

How to Ride the Coming Tidal Wave of Technology and Competition

Dennis M. Horn and Ira Meislik

Dennis Horn is a partner in Holland & Knight LLP, based in Washington, DC. Ira Meislik is a principal at the law firm of Meislik & Meislik, with offices in Montclair, New Jersey, and San Diego, California. Dennis is the chair, and Ira is a member, of the Future Practice and Guidance Task Force.

Technological and economic forces are transforming the legal profession. As emerging trends reshape the legal profession, lawyers both new and old will need to be nimble and prepared to keep pace. What legal landscape will baby-boomer and millennial lawyers face over the next 10 years? How can they position themselves for success?

In the words of Edmund Burke, “You can never plan the future by the past.” At least four trends will affect the legal landscape severely in the future:

- Direct consumer access to legal information and forms via the internet will translate into less market power for the legal industry.
- Clients increasingly have access to alternative sources for their legal needs, such as accounting firms, in-house lawyers, overseas legal research providers, and internet-based legal talent.
- Clients are disaggregating their legal needs, especially for complex litigation and due diligence, using technology for discovery and due diligence, thus reducing the legal hours required for those tasks.
- Clients, seeking lower and more predictable legal costs, are increasingly revolting against straight hourly billing.

In this article, we explore the professional concerns and opinions of Claire and Peter, who are not real people but who represent a composite set of lawyer interviewees who mostly specialize in real estate or trusts and estates law.

Claire, a new associate in a large law firm, has student debt of almost \$250,000. She expects to pay off her debt over the next 10 years, but she needs a big paycheck to do so. She is bright, expects to work hard, and is comfortable with technology. Claire is also painfully aware that many clients are unwilling to allow her law firm to bill for her time while she is learning the legal craft. She also knows that many well-qualified law school graduates, overlooked by Big Law, would love to have her job.

By contrast, Peter has been at a large firm for more than 30 years. In his mind, his success comes from personal integrity, excellent skills in the trusts and estates area, and stamina and willingness to work a lot of billable hours. Despite his present success, Peter is fearful that changes in technology and to tax law may result in commoditization of a large part of his trusts and estates practice.

Emerging Trends

At least in some areas of specialization, there will be more legal talent than there is demand in the future. Commodity legal products will face increasing price pressure. Lawyers who succeed in this environment will need new skills, especially a command of law, technology, and communications, as they focus on problem solving for their clients.

Market Power

The legal industry will have less market power. As part of an accelerating trend, lawyers will no longer be the sole gatekeepers for legal information. Search engines and legal applications are incorporating increasingly sophisticated artificial intelligence technology. This means that not only will legal research and forms be available to everyone through the internet, but this also will lead to standardization of many legal products that were once bespoke. Using search terms crafted by lawyers, much of legal discovery is already automated. Now, artificial intelligence is being used to create those search terms. Just as residential purchase agreements have been standardized in many parts of the country, expect that purchase agreements for ever more complicated real estate sales will be, too. Even today, federally backed residential mortgage documents are so standardized that they are hardly modifiable and now are signed on tablet computers in connection with closings. Commercial loan documents used by Fannie Mae and Freddie Mac are standardized, and even negotiated changes are almost always on standard riders. Products are already available that will electronically review many kinds of contracts and suggest changes, even proposing alternative clauses. All of that means that, in the future, at least in some areas of specialization like litigation, there will be more legal talent than there is demand.

Alternative Providers of Legal Services

Increasingly, clients will seek to further reduce their costs by using different and alternate sources for their legal needs such as more in-house lawyers, smaller, specialized law firms, overseas legal research accounting firms, and internet sources for legal talent, such as Axiom, Thomson Reuters, and Elevate. In fact, law clients in Europe, where the practice of law is not as strictly regulated as it is in the United States, have been using their accounting firms for traditional legal work for some time already. Bar rules in the United States have traditionally shielded lawyers from non-law firm competition. No one should expect this to continue in the future. The rules defining the unauthorized practice of law will be changed to allow for alternative means of delivering legal services. Pressure to change existing, restrictive bar rules will come from those desiring to expand access to legal representation to people currently priced out of the market and pressure from technology providers seeking greater operational flexibility. We already see competing non-lawyer businesses such as LegalZoom working within the existing framework of rules.

