

THE NEW WORLD OF LEGAL WORK

THE CHANGING RULES OF
THE 21ST CENTURY

BY JORDAN FURLONG

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Contents

FOREWORD	3
THE FUTURE OF WORK	4
Unexpected journeys	8
Agile employment	10
Risks and rewards	13
THE IMPACT ON LEGAL	16
Who, where and how	19
The future of legal work	21
New legal employment	23
WHAT THESE CHANGES MEAN FOR LAW FIRMS, LAWYERS AND IN-HOUSE COUNSEL	24
A. Law Firms	26
Analysis and inventory	27
Making a fresh start	29
Doing right	30
B. Lawyers	31
Shifting to solo	34
Three-stage process	35
Looking ahead	36
C. In-House Counsel	37
The mother of invention	38
Alignment and action	39
Last chance	40
CONCLUSION	42

“THE RECENT MARKET
TURMOIL HAS CHANGED THE
WAY LAWYERS THINK ABOUT
THEMSELVES, THEIR WORK
AND THEIR CAREERS.”

Foreword

*“I’m doing all right, getting good grades
The future’s so bright I gotta wear shades.”*

It was 1986 when this was in the charts – it was the year that I was sent by my school on a week’s work experience to a local law firm. In those days, a legal career seemed straightforward once the ‘good grades’ were in the bag. Perhaps a bit mundane for any self-respecting teenager with their eye on the charts, but it all looked nicely predictable. Aspiring lawyers just needed to aim for the large bright light and keep the needle on the record.


Fast forward to today and things look rather different. Not just for teenagers of 2014 but for those of us from 1986, now half-way through our legal careers, and for all the lawyers in-between. The recent market turmoil has changed the way lawyers think about themselves, their work and their careers. There are still bright lights out there, perhaps even brighter, but they’re more dispersed and shifting in unpredictable ways.

Simply keeping the needle on the record seems no longer to be a viable option. Luckily, when it comes to change, LOD likes to think positively. So, we wanted to examine the opportunities that have arisen for lawyers across the board out of this on-going upheaval. We wanted to delve into how they might come out of it smarter and more agile. And we wanted to explore how, by being open to new ways of doing things, lawyers can ultimately become better at what they do.

Jordan Furlong is someone who called the changes facing the legal industry before almost anyone else. He’s a lawyer, consultant and strategist with a great blog which well-deserves its many awards. Way back in the last decade he was already comparing the upcoming disruption of the legal industry with that seen in the music industry and offering advice to those of us caught up in the change. For 2014, we asked him to offer his thoughts in his own style on the future of legal work. We hope it provides some insight and inspiration on what a bright future might look like for all levels of the profession.

Happy reading.

Simon Harper
Co-Founder
Lawyers On Demand



THE FUTURE OF WORK

“THERE IS ALMOST
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The future of work

The future of work has arrived! There's only one problem: it doesn't look quite the way most of the experts predicted.

Certainly, everyone could see a new world of work coming some time ago. Go back about 10 or 15 years and rifle through the think-tank reports concerning employment in the 21st century. You'll see several themes emerge repeatedly:

- Demographics, technology and globalisation would drive a gradual transformation in the nature of work.
- Labour force expansion would decelerate as Boomers retired and the pace of women's entry into the workplace slowed.
- Many tasks would be outsourced to lower-cost jurisdictions overseas, but the deeper pool of available talent would drive greater productivity.
- Technology would replace both lower-skilled and even some higher-skilled jobs, but it would still create more jobs than it eliminated, spawning new types of work about which present-day analysts could only speculate.

Some of these prognostications have proved to be right on the money. For example, overseas outsourcing (and, more recently, onshore repatriation) of jobs has become a widespread productivity tactic for many companies. In addition, technology has produced new and often unexpected career paths: nobody in the 1990s foresaw that 'app developer' would shortly become a reliable and legitimate way to earn a living. But many other predictions have come only to half-fulfilment, while some have yet to emerge at all. Why not?

Trend forecasting, in every era and industry, has one major vulnerability: while the effects of visible trends can be predicted with great accuracy, there is almost no way to anticipate the impact of unexpected developments that disrupt all those carefully charted trend lines. In the case of 'future work,' the forecasters of the 1990s could not have predicted the massive impact of two unforeseen events of the 2000s.

Unexpected journeys

The first of these was the collapse of Lehman Brothers and the resulting Great Financial Crisis of 2008, which have been roiling the world's markets and workforces for more than five years now. Throughout the resulting recession, a frenzy of austerity measures has swept through both private and public sectors worldwide, especially in Europe, causing institutions that normally drive hiring to retreat into seemingly continuous cost-cutting mode.

