

**EVEN IN A DIGITAL, DATA-DRIVEN WORLD,
WE STILL NEED TRAVEL AGENTS...AND LAWYERS**

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Introduction

The mid-1990's witnessed the peak for retail travel agents and brick-and-mortar law firms the likes of which are unlikely to be experienced again. Over 20,000 travel retail locations closed in the past two decades, and the legal profession shed thousands of jobs. Both of these professional service industries were disrupted by technological innovation, in particular sophisticated online access and high-level data aggregation. There are lessons to be learned from travel agents for lawyers at all levels of service, from solo practitioners to large, traditional firms. The reality is that travel agents are no longer necessary to secure the lowest airfare or most desirable seat on the plane. Instead, the store-front travel agent has been largely replaced by intuitive, user-friendly search engines and strategically curated websites targeting travelers of every budget for any destination. Online search has made travel planning available to the masses, tapping latent markets and creating new standards through customer-based travel review sites. User adoption has been overwhelming—Orbitz.com alone facilitates 1.5 million flight searches and 1 million hotel searches daily. Even in the Orbitz.com, Expedia.com, Jetsetter.com and Kayak.com world, however, a cadre of travel professionals has carved out niche specialties where individual, human interaction is desirable and sought.

The travel industry channeled disruption into new models for personal service that law is only now beginning to attempt. We have yet to see a parallel explosion in online services and data-driven analysis in the legal profession, though a number of new organizations are emerging in response to the changing landscape created by the so-called shrinking pyramid and the associated economic pressures. For example, the market share of the three leading legal process outsourcing companies (LPOs) has grown significantly at a time when most law firms felt the pain of recession and had to adjust their expectations of growth and profitability. The market size of the LPO business is hard to estimate, but industry sources believe it to be worth between \$500 million and \$900 million in revenue. Bullish forecasts guesstimate that the industry will surpass \$2 billion in 2012 and reach \$4 billion in 2015. What's noteworthy is that the client list of these LPOs significantly overlaps with those of traditional leading law firms.

Consider also online retailers. LegalZoom, founded in 2001, competes with smaller law firms. An article in *Forbes* warned that as Craigslist decimated the newspaper industry by taking away its low-end but profitable classified-ad business, LegalZoom targets the high-volume, low-cost business of providing basic consumer and

business documents,¹ and is moving higher up the value chain with its new addition of legal plans, discussed more fully below. A more recently launched online legal service, Rocket Lawyer, received \$18.5 million investment from Google Ventures. Rocket Lawyer charges \$9.99 to \$39.95 a month to review documents and give legal advice. In the UK, private equity firms have started buying equity stakes in law firms. For example, Palamon Capital Partners now owns majority stakes in Quality Solicitors, a network of so-called “High Street” law firms, i.e. primarily consumer law firms. The investment is thought to be upwards of GBP 70m or \$111m.² It was the first outside investment after the Legal Services Act liberalization in October 2011.³ The Legal Services Act 2007 allows UK law firms to finance externally and even to float. With the help of Palamon’s investment, Quality Solicitors wants to become a household name and improve its operations. A partner at the private equity firm said that Quality Solicitors represents an unparalleled opportunity to gain market share in the legal industry and create a successful legal franchise chain.⁴ The private equity firm has done this before with Integrated Dental Holdings, the UK’s largest dental chain, and with Towry, the UK’s biggest independent group of financial services advisors.⁵ Their choice of chairman for Quality Solicitors, the former chief executive of the flower delivery network Interflora, speaks volumes. In September 2012, Quality Solicitors announced an exclusive partnership with LegalZoom to provide legal advice to customers of LegalZoom’s new UK site, set to launch in 2013. According to Quality Solicitors’ founder Craig Holt, the partnership “brings the best of both worlds, combining the speed, convenience and value LegalZoom’s technology brings, with the comfort and confidence provided by knowing a local QualitySolicitors expert lawyer is on hand to help at any point.”⁶ Similarly, Riverview Law, which is part-owned by DLA Piper, offers fixed-price packages for businesses of all sizes, ranging from one-off matters including litigation, through to annual and multi-year contracts for what it calls Legal Advisory Outsourcing. Riverview is cultivating a significant on-line presence for the small-to-medium sized commercial market, and offers free legal document templates, free access to its online legal advice library and a free phone consultation with the legal team.

What contributes to the changes in the legal profession is two-fold: (1) open access to vast amounts of information free-of-charge or at a low-cost; and (2) the involvement of procurement in the purchasing of professional services. More and more individuals are able to create their own legal documents online or seek out a range of lawyers through online review sites and retail portals. More and more companies take a structured and rigorous approach to selecting firms with the goal to ensure that the relationship continues to deliver expected outcomes. Individuals and companies are beginning to engage in intelligent purchase. For companies, this shift is particularly seen at the initial instruction phase, when they bring in procurement professionals to help evaluate providers and negotiate fee structures. In-house lawyers who once had free rein to engage, select and pay outside counsel now must report to executives, who are not lawyers, and who now insist on predictability as to legal expenses.

¹ Daniel Fisher, *Entrepreneurs versus lawyers*, Forbes, 10.05.11 (October 24, 2011), <http://www.forbes.com/forbes/2011/1024/entrepreneurs-lawyers-suh-legalzoom-automate-daniel-fisher.html>

² Jane Croft, *Palamon Capital invests in Quality Solicitors*, Financial Times, (October 21, 2011), <http://www.ft.com/intl/cms/s/0/0ec0c6f4-fbce-11e0-9283-00144feab49a.html#axzz2OSbscVNY>

³ *Id.*

⁴ *Id.*

⁵ Catherine Baksi, *Private equity buys into QualitySolicitors*, The Law Society Gazette, (October 20, 2011), <http://www.lawgazette.co.uk/news/private-equity-takes-stake-qs>

⁶ <http://www.thelawyer.com/legalzoom-to-tie-up-with-qualitysolicitors-for-british-launch/1014411.article>

This article explores ways that the legal profession can learn from the travel industry's path of innovation in an era where significant components of law practice have been (or soon will be) displaced by technology and do-it-yourself services. We identify and assess two of the early entrepreneurs in online retail and in-house procurement of legal services based upon data aggregation, concluding with several recommendations for the profession drawn from the travel industry's experience. Part I of the paper provides an overview of the travel industry's response to the Internet-boom during the 1990's, comparing the legal profession's reaction at that time and suggesting six lessons that law can learn from travel. Part II then examines emerging models and markets for legal services, offering three case studies: (1) the emergence of legal process outsourcing and data-driven procurement in American big law; (2) LegalZoom as first-mover in the online, do-it-yourself legal services market; and (3) Riverview Law's new model for business representation in the wake of the UK Legal Services Act. Part III concludes that in order to thrive in the wake of the shrinking pyramid, lawyers, like travel professionals, must begin engaging in more deliberate innovation to preserve opportunities for the application of complex judgment, while simultaneously leveraging the advantages of online technology and complex data analysis. Our article offers a unique perspective on these issues, drawing from the authors' varied backgrounds—collectively we represent two law schools and three industry innovators in the new legal marketplace.

Part I: Six Lessons for Law from Travel

The technology advancements of the 1990s led to significant disruption for professional service and information industries. Consumers gained access to information that previously had been the exclusive province of the industry expert. At the same time, one of "the most notable transformations in the U.S. labor market since World War II" was occurring in the form of "the rising share of employment in the services industry and the declining share in manufacturing."⁷

One of the earliest and hardest hit service industries was travel. During the first half of the 1990s the travel industry lost a collective \$15-20 billion in profits.⁸ Yet, by the end of the decade "[t]he net profits of all scheduled airlines worldwide rose from \$4.5 billion in 1995 ... to \$8.5 billion two years later."⁹ Not only did technology innovation impact travel agents and service providers, but airline deregulation compounded the stress on the industry. "Prior to airline deregulation, the US airline industry operated similarly to a public utility company with each carrier's routes and prices set by a governing body, the Civil Aeronautics Board."¹⁰ Under the Carter administration, "Congress [passed] the Airline Deregulation Act in 1978, making the airlines one of the first consumer industries to be deregulated. The resulting reforms applied free market principles to the U.S. airline business, which spurred a dramatically larger, more accessible and, some say, a more affordable travel industry."¹¹ By contrast, others "argue[d] that whereas inflation-adjusted airfares have dropped 37 percent in the 22 years

⁷ Joseph R. Meisenheimer, *The Services Industry in the Good versus Bad Debate*, Monthly Labor Review, pgs. 22 – 47 (Feb. 1998).

⁸ See *The sky's the limit*, The Economist (Mar. 10, 2001), <http://www.economist.com/node/525723/print>, ("first few years of the 1990s" the travel industry lost \$15 billion); *The Airline Industry*, <http://adg.stanford.edu/aa241/intro/airlineindustry.html> (The International Air Transport Association's "member airlines suffered cumulative net losses of \$20.45bn in the years from 1990-1994").

⁹ *Id.*

¹⁰ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 8.

¹¹ *Id.*

since deregulation, they were also falling just as much and just as fast in the 22-year period before deregulation.”¹² Similarly, the lower prices, while reflecting significant discounts, were seen by some as lower quality, “saddled with restrictions” and constituting “a different product quality.”¹³ The role of the travel agent was especially hard hit, particularly since an agent’s “revenue was derived almost exclusively from commissions.”¹⁴ The airlines that previously had “outsourced the labor-intensive process of research and booking travel to travel agencies in the late-1970’s” turned to the Internet and travelers themselves for outsourcing, “let[ting] the travelers do the work without the help of any airline employees or intermediaries, thus significantly lowering the airlines’ costs once again.”¹⁵ “By the mid-1990s, three important factors and gained momentum to drive the aggressive migration to and adoption of Internet-based travel: high distribution costs – and the obvious value-for-dollar question that was raised based on system bias; new technology that offered a cheaper alternative to ... direct access to customers; and a consumer population receptive and eager to take control of their own destinies.”¹⁶

Legal services, by comparison, went relatively unscathed through the 1990s and even into the early part of the 21st century. The massive layoffs and un(der)employment for law did not hit full force until over a decade after travel. For example, according to the “LayoffTracker” from the blog Law Shucks, from January 2008 to December 2011 “over 15,435 people have been laid off by major law firms (5,872 lawyers/9,563 staff).”¹⁷ It is worth noting, however, that this data does not include layoffs that occurred in small or mid-sized firms, solo practices, or government, nor does it include layoffs before 2008 or after December 2011, although according to Law Shucks the layoffs have now slowed significantly: “2011 has been even slower, with just 439 people let go, of which merely 12 were lawyers.”¹⁸ From 2010 to 2012, over 130,000 new lawyers entered the legal job market, predicted by the U.S. Bureau of Labor to offer only 73,600 new lawyer jobs over ten years, 2010-2020.¹⁹

Beyond the employment situation for lawyers is the “‘justice gap’: millions of people who need legal representation cannot afford or access a lawyer. The overwhelming majority of this country goes without much-needed legal help because they simply cannot afford to pay a lawyer three-figures-per-hour for multiple hours, but they also do not qualify for the limited legal aid programs available.”²⁰ Lawyers struggle to “develop sustainable models for delivering legal services that are affordable, accessible and, importantly, adopted by clients who utilize them on a regular basis.”²¹ At the same time, we have a “surplus of lawyers,”²² with thousands of lawyers seeking employment

¹² *Id.*

¹³ *Id.*

¹⁴ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 21.

¹⁵ *Id.* at 24-25.

¹⁶ *Id.* at 24

¹⁷ *Layoff Tracker*, LAW SHUCKS: LIFE IN AND AFTER BIGLAW, <http://lawshucks.com/layoff-tracker/> (last visited Mar. 20, 2013).

¹⁸ *Id.*

¹⁹ Elizabeth Lesly Stevens, *Will Law Students Have Jobs After They Graduate?*, WASH. POST (Oct. 31, 2012), http://articles.washingtonpost.com/2012-10-31/lifestyle/35498320_1_law-schools-law-jobs-legal-career-professionals.

²⁰ Renee Newman Knake, *Why Law Students Should Be Thinking About Entrepreneurship and Innovation in Legal Services*, Bloomberg Law (Nov. 2012), <http://about.bloomberglaw.com/practitioner-contributions/innovation/>.

