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**Enter the Disrupters:** How New Law Firm Rivals are Disrupting the Market for High-end Legal Services in the U.S.

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### **ABSTRACT**

The U.S. legal industry, a nearly \$300 billion industry and one of the most profitable in the world, is experiencing fundamental change that is accelerating the need for top law firms to innovate. Relatively flat market demand for the corporate legal services of top law firms has many firms focused on “stealing” market share from competitor law firms and trying to move further up market to preserve high profit margins. Meanwhile, a new breed of competitors, to which most top law firms will likely pay little heed, is developing business models that could fundamentally change the client value proposition in the market and pose a disruptive threat. What many law firms may perilously fail to realize is that the client-oriented strategies these new rivals must pursue to effectively compete is what poses the biggest threat. The resulting client value proposition could relegate top firms to a smaller portion of the client relationship that could ultimately get funneled through and managed by the new rivals on behalf of corporate clients. In this study, I use Clayton Christensen’s disruptive model of Schumpeterian competition to examine how the seeds of disruptive innovation are taking root in the market for corporate legal services in the U.S. and what approaches top law firms will need to adopt to effectively compete. I also use scenario decision strategy to assess other possible paths of continued evolution in the market for corporate legal services in the U.S. and the potential implications for new rivals and incumbents.

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*“If our long study of disruption has led us to any universal conclusion, it is that every industry will eventually face it. The leaders of the legal services industry would once have held that the franchise of the top firms was virtually unassailable, enshrined in practice and tradition—and, in many countries, in law. And yet disruption of these firms is undeniably under way.” Clayton Christensen<sup>1</sup>*

## I. Executive Summary

The U.S. legal industry is about \$300 billion with average profits near 20%.<sup>2</sup> It is the largest legal market in the world, and 80% of the world’s highest-grossing firms are headquartered in the U.S.<sup>3</sup> The focus of this paper is on the top 100 U.S. law firms. 2013 revenue for this group was \$75 billion, with profits averaging near 40% over the last five years.<sup>4</sup> Restrictions on outside investment in law firms, licensure requirements, and the complex nature of corporate legal work have protected top law firms from outside competition, limiting innovation. But the industry’s market size and profit margins make it an attractive target for a new breed of competitors that is using the rising trend of disaggregation (unbundling) of legal services, greater access to information, and advances in technology to develop new business models to deliver corporate legal work in new ways (think better, faster, cheaper).

In the backdrop is the Great Recession, which magnified instability in the traditional law firm business model. Factors generating instability are many, several of which I note here. (1) Slowed demand with greater reliance on increased billing rates to drive profitability, but with pressure from clients to drive rates down. (2) The move by corporate clients to disaggregate legal services and source them to the most cost-effective provider, including to non-law firm providers and through insourcing more work, to drive down the cost of their legal spend. (3) Greater lateral partner mobility, driven by increased competition for partners with big books of business. (4) A rise in law firm consolidations. (5) The loosening of regulation around the practice of law (in deed, if not in word). (6) A surplus of talented lawyers, including some who are moving to smaller firms that compete with top law firms for niche work, and others who are available to join companies that are positioned to disrupt the market.<sup>5</sup> These business realities make top firms vulnerable to attack from the outside and accelerate the need to innovate to compete. They also present opportunities for new rivals.

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<sup>1</sup> Clayton M. Christensen, Dina Wang, and Derek van Bever, “Consulting on the Cusp of Disruption,” *Harvard Business Review* (Oct 2013).

<sup>2</sup> First Research Industry Profile: Legal Services (Sept 9, 2013), and IBIS World Industry Report, “Law Firms in the US (54111) (Sept 2013). For average industry profits, see Sageworks comparative industry data cited in “Law Firms Seeing Steady Growth, Strong Margins,” *Forbes.com* (<http://www.forbes.com/sites/sageworks/2013/07/28/legalindustrydata/>) and “Accounting Firms Tally High Margins,” *Forbes.com* (<http://www.forbes.com/sites/sageworks/2013/03/29/profitability-of-accounting-firms-high-among-industries/>).

<sup>3</sup> First Research, *supra* note 2, and MarketLine Industry Profile: Global Legal Services (Nov 2012).

<sup>4</sup> Am Law 100, ALM Legal Intelligence, 2009-2013 (“Am Law 100 Data”). (Profit numbers are not reported in accordance with GAAP and not directly comparable with those reported by public companies or others reporting on a GAAP basis.)

<sup>5</sup> See *infra* Section II—Industry Backdrop for industry analysis and further discussion of these factors.

There are three key takeaways I offer from this study. First, the seeds of disruption have been sown in the market for corporate legal services in the U.S. and are taking root. In this changing landscape, top law firms could find themselves in the position of having to disrupt their own business models or risk falling behind as new rivals gain a stronger foothold in the market. Second, as the industry landscape continues to change, it is essential for firms to employ strategic planning tools that incorporate uncertainty and complexity, going beyond traditional strategic planning approaches. One such tool I used in this study to analyze the possible evolution of the market for corporate legal services in the U.S. is scenario decision strategy, which allows a company to simultaneously examine multiple variables based on underlying market uncertainties and plan for potential paths of continued market evolution. For my analysis, I looked at the possible future state of the legal industry by the year 2030. That analysis yielded four possible future worlds under an examination that considered two key uncertainties: pace of technology adoption and level of outside investment in new rivals. Probably the most dramatic future this analysis yielded is one where there is significant outside investment in new rivals and rapid adoption of new technology by clients. In that future, new rivals could serve as the networked hub for corporate legal services, where the client relationships top law firms now dominate could ultimately get funneled through and managed by the new rivals on behalf of corporate clients.

Third, as the market continues to evolve, top law firms may perilously fail to realize that the strategies some new rivals pursue to compete pose the biggest threat: they tend to zero in on what clients want at the most basic level and develop direct solutions to address those needs. Many law firms take the opposite approach: they focus first on areas of expertise and then figure out how to sell that expertise. Or if they do look first to client needs, they often do so through the narrow lens of current legal service offerings. This distinction has profound implications. The former approach can create a virtuous cycle: develop client insight, use client insight to define and redefine company purpose to meet evolving client needs, co-create solutions with clients tailored to meet their needs (which then further deepens client insight). The resulting value proposition could relegate top firms to a smaller portion of the client relationship. In this environment, the fast-follower strategy that many top firms employ becomes risky given the potential for an ever-widening gap between leaders and followers.<sup>6</sup>

## **A. Objectives, Definitions, Structure**

I had two primary objectives for this study. The first was to examine whether the business models and advances in technology that new rivals are using to redefine standards of performance in the U.S.

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<sup>6</sup> George S. Day and Paul J.H. Schoemaker, *Wharton on Managing Emerging Technologies* (2000), pp. 6-7. (Day and Schoemaker discussing the risks of a fast-follower strategy in an era of increasing technological change.)

market for corporate legal services pose a disruptive innovation threat to top law firms. Here, I use technology in the broad sense to refer to “the process of transforming basic knowledge into useful application,” including business processes.<sup>7</sup> The second objective was to explore possible paths of continued evolution in the market for corporate legal services in the U.S. and the related implications for new rivals and incumbent firms.

I’ve written this study for an MBA audience but with an eye toward leaders of top law firms and leaders of new rivals to top firms. For the purposes of this study, when I refer to incumbent or top law firms, I mean the 100 largest law firms in the U.S. by revenue, also known as the *American Lawyer* 100 (Am Law 100). The market for corporate legal services in the U.S., as I use that phrase here, refers to legal services provided to Fortune 500 companies (and equivalent companies for which revenues are not publicly available). Finally, I use “new providers of legal services” (NPLs) to refer to (a) non-law firm legal service providers that are new rivals to law firms (over the last 5-10 years), including new model firms, such as Axiom Law; (b) legal process outsourcers (LPOs); and (c) legal tech companies.

The balance of this Executive Summary covers analytical frameworks and research design. Following the Executive Summary is an industry backdrop that informed my analysis. I then turn to the primary focus of this paper—an analysis of disruptive innovation in the market for corporate legal services in the U.S. and an exploration of possible paths of continued evolution in the market.

## **B. Analytical Frameworks**

There are many advanced business theories and frameworks to guide complex decision-making across industries and unique business situations; some are better suited for analyzing stable environments and others for uncertain and rapidly changing ones.<sup>8</sup> For this study, I primarily relied on frameworks that fall into the latter category. Along these lines, I used Clayton Christensen’s disruptive model of Schumpeterian competition to examine whether the seeds of disruptive innovation are taking hold in the market for corporate legal services, and I used scenario decision strategy to assess other possible paths of continued evolution in the market. Apart from these frameworks, I used Porter’s Five Forces to examine the competitive forces currently shaping the market for corporate legal services in the U.S.

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<sup>7</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 2.

<sup>8</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at pp. 8-9. (Day and Schoemaker’s work draws together a diverse range of frameworks for managing in uncertain and rapidly changing environments that cut across many disciplines, from finance to marketing.)

### **C. Research Design**

Given that this study explores matters that are emergent in nature, I used exploratory research methods for my research design.<sup>9</sup> I completed this study over two semesters during my studies at Wharton, and it is small-scale in nature.

I used three exploratory research methods: secondary research, interviews, and a focus group. I spoke with 19 people across interviews and the focus group. My review of secondary data and information included industry reports, industry surveys, journal articles, news articles, and online data. See [Appendix A—Secondary Sources](#).

I conducted fourteen semi-structured interviews with industry experts/thought leaders, legal tech companies, leaders in top law firms, and academics. The interviews focused on gaining greater insight into (1) whether NPLs are likely to pose a disruptive innovation threat to top law firms or whether the threat is more likely to be limited to specific segments of the market, and (2) the forces shaping the industry and related trends and key uncertainties to help inform my scenario decision strategic analysis. See [Appendix B—Summary and Thematic Analysis of Interviews](#), and [Appendix C—Representative Interview Questions](#). My primary research also included related discussions with Wharton strategy and marketing professors.

I held a focus group of five corporate in-house counsel who are decision makers in hiring/firing legal service providers. All were from Fortune 500/1000 companies, or the equivalent, and their industries span financial services, technology, real estate, and health care. The goal of the focus group was to yield additional input on trends and key uncertainties for the scenario planning analysis, and the output also generated additional insight into potential disruptive threats in the market. See [Appendix D—Focus Group Methodology and Results](#).

### **II. Industry Backdrop**

The top 100 U.S. law firms (Am Law 100) range in size from about 250 to 4000 attorneys.<sup>10</sup> Total revenue for this group is \$75 billion, with profits averaging near 40% over the last five years.<sup>11</sup> Since the mid-1990s, the Am Law 100 has doubled in size and gross revenue, and profits have risen over

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<sup>9</sup> Dawn Iacobucci and Gilbert A. Churchill, Jr., *Marketing Research: Methodological Foundations*, Tenth Edition (2010), pp. 29-31. (Exploratory research afforded me the flexibility needed in facing matters of uncertainty, given that the questions I address are not precisely and unambiguously formulated, and, therefore, do not lend themselves to descriptive or causal research where data collection is rigidly specified to obtain precise results and conclusions.)

<sup>10</sup> Am Law 100 Data, *supra* note 4. (Wachtell, Lipton, Rosen & Katz has 249 attorneys (and also has the highest profits-per-partner among the Am Law 100). DLA Piper has 4036 attorneys (and is the top-grossing firm in the Am Law 100).)

<sup>11</sup> Am Law 100 Data, *supra* note 4.

200%.<sup>12</sup> These firms have generally adopted a business model that is often referred to as the New York Model, characterized by high leverage (few equity partners relative to the number of associates and other attorneys), high hourly billing rates, and high billable hour requirements for attorneys.<sup>13</sup> Law firm revenue is measured by (average hourly billing rate) x (average billable hours worked per timekeeper) x (# of timekeepers) x (realization rate).<sup>14</sup> Average hourly billing rates at the top firms range from about \$400 for associates to \$750 for partners, with some partners billing close to \$2000/hour.<sup>15</sup> Prior to the Great Recession, annual rate increases for the Am Law 100 averaged 6-8%, and a per-attorney billable hour requirement of 1900 hours annually is standard for many firms.<sup>16</sup> A key driver of profitability for top firms is leverage (the ratio of all attorneys (minus equity partners) to equity partners). Average leverage for the top 100 firms in 2013 was 3.5 (down from close to 4.5 at the start of the Great Recession).<sup>17</sup> For several decades, top law firms have used three primary tactics to increase profitability: (1) increased hourly billing rates in excess of the rate of inflation; (2) increased leverage by growing the ranks of non-partner attorneys (including non-equity partners); and (3) increased billable hour requirements.<sup>18</sup> And over the last 20 years, law firms have added the recruitment of more lateral partners to this mix.<sup>19</sup>

A strengthening of competitive forces is pressuring these tactics and threatens the long-term sustainability of current profit levels. Globalization, the rapid evolution of technology, and the inefficiencies and instability exposed in the current business model by the Great Recession are impacting the underlying economics in the industry. The collective strength of competitive forces in the market is moderate, but there are three forces gaining strength that are likely to have the greatest near-term impact on profitability: buyer power, the threat of substitutes, and increasing rivalry among

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<sup>12</sup> First Research, *supra* note 2 (citing data from The American Lawyer) and Michael H. Trotter, *Declining Prospects: How Extraordinary Competition and Compensation are Changing America's Major Law Firms* (2012), pp. 22-23. (Trotter also compares the 211% increase in profits per partners 1995-2010 to a cost of living increase of 43% during the same period.)

<sup>13</sup> Trotter, *supra* note 12, at p. xxiv.

<sup>14</sup> Timekeepers include all attorneys and any employees who are not attorneys but who bill time to clients (e.g., paralegals, research analyst). The realization rate measures the conversion of time worked into cash receipts (reflecting any discounts to standard billing rates, pre-collection adjustments to a bill to account for associate training time and/or service inefficiencies, and post-collection losses).

<sup>15</sup> See ABA Journal post discussing data from TyMetrix Legal Analytics and CEB, online at: [http://www.abajournal.com/news/article/average\\_hourly\\_billing\\_rate\\_for\\_partners\\_last\\_year\\_was\\_727\\_in\\_largest\\_law\\_f/](http://www.abajournal.com/news/article/average_hourly_billing_rate_for_partners_last_year_was_727_in_largest_law_f/) and Above the Law discussing data from the National Law Journal 2013 Law Billing Survey, online at: <http://abovethelaw.com/2014/01/the-big-law-firms-with-the-highest-partner-billing-rates/>.

<sup>16</sup> Peer Monitor and Georgetown Law Center for the Study of the Legal Profession, 2014 Report on the State of the Legal Market, p. 7 (footnote 13) (“Peer Monitor State of Industry”).

<sup>17</sup> Am Law 100 Data, *supra* note 4 and Robin Sparkman, “Spring Awakening: The Am Law 100’s Most Modest Gains Hint that a Fundamental Recovery is Taking Root,” The American Lawyer (May 2013). Leverage also generally includes non-attorney timekeepers, but industry comparisons and averages reported in the Am Law 100 use attorneys only.

<sup>18</sup> Trotter, *supra* note 12, at p. 14. (Trotter also adds two additional tactics: (a) charge some operating expenses directly to clients (e.g., phone calls, photocopies), and (b) “periodically [make] efforts to moderate the growth of overhead expenses.”)

<sup>19</sup> Trotter, *supra* note 12, at p. 26 and see *infra* Section II.E—Rivalry.

top law firms. The threat of entry is a rising threat over the longer-term. (I include a high-level summary of the industry analysis at the end of this section in [Section II.F—Backdrop Snapshot](#)).

### A. Buyers

Buyers of corporate legal services (in-house legal departments) are wielding greater bargaining power. Several factors have shifted the balance of power toward corporate clients: (1) greater access to information (through e-billing and other sources) that enables clients to more effectively compare the cost of legal services across providers; (2) the ability and increased willingness to disaggregate legal services and source them to the most cost-effective provider; (3) the expanding availability of alternatives to top law firms to which to source work; (4) relatively low switching costs; and (5) the ability to backward integrate. In-house legal departments are also facing increasing pressure from senior business executives in their companies to reduce total legal spend. Clients are using their market power to pressure price reductions to reduce the cost of legal services. Clients are also reducing the number of outside firms they engage (convergence) in an attempt to reduce legal spend. In an Altman Weil survey of Chief Legal Officers (CLOs), almost 80% of respondents said they negotiate price reductions from outside counsel to control costs.<sup>20</sup> In addition, the top service improvements CLOs want to see from outside counsel involve costs and pricing.<sup>21</sup> Pricing pressure is also reflected in a decrease in law firms' realization rates. During the three-year period Q3 2010 to Q3 2013, realization rates hovered at around 84% (firms were collecting \$0.84 for every \$1.00 of standard time they recorded).<sup>22</sup> Compare this to a 92% collected realization rate in 2007.<sup>23</sup> There has also been talk in the industry about the eventual replacement of the billable hour with alternative fee arrangements (AFAs) (such as fixed fees, success fees, and periodic retainer fees), but that has not yet materialized. In a 2013 ALM Legal Intelligence survey of in-house counsel, 60% of respondents said they are responsible for driving the movement toward AFAs (versus 4% who said their law firm proposed the

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<sup>20</sup> Altman Weil 2013 Chief Legal Officer Survey ("Altman Weil CLO Survey"). (This is a survey Altman Weil has conducted for the last 14 years. Fifty percent of participants lead in-house departments of more than 15 people. Fifty-five percent are from companies with at least \$5 billion in annual revenue, and 30% are from companies with more than \$10 billion in annual revenues. The 2013 survey included 270 respondents, or 16% of the corporate law departments that were invited to participate. The main themes and related trends documented in this survey are generally consistent with a number of industry leading surveys of in-house legal departments, including ALM Law Department Metrics Benchmarking Survey, Association of Corporate Counsel (ACC) CLO Survey, BTI Benchmarking Corporate Counsel Survey, and Acrtias Sharpelegal.)

<sup>21</sup> Altman Weil CLO Survey, *supra* note 20. (CLO's first choice was improved budget forecasting, followed by greater cost reduction, more efficient project management, and non-hourly based pricing structures.)

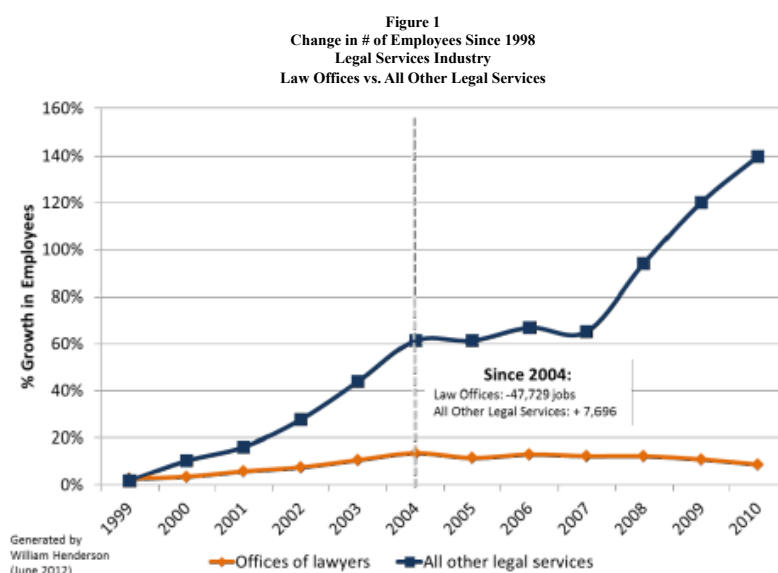
<sup>22</sup> Peer Monitor State of Industry, *supra* note 16, at p. 5.

