

Impediments To Legal Industry's 'Inevitable' Future: Part 2

By **Craig Levinson** (June 8, 2018, 6:08 PM EDT)

In part one of this article series, I agreed with the legal pundits speculating that NewLaw's present and future disruptors (NewLaw firms, the Big Four and alternative legal service providers) will radically change the landscape of the legal services industry. This would likely come at the expense of BigLaw, a term signifying the traditional law firm model being used by incumbent law firms. My issue has never been with the "if"; it's always been with the "when." Given the resistance to change of in-house counsel and the relatively small amount of money budgeted for legal departments, this "inevitable" future may not come quite as rapidly as analysts have predicted.



Craig Levinson

I also advised firms not to rely on my notion of a prolonged ramp-up, as factors like an economic event or the sudden entry of the Big Four into U.S. legal practice would be game-changers. Regardless of the pace at which the legal industry transforms, now is the time for both the incumbents and the challengers to best position themselves for the eventual shakeup. This strategic blueprint provides four key strategies BigLaw should embrace to defend its existing business from both NewLaw and from other BigLaw competitors. This is critical, as these tactics will almost certainly be adopted by NewLaw in their quest to capture more legal services market share.

1. Blow Up the Leverage Model and Eliminate Hourly Billing

Many BigLaw firms refuse to address their dependence on leveraging associate and non-equity partner labor. For many, it's the only model they've ever known. Law firm profits haven't come from rainmakers billing \$1,000 per hour. If you do a true cost per hour analysis, most equity partners lose money for their firms with each hour they bill. Law firm profits have traditionally come from armies of \$400 per hour associates billing 2,200 hours per year (equaling \$880,000 in revenue) while being paid \$200,000 salaries. That's the pool from which equity partners have always made their money.

The problem for those firms resistant to change is that a small percentage of their BigLaw competitors are already transforming. These firms are proactively using technology to replace certain associate tasks. They're applying process management tools to increase efficiencies. They're charging by the project and not by the hour. And they're saving clients millions. Corporate counsel may be resistant to change, but only up to a point. Mike Roster, co-chair of the Association of Corporate Counsel Value Challenge, says that for 85 percent of a company's legal spend, "there are typically 10, 20 or more law firms and practice groups who can handle the work superbly — not just OK, but superbly."^[1] When two Am Law 50 firms can do a job superbly, yet one is charging one-third less than the other, the cost of changing firms begins to pale in comparison to the benefits.

Forget, for a moment, the new entries into legal services. At some point, law firms that don't move from hourly billing to value billing^[2] will fail to be competitive with their BigLaw contemporaries. Richard Susskind, author of "Tomorrow's Lawyers: An Introduction To Your Future," has been a long-time proponent of law firms becoming more competitive by handling projects more efficiently. He writes, "For law firms that charge by the hour and so have historically benefited from ineffective case management ... workflow and project management systems represent new efficiencies and, in turn, the prospect of reduced

fees.”[3] And Susskind believes that these systems can be implemented in a manner where reduced fees don’t equate to reduced profits.

Susskind also views this tactic as a requisite measure for eventual competition with the Big Four and the law companies. In an interview with Oxford University Press, he stated, “The classic theory of disruption is that ... incumbents ... are reluctant to change and the people who change more willingly are the aspiring players, the disruptors. And that’s why ... the law firms need to take the big accounting firms (and) the legal tech companies very seriously, because these organizations ... they’re not as invested in the old way of working. They can literally start with a blank sheet of paper and say, ‘What are our clients wanting and ... can we deliver these services differently?’”[4]

He went on to say that he believed most mainstream lawyers don’t take the legal tech companies seriously. I don’t share that opinion. I believe BigLaw attorneys give the legal tech companies their due, but, as I wrote in part one of this article, they haven’t been impacted enough to consider those companies anything but a “should handle someday” problem. What’s more troubling is the notion that they view the small percentage of progressive BigLaw competitors through that same lens. Shrewd law firm leaders seeking to follow the model of those enlightened BigLaw firms can’t afford to wait for their lawyers to feel the impact of lost clients. They need a process to encourage internal change now.

2. Adopt a Change Management Process That Addresses Internal Pushback

When the consultants at McKinsey & Co. started applying the psychology of change management to business,[5] they identified three levels of change. The most difficult level included the challenge that BigLaw leaders currently face: changing a reactive culture into a proactive culture. It’s a complex problem because it involves changing the individual mindsets of hundreds of people. According to their research, there are four conditions necessary to change mindsets. Here’s how I view them in the context of law firms:

- Purpose: Tell all the stakeholders involved a compelling story of what makes the proposed change worthwhile, in a way that each of their contributions or perceived sacrifices makes sense to them as individuals.
- Consistent role models: Firm leaders need to be all-in, and not just with support. They should have skin in the game. If possible, some of the pilot programs should be with their clients.
- Reinforcement systems: There should be rewards for stakeholders who get on board. Whether it’s compensation, recognition or an office upgrade, everybody responds to his or her own carrot. The long-term rewards to the firm and to the stakeholders should also be consistently demonstrated.
- The skills required for change: Training must be a priority, and the hours spent in training should count toward a compensation column. Skills must be taught in manageable chunks and must be customized to each lawyer’s individual situation and preferred learning style.

