

Strategic Legal Technology

The Best Of 2016

by Ron Friedmann



*Copyright: Ron Friedmann
Published by LegalBusinessWorld™
LegalBusinessWorld™ by iGrowthlegal*

From the Author

Assembling my best blog posts from 2016 was an interesting exercise. My posts are often triggered by articles, surveys, or conversations. I don't write a master publishing schedule the beginning of a year. Before reviewing my posts, I worried I might find a totally scattered and disconnected set of topics. I should have realized that, even without a master plan, I am drawn to recurring themes. Reviewing my 2016 work, I saw three emerge.

Of course, legal technology is one. With a blog called Strategic Legal Technology, how could it be otherwise? When I started blogging in 2003, I viewed tech as the main driver for lawyers to practice more efficiently. Within a couple of years, however, I realized that tech is only one element of practice efficiency. And beyond efficiency, I realized that lawyers also had to achieve good outcomes and deliver excellent client service. So I expanded beyond pure tech.

The aftermath of the 2008 economic crisis crystallized my thinking: in a low growth environment, firms must improve service delivery to succeed. Thinking and writing about service delivery raises many questions about law firm business and practice operations, especially the issue of delegating work to lower cost resources. I like to think I offer realistic views. Though disruption is not an imminent threat, firms are at risk for losing share to the

Big 4. And I believe lawyers will lose share to other professionals who support them and work with them. Innovation – in tech, in practice management, and in business models – is in the air but its impact to date is uncertain.

On legal tech, perhaps because I have been at it so long, I am somewhat skeptical. My big question is pretty old – what software should lawyers use? And I don't mean all that seems new. On the new, while I do see much promise in artificial intelligence, I question commentators who claim AI will change everything in legal quickly. AI is not the only new kid on the block(chain). Blockchain, like AI, holds much promise and bears watching.

I do have eclectic interests and so my catch-all third category covers a few legal market trends. My favorite is Do Less Law, by which I mean that lawyers must scope matters realistically, make better risk adjusted decisions, and improve efficiency. Doing less law is perhaps the most challenging issue I raise because it requires a big re-think. I hope others will contribute ideas on this topic – right now, I feel like a lone voice.

I welcome comments and, indeed, rebuttals. You may not agree with what I write, but I hope you find it informative and thought-provoking - Ron Friedmann

Table of Contents

§1 Changes in Law Firm Service Delivery and Who Does the Work

§2 Legal Technology

§3 Other Legal Market Trends

§1 Changes in Law Firm Service Delivery and Who Does the Work

Is Big Law Having Its Kodak Moment?	9
Should Law Firms Fear Losing Clients? (Altman Weil 2016 CLO Survey)	13
The Future of Legal Talent - Not Lawyers?	18
Legal Market on the March	20
Will All Lawyers Work for the Big 4 by 2026?	23
Should We Settle for Incremental Change in Big Law?	28
Who's Managing Big Law Alternative Staffing?	32
Tracking Law Firm R&D Initiatives	35
The Coming Changes in How Lawyers Practice	37
Flex by Fenwick - A Strategic Approach to Service Delivery	43

§2 Legal Technology

My Big Unanswered Legal Tech Question	51
The Rise of Legal Knowledge Management	53
Do Large Law Firms Have to Start from Scratch to Automate?	57
Automating Legal Advice: AI and Expert Systems	59
Bots, Big Data, Blockchain, and AI - Disruption or Incremental Change?	66
Blockchain - Will It Affect Your Practice or Firm?	72
<i>A. Introduction to Blockchain Interview on Its impact on Practice and Firms</i>	72
<i>B. Questions and Answers about Blockchain Impacts</i>	38

§3 Other Legal Market Trends

How and Why Law Firms Can + Should Do Less Law (#DoLessLaw)	88
The Next Step in Large Law Firm Low Cost Service Centers	91
What's Easier to Learn? Law or Statistics?	93
Litigation Finance - How It Works at Bentham	95

Changes in Law Firm Service Delivery and Who Does the Work



Is Big Law Having Its Kodak Moment?

A recent report suggests Big Law is having its Kodak moment. Before the turn of the century, "Kodak moments" were good. That successful marketing slogan prompted many snapshots. Today, a Kodak moment more likely means a famous company with a fabulous brand and fantastic market share that misses new technology and goes bankrupt. (See, *e.g.*, [Bloomberg's 2013 Kodak Moments Just a Memory as Company Exits Bankruptcy](#).)

In January, Georgetown University School of Law and Peer Monitor released their latest annual report, the [2016 Report on the State of the Legal Market](#). I agree with its conclusions: law firms must change what they do to preserve profitability and market-share. I take issue, however, with its Kodak analogy.

The report introduction, The Dangers of Success, describes the fall of Kodak. Though the company invented the digital camera, it failed to bring it to market in time. It saw no need to do so with photographic film so successful. The report notes:

"This story of the demise of Kodak is an important cautionary tale for law firms in the current market environment."

Is the legal market really at its Kodak moment? Flat demand and price pressure hardly count as threats of extinction. Law firms may hurt but the market has yet to discover a full substitute for them.

A Kodak moment for the legal market would mean a distinctly *different* yet viable full substitute for law firms. In my view, the

substitutes today look quite *similar* to the firms. Law departments bring work in-house. They operate largely as do firms. Alternative service providers (*e.g.*, document review companies and LPOs) take share from firms. They do tasks similar to law firms, with lawyers, arguably more efficiently. These difference seem minor compared to film versus digital.

Dire analogies can conceal the truth. Big Law's loss of share reflects old-fashioned sourcing decisions, not fundamental shifts. A fundamental transformation would eliminate large swaths of legal work or replace lawyers with technology. We have not eliminated legal work nor has technology dramatically affected lawyer work (outside of document review in discovery).

The Georgetown report continues after the quoted sentence above to note that:

"Since 2008, the market for law firm services has changed in significant and permanent ways. Clients who previously deferred to their outside firms on virtually all key decisions regarding the organization, staffing, scheduling, and pricing of legal matters are now, in most cases, in active control of all of those decisions.

Increasingly, clients are demanding more "value" in return for their legal spend, and by value they mean greater efficiency, predictability, and cost effectiveness in the delivery of legal services. What once was a seller's market has now clearly become a buyer's market, and the ramifications of that change are significant."

I largely agree. But the worry is less a Kodak moment and more how to motivate *both* law firms and clients to change. *Both* must work together to focus on budget predictability and efficiency. That means slow and often painful adaptations. Examples include process improvement, project management, budgeting, practice-specific technologies, and knowledge management. Each change takes hard work and painful re-thinks. Reading the recent *Atlantic* article [What Was Volkswagen Thinking?](#), I was struck by the concept of how "scripts" govern business behavior:

"Executives are bombarded with information. To ease the cognitive load, they rely on a set of unwritten scripts imported from the organization around them. You could even define corporate culture as a collection of scripts. Scripts are undoubtedly efficient. Managers don't have to muddle through each new problem afresh, [Denny] Gioia wrote, because 'the mode of handling such problems has already been worked out in advance.' But therein lies the danger. Scripts can be flawed, and grow more so over time, yet they discourage active analysis."

Both client and law firm lawyers live by the same set of scripts. No wonder change takes so long and moves so slowly. (By way of contrast, note that in healthcare, payor scripts differ from those of providers.)

I think many lawyer scripts are dysfunctional, for example, "leave no stone unturned" lest a minuscule risk be missed. I see a danger-

ous and damaging script running in the Georgetown-Peer Monitor report itself. It defines productivity as hours billed per lawyer. It takes a powerful script to change the ordinary meaning of the word productivity, which is output per unit of input, to one virtually contrary to the actual meaning.

I emphasize again that I agree with all of the report's recommendations for law firms. But a Kodak moment? The economic crisis lies years behind us. If clients were going to switch from film (law firms) to digital (law firm alternatives), then we'd have seen it already. What we have seen, instead, is a slow movement of work in-house and to alternatives. And at law firms, we see the slow march of improving client service, incremental efficiency gains, and more predictable pricing.

Re-writing the hidden scripts that govern the thinking of both clients and law firms will take years, maybe decades. Even if we lose a few firms along the way, a Kodak moment seems unrealistic today.

(This post was first published by Bloomberg Big Law Business as [Is Big Law Having Its Kodak Moment?](#) on 26 January 2016)

Should Law Firms Fear Losing Clients? (Altman Weil 2016 CLO Survey)

Should law firms fear losing clients? Many do already but just how much should they worry? The [2016 Altman Weil CLO Survey](#) provides insight.

The report opens with worrying data:

53% of law departments say they shifted a portfolio of work worth \$50,000 or more because of a client service issue; 41% switched to another firm in pursuit of lower fees; and 30% moved their work to a firm that was more effective in managing matters. ([Survey, page 14](#))

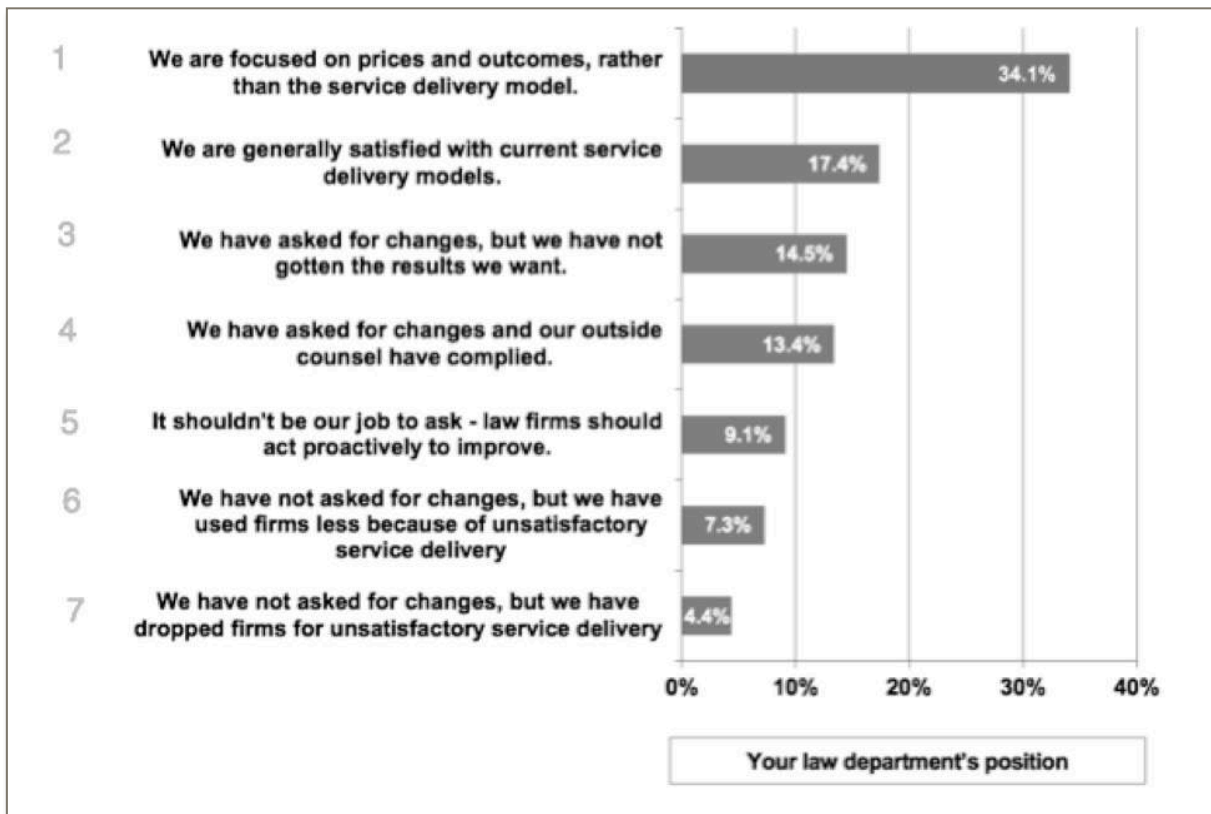
Answers to the 2016 bonus question illuminate client motivation and size the risk. On page 14 are responses to the question, "Which of the following statements best reflects your law department's position changing the way your outside counsel deliver legal services? (Choose one.)"

Statements

1. We are focused on prices and outcome, rather than the service delivery model.
2. We are generally satisfied with current service delivery models.
3. We have asked for changes, but we have not gotten the result we want.

4. We have asked for changes and our outside counsel have complied. It shouldn't be our job to ask - Law Firms should act proactively to improve.
5. We have not asked for changes, but we have used firms less because of unsatisfactory service delivery.
6. We have not asked for changes, but we have used firms less because of unsatisfactory service delivery
7. We have not asked for changes, but we have dropped firms for unsatisfactory service delivery.

The Outcome: Altman Weil 2016 CLO Survey (Page 30, Question Numbers Added for Reference)



By my read, 70% of clients are a flight risk.

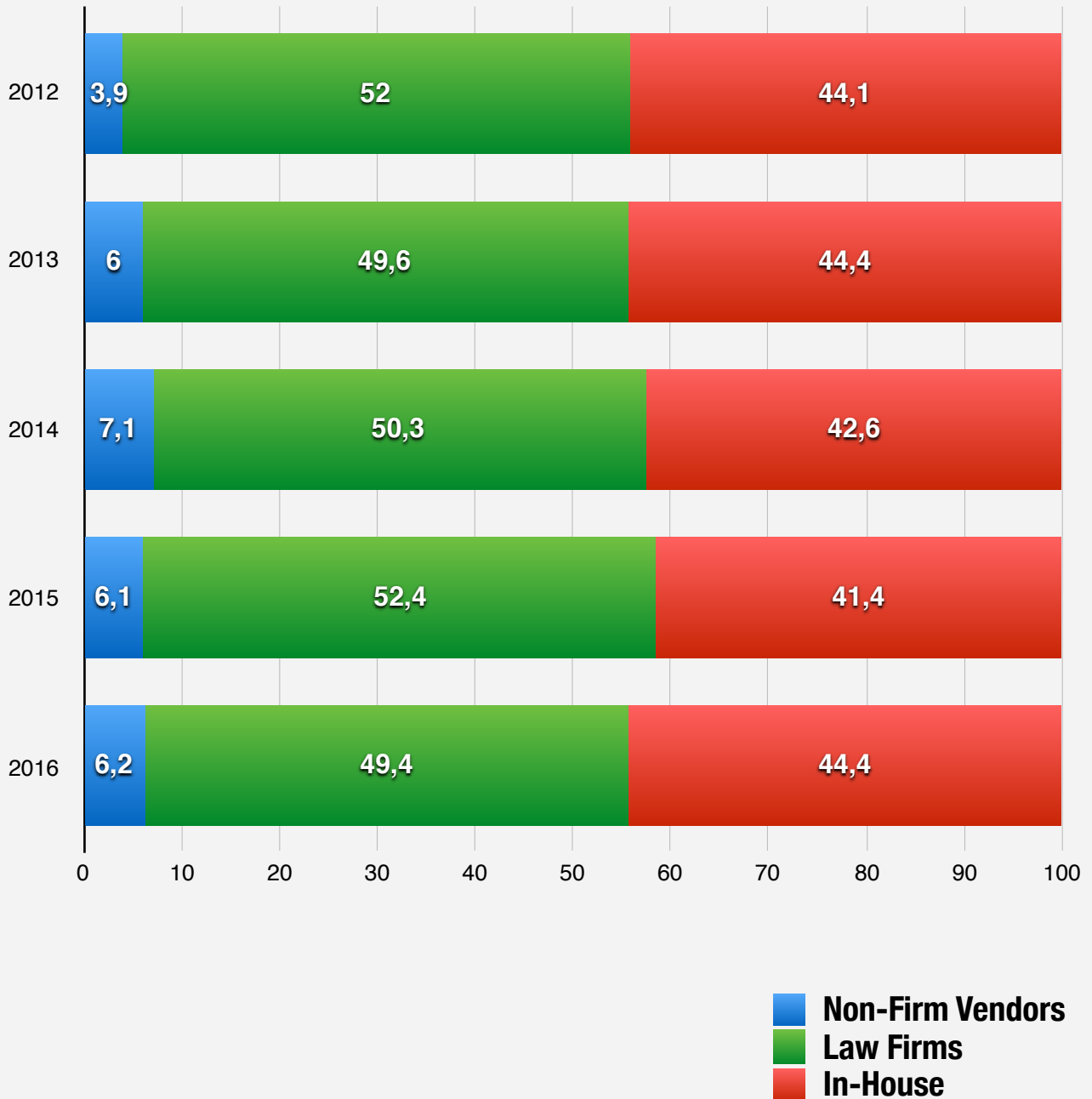
In my view, only questions 2 and 4 do not represent risk of switching behavior (flight): "We are generally satisfied" at 17.4% and "We asked for change and got it" at 13.4%. That's about 30%. The rest the answers represent the mindset of clients willing to switch firms.

