



1-3-2019

# LAWYERS, LEADERSHIP, AND INNOVATION

Donald J. Polden

Follow this and additional works at: <https://digitalcommons.law.scu.edu/lawreview>



Part of the [Law Commons](#)

## Recommended Citation

Donald J. Polden, *LAWYERS, LEADERSHIP, AND INNOVATION*, 58 SANTA CLARA L. REV. 427 (2019).

Available at: <https://digitalcommons.law.scu.edu/lawreview/vol58/iss3/3>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized editor of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com), [pamjadi@scu.edu](mailto:pamjadi@scu.edu).

# LAWYERS, LEADERSHIP, AND INNOVATION

Donald J. Polden \*

## TABLE OF CONTENTS

Introduction .....	427
I. Lawyers as Leaders .....	429
II. The Demand for Change in the Legal Profession and in Law Practice .....	431
III. Lawyers and Innovation .....	434
A. How Does Innovation Occur? Not Without Leadership....	436
B. Constraints on and Challenges to Innovation Thinking in Organizations .....	439
C. Law Firms, Legal Departments and Innovation.....	441
1. The Challenges and the Need for Change .....	441
2. Law Firm Responses—Creative and Innovative, but Not Widespread.....	445
a. Talent Acquisition and Development .....	446
b. Technology and Communications .....	448
c. Building Value for Clients.....	449
Conclusion.....	451

## INTRODUCTION

It is now accepted wisdom that one of the most consistent patterns in business is the failure of companies to stay at the top of their industries when technologies and markets change.<sup>1</sup> Can the same be said for the business of law? Or are law practitioners and legal services' providers different and impervious to the need to change, adapt, adjust, and modernize in some appreciable way?

---

\* The author is Dean Emeritus and Professor of Law at Santa Clara University School of Law. He is a graduate of The George Washington University and Indiana University School of Law and has been teaching leadership skills and development courses at Santa Clara University for more than a decade. This Article is based on a presentation the author made at the Advancing Leadership in the Legal Profession symposium held at Santa Clara University on March 23, 2018, which was collaboratively sponsored by Santa Clara University School of Law, the Santa Clara Law Review, and the new AALS Section on Leadership.

1. Joseph Bower & Clayton Christensen, *Disruptive Technologies: Catching the Wave*, HARV. BUS. REV. (Jan./Feb. 1995), available at <https://hbr.org/1995/01/disruptive-technologies-catching-the-wave>.

This Article is about how lawyers who lead their organizations innovate to respond to challenges to their organization and design and implement change so their organizations can stay at the top of their profession. In recent years, many law practice and legal services organizations have faced significant, sometimes existential, challenges to the success and viability of their group.<sup>2</sup> Some of those organizations have responded well, but others have failed to meet the challenges and, as a result, have failed, sometimes miserably.<sup>3</sup> The Article considers what the firms and their leaders that have succeeded have done to innovate around the challenges they faced. What processes did the organizations' leaders implement to address challenges? Who in the organization provided leadership through the crisis and how did they lead? How were others in the organization included in the process for change and how did they respond?

The purpose of the Article is to describe the importance of change leadership in law organizations today and how lawyer-leaders move their organizations through the challenges they face. By studying successful leadership in innovation, we can help prepare other law leaders for the challenges they and their law organizations will undoubtedly face in the very uncertain future of law firms and legal services providers.

The Article initially describes leadership roles that lawyers, like many other professionals, play in their firms, companies, and various other organizations. Similarities exist between these roles and other professionals who provide leadership in business, medicine, and other fields that are experiencing contemporary challenges to their methods of doing business. The second part of the Article describes many of the contemporary challenges that lawyers in leadership roles take on for their groups, especially the significant changes to law practice since the national recession of 2007. The third section of the Article surveys the current literature on innovation and change leadership and discusses how effective leaders use processes to institute change in their law firm or legal services organization. The final section then describes how several leading law firms and law organizations have responded to the contemporary challenges in the law practice field to lead their organizations through these challenging times. These examples will permit us to both describe and understand the importance of effective leadership in law organizations. However, the Article concludes that

---

2. The term "organizations" or "law organizations" refers to a wide range of legal education groups (like law schools) as well as law practice groups (such as traditional law firms, corporate legal counsel office, non-profit or public interest law practice groups, and other law offices).

3. See *infra* notes 70-75 and accompanying text.

while law firms and legal services businesses engage in sophisticated and needed changes to their business and practice models, many firms lack engaged and capable leadership to plan and implement the changes they need to survive and succeed. As a result, there is growing uncertainty about the ability of those organizations to provide the scope and depth of services that clients—individual as well as businesses and government—need in today’s global and technology-dependent environment.

### I. LAWYERS AS LEADERS

As I have written in the past, and it remains highly pertinent today, leadership matters in many areas of our society and economy, including the work of lawyers.<sup>4</sup> Leadership is a function of the relationship between a leader and his or her followers and it occurs when a leader inspires others to take on critical and necessary activities for the group or organization.<sup>5</sup> It is important to understand the distinction between managing and leading, and between leaders and managers: good managers maintain the operations of an organization while leaders motivate the group to make necessary changes. If the organization does not need change, then it does not need a leader; a good manager will do.<sup>6</sup> A central theme to this Article is that effective, creative leadership in law firms and organizations will make all the difference to the organizations’ success in the next decade.

Why do we think that lawyers need to be responsible for leadership? The literature on lawyers and leadership reveals that a high percentage of legally trained people are in key government, business, and related positions.<sup>7</sup> Consider the prevalence of lawyers in C-Suite positions in major corporations, in Congress and state legislative positions, and in significant government and private industry roles.<sup>8</sup> Lawyers inhabit

---

4. Donald J. Polden, *Leading Institutional Change: Law Schools and Legal Education in a Time of Crisis*, 83 TENN. L. REV. 949 (2016) [hereinafter *Leading Institutional Change*]; Donald J. Polden, *Leadership Matters: Lawyers’ Leadership Skills and Competencies*, 52 SANTA CLARA L. REV. 899 (2012) [hereinafter *Leadership Matters*]; Donald J. Polden, *Educating Law Students for Leadership Roles and Responsibilities*, 39 U. TOL. L. REV. 353 (2008).

