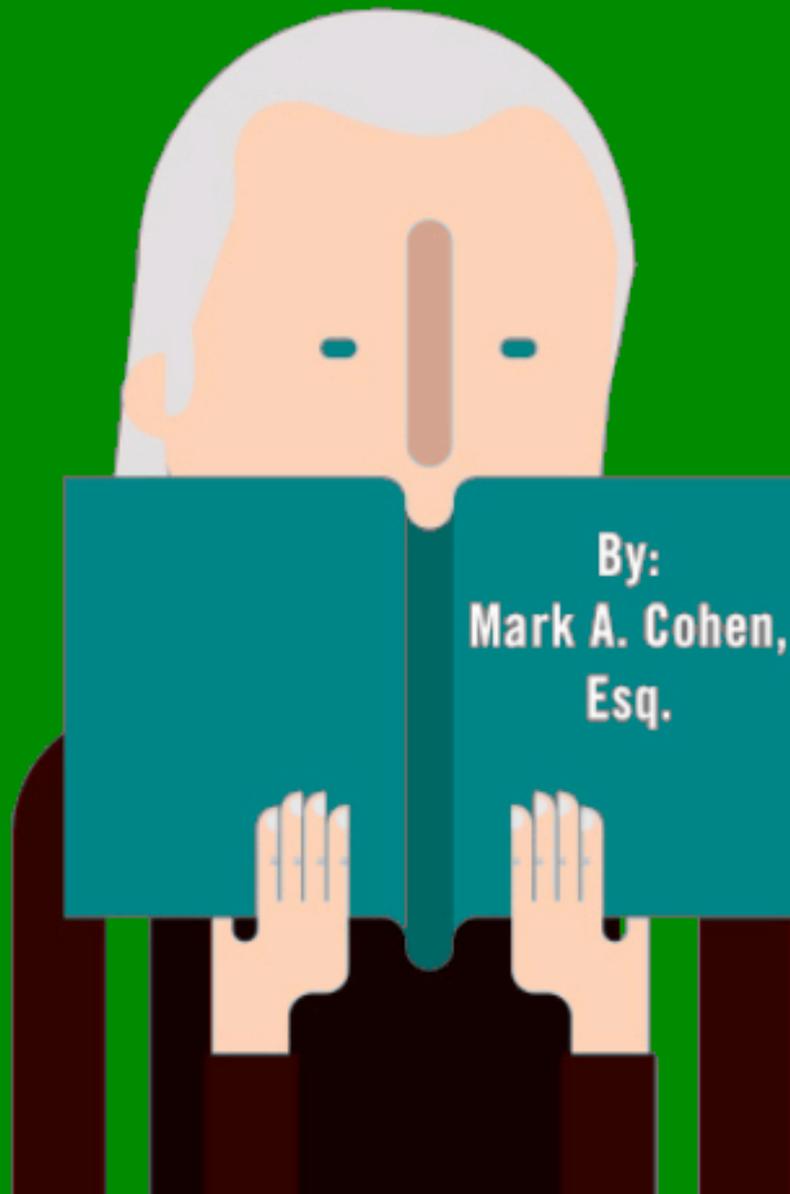




# Legal Mosaic: More Essays on Legal Delivery





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## Introduction

This is my second collection of essays on the transformation of the legal industry. For those of you who read my weekly column in [Forbes](#), my articles at [LegalBusinessWorld](#) or have read “Legal Mosaic: Essays On Legal Delivery (eBook | PDF)”, welcome back. And for new readers, glad you are here and hope you find these essays to be informative, provocative, and entertaining.

Law is a huge industry—approximately one trillion dollars of annual global spend. The legal vertical is undergoing accelerated transformation brought on by a host of inter-connected factors: the global financial crisis of 2008 and its aftermath; technology; globalization; an agile workforce; products replacing services; and a misalignment of the traditional law firm partnership model with client/customer expectations. These forces have changed the way legal services are bought and sold as well as by whom, from what delivery model, and at what price they are delivered. Lawyers are not the only ones to deliver those services—technologists, process experts, accountants, and others including paraprofessionals-- are all part of a growing legal supply chain. Legal practice and legal delivery—like medicine and healthcare services—are no longer synonymous terms. Legal practice refers to core functions lawyers perform—client interaction, representation in tribunals, etc. Legal delivery describes the structure, process, and resources that fulfill them.

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Law firms and their partnership model long dominated the legal supply side. Law firms still account for approximately half of all legal spend, but demand for their services has been flat since the global financial crisis—with no sign of picking up. At the same time, overall legal demand has continued to rise during this period. Market share has migrated from law firms to corporate legal departments and a growing array of legal service providers. A handful of elite service providers—including the Big Four accounting firms—are exceedingly well capitalized, tech and process savvy, global, operate from a corporate structure, and have deep domain expertise in their service and product areas. They are moving up the complexity chain and handling work once exclusively performed by law firms. These providers are doing that work faster, cheaper, and better than law firms.

It's a buyer's market, and today's corporate legal consumers have a range of options as never before. They can do the work on their own (insource), disaggregate tasks and source them to different providers (outsource), or create a hybrid arrangement, partnering with outside suppliers. This new buying paradigm is problematic to all but a handful of elite, brand-differentiated law firms that still dominate high-risk, cost-insensitive matters. Everything else is up for grabs—and that's about 85% of a trillion dollars of annual legal spend.

That mind-boggling amount of untethered 'legal' business is why there is an enormous uptick of innovation, capital, and new

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delivery models springing up in the long static legal vertical. During the past five years, more than 280 legal technology startups have raised in excess of three quarters of a billion dollars of investment capital, according to the research firm CB Insights. That number does not even take into account the burgeoning litigation finance business as well as other ‘niche’ providers of legal goods and services. The smart money is not betting on law firms.

Artificial intelligence (AI) is already a part of the legal delivery landscape. No doubt it will expand in its breadth and scope of tasks. But AI—like so many other change elements in the legal vertical—is part of a larger whole. AI alone will not alter the legal delivery landscape, but it will certainly be a part of the change process. The challenge—and opportunity—for legal service providers will be to integrate the various change elements—everything from cyber-security to legal operations--and to provide clients with an end-to-end solution to business challenges raising legal issues. This will require efficient, accessible, cost-effective, reliable, integrated, global products and services deployed in a manner that suits client objectives and risk tolerance. It means deploying the right resource—human and/or machine—for the appropriate task.

This is the golden age of the legal entrepreneur. New models, metrics, technology, capital, and buyer attitudes are shaking up a staid industry. For lawyers, ‘knowing the law’ remains a core skill, but that alone is no longer sufficient to assure success or security.

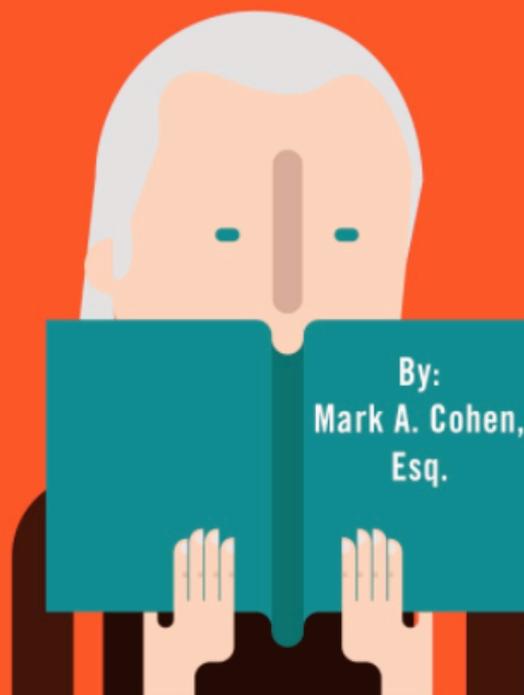
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Law schools must revamp their curricula to insure that upcoming lawyers are market-ready upon graduation. This means more experiential learning as well as new courses that include: interacting with clients, collaboration, project management, technology as it is deployed in delivering legal services, cultural awareness, and business fluency. ‘Legal reeducation’ (a/k/a executive education) will also be required for practicing lawyers. This is something considerably more than the box-checking exercise that is continuing legal education (CLE). Reeducation need not be a costly, protracted, or forbidding. Technology and human resources exist to make this process quick, informative, and cost-effective.

Law has yet to be disrupted in the way that so many other industries—retail, hospitality, medicine, and ride share among many others—have. But innovation in the legal vertical is more advanced—if not ubiquitous—than many think. Technology, service providers, and other professionals are not replacing lawyers. But they are certainly altering how, when, at what price, and from what structure legal expertise is deployed. And that’s the essence of what’s occurring in the legal vertical.



# Legal Mosaic: Essays on Legal Delivery



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## The 2017 Georgetown Report And The Sunset Of The Traditional Law Firm Model

The Center for the Study of the Legal Profession at Georgetown University Law Center and Thomson Reuters Legal Executive Institute recently released their 2017 Report on the State of the Legal Industry. ‘The Georgetown Report,’ as it's commonly referred to, confirms that corporate legal buyers are directing more work away from large law firms, electing to take it in-house or to legal service providers (read: alternatives sources to the traditional law firm partnership model). The Report provides a broad range of data confirming weaknesses in the traditional model: flat demand for law firm services in a market with growing demand; shrinking leverage (one of the cornerstones of the BigLaw model); reduced realization; intense competition; and the failure of most law firms to innovate in a market demanding it. The Report also cites growing market segmentation among law firms with about 20 pulling away from the pack once collectively called 'the AmLaw 200' and later 'AmLaw 100.' It also notes that clients are increasingly sending work “down market” to smaller firms with specific expertise and lower rates.

