

Future Proofing Midsized Law Firms

A guide for strategic and innovation leaders



JOHN ALBER

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“Beginning in the medium-term, we can expect many of the mainstays of law firm cash flow to come under attack by automation. Processing power will melt away human labor, so hours-based economics will suffer greatly. Document automation is still a kludge today. It will not be by 2025. Just as happened with eDiscovery, document assembly and AI technologies will begin to merge and strip the hours out of legal drafting, and then a succession of other legal tasks.”

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“Notwithstanding its early exposure to client demands for more speed, and an opportunity to seize the initiative with, for example, document automation technologies, the legal sector has largely foregone those opportunities. It has responded to client demands for quicker turn times by asking more of its lawyers rather than asking more of its systems. As a consequence, law has metamorphosized from a deliberative and esteemed corner of commerce into an hour-crunching machine.”

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“The pool of risks managed by traditional legal means is vast, and the methods by which we now manage those risks are almost comically inefficient. That mismatch between the scale of risks and the capacity of traditional law to manage them is precisely the genesis of blockchain technology and its ‘smart’ means of recording,

acting on and enforcing agreements in commerce. Smart contracts are, more than anything, a rebuke of our reluctance to change methods in an age when virtually all commerce is becoming digital.”

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“The 24 percent compound annual growth rate for ALSPs may be a floor, rather than a ceiling. And it’s worth remembering that, at a 24 percent growth rate, market share will double every three years. Higher growth rates will approach the power of Moore’s Law for achieving transformation – a doubling of power every two years.”

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“One cultural variable does need closer examination, because it can be single-handedly determinative of the degree to which a firm can effect significant, truly innovative changes in business models. That variable is the degree to which a firm either does, or is willing to, recognize, recruit, nurture, and reward entrepreneurship.”

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“Effective innovations start small. They are not grandiose. It may be to enable a moving vehicle to draw electric power while it runs along rails, the innovation that made possible the electric streetcar. Or it may be the elementary idea of putting the same number of matches into a matchbox (it used to be 50). This simple notion made possible the automatic filling of matchboxes and gave the Swedes a world monopoly on matches for half a century. By contrast, grandiose ideas for things that will ‘revolutionize an industry’ are unlikely to work.”
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“Legal Project Management (LPM) is not rocket science. It’s simply a structured way to manage legal projects. And it is not just for complex litigation. It applies just as well to mergers and acquisitions, to complex one-off contracts, and to simple, but high-volume matters (e.g. high volume litigation like the foreclosure work done during the Great Recession, or to high-volume contract management). Indeed, there is an argument that all projects in law, of whatever scale, can benefit from the best practices involved in LPM.”

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“And this gauntlet that each young lawyer runs teaches, above all else, the value of the correct – the correct way of thinking, the correct factual distinction, the correct advice, the correct result. It teaches that lawyer thinking, lawyer correctness, is the province of the few. There is law. There are lawyers. And then there is the rest of the world. And it is, to quote Kingsfield, mush. Which leads lawyers to the notion that being correct is also sufficient. Nowhere in three years of law school or in the subsequent years of apprenticeship are lawyers taught the necessity of also being helpful. It simply isn’t on the curriculum.”

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“In each of these cases, partners and their teams, managing large and profitable books of business, were retained despite heavy recruiting by other firms, because the support structures provided for them were not duplicable at other firms.”

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Executive summary

Sometimes, the future doesn't wait politely for us off in the distance. It steps forward and right into our face. We need words for when that happens, and so we borrow them from other disciplines. Thus, lawyers are already saying that the COVID-19 pandemic will force a "reset" in the legal marketplace. Firms will need to rethink how to practice in a post-pandemic world. But before plunging into the particulars of how to survive in a world reshaped by social distancing and its economic fallout, it's worth considering our use of the word "reset" itself... because it is fundamentally misleading and reflects our own misapprehension of how the future works.

As we most often encounter it, the term "reset" speaks to the need to interrupt an errant computer process and restore a system, either back to normal operations or to its start-up condition. But, over the short life of this computer term, we've repurposed it, and made it a metaphor for redefining "normal" after a calamitous world or national event of some kind. Used in this way, we've had "resets" after the October 1987 stock market crash, after the 2000 dot.com bust, after 9/11, after the 2009 real estate bust, and after the Great Recession. And now we will have another reset in the wake of the pandemic.

Just counting these major events, it looks as though we should expect resets every five or six years, on average. And that's not counting the smaller-scale resets that rain down regularly in various business sectors. Online streaming completely reset the video entertainment business. The iPhone forced a reset in the mobile phone industry. The CCD camera reset the world of photography – and the chemical companies that served it.

