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The Business of Law: Evolution of the Legal Services Market

Tyler J. Replogle

University of Michigan Law School

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THE BUSINESS OF LAW: EVOLUTION OF THE LEGAL SERVICES MARKET

Tyler J. Replogle*

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INTRODUCTION

The legal services market is changing. This change has been driven by various factors through the years: expansion of in-house legal departments, globalization (through mergers and outsourcing), technological advances, and the rise of alternative legal service providers. This paper explores these factors in isolation—i.e., discussing each factor separately and distinctly from other factors. Then, this paper seeks to understand these factors together, as products of a legal services market that is evolving from the growth stage into the mature stage.

Part I summarizes the early history of law firms, including the rise of the Cravath System through the Golden Era of the 1960s. Part II examines several factors affecting the legal services market, specifically: expansion of in-house legal departments, globalization (through mergers and outsourcing), technological advances, and the rise of alternative legal service providers. Finally, Part III discusses how these factors can also be understood together, as products of a maturing legal services market.

* J.D. Candidate, December 2016, University of Michigan Law School; B.S., December 2011, Finance, Accounting, Indiana University. A special thanks to Professor Robert Hirshon, Frank G. Millard Professor from Practice and Special Counsel on Developments in the Legal Profession. I was a student in Professor Hirshon’s course that covered the evolution of law firms, and it was during that course where this paper originated. Since then, Professor Hirshon has graciously volunteered to provide helpful comments on this Note and insights into the legal services industry. All opinions and errors are my own.

DISCUSSION

I. EARLY HISTORY OF LAW FIRMS

The early history of law firms began with the emergence of *large* law firms in the late nineteenth century. These law firms rapidly expanded to serve the needs of growing businesses into the 1960s, which is often termed the Golden Era.

A. *Emergence of Large Law Firms*

Large law firms emerged in the late nineteenth century.¹ Unlike today, the term “large law firm” was initially understood to represent a firm with four or more lawyers.² These firms emerged to serve the needs of growing businesses that required increasingly specialized legal services in business law and transactional work.³ In 1872, there were only 15 firms with 4 or more lawyers in the firm. By 1903, that number had grown to 210, and in 1924 it had grown to over 1,000.⁴

During the first decade of the twentieth century, the “Cravath System” was established and firms took their modern form.⁵ Named for Paul Cravath, a partner at Cravath, Swaine & Moore,⁶ the Cravath System was a pyramid-shaped organizational structure in which each partner was served by several associates to ensure profit maximization.⁷ Within this system, there were only two primary classes of professionals: partners and partnership-track associates.⁸ Smart, ambitious young lawyers entered the firm as partnership-track associates.⁹ These young lawyers underwent a probationary period, during which partners decided whether the associate should be admitted as a partner or would be asked to leave the firm.¹⁰ Partners were primarily selected from within the firm and hiring an attorney from another firm—termed “lateral hiring”—was rare.¹¹

1. Eli Wald, *Smart Growth: The Large Law Firm in the Twenty-First Century*, 80 *Fordham L. Rev.* 2867, 2869 (2012).

2. Vincent Robert Johnson, *On Shared Human Capital, Promotion Tournaments, and Exponential Law Firm Growth*, 70 *Tex. L. Rev.* 537, 542 (1991) (reviewing Marc Galanter & Thomas Palay, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* (1991)).

3. Wald, *supra* note 1, at 2869.

4. MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 14-15 (1991) (citing data compiled from WAYNE K. HOBSON, *THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY, 1890-1900* 161, 168, and 171 (1986)).

5. *Id.*

6. Wald, *supra* note 1, at 2868-69.

7. *Id.* at 2870.

8. Bernard A. Burk & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 *COLUM. BUS. L. REV.* 1, 10 (2011).

9. GALANTER & PALAY, *supra* note 4, at 9.

10. *Id.* at 28 (referred to as the “up-or-out” rule).

11. Burk & McGowan, *supra* note 8, at 10.

In addition to being a time of growth in the legal services market, this period also marked a shift from lawyers as courtroom advocates, to business advisors.¹² In describing this shift, Robert Swaine concluded around 1900 that “the great corporate lawyers of the day drew their reputations more from their abilities in the conference room and facility in drafting documents than from their persuasiveness before the courts.”¹³

B. Pinnacle of Large Law Firms: “Golden Era”

Beginning in the late 1950s and lasting through the early 1960s, law firms experienced the “Golden Era.”¹⁴ For large firms, this was “a time of prosperity, stable relations with clients, steady but manageable growth, and a comfortable assumption that this kind of law practice was a permanent fixture of American life.”¹⁵ During this time, law firms developed deep and enduring relationships with corporate clients.¹⁶ Often, firms enjoyed direct communication with corporate executives as their trusted advisors.¹⁷ Through the 1960s, it was not unusual for a single law firm to handle all of the legal matters of its major clients.¹⁸

The primary driver of these close, institutional relationships was information asymmetry between businesses and their lawyers.¹⁹ Starting with New Deal legislation in the 1930s through the “rights revolution” of the 1960s, the laws governing corporate conduct became increasingly complex.²⁰ Few businesses at the time had the internal expertise to navigate these regulations.²¹ Accordingly, businesses invested in close, long-term relationships with full-service firms to help them understand their legal responsibilities.²² These close, long-term relationships did not last forever.