What can law firm leaders do to minimize the risk of losing clients? The survey cites actions such as better client service, better legal expertise, lower fees, and managing matters more efficiently. (See page 14.) Many of my blog posts explain how lawyers can practice law more efficiently.

I close with further detail about flight risk: when law firms lose business, they lose mainly to competitors or clients. Many commentators, however, say alternative providers (non-law-firms) will eat law firms' lunches.

I don't see it in the data: the chart on the next page shows, for the last five years, the allocation of law department spending on alternate providers, law firms, and law departments. The share of non-firm vendors since 2011 averages 6.5% with little change. If alternative providers were growing rapidly relative to law firms, we would see this percentage increasing.

Law Department Budget Allocation



Law Department Budget Allocation (Data from Altman Weil 2016 Survey, page 17)



- HOME
- ABOUT ALTMAN WEIL
- PEOPLE
- PRACTICES & SERVICES

[< RETURN TO ARTICLES, NEWS & RESOURCES](#)

Law Department Surveys and Reports

Date	Title
November 1, 2004	2004 Chief Legal Officer Survey
December 1, 2005	2005 Chief Legal Officer Survey
October 11, 2006	2006 Chief Legal Officer Survey
December 5, 2006	2006 Law Department Metrics Benchmarking Survey / 2006 Law Department Compensation Benchmarking Survey - Special Summary
June 20, 2007	2007 Chief Legal Officer Survey
June 24, 2008	2008 Chief Legal Officer Survey
June 30, 2009	2009 Chief Legal Officer Survey
October 20, 2010	2010 Chief Legal Officer Survey
November 29, 2011	2011 Chief Legal Officer Survey
November 5, 2012	2012 Chief Legal Officer Survey
October 23, 2013	2013 Chief Legal Officer Survey
November 4, 2014	2014 Chief Legal Officer Survey
November 10, 2015	2015 Chief Legal Officer Survey
November 8, 2016	2016 Chief Legal Officer Survey
July 1, 2004	Altman Weil Flash Survey: Law Department Office Space
December 9, 2008	Altman Weil Flash Survey: Law Department Cost Control
March 4, 2016	Clients Rate Law Firms' Efforts to Understand Them
November 8, 2013	CLO Pricing Preferences - Chief Legal Officer Survey 2013
February 8, 2016	Cutting Outside Counsel Budgets
July 1, 2004	European In-House Counsel Sentiment Survey - The Opinions of Chief Legal Officers on Issues of Importance

DOWNLOAD THE REPORT HERE > [Go to Altman Weil Inc.](#)

The Future of Legal Talent - Not Lawyers?

A Deloitte February 2016 report, [Developing legal talent: Stepping into the future law firm](#), suggests that by 2025, UK law firms will need a *broader skill mix* to remain successful. I agree but take issue with Deloitte on how to manage that mix.

The report finds that firms will have to "demonstrate strategic value to differentiate... from their competition through efficiency, expertise and service quality." That expertise, Deloitte says, may include technology, pricing, relationship management, and product development. I agree. Law firms already employ finance experts, data scientists, IT specialists, and other internal and client-facing professionals. I disagree, however, with Deloitte's view on how to manage them. Deloitte believes firms will have less incentive to develop and retain "non-traditional" employees and will likely access them via "transient" means such as "through partnership arrangements or contractor models". Deloitte does not make clear its case for *transient*. In my view, there is a stronger case to treat *lawyers* as the transient and other professionals as permanent. I say that because of the current and likely future dynamics of the labor market for each category of professionals.

The lawyer market is transient now and likely to remain so. A robust temp lawyer market - from staffing companies to online market places - already lets firms easily flex the number of lawyers

actively working on matters. Furthermore, lawyers are already demonstrably very transient: lateral moves occur daily. That we have so many temp services and laterals suggests the market already sees lawyers are fairly fungible. And with an ongoing lawyer oversupply, recruitment is not that hard. So continuing to flex lawyer counts will be easy.

Not so for other professionals. Law firms struggle now to find legal project managers and pricing professionals. Trends today suggest demand will continue to outstrip supply. Separately, much-coveted experts such as data scientists and cyber-professionals will have plentiful job options across industries for years to come. So finding and keeping these professionals will be harder than doing so for lawyers.

That suggests law firms should work hard to entice other professionals to stay as *permanent* and long term employees.

Furthermore, the fungibility of other professionals is unproven. We know that lawyers can easily move within and across firms. Is the same true for other professionals? Perhaps but arguably, law firms will extract more value by keeping them long term. As permanent employees, other professionals can develop deeper working relationships with lawyers and clients plus learn more about the law. That will add value for both clients and firms.

Finally, if success requires an expertise mix, why favor lawyers over other experts? I would expect this conclusion from caste-system-minded lawyers who love saying "non-lawyers". The surprise is that a Big 4 so concludes.

Legal Market on the March

The legal market has been on the march in the last few days, despite the the long US Thanksgiving weekend. I highlight here, in two related groups, a few news items of note...

Law Firm Business Services Staffing May Be Up For Grabs

- *The Lawyer* magazine has a long and interesting report, [UK 200 Business Services 2016: Key findings](#) (28 Nov 2016). It describes the potential impact of rapidly changing legal technology and its impact not on the practice of law (AI is already old hat) but on law firm staffing.
- At the same time that tech may take jobs, many firms continue to seeks savings via labor cost arbitrage, the latest example being [Dentons launches new shared services hub in Poland, will lay off about 25 in UK](#) (*ABA Journal*, 22 Nov 2016).
- And business process outsourcing - another way to move jobs out of law firms - continues apace. [Law Firm Business Development: Is Marketing Department Outsourcing The New Black?](#) (LawVision blog, 21 Nov 2016) reports the " trend is that all non-strategic functions, Marketing Communications or otherwise, are being considered as potential outsourcing targets." (On 15 Nov 2016, LawVision and nSource [announced](#) a strategic alliance for marketing and BD outsourcing.)

- The staff remaining at law firms main offices may well have more work flexibility. [Allen & Overy “changes market perception” with tech budget rise](#) (*The Lawyer*, 25 Nov 2016) reports that A&O IT spending is 5% higher for 2016-17 over the prior year. This is driven in part to "support a more flexible and mobile workforce".

Legal Service Delivery Shows Signs of Morphing

- US labor and employment law firm Jackson Lewis has launched a data analytics group "to tackle new and non-law projects for its employer clients." [This Law Firm Is Betting on Data](#) (*Big Law Business*, 23 Nov 2016) also reports examples of the team's work, including damage assessments.
- Pillsbury has partnered with cybersecurity experts FireEye and Thomson Reuters Legal Managed Services to offer what the firm calls "a 'one-stop shop' for cybersecurity risk assessments and compliance". (See [Pillsbury’s Equation: Biglaw + alt.law = Modern Cybersecurity Solution](#), *Above the Law*, 23 Nov 2016)
- High volume work in Big Law continues to automate and augment with technology. *Legal Futures* (22 Nov 2016) [reports](#) that LISA (Legal Intelligence Support Assistant), powered by Neota Logic, will assist in drafting NDAs and could soon have other uses. Separately, [AI Start-up ‘Legit’ to Disrupt Patent World, Secures Seedcamp Funding](#) (*Artificial Lawyer*, 25 Nov 2016) reports that first round funder SeedCamp has invested in start-up Legit

Patents, which "has developed a new way of approaching the patent filing process using AI technology that will reduce the need for initial input from patent lawyers and greatly reduce the cost and time of making a provisional filing."

- On the consumer side, LegalZoom in the UK launched Legacy, a website and mobile app for wills. (See [LegalZoom launches 'digital will' in first UK product roll-out](#), *Legal Futures*, 28 Nov 2016)

Last week seemed particularly eventful for a week that, at least in the US, is normally quiet on the business and legal news front.

Will All Lawyers Work for the Big 4 by 2026?

In September, as a panelist at the [College of Law Practice Management 2016 Futures Conference](#) (PDF of agenda), I addressed the question "Will All Lawyers Work for the Big 4 by 2026?". (The conference used the term mega accountants but it's hard to imagine in 10 years that term will mean anything other than the current Big 4.)

That question was one of four in the session "What types of entities will provide legal services?":



PANEL 1
What types of entities will provide legal services?

Will we all be working for Mega-Global Accountants LLP? Ron Friedmann <i>Partner</i> Fireman & Company	Will the legal profession still be self-regulated? Juda Strawczynski <i>Policy Counsel</i> Law Society of Upper Canada	Should law firms and legal departments be run with business disciplines? Liam Brown <i>Founder and Chairman</i> Elevate Services	Are alternative business structures going to fly? Reid Trautz <i>Director, Practice & Professionalism Center</i> AILA
--	--	--	---

The outline of my five minute answer is below. At the end, I provide additional links to conference coverage from [Attorney at Work](#).

Will All Lawyers Work for Mega Accountants by 2026?

1. The short answer: no
2. The longer answer: a higher percent of lawyers and staff will work for Big 4 than do now, perhaps much higher
3. Characteristics of the Big 4 that explain why they will gain share from Big Law

A. Multidisciplinary

1. Clients want and like multi-disciplinary approaches to business problems and many “legal problems” are really business problems
2. Business problems take teams to solve, teams that consist of multiple areas of subject matter expertise
3. Is there a “non-accountant”? The Big 4 have a less powerful caste system so they can more readily tap multiple professionals and areas of expertise

B. More cost-effective and more willing to invest and innovate

1. Decades of audit price pressure taught the Big 4 how to deliver at lower cost
2. This includes investing in tech, process improvement, project management, and knowledge management (KM)
3. Higher investment in training, tools, process, and KM means more efficient “industrial delivery”, which means high quality output at lower cost

4. A significant portion of Big Law work is more routine than many lawyers think. Routine work is at risk of shifting to Big 4.
5. “Factory” and “industrial” remain dirty words to lawyers - less so or not so to Big 4
6. Clients already are shifting how they work: back in-house, to alternate providers, and to the Big 4.
7. As the Big 4 expand, they will remain another - but a very attractive other - option for lower cost delivery

C. Deeper relationships with and ability to gain legal business via access to the entire corporate C-suite

1. Big 4 work hard to have deep executive relationships across the corporate C-suite
2. For example, Deloitte has a CFO Roundtable for thought leadership... it’s building out a comparable program for Chief Legal Officers (CLO)
3. With access to the COO, CEO, CFO, CLO, the Big 4 are institutionally advantaged in business development versus Big Law, which has access only to the CLO typically
4. The Big 4 have institutionalized client relationships, which means lateral mobility of their partners has less impact on their business than it does in Big Law

D. Regulatory barriers likely to decline

1. The bar regulations as applicable to high-end, business-to-business (B2B) work tend, over time, to accommodate corporate interests
 2. Over a decade span, we should expect rule changes that favor Big 4
 3. In any event, who will have the cash to take on the Big 4 for unauthorized practice of law (UPL) or other ethical charges?
4. Why we will still have large law firms, especially blue chip ones
1. Change in legal continues to happen very slowly
 2. For all those who forecast disruption, I say, “show me the data” and “if the economic crisis of 2008-10 did not disrupt, why will other events do so?” That gives Big Law a very long tail
 3. So we are looking at evolution, not rapid or abrupt change
 4. In my view - and this is a guess based on current behavior rather than on data - general counsels will still want the “insurance” of brand name law firms for truly bet the company and extremely high-stakes matters
5. The biggest impact of the Big 4 likely will be on the middle of the Am Law 200

1. Assuming brand still matters in 2026 for bet the company, the firms with the most blue chip reputations will prosper (*e.g.*, Cravath, Wachtell, Latham, Allen & Overy, King & Wood Mallesons (KWM), Oslers)
2. The value players - mainly the specialized labor & employment large firms today - will likely still have a strong market position because they have already differentiated by improving delivery efficiency
3. But firms stuck in the middle - without strong reputation in narrowly focused legal niches and without a very strong low-cost value proposition - will find they lose share to Big 4

6. Conclusion

1. There will be more lawyers and allied professionals working for Big 4 in 2026
2. But there will still be law firms hiring lawyers and staff

For additional conference coverage see [Attorney at Work](#):

- [Overheard at the 2016 Futures Conference](#) by the Editors
- [The Future of Client Service](#) by Nathaniel Slavin, *The Wicker Park Group*
- [Will Alternative Business Structures \(ABS\) Fly?](#) by Reid Trautz, American Immigration Lawyers Association
- [Where Will the Legal Jobs be in 2026?](#) by Jordan Furlong, *Law21*
- [Will Our Data be Any Safer in 2026?](#) by Sharon Nelson, *Sensei Enterprises, Inc.*

Should We Settle for Incremental Change in Big Law?

Mainstream media regularly reports on big changes in many markets. Two juxtaposed articles on the front page (below) of the Business & Tech section of the *Wall Street Journal* (21 April 2016) got me thinking about change in Big Law.

BUSINESS & TECH.

Coke Is Hit: Stock Drops as Growth Slows
EARNINGS | B3

War Over Office Breaks Out in
TECHNOLOGY | B4

© 2016 Dow Jones & Company. All Rights Reserved. THE WALL STREET JOURNAL.

Market Shifts Slam Tech Old Guard

By Don Clark

EMC Corp. on Wednesday became the third old-guard tech company in three days to report disappointing results stemming from the industry's rapid shift to new ways of computing.

The data-storage company issued quarterly results that underscored a slowdown in spending by companies that install and operate their own computing hardware, as technology spending shifts from corporate data centers to off-premise cloud services and from PCs to mobile devices.