All of this adds up to competition lawyers have been able to ignore in the past but will not be able to ignore in the future. Today, in some states, the bar rules allow non-lawyers to represent clients in ever more fora. For example, the Washington State Bar Association, on orders from the Washington State Supreme Court, authorized licensed legal technicians—non-lawyers—to give legal advice and counsel to clients in family law matters. These licensed legal technicians can now form their own law firms and can appear in court in certain family law matters. Reportedly, California and Oregon are considering similar programs. In allowing non-lawyers to practice law in limited circumstances, the legal profession is following the path of medicine, where nurse practitioners, physician assistants, and specially trained nurses are replacing doctors on the front line.

Disaggregation of Legal Tasks

In addition, more and more clients, for economic reasons, are disaggregating legal tasks, especially for complex litigation. An internet-based technology company might provide discovery service using contract lawyers while a different law firm handles the motion practice and trial. Brief writing is being outsourced to low-wage countries. Initial drafts of contract documents are being outsourced as well. Jim Jones, a senior fellow at the Georgetown Center for the Study of the Legal Profession, tells the story of a prominent lawyer in a big firm who was the only lawyer from his firm on a case during the discovery phase of the litigation. His job was limited to managing and directing the discovery process, using resources outside his firm. If the matter went to trial, he would mobilize resources, primarily within the firm; but initially, he was the chief strategist and his resources were not limited to the firm in which he worked. That story illustrates both the need for a seasoned litigator managing the litigation strategically and the dissemination of legal work among multiple service providers, including machines. Overall, fewer hours will be billed by lawyers in that litigation.

Fee Challenges

Perhaps reflecting the shift in market power that these other trends allow, some clients are increasingly revolting against the legal industry's open-ended hourly billing formula, a formula that can result in unpredictable and uncontrollable costs. Instead, more and more clients are demanding predictable cost outcomes, especially for repetitive legal tasks. They want their lawyers to share with them the benefits of the economy of scale from repetitive work and want those lawyers to absorb some or all of budget overruns. In the past, this has translated into fee agreements based on budgets, caps, collars, and discounts. On the other hand, the scope of much of legal work is not predictable, and many clients have accepted that hourly billing may be the fairest way to allocate risk in those cases. Lawyers who know their costs can sometimes negotiate fees that increase their margins on certain legal products, such as opinions. Even where fees are based on the traditional hourly billing basis (which remains true for almost all the attorneys interviewed), an increasing number of clients will insist that their lawyers justify cost overruns.

Law Practice Statistics

Up-to-date statistics are difficult to obtain, but the available information suggests certain clear trends. According to the *Lawyer Demographics for 2016*, published by the ABA, there were 1.3 million licensed lawyers practicing in the United States as of the date of the report. In 2005, the median age of all lawyers was 49, up 10 years over the median age in 1980. Nearly 36 percent of lawyers in 2016 were

women, up from 28 percent in 2000. Just under half of graduating law students in 2014 were women. According to the Law School Admissions Council, law school applications dropped more than 40 percent from 2004 to 2017. There has been little change in ethnicity within the legal profession over the past 18 years; whites made up 89 percent of the profession in 2000, which is not very different from the 88 percent level in 2010. These trends suggest that the legal workplace will continue to be dominated by older white men as fewer attorneys join the legal workforce and as older ones extend their careers. The effect of the increase of female law graduates may change this power dynamic over time, though there is little evidence thus far that the profession is becoming more diverse or inclusive.