II. FACTORS AFFECTING THE LEGAL SERVICES MARKET

Since the Golden Era, several factors have forced the legal services market to change. These factors have taken various forms through the years, including: expansion of in-house legal departments, globalization, technological advances, and the rise of alternative legal service providers.

12. GALANTER & PALAY, *supra* note 4, at 6.

13. *Id.* at 6 (Mr. Swain, partner at Cravath, chronicled the history of Cravath in ROBERT T. SWAIN, *THE CRAVATH FIRM AND ITS PREDECESSORS 1819-1947: THE PREDECESSOR FIRMS 1819-1906* (1946)).

14. *Id.* at 20.

15. *Id.* at 36.

16. See David B. Wilkins, *Team of Rivals? Toward A New Model of the Corporate Attorney-Client Relationship*, 78 *FORDHAM L. REV.* 2067, 2077 (2010).

17. Craig B. Glidden, *The Evolution and Influence of Corporate Legal Departments*, 12 *FLA. ST. U. BUS. REV.* 131, 133-34 (2013).

18. Wilkins, *supra* note 16, at 2077.

19. *Id.* at 2077-78.

20. *Id.* at 2077.

21. *Id.*

22. *Id.* at 2078.

Each of these factors are examined below, concluding with a discussion on the impact of the Financial Crisis.

A. *Rise of In-House Legal Departments*

After the Golden Era, many large U.S. corporations expanded the nature and scope of their business activities, especially during the mergers and acquisitions boom of the 1980s.²³ This resulted in more legal work, including transactions that were larger, more complex, and time-sensitive.²⁴ By the middle of the 1980s, it had simply become too expensive for businesses to rely exclusively on law firms, especially for reoccurring and routine work.²⁵ Accordingly, businesses looked to innovate and cut these legal costs.²⁶ General Electric Co.'s ("GE") general counsel Ben Heineman led the way, setting the stage for a new approach to delivering legal services.²⁷

In 1987, Jack Welch, GE's fabled CEO, charged Heineman with the task of creating a legal department that rivaled the best law firms at that time.²⁸ Welch also asked Heineman to seek out and eliminate unnecessary legal costs.²⁹ To Heineman, this meant breaking up long-standing relationships that GE's business departments had with law firms.³⁰ Accordingly, Heineman recruited and hired exceptional lawyers from prestigious law firms to work in GE's legal department.³¹ By the time Heineman ended his tenure as General Counsel in 2006, GE employed over 1,000 in-house attorneys.³²

As a result of Heineman's reign, GE's legal department began to service much of the work that had previously been sent to law firms.³³ In addition to in-sourcing, GE also controlled the overall management of its legal work: unbundling it, sourcing it, pricing it, and overseeing the entire process.³⁴ The bright, experienced lawyers that filled GE's legal department helped eliminate the information asymmetry between GE and their outside counsel; which had previously supported the close, long-term rela-

23. Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT'L L. 763, 770 (2007).

24. *Id.*

25. Glidden, *supra* note 17, at 134.

26. *Id.*

27. See generally, Glidden, *supra* note 17.

28. *Id.* at 135. Ben Heineman was a "marquis selection." He was a graduate of Harvard and Yale, a Rhodes Scholar, a Supreme Court clerk, and the managing partner of Sidley & Austin's Washington office. *Id.*

29. Wilkins, *supra* note 16, at 2081.

30. *Id.* at 2081.

31. *Id.*

32. *Id.* In 2006, the 1,000 plus lawyers at GE were enough to rank it among the twenty largest law firms in the world. *Id.*

33. *Id.* at 2081-82.

34. *Id.* at 2082.

tionships that businesses and their outside counsel had shared in the Golden Era.³⁵

Because of Heineman's success, other businesses began to emulate GE's policies.³⁶ The traditional relationship that once symbolized the Golden Era broke down.³⁷ Unlike the Golden Era, where businesses relied on law firms to serve as trusted advisors, businesses began hiring law firms primarily for specific, specialty tasks that could not be completed in-house.³⁸ Moreover, businesses ceased relying on just one law firm to service their legal work; instead, businesses split their legal work amongst a variety of firms.³⁹

Law firms, consequently, were forced to compete regularly for new matters. These competitions took the form of beauty contests,⁴⁰ fee reductions, demonstrations of expertise, and consents to demanding supervision.⁴¹ The Golden Era was nothing but a faded memory when, in 2003, GE began requiring firms to compete in online auctions for the company's legal work.⁴²

In addition to building in-house legal departments, businesses increasingly turned to consulting firms to help reduce legal costs.⁴³ Specifically, consulting firms advised corporations on how to save money and increase productivity by, for example, holding law firms accountable for compliance and billing guidelines.⁴⁴ Consulting firms such as Altman Weil, Hildebrandt, and Huron Consulting emerged and focused specifically on the legal services market and facilitating the transition towards more client-centric services.⁴⁵

The trend of growing in-house legal departments exerting increased pressure on law firms has continued.⁴⁶ Businesses are under pressure to deliver more for less. This pressure, in turn, has forced businesses to de-

35. Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 761 (2010). See also Wilkins, *supra* note 16, at 2077.

36. Wilkins, *supra* note 16, at 2081.

37. *Id.* at 2082.

38. Abram Chayes & Antonia H. Chayes, *Corporate Counsel and the Elite Law Firm*, 37 STAN. L. REV. 277, 294 (1985).

39. *Id.*

40. Aronson, *supra* note 23, at 770 n.11 ("'Beauty contest' generally refers to the process by which a corporate client establishes a competitive procedure to select outside counsel.").

