LAW IS A BUYER'S MARKET

Building a Client-First Law Firm

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For Mom and Dad

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INTRODUCTION

WHY I WROTE THIS BOOK

When I first committed myself to write a book, a wise friend advised me to be very clear, in my own mind, about who I was writing for and what value I expected this book would provide them. Who is the audience? she asked. Why should they care about what you have to say? Without these guiding lights, she warned me, an author can get lost in the complexity of the subject matter and wind up wasting his time.

That, I feel I should tell you, is exactly what I ended up doing in my first draft of this book. I began writing an omnibus dissertation on the future of legal services, a Grand Unified Theory of the Legal Market that would cover everything and explain to everyone all there was to know. What I produced was just about as compelling and useful as you would imagine from that description. After several months banging away at that dire project, I stuffed the whole thing into a Word file and saved it under a forgettable name.

By that point, belatedly, I had recalled my friend's words, so I returned to my starting point to try again. This time, I strove for clarity in my rationale, my purpose, and my audience. I realized that one of the keys to writing an effective book was to figure out what you were *not* going to talk about, and to whom you would *not* be speaking. So I started narrowing things down.

- I would write principally for the buyers and sellers of legal services—in the vernacular, clients and lawyers. This ruled out law students and law professors, judges and court staff, and regulators and government officials, even though my speaking engagements have included all these groups and others. It also ruled out, for the most part, the newest entrants in the legal marketplace, the "NewLaw" competitors to the legal profession. All these groups could probably derive some value from the book, but they weren't going to be the primary audience.
- I also decided to narrow down even these categories. I would write for lawyers who worked in (ideally, who helped to lead) midsize and large full-service law firms, those that primarily serve businesses, corporations, and large institutions, as well as for the lawyers (and others)

inside these firms. I would not address lawyers in sole practice or smaller firms (which, for present purposes only, I'll define as practices with fewer than ten lawyers), even though I think they can find value here as well.

- I also determined that, because most of my work is performed in and around North America, I would restrict my geographical ambit to Canada (where I live) and the United States (where I usually work and where the largest amount of legal market activity takes place). This was a little more difficult, because a great many interesting things are happening throughout Great Britain, Europe, and Australia, to name just a few other jurisdictions. Nonetheless, most of the examples and analyses in this book are drawn from, and will have the most resonance for readers in, the U.S. and Canada.

So that was how I settled on the "who" of this book. The "what" and the "why" of the book were determined together as follows.

I've been a member of the legal profession for more than 20 years. I was a full-time legal journalist for nearly 15 years, and I've been an active observer and analyst of the legal services market for more than a decade. And over that time, two facts have become increasingly clear to me:

1. The market for legal services isn't working well for its participants. Throughout the course of these past 20 years, I've seen a lot of people without the money to get their legal problems addressed, as well as others who didn't even realize that the problems they were experiencing had a legal solution. I've seen people who knew they needed a lawyer and were able to afford one still come away vexed and disheartened by their dealings with both lawyers and the legal system. I saw courthouses backlogged with aging cases and a justice system overflowing with confused and frustrated users.

   Most remarkably of all, I saw overworked, dissatisfied, unhappy lawyers, labouring every day just to make a living and serve their clients — the only people, you would think, who could still benefit from an otherwise broken-down system. I looked at all that and thought: "This can't be right. The market for legal services shouldn't be this dysfunctional and discouraging for everyone. There's got to be a better way."

2. Within the last five to ten years, a better way started to emerge. I began to see new forces coming to affect the legal market, causing fresh possi-

bilities to occur to its participants. I saw new providers enter the market and begin to change everyone's expectations of legal services delivery. I saw regulatory reforms make the first small dents in lawyers' monopoly position and start inching us towards market liberalization. I saw conversations about innovation in the legal sphere grow beyond the small, hopeful community to which they'd been restricted and enter the mainstream awareness and attention of the entire legal profession.

Most encouraging of all, I saw legal system users—the people and businesses upon whom lawyers depended for their livelihoods—grow increasingly aware of, confident about, and capable of managing innovative solutions to their legal challenges. I saw change coming to the previously invulnerable legal market, faster than its participants expected or could necessarily manage.

Faced with these unprecedented developments in an incredibly important area of society and the economy, I did what everyone else was doing in the mid-2000s: I started a blog.[1] And the more I wrote in my blog about what I saw in the legal market and what I thought it meant, the more I received inquiries from lawyers, legal associations, regulatory agencies, law schools, and even judges, to attend their meetings and talk about what I was seeing. And when these groups elected not to run me out on a rail when I finished speaking, I took that as a sign that I might be onto something.

So this is now my full-time line of work. I observe what's happening in the legal market, I strive to understand why it's happening and what it means, I try to forecast where these developments are taking the legal market and its participants, and I offer my advice on which responses and adjustments those participants (principally law firms) should make.

And yet, whenever I speak to lawyers who are experiencing this upheaval, it becomes clear to me just how far most law firms have to go. They know that something is happening to their markets and their clients, but they don't have the information or the tools they need to make the necessary adjustments. Most of all,

They know that something is happening to their markets and their clients, but they don't have the information or the tools they need to make the necessary adjustments.

[1] Law21.ca

they don't fully appreciate that the old market for legal services is passing away and a new one is emerging to take its place, and what they ought to do about that.

And that's why I wrote this book. I thought it would be helpful for these law firms and their clients if I were to set out my thoughts on these subjects in a convenient paperback format, so that they might consider these thoughts, figure out which of them are applicable to their own situations, and start to implement them.

NOTES ON THE TERMINOLOGY USED IN THIS BOOK

You'll see two closely related terms appear frequently throughout this book: "buyer" and "client." Lawyers and law firms, of course, invariably use only the latter term. But I use both, each in specific circumstances.

For me, whether someone is or is not a "client" of a law firm is less important than the fact that they're a "buyer." When we think of a person or a company as a "client," we tend to invoke certain aspects of the lawyer-client relationship, most notably the ethical safeguards around confidentiality and fiduciary duties. That, of course, is a good thing.

But calling someone a "client" can mask the equally important fact that this person is also a *customer*—someone who's paying money for the timely and pleasant delivery of certain goods and services. "Client" is a word that encourages professionalism among lawyers, of course, but it doesn't necessarily encourage responsiveness, service, or customer care.

So, when talking about the people, businesses, and organizations that enter the legal market, seeking products or services that meet their needs, I use the term "buyers." When talking about a buyer that has agreed to enter into a service relationship with a lawyer or law firm, I use the narrower term, "client." We can consider "client" to be a subset of "buyer."[2]

The point of this distinction is to remind us that whatever the other characteristics of the lawyer-client relationship, that relationship is fundamentally a *commercial* one. And the rules governing commercial transactions are

[2] I go into some more detail on the difference between these terms in Chapter 15.

older and more widely understood by legal buyers than are the rules governing lawyer-client interactions. Lawyers must be aware of both sets of rules whenever they deal with their clients.

Another term that appears in this book is "non-lawyer." You'll soon notice that this term is rendered in quotation marks every time it appears. This is because I can't stand "non-lawyer." It's a term that is used by nobody except lawyers and is meant to do nothing more than draw a clear line between two groups of people: lawyers and every other person in the world. No other occupation does this. You never hear nurses talking about "non-nurses" or plumbers talking about "non-plumbers."

"Non-lawyer" is used as code, not just for "someone who isn't a lawyer," but also for "someone who doesn't measure up to the high standards lawyers set for themselves." You hear it used in law firms all the time: "The new marketing director is skilled and experienced, sure, but she's a non-lawyer, so she can't really understand what lawyers and clients need." And you hear it with increasing frequency in relation to new providers of legal services who aren't lawyers: "You can't really think that a non-lawyer could deliver the quality and professionalism that lawyers do." The reason why many lawyers use "non-lawyer" so often is that it draws all the distinction they believe anyone should ever need.

I don't much care for this way of thinking. It's a bad habit that does lawyers no credit, and it's one of the most powerful obstacles to the profession's willingness to re-examine its habits and practices. Constructive criticisms are disregarded and potential innovations are dismissed if they come from "non-lawyers" or otherwise threaten lawyers' primacy in the legal market. Lawyers who use the term in this fashion will someday be unpleasantly surprised to see just how much of the legal market belongs to "non-lawyers."

Ideally, I'd use the phrases "people who aren't lawyers" and "entities that aren't law firms" instead of "non-lawyers." But that would drive you crazy within a few pages, and it would probably drive me crazy a few pages after that. So for the purposes of keeping us all sane, I'll stifle my objections and use "non-lawyer." But I'm putting it in quotes.

A NOTE ON THE SPELLING IN THIS BOOK

Since I'm Canadian, this book uses Canadian spelling. You can recognize Canadian spelling because a "u" appears in words like "labour" (as Britons spell it), but a "z" (which we call "zed") appears rather than an "s" in words like "organize" (as Americans spell it). We also spell "cheque" without a "ck," but I don't use that word in this book—other than in this sentence.

PROLOGUE
A KNOCK AT THE DOOR

Occasionally, the law comes to your door, and it's something to celebrate.

- A recently married couple learns that they're expecting a baby, and for the first time in their lives, they start to think seriously about what will happen after they die, so they make an appointment with a local wills and estates lawyer.
- A high-tech startup finally secures its long-coveted Series A funding, and the founders exchange glances over champagne toasts as they realize they're suddenly confronting a host of uncertain legal issues, so they contact a boutique law firm specializing in new technology businesses.
- The owners of a thriving young company finally gather their courage and decide to make their first foray into the international market by acquiring a smaller, overseas rival, so they hire a large full-service law firm to manage the whole complex affair.

In all these situations and countless more like them, the law is welcomed as a friend: a facilitator of growth and success, a means to ensure security and expand opportunity. Everyone is energized and upbeat.

More often, however, the law comes to your door, and it's an irritant.

- A small business finds out that its tax return has been challenged yet again by the revenue authorities, so the owner and her husband have to shell out for another round of expensive legal advice, delaying their plans to expand by one more year.
- A manufacturer is forced to shut down an old factory because it can't satisfy an array of environmental conditions, so it has to start laying off longtime workers in the factory's small community.
- A bank can't stay in business unless it complies with a vast and bewildering web of regulations, so it needs to hire a large law firm at a staggering, ongoing expense just to keep on top of all the demands.

In all these situations and countless more like them, the law is a pain in the neck: tolerated as a tiresome obligation, endured as a repetitive and expensive chore. Everyone just wants to get it over with.

And once in a very long while, the law comes to your door, and it's me.

Many of the details are fuzzy—reasonably enough, since this happened back in 1994—but others are still as clear as if this, my first real experience as a lawyer, had happened yesterday. I was working as an articling student[3] at a highly respected national law firm in Toronto. An associate came to my cubicle with a fairly easy assignment: Go rent a car, drive to a distant suburb, and serve a statement of claim on a particular person at a particular address.

I can't say why the firm didn't simply hire a process server, rather than handing this job to a much more expensive (and far less competent) future lawyer. Possibly, this was meant to be one of those "learning experiences" in the ways of the legal system that traditional firms seem to cherish. I also can't recall any details of the claim, other than the amount of the requested damages: $30,000. That was a figure closely adjacent to my annual salary as an articling student, so while it might seem like small change in retrospect, at the time it felt more significant to me—and likely, to the people who were named as defendants.

I also remember the affordable-housing community through which I drove the rental car, as well as the very modest semi-detached townhouse whose short flight of steps I climbed. I rang the bell, the door opened, and a young woman looked at me a little suspiciously, while a toddler played with scattered toys at her feet.

"Could I speak to Mr. A?" I asked, as I had been instructed to do. She summoned a man to the door. I handed him the statement of claim, told him he was being served with litigation documents, and recited other memorized instructions to which I'm sure they weren't really listening. My job was done, and I could've left immediately; but for some reason, I felt compelled to linger.

[3] In Canada, a law graduate can't be called to the Bar unless he or she has completed a one-year "articling term," an apprenticeship to a practicing lawyer that provides the new graduate with hands-on lawyering experience.

The man opened the package, and the two of them looked at the documents together. They were clearly shocked—whatever the unhappy circumstances that involved them and my firm's client, they were not expecting a statement of claim to be the next step. They huddled together in the doorway, speaking in urgent, worried murmurs to each other about the amount of money at issue. The toddler caught some of their unease and began to grow restless.

Then they turned their attention to me, and I braced myself—I had anticipated and feared a hostile reaction all through the drive on the way over. But I was wrong. They turned to me with open distress. "What do we do now?" they asked me. "How are we supposed to respond? Can you help us?"

Now, I was just an articling student, but even I knew enough not to try giving advice to a party on the other side of a claim. And it wasn't like I knew anything that could help them, anyway. All I knew was that at that moment, I wanted to be anywhere else in the world other than on that doorstep. I stood there for a few moments saying "I'm sorry," and "I can't help," before retreating back down the stairs to the safety of the rental car. They were still standing in the doorway as I drove off.

WHY WE'RE HERE

I tell you this story not because it's unique or especially important to anyone other than the parties involved. Nor do I tell you this as a parable for all the many things wrong with our system of training new lawyers, although it could certainly serve as one. I'm not even telling the story because it marked my first step away from the practice of law and towards my eventual recognition that I could provide more value outside the Bar than inside it.

Many times, law comes to the door, and it feels like a home invasion. It arrives as trauma, disrupting plans and dreams, threatening the personal well-being and financial survival of those who open their door to find it there.

I tell you this story to make this point: Many times, law comes to the door, and it feels like a home invasion. It arrives as trauma, disrupting plans and dreams, threatening the personal well-being and financial survival of those who open their door to find it there.

From the poorest family to the richest corporation, the impact of the legal system usually disrupts—and frequently shatters—the normal flow of life's events. It lies heavily on human hearts and looms darkly over business prospects, until such time as the shadow it casts can somehow be resolved and removed. Often, when law comes to the door, it's a serious complication or a damaging setback, placing people and companies immediately into a deficit position.

A number of lawyers have told me how tough it is to be a seller of legal services these days, and I'm sure they're right. But on more than one occasion, I've felt like responding, "Really? Maybe try being a legal services buyer sometime." Try being a person or family or business that gets accosted by and dragged into the opaque, arcane, and sometimes ruinous legal system. Because that's pretty hard, too.

In the best possible circumstances, a legal services buyer pays a lawyer to advance an opportunity or facilitate an investment. But in most other circumstances, buyers pay a lawyer a lot of money to resolve a problem that they don't fully understand and for which they never asked. The best they can hope for is a return to square one—a restoration to the *status quo ante,* minus dozens of hours and thousands of dollars. If you're a lawyer and you're not fully cognizant of this fact, then you're missing out on information that can give you not just the empathy to help these buyers, but also the advance warning to prepare for what's coming our way.

WHAT THIS BOOK IS ABOUT

We are now crossing the threshold into a full-scale transformation of the legal market—a transformation driven by historic forces of upheaval beyond the legal profession's power to control or even influence. Every lawyer in this market, as well as those future lawyers yet to arrive, will see their lives and fortunes transformed as well.

It's my intention, throughout this book's 15 chapters, to describe why the market for legal services has irrevocably changed and how traditional law firms, finding their old practices and procedures no longer effective, can change with it. My plan is to describe the forces that have remade the legal services market, forecast how that market will develop in the future,

and offer my recommendations for how law firms can adapt or reinvent themselves to succeed in that future.

But although this book is meant for lawyers, in a way, it's not really *about* lawyers or law firms. It's about the people and families and businesses that consult lawyers and retain law firms and thereby enter the legal market, willingly or otherwise. The law exists for *them*: to help regulate their relations with one another and the societies they've built, within a framework of justice and accessibility. The law does not exist, in the famous observation of Richard Susskind, to provide a living for lawyers.[4] Many lawyers seem to have forgotten that.

The law is about the *buyer* of legal services, not the seller. Up until recently, the legal market operated in direct opposition to that truth, prioritizing the interests of sellers over those of buyers in both operational and institutional dimensions. Law has been engineered, by lawyers and others, to be a seller's market. It's been like a river whose current has been artificially dammed and redirected to serve the interests of developers. Little wonder that backlogs and flooding have long been rampant throughout the system, while a constant state of drought has developed at various points downstream.

THE NEW LEGAL MARKET

This is all, finally, changing. As you'll see in the following chapters, the priorities of the buyer are now emerging as the dominant force in the legal market, and the market's power dynamics are following suit. The river is being allowed to pursue its natural course, and the legal profession now has to decide whether to go with its flow.

I must advise you that the lawyers and law firms that try to paddle their crafts against this newly energized current are going to founder and drown. But those who instead reposition themselves and redirect their energies, seeking to match the current and ride in its natural direction, will find themselves virtually flying down the river towards their destination. And they'll find themselves accompanied on this trip by the people and businesses that need their help.

[4] In *The End of Lawyers? Rethinking the Nature of Legal Services,* by Richard Susskind (Oxford University Press, 2010), and if you haven't read it, you really should.

View absolutely everything you do through the prism of the people and the businesses that consult you and purchase your services—your clients.

So the fundamental message of this book for the providers of legal services is this: View absolutely everything you do through the prism of the people and the businesses that consult you and purchase your services—your clients. See the world through their eyes, align your interests and priorities with theirs, and build law firms and legal enterprises founded upon service to their needs. Law is a serving profession. *Serve your clients.* That's why we're here. That is your North Star, and if you follow it, I promise you will not go astray.

The law will continue to come knocking at people's doors, whether as a celebration or an irritant or a home invasion. When those people open their doors to the law, they will find you standing there behind it. What are you going to say to them? What are you going to do?

Chapter 1

THE END OF THE SELLER'S MARKET IN LAW

Almost every textbook or treatise on the legal market has been written by a member of—or from the perspective of—the legal profession. Whether it's a survey of the market's mechanisms, a guide to maximizing law firm profitability, or even an indictment of the "access to justice" problem, the voices that speak and the priorities they speak from tend to be those of the sellers of legal services.

Which is fine, of course. Lawyers understand the environment in which they operate and their perspectives obviously are legitimate. But it should also be evident that any picture of the legal market painted from lawyers' point of view necessarily will be an incomplete one. We can't fully understand the legal market unless we also look at it from the perspective of the people and businesses whose money keeps it going. We need to listen closely to buyers and take seriously what they're telling us about the legal market, because it's their story that helps explain why the market is changing.

My starting premise in this book is that, up until now, the law has always been a seller's market—and since the sellers have exclusively been lawyers, it's more precisely been a lawyers' market. Why do I believe that? Here are three reasons:

1. **There is a great imbalance of power between buyers and sellers.** Legal services buyers traditionally have had little knowledge of the law, very little ability to assess the quality of legal services, and no way at all to assess competing claims of expertise among providers. Sellers have outpointed buyers in all these categories and more, essentially rendering buyers little more than supplicants to those who sell solutions for their needs. The urgency of most legal problems and the perceived complexity of most legal solutions further erode buyers' bargaining positions; they can't really afford to haggle. The fact that courts long ago felt obliged to create a fiduciary duty that binds lawyers

to their clients illuminates the size and depth of the power imbalance between them.

2. **Legal solutions are restricted to one type of seller.** Nothing against Hyundai, to choose a carmaker at random, but if it were the only company in the world permitted to manufacture automobiles, you'd probably feel like you were missing out on the full range of automotive options. Lawyers, however, have always enjoyed a monopoly over the provision of legal services, since competition from other potential sellers is generally banned through regulations against the "unauthorized practice of law." Legal services regulation, influenced if not controlled by the legal profession, has endeavoured to scour the legal market clean of any other options. You can debate whether this has been a good or a bad thing, but it's difficult to argue that it has improved buyers' market power.

3. **Legal solutions are priced to serve the interests of sellers.** Most lawyers' services are sold on the basis of a specified hourly rate multiplied by an unspecified number of hours. That's not really a "price" any more than if the cost of your airline ticket were determined only once you landed at your destination. It's trite to point out that variable pricing based on the provider's time and labour discourages efficient production and shifts the risk of unforeseen developments onto the buyer. But trite as it might be, it remains true, and a market in which this is still the predominant pricing method in 2017 is almost self-evidently pitched heavily in favour of sellers. The problem has never been the existence of "the billable hour" *per se*; it's been the near-complete absence of any other pricing mechanism.

THE "MARKET" BLIND SPOT

Now, take off your lawyer hat for a moment. Place yourself in the position of someone entering and trying to get through the market described above. Are you likely to be positive about the experience? How are you going to feel about the people and the system that put you through it?

I believe that, if you did indeed put aside your lawyer hat and thought the whole thing through, you'd understand the frustration and even the indignity to which legal market buyers routinely feel subjected. But—and I think this is the core of the problem right here—most lawyers don't do that. This

is not because they're heartless, but instead because many lawyers don't really think in terms of a legal "market" at all.

I'm educated, trained, and licensed to be a lawyer. Over the past two decades, I've worked with and spoken to literally thousands of lawyers in multiple jurisdictions worldwide. And I'm prepared to say that the majority of lawyers do not think of themselves as operating in a "market." They don't tend to think of themselves as "sellers" and their clients as "buyers." That's not how they view this world.

Some of these lawyers find the application of market terms to legal services as unprofessional and kind of distasteful. I don't, to be honest, fully understand this—do they regard their work as an ongoing act of benevolent patronage for which they are handsomely rewarded by the hour? I'm not sure.

Other lawyers have no background or experience in business, so they simply don't think of legal services in terms of transactional enterprise at all. To one degree or another, these lawyers resist the description of legal services as a commodity (in the economics-textbook sense of a good or service available for purchase) or the sale of legal services as a market event.

So the problem isn't just that law is a seller's market. The problem is that it's a seller's market *whose sellers don't even know they're in a market*. They're like fish who don't know they're in water.[5] How in the world do you solve a problem like that?

The problem is that it's a seller's market whose sellers don't even know they're in a market.

The answer is that you don't. Other people solve it for you, on their terms.

WHY THE SELLER'S MARKET IS ENDING

Consider the untold millions of legal services buyers who've trudged through this market, year after year, because they didn't have any other options.

[5] The full anecdote behind this reference is usually credited to David Foster Wallace in his famous 2005 commencement address at Kenyon College, which he begins: "There are these two young fish swimming along and they happen to meet an older fish swimming the other way, who nods at them and says, 'Morning, boys. How's the water?' And the two young fish swim on for a bit, and then eventually one of them looks over at the other and goes, 'What the hell is water?'" http://bulletin.kenyon.edu/x4280.html.

Consider how the legal profession has either been oblivious to this fact or has inadvertently exploited it all those years. That's how we can come to understand and appreciate the demise of the seller's market in law.

Even if lawyers don't always fully appreciate how they're participants in a market, they do understand that the practice of law traditionally has been a pretty good line of work. It's hard work, of course—don't imagine that I'm downplaying the intellectual and emotional rigour required to be a good lawyer.

But law practice more than compensates for the demands it makes on its practitioners. It's intellectually engaging, it pays well, and it never seems to run out of clients. Throw in the high social regard that, lawyer jokes notwithstanding, the profession still generally enjoys, and you can see why the business of being a lawyer is a boat whose occupants have never felt much inclination to rock. It's always easy to defend the *status quo*, but it's easier again when the status is comfortable and the quo is remunerative.

So, it's natural that the sellers of legal services enjoy the market in which, knowingly or otherwise, they operate. But it's important that we fully understand this fact: The buyers of legal services *hate* it. Viscerally, to a degree most lawyers don't fully grasp.

Legal services buyers hate the way the legal market operates, they deeply resent the frustration and helplessness they often experience, and they've come to seriously begrudge the people who have benefited from it. A market in which you are crisis-stricken, ill-informed, vulnerable, and at the whims of an elite cadre of expensive solution providers is a market you will not willingly or happily enter twice.

The legal market is changing because, however well it has worked for its sellers, *it has failed its buyers*. And no market, regardless of how tightly its sellers grip the reins of power, can survive that state of affairs very long.

Momentum is a powerful force, and few markets have enjoyed as much inertial force as the law. But momentum will only carry you so far. The ongoing failure of the legal services market to truly serve the interests of its buyers is finally catching up with it, in large part because the stakes are too high for the failure to continue.

Legal services are not a nice-to-have or a stocking stuffer. They are essential to the quiet conduct of human lives and to the survival and success of every kind of business and organization. We have always instinctively recognized that legal services aren't so much an ordinary commodity as they are a vital public utility.

But buying these essential services is and always has been a stressful, expensive, and difficult process that often leaves buyers feeling anxious and dissatisfied, regardless of the outcome. Buyers have longed for something different and better—and as we'll see in subsequent chapters, buyers jumped at those alternatives as they began to emerge.

A surprising number of lawyers don't see this. They look at a business environment that has worked wonderfully (from their perspective) for many years but that now, early in the 21st century, is starting to break down. Buyers are gaining more knowledge about the law. They're beginning to look for alternative sources of legal solutions. They're coming to insist more frequently on lower and more reliable prices. They're not behaving themselves properly. I mean that literally: Legal services buyers' *behaviour* is new, unexpected, and unsettling to sellers.

Many of the lawyers I encounter these days wonder when things will get back to normal. What they need to understand is that this market was *never* normal. It was barely even a "market," in technical terms. It was a closed system, artificially constrained for decades by asymmetric knowledge, limited competition, undifferentiated providers, seller-driven pricing, and the absence of disinterested regulation. Consequently, buyers have long suffered from weak bargaining positions, low self-confidence, and little sense of having received value for money.

Why would we ever suppose buyers would want that to continue? This isn't a market going crazy, as much as some lawyers might like to think. It's a market that's finally going *normal*. And it's not going back.

When we look at the legal market from a seller's perspective, it's almost impossible to imagine why anyone would want to change it. But when we look at it from a buyer's perspective, it's almost impossible to imagine why anyone would want to maintain it.

THE MULTIPLE TRIGGERS OF CHANGE

So if, as I've argued, law has always been a seller's market, why should that be changing now? Why should today's buyers be any more or less inclined or able to act on their frustration than preceding generations were? What's happened all of a sudden to bring about the end of the sellers' market and usher in something new?

The short answer is: pretty much everything.

The longer and somewhat more helpful answer is this: Throughout the opening 15 years of the 21st century, an extraordinary array of powerful external events has picked up the multi-billion-dollar legal services market and shaken it like a snow globe, sending everything inside into spirals of chaos. Some of these economic and social forces have universal application, while others have been aimed specifically at the legal market. Either way, these forces were and remain far beyond the control or even the influence of the legal profession.[6]

I would rather not spend too much time delving into these forces and their impacts, because this is intended to be a practical, solutions-oriented book rather than a sociological dissertation. But what I've found, in my speaking appearances and in my conversations with lawyers, is that there's a real hunger within the legal profession to fully understand the causes of its current afflictions.

Partly, this is due to lawyers' natural inclination towards narrative explanations for complex situations. A logical sequence of events makes a chain of causation much easier to grasp. And partly, this is because of lawyers' natural skepticism. Lawyers demand a highly persuasive argument with airtight logic before they'll consider any new premise.

So, I think it's worth taking some time to lay out my theory of massive change in the legal marketplace—how I believe it shifted from a sellers' advantage to a buyers' advantage. If you don't need to be convinced on the details, you can skip ahead to Chapter 4. But if you'd like to see the history behind the conclusions, then in the following paragraphs and in the next two chapters, I'll do my best to set it out.

[6] This fact alone is something new, and it plays a significant role in many lawyers' slow acceptance of market change—they have difficulty acknowledging that any external actors could bring it about.

Briefly, it looks like this:

Technology has advanced to the point where systems and software can perform some functions that previously could be accomplished only by a lawyer.

- *Technology* has advanced to the point where systems and software can perform some functions that previously could be accomplished only by a lawyer, with more such functions legitimately within technology's reach during the next several years.
- *The internet* has lowered previously insurmountable barriers to accessing legal information and has enabled communication and collaboration among buyers and a wide range of new parties interested in the legal sector, increasing buyers' legal knowledge.
- *Globalization* has helped reduce the cost of many services by enabling the outsourcing and offshoring of legal work to less expensive locations and reducing the importance of physical presence in service provision, thereby changing price conversations.
- *Regulation* of legal services has begun to loosen and liberalize, with some jurisdictions permitting the ownership of law firms by "non-lawyers" and others moving to scale back prosecution of the unauthorized practice of law, opening the door to new providers.
- *Competition* arising from these factors has swept through the market, offering lawyer-like services conveniently and at lower prices, shifting buyers' expectations about legal services delivery, and shaking lawyers' business assumptions to their core.
- *Empowerment* of buyers has led them to try navigating some parts of the legal market without the aid of a lawyer or even completely on their own, with an unprecedented chance of reasonable success.[7]

These are the new factors at play in the business of law, and together, they're rebalancing the playing field of the legal services market. I'll explore

[7] I contributed a chapter on this subject to the American Bar Association's 2015 book *The Relevant Lawyer: Reimagining the Future of the Legal Profession*. "Client Change: The Age of Consumer Self-Navigation" explains in more detail how a "self-navigation" trend rising throughout the legal market is enabling people to resolve some aspects of their legal challenges on their own, with the assistance of an emerging ecosystem of technology providers and "non-lawyer" helpers. Self-navigation is eclipsing "self-representation" and will soon replace that unhappy practice altogether, with dramatic implications for both lawyers and the legal system. More details are available in *The Relevant Lawyer,* which is itself a great book that will reward the investment of your time.

each one in more detail throughout this book. But there's one other overarching factor that should be taken into account: the most harrowing economic event the world has experienced since the Great Depression.

ECONOMIC CRISIS AND THE LEGAL MARKET

The Great Financial Crisis (GFC) of 2007–2008 can best be described as a convulsion in the global economy: the deflation of the American residential-housing price bubble, the revelation of the mortgage-backed securities scam, the rescue of Bear Stearns and the collapse of Lehman Brothers, the global liquidity crisis, and the near-death experience of the worldwide financial system. The GFC just about broke the global economy, and a decade later, you can make a plausible case that we haven't really fixed it yet. It's not even entirely clear, at the time of writing this book, whether or not we're simply between cardiac events.

But this crisis, while deeply traumatic, was just a single event that took place against a backdrop of fundamental shifts in the nature of work in advanced economies. Over the course of the last few decades, automation and business process advances have reduced the amount of human effort required to sustain or improve productivity, while waves of outsourcing made possible by globalization and technological advancements have relocated many jobs to lower-cost locations. For a variety of reasons, through which Thomas Piketty[8] will happily walk you, the benefits of this increased productivity have been accruing to the owners of capital rather than to the providers of labour, leading to wage stagnation and contributing to a significant rise in underemployment and unemployment.

As a result, many full-time permanent jobs with pensions and benefits have been either supplanted by part-time, itinerant, no-benefits employment opportunities sent offshore, or most commonly, simply automated out of existence by machines and software. This has been especially prevalent among the kinds of entry-level jobs previously filled by younger people, many of whom today stagger under the weight of educational loans that

[8] Thomas Piketty is the author of 2013's *Capital in the Twenty-First Century,* which argues that because the rate of capital return in developed countries is greater than the rate of economic growth, wealth inequality is growing and will continue to increase in the future unless something drastic happens. Something drastic probably will happen, and few people will like it very much when it does.

look increasingly unpayable. The upshot of all these developments is a global economy (and billions of people) under tremendous pressure, with no obvious release valve—or at least, none that we'd like to contemplate.

The legal profession took serious note of all these developments, of course. But most of the commentary in the legal press throughout this period concerned the impact of economic trends and financial crises on lawyers and law firms. How are these developments affecting law firm strategies and tactics? What is the impact of these worldwide economic trends on this year's profits-per-partner rankings? How much legal work previously assigned to first-year lawyers can you outsource to India? How much less can you pay summer students in a devastated economy? And which law firms are billing the most money to handle the bankruptcies of financial institutions or even entire cities?

Neither the legal media that generated these stories nor the lawyers who consumed them covered themselves in glory during this time. Immersed in a legal culture focused on profits and privileges, they spent too much time wondering what global economic devastation might mean for the sellers of legal services. The far more significant story, one to which the profession paid insufficient attention, was the impact of economic chaos and financial disaster on the *buyers* of those services.

THE NEW ECONOMIC IMPERATIVE

Again, think for a moment about people who've lost their jobs, whose mortgages are underwater, or who need to hold down two or even three part-time positions to keep their families clothed and fed. They have unemployed grown children living in their basements, or elderly parents in ill health living in the spare room upstairs.

These people are not seeking out legal services unless those services are absolutely necessary—and even then, only if those services are priced predictably and affordably. These people will bypass what seem like luxury offerings from lawyers and instead accept "good enough" outcomes from "non-lawyer" alternatives. Or, in growing numbers, they'll simply try dealing with their legal issues by themselves. What they're emphatically not doing is looking to hire the "best" lawyers to get the "best" results, because that kind of asset is simply out of their reach.

Yet throughout this period, every aspect of how lawyers worked—reinventing the wheel, billing services by the hour, passing unexpected costs on to the client—and how law firms were marketed—"excellence," "high quality," "zealous advocacy," and other luxury terms—were geared in exactly the opposite direction.

Whether they realized it or not, lawyers presented themselves as an extravagant purchase to a market for which extravagance was not just out of reach—it was also a little insulting. Most law firms were speaking a foreign language to the people they hoped would hire them. They dangerously misunderstood the true state of their market.[9]

Whether they realized it or not, lawyers presented themselves as an extravagant purchase to a market for which extravagance was not just out of reach — it was also a little insulting.

The same dynamic occurred in the corporate legal world. Companies that saw rivals disappear into bankruptcy or hostile takeover, or that faced insurrections from shareholders, delivered ultimatums to their legal departments: You must transform yourselves from comfortable cost centers into operationally sound corporate divisions with strict budgets and stricter accountability for results. Procurement specialists followed up with visits to in-house lawyers to discuss how they might rationalize outside legal spend, using purchasing tactics honed in more commoditized markets.

Law departments grappled with all of this while their internal responsibilities increased, their compliance requirements multiplied, and their budgets were often frozen or even cut back. It was into this environment that law firms kept sending their annual rate increase notifications, making little effort to manage costs or procedures, and generally going about their business as if nothing had changed.

In the aftermath of the financial crisis, many law firms seemed to completely lose touch with what was really happening to their markets. Because they rarely bothered to see how the legal market was operating from the buyers' perspective, they doubled down on priorities and practices that were ever less helpful and relevant to the people and businesses they

[9] Feel free to draw any political parallels that come to mind here regarding the failure of elites to appreciate the nature and depth of everyday voters' alienation from the system.

served. They failed to perceive the widening disconnect between the clients they imagined they were serving and the clients that actually existed. It's a failure that still persists throughout the legal profession today.

THE DAMAGE DONE

The GFC marked a turning point for legal services. Every major industry report in recent years has confirmed that growth in law firm demand, revenue, and profitability have trended consistently lower over the past several years. Realization rates—the capacity of law firms to actually collect the standard rates for their services—declined throughout this period. Litigation was particularly hard-hit, largely as a result of the emergence of alternative providers and developments in technology that likely will spread to corporate practices in future. Let's take a look at some of the details.

Permanently weakened growth

Ever since the GFC, demand for law firm services has been relatively flat. A 2016 report by the Georgetown Center for the Study of the Legal Profession considered the total number of hours billed by a sample of AmLaw 100, AmLaw 200, and midsize U.S. law firms. It found that the total number of billable hours recorded barely increased in the previous year, which "continue[d] a pattern seen over the last six years (with the exception of a brief uptick in 2011 and a sharp negative turn in 2013). It contrasts markedly with the 4 to 6 percent annual growth in demand seen in the legal market prior to 2008."[10]

A similar report by Citi-Hildebrandt (generally considered the most optimistic of the issuers of major reports on the U.S. legal market[11]) anticipates low single-digit growth in legal industry revenue and profitability to be typical in the coming market. This is a departure from profit growth rates of roughly 10 percent in the years immediately prior to the GFC.[12] Importantly, these estimates of revenue and profitability do not appear to take

[10] Georgetown Center for the Study of the Legal Profession and Thomson Reuters Peer Monitor, "2016 Report on the State of the Legal Market": https://peermonitor.thomsonreuters.com/wp-content/uploads/2016/01/2016_PM_GT_Final-Report.pdf [Georgetown (2016)].

[11] Adam Smith Esq., "The Big 3", Jan. 11, 2016: http://adamsmithesq.com/2016/01/the-big-three-annual-reports-on-law-land/ [Adam Smith Esq.].

[12] Citi-Hildebrandt, "2016 Client Advisory": https://www.privatebank.citibank.com/pdf/2016CitiHildebrandtClientAdvisory.pdf [Citi (2016)].

interest rates into consideration, meaning that law firm profit and revenue in real dollars could actually be shrinking.[13]

The Citi report also suggests that a shift in demand volatility has occurred over the past several years. In 2005–2007, almost two-thirds of law firms saw demand increases; in the 2012–2014 and 2013–2015 periods, this fraction was approximately one third.[14]

These findings are consistent with the perceptions of law firm leaders over the last few years. In its "2016 Law Firms in Transition" report, Altman Weil polled managing partners and chairs at 800 U.S. law firms with 50 or more lawyers. Seven years after the GFC, only 38 percent of law firm leaders reported that demand for services at their firm had returned to pre-recession levels; 25 percent expected it would never fully return.[15] Additionally, 62 percent of respondents thought the erosion of overall demand for work done by law firms is a permanent trend.[16]

Decline in realization rates

Perhaps the best illustration of a power shift in favour of buyers during this period—as well as the counter-intuitive pricing strategies pursued by some law firms—is realization rates. Collected realization rates are the proportion of standard rates that are actually collected; this includes discounts negotiated before sending the bill, hours worked but not billed, and discounts conceded after the bill is sent. Billed realization rates include only the first two types of discounts.

In October 2015, realization rates at large U.S. law firms hit an all-time low, continuing an ongoing downward trend.[17] This means that lawyers' standard rate—the hourly rate initially quoted to clients as a starting point for negotiations—is increasingly separated from the rate law firms are actually able to collect for their services. In 2005, Georgetown's report found billed realization rates stood just below 94 percent and collected realization

[13] Adam Smith Esq.

[14] Citi (2016)

[15] Altman Weil, "2016 Law Firms in Transition": http://www.altmanweil.com/dir_docs/resource/95e9df8e-9551-49da-9e25-2cd868319447_document.pdf [Altman LFIT (2016)].

[16] Altman LFIT (2016)

[17] Georgetown (2016)

just below 93 percent. By October 2015, those two rates had fallen to approximately 86 percent and 83 percent.

Over the same time period, the Citi report noticed a similar trend in alternative fee arrangements (AFAs) and pre-negotiated discounts, both of which are deviations from standard billing practices and rates prior to the GFC. Fees structured in one of these ways accounted for 58.6 percent of law firm revenue in 2015, up from 50.3 percent in 2010[18] and certainly up a substantial degree from 2005.

Litigation impact

Litigation practices have been particularly affected by these market changes, suffering negative growth in demand since the beginning of the GFC, except for a brief period in late 2011 and early 2012. Demand growth in litigation has lagged behind transactional practices at almost all times since 2010.[19]

The Citi report noted that "litigation practices have been disproportionately impacted by the trend in disaggregation of work, either doing more work in-house, or sending relatively routine work to low-cost providers rather than to traditional law firms…. Improvements in technology have also disproportionately impacted litigation practices more than non-litigation practices by reducing the number of hours spent on a client matter. Either lawyers are leveraging technology to finish their work in fewer hours, or they are losing the business to third-party providers."[20]

This could be a precursor for what's to come for corporate practices. Contract analysis software that helps perform due diligence appears to be in a similar state to e-discovery software several years ago, and is gaining acceptance by in-house departments and alternative providers. If law firms are able to adopt contract analysis software more quickly and effectively than they did with e-discovery, they might yet be able to retain this type of

[18] Citi (2016)

[19] Georgetown (2016) and Citi (2016)

[20] Citi (2016). Here's a similar quote from Georgetown (2016): "The erosion [of the market share controlled by traditional law firms] began at the lower end of the market with legal process outsourcing firms skimming off routine but lucrative document review and e-discovery functions."

work. But if not, the erosion of market share held by law firms in litigation services could be replicated in corporate practices over the next few years.

Spending and insourcing

Finally, as has been the case every year since 2011, the 2015 Altman Weil survey of Chief Legal Officers found that more law departments decreased their spend on outside law firms than increased it. In 2015, for example, 44 percent of respondents said they had decreased outside counsel budgets in the previous year, while 32 percent reported increasing them. This was despite the fact that a relatively equal proportion of law departments saw their total budgets increase and decrease over the same time span.[21]

To the extent that work done by outside law firms will continue to be done at all, 76 percent of the law departments that reported reductions in outside law firm spend also said they'll re-allocate this work to their own in-house legal staff. Thirteen percent will use technology and 9 percent will use contract lawyers.[22]

This is all consistent with the experiences of law firm leaders. Fully 68 percent of managing partners and chairs told Altman Weil they've already lost business to corporate law departments insourcing legal work. In addition, 21 percent reported losing business as a result of their clients' use of technology that reduced the need for lawyers and paralegals, and 19 percent as a result of alternative providers.[23] Larger firms were much more likely to be affected by these competitive threats than smaller firms.[24]

HERE COMES THE FLOOD

The developments outlined in these reports did not just materialize instantaneously throughout the legal world. They are part of steady and accelerating trends affecting midsize and large full-service law firms that reveal an industry-wide failure to adapt to changing market circumstances. By the time you read this book, more such intelligence will have appeared, and I fully anticipate that this message will have become only clearer and more forceful.

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[21] Altman Weil, "2015 Chief Legal Officer Survey": http://www.altmanweil.com/dir_docs/resource/e377d935-7263-4031-b25d-57dbc4d9d16d_document.pdf. [Altman CLO (2015)]

[22] Altman CLO (2015)

[23] Altman LFIT (2016)

[24] Altman LFIT (2016)

The old legal market—and I think that's what we can safely call it now—existed in a tense dis-equilibrium between unhappy, powerless buyers and happy, powerful sellers. The fallout from the global financial crisis and the precarious new nature of employment exacerbated the intense pressures already felt by legal services buyers. These pressures began to destabilize buyers, who didn't realize they had a breaking point until they were confronted with one.

Herbert Stein, the former chair of the Council of Economic Advisers, once made the acute observation that "if something cannot go on forever, it will stop." Stein's Law is sometimes re-phrased as "unsustainable trends tend to come to an end." A monopolistic market populated by long-complacent sellers and increasingly angry buyers simply can't go on. It will continue until it doesn't. Something will break the impasse.

A monopolistic market populated by long-complacent sellers and increasingly angry buyers simply can't go on. It will continue until it doesn't. Something will break the impasse.

What has broken the impasse in the legal market, signaling the end of the old system and the start of the new one, is the emergence of *buyer choice*. All that buyers ever needed were legitimate alternative options for legal services, both to create a range of selections for them to patronize and to jolt the incumbent providers into awareness and action.

Over the past decade, these options have emerged—some of them licensed and legitimized, some of them unauthorized and rogue, but all of them presenting something completely new: viable alternatives to lawyers and law firms for the provision of legal services. In the next two chapters, we'll examine these options and what they've done to the legal market.

Chapter 2

THE EMERGENCE OF LAWYER SUBSTITUTES

Lawyers are no longer the exclusive suppliers of legal services. That's neither a prediction nor a warning, but simply a statement of fact. For the first time in the history of the legal market, people and businesses can obtain adequate legal assistance without retaining the services of a lawyer. Buyers finally have choices. In the next two chapters, we'll explore the depth and dimensions of those choices.

Before we dive into the details, however, let's take a moment and allow this fact—that lawyers aren't the only source of adequate legal services—to sink in. Even ten years ago, this was scarcely conceivable. A little as ten years from now, it could be commonplace. Before you know it, it'll be "the way things have always been." Today, we're right at the transition point, balanced on the fulcrum between these two eras in the legal market. If you're feeling a little wobbly and unsteady these days, well, that's what it's like to stand on a fulcrum. The ground will become much steadier as we wind our way farther into this second era.