²¹ *Id.*

²² Catherine Rampell, *The Lawyer Surplus State by State*, N.Y. Times (June 27, 2011, 11:35 AM), <http://economix.blogs.nytimes.com/2011/06/27/the-lawyer-surplus-state-by-state/>.

and law schools continuing to add new attorneys to the mix. It seems that “every state but Wisconsin and Nebraska (plus Washington, D.C.) is producing many more lawyers than it needs. ... In fact, across the country, there were twice as many people who passed the bar in 2009 (53,508) as there were openings (26,239).”²³ One key to solving the delivery and matching problems is user-adoption. “The profession must offer personal legal services that are affordable, accessible, and—importantly—*adopted* by clients/users on a consistent, sustained basis. The unmet *need* for legal services must be channeled into a *demand* for legal services.”²⁴ The travel industry has become adept at cultivating adoption in this way through technology, data-driven decision making, marketing, branding, and beyond.

While legal services are increasingly offered via new technologies, the legal industry has yet to experience the wide-spread adoption that has occurred in the travel industry. Moreover, where the role of travel agent was in many ways destroyed by deregulation and technology, the travel industry is experiencing a rejuvenated demand for personalized rather than computerized service. The travel industry’s evolution in a digital, data-driven world offers lessons for lawyers at all levels from legal aid to Wall Street to not only avoid displacement but also capitalize on existing and emerging technology advancements. We suggest six lessons below.

A. Online Can’t Be Ignored

Consider that travel agents are no longer necessary to secure the lowest airfare or most desirable seat on the plane. Instead, the store-front travel agent has been largely replaced by intuitive, user-friendly search engines and strategically designed websites targeting travelers of every budget for any destination. As Internet access became more publicly available, rather than resist the movement, “the travel industry was one of the earliest to go online.”²⁵ Online search has made travel planning available to the masses, tapping latent markets and creating new standards through customer-based travel review sites. User adoption has been overwhelming—Orbitz.com alone facilitates 1.5 million flight searches and 1 million hotel searches daily. The travel industry channeled disruption into new models for personal service, outsourcing much of the travel planning work previously done by agents to the customers themselves.

The travel industry knew early on that online service cannot be ignored, for both sharing information with customers and collecting information about customers. “One big advantage of the Internet is that it gives consumers access to better information about what is on offer. Conversely, as more people buy their tickets online, the airlines get to know more about their customers’ needs and preferences.”²⁶ This data has enhanced is what is known as “customer relationship marketing,” where the airline induces customer loyalty “by offering tailor-made deals reflecting his known preferences.”²⁷ Where once a travel provider might have simply offered information, through online tools, most airlines, for example, “offer customers reservations, electronic tickets, seat selection, in-flight merchandise, reward points and sometimes discounted fares unavailable elsewhere.

²³ *Id.*

²⁴ Renee Newman Knake, *Democratizing Legal Education*, forthcoming Connecticut Law Review (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2240689

²⁵ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 26.

²⁶ *The sky’s the limit*, The Economist (Mar. 10, 2001), <http://www.economist.com/node/525723/print>.

²⁷ *Id.*

In addition, they may offer lodging, transportation-package deals and cruises through their alliance partners.”²⁸ Online also allowed for the removal of intermediaries through direct-access software, fundamentally altering the traditional players in the travel supply chain.²⁹

The legal industry is witnessing some of the same phenomena. For example, as seen in the LegalZoom and Riverview case studies below, new entrants into law are highly focused upon the user/client’s online experience. Providers like these are altering the traditional supply chain for services, as is the new role of the general counsel in navigating legal process outsourcing and procurement, also discussed as part of the case studies in Part II. The lesson that follows from the need to embrace the online experience, of course, is that service industries must invest in high quality technology for the long term.

B. Investment In High-Quality, Long-Term Technology

The travel industry also recognized that “[t]o meet the requirements of their increasingly discerning customers, [it had] to invest heavily in the quality of service ... offer[ed], both on the ground and in the air. Ticketless travel, new interactive entertainment systems, and more comfortable seating are just some of the product enhancements being introduced to attract and retain customers.”³⁰ The legal profession, by contrast, has been slow to adopt technology both for practicing attorneys and, importantly, for the clients. One notable exception is newcomer Clearspire, which recently announced a plan to hire 50 to 100 “former BigLaw lawyers each year for the next five years,” into its “nontraditional legal services model.”³¹ Clearspire, formed in 2009, is known for investing in a “\$5 million online platform that connects lawyers and clients through virtual offices and high-end videoconferencing systems.” Both legal services providers profiled in the case studies below are other exceptions. In the case of Riverview, the core team understood the value of investing in high-quality, long-term technology at the outset and were able to leverage 12 years’ experience and expertise gained while building a proprietary case management platform in a previous business. Similarly, LegalZoom has gone to great lengths to make their online process easy to use and understand for their customers. In addition, when faced with the prospect of integrating attorneys into their offerings through new legal plans, LegalZoom developed membership portals through which customers could manage their consultation requests (including scheduling consultations online), peruse user reviews of plan attorneys and utilize other LegalZoom benefits in one place. On the other side of the equation, LegalZoom’s systems allow participating law firms to manage the administrative requirements of providing consultations and even refer out certain matters easily.

²⁸ *Id.*

²⁹ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 26.

³⁰ *The Airline Industry*, <http://adg.stanford.edu/aa241/intro/airlineindustry.html>.

³¹ Rachel Zahorsky, *New-model firm plans hiring spree*, ABA Journal (Jan. 17, 2013, 12:25PM), http://www.abajournal.com/lawscribbler/article/firm_seeks_to_liberate_lawyers_50_to_100_each_year/.

C. Marketing and Branding Matter More than Ever³²

The ability to differentiate one's service through marketing and branding matter more than ever, a lesson learned early on by travel providers. Indeed, there is general recognition in (the business school) academia and practice that marketing addresses the increased need to compete for business. Marketing is important since organizations need to be aware of their competition and aim to satisfy their customers in order to be successful. This is particularly true for service industries due to the direct interaction they have with their customers. While the rationale for marketing might be unquestionable, professional services firms, in particular law firms, traditionally resisted the diffusion of the marketing concept or market(ing) orientation.³³ Little marketing used to occur in the legal profession, and lawyers began to adopt marketing "unenthusiastically" or not at all.³⁴

It has been argued that, from a microeconomic point of view, a law firm is essentially a service business like any other: it renders services to clients from whom it receives payment.³⁵ Like any other business, a law firm combines resources in order to produce services and adheres to the basic principles of economics—profitability and financial liquidity, to ensure continuity. The "growth in the size of the profession, the size of firms, and the volume of the market, has led . . . [to] lawyers having to treat the practice of law as a business."³⁶ Access to justice requires not only that the legal advice given be sound, but also "the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way."³⁷ Customers are the lifeblood of any commercial organization. Without them, a business has no revenues, no profits, and therefore no market value. In fact, the basis of a business is its ability to create and keep a customer.³⁸ "[T]he law is a service business, and satisfaction can only be measured by the client."³⁹ As the satisfaction of customer needs is the main business goal, businesses have only two basic functions, or processes, that are performed to carry out their mission: marketing and innovation.⁴⁰ Nevertheless, lawyers historically have not embraced marketing. Marketing was almost non-existent among lawyers as it was not only "disliked," but also considered "profoundly unprofessional and inappropriate."⁴¹ While these observations are now dated, the strong influence of tradition and history in the legal

³² Portions of Subpart C, "Marketing and Branding Matter More than Ever," are reprinted from Silvia Hodges, *I Didn't Go to Law School to Become a Salesperson – The development of Marketing in Law Firms*, forthcoming *Georgetown Journal of Legal Ethics* (2013).

³³ See Lloyd C. Harris & Nigel F. Piercy, *Barriers to Marketing Development in the Barristers' Profession*, *SERV. INDUS. J.*, Oct. 1998, at 19, 20; see also WERNER PEPELS & BRUNHILDE STECKLER, *ANWALTS-MARKETING [LAWYER MARKETING]* 2 (2003); Angela Vickerstaff, *Legal Sector Marketing: A Contested Case*, 38 *MGMT. DECISION* 354, 356 (2000). "Market orientation" is a strategic worldview whereby a firm focuses on its selected client base (its "market") in all it does. Serving that market is the focal goal of all functions in the business. The market, i.e. the clients, is the organizing principle for the firm and information about clients is used at all levels across all functions to steer the company in the right direction. "Marketing orientation," as truly distinct from market orientation, is more tactical: in a marketing oriented firm, the marketing function has the power and drives the company ethos and pecking order. E.g., the firm might have a tradition of hiring leadership from the marketing function.

³⁴ See Lisa O'Malley & Lloyd C. Harris, *The Dynamics of the Legal Market: An Interaction Perspective*, *EUR. J. MKTG.* 874, 875 (1999).

³⁵ See PEPELS & STECKLER, *supra* note 3, at 1.

³⁶ STEPHEN MAYSON, *MAKING SENSE OF LAW FIRMS* 15 (1997) [hereinafter MAYSON, *MAKING SENSE*].

³⁷ SIR DAVID CLEMENTI, *REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES* 5 (2004) [hereinafter CLEMENTI, *REVIEW*] available at http://www.jambar.org/clement_report.pdf.

³⁸ See PETER F. DRUCKER, *MANAGEMENT, TASKS, RESPONSIBILITIES, PRACTICES* 20 (1974); see also THEODORE LEVITT, *THE MARKETING MODE* 10 (1969). Both sources emphasize the importance of focusing on the customer, and hence, the importance of marketing within any organization.

³⁹ John O. Cunningham, *Getting the Most Out Of Outside Counsel* 4 *MIDWEST IN-HOUSE* 1, 25 (2007).

⁴⁰ See DRUCKER, *supra* note 9, at 20.

⁴¹ See Harris & Piercy, *supra* note 3, at 20.

profession, the perception of and the attitude towards marketing were substantial barriers to the advance of marketing in this field.

By comparison, the UK's Legal Services Act has focused investors on the sizeable opportunity that exists to create powerful brands in an industry which has grown up without them. At a consumer level, new UK entrants such as Quality Solicitors and Cooperative Legal Services are plowing huge sums of money into brand creation and management in an attempt to gain early-mover advantage. Riverview Law was the first commercial firm to launch after the UK liberalization fully took effect, and is similarly seeking to capitalize on the absence of household brands in the B2B arena and hoping to establish itself as the "go-to" firm for fixed-fee value-based legal services. More details of its approach can be found in the case study below. Being a very early mover, LegalZoom executives learned early that brand was particularly important in online legal services. The company reported marketing and sales spending of over \$30 million in 2009 and 2010 and topped \$40 million in 2011. Brand recognition is historically very low in the legal services industry, yet the services provided are ones for which trust is very important. As detailed below, LegalZoom has focused intently on building a recognized and trusted brand since its very early days and continues to do so.

D. High-End, Personalized Service is Still in Demand

Despite the massive paradigm shift from human to machine in the travel industry, a demand for travel agents still exists, even in this digital, data-driven world. A cadre of travel professionals has carved out niche specialties where individual, human interaction is desirable and sought after. Even with the online capabilities to secure one's own travel plans, users find that they need recommendations, direction, and an expert who can navigate the overwhelming array of choices.⁴² Indeed, notwithstanding the "bloodletting the industry has experienced since the onset of D.I.Y. booking more than a decade ago" it turns out that now "[n]early one in three leisure agencies is hiring ... [a]nd in 2011 travel agencies experienced a second consecutive year of growth; their bookings account for a third of the \$284 billion United States travel market."⁴³ To be sure, the composition of the travel industry looks much different today than it did two decades ago—during "the mid-1990s, there were about 34,000 retail locations booking trips. Today, there are 14,000 to 15,000."⁴⁴

Interestingly, travel agents "still play a relevant role," at least in part due to "the drawbacks of the Web"⁴⁵ and the overwhelming amount of information available, some of which may be unreliable or not trustworthy. This has created a demand for "a new breed of tech savvy, specialized and collaborative agent."⁴⁶ The client, of course, has done research and is better informed, yet still needs an expert's guidance. "Agents today also know they must set themselves apart from the Web by offering special experiences that consumers can't easily get on their own."⁴⁷ Indeed, "in a recent test of agents versus

⁴² Michelle Higgins, *Are Travel Agents Back?* NY TIMES at TR1 (Apr. 20, 2012) ("I needed recommendations and someone to steer me in the right direction," said Ms. Griffin, who opted to work with an agent after years of making her own reservations because she needed a getaway suitable for a toddler and had little interest in scrolling through endless and conflicting user hotel reviews online. "There are so many," she said. And with every site displaying beautiful pictures and tantalizing offers, "it can be overwhelming.").

⁴³ Michelle Higgins, *Are Travel Agents Back?* NY TIMES at TR1 (Apr. 20, 2012).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

online search engines[, a]gents won ‘nearly every time ... on both price (the objective part of the test) and service (what you might call the essay question). In other words, the agents suggested alternate routes, gave advice on visas and just generally acted, well, more human than their computer counterparts.”⁴⁸

Similarly, lawyers can position themselves as “tech savvy, specialized and collaborative” advisors. Some law schools are beginning to prepare students for this role.⁴⁹ Individual attorneys and law practices should similarly develop this expertise as a supplement to increasingly online services.