41. Wilkins, *supra* note 16, at 2082.

42. *Id.* at 2082.

43. Glidden, *supra* note 17, at 136.

44. *Id.*

45. See *id.*; Heather D. Jefferson, *Marketing the 21st Century Law Firm*, DEL. LAW., Spring 2001, at 6.

46. Eversheds, *Law Firm of the 21st Century: The Clients' Revolution*, 2 (2010), <https://www.law.georgetown.edu/academics/centers-institutes/legal-profession/documents/upload/Conference-Papers-Add-Material-ClientRevolution.pdf>.

mand that their law firms reduce costs and provide greater value.⁴⁷ Law firm managing partners and chairs in U.S. firms expressed these sentiments in the Altman Weil 2015 Survey.⁴⁸ In that survey, 72% of law firms stated that they believed the pace of change in the profession was increasing.⁴⁹ Additionally, law firm leaders found that clients were taking matters into their own hands by using “alternative measures themselves to achieve greater efficiency and economy.”⁵⁰ Accordingly, 67% of law firms stated that they were losing business to in-house legal departments that were in-sourcing work.⁵¹

B. *Globalization: Mergers and Outsourcing*

In the late nineteenth century, law firms expanded in response to the needs of growing businesses.⁵² Today, law firms engage in mergers and outsourcing in response to the growing global legal services market.⁵³

1. Mergers

The trend of law firm mergers, beginning in the mid-1990s,⁵⁴ has dramatically increased during the past few years.⁵⁵ In 2015, there were 91 law firm mergers and acquisitions: a record high that included the largest law firm merger ever.⁵⁶

In 2015, multinational law firm Dentons announced its merger with Chinese law firm Dacheng—firms of 2,500 and 3,500 lawyers, respectively.⁵⁷ Moreover, this was only the first of eight mergers for Dentons during 2015: other notable combinations occurred with Australian firm Gadens, which had 500 lawyers; United States firm McKenna Long & Aldridge, with 300 lawyers; and Singapore firm Rodyk, with 200 lawyers.⁵⁸ Dentons continued this growth strategy into 2016, expanding into the Car-

47. *Id.*

48. *See generally*, Thomas S. Clay & Eric A. Seeger, *Law Firms in Transition: An Altman Weil Flash Survey*, ALTMAN WEIL (2015), http://www.altmanweil.com/dir_docs/resource/95e9df8e-9551-49da-9e25-2cd868319447_document.pdf.

49. *Id.* at ii.

50. *Id.*

51. *Id.* at 20.

52. *See* Wald, *supra* note 2, at 2869.

53. Aronson, *supra* note 23, at 770.

54. *Id.* at 769-70.

55. Elizabeth Olson, *Law Firm Mergers Rose Again Last Year*, N.Y. TIMES, (Jan. 7, 2016), https://www.nytimes.com/2016/01/08/business/dealbook/law-firm-mergers-rose-again-last-year.html?_r=0.

56. *Id.*

57. *Id.*

58. *Id.*

ibbean and Latin America.⁵⁹ As of December 2016, Dentons housed around 7,500 lawyers—the world’s largest law firm by number of lawyers—and rumors swirl of more mergers to come (e.g., merger with the European arm of King & Wood Mallesons).⁶⁰

Law firms and legal consultants offer a number of justifications for these mergers. For example, Altman Weil, a leading legal consulting company, suggests the following reasons for growth through merger activity:

- to serve existing clients that have a growing business;
- to serve new clients that have been acquired through beauty contests or referred to a law firm by its existing clients;
- to add practice areas that are needed by clients; or
- to access new geographical markets.⁶¹

Some observers of the law firm merger phenomenon are skeptical. Bruce Aronson spent eleven years as a partner at a major New York law firm before becoming a law professor at Creighton University.⁶² Professor Aronson argues that mergers are the result of reputational signaling and herd behavior.⁶³ Professor Aronson contends that law firms have become desperate to demonstrate their reputation and quality to clients in the current legal services market—which is marked by increased competition forcing firms to compete largely on the basis of reputation because quality is too difficult to measure and quantify.⁶⁴ Professor Aronson believes this is especially prevalent given the current uncertainty around the legal services market: general uncertainty about the legal services market and specific uncertainty around the drivers of merger activity.⁶⁵ Under these conditions, law firms, he claims, are more likely to engage in defensive mergers based solely on the actions of other firms—e.g., law firm A merges, so law firm B believes that it should also merge because law firm B is uncertain about the future of the legal services industry and does not have complete information on why law firm A merged.⁶⁶ Finally, Professor Aronson claims that the behavior of elite firms—such as Wachtell and Cravath—support his understanding of merger activity. These elite firms do not have the same reputational and quality concerns. Accordingly, their current behavior—pursuing a clear strategy of high-profitability over increased merger activity—is logical.⁶⁷ In contrast to Professor Aronson’s

59. Katie Walsh, *Dentons Extends Footprint to Sydney at Last, Gadens Split*, FINANCIAL REVIEW, (Dec. 1, 2016), <http://www.afr.com/business/legal/dentons-extends-footprint-to-sydney-at-last-gadens-split-20161129-gt0g1l#>.