<sup>23</sup> Peer Monitor State of Industry, *supra* note 16, at p. 5.

AFA), but almost 70% percent say their use of AFA billing is no different from that of the prior year.<sup>24</sup> One reason noted is the difficulty in determining alternative values for legal services.

## B. Suppliers

The most important suppliers in the market for corporate legal services are lawyers. There is growing competition among top law firms for partners with big books of business, which increases the market power of top partner rainmakers (discussed further in [Section II.E—Rivalry](#)). Top firms are also competing for talented lateral associates in certain specialized practice areas. But extensive layoffs during the Great Recession and decreasing lawyer productivity in the face of flat market demand have weakened supplier power for many other attorneys. Slowed demand has caused some top firms to decrease the overall number of lawyer hires and demote some partners from equity status (“de-equitize” partners). Additionally, there’s evidence that law firm employment hit a plateau in 2004, before the Great Recession (see **Figure 1**, data on “Offices of Lawyers”).<sup>25</sup>



Source: William D. Henderson (June 2012)

<sup>24</sup> ALM Legal Intelligence 2013 Law Department Metrics Benchmarking Survey. (ALM Legal Intelligence has conducted 24 surveys of in-house counsel from 1972-2013. The 2013 survey contains data from 70 corporate law departments. Over 70% of the law departments are in companies with \$1 billion or more in annual revenue, with just over 10% coming from companies with annual revenues of at least \$3 billion. Almost 30% of respondents work in law departments with at least 10 employees, and on average, respondents work in a law department with 28 employees.)

<sup>25</sup> William D. Henderson, “From Big Law to Lean Law,” *International Review of Law and Economics* (2013), p. 19 (“Henderson, Big Law”). (Citing U.S. Census Bureau (NAICS 5411) data showing the high water mark for Law Office Employment (NAICS 54111) as 2004 at 1.1 million employees and then contracting by about 50K employees as of 2010.)

These combined factors have placed more capable lawyers in the market with expertise that matches that of some lawyers at top firms. Some of these lawyers have moved from top law firms to smaller firms that compete with top firms for niche work.<sup>26</sup> Still others are poised to join the growing number of NPLs competing for corporate legal work. There's also evidence that employment outside of law offices, in the area of "other legal services" has steadily grown since 1998, at an average growth rate of 8.5% per year.<sup>27</sup> William Henderson, a Professor at Indiana University Maurer School of Law who has written extensively on the legal industry notes in his study from which I've cited these data here that "other legal services" could represent some of the companies that I define in this study as NPLs (see **Figure 1**, data on "All Other Legal Services").<sup>28</sup> Add to this the projected surplus of thousands of law school graduates by the end of 2020.<sup>29</sup>

### C. Substitutes

The threat of services, products, processes, and technology that can substitute the services of top law firms is increasing at each stage within the legal services delivery hierarchy, driven by what noted industry expert, Richard Susskind describes as the evolution of legal services (**Figure 2**).<sup>30</sup> Susskind describes this as an evolution driven by technology. The evolutionary path he describes moves from bespoke, or highly customized service (which may or may not be of a high quality); to standardized services for legal processes and knowledge that are recurrent in nature (*e.g.*, master agreement of the International Swaps and Derivatives Association (ISDA)); to the systematization or automation of certain internal legal activities (*e.g.*, written checklists and procedures); to the packaging and delivery to clients of the systematized and automated solutions; to finally commoditization, or commonplace often DIY online or IT-based legal service offerings (*e.g.*, online debt collection services).<sup>31</sup>

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<sup>26</sup> *The American Lawyer* Lateral Report notes some indication of increasing movement by lateral partners from the top 100 law firms in the U.S. to the second hundred firms. The data show that the percentage of Am Law 100 partners who lateraled to a second hundred firm has increased from 5.7% in 2009 to 6.7% in 2013. Research by Professors Marc Galanter and William Henderson published in the Stanford Law Review shows that those lawyers more likely to move downstream into a lower tier firm include those working in regulatory practices, trust and estates, or other niche specialties, see Marc Galanter and William D. Henderson, "The Elastic Tournament: The Second Transformation of the Big Law Firm," 60 Stanford Law Review 1867 (2008).

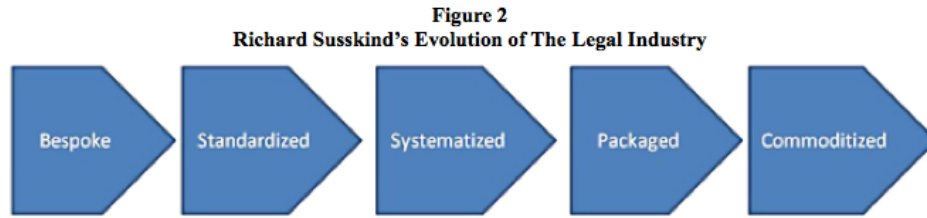
<sup>27</sup> Henderson, Big Law, *supra* note 25, at pp. 19-20.

<sup>28</sup> Henderson, Big Law, *supra* note 25, at p. 19. (These data are from the U.S. Census Bureau "All Other Legal Services" (NAICS 541199). Granted the actual numbers are small (from 9,800 workers in 1998 to 23,504 in 2010), but the trend and rate of growth are noteworthy).

<sup>29</sup> *Bloomberg Business Week*, "Howrey's Bankruptcy and Big Law Firms' Small Future (May 2, 2013). (Citing U.S. Bureau of Labor Statistics estimates that the U.S. economy will create 74,000 lawyer positions by the end of 2020. While law schools are graduating about 25,000 J.D.s per year). See also, Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis* (2013).

<sup>30</sup> Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (2008), p. 29.

<sup>31</sup> Susskind, *The End of Lawyers?* See *supra* note 30, at pp. 28-33.



Source: Richard Susskind (2008)

The output from the focus group I conducted with in-house counsel supports this idea. Participants spoke extensively about their quest for more standardized and systematized solutions for their more routine work and an increasing willingness to disaggregate legal services and source work to the most cost-effective provider. They are looking to a future of “on demand legal services,” with a rationalized structure of in-house and outside legal teams to get the right level of work to the right level of person at the right cost—legal services when needed and where needed. They emphasized the desire for standardization with the flexibility to engage specialized resources when needed (with those specialized resources not limited to top law firms). Given their experience unbundling legal services and working with legal service providers beyond top law firms, they even spoke of foreseeing the standardization of things that we would never think possible today.

There are currently four primary substitutes to top law firms: (1) clients themselves, (2) “large enough” law firms, (3) boutique law firms, and (4) NPLs. The first, law firm clients, are building out in-house legal teams to perform at a lower cost some of the work they would normally send to law firms. For example, a GC can hire 3-4 seasoned attorneys for about the same price as purchasing 2000 hours of an associate’s time from a top law firm based on an average billing rate of \$400/hour.<sup>32</sup> In the Altman Weil CLO Survey, close to 50% of respondents say they decreased their budgets for outside counsel in 2013 (compared to about 40% in 2012 and 25% in 2011).<sup>33</sup> Close to 25% plan to further decrease their use of outside counsel in the coming year and shift that work to in-house legal staff.<sup>34</sup> This trend of *insourcing* runs counter to the popular perception that *outsourcing* is the prevalent trend in business today. This counter-trend in legal work likely reflects a failure of law firms to minimize the cost of legal services and maximize *value* to clients over the last several decades. The output from the focus group for this study validated these trends. Participants described a future where in-house teams provide coverage for a greater portion of legal needs, while leveraging the spectrum of outside legal service providers (not limited to traditional top law firms). They described this as “full-spectrum” in-

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<sup>32</sup> See Trotter, *supra* note 12, at p. 118 (which draws this comparison) and Major, Lindsey & Africa, 2012 In-House Counsel Compensation Report (reporting aggregate compensation data for over 1700 in-house lawyers; showing median total compensation for in-house lawyers for a \$5B revenue company at just over \$200,000 in 2011).

<sup>33</sup> Altman Weil CLO Survey, *supra* note 20.

<sup>34</sup> Altman Weil CLO Survey, *supra* note 20.

house coverage (but not necessarily all purpose). They also talked about an in-house trend toward increasing the use of paralegals and contract managers who are not lawyers to produce and manage standardized work through the use of playbooks, checklists, and related training tools.

The second group of substitutes is “large enough” law firms. A recent report by LexisNexis CounselLink shows some evidence of a shift to what they’ve dubbed “large enough” firms (defined as firms with 201-500 lawyers).<sup>35</sup> A group that includes some but not all of the top 100 law firms. The report indicates that the percent of U.S. legal fees paid to large enough firms grew to 22% during the trailing 12 months that ended June 30, 2013 up from 18% three years earlier, while the share of U.S. legal fees paid by clients to firms with more than 750 lawyers (the “largest 50” firms) dropped from 26% to 20% during the same period.<sup>36</sup> And for high fee litigation matters (defined as those matters generating fees of \$1 million or more), large enough firms grew their portion of U.S. legal fees to 41% up from 22% for the same three-year period.<sup>37</sup> Data from AdvanceLaw cited in Peer Monitor’s State of the Industry report offers additional supporting data. In a survey AdvanceLaw conducted of GCs from 88 major companies, almost 75% indicated they would be willing to move legal work away from “pedigreed firms” (defined as the top 20 U.S. law firms or the Magic Circle firms in the UK) to non-pedigreed firms assuming a 30% difference in overall cost.<sup>38</sup> Fifty-seven percent also noted that they find lawyers at pedigreed firms less responsive than those of their non-pedigreed brethren.<sup>39</sup> Participants in the in-house counsel focus group I conducted for this study also indicated that litigation continues to be a company priority for many in-house teams and is an area where it is difficult to cut costs in real time. So in-house teams are continuing to look for effective ways to manage litigation to cut costs. The third group of substitutes also comprises law firms: Boutique firms. They offer sophisticated legal services in niche areas of law (e.g., IP litigation, labor and employment, real estate),

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<sup>35</sup> LexisNexis CounselLink: 2013 Enterprise Legal Management Trends Report (2013 mid-year edition): The Rise of “Large Enough” Law Firms. (I say “some” evidence because this is the first edition of this report and the amount of data is limited, but the trends are consistent with anecdotal information in the legal press, feedback from GC panels, and the feedback from the focus group I held for this study. CounselLink is an “enterprise legal management solution suite for matter management, legal spend management, legal hold, analytics, and strategic consulting services.” The current collective stream of data and processed invoices in its database represents more than \$10 billion in legal spend, 2 million invoices, and over 300 thousand matters gathered over the last four years.)

<sup>36</sup> CounselLink Large Enough, *supra* note 35.

<sup>37</sup> CounselLink Large Enough, *supra* note 35.

<sup>38</sup> Peer Monitor State of Industry, *supra* note 16, at p. 9. (Citing AdvanceLaw survey. AdvanceLaw “vets law firms for quality, efficiency, and client service and shares performance information with its membership of some 80 GCs of major global companies, including the likes of Google, Panasonic, Nike, eBay, Oracle, Deutsche Bank, Kellogg, Yahoo, 3M, ConAgra, Nestle, and Unilever.”)

<sup>39</sup> Peer Monitor State of Industry, *supra* note 16, at p. 8.

and they can range in size from small to large firms. For the larger firms in this group, they differ from the “large enough” law firms by the narrower scope of their practice area focus.<sup>40</sup>

Finally, the fourth group comprises the NPLs, a primary focus of this paper. This group includes LPOs/contract attorneys, legal tech companies, and new model firms. Most of these companies are owned and operated by business people, not lawyers. The first of these, LPOs, often engage foreign lawyers in low-cost centers for document review, e-discovery, and/or legal research. Some also offer basic contract drafting and writing services. These companies tend to tackle high-volume, low-margin work, mainly through labor arbitrage, working directly with in-house teams or with law firms at the direction of in-house counsel. For the purposes of my discussion here, I’ve also grouped U.S. contract attorney services with LPOs. These companies assemble teams of attorneys and others in the U.S. on a contract basis to complete large-scale document reviews. Examples of LPOs and contract attorney services include: Pangea3, Integreon, UnitedLex, Elevate Services, Clutch Group, Huron Consulting, CPA Global, Mindcrest, Robert Half Legal, and Special Counsel. There is one LPO, Novus Law, which stands out as different from this group. Novus is distinguished by the sophisticated technology and advanced process management techniques (including proprietary technology and business processes) that are highly integrated into its business model. The in-house counsel focus group participants noted that as the standardization of legal work increases in the future, they foresee a related increase in the use of LPOs and contract attorneys to take the first pass at drafting various legal agreements, with in-house counsel finalizing them. Turning to the legal tech companies, most of the notable companies offer high-volume, low margin technology-assisted document review for e-discovery, thus leveraging technology to do some of the same work as that of LPOs and contract attorneys. Representative companies that are mostly in the predictive-coding space include: Recommind, H5, kCura, and Kroll Ontrack.

Next among the NPLs are the new model firms. They tend to deliver a suite of services and solutions that go beyond the more limited offerings of most other NPLs (*i.e.*, the LPOs and legal tech companies). Their range of offerings varies, but those with the most comprehensive suite of services often include: (a) in-house placement (or “leasing”) of highly experienced attorneys for short-term and long-term engagements; (b) managing part or all of large-scale legal projects (*e.g.*, M&A transaction); and/or (c) managing aspects of the in-house legal practice from start-to-finish, such as in-house contracts and compliance operations (aka managed legal services or legal *practice*, as opposed to legal process, outsourcing). These businesses often incorporate professional management, technology, and

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<sup>40</sup> Two current examples include Boies, Schiller & Flexner (litigation) and Littler Mendelson (labor & employment).

process re-engineering into their models. Axiom Law (aka Axiom Global Inc.), Clearspire, and Riverview Law (U.S.) are examples of companies in this space. Of these new model firms, Axiom and Clearspire are among the most notable.<sup>41</sup> These companies have structured their business entities to avoid being characterized as a law firm. This has allowed them to avoid running afoul of U.S. regulatory restrictions on outside investment in a law firm (designed to preserve the professional independence of a lawyer) and the unauthorized practice of law.<sup>42</sup> For example, Clearspire operates as two entities: a virtual law firm with salaried employee-lawyers (rather than partners), and a second company that is its operating arm. Both Axiom and Clearspire have client lists that include Fortune 500 companies, and a roster of employee-attorneys that includes converts from top law firms. Clearspire's business model appears to incorporate more technology than that of Axiom's. But Axiom appears to be strategically positioning itself to offer a more comprehensive suite of services than any other new model law firm. Axiom is a private-equity backed company, and there's some indication that Axiom will be using a recent round of \$28 million in funding to focus on building more technological capabilities over the near-term to support its business ambitions.<sup>43</sup>

A key theme that emerged from the in-house counsel focus group was an increased openness to adopting innovative approaches to how legal services are bought and delivered, which could open the door to more substitutes (and new entrants). In large part, business people who are questioning and scrutinizing the logic of the billable hour are driving this increased openness to substitutes. A key question in-house counsel is asking that came out of the focus group: "What can be done by a lower-cost resource (including non-lawyers and technology)?"

#### D. New Entrants

Several factors have historically provided protection against the threat of new entrants into the market for corporate legal services in the U.S.: (a) restrictions on outside investment in law firms; (b) licensure requirements; (c) the specialized nature of legal work; (d) the level of rivalry among top

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<sup>41</sup> **Post-project completion note:** Clearspire closed its doors on May 15, 2014. The founders say they plan to repurpose the company's proprietary technology to create a legal services delivery platform for use by other legal service providers. As one legal entrepreneur notes: "Clearspire's demise is unfortunate, but does not reflect on NewLaw any more than the demise of a new microbrewery reflects on the success of other microbreweries and their ability to challenge incumbents. The point of NewLaw is that there is no single approach, no single model. The solutions being offered are many and varied. Some, like Clearspire, will fail. But others will succeed, and the market will be richer for the variation of options that become available for clients." Patrick J. Lamb, founding member of Valorem Law Group, ABA Journal blog post (June 11, 2014).

<sup>42</sup> ABA Model Rules of Professional Conduct, Rule 5.4 (Professional Independence of a Lawyer), online at: [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_4\\_professional\\_independence\\_of\\_a\\_lawyer.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_4_professional_independence_of_a_lawyer.html) and Rule 5.5 (Unauthorized Practice of Law), online at: [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_5\\_5\\_unauthorized\\_practice\\_of\\_law\\_multijurisdictional\\_practice\\_of\\_law.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law.html).

<sup>43</sup> Bloomberg Law: Lee Pacchia's interview with Axiom CEO, online at: <http://www.youtube.com/watch?v=97Cvltcx1HY>.

firms; and (e) the difficulty of displacing top law firms with strong reputations from established client relationships. However, there are at least eleven combined factors that are making the market more attractive for new entrants: (1) market size, (2) profit margins, (3) the fragmented nature of the market (the largest firm represents only 3% of the market), (4) relatively limited capital requirements, (5) increasing ability of clients to disaggregate legal services, (6) growing willingness of clients to substitute top law firms with lower-cost providers, (7) expanding opportunities to use technology and process re-engineering to increase efficiencies and standardize the delivery of legal services, (8) top firms that appear to be willing to cede what they perceive as lower-margin work to other providers, (9) companies that are paving the way in creating business structures that don't run afoul of the restrictions on outside investment and licensure requirements, (10) the continued success of companies like Axiom, and (11) outside investment that is *starting* to flow to legal startups, with about \$450 million in funding for legal startups in 2013, up from about \$100 million in 2012.<sup>44</sup>

In terms of new entrants, I've focused on two primary groups of companies that I believe are representative of the types of rising new entrants we're likely to see in the market for corporate legal services over the coming years. These are (1) legal technology companies, and (2) accounting firms. The legal tech companies I focus on here are different from those I discussed under substitutes in that they comprise either (a) companies that are currently in the market for corporate legal services but that may not yet rise to the level of an actual substitute, or (b) companies that are developing roots that could position them to later enter the market. In terms of accounting firms, I mainly focus on those established firms that are beginning to take advantage of the liberalization of the legal market in the UK under the Legal Services Act of 2007, which came into full force in late 2010.

