

From Big Law to Lean Law

In a provocative 2009 essay entitled *The Death of Big Law*, the late Larry Ribstein predicted the shrinkage, devolution and ultimate demise of the traditional large law firm. At the time virtually no practicing lawyer took Larry seriously. The nation's large firms were only one year removed from record revenues and profits. Several decades of relentless growth had conditioned all of us to expect the inevitable rebound. Similarly, few law professors (including me) grasped the full reach of Larry's analysis. His essay was not just another academic analysis. Rather, he was describing a seismic paradigm shift that would profoundly disrupt the economics of legal education and cast into doubt nearly a century of academic conventions. Suffice to say, the events of the last three years have made us humbler and wiser.

This essay revisits Larry's seminal essay. Its primary goal is to make Larry's original thesis much more tractable and concrete. It consists of three main pillars: (1) the organizational mindset and incentive structures that blinds large law partners to the gravity of their long-term business problems; (2) a specific rather than abstract description of the technologies and entrepreneurs that are gradually eating away at the work that has traditionally belonged to Big Law; and (3) the economics of the coming "Lean Law" era. With this data in hand, we can begin the difficult process of letting go of old ideas and architecting new institutions that better fit the needs of a 21st century economy.

From Big Law to Lean Law

William D. Henderson[†]

Our late colleague, Larry Ribstein, left us prematurely. In terms of academic productivity, however, he had already lived several lives. He was a dominant figure in not one legal subfield, but several.¹

One of these subfields was a focus on the legal profession and lawyer regulation. Larry's core critique, developed over a series of articles,² was how the legal ethics rules, through bans on noncompete agreements and nonlawyer investment, were limiting the ability of lawyers to create new forms of organization that would facilitate optimal levels of risk sharing and innovation. Larry advanced these arguments long before the first signs of trouble. When the large corporate law firms were finally showing signs of stress, Larry reviewed the evidence. He concluded that most large law firms were evolving into highly inefficient, sprawling structures that worked to the benefit of individual lawyers and, as a result, were hollowing out the very mechanisms needed to strengthen and grow organization. He also took stock of broader trends affecting the market for corporate legal services. The clients were wising up. Moreover, they had other options. Playing out the logical next steps, Larry confidently pronounced the death of Big Law.³

As someone who closely follows the legal market and talks regularly with a wide range of lawyers, I can say with confidence that three years after the

[†] Professor of Law at Indiana University Maurer School of Law and Director of the Center on the Global Legal Profession.

¹ Larry Ribstein SSRN homepage has abstracts for 95 articles posted since 1997. Substantive areas include agency and partnership, limited liability companies, corporate law, securities law, corporate governance, choice of law, legal ethics and lawyer regulation, law firms, class actions, jurisdictional competition, federalism, and lawyers in cinema. See http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=47251.

² See Bruce H. Kobayashi & Larry E. Ribstein, *Law's Information Revolution*, 53 ARIZ. L. REV. 1169 (2011) (foreseeing the partial replacement of legal practitioners by "legal information engineers" who put highly valuable legal information into legal products that can be sold over and over again to a broad audience); Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649 (2011) (arguing that "for the first time, [law schools may] need to provide the type of education the market demands rather than serving lawyers' and law professors' preferences"); Milton C. Regan Jr., Bruce MacEwen, & Larry Ribstein, *Law Firms, Ethics, and Equity Capital: A Conversation*, 21 GEO. J. OF LEG. ETHICS __ (2007); Larry E. Ribstein, *Ethical Rules, Law Firm Structure and Choice of Law*, 69 U. CINN. R. REV. 1161 (2001) (arguing the ethical rules on capital structure and noncompetition agreements, particularly for firm with offices in multiple jurisdiction, stifles innovation and "may perversely hurt the very clients such rules are supposed to protect"); Larry E. Ribstein, *Ethics Rules, Agency Costs and Law Firm Structure*, 84 VA. L. REV. 1707 (1998) (analyzing several ethical rules that regulate non-lawyer ownership of law firms, vicarious liability, noncompetition agreements and conflicts of interest that compound rather than mitigate the problem of agency costs between lawyers and clients).

³ See Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749 (2010). A draft of this article appeared in SSRN in the fall of 2009.

publication of *The Death of BigLaw*, Larry's thesis is not widely accepted, let alone understood, by most large law firm lawyers. Yet, for reasons entirely rooted in self-interest and survival, it ought to be. By extension, legal education, which over the last several decades became heavily dependent on the fortunes of BigLaw,⁴ also needs to grapple with the Larry's core message of value creation.

The purpose of this essay is to move from the plane of high theory, where Larry Ribstein was a virtuoso, to the ground floor of practical application, where law firm leaders and educators have to assess myriad messy facts and make decisions about what to do next. BigLaw is not dead—Larry was trafficking in metaphor—but it has plateaued. It is also losing market share.⁵ This creates an environment of uncertainty that is rarely acknowledged by law firm leaders and legal educators. Something new is going to gradually supplant, or at least rival, BigLaw; and as a practical matter, none of us really know what it is going to look like.⁶ In times of massive structural shift, strategy is little more than an informed guess. Yet, such an approach is more likely to be successful than one that relies on false, outdated assumptions.

Drawing upon Larry Ribstein's insights and some more recent market data, I will attempt to draw a more concrete picture of the state of BigLaw, the evolving market for corporate legal services, and how the future might unfold. The Essay is organized in three parts. Part I is a summary of Larry's primary critique of BigLaw. Part II adds color and concrete detail to Larry's prediction by examining recent trend data for both large law firms and non-law firm competitors that Larry's predicted would grow at Big Law's expense. Although Big Law remains big, it appears to be losing market power. Further, Larry may have underestimated the dynamism of nonlawyers entrepreneurs operating in the legal industry and overestimated the need for regulatory changes to spur innovation.⁷ The breadth

⁴ In 2007, 42.5% of all law school graduates entering private practice started their careers at firms of 100 lawyers or more. See NALP Bulletin (July 2012). Since that time, the proportion has dropped to 23.0%. This latter figure understands the magnitude of the drop because only 45% of the class of 2011 obtained entry level jobs in private practice, down from 55% for much of the preceding decade. See *id.*

⁵ See Toby Brown, *Is the Legal Market Flat?*, 3 Geeks and a Law Blog, July 10, 2012, at <http://www.geeklawblog.com/2012/07/is-legal-market-flat.html> (director of a strategic pricing and analytics at an AmLaw 50 firm reviewing data on the corporate legal market, noting the flat revenues of large law firms and the rapid growth of companies like Pangea3, which is a legal process outsourcing, and concluding that '[t]he simple math of 50% market growth suggests LPOs are taking market share from firms').

⁶ Note that changing market conditions and obsolescent of products is a recurring and ordinary feature of capitalism. See generally JOSEPH SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (1942). The ordinary feels extraordinary, however, when it is our industry that is inching toward destruction.

⁷ Albeit Larry's thinking was rapidly evolving. One of his last papers considered the growing evidence that law was that law was poised for major disruption as the unlocking of legal information made it possible to create legal products separate and apart from legal service providers. See Bruce

and depth of change is very large and gaining momentum. Part III outlines the prevailing economic conditions of the post-Big Law period—what I refer to as Lean Law.

I. RIBSTEIN’S CRITIQUE OF BIG LAW

What do large law firms produce that is distinct and apart from the legal work performed by partners, who own the firm, and their lawyer employees? According to the Larry Ribstein, the most persuasive explanation was reputational bonding.⁸ Lawyers are in a better position than clients to evaluate the skills, integrity, and work ethic of other lawyers. Therefore, highly capable lawyers have a strong incentive to organize themselves into firms, not only to provide more specialized services to clients—which clients surely need—but also to erect a screen to filter out less able or trustworthy lawyers. Over time, the firm earns a reputation for skillful lawyering and excellent client service. That reputation has positive value that enables a firm to charge premium fees.

Yet, the Ribstein critique also points out that the success of the large firm also gives rise to opportunistic behavior by individual lawyers. Once the firm’s vaulted reputation is in place, partners may be able to make more money by focusing on their own client relationships and giving short-shrift to activities that would preserve and grow the firm’s reputational capital (e.g., training and mentoring junior lawyers).⁹ Firms can mitigate this behavior through careful screening and monitoring of partners. Yet, firm size, geographic dispersion and lateral turnover make this job more difficult.¹⁰ In addition, the rise of limited liability through LLP and LLC business forms seemingly reduce the downside *individual* risk of poor

H. Kobayashi & Larry E. Ribstein, *Law’s Information Revolution*, 52 ARIZ. L. REV. 1169, 1192-97 (2011) (discussing advent of legal information and products that are made possible by the rise of the internet and other digital technologies; hitherto were not available, and providing examples of “automated advice” and other new business made possible by legal unbundling).

⁸ See Ribstein, *The Death of Big Law*, supra note 3, at 753 (noting the most persuasive explanation of firm-level income is that the firm effectively charges clients for the value of its long-lived reputation).

⁹ See id. at 754-55; see also Ronald J. Gilson & Robert Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985) (discussing law firm partner incentives to free-ride and the difficulty of completely solving this problem).

¹⁰ See Ribstein, *The Death of Big Law*, supra note 3, at 775 (noting that “[l]ateral hiring and geographic dispersion complicate firms’ ability to maintain a strong culture of trust and cooperation.”); see also William D. Henderson & Leonard Bierman, *An Empirical Analysis of Lateral Lawyer Trends from 2000 to 2007: The Emerging Equilibrium for Corporate Law Firms*, 22 GEO. J. LEG. ETHICS 1395 (2012) (documenting the higher levels of geographic dispersion and the increase in lateral mobility); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN L. REV. 1867 (2008) (same).

monitoring, which means that lawyers become less vigilant monitoring each other.¹¹

Big Law as a business model is dead, according to Ribstein's critique, because the firms' reputational capital is being steadily eroded away by a confluence of pervasive business practices. These include five factors:

- (1) *Bad Incentives*. Compensation structures that reward individual rainmaking and provide inadequate incentive to build the firm for the longer term.¹²
- (2) *Diluted Selection Criteria*. Lenient partner and senior selection processes that end strict up or out in favor of keeping lawyers who add to short to medium term profits.¹³
- (3) *Inadequate Monitoring and Training*. Excessive partner to associates leverage, which makes high quality training, mentoring and monitoring infeasible.¹⁴
- (4) *Lack of Shared Downside Risk*. The migration away from general partnerships, where vicarious liability for partner behavior is potentially unlimited, to limited liability entities, such as LLPs and LLCs, which typically caps liability to one's capital account.¹⁵
- (5) *Proliferation of Exit*. Increased emphasis on lateral partner hiring to grow the firm, which "complicates a firms' ability to maintain a strong culture of trust and cooperation."¹⁶

¹¹ See Ribstein, *The Death of Big Law*, supra note 3, at 764-65 ("Personally liable partners have an incentive to monitor co-partners and associates and guard against taking on business that could significantly increase the firm's risk of malpractice or regulatory liability." (citing Larry E. Ribstein, *Limited Liability of Professional Firms after Enron*, 29 J. CORP. L. 427 (2004))

¹² See Ribstein, *The Death of Big Law*, supra note 3, at 755-56.