Among the results, 'reducing headcount' has shifted from a short-term tactic into a long-term strategy for many employers. Older workers, many of whom saw lifetime savings shrink or disappear in a matter of hours in 2008, still cling to jobs from which they normally would have retired by now: the number of people working past retirement age in the UK is growing by 10% each year. In turn, youth unemployment is rising fast almost everywhere, especially in continental Europe.

The second development, historically intertwined with the first but destined to outlive it, is the rise of the mobile device. The first Apple iPhone was released in June 2007, slightly over a year before the fall of Lehman; the first Android-powered phone appeared in October 2008, the very same month the GFC began; and the first iPad came out in April 2010, less than two years later. It is difficult to overstate the impact of these devices on both our daily lives and our careers.

Today, there is hardly an employee or entrepreneur of any kind anywhere who is not connected 24/7 to email, texts, websites, applications and a global supply of news and data. Mobile Wi-Fi productivity has knocked down office walls and erased national borders in a matter of a few short years, with much more change inevitably to come.

Between the harrowing effects of a global financial coronary and the mind-boggling impact of worldwide mobile productivity via smartphones and tablets, we can now start to trace more accurate outlines of the future of work. Through this combination of necessity forced upon us and opportunities offered to us, we are entering a new phase in the development of labour and productivity, with a new set of relations between the purchasers and sellers of talent. In this new era, we will redefine what it means to be an 'employer' and a 'worker,' through the lenses of technology, flexibility, specialisation and autonomy.

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Agile employment

Alison Maitland and Peter Thomson, in their 2011 book *Future Work: How Businesses Can Adapt And Thrive In The New World Of Work*, contend that we are now entering a time of 'agile employment'. Indeed, in June 2013 the government asked Sir Winfried Bischoff, Chairman of the Lloyds Banking Group, to head a group of chief executives and chairmen from leading employers in looking at workforce agility and how UK business might support the growth of workforce agility across UK plc. The group was named The Agile Future Forum. Workforce agility, as described by the forum, allows an organisation to establish the optimal workforce to support its objectives while simultaneously meeting the needs of an emerging generation of workers. The authors identify four aspects of agile working practices:

- **Time**
When do people work? This includes part-time and flex-time work, job-sharing, staged retirement, and customised workdays.
- **Location**
Where do people work? This encompasses home-based and mobile workers, as well as people working across multiple sites.
- **Role**
What do people do? This includes multi-skilling i.e. training for staff to fulfil multiple roles.
- **Source**
How are people employed? This refers to new modes of employment such as contract, project, or temporary work, as well as the new agencies emerging to coordinate such workers.

According to the CBI's 2011 Employment Trends Survey of businesses, 96% of UK companies offered at least one type of flexible working practice to their employees. In their own studies of companies such as Tesco, Ford and Lloyds Banking Group, The Agile Future Forum found that agile working practices generated value equivalent to between 3% and 13% of workforce costs. It also highlighted two case studies from the legal sector: 28% of Eversheds staff reported increased productivity and 14% increased their chargeable hours when the firm allowed employees the freedom to choose their own working model, while Addleshaw Goddard generated a 15% to 20% increase in the productivity of (and a 50% reduction in absenteeism among) its home-based workers.

Maitland and Thomson argue that agile arrangements 'increase efficiency and attract the best talent and skills':

The new workforce wants a fresh deal. Aided by technology, companies now have the tools to boost output and cut costs, to give employees more freedom over how they work.... There is ample evidence that trusting people to manage their own work lives, whether individually or in teams, pays off. Organisations that measure and reward people by results, rather than hours, benefit from higher productivity, more motivated workers, better customer service, and lower costs.

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Risks and rewards

It's not difficult to see why many businesses would respond positively to the prospect of a more 'agile' workforce. Increasingly volatile 21st-century markets have resulted in much less stable corporate revenue streams than in the past; yet many organisations still operate under long-term, fixed-cost business models that must sustain locked-in salaries, pensions, benefits and overheads, regardless of economic circumstances. Companies understandably welcome the advent of a system that enables them to hire only who they need and only when needed, rather than carrying around a huge permanent flotilla of talent that is rarely called upon to full effect.

Nor is it difficult to see the potential for exploitation of the labour pool if agile work trends are executed poorly or maliciously. Historically, the elimination of secure, full-time, permanent positions often has led to work that was lower-paying, more isolated and more capricious. The ONS reported earlier in 2013 that the number of workers who say they are self-employed in their main job rose by 367,000 between 2008 and 2012; from March 2011 to March 2013 64% of the new self-employed in the UK were managers or professionals. The median hourly wage for self-employed Britons reported in July 2013 was £5.58, less than half the £11.21 earned by employees.