Buyers' options in the legal market have expanded in two dimensions. Buyers no longer need to visit traditional law firms in order to hire a lawyer—they can choose new platforms to find lawyers, and we'll explore those law firm alternatives in the next chapter. But buyers don't even need to retain lawyers to obtain many legal services anymore, and we'll explore these lawyer alternatives right now.

ACCEPT SOME SUBSTITUTES

Actually, a more accurate name for lawyer alternatives would be "lawyer substitutes." In economics, "substitute goods" are products perceived by the market as so similar to one another that raising the price of one increases demand for the other. Assuming you consider McDonald's and Burger King

pretty much interchangeable,[25] then if Burger King raises its menu prices or if the closest Burger King is inconveniently distant, you'll go to McDonald's. A "lawyer substitute" would be a person or process whose use provides outcomes so similar to those a lawyer would provide that it doesn't really matter whether you hire the lawyer or the substitute—and if the lawyer becomes too costly,[26] the substitute will become the first choice.

Traditionally, legal services were considered immune to the law of substitute goods, for a couple of reasons. One is that law has often been regarded as a "credence good," one whose value is difficult or impossible for a consumer to ascertain even after using it. This is as you'd expect, given the often opaque and complex nature of much legal work and the unsophistication of the buyer relative to the expert seller.

Some legal goods are more "credence" than others, of course. In extreme cases (such as a last will and testament), the buyer literally will never know whether the legal product she purchased was effective or not.[27] Other legal goods are easier to assess upon use. If you've bought advice from a lawyer concerning your ability to immigrate to another country, yet you're still turned back when you try to cross the border, you'll immediately know that something's gone wrong with your purchase.[28]

The more salient reason for lawyers' presumed immunity from the law of substitute goods is that there have never been any substitutes or alternatives to lawyers in the legal marketplace.

But the other, more salient reason for lawyers' presumed immunity from the law of substitute goods is that there have never been any substitutes or alternatives to lawyers in the legal marketplace. Well, there *have* been alternatives from time to time, but they've never lasted long because legal services regulators shut them down. Offering the services that lawyers offered, without being

[25] And you should.

[26] "Cost," of course, isn't always or even primarily a matter of money. If it's really difficult to find a lawyer in your area who can help you, or if you find that dealing with a lawyer and getting him to return your calls is a real hassle, then your cost of using a lawyer goes up. Lowering a buyer's cost—reducing the friction—of using a lawyer should therefore be part of a lawyer's client retention and business development strategies.

[27] Although her would-be heirs certainly will.

[28] See generally, "Believe me: Legal services, credence goods and the CMA," by Nicola Searle, http://ipkitten.blogspot.ca/2016/01/believe-me-legal-services-credence.html.

a lawyer, constituted the unauthorized practice of law and was subject to prohibition and prosecution by legal regulatory authorities.[29]

Perfect substitutes are rare in most markets—many people, when pushed to choose, actually will express a slight preference for either McDonald's or Burger King. No one has yet developed a perfect lawyer substitute, and while I'm pretty bullish on legal technology, I have zero expectation that a perfect, complete substitute for a lawyer will emerge in my lifetime.

But we're now seeing the development of at least *partial* lawyer substitutes—people and mechanisms that can generate close approximations of the performances and outcomes that traditionally have been associated exclusively with lawyers.

Some of these substitutes can generate some of the functions of a lawyer without any appreciable drop in quality—or even, in the example of machine-learning software for electronic discovery, with real improvements in quality.[30] Others can provide many of the functions of a lawyer with an appreciable but still acceptable reduction in quality—not quite as good as a lawyer, but in most cases, "good enough" and much less expensive. And some of these substitutes, it should readily be acknowledged, are inferior to lawyers and are not at all reliable.

Over the next decade or so, we'll see all these types of substitutes sort themselves out into the market niches that wish to, or can afford to, use them. The inferior substitutes will sink beneath the waves and disappear. The untrustworthy substitutes will be exposed as frauds and chased out of the market. But the reliable substitutes that provide adequate outcomes

[29] Most of the time, to be clear, prohibition and prosecution were justified, since many such providers were insufficiently competent or were outright crooked. But banning "non-lawyers" from legal services provision has now become a reflexive habit for regulators—so much so that a UPL prosecution is routinely initiated for the mere fact of "non-lawyer" legal services provision, without any investigation of whether the service might be competent and the provider might be trustworthy. As the following chapters should demonstrate, that's simply no longer the case. Some legal services now available from some "non-lawyers" are perfectly fine. Unless legal regulators (who all happen to be members of the legal or judicial professions) reconsider their approach in light of these new facts, then continuing to ban potential competitors will look increasingly like restraint of trade. And that is going to attract the kind of legislative scrutiny that an independent legal profession does not want to receive.

[30] See generally, "People Make Mistakes in Contract Review. Here's How," by Noah Waisberg, Kira Systems Blog, April 28, 2014: http://info.kirasystems.com/blog/2014/04/28/people-make-mistakes-in-contract-review-heres-how.

will survive—and, if other industries' history is any guide, these substitutes will get better and better with time. Everyone—yes, even lawyers—is going to benefit from this development.

HOW SUBSTITUTES WORK IN THE LAW

To reiterate, when I talk about "lawyer substitutes," I'm not talking about someone or something that will completely replace a lawyer, or will render that lawyer wholly redundant. After all, if you were to develop someone who has all the skills, experiences, and insights of a lawyer—well, almost by definition, what you'll have developed *is* a lawyer.

Nobody in the legal market is trying to completely replicate human lawyers and call them by another name. Nor is anyone out there actually trying to build a "law-talking"[31] android. All those articles you see in the legal press asking, "Will lawyers be replaced by robots?" aren't much more than clickbait, making the whole subject easy (maybe too easy) for the legal profession to dismiss.

That's not what I'm talking about here. A "lawyer substitute" doesn't replace the individual lawyer so much as the individual lawyer *function*—the activity, process, or outcome that previously could only be accomplished by a lawyer. I'll be the first to agree that the main reason for lawyers' longstanding market dominance has been that they do good work and serve their clients faithfully. But a close second reason has been the (regulator-enforced) absence of any other option for performing legal tasks. Those options are now emerging, outside of lawyers' control.

A "lawyer substitute" doesn't replace the individual lawyer so much as the individual lawyer function—the activity, process, or outcome that previously could only be accomplished by a lawyer.

These new options don't need to do everything that a lawyer does. They only need to do *one* thing. Think of it this way: A lawyer might spend 60 hours a week working on client tasks. Suppose a technology or process emerges that can take one task that engages the lawyer for one hour a week and do it just about as well, faster, and/or at a lower price. Clients try out this new option, they like it, they come to trust it, and they begin using it

[31] To borrow a phrase from noted litigator Lionel Hutz.

on a regular basis. The lawyer is not competitive to this new option in terms of speed, price, and/or quality—she can't match the substitute in its one specialized area. As a result, she can no longer offer this service at her usual pace and rate.[32] Now this lawyer is down to 59 hours a week.

So what? Fifty-nine hours a week still represents a busy and profitable practice. But then another specialized option emerges that takes away another hour of a different task. And then another emerges that can take away two. And the lawyer soon finds that piece by piece, her stock in trade is being dismantled and carried off. The sphere of exclusivity within which she has traditionally worked and prospered has begun to shrink. The number of things that *only she can do*—or at least, the number of things that only she can do slowly, deliberately, and at the price she's always charged—is declining. That's how "lawyer substitutes" develop, and that's how they are gradually but inexorably siphoning off the inventory of the traditional lawyer—and with it, the oxygen of the traditional law firm.

It's easy for lawyers to dismiss these competitive mosquitoes, largely because very few of these substitutes attack a core, high-value aspect of what lawyers do. "No computer will ever be able to defend a client in court," lawyers say. Well, obviously not. But that's not where new competitors are entering the market.

DISRUPTION THEORY AND THE LAW

Harvard's Clayton Christensen conceived of and has spent the last couple of decades explaining the enormously important theory of market disruption.[33] Here's my best attempt to summarize Christensen's theory and how it works in the legal market.

Normal market activity requires two parties: a source of demand (buyer) and a source of supply (seller). Market disruption requires the presence of a third party: a new, alternative source of supply that can appeal to the source of demand in ways that the primary supplier can't. The alternative's appeal lies in its ability to provide value to the purchaser to a degree or

[32] This scenario is, of course, happening all over the legal market right now, even as you read this.

[33] *The Innovator's Dilemma* (1996, HarperBusiness) and its follow-up books, including *The Innovator's Solution, The Innovator's Prescription,* and *The Innovator and the Philosopher's Stone.*

in a dimension that the incumbent supplier has overlooked, oversupplied, ignored, or believed to be impossible.

The alternative supplier can generate this value for one reason. It has adopted a means of production profoundly different from the incumbent supplier's, one designed to produce deliverables (in dimensions such as affordability, timeliness, convenience, and quality) better aligned with what the source of demand truly values.

The primary, incumbent supplier can't copy the upstart's approach, because its very existence as a commercial entity is rooted in the way it's always gone about its business. The incumbent could no more adopt the substitute's approach than the proverbial leopard could change its spots to stripes. Its cultural, financial, and organizational imperatives force the incumbent to keep doing what it's always been doing, often while ignoring or openly mocking the poor quality or wacky techniques of the challenger.

Christensen's disruption theory states that given all these circumstances, the alternative supplier will steadily grow its market share, because it's giving the market what it *really* wants—improvements in value, not in sophistication, which is all the incumbent can offer.

The substitute starts making progress at the edges of the market, by addressing the market's least complex and lowest-value needs. That's where the substitutes begin—but they never stay there. They gradually work their way upwards and inwards to higher-value sectors as they develop and mature—until, at a certain point, the established supplier fades away and the substitute becomes the new incumbent. Christensen cites numerous examples of this pattern from steel, computer chip, and other industries.

Now, it's law's turn to give the marketplace what it really wants. Partial lawyer substitutes have already evolved and are now emerging in two areas—one inside the regulatory sphere and one outside it. Let's look at both of these in turn.

AUTHORIZED SUBSTITUTES FOR LAWYERS

The first type of partial lawyer substitute has developed over the past decade as a result of direct action by governments, courts, and regulators to liberalize the legal market and create new approved classes of legal provid-

ers. The motivation behind the authorization of these substitutes was the (accurate) perception that the "access to justice crisis" was metastasizing and that lower-priced alternatives to lawyers were sorely needed.

In theory, this was exactly what the market needed: a wider range of options, at different levels of proficiency and corresponding price points, from which buyers could select a provider that best matched their needs and resources. In practice, however, these authorized lawyer alternatives have proven to be few and limited in their scope of allowed activities. In North America, in fact, there are (at time of writing) only three real examples of authorized alternative legal services providers:[34]

- In 2006, at the direction of the Ontario government, the Law Society of Upper Canada stopped prosecuting independent paralegals for engaging in the unauthorized practice of law and instead began to regulate them as "licensees." Ontario paralegals today can represent people in small claims court, in landlord-tenant and other administrative tribunals, and on some minor criminal charges.[35]
- In 2012, the Washington Supreme Court authorized the creation of a class of alternative providers called Limited License Legal Technicians.[36] LLLTs are trained and qualified by the court to address family law issues that arise on the margins of the market. They can complete and file necessary court documents, help with court scheduling, and support people as they wind their way through the family law system.[37]
- In 2014, the Permanent Commission on Access to Justice of the New York State Supreme Court authorized "court navigators" to help low-income residents in areas such as housing, consumer debt, and benefits access. They can accompany people who can't afford a lawyer to court

[34] *Notaires* in Québec's civil law system, who are roughly analogous to British solicitors, do constitute a fourth "non-lawyer" group. But unlike these other substitutes, *notaires* have been around for centuries and aren't part of the common-law system in force elsewhere in North America.

[35] The 2012 *Report to the Attorney General of Ontario Pursuant to Section 63.1 of the Law Society Act* by the Law Society of Upper Canada sets out the details of paralegals' scope of activities: http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147488010.

[36] Seven other states (California, Oregon, New Mexico, Colorado, Minnesota, Florida, and Utah) were considering LLLT experiments of their own at time of writing: http://www.seattletimes.com/seattle-news/washington-experiments-with-more-affordable-legal-advice/.

[37] LLLTs' scope of practice is outlined by the Washington State Bar Association: http://www.wsba.org/licensing-and-lawyer-conduct/limited-licenses/legal-technicians.

to provide advice and moral support on straightforward matters such as consumer credit disputes.[38]

And that's as far as officially sanctioned legal market liberalization has proceeded in North America. Opposition by the organized Bar in all three jurisdictions to even these modest advances was significant. Lawyers complained that these partial lawyer substitutes would make it harder for lawyers to earn a decent living. This was consistent with a lengthy history of staunch resistance by the organized Bar to the prospect of "non-lawyer" activity in the legal services market.[39] In reality, however, lawyers were never in danger of losing much business to these new providers. Their scope of permitted activities has been so tightly curtailed by regulatory bodies that there's little overlap between their markets and lawyers' markets.

So I think the proper conclusion is that these "lawyer substitutes" aren't actually substitutes at all. Rather, they're parallel providers for a part of the market that can't attract lawyers' attention—because that part of the market doesn't have the money to do so. Their ranks will likely grow in the years to come, but until lawyer regulation changes drastically, I doubt that their scope of practice will match that growth. Given the current nature of regulation, it's probably not surprising that lawyer substitutes haven't thus far been able to flourish inside the regulated sphere.

PRAGMATIC SUBSTITUTES FOR LAWYERS

Outside the regulated sphere, however, it's a different story. Thanks to some extraordinary advances in technology, new options for accomplishing legal work are flourishing with remarkable speed. These options fall into one of two general categories:

1. *Legal Process Substitutes* can carry out some or all of the steps involved in a legal process or procedure, executing the tasks necessary to move the legal matter along the road towards its completion.

[38] "Task force hears call for strong measures for legal services," *California Bar Journal,* June 2014: http://www.calbarjournal.com/June2014/TopHeadlines/TH3.aspx.

[39] A good summary of the American Bar Association's checkered history in this regard is provided by Malcolm Mercer in "Unmet Legal Needs—The Challenge to Legal Practice and to Self-Regulation," Slaw.ca: http://www.slaw.ca/2016/07/13/unmet-legal-needs-the-challenge-to-legal-practice-and-to-self-regulation/.

2. *Legal Solution Substitutes* can accomplish a specific outcome or come up with a desired result, providing a needed answer to a legal question or achieving a hoped-for resolution to a legal difficulty.

Legal Solution Substitutes can accomplish a specific outcome or come up with a desired result, providing a needed answer to a legal question or achieving a hoped-for resolution to a legal difficulty.

Processes and solutions, of course, aren't airtight containers; one is usually difficult to address without paying at least some attention to the other. But speaking generally, these are the two functions for which lawyers' knowledge and skills are most in demand: executing a necessary process and achieving a desired result.

Partial substitutes for lawyer functions are available right now in both these categories, with more on the way. Here are some of the most significant examples:

- *Online document providers:* Companies like LegalZoom and Rocket Lawyer offer 24/7 access to legal documents that customers can interactively customize to their own specifications, as well as referrals to a growing network of lawyers in the customer's jurisdiction to review the document and address the customer's more complex legal issues.[40]
- *Contract drafting and analytics:* These programs create contracts from massive precedent databases or apply natural language and machine learning techniques to all aspects of the contract lifecycle (including discovery, due diligence, execution, and expiration) in order to manage the rights, obligations, and risks in a company's contracts.[41]
- *Legal research databases:* Accessible online case law and legal knowledge systems can significantly reduce the time and effort required by,

[40] That's an awfully brief summary that fails to fully describe the enormous impact these providers are going to have on consumer law practice, especially in wills, incorporations, and other legal basics for individuals and small businesses. But this book is focused on large full-service firms that serve larger entities to which LegalZoom is less relevant—for now, anyway. I suggest you follow the work of people like Susan Cartier Liebel, Carolyn Elefant, Sam Glover, and Richard Granat to learn more.

[41] "Artificial Intelligence in Law—The State of Play in 2015," by Michael Mills, *Legal IT Insider*, Nov. 3, 2015: http://www.legaltechnology.com/latest-news/artificial-intelligence-in-law-the-state-of-play-in-2015/. The article includes an excellent diagrammatic explanation of artificial intelligence that you should clip and save.

and increase the accuracy of, traditional methods of researching the law, enhancing their value further with previously unavailable analytics around case outcomes and judges' rulings.

- *Online dispute resolution:* Internet-based systems now enable the rapid, affordable, and relatively painless resolution of financial and personal conflicts; once they're eventually annexed to courts, these systems will become an integral and seamless part of the civil justice process, helping eviscerate much traditional litigation practice.
- *In-house legal operations:* In this multidisciplinary field, professionals collaborate to design and build systems to manage legal affairs, speeding up or replacing traditionally trained lawyers.[42] "Legal ops," a term with which you should become familiar, is one of the leading causes of the law department "insourcing" that's reducing outside counsel engagements.
- *Legal process improvement:* LPI encompasses practices such as legal project management, project mapping, and continuous improvement to increase both the efficiency with which a legal task is carried out and the effectiveness or quality of the outcome. Lean Legal, exemplified by law firms such as Seyfarth Shaw, is a leading example.
- *Legal artificial intelligence:* Expert systems can convert lawyers' knowledge into complex algorithms that answer legal and compliance questions, predictive analytics forecast the outcomes of litigation by analyzing massive case law databases, and potential killer apps like IBM's Watson are poised to revolutionize legal research, reasoning, and analysis.[43]
- *Technology-assisted review (TAR):* Arguably a division of artificial intelligence, TAR includes machine-learning applications that can assess the legal relevance of documents through a system of inductive reasoning

[42] See generally, "What the Jobs Are," an outstanding article by Prof. William Henderson in the October 2015 issue of the *ABA Journal*: http://www.journal.com/magazine/article/what_the_jobs_are.

[43] See Chapter 5 for a list of law firms that have already committed resources to artificial intelligence initiatives. See also, "Automating Legal Advice: AI and Expert Systems," by Ron Friedmann, at Bloomberg Business of Law, Jan. 22, 2016 (https://bol.bna.com/automating-legal-advice-ai-and-expert-systems/), as well as "The intangible law firm" (http://www.law21.ca/2016/07/the-intangible-law-firm/), posted July 11, 2016, on my Law21 blog.

and then carry out the review process faster and more effectively than human lawyers can, most famously through predictive coding in e-discovery.

All these systems and technologies promise to perform certain legal tasks faster, less expensively, and sometimes more accurately than a lawyer could. They can accelerate the speed, amplify the efficiency, and enhance the quality with which many legal processes are carried out or by which some legal solutions are achieved.

The emergence and growth of these partial lawyer substitutes will have a significant impact on the legal world. Electronic discovery alone has already become a $10 billion market worldwide.[44] That is a staggering number, not only because of its sheer size, but because it implies the redirection of many more billions of dollars traditionally paid to law firms to conduct discovery through the manual efforts of lawyers. Ray Bayley, CEO of litigation support firm Novus Law, once estimated that for every dollar his company earns, law firms lose four.[45] It isn't simply a matter of work shifting from lawyers to lawyer substitutes; it's that the *cost* of the work shrinks considerably in the transition.

It isn't simply a matter of work shifting from lawyers to lawyer substitutes; it's that the cost of the work shrinks considerably in the transition.

Partial lawyer substitutes weaken lawyers' bargaining position when dealing with buyers. Lawyers no longer have exclusive access to the legal toolbox, which means the longstanding asymmetry between the knowledge and capacities of buyers and sellers is starting to re-balance, and fast.

THE IMPACT OF SUBSTITUTES ON SELLERS

Let's pause here for a moment and remember that all these lawyer substitutes cover only a narrow band of the full array of lawyer functions.

[44] "New IDC Forecast Shows Worldwide eDiscovery Market Surpasses $10 Billion in 2015," International Data Corporation press release, Jan. 4, 2016: https://www.idc.com/getdoc.jsp?containerId=prUS40881916.

[45] "Who's eating law firms' lunch?" by Rachel Zahorsky and William Henderson, *ABA Journal,* October 2013: http://www.abajournal.com/magazine/article/whos_eating_law_firms_lunch.

Lawyers engage in a wide range of activities across a broad spectrum of complexity and consequence. Some lawyer activities are extraordinarily challenging and important—the kind of work for which substitutes aren't being sought and for which they'll likely never be found anyway.

But many other lawyer activities are simpler and more mundane: drafting a non-disclosure agreement (versus crafting sophisticated tax solutions related to a merger), reviewing a contract (versus analyzing a complex shareholders' agreement), and so forth. If your law practice leans heavily towards the simple and mundane, than I'm afraid you have a problem.

These kinds of tasks are now within reach of systems and software. They don't engage lawyers' best intellectual talents and analytical skills, but they have nonetheless consumed an enormous amount of lawyers' time and clients' money. That's a fundamental misalignment of value in the legal market, one that's about to get sharply realigned.

The primary effect of partial lawyer substitutes will be to remove simple, straightforward tasks from lawyers' stock in trade.

The primary effect of partial lawyer substitutes will be to remove simple, straightforward tasks from lawyers' stock in trade. The substitutes will accomplish this work faster, less expensively, and often more effectively than a lawyer can. Buyers can thereby enhance their outcomes, gain more time, reduce their legal spend, and scale back their need for lawyers or law firms altogether.

Obviously, that's great news for buyers and for the market as a whole—but it's not necessarily cause for mourning by the seller, either. This doesn't have to be a simple win-lose, zero-sum battle between lawyer and substitute.

Yes, an individual lawyer whose market value has been reduced or eclipsed by partial substitutes is going to feel a little uncomfortable. In extreme situations, a lawyer whose best efforts can be mostly or entirely replicated by a system or a machine is not—I'm sorry to say—going to enjoy continued employment in that capacity. If a machine can do your job as well as or better than you can, it will—and from the market's point of view, it should. Every other industry has experienced this, gotten through it, and gotten over it. So will law.

As a lawyer confronted with the rise of market substitutes for your work, there are exactly two options available to you.[46] The first is, you can choose another line of work. That's not my recommended course of action.

The second option looks like this:

- You can adjust your skill set, toolkit, and value offering in order to become more competitive in the post-substitute world.
- You can upgrade your capacities to deliver higher and better value than you previously did.
- You can adopt and apply these lawyer substitutes yourself to improve your own productivity.
- You can spend less time, money, and effort and achieve equal or better outcomes than you could manage beforehand.
- You can invest cost savings in competitively advantageous activities such as lowering your prices or researching and developing new business lines and service offerings.
- You can move up the value chain, so that you can take on more challenging work from more interesting clients at more remunerative prices.

This is the extraordinary value proposition that is, even as we speak, failing to capture the imagination of thousands of lawyers worldwide. Instead, we're subjected to flashlight-by-the-campfire tales of "robot lawyers coming for our jobs." The better and more sensible response is that a lawyer substitute is nothing more than a tool with which lawyers and law firms can do their work better. It's not about replacing lawyers; it's about *augmenting* them.[47]

Go back to our hypothetical 60-hour lawyer. She might find that the development of lawyer substitutes and their application to her job has reduced her weekly billable hours from 60 to 20. What can she do? She has a few options:

1. *Employ the substitute.* Appreciate that a laborious task that once consumed an hour of her time now takes a desktop device ten seconds to

[46] Well, three options, if you're a devotee of Ned Ludd and his interesting critiques of industrial technology.

[47] See: "Aha! A.H.I." by Ryan McClead, 3 Geeks and a Law Blog, December 8, 2015 (http://www.geeklawblog.com/2015/12/aha-ahi.html).

process. Adapt the device into her own practice and fold it into the collection of tools she already uses. Leverage the newfound efficiency introduced by this device to do 100 such tasks in the same time, or reduce her rates to become more competitive, or use the freed-up time to better serve her clients or go find some more.

2. *Enhance the substitute.* Recognize that this substitute is still in its relative infancy and has just begun to tap into its potential. Learn how the substitute works, and think of ways, using her lawyer knowledge and market experience, in which the substitute can become more powerful and productive, creating even more efficiencies and greater effectiveness (maybe she can even license her improved version to other lawyers). Identify the substitute's disruptive aspects, and build on them.

3. *Surpass the substitute.* Accept that the growth of such substitutes represents the end of her ability to profitably provide what are now low-value functions, and commit herself to moving up the value ladder. Devote her time and energies to other activities for which substitutes have not developed and are unlikely ever to develop, and which almost by definition will be more complex, higher-value, and better compensated. Sure, there are limits to how many lawyers can make this transition—which is all the more reason for this lawyer to start now, so that she can be among them.

The rise of lawyer substitutes does not mean the end of lawyers. But it does mean the end of lawyers' traditional activities, productivity measures, and business models. It means the end of buyers' weary resignation to accepting lawyers as the only available provider of low- and middle-value legal services. And it means the end of lawyers' ability to profitably devote their time and effort to low- and middle-value tasks. All accounted for, this is not a bad thing. Instead, it opens up a world of possibilities for the legal profession.

THE IMPACT OF SUBSTITUTES ON BUYERS

Not every lawyer will recognize these opportunities, of course, and not every law firm will employ substitutes to enhance its productivity. Much as I might wish otherwise, the emergence of lawyer substitutes will prob-

ably prove to be, at best, a mixed bag for the legal profession. But it figures to be a nearly unqualified success for legal services buyers. As each new substitute develops and improves, the following benefits will appear in the market:

- Buyers will have new options for accomplishing certain legal tasks or aspects thereof; lawyers' monopoly over this industry will slowly start to fall away. This fact alone will create a massive and permanent shift in the legal market and accelerate the rebalancing of power from sellers towards buyers.
- A race to quality will ensue. Lawyer substitutes will be driven to constantly improve their offerings in order to persuade buyers to switch from lawyers or from other substitutes. Lawyers will be equally motivated to sharpen their own skills and improve the efficiency and effectiveness of their own services to keep up. Buyers win again.
- Simultaneously, a race to affordability will occur. Lawyers are vulnerable to new providers on many grounds, but none so obvious as price. Highly cost-effective substitutes will drive lawyers to respond with price improvements of their own, either by lowering their profit targets or reducing their own costs without compromising quality and results.
- Technology-based lawyer substitutes are more or less scalable, meaning that the marginal cost of each new use of the technology is extremely small. Contrast that with the use of lawyers, where every billable hour is just as expensive as the one before it. Marginal cost improvements will continually push down the price of most legal services.
- As more and more straightforward and pedestrian legal tasks are redirected to substitutes, lawyers will be forced to develop higher-quality offerings, thereby generating more options for buyers in truly important legal matters (and even creating new offerings where none existed previously).

Not all of the exciting new substitutes and lawyer alternatives now flooding the legal market will succeed, of course. By definition, in fact, most of these upstarts and innovators will stumble and fall, for one reason or another, and be trampled in the stampede of competing offerings. That's

one of the reasons I haven't spent time dwelling on specific products or provider categories. These will evolve rapidly in the coming years, in directions and with functionalities nobody can reliably forecast.

But the phenomenon of partial lawyer substitutes will not fade away. It will continue to grow for at least the next 10 to 15 years, up until the point where even the most powerful and sophisticated substitutes will encounter the steel barrier of lawyers' unique value offerings and true professional excellence. That barrier, however, is still some distance away.

Safely insulated for many years by technological limitations and regulatory protection, lawyers became a little spoiled, charging hundreds of dollars per hour for what we now recognize to be simple and straightforward tasks. That stage of the legal market is now behind us, and it looks to me like many lawyers are destined to learn this the hard way. Many tasks in the legal market that no longer require a lawyer are still being performed by lawyers. That won't last much longer. The process of decoupling lawyers from their traditional inventory is not going to be an easy or a pretty one, but I don't see how it can be stopped or slowed.

The point I want to leave you with, however, is this: In the long run, both buyers and sellers will benefit from the emergence of lawyer substitutes. Any lawyer who really grieves the loss of document review opportunities and due diligence assignments has completely missed the point of being a member of this profession. Find me a lawyer who went to law school dreaming of someday being able to draft contracts and fill out documents on an hourly basis. That's not why most people entered the law, and it's not what intelligent, creative, and dynamic individuals should spend their days doing. In any event, it's not what legal services buyers are going to pay lawyers to do anymore.

The substitutes are here, and they're never going away. We all need to accept this. And we need to accept it quickly, because while lawyers' market role is being upended by substitutes, the same thing is happening to lawyers' traditional business platform. Substitutes are not only coming for the lawyer; they are also coming for the law firm.

Chapter 3

THE DEVELOPMENT OF LAW FIRM SUBSTITUTES

We can probably agree that the traditional law firm has been a highly successful business model—among the most profitable enterprise types of the last century, in fact. Today's most successful large law firms provide each of their lawyer shareholders with hundreds of thousands of dollars—sometimes millions of dollars—in *profit*, and do so every year. You have to admit, that's a pretty good return on investment for completing three years of law school, passing a Bar exam, and landing a job in BigLaw.

Law firms of all sizes, however, are stunningly profitable primarily because they've provided the legal market with exclusive access to the only available source of an extremely valuable asset: legal solutions. The traditional law firm succeeded because it brought together in one place—that is to say, it *aggregated*—the market's only competent and authorized providers of legal solutions—that is to say, lawyers. Some of these providers, naturally, possessed great insight and expertise, while others were less gifted or merely ordinary. Some of these solutions were incredibly complex and valuable, while others were simpler and more straightforward.

But the commercial genius of the traditional law firm was to aggregate all these providers and all these solutions onto a single platform, market that platform as a prestige destination for both clients and lawyers, and price all its services at a premium commensurate with that prestige.

So long as the law firm had at least a few truly outstanding lawyers, the brand and earning power of these lawyers could set the brand and earning power for all those below them in the organization, whether or not their skills and experience could justify it. A senior partner who billed $800 an hour could justify a junior who billed half or a third of that amount, which is still a lot of money relative to what that junior actually cost the firm and what the task performed by the junior was actually worth. This meant

that the work of an unskilled new lawyer was billed at a rate above the value that that lawyer could realistically be expected to provide,[48] and certainly well above what that lawyer would be able to command on the open market.[49]

Considered from this perspective, it's hardly a surprise that aggregating the sole providers of valuable solutions onto a single platform created such powerhouse returns. It was a great bargain for unskilled new lawyers, who would otherwise have had little market value to speak of. It was even better for more experienced lawyers, who could leverage the work of these relatively affordable juniors and generate a significant profit. And it was best of all for the law firms, which reaped the extraordinary benefits of aggregated exclusivity in an asymmetrical market, especially given that every other law firm adopted the same model and followed the same rules of engagement. It was, in short, a pretty sweet deal—for the sellers of legal services, at least.

Bundling low-value assets into a high-value platform and passing off those assets as having much more value than they actually did was always a risky gambit.

Even sweet deals, of course, have their weaknesses. That's especially the case for enterprises that incorporate significant market inefficiencies into their models, as this one did. Bundling low-value assets into a high-value platform and passing off those assets as having much more value than they actually did was always a risky gambit. It would work only so long as buyers remained sufficiently untroubled or unsophisticated not to question the premise behind the value proposition—to continue paying no attention to the man behind the curtain.

[48] If you think the work of new law school graduates at large law firms is really worth its billing rate, then I suspect you've never been a new law school graduate.

[49] This is especially the case for those large firms that, at time of this book's writing, are competing to offer $180,000 starting salaries to first-year associates and to bill those lawyers at commensurate rates ("Law Firm Cravath Raising Starting Salaries to $180,000," by Sara Randazzo, *The Wall Street Journal*, June 6, 2016: http://www.wsj.com/articles/law-firm-cravath-raising-starting-salaries-to-180-000-1465241318). But even at midsize firms in regional cities, the rates junior lawyers bill are likelier to reflect the maximum amount that the firm feels it can charge rather than an estimate of the value the lawyers can provide. This is what flex-lawyer agencies, detailed later in this chapter, are revealing. The more affordable rates these lawyers charge, without the distorting middleman effect of law firm overhead and partner leverage needs, are a much closer reflection of the real value of the work these lawyers can perform.

In particular, the continued success of the lawyer-aggregating law firm required three conditions to remain fulfilled:

1. There cannot be any other providers of legal solutions besides lawyers, because if there were, the value of firms' sole asset (its lawyers) would decline.
2. There cannot be any other platforms that employed lawyers, because if there were, the exclusive access to lawyers that firms provided would disappear.
3. There cannot be any other aggregators of legal solutions, because if there were, the entire law firm business model would face enormous market challenges.

We saw, in the last chapter, that the first condition no longer applies. As we'll see in this chapter, these other two red lights are now starting to blink. The market circumstances that launched the growth of the traditional law firm are changing, creating a completely different climate for the purchase and sale of legal solutions. That is converting all these foregoing conditions into vulnerabilities.

Law firms as we know them today developed and flourished within a very particular climate—a unique set of environmental circumstances (information asymmetry, power imbalance, regulatory monopoly, and so forth) that are now passing away. Law firms are struggling in this new environment, in much the same way that a fish, which evolved to take in oxygen from water through its gills, finds itself gasping for life on dry land.

What we're seeing, in parallel with the development of lawyer substitutes described in the last chapter, is the rise of *law firm substitutes*: commercial platforms and enterprises that provide many of the same functions that law firms have provided, but at a lower cost to buyers. Remember the definition of a market substitute: something that replaces the *functions* (activities, processes, or outcomes) that previously could only be performed by an established incumbent.

The legal services market can now avail itself of substitutes not just for lawyers, but also for law firms:

1. Because there are now alternative providers of legal solutions, the value that law firms once derived from lawyers' exclusive claim to that function is falling.

2. Because there are now alternative platforms for lawyers' services, the value that law firms once derived from exclusive access to lawyers is falling.
3. Because there are now alternative aggregators of legal solutions, the value that law firms derived from aggregating lawyers is falling.

We'll spend the rest of this chapter looking at each of these three challenges and what they mean to the future of law firms.

ALTERNATIVE PROVIDERS OF LEGAL SOLUTIONS

In Chapter 2, I discussed how buyers can now access partial lawyer substitutes: para-professionals, legal process systems, and legal outcome providers that can replicate and deliver functions that lawyers were once exclusively skilled and authorized to perform. More of these substitutes will develop, and the range of activities they can competently undertake will continue to grow. Interestingly, the challenge this poses to law firms is going to be much harder for them to overcome than it will be for the lawyers themselves.

I start with the premise that the application of lawyers' time and efforts constitutes pretty much the entire inventory of traditional law firms. I think this is a self-evident point, but I've had arguments with some people about it. They contend that law firms sell solutions to legal problems. I maintain that what law firms actually sell, their *real* inventory, is time spent by their lawyers on activities requested by clients.

If you're in doubt about this, pick up any invoice from any random law firm and look not at the description of the services, but what's actually being billed: hours of lawyers' effort. Look at what these firms require their lawyers to record and report in order to be compensated and promoted: hours of their effort. Look at how law firms measure the productivity and value of their lawyers: hours of their effort. As soon as law firms start billing clients, paying lawyers, and measuring productivity according to the solutions provided by their lawyers, then I'll agree that that's what firms actually sell.

A quick glance at a traditional law firm's financial statement shows that the source of 99 percent or more of the firm's revenue is the labour of its lawyers (and in some cases, clerks and paralegals to whom the lawyers

have assigned rote work). Traditional law firms have few sources of meaningful revenue other than lawyer activity: no automated client solution systems, no paid legal knowledge subscriptions, no affiliated businesses offering complementary services.

When you stop and think about it, this is an awfully risky business strategy. What if your best lawyers leave one evening and don't come back the next day? You don't have any other means for generating revenue. What if your lawyers can't collect the money they bill? As we noted in Chapter 1, realization rates in BigLaw firms in the U.S. have dropped to about 83 percent, meaning that these firms' lawyers are virtually working one day free out of every five.

But most worrying of all: What if the overwhelming source of your company's revenue is an asset for which less expensive viable substitutes suddenly appear? Imagine a country that relies on the export of a single staple for 99 percent of its gross domestic product. Now think about what would happen to that country if a cheaper and/or better alternative to that staple were to emerge.

That's why, for traditional law firms, the development of more efficient and less expensive lawyer substitutes is a potential disaster. The emergence of lawyer-like systems and technologies means that legal tasks can be accomplished faster and less expensively than through the use of lawyers' effort alone. Consider a few examples:

- Ten years ago, electronic discovery dazzled law firms with the prospect of millions of hours' worth of associate labour spent reviewing e-mails and other digital media for potential evidence. But the development of technology-assisted review and the rise of e-discovery giants like Recommind, kCura and LogicKull ended the party almost as soon as it began. Today, no law firm would seriously try to bill its clients for its lawyers' individual electronic discovery efforts—and since all discovery increasingly is electronic, an entire highly profitable segment of law firms' traditional inventory is disappearing.
- Due diligence in advance of a corporate merger, acquisition, or restructuring was a similarly essential part of associates' billable time, as many current partners can ruefully recall from their own initiation into their firms. But products like Diligence Engine by Kira Systems use machine-learning techniques to identify significant contract clauses and extract

important information in a matter of hours, a task that young associates once took weeks to accomplish, at a fraction of the original cost. General contract review is heading down a similar path.

- Answering routine queries about the application of laws and regulations to particular circumstances used to keep both associates and partners as busy as they cared to be. But expert applications, developed by companies such as Neota Logic, can now field these questions and dispense basic guidance without requiring the expensive time of lawyers. And as these systems become more proficient, the range of matters they can address (on at least an initial-inquiry basis) is poised to expand.

You can see the problem. If law firms don't adopt these and similar cost-saving tools for accomplishing legal tasks, they'll be uncompetitive to rival providers that do. But if they do adopt these tools, they'll accomplish these tasks in fewer hours—thereby reducing their inventory and therefore their revenue stream. It's a classic no-win dilemma for the traditional law firm model, and I don't think there's a solution that doesn't involve a significant restructuring of that model.

We'll look more closely at the impact of lawyer substitutes on law firms in Chapter 5, "The Post-Lawyer Law Firm." But this is just the first of the three challenges posed by new market conditions. Next is the fact that lawyers are no longer found exclusively within traditional law firms.

ALTERNATIVE PLATFORMS FOR LAWYERS' SERVICES

Buyers of legal services used to have only two choices when seeking a lawyer's assistance: hire a lawyer as an employee, or retain the services of a lawyer via a law firm. Unless you were a large corporation or an individual sufficiently wealthy to maintain your own personal law staff, the first option wasn't open to you. So you had to go the second route and retain a law firm. Whether that firm was a solo practice, a 7,000-lawyer global mega-mall, or something in between, the firm was your only option for finding a lawyer and asking him or her to help you.

Today, that's no longer the case, and you can give most of the thanks to globalization and the internet. The former opened up vast new markets and equally vast labour pools to the business world, while the latter made low-cost connectivity and instantaneous communications across great distances possible. The world might not be as flat as Thomas Friedman famously

wrote that it is, but it's undeniably becoming more level and easier to cross. Buyers now have a range of substitute platforms through which to acquire a lawyer's services.

Legal Process Outsourcing

The first of the new platforms to develop was the legal process outsourcing (LPO) company, which grew from the business process outsourcing (BPO) companies that Friedman and others identified around the turn of the millennium. Based originally in India but eventually expanding to other countries, LPOs offered corporate clients the remote services of English-speaking, common-law trained foreign lawyers to perform entry-level legal work at rates well below those charged by North American law firm associates. Early skepticism of LPO offerings centered on the quality of the work and the security of confidential client information, but the lawyers proved to be smart and hard-working, and the environments within which they operated were sufficiently secure. Corporate clients were interested, and many took advantage of the opportunity to reduce their outside legal spend.

So why don't LPOs rule the legal market today? Partly, it's because many LPOs relied too heavily on the wage arbitrage advantages of low-cost jurisdictions as their sole competitive advantage. The financial crisis of 2007–2008 brought about a sharp drop in new lawyer hiring in North America and a consequent rise in the unemployment ranks of inexperienced lawyers. This led to an ongoing and ever-increasing reduction in these lawyers' bargaining power and salary demands. To make matters worse for these lawyers, their bargaining position eroded further every year as successive cohorts of graduating law students joined the unemployment pool. BigLaw firms created a low-cost labour pool right in their own backyards and then moved to exploit it. Both the firms and their clients came to prefer cheap local lawyers to cheaper foreign ones. As the power of wage arbitrage declined, so did many LPOs.

Many LPOs relied too heavily on the wage arbitrage advantages of low-cost jurisdictions as their sole competitive advantage.

But not all. Powerhouse LPOs like Integreon, Pangea3, United Lex, and CPA Global made two significant adjustments. First, they introduced or broadened their use of systemic efficiency and project management improvements in their legal workflow. This enabled them to take on "chains" of routine legal tasks and processes within more complex deals, leaving the

highest-value work for law firms but capturing a percentage of the straightforward work for themselves.[50]

Secondly, these LPOs began to onshore more legal work from their low-cost centers overseas to somewhat pricier but still cost-competitive locations in North America, taking advantage of the same depressed market for inexperienced lawyers' services that law firms and corporate buyers were exploiting.[51] Some LPOs have even begun working with law schools to create entry-level positions within their own operations, seeing advantages to "training" new lawyers in their operations from the outset and gaining access to even lower-cost talent.[52]

At this point in the legal market's evolution, LPOs appear to be going through a transitional stage in their own development. Pangea3, then the world's largest legal process outsourcer, was purchased by legal information giant Thomson Reuters in 2009 and was integrated into the company's other legal sector offerings. That seemed to signal a turning point for LPOs, which have been steadily becoming another mainstream provider in the legal industry. But LPOs also helped set the table for what would come next.

Flex-Lawyer Platforms

A more robust, non-firm platform for lawyers, and perhaps the most significant disaggregator of lawyers from law firms today, is the flex-time lawyer company. There have long been contract or "temp" lawyers in the legal market, of course. But these tended to be idiosyncratic lawyers who preferred working on a piecemeal basis for personal reasons, who didn't expect to become rich from being a lawyer (and certainly didn't). "Contract lawyering" didn't have the greatest reputation, and while there were "temp agencies" that would broker these lawyers' availability, their numbers were minuscule when compared with the population of lawyers in law firms.

In just the last five years, however, that situation has changed dramatically. The same surging population of unemployed and underemployed

[50] See 'The evolution of outsourcing," a Law21 post on June 8, 2010: http://www.law21.ca/2010/06/the-evolution-of-outsourcing/.

[51] "Legal Process Outsourcing Comes Back Onshore," by Rebekah Mintzer, *Corporate Counsel,* July 29, 2015: http://www.corpcounsel.com/id=1202733303001/Legal-Process-Outsourcing-Comes-Back-Onshore.

[52] "Finally, Some New Jobs For Law School Graduates," by Joe Patrice, *Above The Law*, June 8, 2015: http://abovethelaw.com/2015/06/finally-some-new-jobs-for-law-school-graduates/.

lawyers that was caused by the 2007–08 financial crisis is now producing a market entity of its own. This kind of company goes by many different names, but the one I prefer is "flex-lawyer platform."

A "flex lawyer" is fundamentally a product both of the times and of the temperaments of the new generation of lawyers. Thousands of lawyers who would have been winding their way through law firms or through private- and public-sector legal departments in a different era have found themselves without full-time employment in the legal sector and struggling underneath mountains of debt.[53] They needed paying work, regardless of the amount paid or the prestige of the payer.

But true to their reputation, many members of this Millennial generation of lawyers also demonstrated limited interest in spending their days, evenings, and weekends becoming and then remaining a law firm partner. Finding the Baby Boomer promise of work, more work, and even more work until rich retirement to be less than inspirational, they instead work not to feel personally fulfilled, but to keep body and soul together for better uses of both.[54]

Altogether, the ranks of lawyers who were alienated (voluntarily or otherwise) from law firms swelled to the point where it was inevitable that other platforms would develop to support this critical mass of unattached talent. In the United States, the first and most prominent flex-lawyer platform was Axiom Law, which assembled scores of young lawyers who had worked for Wall Street's elite firms. Axiom connected these lawyers with corporate law departments seeking temporary or project lawyer assistance, promoting them through the pedigree of their previous employers and billing them at rates below what the top firms charged (although their rates were still pretty substantial).