The Report’s headline grabber is ‘the death of traditional billable hour pricing’ over the past decade and ‘the widespread client insistence on budgets (with caps) for both transactional and

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litigation matters.’ This conclusion overlooks an even bigger item-- many of those matters are no longer assigned to law firms in the first instance. Example: Shell Oil has formed a global in-house litigation team for the bulk of the company’s largest litigation cases and recently handled a multi-billion dollar corporate portfolio divestiture in-house.

The eye-popping profit-per-partner (PPP) numbers that persist for many firms—something not specifically mentioned in the Georgetown Report-- create a false-positive image of their fiscal health. High PPP has been achieved principally by internal cost slashing including staff cuts, reducing real estate overhead, and other measures. It also involves thinning the equity ranks and jettisoning ‘service’ partners who are highly valuable to clients but a potential drag on PPP. The Report notes that firm internal cost cutting has gone as far as it can go, suggesting that PPP at most firms will begin to dip. That will only fuel the lateral frenzy and add to the long-term instability of most firms. PPP was long the glue that bound firms together. Now, it is a vulnerability for all but the fiscally strongest in a Darwinian ‘survival of the fittest’ marketplace.

The Georgetown Report also cites, ‘erosion of the traditional law firm franchise,’ a euphemism for ‘clients no longer need large law firms to handle many legal tasks.’ Erosion of leverage--equity partners atop a pyramid of other lawyers billing lots of hours at high and non-discounted rates, and ‘market segmentation’—a few

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elite firms distancing themselves from the pack-- are additional trends cited by the Report and supported by its data. The inescapable conclusion is that most large firms are confronting an existential crisis that demands an aggressive response lest they experience a collective 'Kodak moment.' So far, most firms have been at best reactive and at worst static to the rapidly changing market. That's one reason why in-house legal departments and service providers now account for nearly half of total legal spend.

### **There's More to It Than That**

There are other, more fundamental and systemic reasons why legal buyers are turning away from traditional law firms. For a long time, firms monopolized the supply side of legal expertise when that was the only element of legal delivery. Consumers effectively had no viable, scalable, and 'safe' alternative supply sources. Also, legal fees were a trifling line item on the corporate budget. That's changed, of course-- especially during the past decade.

Legal delivery is now a three-legged stool supported by legal, IT, and process expertise. Law firms remain strong on legal expertise but that's just part of the equation. Plus, the dramatic rise in their cost has far outpaced other goods and services at a time when legal expense—like virtually every other line item—is closely scrutinized in a business climate that demands 'better, faster, cheaper.' And consider that the urban myth that 'work performed by law firms is bespoke' has been debunked. Disaggregation—the creation of a legal supply chain—is now standard fare as buyers commonly

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engage more than one source for individual matters or portfolios that were once handled start-to-finish by law firms.

Corporate legal departments and service providers have stepped in to fill the law firm vacuum. They tend to be more innovative than law firms, utilizing technology and process far more effectively than firms that remain loathe to provide a meaningful seat at the management to anyone but (rainmaker) lawyers. Corporate legal departments and service providers, in contrast, commonly function as corporations, not fiefdoms. Their DNA more closely resembles clients than law firms do, and they accord technologists, process experts, and others essential to the legal delivery commensurate status and rewards.

There are several other systemic challenges confronting traditional law firms--minimal capital invested in research and development; an economic model that rewards inefficiency more than efficiency; limited understanding of the increasingly complex business of multinational clients—especially contrasted with in-house counsel; and a failure to appreciate that “legal” problems are—from the client perspective—“business challenges”

### **Why Don't Law Firms Retrofit Their Model?**

The Georgetown data confirms that the traditional law firm model no longer dominates the legal marketplace, nor does it align well with its direction. This begs the question: ‘why don’t firms retrofit their model?’ Simple answer: there exists an economic conflict

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between aging equity partners ‘running the table’ and the next generation that is beginning to appreciate its vulnerability.

Translation: don’t expect the old guard at law firms to morph into innovators, especially where to do so would require them to be the largest investors in a model with no residual equity. The absence of real residual equity value at law firms is yet another nail in its coffin. Contrast this, for example, with senior in-house counsel that have a very significant financial interest in the long-term success of the enterprise—even after they retire.

### **In-House Legal Departments and Service Providers Have Limitations, Too**

In-house legal departments are more palliative than cure for the vacuum left by law firms. While they continue to expand in size, influence, and portfolios, their cost is rapidly escalating, too. There is also an inherent conflict in the dual role in-house counsel is asked to serve—defenders as well as business partners of the company. This is not to say that equipoise cannot be achieved, but there is risk, too. Outside counsel can serve a valuable role in mitigating this potential risk factor--but there is no longer need for the entire traditional firm model to achieve this. Firm lawyers can be cherry picked to serve this purpose.

Likewise, service providers bring a great deal to the table, but they too have limitations—especially in the U.S. where the current regulatory scheme prohibits joint ownership between lawyers and anyone other than lawyers. Service providers, on their own, cannot

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‘engage in the practice of law’ even though they perform many of the same functions as law firms. Apart from U.S. regulatory hurdles—for which there are workarounds—is the ‘stigma’ many top lawyers feel for taking their talents anywhere other than law firms, corporate legal departments, government, or public interest groups .

This will change over time, but it’s a tough sell for legal service providers to attract elite legal talent to complement their IT, process, and stable of other experts that are the ingredients in the legal delivery stew.

### **Wanted: A Safe, Scalable, Cost-Effective and Integrated Delivery Model**

What’s missing in the current legal landscape is a safe, scalable, cost-effective, legal delivery model that integrates the legal supply chain. There are many different structures and models that would accomplish this objective-- the most likely being a Clearspire ‘two company model’ where a law firm enters into a bundled services agreement with a legal service provider. Another iteration might involve a corporate legal department breaking off and rebranding itself as a law firm that is paired with legal operations capability, either in-house or via an established outside service provider.

Additional elite legal talent would be readily available because there will soon be a diaspora of lawyers looking for a new model and a new home that aligns better with their interests as well as their clients’.

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## **Conclusion**

The Georgetown Report confirms where the market is. The more interesting question is where it's headed. Doubtless, new delivery models will soon appear that better align the interests of the three principal stakeholders in legal delivery: (1) lawyers, paraprofessionals, and other experts that perform the work; (2) the delivery entity that bundles it; and (3) clients. My bet is that a new legal delivery paradigm will emerge that will transform the fraying legal guild into a 21<sup>st</sup> century model that will benefit clients, lawyers, and society. Stay tuned....

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## **Legal Education's Other Challenge: Retraining Practicing Lawyers For A New Marketplace**

Legal education has received a great deal of criticism in recent years—cost, student debt burden, declining enrollment and selectivity, a baffling building boom, graduates that are neither practice nor market ready, dismal job statistics, etc. What has been largely overlooked in the legal education discussion is the plight of a far larger segment of the legal ecosystem-- practicing lawyers.

### **It's A Whole New Ballgame**

Lawyers are toiling in an industry that has been overhauled by a perfect storm of change agents-- the global financial crisis of 2008 and its fallout; client dissatisfaction with existing delivery models; the escalating role of technology and process management in legal delivery--often referred to as 'disaggregation'; an influx of legal service providers and the growth of in-house legal departments (read: law firm competition); and the creation of new delivery models. How will practicing lawyers receive the (re)-training necessary to survive—much less to thrive—in the new legal delivery order?

Most practicing lawyers were prepared for a legal marketplace that is vanishing. Their law school experience was steeped in doctrinal learning and, perhaps, a dollop of 'real life' exposure via clinics.

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And while that was just fine as recently as a decade ago, it's not now. Legal delivery, once synonymous with the practice of law, is now a three-legged stool comprised of legal, technological, and process expertise. The vast majority of practicing attorneys have had little or no preparation for navigating the impact of technology and process/project management on legal delivery. Nor have they learned about collaboration, leadership, financial fluency, or other skills at law school or on the job where they are consumed by billing hours and making a living. That's why practitioner re-education must be a part of the legal education reform discussion. It's not just law students who must be educated for the new legal marketplace and where it's headed; it's practicing lawyers, too.

### **The Alignment of Law Schools and Law Firms**

Law schools have had a long, symbiotic relationship with law firms. The Academy was a conveyer belt for graduates' passage to firms. Young lawyers acquired practice skills on the job, and clients absorbed the training cost. The traditional law school curriculum was doctrinal and remained relatively unchanged for decades. Law firms, likewise, did little to change their structures or delivery models because there was no pressure to do so.

The closing decades of the twentieth century and the early part of the new millennium were boom times for law schools and firms. Law firms grew and expanded their geographic footprint to service the needs of their clients, and this played well with their pyramidal structure. Likewise, law school enrollment swelled as demand for lawyers increased. This meant that law schools—especially highly

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ranked ones—became even more selective and profitable. A spate of new ones appeared and had little difficulty filling seats. Law schools and law firms had a good, long run.

The bull market for the Academy and firms has ended. Law firms have lost their stranglehold on market share because of high cost, inefficient delivery, a model misaligned with client expectations, and a generally slow, ineffective adoption of technology and process management. This has resulted in the rapid rise of corporate legal departments and legal service providers that have reduced legal cost, promoted efficiency, and introduced new delivery models and structures that meld legal, technological, and process expertise. The new delivery paradigm also includes a better understanding of the client's business, risk tolerance, and notion of value. Corporate legal departments and service providers now account for nearly half of total legal spend, and the trend lines point to their continued growth at the expense of law firms. Demand for law firms has been flat for years even as overall demand for legal service has continued to rise. The delta can be explained by the new delivery paradigm that identifies legal knowledge as one of a number of elements in tackling business challenges.

### **Fallout For Law Schools**

Shifts in the marketplace have taken their toll on law schools, most of whom still train students as if law firms are the only game in town. The Academy has been slow to recast its curriculum to

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prepare students to work in a new legal delivery model that expects lawyers not only to have legal skills but also to be conversant in IT, process, financial fluency, leadership and collaboration. Worse still for law schools—and more so for students—law firms are shrinking incoming classes since clients no longer subsidize associate training and assign that work to sources other than law firms.