These statistics, and the checkered history of management-labour relationships generally, justify a cautious appraisal of the promises of agile work. But it is also true that today's more flexible and independent labour markets wield real power of their own.

Companies that exploit disempowered workers run gigantic risks to their reputation in a social-media world: witness the publicity damage absorbed by businesses that unwisely stock up on unpaid interns at the expense of paid employees. Employers badly need workers with specialised skills and talents in this market, and they cannot afford to lose ground to competitors who treat workers not as resources to be exploited, but as relationship partners with whom a fair balance of interests can be negotiated. Ubiquitous lists of 'Best Companies To Work For' are not just publicity exercises: they confer real advantages in the ongoing war for talent that the recession might have overshadowed, but certainly did not end.

More importantly, however, agile employment can serve the genuine interests of an emerging generation of talent. The decline of lifetime, single-employer, salaried work is no great loss to young Britons who instinctively reject such commitments and who will have dozens of 'employers' during their lifetimes.

The unwieldy term ‘work-life balance’ was always a poor label to describe their desire for a more satisfying integration of personal, family, career, health and social interests. Nor is this desire restricted to Generation Y: older workers with children to raise or parents to care for need more flexibility in their work schedules and greater autonomy in forging their own career paths. Agility can provide just as much value to workers as to employers, perhaps even more.

For an emerging generation of workers, employment in future will come to be understood in terms of opportunity and entrepreneurialism.

- Instead of depending upon a single employer who dictates a defined set of tasks, workers can choose from a range of opportunities to provide unique value to a rotating array of clients in specific circumstances.
- Rather than being tied helplessly to the fortunes of their companies and the vagaries thereof, workers can become entrepreneurs responsible for their own fates — accepting the very real risks entailed by their choices, but also enjoying the immense rewards that they can provide.

Traditional ‘employee’ status eliminated some of the ‘highs’ and ‘lows’ of the employment experience: the employee was protected against the most adverse working conditions, but often in exchange for high degrees of personal gain and autonomy. Agile employees won’t always have that floor to sustain them; but, in turn, they will not have that ceiling to restrain them, either.

The key to fulfilling the potential of agile work lies in execution - on both sides.

- Agile companies will have to shake off the bad corporate habit, developed over many decades, of viewing workers as a regrettably necessary and frequently fungible cost of doing business, adopting a more mature and nuanced approach to their relationships with talent in the process.
- Agile workers, in turn, will have to organise and promote themselves in new ways, forming talent and project agencies to advance their interests (much as certified unions protected their salaried predecessors) and constantly renewing and sharpening their own skills and know-how in order to remain competitive in a crowded talent market.

In the long run, most predictions about the future of work will bear themselves out, including vertically disintegrated businesses, independent telecommuting workers, outsourced and automated tasks, and massive technology-driven gains in both personal and corporate productivity.

All recessions eventually lead to recoveries, and this one will be no exception. But even post-recovery, it is difficult to foresee the re-emergence of the full-time, permanent, salaried employee as the dominant form of employment. Businesses won’t soon forget the financial and tactical benefits of a contingent workforce to scale their performance, and workers won’t quickly surrender the newfound benefits of personal independence and labour flexibility.

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THE
IMPACT
ON
LEGAL

The impact on legal

So, given the inevitability of these trends, what effect will they have on the legal industry? I will provide detailed answers to that question in the second half of this paper, by looking at changing legal talent patterns from the perspective of corporate clients, law firms and lawyers themselves. But first, I will briefly sketch out the big picture of both employment and productivity in the future legal market.

Imagine for a moment that, instead of introducing innovations like assembly lines and robotic workers to the auto manufacturing process, carmakers had continued to employ individual craftsmen to produce each segment of their vehicles well into the 1980s. Imagine the reduction in plant productivity and the skyrocketing of unit prices that would have ensued. Automobiles would be prohibitively expensive and available only to deep-pocketed buyers, rather than widely available to virtually everyone. Now imagine how much less productive our entire economy would be as a result.

That is roughly where the legal industry finds itself today. Most law firms are working not much differently in 2013 than they did in 1953, despite 60 years of advancements in every other industry in the areas of technology, division of labour, and business process. This is why, facing the first serious revenue shortfalls they've seen for many years, most law firms lack the systems or the imagination to do more than cut reflexively and fire ruthlessly to reduce payroll and expenses. Yet profits continue to drop, as clients find cheaper alternatives to lawyers, drive down rates that reduce margins, or go without lawyers' help altogether.