Anatomy of a Successful Practice

What will a successful career look like to each of Claire and Peter? According to Major, Lindsey & Africa's 2016 Partner Compensation Survey, which solicited 77,000 law firm partners in Am Law 200 firms for data, the average compensation of an equity partner in those 200 firms was \$1.1 million, whereas for non-equity partners it was \$367,000. To earn that compensation, the average origination for equity partners was \$3.1 million; the average origination for non-equity partners was \$720,000.

Peter is happy with his career, both with his compensation and the intrinsic work he is doing. Possessing status in a prestigious law firm allows him to serve on the board of one or more local or national non-profit organizations and to engage in interesting pro bono activities. Although the often-brutal hours he has spent on his career has required him, his wife, and his other family members to make sacrifices, Peter does not regret the choices that he has made.

Claire, by contrast, has no expectation that she will become an equity partner in her law firm. She knows the statistic that about a third of her peers at large law firms will leave their firms within three years and only a very small number of the remaining associates will ever become an equity partner. Nonetheless, she is confident she will have many career options and is happy to be where she is today. Her main objective is to learn her craft and pay off her student debt. Claire fears that even if she successfully navigates the career maze at her law firm and is rewarded with partner compensation, juggling her career and family may prove challenging.

It remains to be seen whether Claire and others in her millennial generation will come to adopt the values now held by the Peters of the baby-boom generation. Will she and her age-mates, male and female, seek careers where success translates to a job yielding a comfortable—but not huge—income, where they can work from home and attend their kids' soccer games? Or, will the effect of the student debt, big firm income, and sense of accomplishment coming from their practice in a big firm aided by a nurturing mentor, lock them into the Big Law life? Will Claire rebel against Big Law and start her own firm or take one of many other jobs that she is confident will be available to her?

Technology Disruption

What about Peter's fear that technology, combined with the current \$22.4 million estate tax exemption for a married couple, will reduce the need for lawyers to handle all but the most complex estate plans? Will those factors push more estates into the commodity category and reduce client traffic to his office?

How real are his concerns? According to several of the surveyed lawyers, legal work can be categorized as follows: 20-30 percent is high value, 10-15 percent is commodity work, and the balance, called middle-market work, including contract management, leases, routine litigation and process-driven legal work, makes up the remaining 55-70 percent.

Commodity work may cover a small firm's overhead costs with a little left over. High-value work will likely go to the largest law firms—on Wall Street or in London—or to a small number of well-known boutique law firms or specialty groups within larger law firms. That leaves between 55 and 70 percent of the middle-market work. A Jolt Digest blog titled *A Primer on Using Artificial Intelligence in the Legal Profession*, <https://jolt.law.harvard.edu/digest/a-primer-on-using-artificial-intelligence-in-the-legal-profession>, suggests that large clients are already looking for ways to replace lawyers with technology for their middle-market work. The article reports: “At JPMorgan, an AI-powered program called COIN has been used since June 2017 to interpret commercial loan agreements. Work that previously took 360,000 lawyer-hours can now be done in seconds. The bank is planning to use the technology for other types of legal documents as well.” At its best, technology will allow lawyers to serve more clients efficiently and at lower cost. Technology may also open revenue streams for lawyers not dependent upon billable hours.

Technology provider LawGeex, calling itself “the leading AI contract review platform,” claims to have “achieved an average 94 percent accuracy rate at surfacing risks in Non-Disclosure Agreements (NDAs), one of the most common legal agreements used in business.” It claims that this “compares to an average of 85 percent for experienced lawyers.” Even if this is puffery and might be a premature claim, sometime in the future it will be true.

What this means is that there will be a lot of competition for the remaining middle-market work among large, small, and midsize law firms, non-traditional legal service providers, and internet-based applications. To date, technology has been used as a “dumb” tool to speed up the delivery of services or to do deep searching of information bases or of document dumps, but advances in artificial intelligence are catching up with what was merely science fiction, and computers will be performing thought-based tasks. They may never reach the intelligence of the human mind, though we used to think that computers could never beat chess grandmasters.