¹³ See id. at 756-57 & 762 (citing the rise of an "'elastic tournament' in which associates are kept as employees"). For an empirical analysis of the rise of the two-tier partnership model and associated problems of adverse selection, see William D. Henderson, *An Empirical Study of Single-Tier Versus Two-Tier Partnerships in the Am Law 200*, 84 N.C. L. REV. 1691 (2006).

¹⁴ See Ribstein, *The Death of Big Law*, supra note 3, at 761-63 (noting that "Big Law firms have found that they can increase the number of associates whose billings produce profits without commensurately increasing the number of partners who share these profits" but cautioning that higher leverage fails to account for higher levels of reputational risk and may incentivize misguided strategies for growth).

¹⁵ See Ribstein, *The Death of Big Law*, supra note 3, at 757 & 764-65. Larry writes:

"Limited liability increases lawyers' incentive to gamble with the firm's reputation by hiring more associates than the firm can effectively screen and monitor. ... Lawyers who are personally liable for their firms' debts have an incentive to try to rehabilitate a declining firm so that it can pay the creditors rather than risk being jointly and severally liable for the firm's unpaid debts. By contrast, lawyers with limited liability can jump ship without worrying the firm's liabilities will follow them.

Id. (footnotes omitted).

¹⁶ Id. at 775 (noting that "these firms in effect are buying business by expanding and hiring rainmakers"). For a discussion of how ever larger partnerships make "exit" much more likely than "voice" in resolving internal strife with the firm, see Marc S. Galanter & William D. Henderson, *The Change Agenda: Tournament Without End*, AM. LAW., Dec. 1, 2008).

Notwithstanding the appearance of massive size, Ribstein argued the above pervasive practices have made Big Law remarkably brittle and unstable. As stated at the beginning of this section, reputational capital is what enables individual lawyers to obtain *firm-level* profits distinct and apart from the sale of their own time and services. Yet, “the firm’s reputation lasts only as long as lawyers gain more from investing in it than they do from building their own clientele.” When lawyers infer that their partners lack such a commitment, they become inclined to “grab” clients and invest in behavior that creates portable clientele, which creates better options for exit.¹⁷ When partner profits fall short of their expectations, they head for the doors. Because so few firms in the Big Law sector have avoided these pitfalls, reputational capital, Ribstein argued, is being rapidly dissipated. As a result, large law firms have increasingly become “just a collection of individuals sharing expenses and revenues that has little or no value as a distinct entity.”¹⁸

The core message of the Ribstein critique is that the death of Big Law is caused by the decline of the traditional reputational capital model. As discussed above, this decline is substantially caused by the inability, or failure, of law firms to preserve an environment and ethos where individual lawyers invest in the long-term fortune of the firm.

But according to Ribstein, the value of reputational capital is also declining because of external factors, such as the rise of in-house legal departments.¹⁹ With improved ability to evaluate cost and value, legal departments can avoid the price premiums of Big Law by expanding their own in-house capacity.²⁰ In-house lawyers also have a proliferating array of options to address their legal needs, including hiring of non-U.S. global law firms,²¹ legal process outsourcers with operations in India and other low cost countries,²² non-lawyer company and consultants,²³ and mechanized legal advice or products delivered through

¹⁷ See *id.* at 759-60 (describing the dynamic as a potential prisoner’s dilemma); see also JOHN C. COFFEE JR., *GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE* 227 (2006) (reporting the “decline in law firm stability as ‘star’ attorneys increasingly practice in a free agent market”).

¹⁸ Ribstein, *The Death of Big Law*, *supra* note 3, at 754 & 777 (“The devolution of law firms recognizes that large law firms that do not conform to the traditional Cravath-type reputational capital business model cannot generate significant profits at the firm level and become aggregations of individual lawyers.”).

¹⁹ See *id.* at 759-60.

²⁰ See *id.*

²¹ See *id.* at 765 (“Clients may come to wonder why they should pay large fees to sustain Big Law’s profits, and thereby its fragile financial structure, when they can spend less to hire equally skilled lawyers in other countries” and citing rising fortunes of foreign firms in London, Singapore and Hong Kong).

²² See *id.* at 766 (“Shifting work from Big Law associates working in large U.S. cities to India could threaten the traditional Big Law model of leveraging substantial associate hourly billing into partner profits.”).

²³ See *id.* at 768 (citing Tanina Rostain, *The Emergence of “Law Consultants,”* 75 *FORDHAM L. REV.* 1397 (2006)).

sophisticated software as predicted by the lawyer, technology consultant, and futurist, Richard Susskind in this book, *The End of Lawyers?*.²⁴

For many practicing lawyers, the Ribstein Death of Big Law thesis makes little sense. In the year 2010, when Larry made a presentation of this seminal paper to a large audience that included several managing partners,²⁵ the general reaction was polite bafflement. Sure, there had been layoffs and deferrals, but Big Law was only two years removed from record revenues and profits. Even a year into the recession, the incomes enjoyed by partners was still extraordinarily high by historical standards. Two managing partners and a litigation chair of a major law firm, who were formal commentators on Larry's *The Death of Big Law* paper, conceded that the Big Law model was going to change, but all agreed that Ribstein's dire predictions were overstated.²⁶

II. CONTEMPORARY MARKET DATA

Two and half years after the symposium that featured the Ribstein Death of Big Law critique, Big Law does not appear to be dead. In fact, Big Law is bigger.²⁷ Yet, as discussed in this Part, there is evidence that the legal industry serving the large organizational clients is undergoing significant restructuring. Part II is organized into two sections. Section A presents an array of data that shows the continued dissipation of reputational capital: large law firms are losing market power; lateral activity is on the rise; and leverage (lawyers to number of equity partners) is up. Section B describes a series of non-lawyer legal vendors that are taking portions of the legal supply chain that was formerly the exclusive domain

²⁴ See *id.* at 768 (citing Larry E. Ribstein, *Lawyers as Lawmakers: A Theory of Lawyer Licensing*, 69 Mo. L. REV. 299, 324 (2004) (discussing the shifting boundaries of unauthorized practice, particularly as a result of technological innovations)); *id.* at 780-81 (describing potentially disruptive technologies that cut into services traditionally provided by law firms (citing RICHARD SUSSKIND, *THE END OF LAWYERS?* 100-03 (2008))).

²⁵ The conference event, titled "Law Firm Evolution: Brave New World or Business as Usual?," was hosted by the Georgetown Center for the Study of the Legal Profession. It took place on Mar 21-23, 2010. A draft of Larry's paper was posted on SSRN during the fall of 2009.

²⁶ See, e.g., Jeff Jeffrey, Panelist Predict Changes to, Not Death of, Big Law, *The BLT: The Blog of the Legal Times*, Mar. 22, 2010, online at <http://legaltimes.typepad.com/blt/2010/03/panelists-predict-changes-to-not-death-of-big-law-.html> (reporting on comments by William Perlstein, chair of Wilmer Hale, that Ribstein's predictions were overstated but conceding that the 2000 to 2007 Big Law growth boom was "not normal"; by Jeffrey Haidet, chair of McKenna Long, that firms had gotten "fat, dumb, and happy" during prior decades but that a "new model for law firms is coming" and that "Big Law survives, though with significant changes"; and Bernie Burke, chair of litigation at Howard Rice, conceding the undisciplined expansion of headcount has to end).

²⁷ The average Am Law 100 law firm had 820 lawyers in 2008. The number dropped to 806 in 2009 and then increased to 835 in 2010 and 863 in 2011.

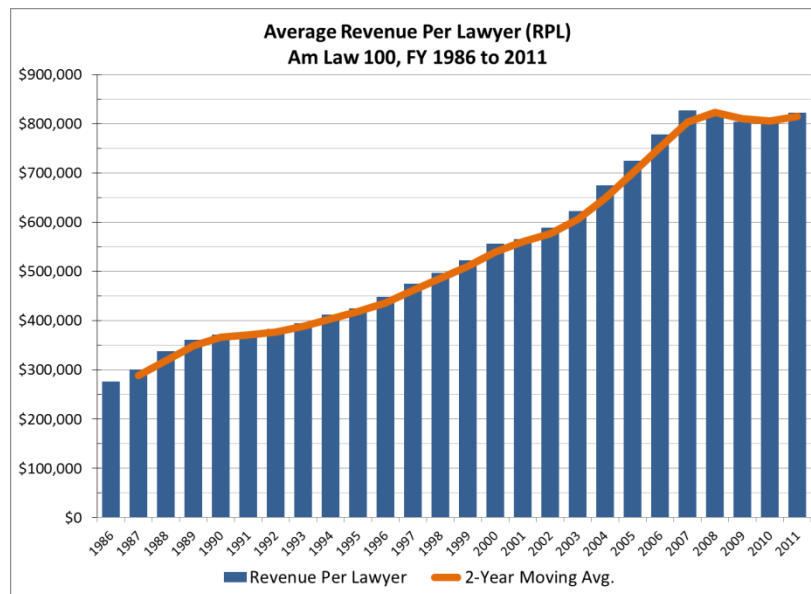
of large law firms. They are growing very rapidly. Indeed, they bear the hallmarks of a disruptive innovation.²⁸

A. Large Law Firm Trends

For the last several decades, large law firms have been growing very rapidly.²⁹ Not only have they grown in size and revenue, they have also grown in profitability. Between 1986 and 2011, the average profits per partner of an Am Law 100 partner increased from \$325,000 to \$1.48 million—an increase of 355%.³⁰ During the same period, the Consumer Price Index climbed 205% while the nation’s GDP increased by 235%.³¹ By any standard, this is a tremendous economic run.

Yet, despite the higher profitability, the large law firm sector appears to have hit a wall on fee increases. As shown in Figure 1, the steady rise in revenue per lawyer hit a high water mark in 2007 (\$828,000 per lawyer) before settling into an unprecedented five year plateau.

Figure 1



²⁸ See CLAYTON M CHRISTIANSEN, *THE INNOVATOR’S DILEMMA* (1997) (describing a recurring business cycle in which incumbent industry rarely can create, anticipate or adapt to new “disruptive” technologies that service their core market in a new way).

²⁹ See generally MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 99-102* (1991) (discussing the dramatic increase in growth rates in major law firms beginning in 1970); Henderson & Bierman, *supra* note 10, at 1396 (reporting that since 1978, the average NLJ 250 law firm had increases in size by 525%).

³⁰ See William D. Henderson, *Rise and Fall*, *AM. LAW.*, June 2012, at ___ (analyzing trends during the first 25 years of the Am Law 100).