60. *Id.*

61. Ward Bower, *A Growing Problem?*, ALTMAN WEIL, 1-2 (2014), http://www.altmanweil.com/dir_docs/resource/338ca46f-0bc8-4237-b914-0b2d35662d8b_document.pdf.

62. Aronson, *supra* note 23, at 763.

63. *Id.*

64. *Id.* at 763, 767.

65. *Id.*

66. *Id.*

67. *Id.* at 830.

assertion, however, it is worth noting that other elite firms—such as Skadden and Jones Day—have expanded globally through mergers and acquisitions without evidence of a dire need to demonstrate reputational excellence to clients.

Regardless of the drivers of merger activity, most observers warn against unjustified incentives for growth.⁶⁸ Altman Weil in particular, concludes their analysis by emphasizing the need for careful, strategic planning for law firms involved in mergers and warns against the herd approach of “bigger is always better.”⁶⁹

The strategic implications of Dentons’ recent combinations have already triggered the concern of some consultants. For example, Dentons’ business is organized as a swiss verein, which is an association of independent legal entities—e.g., Dentons Europe, Dentons US, etc. Accordingly, Mr. Bower, an Altman Weil principal, warned that “it will be challenging for [Dentons] to create and maintain a unified vision and mission for their brand.”⁷⁰ These strategic implications should be a concern for more than merely consultants. Several law firm mergers have failed to live up to expectations because of a lack of strategic vision, leaving behind a trail of firms that no longer exist.

A highly touted 2008 merger between Dewey Ballantine and LeBoeuf, Lamb, Greene & MacRae produced a 1,300 lawyer firm, under the name of Dewey & LeBoeuf LLP.⁷¹ Four short years later, however, that firm sought bankruptcy protection, which marked the largest U.S. law firm failure in history.⁷² Although the motivations and drivers of the current wave of law firm mergers vary, it is evident that these combinations are drastically changing the landscape of the legal profession.

2. Outsourcing

In addition to increased merger activity, law firms have also responded to the global legal services market by outsourcing legal work to countries that have relatively low labor costs, such as India.⁷³ The advantages of outsourcing are simple: reduced costs and added value by allowing U.S. law firms to focus on the sophisticated legal needs of their clients.⁷⁴ The increase in outsourcing activity has, consequently, led to businesses that focus primarily on outsourcing and advise clients on outsourcing matters—these businesses are discussed in more detail in the Alternative Legal Service Providers section.⁷⁵

68. Bower, *supra* note 61, at 2.

69. *Id.* at 4.

70. Olson, *supra* note 55.

71. Jennifer Smith, *A Tough Case for Law Firm Mergers*, WALL ST. J., Apr. 13, 2014.

72. *Id.*

73. See Ribstein, *supra* note 35, at 766.

74. See Carlo D’Angelo, *Overseas Legal Outsourcing and the American Legal Profession: Friend or “Flattener”?*, 14 TEX. WESLEYAN L. REV. 167, 172 (2008).

75. See Ribstein, *supra* note 35, at 766.

C. Technology

Technology has also been a driver of change in the legal services market.⁷⁶ Just as process engineering and automation revolutionized blue-collar industries, computing power is revolutionizing white-collar industries.⁷⁷ Legal services, like other white-collar industries, has a notable subset of tasks that are subject to automation.⁷⁸ Law firms, faced with increased pressure from businesses to do more with less, have increasingly turned to technology to either automate or semi-automate tasks previously performed by lawyers.⁷⁹ For example, e-discovery and predictive coding have already substantially affected the legal services market; and an even greater technology—quantitative legal prediction—awaits on the horizon.⁸⁰

The term e-discovery refers to software that can efficiently analyze documents, typically used in the discovery stage of litigation, at a fraction of the time lawyers would otherwise spend.⁸¹ Traditionally, this software has identified targeted terms at very efficient speeds.⁸² The modern generation of e-discovery, however, is much more expansive. This next generation, termed predictive coding, refers to a computer program that uses algorithms to identify relevant documents.⁸³ Specifically, lawyers upload documents into the program and then manually review a batch of those documents to train the program how to recognize terms that are relevant.⁸⁴ This manual review is then repeated until the program has developed a model that accurately predicts relevant documents.⁸⁵ Research has shown that predictive coding outperforms human reviewers because it is more precise—i.e., predictive coding flags fewer irrelevant documents than human reviewers—although by how much is unclear.⁸⁶

Now, an even more sophisticated technology is poised to cause further disruption—quantitative legal prediction. Quantitative legal prediction refers to a process that predicts legal outcomes based on the quantitative

76. See Daniel Martin Katz, *Quantitative Legal Prediction—or—How I Learned to Stop Worrying and Start Preparing for the Data-Driven Future of the Legal Services Industry*, 62 EMORY L.J. 909, 909 (2013).

77. *Id.* at 913–14 (citing STANLEY ARONOWITZ & WILLIAM DiFAZIO, *THE JOBLESS FUTURE* (2d ed. 2010)).

78. *Id.* at 910.

79. *Id.*

80. *Id.* at 911–12.

81. John Markoff, *Armies of Expensive Lawyers, Replaced by Cheaper Software*, N.Y. TIMES, Mar. 5, 2011, at A1.

82. *Id.*

83. Katz, *supra* note 77 at 945; Joe Palazzolo, *Why Hire a Lawyer? Computers Are Cheaper*, WALL ST. J., June 18, 2012, at B1.

