

# Future Proofing Midsized Law Firms

A guide for strategic and innovation leaders



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# An introduction to the future

*“Firms of any size, from any region in the country, can create conditions for market-leading growth with concerted strategy and careful management. Midsize law firms enjoy many advantages in the market: they are viewed as more cost effective; they are often more nimble; expertise does not have to suffer simply because of smaller scale. These are all factors which clients value. Those midsize firms that can position themselves to be seen as catering to these desires on the part of their clients will be well situated for success in 2019 and beyond.”*

Legal Executive Institute

Consultants who prowl the corridors of midsized law firms have been offering gloomy advice for years. “Merge, grow, or die,” they say, as though there are only three alternatives for any business in the midsized market that wishes to prepare for the future. The gloom has sharpened since the Great Recession. Some pundits have raised the “merge, grow, or die” stakes, and are now predicting that by 2035 – in roughly 15 years – more than half of the traditional law firms in the midsized market will no longer exist. Despite such pronouncements, however, the midsized segment had its best year in a decade in 2018.<sup>1</sup>

Great years, or even great decades, do often precede precipitous falls. The decade of the 1990s set records for newspaper advertising revenue, for example. Investors like Warren Buffet were snapping up these “money machines”, confident in their ability to sustain their extraordinary profitability.

Then came the internet and the demise of the classified ad revenue stream. Hundreds of daily and weekly newspapers perished as a consequence. Figure 1 depicts just the newspaper industry revenue slide. But

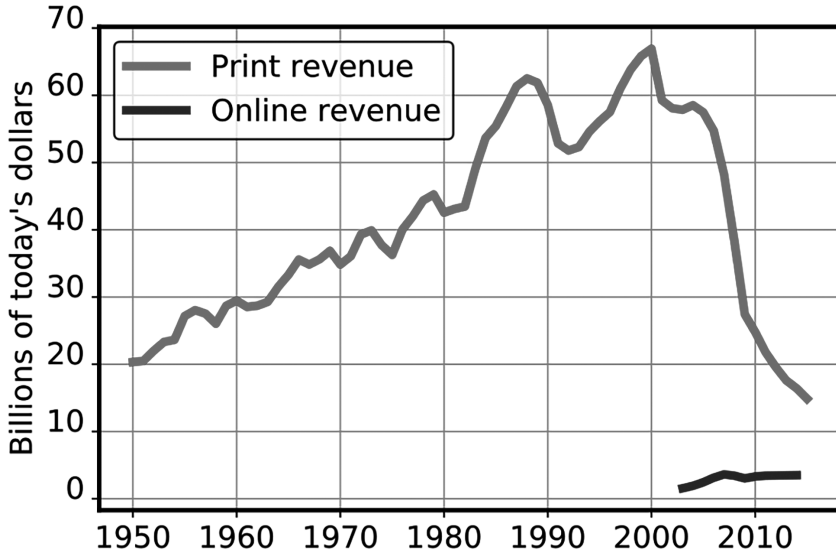


Figure 1: Print versus online revenue. Source: Wikipedia.<sup>2</sup>

the curve is remarkably similar to those for DVD rentals, photographic film sales, and the precipitous revenue crashes of a number of other industries caught out by the rapid business model changes stemming from exponential growth in underlying technologies.

In each of those markets, though, *some* businesses not only survived the shift in revenue models, they turned them to their advantage. Hundreds of papers may have folded, but Gannett transformed itself into the largest newspaper company in the world. While Blockbuster perished, Netflix surged. Kodak shriveled, but Fuji grew.

Merger and growth are two strategies to avoid the axe in our sector. But they are far from the only ones. Indeed, as we shall see in later chapters, economies of scale are hard to find in law – size and multiplication of practices and geographical reach can often *negatively* correlate with success. So, merger and growth may actually be rather poor strategies.

This book was written for firms that reject the “merge, grow, or die” advice, and who are looking for another way forward, one that contemplates not just survival, but real prosperity – and even joy – in the law practice of the future. It was written for those who, while perhaps seeing 2018’s uptick in revenue as an aberration in what otherwise seems like a slow, but relentless decline, nonetheless find some elements of promise in that year’s success and are looking to build on that promise.