What many law firms don't yet appreciate — but soon will — is that a more modern and efficient deployment of talent and systems to accomplish legal work not only reduces personnel costs, but more importantly, *also increases productivity*. The pent-up productivity potential of better infrastructure, workflow, and employment systems in the legal market is off the charts, and the employment revolution described earlier in this paper will play a key role in unleashing those benefits. The means by which legal work can *best* be done — in terms of productivity, sustainability and effectiveness — will become a primary consideration for legal service providers and their clients.

Who, where and how

Leave aside for a moment the question of 'what' law firms do, in terms of the functions they perform for paying clients. 'Who' will do that work, 'how' will that work be done, and 'where' will that work be done? These are the most pressing operational questions facing law firms in the next few years. They also present the widest array of options and opportunities for performing client services that the legal profession has ever seen.

Traditionally, legal work has been performed either inside the client's home base or inside a law firm — and if the latter, within the four walls of the law office itself. Law firms engineered work product simply by putting a lawyer ('Who') in a law office ('Where'), giving him a pen, a legal pad, and a clock ('How'), and closing the door. In future, there will be several different answers available to each of these questions.

WHO?

This will range from independent project lawyers to consumer clients doing unbundled work, and from para-professionals, clerks and technicians to permanent full-time law firm lawyers.

WHERE?

New-look law firm headquarters will complement specialised back-office centers and high-calibre project lawyer firms, with mobile, home-based, or foreign lawyers employing managed legal processes.

HOW?

This will include not only blueprints guided by legal project management and flowcharts used by legal technicians, but also expert applications operating online and automated contract assembly engines.

In future, law firms will no longer consist merely of the occupants of a centralised physical office. Firms will be increasingly de-centralised, distributed and diffuse entities that assign tasks not to the highest available biller in the office, but to the most appropriate and best aligned performer, regardless of location. The creation and review of documents, the application of principles to solve a problem, the completion of an approval process, the execution of commercial procedures — all of these can be performed outside law offices, outside the legal profession, or even outside the human realm. With the relentless advance of Big Data, these trends will accelerate.

These law firms will also develop a better understanding of ‘productivity’. Most firms today still consider ‘hours billed to a client file’ to be the primary metric of productivity (and, crucially, the primary basis of compensation). In future, firms will abandon this primitive ‘input’ measure in favour of more sophisticated and external-facing ‘output’ measures that revolve around value provided to the client. This will trigger an enormous change in law firm culture, especially with regard to work habits: lawyers will be encouraged to pursue quality of outcome rather than quantity of time, which will further accelerate the trend towards flexible workers providing specialised value from the most effective locations.

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The future of legal work

Put it all together and one clear conclusion emerges: The legal industry today has the means, motive, and opportunity to re-engineer its workflow and talent systems, to a degree unprecedented in the profession’s history.

Based on all the foregoing, we can sketch out a reasonable estimate of what the future holds.

A. LAW FIRMS

Many law firms will be smaller than they are today, with fewer permanent lawyers and staff occupying less square footage.

- The physical plant will be configured differently: there will be far fewer lawyers’ offices, and these will mostly be reserved for the most influential partners and business developers.
- “Hot desks” will be available via advance reservation to lawyers, para-professionals and staff who are based at home or on the road, but who need a quiet, secure place to conduct calls or undertake analysis.
- Meeting spaces will replace law offices: collaborative zones where lawyers and/or staff and/or clients can gather to review matters and execute plans in comfort and confidence.

The future law firm will feel less like a 1970s white-collar office and more like a 21st-century condominium hotel.

B. LAWYERS

Most private-practice lawyers will be, for all intents and purposes, entrepreneurs.

- Some will continue in what we would today consider ‘sole practice,’ although with much more specialised niche practices than their GP solo predecessors.
- Others will be high-quality project lawyers, competing to join rotating teams of professionals on an as-requested basis for projects (e.g., major trials, complex deals) that could run either concurrently or consecutively.

- Still others will develop hybrid careers: lawyer-knowledge curator, lawyer-analyst, lawyer-technologist, lawyer-educator, serving either fellow lawyers, clients, or the general public.

Some lawyers, of course, will still be permanent full-time members of a law firm, but only if they are critically important partners or are en route to joining those ranks.

C. LAWYER WORK

Much of what we now consider to be 'lawyer work' will be re-classified as 'legal work' and will be carried out by a variety of performers.