84. *Id.*

85. *Id.*

86. *Id.*

analysis of data points.⁸⁷ This approach has emerged at the intersection of three central technological advances.⁸⁸ First, the transistor count of the world's leading central processing unit (used to measure the speed of computers) has historically doubled every twelve to eighteen months.⁸⁹ Second, the decreasing cost of data storage has followed a similar, if not more extreme, trend as the transistor count—i.e., storage costs are decreasing by half, or more, every twelve to eighteen months.⁹⁰ And lastly, soft artificial intelligence has arrived.⁹¹ Soft artificial intelligence denotes that, although human results can be obtained using this technology, the underlying intellectual process of humans has not yet been attained (nor is it very well understood).⁹²

The underlying process of quantitative legal prediction is especially pertinent in the legal services market because it helps to overcome some of the limitations of human reasoning.⁹³ For example, humans are limited by the scope of their observations—e.g., an experienced lawyer may remember hundreds or thousands of data points, such as cases, holdings, and settlements.⁹⁴ In contrast, quantitative legal prediction can be based on tens of thousands, or hundreds of thousands of data points.⁹⁵ In addition to limited scope, humans have well-documented cognitive biases: availability heuristic, optimism bias, anchoring, confirmation bias, illusion of validity, and frequency illusion.⁹⁶ In contrast, quantitative legal prediction does not have innate cognitive biases so some of the human biases are eliminated.⁹⁷

From a broad social perspective, incorporating technology into legal services can be seen as beneficial because it lowers the cost for clients.⁹⁸ From a law firm's perspective, however, technology typically lowers revenue and eliminates jobs.⁹⁹ For example, previously, law firms were able to bill their associates' time spent on document review, which can be very time intensive.¹⁰⁰ Now, however, "it means that a lot of people who used to be allocated to conduct document review are no longer able to be billed

87. *See generally* Katz, *supra* note 77.

88. *Id.* at 913–19.

89. *Id.* at 914.

90. *Id.* at 916.

91. *Id.* at 918.

92. *Id.*

93. *Id.* at 928–29.

94. *Id.* at 928.

95. *Id.*

96. *Id.* at 929.

97. *Id.*

98. William D. Henderson & Rachel Zahorsky, *Law Job Stagnation May Have Started Before the Recession – And It May be a Sign of Lasting Change*, ABA J. (Jul. 1, 2011), http://www.abajournal.com/magazine/article/paradigm_shift.

99. *See generally, id.*

100. *See* Markoff, *supra* note 82.

out,” said Bill Herr, who managed massive document review projects as a lawyer at a major chemical company.¹⁰¹

Although technology does create new jobs, that does not necessarily mean that the number of jobs created by technology equals or exceeds the jobs eliminated by technology; nor does it guarantee the jobs created are equal or better opportunities in pay and responsibility.¹⁰² David Autor, an economics professor at the Massachusetts Institute of Technology, asserts that the U.S. economy is being “hollowed out” by technology.¹⁰³ Jobs in the middle are being lost to automation and outsourcing, while the new jobs being added are coming at the bottom of the economic pyramid.¹⁰⁴ Moreover, job growth at the top is slowing because of automation.¹⁰⁵

Regardless of where experts stand on the advantages and disadvantages of technology, it is clear that technology has already disrupted the traditional law firm model and newer technology, such as quantitative legal prediction, is set to disrupt that model even further.

D. *Alternative Legal Service Providers*

Businesses are increasingly turning to alternatives to traditional law firms. Just as businesses expanded their in-house legal departments in response to the rising costs of legal services, such as GE did in the 1980s, today’s corporations are again searching for alternatives.¹⁰⁶ Businesses other than law firms—termed “alternative legal service providers”—have turned to technology and process management to compete with law firms.¹⁰⁷ Although each of these providers are unique, they share several common aspects.¹⁰⁸ Specifically, these firms seek to: (1) reduce costs, especially overhead; (2) offer alternative billing practices—something other than the billable hour; (3) provide alternative practices for lawyer compensation and tenure; and (4) find innovative solutions to the process and delivery of legal services.¹⁰⁹

Axiom, a Delaware corporation, is a leading provider of tech-enabled legal services; and a paradigm of alternative legal service providers.¹¹⁰ Axiom operates with over 1,500 employees across three continents.¹¹¹

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. See John S. Dzienkowski, *The Future of Big Law: Alternative Legal Service Providers to Corporate Clients*, 82 *FORDHAM L. REV.* 2995, 2996 (2014).

107. See generally, *id.*

108. See *id.* at 3002-15 (providing an overview of the leading alternative legal services providers, including Clearspire, VLP Law Group, Axiom, and Paragon).

109. *Id.* at 3002.

110. *Id.* at 3008.

111. *What We Do*, AXIOM, <http://www.axiomlaw.com/what-we-do/> (last visited Feb. 12, 2017).