5. *Leadership Matters*, *supra* note 4, at 903; ROBERT CULLEN, *THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP* 13-14 (2010).

6. WARREN G. BENNIS, *ON BECOMING A LEADER* 31-35, 39-40, 86, 89-91, 108-09 (Cambridge, MA: Perseus Publishing Co. 2003) (discussing essential attributes of leaders and contrasting managers from leaders).

7. DEBORAH RHODE, *LAWYERS AS LEADERS* 1 (2013) (pointing out that lawyers “account for just 0.4 percent of the population...[but, they] are well represented at all levels of leadership, as governors, state legislators, judges, prosecutors, general counsel, law firm managing partners, and heads of corporate, government, and non-profit organizations.”).

8. Professor M. Todd Henderson of the University of Chicago Law School estimates that approximately 9% of about 3,500 CEO’s of nearly 2,400 publicly traded S&P listed firms

these positions of responsibility because their legal education and training has prepared them for critical analysis, the ability to marshal relevant facts to arrive at reasoned options and decisions, the fiduciary responsibilities they hold with respect to their clients, and the required performance of their duties as “officers of the court.” The education of lawyers stresses the importance of fealty and duty to the interest of others, notably their clients and to the rule of law. All law students are required to take a course in their professional responsibility to, among other things, represent their clients’ interests (and their clients’ confidences) without distraction or dishonesty.<sup>9</sup> This is a relationship that is based upon and stresses the trust between client and attorney, and the rules of professional responsibility impose several duties on attorneys in the representation of their clients and their service to the community and the profession. Leaders can lead only because of the trust that their followers feel toward the role of the leaders; that trust builds the stock of credibility that leaders have in their organization.<sup>10</sup>

Lawyers provide leadership to their clients and the organizations they lead in several ways. First, lawyers who serve in executive or decision-making positions in organizations, such as law firms, non-profit organizations, and corporate legal departments, play traditional leadership roles and responsibilities, similar to those played by a chief executive or department head.<sup>11</sup> Lawyers working in teams or groups (for example, within the law firm or with professionals from corporate clients) must provide leadership roles to envision how to further the objectives of the team or group. Individual lawyers pursuing the goals of their clients must demonstrate leadership attributes and skills in obtaining the best result possible for the client, including the abilities to persuade or influence others to the clients’ cause or argument.<sup>12</sup> Military lawyers must lead in their legal office or organization as well as in their roles as officers.<sup>13</sup>

What are the leadership approaches of lawyers in leadership roles? The theories of leadership most commonly applicable to lawyers include transformational leadership, servant leadership, and adaptive

---

have law degrees. M. Todd Henderson, *Do Lawyers Make Better CEOs Than MBAs?*, HARV. BUS. REV. (Aug. 24, 2017), <https://hbr.org/2017/08/do-lawyers-make-better-ceos-than-mbas>.

9. Standard 303(a)(1), *ABA Standards and Rules of Procedure for Approval of Law Schools 2017-18*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR.

10. JAMES M. KOUZES & BARRY Z. POSNER, *CREDIBILITY: HOW LEADERS GAIN AND LOSE IT, WHY PEOPLE DEMAND IT* 16-20 (2d ed. 2011). Kouzes and Posner have stated this relationship as follows: “Leadership is a relationship between those who aspire to lead and those who choose to follow.” JAMES KOUZES & BARRY Z. POSNER, *A LEADER’S LEGACY* 52 (1st ed. 2006).

11. CULLEN, *supra* note 5, at 16-23.

12. *Id.*

13. Dana K. Chipman, *Where Are We Trying to Get to?*, 69 STAN. L. REV. 1773 (2017).

leadership.<sup>14</sup> With transformational leadership, organizations are led through fundamental, and often significant change, and through this change, both the organization and the leader experience a form of transformation. Servant leadership is another important approach to leadership for lawyers serving clients' needs. With servant leadership, the role of the lawyer focuses on how to help the client develop his or her goals and outcomes, such as being able to make the best self-interested decision. Adaptive leadership facilitates the mobilization of constituents or a group, such as the need to make a fundamental organizational change of direction, but still within the culture of the organization and taking into account the members' strengths, weaknesses, and needs. When lawyers wish to create or facilitate change and innovate toward a result or around a problem, they will likely implement one or more of these approaches to lead the group or the client. Clearly, the ability to lead others—within the organization, the client, and those who are led in the service of the client—is an essential ability that lawyers must possess to advance the interests of their organizations and, more importantly, their clients.<sup>15</sup>

## II. THE DEMAND FOR CHANGE IN THE LEGAL PROFESSION AND IN LAW PRACTICE

Why do lawyers and their organizations need to change or to innovate change and movement? If an organization is doing well or if a client's legal needs are routine, then the leader-lawyer's tasks are modest. But if the challenges are great and the need to improve, modernize, or innovate are critical, then those leaders need to implement a process of change that defines leadership. Former U.S. Army Chief of Staff Eric Shinseki observed that “[if] you don't like change, you're going to like irrelevance even less.”<sup>16</sup> This is certainly true for lawyer leaders too.

Without question, the last decade has challenged all areas of lawyers' work including the way law is practiced, how lawyers are educated, and the economics of law practice. These challenges uprooted traditional approaches to the relationship between lawyers and their clients, dramatically dimmed the interest of young people in considering law as a vocation, and witnessed disruptive forces throughout the law

---

14. See *Leading Institutional Change*, *supra* note 4, at 969-72, for a more detailed discussion of these theories of leadership approaches commonly used by lawyer-leaders.

15. Scott A. Westfahl & David B. Wilkins, *The Leadership Imperative: A Collaborative Approach to Professional Development in the Global Age of More for Less*, 69 STAN. L. REV. 1667, 1707 (2017).

16. Peter J. Boyer, *A Different War*, THE NEW YORKER (July 1, 2002), <https://www.newyorker.com/magazine/2002/07/01/a-different-war>.

business. This section briefly describes those forces and challenges in many areas of the law business and sets the stage for a more thorough discussion of why lawyer-leaders need to provide innovative leadership in their organizations.