Quarterly reports from International Business Machines Corp. and Intel Corp. pointed to similar issues, weighed down by mature businesses that have been shrinking for years.

Companies are tightly controlling traditional information-technology investments from desktop computers to server systems, industry executives say, as they consider shifts to newer technology and services that could help reduce their operating costs.

"The IT spending environment continues to be challenging, and it's having a meaning-

ful impact across enterprise tech," said Denis Cashman, EMC's chief financial officer, during a conference call with analysts Wednesday.

EMC, Intel and IBM are weighed down by mature, shrinking businesses.

Responses to the pressure have been dramatic. Intel on Tuesday announced plans to cut 12,000 jobs, or 1% of its workforce, to accelerate a plan

to reduce its reliance on selling chips to the shrinking PC business. EMC agreed last year to be acquired by Dell Inc. for a deal then valued at \$67 billion, the biggest acquisition ever in the tech sector. Rather than become bigger, Hewlett-Packard Co. opted in November to split in two.

All the companies have added products and services that exploit recent technology changes, and they cited the success of those offerings in earnings reports this week. But so far those businesses aren't large enough to significantly change their financial picture.

IBM, for example, on Monday said first-quarter revenue from its cloud-computing businesses was up 34% over the year-earlier period. But total revenue nevertheless declined 4.6% and profit fell 13.5%.

EMC, which built its business around systems that store data on spinning disks, has managed to also become the largest vendor of new-wave systems that use flash memory chips instead. But total storage-product sales declined 10% in the first quarter, while total corporate revenue slid 2.5%.

IBM and EMC "have very Please see **GUARD** page B4

Get Fancy or Perish

Upscale shopping malls are luring customers and stores from smaller, regional malls. Grades are based on sales per square foot. Mall value is based on sales productivity, size, quality and other factors.

Grade	Total malls by grade	Percent of value
A++	37 malls	22%
A+	67	
A	94	
A-	104	
B+	133	
B	156	22%
B-	100	19%
C+	108	
C	92	
C-	89	12%
D	72	9%
		7%
		3%

The lowest-rated 8.6% of malls account for 0.2% of value. Source: Green Street Advisors. Please see **MALLS** page B6

Retailers Bolt Aging Malls For More Luxurious Digs

Chains seek vibrant spots to set up shop to lure customers from Web

A continuing series on how changes in shopping habits are fueling big shifts across retail and other industries.

By Suzanne Kasper

A few years ago, Restoration Hardware had three Denver-area stores scattered in malls. Today, the furniture chain has just one new one: a palatial, four-story gallery with a rooftop garden.

Retailers from Gap Inc. to Abercrombie & Fitch Inc. are abandoning a decades-old strategy of increasing sales by locating sites with stores as consumers do more of their shopping online and less at the mall.

The shifting shopping habits have prompted chains such as Williams-Sonoma Inc. and Macy's Inc. to close stores in secondary malls to focus on Web sales and more upscale shopping centers.

Restoration Hardware Holdings Inc. closed its three older Denver-area stores and last fall opened the 70,000-square-foot flagship at the Cherry Creek Shopping Center, an upscale mall that also is home to Burberry and Brooks Brothers.

Restoration Hardware declined to discuss its new approach, but its change in direction is part of a redesign of the nation's commercial centers—a reversal of the "mall-ism" of America.

"With technology, retailers don't need that extra store in a marginal market," said William Tashman, the chief operating officer of Tashman Centers Inc., which owns Cherry Creek and mainly operates high-end, or so-called "A," malls. That is widening the gap between the country's most productive malls and weaker properties, executives and analysts said.

Once-said regional "B" malls that thrived for years are losing shoppers and tenants to the "A" malls—those with sales per square foot in excess of \$500, according to Green Street Advisors.

The research firm estimates that about 44% of total U.S. mall value, which is based on sales, size and quality among other measures, resides with the top 100 properties, out of about 1,000 malls.

Nearly all of the 40 stores that Macy's closed last year were in "B" or "C" malls, ac-

Restoration Hardware opened a large store last fall in Denver's upscale Cherry Creek Shopping Center.

The top-most article, "[Market Shifts Slam Tech Old Guard](#)", describes the revenue challenges that EMC, IBM, and Intel and other established tech companies face because of the rise of cloud and mobile computing. Okay, you say, that's the tech industry, we expect it to change rapidly.

So next consider the article below it, "[Retailers Bolt Aging Mall for More Luxurious Digs](#)". It reports that major retailers now close stores in lesser malls and focus on fewer in just high-end ones. The transition reflects an over-malled US, shifting consumer tastes, and the rise of e-commerce.

And inside the section, "Flat Soda Consumption Hits Coke" reminds us of the decline of soda sales.

The conclusion? Changing tastes and tech affect most markets. The rate of change in large law firms and corporate law departments (Big Law), however, seems much slower than in tech, retailing, and beverages. Satisfaction with the status quo cannot explain this: in-house clients of law departments often avoid their lawyers and law departments regularly complain about large firms.

Big Law change may be slower but it is happening. Surveys, conference talks, and my own work suggest that law firm management now recognizes the need to change. That recognition has led to:

- *New Types of Professionals*. Many firms have hired pricing professionals, legal projects managers, and other professionals that did not exist a decade ago.

- *Lower Cost Delivery Options.* Large and prestigious firms offering lower cost service options. For example, both Paul Hastings and McDermott Will now have lower cost teams to service corporate transactions.
- *New R&D Units.* I recently assembled a [list of large firms with R&D initiatives](#); doing so was impossible until recently.
- *More Client Online Services.* My [list of these](#) has multiple recent new entries.
- *Frenzy Over Legal AI.* A spate of articles about artificial intelligence (AI) in the law and "robot lawyers" gives testament to interest in the topic.

We also have serious thinking about and advice for guiding change. My current favorite is *Remaking Law Firms: Why and How* by Dr. George Beaton and Dr. Imme Kaschner (published by the ABA). I am currently reading the [book](#) (March 2016) and regularly read updates to the [Remaking Law Firms](#) website. (Book review coming soon.)

The good news is that we see more real change than just a few years ago. But keep in mind two cautions.

First, don't confuse the appearance of change with actual change, check-the-box solutions with real ones.. For example, some firms have pricing professionals but have done little to change how they deliver legal work. Without delivery changes, pricing folks can only move numbers around.

And second, beware of magic wands. A focus on AI can distract from more practical and immediately productive steps. For example, I had three unrelated conversations last week about document authoring tools (*i.e.*, MS Word add-ins that help with formatting, numbering, and ensuring contract term consistency). That is one example of a mature yet under-penetrated productivity enhancing class of software.

Change in Big Law takes hard work and investment. Don't let promises of a dramatically different future (*e.g.*, robot lawyers) distract from incremental improvements today. The former may take a long time, a major investment, and fail. The latter takes only blocking and tackling. It's not easy, it's not disruptive, and it's not necessarily even marketing-worthy. But it's sure to yield benefits soon.

This is not to ignore the case for dramatic change. Firms or law departments that manage genuine, deep change will gain many benefits. Smart organizations will at least run experiments on bigger changes while attending to incremental improvement.

Who's Managing Big Law Alternative Staffing?

Altman Weil's recently released [2016 Law Firms in Transition survey](#) is good reading for all law firm management. For me, the questions it raises are the number of non-partner track lawyers and who's managing Big Law alternative staffing?

The survey found that:

“a majority of firms are practicing basic labor arbitrage – shifting work to less costly lawyers. More than half of all law firms are utilizing part-time lawyers (59%) and contract lawyers (56%) to meet demand as needed. Three quarters of firms with 250 or more lawyers are using part-time and contract lawyers.”

A report table provides more detail:

	Under 250 lawyers	250 lawyers or more
Using part-time lawyers	52.7%	75.3%
Using contract lawyers	49.4%	75.3%
Using staff lawyers	33.7%	78.8%
Outsourcing non-lawyer functions	21.8%	30.6%
Creating a low-cost service center for back office	5.8%	21.2%
Outsourcing legal work	6.6%	15.3%
None of the above	23.5%	4.7%

Altman Weill 2016 Law Firm Survey - Alternative Staffing Findings

Wide spread use of non-partner track lawyers in Big Law (beyond for document review) strikes me as relatively new. To confirm this impression, I reviewed past surveys. Altman Weil first asked this question in 2014. Answers from 2014 are roughly the same. Though the incidence has not changed, I think it says something this question first appeared only in 2014. To understand what these data tell us, I compared staffing to another report finding:

"The only efficiency tactics that break the 50% mark among all law firms are knowledge management (54%) and use of technology tools to replace some human resources (52%). Techniques that really challenge the way work has been done traditionally, like legal project management or reengineering of work processes, are less likely to have been adopted, especially in smaller firms."

We see evidence of the rise of KM, LPM, and pricing in the growing numbers of Chief Knowledge Officers and Chief Practice Officers titles and in numerous events focused on these topics.

Alternative staffing, like KM and LPM, do not "really challenge the way work has been done traditionally". On that basis, its high incidence is not surprising. But if alternative lawyer staff are as prevalent as the survey suggests, why don't we see the rise of senior staff and events focusing on it? More fundamentally, who in Big Law decides how many the firm should have and how they are managed?

Earlier this year, I poked around the web and reached out to several contacts to explore this question. I only found a bit of information. My guess is that use of non-partner track lawyers is widespread but not deep. That is, many firms may have a handful, but few have big ranks of non-partner track lawyers or systematic programs.

Is my guess correct or am I missing something? If I'm not missing anything, then will we soon see increasing numbers of such lawyers and a more visible infrastructure to manage them?

Tracking Law Firm R&D Initiatives

My June 2015 blog post [Law Firm R&D Initiatives Grow – Time for a League Table?](#) recapped recent large law firm research and development announcements. It asked if the time had come for a Big Law R&D league table. That time has now arrived.

Early last week I published a [R&D in Big Law](#), which lists publicized R&D initiatives in large law firms. I crowdsourced additions and corrections. By week-end, I added a couple of law firms and added a second list for firms with incubators partnerships for R&D. I welcome suggestions for additions and corrections ([contact me](#) or leave a comment).

My list necessarily involves line drawing. Many large law firms have innovated in ways not formally designated R&D.

Examples include AI, Big Data, legal project management (LPM), and knowledge management (KM). By focusing on *formally announced* R&D initiatives, I established a reasonably bright inclusion line.

Typical league tables rank law firms. And I would love to find a way to rank the success of law firm R&D. Even with data, ranking results would be hard. And I suspect data will be hard to obtain. So for now, simply tracking formal R&D initiatives will have to suffice. Firms may publicize R&D successes but likely not failures. That's too bad. As the ILTA "Failure Party" sessions illustrated, we learn as much if not more from failure as success. And in the world of

R&D, failure occurs on the road to success. "If things are not failing you are not innovating enough" said Elon Musk, perhaps America's best-known living inventor.



'Failure is an option here. If things are not failing, you are not innovating enough' Elon Musk

The Coming Changes in How Lawyers Practice

In this century we have seen dramatic changes in the legal market. From a period of plenty, we moved to one of seeming scarcity. Many commentators suggest that the legal market has been, is being, or will be disrupted. I have a different point of view: if the 2007-10 economic crisis did not “disrupt” the legal market, I am not sure what would.

And anyone claiming disruption must look at how lawyers practice. When I do so, I see incremental and, in my view, minor changes. Probably the biggest changes in the last three decades were the advent of PCs and then the Internet – both over 20 years old. These tools, while hugely important, have not fundamentally changed the mechanics of law practice.

So I expect the future will reflect a continuation of trends we can see clearly today. I present here my take on where firms need to head if they want to succeed, starting with what should motivate change.

Law Firms Face Continuing Pressure to Change

Clients increasingly push law firms to deliver better value. They are also taking steps to reduce cost, including bringing more work in-house, using alternative service providers such as managed document review companies and legal process outsourcers (LPO), and shifting work to smaller firms and boutiques from large firms. We also see signs that technology will replace some lawyer work.

These trends translate to flat demand and tremendous price pressure. To prosper, firms must adjust how they practice and how they run their businesses.

Legal Project Management (LPM), Pricing, and Profitability

Clients no longer allow law firms to “do whatever it takes” and “leave no stone unturned”. Today, clients make risk-adjusted decisions about how vigorously to pursue legal matters. Law firms must tune-in to these client expectations.

For each matter, partners must have clear discussions about its scope before beginning work. They must then set budgets or fixed fees and, once work is underway, monitor performance against budgets. Budgeting and delivering within budgets or fixed fees are necessary new skills - whether matters are priced hourly or under alternative fee arrangements.

These pressures will lead to related changes. Across matters, firm management must consider profitability by matter, practice, client, and partner. To meet this need and support individual matters, firms now deploy software and staff to support pricing, budgeting, profitability analysis, and project management.

We will see continued growth in the number of pricing and legal project management professionals. As more partners understand the new mandate to manage costs and profits, they will use software to help. A new class of pricing and legal project management software is now displacing older systems that only accountants loved.

As lawyers and firms deploy more professionals and better software, they will learn what drives profitability. That will lead to changes in how lawyers work, specifically in staffing and use of technology...

Lawyer Staffing

Delivering value while maintaining profits requires some combination of more leverage and deploying lower cost lawyers. Some firms will leverage up. A handful of top end firms can maintain and increase profitability by driving the traditional partner and associate model, building the base of the pyramid bigger.

Yet that model will not work for many firms. Instead, many will need to de-leverage, at least with traditional associates. Instead, they will need to hire staff attorneys – non-partner track lawyers - at lower compensation than associates. To compete more effectively with alternative service providers, some firms place cadres of lower-paid lawyers in low cost service centers (e.g., in Kansas City, Dayton, and Tampa in the US and Belfast or Manchester in the UK).

Lawyers Will Use More Core and Practice Technologies

Technology will also help firms deliver more value by automating routine tasks, even in high-stake matters. I predict this reluctantly because tech uptake has been so slow to date. For example, document assembly is little used today even though it has been available since the 1980s.

But relentless economic pressure likely will force change. Moreover, many new tools do not require the upfront investment that document assembly does. Examples of new, efficiency enhancing practice technologies include predictive coding for eDiscovery, due-diligence enhancers, and deal management packages.

Some observers suggest that machine learning systems such as IBM Watson can replace large numbers of lawyers. Even if that is technically possible – and I have my doubts in a five-year horizon – the cultural and business model changes mean adoption will take much longer. Today, we see due diligence accelerated by machine learning systems but the impact of AI beyond this remains limited. And lest we lose sight of the basics, we may see the rise of mandatory lawyer training on core office productivity tools. A fixed fee world places a premium on use tools efficiently. Recent audits of associate tech skills have shown very poor skills. Smart firms will fix that.

Firms Will Take Knowledge Management (KM) and Process Improvement Seriously

Both clients and lawyers have long worried about re-inventing the wheel. Knowledge management (KM) offers a variety of ways for lawyers to capture and more effectively re-use prior work product. It also helps them quickly locate their colleagues with relevant expertise. It turns out that experience location generally offers more value than documents. A short conversation with an

experience lawyers yields both relevant documents and context for them.