E. Democratized Service Can Cultivate New Markets

Technology and online access democratized travel, making it not only more affordable but also leading to highly individualized experience through unbundled services and amenities. This also impacted the way travel agents priced their services, for example a “fee for issuing a ticket or a nominal fee for changing it ... or charging for information management, on-site pass port or back-office processing. Many travel agents invested in electronic servicing capabilities either independently or with technology partners, which had the two-fold objective of reducing their own service costs as well as providing entry into the new electronic market.”⁵⁰ These changes also “led to a redefinition of who the customer is at each stage of the process, and aligning costs and revenues accordingly.”⁵¹ Prior to the 1990s, “the customer paid nothing explicit for travel services. The cost of the service was bundled into the cost of the air ticket.”⁵² After the Internet-revolution, “the cost of services – in the form of service fees – is now apparent.”⁵³

The concept of unbundled services for legal services is only beginning to be explored. Unbundled legal services involves “an agreement between the client and the lawyer to limit the scope of services that the lawyer renders.”⁵⁴ Unbundling can occur vertically, “break[ing] up the lawyer’s role into a number of limited legal services, empowering the client to select only those needed” or horizontally, “limit[ing] the lawyer’s involvement to a single issue or court process.”⁵⁵ A range of activities can be offered as unbundled services: advice, research, document drafting, negotiation, court appearances, or the handling of isolated matters. While legal has been much slower than travel to incorporate unbundled services, some predict that “[d]ue to customer education

⁴⁸ *Id.*

⁴⁹ For example, at Michigan State University College of Law’s ReInvent Law program, courses include Quantitative Methods for Lawyers, Entrepreneurial Lawyering, Legal Information Engineering, and Lawyer Ethics and Regulation in a Technology-Driven World. See www.ReInventLaw.com (last visited Mar. 20, 2013).

⁵⁰ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 27.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Harrel Associates, *The Internet Travel Industry: What Consumers Should Expect and Need to Know, and Options for a Better Marketplace*, Consumer WebWatch (Jun. 5, 2002), <http://www.consumerwebwatch.org/pdfs/internet-travel-industry.pdf> at 32.

⁵⁴ Forrest S. Mosten, *Unbundled Legal Services for Today – and Predictions for the Future*, Family Advocate Vol. 35, No. 2 (Fall 2012) at 14. See also Stephanie Kimbro, LIMITED SCOPE LEGAL REPRESENTATION: UNBUNDLING AND THE SELF-HELP CLIENT (2012) (“In this rapidly changing economic and legal climate, lawyers are seeking new methods for delivering their services efficiently and effectively while attracting new types of clients. For many firms, limited scope representation—also known as à la carte or unbundled legal services—may be the solution. By providing representation for a clearly defined portion of the client’s legal needs, such as preparing a legal document or making limited court appearances, lawyers can market their practice to an entirely new client base and give their firm a competitive advantage.”).

⁵⁵ *Id.* at 14

and demand, by 2032, law firms of all sizes will be proactively offering unbundled services in all areas of law and to clients of all demographics.”⁵⁶ Unbundling may also alter the way lawyers offer service, shifting from reactionary to “a preventative approach that will be used symptomatically and asymptotically.”⁵⁷

While unbundling holds the potential to open new markets for legal services, whether through lower-costs for traditional services or through new services such as preventative approaches, there are regulatory barriers constraining the legal profession that were not at issue for the travel industry. These barriers include unauthorized practice restrictions on who may provide legal services and prohibitions on partnership and co-ownership/investment with nonlawyers. The ban on external ownership and investment by nonlawyers is particularly devastating for lawyers who want to “deliver en masse representation to the general public for routine wills, child custody, divorce, mortgage foreclosure, standard contracts, small business needs, immigration, bankruptcy, housing disputes, and other basic matters.”⁵⁸ “But the American Bar Association, the entity responsible for drafting the Model Rules of Professional Conduct, refuses to engage in any meaningful reform and few jurisdictions have taken steps on their own.”⁵⁹

F. Beyond the Role of Trusted Advisor: The Lawyer as “Trusted Curator”⁶⁰

The travel industry was one of the first to contemplate assuming the rule of curator. “The Web democratized the ability to spot things ... [making] curated consumption ... a kind of business, because of the sheer quantity of decisions people have to make around buying things.”⁶¹ The idea of curation, or acting as a curator, contemplates a method for “individuals [to] share their knowledge and passion on any subject not only by creating original content about it, but also by scouring the web and curating the best content into a single location.”⁶² Some of the best known and most successful online travel curators include Orbitz and Jetsetter. Jetsetter.com presents an interesting example of curated travel, because in a very crowded space (and in an industry that was utterly decimated by the Internet-boom in the 1990’s—the travel agent) we see the rise of a totally new service provider that distinguishes itself not by offering a new kind of hotel room, but by altering the way the same hotel room is offered.

A number of recent entrants to the legal services market are taking on a similar sort of role, one beyond that of the traditional trusted advisor—“the lawyer as trusted curator.”⁶³ In an era of information overload, this seems to be an important role for an attorney. While the Model Rules of Professional Conduct do not specifically use this

⁵⁶ *Id.* at 15.

⁵⁷ *Id.*

⁵⁸ Renee Newman Knake, *Democratizing the Delivery of Legal Services*, 73 OHIO ST. L.J. 1, 5 (2012).

⁵⁹ See Knake, *supra* note __, at 41–42 (discussing the ABA’s resistance to reform that would allow practice with or investment from nonlawyers). Only two jurisdictions have experimented with liberalization of the non-lawyer ownership and practice restrictions. Washington D.C. permits limited partnerships with non-lawyers (see D.C. Rules of Professional Conduct, Rule 5.4) and Washington state permits limited law practice for non-lawyers (see Washington Supreme Court Admission to Practice Rule 28, Limited Practice Rule for Limited License Legal Technicians).

⁶⁰ See Renee Newman Knake, *The Lawyer as Trusted Curator*, Legal Ethics Forum Blog (Mar. 17, 2013), <http://www.legalethicsforum.com/blog/2013/03/the-lawyer-as-trusted-curator.htm>.

⁶¹ Simon Dumenco, *Why Calling Yourself a Curator is the New Power Move*, Details, March 2011, available at <http://www.details.com/culture-trends/critical-eye/201103/curator-power-move-trend>.

⁶² Rohit Bhargava, *Why The Future of Travel & Destination Marketing is All About Curation*, Influential Marketing Blog (Feb. 15, 2011) <http://www.rohitbhargava.com/2011/02/why-the-future-of-travel-destination-marketing-is-all-about-curation.html>

⁶³ For further discussion of “the lawyer as trusted curator,” see Renee Newman Knake, *The Lawyer as Trusted Curator*, Legal Ethics Forum Blog (Mar. 17, 2013), <http://www.legalethicsforum.com/blog/2013/03/the-lawyer-as-trusted-curator.htm>.

terminology of 'trusted curator,' this seems to be in the spirit of the Preamble to the Model Rules, which observes that “a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system.”⁶⁴ This guidance contemplates that a lawyer can and should be acting as a curator to educate the public, beyond developing the lawyer's client base. A number of recent entrants to the legal services market employ aspects of curation.⁶⁵ Much like the curator of an exhibit in a museum, these legal services providers combine law with art, design, technology, gamification, humor, and news from other fields to provide a rich user experience. They also offer at least a portion of their curated information for free, letting users establish some form of relationship before taking it to the level of becoming client.

To better understand these lessons, this paper next explores the emerging role of legal process outsourcing and data-driven procurement followed by case studies of two innovators in online legal services—LegalZoom and Riverview Law.

Part II. How Law Can Apply the Lessons from Travel—Three Case Studies

Part II takes up three case studies to examine how some lawyers and legal service providers are already applying the lessons from the travel industry, and to suggest how other segments of the legal profession might consider doing so. While the use of case studies as a research method is not necessarily all that unusual for other disciplines, this is a less-explored realm in legal scholarship. Writing together as a group of academics and industry professionals we endeavor to respond in a meaningful way to those who critique the utility of law review articles.⁶⁶

A. Case Study #1: The Emergence of LPOs and Data-Driven Procurement in American Big Law

The entrance of legal process outsourcing and data-driven procurement have impacted big law and fundamentally altered the role of the general counsel (GC). Top management around the world puts increasing pressure on its general counsel. There is no doubt that the economic crisis forced most companies to scrutinize costs in ways they have never experienced before. From today's management point of view, legal departments are cost centers and need to be managed as such. The legal department has to be a better corporate citizen, no more 'legal is different' explanations are accepted.

⁶⁴ ABA Model Rules of Professional Conduct, Preamble (2012).

⁶⁵ See, e.g., [AxiomLaw](#) you will find [case studies](#) and a [map](#) of legal services to explore; [Inspired Law Practice](#) uses Tumblr to collect and share information for lawyers to discover balance and happiness in their law practices; [LegalZoom](#) was an early mover in providing on-line legal forms for personal and business use; [Legal365](#) is a UK competitor offering similar services; [Riverview Law](#) offers a [free library](#) of legal information and uses social media like [Twitter](#) to educate the public about legal service; [ScotusBlog](#) is not a law practice, but provides a great example of lawyers curating specialized information—the website offers a wealth of information about Supreme Court cases in an user-friendly, accessible website; [The State Decoded](#) is the brainchild of a nonlawyer, Waldo Jaquith, but has inspired some beautifully designed websites for state statutes, including [Virginia Decoded](#) and [MiLaws](#); [Velawsity](#) is a recently launched law practice management system, but already has over 3,000 followers on [Twitter](#) from its curated legal news and commentary; [Westaway Law](#) is a law firm for social entrepreneurship, and devotes a [blog](#) to all things related to that field.; LegalForce's new retail presence – the [BookFlip Store](#). Most of these examples are online curation, but LegalForce is banking on its online success with Trademarkia.com to open a beautifully designed store-front historic offering books, electronic tablets and, of course, a highly-curated legal services experience where customers can do-it-yourself with books and a computer kiosk or meet with one-on-one with an on-site attorney; and [QualitySolicitors](#) is a branded group of law practices throughout the UK, including in [kiosks](#) at WHSmith Stores.

⁶⁶ [cite Justice Roberts, others on this]

Instead, legal is expected to create value for the business units and the organization it serves. Value can be demonstrated in many ways, including members of legal departments participating in committees alongside business managers and provide training to their internal clients. This connects lawyers with business people, possibly circumvents legal issues, and raises awareness of the work—and value—the legal department provides. In any case, like the rest of the organization, the legal department is expected to be efficient, do more with less, save money *and* reduce risk.

This fundamentally changes the way a legal department has to be run. Legal now must manage its workflow, inventory, documents, and knowledge, it must budget, exercise cost control, closely monitor and analyze legal spend. In an effort to rein in cost, GCs consolidate the number of firms their company regularly works with, negotiate discounts and freeze rates, and demand fixed fees or caps or other alternative fee arrangements. They hire legal operations people to support them with these tasks and even collaborate with procurement to ensure they get the most value from their law firms. In short, they are turning to data and analytics to understand and make many of these decisions, much like travel did in evolving from a desks of booking agents to rows of computer processors.

The new champion in this environment is the GC as the leader of change: change towards professional management of the legal department itself as well as its relationships with internal clients and outside counsel. “Three years of cost-cutting has created a new dynamic in the relationship between law firms and their clients,” found Financial Times research report *A New Dawn: Lessons for Law Firm Management in the Post-Crisis World*.⁶⁷ Rather than maintaining a cozy relationship with law firms on an ongoing basis, more and more companies are taking a rigorous approach to selecting firms and ensuring that the relationship continues to deliver expected outcomes.

A central tool to actively manage the relationship with one’s law firms, electronic billing, is common practice in the U.S. today. EMEA countries are following suit. In addition, some legal departments choose non-traditional ways of collaboration with their law firms, an approach e.g. Pfizer and Deutsche Bank have taken. Companies with UK legal work now can also benefit from new model law firms such as Riverview Law discussed more fully in the final case study or organizations such as BT, who offer specialized legal services. Others set up their own pool of lawyers in less expensive locations: British construction services company Carillion for example, hired paralegals in northern England. To ensure cost savings were achieved, both Carillion’s in-house lawyers as well as the company’s panel firms, including Slaughter & May, were expected to use the paralegals’ services. Two innovations for legal services in big law illustrate how travel’s lessons can assist lawyers: legal process outsourcing and procurement. Each is taken up in turn below.