The recent challenges to the practice of law and, indeed, more broadly, the legal profession come from many directions. In recent years, the practice of law has seen the growth of alternative (to traditional law firms) providers in the basic legal services, legal advice, and legal transactions spaces.<sup>17</sup> These include competition for clients' legal services budgets from online legal research and legal services providers, public accounting firms, corporate litigation support, and many other legal services providers<sup>18</sup> The growth of these alternatives has been highly disruptive of the business model for traditional law firms because many of the firms have not been responsive to the needs of clients to reduce their legal fees and costs.<sup>19</sup> As the cost of legal services has increased in recent years, the clients' interest—mainly corporate clients—to constrain costs has increased and nearly all clients have refused to pay high costs of legal services (outside of the “bet the company” litigation). Similarly, clients' demand for control of attorney costs has led to outsourcing of some legal services and low-cost arrangements for more routine legal services, such as document review in litigation.<sup>20</sup> Further, many innovative technologies have been developed that promise to radically transform the way that lawyers and courts operate.<sup>21</sup>

Law firms have been concerned about the costs of acquiring and managing talent in the firm. Talent is one of the most expensive aspects

---

17. See Frederick J. Esposito, Jr, *The New Landscape: Challenges and Opportunities Facing Law Firms*, LAW PRAC. TODAY (June 13, 2014), <http://www.lawpracticetoday.org/article/new-landscape-challenges-opportunities-facing-law-firms/>.

18. See *'Times Are A-changin': Disruptive Innovation and the Legal Profession*, INT'L BAR ASS'N 12-15 (May 2016) [hereinafter *Times Are A-changin*].

19. Thomas S. Clay & Eric A. Seeger, *2018 Law Firms in Transition: An Altman Weil Flash Survey*, ALTMAN WEIL, INC. iii (2018), [http://www.altmanweil.com/dir\\_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/45F5B3DD-5889-4BA3-9D05-C8F86CDB8223_document.pdf) [hereinafter *2018 Firms in Transition Report*].

20. *Id.* (discussing Thomas S. Clay & Eric A. Seeger, *2014 Law Firms in Transition: An Altman Weil Flash Survey*, ALTMAN WEIL, INC. (2014), [http://www.altmanweil.com/dir\\_docs/resource/f68236ab-d51f-4d81-8172-96e8d47387e3\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/f68236ab-d51f-4d81-8172-96e8d47387e3_document.pdf)).

21. Richard Susskind, a leading thinker about the future of law practice and lawyers, has identified several such innovative technologies that he expects will “disrupt and radically transform the way lawyers and courts operate”, including automated document assembly, electronic legal marketplaces, online legal guidance, legal open sourcing of knowledge, information and collaboration, online dispute resolution, and artificial intelligence problem-solving. RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 13, 40 (1st ed. 2013).

of the business of law and it has become a very competitive part of law firm activity especially in national law firms and “boutique” firms.<sup>22</sup> As the number of law school graduates has declined in response to a national downturn in interest in going to law school, firms have been challenged to find new talent they need to staff their departments, cases, and transactions. In recent years, the number of men and women electing to take the LSAT entrance examination has declined by roughly forty percent due to their perceptions of poor job prospects after graduation. Additionally, law schools are reducing class sizes and graduating fewer students.<sup>23</sup> This decline has constrained the hiring plans of legal employers and has adversely affected the financing plans for many law schools, causing some to exit the market and finally signaling that more new law school programs are unnecessary and likely to lead to failures.<sup>24</sup> The past ten years has seen the supply of legal talent falling and failing to meet some of the demand for high quality talent by larger, national law firms. Moreover, the significant declines in supply and demand aspects of the market for legal talent have taken a toll on law student and prospective law student aspirations, and on the law profession’s ability to draw effortlessly from an abundance of smart, talented new lawyers.

Given this seismic change in the market for legal services and legal talent, how have law offices, law firm leaders, corporate counsel, and other law firm hiring professionals reacted? The polar extremes for action in light of these challenges are: freeze and hope that things get better, or innovate aggressively for a better future. There are many examples of firms and law services providers that chose (or merely accepted) the first course and those are discussed in the next section. The failures of leaders in the legal education field, along with a few notable successes in adapting to the great changes of the past decade, have been documented elsewhere.<sup>25</sup> The next section of the paper is about those firms and legal services providers that chose the latter course of action and took creative, innovative steps to understand, and then take on, the challenges facing their organization.

---

22. *2018 Firms in Transition Report*, *supra* note 19, at viii.

23. See Total LSATS Administered, LSAC,

<https://www.lsac.org/lisacresources/data/lisats-administered> (showing 171,514 LSAT tests administered in 2009-2010 cycle and 105,883 tests administered in 2015-2016 cycle). See also Keith Scheuer, *The Downfall of Law School? What Current Enrollment Trends Mean*, NOODLE (last visited Aug. 31, 2018), <https://www.noodle.com/articles/is-law-school-enrollment-still-dropping-the-latest-trends>.

24. Karen Sloan, *RIP, Law Schools. A Look at Closed Campuses*, LAW.COM (Mar. 26, 2018), <https://www.law.com/2018/03/26/rip-law-schools-a-look-a-closed-campuses/>.

25. *Leading Institutional Change*, *supra* note 4, at 956-67 (documenting the failed leadership of the Council on Legal Education of the American Bar Association, the official accreditation agency for American legal education).

## III. LAWYERS AND INNOVATION

In an earlier paper, I stated that during times of crisis and challenge, “there is a premium on leadership skills that permit the leader to focus on innovation around . . . the difficulties and uncertainty that paralyzes the rest of the organization, market or industry.”<sup>26</sup> In most organizations, leaders perceive and articulate a need for bold change when the stakes are high and the need for change is evident. These leaders often respond by assembling a team to shape options and opportunities for the organization.<sup>27</sup> Innovation is taken on by the group with direction of the leader.