Employers want law graduates that are practice and market ready so they can ‘hit the ground running.’ The American Bar Association (ABA) has recently directed law schools to augment the curriculum to include experience-based learning (e.g. hands-on training) as well as courses on technology. This is a first step towards aligning law school training with the changing demands and expectations of the marketplace. Another helpful move would be for law schools to tap into the resources of the University and to promote inter-disciplinary training for law students with business, technology, communications, and other professional schools.

But what about practicing lawyers who find themselves in a rapidly changing marketplace that demands new skills they do not have?

### **The Case For Legal Re-education**

Lawyers in the middle-and later stages of their careers anticipated a secure, predictable career that no longer exists for all but a handful of rainmakers and practice experts. They were trained to ‘know the law’ on the assumption that was all lawyers needed to succeed. That no longer cuts it. So how do practicing lawyers

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acquire key competencies such as understanding of how technology/AI is applied in legal delivery; project and process management; collaborative skills; and financial fluency to cite a few? Continuing legal education (CLE) is a start, but it is often more of a box-checking exercise to maintain licensure than a comprehensive professional re-education.

What's needed is a more intensive, granular, training for practitioners—an executive education boot camp that provides: (1) context for how and why new skill sets are required; (2) an overview of what those skills are and their key elements; (3) hands-on/experiential exercises supervised by experts; (4) lessons learned/reflection; (5) a synthesis of how these skills play into new legal delivery models; and (6) discussion of where “alt-law firm” opportunities lie.

### **Some Suggestions for Cost-Effective, Efficient Delivery of Legal Re-Education**

Legal re-education can be delivered in a number of cost-effective ways. One is via the creation of executive training programs that are administered either at law schools, for-profit institutions, or the ABA and other public interest organizations. Cost could be kept to a minimum by the efficient use of technology-- MOOCS, webinars, etc.-- and by enlisting faculty who regard teaching as a way of ‘giving back.’ Law schools could play a key role, drawing from the resources of the University—collaborating with business, technology, economics, and other schools to offer a more

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integrated, holistic approach to legal delivery for undergraduates and practicing lawyers alike.

**LawWithoutWalls** (LWOW) provides an outstanding example of a collaborative, holistic approach to contemporary legal education that draws from multiple sources within and without the legal ecosystem. LWOW is a multi-disciplinary think tank and training ground operating at the intersection of law, business and technology. It connects the different players in these areas and creates an integrated global environment in which participants engage in hands-on projects to promote innovation in legal delivery. LWOW's focus is to prepare law students to become 'change agents that are transforming the way lawyers and business professionals partner to solve problems.' Its enlightened methodology, pedagogy, leadership, and resources could be leveraged as a paradigm to re-train practicing lawyers and, in so doing, benefit clients and the general public.

Law schools could work with alumnae to subsidize the cost of executive training courses and to promote goodwill. The Academy could also forge partnerships with corporate legal departments, law firms, leading service providers, and the public sector to promote and support these programs. A re-trained legal workforce would not only advance the efforts of participants but it would also serve many broader social objectives including ameliorating the access to justice crisis. It is in society's best interest to have a

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modernized legal workforce that can better serve individual clients and the public at large.

### **Conclusion**

Legal re-education is important not only to the hundreds of thousands of lawyers ‘no longer at ease here, in the old dispensation’ but also to society. An *au courant* workforce would enable lawyers to apply their skills to maximum advantage for the benefit of individual clients as well as the greater good. That’s a solid investment.

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## **‘Legal Innovation’ Is Not An Oxymoron —It’s Farther Along Than You Think**

The legal industry is known for adherence to precedent, not innovation. While precedent remains a guiding principle in the practice of law, innovation is transforming the models, methods, and players involved in the buy/sell process of legal services. Technology, process, access to institutional capital, re-reregulation, client demand for enhanced value, and changes in other professional service industry delivery models—notably medicine and accounting-- are legal innovation’s principal drivers.

Legal innovation has lagged compared with other industries. Law’s Uber has yet to pull up to the curb. But that does not mean that the breadth, scope, and pace of legal delivery innovation has not picked up in recent years. Consider, for example, that in-house corporate departments and legal service providers (read: legal providers that do not ‘engage in the practice of law’ but deliver ‘legal services’) now account for nearly half of total legal spend. The rapid growth of these new supply sources—and their tech and process savvy delivery capability and corporate structures that are better aligned with client standard operating procedure—is a paradigmatic shift away from the long-dominant law firm partnership model. So while no dominant provider has emerged to replace traditional law firms, it’s clear that the search for new

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delivery models is well underway and yielding an ever-expanding array of client options.

BigLaw partners still rake in princely sums, and entry-level lawyers at their firms earn a lavish lunch less than \$200K, but that hardly supports the case that the traditional law firm model is alive and well. Consider the shift in buying practices among corporate clients and the delta between overall legal demand and flat demand for law firm services during the past five years. Then note the shrinking number of equity partners, the smaller classes of incoming associates and the overall declining percentage that large firm lawyers represent in the overall legal population. This is the fallout from changing customer expectations and their internal steps—as well as the growth of well-funded providers—to fill the void being created by buyer migration from the traditional law firm partnership model.

Let's consider for a moment 'disruptive innovation,' the oft-misapplied term coined by Clayton Christensen to describe a paradigmatic industry shift. Professor Christensen's theory posits that change takes hold in the lower end of a market, introducing new customers into the marketplace by creating ease of access, lower cost, and greater efficiency. That's *precisely* what is happening in the retail segment of the legal industry.

LegalZoom, a legal technology company that now has over 3 million customers—and sky-high approval ratings-- is successfully

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using technology to improve access, promote efficiency, and reduce the cost of legal services. They are also bringing new customers into the market. The company is also creating a template for how, when, and for what service level lawyers are required for different tasks and functions. LegalZoom is pioneering levels of lawyer touch-point determined by the value assigned by the customer, not the provider. This ranges from self-serve (standardized documents); to limited access (short online chats with lawyers or calls on a fixed fee basis); to full-blown engagements (with approved panel counsel). This approach is a paradigm shift worthy of the ‘disruptive innovation’ moniker. More importantly, it is one that will migrate to more complex matters in the corporate segment of the legal market. The question will be: who and what is the appropriate resource to deploy for a specific task—or matter--based upon its value to the client?

Corporate clients are already engaged in this process—a paradigm shift—in a number of ways: (1) an increasing willingness to procure services from providers with delivery models different than the traditional law firm partnership model; (2) taking more work in-house; (3) sourcing work—either internally or externally—to providers that are better aligned than law firms with the company’s risk tolerance and enterprise objectives; (4) utilizing technology, process, and ‘the right person for the right task’ to promote efficiency, mitigate risk, and reduce cost; and (5) rejecting the longstanding myth that only law firms—and lawyers—must

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perform all ‘legal’ tasks. Legal problems are increasingly viewed as business challenges raising legal issues.

Why have law firms not taken more aggressive steps to protect their once-dominant market dominance? There are several reasons:

- (1) there was little need to innovate until the global financial crisis of 2008 changed the way business is conducted—even law;
- (2) law firm senior partners lack the financial incentive to invest in the firm’s future because their ‘equity’ is not residual;
- (3) law firms were able to prop up profits by internal cost-cutting measures rather than client-centric innovation—no more;
- (4) law firms were able to prop up profits by internal cost-cutting measures rather than client-centric innovation—no more;
- (5) firms lack the investment capital to make long-term investments in innovation and there is a generational/ economic divide between older and younger partners;
- (6) rather than innovate, firms have tried to ‘reinvent’ their brands by merger.

This is neither innovation nor is it a generally a winning formula based upon a recent [study conducted by ALM Intelligence](#)

Law’s Uber moment has yet to occur, but there is a wealth of evidence that innovation is driving change—in the buy/sell dynamic; in client expectations; in the more widespread and effective deployment of technology and process in legal delivery; in

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the tasks that lawyers perform and for whom they are employed/ managed; in the price sensitivity for all but the highest-value tasks and matters; and for the melding of legal, technological, process, and collaborative skills required to deliver legal services. And while a handful of law firms—Seyfarth and Allen&Overy are two prominent examples—are traditional model outliers that have engaged in real innovation in service delivery, the bulk of the innovation has come from corporate legal departments and elite legal service providers. Is it any wonder, then, that these two groups now account for almost half of total legal spend?

Big money is eying—and investing in-- the legal vertical because of its immense size and disruption potential. Legal technology companies are proliferating; artificial intelligence is already part of the legal landscape—just last week a UK insurance company teamed with an ABS legal service provider to role out an AI-powered app to answer coverage questions for policyholders; and global legal service providers like Axiom and UnitedLex, among others, have global footprints and nine-figure revenues. Most importantly, consumers are embracing delivery options different than the traditional partnership model. This will stoke the innovation fire already ablaze in the legal industry.

## **Conclusion**

The pace of innovation in legal delivery will continue to accelerate during the next few years. And while many envision disruption in binary terms--law firm vs. service provider; AI vs. lawyer; insource

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vs. outsource—it's more nuanced than that. Disruption in legal delivery will not be a 'one-size-fits-all' approach. Clients assign different values to different tasks, functions, matters, and portfolios. Value is derived from context. For example, a product liability case is nuisance value if it's a one-off but high value if it could give rise to a multiplicity of similar actions.

The value of a matter drives the election of resources most appropriate to meeting the client's objective. The disruptive legal delivery model will be one that provides a scalable array of solution tools—human and technological; legal and business; embedded and agile-- that produce efficient, cost-effective, and risk-appropriate resolutions to client challenges. That's precisely what top lawyers have always delivered and it will be the winning formula going forward.