1. Legal Process Outsourcing

More common is hiring legal process outsourcers (LPOs) for specific projects or tasks, bypassing law firms for routine work. According to Aaron Harmon, the ‘stigma’ once associated with using LPOs is dissipating and more organizations are exploring—or

⁶⁷ <http://aboutus.ft.com/2011/06/28/financial-times-study-highlights-mutual-misunderstandings-between-law-firms-and-their-clients/>

already using—it.⁶⁸ The global LPO market currently employs almost 9,000 people and has reached \$1.1bn of annual sales in 2012 according to *The 2012 Legal Outsourcing Market Global Study*. It saw an average growth of 32 percent in each of the last 3 years. Further 30+ percent growth is expected for the coming three years, which means that the market will double in size by 2015. It is projected to reach \$3bn (or £2bn) by 2015. As LPOs make up only 0.25 percent of the overall the global legal services market, there is likely to be “considerable room for growth.” According to the before mentioned Study, even existing users of legal outsourcing have only outsourced about 5 percent of what they could potentially outsource.⁶⁹

Legal process outsourcing is the process of contracting out legal tasks to less expensive third party vendors. They are typically based in places far away, such as India and the Philippines. Looking to reduce inefficiencies, maximize profitability, and gain or retain competitive advantages, many businesses started outsourcing essential functions in the early 1990s. This included back office administrative work, IT, human resources, accounting etc. This process is called business process outsourcing (BPO). In the mid-1990s, legal services were outsourced for the first time. The LPO industry evolved most rapidly in India. Harmon suggests that due to “British colonization, many Indian workers speak English fluently, thereby facilitating an East-West synergy more easily than other countries.”⁷⁰ In addition, India utilizes a common law system similar to what is practiced in the United States and Britain, a result of British colonization.

LPOs started out offering transcription and word processing, and other routine, back-office paralegal tasks. Over time, they moved to include more substantive issues such as patent applications and e-discovery. Increasingly, LPOs offer higher-level types of work traditionally handled by junior associates for a fraction of the price of U.S. lawyers. If the BPO development is any indicator for the LPO development, this is unlikely to stop: services offered have become more technical and sophisticated over time. Harmon understands that the first phase of offshoring involved company-owned (captive) units where basic and repetitive “back-office” tasks were sent by companies. During a second phase, non-captive service providers began to emerge, and as more and more companies set up back offices in India, venture capitalists began to fund start-up companies to provide similar services to third party clients.⁷¹

While LPOs offer their services to law firms, GCs increasingly buy directly from LPOs, cutting law firms out. However, while currently few law firms see LPOs as a threat to the law firm’s core offering, the legal industry would not be the first to mistakenly dismiss low-end competitors: In *The Innovator’s Dilemma: The Revolutionary Book That Will Change the Way You Do Business* Clayton Christensen warns that like other industries before, incumbent suppliers (such as traditional law firms) run the risk to be replaced, hurt or significantly changed by low-end competitors (such as LPOs). “The new products were low-end, dumb, shoddy, and in almost every way inferior. But the new products were usually cheaper and easier to use, and so people or companies who were not rich or sophisticated enough for the old ones started buying the new ones, and there were so many more of the regular people than there were of the rich, sophisticated

⁶⁸ Aaron R. Harmon, *The Ethics of Legal Process Outsourcing to India—Is the Practice of Law a “Noble Profession,” or is it Just Another Business* 13 U. of Fl. J. Tech. L. & Pol’y 41 (June 2008).

⁶⁹ Edward Brooks, *The 2012 Legal Outsourcing Market Global Study*; <http://www.legalfutures.co.uk/latest-news/lpo-warning-law-firms-general-counsel-freeze-out>.

⁷⁰ See *Id.* at 2.

⁷¹ *Id.*

people that the companies making the new products prospered. Christensen called these low-end products “disruptive technologies,” because, rather than sustaining technological progress toward better performance, they disrupted it. After studying a few exceptions to the pattern of disruption, Christensen concluded that the only way a big company could avoid being disrupted was to set up a small spinoff company that would function as a start-up, make the new low-end product, and be independent enough to ignore what counted as sensible for the mother ship.”⁷²

This scenario becomes even more palpable since buyers who switch to LPO suppliers “are unlikely to switch back to Law Firms to have that work done in the future,” according to the *2012 Legal Outsourcing Market Global Study*.⁷³ Despite the possible threat, the Study noted that law firms have taken few steps to protect themselves against their clients’ changing buying pattern. In fact, it remarks that “inaction by Law Firms is one of the biggest threats.”⁷⁴

2. Procurement

Collaboration with procurement is a more recent development, taking part in large corporations, particularly in Fortune 100 companies. Historically, procurement focused on the purchasing of raw materials, production items as well as maintenance, repair and operations supplies. In the last decades procurement made inroads in professional services, including accounting, engineering, information technology, and consulting. Each of the professions protested against procurement getting involved in sourcing their services, arguing its distinction from “normal” business. In fact, until recently, the legal department was considered sacred, the last holdout allowed to source without the involvement of procurement. Procurement has been monitoring legal spend, noting its high degree of spending and lack of transparency.⁷⁵

Today, procurement is involved in the purchasing of legal services to discover savings, negotiate more efficiently, measure best value, and provide more objective comparisons. When effectively using procurement, legal departments do not simply hand over all power to their procurement colleagues. Procurement is rarely the final decision maker: Selecting law firms is still the legal department’s prerogative.⁷⁶ Rather, Procurement is mainly responsible managing the sourcing process; for negotiation and contract development; pre-purchase evaluation of legal services providers (which may or may not be traditional law firms); as well as developing sourcing criteria and purchasing strategies. Procurement professionals are “buyers” in the classic sense: they are responsible for the engagement letter/retainer or framework agreement and negotiations. They are also influencers, in the sense that they try to affect the outcome decisions with their opinion. Additionally, procurement professionals also act as gatekeepers for the legal category—they help manage and direct the flow of information between the service provider and client.⁷⁷

⁷² Larissa MacFarquhar, Profiles, “When Giants Fail,” *The New Yorker*, May 14, 2012, p. 84 http://www.newyorker.com/reporting/2012/05/14/120514fa_fact_macfarquhar#ixzz2McKZaqSd; Clayton Christensen, *The Innovator's Dilemma: The Revolutionary Book That Will Change the Way You Do Business*.

⁷³ See *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ Jason Winmill, *Working with In-House Lawyers: A Significant Sourcing Opportunity*, Inside Supply Management, Legal Briefs: Supply Management’s Legal Issues, Vol. 19, No. 9, pages 36-37.

⁷⁶ *Id.*

⁷⁷ Silvia Hodges, *Legal Procurement: Sourcing is a team Sport*, Bloomberg Law, <http://about.bloomberglaw.com/practitioner-contributions/legal-procurement-sourcing-is-a-team-sport/>

“Effective legal [procurement] sourcing initiatives create ways to articulate and define the specific legal expertise needed, and then objectively assess which outside counsel has that expertise. Initially, these definitions of expertise and legal skill only reside in the minds of the in-house counsel. But a robust sourcing approach will ensure that the specific needs are formally articulated,” notes Jason Winmill.⁷⁸ What’s more, procurement professionals are involved not only in purchasing routine services and legal “commodities,” but also in complex and high value legal services. This means, that there is not a lot left in which procurement is *not* involved. Exceptions may be emergency situations, where procurement’s timeframe does not fit.

As expense pressures have grown in the last few years, and procurement professionals have developed more experience sourcing professional services, some GC welcome procurement’s advice and support. Forward-thinking GCs like Dan Troy of GSK turn to procurement for help, and it pays off. “In the nearly four years since GlaxoSmithKline looked to revamp the way it hires and pays for outside legal services, the pharmaceutical giant has saved tens of millions of dollars in legal fees.”⁷⁹

An opportunity for collaboration between the legal department and procurement is exploring whether legal services can be ‘unbundled’ to borrow a lesson for travel and whether some activities traditionally carried out by counsel should be outsourced to non-traditional law firms or LPO providers. In-house counsel and procurement have to work together to balance the company’s cost-cutting needs with their preferences for outside counsel. GCs are advised to quantify legal services to steer procurement toward measuring results, not just costs. This can be achieved by benchmarking costs, comparing savings in the industry in general or looking at outside counsel savings affected by better practices or better technology.

Governmental agencies have been using the so-called Two-Step Procurement Process for competitive contracting since the 1950s. This process combines sealed bidding and negotiation. Typically, procurement sends out a request for proposals (RFP), describing the client’s requirements. After procurement receives and evaluates the proposals, procurement asks the firms whose offers they found acceptable to submit their price proposals based on their initial terms. Only then will procurement conduct negotiations with the parties, now comparing “apples to apples,” leading to the award of a contract to the lowest responsive offer.

Sourcing legal services requires a significant degree of trust between lawyer and client, something that does not come easily with procurement approaches. Legal services are, after all, expertise- and judgment-based services, not fungible commodities. It is hence important to understand the requirements, dependencies, cost structure and the environment in which the services are used. For example, procurement must understand if the firms serve a unique geography or mostly operate in a tier 1 market. This can make a big difference according to the *Real Rate Report*’s⁸⁰ regression model. Based on

⁷⁸ *Id* at 7.

⁷⁹ Gina Passarella, *GlaxoSmithKline Saves Millions in Legal Fees With Value-Based Programs*, The Legal Intelligencer, (July 9, 2012), http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202561658766&GlaxoSmithKline_Saves_Millions_in_Legal_Fees_With_ValueBased_Programs

⁸⁰ The Real Rate Report[®] is the legal industry’s only benchmark report for law firm rates using actual legal invoice data instead of self-reported survey responses. This report — the only of its kind — has been developed by TyMetrix and the Corporate Executive Board’s Legal and Compliance practice as a guide to the pricing of services throughout the legal industry. <http://tymetrix.com/products/legal-analytics/2/2012-real-rate-report/>

actually paid data, the model says that the location of a lawyer in a tier 1 market, such as New York, Chicago, and Washington DC etc. raises the hourly rate of a lawyer by \$161. However, rather than moving work away from the most expensive locations, it is important to understand why the work is being done there and what value is offered. It may be worth the additional cost. Again, it is helpful to ‘unbundle’ activities that have traditionally been treated as single matters to determining how to move some tasks to other less expensive—providers, such as LPOs creates different risks to manage.

Also according to the Report, law firm rates have continued to increase regardless of the larger economic situation. Although rate increases were somewhat restrained during the recession, in the past two years, rates have resumed growing well past inflation. What’s more, rates for the highest billing lawyers have been growing nearly three times faster than those of the lowest billing lawyers: a 75 percent increase since 2009. Rates for lower priced lawyers, however, have only seen a slow increase as they have been facing greater competition from LPOs and contract attorneys. The vast majority of lawyers, 90 per cent, billed different rates to different companies for similar types of work. Data from the *Real Rate Report*[®] showed that some practice areas—such as M&A—had the highest proportion of lawyers billing companies different rates, while other areas—e.g., Corporate and General Business—showed less variation. Although many companies thought they were receiving the lowest available rates with law firms, many were not. More transparency in the market is likely to mean that rates will be less variable in the future as firms will likely face tougher negotiators. Of course, rates should be evaluated in the context of outcomes to as great an extent as possible. Analyzing total cost per matter often—but not always—discloses that higher combined rates result in lower overall cost. For litigation matters, comparisons preferably include loss results, accounting for disposition type and venue. Again, benchmarking one’s results against industry experience will add information and insight.

Developing a negotiation strategy often includes a preferred provider program, hourly rate structure per timekeeper, per type of practice, per region, volume price agreement (VPA), rebates, payment terms, and agreement internal billing guidelines. A well-designed, fact-based approach for reviewing legal spend can be very beneficial to an organization. Corporations will benefit from optimizing the number of firms used, their ability to leverage spend across the business, standardized rates, documented processes for engaging preferred firms for service, improved billing guidelines for invoice audit accuracy and complete transparency and visibility into all legal spend. A good sourcing strategy that includes developing, implementing, monitoring, and continuous improving can produce sustainable savings averaging of 7 to 10 percent, and in some cases, significantly more. Standard practices of corporations today include billing guidelines, case management guidelines, matter evaluation process, and invoice review process. The majority of organizations also generate key performance indicator (KPI) reports. Law firms need to understand which KPI procurement measures and deliver on these

More and more, these changes are led by data-driven legal operations professionals. Typically equipped with a strong financial background, legal operations managers scrutinize legal spending: Their analyses go from the 10,000 feet-view down to the granular level of the Uniform Task Based Management System (UTBMS) task code, while invoices are looked at—sometimes literally—line by line.