³¹ See *id.*

As of the date of this writing, the companies that track the financials of large law firms are reporting continued flat demand for corporate legal services.³² The flattening of demand is probably attributable to multiple factors, including more work being done in-house by corporate legal departments,³³ greater inroads made by legal process outsourcers,³⁴ migration of work to lower-priced regional firms,³⁵ greater utilization of staff attorneys and contract lawyers rather than (pricey) associates,³⁶ and bigger volume discounts given by large firms in order to hang onto market share.³⁷

Regardless of the cause of the flattening demand, the lack of growth upsets many of the established conventions held with large law firms. Growth creates a sense of vitality and abundance to an organization. Excellent work and sacrifice can be rewarded with partnership. Profitability can be sustained through hiring rather than firing.³⁸ Lack of growth is especially worrisome to law firm managers because it upsets the expectations and mindset of the firm's most successful partners. Partners with portable books of business have options. And the touchstone of a modern law firm failure is a rapid loss of partners to other large law firms.

In the face of flagging market demand, which Larry Ribstein predicted, law firms appear to be adapting in a way that is seemingly counter to Death of Big

³² See, e.g., Peer Monitor Index, Q2 2012 Executive Report, July 27, 2012 (reporting that "since mid-2011, demand has basically been flat" and "[a]t best, the market will continue its sluggish, largely flat trajectory with occasional upward or downward variations. Continued client pressing pressures are a near-certainty for the foreseeable future"); Citi Private Bank Law Watch, Quarterly Flash, 2012: YTD through First Half, Aug. 2012 (reporting sluggish overall demand, with decreases for global and international law firms but modest increases for national and regional law firms).

³³ See Melissa Maleske, *Legal Department Hiring on the Rise*, INSIDE COUNSEL, Mar. 1, 2011 (reporting increase in in-house hiring and providing an example of a company that expanded its legal department to reduce outside spending on litigation).

³⁴ As discussed in Part II.B infra, the U.S. legal press has been slow to examine the burgeoning LPO sector. But in India, thanks to the growth of U.S. and U.K.-based companies, LPOs have become a large, attractive source of jobs for recent law grads. See Aesha Datta, *Fresh Law Grads Find Yet Another Avenue in Legal Process Outsourcers*, THE HINDU BUSINESS LINE, May 11, 2012, online at http://www.thehindubusinessline.com/industry-and-economy/article3408624.ece?ref=wl_opinion.

³⁵ Ashley Post, *4 Tips for Working for Regional Law Firms*, INSIDE COUNSEL, Mar. 2, 2012, online at <http://www.insidecounsel.com/2012/03/01/4-tips-for-working-with-regional-law-firms> (reporting that nearly one-half of corporate legal departments are attempting to control their legal budgets by "increasing their use of regional or boutique law firms" and reporting substantial success by many companies).

³⁶ See Catherine Rampell, *At Well-Paying Law Firms, a Low-Paid Corner*, N.Y. Times, May 23, 2011, online at <http://www.nytimes.com/2011/05/24/business/24lawyers.html> (reporting on the growth in major law firms, such as Orrick, Wimer Hale, and McDermott Will & Emery, of non-partner track associates handling the work of traditional law firms associates, but at a much lower salary and typically outside of the major legal markets).

³⁷ See Law Practice Roundtable, *Managing Change: How Law Firms are Answering the Wake-Up Call*, LAW PRAC. MGMT., July/Aug. 2009, at 32 (discussing growing use of discounted hourly rates in exchange for a guaranteed flow of legal work).

³⁸ See Henderson, *Rise and Fall*, supra note 30, at ___.

Law thesis: They are getting bigger.³⁹ Yet, unlike in prior years, this growth is not occurring through hiring of entry level associates. Indeed, the proportion of entry level law graduates beginning their careers in law firms of 250 lawyers or more has declined from 6,100 in 2007 to 3,500 for the class of 2011.⁴⁰ One of the primary reasons for the decline in entry level hiring is that clients are increasingly reluctant to pay the rate of high-priced junior associates.⁴¹ In contrast, the volume of lateral associate hiring has increased over 60% for each of the last two years,⁴² which is remarkable considering the smaller pool of midlevel associates due to the shrinkage of entry level classes.

Rather the traditional promotion to partnership tournament, Big Law appears to be turning to other sources of growth. One source is “off track” lawyers positions. Between 2010 and 2011, the total lawyer headcount for firms in the NLJ 250 (a ranking of total number of lawyers for U.S.-based law firms) increased from 124,161 to 126,293, which reflected an overall growth rate of 1.7%.⁴³ Yet, total associate headcount dropped 1.3% (from 60,377 to 59,574) while the “other” attorney category grew an astounding 17.2% (from 11,376 to 13,332). Presumably, this alternative source of leverage has the potential, at least in the short to medium term, to retain market share while at least holding profitability constant.

A second source of growth is merger. In 2011, Squire Sanders combined with UK-based Hammonds (approximately 500 lawyers) to create a combined 1,275 lawyer firm. Later in the year, it absorbed Minter Ellison, an 80 lawyer Australian firm based in Perth.⁴⁴ Similarly, DLA Piper expanded by over 600 lawyers with the acquisition of the Australian firm, Philips Fox.⁴⁵ Likewise, there is also a steady pace of mergers among regional and national firms. In 2011, Kilpatrick Stockton

³⁹ Cf. Larry Ribstein, *Big Law Tries to Get Bigger*, IDEOBLOG, Oct. 29, 2009, online at <http://busmovie.typepad.com/ideoblog/2009/10/big-law-tries-to-get-bigger.html> (“if ... Big Law is dying, then what explains Hogan & Hartson and Lovell’s plan to create a US/UK megafirm? Got me.”).

⁴⁰ Comparing NALP Class of 2001 National Summary Report with NALP Class of 2007 Summary Report, online at <http://www.nalp.org/recentgraduates>; see also See Judith H. Collins, *Class of 2011 Has the Lowest Employment Rate Since Class of 1994*, NALP BULLETIN, July 2012, at 12-13 (among entry level jobs in private practice, reporting the proportion of jobs in firms of 101 lawyers or more decreasing from 42.3% in 2007 to 27.7% in 2011).

⁴¹ See Ashby Jones & Joseph Palazzolo, *What’s A First-Year Lawyer Worth?*, WALL. ST. J., Oct. 17, 2011 (reporting that 20% of corporate legal departments are now refusing to pay for the work for first and second year attorneys).

⁴² See Lateral Hiring on the Rise After Two Years of Decline, NALP BULLETIN, April 2011 (reporting 61% increase of associates hiring over 2009); *Lateral Hiring Up for the Second Year in a Row*, NALP BULLETIN, April 2012 (reporting 63% increase between 2011 and 2010).

⁴³ See Marianne Purzycki, NLJ 250: “Other” Lawyer Ranks are Growing, Hildebrandt Blog, Mar. 30, 2012, online at <http://hildebrandtblog.com/2012/03/30/nlj-250-other-lawyer-ranks-are-growing/>

⁴⁴ See id.

⁴⁵ See id.

(ranked #103 on the 2011 NLJ 250) merged with Townsend and Townsend and Crew (ranked #227); and Edward Angell Palmer & Dodge (ranked # 75) merged with Wildman Harrold (#248). According to the Hildebrandt Institute MergerWatch report, the nation's large firms also continue to make strategic acquisitions of small, freestanding regional law firms that "solidify an existing footprint."⁴⁶

If Big Law is dead or dying, why is Big Law continuing to grow? This is a question that puzzled Larry Ribstein.⁴⁷ One answer is that law firm managers are attempting to grow their organizations to the point where they are "too big to fail", or more precisely, "too big to fail quickly." The benefit of larger size is not the potential for a government bailout similar to the Wall Street banks, but the benefit of a larger cushion of revenue to shield the firm against a large defection of partners. Simply stated, a loss of 30 partners from a 300 lawyer firm is largely a much larger blow than 30 partners at a 900 lawyer firm. A defection of similar proportions at the larger law firm (90 partners, or 10%) is less likely to occur as a coordinated event because of the large number of lawyers involved. Thus, what could be a fatal blow in a "small" large firm is effectively an early warning sign in a megafirm. So the primary attraction of growing a firm, at least from management's perspective, may be the additional maneuvering room it provides to grow the firm's profits.

The "too big to fail" theory has empirical support. Since the publication of the first Am Law 100 list in 1987 (ranking of gross revenues of U.S.-based law firms), only 58 law firms remain on the list with their names intact. Of the remaining 42, 11 have collapsed⁴⁸ 18 have undergone a merge that resulted in a change to the name of the firm, and 13 dropped out of the Am Law 100. Of the eleven deceased law firms, only one firm had an Am Law ranking higher than 40 in 1987 (Finley Kumble, a house of cards built on star lateral partners that dissolved by the end of 1987).⁴⁹ When comparing the 58 intact Am Law 100 to the remaining 42 firms that earlier collapsed, merged and dropped in the league tables, we observe the following statistics:

⁴⁶ See Press Release, *Law Firm Mergers Continue Upward Trend in the First Half of 2012, Says Hildebrandt Institute Merger Watch*, Jul. 3, 2012, online at http://thomsonreuters.com/content/press_room/legal/689894 (providing examples of Frost Brown Todd acquiring a seven lawyer firm in Nashville, Buchanan Ingersoll with a seven lawyer firm in Pittsburgh, Clark Hill acquiring a nine lawyer firm in metropolitan Detroit; Balch & Bingham acquiring a seven lawyer firm in Birmingham, and Fowler White acquiring an 11 lawyer firm in Fort Lauderdale).

⁴⁷ See supra note 39.

⁴⁸ These figures exclude Dewey LeBoeuf, the 2007 combination of Dewey Ballantine and LeBoeuf Lamb, which collapsed in the spring of 2012.

⁴⁹ See generally Kim Isaac Eisler, *Shark Tank: Greed, Politics, and the Collapse of Finley Kumble, One of America's Largest Law Firms* (1990).

- **Higher Gross Revenues.** The 58 intact firms had, in fiscal year 1986, higher revenue (\$83 million versus \$57 million [+45%]);
- **Larger Headcount.** The 58 intact firms began the 25 time period with more lawyers (284 versus 227 lawyers [+25%]);
- **Higher Profitability.** The 58 intact firms were, on average, more profitable (\$380,000 versus \$248,000 [+53%]).⁵⁰

Further inspection of the Am Law 100 data from 1986 to 2011 reveals that in 1986, the firms that failed looked virtually identical to firms that merged.⁵¹

The implication for law firm managers is straightforward. Failure is a real possibility, but large and profitable firms rarely fail. If the firm cannot become bigger and more profitable (in a relative rather than absolute sense) through organic growth, then growth should be sought through merger. Failure to keep pace with market growth could cause a firm to fall in the league tables, causing unease within the partnership and a run on the firm's talent akin to once great firms like Wolf Block, Shea & Gould, and Coudert Brothers.⁵² Although mergers may not immediately increase a firm's relative profits, the higher revenues and headcounts enable the firm to convey a sense of dynamism by climbing higher in the Am Law 200 and NLJ 250 rankings. The bigger size also provides managers with greater latitude and margin for error in dealing with episodic partner defections.