Deborah Rhode described the importance of the ability to change and adapt as follows:

Any successful organization or movement needs to adapt to social, political, economic, and technological developments. Any effective leader needs to create the conditions for such adaptation. Estimates suggest that most companies need moderate change at least once a year and major changes every four to five years.<sup>28</sup>

Ben Heineman, Jr., former general counsel of General Electric, described the essential importance of the lawyer as a leader in forging change in transactions, in political relationships, and in the lawyer’s organization:

Someone will have to provide the vision, wisdom, and energy to lead. Such leadership will require many skills and multiple perspectives. No one is totally suited for such tasks, but no one is better suited than a lawyer with broad training and experience. Properly defined, the lawyer’s core skill of understanding how values, rules, and institutions interrelate with social, economic, and political conditions is central to the demands of contemporary leadership.<sup>29</sup>

In times of disruptive and significant changes, organizations need leadership to move the group forward. The more immediate the challenge to the organization is, the greater the inclination of the leader to attempt to speed the process along. Innovation movements are usually fostered or precipitated by motivations to implement meaningful change,

---

26. *Id.* at 973.

27. DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP: LAW, POLICY, AND MANAGEMENT* 163 (2011) [hereinafter *RHODE & PACKEL, LEADERSHIP*] (describing three stages in which leaders can guide change, including “developing a strategy for implementing change and enlisting others in its support.”).

28. *Id.* (citing to Arie de Geus, *Beware: Innovation Kills!*, in *LEADING FOR INNOVATION* 226 (Frances Hesselbein, Iain Somerville, & Marshall Goldsmith, eds., 2002)).

29. Ben W. Heineman, Jr., *Law and Leadership*, 56 *J. LEGAL EDUC.* 596, 607 (2006).

and “disruptive” or “incremental” challenges spur those motivations.<sup>30</sup> Disruptive innovation change must occur when a highly novel and unanticipated— often exogenous to the industry—force, or an immediate threat, forces attention to the problem.<sup>31</sup> Disruptive changes include the discovery of a radically new and different technology that renders much of the assets (such as intellectual property, or talent pools at the firms) obsolete or otherwise subject to a quick write-off. Incremental change is much slower paced and occurs where industries or market participants are making continuous improvements in the firms’ assets (thus making them more efficient and productive) or are gradually increasing the demand for the industry’s products. The client-driven demands for different billing practices (e.g., billable hours, value billing . . . etc.) are an example of more incremental challenges requiring law firm change. Innovation that occurs because of incremental change in the market is just as important to the firm leader as innovation caused by disruption. But the firms’ response time is much shorter and, often, participants in the industry or market may not understand all of the factors that caused or led to the disruptive force. It is important for law firm leaders to remember that incremental change and responding to the need for significant innovation or creativity requires different approaches. Incremental change can be addressed by institutional strategic planning while response to a significant disruptive change requires an innovation process to address the challenges presented by the disruptive threat.<sup>32</sup>

Faced with the need for imminent and significant change, how does innovation happen in organizations facing those challenges? The answer introduces the important concept of innovation leadership, including the “innovation leader” whose job it is to drive innovation in the organization. This section of the Article describes some of the major innovations taken by law firms and other law organizations in light of the challenges of the past decade to the legal profession and to its firms, law offices, and legal education. We are able to consider how well and to what degree law practice organizations are able to confront the considerable challenges of the current time through innovation tools and processes.

---

30. Bill Fischer, *Why We Can't Innovate*, FORBES (May 6, 2018), <https://www.forbes.com/sites/billfischer/2018/05/06/why-we-cant-innovate/>. See also RHODE & PACKEL, LEADERSHIP, *supra* note 27, at 163-65.

31. Clayton M. Christensen & Michael Overdorf, *Meeting the Challenge of Disruptive Change*, HARV. BUS. REV. (Mar./Apr. 2000), available at <https://hbr.org/2000/03/meeting-the-challenge-of-disruptive-change>.

32. Greg Satell, *The 4 Types of Innovation and the Problems They Solve*, HARV. BUS. REV. (June 2, 2017), <https://hbr.org/2017/06/the-4-types-of-innovation-and-the-problems-they-solve>.

*A. How Does Innovation Occur? Not Without Leadership*

According to Deborah Rhode and Amanda Packel, change, “unlike invention or creativity, which refers to the development of something new, and may involve only individual effort and unsuccessful implementation, . . . requires collective practices that produce change.”<sup>33</sup> These collective practices require a process or method that includes others in the organization. The “innovator’s method”, according to Nathan Furr and Jeffrey H. Dyer, requires “discipline, perseverance and dedicated effective leadership” in particularly difficult and challenging times.<sup>34</sup> They further claim that innovators use new methods and approaches to leadership, but that too many leaders are not up to the skills demanded by the task of leading innovation.<sup>35</sup> According to John P. Kotter of Harvard Business School and author of *Leading Change*, a successful initiative to change an organization’s direction has several critical components, including: the establishment of a sense of urgency, selection of appropriate “guiding coalition” to effect change, the creation and articulation of a vision for change, the identification and communication of necessary action that will address the challenge, a “buy in” from the group to experiment with options for change, and institutionalization of changes into the organizations processes, culture, and habits.<sup>36</sup>

Kotter’s perspective on innovation as a process that can effect change through the individuals in the organization has drawn many followers. These followers strengthened Kotter’s pathbreaking analysis by focusing on several key elements of his innovation process: First, they advocate for the need for innovation approaches to business and other organizational problems because many organizations, like law firms, face great challenges that require creative action. A great problem for those organizations is the fact that many are unprepared for, and perhaps even unaware of the need for, innovative action. For example, Kristi Hedges noted that in most work places only a small percentage (just thirteen percent by one analysis) of employees are truly engaged in the work and that a high percentage (fifty percent in her estimation) of employees feel too busy or otherwise blocked at work from being

---

33. RHODE & PACKEL, LEADERSHIP, *supra* note 27, at 163.

34. Nathan Furr & Jeffrey H. Dyer, *Leading Your Team into the Unknown*, HARV. BUS. REV. 80, 82 (Dec. 2014), available at <https://hbr.org/2014/12/leading-your-team-into-the-unknown>.