Once a firm is large enough that lawyers cannot walk around a single office and talk to all potentially relevant colleagues, the firm needs a structured approach to KM. Fortunately, firms can choose from a variety of approaches and technology to create a KM program.

Lower cost lawyers, practice technology, and KM can only go so far in reducing cost. Increasingly, firms will need to reduce cost even further by improving *practice processes*. Firms must identify any repeated aspects of legal work, map these processes, and eliminate waste through process improvement.

Firms Will Continue Reducing Overhead

The pressure for value and focus on profit create continued pressure to control if not reduce overhead. Support staff and rent have long been two of the big costs (after associate pay).

The ratio of lawyers to secretaries has, over the last few years, move from 2:1 to 4:1 and higher. Many firms are also cutting the number of square feet per lawyer as they renew leases. For example, some firms now make all lawyer offices the same size, and smaller than in the past.

In the next five to ten years, we can expect to see a shift from simple cuts to a rationalization of support and space. Firms will centralize as many functions as possible. With centralization, firms can outsource support or move it to lower cost locations, at least for staff who do not need regular, in-person lawyer interaction.

Conclusion

Growing demand for large law firm services from the 1980s until the economic crash of 2009 allowed firms to develop many bad habits. We now operate in an era of permanent austerity. So these habits must be broken. To thrive, law firms will need to reduce costs and work more efficiently.

[This article first appeared in [Legal IT Today](#) #14, June 2016. The entire PDF of that issue can be downloaded at <http://litn.eu/litt14>. This version is slightly edited from its earlier publication.]

Flex by Fenwick - A Strategic Approach to Service Delivery

FLEX by Fenwick is Fenwick & West LPP's 90-lawyer-strong interim in-house counsel business that "is the only service backed by an AmLaw 100 firm that provides custom solutions for interim in-house legal needs." I have long followed alternative lawyer staffing models so was pleased to learn more about FLEX from [Carole Coplan](#), its General Manager.

Background: The Rise of High-End Secondment and Interim In-House Counsel Services for Law Departments

Before reporting on FLEX, some background is helpful. Since the 2008-10 economic crisis, clients have demanded more value from law firms. They have moved work from firms to alternatives such as legal process outsourcers (LPO), legal tech providers, lawyer staffing services, high-end lawyer secondments, and interim in-house counsel. Staffing means short-term, relatively undifferentiated lawyers; secondment and high-end interim in-house counsel mean experienced and specialized lawyers whom clients typically retain for high-value legal services and longer time periods.

Axiom Law has the biggest share of mind in the secondment and interim in-house counsel market. Started around 2001, it grew rapidly in 2009 and beyond when GCs sought to reduce costs.

It has many competitors including, in the UK and Australia, some law firms:

Firm	Service Name	Loc.	Year
Minter Ellison	Flex	<u>Aus</u>	2016
<u>Addleshaw</u> Goddard	AG Integrate	UK	2015
DLA Piper	Teams with Lawyers on Demand	UK	2015
Corrs Chambers	Orbit	<u>Aus</u>	2014
<u>Allen & Overy</u>	<u>Peerpoint</u>	UK	2013
<u>Freshfields</u>	<u>Freshfields</u> Continuum	UK	2013
Pinsent Masons	<u>Vario</u>	UK	2013
Eversheds	Agile	UK	2012
<u>Berwin</u> Leighton <u>Paisner</u>	Lawyers on Demand	UK	2007

I have long wondered why more US law firms have not developed such services. I had moment of excitement in 2011 when I first learned about Fenwick & West LLP’s FLEX service in 2011 (see Tweet image)



but was surprised that no firms followed. My next surprise was when I recently read (Thomson Reuters blog) that FLEX had grown to 90 lawyers, I knew the time had come to learn more. And that's when I reached out to FLEX and was introduced to Carole...

What FLEX Does

FLEX provides in-house attorney solutions for high-growth companies. Most clients utilize FLEX for its bench of commercial transactions attorneys, though many engagements are for support for M&A, employment law, litigation or regulatory work (*e.g.*, privacy). FLEX attorneys have both law firm and in-house experience with at least 5-6 years of experience in one subject area to former public and private company GC's with 20-25 or more years of experience. All are highly vetted with strong credentials and are interviewed and tested to make sure they have the experience and advising skills necessary for in-house work. FLEX offers companies a variety of plans including quarterly blocks of 60, 90, or 120 hours; part-time lawyers for 2 to 4 days per week; and full-time for a negotiated time period. The internal FLEX team includes seven full-time staff. Carole is a former GC and the team's three client managers, recruiting manager and head of marketing are also lawyers.

FLEX Fit with Fenwick

Fenwick started FLEX for strategic reasons, not simply to generate revenue. Management saw that clients and prospects had legal needs that Fenwick's full-service core offering could not always meet at the right price point. Fenwick started FLEX when it saw that venture-backed clients needed an in-house attorney to handle commercial transactions and other routine legal needs once the client reached a certain point in its growth cycle. With service at a

different value point, FLEX can start a relationship where one does not exist or deepen an existing one. The firm has extensive experience with early stage companies and so has a strong sense of what type of lawyering and lawyering economics clients need at different stages of growth and financing. Today, FLEX's clients include venture-backed private companies, as well as large publicly traded companies.

How FLEX Works

FLEX lawyers are W-2 employees of Fenwick but are a different bench of attorneys than Fenwick. They are deployed with clients as consultants and at a much lower cost structure. They are covered by the firm's malpractice insurance and they receive PTO benefits, as well as insurance benefits if they work a minimum of 20 hours/week, which some do. FLEX does not guarantee its lawyers work nor are they paid if they do not work. They are free to work for competitors such as Axiom or Paragon. The lawyers are not required to make a minimum commitment. Some do not want to work anywhere close to the 20-hour threshold for benefits but others do work full time.

FLEX clients and attorneys must clear the firm's usual conflict checking process. But a FLEX lawyers' duty of confidentiality runs directly to the client, not to the firm. Their email is in the flexbyfenwick.com domain and they have only limited access to the firm's knowledge management (KM) resources (*e.g.*, a database of form contracts). They are backed by the Fenwick brand and resources, however, and they can ask Fenwick partners quick legal

questions. Partners do not bill for short answers; if more is required, a matter needs to be opened. FLEX maintains a database of templates for its attorneys and they have access to PLI and other resources. Carole reports that FLEX seeks to offer its lawyers stable, predictable, and high value engagements. This is not as easy as it may sound because operationally, balancing the bench is a challenge. That is, FLEX needs enough lawyers on its roster to meet demand yet also wants to provide each with work (even though it is not contractually required to so).

Most of FLEX's clients are Fenwick clients, however, some of FLEX's clients don't otherwise work with Fenwick. Fenwick has also been a customer of FLEX but this is not a primary purpose of FLEX nor a big driver of its business.

Though FLEX is *not* a recruitment agency, it does assist its lawyers who want to go in-house and its clients seeking permanent in-house lawyers. When a lawyer does convert to full-time, FLEX charges a conversion fee. This is not a goal or business driver but part of the strategy of focusing on meeting client requirements.

Why FLEX is the Only Model of Its Kind in the U.S.

I asked a Carole one of my long-standing questions: why does the US have only one Big Law staffing business and the UK multiple ones? She offered three tentative reasons, agreeing the answer is not obvious. Her hypotheses in *italics* followed by my commentary:

1. *Law firms are not entrepreneurial.* Trite but it's true - not much else to discuss on this one.

2. *Partners worry about tarnishing their brand with routine / commodity work.* We both question this assumption, viewing it through an empirical lens with limited data. The perception, however, likely is mainly wrong: FLEX lawyers are highly skilled and experienced though they may do a bit more routine work than associates or partners. And even if it were true, so what? In both B2B and B2C, customers recognize that providers offer services at different levels. This typically makes a provider **more** rather than less attractive.
3. *Partners fear the staffing model will cannibalize their core business.* We laughed that the same partners who fear commodity perception simultaneously believe this, since the two stand in contradiction. That aside, we agreed that while such service might substitute for a small percent of a firm's work, if clients want this type of service, they will buy it. If a firm does not provide it, they will go elsewhere.

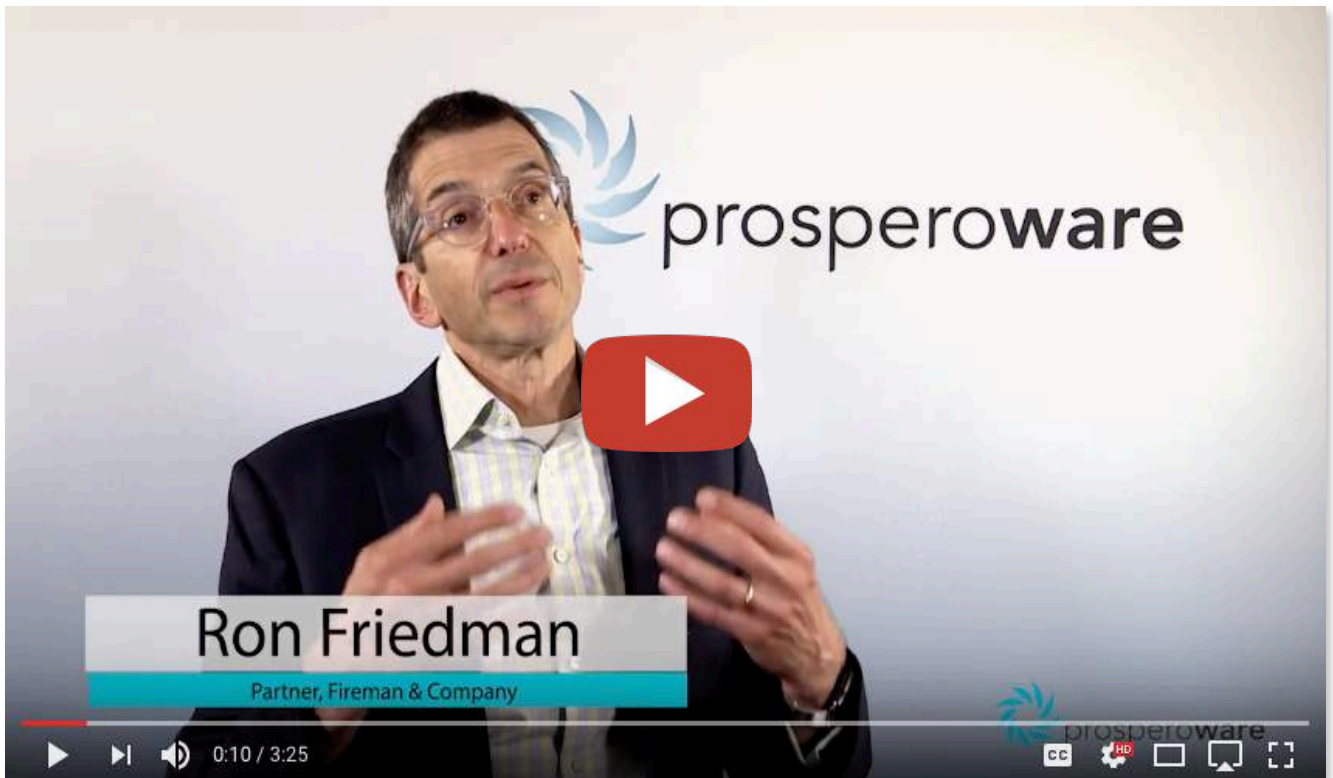
All this said, we still cannot explain why the UK market is so different. Comments, especially from the UK, welcome.

Conclusion

In response to client pressure for value, smart firms improve service delivery in multiple ways: scoping, budgets, project management, KM, practice technologies, and alternative staffing. FLEX is a great example of how Big Law is adapting to new normal by adopting what many now call a NewLaw approach. As FLEX continues to grow, the question is if (when?) US firms will follow.



Legal Technology



Prosperoware interview at ILTA 2016

I discuss improving service delivery, reducing overhead, streamlining processes (e.g., new business intake). I also explain what the middle office is and how firms can improve those services. And finally, I discuss the importance of budgeting, monitoring, pricing, experience management, and other elements of legal project management.

My Big Unanswered Legal Tech Question

Shortly after ILTACon (the International Legal Technology Association annual meeting, August 2016), the editors of [Legal IT Today](#) asked a deceptively simple question:

"Going into ILTACON 2016, or while in an ILTACON session, or now that you're starting to process everything coming out of ILTACON, what's the single biggest question you want answered?"

My question was published in [Legal IT Today](#), Issue 15. (Page 37 of in [pdf](#)). My answer, with some framing comments, appears below.. You will also find questions by D. Casey Flaherty (Founder and Principal / Procertas), John Alber (Futurist / ILTA), and Joy Heath Rush (Vice President of Client Development (Law Firms) / Litéra). As usual, [Legal IT Today](#) has a series of great articles.

--

The question seems simple but it forced me to think about the legal market. To set the stage for my question, let's stipulate that:

1. Law firms face increasing pressure to deliver more value to clients; and
2. A key component of delivering more value is improving lawyer efficiency with technology.

Reflecting on ILTACON 2016, I was struck by the recent rise of legal tech startups and new classes of software. The formerly semi-arid legal tech landscape has become verdant with AI and many other new technologies. Some are broad in application, some narrow; some hyped, some understated. I see huge value in many.

But abundance raises its own issues. I worry that lawyers and law firms will turn to tech to solve process and culture problems ("magic button syndrome"). And I worry that a focus on the new can divert management attention from training lawyers to use legacy software effectively.

So, finally, my question...

"If a firm wants to maximize efficiency and really take advantage of what the market has to offer, what software would it license and what training and adoption planning would it put in place for both new and legacy software? And do we need a reference model, by practice, for software selection and for training and adoption planning?"

We should not let a new product flood distract us from defining real requirements, selecting software and services that meet those requirements, and planning the change management to ensure adoption.

The Rise of Legal Knowledge Management

Legal knowledge management appears to be on the rise. The definition of KM that I like best is the art and science of capturing and re-using legal know-how and identifying colleagues with relevant experience.

The Pressure Behind the Rise of KM. The corporate C-suite now demands that general counsels control legal budgets. GCs, in turn, pressure law firms for better value. So it's no surprise interest in KM has grown. KM boosts lawyer productivity, a key ingredient to deliver better value. I use productivity here as most do, *output per hour*, not the law firm meaning of billable hours per year.

What Recent Published Surveys Tell Us about KM. Let's look at what recent evidence tells us about the rise of legal KM:

1. [The 2016 Citi-Hildebrandt client advisory](#) expects "to see more focus on knowledge management."
2. [The 2015 Altman Weil law firm report](#) finds that 68% of firms with 250+ lawyer firms have KM initiatives to improve efficiency.
3. If we look just at KM technology, [Mitratach](#), an enterprise legal software provider, recently released "[Catching the Wave](#)", a survey of legal tech spending. It found that law department spending on KM technology will grow at 18% for the next few years. That is one of the highest growth rates in

some 10 categories of software. I hope that growth rate holds: I hear too many stories of in-house counsel who pay for the same research or other legal work twice because they have no way to track prior outside counsel work.