In summary, the continued growth of Big Law, at least in terms of the number of lawyers, may have very little to do with the needs of clients and much more to do with the need of law firm managers to buttress themselves against the possibility of collapse. In essence, mergers implicitly buy managers the opportunity to experiment with a broader range of strategic options.

Unfortunately, the most conspicuous and common law firm strategies being pursued today by Big Law tend to dissipate rather than grow a firm's reputational capital. The first is increased reliance on lateral partner hiring. Since 2000, the number of lateral partner moves in the Am Law 200 has increased by over 50% (from 1,998 to 3,012).⁵³ From the perspective of management, the attraction of a lateral partner is that he or she can, in theory, generate revenues sufficient to cover (a) guaranteed income payments to the lateral, (b) any salaries to any associates or staffers the lateral brought with them, (c) a pro rata share of office overhead, and (d) a residual amount of profits that become part of the firm's total profit pool. The ideal win-win lateral partner move occurs when there is a

⁵⁰ Each of these differences is statistically significant differences at the $p < .01$ level:

⁵¹ See Henderson, *Rise and Fall*, supra note 38, at ___.

⁵² See id.

⁵³ Data obtained from the Law Firms Working Group through a special license with the American Lawyer Media (ALM, Inc.).

synergy between a lateral partner's skills and client base and the new firm's existing practice groups. This enables the lateral partner to split the higher profits with the new firm.⁵⁴

According to many large law firm commentators, lateral partner hiring has become the dominant strategy of most large law firms.⁵⁵ Although careful lateral hiring can, in theory, lead to a collection of superior lawyers who augment a firm's reputational capital by providing high skilled and complementary skill sets, how often does that occur? There is an extensive consulting literature on successful lateral partner integration,⁵⁶ which is meant to preempt circumstances that could interfere with a lateral partner's ability to deliver anticipated business.⁵⁷ Further, as Larry Ribstein noted, no matter how talented the lawyer, there is always a risk that a new hire will disrupt or damage a firm's culture.⁵⁸ Indeed, lateral hiring was anathema to the original "Cravath System", which avoided lateral hiring lest "[y]oung partners and associates are ... subjected to the discouragement of seeing someone come in over them from the outside."⁵⁹

If law firm managers are turning to the lateral market to solve their most pressing strategic needs, the current environment of flat revenue growth provides a new and very difficult set of challenges. To attract partners who have

⁵⁴ See, e.g., Mark Brandon, *Focus: Lateral Hiring – Slow But Steady is the Way in Firms' Quest for Lateral Value*, THE LAWYER, Oct. 31, 2011, online at <http://www.thelawyer.com/1010025.article> (providing examples of lateral hiring that produces the desired growth in revenues and profits and examples where the desired growth fails to materialize). Earlier empirical research on the large law firm sector suggests a "separating dynamic may be occurring in the lateral partner market that effectively rationalizes and stratifies firms by practice group and level of expertise. See Henderson & Bierman, *supra* note 10, at 1416 (noting that "the relative mix of practice within large law firms is in a state of flux, with more lucrative practice areas generally moving to larger, more profitable, and higher leveraged firms. Conversely, movement of partners in so-called commodity practices areas are generally occurring at lower PPP firms within the Am Law 200 or smaller firms."); See Galanter & Henderson, *supra* note 10, at 1904-06 (examining similar data for the 2000 to 2005 time period and positing the likelihood of a "separating dynamic" among large U.S. law firms).

⁵⁵ See Jennifer Smith, *Law Firms Pursue Growth by Poaching in Tough Climate*, WALL ST. J., Jan. 31, 2012, at ___ (reporting observations of industry experts that acquiring lateral partner talent has become "a preferred path to increasing market share"); Brandon, *supra* note 54, at (noting that "[l]ateral hiring remains the primary growth strategy of law firms").

⁵⁶ See, e.g., Patrick McKenna, *The Leader's Role in Integrating Laterals* (2010), online at <http://www.patrickmckenna.com/pdfs/Integrating%20Laterals.pdf>; Bruce Jackson, *Bringing Lateral Attorneys on Board: A Blueprint for Success*, LAW JOURNAL NEWSLETTERS, Apr. 2008, online at <http://www.agg.com/media/interior/publications/LateralPart1and2.pdf>; Katie Rutter, *Ten Ways to Boost Lateral Partner Integration*, LEG. MARKETING READER, Apr. 2009, online at http://legalmarketingreader.com/lateral_integration.html.

⁵⁷ See Smith, *supra* note 55 (noting that lateral hires can "carry risks" such as "fail[ing] to deliver promised business").

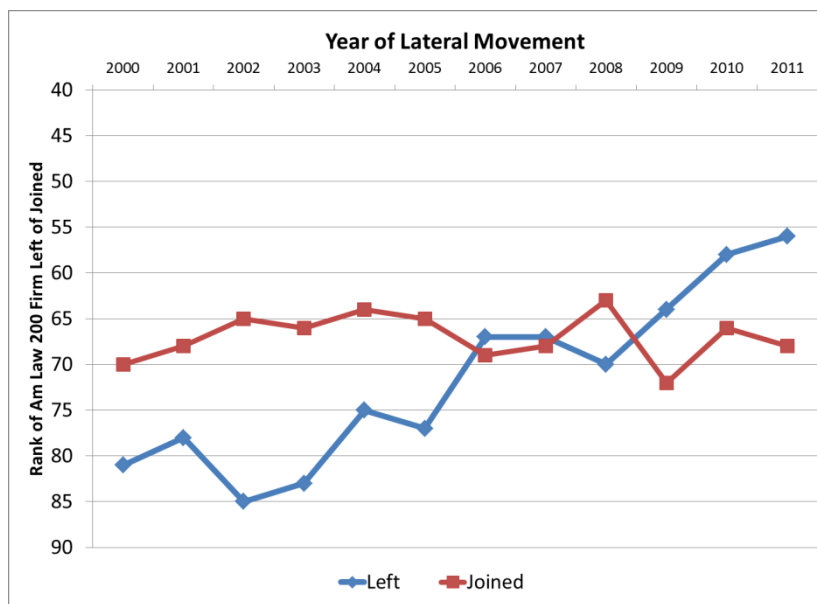
⁵⁸ See *id.* (noting risk that a new lateral may not "mess well with the new firm's culture"); See Ribstein, *The Death of Big Law*, *supra* note 3, at 775 (noting that "[l]ateral hiring "complicate firms' ability to maintain a strong culture of trust and cooperation"); *id.* at 805 (noting that "growth through hiring and retaining entry-level associates can enhance firm stability because the firm can more easily instill a common culture in entry-levels than in lawyers hired from other firms.").

⁵⁹ Robert T. Swaine, *The Cravath Firm And Its Predecessors, 1819-1948* Vol. II, 8 (1948).

their own substantial books of business, a firm will want to post very high profits per equity partner (PPEP). This will signal that the lateral partner will financially prosper at the firm. Yet, to achieve higher PPEP, the firm is more likely to cull the ranks of existing partners who are perceived as unproductive. Since the 2008 recession, the rate of growth of equity partners in the Am Law 100 has slowed to less than .5% per year (from an average of 189 equity per firm in 2008 to 192 in 2011).⁶⁰ Part of this slow growth may be the result of partners being asked to leave the firm. This increases the availability of lateral talent, but with a surplus of lawyers who were underperforming at their prior firm. This creates, or heightens, a so-called Lemons problem in the market for law firm partners.⁶¹

This partnership “squeeze play” to prop up profitably may partially explain the peculiar pattern shown below in Figure 2. This figure shows the average Am Law 200 rank of the firm left versus the firm joined for all lateral partners moves during the 2000 to 2011 time period (n = 30,000).⁶²

Figure 2



Although the average rank of the firm joined has hovered in the 65 to 70 range through this period, the rank of the firm left has gradually climbed from the 80-85 to the 60-55 range. Indeed, since 2009, the average lateral movement has been

⁶⁰ Data obtained from the Law Firms Working Group through a special license with the American Lawyer Media (ALM, Inc.). Calculations by author.

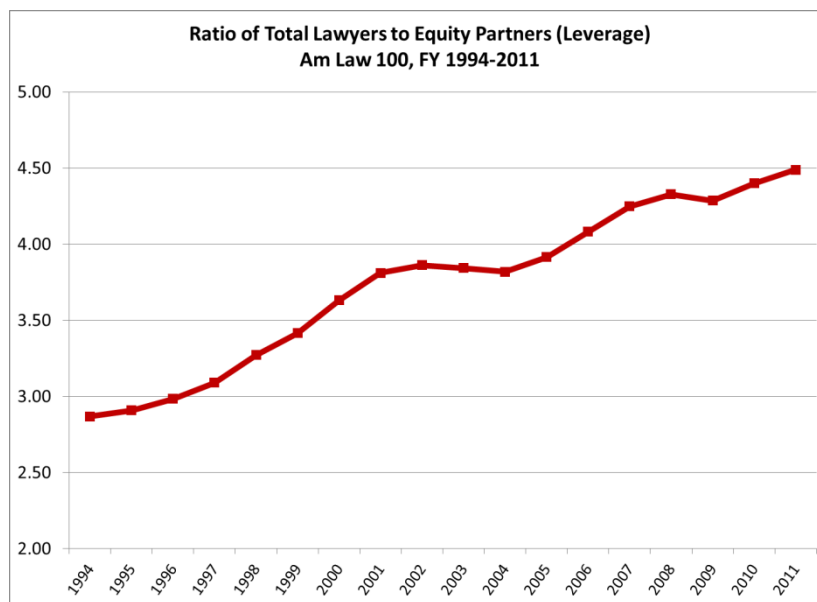
⁶¹ See George A. Akerlof, *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, 84 QUARTERLY J. ECON. 488 (1970) (using the used car market to demonstrate that lower quality goods are more likely to end up on the resale market than the high quality counterparts).