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## Law Firms Prosper As Their Model Falters

Good lawyers are problem solvers. The best ones forestall problems and, when they inherit them, prevent metastasis. So with demand for legal services robust and law firm demand flat three years and counting, law firms have a problem. Its crux is a misalignment of the traditional law firm model with the marketplace—except, perhaps, in certain high-value matters. Is it being fixed? Soaring partner profits (PPP) suggest it is. But the increasing percentage of legal services rendered outside law firms indicates the contrary. Which is it? Short answer: partners have fixed their challenge—how to increase PPP with a declining demand for law firms. Firms, on the other hand, have a worsening, systemic problem that threatens their sustainability.

The list of client gripes about law firms is long and familiar-- high, unpredictable cost; limited understanding of their business; poor process/project management; and ineffective communication. Technology is an especially significant factor. Thoughtfully deployed, IT promotes efficiency; captures intellectual capital; streamlines process; fosters collaboration; substitutes products for services and—for all those reasons and more—is anathema to law firms' performance and reward systems. The traditional law firm model is premised upon business generation and revenue. This is achieved by lots of billable hours under the rubric of

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‘thoroughness.’ Any wonder why law firms have generally been laggards in effectively deploying technology?

The fiscal crisis of 2008 and its aftermath was an accelerant for the rise of tech and process savvy legal service companies. Unlike law firms that are prohibited by regulation from accepting institutional investment capital, leading service companies invest heavily in technology and process. They have a corporate DNA and mindset designed to create ‘better, faster, cheaper’ solutions to legal delivery that align well with corporate culture. Legal service providers have quickly become a multi-billion dollar market segment. Their agile, on demand models are attractive alternatives to the high on staff cost of firm attorneys. And so too is their reduced price structure.

But perhaps the biggest impact of the fiscal crisis is the explosive growth of in-house legal departments. It’s easy to dismiss the ‘insourcing’ of legal work as labor arbitrage. But the more fundamental reason for in-house growth is law firms’ inability to deliver excellence and value. The value deficiency is linked to the traditional firm model and culture. Law firm performance criteria and incentives are very different from corporate departments where business generation is not a success criterion--though advancing business and enterprise objectives certainly is. In-house lawyers have many ‘home field advantages’ over outside counsel. Some examples are: superior knowledge of enterprise goals and risk profile; collaboration with core business interests; and

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integration with the enterprise IT platform. For these and other reasons, corporate legal departments now comprise approximately 45% of total legal spend.

In-house size, influence, portfolios, compensation, and market share are rising steadily. Significantly, many departments now have almost as many non-lawyer members as attorneys. This is because legal delivery is now a three-legged stool supported by legal, technological, and process expertise. Law firms are strong on the legal side but generally lag in technology and process skills. And law firm DNA is not receptive to providing an equal seat at the management table for technologists and service delivery experts. Simply put, in-house departments are doing a better job than law firms integrating technology and process into the delivery of legal services.

### **The Law Firm Response: Preserve Profit-Per-Partner**

Faced with competition from corporate departments and an expanding array of service providers, what is the law firm response? Most firms are making course changes, but they are internal ones designed to preserve PPP. So why are firms not taking more aggressive action to give the customer what it wants? Simple answer: partners—especially more senior ones—are prospering even as their model falters. And as Richard Susskind says, it's hard to convince a room full of millionaires that they've got their business model wrong.

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When one references a ‘law firm,’ it’s important to distinguish between equity partners and everyone else. Because in today’s world, to paraphrase Caesar’s Gallic Wars, ‘All firms are divided into two parts.’ Partners are prolonging life for their model even as clients are increasingly rejecting it. Profit per partner (PPP), the law firm gold standard since The American Lawyer published its inaugural firm profitability rankings in the mid-‘80’s, is at once firms’ lifeblood as well as its disappearing hourglass. With the exception of a few brand firms, PPP is achieved by increasing rates and billable hours, restricting partnership, retaining rainmakers and pulling in big book laterals, and by thinning the partnership herd. This stimulates PPP, not client value. It also explains the head-scratching rate increases and billing quotas that many firms are imposing at a time when clients routinely exact significant ‘rack rate’ discounts and increasingly favor fixed fee billing.

So as firm market share decreases with no signs of reversal, most partners—especially at about 20 brand- differentiated firms—have never been rewarded more handsomely. For The Am Law 100 as a whole, average profits per partner rose by 4 percent in 2015 after a 5.3% increase in 2014. Wachtell boasted a whopping \$6.6 million PPP. The AmLaw 100 average PPP was well over \$1.5 million—not bad for a model on the rocks. The law firm model might be under attack, but partners are feeling no pain—not yet, anyways. And that’s why firms are not reconfiguring their model to better align with clients.

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That begs the question: what does this mean for the future of law firms as we know them? Where is the succession plan? And who will train the next generation of firm talent? Where will capital come from to invest in technology, and when will firms embrace its crucial role in the delivery of legal services? Law firms are pursuing a short-term strategy that is readily apparent to clients. So as PPP is temporarily supported by lateral acquisition-- individually or en masse-- one wonders how long the current law firm model will survive.

### **Why Do Clients Still Engage Large Firms So Often?**

The law firm model may be showing stress cracks, but it still accounts for the majority of legal spend. Why? Perhaps the principal reason is that there is not yet a 'safe,' scalable outsource alternative for high value legal work. And while some large companies—notably Shell Oil—are taking much of their high-end work in-house, that's still the exception in part because not many corporations have (or have need for) such substantial legal departments.

Another reason is that top law firms deliver more than legal services alone. They drive business to their clients, have ties to the C-Suite and Board, and provide 'cover' for bad outcomes ('You don't get fired for hiring IBM' a/k/a 'CYA'). Another reason is the symbiotic relationship between certain firms and in-house legal departments—an alumni club of sorts. And yet another factor is inertia tinged with the considerable cost of replacing firms.

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It's only a matter of time, though, until The Big Four or some other multi-disciplinary professional service provider with a platinum brand and global reach disrupts the legal vertical. Disruption might also come from global legal networks that deploy technology, process, local expertise, and a new delivery model that reduces legal cost, mitigates risk, and seamlessly integrates additional service providers on demand. The technology already exists; it is only a matter of time until the emergence of the first 'safe' provider with sufficient scale and a new, client-centric model.

## **Conclusion**

It's hard to say how long the bonanza for partners will continue or when the incumbent firm model will yield to a new one. The short-term approach that law firms are taking to sustain sky-high PPP cannot last for another generation. Chances are its end will come much sooner. Business today is about technology aligning customer with provider and cutting out the 'middle man.' The traditional firm model is a middle -man. Something's gotta give.

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## How Artificial Intelligence Will Transform The Delivery Of Legal Services

Michio Kaku, a noted theoretical physicist and futurist, maintains, “The job market of the future will consist of those jobs that robots cannot perform.” He opines that gardeners and construction workers—among other blue collars -- will have jobs because of the uniqueness of each project. But the losers, in Mr. Kaku’s view will be white-collar workers, low-level accountants, brokers, and agents. What about lawyers lacking specialized skills and differentiated legal expertise?

Robots have recently entered the BigLaw workforce, performing tasks once assigned to newly minted law grads—but much more efficiently. At the same time, Cravath raised first-year associate salaries to \$180K. And soon thereafter, about one hundred other firms equaled or topped that. What do these seemingly contradictory developments say about the marketplace and where things are headed?

### Higher Pay and New Competition

Cravath rattled the legal marketplace when it announced a few months back that incoming associates would make \$180K. It seemed like an odd thing to do—even for Cravath-- at a time when clients are demanding more for less. Economics aside-- the optics

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are bad. The newbie BigLaw salary is more than many experienced in-house lawyers make and anathema to clients unwilling to subsidize associate “on the job training.” So why would so many law firms follow Cravath’s lead? Simple answer: herd mentality. Their focus seems to be what other firms are doing, not what clients want.

Then there is very different associate news. Baker & Hostetler (one of the firms that followed Cravath’s salary bump) announced that “Ross” would be joining the firm’s bankruptcy team. Other firms will surely follow. Ross is the eponymous progeny of ROSS Intelligence, AI-enabled software. The robot uses the supercomputing power of IBM Watson to comb through huge batches of data, dramatically reducing research time and expense, while providing 24/7/365 updates. And Ross is not bucking for partnership or raises, either.

### **AI Is Not Just About Replacing Lawyers**

The appearance of AI in BigLaw is a harbinger of more sweeping changes in legal delivery. It’s proof that several “legal” tasks can be performed more reliably, efficiently, and cost-effectively utilizing technology and process than by associates logging big hours at high rates. And AI’s entry into legal delivery is solely about replacing lawyers and shaving dollars from corporate legal spend.

Consider DoNotPay, an online robot that has successfully challenged 160,000 parking tickets in New York City and London—

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for free and with a 64% success rate. Here's how it works: users visit the company website and IM with an automated service (bot) that asks them a series of questions. Upon completion of the exchange, the bot takes the user information and creates a document that can be used to challenge the tickets. Time and hassle aside, a lawyer would likely charge far more than the infraction cost.

But that was just the start for DoNotPay. It soon extended its offering to petitions for flight delay compensation. More recently, it has graduated to something life-altering: facilitating applications for government housing. The user experience parallels the parking ticket process: the “client” logs onto the company site; responds to IM'd questions related to health, reasons for homelessness, etc.; the bot synthesizes the answers; then it produces a completed application intended to increasing the applicant's chance of receiving placement in a home. But for this free service, most users would not file an application because neither would they know how to prepare it nor could they afford a lawyer. It's a great example of technology deployed to further the public interest and to address the access to justice crisis.