Starting with legal tech companies, those I include here under new entrants did not make their way into the category of substitutes because the technology of these companies is not yet at a level that is appealing to enough mainstream corporate clients. This could be for one of several reasons. In some cases, the technology is not (yet) targeted at the corporate client base. That would be the case of LegalZoom and other online legal service providers that currently target the small business and consumer markets. In other cases, while the technology is positioned to target the corporate market, it

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<sup>44</sup> See post by Nicole Bradick, "All Rise: The Era of Legal Startups is Now in Session," VentureBeat.com (April 2014), online at: <http://venturebeat.com/2014/04/13/all-rise-the-era-of-legal-startups-is-now-in-session/>. See Cari Sommers, "How Entrepreneurship is Reshaping the Legal Industry," Forbes.com (July 2013), online at: <http://www.forbes.com/sites/carisommer/2013/07/24/how-entrepreneurship-is-reshaping-the-legal-industry/>. (Although funding has increased from 2012 to 2013, the CB Insights data the Forbes.com article cites characterized the VC funding in the industry as "limping along" in 2012 given the amount of total VC investment (\$100 million) in 2012 relative to industry size (\$300 billion), and the 16% drop in year-over-year funding at that time. Also, law is cited as the sector with the least VC investment: see post on TechCrunch by Sarah Reed: "Lawyer, Disrupt Thyself" (March 2014), online at: <http://techcrunch.com/2014/03/21/lawyer-disrupt-thyself/>).

is not yet developed to a point that sufficiently addresses clients' needs (e.g., some of the upstart legal research companies). In still other cases, the technology is at the early-adopter stage of the technology adoption lifecycle.<sup>45</sup> With respect to technology rates of adoption in the legal industry, this topic came up in both my interviews and the focus group. The consensus was that lawyers, including those from in-house legal departments, tend to be late adopters of technology. They generally take comfort in humans for performing most tasks, even when empirical evidence shows better outcomes using technology. So for some of these legal tech companies, the technology is indeed sophisticated, but they are having difficulty moving from innovators to early adopters and then ultimately crossing the chasm to the early majority.<sup>46</sup> Nonetheless, the in-house counsel focus group participants said they envision a future that includes leveraging technology to a greater and greater degree. This includes leveraging technology for (a) more sophisticated review of invoices to compare law firm billing practices, (b) e-discovery, (c) auto-generated agreements that business people can directly access—DIY, (d) smarter and more accurate search functions, (e) “bots” with learning capabilities, and (f) technology to facilitate the management of global projects and teams.

I've grouped these legal tech companies into four categories: (1) online legal services, (2) legal research companies, (3) collaboration platforms, and (4) expert systems. The online legal services companies I highlight are not directly targeting the market for corporate legal services, but they could represent a latent disruptive threat in the market. They generally offer legal forms and document assembly, and/or a two-sided marketplace matching small businesses and consumers with an independent network of attorneys. Examples include: LegalZoom, RocketLawyer, LegalForce, UpCounsel, AttorneyFee, Legal365, and Lawdingo. The market for online legal forms is quickly eroding, with more low cost and/or free forms available, such as through Founders Workbench, Docracy, and LawHelp Interactive. Even some top law firms are starting to offer free legal forms as part of their business development activities. This has caused some online legal service providers to shift their business models toward subscription-based legal plans that connect consumers with a network of independent lawyers. LegalZoom and RocketLawyer are probably two of the most notable online legal services companies. RocketLawyer has raised about \$60 million in funding so far, and LegalZoom filed for an IPO in May 2012 (it hasn't gone public yet).<sup>47</sup> A few interesting facts about LegalZoom: it generated close to \$160 million in revenue in 2011, with \$12 million in profit; it has served about 2 million customers since 2002; and 20% of new California limited liability companies

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<sup>45</sup> See Everett M. Rogers, *Diffusion of Innovations* (1962).

<sup>46</sup> See Geoffrey A. Moore, *Crossing the Chasm: Marketing and Selling Technology Products to Mainstream Customers* (1991).

<sup>47</sup> LegalZoom.com, Inc. Form S-1 Registration Statement, May 10, 2012.

were formed using LegalZoom's online platform in 2011.<sup>48</sup> LegalZoom estimates the market for consumer and small business legal services at almost \$100 billion.<sup>49</sup>

Unlike the rising group of online legal service providers, many of the legal tech companies that focus on legal research, collaboration platforms, and expert systems are targeting the corporate market for legal services. The legal research startups are going after the \$20 billion legal research market where Westlaw (owned by Thomson Reuters) and LexisNexis (owned by Reed Elsevier) are the dominant players.<sup>50</sup> These startups are focused on finding ways to lower the cost of legal research by making the research process more efficient and effective, especially through the use of data-visualization.

Companies in this space include: Ravel Law, FastCase, Judicata (beta), and Tabula (beta). Khosla Ventures has invested close to \$6 million in Judicata, and Ravel Law recently raised \$8 million from New Enterprise Associates (NEA).<sup>51</sup> At the moment, this set of companies serves as complementors to lawyers rather than direct substitutes.

Legal OnRamp and LegalReach are two companies in the collaboration platform space. LegalReach is positioning itself as a LinkedIn for lawyers. Of the two, Legal OnRamp is squarely focused on the corporate legal services market. Legal OnRamp started in cooperation with Cisco Systems as a collaboration platform at Cisco. The mission, as described by the company's founder and CEO, Paul Lippe, is to "improve legal quality and efficiency through collaboration, automation and process re-engineering." It is focused on helping in-house lawyers and law firms collaborate by collecting and sharing knowledge across these two groups via the Legal OnRamp online platform.<sup>52</sup> The platform includes content on the law, community forums and online discussions, and methods for facilitating work between in-house counsel and law firms.<sup>53</sup> Legal OnRamp and Riverview Law (discussed earlier in [Section II.C—Substitutes](#)) recently partnered to create a combined service and technology platform to facilitate cost-effective regulatory compliance for global banks. It's described as "the next stage in

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<sup>48</sup> LegalZoom Form S-1, *supra* note 47.

<sup>49</sup> LegalZoom Form S-1, *supra* note 47 (the exact estimate of market size is \$97 billion for 2011 based on a study conducted for LegalZoom by L.E.K. Consulting LLC).

<sup>50</sup> Nathalie Pierrepont, "Start-ups Look for Piece of the Legal Research Market," *The Recorder* (Nov 2013).

<sup>51</sup> Tech Crunch, "Judicata Raises \$5.8M Second Round to Build Out Advanced Legal Research Systems," (May 2013), online at: <http://techcrunch.com/2013/05/28/judicata-raises-5-8m-second-round-to-build-out-advanced-legal-research-systems-keith-rabois-joins-board/> (Judicata raised \$2 million in its first round of funding). Venture Beat, "Ravel Law raises \$8 million to help lawyers gather data—and cut costs—in a new way," (Feb 2014), online at: <http://venturebeat.com/2014/02/03/ravel-law-raises-8m-to-help-lawyers-gather-data-and-cut-costs-in-a-new-way-exclusive/>.

<sup>52</sup> Adam Smith, Esq. blog, "Legal OnRamp: 'Law Firm 2.0?'" (April 2007), online at: [http://www.adamsmithesq.com/2007/04/eagleeyed\\_readers\\_of\\_my\\_a/](http://www.adamsmithesq.com/2007/04/eagleeyed_readers_of_my_a/).

<sup>53</sup> Adam Smith, Esq., Legal OnRamp, *supra* note 52.

the development of ‘legal-by-design,’ helping legal departments improve quality and efficiency while also reducing the cost of legal work.”<sup>54</sup>

I’ve placed the final group of legal tech new entrants under the “expert systems” umbrella. Three examples include KM Standards, Seal Software, and Neota Logic. KM Standards is a contract automation technology that helps companies and law firms with managing the life cycle of contracts from contract creation to keeping existing contracts up-to date. KMS technology can analyze hundreds of contracts, classify them, and create a reference standard against which to analyze other contracts (*i.e.*, determines what clauses the group of contracts contain, the organizational internal structure of the clauses, and the range of standard and non-standard language in each clause). This then allows users to generate new contracts from the reference standard, run analysis on other contracts against the standard for differences, and analyze existing contracts to ensure they are up-to-date with the most recent standard. The depth of analysis, the volume of contracts that can be analyzed, the level of accuracy, and the speed at which all this can be accomplished is beyond what any human could accomplish. Seal Software is a company that uses contract abstraction technology and offers some applications that are similar to those of KM Standards (although the KMS technology appears to me to be more advanced). While KM Standards and Seal Software automate the analysis of contracts, Neota Logic automates the analysis of legal issues that arise in the daily operations of companies by embedding custom built expert systems (“Advisors”) directly into a company’s business systems. Essentially, Neota Logic is able to take the expert knowledge of a lawyer or another expert, break it down into component parts, and then use that to create decision trees and other tools that are incorporated directly into workflow. One example of a use case from Neota Logic’s website is the creation of an “EU Collateral Directive Advisor,” which evaluates the enforceability of collateral and netting arrangements in cross-border financial transactions and (a) delivers answers that help banks structure transactions, and (b) conducts daily audits of transaction portfolios to spot legal risks. The company notes that this expert system involves more than 12,000 rules. Another example is an expert system that answers employee requests for leave under the Family & Medical Leave Act and similar state laws with detailed guidance with supporting text.

Beyond the potential threat posed by legal tech companies, a somewhat latent threat is that posed by companies like accounting firms that are taking advantage of the UK Legal Services Act of 2007 to establish alternative business structures (ABS) in the UK that allow them to form businesses with lawyers and offer legal services (something they are unable to do in the U.S., given the restrictions on

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<sup>54</sup> “Riverview Law and Legal OnRamp Create ‘Legal-by-design’ Service,” *Managing Partner* (Jan 2014).

outside investment in law firms). For example, PricewaterhouseCoopers' legal arm (PwC Legal) gained an ABS license earlier this year, allowing its accountancy arm to take ownership of PwC Legal. Other accounting firms, including Ernst & Young and KPMG have also expressed interest in launching a legal arm in the UK.<sup>55</sup> These combined structures could ultimately position accounting firms for a significant competitive advantage in the global market for corporate legal services should the U.S. ever go the way of the UK and Australia in liberalizing the legal services market. The client value proposition such companies could offer relative to traditional top law firms could be significant, with the possibility of these companies combining both business and legal acumen with the client-orientated strategies for which accounting firms are often known.

### E. Rivalry

Rivalry among the top 100 U.S. firms (the Am Law 100) is intensifying. The demand CAGR for the corporate legal services market during the period 2008-2012 declined by 0.4% (compared to 3.7% growth 2004-2008).<sup>56</sup> Revenue for the Am Law 100 has been relatively stagnant since the start of the Great Recession.<sup>57</sup> Lower rates of productivity (total number of hours billed divided by total number of lawyers) driven by slowed demand, and the lower realization rates discussed earlier have resulted in relatively flat profits per partner.<sup>58</sup>

Many law firm leaders view as permanent the changes precipitated by the Great Recession that are impacting demand, and almost 70% believe the pace of change in the legal market will increase.<sup>59</sup> Flat market demand and the other competitive forces discussed earlier have top firms racing to "steal" market share from competitors, including through consolidations and lateral partner acquisition. Firms are also competing more on price and through various cost-reduction strategies. However, none of these approaches, as they're currently being pursued, present viable long-term competitive strategies.

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<sup>55</sup> "PwC Legal Gains ABS License," *The Lawyer* (Jan 31, 2014).

<sup>56</sup> Citi Private Bank and Hildebrandt Consulting: 2013 Client Advisory. (Data are from Citi's annual and flash surveys 2004-2012, with close to 60% of data coming from Am Law 100 firms.)

<sup>57</sup> Am Law 100 Data, see *supra* note 4. See also Henderson, Big Law, *supra* note 25 (revenue per lawyer for the Am Law 100 "hit a high water mark in 2007 before settling into an unprecedented five year plateau").

<sup>58</sup> ABA Journal, "Paralyzed profits? Law firms have shown little growth in recent years." (March 2014). (Citing Peer Monitor State of Industry, *supra* note 16).

<sup>59</sup> Altman Weil: 2013 Law Firms in Transition Survey, ("Altman Weil Law Firm Survey"). (A survey of managing partners and chairs at U.S. law firms with 50 or more lawyers. 238 law firm leaders participated, 37% of respondents were leaders from the 250 largest U.S. law firms (and just over 40% of law firms with  $\geq 250$  lawyers participated in the survey.) (The following are some of the trends survey respondents think are permanent: more pricing competition (95.6%), more non-hourly billing (80%), more commoditized legal work (90%), competition from non-traditional service providers (79%). Pace of change results based on firm size: law firms < 250 lawyers (65%), law firms  $\geq 250$  lawyers (71%).)

There were 88 law firm mergers and acquisitions in 2013, up 47% from 2012.<sup>60</sup> This represented the highest number of law firm consolidations recorded in the seven years that Altman Weil has been compiling law firm M&A data.<sup>61</sup> Most were acquisitions of smaller firms, which are often perceived as low-hanging opportunities to grow practices and the client base. However, many firms seem to be pursuing growth as a dominant strategy in the absence of any meaningful strategies around segmentation, targeting, and positioning and differentiation. Further, any benefits that *may* derive from economies of scale through consolidation seem to diminish once a law firm exceeds about 100 lawyers.<sup>62</sup> Rather, firms with multiple offices risk encountering diseconomies of scale driven by conflicts of interest, higher malpractice and other insurance costs, occupancy costs, and the resources and investment required to achieve uniformity in quality and service and collegiality and teamwork across offices.<sup>63</sup> As firms get bigger, profits tend to decline, as law firms must generate larger amounts of work to pay for the increased leverage and overhead.<sup>64</sup> The practice diversification firms may rely on to drive increased work also may not materialize from a consolidation, as diversification can also end up having the dilutive effect of a broad-based practice that is undifferentiated. Additionally, any related boosts to reputation and brand that firms may seek from consolidation are not guaranteed given corporate clients' increasing willingness to look beyond top firms to meet their legal service needs (as discussed earlier in [Section II.C—Substitutes](#)). Moreover, empirical evidence shows a very weak correlation, if any, between law-firm size and profitability.<sup>65</sup>

Top firms are also using lateral partner acquisition (of both individual partners and groups of partners) in search of demand growth, and many engage in bidding wars for partners with expertise and big books of business in the most lucrative practice areas. Since 2000, the number of lateral partner moves among the top 200 law firms in the U.S. has increased by more than 30%.<sup>66</sup> Since 2009, the annual

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<sup>60</sup> Altman Weil MergerLine: <http://www.altmanweil.com/MergerLine/>.

<sup>61</sup> Altman Weil: "Law Firm Combinations up 47% in 2013," <http://www.altmanweil.com/MLPR10814/>.

<sup>62</sup> Peer Monitor: State of Industry, *supra* note 16; Altman Weil: "Mining the Surveys: DISEconomies of Scale? (Citing over 30 years of survey data that has generally shown an absence of economies of scale in private law practice, as larger firms tend to spend more per lawyer on expenses than do smaller firms. And they don't generally reap the benefit of spreading fixed costs over a larger number of lawyers given the additional infrastructure needed to support growth increases in staff and communications costs.) Ward Bower, Edge International Review: "What is the Optimum Size for a Law Firm?"

<sup>63</sup> Peer Monitor State of Industry, *supra* note 16.

<sup>64</sup> Trotter, *supra* note 12, at p. 40.

<sup>65</sup> Peer Monitor State of the Industry, *supra* note 16.

<sup>66</sup> *The American Lawyer*: The Lateral Report, February 2014. (*The American Lawyer* has tracked lateral partner moves among the top 200 firms in the U.S. for the last thirteen years. Moves that are from firm to firm, or to and from government and in-house positions. Survey results cover the period from October 1 to September 30 of each year. Citing 2500 partner moves in 2013.) *The American Lawyer Magazine*, "Of Partners and Peacocks," February 2014. (Covering a study conducted by Professor William Henderson (Indiana University Maurer School of Law) and Professor Christopher Zorn (Pennsylvania State University) analyzing data on lateral partner moves over the last 13 years among the top 200 law firms and statistical analysis on the correlation between more lateral hiring and increased profits. Citing 1900 lateral partner moves since 2000.) See also, William D. Henderson, "An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms," *The Georgetown Journal of Legal Ethics*, Vol. 22:1395.

number of lateral partner moves within the ranks of the top 200 law firms has averaged 2500 and ranged from 2014 to 2775 during the period 2009-2013 (with year-over-year shifts in the practice areas and geographies that experience the most movement).<sup>67</sup> In the Altman Weil Law Firm survey, 100% of large law firm leaders surveyed said they planned to acquire more lateral partners as part of their growth strategy.<sup>68</sup> The hope is that these lateral partners will help generate more work from existing and new clients through increased expertise and firm reputational boosts, and generate opportunities to cross-sell areas to the roster of clients the lateral partner brings on board. But this free agency model has several significant destabilizing effects on firms: (1) the risk of partner defections to the highest bidder; (2) a potentially negative impact on firm culture; (3) a focus on short-term growth in revenue and profitability at the expense of long-term strategy and related investment; and (4) bets on lateral partners who may not live up to the hype.

Briefly examining these in turn. First, even when a law firm secures what it believes to be a lucrative lateral partner acquisition, the state of play is such that there's no guarantee the firm will retain that partner (or any other high-value partners) over the long-term. The defection of a star rainmaker can lead other partners to jump ship, precipitating a rapid downward spiral and demise of even the most storied firm.<sup>69</sup> Second, as lateral partners cycle in and out of a firm, this can create a patchwork of cultures and result in only loose ties that bind the partnership together.<sup>70</sup> Third, to attract and retain top lateral talent, there's increased pressure to grow revenue and profit levels. This in turn feeds a short-term focus on near-term revenue and profitability at the expense of more strategic thinking and related long-term investment. Fourth, lateral partners may not reach expected performance levels. In the 2012 Citi Law Firm Leaders Survey, only 22% of firm leaders characterized their lateral partner acquisitions as "very successful".<sup>71</sup> This may partially stem from the difficulty in effectively integrating lateral partners into larger and larger partnerships. Furthermore, a statistical analysis of 13 years of lateral partner data shows no statistically significant relationship between a lateral partner hiring strategy and higher law firm profitability.<sup>72</sup>

Two other areas where rivalry is intensifying are price and expense reductions. In the Altman Weil Law Firm Survey, law firm leaders see the following three pricing-related trends as permanent: more price competition (96%, up from 42% in 2009); more non-hourly billing (80%, up from 28% in 2009);

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<sup>67</sup> *The American Lawyer*: The Lateral Report, see *supra* note 66.

<sup>68</sup> Altman Weil Law Firm Survey, *supra* note 59. (The survey defined large law firms as firms with  $\geq 250$  lawyers.)

<sup>69</sup> The industry has seen the dissolution of about a half dozen top law firms over the last decade or so, the most recent of which was Dewey & LeBoeuf in 2012. Each of these firms dissolved under different circumstances, but once key partners started to defect, the demise of these law firms was stunningly fast.

<sup>70</sup> See Henderson and Galanter, *Elastic Tournament*, *supra* note 26.

<sup>71</sup> Citi Client Advisory, *supra* note 56.