- The most basic tasks — boilerplate contracts, straightforward document review, fillable forms — will be reduced to programming language and consigned to computers (which will not only reduce costs, but will also raise accuracy and quality).
- Mid-level legal tasks — those that would benefit from a lawyer's expertise, but do not really require it — will be given over to trained paralegals or overseas lawyers.
- Some higher-level work — reserved legal activities that should only be conducted by lawyers — will be farmed out to teams of independent project specialists who report to the permanent full-time lawyers at the law firm (or directly to the client).
- Even the most complex and challenging matters will be broken down into their component parts, and those parts will be assigned to a performer whose skills and price best align with the value of each part.

New legal employment

There is no secret or magic to how all this will come about. The same disruptive forces that have driven outsourcing, automation, and flex work in every other industry will gradually, quietly enter the legal market and transform it. Agility will become as commonplace a labour concept in law as in many other industries.

From now on, organisations that sell legal services will create fewer full-time lawyer jobs to deliver those services. But they will use many more project lawyers, overseas lawyers, paralegals, legal process outsourcing (LPO) companies, and increasingly sophisticated software programs. There might not be as many 'lawyer jobs,' as we've traditionally understood the term, in future. But there will be a record number of 'lawyer opportunities,' and that is where the future lies for the legal profession.

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WHAT
THESE
CHANGES
MEAN FOR
LAW FIRMS,
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A. LAW FIRMS

WHAT DOES ALL THIS MEAN FOR THE LEADERS OF LAW FIRMS AND PRACTICE GROUPS?

If you fall into this category, there's no sense pretending that the challenge in front of you is not immense. It's remarkably difficult to change the tyres on an 18-wheel lorry as it's hurtling down the highway. Yet this is the sort of task the market has presented to you: reconfigure the way in which your firm or group performs legal work while that work is still ongoing — and, by the way, see if you can pull this off in the middle of an historic economic slowdown.

After recognising the scope of the challenge, you should also recognise that it is possible, that it does not need to be done all at once, and that the possibilities and benefits that would flow from success are extraordinary. You have new options both for sourcing your firm's work externally and reconfiguring its workflow internally; here's how you can start to use them.

Analysis and inventory

You might already be undertaking sophisticated process mapping within your firm. But if not, you may wish to begin by performing a basic workflow analysis. Ask the leader of each practice area or industry group, or perhaps the key figures within those sections, to write a brief memo describing how work is identified, assigned, performed, and checked within the group. Who carries out each of these tasks? At what points, and on what bases, are decisions made during this process concerning the 'who,' 'how,' and 'where' of the work?

After the leader provides this list, he or she can then be asked: 'In a perfect world, how would you change this process to make it more effective?' You might be surprised by the answers you receive and by the leader's eventual receptivity to small changes that he or she has personally suggested.

At or around the same time, perform an internal inventory of the skill and performance imbalances within your firm or practice group. What sorts of talent and expertise do you have in super-abundance? (The ability to write legal memos or conduct research, for example.) On the opposite side of the ledger, in what areas do you have less talent and expertise than you desire? (Project and personnel management, or business development, for example.)

Once you've identified the surpluses and deficits in the areas you need, set out to re-balance them. Could your fifth-best memo-writer become, with proper training and support, your best internal project manager or client liaison? Could your extraneous secretary become, with proper training and support, the personal marketing director for the lawyer she has worked with most extensively? Could a competent but expensive full-time associate who's willing to explore new options be transitioned to project lawyer status?

After these processes are complete, it will be time to take a hard look at your law firm and start to make some changes.

- Identify any truly fungible tasks and relocate them outside your walls; give the personnel who used to do those tasks the opportunity to upgrade their skills and move higher on the internal value chain.
- Create flowcharts and procedures to govern the most routine and repetitive aspects of the firm's work, and eventually, expand their reach and mandate their use.
- Encourage remote and mobile work choices by both lawyers and staff who can be valuable contributors, but who do not need to be physically present in the office every day.

Your goal should be to have your entire team, especially those 'inside performers' who are present full-time in the office, regularly punching at or above their weight. Strive to increase the daily 'value payload' of every such performer.

“MANY LAW FIRMS’
TALENT ACQUISITION
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Making a fresh start

It probably goes without saying that at this stage of reading this paper, you've already identified a host of obstacles to carrying out the foregoing tasks, most of them related to recalcitrant partners and the firm's compensation system. These are not trivial barriers; but nor are they insurmountable. Start at the edges and work your way inwards, making progress on the easiest points first.

Don't forget, of course, that while you're deciding what to do with your current human assets, more such assets are joining your firm every year. Many law firms' talent acquisition strategies are vestiges of a previous market; as the nature of legal work and legal employment continues to evolve, those strategies will be an increasingly poor match with market reality.

All I will say in this space is that the recruitment of newly graduated lawyers is something that should now be undertaken with a great deal of considered deliberation, not as an annual matter of course.