One of the firms that created most, if not all, of these conditions was Seyfarth Shaw LLP. Before firm management presented Lean Six Sigma to the firm around 15 years ago, they considered the immense challenge of managing internal change and partner resistance. Their initial strategy included top-down buy-in, internal and external champions, and

persuasive pilot programs. These pilots focused on projects where they could get results quickly and then demonstrate the victories internally.

It was always going to be a tall order for then-firm chair Stephen Poor to get widespread rainmaker buy-in for a program that would mean less revenue from individual client matters, and presumably, reduced earnings for those partners. Poor and his team had to prove that there was a more tangible reward than just saving clients money and creating a competitive advantage over other firms. Following the pilot programs, they were able to demonstrate significant increases in new business from clients that were thrilled with the program results. His partners could then justify to themselves that the earnings lost by implementing process efficiencies would be offset by a greater volume of work, and increased loyalty, from their clients.

Law firm strategy consultant Patrick J. McKenna talks about identifying “ripe” and “unripe” issues. “Diagnosis is the first step to change,” he said. “I (the law firm leader) need to find out where my partners are ... on particular issues. Some will be ripe for change, while other issues may be very critical and are unripe. My leadership challenge is to find ways to ripen those issues over a period of time ... through bringing in outside speakers, analyzing the marketplace, and generally finding some subtle ways to get them to slowly understand without throwing it in their face or getting them to harden their position.”[6]

3. Demonstrate Operational Efficiencies and Technology Solutions; Don’t Just Tell

You’re a leader of a progressive BigLaw firm. You’ve hired incredibly talented operations professionals to create and implement proprietary technology. Your firm employs process, project and knowledge management systems to make matters more efficient, more predictable, and less costly for your current clients. How do you communicate it to prospective clients? You launch a PR campaign. You feature it on your website. And, in the ultimate display of short-sightedness, you have your partners, and only your partners, bring a fancy marketing piece to pitch meetings and tell prospects about your innovative approach.

There’s a reason most innovative B2B businesses don’t use the word “innovation.”[7] According to DeSantis Breindel, a leading B2B branding and marketing agency, the term “has become ubiquitous ... and as a result practically meaningless.” A firm only proves how innovative it is by demonstrating case studies, as well as people, technology and intellectual capital that differentiate it from its competitors. DeSantis noted that a financial services client demonstrated how it had continuously set precedents that shaped its industry. A technology client exhibited its innovation with a branding campaign focused not on their products, but on the diversity, knowledge and problem-solving abilities of their engineers and product developers.

Lawyers are often criticized for our arrogance and our need to constantly be the smartest people in the room. These traits create blind spots and habits that can be counter-productive to our financial goals. Is it any wonder that lawyers are among the most targeted group of professionals by sophisticated scammers?[8] One of those long-standing habits that must be broken is the tendency to bring only lawyers on client and prospect meetings. It’s a tough pill to swallow, but our operations executives are becoming as important as our lawyers. It’s time to start showing them off.

“One of our biggest differentiators is that our partners rarely go on pitches alone,” said Mike Caplan, chief operating officer at Goodwin Procter LLP. “They are accompanied by operations professionals such as me and folks from marketing, pricing, IT and other areas of

operations. We discuss ways in which we can help the client or prospect in areas including technology, outside counsel spend, and electronic billing — without charging for those services. This approach positions us as a full-service firm that goes above and beyond, with both the business and practice of law working together, while keeping the partner and the firm relevant in the clients' minds."

Firms like Goodwin bring their operations professionals to "problem-solve" with their client counterparts. By collaborating with CFOs, legal operations specialists, IT professionals, business unit managers and procurement departments, law firms foster a powerful feeling of partnership with their clients. When those collaborations result in innovative processes that increase efficiencies and reduce costs, the firms then have case studies that will appeal to prospect companies' various stakeholders in the decision-making process. Don't get me wrong. I admire the BigLaw firms that consistently garner awards for innovation. They're doing so many things correct that their competitors aren't. I'm merely saying that using the word "innovation" 26 times^[9] on one webpage or listing your novel processes under a category called "INNOVATIONS"^[10] may not have the impact of actively exhibiting one's case studies, people and technology.