[53] This hardly does justice to the enormity of the crisis at hand. Remember all those articles in the legal press around 2006, predicting law firm bidding wars for Millennial talent and $200,000 starting salary offers for new lawyers? Here we are a decade later, and the Millennial cohort has become lawyers' "Lost Generation," hundreds of thousands of dollars in debt and facing bleak employment opportunities. The legal profession doesn't seem to have yet realized the damage to its future prospects this decade has wrought on the well of talent from which new lawyers have always been drawn. When I see law school application rates in the U.S. falling to 1970s levels, I fear that law's ability to compete with other professions for the best talent has been significantly and maybe irreversibly reduced.

[54] Nor are flex-time lawyers exclusively young: Law firm culture drives a disproportionate number of experienced women lawyers out of these firms and into the wider market for legal services, while other lawyers of both genders have responsibilities for young children or infirm parents that require more personal time than firms are willing to grant.

Similar platforms have developed elsewhere in the United States to focus on specific regions, on women lawyers, and on different levels of experience and legal training (including platforms for paralegals). Canada, Australia, and Great Britain have also seen such companies emerge.

Most interesting of all these platforms might be "Lawyers On Demand," which started as a kind of "parallel" division of large firm Berwin Leighton Paisner. It was comprised of former BLP lawyers who were interested in project work and looking for more flexible assignments. Lawyers On Demand has since spun out to become its own company. It has grown both organically and through acquisition and has spawned similar services such as Allen & Overy's Peerpoint, Eversheds Agile, and Pinsent Masons Vario, among others.[55] DLA Piper even partnered with Lawyers On Demand, rather than create its own division, in order to access the benefits of flex-time lawyers.[56]

The value offering of the flex-lawyer platforms in this market is simple: Don't pay inflated law firm rates for work that our agency's competent lawyers can perform at lower prices. Given that the annual spend on contract legal work in the U.S. in 2015 was reportedly $21 billion,[57] this has obviously proven to be an attractive message. And remember that that figure represents only what's spent on flex lawyers—the actual amount of money foregone by law firms for work that previously went to their associates at much higher hourly rates would be significantly greater.

The value offering of the flex-lawyer platforms in this market is simple: Don't pay inflated law firm rates for work that our agency's competent lawyers can perform.

[55] It's interesting that most of the law firms that have launched their own affiliated flex-lawyer agencies are British (the one exception, at time of writing, is Silicon Valley's Fenwick & West). To the extent that U.S. and Canadian firms are taking advantage of flex-work options, they're using third-party platforms such as Axiom Law.

[56] "DLA strikes groundbreaking deal to offer contract lawyering via LOD," by Tom Moore, Legal Business, Nov. 11, 2015: http://www.legalbusiness.co.uk/index.php/lb-blog-view/5044-dla-strikes-groundbreaking-deal-to-offer-contract-lawyering-via-lod.

[57] "The $21BN Contract Lawyer Marketplace is Up For Grabs, 'Hire An Esquire' Plans to Catch It," by Joe Borstein, Above The Law, Feb. 10, 2016: http://abovethelaw.com/2016/02/alt-legal-the-21bn-contract-lawyer-marketplace-is-up-for-grabs-hire-an-esquire-plans-to-catch-it/.

The Disaggregated Lawyer

LPOs and flex-lawyer platforms now offer partial substitutes for the functions of a law firm. They present those who wish to buy lawyers' services with reliable options other than traditional firms for obtaining those services, and they imbue their offerings with advantages in price, flexibility, and convenience that traditional law firms are often unable or unwilling to match. They're helping to disaggregate lawyers from law firms.

This is making it increasingly difficult for law firms to explain to clients why their lawyers cost so much more than the lawyers available elsewhere in the market. The firms might contend that their own lawyers cost more because they're smarter, better trained, more highly pedigreed, and more closely mentored—but it will be the rare client who doesn't question some or all of these arguments. Especially skeptical will be those in-house counsel who started their legal careers in law firms (as most of them did) and who remember how most "law firm training" was roughly analogous to a bodily toss into the deep end of the pool passed off as swimming lessons.

Partners aren't safe from this trend, either. A growing percentage of the flex-legal talent pool consists of senior lawyers who've left large firms in search of more control over their time and workload. Many of these lawyers act as "outsourced in-house counsel," giving smaller law departments the benefit of experienced hands managing the company's legal affairs.

Faced with buyers who no longer need a law firm to obtain the services of a lawyer, a firm has two possible responses. The first is to provide an extraordinary value proposition to persuade clients to use its own lawyers. But there are few law firm lawyers whose reputation is so exalted and whose expertise is so unique that a competent substitute cannot be found on a non-firm platform. Such lawyers are guaranteed a commanding place in their law firms; most other lawyers are not.

The second response available to the law firm is to lower its lawyers' rates to be competitive with lawyers on less expensive alternative platforms. But those lower rates might be too low to meet the firm's revenue needs. And that could raise the question of whether firms will continue to even employ full-time lawyers at all. The fact that this is even a possibility is an extraordinary development, one that I address further in Chapter 13.

One final point in this section. I've been discussing the disaggregation of lawyers, but the disaggregation of legal-support services (by moving back-office functions to lower-cost centers) is changing law firms as well.[58] More large firms are shifting some of their operational staff away from expensive urban headquarters and into smaller cities in order to reduce their costs. This is exacerbating the trend towards less populous law firm offices.[59]

ALTERNATIVE AGGREGATORS OF LEGAL SOLUTIONS

Up to this point, we've focused on the ways in which law firms are being disaggregated, as assets and functions over which they once claimed market exclusivity are increasingly available from other providers and on other platforms.

But the fact that disaggregation is taking place in the legal sector doesn't necessarily mean that aggregation of legal services has no value. The market still has an understandable interest in a "one-stop shop" for all its legal needs, rather than having to make repeated trips to the market to procure each asset or function that it requires.[60] So there's an argument to be made that what the legal market really needs isn't the disaggregation of law firms, but the aggregation of legal services providers in a platform *superior* to what law firms have traditionally provided.

And as it happens, there are a few platforms promising aggregation of this very type on the way.

Big Four Accounting Firms

Left for dead after the collapse of Arthur Andersen and the passage of the Sarbanes-Oxley Act at the start of this millennium, the legal ambitions of the accountancy giants have instead spent the intervening years regenerating and are now starting to emerge fully into view. Each Big Four firm promotes the availability of its legal services in dozens of countries worldwide,

[58] "Are Firms Succeeding with Low Cost Service Centers?" by Ron Friedmann, Prism Legal, Feb. 23, 2016: http://prismlegal.com/are-firms-succeeding-with-low-cost-service-centers-live-from-ark-library/.

[59] Once a sufficient number of firms outsource their back-office functions, however, redundancies set in, and a case can be made for a single outsourcing platform that manages the operational functions of many different law firms. The customer base for that kind of platform would not be limited to law firms, either.

[60] See Chapter 6, "The Law Firm as a Commercial Enterprise," for more on this point.

reinforced most recently by high-profile lateral hires of senior lawyers from large law firms to run the accountancies' legal business units. And over the past several years, they've expanded from their traditional European base into the Asia-Pacific region, Latin America, Africa, the Middle East, and Australia.[61]

What's most interesting about the Big Four's recent surge of legal activity, however, is that law firms don't seem to be fully aware of its implications. The profession generally seems to view accounting firms' legal interests as still residing in niche areas like tax and immigration. In reality, the accounting giants are targeting multiple channels of commercial legal work, in areas that constitute the heart of many firms' revenue streams. It's my belief that full-service law firms with large commercial clients face no greater competitive threat than this one. But few firms seem to share this belief, and I think I know why.

What's most interesting about the Big Four's recent surge of legal activity, however, is that law firms don't seem to be fully aware of its implications.

Law firms, as we know, have something of a fixation with winning "bet-the-company" work from clients. This is partly because of the enormous number of billable hours and premium billing rates such work enables, and partly because this kind of mission-critical work satisfies lawyers' craving for prestigious, high-status engagements. Bet-the-company work is law firms' strong suit.

The accounting firms, like any good market disruptor, see no advantage in challenging law firms on their strengths, where defences would be heaviest. And anyway, bet-the-company work doesn't scale very well. It's occasional and one-off by definition, since companies don't tend to bet themselves every day. It's too unpredictable and "eat-what-you-kill" to satisfy the accounting firms' interest in a constant, reliable flow of activity and revenue.

The accountancies, accordingly, are more interested in "*run*-the-company" work: the daily, bread-and-butter work of legal process, compliance,

[61] See "Accountants aren't kidding with ABS this time," by Catrin Griffiths, *The Lawyer,* March 3, 2014: https://www.thelawyer.com/issues/tl-3-march-2014/accountants-arent-kidding-with-abs-this-time/, and "Clash of the Titans: Big Four vs MBB vs BigLaw," by Eric Chin, Beaton Capital, Feb. 16, 2015: http://www.beatoncapital.com/2015/02/clash-titans-big-four-vs-mbb-vs-biglaw/.

transaction, and settlement that every company needs to manage effectively and efficiently.

This sort of legal work is neither glamorous nor terribly complex, which is why most law firms aren't excited by it. But it can be powerfully scaled through the application of systems and technology, and it generates steady revenue streams—which is why the Big Four *are* excited by it. So they've spent the first decade of this century developing the capacity to deliver perfectly fine mid-level corporate/commercial, labour and employment, business immigration, outsourcing, and IP legal services to their clients.

That's fine as far as it goes, but that strategy only makes the Big Four an alternative aggregator of legal services. What makes them a *better* one than law firms?

For one thing, the accounting firms are structured and equipped to handle this kind of work in an efficient, systematic manner. As a 2016 Harvard Law School report[62] put it, the accounting firms offer corporate buyers "integrated problem-solving networks with deep industry expertise. Leveraging their skill in process management and IT expertise across their increasingly large global footprint," the Big Four can deliver solutions to clients' "run-the-company" work through systematically applied business advisory services. This kind of work also lends itself more easily to a reliable pricing methodology, since routine or repeated legal matters present a deep pool of data and a well-known range of possible outcomes that reduce uncertainty around the costs incurred to resolve those matters.

Moreover, the Big Four accounting firms are focused on the business side of their corporate and institutional clients to a far greater degree than most law firms. Law firms, to the consistent exasperation of their clients, tend to zero in on the legal aspects of a given situation without reference to, or lacking a complete understanding of, the business implications of a particular legal strategy. A complaint frequently lodged by in-house counsel about law firm advice is that it is deeply risk-averse, too narrowly focused, and deaf to both the company's immediate business needs and its long-term goals.

[62] "The Re-Emergence of the Big Four In Law," Harvard Law School Center on the Legal Profession, January 2016: https://thepractice.law.harvard.edu/article/the-reemergence-of-the-big-four-in-law/.

Accounting firms tend to understand much better than law firms that companies need to make decisions every day without perfect information and with an inevitable degree of risk. Therefore, accountants' legal advice would tend to be more actionable than what law firms produce and more attractive to clients that are looking for business solutions to legal challenges.

Moreover, the rate at which the accounting giants are hiring senior lawyers away from law firms suggests they haven't abandoned the possibility of premium work altogether.[63] Taking advantage of regulatory changes in England and Wales, Ernst & Young, PwC, and KPMG have received or ap-plied for Alternative Business Structure licenses that will allow them to provide a full range of legal services. The United States remains a bulwark against the accountants' legal market advances, primarily because of regulatory barriers against "non-lawyer" ownership of law practices. But in Canada, Ernst & Young, PwC, and Deloitte have all absorbed small law firms into their operations through the formation of affiliated partner companies.[64]

And finally, let's not forget a key consideration: The Big Four accounting firms are big. Enormous, in fact. The world's largest law firm counts more than 7,000 lawyers. The smallest Big Four accountancy, KPMG, has more than 173,000 employees.[65] The accounting giants are larger than many of their multinational corporate clients. They have economies of scale about which law firms can only dream.

In reality, the Big Four aren't so much accounting firms as they are full-scale global business consultancies that include an increasingly formidable legal capacity. They're combining lawyers with other legal professionals, IT personnel, and process and systems engineers to generate legal services in a cost-effective, business-conversant, and competitively priced manner.

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[63] "Deloitte, Other Accounting Giants, See Legal Services Growth," by Julie Triedman, law.com, Sept. 9, 2016: http://www.law.com/sites/almstaff/2016/09/09/deloitte-other-accounting-giants-see-legal-services-growth/.

[64] See, for example, "Accounting firm enters business law market," by Michael McKiernan, *Law Times*, March 14, 2016: http://www.lawtimesnews.com/201603145283/headline-news/accounting-firm-enters-business-law-market.

[65] "Working for PWC, Deloitte, EY and KPMG. What's the difference?" by Sarah Butcher, eFinancial Careers, April 28, 2016: http://news.efinancialcareers.com/uk-en/204621/working-for-pwc-deloitte-ey-and-kpmg-whats-the-difference.

They're becoming aggregators of legal solutions, and any law firm midsize or larger needs to have these firms on its competitive radar.

As previously stated, law firms like high-value, "bet-the-company" work, and they're in a good position to retain it. Firms care much less for low-value basic work, which is why they seem content to lose it to flex agencies and LPOs. But the middle tranche of work—the "run-the-company" type—keeps a lot of lawyers employed and a lot of law firms solvent. Firms shouldn't be complacent about massive competitors targeting this work. But they sure seem to be.

Innovative Legal Enterprises

I'll admit, I've been pretty hard on law firms throughout this chapter, maybe a little too harsh here and there. I'd be more than a little remiss if I didn't devote some space to the lawyers and law firms that *do* appreciate the challenges and recognize the opportunities that market change is creating. And that brings us to some of the most interesting alternative aggregators of legal services: those within the legal industry itself.

A small handful of law firms have taken real steps towards restructuring themselves, introducing incremental but substantive changes to their DNA, in hopes of becoming better legal services aggregators than law firms have traditionally managed to be. Some brand new law firms have appeared within the last decade or so and established themselves immediately as different beasts in the market, appealing to potential clients with a more buyer-friendly architecture and attitude. An emerging amalgam of what are variously referred to as "NewLaw" or "NextLaw"[66] firms also offer specialized legal skills or managed legal services through a combination of lawyers, legal support professionals, and technology.

A small handful of law firms have taken real steps towards restructuring themselves, introducing incremental but substantive changes to their DNA.

Together, all these entities share the belief that the traditional law firm model has run its course, and that the companies and people who buy

[66] Credit Dr. George Beaton of Beaton Capital in Australia and Jeff Carr of Valorem Law Partners in Chicago, respectively, for coining these terms.

lawyers' services want to engage with a different type of platform. They're willing to try re-engineering the traditional law firm's internal workflow systems and operational structures to enable buyer experiences and outcomes more consistent with what the market now requires.

Here are some examples[67] of innovative law firms and legal enterprises (along with the firm's or enterprise's headquarters location). I imagine that few if any of these firms would say they've perfected the model and practice they set out to achieve, but they all seem to be well on their way.

- Baker Donelson (Memphis, Tennessee)
- Bartlit Beck (Chicago)
- Bryan Cave (St. Louis)
- Davis Wright Tremaine (Seattle, Washington)
- Eversheds (London)
- Foley & Lardner (Milwaukee, Wisconsin)
- Gowling WLG (Toronto)
- Hive Legal (Sydney)
- Hunoval Law (Columbia, South Carolina)
- Keystone Law (London)
- LeClair Ryan (Richmond, Virginia)
- Littler Mendelson (San Francisco)
- Marque Lawyers (Sydney)
- Novus Law (Chicago)
- Radiant Law (London)
- Riverview Law (London)
- Seyfarth Shaw (Chicago)

[67] The problem with making lists is that you'll always overlook someone who feels, often rightfully, that they should have been included. I've tried to include those firms that have established themselves most prominently on the NewLaw scene, but if I've missed your firm, my apologies in advance. You can write to inform me of your NewLaw entity at jordan@law21.ca.

- Valorem Law (Chicago)
- Winn Solicitors (Newcastle upon Tyne, U.K.)

Here are some of the tools and tactics these enterprises most commonly employ:

- Mapping the processes by which a law firm assesses, creates, and delivers legal work, followed by a streamlining process that removes unnecessary steps, applies technology to routine or repeatable processes, and calculates the total cost of the resources necessary to complete the work.
- Applying legal or lean project management principles to the execution of tasks, creating a framework around the workflow process that includes expectations of time, budget, responsibility, milestones, and communication between and among buyers and providers.
- Investing in game-changing technology that can automate routine and repeatable tasks, analyze data assembled by the enterprise and its clients to anticipate and minimize risks, or employ cognitive computing methods to conduct advanced research, forecast market behaviour, and predict the outcomes of disputes.
- Using the foregoing methods to lower the price of legal services for buyers, to make those prices more predictable and reliable, to provide buyers with explanations for the rationale behind prices, and to notify buyers ahead of time of changes in the expected work schedule that will affect prices.
- Investing heavily in the buyer relationship through numerous methods, including learning about buyers' circumstances and interests, enhancing transparency for buyers by sharing access to work in progress, and focusing relentlessly on total value delivered to the end user of the firm's services.

In all these ways and more, these innovative legal enterprises are going to prove more attractive to many clients than traditional law firms. But here's the kicker: They're also going to prove more attractive to many *lawyers*.

Traditional law firms served two needs in the legal market. Externally, they facilitated the connection of legal services buyers with legal services sellers. But internally, they also coordinated lawyers more efficiently and effectively than could be managed through repeated collaborations by independent solos. And they brought some basic economies of scale to bear on the assembly of lawyers' support resources and the marketing and development of lawyers' business.

In the coming years, these substitute platforms will exploit not only buyers' dissatisfaction with the traditional firm, but also similar dissatisfaction among lawyers. They will demonstrate that the traditional law firm is becoming a mediocre platform for good lawyers seeking to access the marketplace.

- Its compensation system measures lawyers' value solely in terms of effort and demands heavy labour as the price of continued employment.
- Its billable hour fixation acts as a cap on lawyers' earning potential, since lawyers can only work so many hours a year and will only receive payment for a fraction of those hours.
- Its entrenched inefficiencies and top-down rate-setting systems give lawyers little control over the fees they must charge their clients.
- Its promises of increased revenue from cross-selling opportunities are rarely realized in a culture of lawyer protectionism.
- Its partnership system has devolved to the point where even partners are being leveraged to support the firm's most senior lawyers.

Law firm substitutes have the potential to address many of these concerns and offer more advantages besides. They will stand out in the market as innovative buyer-focused enterprises and thereby attract potential clients. They can help lawyers deliver services more efficiently and, therefore, with lower costs and greater profits. They can offer lawyers a greater range of work and career options. And they're fundamentally structured and operated to keep on innovating and evolving, to constantly seek out improvements to the legal services business.

So it's not just the loss of their clients that traditional law firms need to be concerned about, as these new aggregators continue to develop. It's also the loss of their lawyers.

THE TRANSFORMATIVE POWER OF SUBSTITUTES

Obviously, all these entities (and you can include the accounting firms here as well) currently represent just a small fraction of the market share owned by traditional law firms. If you belong to one of the countless incumbent providers in this market and you see how few the innovators are in number, you could easily dismiss them as an irrelevant competitive concern. But I think that would be a mistake.

Instead, think about the fact that this remarkable array of legitimate substitutes for traditional law firms has emerged so quickly that they've gone from zero to millions of dollars in revenue in 15 years. Think about the fact that the technology that powers many of their competitive advantages is getting faster, smarter, and cheaper at a staggering pace. Think about the fact that in those jurisdictions where it's permitted, some of these new platforms are attracting millions of dollars in venture capital or shareholder investment. Their trajectory, from the point of view of incumbent lawyer platforms, ought to be chilling.

Most importantly, think about the fact that most of the revenue earned by these enterprises has come at the expense of traditional law firms. These new platforms are aggregating legal solutions just like traditional law firms do, but without the inefficiency, redundancy, and waste that are among that model's hallmarks. That means they can compete against law firms on price, but *without compromising quality*.

That is a new and significant development. These law firm substitutes have identified the market gap of inefficient, overpriced law firm services, and they're exploiting it. They're revealing a dangerous truth to legal services buyers: You can obtain the solutions you need without the overhead costs of the bloated, inefficient law firms that have been doing your work the same archaic way for decades.

Not only are these substitutes taking work from firms, they're also transforming that work.

This is the real threat to the traditional law firm model. Not only are these substitutes taking work from firms, they're also *transforming* that work in the process, making it lighter, faster, more easily tracked, and more accurately measurable. That work constitutes hundreds of millions of dollars that has formed the backbone of traditional law firms' inventory. Even if traditional firms could wrest this work back from the new platforms, they would find there's much less of it. The systems, processes and technology that have been applied to the work have permanently streamlined it.

The new law firm substitutes are changing buyers' expectations about legal services. In so doing, they are going to change the way the legal market works.

Chapter 4

THE FALL OF THE TRADITIONAL LAW FIRM

The changes to the legal market outlined in the previous three chapters are real, transformative, and permanent. They're real in the sense that they have visible causes and measurable effects on myriad market participants. They're transformative in the sense that they are changing key elements within the legal market, while causing enormous substantive and behavioural modifications to the market's participants. And they're permanent in the sense that these changes are not brief fluctuations brought about by freak events or temporary weather patterns, but are instead natural responses to powerful new social, economic, and technological forces worldwide that show no sign of going away.

I believe that these changes represent an insurmountable challenge to the traditional law firm model. At the end of Chapter 1, we reviewed some of the negative effects of market change on the profitability of many traditional legal market participants and most especially on midsize and large full-service law firms. In this chapter, I'll strive to demonstrate that the traditional law firm platform is not going to survive these changes—that what we're seeing here isn't a prolonged stretch of bad weather, but instead is the legal market equivalent of irreversible climate change.

And I'm going to begin making that argument by way of Earth's last major extinction event.

DINOSAURS AND CLIMATE CHANGE

Like me, you were probably fascinated by dinosaurs for a brief period in your childhood. Maybe you collected all sorts of oversized hardcover picture books describing in great detail the brontosaurus, the triceratops, and (of course) the tyrannosaurus rex. And you probably read, as I did, that the dinosaurs became extinct about 65 million years ago, when a huge asteroid struck the Earth and killed them all.

What I've learned over the past several years, mostly by virtue of having two children of my own with an intense interest in the subject, is that paleontology has advanced considerably since I was a kid. There are now hundreds of known dinosaur species, and scientists understand far more about their features and habitats than they did even a few decades ago. And as it turns out, the full story of the dinosaurs' extinction is a little more complicated than originally told.

These days, we refer to someone who's out of touch and refuses to accept change as a "dinosaur." But the evolutionary record says almost the precise opposite. Dinosaurs were the kings of evolution and the queens of adaptation; in terms of longevity, they were the most successful race of creatures in the planet's history.

From about 225 million years to about 65 million years ago—a.k.a., the Mesozoic Era—Earth's climate was remarkably steady and predictable. The continents broke apart and drifted together in new combinations, but throughout this period, the planet was generally warm and increasingly humid, the seasons were remarkably mild, there were no ice caps at either pole, and the sea level was higher than it is today.

During this time of climatic serenity, dinosaurs enjoyed an uninterrupted run of dominance over the Earth. It wasn't always a walk in the park—dinosaurs did experience two major planetary environmental changes during their time[68]—but they survived those events, and in so doing, they retained their fundamental characteristics, largely because the climate in which they were evolving remained generally stable throughout their reign.

That is, up until an asteroid the approximate size of a city plowed into the Earth near the Yucatan Peninsula in Mexico, causing worldwide devastation on a scale we can scarcely conceive today. But even before that singular event, dinosaurs were already facing an extraordinary challenge. Earth was experiencing a particularly intense period of super-volcanic activity, principally in an area called the Deccan Traps, where a volcanic field about half the size of modern-day India erupted more or less continuously for hundreds of thousands of years, unleashing lava that covered an area of about 500,000 square kilometers to a depth of two kilometers.

[68] Represented by the Triassic-Jurassic Extinction Event and the Jurassic-Cretaceous Boundary, for those scoring at home.

As you might imagine, volcanic activity on a scale that massive made the Earth a pretty unpleasant place to live. Ash and soot shot into the atmosphere by the megaton, blocking sunlight and filling the air with particulate matter that clogged lungs and made it difficult to breathe. Dinosaurs had survived a lot—there's some suggestion that the earlier Triassic-Jurassic extinction event was also caused by colossal volcanic activity—but this was an especially rough ride. There's paleontological evidence that the dinosaurs were already in decline before their sudden extinction, whether from volcanic eruptions or from other causes, losing species at a faster rate than new ones could replace them.[69]

Somewhere in this lengthy period of time came an asteroid strike of unimaginable force, and a climate that had already been deeply inhospitable suddenly became utterly uninhabitable. About 75 percent of Earth's species disappeared in the centuries following the impact, including every non-avian dinosaur, as the sun was blotted out for years, global temperatures plummeted, sea levels dropped precipitously, and any creature that relied in any way on photosynthesis was in serious trouble. Transformative climate change occurred around the entire planet.[70]

But the dinosaurs didn't all die instantly in the fiery flash of the asteroid strike. They died out over the course of hundreds of subsequent years because their environment was completely transformed. The climate in which they and their ancestors had thrived for millions of years—the very specific climate *in and for which* they had evolved to their present state—disappeared. The cooler Tertiary Era climate that replaced it was far more hospitable to mammals and other species.

The asteroid didn't kill off the dinosaurs. Climate change did. The dinosaurs and their habitat had evolved in lockstep, and when their habitat vanished, the dinosaurs did too.

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[69] "The Long Decline of the Dinosaurs," by Ed Yong, *The Atlantic,* April 28, 2016: http://www.theatlantic.com/science/archive/2016/04/the-long-diminuendo-of-the-dinosaurs/478668/.

[70] I used *A Brief History of Everything*, (Bill Bryson, Anchor Books, 2003) and "Dinosaur Extinction," NationalGeographic.com (http://science.nationalgeographic.com/science/prehistoric-world/dinosaur-extinction) as my primary sources for details on the rise and fall of the dinosaurs.

THE LESSONS FOR LAW FIRMS

What does any of this have to do with the theme of this book? Rest assured, I'm not going to make lame jokes about how lawyers are dinosaurs; I've already described how I think lawyers can actually respond pretty well to market change.

Law firms are like dinosaurs. The climate in which they evolved is changing radically and permanently — and I think they are in serious trouble as a result.

But *law firms are* like dinosaurs. The business climate in which they evolved is changing radically and permanently—and I think they are in serious trouble as a result.

Law firms as we know them today did not materialize suddenly, dropped whole from the heavens into upscale office buildings with ample parking. They developed gradually, over the course of the past century, to thrive in and serve a legal market that featured only one type of service provider, virtually no tools to scale service provision or enhance work production efficiency, and a deep asymmetry of knowledge and power between buyers and sellers of legal services. The structural and cultural frameworks of law firms developed in ways that reflected the serene if not moribund market in which they developed. And because that market was so stable, comfortable, and rewarding to sellers, law firms had no need to evolve any further—and so they didn't.

Law firms have long been the singular provider of a valuable service that they could create and deliver pretty much any way they liked. They've never known a time when the intellectual labour of lawyers was not the sole and sufficient means of production. Thanks to artificially quiet competition and somnolent buyers, firms have never experienced any other type of market demand or felt any pressure to go about their business differently. The one great innovation in law firm management, the development of the Cravath System, predates the First World War.[71]

[71] Among the really remarkable innovations introduced by Paul Cravath a century ago was the idea that "the firm should pay all associates a salary and only hire top graduates from the best law schools.... Once at the firm, associates were required to go through rigorous and extensive training, not in one specialized field but in several.... Over time, the most talented of the associates would become partners, but only after being well-versed in the many aspects of the firm's practice." And that is still, roughly, the way law firms go about replenishing their talent 100 years later. See "Philosophy: The Cravath System," Cravath, Swaine & Moore website: https://www.cravath.com/cravathsystem/. But see also: "How most law firms misapply the 'Cravath system,'" by Prof. William Henderson, The Legal Whiteboard, July 29, 2008: http://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html.

When the weather and climate today are the same as they were yesterday, and the day before that, and for the last hundred years, species learn to rely on that pattern and adapt accordingly. Bitterly cold Ice Ages therefore produced woolly mammoths; the humid Mesozoic period produced cold-blooded lizards; and the 20th-century legal services market produced law firms. The mammoths and lizards thrived, right up until the point when their weather and climate suddenly and radically changed. Then they became part of the fossil record.

Traditional law firms evolved to thrive in the prevailing conditions of their environment, the legal market of the last 100 years. By definition, they are not meant for any other environment, certainly not for a radically different one. They are ideally suited to a very narrow and specific set of environmental conditions. Those conditions are now disappearing.

Maybe technology and the internet will prove to have been our Deccan Traps, changing the environment in which law firms operated. Maybe the 2007-08 financial crisis will turn out to have been our asteroid, setting off a cataclysmic chain of events that reached around the world. Maybe the new competitors and technology providers described in Chapter 3 will be our mammals, scurrying into shelters during the extinction event and emerging into a new climate. Maybe I've stretched this analogy just about as far as it can go.

My ultimate point is that dinosaurs evolved to be ideally competitive and dominant in a particular climate; but so complete was their adaptation that their dominance ended when the climate did. They were fundamentally unsuited to a different kind of environment than the one in which they evolved. So it is with law firms.

LAW FIRMS VS. THEIR MARKETS

Hopefully, the preceding sections have provided a theoretical context in which to better understand the plight of law firms. Now let's drill down to some specifics. I've been talking a lot about the "traditional law firm." What precisely do I mean by that?

If you've worked in a law firm any time during the last 50 years, you could probably rattle off several of that firm's characteristics right now. Whatever features you might name, they are likely shared by the vast major-

ity of other law firms—and that fact alone reveals how little diversity exists within this particular "species." So let's describe the species of the traditional law firm, in order to contrast its characteristics with the demands of the emerging market for legal services.

The traditional law firm typically features:

1. An ownership group comprised entirely of lawyers, who also manage its operations and generate much of its revenue.
2. Junior lawyer employees with billing rates below those of senior lawyers and whose hourly work is leveraged to generate profit.
3. The location of all owners and full-time employees in expensive premises centrally positioned in an urban area.
4. Business opportunities sought out and secured by individual lawyers rather than by a sales force managed by the firm.
5. The "ownership" of client files and relationships by individual lawyers rather than by the firm as an enterprise.
6. Methodologies for assigning and performing legal work determined by individual lawyers rather than by the firm.
7. Time- and effort-based metrics both for pricing the work to the market and measuring the productivity of the firm's workers.
8. Lawyer compensation systems based almost entirely on the acquisition of business opportunities and the billing of hours.
9. Very limited use of technology, automation, or systematization in the performance of legal work, especially routine operations.
10. Few if any formal systems for client feedback, quality control, or active mentoring of junior personnel.[72]

[72] Albert Bollard, a consultant from McKinsey, shared a particularly acidic view of law firms' organizational failings at a 2016 conference. Among his charges against the law firms he observed: "Expertise was valued for its own sake, rather than for contributing to customer value. Knowledge was shared via *ad hoc* apprenticeship, neither codified nor shareable. Experts 'own tasks' and fail to improve the way organizations perform tasks … [No] end-to-end ownership of the client's experience, and a failure to create and enforce standard ways of working." "What Law Firms Can Learn From a McKinsey Consultant," by Aric Press, Bloomberg Business of Law, June 8, 2016: https://bol.bna.com/perspective-what-law-firms-can-learn-from-a-mckinsey-consultant/.

You're almost certainly nodding in recognition as you review this list. It describes virtually every law firm that I've personally encountered and the great majority of firms mentioned in the extensive literature on law firm management written over the past several decades. These are the core features of the traditional law firm, as experienced by almost everybody who has ever worked inside one.

These features are so ubiquitous in law firms, in fact, that we've come to assume they're natural and normal. But that's not the case. Just because almost every law firm has always been this way doesn't mean it's the only way law firms can be, or that a better way can never emerge.

Here's what the traditional law firm has always told the legal market, and what the market is now saying in response.

Law Firms:

"Lawyers' interests, prestige, and convenience are our top priority. We will sell you the time and effort of our lawyers at rates of our choosing and deliver our work product as and how it suits us. We will not pursue any means to conduct your work more efficiently. We are incentivized to maximize the amount of money you spend with us. You will deal exclusively with the lawyer who brought your business to the firm and his or her delegates. We will rarely ask you about your satisfaction with our work and even more rarely use your feedback to change how we go about business."

The Legal Market:

"Get serious. Our funds are limited, so we can't and won't give you *carte blanche* to carry out our work. We want routine tasks performed quickly and cost-effectively. We require more certainty in the pricing and delivery of our legal solutions. The efficient execution of your tasks is a core expectation. We want access to all the resources of your firm, not just the lawyers you place in front of us. We will tell you whether and to what extent we are happy with your work and we expect you to act on what we tell you. And guess what? We now have options for obtaining all these things from your competitors. Step up your game, or step aside."

The legal market is growing up. Buyers are becoming more knowledgeable, confident, and demanding. But the traditional law firm assumes the opposite of these characteristics among buyers: that they are ignorant,

fearful, and complacent. The firm's attitude towards its buyers is essentially patronizing: "You'll take what we have to offer, and you'll like it."

How is that attitude working these days? The description of law firm fortunes related at the end of Chapter 1 suggests "not well." Most law firms, despite more than a decade of dire warnings from market analysts and management experts, aren't dealing constructively with the emerging demands of buyers. They're doubling down on their old habits, raising rates despite unmistakable signs of rate fatigue from clients, and focusing their energies on adding high-profile lawyers rather than on serving clients more effectively.

But in a way, it's not really the firms' fault. The traditional law firm doesn't know how else to respond to the market, because it has never experienced market conditions like these. It's a dinosaur wandering through a chilly climate that it finds totally alien and in which it cannot sustain itself for very long. It is out of step with its times.

To be clear: I am not in any way predicting "the end of BigLaw." It's ludicrous to suppose that corporate and institutional clients will no longer require the services of large, sophisticated, professional firms for complex legal services. There will be something called "BigLaw" 50 and 100 years from now, if not longer.

The nature and business model of the platforms that constitute "BigLaw" will be radically different in the future than they are today.

But I contend that the nature and business model of the platforms that constitute "BigLaw" will be radically different in the future than they are today. There might be a scattered few firms owned and operated exclusively by lawyers that sell their services on an hourly rate basis with only glancing attention to efficiency. But they will be rare and will serve a mere fraction of all buyer needs.

The rest of the market will be contested by sophisticated, multidimensional professional service providers, which will employ complex systems and advanced technology while rendering value at the enterprise level. That's what the future legal market will demand and reward. If you want your firm to be part of *that* "BigLaw" community, keep reading.

THE TROUBLE WITH LAW FIRMS

This all sounds fine, you might say, as far as it goes. But surely the difference between the Mesozoic dinosaurs and today's law firms is that we *know* the asteroid is coming—and if my assessments in the previous chapters are accurate, we even know what the asteroid looks like and what its impact will be. So why not make a few adjustments to law firms today, taking these incoming market changes into account, and then let the tuned-up law firms proceed onward to ever-greater glory?

That's a reasonable objection, but it runs into a couple of hard facts. First, tweaks to the law firm model aren't going to be enough to enable a successful adjustment to the new market environment. The gap between where many firms are today and where they need to be is too wide to be bridged by the enterprise equivalent of a fresh coat of paint. Law firms require more substantive changes to their model and culture.

The second problem is that law firms are owned by, managed by, populated by, and built in the image of lawyers. While they possess many wonderful qualities, lawyers tend to be a little short on several other characteristics—business training, entrepreneurial spirit, risk tolerance, and personal resilience[73]—that can be found in other industries and enterprises. Given that lawyers are not especially adaptation-positive, it's inevitable that the firms they create in their image will share that handicap.

On one point in particular, the repeated experience of consultants and professionals who seek to advise law firms is remarkably similar and instructive. Generally, law firm owners are deeply reluctant to approve any initiative that might yield a market advantage unless there are several successful examples of highly similar firms undertaking that initiative. In any other industry, when an innovation is proposed, the news that "No one else is doing this yet!" is welcomed. In law firms, that same statement is disheartening (read it again, only this time without the exclamation point).[74]

[73] Read more on the role of lawyer resilience in Chapter 12.

[74] One of the first things lawyers learn to do in law schools, and they learn it really well, is how to distinguish precedents that they don't wish to follow. So even if you can identify examples of innovations at other law firms, you can expect to hear the objection: "Yes, but we're different…."

Of course, holding off on an innovation until its use is widespread means it's no longer an innovation, and any competitive edge has been lost. Sadly, that happens with regularity within law firms.

Law firms have a few other lawyer-driven features that further complicate the innovation and adaptation process:

1. *Lawyers > "Non-Lawyers"*

The flip side of law firms' lawyer-focused nature is that there aren't nearly enough people among firms' leadership and management (never mind ownership) ranks who aren't lawyers. Other industries have figured out that diversity among shareholders and directors is competitively advantageous. People who look, act, and think differently from each other will identify a wider spectrum of opportunities and risks.[75] But in law firms, non-practicing lawyers garner less respect than practicing lawyers, and "non-lawyers" command less respect than both. I've lost count of the number of experienced professionals in marketing, sales, technology, librarianship, and other expert fields who have encountered a brick wall of resistance in law firms based not on their ideas, but instead on their lack of a J.D.

2. *Lawyers > Clients*

Most businesses exist to serve their customers, and if an innovation allows the business to do that better, it will be viewed favourably. I'd like to say that law firms serve their clients above all else and prioritize their interests above those of their lawyers, but this is a non-fiction book. Law firms make strategic and tactical decisions to benefit their partners first and everyone else second. They bill by the hour because it's convenient and profitable for lawyers. They resist efficiency upgrades because that would oblige them to price their work differently. Many vendors who think law firms are like regular businesses have tried to sell a firm on an innovation by talking up the benefit to clients, only to notice a chilly silence fill the room. The quick thinkers switch gears and start promoting the partner profitability enhancements, and suddenly find the mood becoming a lot friendlier.

3. *Lawyers > Firm*

In a business owned and operated by and for its equity shareholders, who looks out for the interests of the firm as a whole? I think you'd agree, for example, that smart firms would set aside a tiny percentage of every year's

[75] This is the "strategic case for diversity," about which you can read more in Chapter 12.

profits to fund long-term competitive enhancements, such as a research and development capability or competitive intelligence efforts to identify the next big market opportunity. And many firms do give this a try.[76] But most partners prioritize their short-term financial interests ahead of the firm's long-term well-being, sometimes to absurd lengths. A law firm staff professional of my acquaintance once recalled how a partner interrupted an innovation pitch to declare that if this initiative lowered his annual draw by even $2,000, he would oppose it—to the vigorous agreement of many of his colleagues.

Then you throw in aggravating factors, such as the unsheddable legacy costs of lavish offices in expensive locations and the disturbing sense of entitlement among many lawyers to their firm's continued share of the market. This is the heart of the challenge for law firms: These characteristics are not bugs in law firms' systems. They're *features*.

A law firm's competitive weaknesses and maladaptive tendencies can't be addressed easily because they're rooted deep in the firm's operational and financial culture. I've seen visionary law firm leaders valiantly try to curb their firms' tendencies towards parochial, narrow-minded resistance, but there's only so much they can do. Law firms simply aren't set up to be efficient, buyer-focused, innovative platforms for the delivery of legal services, and no amount of tinkering with the machinery is going to change that.

But efficient, buyer-focused, innovative platforms are exactly what the legal market is now seeking, and it's finding them in growing numbers. The traditional law firm is constitutionally unable to compete in, let alone dominate, the new legal market. Something will have to replace it.

THE NEXT EVOLUTION: SOMETHING BETTER

Myriad books and articles are available to you detailing strategies by which you can rescue "the law firm" as we've always known it. My prescription is a little different. I contend that the traditional law firm model simply can't be saved—and what's more, that it *shouldn't* be saved. I want to counsel you against trying.

[76] See "R&D in Big Law," by Ron Friedmann, Prism Legal blog, last updated June 2016: http://prismlegal.com/rd-big-law/.

The traditional law firm business model developed more or less by accident in another market environment. Technological advancements have now commoditized vast portions of its inventory, automating tasks that previously only lawyers could perform. Alternative platforms by which legal services can be provided to the market more robustly and efficiently are draining both lawyers and clients from the traditional model. Its longstanding vulnerabilities have been fatally exposed by market change.

The traditional law firm model, in short, has had a great run, and continues even to this day to support some very profitable enterprises. But that run is coming to an end.

The traditional law firm model, in short, has had a great run, and continues even to this day to support some very profitable enterprises. But that run is now coming to an end.

You could feel badly about that, if you like, reflecting on the many truly great law firms the old model produced and the undeniable benefits its has rendered both to its clients and its owners over the past several decades. Or you could celebrate the old model's demise, because that model acquired a legion of bad habits and exploitative tendencies that have left many clients unhappy and many lawyers miserable.

Personally, I'm not doing either. The passage of a business model is a simple function of inexorable market economics, and I'm not investing much emotional capital into it. I'm not all that interested in whether the traditional law firm model is worth saving, because it can't be saved, and that's that.

I *am* interested, deeply, in what will succeed that traditional model. I want to know what comes after the dinosaurs. More importantly, I want the legal profession to take the lead in figuring it out. Instead of an accidental law firm model, we can have an *intentional* one. We can shape the law firm of the future for the better.

We have the opportunity, perhaps an unprecedented one, to build law firms not inadvertently or selfishly, but on the foundational principles of service and professionalism, with the architecture of productivity and value, and in the best interests of the people and businesses those firms serve. We ought to seize that opportunity and run with it.

Because you know what? The extinction of the dinosaurs was actually a great thing. Life on Earth would be uncomfortably reptilian today had that asteroid missed us. I grant you that as mammals, our rooting interest in the eventual outcome is fairly clear; but isn't Earth a better and more fulfilling place because of that asteroid? The only surviving members of the dinosaur species today are birds, and that worked out nicely too. Wouldn't you prefer a robin singing brightly in your backyard to a stegosaurus lumbering around and ripping up your lawn?

The extinction of the old law firm model will also be seen, in due course, as a great thing too, because of the extraordinary value and variety of the models that flourished in its wake. Out with the tiny-brained reptiles, in with opposable-thumbed mammals—*that's* the opportunity in front of us right now.

But fulfilling that opportunity depends on what you and your colleagues decide to do, today, in order to bring it about. In the balance of this book, I'm going to outline what I think the new law firm model should look like. I'll be touching on issues such as the firm's commercial structure, its purpose, its choice of markets and clients, and its strategies (yes, more than one), as well as the leadership and change management required to move the firm towards this destination. It's my hope and intention that this information and insight will help your firm chart a course forward, towards a new and better day.

Before we tackle all these topics, however, we need to address what I think is the most fundamental issue facing law firms over the next 10 to 15 years: the steadily diminishing role that lawyers will play in creating and delivering services to clients. That's coming up next.

Chapter 5

THE RISE OF THE POST-LAWYER LAW FIRM

Every law firm in the world currently shares one common characteristic, powered by one fundamental assumption. This feature and this assumption are so basic that we often don't even notice them. But they underlie our whole conception of law firms—and as they start to crumble, the entire law firm edifice above them is going to start giving way.

The characteristic is this: Every law firm consists of lawyers. The assumption is this: You need lawyers to have a law firm.

Now, to be fair, this has been a perfectly sensible assumption throughout the history of the legal market. Lawyers preceded and enabled law firms, in the same way that merchants preceded shops and priests preceded churches. Law firms only developed in the first place because, at some point in history, one or more lawyers decided to set up a commercial platform for the convenient and profitable provision of their services. Lawyers; *ergo*, law firms.

Over the next 10 to 15 years, this is going to change. Lawyers will no longer be considered essential to law firms' ability to deliver legal services. As we've seen in Chapters 2 and 3, a growing number of legal tasks can already be carried out by para-professionals, systematized and automated processes, and a rapidly multiplying legion of software products. You can get work done in a law firm right now without requiring a lawyer to do it. Technological innovations and regulatory developments promise more of the same into the foreseeable future.