Associates who will someday become partners remain vital to law firms' long-term growth; but few firms have systems to accurately identify and develop those future leaders that would inspire any degree of objective confidence.

The hard truth is that associates who will not someday become your partners do not occupy a strategically significant place in your firm, and they should not be considered prime candidates to occupy highly prized full-time permanent positions. But remember that they can still contribute real value to your firm and can be incorporated into teams of as-needed independent project specialists.

Doing right

Law firms now have many opportunities, as I have just described, to perform client work more cost-effectively, and they should take those opportunities. But pressing one's advantage in a fluctuating labour market is something one should only do very carefully, and only after serious consideration of the immediate human and long-term strategic costs.

Many law firms have recently sought to preserve senior partner profits by firing secretaries, cutting associates, and de-equitising junior partners; they have earned little respect for their professionalism in doing so. Firms that choose to take an equally ruthless approach to agile talent in the age of outsourcing will earn a similar result.

It is important for firms to understand that if they create a class of second- or third-class citizens within their purview, there will be a price to pay, in terms of brand impact within the community and their ability to recruit and retain the people they want in future.

Conversely, however, if law firms treat people better than the market minimum — if they make it clear that affiliation, in any form, with their law firm affords a degree of care, protection, and loyalty — they will reap the benefits, both tomorrow and down the road. And they will, not incidentally, be acting on the principles of professionalism and stewardship upon which their firm was originally founded.

B. LAWYERS

WHAT DOES THIS MEAN FOR SENIOR ASSOCIATES CAUGHT BETWEEN SHIFTING MARKET ENVIRONMENTS?

A popular cartoon once portrayed a golfer striding confidently up to the first hole, only to find a football balanced on the tee in place of a golf ball. The caption read: 'Just when you think you've mastered the game, someone changes the rules'.

If you are a senior law firm associate — or if you're several years into your career, regardless of your current position — then you can appreciate the truth of that sentiment, if not necessarily the humour. The legal environment has changed more during your brief time in law than at any period in the last several decades, with little warning and even less guidance about how to respond.

Associate lawyer positions have always required a great deal of hard work and a willingness to make long-term commitment. But traditionally, those demands have been balanced by good pay, secure employment, and a decent shot at the fabled brass ring of partnership down the line.

Today, the first benefit has shrunk, the second has almost disappeared, and the third is not only less likely, but is also a less attractive option than ever before. 'Partner-track' associate positions still exist for a favoured few, but they are less common than ever, and they offer no guarantee that the game won't change again once the ring is grasped.

This might seem like a no-win scenario for today's senior associate: of the two doors that have always led into the future, one has been closed and bolted, while the other leads to a mysterious, shadowed exterior. But in reality, as these doors have creaked shut, many other doors and windows have appeared and sprung wide open, offering myriad options that were not available to any previous generation of lawyers.

The key distinction to remember is that as traditional 'legal jobs' begin to fade away, new 'legal employment' opportunities are proliferating everywhere, promising more choice, flexibility, and customisation than most 'jobs' could ever offer. This development could not be better timed for the Millennial generation that prizes individual fulfilment, cherishes relevant work, and demands personal autonomy in a balanced trade for talents, effort and commitment.

The new legal employment options, now and in the years to come, all share one common trait: they are located outside the four walls of the traditional law firm. They include:

- High-calibre project lawyer with rotating clientele
- Flex-time contract lawyer with emerging specialities
- In-house lawyer managing multiple legal resources
- Solo specialist in a constantly evolving niche practice
- Legal procedural wizard managing key processes
- Legal technologist programming the tools of the future
- Legal knowledge curator applying data to solve problems

This is not to mention the host of other developing options identified by Richard Susskind in his landmark book *The End of Lawyers?*

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Shifting to solo

The keyword you should keep foremost in mind from now on is ‘independence.’ Future legal employment will be agile and entrepreneurial in nature, rewarding the self-starter who builds a reputation for value, effectiveness and foresight. Project lawyer work will flourish, and individual lawyers with strengths or backgrounds in particular areas will be in demand.

That might sound to you like sole practice — and in a way, it is. But the larger point is that in this new legal environment, we are *all* solos, whether we actually operate a sole practice or not: we are all independent professionals capable of forging our own paths in any direction we like. Whether you are a project lawyer, a contract lawyer, an in-house lawyer, or a technical lawyer, you will need the instincts and sensibilities of a bold entrepreneur.

This will not be an easy transition for many senior associates, especially those who have come of age in law firms and have become accustomed to the salaried life. You might feel that you simply lack these skills or instincts, that you are simply ‘not cut out’ for the entrepreneurial life. That may be so — but for most people, it really is not the case at all.