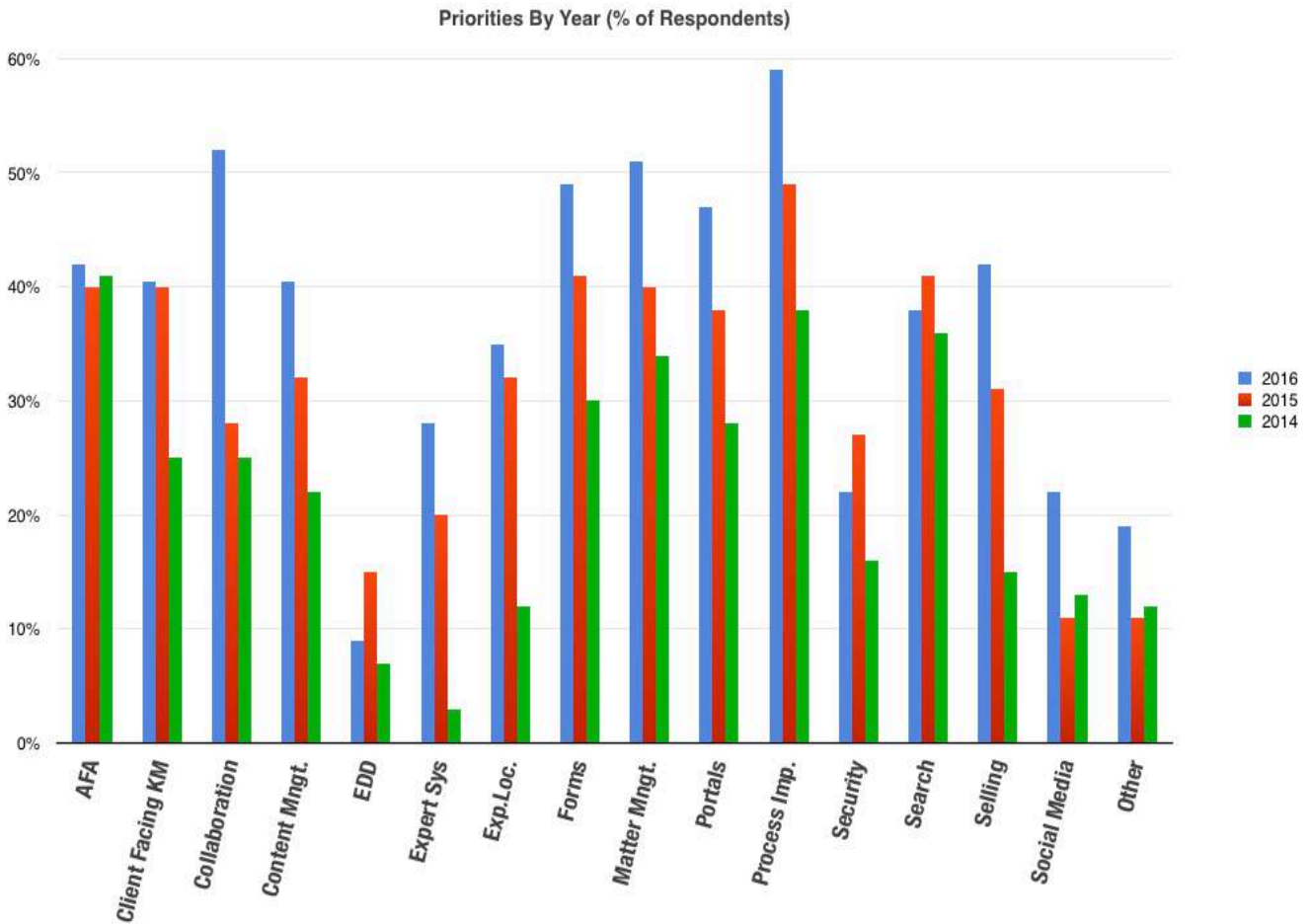
Other Recent KM Growth Indicators: Three other 2015 developments point to the rise of KM:

1. The ABA published a book on it, [Knowledge Management for Lawyers](#) by [Patrick DiDomenico](#), CKO at Ogletree Deakins. The last legal KM book was published over a decade ago.
2. The Law Practice Division of the American Bar Association started the [Knowledge Strategy Interest Group](#). I do not recall prior ABA efforts focused on KM.
3. Attendance at the 11th annual [Ark KM conference](#) in October 2015 broke prior attendance records, requiring a move to a larger venue to accommodate some 150 people from a range of large law firms.

I See Renewed KM Interest in My Consulting. The survey findings and 2015 developments are consistent with what I see in my consulting capacity: [Fireman & Company](#)'s has recently started several new large firm KM engagements.

So, Just What is it that KM Professionals Do? To answer that question, consider a survey conducted in connection with an annual private meeting global legal KM professionals. [Oz Benamram](#), the CKO of White & Case, [Mary Abraham](#), a

consultant, and I organize the meeting and run the survey. The chart below shows priorities of large law firm KM professionals over the last three years.



Private KM Survey - Priorities of KM Professionals at Large Law Firm

You may be surprised at the breadth of what KM professionals do. In the early days, around the turn of the century, the focus was mainly on creating precedent and taxonomies and building portals.

The KM part of the focus grew to include enterprise search, experience location, expert systems, and collaboration tools. While the KM toolkit grew, so too did the remit of KM professionals. Today, many support alternative fee arrangements, process improvement, and legal project management.

This survey also provides evidence of the growth in KM. This year, almost 90 people from multiple Anglo-law jurisdictions answered the survey, up from about 60 in 2014. We have had an almost equivalent corresponding percentage increase in attendance of the meetings. (For a complete survey write-up, see my [Strategic Legal Technology blog](#)).

Concluding Thoughts: For in-house lawyers, KM can improve efficiency of their own lawyers. And it can avoid paying law firms to do the same work more than once. Law firms can also improve efficiency. Plus firms can use KM to improve their service delivery, perhaps the only sustainable way to differentiate today.

[This is a slightly revised version of an article first published on 19 February 2016 as [The Rise of Legal Knowledge Management](#) at Bloomberg BNA Big Law Business.]

Do Large Law Firms Have to Start from Scratch to Automate?

A recent article about aircraft production observed that automation requires starting from scratch. Wow. It made me wonder if that's so for law firms?

[Airplane Makers Automate to Meet Surging Demand](#) in the *Wall Street Journal* (9 July 2016) reports that Boeing and Airbus "are digging deep into the technology toolbox to deliver what they have promised will be an unprecedented boost in airliner production." They are deploying robots, drones, and powered exoskeletons to produce jets faster. One line jumped out:

"Starting from scratch turns out to be easier than adapting the new automation to existing facilities."

Might this also be true for large law firms? They rely on lawyers and generic computers to produce legal work. Surely re-tooling this cannot be as complex as for jet factories.

To answer this, remember that the legal market notion of productivity - hours worked per year per lawyer - is exactly *wrong*. Everywhere else, productivity means output per unit of time. Measuring jets produced per month and person-hours required per jet is easy. But how do we quantify legal output? I don't know, so we have to work from anecdotes and impressions.

I see more automation in Big Law boutique spin-offs and in New Law than I do in large firms. If true, big firms that want to automate more should be able to do so? After all, they don't have the equivalent of Boeing's factories and installed machinery.

The only installed base or law firms is lawyers. *And the business model*, which is the real constraint. Boutiques and New Law, unlike Big Law, work under fixed fees so they can deploy automation profitability.

Large law firms could, as a matter of production means, easily adopt the same tools as New Law. A business model to maximize hours stymies such efforts.

Happily, I see signs of change. More large law firms now take automation seriously. Several have spun-up [R&D initiatives](#). Others have deployed contract analytics software to accelerate due diligence. Some invest more in knowledge management, which increases output per hour by enabling lawyers to work faster to produce the same outputs.

While law firms don't face the aggressive delivery schedules of airframe makers, they do need to deliver more and better client value. To automate, they do not need to re-build from scratch. The main required ingredient is client pressure. If GCs keep pushing for value, pay attention to production means, and choose firms based on real productivity - and publicly say why - then large firms will be motivated to automate.

Automating Legal Advice: AI and Expert Systems

In 2015, we regularly read about automating legal advice with artificial intelligence (AI), especially with IBM Watson. In my view, the AI smoke - at least as described in many reports - exceeds the fire. In fact, I cannot name a single large law firm that has deployed a Watson system.

Yet, as I explain below, expert systems, a branch of AI, are actually being deployed. Several firms have licensed expert systems to automate advice or intake. I start with some background on AI before turning to recent expert system developments.

Artificial Intelligence (AI) in the Legal Market - a Recap

I first became aware of legal Watson at the 2014 ILTA conference. The private track of large firm CIOs heard a presentation on IBM Watson. Based on second hand reports of it, I wrote [Meet Your New Lawyer, IBM Watson](#). It explains my skepticism about Watson's immediate prospects in the legal market.

Intrigued nonetheless by the potential of IBM Watson, I attended World of Watson, a slickly produced event at the uber-hip Brooklyn Navy Yard in May 2015. (See my live [IBM Watson posts](#).) It was fun, especially the meet-up of Big Law lawyers and managers that I organized. But at the end of day, I gained little insight into the potential for AI in legal.

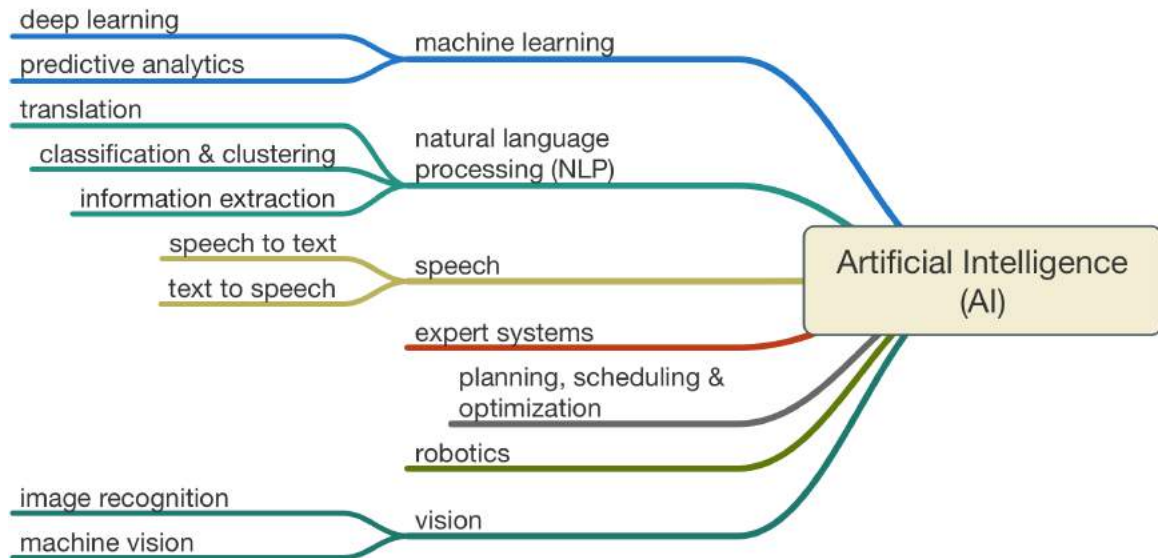
Later that May, I wrote [Legal IBM Watson: Business Model and Reasoning Modes](#), which explains the business model challenges of deploying Watson: a big time investment and much content. After listing the three uses of Watson I could find in legal, I closed noting Other ways exist to automate answering legal questions. How do we assess the cost/benefit of Watson with alternative approaches? For example, expert systems from [Neota Logic](#) answer questions via an interactive Q&A session.

I will return that alternative below. Forward to 2015 year end when economists [Dana Remus](#) and [Frank S. Levy](#) published [Can Robots Be Lawyers? Computers, Lawyers, and the Practice of Law](#) (SSRN, 30 Dec 2015) by. I found it eye-opening. So did *New York Times* reporter John Markoff, who wrote [The End of Lawyers? Not So Fast](#) (4 January 2016).

Remus and Levy conclude that the impact on legal employment of AI will be quite limited for the foreseeable future. I found their paper a good antidote to hyperbolic press in 2015 suggesting that AI would sweep the legal market.

All this said, I do see potential for AI in the legal market. And I await eagerly the release of [Kim by NewLaw firm Riverview Law](#) (7 Dec 2015 press release). It is an AI system not based on Watson. Also, lost in the 2015 legal AI hype is that expert systems are a branch of AI. [Michael Mills](#), co-founder of Neota Logic, explains this in detail in [Artificial Intelligence in the Law - The State of the](#)

Play in 2015. His published diagrams shows the many branches of AI:



Legal Expert Systems are Here Now

I have a long-standing interest in legal expert systems. For over two years, ending just as this century began, I worked for Jnana Technologies, the developer of an expert system platform targeted primarily at the legal market. I built or helped build legal expert systems that were deployed at that time. Subsequently, Neota Logic acquired the underlying technology of Jnana. (I have no financial interest in Neota.)

Now I return to the point about alternatives to other types of AI and alternatives to Watson. In my view, expert systems are here and now. That does not mean easy. Building them requires deep legal expertise to start and then for on-going maintenance.

Moreover, the business model challenges law firms: Why would lawyers forgo billable hours to build a system?

Because of the billable hour conundrum, at one time, I thought big legal publishers might build expert systems. If they do, I am not aware.

Some law firms seem to be overcoming the billable hour block. Firms today face a litany of challenges: low realization, flat demand, market share battles, and clients pulling work in-house. In response, some forward thinking firms are moving beyond the billable hour, at least for purposes of offering automated advice.

In December 2015, I spoke with partners at two large law firms that are developing systems based on Neota. [Martin T. Tully](#) of [Akerman](#) co-spearheads his firm's development of the [Data Law Center](#). It is, according to the website, a

"first-of-its-kind legal product developed in collaboration with Thomson Reuters to support the compliance strategies of large companies. The Akerman Data Law Center will provide corporate counsel and compliance officers with a timely trove of state and federal data laws, regulations, and legal insights. This product will deliver tailored research, multi-jurisdictional surveys and regulatory gap analyses in a wide array of data and privacy risk areas empowering clients to quickly and cost-effectively understand and handle routine compliance matters."

Martin shared that its development stemmed from the firm's [R&D Council](#). The Neota Logic system will first offer (it is not yet released) services for data security and privacy laws; eventually it will cover other data issues, for example, records management.

Both Akerman and the Pangea3 managed services division of TRI will keep the resources and system logic fresh. Martin expects the system will eventually answer 80% of subscriber questions; the remaining 20% may require traditional legal services, which are planned to be bundled in the offering.

[David W. Simon](#) of [Foley](#) leads his firm's development of the [Foley Global Risk Solution](#), based in part on Neota Logic. Mr. Simon explained that this system meets

"the FCPA/anti-bribery compliance needs of companies with international business operations that may not have the internal resources and personnel to develop and implement an effective compliance program on their own. FOLEY Global Risk SolutionsSM (GRS) is an award-winning, fully integrated FCPA compliance solution that addresses each of the "hallmarks" of an effective anti-corruption compliance program identified by the U.S. Department of Justice and the Securities and Exchange Commission"

The system is still in launch phase but has six clients signed up. David reports though that he has had over 50 meetings with prospects to demo the system - a far higher level of interest than he

has seen for conventional practice pitches. Over time, it becomes more powerful because the Q&A database that drives some answers grows.