35. *Id.*

36. John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, HARV. BUS. REV. 59 (Mar./Apr. 1995), available at <https://hbr.org/2007/01/leading-change-why-transformation-efforts-fail>.

creative and innovative.<sup>37</sup> This underscores two critical issues for organizations facing the need for great change: there needs to be perceived urgency for change to happen to spur creation of innovation and the urgency needs to be so significant that leaders compel the creation of an innovation methodology that will get results.

Second, commentators argue that innovative thinking within the organization is different than traditional business thinking, including strategic or long-range planning. David Horth and Dan Buchner argued that innovation thinking is different than traditional business thinking but that innovation thinking is often additional to traditional business thinking in most organizations.<sup>38</sup> They contend that traditional business thinking is logical, requires proof, looks for precedent, is binary (“there is right and wrong”), is uncomfortable with ambiguity, and wants results.<sup>39</sup> There is nothing wrong with this thinking in the organization, but it is incomplete or inadequate for many situations requiring more transformative action. In contrast, innovative thinking is intuitive, asks “what if?” unconstrained by the past, holds multiple possibilities, relishes ambiguity, and seeks meaning.<sup>40</sup> Clearly, each of these different approaches to problem-solving has its place in the modern organization that is ambitious about its future. However, the authors point out the challenge presented to individuals leading innovation, which is quite different than leading traditional strategic planning for the organization.<sup>41</sup> Innovative leadership requires an agility and quickness that is often not prized in traditional planning and business decision making.<sup>42</sup> Furthermore, leadership for innovation means that leaders must learn how to create an organizational climate where others can apply innovative thinking to solve problems or address contemporary challenges to the organization.<sup>43</sup>

Third, innovation leadership requires expertise, commitment, and direction by the leader. Innovation and critical change do not happen by themselves, but rather, leadership is needed to drive the organization through innovation analysis, exploration of ideas for change (ideation), and embrace of the needed change. Horth and Buchner report that

---

37. Kristi Hedges, *How to Drive Innovation in Five Steps*, FORBES (Apr. 10, 2014), <https://www.forbes.com/sites/work-in-progress/2014/04/10/how-to-drive-innovation-in-five-steps/#7fbf68a53d4b>.

38. David Horth & Dan Buchner, *Innovative Leadership: How to Use Innovation to Lead Effectively, Work Collaboratively, and Drive Results*, CTR. FOR CREATIVE LEADERSHIP 6-7 (2014), <https://www.ccl.org/wp-content/uploads/2015/04/InnovationLeadership.pdf>.

39. *Id.* at 7.

40. *Id.*

41. *Id.* at 6-10.

42. *Id.* at 5.

43. *Id.*

studies have shown that a twenty to sixty-seven percent variance on measures of climate for creativity in organizations is directly attributable to leadership behavior.<sup>44</sup> Therefore, leadership matters in driving innovation through and by the organization. Furthermore, leaders' decisions have significant effects on the employees' perception that the organization cares about overcoming challenges and making vitally important changes.

Fourth, innovation occurs through a team effort that is collaborative, engaged, and disciplined. Innovation leaders often create groups to process possible innovative changes and this requires the creation of a climate within the organization that values and pursues innovation and change.<sup>45</sup> Glenn Llopis argues that innovation processes need participants who are explorers and flexible thinkers, comfortable with ambiguity, or open to new ideas or ways of doing things.<sup>46</sup> However, leaders have the responsibility of harnessing those participants' talents and resources while building trust among the participants, fostering collaboration and discovery, insisting on open communication, and a commitment to pursue possibilities until they get results.<sup>47</sup>

Fifth, successful innovation needs an environment that fosters and permits experimentation and, in some instances, failure. Finally, a successful innovation process requires assessment and evaluation. Gary Hamel and Nancy Tennant argue that companies or organizations that need to innovate must invest in both the employees' abilities to innovate and the tools and processes needed to innovate.<sup>48</sup> The process, to be effective, must involve comprehensive innovation metrics (such as dashboards) and involve an openness to exploration and experimentation.<sup>49</sup> And, Greg Satell adds that the process needs to be driven by a diversity of different perspectives that focuses on the need for change and the use of teams to design and effect the change.<sup>50</sup>

Applying Kotter's thinking about innovation and change leadership, we know that innovation is a group process initiated by effective leaders and that it does not happen by itself, but rather, must be

---

44. Horth & Buchner, *supra* note 38, at 13.

45. *Id.* at 15.

46. Glenn Llopis, *5 Ways Leaders Enable Innovation*, FORBES (Apr. 7, 2014), <https://www.forbes.com/sites/glennllopis/2014/04/07/5-ways-leaders-enable-innovation-in-their-teams/#52e5ea948c4c>.

47. *Id.*

48. Gary Hamel & Nancy Tennant, *The 5 Requirements of a Truly Innovative Company*, HARV. BUS. REV. (Apr. 27, 2015), <https://hbr.org/2015/04/the-5-requirements-of-a-truly-innovative-company>.

49. *Id.*

50. Greg Satell, *4 Ways to Build an Innovation Team*, HARV. BUS. REV. (Feb. 13, 2018), <https://hbr.org/2018/02/4-ways-to-build-an-innovative-team>.

initiated and guided. We also know that innovation processes sometimes result in failures, often leading to further experimentation and adaptation, and hopefully, an approach that addresses the challenges facing the group. Finally, we know that innovation process results need critical assessment and monitoring to ensure that they result in what the organization needs. There seems to be a fair degree of unity on the critical steps for the process of organizational innovation among the experts in the field. However, the process of innovation is fraught with challenges and difficulties.

*B. Constraints on and Challenges to Innovation Thinking in Organizations*

There are obvious strengths to a leader's decision to create a process to address challenges through a new vision and plan for action, but there are considerable difficulties with innovation approaches in many organizations. Stefan Thomke and Jim Manzi address one such problem: the leader's zeal for quick change (especially if the challenge is, for the organization, an existential one) when the leader is operating "in a world where they lack sufficient data to inform their decisions."<sup>51</sup> They point out that "ideas that are truly innovative—that is, those that can reshape industries—typically go against the grain of executive experience and conventional wisdom."<sup>52</sup> The greater the disruptive nature of the problem or challenge, the greater the inclination of the leader to push for quick change—and this zeal for action may not be the right type of change.