There are now more and better resources available to new lawyers looking to carve out a niche for themselves than there have ever been. In England & Wales, there is access to finance and structural options for legal enterprises available nowhere else in the world. For all that the challenges seem to multiply across the landscape, so do the tools and opportunities. All that is really required is the courage to try, and the confidence to make a go of it.

Three-stage process

I suggest that senior associates preparing to enter this brave new market pursue the following three steps.

1. PLANNING

Figure out what your market value proposition should be, based upon the skills and experiences you’ve already accumulated during your ‘legal job’ years and upon your inherent talents and interests. Choose a ‘base of operations,’ whether that is a region, a market, or a practice area. Solidify the networks you’ve developed within that base, focusing them towards your market proposition. If there are business skills or know-how you feel you lack, including sales, client service and time management, acquire them now.

2. LAUNCHING

Among your first priorities will be developing your expertise, and a reputation to match, within your chosen community. Aim to become head-turningly great at something highly useful at your earliest opportunity. Take on new projects; seek referrals; self-publish your know-how through blogs and social media. No matter what your lifestyle was like when you were a law firm associate, switch into ‘startup mode,’ running a streamlined practice in a frugal environment. Become actively involved in whatever legal community you have chosen.

3. GROWING

If you’ve executed the first two steps properly, you may very well find growth coming sooner than expected. Figure out your maximum-comfort zone, whether it’s a legal niche, a mode of work, a client or regional base, and so forth. Do what most law firms fail to do and differentiate yourself: what can clients get uncommonly or even uniquely from you upon engagement? Remember to tap the latent legal market: the blue oceans, the overlooked markets. Risk management, legal health plans, and preventive law will be among the emerging practice types to exploit.

Looking ahead

This future market (and it is not far away) doesn't need more lawyers who react to familiar legal problems and offer solutions that are indistinguishable from what every other lawyer would deliver. It does need lawyers who can anticipate problems before they occur, calculate risks, and chart a course to avoid or minimise those problems. Become a resource that people can't do without, or at least can't easily find a substitute for, and let them know who you are and what you can do.

Most of all, figure out *how* you want to practise law. Do you truly desire the brass ring of law firm partnership? If so, then you should strive to become a core asset to your chosen firm and to adopt traditional ways of working that partners understand and appreciate. Or do you really prize autonomy, flexibility, and a fully integrated life over the traditional structures (and, frequently, rewards) of law practice? If this more closely reflects your goal, then start exploring the available routes towards agile employment, project specialisation, and entrepreneurial independence. Take immediate control over and responsibility for your own career, and don't hand it over to anyone else without a very good reason.

This all might seem like a very tall order, and it will probably take you well out of your comfort zone at the beginning. But by the time you've finished asking and answering all these questions, your comfort zone, and your career options, will be substantially greater than you can foresee today.

C. IN-HOUSE COUNSEL

WHAT DOES ALL THIS MEAN FOR IN-HOUSE COUNSEL IN THE CURRENT MARKET?

If you fall into this category, you might feel as if you're a kid again, your birthday has arrived early, and you've received a stupendous new present. You might also feel as if you've opened your present to discover an elaborate and complex construction set so enormous, it will require you to deconstruct your entire room just to make it fit.

For most corporate and institutional clients, both before and immediately after the rise of the general counsel, any decisions concerning legal services came down to a simple make-or-buy proposition. The most basic work could be handled internally; everything else would be shuttled off to outside counsel, either a single firm or a range of firms.

As time wore on, however, corporate legal work grew more complex and outside counsel became much more expensive. Most law departments responded by shifting the balance of work to favour internal over external routing, but maintained the basic inside/outside dichotomy that had served them so long (if not necessarily so well).

The mother of invention

Today, this either/or proposition has become unworkable at approximately the same time that it has become unnecessary. Unworkable, because despite an unprecedented surge of insourcing on the part of law departments, many are approaching or have reached their maximum headcount and budget; simultaneously, despite the legal market equivalent of the Seven Plagues of Egypt, most law firms still are unwilling or unable to break their age-old habits of hourly billing, dart-board cost estimates, and annual rate increases.

But it is also unnecessary, because the binary proposition of old has exploded into a multi-dimensional array of options. The potential resource structures available to in-house counsel now include:

- internal department lawyer or staff member
- outside counsel in a specified type of legal area
- outside counsel in a limited panel arrangement
- outside counsel taking all the client's work in a given area at a fixed price
- secondees from a designated firm, company or agency
- contract lawyers for a limited period of time
- legal process outsourcing (LPO) company lawyers or staff
- offshore captive operation lawyers or staff
- commercially available interactive software
- customised in-house interactive software

The old 'either/or' dilemma has been solved decisively for in-house lawyers. In its place, however, two new challenges have arisen, and it is with these that law department leaders now have to contend.