And our world is no different. Just to name one example, powerful machine learning search tools and legal process outsourcing have completely reset the business of document discovery and stripped away a major line of revenue from law firms. More resets are lined up in the legal anteroom.

These resets, rather than being episodic, occur almost continuously. They're part of our global economic ecosystem, for better or worse. It's just that we often overlook those less-than-global resets taking place right under our noses. Events like the pandemic interrupt our inattention, grab us by the lapels, and force us to recognize and respond to change. But the change is not new; rather, it's a state of being, both in business and in the world at large.

When seen that way, "future-proofing" our practices become a matter of cultivating the ability not just to recognize and respond to change as it happens, but to actually lead in times of great change.

Nobody wants to lead a pandemic. But already some companies and some law firms are employing the new skills they've built, using the new resources they've developed, and putting in place the new processes they've been perfecting, in order to emerge from the chaos of this moment in a dominant position in the marketplace. These companies and firms have future-proofed their businesses by equipping themselves to lead change, not just respond to it.

In the words of Peter Drucker, whose prescient business wisdom we will look to a good deal in this book:

"In a period of upheaval, such as the one we are living in, change is the norm. To be sure, it is painful and risky, and above all, it requires a great deal of very hard work. But unless an organization sees that its task is to lead change, that organization – whether a business, a university, or a hospital – will not survive. In a period of rapid structural change, the only organizations that survive are the "change leaders". It is therefore a central 21st century challenge for management that its organization become a change leader."

Not every day brings a pandemic, but nowadays we operate in an environment so change-riven that we need to act *as though* pandemics are always around the corner, and be prepared to lead through the chaos that will certainly ensue in one segment or another – or sometimes all of them – on an ongoing basis.

This book is a curriculum for shifting your organization from institutional passivity and the consequent recurrent need for resets, to real change leadership. It draws its lessons both from decades of experience transforming one of the world's largest firms into an acclaimed innovation leader, as well as from best practices harvested from leading firms of all sizes around the globe... and, of course, from Peter Drucker.

The intended audience for this curriculum is the strategic and innovation leadership in dynamic midsized firms. That focus reflects what may be the ripest opportunity in the legal marketplace. The world's most forward-looking and best clients have for decades been declaiming the large firms in their panels for lack of innovation and general stodginess. And they've begun to shift work into the midsized market.

Now, therefore, is *exactly* the time to transform your firm from one battered by reset after reset to one that others look to for leadership and best practices in difficult times. Now is precisely the time to learn how to thrive rather than just survive.

This book is divided into three sections.

Section I is an innovation primer. It lays the groundwork you'll need before taking action. Chapter one of that section begins, not with the question of *how* to innovate, but rather with *why* we should concern ourselves with innovation. We start there because if we don't get the why right, then none of the rest of our work on innovation will matter. The legal world is now full of firms with innovation initiatives, innovation committees, and innovation budgets. But most of that effort will be wasted, because it's aimed in the wrong direction – for example, as a means of distinguishing a firm from its competition.

Serious innovation has only one goal – to help a firm survive in a brutally harsh business environment. Today's highly dynamic global marketplace is grinding through businesses faster than at any time in history. Indeed, the average lifespan of a new S&P 500 company is now just 15 years, down from 67 years in the 1920s. And law firms are just as mortal as any other business. Only firms that address such mortality directly have any hope of thriving.

Chapter two moves from the question of why innovate to the business context in which all innovation occurs in this age. We don't dwell on the changes in the legal market already amply covered in the legal press – flat demand, plummeting realization, pressure to price differently, etc. Instead, we explore the broader business climate and technological context in which all practice will operate in the future.

We begin with a technology focus. Despite what may once have been justifiable skepticism about the impact of technology on law practice, inventions already in the pipeline will cause breathtaking transformations in our business and personal lives, whether we innovate or not. Changes wrought by this technology will exceed our imagination's ability to foresee them; will exceed even the ability of our best futurists to predict what will happen.

It's important that we understand the drivers of such change, including some of the mathematics of change, as preparation for thinking about how we will ride this tiger. Because that's the plan. What this book really aims to do is prepare you to master technology and business processes that *have not yet been brought to market* in order to forge real innovation in your practices and businesses.

In chapter three, we look at the rise of the service economy. A majority of our GDP is derived from service now, and with that shift has come a revolution in service expectations. The companies that are leading the Information Revolution are also leading the development of high-performance service models. We will look to see just how those companies render service that is better, faster, cheaper, more connected, and more personalized than that of traditional companies. And, we'll search for opportunities to transform service in law as well.