### **Lawyers: Learn to Collaborate With Robots**

Lawyers—like other professionals—will have to learn to work alongside robots. AI is not going away. What matters in today's marketplace is which resource—human or robot-- is appropriate for the task; from what structure it is delivered; and at what level of

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skill, efficiency, and cost. Highly paid lawyers—especially those with undifferentiated skills delivered from traditional law firm models—are no longer the default provider. And should law firms vie to perform more routinized tasks, they might consider assigning Ross instead of \$180K associates. It’s a twenty-first century version of “look to the left and look to the right.” And at the end of the day, it might be a lawyer working with a robot, not two high-priced associates.

Talented young graduates cannot be compared to robots, of course, and it’s not a zero-sum survival game. Still, the smart money is (literally) betting on IT and process—not the traditional law firm model—to dominate legal delivery. Witness the significant uptick of investment in tech and process-savvy providers like LegalZoom, AVVO, and Axiom among scores of others. This will not spell “the end of lawyers” but it will recast how, for whom, when, and at what cost lawyers will be deployed. And increasingly, lawyers will work outside the law firm environment-- in corporate legal departments, service providers, multidisciplinary firms such as the Big Four, tech companies, and others in the legal delivery supply chain.

For a glimpse into law’s future, lawyers should look at the medical profession as analog. Robots have been used productively there in a number of ways: professional training, patient care, and diagnosis, among others. And it’s not just robots; IT has accelerated disaggregation in healthcare delivery. That’s why doctors who once performed virtually an entire physical exam, for

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example, now are with the patient for only a small part of it. They conduct a preliminary screening and then reappear to synthesize test results and activities conducted by paraprofessionals. Their time is leveraged *and they perform only those tasks that require their specialized expertise and training*. Why should legal delivery be different?

### **Conclusion**

It's easy to sympathize with loan-saddled law grads keen to retire debt. But that's a separate issue from law firms paying salaries that bear no relation to client value. And while Ross and talented—but unproven—graduates both have a place in the new delivery marketplace, it's imperative that young lawyers—and their older colleagues—embrace technology; regard it as their new “partner,” and provide specialized legal expertise and skills (trial work, negotiation, client counseling) that machines cannot.

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## **It's Time For A Digital Legal Marketplace**

Many years ago at a Finley Kumble partnership meeting a friend wryly commented, 'We're tents in the bazaar.' He was right; each partner operated his/her own mini-firm-- setting rates, hustling business, and engaging in non-stop origination disputes. It was by no means a collegial bazaar. Decades later, the Finley Kumble version of 'partnership'—once anathema to white shoe firms—predominates. But in addition to the 'bazaar' that most large law firms are, a broader competitive marketplace also exists. Law firms once dominated the legal vertical, and there was plenty of work to go around. Those days are over. In-house legal departments and legal service providers now combine for nearly half of total legal spend. The 'tents in the bazaar' remain, but a new digital marketplace is also emerging. It is changing the way legal services are bought and sold.

### **GE's 'Preferred Counsel' Digital Marketplace**

General Electric's recently launched an internal website for its approximately 800 strong in-house legal team. The site, called 'GE Select Counsel' enables users to search the roster of more than 200 law firms that are GE 'preferred providers.' Each firm posts its profile which GE counsel can access for reviews, rates, discounts, diversity data, and a range of other information relevant to retention decisions. This is GE's version of 'Yelp meets LinkedIn,'

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part of the company's broader initiative to become digital to achieve a shared services model. Welcome to the new legal marketplace where legal providers vie for work in a digitized marketplace and where buyers can comparative shop as never before.

There are several takeaways from the GE site. First is its prerequisite that to become a 'preferred provider'—and to maintain a profile-- a firm must agree to play by GE's rules. That includes signing an agreement to provide negotiated rates. Next, the site enables GE counsel to make more informed buying decisions; they can access and compare firm expertise, experience in similar matters, price, peer reviews, and other criteria. This will spell the end for the 'water cooler recommendation.' Most significantly, the GE 'marketplace' underscores the fundamental shift in the way legal services are bought—and sold. To borrow from Facebook, clients were once 'in a relationship' with particular lawyers and firms. Now, 'it's complicated.' In a digitized world, buying decisions are less relationship and more procurement driven. This Tinder-type transactional dynamic between seller and buyer is a reminder that legal services are generally perceived by buyers to be more fungible than bespoke. And now buyers can check relevant data and reviews, too.

### **What's Next For Legal Services?**

The legal vertical is one of the last large guilds to resist digital disruption. Those outside law's self-regulated cocoon wonder why

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change in the legal industry has been incremental, not disruptive. Fair question, especially when one considers that some estimates peg legal service as a one *trillion* dollar (that's 't' as in 'tons of money') annual global market. Not only is the size of the legal service market enormous, but also its traditional delivery model is misaligned with market need and demand. Derek Bok, the former president of Harvard University and dean of its law school, summed it up this way: 'There is far too much law for those who can afford it and far too little for those who cannot.'

Approximately 85% of all Americans as well a majority of small businesses cannot afford legal representation at current prices. This is often referred to as 'the access to justice crisis.' At the same time—and paradoxically—tens of thousands of under-employed and unemployed attorneys are looking for work. Likewise, there's not much love for the incumbent law firm delivery model in the corporate segment of the market. Only a small fraction of General Counsel would recommend their 'go-to' law firm. If the legal industry's pent-up market demand and underutilized supply capacity—and buyer frustration-- appears ripe for an Uber, Airbnb, or other tech-enabled model to connect buyers directly with sellers, it does to me, too. It's time for a digital legal marketplace.

GE's internal digitized marketplace pairing its buyers with 'preferred' sellers indicates that a far larger marketplace could be created. Such a marketplace could be divided up into many different segments each one catering to a particular market segment or geography, for example. Digital marketplaces would

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ease the access to justice crisis, permit sellers to better differentiate themselves through direct, data-driven comparisons to competitors, and enable legal consumers—retail and corporate—to acquire legal services and products with greater ease, efficiency, choice, transparency and due diligence—at a lower cost. And if this sounds far-fetched, consider Amazon.

### **Why Not An Amazon For Legal Services?**

Amazon is the granddaddy of digital marketplaces. It has reimagined retail, utilizing technology to create a vast, multi-layered marketplace for buyers and sellers. By removing the middleman and making the purchase and sale of goods easy, accessible, efficient, and less expensive than the traditional delivery model, Amazon has brought new buyers into a rapidly expanding marketplace. Amazon's multi-level e-commerce strategy has created multiple channels for businesses and consumers to interact in different ways, each one expanding the size, breadth, and vibrancy of the marketplace. Approximately 40% of Amazon's sales are third-party product. The common denominators are that goods are easier to access, compare, review, buy and sell. Why not apply this provider-agnostic approach to legal services?

Technology is not a panacea for the legal vertical any more than it is for medicine or a slew of other industries it has disrupted. But IT *can* enable the formation of a marketplace that breaks down traditional access barriers; promotes competition; affords consumers greater choice; and enables providers to differentiate

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themselves based upon data rather than hearsay. Most importantly, a digital legal marketplace will bring millions of new clients/customers into the market and provide many of them with affordable legal representation. In the end, such a marketplace will realign the interests of lawyers, clients, and society at large. It will also help to restore the rule of law by providing greatly improved access to legal representation. And it will also restore public confidence in lawyers.

## **Conclusion**

The delivery of legal services remains largely fragmented, outdated, and inefficient. It's time for a digital legal marketplace. This will not undermine the legal profession. Instead, it will enable lawyers, technologists, and process experts to better leverage their skills to deliver services and products more efficiently, cost-effectively, and transparently to a greatly expanded universe of clients/customers. A legal marketplace will not change the practice of law, but it will certainly improve its delivery and societal impact.

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## **Cab Companies And Law Firms Are Taking The Same Route**

Miles van der Rohe, the noted architect, remarked: “Architecture depends on its time.” The same can be said about business structure--it depends on its time.

A paradigm shift is occurring. Technology has enabled the creation of new business structures. It has facilitated a decentralized delivery structure, creating communities that connect sellers with buyers.

This is sometimes called the collaborative or sharing economy, where individuals deploy underutilized assets—everything from cars and apartments to lawyers—to “share” with buyers.

This eliminates centralized institutions that control supply and stifle competition by protectionist self-regulation. It has produced “faster, cheaper, better” delivery of goods and services available on an as needed basis.

Two examples of this phenomenon are the taxicab and legal industries. Each is in the throes of what Clayton Christensen calls “disruptive innovation.”

While change in the cab industry is farther down the road than law, the similarities in the “before and after” of each is striking.

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## **A Quick Look in the Rearview Mirror: Cabs and Law Firms Pre-2008**

Lawyers and cabbies have several things in common: (1) if their meter is not down, they are not generating revenue; (2) most cabbies don't own their medallions, and the vast majority of attorneys are not equity partners in their law firms; (3) both groups operate in economic models that are strikingly similar: owners benefit when their ranks of cabbies — or lawyers — are working “with their meters down;” (4) statistics show that lawyers and cab drivers have disproportionately high rates of drug abuse, alcoholism, depression, and a host of other maladies; (5) until recently, both worked for providers with largely undifferentiated brands—cab companies and law firms—operating in self-regulated environments that discouraged outside competition; (6) both will soon be rendering services from different delivery models that are customer-centric, cost-effective, and more efficient than the incumbent models they unseated; and (7) both will soon be affected by AI that will circumscribe and redefine their roles.

Cab companies and law firms were riding high a decade ago. They faced little competition, steadily jacked up already high rates, and still experienced an increase in demand. Provider focus tended to be on profit rather than customer satisfaction since buyers had no scalable alternatives. Would-be drivers worked for cab companies the same way most lawyers toiled at law firms.

Owners thrived. Medallions—a requisite for operating a cab—outpaced the stock market as an investment. Law firm profit-per-

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partner (PPP), likewise, outpaced other industries. Neither perceived a need to invest in research and development or to focus on customer satisfaction. And each had a long run until the financial crisis of 2008.