⁶² Data obtained from the Law Firms Working Group through a special license with the American Lawyer Media (ALM, Inc.). Calculations by author.

from a firm of higher revenues to a firm of lower revenues. This suggests that large law firms are becoming tougher, more unforgiving places to work, at least for the partners.⁶³

The second strategy that continues to be very common and pervasive among law firms today—but also, according to the Ribstein Big Law critique,⁶⁴ damaging to a firm’s reputational capital—is increased reliance on leverage in the form of greater proportions of non-partner lawyers. As Shown in Figure 3, since the Am Law 100 first started tracking the number of equity partners in 1994, the ratio of total firm lawyers to equity partners has increased steadily from 2.87 in 1994 to an all-time high water mark of 4.49 in 2011.⁶⁵

Figure 3



The increased reliance on leverage draws into sharp relief the tendency of Big Law to use its existing reputational capital to maximize short term profits rather than take the steps necessary to build a stronger organization capable of taking market share from competitors. The higher leverage makes it much more difficult to properly screen, monitor and train lawyers who are capable of building the firm’s reputational capital. Further, when we layer on top the increased pressure to originate business—to either preserve one’s standing in the firm or take

⁶³ Cf. Drew Combs, *Happiness is Relative*, AM. LAW., Sept. 1, 2012 (“Their profession may be full of darkness and uncertainty, but midlevel associates at the nation’s largest law firms are more content than they’ve been in years.”).

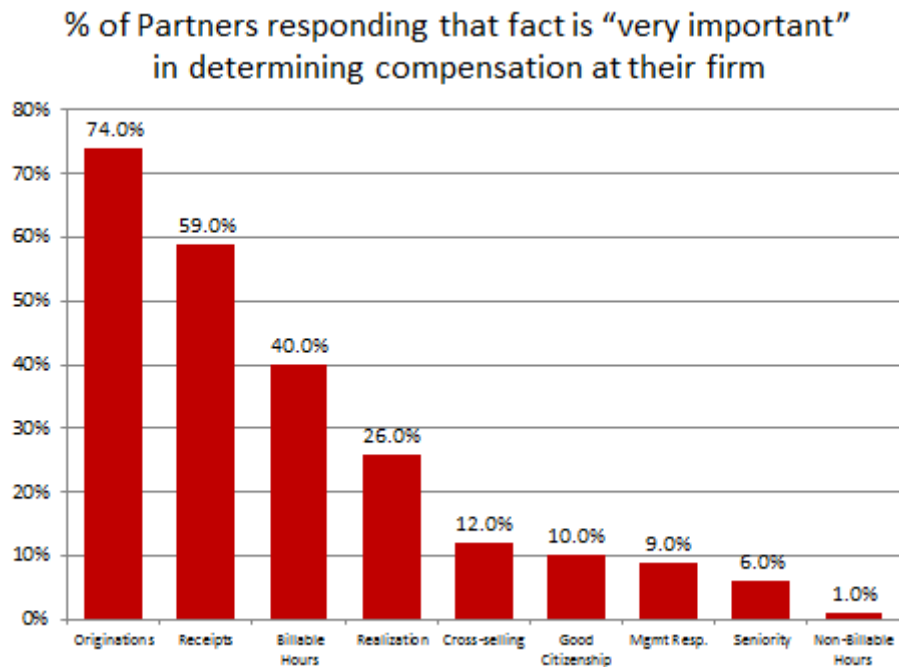
⁶⁴ See Ribstein, *The Death of Big Law*, *supra* note 3, at 759-60.

⁶⁵ Data obtained from the Law Firms Working Group through a special license with the American Lawyer Media (ALM, Inc.). Calculations by author.

advantage of rich payouts available to lateral partners—equity partners lack meaningful financial incentives to invest time in the mentoring of junior lawyers.

This incentive problem, which focuses a lawyer’s attention on the current fiscal year, is evident in a 2012 survey of over 2,200 partners at major law firms.⁶⁶ The results are summarized in Figure 4.

Figure 4



When asked to assess the importance of various factors that are considered in determining compensation at their firms, origination of business was ranked as the most important factor (74% picking “very important”) followed by revenues generated through that partner’s work for clients (59%). In contrast, management responsibilities was selected as “very important” by only 9% of respondents; and only 10% of respondents reported that good citizenship was very important.⁶⁷ When asked what was “most important” in determining compensation, 65% selected origination followed by 21% for working attorney receipts.⁶⁸

⁶⁶ See, e.g., Major, Lindsey & Africa, 2012 Partner Compensation Survey (2012), online at <http://www.mlaglobal.com/partner-compensation-survey/2012/>.

⁶⁷ See id., Appendix XI.

⁶⁸ See id.

Unfortunately, maximizing this current year's revenues⁶⁹ does nothing to build the firm's reputational capital, nor is it likely to create firm-specific property or processes that hold out the prospect for creating a short, medium, or long term competitive advantage against rival law firms. This tremendous economic waste and misdirected energy is what caused Larry Ribstein to pronounce the death of Big Law. The source of the confusion is that many lawyers continue to make a handsome living in the Big Law sector. Yet, the Big Law organizational form (as opposed to individual lawyers or teams of lawyers) is conferring little or no direct value to clients. For the large majority of Big Law, the emphasis on large, short term, distributed profits has a substantial stranglehold on innovation.

If we think the current form of Big Law is sustainable over the long run, we are kidding ourselves. Some Big Law lawyers will continue to make handsome living, but the number at the top of the pyramid will shrink and significant portion of work will flow to lower cost providers with comparable or even higher quality. Indeed, as discussed in Section B, law firms are no longer the only game in town.

B. The Emergence of Non-Lawyer Legal Entrepreneurs

Earlier this year, the director of strategic pricing and analytics for an Am Law 50 law firm reviewed revenue data for the large law firm sector and remarked that "the overall demand has been and continues to be predicted as ... flat."⁷⁰ Yet, at the same time, the analyst wondered whether his data source was capturing the full range of legal expenditures by the corporate law sector. Was it, for example, including the legal process outsourcer (LPO) Pangea3, which has been experiencing growth of 40-60% for the last several years?⁷¹ Likewise, was it counting Axiom, the staffing and outsourcing firm started by a Davis Polk associate in 2000 that now employs over 800 lawyers worldwide with \$130 million in annual revenues and projected growth of 35% per year?⁷² The analyst concludes, "The simple math of 50% market growth suggests LPOs are taking market share from firms. And it's likely other non-traditional providers are doing the same."⁷³

One of the persistent themes in Larry Ribstein's critique of lawyer regulation was the ethical rules, such as the prohibition on non-lawyer investment in law

⁶⁹ According to a recent study by ALM, revenue generation was listed as the top priority in most law firm strategic plans. See ALM LEGAL INTELLIGENCE, THINKING LIKE YOUR CLIENT: STRATEGIC PLANNING IN LAW FIRMS 1 (October 2012)

⁷⁰ Brown, *supra* note 5.

⁷¹ See *id.* (linking to Anuj Agrawal, *In Conservation: Sanjay Kamrani and David Perla, co-CEO's of Pangea3*, BENCH & BAR, Jun. 27, 2012 (reporting on growth of LPO from a start-up in 2004 to 850 lawyers currently and projected growth of 40% to 60% per year)).

⁷² See Brown, *supra* note 5 (linking to Ron Friedmann, *The Rise of Axiom*, STRATEGIC LEGAL TECHNOLOGY, Jul. 1, 2012) (discussing content of an article in the July 2012 American Lawyer titled, "The Disruptive Innovation at Axiom's Legal Outsourcing Division").

⁷³ See Brown, *supra* note 5.

firms (Model Rule 5.4) and the ban on non-compete agreements (Model Rule 5.6), inhibited the ability of lawyers to adapt to the changing needs of the market place.⁷⁴ The prohibition on nonlawyer investment meant that lawyers had to be the source of finance for any capital intensive innovation or improvement in their law practice. Further, the nonlawyer ban inhibited collaboration and co-venturing with nonlawyer specialists, which stifled the overall pace of innovation. The ban on noncompetes was no less problematic because it dramatically reduced the ability of law partners to lock themselves into business plans with a longer term time horizon. These ethical rules were ostensibly enacted for the benefit of clients, yet their effect has been to create a highly insular guild of lawyers who are incapable of keeping up with the business needs of their clients.

Through several articles, Ribstein argued vociferously for regulatory changes needed to enable law firms to evolve into new and more flexible business structures. Yet, throughout Ribstein's long career, the lawyer regulatory landscape throughout the U.S. remained essentially unchanged.⁷⁵ It was almost as if we lawyers believed we had the power to define how clients could buy and access solutions to their legal needs. In *The Death of Big Law*⁷⁶ and *Law's Information Revolution*,⁷⁷ Ribstein began to think through the post-Big Law future in which new types of law firms specialized in legal information products, legal processes, legal service technologies, research and development and new ways to finance and distribute legal services. They would come into being because of the value they would deliver to clients.

Although there is evidence that Ribstein's perceptions were changing,⁷⁸ he may have overestimated the need for regulatory reform to facilitate the entry of nonlawyers (and innovation) in the legal industry. In the year 2012, we are indeed seeing the entry and growth of many companies that offer a wide range of "legal inputs" and "legal products" to highly sophisticated corporate clientele—an insight now fully grasped by the Am Law 50 analyst discussed above but few others. If Ribstein underestimated the power of market forces to find ways to get into a highly lucrative seemingly protected market, he was nonetheless closer to the mark than the rest of the legal academy and virtually all practicing lawyers.

⁷⁴ See Ribstein, Ethical Rules, Agency Costs, *supra* note 2, at 1721-25 (discussing unwanted effects of prohibitions on nonlawyer ownership and noncompetition agreements).

⁷⁵ The major exceptions here were the Supreme Court's decision in *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), which struck down on First Amendment grounds, the legal profession's ban on lawyer advertising, and the Court's decision in *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), which ended the practice of state bar fee schedules, which sought to establish minimum prices for legal services). Neither one of these decisions, however, treaded on to business interests of large corporate law firms.

⁷⁶ See *supra* note 3.

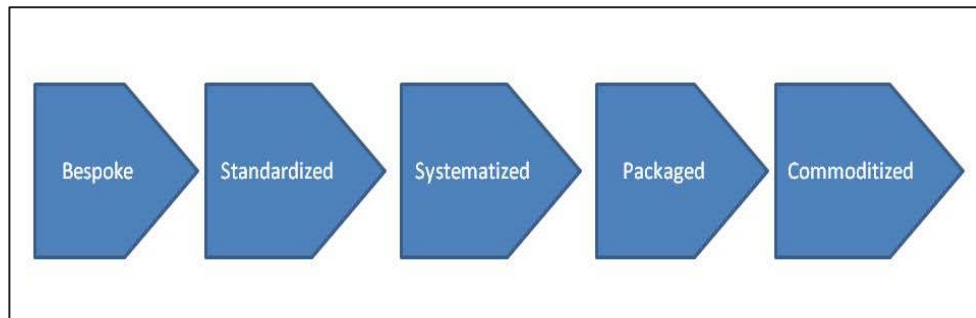
⁷⁷ See *supra* note 2.

⁷⁸ See note 7, *supra*, and accompanying text.

This systemic underestimation of the market arguably occurred because we lawyers and law professors can get trapped in our own mental frames. The law belongs to lawyers, we think. And from that, it follows that corporate law belongs to large corporate law firms and corporate lawyers or something that descends from them. Yet, this perception is belied by the emergence of a staggering number of new legal entrepreneurs who are financed by venture capitalists, private equity and publicly held companies.