Indeed, many midsized firms *are* actively trying to figure out where they fit in the new legal landscape that is taking shape. They are moving beyond talk towards taking the first tentative actions – appointing committees, for example, or designating partners to lead their efforts. The key descriptor for much of this activity seems to be innovation – hence we see the multiplication of innovation committees, innovation partners, innovation initiatives, etc.

And that quest for innovation solutions is understandable. Search for references to the word “innovation” and Google returns *hundreds of millions* of results. Read the business press or the legal press, and innovation crops up over and over again. Consult client surveys conducted by Citi, Wells Fargo, Altman Weil, HBR and others, and innovation, or the lack thereof, rises to the top as a concern of general counsel and chief legal officers everywhere. They complain that too often the firms that serve them are “slow, reluctant or ill-equipped to change”.<sup>3</sup>

As a consequence of all this buzz, innovation has become a marketplace imperative. Clients and competitors speak of it often; in all likelihood, even your own partners are crying out for innovation. You can't *not* think about it. The question is “What do we *do*?” If innovation is the imperative of the age, then how do we achieve it? Where do we even begin?

### **Avoiding the ovine**

So often, this is the point at which ovine instincts intervene. When faced with a felt need to act, our first impulse is to look outward to the herd. What have others done? What products are others buying, or inventing? If we go there, our herd brain tells us, we'll be safe.

But, if innovation is indeed on the path to survival, the ovine approach to innovation is exactly the wrong thing to do. It yields miserable results, and well it might. Doing what others do is, in some senses of the word, the very antithesis of innovation. At best, it might be characterized as *imitative implementation*. We implement what others have done and hope for the best.

What's the problem with such an approach? It is that such “innovation” nearly always occurs in a vacuum, with no particular business goal driving the sometimes-considerable effort and expense involved in implementation. We implement because others have done it, not because clients are paying for us to transform our relationship with them, nor because we want to fundamentally change how we are delivering services.

Consider the hugely ovine imperative in BigLaw to implement a CRM – a Customer (or, if you will, Client) Relationship Management system. It must be good, right? Dozens of firms have done it. And who can quarrel with the need to somehow manage relationships? They're our bread and butter.

But you can only point to a handful of firms that achieved *any* kind of success with CRM, and none that fundamentally transformed their business. The rest, and all the many millions spent on CRMs?

Sheep droppings.

CRMs, by the way, are typical of the sorts of innovation initiatives undertaken by big firms. Hence, the millions expended. Such firms have the money, and a felt need to spend it in the name of innovation. So, voila! We get CRM writ big.

Those big spends sometimes cause small and midsized firms to despair of ever really innovating. Why? Because they lack the budgets and resources of the behemoths. Without that, how can they possibly hope to match the accomplishments of their larger siblings?

But here's a little secret – most BigLaw innov...*implementations* should not be emulated, because they're too often failures. Yes, firms may have installed software and trained lawyers. They may even brag about it, and the legal press may eat that up. But look for business transformation that can be expressed in real numbers – more clients, longer-lasting relationships, improved margins, or other key business metrics. That's what innovation accomplishes. And, mostly, you won't find it. So, why emulate it?

### **Follow the nimble path**

Which brings us back again to the question of what to do. If you aspire to innovate in your market space as a survival strategy, how do you go about it? What, exactly, do you do? Do you lavish money on the problem, brag and hope for the best, a la BigLaw? Or is there some other way?

There *is* a way, and happily, it is a far nimbler and more flexible path than that typically taken by very large enterprises – like BigLaw. It has the fewest wasted dollars and is the one best suited to small and midsized firms.

This is an important point. The large firms that make headlines are often too big to be nimble, which leaves profound gaps in service delivered to their traditional large-company markets. Chief legal officers have noticed the gaps and are beginning to look elsewhere for value-priced, but exceptional, service. Some of the most innovative small and midsized

firms, and a plethora of what have come to be called New Law companies, have surged in to fill these gaps. *And there is plenty more opportunity left.* Small and midsized firms that take up innovation as a discipline can not only open up their existing markets, they can tread on BigLaw territory as well. BigLaw will be slow to respond. You can count on that.