The population of known legal problems[77] that can be resolved solely by the direct, real-time application of lawyers' efforts is going to shrink a

[77] The population of unknown legal problems—that is, challenges and opportunities with a legal remedy but that have not yet developed or been identified at the present time—likely will expand. But we should expect that these newly emerging opportunities, like those that already exist, will not all require the direct, real-time application of a lawyer's time and efforts either.

little more, and eventually a lot more, every year. This is going to change everything we believe to be true about law firms.

WHAT'S A LAW FIRM WITHOUT LAWYERS?

Across the legal market, from the smallest local firm to the largest global colossus, law firm leaders are starting to ask themselves some thought-provoking, even groundbreaking questions:

- "Could we deliver some legal services without using lawyers?"
- "Could we be more productive and effective if we solved clients' issues without assigning lawyers to the job?"
- "Could we grow our business opportunities by offering clients solutions that don't require lawyers?"

It's not exactly a secret within the legal industry that lawyers aren't the easiest assets to manage. As a general rule, they tend to be expensive, autonomous, difficult to lead, and prone to decamp to competing businesses without warning. The more experienced and expert the lawyer, the more these characteristics will manifest themselves. So if you consider the volatile and mercurial nature of this valuable resource, and if you hear that some of this resource's functions could be rendered by other assets that suffer from none of these liabilities—well, you at least want to learn a little more, right?

The traditional law firm is a commercial vehicle whose structure is very familiar to us: a collection of lawyers gathered in a central location under a single brand name to deliver legal services, supported by staff members and various other resources.

The "engine room" of this vehicle is the lawyer. Law firms' ownership, profit-sharing, workflow, billing, compensation, governance, and culture all revolve around lawyers. Law firms' naming conventions are almost universally based on the surnames of their individual founding lawyers. Law firms go so far as to divide their personnel into two airtight categories: lawyers, and everybody else (a.k.a. "non-lawyers"). And if a law firm's lawyers don't believe something is worth doing, the firm ain't doing it.

Lawyers, in other words, are absolutely essential to the traditional law firm—not just to the firm's revenue and sales, but also to its very definition

and identity. I sometimes think the only reason we say "law firm" rather than "lawyer firm" is to economize on syllables.

This model is now, slowly, giving way to a new vision of law firms, one that revolves not around lawyers, but around *the firm's capacity to deliver services of value to clients*. This new law firm's "engine room" is not comprised of collected lawyers, but of collected *legal expertise,* applied to client needs through the use of systems, processes, technology, and expert professionals, as well as lawyers.

The potent combination of advanced technology, powerful databases, sophisticated analytics, and streamlined procedures is enabling law firms to deliver solutions to clients without necessarily requiring the real-time application of lawyers' efforts. Put differently, law firms are discovering that they can provide some legal services to clients using only applied knowledge resources and technology. This will change everything.

Law firms are discovering that they can provide some legal services to clients using only applied knowledge resources and technology. This will change everything.

IT'S ALREADY HERE

There are several examples of large law firms that have already travelled some distance down this road:

- Akerman has developed a product for corporate counsel and compliance officers that delivers regulatory gap analyses in data and privacy risk areas.[78]
- Berwin Leighton Paisner is using AI methodologies to perform straightforward legal processes hundreds of times faster than the traditional use of human labour.[79]
- Bryan Cave boasts a wide range of technology-driven initiatives that include claims management systems and loss prevention tools for clients.[80]

[78] "Automating Legal Advice: AI and Expert Systems," by Ron Friedmann, Bloomberg Business of Law, Jan. 22, 2016: https://bol.bna.com/automating-legal-advice-ai-and-expert-systems/.

[79] "BLP enlists AI to shoulder process work burden—and so far the lawyers like it," by Dan Bindman, Legal Futures, Sept. 16, 2015: http://www.legalfutures.co.uk/latest-news/blp-enlists-ai-to-shoulder-process-work-burden-and-so-far-the-lawyers-like-it.

[80] "Purposefully structured for innovation," Bryan Cave website: https://www.bryancave.com/en/about/innovation.html.

- Cadwalader, Wickersham & Taft has developed a fee-based online dashboard that helps its corporate users navigate the financial regulatory landscape.[81]
- Clifford Chance is using a range of AI systems in e-discovery, cybersecurity, and contract and document review.[82]
- DLA Piper has adopted machine-learning systems for document review during the due diligence process for M&A transactions.[83]
- Foley & Lardner has created a compliance system to help clients manage risks associated with *Foreign Corrupt Practices Act* rules.[84]
- Gilbert & Tobin is developing computer applications to reduce, in some cases, the time it takes to perform a task from 20 hours down to just two hours.[85]
- Latham & Watkins, Dentons,[86] and Baker & Hostetler[87] are three of the first large law firms to sign deals with ROSS Intelligence, a legal research engine powered by IBM's Watson.

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[81] "A Law Firm's Ambitious Dashboard: Inside the Cadwalader Cabinet," by Gabe Friedman, Bloomberg Business of Law, Jan. 11, 2016: https://bol.bna.com/a-law-firms-ambitious-dashboard-inside-the-cadwalader-cabinet/.

[82] "Clifford Chance Partners with Kira Systems, Using AI to Expand Review, Cost-Saving Capabilities," by Ricci Dipshan, *Legal Technology News,* July 5, 2016: http://www.legaltechnews.com/id=1202761747017/Clifford-Chance-Partners-with-Kira-Systems-Using-AI-to-Expand-Review-CostSaving-Capabilities?slreturn=20160807125811.

[83] "DLA Piper to use artificial intelligence for M&A document review," by Debra Cassens Weiss, *ABA Journal,* June 15, 2016: http://www.abajournal.com/news/article/dla_piper_to_use_artificial_intelligence_technology_for_ma_document_review/.

[84] "Foley Introduces Industry's First Web-Based Affordable FCPA Compliance Solution," Foley & Lardner website: https://www.foley.com/foley-introduces-industrys-first-web-based-affordable-fcpa-compliance-solution-02-03-2015/.

[85] "G+T wants to use computers to cut lawyers' work," by Marlanna Papadakis, *Australian Financial Review,* June 9, 2016: http://www.afr.com/business/legal/gt-wants-to-use-computers-to-cut-lawyers-work-20160607-gpd5sv.

[86] "U of T students' artificially intelligent robot signs with Dentons law firm," by Jeff Gray, *The Globe And Mail,* Aug. 9, 2015: http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/u-of-t-students-artificially-intelligent-robot-signs-with-dentons-law-firm/article25898779/.

[87] "AI Pioneer ROSS Intelligence Lands Its First Big Law Clients," by Susan Beck, *The American Lawyer*, May 6, 2016: http://www.americanlawyer.com/id=1202757054564/AI-Pioneer-ROSS-Intelligence-Lands-Its-First-Big-Law-Clients.

- Littler Mendelson combines access to its own and client data with powerful analytical tools to calculate potential client damages in class actions and proactively identify litigation risks.[88]
- Mishcon de Reya plans to establish an internal laboratory to assess AI initiatives in order to position the firm as an early adopter for new technologies.[89]
- Norton Rose Fulbright has created ContractorCheck, an expert system designed to help corporate clients accurately characterize a worker as either a contractor or an employee.[90]

These firms and others proceeding with similar products and services either provide them free of charge to the firm's regular clients as a reward or an enticement for using the firm, or they sell them to clients as a standalone offering. I hardly need to add that these sales provide incredibly high margins, since like all software products and services, their second and subsequent uses cost the firm almost nothing.[91]

THE RISE OF THE PRODUCTIVITY ENGINE

All these technology-powered products and services are essentially "productivity engines." They enhance the user's ability to complete a task or reach a solution while reducing the amount of time and money required to achieve that goal. Earlier, I talked about the new "engine rooms" of law firms; these are the actual engines.

There is no question that using these products and services increases legal productivity. There is equally no question that such an outcome is antithetical to the traditional law firm's ability to generate revenue.

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[88] "The L&E Firm of Tomorrow: Littler's Drive for Analytics Initiatives," by Chris DiMarco, *Legal Technology News,* Oct. 1, 2015: http://www.legaltechnews.com/id=1202738678001/The-LE-Firm-of-Tomorrow-Littlers-Drive-for-Analytics-Initiatives-?slreturn=20150902082920.

[89] "A transformed business: Mishcon de Reya unveils ten-year strategy," by Sarah Downey, Legal Business, June 8, 2016: http://www.legalbusiness.co.uk/index.php/lb-blog-view/6615-a-transformed-business-mishcon-de-reya-unveils-ten-year-strategy.

[90] "ContractorCheck: A useful tool to characterise working relationships," Norton Rose Fulbright website: http://www.nortonrosefulbright.com/knowledge/online-services-resources-and-tools/contractorcheck/.

[91] The second and subsequent use of lawyers, by contrast, costs considerably more.

These high-tech productivity engines share two characteristics. The first is that, yes, lawyers' efforts and knowledge invariably contributed to their development. Expert systems, for example, require lawyers' expertise to populate the databases and provide direction to the algorithms that will make decisions. But lawyers are not required to *directly deploy* their efforts and knowledge for clients' use in real time. Their expertise has been distilled and "embedded" within the system, so that it can be applied over and over again, many times a day in many different locations by many different clients. Lawyers are needed at various stages to help build the systems that carry out this work. But lawyers are not needed to actually carry out the work themselves.

Clients can access the lawyer's expertise directly, by themselves, without having to call the lawyer up and set the timer running.

In other words, clients can access the lawyer's expertise directly, by themselves, without having to call the lawyer up and set the timer running. This is a clear benefit to the client, who saves time and money while gaining more control over the process of finding answers and solutions to his or her questions. Equally, the time and effort that lawyers would have had to personally devote to delivering these services can be freed up and applied to other revenue-generating activities, or even dispensed with altogether.[92] This is, in the long run, a clear benefit to the lawyer as well.

The second characteristic shared by these productivity engines is that in almost every case, the core element of the offering is *information*: both legal knowledge and non-legal data, applied and leveraged by technology. Every law firm in the world possesses information, whether assembled in precedents kept inside servers and filing cabinets, stored up in libraries and online subscription services, or tucked away in the labyrinthine recesses of their lawyers' brains.

For law firms, information has always been a static resource, tapped when required but otherwise lying latent and dormant. The development of productivity engines is transforming that information into a *dynamic* resource, an asset that can provide value all on its own, without needing to be picked up and wielded by a human. Up until now, to provide

[92] The recent rapid diminishment of associate work in many law firms is an example of "dispensing with the hours altogether." More on this in Chapter 13.

legal solutions of value to their clients, law firms could only deploy lawyers, or the occasional experienced clerk or paralegal. Today, however, firms can also unleash their information through advanced systems that can deliver answers and solutions. Some already do.

This means that for the first time, law firms have resource options beyond lawyers alone for the development and delivery of value to clients. They can access, analyze, and apply information already prevalent in their systems or their markets. They can use this information to develop new business lines and generate viable income streams independent of lawyer activity. Legal information is widespread, can be accessed with relative ease, and doesn't complain about partner profits or threaten to join the law firm down the street.

From the law firm's point of view, information deployed through productivity engines is a formidable asset. From the individual lawyer's point of view, on the other hand, it's a formidable rival.

What we're witnessing, therefore, is the start of the gradual *de-lawyering* of law firms. So long as lawyers' equity is still required to finance the capital and operations of a law firm,[93] lawyers will still constitute a significant percentage of a law firm's total personnel. But they will constitute a steadily diminishing percentage of the law firm's revenue-generating assets and competitively significant personnel. Sources of law firm productivity and profitability, at one time a club exclusively open to lawyers, will start to include law librarians, legal knowledge engineers, legal data analysts, and legal productivity engines developed to harness the information the firm has assembled and applied.

Today, lawyers generate more than 99 percent of a law firm's revenue. Once productivity engines are ubiquitous in law firms, that percentage could conceivably drop below 50 percent.

Why would law firms commit themselves to such a radical transformation of their businesses? Simply put, because the market will reward those firms that adopt these advances and punish those that resist. The firms that adopt and develop these productivity engines will be able to sell their

[93] Much more on this subject in Chapter 13.

services at a lower price without having to compromise on quality.[94] It'll be a simple matter of competitive mathematics.

THE LAWYER-PROOF LAW FIRM

This development will also have significant strategic implications for how law firms manage the lawyers that they do employ. It seems to me, in fact, that we might be on the verge of developing what you might call "lawyer-proof" law firms—firms that don't rise and fall, as traditional law firms did, with the actions and fortunes of individual lawyers.

Remember the original *Law & Order* franchise on NBC in the 1990s? Of course you do; you're a lawyer. You probably set aside Wednesday evenings to meet up with your classmates or colleagues to see what Ben Stone or Jack McCoy would do this week. *Law & Order,* interestingly for our purposes, was considered to be an "actor-proof" TV show, thriving despite the continuous turnover of popular actors because the show's brand and format were predictable, steady, and strong. Law firms can similarly become "lawyer-proof" if they can build predictable, steady, and strong systems that generate profitable business independent of the real-time efforts of their lawyers.

The major accounting firms, to cite an emerging rival to law firms, are essentially "accountant-proof." They hire and deploy good accountants and other professionals in service to their buyers, of course. But what their buyers really want is these firms' ironclad brands, high-quality standards, operational templates, and efficient systems—their machinery, for lack of a better word.

The contributions of individual accountants, regardless of their quality, reinforce the reputation of the accounting firm, rather than accruing to the reputation of the individual professionals themselves. If a good accountant leaves the firm and goes to a rival, the clients whom that accountant was serving invariably stay with the firm and begin working with a different professional on their files. When was the last time you heard a corporate CEO say, "I hire the accountant, not the firm"? There's probably a reason for that.

[94] In fact, these firms can make a good argument to their clients that, given the discipline that automation imposes on the process of providing legal solutions, the outcomes generated by these productivity engines are actually *superior* to what error-prone human lawyers can provide.

Consider the legal equivalent: a "lawyer-proof" law firm, one whose brand, standards, templates, systems, and productivity engines are strong enough that they rival or surpass the talents and profiles of its individual lawyers. This firm could lose a good lawyer to a competitor and not worry that its clients would follow the lawyer out the door. The firm could train someone else to take the departing lawyer's place with no great disruption to the firm's workflow. This firm's operations could be carried out by any qualified lawyer, or maybe not even by a lawyer at all.

A law firm striving to be lawyer-proof could take the following steps:

- Develop systems to govern the intake, creation, pricing, and delivery of client work, rather than leaving each of these factors to the whims of the lead lawyer.
- Leverage systems to deliver results faster, more predictably, and with fewer individual variations, allowing the firm to lower prices and deliver a higher quality of output.
- Implement rigorous discipline in the management of client files, paying particular attention to mapping out and improving the processes by which clients are served.
- Eventually employ fewer lawyers and more trained technicians to run the "machinery," further reducing the firm's exposure to lawyers and the risks of their defection.

A "lawyer-proof" law firm would probably resemble accounting firms more than traditional law firms, and that would have an impact on the type of work the firm does. As I mentioned in Chapter 3, while most law firms are focused on "bet-the-company" work, the major accounting firms are focused on "run-the-company" work. Lawyer-proof law firms would compete in the latter market, for two reasons:

- Straightforward or repetitive legal work lends itself much more easily to systematization and automation than big-ticket bespoke legal matters; and
- The singular lawyers who excel at "bet-the-company" work will always have complete autonomy anyway, and will write their own tickets wherever they go.

Lawyer-proof law firms would avoid bet-the-company work precisely because they want to avoid the type of lawyer whose independence and capriciousness undermine the firm's need for stability and predictability.

You might object that such systematized, mechanical firms would be fit only for mid-level or lower-level "commodity" matters, and that therefore, "bet-the-company" work would rapidly migrate to the big-ticket lawyers found at other firms. And you might be right. But even if so, I'm hard-pressed to see what's so bad about the mid-level, run-the-company work. There's an enormous amount of it, most of it is amenable to high-efficiency systematization and therefore high-margin profitability, and many firms are ignoring it while chasing the glamour assignments.

Lawyer-proof law firms would reduce the risks of relying on mobile, mercurial, me-first lawyers as the engines of the law firm enterprise. These firms could create and strengthen legal services delivery systems and productivity engines to generate standalone revenue without incurring the costs of lawyer involvement. Over the next several years, a law firm model in which the machinery delivers reliable services—regardless of what or who is delivering them—will become an increasingly attractive option for law firm leaders.

THE POST-LAWYER LAW FIRM

If you plan to build or lead a law firm through the end of the 2010s and into the 2020s, the coming "inessentiality" of lawyers is a critical development to understand and act upon. A law firm whose value is defined in terms of its clients and its markets needs to focus on building systems that can meet *those* needs, rather than the interests of its equity-owning lawyers. The only thing that matters in building those systems is that they are effective, not whether the people who operate those systems come with a law degree. Law firms need to give lawyers the appropriate, rather than the maximum possible, degree of importance in delivering their services. That degree will be significantly less in the future than it's been in the past.

The implications of this development for law firms, as you might imagine, are enormous:

- Law firm **culture** is modeled on lawyer culture. Law firms (like lawyers) value and encourage analytical, individual, critical, and risk-averse behaviour. As lawyers begin to decline as a percentage of law firms' busi-

ness generators, these characteristics will also start to decline, while other behaviour—empathetic, collaborative, constructive, and entrepreneurial behaviour—will begin to rise. Collective action in the interest of the enterprise will become easier to encourage and exemplify, if only because there will be fewer lawyers in positions of power over the firm's business to resist it.

- Law firm **workflow** has long consisted of assigning tasks to a lawyer and waiting for the lawyer to sequentially and painstakingly carry them out, often with only glancing attention to standardized procedures. As other professionals and technicians become more involved in the creation of legal services, and as automated systems and programs take on more tasks previously carried out by lawyers, law firm workflow will become more standardized and productivity will increase. Lawyers will no longer be the only ones whose priorities determine how work gets done.
- Law firm **compensation** systems are currently built around lawyers' billed hours and lawyers' business origination activities. As services start to be delivered through, and clients come to be attracted by, the performance mechanisms of the enterprise, firms will find more sophisticated and accurate ways of measuring and rewarding individuals' provision of value. Lawyers' time and efforts will be the source of a decreasing percentage of the firm's revenue, opening the door to a reconsideration of what we're actually paying lawyers to do. Firms will get better at incentivizing the contribution of real value.
- Law firm **pricing** is currently founded upon lawyers' billable rates and hours worked. As more products and services are created and delivered with minimal lawyer involvement, through the use of other professionals and advanced software, law firms will develop new pricing mechanisms that don't require the crutch of lawyers' hourly rates. They will start integrating buyers' circumstances, and the unique value of a legal service in those circumstances, into their pricing equations. Competitive intelligence will become key to profitability. Lawyers' hourly rates will no longer determine what buyers pay. The market will do that instead.
- Law firms' **leaders** have traditionally been lawyers with robust practices who could command respect for their legal accomplishments, regardless of whether those lawyers possessed actual leadership skills.

> At many law firms, you could not hope to serve as managing partner or group leader unless you also brought in a lot business or billed a lot of hours.[95] But as lawyers' revenue-generating efforts constitute less of a firm's overall income, those efforts will also play a smaller role in leadership discussions. Professional law firm businesses, employing a diverse range of employees, will require professional leadership, exercised by people whose credentials extend beyond the size of their origination credit.

I want to be clear on one point. A "post-lawyer" law firm is not the same thing as a "lawyer-free" law firm or a "zero-lawyer" law firm—nor would those objectives be sensible or worthwhile. The goal of successful law firms in the new market is not to dispense with lawyers altogether, but to use lawyers *appropriately and proportionately,* in order to maximize the overall productivity of the firm and the value it provides to clients.

But if the "zero-lawyer" firm is not a desirable goal, then the "all-lawyer" firm is no longer a sustainable one. The personal, direct, real-time involvement of a lawyer is not necessary to complete a growing number of legal tasks, and firms' operations will evolve to reflect that. We no longer require lawyers to carry out every legal function that the market requires, and that will become clearer to the legal profession over the next several years. "Go get a lawyer" should no longer be a law firm's automatic answer when considering how to acquire a specific capacity or meet a specific client request.

Lawyers will provide many law firm services in the future, maybe even most—but never again all.

LIFE AFTER LAWYERS

The individual lawyer is moving towards a more proportionate role in the law firm business. Sometimes, that role will be an owner or shareholder of the firm. Sometimes, it will be a leader and strategic executive officer. Sometimes, it will be a manager of people and processes. And sometimes, it will be a supplier of high-value legal expertise and insight. But I seriously doubt it will be all four at once, or even more than one or two at a time. Lawyers have very specific and high-value skill sets, but law firms

[95] Imagine an insurance company that appointed its most successful salesperson as its CEO—or worse, that required its CEO to sell homeowner policies on the side. That's how law firm leadership operates.

will need more than what lawyers can provide in order to be competitive in the future.

A traditional law firm exists to provide buyers with access to solutions for their law-related challenges through the application of a lawyer's time and effort. The future law firm will answer to the same description, minus the last nine words. So you must think of your law firm as a business entity that helps buyers overcome legal challenges and meet legal opportunities—not as a hotel for lawyers, which is the description to which most law firms answer today.

A traditional law firm exists to provide buyers with access to solutions for their law-related challenges through the application of a lawyer's time and effort. The future law firm will answer to the same description, minus the last nine words.

In the end, you need to ask yourself: "Is our law firm a platform for lawyers to sell their services? Or is it a business that delivers value to buyers of legal services?" How you answer those questions will determine all your coming decisions about what kind of law firm you're going to build and maintain.

Chapter 6

THE LAW FIRM AS A COMMERCIAL ENTERPRISE

Up to this point in the book, I've tried to establish that the traditional law firm model is no longer sustainable, given the enormous changes taking place in the market environment in which that model operates. If that's true, then we need to consider what a new, better, more market-appropriate law firm business model looks like—the "post-asteroid" law firm, if you will. The balance of this book will address that topic.

I'd like to start by posing a question. Admittedly, this question is a little philosophical, and although it might also sound a little snarky, it's not really meant to be. But I think that asking and answering this question is nonetheless essential to understanding what the future law firm business model should be.

The question is: "Why do law firms even exist?" That is to say, what economic rationales prompt the market to endorse, by its patronage, the choice by lawyers to come together and form a law firm? What makes buyers view the firm as a viable and often preferential platform for obtaining legal services, rather than simply retaining individual practitioners whenever needed?

One way to start answering that question is by referencing the work of economist Ronald Coase, most famous for authoring a landmark treatise in 1937 titled *The Nature of The Firm*. Coase asked and answered a similar question that was occupying the business world in his day: Why do companies exist?

Coase's answer, oversimplified, was that repeated individual trips to the market created expense and inconvenience for buyers. His central insight was that companies exist because constantly going back and forth to the market imposes heavy transaction costs for buyers. A company creates long-term contracts when a series of short-term contracts are too much hassle to negotiate and enforce. The market, in other words, desires a

single platform on and through which it can acquire the products and services it needs, efficiently and reliably. Companies provide that platform.[96]

That's fine, as far as it goes. But it seems like there should be more behind the rise and resilience of the company than minimizing one's daily inconveniences. While reducing transaction friction is important, it's only a partial answer to the "why" of corporations. And over time, Coasian acolytes and critics have come together to assemble a series of other benefits that are conferred by companies. Today, we can identify at least five ways in which companies create value that surpasses what can be generated by individual sellers acting alone.

1. *Companies organize production.* They coordinate resources in ways that improve provider efficiency, build economies of scale, and increase the quality of processes and outputs.
2. *Companies assemble knowledge.* They create unique and valuable types of knowledge made possible through the applied combination of individuals and systems.
3. *Companies build culture.* They institutionalize a specific approach to work or codify a particular ethic designed to enhance worker and system productivity.
4. *Companies spur innovation.* They centralize and invest resources towards the development of innovations that improve company effectiveness.
5. *Companies reduce transaction costs.* They collect disparate but related resources under a single roof or brand for the greater convenience of purchasers.

Companies that do all or most of these things, consistently and correctly, will succeed. Building companies up to this point and then keeping them there is the challenge that has launched a thousand business best-sellers and keeps CEOs and corporate strategists up at night.

The common element in each of these five features, however, is that they create or increase *value* in the production process where little or none existed before—value in many dimensions, but ultimately operating to the benefit of the end user, the buyer. Companies exist because, and succeed

[96] For a good primer on this subject, see: "Why do firms exist?" Schumpeter column, *The Economist*, Dec. 16, 2010: http://www.economist.com/node/17730360.

when, their primary benefits flow directly to the buyers of their products and services.

AND NOW FOR SOMETHING COMPLETELY DIFFERENT

So now let's take a look at law firms. A typical law firm has many equity owners, anywhere from a small handful to several hundred. Publicly traded corporations have many equity owners, too, shareholders who can number in the hundreds of thousands.

What sets law firms apart, however, is that a firm's equity owners also constitute the bulk of its workforce, carry out most of its management, and generate a great deal of its revenue. That's a little unusual. Although the division of ownership from management and of both from labour has sustained commercial enterprises throughout the world for centuries, it's never quite managed to pass the doors of the traditional law firm.

Although the division of ownership from management and of both from labour has sustained commercial enterprises throughout the world for centuries, it's never quite managed to pass the doors of the traditional law firm.

But this is just one way in which, compared to companies of equivalent size and revenue in almost every other industry, law firms are remarkably unsophisticated businesses.

- They generate revenue through the fulfillment by individual lawyers of client requests, one after another, billing the time and effort expended by those lawyers.
- Their expenses consist almost entirely of personnel compensation and the leasing and maintenance of premises.
- They have few capital expenditures: they consume no raw materials, build no factories, and supply merely basic office tools and technology to workers.
- They are expressly forbidden from granting equity to any shareholder who is not a member of the legal profession.
- Shareholder "dividends" (annual equity partner draws) exhaust almost every dollar of profits the firm generates, starting the process over again every year.

So how well do traditional law firms measure up against those five Coasian standards outlined earlier? Let's take a look.

1. *Do they organize production?* Law firms manage production indifferently at best. Because work is priced and sold according to lawyers' time and effort, firms perform tasks deliberately and labour-intensively. The reinvention of wheels is preferred to the development of centralized and managed production processes that would increase efficiency (and thereby reduce inventory). Many workers are also equity owners who view themselves as autonomous craftspersons and resist management of their work processes. Quality control standards are rare.

2. *Do they assemble knowledge?* As we discussed in the last chapter, law firms possess legal knowledge in great quantities, either in lawyers' work product or in their frontal cortexes. But that knowledge has always been diffuse, unstructured, and difficult to access. Law firms' efforts to collect and leverage the knowledge within their walls have been mostly haphazard and unsuccessful. Lawyers tend to guard their knowledge closely and share it grudgingly, making it difficult for firms to take advantage of their deep reserves of in-house expertise.

3. *Do they build culture?* Law firms do have strong cultures—but in most cases, these cultures were not developed intentionally and are not especially conducive to high levels of productivity, customer service, or employee morale. Few law firms have consciously developed and institutionalized a principled approach to how people are expected to act and how work is expected to be done. Fewer still have managed to successfully and consistently enforce that culture. Law firm culture normally is geared more towards the interests of the firm's shareholders than of its customers.

4. *Do they spur innovation?* Law firms, I think I can safely say, are not bubbling hot springs of innovation. The *status quo* has been immensely profitable for law firms for as long as anyone can remember. The lawyers who own law firms tend to distrust and resist change as a matter of course. Law firm coffers emptied of profits every year have little money left over for research and development. And up until recently, the market has never generated the competitive pressures that would make innovation necessary or desirable anyway.

5. *Do they reduce transaction costs?* Yes, they do. In fairness, this is the one Coasian advantage on which law firms have always delivered. A diverse collection of lawyers gathered in one place is an easily accessible source of expertise. But the disaggregation of legal services and the rise of viable new suppliers and platforms, as detailed in the last few chapters, are now reducing the hassle buyers face when trying to find the legal resources they need and combine them appropriately. As disaggregation spreads through law firms, even this lone benefit is increasingly threatened.

From a commercial enterprise point of view, therefore, law firms don't appear to have much going for them. Alternatives to firms are emerging, firms' customers are becoming sharper and more demanding, and technology is productizing and commoditizing firms' previously expensive inventory.

So if they want to remain leaders in the new legal market, law firms will have to become stronger and more resilient commercial entities than they've traditionally been. They need to acquire all five characteristics of successful companies outlined above to increase the effectiveness of their operations and enhance the value of their services to their clients. They'll have to:

- organize legal talent more effectively,
- develop robust legal business processes,
- capture and leverage knowledge,
- invest for the long term, and
- create an intentional culture

in order to increase the value of their services.

The law firms that make it through this coming decade, therefore, will be sophisticated, productive, multi-dimensional businesses that organize and apply legal expertise to deliver value to buyers with maximum effectiveness. As we discussed last chapter, they will have fewer lawyers than they once did and will rely more on processes and technology. They're not going to be run like country clubs, money machines, or boutique hotels for lawyers who are more interested in their own affairs than those of the firm.

They will choose to become strong, professional, buyer-first businesses, and will take the steps necessary to achieve that goal.

THE CONVENIENT FICTION OF LAW FIRMS

That all sounds great. But there's still one problem. Who, exactly, is the "they" that we're talking about here?

Throughout this book, as a matter of fact, I've been talking about what law firms *should* be, how they *should* plan, and what they *should* do. But all these observations are founded upon the unspoken assumption that a law firm can actually "act" in any practical sense—that it can be considered a functional standalone enterprise capable of advancing its own interests independent from those of its owners and operators. Before we proceed much further, therefore, we should address the fact that this is essentially a convenient fiction.

When we talk about a traditional "law firm," we're not talking about a commercial entity in the same sense in which we discuss a company with a chairman, board of directors, shareholders, letters of incorporation, and so forth. Most law firms are private partnerships whose owners are also their shareholders, who are also their salespeople, who are also their managers, who are also their workers, who are also their directors.

A law firm partnership isn't really a commercial entity separate and apart from the people who own it and work inside it. It is *the people who own it and work inside it.*

In a corporate setting, all these roles are played by a diverse assortment of people with a wide range of interests. In law firms, all these roles are played by the same people with the same interests. A law firm partnership isn't really a commercial entity separate and apart from the people who own it and work inside it. It *is* the people who own it and work inside it.

Companies separate ownership and management for many excellent reasons. Among the most important is that the big-picture interests of the company might not always coincide with the small-picture interests of its owners, managers, or workers. A company is considered to have an independent legal existence in part so that its goals and priorities can be advanced free from conflicts with the goals and priorities of its personnel.

Corporations are deemed to lead an existence and pursue interests distinct from those of their shareholders. "The best interests of the company" is a phrase that repeatedly occurs in legislation and case law concerning the leadership and stewardship of a corporation.

"The best interests of the law firm," by contrast, is not a phrase that rolls easily off the tongue. A law firm's interests are, in practical terms, precisely the same as those of its owners and managers. The firm will act as directed by its management team or its executive committee; in most law firms, these groups are populated by a very small number of equity partners who either exercise great influence over large books of business or who respond agreeably to those who do.

The typical law firm, therefore, "makes decisions" based on what a small number of its most powerful equity partners consider to be in their own best interests. Even in law firms where those partners have the noblest of intentions, it's difficult for the partners to make strategic and tactical decisions adverse to their own interests. And not every law firm has partners with the noblest of intentions.

Everyone knows this essential truth about law firms, although no one talks much about it. We pretend that a law firm has a purpose independent of, and will pursue objectives other than, the interests of its most powerful lawyers. We say that "law firms should do this" or "law firms can do that," as if the firms in question were independent actors with real autonomy and vision. For the most part, they are not. This, although rarely realized as such, is a significant vulnerability for law firms in this unfolding market.

WHAT CROSS-SELLING TELLS US

A good illustration of this disconnect is the whole notion of "cross-selling." Leaders of full-service, multi-jurisdictional law firms talk frequently about generating more business through "cross-selling." Lawyer A will introduce her client to Lawyer B in a different practice group, in hopes that the client will engage Lawyer B for its legal needs in that area. Law firm and practice group leaders promote cross-selling internally and exhort lawyers to take part.

Cross-selling is a great idea, hobbled only by two small problems: clients don't like it, and lawyers don't do it.

You can understand the animosity from the buyer's side. Nobody likes to be treated as the means to someone else's ends. Remember the resentment you felt the last time a salesperson tried to "up-sell" you something? That's how a "cross-sold" client feels. Corporate clients frequently endure tedious luncheon meetings in which Lawyer B breaks out the brochures over coffee and keeps everyone half an hour late listening to pitches. It's hard to sell people something they never asked for in the first place (and that, in most cases, they already get from another source with which they're perfectly content).

It's more illuminating to consider the resistance to cross-selling on the lawyer's side—specifically, on the part of Lawyer A in our example. This lawyer often will be reluctant to introduce her valued client to Lawyer B, or at least, won't strongly encourage the development of a business relationship between them. Even if financial bonuses are attached to these matchmaking efforts (and they aren't always), the disincentives are stronger.

Lawyer B is probably not a close and trusted colleague, especially given that the two lawyers work in different practice groups and that the firm has not always taken steps to encourage the growth of their relationship. Lawyer A can't guarantee that Lawyer B won't drop the ball on the client's case, or carelessly spill a corporate secret, or offend the client in some way. "I'm not going to risk any damage to the relationship with my client," Lawyer A reasons.

What's really interesting, however, is the fact that Lawyer A refers to the client with the possessive "my." So does Lawyer B, for that matter, in reference to "his own" clients, as do all other lawyers within the firm. Most lawyers who bring business into a law firm consider the clients they've landed to be part of their personal inventory. Either the lawyer originally brought the client and its business to the firm, or the lawyer has built a rapport with the client over the course of many months or years of good service, such that the client thinks of and deals with the firm primarily through that lawyer.

Therefore, cross-selling will occur only if the lawyer in question chooses to refer "his" or "her" clients to another lawyer elsewhere in the firm, and not otherwise. Frequently, he or she does not, and there the matter ends.

Now, if you stop and think about this for a while, it should strike you as a little strange. When you walk into The Gap, Home Depot, or Best Buy, the

first salesperson who greets you will not loudly claim you as their own or brand you with a hot iron. They'll happily pass you over to a colleague to answer questions, receive advice, or otherwise move you closer to completing a transaction. If you return to the store at a later date and your original point of contact is not there, you'll speak with someone else to help you get what you want.

These salespeople, even the ones who receive commissions as part of their salary, don't act this way because they're all smiles and sunshine. They pass customers back and forth among each other because they work for the company, and the company considers that you—the person who walked through its doors—are *its* customer, not the salesperson's. And the company is correct to believe this. The salesperson's individual interests in your time and attention do not outweigh those of the company.

"Hold on," you might object. "Law firms are not clothing boutiques, hardware outlets, or electronics stores. A law firm is a professional services entity owned by its partners, so every partner works independently for herself. This partner probably landed the client through hard work and dogged perseverance, and she's the one whose services will be delivered to the client and on whom liability will rest. She should have every right to dictate what happens to the client with whom she deals."

And that, to my way of thinking, is precisely the problem.

Because a law firm in which this is the dominant belief is not a commercial enterprise by any definition with which we are familiar. It's not a "company" in the Coasian sense, or any kind of managed business organization. It's little more than a warehouse, one in which lawyers share rent, utilities, and a receptionist, but neither risks, rewards, nor professional aspirations. It's not so much a business entity as a farmer's market or a neighbourhood yard sale.

In real businesses, the interests of individual salespeople and service providers are aligned with and subsumed into the greater interests of the company. In real businesses, workers' personal success and market validation are integrated into the success and validation of the company. In real businesses, *the salespeople don't own the customers*.

When it comes to cross-selling, therefore, a law firm and its lawyers are at loggerheads, locked in an ongoing struggle for control of the client relation-

ship. What we need to appreciate is that this struggle exists at almost every point in the relationship between a law firm and the lawyers who own it and work inside it. And as we know very well, when this struggle occurs, the law firm invariably loses.

THE LAWYER VS. THE LAW FIRM

"Clients hire the lawyer, not the firm" is the oldest line in the legal business development handbook. Law has always been a personal services business with a strong relationship component. Clients come to rely not only on a lawyer's expertise, but also on his or her judgment and advice.

But as close as the lawyer is to the client, the law firm is proportionately far away, normally just a name on a letterhead or an invoice. Most of a law firm's clients deal primarily if not exclusively with one lawyer or small group of lawyers and staff. Only major corporate clients connect with a firm through multiple points of contact, and even in that situation, the departure of a key lawyer can throw the firm's relationship with the client into doubt.

Lawyers have sufficient confidence in this dynamic that they exercise an extraordinary degree of autonomy within their firms. Ask a typical law firm partner to vote yes or no to a proposal that will compromise revenue in the short term but will enhance profits in the long term. In most cases, maybe the overwhelming majority of cases, the thumb will be turned down. The brand and the interests of the individual lawyer have consistently trumped the brand and interests of the firm in which he or she happens to practice at the moment, and both the lawyer and the firm know it.

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This is the war that's been raging within law firms for years now: the fight for control of the business between individual lawyers and the collective firm. Firms have lost so many of these battles that they've stopped counting and, in many cases, stopped fighting. When the firm is little more than the sum of its individual, autonomous, owner/worker lawyers, what

chance does the firm have to escape the immense gravitational pull of those lawyers' self-interest?

That's why the coming decline in law firms' lawyer population, discussed in the last chapter, is of such immense importance to law firm strategy.

Over the next several years, a growing share of law firms' revenue will come from sources other than its lawyers, including automated systems and productivity engines. A growing number of its business opportunities will arise from marketing and sales campaigns based on these systems and engines rather than from the efforts of individual lawyers. A growing percentage of law firms' productivity will be traced back to systems and software inside the firm (and flex-time third-party providers outside it).

Every time a law firm successfully invests resources in a source of productivity other than a lawyer (and especially other than an equity partner), the firm gains leverage over its lawyers and its lawyers lose ground.

I doubt that many lawyers are consciously aware of this shift in the dynamic. But I suspect that they might be subconsciously aware, and that might be part of the reason (beyond the standard causes of short-term thinking, risk aversion, and plain stinginess) why many lawyers reflexively resist investments that allow the law firm to deliver services without the active involvement—and outside the personal control—of its lawyers. With each step towards process improvement, systems installation, pricing controls, project management, productivity engines, and similar initiatives, law firms are creating reasons for clients to buy their services with minimal regard to which lawyer (if indeed, any lawyer) is providing the service.

Clients have hired lawyers rather than firms for many reasons, but the most important reason is that there was never much of a "firm" to hire. Law firms had little to offer beyond access to a lawyer whose law practice they were hosting. But now, the warehouse is turning into a factory—a "law factory," to borrow Ron Friedmann's insightful phrase[97]—a place whose primary function is the coordinated production of products and services that meet client needs rather than the storage and service of individual producers.

[97] Ron's observations about the "law factory" can be found here: http://prismlegal.com/category/law-factory/.

After many years of frustrating impotence, law firms can finally start to serve their markets *institutionally*. They will no longer be held back by their lawyers, hamstrung by their me-first culture, unable to muster the critical mass and momentum to make strategic decisions on an enterprise basis. Law firms will become more streamlined, systematized, managed, automated, and centralized—not just in order to compete in a more demanding market, but to settle once and for all the question of who's really calling the shots around here.

I think there is no trend in the new legal market as important as this one: Law firms are going to become commercial enterprises very similar to other businesses. They will find ways to separate ownership from management and management from labour. They will institute business processes and leverage technology as a matter of course. They will still rely upon good lawyers to deliver great service, but they will no longer allow those lawyers' personal interests to dictate the firm's strategy and direction.

Firms that ignore or miss this trend inevitably will fail. The salespeople cannot own the customers. Firms that recognize and catch this trend will begin to change what they are, what they do, and how they do it. In the process, they will transform the legal market.

Chapter 7

IDENTIFYING YOUR LAW FIRM'S PROFESSIONAL PURPOSE

We've just explored the question of why law firms exist. Now we're going to get a little more personal. Why does *your* law firm exist?

What's the purpose of your law firm? Wait before you answer; you'll want to think this one through. This is an existential question for law firms, one that needs to be addressed and settled before tackling any other important subject, like strategy or business development. It's important to get this right.

Every business exists to serve a purpose of some kind—to do something that delivers or enables some outcome for its users. The more narrowly and powerfully focused the purpose, the easier it is for the business to express it and accomplish it. Here are some examples.

- BMW exists to produce automobiles, so that its customers can drive safely and comfortably to their destinations.
- Subway exists to serve food, so that its customers can eat a meal that's served quickly and is (relatively) healthy.
- Pixar exists to create animated films, so that its customers can enjoy good stories told in an engaging manner.
- Amazon exists to sell other companies' goods online, so that its customers can obtain those goods quickly and easily.
- Google exists to organize the world's information, so that its customers can have universal and easy access to knowledge.

In this same vein, ask yourself: "What does our firm exist to do, what outcomes does it deliver or enable, and for whom?" Think about your answer, then write it down somewhere before continuing. *"Our firm exists to do X, so that Y can Z."* Look at your answer again at the end of this chapter. I'll give you my own answer at that time.

Here are some possible answers that lawyers might offer to that question.

1. *"Our law firm exists to be a business platform for lawyers, so that our lawyers can deliver legal services to buyers more effectively."*

That's not a bad answer. A law firm enables lawyers to enjoy economies of scale, referrals of business, opportunities for collaborative insight, and the collegiality of like-minded colleagues. Creating or joining a law firm allows lawyers to afford expensive resources like a library or meeting rooms and to build a collective brand name under which to carry on business. The purpose of the law firm, in this telling, is to enable lawyers to successfully ply their trade through the construction and maintenance of a suitable commercial vehicle.

There are nonetheless a couple of problems with this answer. One is that we've just finished discussing the inevitable decline of lawyers within law firms and the emergence of business lines to which lawyers are not directly essential. Given that, basing a law firm's purpose on a class of service providers whose strategic and tactical influence will only dwindle from this point onwards doesn't seem like the best approach. It's a plan for tomorrow based on yesterday's information.

The second problem is that this is actually the answer to a slightly different question: "What is the purpose of your law firm from its lawyers' perspective?" This response provides lawyers' business rationale for their law firm to exist, but it doesn't talk about the firm's clients, the ones who purchase the services of its lawyers. The underlying premise of this book is that the legal market has shifted fundamentally over the past several years in favour of the buyers, rather than the sellers, of legal services. A better answer would focus more on those buyers and their interests.

2. *"Our law firm exists to provide excellent legal service to buyers, so that they can resolve their problems and accomplish their goals."*

We're getting closer. You can actually find versions of this answer on the "About Us" or "Our Mission" pages of many law firm websites today. It's a fine answer, suitable for framing and posting in the lobby above the reception desk.

But still, and with all respect to the law firms that employ it, I would be skeptical that this is *really* the purpose of these firms. Because if it is, then

the firm should have good answers to these follow-up questions: "Is the provision of excellent legal service to buyers the subject of your partnership meetings? Is it the basis upon which your lawyers are assessed and compensated? What are the metrics with which your firm tracks excellent service to your buyers, and do you award bonuses for this accomplishment?" Most law firms don't actualize "excellent client service" in these ways, because that's not really why the firm exists.

For a business to claim something as its purpose, the business should be able to show that that purpose consumes its attention, drives its efforts, and is woven into the fabric of its operations and incentives. There is never a time when BMW is not thinking about making great vehicles for people to drive, and it rewards people and builds systems to enable that outcome. There is never a time when Pixar is not thinking about how to tell great stories in a delightful fashion, and it rewards people and builds systems to enable that outcome.

What is your law firm always thinking about? What do the people who run your firm really care about and discuss at their executive meetings?

What is your law firm always thinking about? What do the people who run your firm really care about and discuss at their executive meetings? What outcomes does your firm reward people and build systems in order to enable? If your law firm is typical of those in the market today, I'm confident that this next response is the most accurate so far.