The target market is mid-size companies with without in-house counsel. For the moment, the firm will make it available only to clients but will eventually consider a subscription model for non-clients.

Foley and Akerman are not the only firms that have licensed Neota Logic and are building expert systems with it. Here are other instance with public mentions of uses of Neota Logic:

- [Littler](#) has a joint offering with Neota, [ComplianceHR](#).
- Norton Rose for its [ContractorCheck](#) offering (see also [Neota press release](#)).
- Seyfarth for a crowdfunding application, [DisclosureDragon](#) ([Seyfarth press release](#)).
- Thomson Reuters for [Checkpoint Catalyst](#) service for tax professionals (Neota [press release](#)).

Neota Logic is not the only option for expert systems. I have not searched for the universe of available systems but am also familiar with [VisiRule by Logic Programming Associates](#) (link to demos of legal expert systems), [Berkeley Publisher by Berkeley Bridge](#), and [Oracle Policy Automation](#) (used, for example, in the [IRS Interactive Tax Assistant \(ITA\)](#)).

Conclusion

When it comes to automating the delivery of legal advice, AI as epitomized by Watson has gained the biggest share of mind. I suspect - and you can evaluate the evidence above - that expert systems actually have a bigger share of market in legal.

Note: This article was first published by Bloomberg Big Law Business as [Automating Legal Advice: AI and Expert Systems](#) on 22 January 2016

Bots, Big Data, Blockchain, and AI - Disruption or Incremental Change?

The legal media has lately had a mania for tech headlines. Many commentators claim that tech, especially artificial intelligence (AI), will do something **to** Big Law. I disagree. Tech more likely will do something **in** it: incremental change. I start with the case against disruption, then look at four headline-grabbing technologies: AI, Bots, Big Data, and Blockchain.

The Case Against Disruption

By the late 1980s, a few law firms had most of their lawyers using PCs. The market did not reward these early adopters. Nor did it punish late adopters. The same pattern played out for email, the Internet, and social media.

Tech did disrupt legal secretaries. But that took an economic crisis and 15 years. Tech has enabled change - for example, the rise of boutiques and clients using alternative providers - but that has not disrupted lawyers or law firms.

An even bigger event than tech - the 2008-10 economic crisis - also failed to disrupt Big Law, notwithstanding widespread layoffs and a few dissolutions. In the aftermath, Big Law faces price pressure and more competition but not disruption. Even with tech, with price pressure, and with clients bringing more work in-house, Big Law prospers as reported by recent Am Law 100 and Altman

Weil surveys. With this history, I just don't see how the new technologies today will be any different than the past.

Artificial Intelligence (AI)

AI screams loudest in Big Law. For example, the news in May of BakerHosteteler going public with using ROSS Intelligence (based on IBM Watson) generated many "Robot Lawyer" stories. Hyperbolic headlines notwithstanding, the impact of AI is limited to four fairly narrow realms.

1. *Machine learning* improves contract analytics and powers predictive coding in eDiscovery. The latter says a lot about legal. I saw long ago, from the document review trenches, that machines usually perform better than big teams of humans. Persuading both lawyers and the courts of that, however, has been a decade-plus effort that continues.
2. *Expert systems* deliver interactive legal advice for specific legal questions. Several large law firms have recently announced such systems. Building and maintaining them requires much expert lawyer time, which remains an economic disincentive. I worked for a legal expert system company in the late 1990s. It's taken 15+ years for a few commercial systems to emerge.
3. *Machine learning for answering questions of legal classification*. For more on this, see my prior post, [Machine Learning \(AI\) to Answer to Legal Questions: Blue J Legal](#). It can answer legal questions but, like expert systems, building

them seems a big investment. So the business model remains an open question.

4. *Watson* benefits from IBM's PR prowess. My [Watson blog posts](#) explain my skepticism in detail. Even ROSS Intelligence talks more about augmentation than replacement. AI disruption proponents should read the scholarly and empirically-based paper, *Can Robots Be Lawyers?* (Remus and Levy, 30 Dec 2015, [SSRN](#)). It concludes the employment impact of AI on lawyers will remain limited for the foreseeable future.

In sum, the case of AI doing something **to** the legal market is hard to see. And even feeling its impact **in** via incremental change in legal is taking time, just as prior technologies did.

Bots

Bots have been in the news. They are automated systems that do tasks for consumers, often initiated by text messages. Bots may replace multiple apps on mobile devices. In China, many transactions already take place via bots.

A recent TechCrunch headline, [Facebook says 10K+ developers are building chatbots...](#), suggests the level of interest. In legal, Microsoft Assistant General Counsel Dennis Garcia recently wrote that bots could help law departments. ([‘Chat Bots’ Provide Opportunity to the Legal Profession, Bloomberg Big Law Business](#), 28 April 2016).

I love the idea but legal bots depend on AI to work. So they are hardly a basis **to** disrupt the legal market. Furthermore, [The Humans Hiding Behind the Chatbots](#) (*Bloomberg Tech*) points out that many bots are, in fact, powered more by people than machines. Right now, it's not clear when bots will even do anything **in** Big Law.

Big Data and Data Science

Big Data was hyped in 2014 and 2015. I believe it holds more immediate promise for lawyers than AI. Firms can use it to analyze costs, forecast potential matter cost over-runs, and spot clients or lawyers who may leave the firm. To date though, we hear more about Big Data from the vendor side (*e.g.*, Lex Machina, Premonition, and FiscalNote).

In Big Law, big data analytics is mainly used for eDiscovery. One large firm, however, has hired a data scientist who works with client data sets to solve a host of legal issues. That is the exception, not the rule. I can paint a case for Big Data doing something **to** the legal market. Clients would have to use it to avoid legal problems. If GCs took up prevention en masse, then we might see demand drop enough to really harm Big Law. This remains hypothetical. But until further notice, look for incremental change **in** legal.

(My [#DoLessLaw](#) Tweets and similarly themed [blog posts](#) discuss prevention in more detail.)

Blockchain

Blockchain, also much in the press, powers Bitcoin but has potential far beyond cryptocurrencies. It is also the basis for self-enforcing smart contracts. Some say 2016 is to the blockchain what 1994 was to the World Wide Web. The web transformed and disrupted many businesses; so too *might* the blockchain.

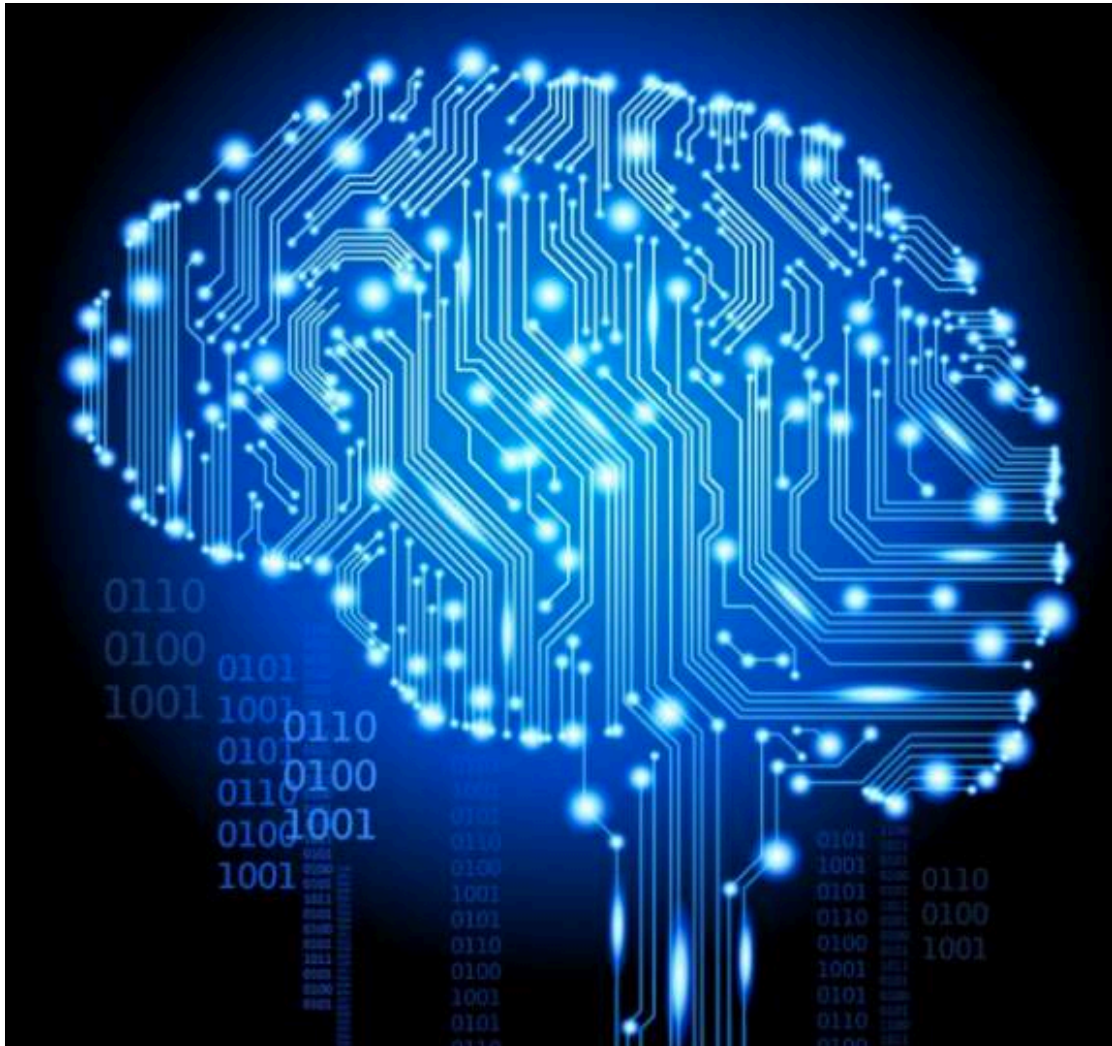
The short term impact is likely to be incremental change **in** Big Law, on the practice side. Many financial institutions are piloting blockchain transactions.

Lawyer and regulators are already involved. If pilots move to production, I imagine that will create work for lawyers. Several law firms (*e.g.* Holland & Knight, Kaye Scholer, and Reed Smith) already have lawyers doing blockchain work. Eventually, deal lawyers may have to learn a new body of law and tech. Though two Australian law firms have run blockchain classes for lawyers, it is early days to say this tech will do anything **to** Big Law.

Conclusion

Many commentators who forecast Big Law disruption seldom explain just how and why it will occur. So I felt the need to bring some sober thinking to what's actually likely. I hope my conclusions are wrong - that would please me.

A slightly different version of this article appeared originally at Bloomberg's Big Law Business on 17 June 2016 as [Disruption? More Like Incremental Change for Big Law \(Perspective\)](#) and now has comments there by George Beaton, John Chisolm, Mark A. Cohen, and Richard Tromans.



AI articles appears with images like this, suggesting rather overly optimistically that AI will replace lawyers.

Blockchain - Will It Affect Your Practice or Firm?

A. Introduction to Blockchain Interview on Its impact on Practice and Firms

Both the legal and mainstream media have written many articles about the Blockchain. So I thought readers will appreciate hearing from three lawyers whose practices focus on it. I've asked them to explain what the blockchain is and its impact on law practice, business, and law firm management.

Three partners in three firms have kindly agreed to participate in this discussion:

- [Josias “Joe” N. Dewey](#) | Holland & Knight LLP
- [Dax Hansen](#) | Perkins Coie LLP
- [Scott Farrell](#) | 范睿 Partner | 合伙人 King & Wood Mallesons



Scott Farrell



Dax Hansen



Joe Dewey

Scott Farrell, Dax Hansen, and Joe Dewey discuss blockchain

B. Questions and Answers about Blockchain Impacts

Let's start with quick introductions - tell me in a few sentences what your Blockchain practice looks like and how many of your colleagues focus on it.

Dewey: I have practiced transactional law for over 18 years with a particular speciality in finance transactions. Computer programming has been a hobby of mine since I was eight years old. At the intersection of law and blockchain technology, there is a need for legal professionals who understand both substantive areas of the law and the technical workings of blockchain protocols. So my blockchain practice is focused on designing blockchain-based tools for clients, especially finance clients who can greatly increase efficiencies with it, and advising clients on how blockchain technology could help them (and also where there is more hype than reality). A year ago, the only colleagues who even knew what the blockchain was were focused solely on the money transmitter and associated licensing issues. That is now shifting with professionals in different areas looking at the technology from different angles (e.g., corporate lawyers looking at difference between conventional corporations and corporate finance versus decentralized autonomous organizations (DAOs)). Intellectual property rights in this area is another angle that is starting to attract interest. I expect the number of lawyers in my firm who touch upon blockchain technology to grow exponentially over the next year or so.

Farrell: My practice comes at this from a different perspective. For the last 20 years I have worked in financial markets and financial systems, including derivatives and capital markets. Since the global financial crisis this has developed a focus in working with financial market infrastructure - such as exchanges, clearing houses, trade repositories and payment systems. My practice in *centralised* financial market infrastructure has adjusted to also include *decentralised* financial market infrastructure as it has grown into an alternative way to connect participants in the global financial markets. We work for incumbent financial institutions, market infrastructure providers as well as new entrants and regulators and governments in this area. Including those in our other offices around the globe, I would estimate that there is more than a few dozen of us currently who have a focus on this area, including its use with smart contracts. This will grow as more of our clients move their focus into this field.

Hansen: Simply stated, my practice focuses on the intersection of technology and money. For the last dozen years, I've chaired Perkins Coie's fintech industry practice group, helping tech companies, retailers, video game companies and wireless companies launch new products and services and navigate the domestic and international financial systems. Having published on legal requirements applicable to "traditional" virtual currencies in the video game and retail sectors, in 2011 pioneers in the Bitcoin and other decentralized virtual currency space asked me to help "keep them out of jail" and build businesses around this new

technology. From 2011 until the Bitcoin industry's watershed conference in San Jose in May 2013, we worked in the trenches with the early pioneers and industry associations dealing with decentralized infrastructure development and early subpoenas and law enforcement inquiries. That was an intense time! I was so rapidly deputizing new subject matter experts from my firm to assist our clients with pressing needs, that it became obvious we needed a unique multi-disciplinary team approach to this technology. So, in May 2013 we launched the first blockchain legal industry practice - complete with a webpage, resources page, weekly team training calls and eventually a blog and the firm's first mobile app - which has grown to over 40 lawyers focused on all aspects of blockchain technology, from digital currencies to capital markets and distributed applications of all types.

There are a lot of sources to learn about blockchain and a full technical explanation is out of place here. But to orient readers, can one of you describe in a few sentences what the technology is?

Dewey: I always start any explanation with--it's a ledger just like an excel spreadsheet. What makes the technology special is that everyone participating on a blockchain network shares the same ledger, which, without the need of a central third party, always maintains consensus so that all the ledgers look the same. If you abstract it to that level and avoid discussing all the intricacies of cryptography and merkle trees, then most people quickly realize the potential of being able to keep records of basically anything

without the need of a trusted centralized source. From there, you can move on to more complex concepts like smart contracts.