To frame this discussion, let us consider Richard Susskind's framework, shown in Figure 5, which describes the evolution of the legal industry. Susskind asserts that legal work is gradually migrating from bespoke (e.g., court room practice), to standardized (e.g., form documents for a merger), to systematized (e.g., a document assembly system for estate planning), to packaged (e.g., a turn-key regulatory compliance program), to commoditized (e.g., any IT-based legal product that is undifferentiated in a market with many competitors). These changes are made possible by identifying recursive patterns in legal forms and judicial opinions, which enables the use of process and technology to routinize and scale very cheap and very high quality solutions to the myriad of legal needs.

Figure 5. Richard Susskind's Evolution of Legal Industry

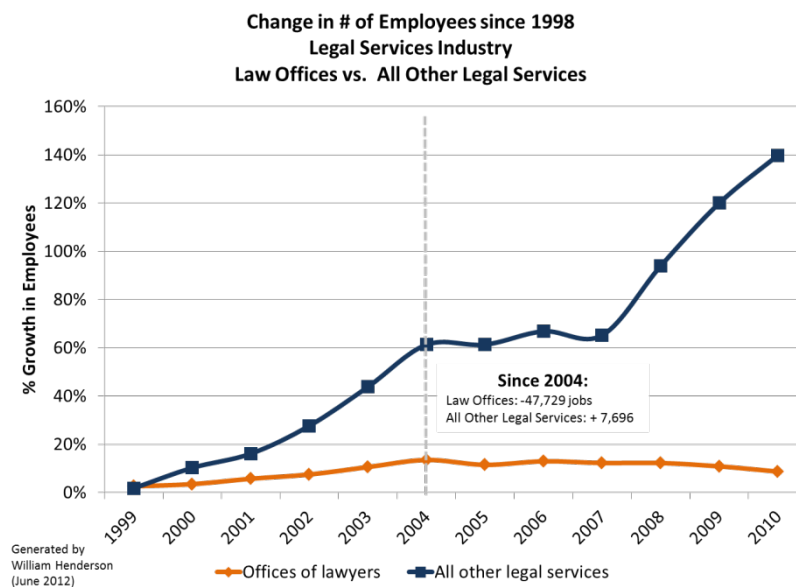


According to Susskind, lawyers naturally risk this “pull to the right”, so their natural reaction is double-down on the “Bespoke” work and claim it to be one’s specialty. This natural human tendency will temporarily create a market glut in which overcapacity in the Bespoke sector has to winnow itself down. Yet, as Susskind points out, another factor producing the rationalization of the legal market is that the greatest profit-making opportunities are lodged between the Systemized and Packaged parts of the continuum. If an organization can continuously innovate and create systematized/packaged solution to legal issues and problems that can be sold over and over again to a large base of clients, the organization can enjoy the prospect of “making money while you sleep.”⁷⁹

⁷⁹ Richard Susskind, *The End of Lawyers?* 37 (2008).

There is now substantial evidence that the right portion of Susskind’s continuum is beginning to grow and take shape. For example, consider the legal services industry as defined by the U.S. Census Bureau (defined as NAICS 5411).⁸⁰ In 2010, this sector employed 1,172,748 employees (as of March 15, 2010). Of these workers, 91.7% are employed in law offices (NAICS 54111). Yet, as shown in Figure 6, which is drawn from the U.S. Census Bureau County Business Patterns dataset, beginning with a baseline of 1998 (the first year of the NAICS classification system), the high water mark for Law Office Employment was 2004 (1,122,723 employees)—nearly nine years ago. As of 2010, total employee headcount in U.S. law offices has contracted by over 47,000 employees.⁸¹

Figure 6



In contrast, the top line of Figure 6 plots the employment trends in the catch-all “All Other Legal Services” (NAICS 541199), which has steadily grown from 9,800 workers in 1998 to 23,504 worker in 2010. Indeed, since the high water mark for law office employment, the All Other Legal Services group has grown by nearly 8,000. The average job in a law office pays \$80,000 versus \$46,000 in All Other Legal Services.⁸² But the most striking feature is the rate of growth, which averages 8.5% a year. In 1998, All other Legal Services comprised

⁸⁰ See U.S. Census Bureau, North American Industry Classification System (NAICS), online at <http://www.census.gov/eos/www/naics/>

⁸¹ The County Business Pattern dataset includes payroll and headcount data for both lawyer and nonlawyer employees, but the trendlines are likely worst for lawyers. Other data from the Bureau of Labor Statistics suggest that lawyer jobs are trailing both paralegals and legal assistants. See BLS Occupational Outlook Handbook, online at <http://www.bls.gov/ooh/> (last visited August 26, 2012).

⁸² Calculations made by author from U.S. County Business Patterns data. I divided total payroll by the number of employees in each subsector.

0.9% of 5,411. As of 2010, the percentage had increased 2.2% --and at the time of this writing, this data is 2.5 years old.

The cost structure and growth rates of companies inside the 541,199 subsector don't look anything like law firms. Who are these employers? The County Business Patterns data includes payroll and headcount information, but it is anonymized and aggregated at a geographic level so as not to reveal company-specific information to industry rivals.⁸³ As a result, we don't know the identities of these companies. But we do know that seven states have All Other Legal Services employers that employ between 500 and 1,000 workers: Delaware, Florida, Georgia, Missouri, New York, Ohio, and Pennsylvania. Likewise, in the 100 to 500 employee range, California has eight employers; Florida, Illinois, and Texas have two; and Connecticut, Indiana, Massachusetts, Minnesota, New Jersey, Ohio, and Pennsylvania each have one. The states with the biggest All Other Legal Services payrolls are California (\$201 million, 4,222 employees, 553 establishments), followed by Florida (\$125 million, 2,925 employers, 697 establishments) and New York (\$113 million, 2,501 employees, 297 establishments).

In a 2010 article, Professor Milton Regan and Palmer Heenan described the process of "disaggregation" in which the legal supply chain would be broken down into discrete units and sourced to the most cost-effective provider.⁸⁴ I believe the disaggregation process is driving the rapid growth of the All Other Legal Services subsector—yet this subsector is, in all likelihood, owned and controlled by nonlawyers.

For example, contract attorney registry services are strong candidates to fill the disaggregation niche. Because of the proliferation of electronic data, document reviews in large corporation transactions or litigation matters can no longer be cost-effectively reviewed by expensive law firm associates. So this work is allocated to teams of contract attorneys and paralegals assembled by contract registry services. One of the biggest is Robert Half Legal, which has 26 locations throughout the U.S. and Canada.⁸⁵ Robert Half Legal is owned by Robert Half International, which is a public company traded on the New York Stock Exchange

⁸³ This information is withheld at the county level when it would functionally reveal competitive information on specific employers.

⁸⁴ Milton C. Regan & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Disaggregation of Legal Services*, 78 *FORDHAM L. REV.* 2137, 2139 (2010)

⁸⁵ Robert Half's website describes their services: "We place lawyers, paralegals, law clerks and legal support professionals on a temporary, project and full-time basis in high-demand practice areas. We also provide project teams, along with dedicated space and high-tech resources, for a wide range of initiatives including litigation support, M&A review and discovery matters." Online at <http://www.roberthalflegal.com/AboutUs>.

(NYSE symbol: RHI). The SEC filings do not break out information on their legal services business.

A competitor of Robert Half is Special Counsel, which “places attorneys, paralegals ... and legal support personnel on a temporary, temporary-to-direct hire, and direct hire basis into law firms and corporate legal departments.” Special Counsel now has 36 offices in the United States. It is owned by Adecco Group North America, which is a subsidiary of Adecco Group. Adecco Group is listed on the SIX Swiss Exchange (symbol ADEN). Again, because of the size of the corporate parent, financials for Special Counsel are not disclosed.

In the document review space, contract attorney registry companies are increasingly competing against legal process outsourcers (LPOs), who use foreign lawyers to perform the same work on large scale transactions and litigation matters. Outsourcing creates difficulties in tracking the growth patterns of an industry sector or subsector because only the domestic component of a global supply chain will appear in dataset like County Business Patterns. So, the actual growth in the All Other Legal Services subsector may actually be a number significantly larger than 14,000 domestic workers.

One of the most well-known LPOs is Pangea3, which was started in 2004 with \$1.5 million in venture capital funding.⁸⁶ The company was subsequently purchased by Thomson Reuters (NYSE, symbol TRI) in 2010 for a deal rumored to be between \$35-40 million.⁸⁷ At the time, the company had \$25 million in annual revenue, with an electronic discovery reported to be its “biggest piece of business.”⁸⁸ The company’s core operations are in Mumbai, India and additional facilities in Delhi and Carrollton, Texas. Its corporate headquarters are in New York City. Since its founding, Pangea3 has reportedly grown between 40 and 60 percent per year. The company reports that it now employs over 850 lawyers worldwide; company management expects this historical growth rate to continue for the next several years.⁸⁹

There are several more relatively large companies operating in the LPO space; and they too are owned and controlled by nonlawyers. For example, Huron Consulting Group, a publicly traded company (NASDAQ symbol HURN),

⁸⁶ Anuj Agrawal, *In Conversation: Sanjay Kamlani and David Perla, co-CEO's of Pangea3*, BENCH & BAR, Jun. 27, 2012 (reporting on growth of LPO from a start-up in 2004 to 850 lawyers currently and projected growth of 40% to 60% per year). Note: This is an Indian publication!

⁸⁷ See *Thomson Reuters Acquires Indian Outsourcing Co. Pangea3*, ABA JOURNAL, Nov. 18, 2010, online at http://www.abajournal.com/news/article/report_thomson_reuters_to_acquire_indian_legal_outsourcing_co_pangea3/.

⁸⁸ Agrawal, *supra* note 86.

⁸⁹ *Id.*

recently issued a press release announcing a new document review and data operations facility in Gurgaon, India (a booming suburb of India).⁹⁰ The press release reads, "The Company offers around-the-clock global discovery support with 1,500 seats at nine locations across the U.S., U.K., and India to address client's complex business needs."⁹¹ Huron Consulting Group's revenues have increased from \$315.6 million in 2007 to \$606.3 million in 2011.⁹²

Another LPO is United Lex, which does e-discovery work along with contract and intellectual property portfolio management.⁹³ United Lex was recently listed on the *Inc.* magazine's list of the 500 Fastest Growing Private Companies, with sales growth of 1,287% over three years.⁹⁴ United Lex has 750 employees, including 650 in India.⁹⁵ Similarly, CPA Global is LPO that does work in document review, legal research, patent portfolios, and trademark renewals. It employs 1,500 people in 17 locations throughout the world.⁹⁶ In early 2012, CPA Global was acquired by Cinven, a European private equity firm.⁹⁷

Within the document review space, "predictive coding" represents a third category of company that is profiting from disaggregation.⁹⁸ In essence, predictive coding is machine algorithms partially replacing lawyers in the search for relevant information. In a recent federal court decision, Magistrate Judge Andrew Peck, ruled that a predictive coding algorithm was, on the facts before him, an acceptable substitute for manual review.⁹⁹ Judge Peck favorably cited one study that compared two computer algorithms against human review, finding that the two computer searches were at least as accurate as lawyers.¹⁰⁰ Judge Peck also favorably cited another study that found that technology-assisted

⁹⁰ See Press Release, Huron Consulting Group Expands Global E-Discovery Offerings with India Document Review and Data Operations Facility, July 17, 2012.