<sup>72</sup> Henderson, "Of Partners and Peacocks," see *supra* note 66.

and more commoditized legal work (90%, up from 26% in 2009). As noted earlier ([Section II.B—Buyers](#)), although there has been a lot of talk in the industry predicting the rise in alternative pricing structures to replace the billable hour, most price reduction has come in the form of discounts to hourly billing rates. I was unable to uncover good examples of top law firms that are taking a more strategic approach to pricing by looking beneath the demand curve to understand and manage the client value proposition, which should be the primary determinant of pricing decisions.<sup>73</sup> In addition, even though 96% of law firm leaders in the Altman Weil Law Firm Survey view price competition as a permanent trend, only 29% report that their firm has significantly changed its strategic approach to pricing since the recession, and only 6% listed delivering value to clients as their greatest challenge in the next 24 months.<sup>74</sup>

Meanwhile, in the Altman Weil CLO survey, many CLOs indicate that their preference is not simply the lowest price they can get. Rather, almost 40% said they want “transparent pricing” to understand the value for the dollars spent (how and why pricing is set), and 20% prefer value-based pricing that varies based on results. Only 10% of CLOs say they want the lowest price available.<sup>75</sup> But in each of the last five years when Altman Weil asked CLOs how serious law firms are about changing their service delivery model to provide greater value, the median rating was 3 on a scale of 1 (not at all serious) to 10 (doing everything they can), with 85% of ratings in 2013 falling between 1 and 5.<sup>76</sup> These results are also consistent with the feedback from the in-house counsel who participated in the focus group I conducted for this study. Even though clients are looking for value beyond price reductions, in the absence of a clear value proposition that resonates with clients and aligns law firm metrics and incentives with the results clients seek, clients are focusing their attention on price-cutting through larger discounts against standard billing rates. As noted earlier, almost 80% of respondents to the Altman Weil CLO survey said they negotiate price reductions from outside counsel to control costs.<sup>77</sup> This disconnect is likely driven by a focus on the input of billable time versus the value-based output and productivity clients seek. Michael Totter states it well: “Many lawyers [...] confuse their role in selling legal services with selling time. In determining the value of their services to be charged to clients, they began to divorce considerations of quality, efficiency, and results—and to rely solely

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<sup>73</sup> See Thomas T. Nagle, John E. Hogan, and Joseph Zale, *The Strategy and Tactics of Pricing: A Guide to Growing More Profitably*, Fifth Edition (2011). (Discussing the principles of strategic pricing and their application.)

<sup>74</sup> Altman Weil Law Firm Survey, *supra* note 59.

<sup>75</sup> Altman Weil CLO Survey, *supra* note 20.

<sup>76</sup> Altman Weil CLO Survey, *supra* note 20.

<sup>77</sup> Altman Weil CLO Survey and related note, *supra* note 20.

on the hours invested in the effort.”<sup>78</sup> Bridging this gap will require a firm to find a way to maximize benefits for clients and the firm while minimizing costs and risks.

On the cost management side, a number of top law firms are focused on strategies to lower overhead costs and improve operational efficiency. In the Altman Weil Law Firm Survey, 75% of respondents from large law firms indicated their firm has significantly changed its strategic approach to cost management, and 55% have changed their approach to the efficiency of legal service delivery. Among other things, top firms are adding lower-cost lawyers to the leverage mix (non-partner track attorneys and temp and contract attorneys), offshoring more back-office functions or moving these functions to lower-cost locations in the U.S., and incorporating project management into the workflow. But the cost-reduction tactics top law firms are employing do not yet appear to have translated into value from the client’s perspective, or to form part of a strategic move to build new competencies and related activity systems that are difficult to imitate. Instead, much of the cost reduction is the result of reduction in overhead. But there’s only so deep firms can cut in terms of overhead. And for those firms that are focused on driving greater operational efficiency, the approaches many firms are adopting are relatively generic in nature (*e.g.*, project management). Further, in light of the rapid diffusion of best practices and competitive convergence, generic strategies for improving operational effectiveness will not translate into sustained profitability.<sup>79</sup> Instead, to achieve sustainable competitive advantage, firms need to develop interconnected and self-reinforcing activity systems that enable them to perform different activities from those of rivals or to perform similar activities but in different ways.<sup>80</sup>

Rivalry among top law firms is intensifying, but the strategies top law firms are using to compete are mostly fast-follower, undifferentiated strategies, and not the type likely to confer long-term competitive advantage. “Most firms cannot overtake a leader by following it around the course. After all, most leaders are getting better too. To close the gap, it is necessary to risk a different tack and to select it wisely. Otherwise you just fall further behind.”<sup>81</sup>

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<sup>78</sup> Trotter, *supra* note 12, at p. 14.

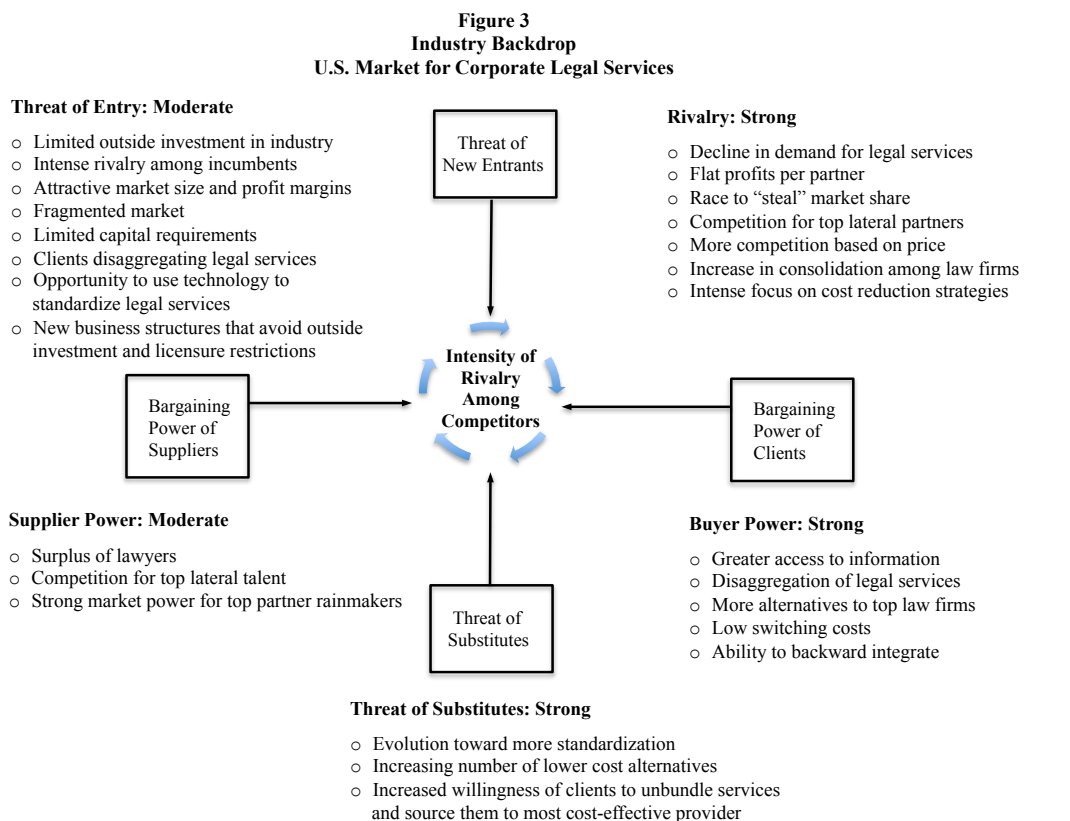
<sup>79</sup> Michael Porter, What is Strategy?” *Harvard Business Review* (Nov-Dec 1996).

<sup>80</sup> Michael Porter, What is Strategy, *supra* note 79. See Trotter, *supra* note 12, at p. 140. (Discussing the Association of Corporate Counsel’s (ACC) law firm profitability model that is designed to demonstrate to law firms more strategic approaches for how they can achieve greater operational efficiency.)

<sup>81</sup> Trotter *supra* note 12, at p. 101. (Trotter uses the decision in 2008 by most top U.S. law firms to raise associate starting salaries to \$145,000–\$160,000 a year without adjusting their strategy as an example of this, commenting that it was “an easy road to oblivion for many firms.”)

## F. Backdrop Snapshot

The following (**Figure 3**) offers a high-level snapshot of the foregoing industry backdrop, adapted from Michael Porter's Five Forces framework.



Source: Kelly M. Brown Analysis (2014)  
(Adapted from Porter: Competitive Advantage (1985))

## III. Seeds of Disruption

Having a solid understanding of industry dynamics, such as those just discussed in [Section II—Industry Backdrop](#), is essential for any strategic analysis. However, key for determining which strategies to pursue and which related investments to make requires an understanding of not only the current state of an industry, but also how an industry is changing. In her HBR article, “How Industries Change,” Anita McGahan advises that a company’s “plan for achieving a return on invested capital cannot succeed unless it is aligned with the industry’s change trajectory.”<sup>82</sup> At a high level, she identifies four distinct change trajectories: radical, progressive, creative, and intermediating.<sup>83</sup> Radical

<sup>82</sup> Anita M. McGahan, “How Industries Change,” *Harvard Business Review* (Oct. 2004) (“McGahan, Industries Change”). (McGahan’s findings are based on over a decade of research and related statistical analysis.)

<sup>83</sup> McGahan, Industries Change, *supra* note 82.

change occurs when both a company's core activities (the recurring actions a company performs that attract and retain suppliers and buyers) and core assets (resources, knowledge, and brand capital that make a company more efficient at performing core activities) become threatened and fail to generate the value they once did.<sup>84</sup> Progressive change is the most common change trajectory and does not pose a threat to core activities or core assets. Creative change threatens core assets. And intermediating change threatens core activities.<sup>85</sup> Given the current state of the legal industry, the U.S. market for corporate legal services seems to be evolving from intermediating change, with client relationships (core activities) at risk, to radical change where both client relationships and core assets, such as brand capital, could begin to erode. In radical change, "the relevance of an industry's established capabilities and resources is diminished by some outside alternative; relationships with buyers and suppliers come under attack; and companies are eventually thrown into crisis."<sup>86</sup> McGahan describes the radical change trajectory as closest to Clayton Christensen's concept of disruptive change, which I use for the balance of this section as the framework for analyzing the changes taking place in the legal industry.<sup>87</sup> As McGahan notes: the only reasonable approach to radical change is for a company to focus on the endgame and its implications for current strategy.<sup>88</sup>

In *The Innovator's Dilemma*, Christensen explored the question of why successful companies led by great managers often fail when confronted with disruptive changes in the market. What Christensen uncovered is that the principles of good management are only *situationally* appropriate, which ties back to McGahan's research—that a company must align its strategy with its industry's change trajectory. Christensen discovered there are certain principles that apply to the situation of disruptive change that are at odds with conventional management wisdom. He determined that companies (including industry leaders) that don't understand these principles, or that try to fight the forces of disruptive change, stumble. In *The Innovator's Dilemma*, he reveals that even the most empirically based principles of good management will not succeed in the face of certain types of industry change. Rather, there are times when adopting an opposing approach is the better strategy.

Christensen identified three key factors that determine if incumbents are at risk of low-end disruption. (1) Whether incumbents are delivering products or services at performance levels beyond what customers want (*i.e.*, over-serving customers). (2) Whether the innovation from the potential rival is sustaining or disruptive. (3) Whether incumbents forego investing in disruptive innovation because it

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<sup>84</sup> McGahan, Industries Change, *supra* note 82.

<sup>85</sup> McGahan, Industries Change, *supra* note 82.

<sup>86</sup> McGahan, Industries Change, *supra* note 82.

<sup>87</sup> Clayton M. Christensen, *The Innovator's Dilemma: When New Technologies Cause Great Firms to Fail* (2000).

<sup>88</sup> McGahan, Industries Change, *supra* note 82.

does not appear to help them deepen or expand work with their most profitable clients given the following: (a) it results in lower-margin work, (b) the size of the opportunity is small, and (c) they're not sure their most profitable customers would look to them to deliver work product based on the disruptive innovation.

#### A. Over-serving Clients

Christensen notes that over-serving clients often results from attempts by incumbents to outperform rivals in the quest to increase revenue and profitability. This gives entrants the fertile ground to serve mainstream clients by providing them with lower-priced services. As discussed in the Industry Backdrop, top firms are competing for star lateral partners and using other tactics to preserve their foothold and gain market share for the most lucrative, high-end work. And many law firm leaders are betting their firms on the ability to make it into the elite group of firms that will comprise the coming "oligopoly" predicted by some industry experts. These firms are often not willing or able to deliver services at a lower price, which makes them willing to cede to other providers the work they perceive as lower margin, or otherwise of lower value. Meanwhile, more legal work is becoming standardized, and as a means of lowering the cost of legal services, clients are increasingly willing to unbundle legal services and send more routine work to lower-cost providers who are able to deliver "good enough" work product. Clients simply are no longer willing to pay the high billing rates for their more routine work. This becomes the thin edge of the wedge, where lower-cost providers get their foot in the door with corporate clients by performing their more routine work using a lower cost business model; they gain insight into the company's operations through this routine work and use that knowledge to build deeper relationships; they use their learning from the routine work to develop stronger performance capabilities overtime; and they eventually expand their relationships into other, higher-margin work.

#### B. Sustaining Versus Disruptive Innovation

A sustaining innovation improves the performance of established products or services in a manner consistent with what mainstream clients have always valued.<sup>89</sup> Christensen notes that most technological advances in an industry are sustaining in nature. In circumstances involving sustaining innovation, Christensen's research found that incumbents almost always prevail. On the other hand, disruptive innovation usually *underperforms* products and services in the mainstream market and, therefore, appeals to clients at the lower-end of the market.<sup>90</sup> These products and services are usually simpler and cheaper than those that appeal to incumbents' mainstream customers. In these

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<sup>89</sup> Christensen, *The Innovator's Dilemma*, *supra* note 87, at p. xv.

<sup>90</sup> Christensen, *The Innovator's Dilemma*, *supra* note 87, at p. xv.

circumstances, Christensen notes that entrants usually win. Once the disruptive innovation begins to take root in the low-end of the market, the pace of innovation progress allows entrants to improve services so that they become more appealing to the mainstream customer segment.<sup>91</sup> In the legal industry, when NPLs began to enter the market, their offerings were not nearly as sophisticated as those of top law firms. Instead, their capabilities limited their work to the lowest rung of the legal services hierarchy—reviewing thousands of documents and conducting basic fact gathering. That work generally falls into the category of sustaining innovation. But as discussed in the Industry Backdrop, the service offerings of some NPLs, like Axiom and Novus Law are becoming more sophisticated, as are predictive coding and logic technologies. The services of these NPLs are still not at a level where they can offer the full suite of services or level of expertise comparable to that of top law firms. But they are using technology and/or process re-engineering to redefine the legal services delivery model, and they have been improving their standards of performance over time. This is positioning some of these companies to become disruptive innovators. (See [Section III.D—On the Path of Disruptive Innovation](#)—for examination of where the various categories of NPLs are likely positioned on Christensen’s disruptive technology curve.)

### C. Rational Investments

There are a handful of known top firms that have made some investments to counteract the potential rise of NPLs, but most top firms have rationally forgone such investment given that most elite firms see the work that NPLs have targeted as lower-margin and not critical for deepening or expanding work with their most profitable clients.<sup>92</sup> Unfortunately, the problem with this approach that Christensen points out is that incumbent firms often see the prudence in making investments in disruptive technology only after disruption in the market becomes readily apparent to them (*i.e.*, when it begins to chip away at some of their bread and butter work). But by that point, it’s usually too late to mount an effective attack against the disrupters.

### D. On the Path of Disruptive Innovation

It turns out that Christensen himself noted in a recent article in the *Harvard Business Review* that the legal industry is undergoing disruptive change.<sup>93</sup> He cites the seeds of disruption as having been planted as far back as 25 years ago when GE created what is now the modern corporate in-house law department. Since then, in-house legal departments have continued to grow and they are starting to

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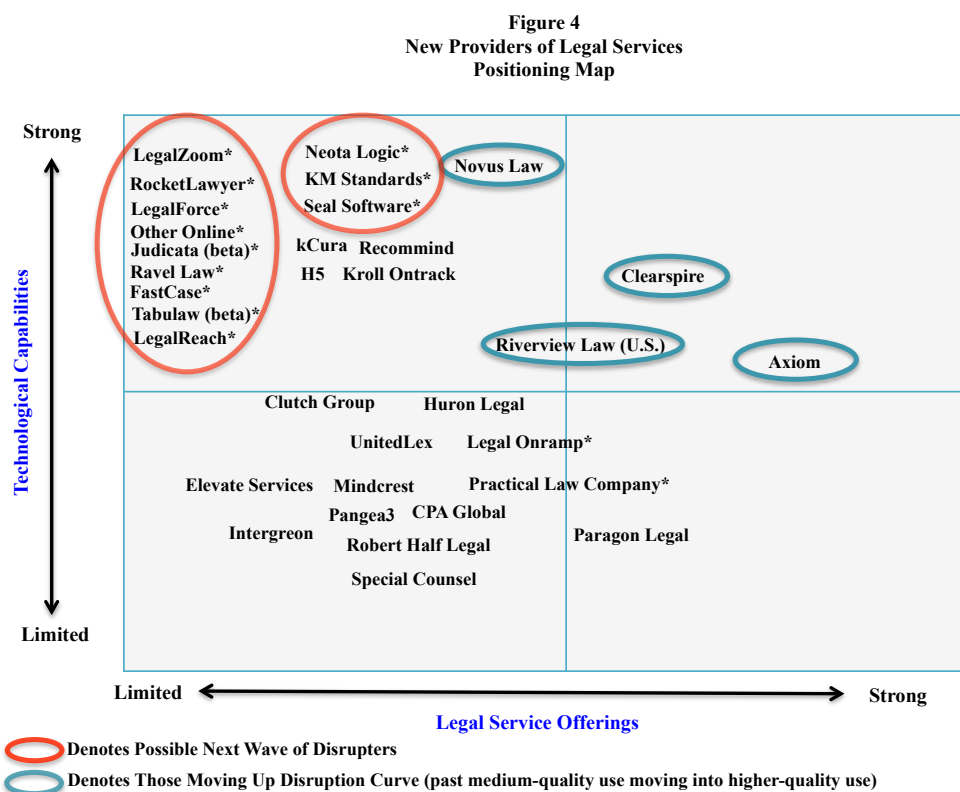
<sup>91</sup> Christensen, *The Innovator’s Dilemma*, *supra* note 87, at p. xvi-xvii.

<sup>92</sup> Seyfarth Shaw is one example of an Am Law 100 firm that has invested in process re-engineering innovation through a subsidiary Seyfarth Shaw Lean consulting.

<sup>93</sup> Christensen et al., *Consulting on the Cusp of Disruption*, *supra* note 1.

*insource* more and more work, as discussed in the Industry Backdrop. And the Great Recession increased clients' willingness to engage still other alternatives to traditional law firms.

**Figure 4** illustrates the relative positioning of NPLs based on technological and legal services capabilities (see [Appendix E—Positioning Map of NPLs](#) for an enlarged version of Figure 4).



\*As set forth in the Industry Backdrop, I categorized the companies identified with an asterisk as potential new entrants (the others I identify as potential substitutes).