Farrell: When I brief lawyers new to the area (or company boards unfamiliar with the technology) I ask them to think of real property transactions before there were land registries operated by government authorities. Title to a piece of land under such a system is sometimes called “old system title” and is not based on a name being recorded in a register. Instead it is based on holding all of the deeds which show the transactions in the past in the land including the one under which the current owner took ownership. It is based on a “chain” of title. Each time there is a sale, the buyer checks that a valid chain of title is in place, based on the deeds which the seller holds. You can get from here to the idea of blockchain if:

- that chain of title to the land is recorded by many people and those people verify each proposed transaction in that land
- each valid transaction is added by all of those people to the record they hold and no transaction can be added to any of the records unless those people agree that it was valid
- no changes are made to transactions once they have been recorded in this way.

This leaves you with a immutable distributed ledger of transactions - a peer-to-peer database which has validity because of the consensus in its truth.

Hansen: I agree with everything Dewey and Farrell describe. It is novel ledger technology that allows for the immutable recordation, transfer, settlement and audit of any currency or asset that can be “tokenized” - all in a decentralized environment that does not require the participants to trust each other. The innovation is in the decentralization, which tips our traditional thinking upside down because there is no longer a need for one party to be in charge or grant or deny access to a system. Blockchain technology is built on open protocols and often open source software. Blockchain technology also is new platform technology that is enabling an entirely new batch of “smart” transactions in capital markets, insurance, trade finance, supply chain management and smart cities.

OK, so it sounds like there is some pretty deep and sophisticated technology at work here. We know, well maybe I should say I know, that technology scares a lot of lawyers - obviously none of you. Is there something in your background that caused you to gravitate toward Blockchain legal work?

Dewey: I am a geek. My first computer was a Texas Instruments TI 99/4A, which had 16 kilobytes of internal RAM. To put that in perspective, most computers come with at least 2 gigabytes of internal RAM today, and many up to 16 GB. I probably would have gone on to get an electrical engineering/CS degree but for the fact that the internet was unknown at the time and people who went into that profession back then might be stuck designing chip sets

for Motorola brick phones. Ultimately, my fascination with the law (which had a somewhat mystical appeal to me since no one in my family had ever been a lawyer) won out, but I've always been a computer geek at heart.

Farrell: I am not a geek. They are way too smart. However, my practice in complex financial instruments and infrastructure has led to a need to understand logic, mathematical processes and algorithms. It has also led to a need to work with contracts based on international standards and legal “codes” in contrast to legal “language”. It was not a huge step from this to blockchain - from centralised to decentralised market infrastructure. I believe that lawyers are a lost tribe of programmers anyway, because of their use of logic to solve problems. You can work with blockchain without being able to build one.

Hansen: The early Bitcoin enthusiasts all seemed to have a connection to the game, *Magic the Gathering*. Ironically, although I didn't play *Magic the Gathering*, I did some legal work on the online game for Wizards of the Coast! More relevantly though, I've spent my entire legal career working with innovators to address the regulatory and consumer protection aspects of, and negotiate the commercial agreements around, new technology - especially payments and financial services technology. My mentors at the firm were among the first internet lawyers, so I started my career working on projects where “black letter” law didn't exist and we had to develop creative ways of advising clients on the application

of law to new technologies. That always involves doing a deep dive on the technology our clients are innovating and deploying, actually using the technology. Blockchain technology was immediately compelling to me because I could see its potential to disrupt the status quo.

What do you think the likely impact of blockchain will be on on the business world, esp. financial markets. Also, will it be something we as consumers see directly and, if yes, how?

Dewey: There are so many potential use cases that are likely to be implemented over the next two to five years. While financial services is the low hanging fruit, I think supply chain management will see just as much evolution with blockchain technology. Within financial markets, I believe you'll see the more standardized financial products, like swaps and other derivatives, switch over to blockchain platforms first. The Barclay's swap demonstration really highlighted how easily derivatives can be confirmed on a blockchain system. More traditional commercial finance will be next, but will be more difficult to implement because of the lack of uniformity in documentation (*i.e.*, there is no corresponding ISDA set of master agreements for commercial loans). That said, there is a tremendous amount of effort going into "computational law" projects that will lead to legal contracts being constructed my like computer code (even if the user doesn't see what's going on behind the scenes). These efforts will lead to more machine readable contracts, which will make it easier to integrate smart contract

components into what are otherwise traditional legal contracts. For example, two parties could enter into a contract for the sale of widgets originating out of China and destined for a “smart warehouse” in the United States. The purchase order document would read like a traditional legal contract, but embedded in the contract would be code uploaded to the blockchain, which code would trigger a payment instruction once the cargo (which is embedded with an NFC or RFID chip) enters the “smart warehouse” at its final destination in the United States. This would replace the existing merchant letter of credit and bill of lading documentation that is still used for much of the world’s international supply chain. This example also shows the close relationship between blockchain technology and the Internet of Things (IoT).

Farrell: I think that there are at least two parts of this. The first is in the private sector - businesses which will have opportunities in improving their services through the adoption of distributed ledger technology. The second is in the public sector - improvement of the services which our governments offer through their use of this technology. In the private sector, financial services are a key opportunity because of their existing relationship with technology and the importance of data to their business. Key areas here are international payments (because of current inefficiencies in low value payments), trade finance (because of the document heavy framework and the absence of a trust environment) and capital markets (because of the standardisation required due to the

risks being managed). In the public sector, the cornerstone of a range of services are identity frameworks. This could assist everything from the anti-money laundering checks to welfare payments. It might be that consumers will see the benefits of these without being directly exposed to the blockchain itself - like having the benefit of a more efficient car without knowing what changes have taken place in the engine.

Hansen: This is game-changing technology, so the impact on businesses and consumers will be huge. Goldman Sachs and E&Y have recently released compelling reports outlining use cases in all major sectors. Blockchain's first use case was person-to-person payments, and we are now working through use cases in the financial sector and capital markets. Supply chain management is trending now, and we'll soon see disruption in other industries, such as health care. Many uses will focus on enterprise and back office applications, but consumers will also interact with blockchains to purchase and manage digital assets, such as music, electronic content, tickets and virtual reality applications. The user interfaces for these applications will become more user-friendly, automating the use of blockchain a new platform technology without requiring users to be versed in public and private key management and encryption.

Your practice already deals with blockchain so perhaps you're biased but what do you think the blockchain means for lawyers today, 1 year out, and 5 years out? That

is, will they need to learn to code? Learn a new body of law? Other?

Dewey: As much as I support efforts to teach people to code, I don't think it is practical to think all lawyers will becoming computer coders. I think contracts will be built like software in the future, but for most lawyers, they will still interact with a lawyer-friendly (i.e., non-coder) user interface with the code conversion occurring behind the scenes. There are several efforts to build domain specific languages for drafting legal contracts. An organization called Legalese (<http://legalese.com/>) is spear-heading a wonderful, collaborative effort to develop a DSL [domain-specific language] for contract drafting. I'm also working on a library in the Go programming language that will allow "legal engineers" to build contracts with code. Some of us will be able to build contracts in a text editor just like computer coders, but other lawyers will still be able to take advantage of all the benefits of a DSL for coding contracts through the use of UI/UX interfaces that allow them to drag and drop clauses or use an overlay module in Microsoft Word.

Farrell: I agree that lawyers won't need to be coders. I think the role of lawyers is as architects of coding projects not engineers of them. There are plenty of brilliant professionals in information technology who can create the code needed far better than a body of cross-trained lawyers. The role for lawyers in the context of smart contracts is to guide where that code **is** needed. I also believe that anything beyond the simplest transactions will always

require both a human and a computational element - meaning that not all of a contract relationship can be expressed in code. There is a difference between logic and reason, law has both but computers struggle with the latter. For example, a computer which can work out what is “commercially reasonable” in a contract law sense is science fiction at present. This combination of human and computer intelligence is the foundation behind the “DnA” (Digital and Analogue) smart contract architecture which we have developed and recently published open-source.

Hansen: The legal industry, as with all other industries, eventually will be disrupted by blockchain technology. Just as legal professionals have had to adapt both their substantive legal advice and practice management to internet and mobile technologies, they will need to adapt to blockchain technologies. Clients will demand sophisticated legal advice related to their complex use of blockchain technologies to evolve their business practices. Moreover, the software and database tools lawyers use will incorporate blockchain technology. Lawyers’ basic function of contract drafting and dispute arbitration may be somewhat displaced by smart contracts, but I think lawyers will take on an enhanced role of creating and mediating legal structures within which smart contracts will operate.

A lot of folks who read my blog are in law firm management (including marketing, IT, knowledge management, and finance) or at legal providers. On the

one hand, some argue this is the “1994 of blockchain” meaning it’s where the Internet was just as it was exploding in use. On the other hand, it would be hard for me to argue persuasively today that law firm staff or legal vendors need to rush out to learn blockchain beyond some general awareness. So, just where are we? How long before staff or vendors working with lawyers need to learn, think about, or worry about blockchain? And why or in what ways?

Dewey: There are probably some good parallels between the internet in 1994 and where blockchain is at today. What has changed, however, is the law firm business environment. In 1994, law firms were simply not going to be at the forefront of developing technology. They were going to be consumers of whatever technology was provided to them by other providers. That’s not the case today. There are a number of law firms, mine included, who are actually developing technology in-house. I think this is an important distinction between now and 1994 because law firms today have an opportunity to gain a competitive advantage over other firms based on their technological capabilities. For those firms who wait around for software companies to develop blockchain solutions for them, they risk being at a competitive disadvantage to those firms who develop and implement those solutions themselves. For these reasons, I think firms would be wise to designate one or more individuals within a firm (preferably from a wide cross section of professionals and support staff) to really stay abreast of what is going on in this area. It may take five

years before we see real world implementations of blockchain, but it could be a year. No one knows, so why take the chance of being left behind?

Farrell: There are a few important themes here. The first is that change driven by technology often works on an exponential scale. This means that you can't really see the extent of what is happening at the start and then, when you can, it is already happening so quickly that you can't catch up. So some care needs to be taken in thinking that any change can be ignored until it has an impact. The second is to look at the landscape, not of lawyers, but of their clients and their lawmakers. We are seeing significant investments in blockchain by both - including global banks, central banks, major governments. These include serious thinkers, people who are not merely dazzled by something shiny and new. The third is to see the theme beneath the technology. Blockchain is a form of peer-to-peer database. This concept of sharing, whether property, products or services, is a discernible current of change in many economies. As law is an information and service industry it needs to pay particular attention to a potentially significant way in which information is shared, verified and used. We are not immune from change. I do not believe that the solution is for lawyers now to buy a particular product or service, instead I think that in the face of this new engine of trust, which could replace part of our role, we need to think carefully about what *actually* is the service which our clients value.

Hansen: Blockchain technology is the most disruptive technology I have seen in my legal career to date. Its innovative potential is astounding. It has already changed peer-to-peer payments and is currently changing capital markets. Major tech companies, venture capital firms and financial institutions have joined the startups who initiated the blockchain revolution. Blockchain-specific laws and regulations are being adopted around the world. Blockchain technology is here to stay, folks. It is also extremely complex, requiring significant ramp up time to understand - only to have it evolve again. Blockchain years move faster than dog years! Perkins Coie invested early in the learning curve, allowing it to provide sophisticated advice to early adopters. Any firm only now getting started on blockchain has missed the opportunity for a first mover advantage, but still invest because blockchains will soon be top-of-mind for its clients.

Thanks all for your time and a very informative interview.

This article was first published as [Will Blockchain Affect Your Practice or Firm?](#) by Bloomberg Big Law Business on 17 August 2016.



Other Legal Market Trends

How and Why Law Firms Can & Should Do Less Law (#DoLessLaw)

A just-released report finds that lawyers and law firms can and should do less law. (For background on [#DoLessLaw](#), see my prior post, written with [Tim Corcoran](#), a [Taxonomy of Do Less Law](#)).

The Legal Leadership Council of [CEB](#) published a post (8 Jan 2016), [Corporate Law: How to Help Your Team Manage Outside Counsel](#) and accompanying "[Preview Report](#)" (pdf). Both report on a survey of about 140 of CEB's in-house counsel members. I focus here on the DoLessLaw implications...

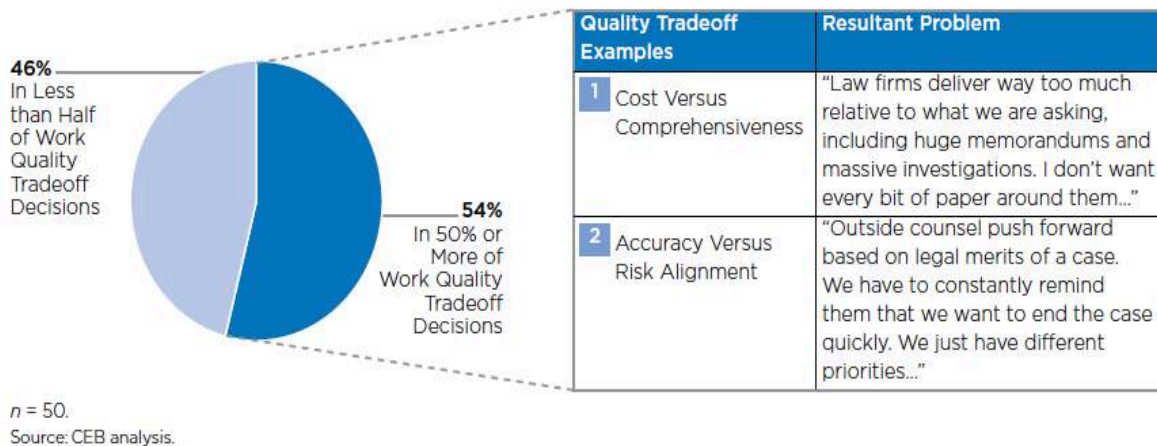
CEB explains that an "often overlooked problem with getting good quality work from external law firms" is that "in-house staff are either unwilling — or unable — to manage outside counsel adequately."

By not managing, GCs allow law firms to over-invest in legal work. CEB finds that inadequate project management explains some of the "value leakage". Firms under-deliver because they "overwork" and "overstaff" matters and "don't stick to an already-agreed-on budget, resulting in highly unpredictable costs."

In my view, a reason lawyers do this is that they tend to look for pebbles rather than just rocks. CEB findings support this, noting that firms "write memos that are too detailed and 'in the

weeds'." Moreover, 54% of GCs say that over one-half of law firms "incorrectly make work quality tradeoffs", illustrated here:

Frequency With Which Outside Counsel Incorrectly Make Work Quality Tradeoffs
Percent of General Counsel Responses



Work Quality Tradeoffs

- Occur when outside counsel must prioritize among competing quality attributes
- Represent the most significant barrier to improved outside counsel performance

Source: CEB analysis.

Examples of the problems arising from poor tradeoffs include law firms delivering "way too much relative to what we are asking for" and pushing forward on the merits ignoring the client wanting to "end the case quickly".

CEB puts the onus on GCs to cause firms to do less law. They found that in-house lawyers must "set clear work quality expectations, align legal risk tolerance, [and] specify matter execution priorities". While matters are active, GCs must make clear the

company's clear risk preferences and provide "tools and decision rules to make correct matter trade-offs".