A related problem within the organization that needs significant change through innovation is to move complacent firm members (usually partners) to realize the significant problems that the firm is facing, and to implement some meaningful and ultimately successful change process. Law firms, especially large, national ones, are inherently conservative and tend to adhere to "business as usual." In large part that is due to the high profits per partner in those firms in recent years, ranging from \$3 million to \$5.3 million per partner among the fifteen most profitable American law firms.<sup>53</sup> There is inherent pressure to pay the profits out to partners rather than invest in necessary law firm innovation. The law practice commentator Richard Susskind has said

---

51. Stefan Thomke & Jim Manzi, *The Disciple of Business Experimentation*, HARV. BUS. REV. 70, 71-72 (Dec. 2014), available at <https://hbr.org/2014/12/the-discipline-of-business-experimentation>.

52. *Id.*

53. *Global 100 Rankings*, AM. LAW. 34, 38 (Oct. 2017) (per partner profits for largest international law firm; all but one in top 15 firms are U.S. based firms).

that “It is hard to convince a room full of millionaires that they’ve got their business model wrong.”<sup>54</sup> But it often is wrong.

A second problem with leading innovation and change concerns an integral part of the change process, namely the dynamics of the work group in charge of designing and implementing the necessary change. Sharing important research that builds on the path-breaking work of Daniel Kahneman and Amos Tversky, Cass Sunstein and Reid Hastie described some dangers to the group decision-making processes.<sup>55</sup> They described the errors that groups are likely to make without strong leadership and direction:

- Groups tend to *amplify* the errors of their members and not merely correct them;
- Group members tend to follow the statements and actions of those who spoke or acted first (or before them), with a *cascade effect*;
- Often group members can become *polarized* and take up positions more extreme than those they held before deliberations;
- Group members can become focused on *what everybody already knows* and therefore fail to assess and evaluate critical insights and information held by a few.<sup>56</sup>

A third problem with group innovation processes is getting the message of responsive change to the intended audience—clients and consumers of the firms’ legal services—and getting them to embrace it and act on it. In other words, sometimes the parts of the market or industry that have indicated a need for change do not pick up on important clues or messages regarding the occurrence of innovation or the addressing of group concerns. For example, many clients of legal services providers have complained that the law firms who they employ are behind on the technology that the clients need the firms to embrace.<sup>57</sup> Yet, law firms that are building modern technological responses to the problems (communication, data management, lower cost technology solutions to repetitive lawyer tasks, for example) must convince the clients that they are instituting needed technology upgrades. If not, then the clients will not reward the value of innovative efforts by law firms.

---

54. Paul Lippe, *Richard Susskind Q&A: ‘The Competition That Kills You...May Not Look Like You*, A.B.A. J. (Jan. 28, 2016), [http://www.abajournal.com/legalrebels/article/richard\\_susskind\\_qa](http://www.abajournal.com/legalrebels/article/richard_susskind_qa).

55. Cass R. Sunstein & Reid Hastie, *Making Dumb Groups Smarter: The New Science of Group Decision Making*, HARV. BUS. REV. 90-92 (Dec. 2014), available at <https://hbr.org/2014/12/making-dumb-groups-smarter>.

56. *Id.*

57. *2018 Firms in Transition Report*, *supra* note 19, at iii; *Times Are A-changin*, *supra* note 18, at 27-28.

It is necessary for leaders of the innovation process groups to move the group beyond the predictable errors associated with managing change, especially in a highly disruptive business environment, and keep the group's focus clearly on the problems that demand innovation and change by the organization.<sup>58</sup> The law firms that find and follow change leadership are more likely to survive in the "new normal" of international, technology driven law practice, and the firms with excellent innovation leadership will thrive.

### *C. Law Firms, Legal Departments and Innovation*

Previously, the Article identified some of the drivers of innovation in law organizations. This section describes some of the current areas where law firms are engaging in creative and innovative measures to address problems; both incremental changes and highly disruptive changes to the markets for legal services and for legal talent. It continues the examination of challenges and difficulties that law organizations are facing today.

#### *1. The Challenges and the Need for Change*

The business of law, in particular law firms and law office organizations, has been especially hard hit with significant challenges and pressures since the Great Recession. Since 2009, there have been some modest areas of recovery in some key indicators of law firm success and sustainability, but the legal profession is still experiencing great difficulties and there are some undercurrents in the recovery that suggest that there are more significant and damaging trends ahead.

Altman Weil, Inc., a leading consulting firm for the legal business, has prepared annual reports on the climate and condition of the legal profession over the past decade.<sup>59</sup> The reports are based on survey responses of more than half of U.S. law firms of fifty or more lawyers. The most recent report, entitled "2018 Law Firms in Transition", surveys the market for legal services and the legal profession, and describes several areas of positive recovery by firms. However, it goes on to state that the threats to the legal profession in 2018 are more subtle and menacing than those presented by the economic recession beginning in 2007-2008.<sup>60</sup> In 2009, the legal profession was hit with the effects of the Recession: clients were pulling back on large amounts of legal work, canceling projects, and complaining about inefficiencies of law firms.

---

58. Fischer, *supra* note 30.

59. See *2018 Firms in Transition Report*, *supra* note 19, at I; see also ALTMAN WEIL, [www.altmanweil.com](http://www.altmanweil.com) (containing the Firms in Transition Reports for past ten years).

60. *2018 Firms in Transition Report*, *supra* note 19, at ii.

This trend was followed by significant lay-offs in law firms as they jettisoned young talent to try to salvage their profitability. According to the 2018 Law Firms in Transition Report, the threats to firms include almost two decades of increased commodification and commercialization of legal services, the sweeping changes in technology and communications, insufficient attention to effective management of their talent (both new associates and unproductive partners), and other highly disruptive forces in the legal services area.<sup>61</sup> Disruption in these areas of essential law firm operations has segmented law firms even more in terms of revenues, profitability, and talent acquisition and retention.