Source: Kelly M. Brown (2014)

In the upper left quadrant are those NPLs that have built or are building relatively strong technological capabilities but that deliver relatively limited legal service offerings. These tend to be the legal technology companies that offer niche capabilities and that I identified earlier as either substitutes for certain types of legal work (KCura, Recommind, H5, and Kroll Ontrack) or new entrants (online legal service providers, such as LegalZoom; legal research providers, such as Ravel Law; collaboration platforms; and expert systems, such as Neota Logic). They either currently deliver lower-end legal services targeted at the small business and consumer markets, or corporate legal services that are limited to more routine, lower-margin work. But their level of technological sophistication is higher than that of other NPLs, which could position some of them (those circled in red) to take on more

types of legal work in the future as technology enables increasing standardization of legal work (including some of today's more sophisticated legal work).<sup>94</sup>

In the lower left quadrant are mostly the LPOs (other than Novus Law) that primarily use labor arbitrage to deliver lower cost routine legal services (mostly document review), but some do appear to offer greater levels of technology relative to the others (*e.g.*, United Lex). These LPOs tend to represent examples of sustaining innovation (as opposed to disruptive). While the in-house counsel focus group participants for my study predict the increasing use of LPOs to help with drafting various agreements as more legal work becomes standardized (*e.g.*, LPOs create the first draft and in-house teams finalize), it appears that most LPOs will continue to serve as complements to law firms rather than pose a disruptive threat.

In the upper right quadrant are the new model law firms that I characterize as substitutes (I project that Novus Law will also make its way into this quadrant). These companies either have or are building strong technological capabilities, offer a wider range of legal services than those of the other NPLs, and have already started to eat into some of the bread and butter work of top law firms. Paragon Legal, positioned in the lower right quadrant, offers in-house placement (or "leasing") of highly experienced attorneys for short-term and long-term engagements, similar to Axiom's roots. But Paragon appears to have a more limited technological platform and a more limited suite of legal service offerings (Axiom has since moved beyond a purely in-house placement model).

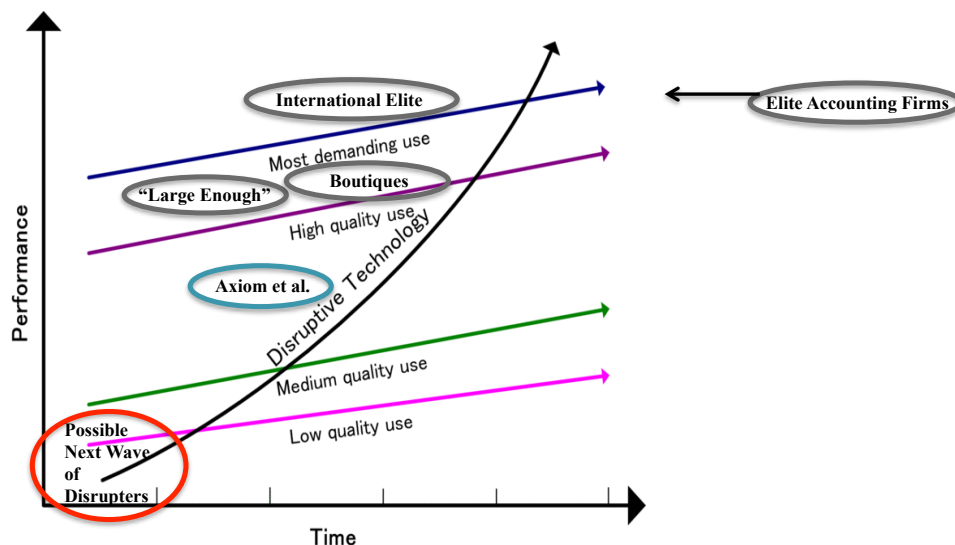
The next figure (**Figure 5**) shows where some of the NPLs depicted in Figure 4 likely fall on Christensen's disruptive technology curve, and the potential categories that the current Am Law 100 firms could get funneled into as a result.<sup>95</sup>

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<sup>94</sup> Those not circled in red tend to offer services that are primarily limited to electronic document review. See *supra* Section II.C.—Substitutes.

<sup>95</sup> See also Henderson, Big Law, *supra* note 25, at p. 28, where he uses Christensen's Disruptive Technology curve to depict a possible timeline for new legal service entrants to move up the curve and pose a disruptive threat to the top 200 law firms in the U.S.

Figure 5  
Market for Corporate Legal Services  
On the Path of Disruptive Innovation  
Adapted from Christensen: *The Innovator's Dilemma*



Source: Adapted from Clayton M. Christensen, *The Innovator's Dilemma* (1997)

Axiom and other new model law firms seem to already be taking a position near the center of the disruptive technology curve, redefining the legal service delivery model and moving from less sophisticated (“low and medium quality use”) toward more sophisticated work (“high quality use”). I would also include Novus Law in that group. Meanwhile, I’ve positioned at the bottom of the curve (“low quality use”) those companies that were circled in red in Figure 4, which are building strong technological capabilities but which currently offer relatively limited corporate legal services capabilities, or are currently targeting the small business and consumer markets. These are the companies that could be paving the way for a new cycle of disruption. They could present a future low-end disruptive threat to not only top law firms, but also to some of the current disrupters, like Axiom (which may need to make its own investment in potentially disruptive technologies to remain competitive over the longer term).

At the top of the figure, I depict three potential categories for the current Am Law 100 firms as other players continue to move along the path of disruptive innovation. One group is the international elite—those firms that could become the go-to firms for highly customized and sophisticated legal services

(“most demanding use”). While the need for a “super elite” group of law firms is unlikely to go away anytime soon, the highly specialized work requiring their high-level of service is likely to represent a smaller and smaller portion of total corporate legal work (if not legal spend) as larger portions of legal services evolve along Susskind’s predicted evolution of the legal industry to more standardized, systematized, and packaged solutions. This group of the international elite could also one day include elite accounting firms if the U.S. ever ends up following the UK in moving toward greater liberalization of the legal services market. The other two groups—Large Enough and Boutique—are those that would compete with new model firms for legal services that are of “high quality use” as new model firms move up the disruptive technology curve. Large Enough firms tend to be the general practice law firms I identified earlier as the firms corporate clients are increasingly looking to as substitutes for some of the largest Am Law 100 firms, including for some high fee litigation matters. Boutique firms are those I also identified earlier as substitutes to traditional top law firms that offer specialization in niche areas of law and can range in size from small to large firms.<sup>96</sup>

#### E. Advice for the Disrupted

The following are two potential strategic responses to low-end disrupters: (1) replicate or take an option (through acquisition or alliance) on the low cost business model, and/or (2) develop innovation capabilities.<sup>97</sup> The first approach could offer a company what seems to be a more immediate response in the short-term. But Christensen notes that in the context of disruptive innovation, to create economic value through an acquisition over the long run, a company must clearly identify the value driver behind the acquisition, and develop the appropriate related strategy. When the primary driver is to acquire resources as a way to leverage existing capabilities, a company should focus on executing a solid merger integration strategy. However, when the primary driver is to acquire processes and values, the company is advised to create a standalone organization to avoid the pitfall of “vaporizing” the processes and values that were the target of the acquisition in the first place.<sup>98</sup>

Christensen explains that the second strategic response—develop innovation capabilities—involves setting up an autonomous business unit led by those with the relevant schools of experience, with a separate resource allocation process and complete freedom to build a business with an entirely new

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<sup>96</sup> Two current examples include Boies, Schiller & Flexner (litigation) and Littler Mendelson (labor & employment).

<sup>97</sup> Christensen, *The Innovator’s Dilemma*, *supra* note 87, at pp. 172-180.

<sup>98</sup> Christensen, *The Innovator’s Dilemma*, *supra* note 87, at pp. 160-172. Christensen discusses this much more extensively in the *Innovator’s Dilemma* in the context of what he calls the organizational capabilities framework (or Resources-Processes-Values (RPV))—the factors that impact what an organization realistically can and cannot do. In this context he notes, for example: “The processes that make an organization good at outsourcing components cannot simultaneously make it good at developing and manufacturing components in-house. Values that focus an organization’s priorities on high-margin products cannot simultaneously focus priorities on low-margin products.”

business model to address the disruptive threat.<sup>99</sup> The spin-out must have the freedom to learn from failure and iteratively build products and services. Companies must also be willing and prepared to even kill off parts or all of the original “core” business if necessary. Christensen doesn’t sugarcoat this process: “Self-disruption is extremely difficult. The day after you decide to set up the disruptive business as a separate unit, the illogic of the new business to the mainstream business is not magically turned off. Rather, second-guessing about the initiative persists, because the logic is embedded within the resource allocation process itself. That second-guessing must be overcome every day.”<sup>100</sup>

In addition to these direct responses to disruptive change, there’s another overarching strategic imperative for firms: be client centric. Theodore Levitt, the late Harvard Business School professor who was an icon in the field of marketing, implores businesses to become “thoroughly customer-oriented,” which he describes as a constant watchfulness for opportunities to apply technical know-how to the creation of customer-satisfying uses.<sup>101</sup> (In the context of low-end disruption, a company needs to foster this orientation in both the mainstream market and the disruptive markets that are emerging.) Levitt goes on to note that most companies improperly define a business or industry based on products or services delivered (e.g., being in the railroad business) rather than based on a client need (e.g., transportation). He coined a phrase for this tendency of companies to look inward: *marketing myopia*. One strategy for counteracting “marketing myopia” is to take an approach Clayton Christensen suggests in *The Innovator’s Solution*: focus on the job that a client “hires” the company to do.<sup>102</sup> He calls this the “jobs-to-be-done view”. In this regard, those of us in the legal industry can take a cue from Mark Chandler, GC of Cisco, who has publicly said that as a client what he wants to buy is “access to information, strategy, and negotiation, and, in the case of litigation, to courtroom skill.”<sup>103</sup>

Being client-oriented is an area where NPLs likely have an advantage over incumbents. Years of demand that outpaced GDP growth eased the urgency for top firms to pursue truly client-oriented strategies. Or as Levitt puts it: “apparently assured expansion of demand [...] tends to undermine a proper concern for the importance of [...] the customer.”<sup>104</sup> What law firms may now perilously fail to realize is that the competitive strategies some new rivals pursue pose the greatest threat. As new rivals enter the market, they focus (if not by choice, then by necessity) on the problems clients face at the

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<sup>99</sup> Christensen discusses self-disruption in both *The Innovator’s Dilemma* and *The Innovator’s Solution* (2003), and revisits those lessons as A Check-list for Self-Disruption in his HBR article, “Consulting on the Cusp of Disruption,” *supra* note 1.

<sup>100</sup> Christensen et al., Consulting on the Cusp of Disruption, *supra* note 1.

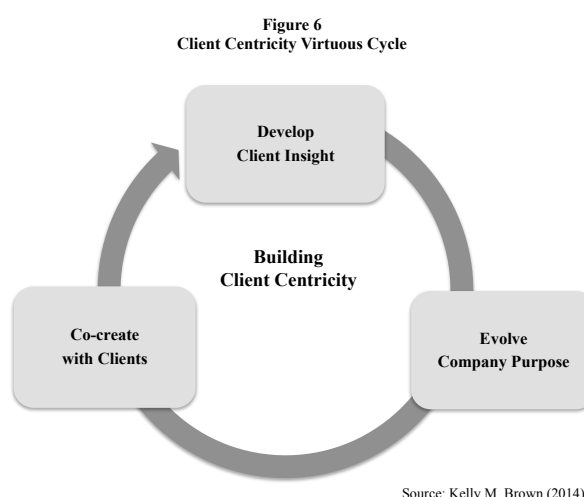
<sup>101</sup> Theodore Levitt, “Marketing Myopia,” *Harvard Business Review* (July–Aug 1960) (Reprinted July–Aug 2004).

<sup>102</sup> Clayton M. Christensen and Michael E. Raynor, *The Innovator’s Solution: Creating and Sustaining Successful Growth* (2003), see Chapter Three, “What Products Will Customers Want to Buy?”

<sup>103</sup> See Cisco General Counsel on State of Technology in the Law (Jan 25, 2007), online at: [http://blogs.cisco.com/news/cisco\\_general\\_counsel\\_on\\_state\\_of\\_technology\\_in\\_the\\_law/](http://blogs.cisco.com/news/cisco_general_counsel_on_state_of_technology_in_the_law/).

<sup>104</sup> Levitt, Marketing Myopia, *supra* note 101.

most basic level and develop direct solutions to address those needs. Many law firms take the opposite approach: they focus first on areas of expertise and then figure out how to sell that expertise. Or if they do look first to client needs, they often do so through the narrow lens of current legal service offerings. This distinction has profound implications. The former approach can create a virtuous cycle: develop client insight; use client insight to define and redefine company purpose to meet evolving client needs; co-create solutions with clients tailored to meet their needs (which then further deepens client insight) (**Figure 6**). The value proposition this creates could relegate top firms to a smaller and smaller part of the client relationship.



#### IV. Sketching the Future—Corporate Legal Services in 2030

Clayton Christensen’s disruptive innovation framework provides insight into some of the current dynamics in the market for corporate legal services in the U.S. In addition to understanding the current industry landscape and related change trajectories, law firms and NPLs must regularly assess the continued evolution of the industry and possible related future scenarios. Scenario decision strategy is a useful framework for assessing the potential paths for continued evolution in an industry by assessing and organizing underlying uncertainties in the market. The approach I used for this study is that set forth by Paul Schoemaker and V. Michael Mavaddat in their chapter in *Wharton on Managing Emerging Technologies*, “Scenario Planning for Disruptive Technologies”.<sup>105</sup> Rather than making

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<sup>105</sup> See Day and Schoemaker, *Wharton on Managing Emerging Technologies*, *supra* note 6, Chapter 10, “Scenario Planning for Disruptive Technologies.”

definitive statements about an inherently uncertain future and painting a single picture of the future, scenario decision strategy enables a company to sketch a vision of many futures and then “develop the best strategy for preparing for this portfolio of futures and adjusting that strategy as the path becomes clearer.”<sup>106</sup> The scenario-planning framework helps depict how the various uncertainties facing an industry might interact under a variety of different assumptions.<sup>107</sup> So it has the benefit of enabling managers to consider the impact multiple technologies and other factors could have on an industry versus analyzing just one technology or issue in isolation.

Scenario decision strategy addresses three challenges inherent in industries undergoing disruptive change: (a) uncertainty, (b) complexity, and (c) paradigm shift.<sup>108</sup> Broadly speaking, the analysis involves constructing scenarios using the following steps: (1) understand the organizational context for use of the scenarios, (2) identify the forces shaping the industry and the related trends and key uncertainties, and (3) build a matrix of possible future scenarios around two central uncertainties and incorporate other key uncertainties into an analysis and full description of each scenario. I conducted this exercise with the in-house counsel focus group for this study to generate information on trends and key uncertainties. I also used input from the interviews I conducted. In [Appendix F—Scenario Planning Analysis](#), I include a detailed description of the scenario planning methodology and the forces, trends, and key uncertainties I uncovered in my research. I built the scenarios to examine what the U.S. market for corporate legal services might face over the next 15 years (think 2030). The organizational context I focused on was that of a top law firm. The stakeholders for this analysis are those who can exert a leadership role in the industry: corporate clients, lawyers, incumbent law firms (Am Law 100), NPLs, legal educators, and relevant regulatory bodies.<sup>109</sup>

Through my analysis, I identified ten key uncertainties (listed in [Appendix F—Scenario Planning Analysis](#)). Any two of these key uncertainties can be used to construct a series of four possible scenarios, and a company could pick multiple pairs and run through multiple scenarios. A law firm, for example, could also conduct its own research with its lawyers and clients to uncover still other uncertainties not identified in this study to construct other or additional scenarios as part of a strategic

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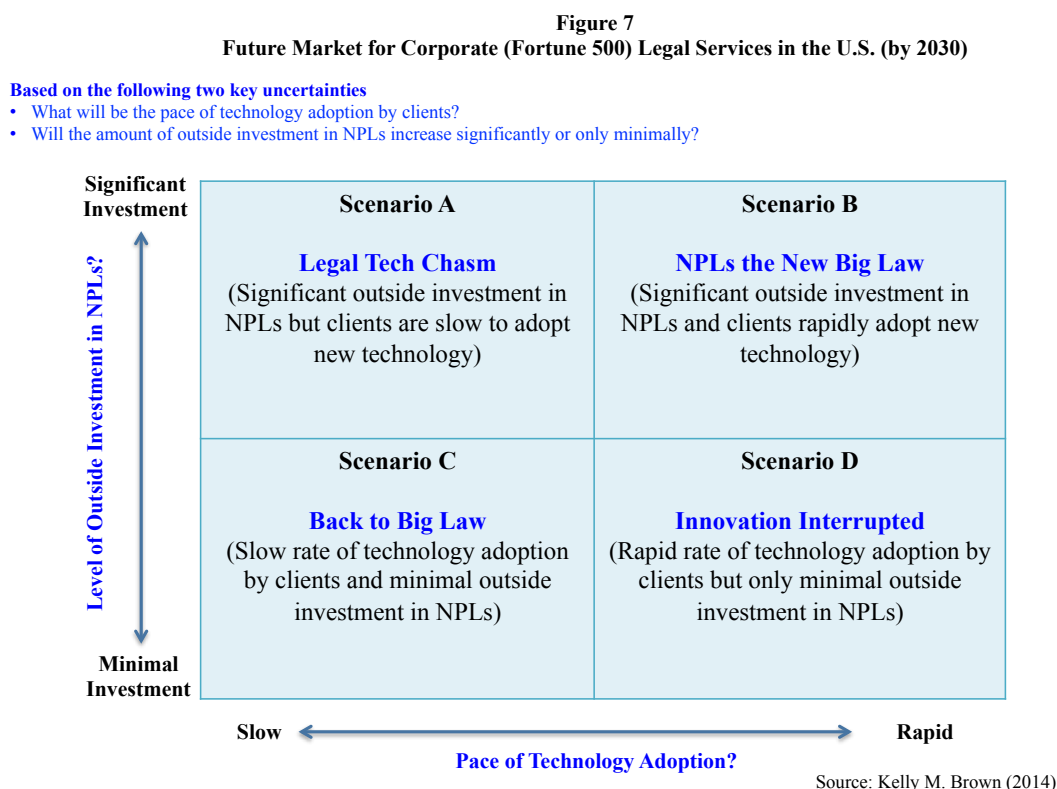
<sup>106</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 209.

<sup>107</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at pp. 211-212.

<sup>108</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at pp. 211-212.

<sup>109</sup> After completing my research for the scenario decision analysis, I came across a 2009 presentation on a study sponsored in part by Altman Weil in collaboration with Decision Strategies International and Legal Research Center that uses the same methodology for a similar analysis, looking at the legal industry in 2020. Decision Strategies International is a future-focused strategy consulting firm founded by Paul J.H. Schoemaker, the co-author of *Wharton on Emerging Technologies* and the chapter in that book on scenario decision strategy (both cited to in this paper at *supra* notes 6 and 105, respectively). The 2009 study was larger scale in nature and involved interviews with 50 industry stakeholders. The related presentation is online at: [http://www.altmanweil.com/index.cfm/fa/r.resource\\_detail/oid/a4f6b409-0607-4d2b-88a2-3207a6b1566d/resource/The\\_Legal\\_Market\\_in\\_2020\\_A\\_Special\\_Report\\_from\\_the\\_Consultants\\_at\\_Altman\\_Weil.cfm](http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/a4f6b409-0607-4d2b-88a2-3207a6b1566d/resource/The_Legal_Market_in_2020_A_Special_Report_from_the_Consultants_at_Altman_Weil.cfm).

planning process. I chose the following two key uncertainties based on my assessment of level of importance (very important) and unpredictability (very unpredictable) over the next 15 years: (1) Will the amount of outside investment in NPLs increase significantly or only minimally? (2) What will be the pace of technology adoption by clients? I built the following matrix of four possible scenarios based on these uncertainties (**Figure 7**).