A New York Times article, *A.I. Is Doing Legal Work. But It Won’t Replace Lawyers, Yet* (March 19, 2017), <https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html>, cites legal experts who opine that “technology will unbundle aspects of legal work over the next decade or two rather than the next year or two. . . .” The article cites a paper by Frank Levy, a labor economist at the Massachusetts Institute of Technology, and Dana Remus, a professor at the University of North Carolina, opining that the adaptation of technology in the legal profession would cut hours worked by lawyers by 2.5 percent annually over the next five years. If the prediction comes true, it means a 12.5 percent drop over what those billable hours would otherwise have been over five years. According to the article’s author, even though the pace of technological adaptation in law may be slow and unpredictable, technology will gradually take over much of the commodity work now done by attorneys.

Although applying technology will gradually reduce the number of hours worked by lawyers, legal work is really about problem solving, not paper pushing. Problem solving requires critical thinking, methodical organization, and superior communication skills. Success in law also requires the human skills of empathy, judgment, creativity, and advocacy. Clients want to be heard, and it often requires respectful listening to identify the real problem that needs to be solved. Successful lawyers in the future will be those who use both technology and their human resources to provide solutions to the problems posed by a client. Documents alone will not solve a client's problems. Clients will always want an empathetic lawyer capable of applying strategic legal and business thinking and judgment to the issues facing that client.

Harnessing Technology

Some law firms, such as Dentons and Baker McKenzie, either have invested in technology startups or have set up innovation committees to explore productive use of technology. Using tools like Lex Machina and Ravel Law, many lawyers have automated routine tasks such as document searches. Today, advances in artificial intelligence may reduce the reliance on lawyers in some ways, just like computer programs reduce the time accountants spend on preparing tax returns. According to the *A.I. Is Doing Legal Work. But It Won't Replace Lawyers, Yet* article, firms that use cutting-edge technology are using it mostly in electronic discovery, due diligence, and contract review. In virtually all cases, people—rather than machines—interpret the results. In addition, technology has already improved the lot of the working lawyer. Law firms are experimenting with shrinking their physical offices and allowing more professionals to work from home. Secure communication from remote locations allows firms to attract legal talent that might not otherwise be available to these firms, and the flexibility is a boon to young parents. It may also translate into savings on rent as law firms require less office space.

Secrets of Success in Changing Times

What will be the real challenge as we move deeper into the 21st century? It will be to find a way to identify legal work beyond the one-size-fits-all type, the kind where problem solving is needed and where technology companies are not interested because the market for solving such specialized problems is too small to be served. That average equity partner with annual compensation in excess of \$1 million isn't being so rewarded on the basis of competence alone. Competence in the law and hard work are the table stakes in the legal profession. To grab the brass ring, the lawyer also needs the entrepreneurial skills to hear what the clients want, design a system to provide those services, and market that system to attract clients. For entrepreneurial lawyers, the changing landscape in the legal profession will offer new opportunities for success. This is no less true for lawyers in small or solo firms. The ability to market oneself and to sell one's services, important as this has always been, will become far more critical for career success.

Obstacles to Success

What are the obstacles to law practice success in the future? Lawyers cannot look upon the future as a continuation of the present. They should not perceive the future from within the framework of their current practice. They will need to embrace new frameworks and methods. One surveyed lawyer shared a concern that many lawyers and firms do not even know how to measure the profitability of their services or even to determine the cost to perform those services. He added his belief that while lawyers may

be sophisticated when it comes to solving legal problems, the same does not hold true when it comes to solving their own business problems. Conventional wisdom is that attorneys, as a group, tend to be very conservative in their business practices. A former banker who works with large law firms jokes, "Some lawyers dislike change. The rest hate change." Those words explain why many law firms have been reluctant to embrace alternative fee structures, use online resources to reduce costs, and experiment with different ways of delivering legal products.