3. *"Our law firm exists to maximize profits for its owners, so that its owners can make more money here than elsewhere."*

I don't mean to sound cynical. But if we're really being honest with ourselves, isn't this closer to the purpose of many law firms today?

Set aside for a moment the usual talk (no matter how sincerely believed) of professionalism, client service, and the higher purposes of the legal profession. Ask instead: "How does this law firm measure success? For what accomplishments does it compensate and promote people? What outcomes does it discuss at partnership meetings? What is the single most important metric discussed at these meetings?" I'll wager the price of this book that none of these questions is answered with some variation on "client satisfaction survey results."

The purpose of many law firms today is to generate maximum profit for the firm's equity shareholders through the sale of legal services. There really isn't a defined, directed, or executed purpose beyond that. This isn't a criticism or a condemnation of these firms. It's just a description.

THE MONEY QUESTION

I'm not saying, of course, that a law firm *shouldn't* make money or turn a profit. Making money is one of the things businesses are there to do. What I'm saying is that the overriding *purpose* of many law firms is to *maximize* revenue and profits for their lawyer-owners, to make as much money as is realistically possible and more than could be made anywhere else within walking distance.

These firms' strategic decisions are driven by the desire to maximize the profits of their equity shareholders. It's what people in these firms think about, care about, and talk about. It's what they're rewarded for doing and punished for failing to do. Maximizing ownership profit is the core purpose of many law firms; any other positive outcome is welcomed and celebrated, so long as that main objective is fulfilled.

Ask a typical law firm equity owner to choose one chief purpose for his or her law firm from the four offered in the following list. Actually, do that right now—flag down the nearest passing partner, pass him or her this list, and ask for an honest answer. What, for you, is the most important purpose of our law firm?

(a) Providing me with intellectually challenging work.

(b) Maximizing my market visibility and prestige.

(c) Maximizing my personal revenue and profitability.

(d) Serving a business or social need in the market.

My expectation (and maybe yours, too) is that this partner would not hesitate to identify (c), the maximization of profitability, as the most important objective. The partner would actively oppose the promotion of a different primary purpose and would cheerfully remind you, in so many words, that his or her ongoing participation in the entire expedition hinges on how well the firm achieves this goal.

A law firm bent on maximizing the profits of its owners has its benefits and charms, I suppose, but it also has a problem. When a firm built around money ceases to generate it commensurate with the appetites of its members, that firm loses what you might call its gravitational force. The center fails to hold, and things fall apart. Money is the glue holding the firm together, and when it dries up, there is nothing left to maintain the firm's structural integrity. This is what has brought about the recent disintegration of a number of law firms—sometimes in spectacular fashion as with the Dewey & LeBeoufs of the world, sometimes more quietly and privately in law firms farther from the limelight.

Every successful business or social organization requires some kind of organizing principle that embodies and advances ideals, convictions, and goals, something to which people are drawn because it corresponds with the values to which these people aspire. Money, no matter how much of it you can generate, is not an organizing principle. It is not a purpose. It's a *side effect*. A law firm generates money only if and to the extent that it has adequately served interests external to the firm. Money is an outcome, or more accurately, a metric. It's a useful measure of whether a law firm is successfully serving the interests of its clients. You cannot treat a metric as a purpose.

The greatest danger for a law firm whose purpose is to maximize owner profits is that its gaze is directed inwards rather than outwards. The firm develops a kind of narcissism. The interests of internal parties (principally, the firm's equity shareholders), rather than the interests of external parties (principally, its clients or those whose interests its clients serve), occupy its attention and efforts. Its partner meetings devolve to and revolve around revenue and profit rather than quality and service. Clients are billed hourly and heavily because that's what's most convenient and remunerative for lawyers.

A business that cares more about its owners' interests than its customers' welfare is headed for oblivion. A law firm that fits this description is in danger—and not only because of the swift ascension of buyers' power in this market. The law firm is in danger because it is fundamentally unprofessional.

WHAT PROFESSIONALISM REALLY MEANS

"Is the practice of law a profession or a business?" You've heard that question before; probably you've either asked it or answered it at some point. That question drives me bonkers, and I would happily see a moratorium imposed on having it ever asked again.

The question creates a false dichotomy. The law must be *either* a profession *or* a business, but it can't be both, presumably because the features and priorities of one are antithetical to those of the other. There's also an insidious personal subtext to the question. "If you believe law is primarily a business rather than a profession, then *you* must not be very professional. You apparently place your own business interests ahead of those of your profession." A business is all about profit and greed; a profession is all about self-sacrifice and nobility. Which of these better describes you?

But I think the lawyers who like to place "business" and "profession" in opposition to each other don't fully understand either one. Possibly they hold the parochial belief that companies care only about their bottom line and thus exemplify corporate greed, whereas law firms care about their clients and thus exemplify ethical righteousness. Lawyers from more recent generations, who worked in coffee shops, on construction sites, or in their own companies before entering law school, tend to know better. They've seen first-hand, through their own efforts, that a business thrives only to the extent that it successfully serves the interests of its customers.

Any business that prioritizes its customers above its owners is not only on safe financial ground, it's also on safe moral ground. If you give people what they need, when they need it, at a price they can pay, in a manner that's accessible and convenient, then you are serving their interests, and you'll be properly rewarded for it. Any business, by contrast, that prioritizes its owners above its buyers and creates frustration through uncertain pricing, poor communication, and inconvenient access—well, that business would be self-serving and unprofessional.[98]

Many lawyers seem to assume that running a business is somehow a lesser form of activity than serving in a profession. They talk about the im-

[98] It would also be in serious danger of dissolution, unless it was somehow protected from normal market forces by some kind of regulatory monopoly.

portance of placing the client's interest above all else—but they don't talk about how to implement that principle in their practices. I'd love to hear a lawyer who believes "law is a profession rather than a business" explain how billing his services by the hour serves the client's interests, or how his practice is structured to maximize client convenience and outcomes. In fact, I'd love to hear an actionable definition of lawyer "professionalism" that differs in any significant way from a definition of "good business practices."

There's more to "professionalism" than high standards or ethical behaviour. The Latin root of "profession" is *profiteri*. *Profiteri* has two components: *pro*, which means "forth," and *fateri*, which means "confess." Taken together, they mean "to announce a belief." The term has religious roots. Its original use was to bind yourself, publicly by a vow or oath, to a vocation or higher purpose.

Initially, only three occupations qualified as professions: clergy, medicine, and law. If you embarked on one of these careers, you "professed" it, maybe right there in the village square, so that everyone would know you were serving a greater social need and could be approached for help. These professionals made lifetime vows to higher powers: obedience and poverty for clergy, the Hippocratic Oath for doctors, and allegiance to the court and the rule of law for lawyers. Professional status was, and still is, serious stuff. It revolves around the principles of *profiteri*: service, selflessness, higher purpose, and making life better for others.[99]

So when we talk about "professionalism" in law, it's important that we remember we're not talking about excellence or good behaviour, or at least, not only about them. We're also talking about s*erving the interests of others,* prioritizing those interests above our own for a greater cause. To be a "professional" means to be in service to other people, to place external interests above internal ones.

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If you're a member of a professional services firm, then by definition and obligation, you are focused on other people more than on yourself. Lawyers

[99] I wrote about this more extensively in "Professionalism Revived: Diagnosing the Failure of Professionalism among Lawyers and Finding a Cure," a paper submitted for the Chief Justice of Ontario's Tenth Colloquium on the Legal Profession on March 28, 2008: http://www.lsuc.on.ca/media/tenth_colloquium_furlong.pdf

whose own interests come to surpass or replace those of their clients are, in the truest sense of the word, "unprofessional." Law firms that do the same are also unsustainable.

PURPOSE AND PROFESSIONALISM

So is law a business or a profession? Obviously, it's both. More accurately, a law practice is a commercial business that deals in professional services. Those services must be delivered in a manner that matches or exceeds the ethical standards of the legal profession. But the business must also be operated in a way that maximizes its effectiveness in identifying and serving the interests of its customers. The requirements of business and professionalism are not opposed; they're actually pulling in the same direction, towards the identification and service of the needs of others.

This is true, by the way, regardless of how many lawyers a law firm or legal services entity happens to employ. It's no answer for the highly automated, systems-driven, lawyer-proof law firm I described in the last chapter to claim that its professional obligations are relaxed because there are relatively few lawyers on active duty. The professional expectations placed on individual lawyers and those placed on legal services firms both spring from the same source: the critical social and human role that the law itself plays in our lives and communities. If you're running any kind of business that deals with legal services, then, no matter how few lawyers are directly involved in delivering those services, you assume the same mantle and burden of ethical and professional standards that bind individual lawyers. It's not the provider of the services that matters; it's the nature of the services themselves, and their recipients.

So as both a commercial entity and as a professional organization, any law firm that wants to compete under these new market conditions will have to orient itself towards the needs of its clients. This orientation will have to go deeper than mission statements or marketing slogans. It will have to take the form of a real commitment, reflected in the firm's strategies and activities, to maximize the interests of clients. This must, I submit, constitute the firm's purpose in the market.

I promised an answer to the question with which I led off this chapter: What is the purpose of your law firm? Here's the response I would like my law firm to provide.

Our firm exists to serve the interests of clients in our chosen markets by addressing their legal challenges and opportunities, so that those clients can achieve their objectives.

This statement of purpose, I think, has several attractive features.

- It's founded upon both solid professional and sound business principles.
- It fully invests the firm in the external interests of the markets and clients it wishes to serve, rather than the internal interests of the people who deliver the services.
- It sets out the means by which that purpose is to be accomplished, since a purpose without binding instructions for its implementation doesn't have much value.
- And it reminds us that the services law firms provide don't exist in a vacuum, but instead are meant to solve real problems and address real challenges facing the firm's clients.

Whenever any action is suggested or any strategy considered within a law firm, the proposal should be tested against the purpose of the firm. Will it help us serve the interests of clients in our chosen markets? Will it address their legal challenges and opportunities, so that they can achieve their goals? And if the answer is yes, exactly how is this going to happen?

Applied in this way, a law firm's client-focused statement of purpose can considerably improve the firm's decision-making. It will slow down or eliminate any number of activities that don't have a clear cause-and-effect connection to the firm's purpose. Will this proposed merger help us serve clients' interests? How? Will this new project management system help us serve clients' interests? How?

I adamantly believe that a law firm can't redesign its pricing, can't modernize its operations, can't revamp its strategy, can't do anything of practical consequence unless it has clearly established a purpose that is externally directed towards identifiable markets and clients. I wouldn't advise a firm to undertake any kind of strategic planning exercise until it has identified a purpose that goes beyond the maximization of revenue and connects with the interests of identifiable external parties that it has elected to serve. Purpose precedes strategy. Purpose is where law firms begin.

APPRECIATING THE CHALLENGE

Identifying an external market purpose, eliminating all others, and bending the firm's entire effort towards fulfilling that purpose can be, to put it mildly, difficult. But it's not impossible, and more importantly, it's not avoidable. A law firm requires an identifiable external purpose on which to focus its resources and galvanize its people if it entertains any serious ambition to compete successfully for the work it wants to do.

A law firm requires an identifiable external purpose on which to focus its resources and galvanize its people if it entertains any serious ambition to compete successfully for the work it wants to do.

It's a significant challenge for a law firm to address the question of its purpose. A veteran firm with a handful of equity partners—let alone hundreds—likely contains multitudes of purposes, many of them unarticulated, quite a few of them in conflict with each other, and most of them internally directed. In a firm like this, a foundational re-examination of purpose likely will generate arguments of unparalleled intensity among its leaders.

I believe, however, that this intensity is a good thing. It means the firm is consciously and intentionally choosing its purpose at an enterprise level, not simply being driven along by the interests of its most powerful equity partners, as it always has been. Some of the loudest voices in these arguments will belong to those partners who want to continue leading the firm in directions that favour their personal interests. But these lawyers must make their case through rational argument and against defensible criteria like those set out above, not simply because "it's what we've always done around here." It's imperative that these voices not hijack the conversation or dominate the discussion on volume alone.

I can speak from experience (and I imagine you can too) that getting consensus among a law firm's equity owners about the purpose of the business they own in common seems like the next best thing to an impossible task. Attempts to build such consensus will be painful for all concerned. Multiply that a hundredfold for larger firms.

But here's the thing: The purpose of a law firm *cannot be determined by consensus*. You can't strive to find a small patch of common ground among the firm's owners and try to pitch a mission statement there. A law firm's

purpose is a deliberate choice. It must exclude many alternatives in order to focus on what it includes. This is actually the opposite of consensus, which seeks to bring as many people as possible into the tent by coming up with something generally agreeable. Determining a law firm's purpose is a *decision*, one made by individuals with the recognized authority to determine something fundamental to the firm's nature.

What I've just described is, of course, the anti-matter of law firm decision-making. Accommodation and consensus are revered, confrontations are discouraged, and tough choices are a matter of last resort. So I fully appreciate the enormity of the challenge. But that doesn't make it any less necessary.

This is where you decide what your firm is going to be and what purpose it wants to serve. Everything that comes afterwards will refer back to and flow from how you answer this question: What's the purpose of your law firm?[100]

[100] More on all this in Chapter 14, "Change Management and Leadership in Law Firms."

Chapter 8

CHOOSING YOUR LAW FIRM'S MARKETS AND CLIENTS

So now we have a template for a law firm's statement of purpose.

Our firm exists to serve the interests of clients in our chosen markets by addressing their legal challenges and opportunities, so that those clients can achieve their objectives.

Sounds good. So how does a firm choose its markets and identify its clients therein? We'll explore how to do both in this chapter.

UNDERSTANDING YOUR FIRM'S MARKETS

Up to this point in the book, I've been using the word "market" pretty freely, usually in reference to the overall "market" for legal services—the aggregate economic activity of all buyers and sellers engaged in legal services transactions in a given jurisdiction and time period. So, for example, the market for legal services in the United States in 2015 constituted about $439 billion in spending, most of it on lawyers in law firms.[101]

In this chapter, I'm going to apply that term in a much narrower and more targeted sense, to describe the "market" or "markets" served by a particular law firm. In this sense, I'll use "market" to describe an identifiable community of businesses or individuals that share:

(a) several defined characteristics, interests, and activities, and

(b) a common desire to obtain products and services related to the law.

A group of similar entities that require legal services to help solve problems, address challenges, and advance opportunities is a market, one to which a law firm might wish to sell its services. Put differently, if you want to sell something, you need a market in which to do it.

[101] "The Size of the US Legal Market: Shrinking Piece of a Bigger Pie," Legal Executive Institute, Jan. 11, 2016: http://legalexecutiveinstitute.com/the-size-of-the-us-legal-market-shrinking-piece-of-a-bigger-pie-an-lei-graphic.

A market is better defined not just in terms of its size and location, but also in terms of its needs, interests, constraints, and motivations.

A law firm's market can be extraordinarily large and diffuse (say, all regulatory agencies of the United States federal government) or remarkably small and narrow (say, tool-and-dye manufacturers in southeastern Pennsylvania), depending on the firm's reach and ambition. But a market is better defined not just in terms of its size and location, but also in terms of its needs, interests, constraints, and motivations. What is your market, what does it need, and why does it need it? Useful examples of viable law firm market descriptions might include:

- United States federal government agencies that need in-person representation to prosecute matters before minor regulatory boards in order to fulfill their mandates.
- Tool-and-dye manufacturers in southeastern Pennsylvania that require financial restructuring in a recessionary environment in order to stave off complete bankruptcy.
- Family-owned businesses in Québec whose founders must step aside because of age or illness but have no succession plan and don't want to talk about one.
- General contractors who build condos in urban centers but face employment law claims because they frequently hire and fire temporary workers to keep their costs down.
- Energy multinationals that encounter multiple environmental approval processes when trying to build pipelines across public lands and lack a system to affordably manage them all.
- Municipalities that are foundering under waves of property tax assessment appeals but are saddled with intransigent councillors who won't back down from hard-line tax bylaws.

Each of these identifiable communities of businesses or individuals is a market. Every individual, company and entity within those markets that needs legal services (whether or not it recognizes that need yet) is a potential buyer, or in law firm parlance, a potential client. Choosing the most appropriate and promising markets in which to operate is a critical element

of your firm's success. It's the key step that lies between determining your firm's overall purpose and creating its various strategies.

CHOOSING YOUR FIRM'S MARKETS

You might notice that I keep using "choose" as the operative verb to connect law firms with their markets. That's because I want to underline the importance of viewing a law firm's market as the result of the firm's conscious, informed choice—not as an accident of circumstance or the by-product of other people's earlier choices, which are the mechanisms that drove many law firms into the markets they now inhabit.

I think many law firms historically acquired their clients first and their markets second. Somewhere early in a firm's genesis, one of its lawyers landed a client and performed the assigned tasks well; impressed, that client hired the lawyer again and recommended the lawyer to a similar client, which also retained the lawyer, and more followed. In a sense, the lawyer "backed into" a market by virtue of doing good work for one client that led to other opportunities in the same area.[102]

Since the traditional law firm was essentially a convenient vehicle for the preferences and interests of its most influential lawyers, those preferences and interests (what the lawyers were qualified to do, what type of work the lawyers wanted to engage in, where the lawyers could make the most money, and so forth) dictated the firm's activities. The law firm was effectively "carried into its markets" by its lawyers, and there the firm remains to this day.

In the new legal environment, that sequence will be reversed. Smart law firms will choose their markets first and their clients second, and their lawyers and other personnel will follow behind.

As lawyers' influence within law firms begins to wane and the firms themselves start to assert more institutional control over their destiny, there will be a dawning realization that no other type of company allows its salespeople to select the markets in which it operates. The legal services environment will be crowded with increasingly competent providers offer-

[102] It's no wonder so many senior lawyers insist that "the only marketing I need is doing good work"—that's exactly how they entered their markets in the first place.

ing ever-more enticing advantages. So law firms will need to be more careful about where they try to sell their services.

"Where can we be most successful? Which markets offer us the best chance of profitable operation?" These are the types of questions that law firms, as commercial entities increasingly independent of their lawyers, will ask themselves. In this way, the deliberate choice of a market will come to supersede the acquisition of a client in the firm's strategic sequence of events.[103]

Law firms in this new environment will revolve around their clients and those clients' markets. Accordingly, firms will have to undertake an honest, clear-eyed, and rational assessment of precisely which markets they wish to be active in, and why.

MAYBE WE'RE IN THE WRONG PLACE

At this point, you might be thinking, "Great. Here's a list of all the markets in which our firm currently operates. That's done. Can we break early?"

Unfortunately, it's not that simple. The correct answer to the question, "In which markets should our firm operate?" isn't, "The markets in which we operate now." That's just a restatement and forward projection of your firm's annual report, and it's insufficiently rigorous for what we need to accomplish.

"The markets we serve now" isn't just an insufficient response—it's also a potentially harmful one. Your firm might be one of those described above that "involuntarily" entered their markets on the backs of their equity partners. That process often occurred gradually, over the course of years or decades, stretching back to some very different economic environments than the one we now occupy and the ones coming our way. The lawyers who first chose the markets your firm currently serves might have relocated to a different firm, been appointed to the bench, or shaken off this mortal coil.

The *status quo* is a terribly strong and persuasive force that anchors people and organizations in their current habits; that goes double for law firms and their change-averse, precedent-loving lawyers. But ask yourself:

[103] That's not to say that the acquisition of skills and experience in a given area won't serendipitously open the door to a new market; that can and does happen. I just wouldn't make that happy circumstance the foundation of your market choices.

Are the markets your firm entered 10, 20, or 50 years ago still the right ones for your firm to serve? Are they the markets that you really want to serve? Are they likely to still be the right markets five or ten years from now? Law isn't the only sector experiencing rapid and accelerating change; you can't count on your firm's current markets remaining stable or even particularly recognizable.

Basing your firm's present and future markets on its past choices and practices prevents your firm from taking a hard, fresh look at what its markets *ought* to be, what they *could* be, and what the firm *would like* them to be. Don't simply assume your firm's existing markets are the right ones. Initiate a process by which you can make fully informed decisions about the markets you consciously choose to serve—now and in the future—and then mobilize your firm to achieve that outcome. Let the markets you choose to serve dictate the type of firm you develop, not the other way around.

If you're launching a new firm, this step is absolutely essential. If you're leading an existing firm through a process of change, this step is still critical to your discussions about what kind of firm you want to be and whom you intend to serve. Conduct this process once, and then review it at scheduled intervals in the future. But don't skip past it or try to finesse it, because your firm's ultimate success will stand or fall here. It's where the purpose you identified for your firm in the last chapter starts to play a key role.

YOUR FIRM'S OPTIMAL MARKETS

In order to identify your firm's optimal markets, you need to think about what would make a market a great choice for your firm to enter. Every firm will come up with different answers here, based on the firm's particular features and circumstances. But I think there are three broad criteria that every firm can usefully consider when undertaking this analysis. In order for a market to be optimal, it should satisfy each of the following conditions:

1. *The market is sustainable.* The market is robust and can reasonably be counted upon to stay robust for the next ten years or longer, justifying your firm's investment of time and resources. Quite a few markets would be safe bets under this category, of course. People will continue to die without exhausting all their personal assets beforehand, businesses will

continue to import talented people across borders, companies will continue to fall into insolvency at historically reliable rates, and so forth.

But other markets aren't necessarily the slam-dunks we might think they are. So long as the internal combustion engine continues to be widely used, for example, energy companies will produce oil and generate tremendous amounts of legal work; but at some point in the next decade or two, alternative sources of energy will finally become economically and politically feasible, with dramatic consequences. So if your firm serves the oil-and-gas industry, you need to at least keep a close eye on the energy market share of alternative fuels.

Similarly, automotive personal injury and insurance cases power thousands of law firms every year. But sometime soon, self-driving vehicles will become a reality, and they will eventually change the auto insurance industry and regulatory system completely. Who needs to worry about an auto accident negligence suit when the car's "driver" isn't doing the driving? So if you work in this sector, someone in your firm should be keeping tabs on progress towards autonomous automobiles.

Every few years, in fact, each of your firm's practice or industry groups should prepare a long-range forecast of the industries in which they're invested and present that forecast to the firm's leadership. This effort would go some distance towards managing the risk that a chunk of the firm's business could dry up because of unforeseen market shifts.

For present purposes, a similar assessment should be undertaken as part of your firm's "fresh look" analysis. A potential market might look attractive today, but is it a flash in the pan? Is there a canyon ahead on this road, and if so, is there a bridge across it? Among the most important features of any legal market, after all, is the market's continued ability to exist.

2. *The market is complex.* The legal challenges and opportunities of buyers in this market are sufficiently complicated that they require professional assistance to address them. This isn't as straightforward as it might seem. As we've already noted, the growing sophistication of legal services buyers, as well as the emergence of high-tech tools and self-navigation ecosystems to support those buyers, remove more and more legal challenges and opportunities from this category every year.

Litigation in particular appears poised for a great "simplification," in which systems and technologies will eliminate or streamline cumbersome dispute resolution processes that traditionally kept lawyers and judges employed. If your firm's market is, for example, large manufacturers prone to faulty product class actions, there are probably innovative start-ups (perhaps funded by these same manufacturers) now developing online systems by which parties can personally and directly resolve many of these disputes, faster and less expensively than the litigation process offered by law firms. When studying a potential market, therefore, ask yourself whether the nature of the opportunities in that market could rapidly change or decline.

When studying a potential market, therefore, ask yourself whether the nature of the opportunities in that market could rapidly change or decline.

Now, even if a market does undergo a radical simplification in which many traditional law firm offerings are no longer required, that doesn't mean your firm must abandon it. A law firm could continue serving the needs of buyers in these markets by adopting and installing the kind of routinized processes and tech-driven productivity engines that deliver solutions at competitive prices while still generating a profit.

At the same time, the firm could analyze the market for potential higher-value opportunities that still require the expertise and counsel of a law firm. If there's one thing that law always seems to deliver, it's growing complexity. For every service line that no longer requires a law firm's assistance, it's reasonable to suppose one or two or more can emerge that will.

3. *The market is congruent.* Put differently, your firm and the market match up well. The market has legal challenges and opportunities that your firm can either provide services for now or can mobilize itself to provide services for shortly.

I warned earlier against simply extrapolating from your firm's current practices when identifying your markets, and that advice still holds. That having been said, however, it only makes sense that if your firm possesses established skills and expertise to serve a given market, it should press

that advantage (assuming the previous two criteria are met). A pre-existing expertise or foothold should give a potential market a head start in the competition for your firm's attention, although it shouldn't be enough to win the race by itself.

Conversely, your firm might identify an existing market that you'd really like to serve, but the firm lacks a strong lawyer or knowledge asset upon which to build a capacity. Obviously, proceed with caution here. You'll want to commission independent studies that describe the rewards and risks of this market, ensure the presence of few if any other providers already serving the market, and confirm that your firm possesses the ability to swiftly acquire and implement the assets necessary to build a capacity. What you really want to avoid is a heavyweight lawyer catching the legal market equivalent of gold fever and railroading the firm into a speculative market investment.

Your law firm's choice of markets needs to be a disciplined, rational process. One of the reasons for invoking these criteria is precisely so that every market choice meets minimum procedural and substantive standards. So make sure there's sufficient congruence between what the market needs and what your firm can provide within a reasonable timeframe and at a realistic cost of development.

In addition to the three outlined above, there's one more significant benefit to choosing your optimal markets. You also decide that all other possible market choices are sub-optimal and therefore off-limits for your firm. That's the thing about making choices. Once you choose, you've excluded all other possibilities, effectively saying "No" to each of them.

Once you've picked out your firm's optimal markets, therefore, you need to stick to your guns and not pursue opportunities outside those markets. As you might imagine, this is a daunting task within traditional law firms, because individual lawyers will lobby to pursue an opportunity outside the firm's chosen markets, or will simply go ahead and pursue that opportunity anyway—the classic combination of either asking permission beforehand or seeking forgiveness afterwards. This is the benefit of having gone through a disciplined process for identifying your markets. You can tell that lawyer, "Sorry, we've already made our choices, and that one didn't make the cut. Bring it up with the Executive Committee when we re-examine our markets 12 months from now."

You'll certainly come up with other factors to consider when assessing your own law firm's desired markets, and you'll weigh each of these factors differently than other firms would. The point is to make a conscious, fact-based assessment of the markets in which your firm wants to operate. Once you've done that, you can start turning your mind to deciding which buyers in those markets you want to try converting into your firm's clients.

IDENTIFYING THE CLIENTS YOU WANT TO SERVE

Now, maybe you're with me so far, when I suggest that a law firm should deliberately choose its markets and create criteria to help it select them. But you might draw the line at my next suggestion, that firms do the same thing with the buyers of their services (a.k.a. clients).

The obvious objection is that it's just not realistic to be choosy about your clients. Given everything we've been saying about the rise of the buyer, the intensity of competition, and the reality of challenging economic times, a law firm simply can't be too fussy about its client base.

If an individual or company within the firm's chosen markets wants to retain the firm, the argument goes, the firm should grab the opportunity and run with it. Very few law firms are so fortunate that they can pick and choose among a crowd of clients waving money at them and begging to retain their services. The rest of us have to take our markets as we find them and do the best we can to bring in steady work while enhancing our own competitive positions.

That's a reasonable objection, and I can't blame law firms for using it to resist a strategic approach to client acquisition. But it's not a complete answer. The reality is that some clients are indisputably better than others, and your firm should want as many of the better ones as it can get.

A law firm should have sufficient clarity around its preferred client base that it can identify a client that is both *minimally acceptable* and *maximally desirable*. Most firms only address the first criterion. They have procedures in place to ensure baseline levels of client acceptability, through intake committees or screening protocols that examine a potential client's solvency, compatibility, and absence of conflicts. But usually, that's as far as it goes. There is no institutional attempt to describe what the very best

clients would look like, and to identify which characteristics make them the very best.[104]

Law firms should take the time and make the effort to describe what would make a client maximally desirable from the firm's point of view.

I believe law firms should take the time and make the effort to describe what would make a client maximally desirable from the firm's point of view. An easy way to do this would be to draw up a comprehensive and specific list of client characteristics and circulate it to your lawyers and staff. (There's a bullet-point list coming up in a few pages' time that can serve as a template.) Then give each person 100 points and ask them to assign those points proportionately to those characteristics they value most highly.[105] Round up the most popular features chosen in this fashion. These are the characteristics your people collectively consider to be "ideal."

The law firm can accomplish two worthwhile goals with this list. First, assembling this "ideal features" list allows the firm to explicitly identify just what it finds most attractive in a client and to subject that desirability to a critical assessment.

- Which current and past clients actually fit this description?
- How profitable to the firm (not, let's be clear, to individual partners) did these clients prove to be, and for how long?
- How much personal angst and management attention did these clients generate?

Then flip the lens.

- Which current and previous clients of the firm were the most profitable, and how many of these "ideal" features did they display?

[104] Individual lawyers can often describe their ideal clients, usually in terms that reference the free and abundant flow of revenue. But as we've been discussing, what makes a client ideal from the perspective of an individual lawyer might not be (and sometimes is not at all) the same thing as what's good for the firm itself.

[105] This is much preferable to asking people to simply "check the boxes" of those features they like, or even to rank-order them. Assigning points in this fashion forces people to make choices about what they truly prioritize, using limited resources. Choices have costs, and one of those costs is that every choice you make means you reject other plausible options, because the resources and bandwidth don't exist in the real world to allow you to choose them all. There are no "perfect" clients, and your firm's lawyers and staff should not employ a system that allows them to construct one.

- Which current and previous clients generated the least trouble and highest satisfaction, and how many of these "ideal" features did they display?

In this way, you can bring your firm's submerged assumptions about "the best" clients to the surface and examine them in the bright light of day. You might find resonance and alignment between the clients you think you want and the ones who provide you the most personal and financial fulfillment, and if so, great. But if you instead find inconsistency and discordance between what you think you like and what you *actually* like, you should probably revise your client list to more closely reflect the latter.

The second advantage of drawing up (and then fact-checking) an "ideal features" list for clients is that, once you're confident you know what you really want in a client, you can build systems that increase the chances you can land and keep these kinds of clients. Don't settle for a client intake and management system that merely removes the clearly unsuitable, insolvent, and conflicted. Your firm should be more ambitious than that.

Build a system that assesses both current and new clients against your "ideal features" list and assign extra resources (non-billable, it should go without saying) to serve those ideal clients. If these are the kinds of clients you really want, place them in a special "High Priority" service zone whose members receive twice the level and intensity of service. Stay in constant touch with them, anticipate their needs closely, respond with alacrity to their requests, explore the possibility of developing new service lines, and so forth. Don't give your very best clients and your borderline clients the same basic level of service. Create a "premium service" line within your firm for the clients you most want to keep. Get and keep more of the business you want.

BUILDING THE IDEAL CLIENT

What might some of these "ideal features" look like? You could certainly begin with the same criteria I proposed earlier for market entry: sustainability, complexity, and congruency. Every firm will have to make its own call regarding the other features, depending on its purpose, markets, personality, and so forth. But I would suggest that when you cast your net to collect these characteristics, you do so widely and in multiple dimensions.

Many client assessments in law firms start with the size of the potential client and its legal spend, and don't proceed much further than that. But I think you'd agree that there's much more to "good" clients than simply their wallet. Here's that list I mentioned a moment ago of some characteristics of good clients that I've noticed over the years.

- They are pleasant to deal with. They treat all your people well, not just your lawyers.
- They have reasonable expectations about what can and can't be accomplished through the law.
- They have clarity about what they want to achieve, in practical terms, by retaining your firm.
- They believe law firms should be fairly compensated; fee discussions aren't a zero-sum game.
- They pay their bills promptly and without trivial complaints.
- They express any serious complaints directly and engage in your efforts to address them.
- They provide interesting, high-value work, rather than merely dull, low-level assignments.
- They are prestigious, enhancing the firm's image and potentially drawing other good clients.
- They complement the firm's existing client base or help anchor a new market in development.
- They are good (corporate) citizens who make a positive difference in their industry or community.

You'll notice that many of the foregoing characteristics are "soft" features, connected not with money or market size but with how the firm and its members feel about dealing with them. If you don't think the quality of a client's personality and behaviour matters to your firm's success, then I expect your lawyers and staff can set you straight. People will work harder and better for clients they like, enjoy, or approve of; they are less motivated and less productive when working for unpleasant clients with questionable practices. Lawyers and law firm staff want to be proud of the

work they do and the clients they serve. That makes a bigger difference than you might think.

One of the benefits of taking this approach to your client development is that you suddenly have the option of thinking about who your firm might *enjoy* serving. This is a novel concept for many lawyers, and it often delivers an unfamiliar thrill: "You mean, I'm allowed to *like* my clients?" Yes, you are. You're permitted to seek out clients who make you feel good about coming into the office every day. I would go so far as to say you're entitled to do that.

Use the foregoing considerations to develop a strategic approach to choosing your clients. Think about the clients you currently have, the clients you once had but no longer do, and the clients you don't have but wish you did. Assess all three groups against your "ideal client" criteria and figure out which ones match up best with your firm. Then expend all your available business development and client relationship energy to find them, serve them, and keep them. Starting with your preferred customers and figuring out how you can help them has never steered anyone wrong.

Chapter 9

CREATING A STRATEGY TO FULFILL YOUR FIRM'S PURPOSE

We've covered a lot of ground already, at a head-spinning clip. I've so far proposed that in the new legal marketplace, a buyer-focused law firm will need fewer lawyers and more systems to help its carefully selected clients in its intentionally chosen markets achieve their well-understood objectives.

If you happen to belong to an owner-focused law firm that keeps adding lawyers to provide billable legal work to the firm's randomly assembled clients in its haphazardly targeted markets with little regard to those clients' goals—and the law of averages would suggest that you do—then the journey so far might have been something of a shock to your system.

Now, hopefully, it's been an invigorating, inspiring shock. But even if you're filled, as I am, with tremendous enthusiasm for the possibilities of this new law firm architecture, you might still feel daunted by figuring out how you're actually going to design or engineer your firm to achieve these possibilities. And that brings us to the issue of your law firm's strategy.

YOU KEEP USING THAT WORD

"Strategy" is a widely used and frequently misunderstood term in law firms. Ask most lawyers about their firm's strategy, and they'll think back to that time when the firm's leadership team took several meetings and at least one offsite retreat to come up with a grand vision for the firm, eventually expressed in a handsome bound document that now occupies a rarely accessed shelf in their office. This is the fate suffered by most law firm strategic plans: to serve as the organizational owner's manual, pulled out in the event of a crisis but otherwise stashed away with the ice scraper and the map of Pensacola.

Even law firm leaders can display some confusion about what their strategy is. I sometimes hear managing partners say things like, "Our strategy

is to be the premier insolvency firm in the Midwest." But this is a goal, not a strategy. Your goal is not to sit on a train for eight hours, unless you really have a thing for rail travel. Your goal is to get to Omaha. Taking the train is just one strategy (and maybe not the best one) for accomplishing that goal. The process you undertake in order to fulfill your goal—or your purpose—is your strategy.

Now, if your firm's goal or purpose is, as I discussed in Chapter 7, to maximize profits for ownership in the short term, then your firm will adopt a strategy by which that purpose can be fulfilled. Its strategic plan will focus on how the firm can constantly grow its market share, how it can encourage more billable work from its lawyers, and how it can attract lateral hires with attractive books of business, all in order to increase overall partner profit levels. If the purpose of a law firm is to make loads of money for its owners, then a rational strategy for such a firm will set out to do just that. The strategy probably will pay incidental attention, at best, to client service or process improvement or cultural enhancement, because these things aren't likely to maximize partner profitability in the short term.

This is the kind of strategy a law firm can afford to adopt in an uncompetitive and undemanding seller's market. That's why so many traditional firms, which came of age in such a market, seem to have one of these strategies factory-installed.

A seller-first, lawyer-focused strategy in a buyer-first, client-focused market gets it fundamentally backwards.

Deploying this kind of strategy in a buyer's market, however, is the equivalent of going sunbathing in a blizzard. A seller-first, lawyer-focused strategy in a buyer-first, client-focused market gets it fundamentally backwards. It tries to push a vision outwards from equity partners' objectives, rather than letting one flow inwards from market needs and buyer interests.

In most law firms, this overriding outward force is applied by equity partners and is usually too powerful to overcome. It invariably bends the firm's strategy back towards these partners' interests, the same way that light bends back towards a black hole. Nothing, not even market realities, can escape the gravitational pull that equity partners exert over a traditional law firm's strategy.

A law firm strategy founded upon its lawyers is a case of supply in search of demand. More problematically, it's a case of an ever-changing supply in search of always-different demand.

Most law firms' primary assets are still their lawyers—but those assets have become inherently unstable. Senior partners retire late and without succession plans, mid-level partners impatiently await their turn, junior partners become discouraged and migrate in-house, upcoming associates are fewer and disappear faster, and lateral hires bring a clashing set of their own priorities. This noisy, never-ending turnover in the firm's asset mix causes an ongoing metamorphosis in the firm's profile from year to year, a continuous personality makeover.

Because the firm's strategy is built around its lawyers' interests and expertise, the firm's strategic focus is constantly changing—because the firm is responding not to market movement, but to the fact that its own combination of expertise and ambition is always in flux.

Markets and buyers are always changing too, of course, but at their own tempo and according to their own interests, not those of their outside counsel. A lawyer-first law firm strategy invariably will be out of sync with the markets in which the firm operates. It will be far more interested in pursuing the interests of its owners than those of the people and businesses the firm purports to serve.

THE DUCK-HUNTING EXPEDITION

In some ways, I think you can draw certain parallels between the strategic planning session at a lawyer-first law firm and the discussion that might take place prior to a duck-hunting expedition.

At some point before launching out onto the wetlands, the duck hunters will gather together to talk about the essentials. They'll identify their targets, describe the targets' environment, assess their weaponry, and maybe share best practices for aiming and firing. They'll usually agree that every hunter should take home whatever he kills, although if one hunter leads the others to a large flock of ducks, he should receive a reward of some kind. They don't usually spend much time setting out appropriate standards of behaviour, beyond a regular admonition not to rock the boat.

Once these preliminaries are all settled away, it's finally time to get down to hunting. The entire point of the expedition is to find and shoot ducks, so the only strategies the hunters will adopt are those that will fulfill that purpose.

You'll notice, by the way, that some of the key stakeholders in the whole venture—the ducks—are not asked for their input.

I'm being facetious, of course, but there are a few striking parallels.

- A typical law firm strategic planning effort begins by identifying the kind of work the partners want to pursue and the markets and buyers that can provide this work. These buyers and markets are normally regarded primarily as targets, not as subjects with their own inherent interests. When you're trying to shoot a duck, you're not terribly interested in what's on its mind.
- The discussion then turns to the firm's weaponry. Does the firm possess the knowledge, skills, and prestige necessary to get this work? If the partners decide that the firm's firepower is lacking, they can laterally recruit some high-powered lawyers from other firms. It's like persuading a successful hunter at another pond to join your expedition; surely, all the ducks he was shooting over there will follow him here.
- From there, the session moves to financial matters. Revenue goals and costs expectations are set and partner performance standards are established. Compensation formulas, business origination credits, and minimum standards of financial performance required to remain in the partnership are hammered out. Unlike the duck-hunting expedition, and fortunately for the lawyers, nobody in the room is armed at this point.

Law firms in the new market need to do better than this. They need a purpose grounded in the people and businesses they want to serve, and they need strategies that will enable them to accomplish that purpose. They can no longer regard markets as wetlands and buyers as bounty to be bagged. They need to make their clients the *subject*, not the object, of the firm's existence and purpose.

Everything that law firms conceive, plan, and carry out should be done within a framework and towards the goal of helping clients in their chosen markets achieve their goals, by anticipating and addressing their legal chal-

lenges and opportunities. Law firms' strategies must be designed to achieve this purpose.

Strategy follows purpose. If you agree with me that a firm's purpose must be geared towards the needs of its preferred clients in its chosen markets, then it follows that the firm's core strategy must be similarly directed.

THE TRI-PARTITE LAW FIRM STRATEGY

So how do we accomplish all this? A law firm that exists to serve the interests of its clients needs a strategy oriented towards and dedicated to those clients. The law firm must be about helping its clients get the legal services and solutions they need. So the strategy needs to be about client service.

But hang on. A law firm can't survive on great service alone. Realistically, it also needs a strategy to govern its activities in the marketplace as a competitive business entity, because as wonderful as client service is, it won't pay the bills by itself. So the strategy needs to be about competitiveness in the market.

And now that you mention it, the firm can't direct all its attention externally. Who and what constitutes the core of the firm itself? We also need a strategy to govern the firm's internal behaviours in order to better serve clients and compete for business effectively. So the strategy needs to be about the culture of the firm.

Alright, then, so which is it? I think it's all three. A law firm strategy needs to address and function in three separate but closely related dimensions in order to fulfill its purpose.

1. The first and most important strategy focuses on serving the needs and interests of buyers. This is the **Client Strategy**, because it keeps the firm's attention primarily attuned to who its clients are, what they're doing, what they care about, and how the firm can address their legal issues.
2. The second strategy focuses on ensuring the firm is competitive in the markets and with the clients it wishes to serve. This is the **Competitive Strategy**, because it directs the firm's efforts to sustain and grow a strong competitive advantage in the markets it wishes to serve.
3. The third strategy focuses on developing and maintaining an internal culture that will support both the firm's client service and its competitive-

ness. This is the **Culture Strategy**, because it governs the firm's ability to attract and keep the right people and install the best systems to serve clients and strengthen competitiveness.

Now, I know what you're probably thinking: That sure seems like a lot of strategies. And I suppose it is, when viewed from the perspective of how law firms traditionally have approached the subject. Most law firm strategies take a little from each of the Client ("What are our markets?"), Competitive ("How do we grow?"), and Culture ("How do we compensate?") categories. They roll them up with an aspirational mission statement or motto along the lines of "a relentless focus on excellence," and they call it a day.

That worked just fine back when lawyers dictated the terms of the market for legal services and could design law firms as vehicles for their financial ambitions and personal convenience. But in this new market—one in which legal services providers will multiply, personnel and procedures will make or break organizations, and buyers will hold an equal or upper hand to sellers—law firms must create strategies that:

- place clients and their interests at the center of what they do and why they do it,
- stand out among all their competitors as providing genuine, visible value to clients, and
- install and maintain a healthy and productive internal engine at the heart of the firm.

In the next three chapters, we'll explore each one of these strategies.

UNDERSTANDING STRATEGY

If you think this tri-partite strategic approach requires more work than traditional strategies have demanded, you're right. But this higher level of infrastructural complexity and institutional management isn't some leap into an undiscovered country of complex corporate management. It's simply the overdue arrival of law firms into what has long constituted the completely ordinary management of professional businesses. Many law firms generate millions of dollars in revenue every year; they can't be operated like collective fiefdoms of individual law practices any longer.

Keep in mind, what I'm going to describe in the next three chapters is really only an outline or template for what your law firm's strategy will look like in the end. The final version of your firm's strategy will be substantially more complex than what I have time and space to propose here.

But it's critical that you and your leadership team welcome and step up to this challenge. Don't be intimidated by the complexity demanded by law firm strategic planning in a buyer's market in the 21st century. Lean into it instead. You'll run into difficulties and dead ends throughout the process, but that's to be expected and it's perfectly fine. So long as everything you do remains ultimately geared towards serving your preferred clients in your chosen markets and helping them achieve their goals, you can rest assured that you're on the right track.

Don't be intimidated by the complexity demanded by law firm strategic planning in a buyer's market in the 21st century. Lean into it instead.

The next three chapters will briefly review each of these strategies and identify several components within each one for further study. But I want to close this chapter with a final word about strategy, a topic on which many words have already been spent. I've come across a lot of definitions of strategy, but one that particularly stands out for me is this one, from Frank Cespedes at Harvard Business School.