The next sections include a detailed description of how each of these scenarios might possibly play out, depicting an overview (snapshot), the state of clients, and the state of industry players.

In reviewing this or any scenario planning analysis, keep in mind that the aim of scenario planning is “to push people past their comfort zone, and to inspire managers to stop following the pack.”<sup>110</sup> Therefore, by its very nature, scenario decision strategy is designed to challenge deeply held beliefs and existing business models. Because scenarios are designed to stretch the imagination, a related challenge is that some may dismiss resulting scenarios as absurd (and I imagine this will be especially true among attorneys). But rigorous scenario planning can help a company keep from stumbling in the face of disruptive change. As Schoemaker and Mavaddat note, “the reason most firms stand paralyzed

<sup>110</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 240.

in the face of technological [disruptive] change is usually a failure of imagination and an inability to make sense of weak signals that don't fit the traditional frames of mind....However, the mind can only see what it is prepared to see. Scenario planning helps prepare the corporate mind so that it will recognize opportunities faster than rivals, and can move more quickly, with more resolve.”<sup>111</sup>

#### A. Scenario A in 2030: Legal Tech Chasm

**Snapshot.** This is a world where the rate of outside investment that started to flow into the industry a few years after the Great Recession has finally caught up with the size of the potential market opportunity for corporate legal services. The investment NPLs are seeing by 2030 goes well beyond the mere \$450 million in invested capital that we witnessed in 2013. The technology innovation this investment has driven has been phenomenal. Much of the innovation has focused on the ability to use expert systems, like that originally developed by Neota Logic, to automate the analysis of legal issues in real time for business people at companies and deliver “turbo tax” like solutions in complex areas of law. Unfortunately, it turns out that the excitement that drove the growth in investment stemmed from a small group of in-house counsel at technology companies who turned out to be the innovators and early adopters of the technology NPLs have built over the last 15 years. Unfortunately, NPLs now find themselves in the predicament where they are unable to cross the chasm into the mainstream and convince clients that are less technologically inclined to come on board as the early majority.

**Clients.** The main factor that could be driving the slow adoption rate is that companies are not putting as much pressure on their in-house legal departments to reduce costs. This could be the result of several developments. The first is that the economy is exceptionally strong in the year 2030 and companies are no longer scrutinizing legal costs as they did following the Great Recession. So in-house legal departments, in turn, have reduced the pricing pressure and demand for changes in legal service delivery that were so prominent after the Great Recession. Second, the growth in NPLs resulting from the significant amount of outside investment has also provided clients with more options to seek legal services beyond traditional law firms, notwithstanding clients' slow rate of adopting some the newer technology NPLs have to offer. So clients have been able to maintain some of the cost savings they enjoyed following the Great Recession, with NPLs positioned as sustaining innovation, or complements, to the services of top law firms. Third, clients have also gotten much better at managing disaggregated legal services thanks to the increasing role NPLs have played in managed legal services (managing aspects of the in-house legal practice from start-to-finish), including compliance operations, which used to represent the largest percent of the in-house legal budget.

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<sup>111</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 210.

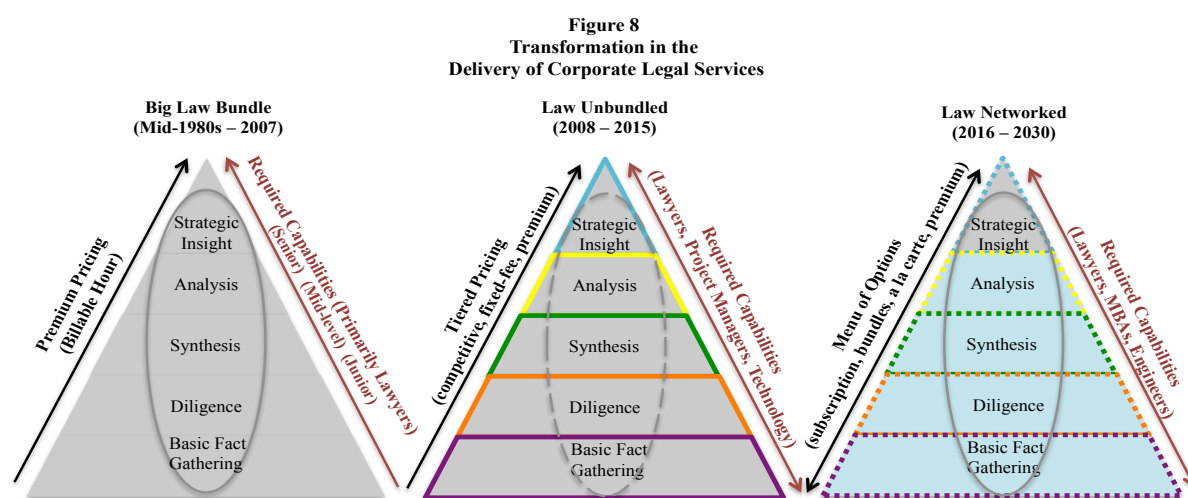
Another related factor is that clients, themselves lawyers, remain skeptical about the ability of technology to do a better job at legal service delivery than an actual lawyer. They've gotten comfortable with technology assisted document review, but they don't yet fully trust technology to analyze a legal situation and deliver related legal advice.

**Industry Players.** NPLs make up a much larger portion of the legal market in 2030, driven by the infusion of outside investment capital. They focus on a large percentage of the bread and butter work for most large corporations. However, given that most clients have been slow to adopt the new technology offered by NPLs, many clients still rely on major law firms for their complex and specialized legal issues, notwithstanding the technological solutions that are available to address some of these very same complex legal issues (and at a much lower cost and with greater accuracy). One thing that has changed is that the Am Law 100 no longer exists. NPLs have taken on much of the work that used to go to the Am Law 100 firms. So the traditional law firms that remain fall into one of two buckets. The first is the super elite that primarily focuses on business transactions. They live on the cutting edge, helping clients to create the next version of debt instruments and new deal structures. The second group is the boutique firms (some large and some small) that specialize in niche practice areas, including specialized litigation, and specific geographies to deal with the localized legal issues across the globe (as the global legal landscape has yet to become more harmonized). Many of these boutique firms were formed through the increased consolidation in the industry. That consolidation focused on rationalizing service delivery within given practice areas versus a drive to mega general practice firms, which is no longer a strategic focus for firms given the role NPLs now serve in the industry.

## **B. Scenario B in 2030: NPLs the New Big Law**

**Snapshot.** In this sketch of the future, NPLs reign supreme because they have closely aligned their operations with those of corporate clients. The large amount of outside investment that has flowed to NPLs, coupled with clients' openness to technology-based legal solutions, has enabled NPLs to not only innovate in dramatic fashion, but also to continue to iterate on innovation working side-by-side with clients. Technology innovation has led to more standardized solutions for the delivery of legal services and the ability to "productize" many legal services through the use of expert systems like those originally created by Neota Logic. Clients have overcome their skepticism and are willing to trust the empirical evidence, which clearly demonstrates that these systems are radically faster and more accurate than a lawyer delivering comparable legal services and advice. In this world, NPLs have built their business models around an outside-in approach to strategy creating a virtuous cycle: (1) developing deep client insight, (2) defining and redefining company purpose to meet clients'

evolving needs, and (3) co-creating solutions with clients. As a result, clients treat NPLs as an extension of their in-house teams, and NPLs are now the networked hub for clients (**Figure 8**). (See [Appendix G—Scenario B: NPLs the New Big Law](#), for an enlarged version of Figure 8.)



Source: Kelly M. Brown (2014)

Looking at Figure 8, up until 2007, top law firms essentially served as one-stop shops for corporate clients using the billable hour model. Lawyers (sometimes supported by a paralegal) delivered all aspects of legal services, from document review and basic fact gathering to analysis and strategic insight. Housing everything under one roof facilitated the internal sharing of information, knowledge, and insight and helped ensure a certain level of consistency in service delivery. The first triangle in Figure 8 depicts this—information can flow freely (represented by the solid oblong connector) with no walls between the various services. However, the world changed dramatically after the Great Recession. Pressures to reduce legal spend and more effectively align cost and value made clients more willing to unbundle legal services and source work to lower-cost providers, including non-traditional providers of legal services, such as LPOs. However, clients' later found that having to manage the process of unbundling and then reintegrating services introduced other inefficiencies into the market. This is represented by the middle triangle in Figure 8, where each type of legal work is walled off from the other (illustrated by the different solid colored lines), and information is not easily

shared across the various types of services (illustrated by the dotted oblong). So since 2016, clients have engaged NPLs to deliver the coordination function Big Law firms used to provide as the one-stop shops for legal services. But NPLs now serve that function using a very different business model. Under this new model, NPLs serve as a “legal network,” working with a variety of service providers and taking the lead to ensure coordination of all service delivery. The triangle at the far right in Figure 8 illustrates this with only dotted colored lines separating the various types of legal services and the solid oblong representing the connector function the NPLs serve. These NPLs employ a range of employees to serve client needs, from lawyers, to MBAs, to engineers, and they deliver pricing via a menu of options, including subscription, bundled, a la carte, and premium pricing models.

**Clients.** In this world, clients are very open to the use of technology to help drive down the cost of legal services. Even though the economy is very strong, clients are not willing to relinquish the control they gained over legal spend during the years following the Great Recession. So they’ve continued to look for ways to reduce legal costs. Two factors driving this are (1) the continued fragmented nature of law across the globe, where clients must rely on localized legal solutions in every jurisdiction they operate in, and (2) the increasingly complex regulatory regime. The great advances NPLs have made in technology innovation have delivered clients solutions that effectively and efficiently reconcile differences across jurisdictions and regulations and deliver related legal advice.

**Industry Players.** As noted earlier, the main industry players are NPLs. All other players serve as “outsourced” providers that the NPLs manage, including the elite law firms. NPLs have developed deep knowledge about clients and their industries and have created an extremely efficient networked system that enables them to quickly match clients’ legal needs to the appropriate legal service provider. In some cases, NPLs deliver the services directly, and in other cases they engage legal service providers all along the legal services hierarchy, from LPOs for basic fact-gathering, to a small group of international elite law firms for strategic insight on matters of first impression.

### C. Scenario C in 2030: Back to Big Law

**Snapshot.** The accelerated pace of change the industry experienced following the Great Recession has slowed dramatically. The economy has been booming over the last 10 years, and there’s no longer a strong imperative for change in the industry, as companies are no longer putting pressure on their in-house legal departments to reduce costs. Demand for legal services from top law firms is again outpacing GDP growth. The strong economic growth has caused outside investors to look to other

industries that seem more lucrative, given the slow rates of technology adoption in the legal industry. So not many alternatives to traditional law firms exist any longer.

**Clients.** In-house legal departments are relieved that their companies are no longer scrutinizing the legal budget. However, as they witness increasing regulatory complexity and no sign of a harmonized global legal landscape across jurisdictions, they worry that their reluctance to adopt new technological approaches for the delivery of legal services places them at the mercy of the traditional law firms. They worry about the implications of this if/when the economy experiences another downturn.

**Industry Players.** The main industry players are the top law firms. Of the original Am Law 100 firms, five have become mega general practice firms and ten have become part of the international super elite. In addition to these, clients look to “large enough” firms and boutique firms for their legal needs, based on the deep relationships they built with some of those firms in the years following the Great Recession. The LPOs that relied mostly on labor arbitrage, versus investment in technology solutions, also remain as players in the market. But most have aligned with only a handful of firms, serving the role of a quasi-captive LPO for those firms. The Great Recession did have one lasting impact on law firms: increased efficiency. Following the Great Recession, most firms became quite effective at project management and process re-engineering, and the resulting cost savings has now become an integral part of their business models. But for the most part, these cost savings are benefiting the top law firms in the form of expense savings and are not being passed through to clients.

#### **D. Scenario D in 2030: Innovation Interrupted**

**Snapshot.** The economy ultimately had a strong recovery following the Great Recession. But within seven years of that recovery, the economy experienced another significant downturn, although not as severe as that of the Great Recession. However, the second downturn was enough to accelerate in-house legal departments’ search for more technology solutions that deliver lower cost legal services. Unfortunately, though, VC interest in the legal industry does not match clients’ renewed interest in technology. Given the initial slow technology rates of adoption in the legal industry following the Great Recession, most outside investors decided to look elsewhere for opportunities, and they’ve not returned to the industry since, notwithstanding clients’ renewed interest in adopting technology.

**Clients.** Some in-house departments have tried to partner with the handful of legal technology companies that remain in the industry (most of which work directly with law firms) in an attempt to build proprietary technology to streamline compliance work, which still represents the largest portion of most in-house legal budgets. However, most in-house departments haven’t been able to secure

sufficient funding from their companies to support such efforts. Even though in-house departments believe that leveraging technology would ultimately reduce legal spend, most companies express little interest in making such investments in their legal departments (cost centers).

**Industry Players.** The Am Law 100 is still mostly intact with about 25 firms breaking off into a group of the “international elite.” The few NPLs that grew in prominence after the Great Recession using technology as a key part of their business model still remain. And they have become the sole source for clients looking to leverage technology to reduce legal spend. But outside investment in NPLs has dried up, so no new NPLs have entered the market and innovation within existing NPLs has stagnated. The second downturn following the Great Recession resulted in a surplus of lawyers that law firms have been able to hire as low-cost temporary staff attorneys to do some of the work that they and clients used to outsource to LPOs. So most of the LPOs that relied on labor arbitrage, versus investment in technology solutions, were forced to exit the market. As was the case in Scenario C, the Great Recession did have a lasting impact on increasing efficiency in law firms.

#### E. Scenario Planning in Practice

As noted earlier, a major challenge with scenario planning is that some may reject the resulting scenarios as fanciful. But when scenario planning is built on a solid understanding of the industry landscape and rigorous research on key trends and uncertainties gathered through surveys (for a large number of participants), interviews, focus groups, and/or workshops, it serves as a powerful strategic planning tool for simultaneously examining multiple variables that could shape the future, beyond what traditional planning approaches offer. For those who decide to take on this type of analysis, Schoemaker and Mavaddat advise that managers can reduce possible resistance to scenario planning and the new ideas the analysis generates if the scenarios are considered “learning” opportunities, presented first as “tentative hypotheses to be tested and validated through further discussion and research.”<sup>112</sup> Once learning scenarios are revised and accepted (with the involvement and backing of key decision makers), they can then become decision scenarios against which a company can test strategies and current and proposed projects. Managers can also quantify how strategies and projects might fare under each of the decision scenarios using tools for strategic risk analysis, such as Monte Carlo simulation and options analysis.<sup>113</sup> Ultimate success in building scenarios and then implementing the resulting strategies requires an investment of time, open-mindedness, imagination, and boldness.

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<sup>112</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 240.

<sup>113</sup> Day and Schoemaker, Wharton on Managing Emerging Technologies, *supra* note 6, at p. 240.

## V. Conclusion: Reimagine Law Through the Eyes of Clients

I offer three takeaways from this study: (1) the seeds of disruptive innovation have been sown in the market for corporate legal services in the U.S. and are taking root; (2) it is essential for top firms to undertake rigorous planning for the future using tools that incorporate uncertainty and complexity; and (3) there's an urgent need for top firms to proactively build client centricity into their business models as a top priority.

What prompted my research was that I perceived change happening in the industry at a level that went deeper than what was already readily apparent in the market following the Great Recession. In completing this research, I find that the fundamental change happening in the industry does resemble the type of change Christensen characterizes as disruptive innovation. Others may argue about the type of change occurring in the industry and whether it represents a disruptive threat. But whether or not one characterizes this change as disruptive, there's strong agreement across my interviews, focus group, and secondary research that the market for corporate legal services in the U.S. has undergone a structural change that opens the door of opportunity for NPLs and requires incumbent law firms to rethink business strategies. Firms need to develop a two-part strategy: one to navigate the current landscape, and another to prepare for the future. Application of analytical frameworks like those used in this study can help guide firms (and NPLs) in deciding what strategies to ultimately pursue as the industry continues to evolve. Scenario decision strategy is a framework that is especially useful for analyzing an evolving industry and all the uncertainty and complexity that brings.

The most important takeaway from this study is not about the technology or the business models current or potential disrupters are using to pursue opportunities in the market. The key takeaway is that while many top law firms may believe they are delivering outstanding client service based on the depth of their legal expertise, clients are looking for a level of value that goes beyond legal expertise that many law firms have been unable or unwilling to successfully deliver. This has opened the door for NPLs to enter the market, gain a better understanding of how clients define value, and then proceed to fill the value gap. My hope is that this study reminds us of the dangers of “marketing myopia” and causes us to pay heed to the imperative that we view the legal industry, and all industries, as a “customer-satisfying process, not a goods [or service] producing process,” working backward from clients’ needs and then creating products and services that satisfy those needs.<sup>114</sup> For those of us in the legal industry, we must challenge ourselves to reimagine law through the eyes of our clients.

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<sup>114</sup> Levitt, Marketing Myopia, *supra* note 101.

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## Appendix B—Summary and Thematic Analysis of Interviews

### Purpose

The purpose of the interviews was to gain greater insight into (1) whether new rivals to law firms are likely to pose a disruptive threat to top law firms or whether the threat will more likely be limited to specific segments of the market, and (2) the forces shaping the industry and related trends and key uncertainties that help inform scenario decision strategy.

### Interviewees

I conducted 14 interviews—12 formal and 2 informal. These comprised the following: current and former executives at nontraditional legal service providers (3), executives at legal technology companies and/or in the legal technology space (3), executives at law firms (2), legal industry experts (4), and law school academics (2). (I obtained input from in-house counsel via the focus group I conducted for this study.)

### Format

The interviews were semi-structured in nature, meaning that I focused on the same set of high-level topics across interviews and modified questions based on the interviewee and the flow of the discussion. I conducted nine interviews in-person and five interviews by phone. I recorded all but three interviews with the permission of interviewees. I assured all interviewees that I would keep their interviews confidential, that I would destroy the recorded interviews after completion of my study, and that I would not reveal anyone's participation in an interview, absent consent.

### Discussion Topics

Interview discussion topics focused on three primary areas: (1) industry landscape, (2) how nontraditional rivals to law firms are organizing for innovation, (3) technologies driving innovation in the legal industry, and (4) strategies for innovating in the industry (now and in the future). [See Appendix C for representative interview questions.](#)

### Thematic Analysis

The following is a thematic analysis of the 12 formal interviews, including summary data on themes generated, the top themes generated, and a list of all themes generated.