Legal operations professionals use data to conduct analyses in four performance areas regarding rates, outcomes, resource use, and other law firm metrics. The quality of

the analytics here is mainly driven by:

- The quantity of the data – how detailed is it, how much of the legal spend is covered, how many years of data comparisons are available.
- The extent to which the data can be segmented: To generate insightful analyses, for example, segmentation by descriptive information (e.g. practice area, timekeeper level, severity) would be useful, or segmentation by time (including trending information).
- The extent to which miscellaneous performance indicators are collected.
- The extent to which benchmark data can be incorporated into the analyses.

To evaluate efficiency, they measure the extent to which higher and lower cost timekeepers and timekeeper levels are used on matters. For example, to what extent are partners used compared to associates and paralegals? How does it change over time? Analyses account for matter type as well as for severity/complexity. Evaluation of efficiency can be applied at the matter level as well as at the phase, task or group of tasks level by incorporating UTBMS data. Other performance metrics used include the quality of line item entries, compliance with expense guidelines, on-going/unusual weekend hours billed or the frequency of high daily hours for individuals, performance to budget, closed matter performance evaluations, and number of billers per matter.

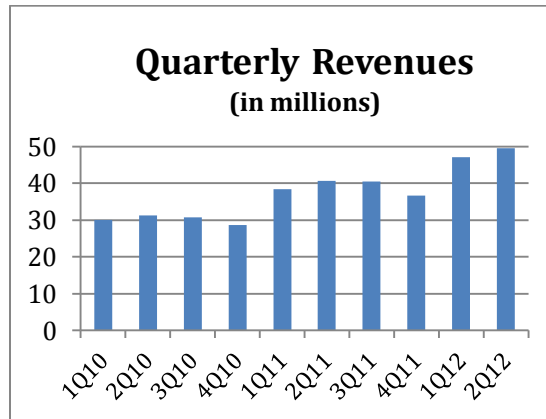
So what conclusions can we draw from this rapidly evolving situation? The basis of valuable insight is clean, reliable data that can be sliced and diced for analysis. Without the necessary systems or processes to capture and analyze spend data the legal department continues to operate only partially sighted. Until now, the legal department was typically the last part of the organization to avoid this level of data scrutiny. However, time is running out for insisting that legal is ‘different.’ The ‘legal exception’ has a limited shelf life; show good corporate citizenship now before you are forced to. Adapting to that change in order to stay competitive, to thrive in the “new normal,” is essential. As discussed more fully in the case study below, LegalZoom, the online provider of self-help legal documents, for example, has for several years battled with the North Carolina Bar Association about the bar’s attempt to prevent LegalZoom from what it considers the unauthorized practice of law in the state. This reflects an economy-wide change.

From travel agents to print journalists, “middleman” professions are increasingly irrelevant due to computer and Internet technology advances. Business and individual clients likewise assume that electronic tools make lawyers increasingly irrelevant to help with commodity services like drafting a will, filing a patent application, or registering a deed. While some jobs are being replaced with technology, however, new roles are developing. Much as the information overload in travel led to the role of curator and cultivated a need for high-end, personalized, human expertise in planning for travel experiences, law is witnessing the emergence of roles such as the lawyer as a trusted curator and a return to the lawyer as trusted advisor for specialized, nuanced service. Technology will continue to affect the cost and quality of the legal service delivered to the clients. Improving the delivery of legal service through knowledge management and client relationship management software will make legal costs competitive. Getting the work, doing the work with the help of technology, and getting paid for the work will all be transformed. Business schools call this marketing, production, and finance. Law firms

must consider them the survival tactics of the future.⁸¹ The next two case studies make these observations compellingly clear.

B. Case Study #2: LegalZoom as First-Mover in the Online, Do-It-Yourself Legal Services Market

LegalZoom was founded with a vision of combining the power of online technology with deep legal experience to create a scalable online legal platform that would fundamentally transform the way legal services are delivered to small businesses and consumers. In the twelve years since its launch, LegalZoom has become the leading online provider of services that meet the legal needs of small businesses and consumers in the United States. The company served approximately two million customers in the first 10 years of business. In 2011 LegalZoom customers placed approximately 490,000 orders and more than 20 percent of new California limited liability companies were formed using LegalZoom's online legal platform. Second quarter revenues in 2012 reached nearly \$50 million⁸².



The company remains focused on transforming the small business and consumer legal services market by leveraging the power of technology and people. Today, LegalZoom's services include a portfolio of interactive legal documents that are personalized by customers through dynamic online processes, as well as subscription legal plans and registered agent services. For small businesses and consumers who want legal advice, LegalZoom's subscription legal plans connect customers with experienced attorneys who participate in a legal plan network. In order to continue this type of expansion over the last 12 years, LegalZoom has focused a great deal of effort on two areas: exceptional customer experience and building a leading brand.

A. Exceptional customer experience.

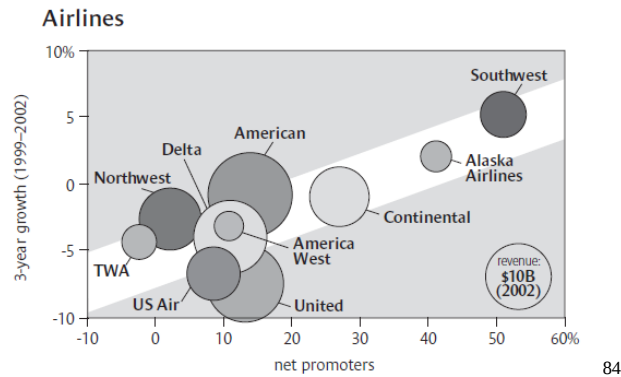
Nearly every LegalZoom customer is asked one question following his or her purchase: "How likely are you to recommend LegalZoom.com to a friend or colleague?" This question is intended to measure customer loyalty by facilitating the tracking of net promoters – the percentage of customers who are promoters of a brand or company minus the percentage who are detractors⁸³. The number is important as loyalty drives revenues

⁸¹ <http://wislawjournal.com/2013/02/22/lawbiz-coaches-corner-understanding-law-firms-new-normal/>

⁸² All financial data is publicly available in LegalZoom.com, Inc's S1 on file with the Securities and Exchange Commission, available at <http://www.sec.gov/Archives/edgar/data/1286139/000104746912007609/a2209713zs-1a.htm> (last visited Mar. 20, 2013).

⁸³ For a thorough discussion of Net Promoter Score and loyalty, see Reichheld, Frederick, The One Number You Need to Grow, Harvard Business Review, 2003. To calculate net promoter score, calculate the percentage of customers who

both from repeat customers and from new customers who were referred to a company. The net promoter score has been shown to serve as a very good indicator of customer loyalty and predictor of growth. For a striking example of this, see the chart below which shows 3-year growth of several airlines on the Y-axis against net promoter score of those same companies on the X-axis.



While net promoter score is not a perfect indicator and is not appropriate for all industries, it does provide a simple and fairly accurate measure of customer loyalty when applied appropriately.

Because LegalZoom recognizes the importance of this type of loyalty in the online legal service business, customer satisfaction has been a primary focus of the company for years and the company has provided an exceptional customer experience through a variety of strategies. For example, customer care is central to LegalZoom's culture and employees are highly focused on providing exceptional customer experiences. Even in the early days as a legal document provider, LegalZoom provided live customer care representatives who focused on resolving customer issues. LegalZoom has put its money where its mouth is regarding customer experience by maintaining a satisfaction guarantee for its offerings. If a customer is not completely satisfied with services received for any reason, LegalZoom will attempt to correct the situation, or provide a refund or credit. Approaches such as these have not gone unnoticed by LegalZoom's customers. While LegalZoom does not publicize its net promoter score, in 2011, nine out of ten of the approximately 34,000 customers who responded to a LegalZoom survey said they would recommend the company to their friends and family.

B. Leading Brand.

LegalZoom recognized early on that building a trusted brand would be critical for a company providing legal documents online. The credibility of the documents is extremely important for any company in the space. That is why LegalZoom co-founders Brian Lee and Brian Liu approached Robert Shapiro with an offer to join as a co-founder in the very early days of the company. Since that time, LegalZoom has continued to focus on building a trusted brand through use of talk radio, pod casts, television commercial using real LegalZoom customers and innovative social media initiatives such as Free Joe Friday (a free legal Q&A session on Facebook with Joe Escalante; an attorney and host of the syndicated entertainment legal advice radio call-in program "Barely Legal

respond with nine or ten (promoters) and the percentage that respond with zero through six (detractors). Subtract the percentage of detractors from the percentage of promoters to arrive at your net promoter score.

⁸⁴ Reichheld, Frederick, The One Number You Need to Grow, Harvard Business Review, 200

Radio.”). As a result of these efforts, LegalZoom has become the leading, nationally recognized legal brand for small businesses and consumers in the United States; with 60% aided brand awareness based on a survey conducted using United Sample, Inc. in January 2012⁸⁵.

C. Early Stages – Document Assembly

LegalZoom first deviated from the traditional law firm model more than a decade ago when it entered the market as a Legal Document Assistant and introduced its online legal document services. Legal Document Assistants are non-lawyers that provide basic legal documents directly to consumers, generally using online intake questionnaires and automated document assembly. These entities focus primarily on the unmet legal needs of consumers in moderate income households - needs have existed for some time⁸⁶. While the levels of service vary somewhat, most of these entities provide consumers with some sort of legal document, but no tailored legal advice. These entities are regulated directly in a few states⁸⁷ and indirectly through the state bars and committees on unauthorized practice of law in most others.

As a result of LegalZoom’s early success in providing online legal document services, the company has become seen as a substitute to lawyers and is viewed as cutting into the low-end, routine, less custom work. Richard Susskind provides an excellent view of the spectrum of legal services product. At one end of the spectrum, are bespoke legal services. These are “traditionally handcrafted, one-to-one consultative professional services.”⁸⁸ Legal “commodities” are on the opposite end of the spectrum, with gradations in between⁸⁹. LegalZoom has been providing services at the Commodity and Packaged end of the spectrum in the traditional markets for small firms (estate planning documents, small business documents, etc.) for around a decade and many other providers have followed suit.

Traditionally, the threat of substitutes for law firms has been very low. The profession is regulated and lawyers themselves can dictate who can be licensed to practice law. As of 2007, approximately 94% of all services provided under the legal services category were provided by law firms⁹⁰. That said, in recent years substitutes have been the focus of a great deal of energy from the legal services industry. The growth of this industry has been viewed as a threat by small firms in particular because the provision of simple legal documents such as Last Wills and Powers of Attorney has traditionally been their market. The impact of this threat is that certain legal services are becoming commoditized⁹¹. In addition, these simple services are often the entry point for small firms into the lives of clients from whom they expect to receive significant business

⁸⁵ LegalZoom.com, Inc. S1

⁸⁶ The unmet legal needs of consumers are well documented and dramatic. In 1994, the American Bar Association published Findings of the Comprehensive Legal Needs Study. The study surveyed low and moderate income households to assess their legal needs and related solutions for 1992, the year prior to the data collection. Nearly half (46 percent) of moderate income households reported having at least one legal need in the prior year. Less than half of those consumers (43 percent of those with a legal need and 22 percent of those overall) consulted a lawyer about their problem. William Hornsby, “Improving the Delivery of Affordable Legal Services Through the Internet: A Blueprint to Shift to a Digital Paradigm, ABA Standing Committee on the Delivery of Legal Services.

⁸⁷ See California Business & Professions Code § 6400 et seq. and Arizona Code of Judicial Administration §7-208

⁸⁸ RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES __ (2008)

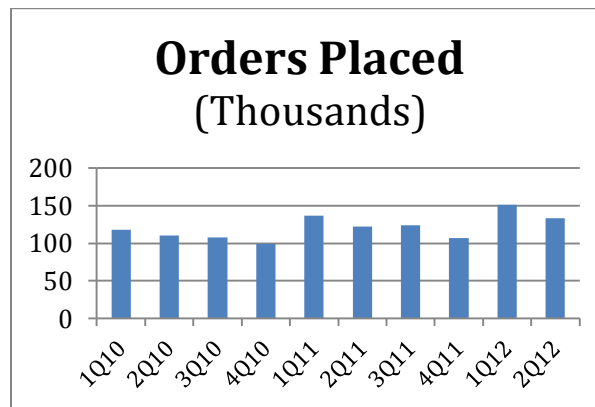
⁸⁹ *Id.*

⁹⁰ Mintel, Legal Services Snapshots – US – December, 2008

⁹¹ Susskind defines a commoditized legal service as “an IT-based offering that is undifferentiated in the marketplace (undifferentiated in the minds of the recipients and not the providers of the service).”

in the future. As such, small firms and sole practitioners have reacted with lawsuits claiming Unauthorized Practice of Law, among other things, with limited success⁹².