Alignment and action

The first is the challenge of alignment: choosing the right solution for the right problem. This involves assessing the complexity, urgency and sensitivity of a given issue and identifying the most appropriate provider or providers to which it should be routed. This sounds simple — deceptively so, for two reasons.

First, it requires an inside-out familiarity both with the capabilities and costs of the various options and with the anticipated impact of the overall issue in the greater corporate scheme. That's a lot of information to have constantly at one's fingertips, and it can change rapidly. Secondly, this is not a process that one person can manage continuously, diagnosing and prescribing over and over again: it needs to be built into a system that both internal and external providers can access, understand, and use to help make decisions about the best treatment of a legal complaint. This is not an easy system to build, but with time and patience it can be developed.

The second challenge is perhaps even more fundamental: actually starting to act. Recall the analogy to a birthday present so hideously huge and complicated that it discourages the recipient from even trying to set it up. In-house counsel surveying the daunting requirements of multi-sourcing their legal work and re-engineering their systems to manage that process might understandably prefer to keep the box sealed and stick with their imperfect but familiar dichotomy.

Understandable — but, unfortunately, also unsustainable. Those few in-house counsel who have not yet heard from their CEO in strong terms about rationalising outside spending should expect to receive such a call imminently. The dichotomy is unaffordable, plain as that. Something will have to replace it.

The best way to start is the same way as in the old joke about how to swallow an elephant: piece by piece. In-house counsel can resolve to gradually, provider by provider, develop a portfolio of reliable additional options for accomplishing legal tasks. Identifying those reliable options is not that difficult, especially if fellow corporate counsel are sought out for advice; the key is to identify the types of work that would most productively be channelled in each provider's direction.

Create an inventory of the type of work most commonly tackled in your department, and match it against a detailed chart of your alternative providers and the strengths they each bring. Use this information to start building the decision-tree engine that will eventually help direct the right work to the right provider.

Last chance

You have probably heard the current state of the marketplace described as a ‘window of opportunity’ for in-house counsel, a chance for the client to finally rewrite the rules of engagement when it comes to the delegation and sourcing of its own work. That is an accurate description. But the thing about windows is this: they need to be opened.

There is fairly widespread agreement in the legal market, including among many of the most innovative in-house counsel, that corporate clients are failing to grasp the present opportunity to expand their roster of legal solution providers. Some law firms have heard and responded to the call for change, and many of the newest providers to this market are eagerly chasing down leads among corporate buyers at every opportunity.

But ultimately, the pace of change will be determined by the buyers, not the sellers. If in-house counsel really wish to win the lottery prize of a vibrant, high-quality competitive market for legal services, they will first have to buy a ticket.

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CONCLUSION

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Conclusion

The legal profession has long been considered the very embodiment of tradition and conservatism. Lawyers are not only renowned for their reliance on precedent and their aversion to risk, they frequently pride themselves on these qualities.

And well they should: many clients have been kept out of deeper trouble, many losses have been minimised, and many solutions have been successfully crafted, thanks to the vigilance of lawyers who anticipate problems, correct errors and navigate treacherous waters with a steady hand. This paper should not be seen as a call for lawyers to abandon caution, casting themselves upon the wheel of fortune by madly pursuing the latest fad or the brightest will-o'-the-wisp. That way lies the near-certainty of disaster.

But while I acknowledge the dangers of one extreme, I must equally insist on the dangers of the other: refusing to acknowledge that fundamental changes in society, markets and technology are bringing an end to the methods of law practice and legal service delivery that lawyers have embraced for decades, if not centuries. The legal economy is globalising; legal workplaces are automating; generational change is transforming our profession; and a regulatory revolution is rewriting our marketplace DNA. Ignoring the reality or the ramifications of these developments is a short road to ruin for lawyers and law firms both.

I recommend that lawyers and law firms follow a middle way that respects lawyers' natural caution while still charting an irreversible path forward. That path starts right here, with a recognition that new ways of performing legal work must be taken seriously and made widely available. This paper has striven to demonstrate not only why change in legal employment and workflow is necessary and desirable, but also how lawyers, law firms, and clients can begin to implement change in measured yet decisive steps.

It takes courage to be a pioneer, and courage can be hard to summon in challenging times like these. But the pioneers who recognise and embrace the new world of legal work, and who wisely implement the opportunities they provide, will reap the benefits, both today and in the years and decades to come.

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