⁹¹ *Id.*

⁹² See Huron Consulting Group Fact Sheet, page 1, Online at http://www.huronconsultinggroup.com/library/Huron_factsheet.pdf.

⁹³ See United Lex website, <http://www.unitedlex.com/>.

⁹⁴ See Press Release, UnitedLex Makes Inc. Magazine's 2012 Inc. 500 List of the Nation's Fastest-Growing Private Companies, http://www.unitedlex.com/pr_inc500_082112.shtml.

⁹⁵ See United Lex Expects 80% Revenue Growth this Fiscal, *The Economics Times*, Jan. 22, 2012.

⁹⁶ Press Release, *Cinven to acquire CPA Global*, Jan. 18, 2012 (reporting on size of CPA Global).

⁹⁷ *Id.*

⁹⁸ See Melissa Whittingham, Edward H. Rippey and Skye L. Perryman, *Predictive Coding: E-Discovery Game Changer?*, *EDDE JOURNAL*, Sept. 23, 2011, at 11.

⁹⁹ See *Da Silva Moore v. Publicis Group & MSL Group*, 11 Civ. 1279 (ALC) (AJP) (S.D.N.Y. Fed. 24, 2012) (recognizing that "computer-assisted review is an acceptable way to search for relevant ESI in appropriate cases").

¹⁰⁰ See *id.* at 18 & n.10 (citing Herbert L. Roitblatt, Anne Kershaw & Patrick Oot, *Document Categorization in Legal Electronic Discovery: Computer Classification vs. Manual Review*, 61 *J. AM. SOC'Y FOR INFO. SCI. & TECH.* 70, 79 (2010)).

reviews reduced by a factor of 50 the number of documents requiring human review."¹⁰¹

Companies operating in the predictive coding space include Recommind, which specializes in eDiscovery, compliance and information management. It explicitly offers “products” for searching and analyzing large volumes of information. Recommind has approximately \$15 million per year in annual revenues and approximately 100 employees spread over facilities in Massachusetts, California, London, Germany and Australia.¹⁰² Kroll Ontrack is another e-discovery company that offers predictive coding. Kroll Ontrack, which started as a hard disk recovery service, evolved into the e-discovery and information management services. It now employs 1,500 workers in 11 U.S. and 19 foreign locations around the world. In 2010, Kroll Ontrack had revenues of \$250 million. Kroll Ontrack is subsidiary of Kroll Inc., which is a global risk consulting firm. Kroll, Inc. was recently acquired by Alteryx, which is a conglomerate that owns a series of companies specializing in information management.¹⁰³ Alteryx is owned by the Providence Equity Partners, a private equity fund with over \$27 billion under management.¹⁰⁴

All of the companies discussed above are profiting from the migration away from bespoke legal work. With disaggregation, it is possible that everything up until the courthouse door, or the client counseling moment, is an entry point for a legal service vendor to become part of the global legal industry supply chain. The debate over Model Rule 5.4, which prohibits fee-splitting with nonlawyers,¹⁰⁵ may be largely moot.¹⁰⁶ Rule 5.4 does not appear to be very effective at keeping nonlawyers out of the legal industry. But it may be an effective mental fence that has hindered lawyers and law professors from venturing out and understanding how the world is changing around us.

¹⁰¹ Id. at 19 (quoting Maura R. Grossman & Gordon V. Cormack, Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient Than Exhaustive Manual Review, RICH. J.L.& TECH., Spring 2011, at 48.

¹⁰² See InsightView, Recommind, Inc., online at <http://www.insideview.com/directory/recommind-inc>.

¹⁰³ See Aaref Hilaly, *What's Next for Kroll Ontrack*, E-DISCOVERY 2.0, June 8, 2010 (reporting sale price of \$1.2 billion for Kroll, Inc.).

¹⁰⁴ See Providence Equity Partners, About Us, <http://www.provequity.com/about-us>.

¹⁰⁵ See Model Rule 5.4(d).

¹⁰⁶ See, e.g., Joe Palazzo, *IBM General Counsel: Nonlawyer Ownership Is a Nonstarter*, WSJ LAW BLOG, Feb. 14, 2012 (discussing practicing bars opposition to any attempt to enable nonlawyer to own equity in law firms, including proposed changes by the ABA Ethics 20/20 Commission); Chris Bonjean, *ISBA Submits Resolution Regarding ABA's Ethics 20/20*, ILLINOIS L@WYER NOW, Jun. 20, 2012 (reporting on resolution by the Illinois State Bar Association, modeled on a 2000 ABA resolution, that “law firms shall not be owned by non-lawyers and legal fees shall not be shared with non-lawyers”).

III. LEAN LAW

For the purposes of history, I am willing to side with Professor Larry Ribstein argument that the Big Law model is, in fact, dead. Obviously, many large law firms exist and continue to rake in enormous revenues. But clients have more choices than ever. As a result, the core business practices that catapulted these firms to such size and scale—high partner-associate leverage, annual rate increases, rewarding hardwork with partnership, ever high profits—are on the wane. To survive and thrive in the years to come, firms will increasingly follow Lean Law principles—better, faster, cheaper through collaboration, process engineering and technology—rather than the Big Law model. Let me first describe in simple historical terms the evolutionary progression that produced the Big Law model; then I will attempt to lay out a handful of characteristics that comprise the emerging Lean Law era.

For nearly 100 years, U.S. lawyers working in large law firms prospered because the world was becoming more complex and regulated. Specialized lawyers with deep technical expertise were in short supply. By combining into a firm, lawyers could specialize in specific areas of law, handle bigger and more complex matters, and otherwise coordinate their efforts to better serve clients. Indeed, in anticipation of growing client demand, the most successful firms constructed a partner-associate training model designed to keep pace with the growth.¹⁰⁷ Firms with a large client base and a well-run partner-associate training model generally prospered during the Postwar era.

As evidence of this claim, consider the fact that the average number partner of an Am Law 100 firm (a list of firms based on gross revenues) was born in 1895 and died in 1964 – yet the growth has marched on for another half century. This is the reputational capital that Larry Ribstein rightly highlighted as key to a large law firm’s financial fortunes. The period of greatest financial success has occurred during the last three decades. Between 1978 and 2003, total U.S. legal expenses as a percentage of GDP increased from .4% to 1.8%.¹⁰⁸ From this growing pie, large firm lawyers were getting the biggest slice.¹⁰⁹ By the mid-2000s, the profit share of the average partner in an Am Law 100 firm was

¹⁰⁷ See William D. Henderson, *Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 MARYLAND L. REV. 373, 376 (2011) (citing example of the “Cravath system”).

¹⁰⁸ See Marc Galanter, *Planet of the APs: Reflections on the Scale of Law and Its Users*, 53 BUFF. L. REV. 1369, 1378 & fig.1 (2006); see also *Id.* at 1379 & fig.2 (comparing the growth of GDP and receipts of legal services industry between 1967 and 2002 and finding that legal services grew nearly three times faster than the overall economy).

¹⁰⁹ See JOHN P. HEINZ & EDWARD LAUMANN, *THE SOCIAL STRUCTURE OF THE BAR* (rev. 1994) (aka Chicago Lawyer I); JOHN P. HEINZ, ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 99 (2005) (aka Chicago Lawyers II) (reporting that between 1975 and 1995 large law firms were the “clear winner in the market for legal services”).

over \$1 million per year. This tremendous prosperity was driven, in part, by an imbalance between the supply of sophisticated, specialized business lawyers (too few) and the legal needs, or demand, of corporate clients thriving in an era of globalization (very high).

Because complexity and regulation continues to grow unabated, large corporate clients continue to have enormous legal needs. Yet, two key economic factors have changed.

- (1) *Big Law has significant excess capacity.* Between 1978 and 2008, the average size of a firm listed in the NLJ 250 (the largest firms based on attorney headcount) increased by a factor of five, growing from 102 to 535 attorneys.¹¹⁰ This enables general counsel to deal with internal cost constraints by pitting large law firms against one another in search of lower prices. Thus, large law firms are increasingly locked into a battle over market share.¹¹¹
- (2) *New entrants into legal supply chain.* As discussed in Part II.B, a new generation of legal vendors has emerged who appear to be profiting from the disaggregation process, shrinking the volume of work that has traditionally flowed to large law firms.

The upshot of excess capacity and entry of new tech-driven vendors is that corporate law is poised to become dramatically more competitive.

In practical terms, the biggest challenge facing Big Law, and perhaps the entire U.S. legal profession, is that the artisan model of lawyering (or Bespoke work) has reach its high-water mark and is now on the decline. The traditional legal services market is now confronted with a productivity imperative. To cope with globalization, corporate clients need better, faster, and cheaper legal output. This productivity imperative is experienced as stress inside Big Law, as the less productive partners are de-equitized and asked to leave.¹¹² In contrast, for the new legal entrepreneurs, it is an enormous profit-making opportunity, as their entire business model is well-suited for the systemized-productized sweet spot identified by Susskind.¹¹³

Yet, as the legal market transitions into the new Lean era, the legacy reputation of the Big Law era still will continue to carry weight. Several years ago, a well-known law firm consultant and commentator famously observed that

¹¹⁰ See Henderson & Bierman, *supra* note 10.

¹¹¹ See William D. Henderson, *More Complex than Greed*, AM. LAW. DAILY, May 29, 2012.

¹¹² See Part II.B, *supra*.

¹¹³ See note 79, *supra*, & accompanying text.