> *So, what is strategy? It's fundamentally the movement of an organization from its present position to a desirable but inherently uncertain future position. The path from here to there is both analytical (a series of linked hypotheses about objectives in a market; where we do and don't play among our opportunity spaces; and what this means for the customer value proposition, sales tasks, and other activities) and behavioural (the ongoing coordinated efforts of people who work in different functions but must align for effective strategy execution). And the trail always begins with customers.*[106]

Here are three takeaways from that definition to remember.

- Strategy is uncertain. You're trying to get from Point A to Point B, but you don't yet really know what Point B looks like or where it is. That

[106] "Stop Using Battle Metaphors in Your Company Strategy," by Frank V. Cespedes, *Harvard Business Review*, Dec. 19, 2014: https://hbr.org/2014/12/stop-using-battle-metaphors-in-your-company-strategy.

lack of certainty can be especially daunting for lawyers, who strongly prefer clarity and precision to the opposite. Be ready to roll with that uncertainty as best you can—and in the meantime, make sure you find out everything you can about Point A (where you are now) and the road conditions ahead (the legal services environment).

- Strategy is normally conceived of in terms of externalities, specifically those associated with markets and customers. But strategy is equally about "internalities": your organizational functions, the people you hire to carry them out, and the success with which your functions and your people interact and "click" between and among each other. Don't neglect to keep your house in order.
- Strategy, like purpose, is ultimately grounded in the buyer, not in the seller. You're not so much moving your law firm along a path to a destination as you are re-engineering your firm to help it achieve a steady state of market activity in which value delivery and buyer satisfaction follow each other in a continuous loop. Define success in terms of achieving not your own objectives, but those of your clients. Remember that a *professional* services firm serves its clients' interests first.

With all that in mind, let's look more closely at the key elements of a tripartite law firm strategy.

Chapter 10
THE CLIENT STRATEGY

All strategies are equal—to channel George Orwell for a moment—but some strategies are more equal than others. As important as it is to get the upcoming Competitive and Culture Strategies correct, I think that in a buyer's market for legal services, everything ultimately depends on your firm's Client Strategy. Here are three considerations to go into your Client Strategy, followed by what I think are its three most important components.

THE CONSIDERATIONS OF A CLIENT STRATEGY

1. ***The client is your co-provider.***

A few years ago, in a post at my Law21 blog, I wrote that clients were becoming law firms' biggest competitor.[107] This was the clear lesson emerging from the behaviour of legal services purchasers across the market.

Consumer law buyers were using alternative service providers and taking advantage of the growing self-navigation ecosystem I mentioned in Chapter 2. Corporate law clients were insourcing work that they once routinely passed over to law firms, or redirecting outsourced work to new platforms such as LPOs, managed legal services companies, and flex-work lawyer agencies. I urged law firms to realize that their major competitive threat was not from these other providers, but from the newfound willingness and ability on the part of clients to gain greater control over their legal needs and take on a growing segment of those needs by themselves.

As the market has continued to evolve over the intervening years, and as some law firms have indeed recognized this trend and acted upon it, I'm coming to think that a new and better way to describe clients' relationship with law firms is emerging. Law firms should think of their clients not so much as competitors, but as "co-providers." I think this is not only a more

[107] "Who's your biggest competitor?" Law21, Aug. 7, 2014: http://www.law21.ca/2014/08/whos-biggest-competitor/.

accurate way to describe the phenomenon, but it better reflects the spirit of collaboration that is slowly seeping into the legal market.

A "competitor" wants to gain something at your expense: work, relationships, and market share that currently belongs to you but that the competitor desires for itself. Competitors in the legal market are predators in a zero-sum game; there's only so much prey out there, and whatever one competitor obtains is another's loss.

While that certainly describes many (although not all) of the new participants in the legal market, it's not a fair description of most clients. They're really acting as "co-providers"—answering some of their own questions and solving some of their own problems, but doing so alongside their other providers, in tandem and ideally in collaboration. They do the things they can or want to do and leave other things for others to do.

Clients (the good ones, anyway) aren't motivated by taking work away from law firms and depriving them of activity and revenue. They're not playing a zero-sum game.

Clients (the good ones, anyway) aren't motivated by taking work away from law firms and depriving them of activity and revenue. They're not playing a zero-sum game. They're interested in achieving goals and finding solutions, and they want to come up with the most effective way of deploying their assets to accomplish that.

So I hereby retract my description of a law firm's clients as its competitors and instead recast them as firms' co-providers: partners and colleagues in the quest to achieve the client's objectives. I think you'll find this simple reframing technique will have a powerful and positive impact on how you view and deal with your clients.

2. ***Trust is everything.***

This is not a touchy-feely reflection on how important it is that law firms and clients hold each other's hands as they walk blindfold down the street. Trust serves many practical purposes in our lives—it allows you to drive through a green light without worrying about getting T-boned by a truck coming the other way, for instance. In the business world, trust is a very real and essential element of commerce—recall the depths of the 2008 banking crisis, when financial markets stopped working because traders

lost faith in the integrity of financial instruments. In the legal market in particular, where even the most sophisticated buyers don't always know whether the product or service they've bought will be effective, trust is an absolute business necessity.

Your clients need to trust you, and you need to trust your clients. It probably goes without saying that that does not describe the state of relations between all clients and law firms these days.

I find that a useful measure of the degree to which your clients trust you is the number of Requests for Proposals (RFPs) they send you on a monthly basis: The client's trust is inversely proportional to their volume. RFPs are the client's way of saying, "We don't know or trust you enough to initiate a retainer relationship without getting reams of documentation from you."

A different way of looking at the same issue is that the degree to which you trust your clients is directly proportional to the number of fixed-fee arrangements you agree upon. This is because these arrangements were made possible by lengthy conversations with your client about scope and pricing, and you're not worried that the client will bury you with an avalanche of all-you-can-advise requests.

One of the most important objectives of your Client Strategy—arguably the most important, by a considerable margin—is to improve the degree to which you and your client trust each other. Nothing will stitch a client closer to a firm than an assured confidence that the firm understands the client and is looking out for its best interests.

Remember also that it's the firm *institutionally*, not a favourite lawyer within the firm, that must be the repository of this trust. Law firms don't always appreciate how difficult it is for clients to trust them or how strong is the presumption that firms will always exploit clients to advance their own interests (and that is not an entirely irrational presumption). The only way to effectively build trust is to go first. Use your Client Strategy to show key clients that you trust them. The rest will follow naturally.

3. ***Clients want peace of mind.***

One interesting aspect of legal services is that they generally have no intrinsic value. That is, they are not ends in themselves, but are means to another end. Nobody wants a separation agreement for its own sake, to hang on a wall and admire for its elegance; they want one to regulate the

end of married life and lay the groundwork for future relationships with a former spouse.

Most legal services have *applied* value. They're useful only insofar as they help the buyer fulfill a greater interest or achieve something else that the buyer wants or needs. Understanding that greater interest, looking beyond the service requested to the big-picture need behind it, is the key to a strategic approach to client service.

You might be familiar with the following (probably apocryphal) anecdote. Black & Decker had just hired a new CEO. He walked into his first meeting with his board of directors, held up a power drill, and asked, "Is this what we sell?" The directors looked at each other and looked at the drill and said, "Yes, that's one of ours; that's what we sell." "No, it isn't," replied the CEO, putting down the drill and picking up a board with a hole in it. "*This* is what we sell," he said. "This is why the customer comes to us. This is what he wants."

So what do law firm clients want? Across all classes and types of buyers, across all manner and severity of issues, the one thing most clients really want is peace of mind. They want the anxiety of an unsolved problem off their minds, the fear of a missed opportunity allayed, or the worry of a legal action removed. They have lives to live and businesses to run, but this legal issue is slowing them down and making it difficult for them to accomplish their goals. They want someone to take it off their hands.

Peace of mind is what clients get when a qualified and experienced professional, who comes to know them and whom they come to trust, identifies ways to help them start moving past their anxiety and towards a solution. This applies just as much to the general counsel of a giant multinational as it does to the owner of a locally sourced vegan catering service. What statement, recommendation, or outcome can you provide that will enhance your client's peace of mind? That's always the next thing you should be pursuing.

THE COMPONENTS OF A CLIENT STRATEGY

The foregoing three points are key considerations for your firm to keep in mind when formulating your Client Strategy. Express these principles through your strategy and use them to assess the strategy's effectiveness

at every stage of its construction. If you can't identify how the strategy incorporates these considerations, go back and redraft the strategy until you can.

The next three points are a little different. They're components of your Client Strategy. These are practical, actionable aspects of your strategy, the tactics through which you achieve the strategy's purpose. Your Client Strategy must include, but need not be limited to, these components.

You need to choose specific objectives for each component, identify the metrics by which you'll measure progress against these objectives, and assign a senior person within your firm to monitor their implementation and report the results to the firm's leadership on a regular basis. Firm personnel responsible for maintaining and reporting on these aspects of the client experience could include practice and industry group leaders, client relationship partners, and a director of client relations (who does not need to be a lawyer).

1. ***Client intelligence***

So, why *does* the client need that hole in the board? Recall the purpose of our modern law firm from Chapter 7: "To serve the interests of clients in our chosen markets by addressing their legal challenges and opportunities, so that those clients can achieve their objectives." What are those interests? What are those objectives? Law firms learn the answers to these questions through the collection and maintenance of intelligence. Your firm's client strategy hinges on knowing your buyers' identity, circumstances, and goals, so that you can anticipate and respond to their needs.

(a) *Identity: Who is the client?* Choose one of your firm's corporate clients at random and ask yourself the following questions about it. What does it do? When was it founded? Where is it located? How many people does it employ? In what jurisdictions does it operate? Who are its primary customers? Who are its major suppliers? Who are its executives and key personnel? What is its inventory of products? What is its range of services? What is its stock price (if publicly traded)? Who are its main shareholders or investors? What is its risk profile and appetite?

These are examples of questions that go to the identity of the client. They comprise a snapshot of the client at a moment in time (and of course, new snapshots should be taken regularly, so that the picture remains fo-

cused and fully up to date). The answers to the most important of these questions should be known by all the people in your firm who serve the client and should be easily accessible to anyone else in the firm who'd like to learn. Why? Because they're really important to the client, and therefore they should be equally important to your firm.

(b) *Circumstances: What is the client's environment?* Here are some more questions about your randomly selected client. What is its competitive position within its marketplace (leader, middle of the pack, trailing)? Who are its main rivals? How much market share does it own? What are its market success measures? Where has it opened or expanded operations recently? Where has it narrowed or closed operations? Which unions (if any) operate in its workplace? What regulations govern its operations? What legal proceedings or investigations is it facing?

These are examples of questions that go to the client's interactions with other market players and its own customer base. Your clients don't exist in a vacuum; they act upon, and are acted upon by, countless other market events and participants every day. You certainly don't need to keep this intelligence up-to-the-minute, but it should be kept reasonably fresh. If "identity" is the snapshot of the client, then "circumstances" is the background of the picture, and that background should be deep, detailed, and definitive.

(c) *Objectives: What are the client's goals?* What is the client's corporate purpose and long-range destination? What market position does it ultimately seek? What is its strategic plan? How is that plan proceeding? What are the client's domestic and foreign growth prospects? These are examples of questions that go to the client's big picture. If "identity" and "circumstances" are a photograph, then adding "objectives" turns this into a moving picture, with a plot, protagonist, and destination.

But we're not done yet. Now ask: Why is the client seeking the particular legal services at hand? What does it hope to accomplish or avoid with these services? Where do they fit within the client's growth and risk profiles and long-term objectives? What priority does the client place on them? These are examples of questions that look behind the request to find the reason—the hole in the client's board. These are questions that should be asked and answered during the initial retainer conversations with the client for this matter.

Make it standard practice for your firm to collect and reflect on this information for each of its key clients. Keep this information in a database accessible through a secure online dashboard to all members of the firm (and to the client, where possible), update it frequently, and make it a policy that everyone who deals with the client reviews the information during the engagement. For the business development proponents among you, this dashboard of information is also an extraordinarily rich resource with which you can analyze the client's affairs and recommend products or services to meet unfulfilled needs or counter unanticipated risks.

2. *The client experience*

How the law firm interacts with its clients is almost as important as the quality and effectiveness of what the firm delivers. This is one of the most important realities to emerge from the rise of the buyer in the legal market. The client's *experience* of using the firm plays a significant role in determining the client's satisfaction and its inclination to use the firm again.

The experience of clients when using your firm—essentially, what they find your firm is like to deal with—has a direct impact on the firm's reputation, brand, prestige, and success. Whether the firm, through its people and its various points of contact, proves to be accessible or responsive or error-prone or pleasant or expensive or whatever else, that is how clients think of the firm and it's what they tell others. Never mind your marketing slogans and advertising campaigns. Your firm, in the eyes of the market, is defined not by who and what you say you are, but by who you *actually* are and what you *actually* do.

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In this sense, the client experience is really the "design" of your firm. Good design, in the technical sense of the word, maximizes the quality of the experience by which a user reaches his or her desired outcome. Design accomplishes this by optimizing the process through which the outcome is achieved—not just getting the best result in the circumstances, but also traveling the best path towards that result.

A good law firm "user experience" (UX) is easy, fluid, productive, and pleasant for the client; a poor law firm UX contains bottlenecks, breakdowns, missed signals, and frustrations for the client. But unless the firm

is deliberate about its design and takes pains to be aware of its UX, it won't know whether it's delighting its clients or driving them nuts.

Here are ten elements of good law firm design for your consideration—call it a "Client Experience Checklist."

1. *Responsiveness.* Client inquiries of all kinds receive a prompt response, preferably within a defined time frame and from a previously designated individual. No waiting around wondering when or if someone will call or email back.
2. *Satisfaction.* The client gets an answer to the question it asked, or a solution to the request it made, on time and on budget. No need to repeatedly rephrase the question or repeat the request, in hopes that maybe the firm will get it *this* time.
3. *Billing.* The client receives invoices for the law firm's work as soon as possible, electronically, and with sufficient detail. No vaguely worded paper bills three months after the fact for long-forgotten tasks.
4. *Pricing.* The client receives a price for the law firm's work that is rational, reliable, and transparent. No guessing about what fee the hourly rate will generate or shouldering 100 percent of the burden of risk that the scope of the engagement will change.
5. *Accessibility.* The client can obtain real-time updates on the status of the work it has commissioned and the progress of the bill against budget. No having to pick up the phone to the lawyer just to find out where everything stands.
6. *Connectivity.* The client has a single point of contact for all inquiries, and that point of contact has a single delegate. No wondering which person to email for information, or contacting several people and sowing internal confusion about who should reply.
7. *Consistency.* The client receives a consistent customer experience across the board, no matter which people or processes the client encounters. No wide variations in your experience depending on whom you're dealing with and how they feel that day.
8. *Familiarity.* The client safely assumes that firm personnel have absorbed the appropriate intelligence about its operations. No wasting billable hours bringing new people up to speed on the situation.

9. *Assurance.* The client is never to be taken by surprise—ever. No unexpected bills, no unexpected amounts in an expected bill, and no bad outcomes without prior warning or expectations management.

10. *Benefits.* The client receives complementary benefits proportionate to its investment with the firm: free CLEs for client personnel, free market intelligence, free check-in calls from partners. No paying for what the firm already has and can afford to give away.

Your firm's client experience needn't include every item on this checklist, but it should contain at least some—if you're not sure which ones, ask your clients which they'd prefer. And don't forget to actually tell your clients what you're doing. Make them fully aware that you're prioritizing the firm's user experience and ask them to assist. They'll appreciate your efforts to remove every potential obstacle to the fast, easy, and accessible acquisition of what they need.

3. *Results*

Intelligence is important. Design matters. But the ultimate currency of buyer satisfaction is now and always will be the results delivered to and the value realized by the client. If you're not tracking the results you achieve for your clients—and their satisfaction or lack thereof with these results—you're missing out on literally the most important thing your clients care about. Your law firm's Client Strategy will succeed in direct proportion to the firm's ability to measure its success in meeting client requests.

One simple way to go about tracking your results would be to create a separate chart or spreadsheet for each client and make a new entry for each standalone retainer or engagement by that client. The spreadsheet should be made available in a secure online location to which both the client and the law firm have access, with the following questions as headings:

(a) *What was asked?* A summary of the client's direction, as set out more fully in the retainer agreement or memo confirming the scope of the engagement. If the client modifies its request after commencement of the retainer, create a new entry directly beneath the original one and start again.

(b) *Who is involved?* A list (with contact information) of the key individuals working on the engagement, including any lawyers and staff with more than minimal involvement and the key representatives on the client side.

(c) *What was promised?* A summary of the firm's undertakings in response to the request. Make separate entries for the outcome the firm promised to deliver, with any necessary provisos, the promised budget, and the promised timelines.[108] These should also be set out in the retainer agreement, of course.

(d) *What was delivered?* Separate entries for the actual outcome achieved, the actual amount charged by the firm to achieve it, and (internal access only) the actual time and resources consumed to deliver it. Don't provide reasons or excuses for any variances in this spreadsheet; they're immaterial from the perspective of client results.

(e) *Was value provided?* The client's assessment of the outcome of the retainer. I suggest using a simple grading system similar to that found in some graduate schools: Fail, Pass, and Honours. Either the outcome failed to provide the value sought by the client, or it provided the expected value, or it provided value that exceeded the client's expectations. That's all that really matters.

The firm's managing partner, the appropriate practice or industry group leader, the appropriate client relationship partner, and the director of client relations would own responsibility for this spreadsheet. They should check it daily and confer about it weekly. Passing grades should be recognized and congratulated; honours grades should be celebrated and rewarded; failing grades should be a red alert that galvanizes the entire team and spurs an immediate meeting with the client and a soul-searching post-mortem by the lawyers and staff involved.

Are you with me on this so far? Okay, there's one last step in the process, and it's a really hard one. Circulate these spreadsheets throughout the entire firm. Let everyone see how well each group and each lawyer has delivered on client promises, managed timelines, and met budgets. Identify all the "honours" grades and place them in a firm-wide email, congratulating the lawyers and groups that have collected the most "H"s in the previous month or quarter. Ostensibly, this is to reward your top value performers; additionally, it will light the competitive fires within every group to achieve

[108] The repeated use of "promise" here is intentional. It lends the agreement between the client and the firm a personal touch and sense of commitment. Your people will work harder to "keep their promises" than to "fulfill their duties."

more "H" ratings than other groups, or more than they've achieved in the past.

The point of this exercise, or any similar system you develop with your own firm, is twofold. First, you must track the outcomes you deliver to your clients. If you don't record and analyze your firm's performance against expectations, you'll be unable to improve it and you'll be blindsided when disgruntled clients finally lose patience and move their work elsewhere. And secondly, this kind of system provides you with invaluable data that you can use throughout the firm, including for management, training, compensation, bonuses, and other elements of the firm's operation. Give your firm the data it needs to analyze its own performance and to constantly strive to do better.

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RESPONSIBILITY

If your firm doesn't have a Client Relations Director or a Chief Client Officer, with a direct report to the managing partner, this would be an excellent time to appoint one. (Some organizations have even created a Chief Experience Officer role.[109]) It's up to you whether or not this person is a lawyer and whether he or she has previously been a senior partner within your firm. The important thing is that this person is tasked with overall responsibility for the client strategy and should report to the executive twice a year with the ongoing results of the strategy's implementation and recommendations for what to do next.

These are the basic considerations and fundamental components of an effective client strategy. You can add more of your own, but I'd advise against subtracting any of them. Be specific and intentional about what you want your client strategy to deliver (greater client satisfaction, more client loyalty, more client business, and so forth), choose metrics that will measure your performance, and act on the results. Nothing, not one thing, is more important to the survival and success of your firm than the welfare of its clients. Proceed accordingly.

[109] "The Evolving Role of the Healthcare Chief Experience Officer," by Liz Boehm, Experience Innovation Network, 2015: https://www.vocera.com/public/ein/whitepapers/wp-cxo-survey-2015-report-ein.pdf.

Chapter 11
THE COMPETITIVE STRATEGY

If you look at a typical law firm strategic plan, you'll probably find that it's essentially a stripped-down Competitive Strategy: what kind of business we want, how we're going to get it, how we'll stand out in our markets, what kind of ducks we want to shoot, and so forth.

That's fine as far as it goes; it just doesn't go very far. Not only does it present an incomplete vision for fulfilling the firm's purpose (insufficient attention to clients and culture), but it also fails to address the importance (and the means) of achieving a competitive advantage for the law firm in a buyer's market. That's what we'll review in this chapter.

THE CONSIDERATIONS OF A COMPETITIVE STRATEGY

1. ***The new playing field***

I've gone on at length in this book about the monochromatic nature of competition in the legal services market for most of the last century. If you were offering legal services during this period, then (a) you were a lawyer in a law firm, (b) you were up against other lawyers in other law firms, and (c) you and your competitors all went about your business and competed for clients pretty much the same way.

The first and most significant step to success, when assembling your Competitive Strategy in a buyer's market, is to recognize that this era has come to an end. Law firms are no longer the only game in town, and it seems very likely that they never will be again. You need to recast your assumptions about competition accordingly.

Legal services buyers have options now. They can assign legal tasks to a law firm, a managed legal services provider, a flex-time lawyer agency, a software program, a productivity engine, or an innovative law firm—or they can just keep the work and do it themselves. But it's not simply the fact that these options exist—it's that these options offer dramatically different value propositions to clients than law firms have traditionally made available.

This wave of fresh and different value offerings from new providers is not accidental. Every new participant that has entered the legal market over the past several years knew coming in that law firms are this market's dominant supplier. So they scouted firms heavily beforehand to learn their competitive weaknesses—the areas where they might be vulnerable to new offerings—and let me tell you, they found more than a few. They discovered pretty quickly that law firms ran stunningly inefficient operations, set fees on an opaque and unpredictable cost-plus basis, and provided indifferent customer service. These are law firms' prime vulnerabilities, and the new market participants have been exploiting them mercilessly.

Some law firms make the mistake of assuming that, since these upstarts can't compete with them on grounds such as quality, expertise, and pedigree, they don't pose any real threat. Setting aside the possibility that even these competitive strongholds won't be safe for long, the larger point is: *Of course,* the new providers won't challenge law firms on their strengths. Who does? David didn't grab a sword and start a futile hand-to-hand battle with a large, powerful warrior. He kept his distance, picked up a sling and stone, and killed Goliath with missile fire. David attacked his enemy not at his point of strength, but at his point of vulnerability. These new legal services providers are advancing on law firms armed not with swords, but with stones and slingshots.

Clients finally have the opportunity to select legal services providers based on criteria of their own choosing, including price, efficiency, transparency, communication, and service quality. Your firm's Competitive Strategy has to recognize this fact and respond to it. The sooner you can craft and implement a strategy that reflects the priorities and preferences of your clients, as well as the reality of a multi-provider world, the better your chances of achieving a lead position in your chosen markets. The longer you wait, the likelier it will be that other providers will beat you to it.

2. ***The rise of Procurement***

Not every new participant in the legal market is a seller of legal services. One of the corporate legal world's most important emerging players, in fact, is a newly empowered dimension of the client's purchasing function called "Procurement."

If your firm serves commercial clients in midsize to large corporations, you've probably encountered representatives from the procurement department at the client table. In growing numbers, these specialists are joining conversations about the legal purchasing process. They are extensively trained in, and come equipped with the latest tools for, acquiring the products and services their companies need on the best possible terms. And they invariably bring a tenacity and regimentation to the buying process with which lawyers on both sides of the transaction (law firm and in-house law department alike) are unfamiliar.

Procurement's presence in these conversations has frequently been unsettling for the more traditional market participants. Especially in their first forays into the legal world, procurement personnel often generated tension by implying that legal services were really no different than any other kind of purchase and that the legal department has been applying insufficient rigour when buying services from their fellow lawyers in law firms.

Much of this was true, but not all. Legal services are not utterly unique, as many lawyers like to believe, but nor are they merely widgets, as some procurement people wrongly assumed. Most legal services lie somewhere between these extremes, and Procurement and Legal are coming to understand each other better on this point every day.

From the law firm perspective, the introduction of the procurement function into the legal buying process signals the arrival of new value criteria. Sometimes, the sole criterion will be the lowest price; if so, you need to ask yourself whether that's a situation in which your firm can deliver the kind of high-quality outcomes for which you want to be known. More often, however, the value conversations these days are about scope, quality, budget, timelines, and transparency in legal services provision, and these are criteria on which law firms should be engaging their clients anyway.

The important thing to remember is that Legal and Procurement both represent the client's interests, so they both expect your attention and cooperation. Learn what they want from your firm and what they can offer to help you deliver it. The legal purchasing process is becoming more sophisticated and demand-

Legal and Procurement both represent the client's interests, so they both expect your attention and cooperation.

ing, regardless of which department—Legal or Procurement (or increasingly, both)—is at the table. Your firm's best bet is to swim with this current, not against it.

3. *Dominance*

In my younger days, I used to participate in a fantasy football league every NFL season. About 15 people would pay $100 each to enter a pool, with the proceeds going to the top three finishers in a 60-30-10 ratio. I was a half-hearted and mediocre player, winding up around 8th or 11th every year, until I heard a fantasy football analyst[110] say something that has stayed with me ever since.

"There are two types of participants in fantasy," he wrote, "those who finish in the money, and those in whose money the others are finishing. You never want to be in the second group." The next year, armed with a renewed focus, I buckled down and won my league by a wide margin.

Peter Drucker, who was not a fantasy football analyst, once remarked: "If a business cannot be number one, number two, or number three in a marketplace, it ought to get out of that market."[111] Legal consultant Ed Wesemann expanded on Drucker's point by noting that in most legal markets, three firms invariably dominate. The top firm owns the best 40 percent of the market, the second-place firm 20 percent, and the third-place firm 10 percent. Every other firm is fighting over the scraps, the leftover and least desirable 30 percent of the market. In his book *Creating Dominance*, Ed exhorted law firms to grab one of those three spots, and the higher, the better.[112]

All of this is to say that the point of your firm's Competitive Strategy is not simply to "be competitive"—to be a contender for the work you want and take home your fair share of it. The point is to *dominate*—to be one of the top three firms in the markets you've chosen. You want to open up such a lead over the rest of the pack that they're safely in your rear-view mirror, and your focus is squarely on competing with the other two top dogs. Avoid squandering firm resources on business development activities with little or no return (if you're not sure which activities those are, consult the wrong end of your Accounts Receivable list).

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[110] Yes, that's a real job.

[111] "Managing for Business Effectiveness," a 1963 article in the *Harvard Business Review.*

[112] *Creating Dominance,* by Ed Wesemann (Author House, 2005).

Adopting dominance as your objective will have a real impact on how you build your firm's "competitive brand," what it wants to be known for in its markets. "We practice commercial real estate law" doesn't really get you anywhere. "We are the pre-eminent commercial real estate firm in our city" is the destination you want to have in mind. If you're not among the top three players in your chosen markets today, your strategy should focus on getting you there within a defined period of time. If you're already in the top three, your strategy should focus on keeping you there and moving you up towards occupying the lead position. If your judgment is that you're not in the top three in a defined market and that you have no realistic shot at joining it within the next five years, you should at least consider abandoning this market altogether.

There are too many hungry players in the new legal market, and the pressures applied by procurement specialists to constantly reduce price are too strong, for you to risk falling into the back of the faceless pack. Dominant providers finish in the money; the money they finish in belongs to everyone else. You know which group you want to be in.

THE COMPONENTS OF A COMPETITIVE STRATEGY

1. *Operations*

I once asked an in-house lawyer to name one thing her outside law firms could do to make her happier. "Reduce their cost," she replied. "Fair enough," I said. "Should they do it by outsourcing some work to less expensive providers, or by automating some of their standard processes, or by…"—she cut me off. "I don't care," she said flatly.

That nicely sums up the view that many clients are taking of the costs their law firms incur to provide legal services—they're not going to pay for those costs anymore. They're going to pay for value delivered, and very little else.

It wasn't always this way, of course. Virtually every law firm in the old seller's market could afford to operate inefficiently because it could always pass on every dollar of extra cost directly to its clients. This was the true magic of the billable hour: The buyer effectively paid for the inefficiencies of the seller.[113] These law firms had no incentive to rationalize and stream-

[113] Magic from the seller's perspective, anyway.

line the means by which they did their work and generated their services, and so they didn't.

But a firm like that can't be competitive in a market in which other providers, using technology, systems, and operational improvements, have reduced their cost of doing business and have passed those savings on to the client through lower prices (gaining market share in the process, too). A fight between an inefficient law firm and an efficient legal provider in this market won't be a fair one, but it will be a short one. It will be like asking the artisanal car manufacturers of the 1900s, whose employees crafted automobiles one by one, to compete against robot-equipped, efficiency-infused assembly lines today. It will be no contest.

Competitiveness therefore starts with how your firm does its work — its internal operations and workflow.

Competitiveness therefore starts with *how* your firm does its work — its internal operations and workflow. This subject is deep and wide, and I can't do more than scratch its surface here. There are extensive resources out there on the subject of law firm operational improvement, and you should read and absorb them before incorporating operations into your competitive strategy. But I can at least highlight the areas that law firm workflow re-engineering most frequently addresses.

- *Outsourcing:* Back-office and IT operations, entry-level lawyer work, contractual due diligence, and electronic discovery are just some of the operations now in the domain of third-party specialists and advanced technology.[114]
- *Process Mapping:* Breaking down every step in frequently performed tasks into a flowchart or decision-tree model, and then critically examining each step. Do we need to perform this step? Would it be more effective to move it earlier or later in the process?
- *Legal Project Management:* Creating a disciplined framework around the execution of a client engagement, with clearly defined objectives,

[114] It's easy to outsource the wrong functions or too many of the right ones, however. I once spoke with one large firm that centralized all its legal secretaries in one section of the firm in order to cut costs and enhance efficiency. Only later did the firm realize that it was their everyday physical proximity to their lawyers that enabled secretaries to goad the lawyers into submitting their dockets on time.

scope, budget, timelines, milestones, and responsibilities, as well as a post-project review process.

- *Knowledge Management:* Not just what we traditionally think of as KM in law firms (accessing what lawyers know), but also the firm's cost of generating work, its productivity measures, its expert applications, and much more.[115]

How do you measure the gains from operational improvement efforts? Potential metrics include faster turnaround times for client assignments, fewer "touches" on legal tasks, and higher profit margins tied to reduced costs. What you're really aiming to improve here is *productivity,* not as law firms have long defined it—the generation of billable hours—but instead as the higher effectiveness of productive effort, as traditionally measured in output (inventory and revenue) per unit of input (labour and capital).

One useful operational metric in law firms would be to count the reduction in errors, corrections, and "do-overs" occasioned by overhauling traditional law firm workflow. Process improvement should lead to quality improvement, because good systems with strict procedural rules reduce the capacity for and frequency of human error. Many client RFPs these days include a standard request to describe the process enhancements the firm has implemented and the improvements they have achieved. Firms that have invested in operational improvements have a ready answer.

Few law firms have yet developed the position of Chief Workflow Officer, so this function often falls to the director of knowledge management or law librarian. Wherever the responsibility migrates, firms need to designate an officer in charge of ensuring the continuous improvement of law firm operations and equip this person with systems to measure ongoing cost savings, efficiency gains, and productivity enhancements.

2. *Pricing*

Ten years ago, hardly anyone talked about "pricing" in legal services. The most commonly used word was "billing," and the cutting-edge phrase was

[115] The biggest competitive challenge for law firms, really, is that their clients figured out the potential of investing in operational improvements before the firms did. That's why many law departments now have their own "legal ops" specialists and a growing ecosystem of third-party operations providers to support them. An entire organization, the Corporate Legal Operations Consortium (CLOC), has recently arisen to address exactly this phenomenon. For much more on this subject, read William Henderson's article in the October 2015 *ABA Journal,* "What the jobs are," referenced in footnote 42.

"alternative fee arrangements." The ascendance of "pricing" over the last several years tracks and reflects the emergence of the buyer's market in law during that time, because "price" is a buyer's term. "Bills" and "rates" are seller's terms, and you might have noticed that these words have come up infrequently in this book. That's because we're looking at everything from the perspective of the client.

Taking a seller's approach to pricing must start with an understanding of the value that the services in question provide to the buyer. It does not start with the seller's costs, the seller's hourly rate, or how much profit the seller would like to make this year. Those are important considerations, sure, but they're not the only or the most important factors in pricing. To set a rational, competitive, and profitable price, the seller needs to know three things:

- The value of the services to the buyer (to ensure alignment of price)
- The price offered by similar providers (to ensure competitiveness of price)
- The cost to the seller of providing those services (to ensure profitability of price)

Of these three, the first—buyer value—is the touchstone consideration. A buyer of legal services will generally be satisfied with a price that's aligned with the value (as defined from its perspective) that those services deliver. The corollary to this rule is that clients will pay less for services of less value and more for services of more value.[116] Law firms that charge the same for everything they do, *regardless of its value to the client*, are missing an opportunity.

This is, in some ways, the real reason the billable hour is finally starting its terminal decline: It's impersonal and inflexible. Charging the same hourly rate for all your work divorces the work from the client who requires it and the need that prompted it. Clients have long complained that the billable hour overcharges them, and for routine work, that's often been true.

[116] You might have noticed that professional sports teams have figured this out. Tickets to weekend games against contenders are now priced significantly higher than mid-week games against low-ranked opponents—the price varies according to the value provided. Most theater owners have not figured this out. A ticket to an Oscar-contending blockbuster costs the same as a ticket to a movie that's one step away from direct-to-video. Law firms need to think like pro sports teams, not theater owners.

But lawyers also *undercharge* when they price more complex and high-value tasks by an hourly rate. They might be rendering value in the millions of dollars, but charging only thousands for it.

This is why both clients and lawyers benefit when we talk about "pricing" rather than "billing." And that's exactly the right word: talk. You can't price your legal services properly unless you know what value the client is seeking, and you can't know that unless you have a good, open, constructive conversation with the client. Both sides need to listen. The lawyer has to understand what the client wants and why, and the client needs to understand how easy or difficult its desired outcome will be to obtain. By talking it out, each side learns enough to close in on a mutually acceptable price.

The other reason the billable rate is declining is that for clients, value includes the *reliability* of price. The billable hour system has always assigned 100 percent of the risk of scope change to the client, which renders any initial estimate of the final bill unreliable. Clients have run out of patience with that. "Tell us the price at the start of the retainer," say the clients, "and bill us that price at the end. If and when unforeseen circumstances change the price, tell us immediately, and we'll decide what to do. Your hourly rate is irrelevant to us. Give us a reliable price."

A pricing regimen, like an operational overhaul, is a subject too complex to properly address in detail here. But your Competitive Strategy at least needs a pricing regimen that includes the following:

- Strong relationships with your clients, including an awareness of what constitutes value from their perspective and an open and frequently used communications protocol through which you keep them updated on their matters.
- Knowledge of and control over your costs of doing business, enabled by operational systems that minimize the variables that cause cost instability and give you a sophisticated grasp of your internal profitability.
- Enforceable, enterprise-wide discipline over the setting of price, made possible in part by decoupling individual compensation from individual billing, but enabled principally through strong leadership.

Many law firms have hired a Chief Pricing Officer or similar expert to coordinate the firm's pricing strategy and guide the pricing of individual

engagements. This person, along with the firm's CFO and its practice group leaders, should brief the firm's leadership regularly on pricing issues. You can assess the impact of your regimen through metrics such as market share, firm-wide profitability, new business gained from current clients, and higher satisfaction levels from those clients.

3. *Distinctiveness*

Read the websites or review the marketing materials of any law firms within arm's reach of you right now. What will you find? Virtually everyone pitching clients on the same few terms: lawyer excellence, lawyer expertise, lawyer experience, and lawyer pedigree.[117] The problem, of course, is that most law firms employ excellent and experienced lawyers, so that's hardly a distinguishing feature. As a result, few law firms really stand out from the pack, and clients have little else to go on when making purchasing decisions.

Now that we're in a buyer's market, clients have come to recognize that most of the old competitive criteria are either table stakes (clients kind of expect lawyers to be excellent) or irrelevant. Your clients, I promise you, truly don't care where your lawyers went to law school. Clients are instead looking for firms that (a) really are identifiably different from other firms, and (b) market themselves on criteria that match clients' interests. That's why the next big thing in a Competitive Strategy is distinctiveness.

I like "distinctiveness" better than "marketing," because the latter term refers to something law firms do to markets, while the former term reflects the way in which markets view law firms. To be distinctive is to stand out from your competitors in ways that matter to clients. That sounds incredibly simple, yet few law firms manage to pull it off.

Steve Matthews of Stem Legal Web Enterprises and I have written a book called *Online Publishing Strategies for Law Firms*.[118] One of the points we made in that book was that most law firms' content marketing consists of information that interests lawyers—case comments, legislative updates, regulatory developments, and other residue from our law school experience. Not many firms produce marketing content that matters to clients:

[117] And law firms wonder why clients keep saying, "I hire the lawyer, not the firm." Who's been training clients to think that way?

[118] Published by the ABA Law Practice Division around the same time as this book, by a happy coincidence.

risk management checklists, estate planning do's and don'ts, how to respond when you receive a litigation hold, and so forth.

Clients are looking for law firms that stand out on criteria that matter to them. If you want to know what those criteria might look like, go back to the Client Experience Checklist in the last chapter. Do you demonstrably stand out from other firms on the basis of your firm's:

- Responsiveness,
- Satisfaction,
- Billing,
- Pricing,
- Access,
- Contact,
- Consistency,
- Familiarity,
- Assurance, or
- Benefits?

And if so, can you prove it?

To be distinctive in a buyer's market is to know and act upon what matters to clients. To be competitively distinctive, though, you need to go one step further. You need to know and act upon what matters to clients *that will affect their purchasing decisions.*

You need to know and act upon what matters to clients that will affect their purchasing decisions.

You could, to pose a frivolous example, invest a lot of time and money into becoming the world's nicest and friendliest law firm, such that clients swoon over how thoughtful and considerate you are when dealing with them.[119] But unless extreme thoughtfulness persuades a current client to keep giving you work or a potential client to switch providers and move their work to your firm, I'm not sure it's worth the effort. What will move the needle on buying decisions? What matters enough to clients that they'll

[119] This would not be an especially high bar to overcome.

change their buying habits? If you don't know, let me suggest that you take some clients to lunch, on your dime, and ask them.[120]

Distinctiveness can take different forms, of course. Mega-firms, for example, base their distinctiveness on their capacity to offer pretty much any legal service virtually anywhere in the world. For a client that actually needs that capacity, it's a real selling feature. Other clients are looking for a firm that specializes in their particular need, which offers an advantage to niche players who have decided to do a very small number of narrowly focused things and do them very well.[121] But in each case, it's the client's priorities that matter, not the firm's. That's the iron rule that should undergird every law firm's Competitive Strategy.

RESPONSIBILITY

Chief Marketing Officers should own responsibility not just for the distinctiveness portfolio, but also for the firm's entire Competitive Strategy, in conjunction with key client relationship partners and group leaders. Market and brand surveys, along with client feedback sessions, should complement market share and profitability as metrics with which to measure the success of a firm's competitive efforts.

These are the basic considerations and fundamental components of an effective Competitive Strategy. As you can see, this strategy assumes frequent reference to the Client Strategy, almost by definition. You can't compete on client priorities unless you know those priorities intimately. Understand the new and more intense market in which you're competing, recognize that clients are calling the shots in a buyer's market, and adapt your competitive efforts to helping clients attain their goals, not your firm's.

[120] Read some sobering reflections on this topic in "Nothing You Can Say Can Cause Me To Retain You," by Mark Herrmann, Above The Law, July 15, 2013: http://abovethelaw.com/2013/07/nothing-you-can-say-can-cause-me-to-retain-you/.

[121] Niche specialization offers the added advantage of narrowing your playing field and reducing (sometimes to zero) the number of firms you're up against.

Chapter 12
THE CULTURE STRATEGY

Most law firms have something resembling a Competitive Strategy, and maybe a few can lay claim to a strategy for client relations. But a law firm with an intentional, executable strategy for developing and maintaining a strong culture is vanishingly rare.

From my perspective, a Culture Strategy is an important complement to the two we've already discussed. A good culture makes it possible for a law firm to act in a unified, directed, positive, and strategic manner. A poor culture…well, you don't need to search very far to see what poor law firm cultures look like.

THE CONSIDERATIONS OF A CULTURE STRATEGY

1. *The "One-Firm" Firm*

It seems fair to say that across all borders and all types of industries, we haven't exactly been living through a golden age of workplace culture. For millions of workers all over the world, *Dilbert* is daily coping therapy and *The Office* is a documentary. Even among corporate cultures, however, law firm culture has been especially prone to toxicity.

Dr. Larry Richard, who has conducted groundbreaking research on lawyers' personality traits,[122] has found that lawyers rank remarkably high on features such as skepticism, urgency, and autonomy, and very low on sociability and especially on resilience.[123] Roughly translated, this means lawyers tend to be intense, critical, and easily frustrated short-term thinkers who don't like dealing with other people or taking direction from them. The law firms that lawyers create, own, and operate in their image are not usually delightful workplaces.[124]

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[122] "Herding Cats: The Lawyer Personality Revealed," by Dr. Larry Richard, Report on Legal Management, Altman Weil, August 2002.

[123] "Resilience and Lawyer Negativity," by Dr. Larry Richard, Lawyer Brain Blog, Sept. 19, 2012: http://www.lawyerbrainblog.com/2012/09/resilience-and-lawyer-negativity/.

[124] Throw in lawyers' deeply entrenched tendency to view themselves as superior to the "non-lawyers" who work for them, and you exacerbate the problem.

This is the default setting for most law firms: an anxious, low-trust, failure-averse[125] culture where the needs of the one always outweigh the needs of the many.[126] In the long run, as we discussed in Chapter 5, the decline of lawyers' importance in law firms will ease a significant amount of this dysfunction—but that process will still take some time, and we need solutions sooner than that. When it comes to the troubling state of law firm culture, we can't simply wait for evolution to take its slow course.

Our first order of business, therefore, is to change that default setting. We need to develop an intentional, institutional culture focused above all on the priorities of those who buy the firm's services. We want a law firm culture in which everyone's values and objectives are aligned with those of the organization, which itself is aligned with the interests of its clients. We want a firm in which lawyers value leadership and "followership" in equal measure, willingly giving up some independence in order to build an organization to which everyone contributes, from which everyone benefits, and of which everyone can be proud.

Does that sound like a pipe dream? David Maister, who first charted much of the ground that this book covers, has already modeled this sort of culture in his famous "one-firm" firm essays. I won't repeat David's signal insights on this topic,[127] other than to emphasize his point that the "one-firm firm" approach is not simply a loose term to describe a "culture":

> *It refers to a set of concrete management practices consciously chosen to maximize the trust and loyalty that members of the firm feel both to the institution and to each other. The key relationship is that of the individual member to the organization, in the form of a set of reciprocal, value-based expectations. This, in turn, informs and supports relationships among members.... Everyone knows the values they must live by and the code of behaviour they must follow. Everyone is commonly and intensively trained in these values and protocols.*

This is not just some abstract, feel-good vision. David provides examples of powerhouse professional firms such as McKinsey, Accenture, and Goldman Sachs that have adopted and fiercely defended this approach to

[125] See generally, "When Lawyers Fail at Handling Failure," by Leigh Jones, law.com, Sept. 2, 2016: http://www.law.com/sites/almstaff/2016/09/02/when-lawyers-fail-at-handling-failure/.

[126] Or the few.

[127] You can read them here: http://davidmaister.com/articles/the-one-firm-firm-revisited/.

culture and have experienced astounding levels of success. The opposite approach, which David accurately describes as a "warlord model," is the standard operating culture in many law firms. The warlord culture benefits only a very small number of equity owners, while making life difficult and sometimes miserable for everyone else inside the firm.

The warlord culture benefits only a very small number of equity owners, while making life difficult and sometimes miserable for everyone else inside the firm.

Read and absorb what David Maister has to say about one-firm firms. The truly great law firms of the future will look more like this than do most of the large firms currently dotting the landscape. This is the cultural model that will meet with the most success in the demanding legal environment we've now entered. It also happens to be the kind of culture that the best people will want to be part of.