#### Summary Data

Item	Count
Total number of 1:1 formal interviews	12
Average length of interview	50 min
Total number of themes	63
Average number of themes	5
Number of themes mentioned by at least 6 people (50% of formal 1:1 interviews)	14

#### Top Themes (mentioned by at least 50% of interviewees)\* (see next 2 pages for all themes generated)

Theme	# of mentions	Theme	# of mentions
Increasingly important role of technology.	9	Labor arbitrage as business model for most LPOs.	6
Accelerated path toward standardized services.	9	Increasing need for PM and related skills.	6
Shrinking Am Law 100 (emerging super elite and anticipated changing face of Am Law 25-50).	9	Industry experiencing structural change.	6
First-mover advantage for the few firms that have invested in building differentiated capabilities in process re-engineering.	8	Key technologies: predictive coding, document assembly, contract analysis, expert systems.	6
Basis for competition changing; need truly differentiated capabilities and strong leadership.	7	Axiom is approaching legal services in fundamentally different way.	6
Disaggregation of legal services (Susskind model).	7	Slow rates of technology adoption in industry.	6
LPOs segmenting but not disrupting market.	6	Great Recession as inflection point in industry.	6

*\*Similar themes have been combined.*

*All Themes Generated**(Order listed is of no significance. Top themes highlighted in blue.)*

Theme	# of mentions	Theme	# of mentions
Hard to change direction in top global law firm w/ 200+ captains; hard to achieve buy-in; makes law firms less nimble/flexible).	4	Key technology: predictive coding.	6
Many competing interests within a partnership,	3	Key technology: document assembly.	5
Growth of industry predicated in large part by lateral partner movement.	3	Key technology: contract analysis.	4
Increasingly important role of technology.	9	Key technology: expert systems (productized expertise—"turbo tax" for some areas of law) (most radical but not necessarily most strategically significant at this moment in time).	3
Increasing complexity in regulatory landscape.	3	Incremental technology: legal project management.	3
Accelerated path toward standardization of services.	9	Big 4 accounting firms as a growing competitive threat.	4
Disaggregation of legal services and the evolution from one-stop shop of yesterday.	7	UK Legal Services Act 2007 and eventual impact of alternative business structures (ABS) on the global market and ABA 20-20 commission.	5
Document review not a core competence of law firms	4	Axiom and its role: law firm or something else.	5
Law firms building captive LPOs (whether that's practical in the long run).	4	Future with law firm legal service providers and non-law firm legal service providers that combine technologies, services, and people in unique ways.	2
LPOs not disrupting the market (taking segments of market and serving as complementors to law firms).	6	Legal tech companies that will mostly be horizontal (vs. vertical) companies serving many customers.	3
Labor arbitrage as business model for most LPOs.	6	Technological capabilities significantly outpacing rates of adoption in the industry (by clients and law firms).	6
Elite firms (Am Law 25-50) feeling less impact of change (beyond billing & budgeting). Likely to experience only incremental change w/ impact to PPP, but need to stay on leading edge to maintain status.	5	Anticipated change/expansion in role of LPOs (e.g., regulatory work), but not disruptive role.	4
Anticipated changing face of Am Law 25-50 (and potential evolution of some into more pure plays).	5	Shrinking Am Law 100 as legal services become more standardized (more consolidation; emerging oligopoly).	9
Anticipated use of predictive coding beyond document review: use in hiring, litigation decision outcomes, etc.	4	Enabling technologies: most of current legal technologies reinforce the way lawyers work today. Question re whether way lawyers work has fundamentally changed.	3
LPOs are not legal tech companies, they use low tech to manage processes and people.	5	Technology has become a problem solver and problem creator (e.g., electronic documents, email, etc. have created more and more information to review for litigation, due diligence, etc.)	2
LPOs now starting to take on large-scale contract review (going beyond litigation document review).	2	When technology is at the heart of the way lawyers work and fundamentally changes how lawyers work, that will be disruptive.	2
Future role of document assembly technology (e.g., KM Standard), reducing number of people needed.	4	Management techniques law firms are using to lower costs (e.g., outsourcing back-office functions) are easy to imitate and not strategic.	5
Increasing need for project management and related skills.	6	Firm that have made strategic investment in building actual capabilities in process re-engineering to drive greater efficiency are few but could have first-mover advantages (e.g., Seyfarth, Addeleshaw).	8
Law firms' drive to efficiency driven by clients' drive to bring down total legal spend as % of revenue.	4	Firms need to build strategic capabilities (need to think differently): traditional bases for competition have changed. Need to proactively choose market want to compete in and then figure out how will compete in that market in differentiated way.	7
Industry experiencing structural change that's different from past recessions.	6	Law firms notoriously ineffective in predictability of legal costs.	2

*All Themes Generated (continued)*

*(Order listed is of no significance. Top themes highlighted in blue.)*

Evolution toward a world of very few elite law firms (equivalent of Mayo Clinic surgeons).	5	Axiom is not an LPO.	5
Long-term threat imposed by the rudimentary leadership selection, development, and succession process in current law firm business model.	4	LegalZoom as a longer-term disrupter: low-end legal work that doesn't appeal to current market, with potential to move up market over time (long-term evolution).	3
Demand for lawyers will likely outpace GDP growth, but question will be which legal service providers will clients look to in order to meet that demand.	4	Legal education skills gaps (need for more practical legal skills and business acumen and tech skills).	3
Evolution toward more managed legal services.	5	Law firms as willing (and happy) to give up document review (lower-margin work) to LPOs.	3
Axiom thinks about how legal work gets done in a way that is fundamentally different than how law firms think about it (they are engineers, business people, consultants).	6	Empirical rigorous comparative studies on quality of machine learning techniques vs. humans and evidence that machine learning is radically cheaper, faster, and more accurate than human review.	4
Challenges facing the law <u>school</u> business model.	4	Key strategic issue: how do firms that want to stay in top Am Law 25 stay on the leading edge (like firms such as Skadden).	5
Richard Susskind's evolution of the legal industry.	5	Pace at which in-house counsel will change their behavior (is a key uncertainty).	5
Surprise at reaction to project management as something new & different, when other industries have been using it for 60+ years ("appalling" lack of inefficiency in the legal industry).	3	Whether clients will want certain legal services at all in the future—what will be their appetite for legal services (the idea of companies getting by with less legal intervention; non-consumption).	2
Slow moving industry (slow to change—both clients and law firms): industry not going to collapse tomorrow.	3	Great Recession as an inflection point in the industry.	6
Radical change requires radical change in revenue model and partner compensation model.	2	Changing demographics in the industry: Aging partner population in law firms.	3
Challenges facing law school graduates as industry drives toward greater efficiency: what types of legal employment and development opportunities will be available to them.	5	Technology enabling greater access to law at lower end (small businesses and individual consumers) (e.g., LegalZoom).	2
Anyone who ignores the LPOs and other new types of competitors would be "foolish."	3		

## Appendix C—Representative Interview Questions

The following is a representative sample of the interview questions and discussion topics. [See Appendix B for a summary and thematic analysis of the interviews.](#)

### Industry Landscape

- What are the long-term trends impacting the market for high-end legal services in the U.S.? What are the key uncertainties impacting the market?<sup>115</sup>
- What regulatory changes, if any, do you see on the horizon that could impact the competitive landscape?
- How do you think elite law firms have been positioning themselves to compete in the market?
- What role do you see alternative legal service providers (ALSPs) playing now and in the future?<sup>116</sup>
- Have ALSPs brought innovation to market ahead of elite law firms? If so, how?
- Do you think ALSPs are focused on only certain segments of the legal market, or are they positioning themselves to compete directly with elite law firms all along the value chain?
- What are the biggest commercial opportunities in the market in the next 5-10 years?

### Additional Questions by Type of Interviewee

#### *Executives of nontraditional providers of legal services*

- What types of business models are ALSPs adopting?
- How are ALSPs organizing themselves operationally to deliver legal services (*e.g.*, virtual teams, alliances with established law firms)?
- What are the key technologies that ALSPs are using? Which do you think are the most strategically significant?
- What methods have ALSPs used to bring innovative business models and technology to market ahead of traditional firms?

#### *Executives in legal tech companies*

- What are the key technologies that ALSPs are using? Which are the most strategically significant?
- What is the nature of these technologies (architectural or component change; radical or incremental; disruptive or not)?
- Are there key current or emerging technologies that have the potential to position ALSPs to become viable rivals to elite law firms?
- How do you think rates of adoption for legal tech differ among the following groups: (1) law firms, (2) in-house counsel, and (3) ALSPs? For law firms, any differences you see among different segments of the Am Law 100?
- In the land of Big Law, are there any true lead users of technologies and processes that mimic those of LPOs (or go beyond)? If so, are they buying or building these capabilities?
- What emerging technologies do you see on the horizon that would further accelerate change in the industry?

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<sup>115</sup> For the interviews, I defined high-end legal services as corporate (Fortune 500) legal services offered by the top 100 law firms, also known as the Am Law 100 (I also used “elite law firms” to characterize the top 100 law firms).

<sup>116</sup> In general, I asked interviewees how they would define an ALSP, and then I shared my definition for the purposes of the interviews: new rivals to law firms that include not only legal process outsourcers (LPOs), but also “new model” firms, such as Axiom and Clearspire.

### *Legal Industry Experts and Law Firm Executives*

- What is the job that you think clients hire Am Law 100 firms to do? Do they hire Am Law 25 or 50 firms for yet different jobs?
- The success of top law firms of the future will likely depend on a different set of capabilities, tools, and perspectives. What do you think is needed in this regard in the short-term? In the long-term?
- For an Am Law 100 leader with a crystal ball, what top three questions about the industry's future should that leader ask? Same question, but from the perspective of in-house counsel?
- How can top law firms improve their peripheral vision to see around the corner sooner as technology continues to advance and more nontraditional rivals enter the market?

### *Law School Academics*

- Are LPOs and law firm alternatives (incl. new model firms) positioning themselves as viable rivals to elite firms (disruptive model), or do you see them as limiting their focus to a segment of the market and more likely to become complements to elite firms? In either case, what opportunities/challenges does this present for law students preparing to enter the job market?
- The success of elite firms of the future will likely depend on a different set of capabilities, tools, and perspectives. What do you think is needed from elite firms in this regard? What are law schools doing (or need to do) to prepare law students for this future?
- What do you see as the biggest commercial opportunities in the legal industry in the U.S. over the next 10 years, and what related opportunities does this pose for law students?

### Wrap-up Questions

- Is there anything I didn't ask that you think I should have asked?
- Is there anyone else who you would recommend that I interview?

## Appendix D—Focus Group Methodology and Results

### Purpose

The purpose of the focus group was to yield additional input on trends and key uncertainties for the scenario planning analysis, and the output also generated additional insight into potential disruptive threats in the market.

### Attendees

The focus group consisted of five corporate in-house counsel who are decision makers in hiring/firing legal service providers. All were from Fortune 500/1000 companies, or the equivalent, and their industries spanned financial services, technology, real estate, and health care. I assured attendees that I would keep their individual participation confidential (and one of the ground rules we established for the entire group was to respect the confidentiality of participants).

### Format and Framework for Discussion

The focus group was 2.5 hours. I facilitated the focus group with a former colleague, Shelly Schoo, who has extensive experience facilitating strategic planning sessions for senior executives as a consultant and in-house at law firms and technology companies. We designed the focus group around the scenario planning and decision framework described by Paul J.H. Schoemaker and V. Michael Mavaddat in *Wharton on Managing Emerging Technologies*.<sup>117</sup> We established a short list of “ground rules” for the program, including respect for confidentiality of participants. We used the following parameters to frame our discussion:

- **Scope:** U.S. market for Fortune 500 corporate legal services (beyond traditional law firms; also necessarily touches on global market for corporate legal services).
- **Timeframe (lens):** ≈ next 10-15 years; think 2030 (focus on the future: even forces deemed too remote or weak today).
- **Perspective:** In-house counsel.

We then turned to discussion of key long-term trends, key uncertainties, and scenario building. The output is set forth below, in “Results Detail.” We closed the session with a brief wrap-up and key takeaways, and I delivered a summary of the focus group output to attendees after the program.

### Results Detail

#### *Key long-term trends identified by focus group (next 15+ years)*

*(Order listed is of no significance.)*

<b>Increasing focus on value for money.</b> Increasing need to do more with less, more focus on the cost-value equation, more scrutiny by business people of the billable hour model.	<b>Increased use of law firm substitutes.</b> There’s increasing openness by in-house counsel to adopt innovative approaches to how legal services are bought and delivered. A key question in-house counsel is asking: “What can be done by a lower-cost resource (including non-lawyers and technology)?”
<b>Convergence of outside law firm relationships.</b> More efforts to limit the number of outside law firms engaged to lower the total cost of legal services.	<b>Increased use of technology.</b> In-house teams will leverage technology to greater and greater degrees, including for invoice review, e-discovery, automation of document production (e.g., auto-generated licensing agreements that business people can access), smarter and more accurate search functions, “bots” with learning capabilities, technology to facilitate management of global projects and teams (incl. outsourcing vendors).

<Continued on next page.>

<sup>117</sup> See George S. Day and Paul J.H. Schoemaker, *Wharton on Managing Emerging Technologies*, Chapter 10, “Scenario Planning for Disruptive Technologies.”

*Key long-term trends identified by focus group (next 15+ years) (continued)*

*(Order listed is of no significance.)*

<b>Standardization.</b> Quest to drive greater efficiency and reduce outside legal spend; balance between cookie cutter, pre-approved language and flexibility. Will include standardization of things we would never think possible today.	<b>Limited investment in in-house technology, more use of cloud.</b> In-house teams see the opportunity to leverage more technology but cost constraints limit their ability to fully leverage technology-based solutions in-house (other than e-billing solutions). Improvement in cloud security could deliver access to more affordable technological solutions in-house.
<b>On-demand legal services.</b> Rationalizing the structure of in-house and outside legal teams to get the right level of work to the right level of person at the right cost—legal services when and where needed. Emphasizes standardization with the flexibility to engage specialized resources when needed (specialized resources not limited to traditional top law firms, but would include specialized boutique firms).	<b>Relaxed document retention requirements.</b> In-house teams are already exploring the possibility of relaxing document retention requirements to reduce the number of documents retained by in-house teams and the related costs.
<b>Full-spectrum in-house coverage (but not all purpose).</b> In-house coverage for a greater portion of legal needs, while leveraging the full spectrum of outside legal services as well (incl. LPOS, new model firms, legal technology).	<b>Globalization and optimized legal solutions.</b> Doing business in more countries, with localized legal solutions (multiple legal frameworks across multiple countries), which increases costs. In-house teams hope for regulation that will deliver more harmonized global solutions. Until then, teams are applying 80-20 rule and using risk analysis to determine when and how to optimize legal solutions across jurisdictions to lower costs.
<b>MBAs leading in-house operations.</b> Trend to embed MBAs as part of in-house teams in legal operations roles to increase operational efficiencies and lower the cost of legal services.	<b>Increased regulatory complexity.</b> Complexity, volatility, and the pace of change continue to increase in the area of legal compliance, along with the number of complex legal products (e.g., financial services), requiring human low-tech vs. high-tech standardized solutions.
<b>More non-lawyers as part of in-house teams.</b> Increasing use of non-lawyers (contract managers, paralegals) to produce and manage standardized work through the use of playbooks and other training tools.	<b>Litigation management.</b> Litigation is a company priority for many in-house teams, and it is an area where it is difficult to cut costs in real time, so companies will continue to look for more effective ways to predict and manage the costs of litigation.
<b>Junior lawyers on in-house teams.</b> While most in-house teams do not recruit junior lawyers, for those in-house departments that move toward more full-spectrum coverage, that could eventually present development opportunities and career paths for junior attorneys in-house.	<b>Big Data and data privacy.</b> The rise of big data creates increasing privacy challenges, and the privacy legal landscape is quite fragmented.
<b>Increased use of remote services (outsourcing).</b> With increased standardization of legal work will come increased outsourcing to lawyers and non-lawyers in other jurisdictions. Includes engaging LPOs to take first pass at drafting various legal agreements, with the in-house team finalizing them.	<b>Corporate consolidation.</b> A world where more and more companies consolidate through M&A, which will result in a more complex client base.

*Key uncertainties identified by focus group (next 15+ years)*

*(Order listed is of no significance.)*

Will the regulatory climate of business migrate toward greater complexity or toward simplicity?	How will the evolution of the cloud and big data impact legal services? Will the cloud be more secure?
What will be the pace of globalization?	What will be the pace of standardization and commoditization of legal services?
How will changing demographics affect corporate legal services in the future? (Consider also how Millennials and future generations will prefer to engage/receive legal services.)	What will be the rate of adoption by in-house teams of legal technology that allows for more standardized approaches to the delivery of legal services (both from the perspective of in-house teams' ability to invest in such technologies and the willingness to trust and rely on such technologies)?
How will global economics continue to change in the future and what will be the related impact on the need for corporate legal services?	How will in-house teams and business people prefer to access and use information in the future?
Where will the regional and global business centers be located in the future?	

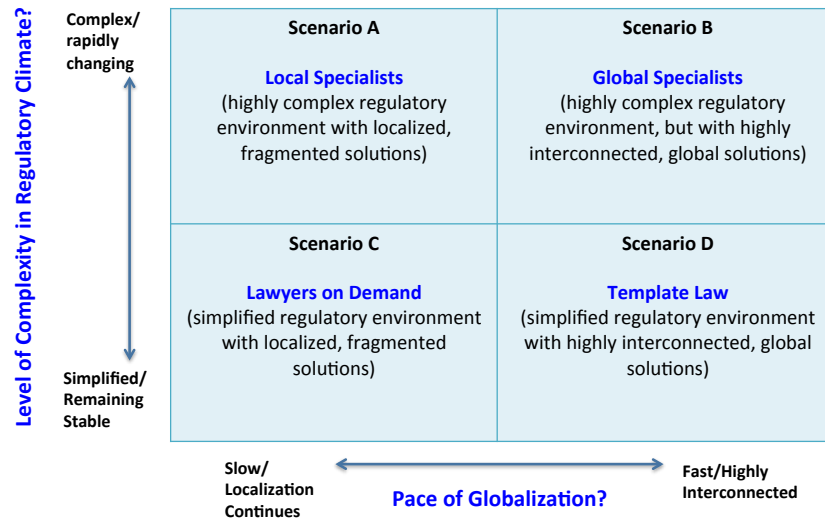
### Focus Group Scenario Building

The group identified the following top two key uncertainties for scenario building: (1) regulatory climate for business, and (2) pace of globalization. Using these two uncertainties, we built the following 2x2 matrix to create four possible strategic planning scenarios for the future market for corporate (Fortune 500) legal services in the U.S.