Chapter four explores in some detail how profoundly dissatisfied our clients have become with traditional law firm service levels. As cordial as those clients may be over lunch or a round of golf, when truly pressed, most will admit to real frustration with how glacial the pace of change is inside law firms.

For a number of years now, boards and executive suites have been demanding that law departments toe the planning and management lines that most other corporate divisions have long had to meet. But getting law firms to help meet those demands is like pushing string. Such law firm reluctance has certainly fostered the growth of law firm alternatives in the New Law sector. And that reluctance has also fostered extraordinary innovation inside our client companies.

In chapter five, we take a close look at blockchain technology and smart contracts. Blockchain furnishes the foremost example of client companies translating into radical action their frustration with traditional law's maddeningly slow response to the Information Revolution. Blockchain presages a wave of self-help for our clients. We should study it, not in order to adopt blockchain, but rather to understand just how we let the ball drop, and how to keep from dropping still more balls in the future.

Chapter six examines the rise of Enterprise Legal Management systems. Our clients are perfecting the ability to analyze what we do and compare it with the work of our competitors. Already such systems are extremely capable. Once augmented with artificial intelligence, they will leave no place for law firms to hide. All of our foibles and missteps will be visible. That transparency will be the undoing of

some firms, but, here again, other firms will learn how to use it as a competitive advantage.

Chapter seven explores the competitive environment in which midsized firms will be operating over the near- and medium-terms. Already, huge shifts in the economics of practice have taken place – largely driven by competitors from outside the traditional legal sector. In order to prepare to meet such emerging competition, we need to understand it.

In chapter eight, we turn inward. We look at two distinct barriers to innovation that exist inside law firms, in great part arising from the partnership structure that most firms adopt. Partnerships foster collegiality and cooperation, certainly. But they can also slow the propagation of innovations across practice areas and geography. It's important to understand why that is and to create strategies that take account of it.

In chapter nine, we explore how firms may structure themselves for innovation, and what sources they can look to in order to generate practice transforming ideas. Here, Peter Drucker leads our thinking – identifying seven sources of innovation that firms can look to for seed stock.

Finally, in chapter ten, we take a sneak peek at artificial intelligence. This chapter will not prepare you to buy AI, and will make no recommendations as to which products are superior. Rather, it will get you thinking about why you might want to use AI in the first place. Most firms want it for the wrong reasons. This chapter will help you find the right reasons.

In Section II of this book, we explore six areas of extraordinary opportunity for change in midsized firms. We focus on these six because they are not capital intensive but do promise transformative effects on the service levels that your firm delivers.

Chapter 11 suggests modernizing how we gather client feedback. Too often, the first time firms get real, actionable feedback is when a client defects to another firm. Modern businesses now build entire economic models around frequent, granular feedback. In order to compete against Alternative Legal Service Providers and other New Law businesses now sweeping the legal market, law firms need to move their client feedback methods out of the 19th century and into the 21st.

Chapter 12 discusses learning how to do digital age homework. Customers of all types in this age – both consumer and business alike – have much-elevated service expectations compared to prior ages. Law school doesn't give us the skills necessary to understand and meet those service expectations, so we need to acquire them. In doing so, we can

use as templates the very software companies that have redefined service in our age. The skills those companies use to understand and serve their markets are the very skills we need to add to law – not software coding, but rather the other skills that allow those companies to deliver the right products and services to market.

Chapter 13 urges you to deliver *measurably* better service. Aspiring to change doesn't mean anything unless you also measure the degree to which you change. Only then can you tell whether you're making progress. This chapter covers both basic financial key performance indicators and much more client-centric measures, all with an eye to making them as effective as possible in fostering change. Most firms just talk about their superior client service. Yours can become a firm that is measurably better.

Chapter 14 looks at deconstructing and rebuilding business processes, and in particular the process by which we create work product. Our clients are asking us to remove cost and add predictability and efficiency to our services. There's already a well-developed discipline regarding how to examine and optimize business processes, and some firms have become famous for adopting it. You can too, and the best place to start adding efficiency is the process we use in creating our own legal documents.

Chapter 15 urges you to make legal project management a science rather than an accident. Imagine trying to build a skyscraper – or even a house – using the improvised project management techniques we use in law. There is a better way, and you can learn how to make meeting budgets and schedules routine rather than accidental by adopting those legal project management strategies.

Chapter 16 discusses the need to add Design Thinking to our toolkit. The professionals who created transformative devices such as the iPhone and the Tesla think differently than do lawyers, scientists, and businesspeople. They've developed and packaged up for easy consumption a discipline for arriving at superior products and services. And we can adopt it in law. Indeed, many of the competitors in New Law and a number of traditional law firms are already using what has come to be called Design Thinking. In order to compete, we need to learn that new way of thinking as well.