Axiom's mission is to improve legal services by effectively combining law with business and technology.¹¹² An example of this innovation is Axiom's own proprietary software, Iris, that seamlessly combines its attorney teams with business operations and management personnel to collaborate more efficiently with in-house legal departments.¹¹³ In addition to using technology, Axiom also reduces its overhead by encouraging their attorneys to work from the client site, from home, or even from other law firms.¹¹⁴

Companies have bought into this approach. Axiom has ongoing relationships with almost half of the Fortune 100 companies.¹¹⁵ Recently, Axiom signed a \$73 million contract with an undisclosed global bank.¹¹⁶ The bank hired Axiom to process the bank's master trading agreements to maintain the bank's compliance with capital and other regulations.¹¹⁷ This contract work is intended to allow the bank to manage its exposure to risks of default in the mortgage industry from swaps, derivatives, and other securities.¹¹⁸ This deal drew the interest of Mary Schapiro, former chairman of the Securities and Exchange Commission, who believes that agreements like this will help businesses better understand their exposure.¹¹⁹ This was a major concern for her and other drafters of the Dodd-Frank Act.¹²⁰

Virtual Law Partners (also referred to as "VLP") is another alternative to Big Law.¹²¹ VLP is based on a model where only senior lawyers and highly trained paralegals, provide legal services for clients.¹²² The model is based on the idea that experienced lawyers provide the most value and the less complex work can be outsourced to other law firms or legal service providers.¹²³ Great autonomy is granted to VLP's lawyers. Each partner has authority to establish their own fee structure and, if necessary, billing rates with clients.¹²⁴ The underlying rationale is that each partner is in the best position to know how, and what, to charge the client.¹²⁵ Ad-

112. *Id.*

113. *What We're Not*, AXIOM, <http://www.axiomlaw.com/what-were-not/> (last visited Jan. 18, 2016).

114. Dzienkowski, *supra* note 107, at 3009.

115. *Id.* at 3008.

116. Daniel Fisher, *Legal-Services Firm's \$73 Million Deal Strips The Mystery From Derivatives Trading*, FORBES MAGAZINE, 2015.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Dzienkowski, *supra* note 107, at 3006.

122. *Id.* at 3006-07.

123. *Id.* at 3007.

124. *Id.* at 3006.

125. *Id.*

ditionally, VLP's lawyers are compensated based on a fixed percentage of partner billings.¹²⁶

Unbundling and efficiency are at the essence of alternative legal service providers.¹²⁷ As opposed to Big Law, which traditionally serves as a one-stop-shop for a business's legal needs, alternative legal service providers recognize that each legal matter can be analyzed and effectively unbundled.¹²⁸ The purpose of unbundling is to ensure the most efficient and competent person services each discrete task.¹²⁹ For example, a client's project may be divided into legal work and nonlegal work. Legal work is then further unbundled into categories based on whether it is complex high-risk work or more mundane low-risk work.¹³⁰ Although each alternative legal service provider has unique aspects, all of these businesses offer an attractive alternative to Big Law, implementing technology and process management to fulfill the needs of the modern legal services market.

E. *Financial Crisis*

The Financial Crisis, beginning in late 2007, drastically changed the legal services market: thousands of associates were laid off, partners were de-equitized, companies slashed legal budgets, and hiring practices were halted or sharply reduced.¹³¹ In 2009 alone, over 4,000 lawyers were laid off.¹³² Moreover, from the period of 2008 through 2014, over 15,000 lawyers and staff were let go.¹³³ It is undisputed that the recession has had a major impact on the legal services market.¹³⁴

Although some commentators credit the economic downturn as the instigator for change in the legal profession, the recession itself is not generally thought to be the primary driver of change.¹³⁵ Instead, the recession accelerated other significant, long-term drivers of change—e.g., pressure from in-house legal departments and technology.¹³⁶ The Financial Crisis did, however, provide an opportunity to critically examine long-standing assumptions about law firms and the clients they serve.¹³⁷

126. *Id.*

127. *Id.* at 3015.

128. *Id.*

129. *Id.*

130. *Id.*

131. Henderson & Zahorsky, *supra* note 99.

132. Samantha Robbins, *From Big Law to Legal Education: The Trickle Down Effect of the Recession*, 27 GEO. J. LEGAL ETHICS 841, 844 (2014).

133. *Id.*

134. Eversheds, *supra* note 46.

135. See generally Ribstein, *supra* note 35; Eversheds, *supra* note 46; see generally THOMAS D. MORGAN, *THE VANISHING AMERICAN LAWYER* (2010); Wilkins, *supra* note 16.

136. Eversheds, *supra* note 46, at 1.

137. Henderson & Zahorsky, *supra* note 99.

Employment data supports this conclusion. Data collected by the U.S. Census Bureau indicates that the surge in law firm employment hit a plateau beginning in 2004.¹³⁸ From 1998 through 2004, law firm employment grew by more than 16%, or 169,000 jobs.¹³⁹ In contrast, between March 2004 and March 2008—several months before the Wall Street meltdown—the law firm sector had already lost nearly 20,000 jobs.¹⁴⁰ “There is no question that a serious recession caused a heightened sense of awareness for law firms and consumers,” says Gregory Jordan, Reed Smith’s global managing partner and chairman of the senior management team and executive committee.¹⁴¹ The long-term trends, however, appeared to have started before the financial crisis.

III. MATURITY OF THE LEGAL SERVICES MARKET

The factors affecting the legal services market, when studied separately, may appear isolated: expansion of in-house legal departments, globalization (through mergers and outsourcing), technological advances, and the rise of alternative legal service providers. According to this perspective, each event has a distinct root cause, triggering a specific change within law firms. For example, the cause of expanding in-house legal departments is attributable to GE’s Jack Welch and Ben Heineman Jr. during the 1980s.¹⁴² For another example, the cause of the layoff of over 4,000 big law lawyers in 2009 is attributable to the Financial Crisis, which began (arguably) in 2008.¹⁴³

These factors, however, can also be understood from a different perspective: all of these factors are merely products of a maturing legal services market. For example, in recent years, some firms have responded to market disruption by reducing the number of entry-level associates: turning the traditional pyramid structure of the Cravath System into a diamond model—with the experienced associates and non-equity partners constituting the wide middle.¹⁴⁴ This begs the question: is this diamond model attributable to one discrete cause—e.g., technology—or is it in response to the maturation of the legal services market generally?