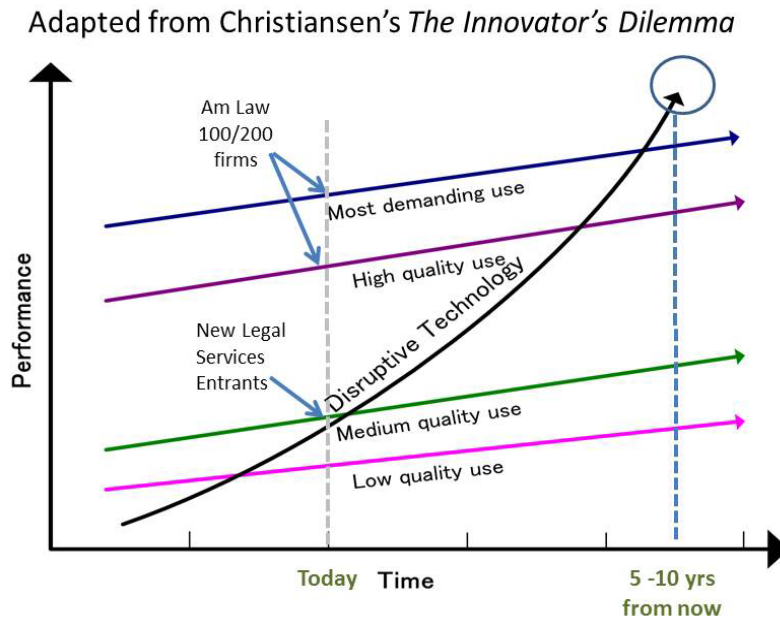
“Nobody ever got fired for hiring Skadden.”¹¹⁴ An in-house lawyer may get fired for exceeding his or her legal budget; a termination may happen if the same in-house lawyer presides over an important legal matter or transaction that, against the expectations of management, goes awry. But that outcome is less likely when the firm is highly profitable and perceived as a first tier firm. These two crosscurrents suggest that corporate legal departments will continue to source work to new legal entrepreneurs when the risk profile is sufficiently low. This enables these vendors to build their reputations and begin the process of targeting and obtaining additional, more valuable legal work for the client. Conversely, because so many large law firms have excess capacity, in-house counsel have the market power to negotiate lower hourly rates or alternative fee arrangements that shift some of the risk of price unpredictability back onto the law firm. So both sectors obtain work, but the allocation is far from stable over the longer term.

The conundrum here for Big Law is that work processes and product offering of many of the new entrants may be the early stages of “disruptive innovation.”¹¹⁵ Specifically, many of the new entrants discussed in Part II.B are entering the market at a lower part of the legal services value chain, such as document review traditionally performed by junior lawyers. When faced with price pressure from clients unhappy with rapidly escalating costs (due, in part, to the advent of digital data), the traditional law firms have often been unable or unwilling to make the investments necessary to compete with new entrants. So this market is gradually being ceded to contract attorney registries services, LPOs and companies using predictive coding technologies and products. But it does not stop there. Allied products and services, which are not particularly lucrative for law firms but are amenable to process and technology solutions, include intellectual property registrations and renewals, regulatory research and monitoring, contract management, and performing routine, annual corporate filings for companies doing business in multiple jurisdictions.

¹¹⁴ See Bruce MacEwen, *Nobody Ever Got Fired For Hiring Skadden*, ADAM SMITH, ESQ., Apr. 21, 2004, online at http://www.adamsmithesq.com/2004/04/nobody_ever_got/.

¹¹⁵ See CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA* (1997) (presenting framework in which incumbent industries often lack the ability to develop and exploit technologies that would replace their core products, leaving them vulnerable to disruptive innovations by new market entrants).

Figure 7



Will these new entrants begin to climb the value curve? Figure 7 presents Clayton Christiansen's Disruptive Innovation framework, including a plausible timeline for the legal industry. The challenges that confront Big Law go to the very heart of the innovator's dilemma. Past success has conditioned Big Law to ply their work in particular ways according to particular reward structures. This makes it very difficult for individual lawyers to obtain the resources and support they need to meet the productivity imperative—that is, create legal solutions for clients that are better, faster and/or cheaper.

To illustrate, consider Firm X, which has clients with differing appetites for innovation depending upon cost-pressures and norms within their industries. Partner A in practice group X may have a client who is demanding more cost-effective handling of his regulatory matters. Partner B, in contrast, has a similar practice but with clients in another industry that is experiencing fewer costs pressures. Will Partner B want the firm to retain profits to subsidize Partner A's solution? The problem becomes more complex if there is a significant age difference between Partner A and Partner B, thus producing different time horizons. The problem becomes still more complex if they work in different offices and, because of lateral movement, lack any shared history or personal connections.¹¹⁶

In this scenario, Partner A will probably be given the latitude to offer the client discounted fees and, accordingly, make less money for himself. In the

¹¹⁶ See Galanter & Henderson, *The Elastic Tournament*, *supra* note 10, at 132-33.

short-term, it means that Partner B is less likely to leave the firm, which props up the firm's profits. But in the longer run, both Partner A and Firm X remain vulnerable because neither has made any progress toward addressing the productivity imperative. Conversely, the new legal entrepreneurs, whose stock in trade is learning how to learn,¹¹⁷ are delivering true innovation and obtaining the credibility to pitch for the client for higher value work – work that might be currently being handled by yet another Firm X partner. Thus, the power of the brand name firm, though clearly attractive for a risk-adverse in-house lawyer, is not a permanent shield against the new entrants.

In my conversations with law firm insiders, the bleakest metaphor I have encountered is that large U.S. law firms have become *The Hunger Games*, a popular young adult novel centered on a tournament in which participants must vanquish one another; the sole prize is survival. As managers increasingly focus on revenues for the current fiscal year,¹¹⁸ the metaphor might apply both across firms and within them. If *The Hunger Games* captures some of the dynamics now taking hold in the large law firm sector, these are dynamics set in motion by highly successful law firm partners who are almost impossible to govern because of the large short-term rewards created by lateral market.

The economist might frame the issue this way: “Why invest in the speculative future of your law firm, through retained profits or a realignment of incentives for the longer term, when you can personally profit by focusing on your own client base?” This logic would seem to reflect rational self-interest. Yet, the successful law firm partner may view the issues through a much simpler lens: “I am successful because I have developed valuable talents and I work hard. Our firm's primary problem is that other lawyers in the firm are not sufficiently talented or hardworking [like me].” Because these lawyers tend to be the least affected by systemic changes in the legal market—through talent or luck, it does not matter which—they are the most likely to discount that market is indeed undergoing structural change. Most probably have not read, or even heard of, Richard Susskind.¹¹⁹ These lawyers generally control the management of the firm, and they generally favor a strategy in which firm lawyers are asked to work harder [as hard as them]. This perspective fuels both the de-equitization of partners and the heavy emphasis on the lateral market.¹²⁰

¹¹⁷ See CHRISTIANSEN, *supra* note 115, at 268 (“Failure and iterative learning are ... intrinsic to the search for success with a disruptive technology”).

¹¹⁸ See note 69, *supra*, and accompanying text.

¹¹⁹ In my travels to talk with law firm partners, I have encountered very few who study their own industry. A small minority has read any work by Richard Susskind.

¹²⁰ One recently retired partner told me, “Individual lawyers have every incentive to maximize their book of business even though the firm itself is headed into a cement wall.” Cf. Steven Kerr, *On*

That said, I want to be careful to not paint the future with too broad a brush. If a law firm, by dint of effective leadership and a farsighted partnership, were investing for the future, these plans are unlikely to be reported in the legal press or shared with an inquiring law professor. In my ongoing field research, I visited the annual meeting of the Electronic Discovery Reference Model (EDRM), which is an industry consortium comprised of law firms, major corporations and legal vendors attempting to set standards around methods of conducting electronic discovery.¹²¹ Until just a decade ago, lawyers and law firms handled virtually every aspect of the discovery phase of litigation. With the advent of electronically stored information (ESI), a myriad of vendors have moved into this market. To what extent is Big Law interested in hanging on to this segment of market? Those who understand the standards—or better yet, participated in setting them—will probably be in a better position to adapt to the changing market. Out of 84 organizations involved in the long-term EDRM projects, many are the new legal entrepreneurs discussed in Part II.B above. But roughly a dozen are Am Law 200 law firms.¹²²

Twenty years from now, we may observe many familiar law firm brands, but the organization and substance of their work may be dramatically different.

CONCLUSION

The purpose of this Essay was to re-evaluate Larry Ribstein’s seminal 2009 article, *The Death of Big Law*, with the benefit of three years of additional market data. The evidence suggests that the Big Law *model* is no longer viable. That is, there is insufficient client demand to support the perennial organic growth of large law firms. In search of growth, law firm managers are wading deeper into the lateral market and enriching lawyers whom they believe have large, portable books of business. Likewise, to preserve profitability, law firm managers are also axing lawyers who are unable to build and maintain their own client base, either internally within the firm (by being a highly skilled specialist) or externally (by being a rainmaker). Profitability is also being pursued through ever-higher amounts of leverage, albeit staff attorneys and non-equity partners appear to be supplanting traditional law firm associates.

None of these strategies make a law firm more attractive in the eyes of the clients—or, in Larry Ribstein’s terminology, build a firm’s reputational capital. Rather, most large law firms seem to be managed for the short-term benefit of individual rainmaking partners. To shield the firm against the defection of a large

the Folly of Rewarding A, While Hoping for B, 9 ACAD. MGMT. EXEC. 7 (1995) (republishing of an “academic classic” originally published in 1975).

¹²¹ See www.edrm.net.

¹²² See <http://www.edrm.net/participants/2012-2013> (providing list of 2012-13 participants).

group of lateral lawyers, law firm managers are gravitating toward rapid lateral expansion and mergers – so, ironically, Big Law continues to grow. The resulting collection of lawyers may produce little or no synergistic value for clients, but it may create internal perceptions of firm vitality and growth and buy managers more time to deal with the vicissitudes of the lateral market. In this sense, Big Law is creating its own peculiar version of “Too Big to Fail.” In the short term, the maintenance of relatively high profitability within these firms will convince stakeholders to stay the course—that is, to continue to pay out large profits and not invest too heavily in efforts to retool the underlying business model. These are the seeds of destruction.

Meanwhile, as discussed in this Essay, a new generation of legal entrepreneurs is beginning to occupy a portion of legal work traditionally performed by large law firms. Many of these companies are owned and controlled by nonlawyers. Further, they are establishing their own relationships with large corporate clients, thus positioning themselves for ascension up the value curve.¹²³ Larry Ribstein was a strong proponent of market forces and private ordering to simulate innovation. He thus favored the reform of ethics rules that would permit nonlawyer investment and the enforcement of noncompete agreements among lawyers. Yet, in the year 2012 and without the benefit of regulatory reform, he might be surprised by the rapid rate of growth of legal vendors owned and controlled by nonlawyer investors. Attracted by the large profit margins of a profession strongly wedded to its artisan modes of production, these new legal entrepreneurs are likely to compete for every portion of the legal supply chain that does not involve either direct client counseling or representation before a tribunal.

In the long-run, I suspect that many Big Law brand names will survive, but a large number will also perish. Yet, even if a firm survives, its internal operations are destined to change. The owners may still make a handsome living, but the owners themselves will be either (a) fewer in number but more financially invested, akin to a closely held corporation with many employees, or (b) an employee-owned company in which each lawyer is carefully vetted at hiring and is expected to think and behave like an owner. With the emergence of more stable organizational forms that foster longer time horizons, we will witness a new era in which reputational capital—based on some variation of better, faster, cheaper—is built up rather than spent down.

¹²³ See figure 7, *supra*.