The financial meltdown caused belt cinching across the globe. Individual and corporate consumers alike questioned how they could “do more with less.” This galvanized entrepreneurs to launch new business structures with delivery capability that relied upon technology, process, and reallocation of existing resources to provide scalable alternatives—and competition-- to incumbent providers. The process of unseating long-standing incumbent providers required not only creating a “faster, cheaper, more accessible solution” but also, in many instances, meant taking on protectionist regulatory barriers. This required new provider to have two key elements: (1) a critical mass of customers that made the new providers “too popular to fail;” and (2) capital to fund regulatory challenges.

### **Cabs and Law Firms Today: Traveling Down The Same Road**

Uber did not attempt to create a variation on the traditional cab company by, say, painting its cars crushed orange, or discounting cab rates by a certain percentage. Instead, it utilized technology — upon which it made a huge initial investment — to alter the way people utilize car-for-hire transport. In the process, Uber did away with the existing taxi fleet model, replacing it with resources it neither owned nor maintained. It changed the way drivers work—

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an “agile” model—as well as the way customers hail rides—via smart phone. It also recast the economics for riders and drivers alike: riders paid substantially less than cab rates and drivers retained a higher percentage of fares than cabbies. Uber made “hailing” a ride more accessible, predictable, and cost-effective and brought many new customers into the market. It upended the taxicab industry and became the poster child for disruptive innovation.

Law firms are its industry’s cabs in the age of Uber. For decades, they have been the predominant provider of legal services. But they have recently lost significant market share to in-house legal departments—that now garner an approximately 40% share—and service providers—that have enjoyed 30% annual growth rates for the past few years. The trend lines point to a continuation of this pattern. During the past three years, global demand for legal services has increased steadily; however, law firm time has been flat. How to explain the delta?

In-house departments and service providers have different delivery structures than law firms. They integrate technology and process management with legal expertise in ways that law firms don’t. They also have different advancement criteria, pay incentives, and a more diverse workforce—especially at the senior management level-- than law firms where business origination is the *sine qua non*. By contrast, the key indices in-house are the ability to defend the company zealously while, simultaneously, “playing offense”--

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collaborating with the business side to advance the enterprise's objectives.

This helps to explain why all but a handful of brand differentiated “elite” law firms-- law's one-percent—are already feeling the impact of a rapidly changing market. The response? Rather than focus on change designed to enhance customer satisfaction and differentiation, most firms make internal adjustments including: “de-equitizing” under-performing partners; hiring fewer newly minted law school grads; and taking steps to insure that profit-per-partner is preserved. This is a palliative but not a cure to the fundamental structural problem that traditional law firms have.

Tellingly, the smart money—lots of it—is investing in tech and process savvy service providers that are developing legal products that replace services and drastically reducing the cost and improving efficiency of legal tasks. LegalZoom, a technology company operating in the retail end of the legal market, is a prime example. It has quickly become the nation's best-known legal brand and is disrupting the retail segment of the legal market. It has provided cost-effective, easy-to-access, and effective legal service to more than 3.5 million customers previously priced out of the market. It has also helped launch more than one million small businesses. LegalZoom has also developed a robust set of client satisfaction and attorney performance metrics for panel counsel that provide answers to customer legal questions on a contract basis. Customer satisfaction is *the* company priority, and that

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explains why LegalZoom enjoys such high approval ratings. It has created a new, scalable model for legal delivery, one that could certainly converge with the corporate segment.

LegalZoom--like Uber-- has met stiff resistance from regulators. It has prevailed in nearly a dozen attempts by regulators to prevent it from conducting business. But for its substantial war chest, popularity with customers (it has become “too popular to fail”), and compelling business model it would have been sidelined. It’s not easy or cheap to take on an entrenched, self-regulated industry.

## **Conclusion**

Uber has created a paradigm shift in business structure. It has changed the way providers work, customers buy, and technology is used. It connects buyers directly to providers and decentralizes control of delivery. And it aligns the interests of buyer and seller. Law is headed down the same road. LegalZoom has demonstrated —to scale—that this can be done in the retail segment of the legal market. The corporate segment of the market is keen for a “safe,” scalable provider that combines legal, IT, and process expertise, a viable alternative to the traditional law firm structure. Clayton Christensen’s theory of disruptive innovation posits that disruption typically begins at the lower end of a market and migrates up. My bet is that law is headed down that road, and its Uber will appear soon.

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## The Smart Money is not Following Traditional Law Firms

Back in the late '70's, there was a popular commercial where a young professional commented above the din of a dinner party conversation that his broker was E.F. Hutton. The room fell silent and the punch line was: "When E.F. Hutton talks, people listen." Above the din of legal pundits (myself included) opining about shifts in the global legal market comes Deloitte's June, 2016 research study on "[Future Trends for Legal Services.](#)"

Lawyers tend to shy away from data, preferring subjective evaluations that preserve the status quo—pedigree and reputation, for example. And they often evaluate things from their own perspective rather than from the more important prism of clients. Law firms tout what they can do and how well they can do it rather than focus on client needs and expectations. And their message is typically undifferentiated—ditto, their brand.

The Deloitte study examines the client side of the market. It is data driven- the quantitative findings derive from an extensive global survey of CEO's, CFO's and Legal Counsel of multinational companies in different sectors. Each of the more than two hundred respondent companies operates in at least five countries. The data are based upon survey responses as well as several in-depth interviews.

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The study's findings confirm that customers are neither pleased with, nor tethered to, the incumbent law firm partnership model. They are looking for alternatives and are increasingly viewing those alternatives as an imperative rather than an option.

Deloitte's findings reveal:

- Demand for legal services is growing
- Purchasers' expectations of legal service providers are evolving
- Purchasing patterns are changing--55% have recently or will soon undertake comprehensive review of legal suppliers
- Demand for non-traditional legal services is increasing--52% would be happy buying legal services from a non-traditional law firm entity providing a range of services
- Legal expertise alone is insufficient; clients want it combined with industry, commercial, and IT expertise
- Law firms are not meeting purchaser expectations in a number of key areas:
  - Integrated, multidisciplinary services other professional service providers deliver
  - Use of IT, especially in data management and cyber-security as well as operating from an integrated platform
  - Regulatory compliance/utilization of technology
  - Fee structure, especially fixed fees, value pricing, and transparency

Deloitte's study parses client dissatisfaction and receptivity to providers that offer a departure from the traditional firm structure.

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This explains some key market trends that include: (1) institutional capital being pumped into tech-driven service companies; (2) the growth of cottage legal service businesses such as litigation finance; (3) the interest—and growth-- of the Big Four in the legal services market; (4) the proliferation of “alternative” law firms; and (5) the growth of corporate legal departments. And it explains why clients are “**voting with their feet**” and looking beyond established law firms to outsource work or, in some instances, to collaborate with.

Deloitte’s study provides answers to some key questions including why:

- Demand for law firm services has been flat for almost three years
- More work is being taken in house
- Service providers are experiencing 30% annual growth
- Client dissatisfaction with law firms is so high
- Discounts, RFP’s, reverse auctions, consolidation of outside firm, and other examples of buyer leverage are common
- Big money is being invested in legal service providers, especially those with tech-driven solutions
- Law firms are feeling the squeeze

### **More Changes Ahead**

Buyers have changed the rules of engagement—literally and figuratively—for procuring legal services. This has resulted from several powerful socio-economic factors including: rapid

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technological advances; globalization; the economic crisis of 2008 and its aftermath (hopefully not reprised by Brexit).

These factors have affected the delivery of legal services, once based exclusively on selling legal expertise. Now, legal delivery involves legal expertise, technology, and business process.

Law firms have been slow to adapt to IT and process, and they are starting to feel the consequences. They are losing market share to corporate legal departments, service providers, and multidisciplinary professional service providers. What can law firms do to stanch the bleeding?

Collaborating with service providers and corporate legal departments is one way. Focus on differentiated legal expertise—those areas where a firm truly excels-- is another. And providing an equal seat at the management table for technologists and process experts is a third. Paramount, though, is a client centric approach to delivery.

Law firms must understand the client's business—its goals, challenges, and DNA. They must deliver service more efficiently, cost-effectively, collaboratively, and transparently.

## **Conclusion**

The Deloitte survey shines a light on where legal delivery is headed. Demand for services is robust, but satisfaction with the

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incumbent delivery model is low. This disconnect underscores the opportunity for disruption. Who will prevail? Might be wise to follow the money.

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## Law Should Play Ball With Baseball Metrics

Yogi Berra said, “Baseball is ninety percent mental and the other half physical.” His numbers are off, but his on-field stats, glove, and immense popularity landed him in Cooperstown, a place that enshrines baseball greats based upon metrics. Ever wonder why law—a trillion dollar global industry purportedly grounded in evidence, proof, and fact—is so remarkably devoid of meaningful metrics for performance and results?

### **Baseball Is Well Into Its Second Generation of Metrics**

Baseball is a numbers game. There’s a metric for almost everything. Measures of individual performance—home runs, runs batted in, batting average, earned run average, etc.-- have been around for more than a century. During the past few decades, a more advanced statistical arsenal—often referred to as Sabermetrics—has been used to evaluate players’ impact upon team results. The purpose is to advance an objective knowledge of baseball and to provide a more reliable measure of player value. So, for example, on-base plus slugging (OPS) and wins above replacement (WAR ) have become key player metrics. Players with high WAR are prized because of their individual prowess *and* its impact on outcome. And while kids can still debate which of two players is better (Mantle or Mays in my day) and a measure of

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subjectivity remains, there is a plethora of objective data to support one's preference.