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *See* Glidden, *supra* note 17.

143. *See* Dzienkowski, *supra* note 107 at 3006.

144. Henderson & Zahorsky, *supra* note 90 (noting the short-term needs driving this pyramid structure are at odds with the long-term needs of investing in a sustainable model that supports clients demands in the future: not enough lawyers undergoing training).

A. Maturing Market

The legal services market has reached a point of maturity.¹⁴⁵ Geoffrey Moore, organizational theorist and management consultant, divides markets into four stages: Growth Stage, Mature Stage, Declining Stage, and End of Life Stage.¹⁴⁶ Initially, the Growth Stage is marked by double-digit growth rates and healthy profit margins.¹⁴⁷ This stage transitions into the Mature Stage, where the market experiences flat growth and increasing commoditization.¹⁴⁸ Then, during the Declining Stage, businesses experience difficulty finding opportunities for attractive returns.¹⁴⁹ Finally, the End of Life Stage is self-explanatory.¹⁵⁰

Dating back to at least 1994, leaders within the American legal profession have grappled with indications that the legal services market was entering the Mature Stage.¹⁵¹ In August 1994, the Board of Governors of the Florida and Texas Bar met in Georgia to hear opening remarks from the American Bar Association President-elect Roberta Ramo.¹⁵² Following President Ramo's introduction, Ward Bower, president of Altman Weil Pensa and a nationally recognized management consultant, addressed the assembled leaders with a 40 minute presentation on the maturation of the legal services market, including warnings that: the practice of law had become a business; the legal services market had displayed characteristics of maturity; and the future could bring about slower growth in fee revenues, diminished profitability per lawyer, and declines in profit margins.¹⁵³ Mr. Bower went on to discuss the characteristics of maturity: greater level of consumer (client) sophistication, large numbers of supplier (law firm) consolidations and contractions, supplier (law firm) differentiation and specialization, geographical expansion to find new or underserved markets, fierce competition based on price, and decreased legal and financial barriers to entry into the profession.¹⁵⁴

It appears that the characteristics and warnings regarding the maturation of the legal service market have materialized. The increased level of client sophistication parallels the rise of in-house corporate legal departments, such as GE, that helped resolve the information asymmetry that marked the Golden Era. The consolidation and contraction of law firms is

145. Michael Callier & Achim Reeb, *The Industrial Age of Law: Operationalizing Legal Practice Through Process Improvement*, 93 OR. L. REV. 853, 854 (2015).

146. *Id.* at 864 (citing GEOFFREY A. MOORE, *DEALING WITH DARWIN: HOW GREAT COMPANIES INNOVATE AT EVERY PHASE OF THEIR EVOLUTION* (2005)).

147. *Id.* at 864.

148. *Id.*

149. *Id.*

150. *Id.*

151. Howard J. Berlin et al., *Facing the Inevitability, Rapidity, and Dynamics of Change*, 74 FLA. B.J. 12, 18 (2000).

152. *Id.*

153. *Id.* at 18-19.

154. *Id.* at 19.

evident in the wave of mergers and subsequent failures of law firms—e.g., Denton’s merger with Dacheng and Dewey & LeBoeuf’s bankruptcy, respectively. Law firm differentiation, specialization, and fierce competition based on price is demonstrated on a continuous basis by the ongoing beauty contests that law firms undergo to bid on companies’ legal work. The recent wave of mergers also fills the role of geographical expansion into new or underserved markets.

In addition to firms growing through mergers, alternative legal service providers, such as LegalZoom, are poised for increased growth in underserved markets.¹⁵⁵ Lastly, barriers to entering the legal services market are deteriorating. For example, in 2007 the Legal Services Act was passed in the United Kingdom.¹⁵⁶ This act created alternative business structures that allow non-lawyers to hold ownership and management positions in law firms.¹⁵⁷ Moreover, barriers in the U.S. have recently been tested.¹⁵⁸ In February of 2016, the ABA adopted Resolution 105, which provides model regulatory objectives for states considering how to regulate alternative legal service providers.¹⁵⁹ Resolution 105 has been attacked by some as endorsing the practice of law by non-lawyers.¹⁶⁰ The resolution was proposed by the Commission on the Future of Legal Services.¹⁶¹ William Hubbard, past ABA president, spoke in favor of the resolution and stated that the ABA was not capable of putting “the internet back in the bottle” and should instead “stand up and lead.”¹⁶²

Recently, the financial performance of the legal services market has provided even further evidence of a maturing market.¹⁶³ In 2014, two key performance indicators of law firms, profits per partner (PPP) and revenue per lawyer (RPL), went up by just 0.2% and down by 0.4% over the

155. See Robert Ambrogi, *Latest Legal Victory Has Legal Zoom Poised For Growth*, ABA JOURNAL, (Aug. 1, 2014), http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth/ (discussing LegalZoom’s plan of offering full-fledged legal advice to consumers and small businesses, in addition to its initial offering of legal forms).