Because business as usual will be the model for most lawyers in the immediate future, what did the senior lawyers interviewed consider the recipes for success in the law? They stressed three factors that lead to success:

- Work hard. To them, this means mastering the legal craft and billing lots of hours.
- Find a niche. Firms and lawyers do better when they focus on what they do best rather than trying to be all things to all clients.
- Promote a culture of respect for others, personal integrity, and transparency among partners.

Some of the survey respondents used "work smart" in place of "work hard." To them, that distinction included their use of new technologies to help them produce the same or even better results faster than before possible.

Conclusion

All the preceding facts and speculation lead to some interesting conclusions:

- There will be less legal work in the future as digital technology, assisted by artificial intelligence techniques, takes over repetitive tasks such as document discovery and production of commodity legal documents that are suitable for mass markets with limited customization.
- The category of commodity legal documents and tasks will greatly expand.

As of now, neither artificial intelligence nor other technology is mature enough to threaten real estate and trust and estates lawyers doing their everyday work. Just as discovery practices in litigation have been transformed, technology and associated legal applications are getting better all of the time. Thankfully, the process of technology replacing lawyers will be gradual. Wise lawyers can use the delay to adjust their practices.

Lawyers' livelihood will be increasingly challenged by competition from other service providers who now, and increasingly in the future, will perform tasks previously performed exclusively by lawyers. To date, competing providers include accountants, internet-based service providers, title companies, and licensed legal technicians, among others. This trend is probably good for society because more people will have their legal needs addressed at a lower cost. It will not be good for lawyers who fail to get ahead of the trend.

The imbalance between legal hours offered and legal hours demanded may be reduced over time as fewer lawyers join the profession. We already have seen a drop of more than 40 percent in law school applications since 2004 (though they are again rising, but slightly). Also, older lawyers will retire out of

the legal marketplace. Along the way, however, the push and pull between market demand and supply is likely to be cyclical with more legal talent than demand available at some times and in some specialties and vice versa.

What can lawyers do to position themselves for success in this changing legal environment?

Adapt. There will be room for law practices of all sizes. Success will be less connected to firm size than it will be to a strategic focus on the firm's core practices and on expansion of its client base. Practitioners who now primarily rely on providing commodity legal advice and products should adapt to produce those products and deliver that advice in a very efficient manner, price-wise and cost-wise, or expand their offerings to include bespoke legal products for which clients are willing to pay.

Acquire New Skills. For the individual attorney to compete in the future, new skills will be needed. Legal knowledge will not be sufficient. Relying on the attorney's status as the gatekeeper for legal knowledge will not be sufficient. Lawyers will need an ability and willingness to understand and harness the power of existing and emerging technology. To take advantage of the expanded disaggregation of legal services by clients or even to survive in the legal business, lawyers must be able to manage a legal supply chain and to use both law and technology to solve their clients' problems.

Understand Clients' Needs. For small and large firms alike, in the future, the "real money" will go to lawyers who both know their clients' needs and know how to market themselves. Intelligence and knowledge of the law are no more than the table stakes an attorney needs to get into the game. Rainmakers and problem solvers will continue to prosper, but the tools they need to succeed will increasingly include technology, organizational, and communications skills.

Satisfy Client Demands. The customer is always right. If clients demand different billing models or the use of technology to perform certain tasks, successful lawyers will have to honor those demands. Those lawyers who satisfy their clients' changing needs will thrive despite the disruptive forces each of us and our industry will be facing as the calendar marches on.

The past is fixed and done. The present is gone in an instant. All that will change is the future, and the future never looks entirely like the past. Some blacksmiths moved from horseshoes to repairing automobiles. Very few of those who stuck with horseshoes survived in business. Like the blacksmiths of a past era, we will have a choice as to how we will respond to the encroaching changes in the business of law. Ignore the message at your own peril. That's the advice we would give to a client. Why not to ourselves? n