Billy Beane, the cerebral General Manager of the small-market, low-budget Oakland A's, championed a new, data-driven paradigm for building rosters. He relied on metrics to identify undervalued talent, enabling him to assemble winning teams with low payrolls. His method helped dispel the myth that teams win with big payrolls. His metric driven approach came to be known as "Moneyball," and it is applied inside and outside of baseball. Why not in the legal industry?

Imagine if the legal industry had metrics enabling buyers to retain legal talent based upon objective criteria—relevant experience, skills, outcomes, peer and client evaluations, etc. These metrics could be pored with price to identify the appropriate cost: value blend for the individual matter or portfolio. This is critical because different matters have different value for clients.

### **Pedigree and Profit-Per-Partner Are Law's Incumbent Metrics**

Legal providers and consumers have historically relied on pedigree—not metrics—to identify quality. And pedigree (law school, firm, partnership) creates "reputation." Likewise, the reputation of a law firm often derives from founders or a few key partners, a form of "excellence by association." There is a conspicuous absence of objective measures for evaluating individual lawyers or firms. And

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while firms do use data for management, it is typically confined to internal financial metrics, not client helpful ones.

Profit-per-partner (PPP) is the seminal metric of law firms, enabling them to retain star partners and to attract rainmaker laterals. But PPP has no bearing upon the quality of a particular partner or firm; the value or efficiency of service; results; or client satisfaction. PPP is a measure of equity partner profitability. Period.

Law also lacks generally accepted quality standards (though some are applied to service providers). It would be easy enough to establish such standards and to maintain data that would be useful on the buy and supply sides. And while some lawyers might bristle at a data driven approach to evaluation, it's the norm in many other industries. Example: five years ago I decided to have Lasik eye surgery. Naturally, I asked around for some recommendations. But I also studied the data: specialized training; how many procedures the doctor had conducted; outcomes; peer reviews; patient reviews; etc. Why should a legal buyer not have access to the same information?

### **Legal Delivery In The Age of Big Data**

The legal industry is behind the curve in utilizing technology and formulating meaningful quality and cost metrics, but that's changing. Early legal software applications involved internal accounting functions, enabling users to track time, billing,

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realization, and other financial data. Clients also used cost tracking data but there were no generally accepted, objective quality standards or metrics that measured outcomes.

Disaggregation of high-volume/low-value work (e.g. document review, regulatory updates, research) spawned tech and process savvy legal service companies. These companies applied a business rigor to legal delivery and introduced metrics for efficiency, accuracy, outcome, client satisfaction, and performance by individuals and teams. This is a paradigm shift for legal delivery, one that presages more widespread reliance on data driven metrics. And while some would say this is more easily achieved for repetitive tasks, there's no reason why high value functions cannot be benchmarked, too.

Some companies are doing just that. AIG, the world's largest legal consumer with an annual spend of approximately \$2B, created a legal operations team to mine its data to reduce legal spend and improve results. After successfully tackling the challenge internally, The Legal Operations Company was spun off as a separate business entity to advise external corporate clients how to reduce legal spend and improve results. This enables buyers to make more informed retention decisions that are based upon objective criteria, not hearsay.

Legalist, a litigation finance startup is another example of a data driven legal service provider. Its founders, two Harvard

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undergraduates, mined 17 years of case data—more than 15 million cases in 10 states-- to predict case outcomes for small and mid-sized business litigation. Litigation financing, a fast-growing legal cottage industry, is in the business of fronting capital to fund litigation. It is a business where, obviously, due diligence is pivotal. Legalist is the first commercial litigation funder to use applied artificial intelligence to evaluate litigation claim value. Curiously, other established litigation funding companies utilize technology but rely principally upon former litigators from pedigreed firms to do the vetting.

Surely, there is a role for lawyers *and* machines here; however, data is a key piece of evidence in building a buy-sell-settle decision. And when legal buyers and counsel are armed with the data at the outset of a matter, litigation and lost opportunity costs can be reduced drastically.

## **Conclusion**

In a world where everything from hospitals to hotels have readily accessible rather than based upon multiple performance, cost, and value criteria, why not expect the same in the legal services industry? It's time for accepted quality standards to be established and for more robust cost/performance/value metrics to become industry standard. "Caveat emptor" should not apply to legal buyers.

To paraphrase Yogi, "Legal evaluations should be ninety percent objective and the other half subjective."

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## Who Do I Sell To? The Legal Service Providers' Dilemma

The sales process in law used to be so simple: partner at law firm has a relationship with the General Counsel or a subordinate in-house attorney. Company has a legal matter and ships the matter over to the firm who handles it start-to-finish. An invoice is presented. It reads: "For legal services rendered," followed by a large and arbitrarily conceived number. Repeat cycle. But that was then and this is now.

Law firm rainmakers can no longer rely solely on "relationships" to secure work. Competition is fierce among law firms, both domestic and foreign-based. Institutionally backed legal service companies offering products and services now vie for pieces of matters—sometimes portfolios-- once handled exclusively by law firms. Example: Axiom recently signed an eight-figure deal with a major financial institution involving regulatory work.

Then there are contemporary "beauty pageants," called Request for Proposal (RFP) that require legal service providers to jump through hoops *just to be considered* for work, either existing or prospective. And let's not forget company IT Departments who routinely vet providers for their level of security, compatibility, etc.

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But that's not all that has changed.

### **The Business of Law Encounters Business Standards**

In-house legal departments have grown in size and stature and are handling a greater volume and complexity of work, much of which was once outsourced to law firms. Many in-house departments now take a business approach to legal delivery that includes utilizing business, IT, and procurement professionals to vet outside legal service providers.

An org chart of large in-house departments often has a dizzying array of titles, many with “General” “Chief,” and “Senior.” Some in-house departments have their own Chief Financial Officers—not to be confused with the C-suite variety— who manage the financial side of legal operations, both inside out. An increasing number of companies engage Procurement to vet legal providers and to serve as gatekeepers. Final selection of law firms generally remains with the GC or senior designees, but Procurement is frequently the decision maker when it comes to legal service companies (e-Discovery, staffing, IT products, etc.).

Knowing which portal to enter has become key to being in the hunt for securing legal business. And it's not always easy to know which door to knock on because companies rarely provide sellers with lineup cards. Sound like a contemporary legal version of “Let's Make A Deal?” It does to me, too.

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## **How and Why Did Things Get So Complicated?**

It is difficult to assign a precise date to when selling legal services became so complicated. Disaggregation—“unbundling”—began about 15 years ago when Tom Friedman taught us “The World is Flat.” Legal process outsourcing, a fancy term for offshore rather than domestic labor arbitrage, took hold as did the rise of legal staffing companies. Not long after, “alternative law firms” that eschewed the traditional partner model and service providers offering legal services but not “engaged in the practice of law” emerged.

And, though it was in its infancy, technology emerged as an integral part of the legal delivery process as paper discovery exploded into e-Discovery. This gave rise to “legal tech” companies that provided everything from software solutions to integrated platforms from which to provide legal services on a remote (“virtual”) basis.

Meanwhile, in-house legal departments bulked up to provide a less expensive, more client knowledgeable alternative to the skyrocketing cost of law firms. And in the process, many developed performance metrics, adopted a business approach to legal delivery, and began to pose a serious challenge to outside law firms and, to a lesser extent, service providers.

All this was prelude to the global financial crisis of 2008 and its aftermath when legal service providers were no longer “sacred

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cows” exempt from delivering value--quality and efficiency at low risk and reasonable cost. To promote this result, in-house departments increasingly turned to “business types” to assume a more prominent role in procuring legal services as well as to run the business side of internal resources

Law had long been a business for providers. Now, consumers were taking a business approach to the procurement of legal services. Turnabout is fair play.

### **Enter: Procurement**

Procurement Departments have played a key role in corporations for decades, overseeing acquisition of goods and services from paper clips to professional services. Their recent emergence in purchasing legal services came as an unwelcome surprise to many lawyers who questioned their ability to understand the “special” services that lawyers provide.

Procurement’s seat at the legal vertical table began at the lower end of the supply chain but has since migrated to “the fat middle” and, in the case of Glaxo-Smith Kline and a few other *avant garde* in-house departments, all the way up to “bet the company” matters. But for most corporate legal departments, there remain limits on the scope of Procurement’s dominion over the purchase of legal services.

Silvia Hodges Silverstein, a guru of legal procurement as well as a friend, describes procurement’s role in purchasing legal services

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this way: “They are ‘buyers’ in the classic sense: they are responsible for the engagement letter/retainer or framework agreement and negotiations. Procurement professionals are influencers; they try to affect the outcome of decisions with their opinion....(they) also act as gatekeepers....and direct the flow of information between the service provider and client.”

Procurement’s growing influence in buying legal services is emblematic of more sweeping changes in the legal vertical. Some key elements include: legal services are now held to similar business standards as clients; the relationship element persists in buying decisions, but metrics are replacing subjectivity; and it’s a buyers’ market, one where business professionals—not lawyers alone-- are involved in acquiring legal services.

## **Conclusion**

The legal vertical is becoming increasingly competitive and clients are flexing their buying power. IT and business are now enmeshed in legal delivery to the point that they have become part of the buying process. Translation: legal service providers must conform to objective scrutiny, demands, and heightened, value-driven expectations.

Those selling legal services must become conversant in legal, business, and IT-speak. Selling legal services is a new ball game, one where lawyers no longer control both the supply and buy sides.

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## Are Lawyers Just Like Other Vendors?

I recently spoke at a Legal Procurement conference where the topic was “Managing Relationships.” My takeaway: providers want to know how to close business and buyers want more for less – and know they can get it. It’s a jungle out there.

Has legal buy and sell devolved from a trusted advisor to vendor dynamic? Is there a “relationship” component left? Before answering, let’s consider briefly how and why we got here.