Of equal note, CEB finds that many popular GC programs do not address law firms doing too much law: success fees or AFA, panels, using Global 200 firms, or preferred firms.

To address law firm over-investment, GCs have to manage better. Only 13% "help outside counsel make necessary trade-offs" and only 29% evaluate firms on "the quality of their decision making, judgment and tradeoffs". That leaves much room to improve.

This report marks a milestone in my view. It clearly articulates and supports with data the potential to reduce spend by doing less law. As with any other law firm changes, the impetus must come from the client.

The Next Step in Large Law Firm Low Cost Service Centers

Large law firms continue to open low cost service centers. That's barely newsworthy after so many US and UK firms have done so. Firms with low cost centers in the US include Hogan Lovells, Littler, DLA Piper, Sedgwick, Kaye Scholer, White & Case, Pillsbury, and Wilmer Hale.

From the outside, it seems the savings always come from labor cost and occupancy. "Lift and shift" I'd say from my outsourcing days - transfer the work as is, just have lower cost people do it.

That leaves money on the table. Process improvement can yield big savings over and above labor cost arbitrage. A function that might have, say 40 people, given the right process improvement, might only need 25 or 30.

[A 'Difficult Day' at DLA Piper as Firm Plots 200 Layoffs](#) (*Bloomberg Big Law Business*, 11 May 2016) reports a 200-person lay-off at DLA Piper (UK). Those positions will shift to Warsaw. Newsworthy here is the COO going on record about process improvement. Andrew Darwin says the moves "tie into a modernization plan and were implemented with consultation from McKinsey & Co... We are a little embarrassed by the fact that we are still pushing paper around the world. It hasn't been a priority before." He mentions the example of shifting to digital CVs from paper in recruitment.

I assume that McKinsey identified many other process improvements. One should not need the most prestigious consulting firm to advise on leaving paper behind.

Most law firms still face largely flat demand. So they likely will continue to seek cost cuts. I expect to read about more low cost centers in the future. Perhaps firms that announce low cost centers in the future - and even ones that have already have them - can take a cue from DLA. Why stop with lower cost labor when process improvement adds significantly to savings? And if firms improve their processes, perhaps they can keep more of their existing staff in place.

What's Easier to Learn? Law or Statistics?

"Much of the 'knowledge' of lawyers can be acquired and accessed by many other means. The only thing over which a law firm has an entrenched monopoly are those aspects of risk and 'assurances' to the client that there are disciplinary consequences for a firm or lawyer's negligence or malpractice."

This quote comes from [Remaking the law firm ecosystem](#) by [Aron Solomon](#) and [Jason Moyse](#) in *Canadian Lawyer* (4 July 2016). The authors argue that "While law firms can and will be remade to varying degrees, the external ecosystem is going to accelerate more nimbly and with greater velocity".

I agree. Solving client legal problems requires more than law. Many skills contribute to solutions, including data analytics, PR, technology, accounting, engineering, and science.

I realized this yesterday when I caught up with an old friend who is an IP law professor. He is doing interesting patent analytics work with US patent data. He has experience both with machine learning / natural language and statistical analysis of patents. We commiserated on the challenge of understanding these disciplines. I shared that I had tried reading a computational linguistics journal article on natural language processing but could not understand the first sentence. And I've had three years of college majors math, including a semester each on probability and statistics.

My professor friend and I agreed that there is no point in lawyers trying to master the details of many other disciplines. Rather, it's easier to teach other professionals what they need to learn about the law to help lawyers. (Indeed, we even agreed that "there's less there than meets the eye" about law.)

So reading the Solomon and Moyse article one day after that conversation, I realized that the meme of lawyers working more closely - and equally - with other professionals is spreading. The breakdown of the legal caste system is slow and, for many, painful. But it needs to happen. It will happen. Clients drive it.

End Notes:

1. Last week I articulated similar points in a webinar hosted by [HighQ on Smart Law](http://offers.highq.com/webinar-smartlaw-the-future-of-law). Recording at <http://offers.highq.com/webinar-smartlaw-the-future-of-law>
2. For those who object to the concept of "law, less there than meets the eye", try a thought experiment. For a reasonably well educated person, what do you think would be easier to explain: contracts, torts, or even the basics of securities law versus statistics, engineering, or accounting. If you think the latter, write a comment here to explain.

Litigation Finance - How It Works at Bentham

I recently spoke with [Dave Kerstein](#), an Investment Manager and Legal Counsel at [Bentham IMF](#) to learn more about litigation finance. Before sharing what I learned, some background...

Background: My Long Interest in Applying Financial Concepts to Law

Combining finance and litigation has long interested me. If financial types got involved, I thought they would help clients value cases and drive practice efficiency, including more use of technology. I suggested this in my 2003 *American Lawyer* article, [A Marketplace Trial](#). My 2007 blog post, [Collateralized Legal Obligations](#), discussed "measuring and predicting risk and bundling pending suits" to "create a portfolio investment". I also noted that such investments would offer risk not correlated to other instruments, a big factor cited in [Litigation Funding Moves Into Mainstream](#), *Wall Street Journal*, 5 August 2016.

But I missed litigation financing. Shortly after learning about it, I read the 2010 Rand Corporation's [Alternative Litigation Financing in the United States](#) study. None of the many articles I've read since explain exactly how it works from an investor perspective. Hence my discussion with Dave.

About Bentham

Bentham's parent company, [IMF Bentham](#), based in Australia, pioneered commercial litigation finance 15 years ago. Australia was a good place to start because it had an adverse costs / "losers pay" legal system, and contingency fees were not then permitted. Bentham's founders saw that those restrictions left many meritorious claims on the table. When the company started financing cases, some challenges were made to its legality. The Australian High Court ultimately ruled that funding was not only legal and permitted, but that it was beneficial to the judicial system because it helped provide access to justice and leveled the playing field for litigants.

Today, the company is ASX traded and funds a high percent of all funded cases in Australia. Bentham raises capital from its equity holders and from public bond offerings, as well as from returns on its successful investments.

Bentham began operating in the US when it opened in NYC in 2011. Today, it also has US offices in SF and LA and plans more in other major US legal markets. Bentham recently opened an office in Toronto, and it funds cases throughout Asia through its Australian offices.

The company has funded over 180 cases to completion and returned funds in about 90% of them, amounting to over \$1.7B. About 63% of those returns were paid to claimants, with the rest

split between Bentham and counsel. Bentham has been financially successful, with an approximate 2.8x return on its invested capital over its 15-year life. The average time to maturity of a case is 2.5 years. The internal rate of return (IRR) is almost 80%.

All of Bentham's US investment managers have at least 15 years of litigation and trial experience, as does Dave, who spent most of his career as a Gibson Dunn litigator.

How Bentham Litigation Financing Works – Single Cases

Bentham funds a variety of commercial litigation, from breach of contract to patent. It usually commits between \$1M and \$10M for individual cases. This funding can be used to cover attorney's fees, out of pocket costs of litigation, as well as operating capital or living expenses of claimants. Bentham also funds law firms directly if they bundle a "portfolio" of three or more contingent cases.

All of Bentham's funding is "non-recourse" except to the litigation proceeds: Bentham only receives a return if the case is successful, *i.e.*, it results in a collected settlement or judgment. When clients lose, Bentham earns nothing and loses its capital.

Dave reports that Bentham strives for fairness and believes claimants in funded cases should receive the majority of litigation proceeds. Bentham structures investments so that that is the most likely outcome.

Bentham targets claims worth at least \$10M. It analyzes a proposed case to determine whether the realistic value is at least 8-10x the amount of funds Bentham is asked to commit in the transaction. Bentham aims to return about 3x to 4x on each investment.

Though all Bentham's funding is "bespoke", in single cases, it prefers a 50/50 investment. In this model, Bentham commits to fund 50% of a capped lawyer fee budget. The lawyers commit to fund the other 50% (and anything over the cap). Ideally (but not necessarily), the client funds out of pocket litigation costs.

In this model, Bentham receives 20% of the litigation proceeds, the lawyer receives 20% of the litigation proceeds (on top of the 50% of fees already paid by Bentham) and the client retains 60% of the proceeds. For clients, this is equivalent of a full contingency arrangement (at a rate of 40%).

When all parties have funds at stake – law firm fees, claimant out of pocket expenses, and Bentham funding – interests align well. The table below illustrates, with some simplifying approximations, the typical economics of a single case financing in the 50/50 model:

Illustrative Economics of Hypothetical Claim in Three Payment Scenarios (\$)			
ASSUMPTIONS			
Expected Value of Claim	10,000,000		
Legal Fees	1,000,000		
WIN	<i>Traditional Fee</i>	<i>Contingency at 40%</i>	<i>Bentham Financed</i>
Legal Fees Paid by			
Client	1,000,000	000	000
Bentham	NA	NA	500,000
Law firm	000	1,000,000	500,000
Net Amounts Received (Lost)			
Client	9,000,000	6,000,000	6,000,000
Bentham	NA		1,500,000
Law firm fee recovery	1,000,000	1,000,000	500,000
Law firm "extra"	NA	3,000,000	2,000,000
LOSE	<i>Traditional Fee</i>	<i>Contingency at 40%</i>	<i>Bentham Financed</i>
Legal Fees Paid by			
Client	1,000,000	000	000
Bentham	NA	NA	500,000
Law firm	000	(1,000,000)	500,000
Net Amounts Received (Lost)			
Client	NA	000	000
Bentham	NA	NA	(500,000)
Law firm fee recovery	(1,000,000)	(1,000,000)	(500,000)
Law firm "extra"	NA	000	000

Chart by Ron Friedmann to illustrate typical Bentham litigation finance economics

How Bentham Litigation Financing Works – Portfolios

Bentham also funds law firm portfolios. Portfolios must have at least three cases (though it prefers four or more), and can include *all* contingent cases a firm handles. For portfolios, Bentham's return is "cross collateralized" by all of the portfolio cases. This means Bentham gets its return from whichever case(s) in the portfolio win. Portfolios are less risky for Bentham than single cases so the return terms for firms are more favorable than in 50/50. Bentham only receives a capped multiple of its invested capital instead of taking a matching percentage return from the litigation proceeds.

Each firm's financing is customized. The amount committed by Bentham in these arrangements is often based on percentage of estimated legal fees the firm might invest in the portfolio cases. However, the amount Bentham commits must ultimately be supported by the expected fee returns in the cases. Law firms can use the funding however they want, including to cover overhead, for out of pocket costs in the litigation, and/or for firm expansion.

Why Law Firms Find Litigation Financing Attractive

Though a firm's upside relative to pure contingency is lower, so too is its downside. Risk trade-offs do not have a single correct answer but from a firm's perspective, funding seems attractive. Bentham terms means firms can afford to take on more similar matters: with fees partially covered, for the same downside risk as with a

contingency fee, the firm could take on multiple matters and diversify its risk.

Portfolios are attractive for Bentham because of the reduced risk. Dave said that in this model, "law firms still retain a big upside in their funded, contingent matters - in a single case the firm does as well as Bentham, but in a portfolio, the firm should do better financially."

So far, Bentham's portfolio investments have been with smaller and mid-size firms. In the last year, however, Bentham has talked to several Am Law 100 firms. Dave reports that big firms see financing as another bottom line booster. If, with Bentham assistance, a firm picks the right portfolio of cases to fund, Dave says it can see a material increase in revenue and realization rate. Bentham developed its Accelerator tool, a series of spreadsheets, to help firms model the impact.

If we assume some price elasticity for litigation, firms may see an increase in demand because, with funding, clients effectively pay a lower price. This of course raises a common concern about litigation financing...

Does Litigation Financing Increase the Amount of Litigation?

I asked Dave if he thinks financing increases the number of cases filed. He said Bentham invests in no more than 5% of matters it examines and prefers working with top notch lawyers and firms.

So, while financing might allow a few more meritorious cases to proceed than would otherwise be possible, it does not materially increase the overall volume. Dave also reiterated that commercial litigation funders only receive a return if the cases they invest in are successful. Thus, funders are motivated to invest only in the most meritorious cases. Funding Dave says, therefore, does not encourage an increase in frivolous litigation as some critics suggest. Instead, Dave says funding assists claimants with strong cases to achieve fair outcomes by removing the financial imbalance between parties and by allowing clients to retain the best counsel for their case.

Dave believes the big impact of funding is to shift market share. Because financing reduces fee risks, firms can take on more or different matters than they otherwise might. And clients can shop for better (more expensive) firms. With Bentham funding, clients can retain top notch firms that otherwise do not offer contingency arrangements. Over time, Dave suggests this will drive more litigation to the best lawyers, without driving more litigation generally.

Does Litigation Financing Increase Lawyer Efficiency?

As indicated at the outset, I thought financing could make litigation more efficient. I asked Dave if Bentham cares if firms handle cases efficiently. I expressed concerns, for example, that lawyers might treat financed matters as black holes where they can bill hours to meet quotas. Dave said Bentham wants efficient

case handling and that financing works best for firms if they pick their best cases and use their best teams. Furthermore, he noted firms will have the highest ROI if they are efficient.

The same logic applies to fixed fees or other alternative fee arrangements. After talking to Dave, it's not clear that financing will in fact drive efficiency. Instead, it may be yet one more tactic to postpone serious changes in how lawyers practice. Firms have protected profits by laying-off staff and partners and by reducing real estate cost. In my view, firms will eventually exhaust such steps. At that point, they will have to change how lawyers work and how firms operate. So far, though, most large law firms have staved off fundamental change. Financing may be yet one more way to postpone the hard work of real change.

Conclusion

Litigation finance has gained significant mind share recently. More and more financial firms offer it. After the 2008 crash, investors learned the hard way that risks were more correlated than they thought. At least for now, it seems litigation as an asset is not correlated, making it a very attractive investment. And it offers both clients and firms benefits. So I expect to see the litigation finance market continue to grow.

About Ron Friedmann

Ron Friedmann is a lawyer by training and has spent over two decades working in the legal market. He is currently a consultant with Fireman & Company. Ron's background and experience is well suited to help lawyers solve their toughest practice and business management challenges.

Legal Market Experience.

Extensive experience includes executive at a legal process outsourcing company; CIO at Mintz Levin; practice support head at Wilmer Cutler (now WilmerHale); consultant to law firms, law departments, and legal vendors; and marketing professional at two legal market software companies.

Business Consulting Experience.

Prior to joining the legal market, Ron worked as a strategy consultant at Bain & Company and as an economic and financial analyst for Data Resources, Inc. (a McGraw-Hill company).

Professional Engagement.

Ron is a Fellow of and former 9-year Trustee of the College of Law Practice Management. Other professional activities include co-founder and organizer of the Law Practice Technology Roundtable; founder and organizer of the DC Large Law Firm KM Group; and member of the NYC Large Law Firm KM Group and co-organizer of its annual global large law firm KM meeting. Ron regularly publishes articles and blog posts in leading publications and speaks on how to improve law practice efficiency and improve law firm business operations.

Education: JD, New York University School of Law in 1986 and BA in Economics, Oberlin College in 1979. Honors at both.