2. *Culture in the community*

I'm frequently told that lawyers are "special." (Lawyers tell me this, at any rate.) Lawyers, they say, possess a higher calibre of character, integrity, trustworthiness, generosity, and ethical commitment than anyone else. Now, I'm a lawyer myself, so I'll happily wear this shoe if it fits. But assuming without deciding that this assertion is true, it suggests to me that a law firm owned and operated by lawyers should accordingly display a higher calibre of character, integrity, and generosity in its public conduct.

So when considering your firm's Culture Strategy, I'd like to suggest you give serious consideration to how your firm's culture will be reflected and expressed in its dealings with others. It probably goes without saying that the effects of your firm's culture should extend to clients—serving them and their interests is the purpose of your firm, after all. But a law firm's culture should also encompass its communities, legal and otherwise.

In the legal community, your firm should ensure it's doing its share of *pro bono publico* work. *Pro bono* clients should include not just your lawyers' favourite charities and pet foundations, but also marginalized persons, disenfranchised groups, and social causes that strive to promote human dignity and the general welfare. Trust me when I say that there are more than enough service opportunities in these latter areas for law firms

to fill. A law firm ought to enhance and be a credit to the city in which it is located.

In the broader community, if you're not already doing so, your firm should set aside a percentage of annual profits to support initiatives and institutions that improve the quality of life in your town, city, or region. Sponsor children's field trips, seniors' activities, worker retraining programs, women's shelters, park cleanups, downtown redevelopment projects, and other pillars of stability and quality of life in your community. Create expectations among staff, and especially among lawyers, that their personal appearances at and contributions to these initiatives are part of the effort.

A law firm is a business, but it's not just like any other business. Lawyers are supposed to be a force for good in society, and law firms represent the concentrated commercial presence of lawyers in their communities. Don't shy away from this responsibility or discount the importance of the social role that law firms serve. Make this role visible and meaningful within your firm—if for no other reason than that your firm's morale, productivity, and ability to recruit and retain good people will increase as a result.

3. ***Generational change***

What else can be said about the Baby Boomer generation that hasn't already filled thousands of books, articles, and documentaries? Now that even the youngest Boomers are in their fifties and the oldest have passed 70, the long, slow fade of Boomers from the working population has begun in earnest.

Many Boomers, if I may venture to say so as a member of Generation X, tend to be pretty proud of their singular generation's accomplishments. But one aspect of Boomers' impact that hasn't been widely discussed is how this generation has shaped the structure and culture of law firms.

Historians of the legal profession often identify the mid-1980s as a turning point in law firms' evolution. Law firms became significantly larger, busier, and more profitable, frequently (it's sometimes said) at the expense of collegiality and quality of life. It might not be a coincidence that the 1980s also marked the entry in force of Boomers into law firm partnerships. As they moved into productive and leading roles in law firms, Boomers gradually reshaped the culture of these firms in their own image.

The general personality traits of the Boomer generation are well known by now: hard-working, independent, competitive, career-focused, hierarchical, and materialistic. Boomers prize order, rank, and achievement; they served their time and paid their dues, and they expect those who follow them to do the same. The first and best use of time is to work and produce; self-worth is measured by output, prestige, and financial reward. Does this remind you of any legal workplaces with which you're familiar?

The modern law firm, I believe, is a Boomer construct. It was shaped by and reflects the values and priorities of the generation that has served as law firms' owners and rainmakers for the past few decades. The culture of law firms is Boomer culture—or at least, it has been, up until now. Generation X first entered law firm partnerships in the 1990s, but my cohort lacked the critical mass to have much effect on the dominant culture.

Millennials, who first started becoming partners in the late 2000s, possess that critical mass in abundance. Millennials' personalities are also well known. They regard work as something you do in order to support your life, not as life's purpose. They take personal development and self-realization seriously. They are peripatetic employees who nonetheless expect employers to provide a well-rounded work experience. They prize family and flexibility above revenue, and they expect to derive meaning and fulfillment from their jobs. They say "work-life balance" without air quotes.

Boomers' disdain for these characteristics and the Millennials who possess them is well known. But increasingly, it's also irrelevant. Law firm culture is going to become Millennial culture.

Over the course of the next two decades, Millennials will become rank-and-file lawyers, then practice group leaders, and then senior and managing partners of law firms.[128] Flex-time lawyering and work-life balance, two of the thorniest divisions in today's law firms, will come to be taken for granted. The billable hour will lose its natural resonance with senior lawyers and partners, and therefore its currency within the firm. Relentless devotion to work will be discouraged, at some cost to productivity. "Lifetime lawyers" will become a thing of the past, as law becomes one of many crossover careers.

[128] Perhaps most importantly of all, they'll also become clients.

Whether this development is good or bad is really beside the point. Millennial lawyers (and clients) will bring a new set of unconscious assumptions and deliberate value choices to the legal services market, and law firm culture will come to reflect these assumptions and choices. Your firm's Culture Strategy therefore needs to peer into the future, to consider who will someday be selling and buying the services of your law firm and to find ways to start institutionalizing the priorities of this ascendant generation.

The last Boomers probably won't leave law firm partnerships until the 2030s. But well before then, the law firm culture that their generation created will be gone.

THE COMPONENTS OF A CULTURE STRATEGY

1. ***Behaviours***

Law firm "culture" isn't that hard to define, really. Culture is what people at a law firm actually do every day—or, less sunnily, what people get away with doing. I've worked in organizations that struck committees to study and define the organizational culture, but that failed to appreciate that the most accurate definition of culture is *what actually happens around here.*

A law firm's culture is the daily manifestation of its explicit performance expectations and implicit behavioural norms—what is encouraged and what is tolerated.

A law firm's culture is the daily manifestation of its explicit performance expectations and implicit behavioural norms—what is encouraged and what is tolerated. The culture that a law firm develops and sustains has an impact on its productivity, retention rates, and morale—positive or negative, as the case might be.

What behaviours does your firm encourage, and what behaviours does it tolerate? If your firm is typical of the genre, it encourages:

- individual effort and achievement,
- competitive relationships with colleagues,
- the prioritization of financial success above personal well-being, and
- the development of an adversarial subtext to the lawyer-client relationship.

Your firm's culture, if typical, also tolerates:

- the application of different standards of conduct to high-earning lawyers,
- the differential treatment of lawyers and "non-lawyers,"
- the generous interpretation of "billable hours" assigned to a client file, and
- the emotional or verbal abuse of junior lawyers and staff.

I'm sorry to recite a list of such unpleasant cultural features, and I have no doubt that your firm, among others, is an exemplar of better values. But the foregoing collection of encouraged and tolerated behaviours is so common within law firms that it would be unhelpful to pretend otherwise.

Whether or not this description accurately reflects your own firm is something you can decide for yourself. What's indisputable is that if your firm can develop and maintain a culture whose behavioural norms are the polar opposite of these, it will reap tremendous benefits in terms of morale, productivity, recruitment, and differentiation. If you want your firm to develop that kind of outstanding culture, you should do everything possible to encourage practical, everyday behaviours that will bring about these cultural conditions, and to apply a zero-tolerance approach towards behaviours that will ruin it.

Allow me to suggest four "cardinal virtues" for law firm culture—core cultural values that law firms can and should prioritize and incentivize—along with examples of how they might be exemplified and how they would be violated.

A. *Consideration for clients:* Displaying a genuine interest in, affection for, and devotion to the overall welfare of the firm's clients.

   - *Exemplified by:* personal engagement through regular communication; asking about ways to reduce clients' unnecessary legal spend.
   - *Violated by:* failing to keep clients informed or respond promptly to inquiries; issuing an invoice containing unexpected fees.

B. *Respect for colleagues:* Treating both lawyers and staff members thoughtfully, professionally, and in a collegial and kindly manner.

- *Exemplified by:* politeness even in stressful situations; sharing credit for good outcomes and accepting responsibility for poor ones.
- *Violated by:* yelling at employees or junior colleagues; fighting for business origination credits beyond what is reasonable.

C. *Service for community:* Contributing valuable time and real efforts to the firm's community service activities.

- *Exemplified by:* donating money to a charity fundraiser proportional to one's means; rolling up one's sleeves to lead a community project.
- *Violated by:* refusing to join a service committee without good cause; unreasonably withholding consent for charitable donation of some firm profits.

D. *Care for oneself:* Paying close attention to maintaining one's physical, mental, and emotional health and seeking assistance when necessary.

- *Exemplified by:* taking every day of one's allotted vacation time; adopting at least one hobby or outside interest to advance one's well-being.
- *Violated by:* relentlessly working nights and weekends without proper rest and recovery; self-inflicting severe amounts of undue criticism.[129]

Not all of these cultural values are easily measured in practical terms, but many of their associated behaviours can be assessed.

- Survey clients about whether they're happy with the level of care they received from a person in the firm.
- Ask colleagues and employees to anonymously assess that person's conduct towards them and others.
- Ask the person to file an annual report detailing his or her community service efforts.

[129] This last factor is a underestimated and under-publicized drain on lawyers' well-being and firms' productivity. Lawyers tend to be highly demanding and critical of others, but they're even more demanding and critical of themselves. Higher than normal rates of divorce, depression, substance abuse, and suicide among members of the legal profession have been well established by countless studies, and can often be traced back to shocking amounts of self-inflicted pressure, criticism, and emotional abuse. Take this issue seriously.

- Retain a trained counsellor to annually assess the health and well-being of all partners and employees.

Your firm's culture is expressed by what actually happens there every day. Decide upfront what kind of culture you want, identify the behaviours that will exemplify and develop that culture, and takes active steps to encourage and measure those behaviours.

2. *Compensation*

You might find it a little odd to see compensation listed under "culture." After all, compensation systems are matters that normally fall within the firm's financial affairs or its business development strategies.

But I contend that culture is the functional result of the collective behaviours that occur within a law firm. If you want to encourage certain behaviours more than others, you need to create incentive systems to achieve that outcome. And there is no incentive system more powerful and deeply embedded within law firm cultures than the financial rewards issued to lawyers for behaving in certain ways.

Among the oldest rules in every company's handbook is: "You get what you pay for." Most law firm compensation systems reward lawyers for two things—billing hours and bringing in business. It should come as absolutely no surprise that lawyers respond to those incentives by devoting as much time and energy as possible to these two activities.

Managing partners sometimes wonder why their firms have difficulty encouraging lawyers to engage in marketing activities, develop project management skills, mentor younger colleagues, volunteer for *pro bono* efforts, or take on various management or leadership duties. The answer, of course, is that few if any of these activities deliver direct financial and career advancement rewards. If anything, most of them reduce the inventory (billable hours) available to lawyers by which they can obtain financial rewards.

Here's a thought experiment to help clarify this point. Suppose that, starting tomorrow, your firm tied half of all lawyers' compensation to the level of satisfaction expressed by clients in the matters on which those lawyers worked. How do you suppose lawyers' behaviours would change?

I think it's a safe bet that lawyers would instantly become more solicitous of clients' happiness. They would check in weekly with the progress of their

files, pay close attention to the quality of their deliverables, and ensure that the fee they generate is reasonably aligned with the value the client feels it's receiving. Contemplate for a moment the probable change in the dynamics of your client relationships: positive or negative? Think about the probable change in your firm's realization and client retention rates: positive or negative? You get what you pay for.

Obviously, bringing in business and generating work product are both important, so of course you want to continue rewarding these outcomes. But equally obviously, there's much more to a successful law firm than that. Your firm's compensation system should also help inspire better:

- client relations, as measured by client satisfaction ratings generated through monthly "checking in" inquiries and post-closing surveys;
- project management, as measured by performance against expectations of legal project timeline and budget targets met;
- legal marketing, as measured by number of leads generated, industry speeches given, blog posts written, etc., compared to those set out in the marketing plan;
- leadership activity, as measured by rotating service on executive committees, management committees, or practice and industry groups;
- recruitment efforts, as measured by carrying out on-campus interviews, associate committee service, and bringing in new partners who stay three or more years; and
- community investment, as measured by *pro bono* work or community activity.

When you create a compensation system that recognizes the multi-dimensional nature of success in a law firm and you use that system to motivate an array of helpful behaviours in due proportion, then you start to build something very different from a traditional law firm. You create a culture in which people's financial rewards are fully aligned with the kinds of activities that satisfy clients, please employees, and enhance your reputation. You build the kind of firm for which people want to work and that clients want to hire.

3. *Diversity*

The business case for diversity in law firms[130] is getting stronger all the time. A number of major corporate law departments have explicitly included the diversity of outside counsel personnel as a key factor in deciding whether and to what extent a given law firm will be engaged.[131] I've heard in-house counsel describe firms that completely ignored client directives regarding diversity and were unceremoniously dropped from the client's panel of firms shortly afterwards. So even if your firm is concerned only with its financial outcomes, there is every reason to make serious efforts to improve its diversity.

The thing is, though, I don't much care for the diversity "business case." It reduces the diversity rationale to a simple matter of money, removing any consideration of social or professional responsibility. It's like paying your kids to clean their rooms. Sure, the task will get done, but the kids won't have learned anything about responsibility, discipline, or contributing their small part to the family unit. They'll have learned to do only that for which they get paid, and when the money dries up, so will their work ethic. If clients stop paying lawyers for diversity, does that mean diversity doesn't matter anymore, and it's okay to go back to ignoring it?

Here's a "strategic case" for law firm diversity. Businesses without diversity are at an inherent competitive disadvantage. When most of your people look the same and come from the same backgrounds, it's likely that they'll all think the same and act the same, too. They'll adopt the same analytic approaches, make the same sorts of assumptions, and reach the same kinds of conclusions. When they meet to compare notes, the groupthink atmosphere will reinforce the built-in strategic biases, and each mem-

Businesses without diversity are at an inherent competitive disadvantage. When most of your people look the same and come from the same backgrounds, it's likely that they'll all think the same and act the same, too.

[130] Diversity means different things in different contexts, but within most law firms, it means increasing the number of, the prominence of, and the availability of leadership opportunities for women, members of visible minorities, physically handicapped persons, and LGBTQ individuals.

[131] "Increasingly Important to Clients, Diversity Efforts Now Need Stronger Commitment from Law Firms," by Gregg Worth, Legal Executive Institute, March 2, 2016: http://legalexecutiveinstitute.com/diversity-efforts-increasingly-important-to-clients-now-need-stronger-commitment-from-law-firms/.

ber of the team will congratulate the other on the brilliance of their insight. You'll have created a culture of privilege—and I don't mean the fun legal kind.

That's the opposite of diversity—that's commonality. And a law firm with a surfeit of commonality lacks any number of essential ingredients to be a great solutions provider: a wealth of perspectives, a broad pool of knowledge, creative dissent, constructive self-doubt, an eye for unanticipated outcomes, and most importantly, an ability to see every angle of the multifaceted challenges clients bring to them. A law firm afflicted with commonality fails to see what its members aren't looking for, and sooner or later, that will prove fatal.

But even this argument, which I think has merit, is still fundamentally self-interested. It promotes diversity as a means to the firm's ends, rather than as an end in itself. The only really valid argument in favour of diversity is that it matters on its own merits and for its own inherent rightness.

Nature is diverse. The natural order of things is to spawn as many variations on a theme as possible and to set them all to work together. People are diverse. Not one of us is exactly like anyone else, and when given the opportunity, we invariably mix and match and swirl together to produce vibrant, cosmopolitan communities. The essential rightness of diversity in everything around us is so obvious that if anything, the burden should lie on making a powerful case *against* it.

Diverse workplaces are good places to be. There's something refreshing, uplifting, and constantly sharpening about a diverse environment. You feel a deeper connection to the real world around you when you're no longer surrounded by the artificiality of sameness. You are never more yourself than when those around you look and think differently from you, because you're challenged to bring your unique background and characteristics into play at all times.

Diversity is good, and its absence in the practice of law is bad for us and bad for the legal system and the broader society we serve. Adopt a policy to advance diversity within your firm, and attach metrics to it so that you can measure its effectiveness over time. Make a commitment to that policy and its outcomes part of your Culture Strategy.

RESPONSIBILITY

Ultimately, the firm's managing partner has responsibility for the development and success of its Culture Strategy. But even the strongest managing partner can't move the yardsticks on this issue without the active involvement of the firm's senior practitioners and its most influential partners. Law firm cultures are only as effective as they are far-reaching and consistently applied. If a junior associate or an experienced secretary sees a powerful rainmaker consistently excused from the same standards that they're expected to meet, the strategy will be rendered immaterial and ineffective—dead on arrival.

Setting and maintaining behavioural standards that advance a Culture Strategy isn't supposed to be a chore, however. It ought to be seen for what it is: a tremendous opportunity to develop a workplace to which people are glad to come every morning and that generates a visible positive difference in the way a firm treats its clients and others. Why would you *not* want to achieve that kind of spectacular outcome?

Chapter 13

THE NEW ROLE OF LAWYERS IN LAW FIRMS

Back in Chapter 5, we talked about the "post-lawyer law firm," the gradual diminishment of lawyers' presence and functions in the future law firm. But diminishment, as we discussed, is not disappearance. We're quite some distance away from a lawyer-free law firm, and I have no particular interest in hastening its arrival. I think it's both desirable and inevitable that law firms continue to include a reasonably robust number of lawyers within their ranks.

The question, then, is not whether a law firm should have lawyers, but what role those lawyers should play.

In traditional law firms, practicing lawyers fell into two camps: partners and associates. Partners owned the firm and shared in its profits. Associates were employees who hoped someday to join the ownership ranks and who laboured in the meantime to provide leveraged profits for the partners. Neither of these roles is any longer what it once was or still purports to be, and I strongly suspect that neither has much of a long-term future in law firms. We're going to have to rethink the purpose lawyers serve in law firms, and we'll need to think outside the narrow confines of "associate" and "partner" to do it.

ASSOCIATE MYTH AND REALITY

Myths die hard. One of the most enduring myths in law firms is the prospect of a wise senior partner taking a young protégé in hand and steeping the associate not only in the practice of law, but in the service of clients and the ways of professionalism. There were once more than enough real-life examples of this dynamic, and there are still a few here and there today, to ground that myth and burnish its attractiveness. But that's not how it usually works anymore.

There are only two reasons why a law firm employs associate lawyers: to breed future partners and leaders, and to provide leveraged labour.

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The first reason, if we're being honest, was always something of a bait-and-switch offer to new lawyers. Only a small fraction of a firm's first-year associates ever make it to the partnership ranks. This isn't an unfortunate side effect of the associate system, but rather, one of its core features. A high level of attrition makes the traditional law firm pyramid structure possible. Most associates, in fact, are specifically hired *not* to be future partners. If they have any role to play, it's to provide competition to the ones who will.

In any event, this rationale for hiring associates is not especially compelling to many law firms these days. Most firms are putting the brakes on admitting senior associates into the partnership, on the grounds that when the pie of available profit is shrinking, the last thing you want to do is put out more place settings.[132] The only potential partners who are currently proving attractive to many law firms are experienced ones at other firms who can be poached and brought on board with their books of business.[133] Beyond that, many firms continue to "de-equitize" the "underperforming" partners they already have.[134] Promoting promising talent from the minor leagues is no longer a priority for most law firms.

The second reason to employ associates is far more important. Law firms long ago developed a "tournament system"[135] that eliminated by attrition 80 to 90 percent of an associate class over a period of several years. Dur-

[132] "Too Many Lawyers? Report Faults Firms for Resisting Layoffs," *The American Lawyer,* May 18, 2016: http://www.americanlawyer.com/id=1202758021650/Too-Many-Lawyers-Report-Faults-Firms-for-Resisting-Layoffs.

[133] See generally, "Chasing Lateral Growth, Big Law Leaders Lose Their Way," by Steven J. Harper, *The American Lawyer,* Feb. 5, 2016: http://www.americanlawyer.com/id=1202748979822/Chasing-Lateral-Growth-Big-Law-Leaders-Lose-Their-Way.

[134] The quotation marks express my skepticism about those two terms. I wrote about these issues in "What 'Overcapacity' Really Means" for the *Edge International Review* in Fall 2013: http://www.jdsupra.com/legalnews/what-overcapacity-really-means-jordan-72488/.

[135] "The Elastic Tournament: The Second Transformation of the Big Law Firm," By Prof. William Henderson and Prof. Marc Galanter, Articles by Maurer Faculty, 2008: http://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1118&context=facpub.

ing this period, all the associates churned out incredible amounts of billable work that fueled the firm's profitability engine. That function, if we're being honest with ourselves, has become the overriding *raison d'être* for associates in law firms.

But throughout the last five to ten years, even this rationale for employing associates has weakened dramatically. First, work gradually began moving off the desks of junior associates, largely because clients no longer trusted the competence of those associates and resisted paying (or refused to pay) their billed hours.[136] Some of that work found its way to "non-equity partners,"[137] superannuated associates whom the firm could bill out at partner rates, and to equity partners themselves, who needed the hours to support their own billing targets. Associate leverage, which was once 3:1 or even 4:1 in most large firms, fell to 1:1 or even less in many places.[138]

Then, as the post-crisis economic situation became bleaker and the mood of the legal market darkened, the supply of associate-level work dropped significantly. Law departments began insourcing straightforward legal work,[139] tired of paying a 50 percent premium[140] for the efforts of law firm lawyers. Layoffs and hiring freezes at many law firms, occurring both in the immediate aftermath of the financial crisis and during the malaise that followed, contributed to a growing pool of unemployed and under-employed young lawyers and recent law graduates.

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[136] "Clients Won't Pay For What Law Schools Churn Out," by Elie Mystal, Above The Law, Oct. 17, 2011: http://abovethelaw.com/2011/10/clients-wont-pay-for-what-law-schools-churn-out/.

[137] There were no such people as non-equity partners in law firms 10 or 15 years ago, and I doubt there'll be any such people five to ten years from now. It was only a jury-rigged patch over the gaping wound in law firms' professional development and revenue generation systems. See: "When is a partner not a partner?" by Edwin Reeser, Beaton Capital blog, July 8, 2015: http://www.beatoncapital.com/2015/07/when-is-a-partner-not-a-partner/.

[138] "Low leverage: A low road to ruin for law firms?" by Sean Larkan, *Edge International Review,* Fall 2011: http://www.legalleadersblog.com/files/2011/10/Edge-International-Review-October-2011-Low-leverage-low-road-to-ruin-by-Sean-Larkan.pdf.

[139] "Companies shift legal spending in-house as more embrace 'in-sourcing,'" by Debra Cassens Weiss, *ABA Journal,* Sept. 15, 2014: http://www.abajournal.com/news/article/companies_shift_legal_spending_in_house_as_more_embrace_in_sourcing.

[140] "Law Firm Competition: Buyers Become a New Entrant," by Frank Strong, LexisNexis Business of Law, Nov. 4, 2015: http://businessoflawblog.com/2015/11/law-firm-competition/.

THE OUTSOURCED ASSOCIATE

All these developments helped create those temporary and flex-time lawyer agencies we discussed back in Chapter 3, which now employ lawyers to offer traditional "associate" services at significantly lower rates than the firms charged. The tasks that belonged to what were once called "associate positions" in law firms increasingly are being provided by flex-lawyer companies like Axiom and LPOs like United Lex.

As we've seen, that short-term contract and temp-lawyer population has blossomed into a long-term project and flex-work legal talent market, into which law firms themselves are now dipping. More than half of the firms surveyed by Altman Weil in 2016 reported that they're using part-time and contract lawyers to meet demand, including 75 percent of firms with 250 or more lawyers.[141] Also as we discussed in Chapter 3, several large law firms around the world have established their own flex-time, contract, or project lawyer divisions. Essentially, law firms are outsourcing a growing amount of their "associate work" to freelance lawyers and saving themselves pension, benefit, management, training, and overhead costs in the process.

And it increasingly appears that whatever hasn't been outsourced will soon be automated. In a 2015 survey, 35 percent of law firm leaders said they could envision replacing first-year associates with law-focused computer intelligence within the next five to ten years.[142] In 2016, Deloitte estimated that 100,000 legal roles could be automated in the next 20 years.[143] Those productivity engines we discussed in Chapter 5 are great for clients and potentially great for law firms that employ them; but they're something less than great for the future prospects of well-paid associate positions in those firms.

All of this, by the way, helps explain the stubbornly high levels of unemployment experienced by law school graduates over the past several years, numbers that have mostly held steady despite an historic drop in the

[141] "Law Firms in Transition 2016: An Altman Weil Flash Survey," http://www.altmanweil.com/LFiT2016/.

[142] "Computer vs. Lawyer? Many Firm Leaders Expect Computers to Win," by Julie Triedman, *The American Lawyer,* Oct. 24, 2015: http://www.americanlawyer.com/id=1202740662236.

[143] "Deloitte Insight: Over 100,000 legal roles to be automated," *Legal IT Insider*, March 16, 2016: http://www.legaltechnology.com/latest-news/deloitte-insight-100000-legal-roles-to-be-automated/. In this respect, law is simply experiencing the same job squeeze that many other industries have gone through. Thousands of North American manufacturing jobs that have been automated out of existence simply aren't coming back.

number of law school applications.[144] Associate hiring among the 350 largest U.S. law firms flattened out in 2014,[145] while "MidLaw" firms of 11–100 lawyers rarely hire new lawyers at all.[146] The number of salaried positions offered by law firms for lawyers in their first few years of practice is at a standstill, and it's inevitable that these numbers are going to start sliding backwards very soon.

What we're experiencing here is the accelerating diminishment of the law firm associate. Firms are no longer sifting through each year's graduating law classes searching for raw sources of leveragable labour with high GPAs. Instead, firms are joining other businesses in other industries and starting to get much of their leverage from software and systems, rather than from humans.

THE OBSOLETE ASSOCIATE

What all this amounts to is that as a class of lawyers within law firms, associates are becoming obsolete. There's just not going to be much need for them anymore. That represents a profound shift in the nature of law firms and legal work, and as it continues to unfold over the next several years, it will have equally profound effects throughout the legal market.

- Law firms' new lawyer classes will become permanently smaller, as firms focus on fewer candidates and conduct more intensive assessments to see which of them will become future rainmakers and practice leaders.
- Law firms will no longer be the career launching pad for so many new lawyers as they've been in the past, meaning other entry-level lawyer platforms will have to emerge (and competence training will become a more acute need).
- Law schools will reconfigure their curricula to produce fewer general-purpose plug-and-play law firm associates (which is what the current

[144] "Employment data for 2015 law school grads is concerning, some law profs say," by Stephanie Francis Ward, *ABA Journal,* May 3, 2016: http://www.abajournal.com/news/article/employment_data_for_2015_law_school_grads_released_by_aba_legal_ed.

[145] "Associate Hiring Stood Still at Firms Last Year" by Karen Sloan, *National Law Journal,* June 8, 2015: http://www.nationallawjournal.com/id=1202728560553/Associate-Hiring-Stood-Still-at-Firms-Last-Year.

[146] "Back In The Race: Midlaw Does Not (Usually) Hire Newbie Lawyers," by Shannon Achimalbe, Above The Law, June 29, 2016: http://abovethelaw.com/2016/06/back-in-the-race-midlaw-does-not-usually-hire-newbie-lawyers/?rf=1.

system is geared to produce) and more lawyers ready to provide value through technology, process, and analytics skills.

I have a hard time seeing how law firms will ever return to the days when associates outnumbered partners and served as the primary source of leveraged revenue generation. The original strategic purposes and business functions of the law firm associate don't really fit this market anymore. The longer that law firms continue to think of associates as a hard-wired necessity in their business model, the longer it will take them to adjust their assumptions to market realities and begin to address the purpose and future of this role.

This challenge should be occupying law firms' attention, but for the most part, it isn't. Possibly this is because partners are noticing a similar dynamic poised to act upon their own position.

THE EVOLVING PARTNER

I don't mean to sound nostalgic for an era that I didn't experience (and probably wouldn't have much enjoyed if I had). But I do think "partnership" used to mean something more substantial and sincere in law firms than it does today.

Go back 35 or 40 years, when most full-service law firms were smaller and more collegial workplaces than they are now—maybe several dozen lawyers who knew each other personally and worked long hours together in close quarters. Some of those lawyers owned the firm, and they ran it not as a purely commercial concern so much as a quasi-family business with a multi-generational arc and a sense of shared obligation. To be sure, plenty of those partners also treated clients indifferently, created hostile working environments, and raised barriers to entry against women and members of visible minorities. But whatever their other merits or demerits, the partners themselves generally took the term, and the interpersonal bonds it implied, seriously.

As well they might. "Partner" is a powerful word. Think of the contexts in which it's used in daily life: "domestic partner," "dance partner," "tennis partner," "life partner." These examples suggest inter-dependency, the coordination of intricate movements, a shared commitment to a common goal, and a level of familiarity bordering on intimacy. Above all, partnership im-

plies trust, and trust requires mutual knowledge, respect, benefit, and reliance: a joint decision to travel together towards the same destination.

At many smaller firms, where the partnership can still meet comfortably around a boardroom table and gather together for backyard barbecues, the old meaning and values of partnership are preserved. But most larger law firms are "partnerships" only in the purest legal sense. In both practical and philosophical terms, these firms are not partnerships, and these lawyers are not really each other's "partners." There are a number of reasons why this has come about.

Most larger law firms are "partnerships" only in the purest legal sense. In both practical and philosophical terms, these firms are not partnerships, and these lawyers are not really each other's "partners."

- *The size of law firms.* Today's midsize and large firms have scores of partners, if not hundreds and occasionally thousands, located in different parts of the country or the world. Most partners in these firms will meet just a small percentage of their colleagues, deal with a tinier fraction on a regular basis, and develop close working relationships with only the merest handful. To pretend that a lawyer in another jurisdiction, working in a different practice area with different clients, and sharing few of your personal and professional interests, is your "partner" is to stretch the word well beyond its original meaning.
- *The range of partner income.* Even in the most sepia-toned law firms of the past, some partners were more equal than others, in terms of internal status and earning power. But lockstep compensation plans ensured that the proceeds of the firm's efforts were divided more or less evenly. Today, in the average AmLaw 200 firm, the highest-earning partner receives more than nine times as much money as the lowest-earning partner; at some firms, spreads of 15:1 or 20:1 are not unknown.[147] In firms like these, the lower-earning partners are actually supplementing the incomes of the highest-earning. Effectively, they are being leveraged like associates.[148]

[147] "The Haves And The Have-Mores: Partner Pay Spreads At Leading Law Firms," by David Lat, Above The Law, July 7, 2014: http://abovethelaw.com/2014/07/the-haves-and-the-have-mores-partner-pay-spreads-at-leading-law-firms/.

[148] "Partner Development, Compensation and Soylent Green," by Edwin Reeser, JD Supra Business Advisor, Jan. 24, 2015: http://www.jdsupra.com/legalnews/partner-development-compensation-and-so-00406/.

- *The absence of loyalty.* Two trends have emerged over the last decade or so that genuinely would have shocked partners in 20th-century firms. One is the frequency with which law firm partners are de-equitized, principally for failing to meet revenue and business generation targets; that outcome was traditionally reserved for the rare situations in which a partner had engaged in some personal or ethical misconduct. The other, not-unrelated trend is the ubiquity of partner mobility, as partners with attractive business profiles routinely leave firms to seek better financial arrangements—or to quit before they're fired. "Partnership for life" is now a quaint and naïve notion; but not that long ago, it was a foundational element of the best law firms.

There are a lot of terms you could use to describe the status of equity-owning lawyers in our current law firm environment. But I think "partner" is now an unhelpful and misleading one, and we're soon going to need another choice of words. To figure out what such other terms might be, we need to go back and look closely at the entire rationale for partners in law firms.

PARTNER MYTH AND REALITY

Why do law firms even *have* partners? What's the value proposition that the role of partner offers, both to the firms that create this position and to the lawyers who fill it? All law firms believe they ought to have partners, and many lawyers believe they ought to become partners. Why is that?

Well, there's only one reason why law firms have ever sought out partners, and I'll get to that reason shortly. But equally, there's really only one reason why lawyers have ever wanted equity partnership in law firms. Lawyers seek law firm partnership, if I may be blunt about it, because they want power. And partnership has long promised lawyers power, in several dimensions:

- The power of control over your own work—to be the assignor rather than the assignee of files, which usually means pushing down the dull stuff and keeping the best and most lucrative, high-client-contact work for yourself.

- The power of influence over the firm's direction and strategy—theoretically so that you could guide the firm's development, but also certainly to create an environment more conducive to your own satisfaction and career advancement.
- The power of prestige—being able to hand out that little white business card with the raised-type gold-leaf "Partner" to your family, your friends, and especially that one law school classmate who was always such a tool.

And of course,

- The power of money—because let's face it, the profitability of many law firms throughout the last few decades has reached levels so astonishing that an entire generation of associates has expended extraordinary effort just for the chance to access it.

Lawyers, like most people, love control, influence, status, and money. Partnership has always offered the keys to each of those kingdoms, and it has always delivered on that offer. Or at least, it used to.

Associates have their myths, and partners have theirs. The reality that greets most lawyers upon accession to partnership is a little different. Partners still have all the billable-hour requirements of associateship, but now they're also responsible for bringing in new business, getting more hours out of their subordinates, and taking on myriad unpaid management roles. And unless they're part of the firm's tight inner circle of leadership, they have little practical input into strategy or direction. They're informed of the firm's changes, not consulted on them. They might as well still be associates.

What's worse, however, is that rather than bestowing power and control on a lawyer, partnership in a law firm actually *reduces* a lawyer's autonomy, binding him tighter to his firm and narrowing his options. The capital contribution he made to secure his admission to partnership immediately disappeared into the firm's operating account, and the odds are good that he'll never see it again.[149] If he tries to leave the partnership, his signing bonuses

[149] "Sorry, partner, your capital cash is gone—but where?" by Edwin Reeser, *ABA Journal,* Feb. 22, 2016: http://www.abajournal.com/legalrebels/article/sorry_partner_your_capital_cash_is_gone_but_where.

could be clawed back[150] and any return of his capital could be strung out over several years to discourage his departure.[151] For many law firm partners, the brass ring has transformed into a pair of handcuffs.

I don't think this is all down to avarice on the part of senior law firm lawyers (although avarice does seem to occupy the co-pilot's seat in quite a number of firms). What this really suggests to me is that the partnership model for large law firms has run its course. The operational, cultural, and ethical contortions through which many law firms have put themselves in order to maintain the benefits of the partnership system should tell us that that system doesn't work well anymore.

This is becoming clearer to potential law firm partners every day. It's probably just as well that law firms are promoting fewer associates to partnership than in the past, because fewer associates are interested in becoming partners. As partner cohorts get older and thinner, and as the eventual day of reckoning draws closer,[152] the payload of risk that partner status represents grows ever larger. Many firms today seem to be run as if they expect to wind down operations and cash out their equity shareholders in about five years' time, leaving leadership voids and unfunded retirement plans[153] behind them. If your name is on an equity partnership agreement at one of these firms, you do not want to be the last one left to turn out the lights.

Partner status, in short, is looking more like a burden than a blessing for a lot of lawyers. Many firms will accordingly find that when older partners do eventually retire, their positions won't always be replaced and the partnership ranks won't be fully replenished. That is a serious problem for law firms, for one reason above all—and that reason is the answer to the other question I raised a few pages back, when I asked why law firms even seek out partners.

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[150] "Firms Increasingly Making Partners Pay to Leave," by Roy Strom, Gina Passarella, and Christine Simmons, law.com, June 6, 2016: http://www.law.com/sites/almstaff/2016/06/06/firms-increasingly-making-partners-pay-to-leave/.

[151] "Firms raise partners' contributions, delay payback," by Richard Acello, *ABA Journal,* May 1, 2014: http://www.abajournal.com/magazine/article/firms_raise_partners_contributions_delay_payback/.

[152] "Your Boomer Partners are Retiring. Is Your Firm Ready?" by Aric Press, *The American Lawyer,* May 13, 2014: http://www.americanlawyer.com/id=1202651709860/Your-Boomer-Partners-are-Retiring.-Is-Your-Firm-Ready.

[153] "Next Pension Clash: Law Firms," by Jennifer Smith, *The Wall Street Journal,* Mar. 5, 2012: http://www.wsj.com/articles/SB10001424052970204571404577258082978298056.

Law firms seek out partners because they need capital.

THE WHY OF PARTNERSHIP

The defining characteristic of equity partnership in a law firm is "equity." Regulations in every common-law jurisdiction (except Australia, England and Wales, and the District of Columbia) are adamant that only lawyers may hold any equity in law firms. I sometimes suspect that at least a few law firms have made and continue to make partners of some lawyers not because of the lawyers' intrinsic merit, but because the firms need the money. Law firms need lawyers to invest their own money simply so that the firm can carry on business.

So what happens when you start running short on equity partners? You start running short on equity, and that's a problem. Law firms can incur debt from banks to help maintain operations, sure, but no bank will lend to a firm without sufficient capital of its own. Borrow from future accounts receivable? That's a very dangerous game. Dip into the trust fund? I hope you enjoy your disbarment hearing. Nothing can really replace cold, hard capital, and firms are slowly losing access to their sole source of it.

By an ironic confluence of events, moreover, law firms are starting to hurt for capital right at the time when they need capital more than ever—when their market positions are coming under threat from staggeringly well-financed competitors.

Law firms are starting to hurt for capital right at the time when they need capital more than ever.

Remember the growing army of alternative platforms and rival providers we talked about in Chapters 2 and 3? Many of them will bring to the table financial resources an order of magnitude beyond what lawyer-only equity can provide. The gross revenue of the entire AmLaw 100 in 2015 was $83.1 billion;[154] the Big 4 accounting firms' revenue that same year was $123.5 billion.[155] Throw in legal technology providers financed by co-

[154] "The 2016 Am Law 100: Trouble Ahead?" by David Lat, Above The Law, April 26, 2016: http://abovethelaw.com/2016/04/the-2016-am-law-100-trouble-ahead/.

[155] "Revenue of the Big Four accounting / audit firms worldwide in 2015," chart produced by Statista: https://www.statista.com/statistics/250479/big-four-accounting-firms-global-revenue/.

lossal Silicon Valley venture funds and the still-distant but inevitable entry into law of corporate giants like Google and Amazon. Law firms, as currently structured and financed, are going to be massively outgunned in the coming market, just as their sole source of capital with which to fund competitive efforts starts dwindling.

And that, among other reasons, is what's going to finally change the legal profession's rules around "non-lawyer" ownership of law firms. Today, lawyers and bar groups are doing everything they can to oppose the legalization of "non-lawyer" law firm ownership.[156] Within ten years' time, they'll be the ones leading the effort to authorize it, simply in order to level the playing field and keep lawyers and law firms alive in a marketplace full of richly financed providers. The days when lawyer capital constituted the sole permissible type of law firm equity are drawing to a close.

THE FUTURE OF "PARTNERS"

Soon enough, law firms will have alternative sources for capital other than lawyers. But by that time, an entire generation of lawyers will have been raised to view the position of equity partner with a certain skepticism and even suspicion. No longer the firm's sole provider of equity, no longer the automatic ambition of young practitioners, no longer the promised land of power and profits—what will the whole point of a "partner" be?

It seems to me that when we use the term "partner," what we're really trying to express is the idea that a particular person is really important—maybe singularly essential—to a law firm's success. This is a person whose contributions to the firm are so valuable and powerful, so difficult to replicate or so specific to this firm, as to border on irreplaceable.[157] What kinds of contributions are we talking about? For myself, I can think of exactly three.

1. The person directly generates and maintains an exceptional amount of business for the firm.
2. The person is an exceptional developer and manager of the firm's people and/or its processes, amplifying the effectiveness of the firm's resources.

[156] "The Debate Over Non-Lawyer Firm Ownership Is Officially Closed, For Now," by Blake Edwards, Bloomberg Business of Law, May 17, 2016: https://bol.bna.com/the-debate-over-non-lawyer-firm-ownership-is-officially-closed-for-now/.

[157] Note that this requirement need not be exclusive to lawyers—and in the future, it won't be.

3. The person possesses exceptional legal skills that deliver tremendous value to clients and represent a real competitive advantage in the firm's markets.

Exceptional (not simply run-of-the-mill, but top-of-the-charts) business generation and maintenance abilities, personnel and procedural management skills, and legal expertise: The people who possess these characteristics are the people you need to keep around. Put differently, if your assistant rushes in one morning to say that a member of your firm has just announced they're leaving, these are the people whose names you pray you won't hear next. These are the people you see when you envision your firm's "partners."

Firms will eventually find some other title—"director," "principal," and "stakeholder" all seem like reasonable choices—to identify these people. They are a law firm's most important members, regardless of their seniority, their connections, or whether or not they own a law degree. You should take a hard look at your firm's personnel today—both those in the current partnership ranks and those who are not—and ask yourself: Who *really* fits one or more of these three definitions? Who can we simply not afford to lose? Those are the people around whom you should be building your new and better law firm.

NEW CATEGORIES, OR MAYBE NO CATEGORIES

"Partner" and "associate" were perfectly adequate terms to describe the two classes of lawyers in 20th-century law firms. Neither of these categories fits easily or functions well in 21st-century law firms and the new market in which those firms will compete. More categories of key personnel—in management, marketing, professional development, technology, knowledge, pricing, process, procurement, customer service, and more—will be needed. Neither these people nor the firm's financiers will require a law degree.

I suspect that law firms, over time, will come to dissolve the arbitrary distinctions between "partners" and "associates," and will instead focus on the recruitment, development, retention, and best use of really valuable people (lawyers and "non-lawyers" both), at various stages throughout their careers, who can produce good outcomes for clients and enhance the value of the firm today and down the road.

But more importantly, firms will eventually recognize that "partner" and "associate" are words that no longer convey much meaning, either internally or externally, when it comes to their lawyers. The important step will be for firms to shake themselves free of the legacy burdens of these old job descriptions and to start re-visualizing the myriad ways in which lawyers, regardless of their capacity and experience, can add real value to the firms and their clients. That's the structural and organizational reality for which your firm should start preparing now.

Chapter 14

CHANGE MANAGEMENT AND LEADERSHIP IN LAW FIRMS

"So let's see if I've got this straight," you might be saying right about now. "You want me to take my large, sprawling, multi-million-dollar professional services enterprise, populated by—what was it?—'intense, critical, and easily frustrated short-term thinkers who don't like dealing with other people or taking direction from them'—and completely overhaul its purpose, markets, clients, strategies, competitiveness, culture, and lawyer categorization. Is that about right?"

Well…yes.

I know this is a lot to ask. Simply running a law firm is a tremendous challenge; changing a law firm can be an undertaking of Kiliminjaro-esque proportions. And most books of this type are "merely" advocating tactical changes to things like compensation and business development within an agreed-upon existing law firm framework, which is hard enough. I'm advocating a full reconsideration and re-engineering of the fundamentals upon which your law firm is based—as well as all those tactical changes. Why don't I put in an order for the Moon while I'm at it?

And yet, I wouldn't ask all this if I didn't believe it were truly necessary. My foundational premise is that the baseline rules of the legal market are undergoing a transformation, and that the traditional law firm is simply not conceived and structured in ways that allow it to compete successfully in that market. I spent the first five chapters laying out my case for that argument and the next eight describing the features of a new, adaptive, fit-for-purpose law firm for the 21st century. You might be persuaded by all of that, or you might not, and that's your call.

But even if you're persuaded by my diagnosis, the remedies I've laid out might seem too daunting. If you were launching a brand-new law firm with a small band of fellow travelers and similar thinkers, the foregoing prescriptions would sound like a fun and creative way to begin your venture.

Equally, if you were introducing an early course correction into a recently launched firm that hadn't yet accumulated too much organizational inertia, then my suggestions might seem challenging, but still doable.

If you're in the other 95 percent of law firms, however, I feel your trepidation. And I don't see much point in pretending that change initiatives on the scale I'm describing have a roaring track record of success. Never mind law firms; in organizations of all kinds, as many as 70 percent of change initiatives never meet their target.[158] So we need to go into this with our eyes wide open.

I want to recommend a clear-eyed acceptance of the reality of difficult, challenging, and necessary change.