156. See generally Sydney M. Cone, III, *International Legal Practice Involving England and New York Following Adoption of the United Kingdom Legal Services Act 2007*, 28 Nw. J. INT’L L. & BUS. 415 (2008) (discussing some results of the passage of the United Kingdom Legal Services Act of 2007).

157. Laura Snyder, *Does the UK Know Something We Don’t About Alternative Business Structures?*, ABA J., (Jan. 1 2015), http://www.abajournal.com/magazine/article/does_the_uk_know_something_we_dont_about_alternative_business_structures.

158. See Lorelei Laird, *ABA House Approves Model Regulatory Objective for Non-Traditional Legal Services*, ABA J. (Feb. 8, 2016) http://www.abajournal.com/news/article/house_approves_proposed_model_regulatory_objectives_for_nontraditional_legal_services (noting that Resolution 105, passed in February 2016, has been attacked by some as endorsing the practice of law by non-lawyers).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. Callier & Reeb, *supra* note 146, at 864-65.

previous year, respectively, for law firms in the AM Law 100.¹⁶⁴ Moreover, from 2008 to 2014, RPL in the Am Law 100 beat inflation by only 0.005%, although PPP beat inflation by 8%.¹⁶⁵ This performance is much weaker than the previous four years: from 2004 to 2007, RPL and PPP beat inflation by 5% and 24%, respectively.¹⁶⁶

B. *What's Next?*

A number of authors have discussed this changing market environment. Richard Susskind addresses the legal services industry directly, stating that firms will continue to be “driven relentlessly by their clients to reduce their costs.”¹⁶⁷ Accordingly, Susskind recommends that firms embrace this changing market and continuously seek ways to provide their clients with better services at a lower cost.¹⁶⁸ Although Susskind himself finds that “most traditional [legal] practices are not changing much,” he predicts an end to the Cravath pyramid structure.¹⁶⁹ Susskind also discusses the proposition that the “Big 4” accounting firms could come into the legal services market because they are well positioned to address the dynamic needs and cost pressures of businesses.¹⁷⁰

Clayton Christensen addresses changing markets generally. After studying numerous markets, Christensen provides a number of principles intended to help managers in the high tech and low tech manufacturing and service businesses confront slowly evolving or rapidly changing environments.¹⁷¹ Christensen lists five fundamental principles of organizational nature that managers in successful firms consistently recognize and harness:

- (1) Resource dependence: customers effectively control the patterns of resource allocation in well-run companies.
- (2) Small markets do not solve the growth needs of large companies.
- (3) The ultimate uses or applications for disruptive technologies are unknowable in advance. Failure is an intrinsic step toward success.
- (4) Organizations have capabilities that exist independently of the capabilities of the people who work within them. Organizations’ capabilities reside in their processes and their values—and the very processes and values that constitute their core capabilities within the current business model also define their disabilities when confronted with disruption.

164. *Id.*

165. *Id.*

166. *Id.*

167. RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 54 (2013).

168. *Id.*

169. *Id.*

170. *Id.* at 56, 123.

171. CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: THE REVOLUTIONARY BOOK THAT WILL CHANGE THE WAY YOU DO BUSINESS*, at xv-xvi (reprint ed., Harper Business 2011).

- (5) Technology supply may not equal market demand. The attributes that make disruptive technologies unattractive in established markets often are the very ones that constitute their greatest value in emerging markets.¹⁷²

Lastly, it is generally agreed that in a mature environment, process quality and improvement are vital.¹⁷³ Alternative legal service providers, such as Axiom, can be understood as directly responsive to providing quality processes.¹⁷⁴

In addition to alternative legal service providers, some observers are encouraging law firms to implement the DMAIC framework to innovate and improve on their processes.¹⁷⁵ The acronym DMAIC stands for: Define, Measure, Analyze, Improve, and Control.¹⁷⁶ DMAIC is utilized for the process improvement methodology, Six Sigma.¹⁷⁷ DMAIC enables practitioners to “gain clarity about the nature of the problems and their causes” to improve on fundamental performance dimensions: quality, cost, and time.¹⁷⁸ Although supporters of DMAIC acknowledge the inherent difficulties in applying the DMAIC framework to law firms—e.g., difficulty in obtaining reliable information on the quality of services law firms provide—authors have provided solutions to overcome these difficulties.¹⁷⁹

CONCLUSION

Since their inception dating back to the late nineteenth century, large law firms have constantly evolved. Recently, this evolution has been driven by factors that have taken various forms: expansion of in-house legal departments, globalization—through mergers and outsourcing, technological advances, and the rise of alternative legal service providers. The effects of these factors have rippled throughout the legal services market around the world.

It is, however, important to keep perspective. The pace of change has been greatly exaggerated in the past—such as McKinsey & Company famously predicting in the 1990s that Cravath would no longer exist as an independent firm by the 21st century.¹⁸⁰ Obviously, Cravath still exists. Nevertheless, it appears that the market is currently undergoing a fundamental shift from growth to maturation; bringing about significant changes to law firms across the globe.

172. *Id.* at 113.

173. *See generally* Callier & Reeb, *supra* note 146.

174. *See* Fisher, *supra* note 117.

175. Callier & Reeb, *supra* note 146, at 870.

176. *Id.* at 869.

177. *Id.*

178. *Id.* at 870, 872.

179. *Id.*

180. Wilkins, *supra* note 16, at 2132 n. 268.