Today, LegalZoom offers a broad portfolio of interactive legal documents that customers can tailor to their specific needs through using dynamic online processes and scalable technology. LegalZoom's interactive legal documents are designed for use, as appropriate, at the federal level, as well as in all 50 states, the District of Columbia and approximately 2,900 U.S. counties. LegalZoom's interactive legal document services for small businesses include limited liability company formations, incorporations and trademark applications and for consumers include wills, living trusts and powers of attorney. Customer demand for these transactional offerings has remained very strong with recent quarterly order volume remaining at over 100,000 transactions with high points of over 150,000⁹³.



This order volume not only provides revenues, but also provides LegalZoom with unique insight into the legal needs of small businesses and consumers. LegalZoom leverages that legal knowledge and team of experienced, in-house attorneys, often in consultation with outside attorneys from across the United States, to design, review and maintain their services. The high volume of transactions handled and the feedback received from customers and government agencies give LegalZoom a scale advantage that enables development of additional services to address their customers' needs and refine their business processes.

Subscription Legal Plans

LegalZoom's understanding of their customer's needs eventually led to significant changes to the business. Where once there was a great deal of room to work with true DIY customers, LegalZoom began to see more customers in need of legal advice. Due to Unauthorized Practice of Law and Corporate Practice of Law statutes, LegalZoom employees could not provide such assistance. Further, due to Model Rule 5.4 and its various incarnations across the US, LegalZoom could not, even if desired, develop or invest in a law firm to assist customers in these matters⁹⁴. While lead generation

⁹² In fact, some attorneys point out that this approach only further commoditizes such services by basically saying such companies are providing the equivalent services of an attorney. Thus far, courts have generally recognized the difference between online "scriveners" and unauthorized practice of law.

⁹³ LegalZoom.com, Inc. S1

⁹⁴ While customer or client demand for such arrangements appears to be high, the US legal industry has been resistant to allowing practitioners and firms to partner with or be owned by non-lawyers. A common fear is that doing so would give non-lawyers direct or indirect control over lawyers' professional judgment. However, many in the industry are calling for

between non-lawyer websites and lawyer was becoming increasingly accepted, LegalZoom knew that a network of unaffiliated lawyers simply using the LegalZoom brand to bring in leads was unlikely to be a beneficial arrangement for their customers.

Ultimately, this led the company to establish basic legal service plans to meet the needs of their customers. Legal service plans appealed for two primary reasons. First, the format was generally accepted by regulators. As the ABA has noted “The ABA has long supported prepaid legal services plans as a way to increase access to the justice system for low- and middle-income Americans. These plans allow individuals and families to address legal issues before they become significant problems, reducing demands on already overburdened court systems and instilling confidence in our justice system.” This same report touched on the second reason that legal plans appeared to be such a good fit for LegalZoom’s customer base. As the report noted, “for the consumer, legal services are among the most difficult services to buy. The prospect of doing so is rife with uncertainty and potential risk,” and further concluded, “the challenge (and opportunity) for the legal profession is to make lawyers more accessible and less threatening to consumers who might need them.”⁹⁵ This opportunity of making lawyers more accessible and less threatening to consumers was a perfect fit for LegalZoom’s mission.

Legal service plans (legal plans), have been offered in Europe for more than one hundred years and, in some countries, have market penetration in excess of 60 percent. Legal plans were not developed in the United States until the late 1960s. Since that time, there has been substantial growth in the market. Legal service plans are offered through various organizations and marketing methods and contain a wide variety of benefits. A large number of plans are offered free to members of associations (such as labor unions and the American Association of Retired Persons). Another large source of legal plans is employee welfare benefit plans, which are paid for by employers and treated as a fringe benefit. Finally, there are plans that are sold directly to consumers. Historically, these direct to consumer plans “have more comprehensive benefits, higher utilization, involve higher costs to participants, and are offered on an individual enrollment or voluntary basis.”⁹⁶ LegalZoom’s offerings are aligned more with this last category of direct to consumer plans.

For small businesses and consumers who want legal advice, LegalZoom offer legal plans that connect subscribers with experienced attorneys licensed in their jurisdiction to address their specific legal needs. In order to be considered for participation in the legal plan network, independent attorneys must satisfy certain quality standards established by LegalZoom and be highly focused on customer care. In fact, all attorneys participating in LegalZoom’s network are surveyed by legal plan members after consultations. LegalZoom’s small business and consumer subscription legal plans are currently available in 41 states and the District of Columbia. LegalZoom’s subscription legal plans include free attorney consultations on new legal matters, review of legal

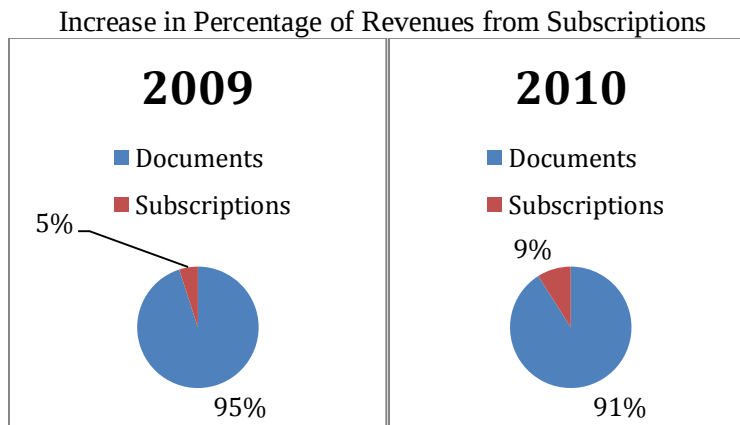
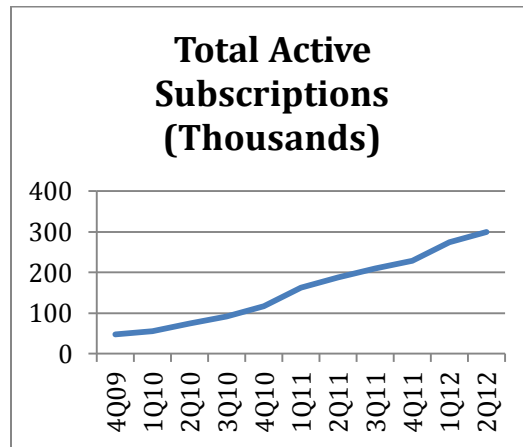
reforms which would allow partnerships with outside non-lawyer professionals, the granting of partner status or ownership to such professionals within law firms, and even stock ownership of firms by the public. According to proponents, such reforms would increase clients’ access to firms, allow firms to raise much-needed capital, and help firms attract and retain talent, among other benefits. These calls are growing stronger given recent developments in England and an increasing focus on access to justice, but agreement on the matter is rather far off on the horizon. Indeed, the last time the matter came before the ABA the delegates, against the recommendations of the counsel set up to study the issue, voted resoundingly against non-lawyer ownership.

⁹⁵ Public Perceptions of Lawyers Consumer Research Findings, 2002, ABA

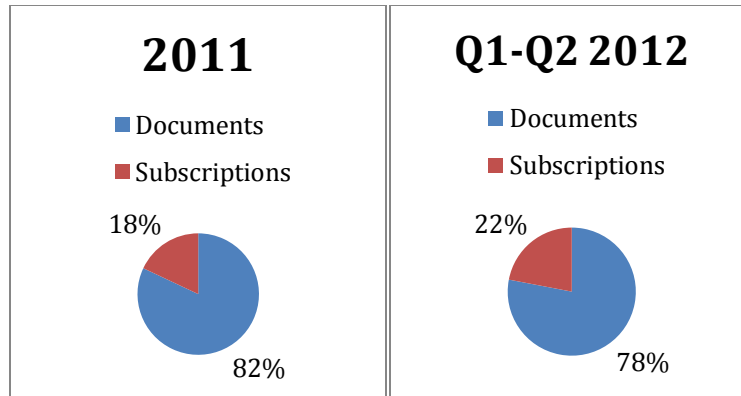
⁹⁶ Pre-Paid Legal Services Inc. annual report, 2009

documents up to ten pages in length, and discounts on LegalZoom services and additional services provided by legal plan network attorneys.

The success of LegalZoom's legal plans is evidence that improving technology can yield more affordable attorney services. As consultations with attorneys become more efficient (the idea is that LegalZoom's system will eliminate much of the research attorney's must now conduct for each new case) the price of legal help will come down and access becomes more universal. The concept has, to date, appeared to work as participating firms have assisted in developing innovative way of completing consultations and membership in LegalZoom subscriptions has increased several fold over the last few years and the percentage of total revenues from subscription enrollement increased from five percent in 2009 to over 20% in the first half of 2012⁹⁷.



⁹⁷ LegalZoom.com, Inc. S1



Another benefit of efficiencies of scale is that provider firms have started offering special discounted flat fee services to members of those legal plans as an additional benefit to the member and additional source of revenue to the firm.

The growth of LegalZoom's legal plans may be the catalyst for moving LegalZoom from status as a pure substitute for legal services to a hybrid with complementary components for many firms as well. As LegalZoom's legal plan membership grows, the company is looking to expand its network of attorneys to provide services outside of plan benefits to members who need local representation or advice on complex or highly specialized matters. The attorneys who participate must meet similar requirements to the primary firms and provide an initial free consultation and 25 percent discount off their customary rates (and, of course, maintain high levels of customer service for legal plan members). While this service is still in its very early stages, it's clear that LegalZoom intends to focus on connecting their customers with the right attorneys in the future. As LegalZoom CEO John Suh has stated, "Forget the fear-based notion of technology replacing lawyers, because that's completely down the wrong path. Think of it as lawyers embracing technology to create greater access to the law and extend legal services to the over 100 million Americans to whom it is currently out of reach."⁹⁸

While innovation in consumer legal services is somewhat limited in the US due to Unauthorized Practice of Law statutes and rules against non-lawyer ownership of law firms, the legal services market in England and Wales is currently undergoing large scale transformation due to the liberalization of legal services regulations. These changes have not only brought in new non-lawyer entrants to the market, but have also spurred innovation among a limited group of law firms. Among the most striking of those examples is Riverview Law.

C. Case Study #3: Riverview Law's New Model for Business Representation in the Wake of the UK Legal Services Act

This case study of the recently launched Riverview Law is best understood within the context of regulatory changes in England and Wales over the past decade. A brief history is necessary before moving on to explore Riverview's work. In a 2003

⁹⁸ Harrison, John, LegalZoom Takes New Twist to Old Profession, Portfolio.com

report entitled *Competition and regulation in the legal services market*, the UK Government's Department for Constitutional Affairs (DCA) highlighted a number of inherent weaknesses in the regulatory framework for legal services in England and Wales. In July of that same year, it commissioned a full review of the existing framework by Sir David Clementi, an accomplished businessman and the former Deputy Governor of the Bank of England. The terms of reference for the review were twofold:

- To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector, and
- To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible, transparent, and no more restrictive or burdensome than is clearly justified.

Clementi submitted his report in December 2004 and in its Foreword he states that nothing that he learned during the 18 month period of his review had caused him to doubt the broad validity of the DCA's earlier conclusion that the current regulatory framework was outdated, inflexible, over-complex and insufficiently accountable or transparent. "The current system is flawed," stated Clementi,⁹⁹ and what followed in his now infamous report called for sweeping changes that struck at the very heart of the long-standing traditions of the legal system.

The Government's response followed some three years later in the form of The Legal Services Act 2007 (LSA) which sought to address most of Clementi's concerns and to implement the majority of his recommendations over a period of approximately five years. The Act heralded a number of significant changes, but is perhaps best known for opening up the sector to non-lawyers. Under the new regime, companies who did not offer legal services as their primary business were now permitted to undertake legal practice, and new licensing rules concerning Incorporation and Alternative Business Structures (ABS) meant that for the first time, anyone could own a law firm.

1. Enter Riverview Law

As intended, the LSA served as a significant catalyst for change in the marketplace, and what followed was a succession of market moves that linked private money with the practice of law. Most activity was focused on individual consumers and in anticipation of a move to enter the market by the UK's largest retailer, Tesco, the term "Tesco Law" was coined to refer to this segment. At the time of writing, the retail giant has yet to enter the legal services market, but many of its competitors have done so, including The Co-operative Group, a retail co-operative run and owned by over 6 million members and with approximately 5,000 stores across the UK.