### **The Way We Were**

Legal practice -- what lawyers do -- has not changed much. But legal delivery -- who bundles the work and from what model -- is undergoing a tectonic shift. Technology, the global financial crisis, and regulatory changes are key factors that have fueled disaggregation (a/k/a “unbundling”) of legal services, ushered in new providers, and spawned a legal supply chain.

It used to be so simple. Law firms were “in relationships” with (much smaller) in-house legal departments. Firms sold legal expertise. Period. There was usually plenty of work to go around, and budgets were virtually unheard of. The best lawyers --and their firms -- became “trusted advisers.” There was little turnover in firms, especially in the partnership ranks.

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Partnership was the law firm equivalent of tenure. Firms retained and groomed the next generation of talent on the promise that “some day this could all be yours.” Clients seldom switched firms. Neither did lawyers. And if they moved, it was for a stint in a client’s in-house department, then back to the firm. There was stability and loyalty on the buy and sell sides. And lawyers sold to other lawyers they knew well. It was clubby, collegial, and stable.

### **Welcome To The Jungle**

That dynamic has changed dramatically in recent years. A major reason is because legal delivery is now a triad involving legal expertise, technology, and process management. Law firms remain strong in legal expertise, but they are generally laggards in technology and process. And they are no longer the only game in town. In-house departments have mushroomed, service providers have proliferated, and the Big Four and consultancies are poised to capture greater market share.

This has caused fraying of “relationships” between law firms and clients. Not only are there alternatives to law firms, but also, those options --especially elite service providers-- are “better, cheaper, and faster” than firms handling tasks dependent upon technology and process. Also, procurement and other “non-lawyers” have a seat at the buy side table. This means that lawyers no longer sell exclusively to lawyers.

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Service providers' DNA differs from law firms; they are all about technology and process and can invest in it because they can assume institutional investment. They have corporate structures and are not burdened by cost inflators like "partner share" (PPP) and expensive real estate. Their market share is increasing rapidly and migrating up the complexity chain.

On the buyer side, the C-Suite recognizes that lawyers are usually not the best judges of technology and process buying. And so CFO's, procurement, CIO's, and other "non-lawyers" now participate with in-house counsel in vetting and selection of outsourced legal work.

Legal delivery is a bazaar with multiple buyers and sellers. To borrow from Facebook, "it's complicated" when it comes to characterizing the relationship status between legal buyers and sellers.

Engagements closed over rounds of golf and glasses of scotch have been replaced by RFP's and reverse auctions. And law firms routinely work with one or more "subs" (read: other law firms and/or providers), especially on larger matters.

Meanwhile, in-house departments have grown in size, internal capability, and influence. In an economic sense, they are competitors of the firms they "partner" with. It's a tough time to be a law firm with a traditional partnership model.

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## Transactional or Relationship Strategy?

Many signs indicate legal buying has become transactional. A recent Association of Corporate Counsel (ACC) survey conducted among corporate Chief Legal Officers (CLO's) found that nearly 60 percent use RFP's regularly, and this includes significant matters. And while it's one thing to use RFP's to vet vendors for high-volume/low-value work, it's quite another in high value matters. What does this say about "relationship building?" It's difficult to create a sense of loyalty and to foster a "relationship" under these circumstances. Then again, with partners moving around so much, there's little loyalty *within* firms -- much less to them.

This begs the question: has trust in law firms been lost to the point where transactional vetting measures are used even in high-stakes matters? Or is this a "box ticking" exercise by bean counters to demonstrate due diligence in the selection process? And if it's just that, why bother? The cost of RFP's is significant for buyers and sellers. Translation: RFP's, reverse auctions, and similar processes have their place, *but there's a time and a place*. And it just doesn't seem right when high-value matters are involved.

No doubt all this comes, in part, as a response to billing excesses by law firms and the erosion of trust that has created. At the same time, clients either value a law firm – and specific lawyers– or they go elsewhere. And that happens frequently these days as clients

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swap out law firms about as often as partners jump ship – as laterals or via mergers and acquisitions. It’s the free agency era.

### **A Need For Balance**

Buyers and sellers are seeking equilibrium in the shifting legal marketplace. Sellers earn the trust of clients based upon value and results over time. Buyers would benefit from easing up on the transactional approach because it does not promote a knowledge of their business nor does it seem appropriate in high-stakes matters where trust is the paramount selection criterion. You don’t ask your surgeon to respond to an RFP when life-threatening surgery is necessary.

It’s a new marketplace with a rapidly changing buyer-seller dynamic. Data is powerful and has its place, but so too does the human element. And that should not be abandoned in the push to maximize economic return or to predict outcomes.

Buyers and sellers must find a new balance and restore trust in one another. That will be difficult to achieve in a climate where everything is negotiated.

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## **With U.S. Democracy In Crisis, It's Suddenly 'Thank God For Lawyers'**

Our democracy is in crisis. That's not opinion or 'alternative fact' but the finding of The Economist 'Democracy Index.' The publication's Intelligence Unit assessed the electoral process, civil liberties, the functioning of government, political participation and political cultures of 200 nations. The United States—for the first time in its history-- was downgraded from a 'full democracy' to a 'flawed' one. The demotion centered on an 'erosion of trust in political institutions.' And the US is not alone. Democracies around the world—notably in Europe—are in similar straits, confronting the double-whammy of eroded trust in political institutions and a bruised middle class reeling from the effects of labor arbitrage, automation, and mass migration. Democracy everywhere is under assault, susceptible to charlatans with carnival barker chants and quick solutions. Worse still, 'facts' are now blurred with 'alternative facts' creating a purposefully confused state of play for traditional watchdogs like a free and vigorous press. It's scary and it could easily get worse.

It's against this backdrop that lawyers have been in the news a great deal lately. The usual lawyer storylines--how much they make, the tens of millions of individuals who go unrepresented due to sky-high legal cost, or the impact of automation—have yielded to a far bigger story. Lawyers are mobilizing to defend our democracy.

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Consider Saturday night when the ‘Muslim ban’ caused shockwaves across the country and the world. The American Civil Liberties Association was in court—and at airports across the country-- seeking injunctive relief from the Executive Order and counseling those ensnared by it. A crowd of about a thousand cheered as the lawyers emerged from the federal courthouse in Brooklyn—not to mention tens of millions watching on television and monitoring social media. When was the last time you heard someone say, ‘Thank God for lawyers?’ Public support for the ACLU’s efforts resulted in approximately \$25million of donations over the weekend.

Lawyers around the country and around the world are coming to the defense of democracy and the rule of law. This is not a political issue; it is a process one. It is a fight to preserve the process by which we govern ourselves as a democracy. The rule of law is one of its foundational elements, the glue that binds our fraying democracy. Lawyers are its artisans. Several thousand lawyers from large law firms have galvanized during the past several days, offering their *pro bono* support to insure that our checks and balances system remains intact. As important (an overlooked) as the millions of hours and thousands of *pro bono* clients that lawyers serve each year, the current *pro bono* efforts being undertaken to preserve the rule of law is what will allow individual clients to be represented going forward. Lawyers are suddenly in the spotlight, on the front lines of the challenges being imposed upon our democracy.

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Lawyers *always* serve two clients simultaneously-- those that retain them and the larger society. Attorneys are guided by ethical and practice rules that apply equally whether they represent the plaintiff or defendant. Respecting rules is what allows them to serve individual clients and society simultaneously. Those same 'rules' of our democracy are being tested now. It is lawyers that are at once on the front lines as well as last defenders. This is a fight that requires the participation of all lawyers, no matter their political views. So to those who question why lawyers exist, here's the answer: to insure that our rule of law is preserved. And that's exactly what thousands of lawyers are doing right now when they are desperately needed.

To those who engage in the popular parlor game of predicting the extent to which technology, new delivery models, and other professionals will marginalize lawyers, consider that they will *never* substitute for the essential work performed by lawyers this past weekend and going forward. Only lawyers will be on the front lines of protecting the rule of law--as well as representing their individual clients. Technology, new delivery models, and other professionals and paraprofessionals will enable lawyers to function more effectively to serve the interests of their individual clients and society. And when the stakes are as high as they are now, lawyer efficiency is imperative—both for individual client representation as well as advancing societal interests.

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Lawyers are as relevant now as at any time in recent memory. It's time for them to channel their inner Atticus Finch--or Vince Lombardi: "When the going gets tough the tough get going." Protecting our democracy is the mother of all cases, and it will take a village. My bet is that lawyers have only begun this fight. We will defend the rule of law vigorously, relentlessly, and ethically. And we will remind people that the profession is a lifeline, not a punch line.

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## About The Author



Mark A. Cohen is a global thought in the legal vertical. His unique perspective draws from four decades of hands-on, high-level international law and business experience. Mark's keen grasp of the contemporary legal marketplace and his distinctive ability to explain it in readily understandable language derives from his 'first career' as an internationally recognized civil trial lawyer. He was a highly decorated Assistant United States

Attorney, the youngest partner of Finley Kumble, then the nation's second largest law firm, and later the founder and managing partner of a 30 lawyer, multi-city national litigation boutique law firm. Mark also served as outside general counsel to three insurance company clients and as Receiver of an international aviation parts business. After retiring from legal practice, Mark focused on improving the delivery of legal services. He was the co-Founder of Clearspire, a revolutionary law firm/legal services company. He presently serves as CEO of Legal Mosaic a legal business consultancy that provides strategic advice to legal service providers, corporate legal departments, law firms, educational institutions, and entrepreneurs. Mark is a sought-after speaker and will be delivering the keynote address on "The Future Lawyer" at this year's German Bar Association Conference. He has lectured at Harvard, Stanford, University College London, and numerous other law schools around the world as well as at 3M, Legal Zoom, Reinvent Law, and many other companies and global symposia. He writes a weekly column for Forbes and is a Distinguished Lecturer of Law at Georgetown where he has designed and taught courses on project management for lawyers, the global legal marketplace, and legal innovation, among other topics.