4. Embrace Nonlawyer Sales Forces and Use Professional Sales Tactics

Sales is an art just like lawyering is. The true professional salesperson has put tens of thousands of hours into perfecting his or her craft. Lawyers who only spend five to 10 hours per week developing business may not want to hear it, but they're amateur salespeople. The law companies have professional salespeople, as do the Big Four. Try placing an amateur against a professional in virtually any other craft (think athlete, musician, chef, engineer, etc.), and the amateur loses ... badly. Thus, the law firms that are employing professional salespeople are the ones who will be best situated to compete in a legal services market that will look radically different years from now.

One benefit of being a full-time salesperson is that you have the time to immerse yourself in an industry and initiate conversations about business problems — before they require legal solutions. The reality is that most law firms are habitually reactive. They get involved in the problem-solution spectrum far too late. Getting invited to the competition after the legal problem has been identified, analyzed and dissected is far from the optimal way to approach the market.

Law firms like Orrick Herrington & Sutcliffe LLP, which have embraced full-time, outward-facing salespeople, called "managing directors," are the ones that are bucking this trend. Orrick's chief client officer, Catherine Zinn, oversees business development, including leading a team of sales executives organized by sector. She, herself, is "player/coach," focusing primarily on global public technology companies. Additionally, she serves as a client service and satisfaction conduit between the firm and many of its largest clients, with an emphasis on diversity and talent.

According to Zinn, "Our sales team stays close to our relevant markets and close to our most successful lawyers at Orrick with a particular focus on sectors and regions. It is our job to know the players; it is our job to know their businesses. On our best day, we speak like industry executives, which is helpful when engaging with prospects and referral sources about what matters most to them and how we can help. This proactive, business-focused approach is what allows them to listen well, understand what clients care about, and, when appropriate, make helpful introductions that result in more interesting and important work for our lawyers."

At DLA Piper, Chief Business Development Officer Erin Dimry has a team which includes professional client development executives focused on identifying, qualifying and pursuing new business opportunities. They're trained in consultative selling, which places significant emphasis on asking intelligent, pointed questions, listening to prospects to understand how they perceive their own problems and issues, and relating one's product or service to that perception.

To convey the importance of this type of selling, Erin said, "There is a very subtle difference between highlighting a benefit and reciting a list of features. As service providers, we spend years perfecting our craft. It can become easy to fall back on our credentials. It's critical to remember that our credentials are only valuable to the client if they enable us to solve a problem the client needs to solve. An example everyone can relate to is the purchase of a new car. Your current car may have an impressive list of features but be missing a singular benefit present in a newer model. If the car salesman launches right into a recitation of a similar list of features without ever asking what made you go shopping in the first place, he or she risks confirming everything you love about your existing car while missing the opportunity to solve the problem that led you to shop for a new one. In my case, this reaffirms my inclination to remain with the status quo. Some lawyers sell in the same fashion. They list all of the complex things they do well, all the while missing that one unidentified thing that's most important to the prospect."

A version of consultative selling which often reveals that undisclosed item is called provocation-based selling.[11] Great salespeople "provoke" their clients and prospects by citing problems and opportunities for which their firms have solutions, and then testing for recognition (or lack thereof). They'll say, "One of the things we're seeing is U.S. commodities companies which export to China that are dangerously ill-prepared for potential retaliation in the form of tariffs on their goods. How are you approaching that issue?" If the client has a "tell me more" reaction, he or she is likely to become a qualified lead. It's the same tactic BigLaw attorneys are taught in order to cross-sell other practices — a tactic they usually, and predictably, fail to employ. By hiring professional salespeople and immersing them in discrete industries, a firm can have trained prospectors testing for issues and qualifying leads while their lawyers are back in the office — lawyering, billing or operating the firm.

A sea change is coming to the legal industry. It may not be as rapidly as some have predicted, but the conditions are in place for a significant upheaval. What can't be argued is that resistance to change rears its head at every turn. In the end, whether it's the incumbents at BigLaw, the agents of change within the clients, or the aspiring players, the biggest combatant is actually inertia. The eventual winners will seek to understand it, learn to successfully combat it internally, and bring in true professionals who can help clients and prospects overcome it. For each audience, the process is the same: Enable people to conclude, in their minds, that the financial, operational and personal impacts of maintaining the status quo are too high, and that action must be taken now. Those who fail to understand the psychologies of change management and decision-making are bound to be on the wrong side of history when the broad transformation of the legal services industry finally transpires.

Craig Scott Levinson is an attorney and the founder of consulting firm Levity Partners. He was previously the director of sales and client development for Berger Singerman LLP, and the co-creator of RainmakerVT, an online virtual reality sales and marketing training system.

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