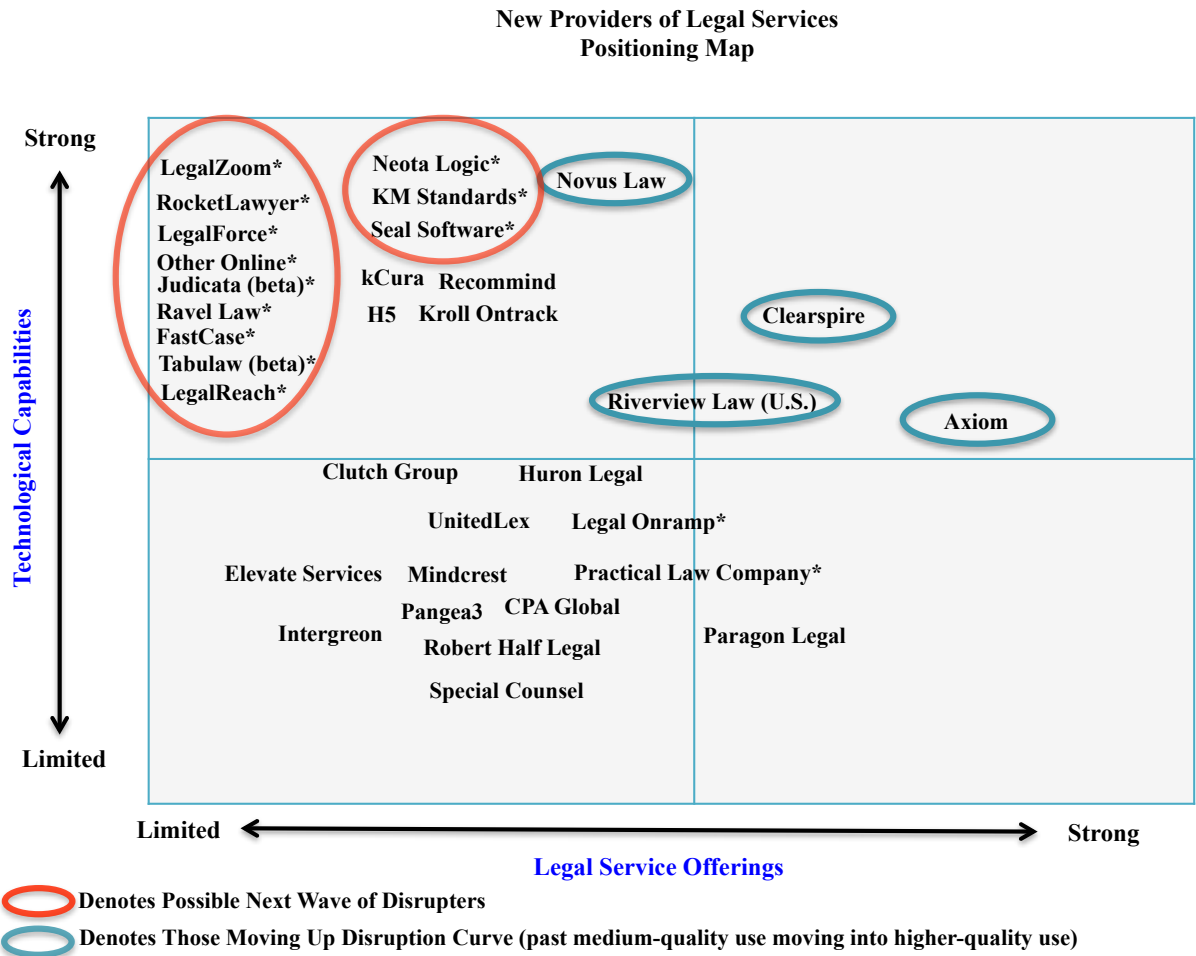
#### Future of Market for Corporate (Fortune 500) Legal Services in U.S. (by 2030)

Based on the following two key uncertainties

- What will be the level of complexity in the regulatory climate for Fortune 500 companies?
- What will be the pace of globalization?



Appendix E—Positioning Map of New Providers of Legal Services (NPLs)



\*As set forth in the Industry Backdrop, I categorized the companies identified with an asterisk as potential new entrants (the others I identify as potential substitutes).

Source: Kelly M. Brown (2014)

## Appendix F—Scenario Planning Analysis

### Methodology

Scenario planning provides a framework for strategic planning in complex and uncertain environments.<sup>118</sup> It is focused on organizing the underlying uncertainties in the market to analyze a set of possible future worlds and possible paths for preparing for those worlds.<sup>119</sup> Scenario planning has the benefit of enabling managers to consider the impact multiple factors could have on an industry versus analyzing just one factor in isolation. Scenario planning addresses three challenges characteristic of emerging business models and technologies (a) uncertainty, (b) complexity, and (c) paradigm shift, and helps tell a story of how various uncertainties might interact under a variety of different assumptions.<sup>120</sup>

Based on the process set forth in *Wharton on Managing Emerging Technologies*, scenario planning involves the following ten-step process. (1) Frame the critical issues in terms of time, scope, and decision variables. (2) Map the stakeholders. (3) Identify and study the main forces shaping the future. (4) Identify trends. (5) Identify key uncertainties. (6) Select the two most important key uncertainties. (7) Assess the logic of each scenario for internal consistency, and refine as needed. (8) Assess the revised scenarios in the context of how key stakeholders might act in them (“learning scenarios”). (9) Reexamine the internal consistencies of the learning scenarios and assess whether any of those with more complex interactions should be assessed using quantitative modeling. (10) Reassess the uncertainty ranges of the main variables and determine quantitatively how each looks under different scenarios.<sup>121</sup>

### Framing of Issues

**Timeframe (lens):** Next 15 years (think 2030).

**Scope:** U.S. market for Fortune 500 corporate legal services (also necessarily touches on global market for corporate legal services).

**Content Development:** Interviews with key stakeholders and thought-leaders, focus group with in-house counsel, and secondary sources.

### Stakeholders

For this study, stakeholders include those who can exert a leadership role in the industry: corporate clients, lawyers, incumbent law firms (Am Law 100), nontraditional providers of legal services, legal technology companies, legal educators, and relevant regulatory bodies.

### Master List of Forces

I include, below, the forces identified through secondary research, the interviews for this study, and the focus group that are likely to shape the future of the legal industry over the next 15+ years (by 2030). Consistent with the approach recommended in *Wharton on Managing Emerging Technologies*, the focus is on identifying fundamental drivers, rather than derivative issues, covering a broad range of forces: economic, social, technological, and political and regulatory forces. I rated each force on this master list on a scale of 1-5 in terms of its importance and predictability based on the same research sources used to develop the master list. In doing so, I considered the following two questions: (1) How important is a particular force (relative to all the other forces) in shaping the future of the legal industry? (1=very unimportant; 5=very important) (2) How predictable is this force in terms of its overall direction and impact within the timeframe considered (next 15+ years)? (1=very predictable; 5=very unpredictable). See the next section, “Classifying Forces into Trends and Uncertainties,” which I used to categorize the set of forces into no more than about 10 key uncertainties and about 14 trends.<sup>122</sup>

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<sup>118</sup> Day and Schoemaker, *supra* note 117, at p. 206.

<sup>119</sup> Day and Schoemaker, *supra* note 117, at p. 206.

<sup>120</sup> Day and Schoemaker, *supra* note 117, at pp. 211-212.

<sup>121</sup> Day and Schoemaker, *supra* note 117, at pp. 214-217.

<sup>122</sup> Day and Schoemaker, *supra* note 117, at pp. 221-223.

## Master List of Forces (continued)

(Order listed is of no significance. See “Classifying Forces into Trends and Uncertainties” (next section) for legend to highlighted rows.)

Force (F)	I	P	Force (F)	I	P
1. Globalization (vs. localized rule of law)	5	4	2. Disaggregation (unbundling) of legal services	5	1
3. Pace of technological advancement	5	1	4. Pace of technology adoption	5	4
5. Increasingly important role of technology	5	1	6. Impact of online providers entering from below	2	5
7. Increasing sophistication of tech (vs. humans)	5	1	8. Liberalization of legal markets <b>outside</b> of U.S.	2	1
9. Increased standardization of legal services	5	1	10. Level of outside investment in U.S. legal industry	5	4
11. Liberalization of U.S. legal market	4	5	12. Extent of corporate consolidation	2	3
13. Complex regulatory environment	5	4	14. Increasing use of the cloud	5	3
15. Increasing rise of big data	5	1	16. Industry based on systems that follow rule of law	5	5
17. Increasing concerns about data privacy	4	1	18. Preferred methods for accessing information	5	3
19. Shifting global business centers	5	3	20. Extent clients continue to demand change	5	4
21. Increased consolidation of law firms	5	4	22. Evolution of law firm business model	4	3
23. Changing demographics: aging partnership	3	1	24. Generational differences impacting work style	3	2
25. Developing legal talent for the future	5	3	26. Changing methods for engaging legal services	5	5
27. Supply of legal talent at all levels	5	3	28. Non-consumption of legal services as option	5	3
29. Pressure from clients for lower cost legal services	5	4	30. More law firm dissolutions	5	3
31. Need for business people running law firms	3	3	32. Growth in industry predicated on lateral hires	5	1
33. Growth in # new providers of legal services	5	4	34. Clients use of convergence to reduce # law firms	3	3
35. Difficulty in initiating change in law firms	4	2	36. Client access to comparative billing data	5	1
37. Shrinking Am Law 100	5	4	38. Emergence of super elite set of law firms	5	3
39. Evolution toward more managed services	3	4	40. Great Recession accelerated structural change	5	1
41. Big 4 accounting firms as competitors via UK	3	4	42. Exponential increases in amount of data & info	5	1
43. Shifting focus on output vs. input (billable hour)	3	4	44. Copycat strategy in drive toward more efficiency	2	1
45. Law schools ill prepared for future industry needs	5	2	46. Shift in demand away from Am Law 50	5	3
47. Greater market segmentation	5	2	48. Empirical data on effectiveness tech vs. humans	5	1
49. Changing revenue models	5	3	50. Changing career paths for lawyers	5	1

## Classifying Forces into Trends and Uncertainties

The following two tables list Trends and Uncertainties derived from my analysis of the forces likely to shape the legal industry over the next 15+ years based on ratings assigned to each item on the master list of forces based on importance and predictability (1=very unimportant; 5=very important) (1=very predictable; 5=very unpredictable). I labeled as “Trends,” those very important forces (=5) deemed very predictable ( $\leq 2$ ). I labeled as “Key Uncertainties” those very important forces (=5) deemed very unpredictable ( $\geq 4$ ). Consistent with the process set forth in *Wharton on Managing Emerging Technologies*, I combined two or more forces based on similarity of meaning/content to reduce the set of forces into no more than about 10 key uncertainties and close to 14 trends.

	Trends
	Key Uncertainties

## Trends

T#	Relevant Force(s)	Description of Trend (T)	T#	Relevant Force(s)	Description of Trend (T)
T1	3	Pace of technological change is increasing	T7	2	Increasing disaggregation of legal services
T2	5	Importance in the role of technology in delivering legal services is increasing	T8	32	Growth in the industry predicated in large part on lateral hires
T3	7, 48	Machine learning is radically cheaper, faster, & more accurate than human doc. review and sophistication is growing	T9	36	Increase in access to comparative billing data, giving clients more power to negotiate lower legal costs
T4	9	Ability to standardize legal services is increasing	T10	40	Great Recession accelerated what will be structural change in the industry
T5	15	Increasing rise in big data	T11	42	Exponential increase in amount of data & info. driving greater reliance on technology
T6	47	With increased disaggregation of legal services there's more market segmentation	T12	45,50	Career paths for lawyers are changing; law schools not prepared for future industry needs

## Key Uncertainties

(Key uncertainties used for final scenario planning matrix are highlighted in yellow.)

U#	Relevant Force(s)	Description of Key Uncertainty (U)	U#	Relevant Force(s)	Description of Key Uncertainty (U)
U1	1	What will be the pace of globalization (will the emphasis be on localized legal solutions or a more harmonized legal landscape)?	U6	37	Will the Am Law 100 shrink and will a much smaller super elite group of law firms emerge?
U2	13	Will the regulatory climate of business migrate toward greater complexity or toward simplicity?	U7	4	What will be the pace of technology adoption by both clients and law firms?
U3	21	Will the pace of consolidation among law firms continue to increase, resulting in a few mega firms?	U8	10	Will the amount of outside investment in the U.S. legal industry, especially in new providers of legal services increase significantly or only minimally? (Also ties to possible future state of liberalization in the U.S. legal market.)
U4	29, 20	As the economy recovers, will clients continue to place pressure on law firms to change approaches to deliver lower cost legal services?	U9	16	Whether and how quickly are we headed to a world economy that will be driven by countries that don't have the rule of law or an independent judiciary?
U5	33	What will be the pace of growth in new providers of legal services (NPLs)? (Also ties to possible future state of liberalization in the U.S. legal market.)	U10	26	What will be the methods for engaging legal services and will companies opt to forgo certain legal services entirely (non-consumption) in favor of less legal intervention?

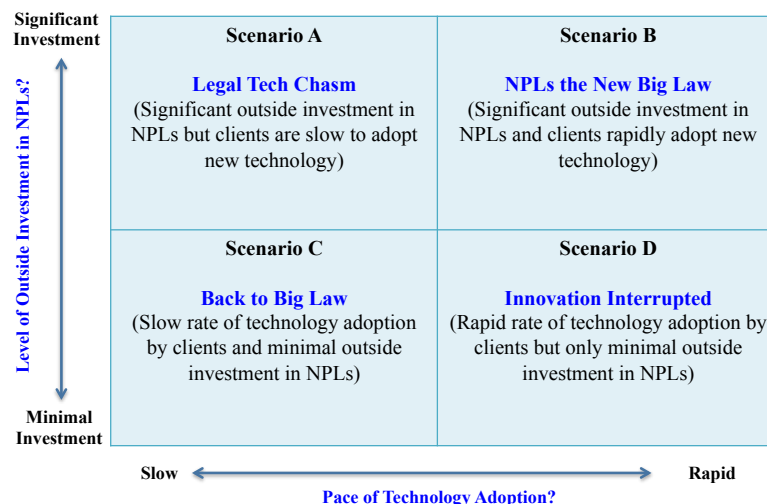
## Scenario Planning Matrix

From the list of key uncertainties, I selected two central uncertainties (highlighted above in yellow): (1) Will the amount of outside investment in new providers of legal services increase significantly or only minimally (U8)? (2) What will be the pace of technology adoption by clients (U7)? The first is about changes in the business model, and the second is about how clients will use information. I used these to construct a scenario planning matrix of four possible future worlds in the legal industry. Each cell in the matrix represents the core of a possible future scenario in the market for corporate legal services in the U.S. ([See also next page for Scenario Blueprint.](#))

Future Market for Corporate (Fortune 500) Legal Services in the U.S. (by 2030)

Based on the following two key uncertainties

- What will be the pace of technology adoption by clients?
- Will the amount of outside investment in NPLs increase significantly or only minimally?



Source: Kelly M. Brown (2014)

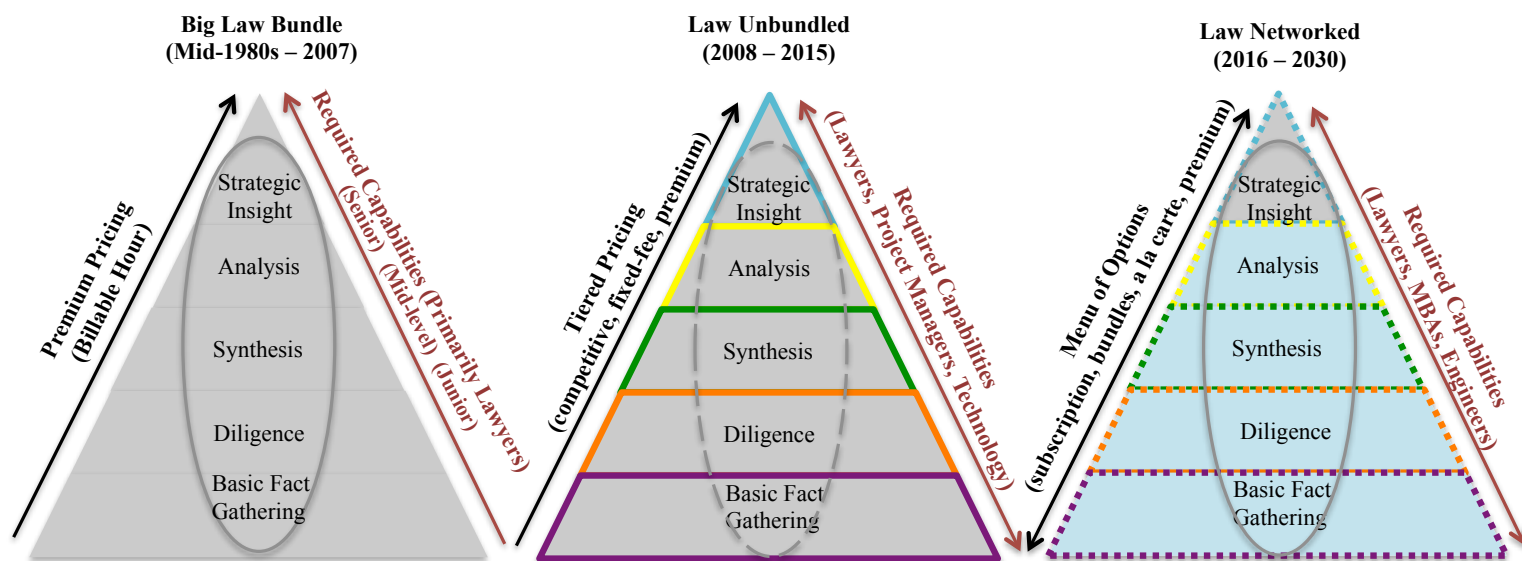
## Scenario Blueprint

I incorporated the other top uncertainties into the consideration of the scenarios for constructing a full description of each scenario. I rated the impact of these scenarios on each of the other top uncertainties as high (H), medium (M), or low (L). [I describe the four scenarios in detail in the body of the study.](#)

	Top Key Uncertainties Incorporated Into Final Scenarios	Scenario A (Legal Tech Chasm)	Scenario B (NPLs New Big Law)	Scenario C (Back to Big Law)	Scenario D (Innovation Interrupted)
U1	What will be the pace of globalization (will the emphasis be on localized legal solutions or a more harmonized legal landscape)?	M	H	M	L
U2	Will the regulatory climate of business migrate toward greater complexity or toward simplicity?	M	H	M	L
U3	Will the pace of consolidation among law firms continue to increase, resulting in a few mega firms?	H	H	H	H
U4	As the economy recovers, will clients continue to place pressure on law firms to change approaches to deliver lower cost legal services?	M	H	M	H
U5	What will be the pace of growth in new providers of legal services (NPLs)? (Also ties to possible future state of liberalization in the U.S. legal market.)	M	H	L	L
U6	Will the Am Law 100 shrink and will a much smaller super elite group of law firms emerge?	M	H	H	M
U9	Whether and how quickly are we headed to a world economy that will be driven by countries that don't have the rule of law or an independent judiciary?	L	H	L	L
U10	What will be the methods for engaging legal services and will companies opt to forgo certain legal services entirely (non-consumption) in favor of less legal intervention?	M	H	H	M

## Appendix G—Scenario B: NPLs the New Big Law

### Transformation in the Delivery of Corporate Legal Services



Source: Kelly M. Brown (2014)