Section III encompasses a single chapter. That chapter is set out separately because it makes such an important point. There was a time in law when joining a firm commenced a lifetime relationship. No more. Lateral partner movement in some cities in the US hovers around 50 percent, and associate losses can reach 80 percent. But that doesn't have to be.

By custom building unique, high-service, and difficult-to-duplicate businesses around clients, firms also build “stickiness” into their relationships with their own lawyers. And in this age, that can be the difference between success and failure. The lessons of this book not only strengthen client relationships and thereby build durable, long-lasting businesses. They transform relationships with lawyers and staff as well. And when firms do that, people stay.

The final segment of this book provides a list of resources to help you begin the process of future-proofing your practices. They include Design Thinking training, law schools with non-traditional curricula that can help you connect with young lawyers disposed to think differently, and client-created initiatives that can begin to help you empathize with those people and companies you aspire to serve.

About the author

John Alber serves as futurist for the International Legal Technology Association and for the Institute for the Future of Law Practice. He writes, speaks, and consults on the need to reshape the delivery of legal services to suit a future demanding excellence far beyond substantive legal skills.

John has served as a transportation industry CEO, as a practicing attorney, and as a law firm leader. During his 16-year tenure as Bryan Cave's strategic innovation partner, that firm came to be recognized as one of the most innovative law firms in the world. While at Bryan Cave, he also served for seven years on the firm's Operating Group (its management committee).

At Bryan Cave, John created one of the first practice economics consulting groups, one of the first client facing software development groups, and one of the first in-firm legal process outsourcing (LPO) organizations. The groups he created developed innovative web-based, client-centric applications that delivered legal advice to clients, managed complex workflows and even created pleadings automatically. They also developed client-facing knowledge management, project management, project estimation and business intelligence systems and highly technology-leveraged alternative staffing solutions for engagements of all types. John now focuses on extending the lessons learned in those efforts to firms beyond Big Law – firms that may face more capital and other resource constraints than their larger cousins.

John is an Emeritus fellow of the College of Law Practice Management. He has received a number of awards, both in the legal field and in information technology generally. Among other awards, he received ILTA's first ever Premiership Award, was named American Lawyer Media's first ever "Champion of Technology", was given a Lifetime Achievement Award by *Law Technology News* and recognized as one of the "Top 25 CTOs" in the world by *Infoworld*. In addition, while under his leadership, Bryan Cave received recognition as a *CIO Magazine* "Top 100 Company" and was twice recognized as ILTA's Most Innovative Firm.

Selected publications

John Alber has written and blogged on a number of subjects, including law, legal technology, technology generally, knowledge management, transportation, aviation, maritime matters and botany. The following selections are antecedents to subjects covered in this book.

Contributions to previous ARK titles

Competitive Strategies for Mid-Sized Law Firms (August 2019) – “Start the revolution in the middle”.

Design Thinking for the Legal Profession (December 2019) – “Designing lawyers down from their ivory tower”

Strategic Innovation as an Emerging Firm Function (October 2018) – “Structuring for innovation”

Lawscape 2025 (January 2018) – “Design Thinking and the why of BI”

Strategic Intelligence for Law Firms (May 2016) – “Design Thinking and the why of BI”

New directions in legal services (May 2017) – “The missing ‘E’ in legal innovation”

Innovating for competitive advantage in the legal profession (June 2018) – “The missing ‘E’ in legal innovation”

The Lawyer’s Guide to Strategic Practice Management (2nd edition) (December 2015) – “Fusion = innovation – How to align your firm’s IT and business strategies”

Law firm strategy, KM, and technology articles

It’s 2020 – How ILTA Prepared You for the Future

International Legal Technology Association Peer to Peer, Fall 2019

Bringing Information Age Business Skills to Law

Rethinking.legal, 10 March 2018

Career Advice from a Futurist

International Legal Technology Association Peer to Peer, Spring 2017

Reframing the AI Question in Law

Rethinking.legal, 20 September 2016

Law Firm ERPs – Foresight or Folly?

Legal Insider, 24 May 2016

Law 2020 – The Future Starts Now

National Law Review, 19 August 2010

Search at the Foundation of the Enterprise

LLRX, 27 August 2007

ERPs or Data Warehouses for Law Firms?

LLRX, 7 February 2006

Delivering Actionable Information to Front-Line Lawyers

LLRX, 15 July 2005

Rethinking ROI: Managing Risk and Rewards in KM Initiatives

LLRX, 23 February 2004