While the market's attention was predominantly fixed on the opportunities for individual consumers, one group of executives in a business operating in the north-west of England believed a significant opportunity also existed in the commercial law arena. They had set-up and at the time were running professional services company AdviserPlus, which provides advisory outsourcing services to a client base ranging from small businesses to large FTSE 100 international corporations. Many of AdviserPlus'

⁹⁹ *Review of the Regulatory Framework for Legal Services in England and Wales: Final Report*, Dec 2004, p.1

clients use the company to provide services typically undertaken by an in-house Human Resources team. Some of those who outsourced advisory support to AdviserPlus also asked the company to undertake their transactional work as well.

Operating in the HR, employment and Health & Safety advisory space, the leadership team was aware of the LSA and its potential impact on the marketplace. So when clients started asking them to consider extending the scope of their services into the legal services arena, they took it very seriously. Around the same time, the team began to be approached by regional commercial law firms who, seeing change on the horizon, were seeking partnership with (or even acquisition by) a successful forward-looking company in an adjacent section of the value chain.

Presented with several alternatives for entering the market, the decision was taken to start with a blank slate and to build a new organization from the ground up. Unencumbered by legacy technology systems, cultural baggage, or the constraints of existing operational structures, the founding team had the luxury of approaching the market with an open mind and asking questions such as *What do customers actually want?*; *How do we best configure ourselves to deliver it?*; *What kind of people and behaviors do we need?*; and last but by no means least, *What technology is required to support it?*

Nearly two years in the making, Riverview Law launched as a “new model” fixed-fee commercial firm in February 2012, shortly after the last of the measures from the LSA was implemented. As the first new entrant into the commercial market, the firm attracted a lot of media attention and quickly gained traction in the market. *The Lawyer* described its arrival as “the boldest-ever post-Legal Services Act move involving the bar” and in the same article suggested that it “poses a direct threat to [UK] law firms.”¹⁰⁰ In June 2012 Riverview opened its first international office in New York, providing an alternative route into the English legal system for US clients requiring advice or representation there. The following table illustrates the forces behind Riverview’s entrance, including significant change factors coupled with a market structure that is vulnerable to well executed new models by new entrants with little or no baggage.



¹⁰⁰ [<http://www.thelawyer.com/invested-interest/1011462.article>]

2. Technology and the “Penny Gap”

Run by experienced business leaders who also happen to have a background in law, the firm’s mission is to *change the way businesses use, measure and buy legal services*. To achieve this, Riverview’s organizational structure and team demographic are markedly different to that of a typical law firm and bear testimony more to the principles taught in business schools and the real world of running companies, than those taught in law schools. A diverse team of professionals has been configured to perfectly match experience, skills and competencies with the requisite resource for any piece of work. Unsurprisingly, technology is a significant enabler, though the leadership team is often keen to stress that it is *just* an enabler. Eleven years’ experience running AdviserPlus proved that however good the technology is, in services businesses it is people that make the difference.

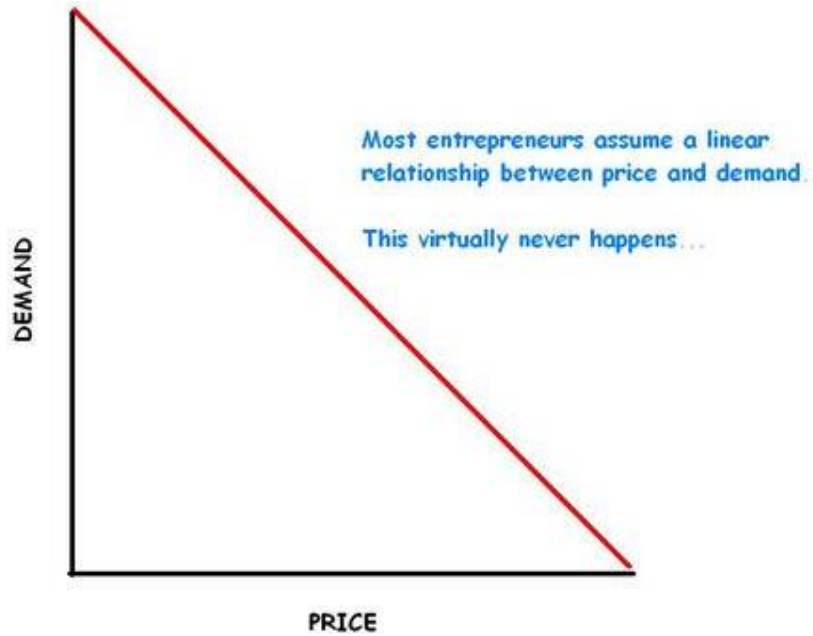
A powerful technology system was required to maximize the efficiencies achieved by this approach, and once again the link to AdviserPlus (a shareholder in the new company) proved invaluable. Specializing in outsourced HR and employment-related advice, over a period of twelve years AdviserPlus had created and refined a proprietary software platform and portal to manage case workflows, interface with clients and produce powerful management information for both internal and external audiences. Riverview’s founders already understood the benefit of investing in high quality technology at the outset.

Leveraging this existing proprietary knowledge and expertise made perfect sense and gave Riverview an easy answer to one of the biggest questions faced by any new business aiming to build an efficient, scalable and future-proof model: *Which of the many available technology platforms should we invest in?* Ongoing access to the very developers who had created the system, known internally as the Intelligent Integrated Architecture™ (IIA), was also a significant advantage. It was then only a matter of working with a partner to adapt the IIA approach to fit Riverview’s precise requirements in the legal sector specifically.

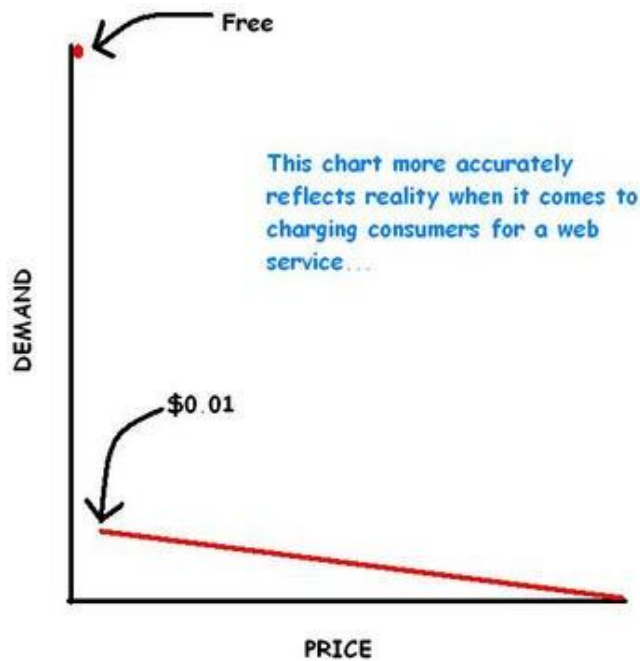
In addition to providing paying clients with the benefits of the portal’s features, the team also recognized the value it could bring to a broader audience. The internet revolution fundamentally changed the way business sourced legal advice and guidance, especially start-ups and smaller businesses who often chose to shun the uncertainty of their local law firm’s billable hour in favor of resources on the World Wide Web. Search long and hard enough and it’s possible to get a free answer to almost any routine legal question, or pay a nominal subscription to a more comprehensive service to access the information more readily.

Riverview understood, though, that there is a huge difference between cheap and free – a reality that venture capitalist Josh Kopelman has referred to as the “penny gap.” He observed that the emergence of technology and the web has rewritten the old rules of what became known as “price elasticity” (the expectation of a linear relationship in which volume goes up as price goes down, to a point of diminishing returns).¹⁰¹

¹⁰¹ [http://redeye.firstround.com/2007/03/the_first_penny.html]



The truth, he suggests, is that zero is one market and any other price is another, and in many cases this “penny gap” can be the difference between a great market and none at all.¹⁰²



According to Chris Anderson, former editor-in-chief of *Wired* magazine and author of *Free: How Today's Smartest Businesses Profit by Giving Something for Nothing*, “The huge psychological gap between ‘almost zero’ and ‘zero’ is why micropayments failed. It's why Google doesn't show up on your credit card. It's why modern Web companies don't charge their users anything. And it's why Yahoo gives

¹⁰² Id.

away disk drive space. The question of infinite storage was not *if* but *when*. The winners made their stuff free first.”¹⁰³

3. Riverview’s Philosophy of Free for Small Businesses

Armed with this understanding of the new *freeconomy*, Riverview decided to take an unprecedented step and offer *free* unlimited access to a comprehensive, regularly updated online library containing over 650 plain English advice pages and 450 documents, forms, records and templates. The intention is that the portal (called MyView) will provide information on just about every conceivable issue and area of law that a small-to-medium sized business might require, all in one place, written in a consistent and accessible style. It makes the Google search redundant, and undermines the business model of those law firms and businesses who believe that users should pay for this type of information.

MyView saw many thousands of businesses register in its first year and includes additional *freemium* components such as a free call to one of Riverview’s qualified lawyers. The idea is that if a member has an issue that extends beyond the generic advice and guidance to be found in MyView, they can pick up the phone and get immediate expert advice on any legal business matter. The adviceline has been designed to be as user-friendly as the portal, and offers immediate access to lawyers on demand without the need to navigate a frustrating Interactive Voice Response (IVR) system.

A number of the UK’s regional High Street (Main Street) firms now offer the first half-hour of advice for free. But to Kopelman’s “penny gap” point, this isn’t as attractive an idea as those peddling it might believe. To the educated client, a free half-hour of advice is little more than a faintly disguised entrance into the world of the billable hour, which is precisely the system in which many of those who take advantage of this offer will find themselves when their issue is not neatly resolved in the limited 30-minute window. Riverview’s free call, however, is just that – an unlimited conversation which will either resolve the issue, or get the caller to the point where they understand their options and next steps.

As a further benefit within a short period of time the member receives a discreet email informing them that a follow-up case note has been generated and sent to their secure case management area on MyView. On logging in, the member has access to a plain English bullet-point summary of the call, with clearly marked actions and next steps where appropriate. Positive feedback from recipients shows that they appreciate the ability to review the advice in their own time and make sure they properly understood the advice and guidance provided over the telephone.

4. Client (and User) Experience is the “Holy Grail”

The ability to integrate the benefits of powerful online technologies with human intervention as and when required was a model tried, tested and refined at AdviserPlus. Thus, the Riverview team entered this new market with the advantage of a well-developed understanding and a blueprint for implementation. The *freemium* model has been successfully employed by the new online giants of the travel industry and has

¹⁰³ [http://www.wired.com/techbiz/it/magazine/16-03/ff_free?currentPage=all]

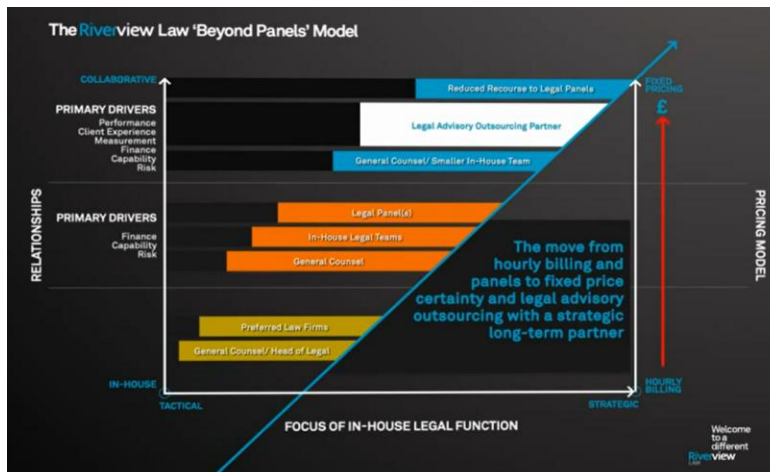
proven itself an effective strategy for initially attracting users who then convert to become clients. It translates well to legal services, but only works, of course, to the extent that users are so impressed by their free experience that they become paying customers when the next need arises. For many of Riverview’s small-to-medium sized business users, the path from free to paid-for often takes the form of a commitment to the firm’s annual “eat as much as you like” service for a monthly fee that starts from the equivalent price of just one billable hour of a junior lawyer’s time at a small local firm.

Providing a great experience for users and clients is therefore critical to Riverview’s model, and an investment was made from the outset in a senior role assigned to oversee it – a Director of Customer Experience. The “Riverview experience” is designed to stand out in an industry which is often accused of being rather introspective and geared towards engaging with customers on the law firm’s terms, rather on the user’s or client’s terms. Befitting of a model that claims to be genuinely customer-centric, each point of interaction and stage of the process has been carefully designed to enhance the experience, and Riverview’s bespoke internal training program teaches team members—staff and lawyers—how to put themselves in their customers’ shoes.