The Firms in Transition Report identifies with some precision several threats to the law practice status quo in the United States:

- Law firm clients are reporting that they want greater cost efficiencies by law firms and greater value in the delivery of legal services;
- There is a host of alternative service providers (many of whom are not traditional law firms) that present new, lower-priced competitive services to clients;
- Greater globalization of legal services has permitted competition by foreign firms for clients of purely domestic U.S. law firms;
- There is a glut in the number of lawyers in the U.S. creating an oversupply of legal services providers, but
- Many lawyers in U.S. law firms are at a stage of their careers where they are considered to be “coasting into retirement” so their incentives to learn to apply new technologies and communication instruments (e.g., social media, blogs) are lessened;
- Overall demand for legal services (measured by billable hours) has decreased in the aggregate since the recession and it continues to spiral downward.<sup>62</sup>

The Firms in Transition Report depicts an industry in turmoil, facing disruptive influences from several different directions and creating significant challenges for most U.S. law firms, corporate legal departments, and non-profit legal services offices. These challenges are exacerbated by a vast array of smart technology developments that are pervasive and changing clients’ expectations about how their lawyers work. How are law firms and organizations responding?

---

61. *Id.* at ii, vi.

62. *Id.* at iii-vi.

The Report's principal theme for 2018 is the need for innovation and change among law firms and it emphasizes the need for change and aggressive, smart innovation. They report that seventy percent of the responding lawyers believe that the pace of significant change affecting law practice will increase in the future, yet they report that only thirty-eight percent of the firms are actively engaged in experiments to test innovative ideas and methods.<sup>63</sup> Further, it reports that in sixty-nine percent of law firms, partners resist most change efforts.<sup>64</sup> According to the Transition Report, the slight improvements in the legal industry in the past few years has created a "false sense of security" which has caused many firms to forego or curtail truly innovative approaches to the problems they face.<sup>65</sup> The Report states that "[m]ost law firms continue to plan for short-term, incremental improvements in performance, while deferring or slow-walking more forward-looking actions to address long-term, systemic threats."<sup>66</sup> Continuing, the Report states that "[F]ew firms have taken full advantage of the disruption as an opportunity and run with it to distinguish themselves from competitors."<sup>67</sup>

The Report summarizes the need for innovation by firms to evolve to a sustainable, long-term looking form:

Such a business model will incorporate effective allocation of key human and technology resources and flexible, scalable operational processes that deliver both profitability and potent client value. Although most firms acquiesce to client demands, those firms that anticipate demands and bring innovation to their clients will be highly sustainable.<sup>68</sup>

The Report stresses the importance of innovation, which they acknowledge can be confusing and misunderstood by industry participants.<sup>69</sup> However, simply put, for law firms in a challenging and quickly evolving business environment, pursuing innovation is simply finding ways to do things that are valued by clients better and to have ready application in the market place, but many have failed to do so.

The recent history of law firms that have failed to innovate or, in some instances, have attempted to innovate but without a clear and thoughtful purpose and strategy is alarming to any observer of industries or businesses. Recent history of major law firm failures is riddled with firms that failed with considerable consternation and noise, and no

---

63. *Id.* at v.

64. *Id.* at ii.

65. *Id.*

66. *Id.*

67. *2018 Firms in Transition Report*, *supra* note 19, at ii.

68. *Id.* at v.

69. *Id.* at vi.

longer exist. These include big name, national firms like: Findley Kumble,<sup>70</sup> Brobeck, Phleger & Harrison,<sup>71</sup> Coudert Brothers,<sup>72</sup> Heller Ehrman,<sup>73</sup> Thelen,<sup>74</sup> and of course, the infamous dissolution of Dewey LeBoeuf.<sup>75</sup> This is a veritable gravesite of firms that misread the evidence of significant disruption and change in the legal profession or attempted to achieve other goals that led to their demise.<sup>76</sup>

The clear message from reports on the current situation from Altman Weil and others is that firms need to innovate, but only after a thoughtful and strategic process; in other words, innovation with a clear purpose. Prompt, thoughtful action is needed to address the demands of law firm clients:

Clients want greater cost effectiveness and value—and they are in a position to insist. This is not new, but the recession accelerated the demand for greater efficiency and lower overall costs. Clients are clamoring for more cost-effective legal services and technology-driven process improvements.<sup>77</sup>

According to the Report, law firms should act with urgency on each of the following: focus on external challenges (like clients and markets) and incorporate innovation into all strategic plans, actively manage the firm's greatest asset—human capital—by supporting new talent and weeding out unproductive talent, pursue real differentiation in the firm's market space, and “pick up the pace” as there is a crisis in law practice happening.<sup>78</sup>

---

70. *Finley, Kumble, Wagner, Underberg, Manley, Myerson & Casey*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Finley,\\_Kumble,\\_Wagner,\\_Underberg,\\_Manley,\\_Myerson\\_%26\\_Casey](https://en.wikipedia.org/wiki/Finley,_Kumble,_Wagner,_Underberg,_Manley,_Myerson_%26_Casey) (as of Aug. 31, 2018).

71. *Brobeck, Phleger, & Harrison*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Brobeck,\\_Phleger\\_%26\\_Harrison](https://en.wikipedia.org/wiki/Brobeck,_Phleger_%26_Harrison).

72. *Coudert Brothers*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Coudert\\_Brothers](https://en.wikipedia.org/wiki/Coudert_Brothers) (as of Aug. 31, 2018).

73. *Heller Ehrman*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Heller\\_Ehrman](https://en.wikipedia.org/wiki/Heller_Ehrman) (as of Aug. 31, 2018).

74. *Thelen LLP*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Thelen\\_LLPLP](https://en.wikipedia.org/wiki/Thelen_LLPLP) (as of Aug. 31, 2018).

75. *Dewey & LeBoeuf*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Dewey\\_%26\\_LeBoeuf](https://en.wikipedia.org/wiki/Dewey_%26_LeBoeuf) (as of Aug. 31, 2018).