## **Here's the plan**

### **Section I – a legal innovation primer**

We will begin this inquiry into innovating to “future-proof” our practices, not with the question of *how* to innovate, but rather with *why* we should concern ourselves with innovation. Because if we don't get the why right, none of the rest of our work on innovation will matter.

As part of coming to understand why we innovate and what processes are most likely to lead to the kind of business transformation real innovation is designed to create, I hope you'll come to see that lists of things to buy or people to hire don't foster innovation at all. Indeed, they too often shut down the kind of thinking needed to rewire a business.

So, you won't read here recommendations to buy Watson or some other form of AI. Indeed, you won't see much about AI at all, not because it's irrelevant to innovation, but because understanding AI is so far downstream in the process of creating real business transformation – real disruption – that it's best saved for another book. And, while you will certainly see a number of products and services mentioned as examples of the state of legal technology, you will not find a buying guide or particular product or service recommendations – because there is *nothing* on the market that can make you or your firm innovative. Innovation is a process rather than a product, and it flows from a state of mind and the cultivation of certain skills, not from your legal technology wish list.

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

We'll begin with a technology focus. Again, this will not be shopping list talk. Rather, it concerns radical shifts in our society that will reshape how we do everything – including law. Technology 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, and 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 invented* in order to forge real innovation in your practices and businesses.

We will look next 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.

We will also explore 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.

We will take a close look at blockchain technology and smart contracts at this point. It is 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.

From there, we will look at 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.

Speaking of competition, we will next explore 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, you need to understand it.

Then, we will turn inward. We'll 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.

Next, we'll explore how firms may structure themselves for innovation, and what sources they can look to in order to generate practice transforming ideas.

Finally, notwithstanding what was just said about AI being a downstream strategy, we *will* 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.

## **Section II – six steps towards transforming legal service delivery**

In the second section of this book, we will explore particular skills in more depth. In separate chapters, we will study:

- **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 ALSPs 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.
- **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.

- **Learning how 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 will explore 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.
- **Deconstructing and rebuilding business processes.** 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 work product.
- **Making 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.
- **Adding 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.

### **Cause for optimism**

The goal in all of this will be to give you encouragement to act and some specific directions in which to take your actions. There is no need to

thrash around in search of innovations to justify that language you're likely adding to your marketing materials. Our business sector is rich with opportunities to innovate, and you won't need a national-scale treasury to seize those opportunities. What you do need are specific steps to prepare yourself to innovate and the will to take those steps, notwithstanding what others have to say about it. In a profession so wedded to precedent, you can expect resistance.

But then every true innovator meets resistance – and meets it with persistence.

For all the gloomy predictions about rising competition and increasing price pressure that you'll find in the pages that follow, I hope you emerge from this book with a sense of optimism. I'm not the only student of this portion of the legal sector to see the opportunities in store for firms that seek to become change leaders. I'll leave you with this pointed observation about potential from the Legal Executive Institute's 2019 report on the midsized legal market:

*“At the outset of this report, we stated that one assumption some might make about midsize firms is that they are not capable of growth at the same levels as Am Law 100 or Second Hundred law firms. Yet evidence indicates that is simply not true.*

*“In our 2018 Dynamic Law Firms study, we segmented the entire Peer Monitor population on the basis of compound annual growth performance on three financial metrics: revenue per lawyer, overall firm profit, and overall average firm profit margin. Those firms that saw the best rates of growth across those three metrics became our Dynamic law firm population. Fully one-third of those firms classified as Dynamic law firms were midsize firms.*

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## References

1. Legal Executive Institute. 2019 *Report on the State of the Legal Market – A View from the Midsize Firms*, [www.legalexecutiveinstitute.com/midsize-law-firms-report-2019](http://www.legalexecutiveinstitute.com/midsize-law-firms-report-2019), pp. 2-3.

2. [https://en.wikipedia.org/wiki/Decline\\_of\\_newspapers](https://en.wikipedia.org/wiki/Decline_of_newspapers)
3. Altman Weil 2016 Survey
4. Legal Executive Institute. 2019 *Report on the State of the Legal Market – A View from the Midsized Firms*, [www.legalexecutiveinstitute.com/midsized-law-firms-report-2019](http://www.legalexecutiveinstitute.com/midsized-law-firms-report-2019), p. 10.