But you know what? At least 30 percent of change initiatives *do* meet their target. And there are several large law firms, highlighted throughout this book, that have grasped this bull by the horns and are slowly but surely wrestling it to the ground. I want to advise neither blind optimism nor defeatist pessimism when considering what lies in front of us. Rather, I want to recommend a clear-eyed acceptance of the reality of difficult, challenging, and necessary change.

In this chapter, I'd like to explain just why change is so hard for everyone (but especially for lawyers), and how you can begin the process of making your firm more change-friendly than it probably is. I want to examine the role that clients can play in encouraging change within your firm, outline the basic elements of a change management process, and finally, discuss the critically important role that leadership plays in this whole matter.

CHANGE IS HARD. REALLY HARD.

"How can I get my lawyers to change?" This might be the question most frequently posed by practice group leaders, managing partners, and law firm CEOs who are trying to help their organizations adapt to the new marketplace but who become frustrated by the fierce resistance they encounter. The source of this frustration, of course, is lawyers' unwillingness either to

[158] According to "Cracking the Code of Change," by Nitin Nohria and Michael Beer, *Harvard Business Review,* May-June 2000: https://hbr.org/2000/05/cracking-the-code-of-change. But see contra: "70% of change projects fail: Bollocks!" by Jen Frahm, Conversations of Change, Sept. 2, 2013: http://conversationsofchange.com.au/70-of-change-projects-fail-bollocks1/.

recognize the need for adaptation or, if they do recognize it, to change how they go about their work. So it's not surprising that law firm leaders are constantly looking for the key to unlock this resistance.

The bad news I have to give these leaders is that they *can't* make their lawyers change. Really, you can't *make* people do anything, short of a court order or post-hypnotic suggestion. Lawyers, just like everyone else, will change their beliefs, habits, and practices only if they decide, on their own, that they want to. The single distinguishing feature between the lawyers who accept the case for change and those who don't is that the latter group doesn't feel like it.

Over the past several years, I've given a lot of presentations to a lot of lawyers. Each time, I lay out my case that adaptation to changing market circumstances is crucial to law firms' future success. Within the first ten minutes, looking out into the audience, I can see two groups of lawyers emerge by noting their facial expressions and body language. Eyes open, leaning forward, taking notes: These lawyers *want* to listen, and so they do, and they get it. Looking down, leaning back, fiddling with their smartphones: These lawyers don't want to listen, and so they don't, and they don't get it.[159]

In all fairness to lawyers, however, change is hard for everyone. Extensive studies in behavioural psychology and economics have demonstrated the remarkable degree to which instinct and intuition, rather than intellect, affect human decisions. Daniel Kahneman's landmark book *Thinking, Fast and Slow*[160] presents proof after proof that subconscious preferences and split-second reactions exercise a disconcerting amount of influence over our activities. Most unsettling is Kahneman's observation that, having made an instinctive and irrational choice, most people will immediately come up with a reasonable-sounding yet completely fictitious rationalization that "explains" why they did what they did. We can't even tell our own reasoned choices from our instinctive ones.

For our purposes, there are two especially important examples of these sorts of tendencies hardwired into the human mind: the endowment effect and the *status quo* bias.

[159] The first group, I'm happy to say, is consistently the much larger one, something I attribute not to my own dazzling stage presence, but to the fact that members of these audiences come ready and eager to hear something new and potentially helpful to them.

[160] *Thinking, Fast and Slow,* by Daniel Kahneman: 2013, Farrar, Straus and Giroux.

- The endowment effect causes people to value something more highly simply because they already own it—for example, experimental subjects who were given coffee mugs, and then asked to name a selling price for them, set an amount twice as high as other subjects who were asked to buy exactly the same mug.
- The *status quo* bias causes us to naturally prefer things as they are, rather than as they might be—probably linked to the human tendency to fear a loss more than enjoy an equivalent gain and to place a higher value on what we could lose than on what we could acquire.[161]

What it comes down to is that most people can't respond to change rationally, using a cost-benefit, balance-of-probabilities approach. They will feel a strong attachment to what they currently possess and will automatically discount and distrust anything offered in its place. And they will fear the risk of loss far more than they will hope for a reward.

LAWYERS VS. CHANGE

Now, take that immensely challenging scenario for change management in any setting, and multiply it by the legal profession we all know and love.

- Lawyers display unusual levels of skepticism, place a high value on personal autonomy, and rely heavily on precedent.[162] These are not the attributes of carefree, happy-go-lucky individuals.
- Most lawyers love to argue and will happily engage in a wide-ranging debate with you concerning whether the need for change actually exists and whether the proposed responses to change are reasonable and proportional.
- Lawyers, as we've discussed, are trained to distinguish—to draw distinctions between the circumstances you propose and their own circumstances. "You might be correct about the trends you detect, but they simply don't apply to my situation."

What law firm leaders quickly come to realize is that if a lawyer doesn't want to deal with something, he or she has an endless supply of tactics to help accomplish that. It's not like talking to a brick wall—it's worse. The

[161] "*Status quo* anxiety," by James Suroweicki, *The New Yorker*, Aug. 31, 2009: http://www.newyorker.com/magazine/2009/08/31/status-quo-anxiety.

[162] Dr. Larry Richard, footnote 122.

wall won't question the fundamental premises of your argument or shift the subject onto stronger nearby ground. Arguing with a lawyer activates his or her primal instinct: Lawyers *hate* to lose. In the result, even if you somehow win the argument, you lose the person.

So it's not surprising that most lawyers have greeted all these changes in the legal market, many of which have operated to the detriment of incumbent service providers, with something less than full-blown enthusiasm. Many lawyers are frustrated and bewildered by the state of their firms or practices. They can't understand why there's less business coming in and fewer profits to be made when they've done nothing wrong to cause it. Cheerfully explaining that all these changes merely reflect the restoration of equilibrium to a fundamentally unbalanced market, and represent an advancement in the best long-term interests of society, won't win you many friends or influence many people.

LAWYERS *AND* CHANGE

But we're not going to just give up this battle without even firing a shot. Yes, lawyers are skeptical, critical, change-resistant, and all the other things we've talked about. But lawyers are also intelligent, inquisitive, creative, and competitive, and these are four traits essential to successfully navigating a process of change. Lawyers understand the notion of tactical advantage better than almost any other group of professionals, and the tactical advantages of adapting to new circumstances ahead of anyone else will appeal to lawyers in a way that can play to your benefit.

Don't underestimate the power of a professional ego, either. Remind your lawyers that incumbents in other professions have learned to roll with major change in their working environments and have made the best of it. Doctors might have been threatened by the emergence of other health-care professionals; accountants might have been put out of business by tax preparation software. Instead, doctors and accountants now devote themselves only to the most complex and high-value engagements, letting other technicians and software programs occupy less critical fields. Are we really going to let doctors and accountants beat us on this?

And one more thing. Every lawyer I know, without exception, is a hard worker. In fact, the most common response I see lawyers make to market change is to redouble their efforts, working harder and longer hours in

hopes of catching up with dwindling revenue. Many lawyers won't hesitate to push themselves and those around them to stay later at the office, grind out more hours, and make more calls to develop new business. You want to harness that energy and work ethic, but you need to channel it away from "must push myself harder" and towards "must adapt faster than anyone else."

Lawyers are smart, sophisticated, hard-working professionals, and if we give them the knowledge and the tools to get better at what they do in dimensions they've not previously realized, I think many will grab the opportunity and make the most of it. If you're leading or managing a law firm, you can start providing this knowledge and these tools right now.

- You can recruit and retain lawyers who display higher levels of resilience and entrepreneurialism than average through psychological profiles of potential new hires.[163]
- You can emphasize leadership development and relationship building in your in-house professional development programs, or contract with outside professionals to do the job.[164]
- You can bring in risk assessment specialists from universities or consultancies to give lawyers the data and methodologies they need to improve their apprehension of, and relationship to, risk.[165]

Work *with,* not against, the essential characteristics of your lawyers. Everything will go a lot more smoothly.

CHANGE AND THE HIGH-TRUST ENVIRONMENT

Engaging with your lawyers on their terms is the battle well started. The next step, a critically important one, is to start creating the conditions within your law firm to make it more amenable to the change process. The bad

[163] "Deviations From The Norm: The Lawyer 'Type' And Legal Hiring," by Brian Dalton, Above The Law, May 20, 2014: http://abovethelaw.com/2014/05/deviations-from-the-norm-the-lawyer-type-and-legal-hiring/.

[164] "Learning to Lead – Creating A Leadership Development Program for Your Law Firm," by Susan Manch, ABA *Law Practice*, May-June 2011: http://www.americanbar.org/publications/law_practice_magazine/2011/may_june/creating_a_leadership_development_program_for_your_law_firm.html.

[165] "Risk Management: A Systematic Approach for Law Firms," by Malcolm Mercer, ABA *Law Practice*, July-August 2010: http://www.americanbar.org/publications/law_practice_home/law_practice_archive/lpm_magazine_articles_v36_is4_pg46.html.

news is that whatever steps you've taken in the past to encourage change in your firm probably haven't worked. The good news is that nobody else has had much success with those steps either.

In a seminal 2013 article,[166] Atul Gawande explored the spread of innovative ideas within organizations and communities and identified both the least and the most effective ways to encourage the adoption of these ideas. Chief among the ineffective means that Gawande identified are:

1. *Politeness.* You ask people nicely to do things differently. But only some respond, and not consistently, and the whole process collapses if the kindness of others is absent or withdrawn.
2. *Force.* You punish people for failing to do things differently. But if the threat of force outweighs the rewards of the job (or if people have other options), they'll quit rather than risk the penalty.
3. *Incentives.* You provide money or other rewards to motivate people to do things differently. But money's impact is short-term and rarely generates behavioural changes in creative, knowledge-working environments.

I'm pretty sure that politeness, force, and incentives constitute 95 percent of the methods used in law firms to try to effect change.[167] But asking lawyers nicely to change the way they do business has not been a roaring success to date; lawyers threatened with penalties take their books of business across the street to rival firms; and creating financial incentives to affect lawyer behaviour would require—wait for it—changing the compensation system, and that brings us right back where we started.

Asking lawyers nicely to change the way they do business has not been a roaring success to date.

There is, however, a far more effective way identified by Gawande to bring about change in an organization or community—although for

[166] "Slow ideas," by Atul Gawande, *The New Yorker,* July 29, 2013: http://www.newyorker.com/magazine/2013/07/29/slow-ideas.

[167] The other five percent amounts to "Wait until the problem goes away or the lawyer who's causing the problem retires." Which, come to think of it, might actually be an underrated change management tool in law firms: change through attrition. Richard Susskind once wisely noted: "It's difficult to tell a roomful of millionaires that their business model is wrong." One solution to that problem might be: "Then let's wait for the millionaires to leave the room."

some lawyers, it might actually be a more difficult route than any of the previous three.

LET'S TALK

The answer, odd as it might seem, is simply to *talk to people*. To create the conditions amenable to change within a law firm, its leaders must enhance the degree of trust within the firm. Law firms, as we've previously stated, are low-trust environments—but there's no law of nature that says they have to stay that way.

How do you enhance trust within a firm? You take the time and make the effort to go around the office, person by person, and gradually establish relationships of reliability and an atmosphere of trust. It's really as simple as that. Talk about change, and do it openly, honestly, and transparently. Don't try to sneak anything past people, or trick them into participating in a change process; lawyers are too smart to be taken in by that, and you'll destroy any chances of gaining their trust if you try.

Find out about the circumstances, aspirations, and objectives of the people who work in your firm.[168] Figure out which of these you can address and improve through a change process, and focus your efforts there. Then keep doing it, over and over. Veteran salespeople talk about the "rule of seven touches"—it requires seven personal interactions to establish a level of trust sufficient for someone to take up a suggested course of action such as purchasing a product. Sales, viewed from this perspective, is really a process of persuasion occurring within a relationship of trust. Facilitating change in an organization is not that different.

You've probably heard of "management by walking around." It's a method of managing employees by wandering through the workplace and randomly dropping in on people to ask about their ongoing work; it's been shown to improve morale, productivity, and a sense of organizational purpose. Think of this strategy, then, as "change management by walking

[168] Do those three features sound familiar? They're the same ones that underlie your client intelligence efforts from Chapter 10. You can make real progress on change within your firm if you visibly inquire into and obviously care about your lawyers' situation, just as much as with your clients.

around"—making a sustained and concerted effort to strengthen the personal bonds among the members of the firm through frequent conversations, and thereby creating an environment in which people can more easily make adjustments and adapt to change.

What you're really engaged in here is a process of raising the level of trust in the law firm. One of the central management and leadership challenges in law firms today is to reverse the long-running "trust drain." There are obviously plenty of business reasons to do this. High-trust law firms will engage in more cross-selling, collaborate on client projects more readily, and suffer less staff turnover and fewer lateral departures.[169] But a good additional reason to do so is that change is almost impossible to facilitate otherwise.

Once you start making real headway towards establishing a high-trust environment within your firm, you can turn your attention to encouraging change. You'll still encounter resistance, of course. Establishing a higher level of trust among lawyers doesn't mean they stop being lawyers all of a sudden. When the reluctance to change manifests itself, you need to remember three things.

1. *Resistance to change is not rational.* Your lawyers are fighting change because humans fight change at a subconscious level. The fact that they're lawyers just makes them exceptionally good at it. Don't get frustrated with them, and don't take it personally.
2. *Resistance should be recognized and respected.* Don't dismiss or wave off lawyers' opposition to change, and don't question their intelligence or ask, "How can you not see this?" They'll be insulted or feel you're taking them lightly, and they'll shut down.
3. *Resistance can be overcome gradually.* This will take time, so recruit many people—and not just formal leaders, either. Being autonomous, lawyers will listen more closely to peers and friends than to managers and leaders. Diffuse the process throughout the firm.

[169] And remember that your firm can facilitate this trust enhancement through both its Client Strategy (a client-first firm has a unifying, external focus) and its Culture Strategy (a firm that prioritizes lawyer self-care has already gone a long way towards reducing lawyers' natural skepticism and standoffishness).

The more you reduce the low-trust environment of a law firm, the more you lower the resistance and the barriers to change within that firm. And it all starts with conversations among colleagues. People change their behaviours when encouraged to do so by someone who has earned their friendship and trust. "Every change requires effort, and the decision to make that effort is a social process," Gawande writes. Lawyers already rank low on sociability, so I'm not suggesting this will be an easy exercise. But I am suggesting it's a necessary one.

THE CHANGE MANAGEMENT PROCESS

Now, I'm not going to describe what a change management process for your firm would look like or even try to identify the best practices in this area. There are shelves of books, reams of articles, and legions of specialists who can speak about that topic,[170] and I won't try to summarize them here. Change management is an expert professional discipline, and I recommend consulting a change management professional to guide you through the process in your own firm. But I will offer two thoughts on the resources and activities that I think underlie successful change efforts specifically within law firms.

1. ***Facts are your friends.***

Law firms are awash in beliefs—opinions and assertions masquerading as universal truths. The self-selected experiences and recollected anecdotes of a small group of influential partners, reinforced by repetition year after year, eventually assume the status of gospel. There are few habits as dangerous to organizations, and as difficult to detect and root out, than the tendency to rely upon conventional wisdom.

Scatter conventional wisdom by shining upon it the harsh light of facts. The first and best use of your internal business intelligence efforts will be to assemble an unassailable litany of cold facts and hard truths about your firm. Gather verifiable facts to buttress whatever change you want to bring

[170] One of the best articles I've read, in terms of practical insights and recommended courses of action, on the subject of change management in law firms is "The Tortoise and the Hare," by Anne Collier, at the ABA's Law Practice Today website: http://www.lawpracticetoday.org/article/the-tortoise-and-the-hare-how-your-preferences-for-change-affect-the-success-of-your-firm/. If you need a place to start, it's a great one.

about, because you almost literally cannot have too much evidence to initiate change in a law firm.

You almost literally cannot have too much evidence to initiate change in a law firm.

Most law firm partners rely so heavily on belief because they know astonishingly little about their firms, beyond what they personally made last year and what they expect to make this year. Specifically:

- They don't know whether and to what extent the firm is profitable.
- They don't know which practice groups, industry groups, individual lawyers, and individual clients are profitable.
- They don't know what they spent to deliver their services, what percentage of their work was billed,[171] and what percentage of their bills was paid.

So tell them. Help them understand the firm inside out, financially and structurally, retrospectively and prospectively. And when I call these "hard facts," remember that's exactly what they might be: uncomfortable and often painful truths about what's working and what's not—about who's contributing value to the firm and its clients, and who's not. Prepare for your facts to be questioned aggressively; defend them through sheer volume and triple-checked accuracy.

Facts alone probably won't change anyone's mind, as I mentioned earlier; but they will give you an evidentiary basis upon which a change process can be founded and can proceed. You need facts in order to properly diagnose your firm, to choose the right activities and make the right decisions for its future.

2. ***Clients are your catalysts.***

Facts are your chassis, but they're not your engine. You're also going to need a catalyst, whether internal or external (or both), to generate a threshold

[171] The short answer is, "Not nearly as much as they think." The 2016 Legal Trends Report, conducted and published by Clio, found that "the average utilization rate for lawyers in the United States in 2015 was just 28 percent. In other words, lawyers bill just 2.2 hours per … eight-hour workday." That is astonishing and deeply worrisome. See: "How Well is Your Law Firm Really Doing?" by Teresa Matich, Oct. 24, 2016: https://www.goclio.com/blog/law-firm-kpis-how-well-law-firm-doing/.

level of urgency and ignite activity within the firm. That catalyst might be a wake-up call or a crisis event—the loss of a major client, the unexpected retirement of a key rainmaker, the defection of a practice group, a precipitous drop in profits, or an ominous note from the bank about reviewing the line of credit. "The prospect of being hanged in the morning," Samuel Johnson once wrote, "focuses the mind wonderfully."

But crisis catalysts don't come along every day, and we sure don't want to wait around until they do. It would be much preferable to proactively identify a catalyst that won't spark a panic throughout your firm, but that will still grab and hold people's attention and enable serious conversations about changes that need to take place. And there's no better catalyst of this type than bringing in some of your own clients to deliver hard truths to their lawyers—believe me, most clients will tackle this opportunity with gusto.

Your firm's biggest clients are its ultimate power brokers, and their intervention in your firm's internal affairs is going to make people stop what they're doing and pay attention. If you can bring in the general counsel or deputy GC of a major corporate client—or, if you really want to set the cat among the pigeons, the head of Procurement—they'll lend the change effort some serious political clout and provide a strong tailwind to push it along.

Drafting your clients into your firm's change management process has multiple benefits.

- Your clients know better than anyone how much has changed in the legal market and how much more influence they now wield. You'll find no better evangelist for the new legal market than the people who pay the firm's bills and no longer wish to pay quite so much.
- Your clients will recognize and appreciate, by the mere fact of being invited to deliver this message, that your firm "gets it" in ways that so many of their other outside counsel don't. They'll spread the word within their company that your firm not only sees how the wind is changing, but also wants to sail with it.
- Your clients might be galvanized by your initiative and might pick up the pace of their own reform efforts. Many corporate clients aren't doing enough to encourage more innovations among law firms, so let

them know that your firm is willing and able to be their partner as they set out down this uncharted path.[172]

Here's a great example of the power of the client perspective. A law firm once retained me not only to deliver a presentation on legal market change to its partners, but also to facilitate a panel of in-house counsel from its biggest clients. One of the panelists, a senior counsel with a major financial institution, was talking about the importance of "preventive lawyering," and gave the example of a firm whose good risk-avoidance advice allowed the client to reduce its litigation spend from, say, $2 million to $500,000.

One of the firm's litigators put up his hand at this point and said, approximately, "If we help you do that, then what happens to the other $1.5 million? How do we make that money back?" The in-house lawyer replied, approximately, "There's not going to *be* another $1.5 million. We're not going to spend any more than $500,000 on litigation. The question is which firm will help us do that." The room grew very quiet after that.

THE MOMENT OF TRUTH

Now, I want to fast-forward you some distance into the future of your change process—maybe you're leading a change in pricing or compensation or process improvement or technology investment, it doesn't really matter which—six to nine months down the road. Let's say that the process is starting to really gain some traction and see some results, and it's looking increasingly possible that, you know what, this might actually work. Real change looks like it might just happen. You're feeling pretty good about the entire matter.

Then one of your key partners, maybe even your top rainmaker, walks into your office unannounced. He closes the door behind him, sits down

[172] To be clear: I'm not trying to suggest that your firm should simply "wait for the clients to say something." They won't, in most cases, because the reluctance to face change and broach the difficult subject of adjustment is common to lawyers on both the seller and buyer side. You then wind up at what Casey Flaherty calls "an impasse: Law firms are waiting on clients to make them change [while] clients are waiting on law firms to be proactive or change in response to market pressure." ("Clients Confirm: We Don't Ask Law Firms To Change," 3 Geeks and a Law Blog, Nov. 25, 2016: http://www.geeklawblog.com/2016/11/clients-confirm-we-dont-ask-law-firms.html). And anyway, it shouldn't be up to buyers to invent better mousetraps. What I'm saying is that the law firm and the client, *working together* under the law firm's lead, can achieve much more than either will or can alone. As I've said before: Your client is your co-provider. It's a partnership.

in the chair across from your desk, and without any preamble, says the following:

> *I want to make something clear. You obviously have some kind of vision for what you want this firm to be, and that's fine. You're the managing partner, and it's your job to have visions for the future and carry them out. So you can introduce as many innovations as you like to accomplish your goals.*
>
> *But not in my group, and not in my practice. Because that's what you're now starting to do. You know very well that I do things my way, the way I've always done them. And you know, my way has put a few Porsches in my garage. I don't think your way has managed that.*
>
> *So this is the one trip I'm going to make down here to tell you that we're not going to be reading any more of your memos in my group. Your innovations stop at my office door. And if you try pushing me, even just once, then let me assure you that this time next week, I'll be walking across the street to X firm and taking my clients with me. And the first you'll hear about it is when you get their press release announcing the move. Are we clear?*

Change isn't really change until it hurts. There will come a moment of pain in your firm's change efforts—at least one, probably several—when someone important begins to experience discomfort as a result of your efforts, and he will make it a mutual pain point by coming to your office to return the favour. He will draw a line in the sand, and then do everything short of actually daring you to step across it.

In this moment, you will simultaneously recognize just how successful you've already been, and how close to going off the rails the entire undertaking has become. This will be the moment of truth, and it's worth contemplating this moment well before it arrives, so that you can decide what you'll do.

Many law firm leaders have already faced this kind of situation, whether as part of a change process or simply as part of trying to manage high-powered professionals with an abundance of self-regard. And this, roughly, is what they've said in response: "I understand your concerns. I know how disruptive this process can be, and I agree we shouldn't mess with success. We can exempt you and your group from this process."

If you expect that this will be your response, then I have to be honest. You might as well not even have begun the change process in the first place. You'll have wasted six to nine months of effort, resources and goodwill, while simultaneously poisoning the well for future change and innovation efforts. You'll have acknowledged openly that in this firm, the change agenda applies only to those people without the power to evade it.

THE LEADERSHIP IMPERATIVE

This, right here, is the crucible of leadership. Leaders have to be ready and willing to absorb complaints, tantrums, and outright threats, and to deal with them swiftly and firmly. True leadership in a law firm is the willingness to say "no" to people who are not accustomed to hearing it, when you know that's the right thing to say. It's committing so completely to your vision for the firm that you place yourself at the collision point between what the firm needs and what its individual partners want. This is what leadership requires in law firms. And guiding your firm through a massive change process is going to require it every single day.

In a word, leadership in a law firm is about *courage*. As C.S. Lewis has written, courage is not simply one of the virtues, it's "the form of every virtue at the testing point."[173] I would argue that no characteristic is more important to a good lawyer than courage. It's what allows us to stand up for our opinions and to stand by our clients as they implement those opinions and change the course of their lives. The best lawyers aren't just the smartest, the hardest-working, or the most caring—they're also the bravest. The worst lawyers, by contrast, are the most timid and the most easily led away from their instincts and standards.

If your firm is going to serve its clients and stand out in its markets better than anyone else, then it will have to take real risks, confront pernicious habits, make painful choices, and carve out a new and better path. To lead a firm through this process requires courage: to resist the temptation to settle, to fight the desire to accommodate, to break the corporate habits of a lifetime that tell us we should be less ambitious than anyone else. Courage is when you stand up and say, "We're either going to be a truly great law firm, or we'll be proud of ourselves for having given it the best possible shot."

[173] *The Screwtape Letters*: Geoffrey Bles, 1942.

Here's how I think you should reply to that hypothetical partner. "Thank you for coming to me with your concerns. I understand and appreciate them. But this law firm and its leadership have committed to this change because we believe it's necessary to our competitive survival, and we can't have any exceptions. We're a team, and we want you on that team. If you feel differently, however, then you don't need to wait until next week. You can leave right now."

And what if he's not bluffing and he actually leaves? You know all the other partners will come storming into your office. "You can't let him go! We'll lose all that work. We'll lose all that money. You've got to keep him here."

Your response to those objections has to be, "Listen. He's never really *been* here. If he's ready to walk out over this today, then he'll walk out next week over something else, or next month when he gets a better offer, or next year when he retires with no one groomed to take over his practice. He's in this for himself, so he's going to leave someday anyway. It might as well be on *our* terms."

And let me tell you, I've heard more stories, from more managing partners and consultants than you would imagine, that recount this kind of scenario and conclude with: "The firm didn't die. It didn't collapse. *It got better.*"

As often as not, the partner who left was a cancer who made everyone else's life miserable. One of his clients stayed behind with the firm rather than leave with him, and another returned within six months because they didn't like his new firm. His departure opened up breathing space for some mid-level partners to expand their own practices and bring in more business. And so forth.

I'm not saying these outcomes will happen in every situation, obviously. But the rewards of standing up for what the firm needs are not entirely spiritual. Often, they're exquisitely material.

The point I'm really hoping to make here, however, is that even if you never engage in a dramatic showdown like the one described above, you need to be ready to do it. You need the courage to say goodbye to a top rainmaker if he's threatening your ability to guide your firm through a period of absolutely necessary change.

So if you want start bringing about real change in your firm, fast-forward several months to the moment when that partner is in your office, issuing his ultimatum. As soon as you feel ready to invite him to leave — and you mean it — then it's time to start the change process, because you and the firm you lead are ready to see it through.

Remember, always, that resistance to change is human nature. Do what you can to build a high-trust environment in your firm and start having real conversations about change. Gather all the facts you can to make your case for change ironclad. Identify catalysts among your clients who can galvanize your team and spur immediate action. Forge a vision and build a road that your firm can travel to reach it. Stand tall and put yourself on the line for what you believe is right and necessary. Be courageous in the fulfillment of your responsibility to your colleagues and your clients.

That's leadership. It's what your firm needs from you today.

Chapter 15

WHAT A BUYER'S MARKET IN LAW MEANS FOR YOU

We're coming up on the end of this book. But your firm's journey into the new legal market is just getting underway.

We've examined the extensive changes taking place in the legal services environment. We've explained why they're not blips or fads, but instead are permanent shifts in the market landscape. We've described how traditional law firms are as ill-suited to this new environment as were dinosaurs to an ice age, and how they're heading inevitably towards a similar denouement. We've laid the foundations for re-examining and re-engineering your law firm's purpose, markets, clients, strategies, processes, culture, and people. And we've thrown in some suggestions for how you, as a leader in your law firm,[174] can start making all this happen. Not bad for a day's work.

At the same time, though, it also feels like we've merely rolled past the opening credits of this movie. There are so many more dimensions to a client-first law firm. How do you develop client-friendly pricing mechanisms for your firm's services, especially those, like complex litigation, that would seem to defy accurate forecasting? How do you train your lawyers, both skills- and attitude-wise, to make the best use of these new tools and techniques? How do you crack the nut of succession planning for older lawyers—or, if your firm has put off planning for too long, succession crisis management?

Leading a law firm, I'm afraid, isn't going to get much simpler or easier in the years to come. But the good news is that there are countless resources available to you now for addressing and resolving these management and leadership challenges—the links I've set out in all the foregoing

[174] Yes, you're a leader of your firm, whether you hold down a title and a corner office or whether you work in a cubicle or from home. If you've gotten this far into this book, then the current welfare and future prospects of your law firm are clearly important to you and you're looking for ways to improve them both. That sounds like a leader to me.

footnotes barely scratch the surface. We're entering what will someday come to be seen as a golden age of law firm management, and if you can select and apply the right advice and approaches for your law firm, you'll be among the first stars of this new era.

But before we wrap up this opening part of your voyage, I'd like to set out some thoughts about the implications of transformative change for all the players in the legal world. Law is now a buyer's market. What does that actually mean for everyone involved? What should they do now?

THE IMPLICATIONS FOR SOCIETY

We might as well start big, by looking at the impact on society. Law is a social science, and society at large has a vested interest in any major structural shifts in our market. Over the last five years, I've seen "access to justice" morph from a chronic, guilt-inducing irritant for lawyers into an increasingly mainstream subject for political action—just another way in which issues that used to be within lawyers' exclusive purview are being commandeered by larger social forces. The social force in question here is the empowerment of everyday people to accomplish tasks they once automatically relinquished to professionals, and it goes well beyond the law into the larger economy.

You might, at this very moment, be renting out your basement apartment for a week to strangers from out of town, or heading out to pick up strangers in your car and drive them somewhere. But even if you're not part of the "sharing economy" of AirBnB and Uber,[175] you're probably booking your own flights on Travelocity, reserving your own hotel rooms on TripAdvisor, selling or renting your own equipment on Craiglist, or raising funds for your own project on Kickstarter.

The DIY economy is now spilling over into the legal sector and giving options to consumer law clients (such as LegalZoom and Rocket Lawyer)

[175] These systems are often referred to, wrongly in my view, as the "sharing economy." Wrongly, because people are not sharing their cars or homes; they're charging a fee for others to use these assets during their downtimes. Nor will we see a true "Uber for law" anytime soon. See my article, "What Makes Uber Tick, and What Lawyers Can Learn from It," at Lawyerist, June 8, 2016: https://lawyerist.com/114612/makes-uber-tick-lawyers-can-learn/.

and corporate legal clients (such as insourcing and flex-lawyer platforms) alike. This has been made possible by a rise in people's ability and confidence to undertake activities previously performed solely by members of an expert class.

Simultaneous with that rise is a decline in the deference that people give to experts and authorities. Traditional cultural elites, including political figures, religious leaders, academics, bankers, and CEOs garner less trust and respect these days than they've traditionally received. This is not to be a great time to be a member of a guild.[176]

I think this helps explain the enthusiasm with which substitutes for lawyers and law firms have been greeted, both by legal services buyers and the general public. Not only do these alternatives provide fresh and attractive options for addressing legal issues, but they also encourage the ongoing process of demystifying the law and lawyers. Buyers will carry out legal tasks themselves where they can. But even where they can't, they will push back against lawyers' traditional assertions of exclusivity and exceptionalism. Using providers other than lawyers isn't just financially beneficial. For many people, it's also emotionally satisfying.

A buyer's market for legal services correlates well with the larger trend towards individual empowerment. But while that might give legal services buyers more power, it's not necessarily going to make their lives any simpler.

THE IMPLICATIONS FOR BUYERS

Buyers now stand at the threshold of unprecedented optionality in the legal services market. They can hire a lawyer from just about anywhere, direct a legal task to be completed by high-tech systems, demand pricing structures that limit their fees within strict boundaries, and so forth. It's all great fun and very empowering—until the ramifications sink in.

[176] Lawyers might not normally consider themselves to be members of a guild, like farriers or harness-polishers or stonecutters. But consider that Wikipedia defines a guild as an "association of artisans or merchants who control the practice of their craft in a particular town … organized in a manner something between a professional association, a trade union, a cartel, and a secret society." I think it's fair to say that's not entirely off the mark.

In this new market, buyers have to work a lot harder to choose their legal services providers and must manage their legal affairs a lot more closely.

In this new market, buyers have to work a lot harder to choose their legal services providers and must manage their legal affairs a lot more closely. They need to understand how legal tasks are performed, which legal services (if any) they should carry out themselves, and how to monitor the progress of all their legal tasks against various time, budgetary, and effectiveness standards. Even more challenging, buyers have to assess the value that their desired legal services provide to them, in order to figure out a fair price for those services and judge whether the services were delivered to expectations and specifications.

In this regard, a tremendous opportunity awaits lawyers (or if not lawyers, anyone else with smarts and ambition): to create the role of "legal concierge." This is a professional who gives you, not legal advice, but instead advice about buying legal services. He or she analyzes your situation, asks some questions, identifies potential sellers of appropriate services, and prepares you to approach and negotiate with them. Think of it as a broker or real estate agent for legal needs. It's an opportunity so obvious that I'm surprised no one's moved on it yet.

Maybe the biggest mental adjustment that buyers will have to make in this new market, however, is what to call themselves. Back in the foreword, I explained the distinction between "buyer" and "client" and why I used a different term at different points throughout the book.

"Client" is a term native to the professional sphere. Tradespeople and retailers traditionally refer to their buyers as "customers," but professionals such as lawyers prefer the more refined sound of "clients." There's more to the name than just prestige, of course. In law, as we've discussed, "client" status confers upon the buyer certain rights and advantages regarding fiduciary duties and the confidentiality of information shared with the lawyer.

But it's still important to recognize that it was sellers who conferred this name on buyers. And when you name something, you exercise ongoing power over it in subtle, sometimes subconscious ways.

In the new legal market, the buyers of legal services can name themselves. They will have more power, knowledge, and assertiveness than before, and they won't always follow the lead of their legal services providers.

They might accept "client," if they wish, with all its advantages and drawbacks, but they won't feel obliged to do so. The names that buyers eventually adopt for themselves will reveal a great deal about how they view their relationships with legal services providers.

Some buyers have already given themselves a separate name, of course. They're corporate in-house counsel, and they have additional considerations.

THE IMPLICATIONS FOR IN-HOUSE COUNSEL

Long before Spider-Man became three separate movie franchises and (for reasons I sill can't fathom) a musical, only nerds like me knew by heart the foundational theme of the superhero's adventures: "With great power comes great responsibility." In-house counsel might want to brush up on their comic-book lore, because that concept is going to be actively in play for them.

The process revolution in legal services is well underway, but I've found that many in-house counsel are often no more aware of or trained in legal process improvement than outside counsel—and in a surprising number of cases, the law firm is actually farther ahead. Without a reasonably strong grounding in legal systems and operations, in-house counsel won't be able to accurately assess whether their legal services providers are doing the job right.

It's also a hard fact that many institutional buyers of legal services are just as conservative and risk-averse as their law firm counterparts. This is especially the case for many senior corporate counsel who lateraled into their position from law firms but never really left the law firm mentality behind. So while in-house counsel need to encourage innovation and improvements from their service providers, they also need to drink their own medicine and take some calculated risks of their own.

Another learned reflex that in-house lawyers should unlearn is criticizing outside counsel for their (admittedly frequent) cluelessness about what the client really needs. In-house counsel are now responsible for correcting those misperceptions, not just complaining about them. In-house lawyers need to tell their firms exactly what the company expects, reward the firm's attempts to do things differently, and maybe most importantly, never again say, "Just bill me by the hour for this work."

As if all this weren't enough, the legal department is now sharing its sandbox with the folks from corporate procurement and legal ops. These professionals will play an increasingly significant part in the legal services acquisition process from this point onwards, including identifying new factors to be considered in choosing legal services providers and assessing their work, as well as envisioning and implementing systems and operations by which internal legal work can be performed.

There'll be days when in-house counsel find themselves longing for the simpler time when they could just send the whole package to outside counsel and sign off on the bill when it arrived. But outside counsel, rest assured, have their own issues.

THE IMPLICATIONS FOR LAW FIRMS

Have I made it abundantly, annoyingly clear how much is going to change for law firms in this new market? I have? Well, here's some more, because I don't think this is a point I can hammer home strongly enough.

Law firms are evolving from businesses composed entirely of tangible assets (specifically, lawyers) to businesses composed largely of intangible ones (knowledge, expertise, brand, processes, networks, productivity engines, service protocols, and so forth). This new asset mix will transform the erstwhile "lawyer hotel" into a multi-disciplinary legal solutions platform that requires careful leadership and professional management. This evolution will be necessary because the market in which firms compete is also changing.

Law firms' competition for clients' attention and dollars now includes people who aren't lawyers and enterprises that aren't law firms. These rivals will rarely compete with firms on criteria with which they're familiar. They will not try to "out-lawyer" the incumbent law firm, because you don't beat incumbents by attacking them on their strengths.

This turn of events is made possible by the fact that the scoring system in the legal services game is changing. Legal expertise used to be the differentiating factor for buyers; now, it's simply table stakes.

Law firms also need to stay alert for the first signs that their market share is slipping away to new rivals. These first losses almost certainly won't be

on "bet-the-company" work, but rather, on fringe matters that are apparently peripheral to the firm's main offerings. Don't be misled. Remember Clayton Christensen and his theory of disruption. When new players enter a market bringing unorthodox methods and cheaper offerings, they always start on the low-end fringes of the market. But they *never* stay there. They move inward and upwards, towards higher-value work.

I referred to these providers as "competition" just now. But that term represents the incumbent's perspective, and throughout this book, I've tried to argue that that's a potentially dangerous vantage point. Better to call these new market participants "options," because that's how buyers see them: intriguing choices that weren't previously stocked on the market's shelves.

The availability of these choices is changing buyers' behaviour. More significantly, they're also changing buyers' expectations about which service providers, through which channels, at what prices, and with what results, are available for their consideration.

As a law firm leader, don't underestimate the competitive threat that these new service options present to your firm. But equally, don't underestimate the potential they offer you as resources, collaborators, or even partners in your own work.

Few of these lawyer and law firm substitutes are openly aiming to take away your core business; most are focused on winning assignments that lawyers and law firms don't do very efficiently and effectively. So think about adopting and co-opting these new rivals and their methods, in order to upgrade the productivity of your own operations. Not only could you keep this "fringe" work for yourself, but you could accomplish it more profitably than you could manage before.

From now on, everything that law firms do, plan, price, sell, perform, and compensate has to be geared not towards themselves or their lawyers, but *towards the buyers of their services.* The standards and criteria of excellence and success within law firms have always been directed inward, by and towards lawyers; now they will have to be redirected outward, towards buyers and the market.

From now on, everything that law firms do, plan, price, sell, perform, and compensate has to be geared not towards themselves or their lawyers, but towards the buyers of their services.

And that brings us to the last group to consider. Let's talk about lawyers.

THE IMPLICATIONS FOR LAWYERS

The broad spectrum of possible outcome for lawyers in the new legal market has two high-profile end points. One of them is utter disaster. The relentless onslaught of advanced software and the insidious infiltration of the market by the dreaded "non-lawyers" combine to effectively destroy the legal profession and end its centuries-old guardianship of the public interest and the rule of law. This is the ghost story told around campfires by people unalterably opposed to any kind of legal market change, no matter how inevitable and no matter what its potential benefits, because it transgresses upon the sacred ground of the legal profession. As you can probably tell, I'm not a big believer in that ghost story.

But the other end of the spectrum isn't a whole lot better. It's nirvana. Lawyers have ascended to a higher plane of consciousness and greater importance to the natural order of things. Artificial intelligence will break the chains of drudge work that have held lawyers down for so long, freeing not just their time but their minds and imaginations to perform greater works than they had ever managed before. Law firms will become streamlined Ferraris of efficiency, overseen by beneficent leaders who will render wise counsel as trusted advisors to grateful clients as they recline on brightly lit open-air patios. There's nothing to be afraid of. Come join the new world of law!

What's interesting about both these extreme scenarios, the catastrophe and the jubilee, is that in both cases, it's still *all about the lawyers.* Our indispensability to life on this planet is affirmed either through its grievous loss or its ultimate fulfillment.

Not surprisingly, of course, the future for lawyers lies somewhere in between the two extremes, and much of it really is out of our hands. It bears repeating, one last time, that the primary cause of the changes taking place in the legal market is a series of forces that are external to the market and well beyond the control of the legal profession.

But the fact that lawyers have less power does not mean they're powerless. The risks and rewards of market change for the legal profession are

real, but the X-factor that can tip the scales one way or another is lawyers' conscious, deliberate, clear-eyed choice of response. Rather than waging a pointless war against the forces of change or simply resigning themselves to whatever fate has in store for them, lawyers should begin, right now, the process of accepting these forces and adapting to the changes they bring.

"Adaptation," in fact, is the best term to describe what lawyers need to do. Accept the reality of change in the market, and recognize that, seriously, there's a lot of positive potential here. The new market for legal services actually plays *better* to lawyers' strengths than the old one, which required us to draft document after document, review contract after contract, pick fights with the other side for the sake of picking fights. That's not why I went to law school, and I doubt it's why you went, either. We're better than that, and we can accomplish more than that.

Lawyers diagnose problems. Lawyers craft solutions. Lawyers build strategies. Lawyers simplify complexity. Lawyers give good advice. Lawyers protect their clients' interests. Lawyers give clients peace of mind. Lawyers help. The emerging legal market is nothing less than the greatest opportunity lawyers have ever been offered to make the most of who they are and to deliver value on an unprecedented scale.

That's the door swinging open in front of lawyers right now. Who'll be the first to walk through it?

MOVING FORWARD INTO A BUYER'S MARKET

The fundamental change taking place in the legal market is that the power to determine the criteria for buying legal services has changed hands, from lawyers to clients. The new criteria for purchasing legal services include value of service, convenience of accessibility, and ease of use. The conditions of purchase include reliability of price, clarity of terms, and responsiveness of provider.

The imperative for law firms, therefore, is to make whatever adjustments are necessary to meet these new demands better than any other provider. I'm convinced that law firms, led by lawyers, can meet this challenge.

The old legal market is passing away. The new market that's replacing it will be more dynamic, will provide more opportunities, and fundamentally

will be better for the buyers of legal services—and yes, ultimately, for sellers too—than what came before. We have every reason to expect a wide range of providers, selling services at different price points, using a vast array of powerful technology, pushing the standards of quality and service ever higher. Law firms can compete in that kind of market. Lawyers can provide value in that kind of market. They have before, and they will again.

The new market for legal services really is better than what came before. All that's left for you and me to decide is how we're going to respond to it.

ABOUT THE AUTHOR

Jordan Furlong is a leading analyst of the global legal market and forecaster of its future development. Law firms and legal organizations consult him to better understand why the legal services environment is undergoing radical change, and they retain him to advise their lawyers how to build sustainable and competitive legal enterprises. He helps lawyers think differently about the services they provide and counsels law firm leaders about re-engineering their firms' purpose, strategy, and operations.

Jordan has addressed dozens of law firm retreats, lawyer conferences, judicial conventions, and regulatory summits throughout the United States, Canada, Europe, and Australia. He has authored hundreds of articles and several short books and white papers that analyze the rapidly evolving legal market and illuminate the forces and trends driving change in this environment. *Law Is a Buyer's Market* is his first full-length book about the market for legal services.

A graduate of Queen's University Faculty of Law in Kingston, Ontario, Jordan engaged briefly in the practice of law in Toronto before starting an award-winning career as a legal journalist, culminating in a decade as editor of three leading Canadian legal periodicals. In 2007, he launched *Law21: Dispatches From a Legal Profession On The Brink,* which has won multiple awards as one of the premier law blogs of the last ten years.

Jordan is a Fellow of the College of Law Practice Management and has served as chair of the College's InnovAction Awards. He is the Strategic Advisor in Residence at Suffolk University Law School in Boston and serves as co-chair of the Board of Directors for its Institute for Law Practice Management and Innovation. He has taught or guest-lectured in courses at Suffolk Law, Queen's Law, and Osgoode Hall Law School in Toronto. He serves as a volunteer advisor to Law Without Walls and is a member of both the Advisory Board of the American Bar Association's Center for Innovation and the Policy Advisory Board of Responsive Law.

Jordan lives in Ottawa, Canada, with his wife and two children. He is always happiest at home or on his way there.

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