5. Legal Advisory Outsourcing

As with AdviserPlus, this same customer focus is applied to larger clients too, for whom Riverview’s streamlined structure, fixed-fee model and advanced technology makes for an appealing alternative to traditional “Big Law.” For one-off matters, the portal’s case management features provide much the same benefits as for smaller clients. But the technology really comes into its own for institutional clients and those using Riverview’s Legal Advisory Outsourcing (LAO) services, for whom the advanced data-handling capabilities and comprehensive reporting suite provide a level of management information that most law firms and in-house departments have hitherto found impossible to deliver.

LAO is not to be confused with LPO (Legal Process Outsourcing). LPO is typically understood to address the “bottom” 10% of the legal requirements of large businesses, whereas LAO is focused on the 60-70% of day-to-day, week-to-week requirements. The Riverview LAO model provides General Counsel with an alternative to using traditional law firms and outdated panel arrangements, or to building large in-house teams. The following graphic illustrates the model:



Riverview's high-end services are as popular as its proposition for small-to-medium sized businesses, and it sees this as a continuing trend. While technology is an enabler to innovate in certain areas, there remains strong demand for the high-touch expertise provided by domain experts, and this is unlikely to change in the immediate future. As with the travel industry, the increased access to information is creating demand for experts to navigate it. While law is in many ways a well-established marketplace, Riverview believes there are opportunities for those firms who can find ways of bringing the people and technology together to create something much more compelling. Having won its first FTSE 100 client after only six weeks, the marketplace would seem to agree.

6. Riverview's Digital Marketing Strategy

Technology and the internet also feature strongly when it comes to Riverview's approach to marketing its services. The firm's leaders understood the importance of leveraging popular social media platforms and using them alongside more traditional approaches such as soft and hard-copy printed media and radio advertising. In a bold pre-launch statement of intent, Riverview appointed a dedicated Social Media Manager to direct a coordinated approach to its activities across the major platforms.

Riverview has been particularly active on Twitter, where its efforts were soon recognized with an award from a creative PR and design agency who provided a useful independent validation of their approach: "Riverview Law engages with a great many of the legal community on Twitter with '@mentions', '@replies' and retweets. Their Twitter interactions focus on law and its change but they do it in an open and friendly, unintimidating manner. They are just as likely to have a chat or a bit of fun with followers. Overall they're an example of one of the most interactive professional personalities on Twitter."¹⁰⁴

The review goes on to highlight another of Riverview's social media objectives: "Riverview Law is one of the most informative Tweepers you could come across. They Tweet fantastically informative content, share news and often Tweet from leading conferences."¹⁰⁵ This observation hints at another important aspect of how Riverview sees their role in this space: not only as a *trusted advisor*, but also as a *trusted curator*, paralleling travel's similar shift from advice-giving to content-curating.¹⁰⁶ In keeping with their client-focused philosophy and desire to make things easy, Riverview quickly understood the benefit to customers (whether paying or not) of consolidating valuable information from a range of sources and passing it on via Twitter and other appropriate social media platforms.

This strategy has also informed Riverview's approach to targeted newsletters. While many firms trot out regular lengthy newsletters (typically weekly or monthly) to clients and followers, Riverview's market research indicated that many recipients are finding increasingly little value in the typical "scatter gun" approach which fails to acknowledge that they are already inundated with information and often don't have the time or the inclination to search through the metaphorical sieve of stones looking for a possible nugget of gold. Sending *relevant* information little and often recognizes that

¹⁰⁴ <http://www.elephantcreative.co.uk/2012/11/16/tweeter-of-the-week-award/>

¹⁰⁵ *Id.*

¹⁰⁶ See discussion *supra* note __ (citing Knake, *The Lawyer as Trusted Curator*).

clients aren't all cut with the same cloth and delivers something of genuine value that's not so likely to meet an untimely end with a judicious use of the Delete key!

The ability to act as both trusted advisor *and* trusted curator is an important hallmark of the new generation of legal service providers who have thrown out the old rulebook and are rewriting the rules of engagement on the clients' terms rather than their own. Riverview maintains that as the market wakes up to the implications of this paradigm shift, there will be an increasing number of providers who use the language of innovation and customer-centered change, but a much smaller percentage of those who are actually *doing* it. The old adage that *actions speak louder than words* is as true as ever, and may help clients sort the wheat from the chaff.

Riverview has also invested heavily in creating professional marketing videos which it hosts on its own YouTube channel and which again serve as a useful differentiator in the marketplace. As Mitch Kowalski, lawyer and author of *Avoiding Extinction: Reimagining Legal Services for the 21st Century* observes: "The vast majority of video produced by North American law firms is worse than horrible. Thinly financed and laced with not even a smidgen of creativity, these videos are quickly forgotten by both firms and viewers. Into this legal media vacuum steps U.K. firm, Riverview Law, with its take on fixed-fee pricing for legal services. Watch and learn Canadian/American law firms: watch and learn. *Cometh the Hour* is three and a half minutes of your life that is not wasted."¹⁰⁷

Cometh the Hour in particular has attracted a lot of attention for its honest and humorous treatment of the way traditional firms struggle to think beyond the billable hour.¹⁰⁸ It has been viewed thousands of times on YouTube and shown at numerous legal conferences around the world at which Riverview was not even present. This is viral marketing at its best, and testimony to the way in which new entrants with a fresh approach are unashamedly shaking the foundations of a profession that has long been in need of an overhaul. These "new kids on the block" know how to leverage the power of digital media and, in contrast to their more traditional competitors, they're not afraid to inject a little humor along the way too.

7. The Importance of Brand

These messages are no coincidence, of course, but instead are part of Riverview's carefully constructed approach to brand management. For a variety of reasons, the legal industry has by and large grown up without strong brands, especially in the small and mid-cap markets which represent the largest volume of business clients. Hence, there are significant opportunities for those early movers able to step into this void with a recognizable brand that gains traction across this sizeable market segment.

Riverview's research into the way large traditional firms are using social media makes for an excellent illustration of just how difficult it is proving for many of them to navigate the brave new world of digital brand management. A number of AmLaw 200 firms who spend a fortune trying to maintain their brand in more traditional contexts, appear to lack any sense of purpose or even control over the use of their brand online. It found numerous examples of multiple corporate profiles on the same platform, apparently

¹⁰⁷ <http://business.financialpost.com/2012/08/27/mitch-kowalski-cometh-the-hour-for-video/>

¹⁰⁸ http://www.youtube.com/watch?v=BfXhn3tf_vE

owned by different representatives of the firm who clearly aren't communicating with each other, and presenting varying levels of quality or in some cases merely an empty branded shell with no content whatsoever.

Riverview is comfortable in this space, though, and works hard to ensure that it presents a consistent and powerful brand, both to existing and prospective clients. Visitors to Twitter, YouTube, Facebook, LinkedIn or Google+ (all of which Riverview is active on) will find the same brand values and key messages designed to leave the audience in no doubt about what it stands for. Riverview's interactive style means it often gets into public exchanges online in which those who have encountered the firm will give tangible examples of these values in practice – an independent validation that they are who they say they are.

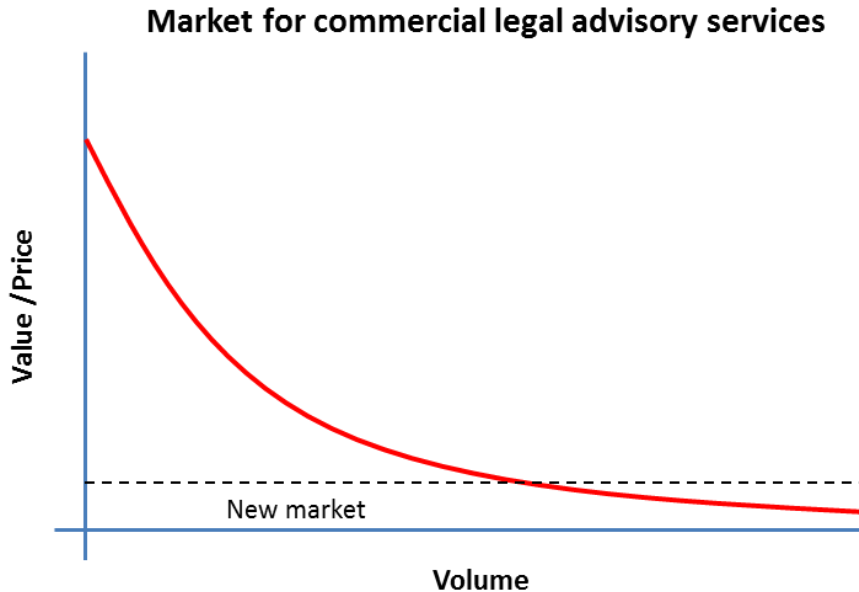
This authenticity is an important value to Riverview and other new entrants who are seeking to bring about a cultural shift in an industry which ironically has not typically been associated with living out its values (many lawyers would seek to disagree, of course, but independent surveys showing the perceived lack of trust in the profession suggest otherwise). Present-day business consumers of legal services are often cynical buyers, used to being bombarded with positive spin from all directions and quick to spot inauthenticity when they are unfortunate enough to encounter it. Mitch Kowalski captured the essence of this achievement when he recounted on his blog the experience of visiting Riverview's UK service delivery center: "The highlight of my trip was visiting Riverview's operations in The Wirral – it was if I had walked into the offices of my fictionalized law firm, BFC – minus the rooftop deck. I was astounded by the fact that from the top down, a customer-centered culture permeated the team. It was palpable, refreshing and genuine – something I've not seen before in any law firm."¹⁰⁹

8. "The Long Tail" of Riverview Law

The concept of "the long tail," popularized by Chris Anderson in a 2004 *Wired* magazine article and then later in his book *The Long Tail: Why the Future of Business is Selling Less of More* (2006), is a useful lens through which to observe the Riverview model. The intelligent integration of technology, people and process combines with a structured approach to external marketing and brand management, to create a compelling proposition from the proverbial head to the tail of the commercial legal advisory services market – a feat that has arguably not been achieved by any other law firm.

On the one hand, the model appeals to large corporates who are increasingly looking for value and price certainty on major instructions and outsourcing arrangements. On the other, its democratized service for start-ups and small businesses has lengthened the tail and created a new market for those who have previously been excluded on grounds of price. The following graph illustrates this point:

¹⁰⁹ http://kowalski.ca/kowalski_blog/maple-leaf-reflections



What Riverview is doing in the commercial space, others are doing in the consumer space in the UK by providing access to justice for millions of individuals whose legal needs currently go unmet because of the high and often unpredictable cost of legal services. The early signs are that the stimulus provided by the Legal Services Act and the UK Government's progressive approach to liberalizing the market is indeed having the desired effect and promoting healthy competition, innovation and the public and consumer interest.

Conclusion

While retail travel agents and brick-and-mortar (or marble-and-dark-wood) law firms may have reached their apex in the mid-1990's, new opportunities remain in both industries. Both of these professional service industries have been upended by technology, especially through sophisticated online access and high-level data aggregation. Perhaps because it was hardest hit, travel responded more quickly than law, offering lessons for lawyers at all levels of service, from solo practitioners to large, traditional firms—these lessons largely emphasize the focus going forward on how to best serve a highly informed yet information inundated user/client.

These are exciting times for those willing and able to embrace change and take advantage of the efficiencies to be found in a new liberalized and technology-enabled paradigm. Similar transformations have long since occurred in other industries and the travel industry certainly makes for an interesting parallel. Indeed, the very same digital revolution that redrew the landscape for travel professionals in the 1990's, has finally caught up with the legal industry and is dragging it kicking and screaming into the twenty-first century.

Long-protected by myth and regulation, the legal services industry has until very recently managed to hold back the tsunami of change that long ago swept across less shielded professions and industries. For centuries, lawyers have had to compete only with other lawyers, creating a remarkably successful and rewarding ecosystem for those on the inside. The cynic might be forgiven for suggesting that beneficiaries of this system have

done their utmost to defend it, fiercely resisting the competitive market pressures that are the norm for just about every other profitable enterprise on the planet.

Yet despite their best efforts, significant change factors, coupled with a market structure that is vulnerable to well-executed alternative models by new entrants, have come together to challenge the very foundations upon which this great industry has been built. The last five years in legal services have arguably seen more innovation and disruption than the preceding five hundred. Those who once opted to entrench themselves structurally and financially in the prevailing system now appear somewhat trapped within their own walls, vulnerable to an onslaught of more flexible and “fleet of foot” new entrants who are hungry to reinvent legal services.