76. It is worth observing that some of these notable law firm failures were attributable to miscalculations in how best to implement change, or due to other decisions made by the firm's leadership. But without question many of these recent law firm failures are attributable to insufficient leadership, risky real estate ventures, too much reliance on revenues from a small number of clients, and failure to recognize the need for significant change in the firm's operations. See Erin Fuchs, *The Eight Most Crushing Law Firm Implosions in the Nation's History*, BUS. INSIDER (June 24, 2012), <http://www.businessinsider.com/the-eight-most-spectacular-law-firm-collapses-in-history-2012-6>.

77. *2018 Firms in Transition Report*, *supra* note 19, at iii.

78. *Id.* at v-viii.

## 2. Law Firm Responses—Creative and Innovative, but Not Widespread

Faced with a rapidly changing environment for the business and practice of law, how have firms responded? How have they marshalled their talent, resources, and firm leadership to respond to the challenges of the times? Or have they “stayed the course” hoping that the chaotic environment would return to a prior time? Clearly, law firms and law organizations have options as they face these significant and systemic challenges. David Susskind wrote that there are three basic options for law firms facing this array of challenges and disruptions in the market for legal services:

First, there is the option to lead, i.e., to pioneer and play the role of the first mover along the path, with all the benefits and potential risks that this entails. The second option is to invest enough to be ready to respond, poised to drive rightwards in the event that a competitor does so or a new entrant jumps in at a later step. The third option is to resist any move to the right (towards commoditization). In the medium to long term, this third option, it seems to me, is commercially suicidal.<sup>79</sup>

As the Firms in Transition Report demonstrates, law firms have had an array of responses to the difficult times, from denial and refusal to engage the challenges they face to thoughtful and aggressive engagement with their business environment and the changes in the profession.<sup>80</sup> However, the Report concludes that while some firms seemed to be responding in a thoughtful, decisive manner, they were in a decided minority of law firms nationally; the majority of firms seemed unresponsive or, worse, indifferent to the challenges they were experiencing.<sup>81</sup> This part of the Article will review and briefly discuss some of the law firm initiatives that suggest a commitment to engage in the challenges facing the legal profession that reflects innovation and creativity.

As the preceding analysis suggests in other markets, innovation and change management in law firms and legal offices requires several key attitudes and goals within those organizations. Commentators have argued that law firms and organizations that are truly innovators in their fields consistently do the following: (1) foster a firm-wide culture of innovation through engaging the organization’s talent, (2) invest in new technologies and collaborate with experts in client development trends, and (3) collaborate with clients on what the clients are demanding in

---

79. Richard Susskind, *From Bespoke to Commodity*, LEGAL TECH. J. 21 (2006), available at [www.legaltechnologyjournal.co.uk/content/view/21](http://www.legaltechnologyjournal.co.uk/content/view/21).

80. See 2018 Firms in Transition Report, *supra* note 19, at v.

81. See *id.* at x.

terms of the interface between their legal providers and in house departments.<sup>82</sup>

It appears that the more important innovations by leading American law firms facing significant challenges occur in these three key areas because they are the most significant set of issues for clients. Clients generally expect their law firms to make strategic and long-term investments in operational excellence so they can deliver high-quality services. They also expect law firms to understand their own business operations inside and out and to be continuously improving upon them. And, clients expect law firms to provide high value services and advice and services based on specific experience in their industry, their geography, or their expertise. Therefore, it is useful to look to current innovations among leading law firms in the key areas of talent acquisition and development, technology and communication, and adding cost-efficient but cutting-edge value to clients.

#### *a. Talent Acquisition and Development*

Acquiring and managing law firm talent is one of the firm's greatest costs. One estimate is that twenty-five to thirty percent of a national firm's gross revenue goes to the non-equity (and staff) talent acquisition and management.<sup>83</sup> The most obvious costs are salary and benefits for new associates and support staff, but there are many other financial and other costs associated with acquiring and keeping the right people in the organization, including staff support, technology support, professional development, and others.

A great deal of national attention is paid to the "Big Law" associate starting salary "tournament", with one (or a few firms) serving as stalking horses to initiate rounds of salary increases for the "right out of law school" cohort. Indeed, recently, the "big law" group of firms saw Milbank Tweed announce it was moving to a starting salary of \$190,000 for new associates just out of law school.<sup>84</sup> Other firms have followed the Milbank announcement and many others are considering whether or not to follow. It is widely-acknowledged that new associates' work and ability to contribute to the firm cannot justify such a high starting salary,

---

82. See Libby Hakim, *4 Things Innovative Law Firms Do Differently*, THOMSON REUTERS (Apr. 18, 2017), <http://insight.thomsonreuters.com.au/posts/innovative-law-firms>, on how Australian law firms and departments are engaged in aggressive and continual innovation.

83. Jeff Haden, *How to Evaluate Law Firm Financials*, INC (Jan. 22, 2014), <https://www.inc.com/jeff-haden/how-to-evaluate-law-firm-financials-wed.html>.

84. MP McQueen, *Your Law Firm is Paying You \$190K Right Out of Law School. Now What?*, AM. LAW. (June 6, 2018), <https://www.law.com/americanlawyer/2018/06/06/your-law-firm-is-paying-you-190k-right-out-of-law-school-now-what/>.

but this has been the way that Big Law has preceded for many years.<sup>85</sup> It is especially noteworthy that the last round of salary escalations occurred before the Recession when many law firms moved to \$160,000.<sup>86</sup> A current jump of \$30,000 in base salary for just out-of-law-school new lawyers has raised concerns by clients as well as other firms, and, some national firms have justifiably refused to meet the new salary jumps citing concerns for clients' legal services budgets.<sup>87</sup>

But the important areas of talent management are firms' professional development plans and their performance review systems. Ideally the two—professional development and performance review—are linked in a transparent and understandable way for young lawyers. I have written elsewhere about how many of the larger firms are building performance expectations around key competencies that they expect their associates to acquire and master on the path to partner status or other levels of job security, professional success, and compensation.<sup>88</sup> And, innovative firms are finding ways to invest in associates—very high levels of talent on a national market—by investing in them in ways other than big salaries.<sup>89</sup>

Recently, Hogan Lovells announced an innovative approach to providing performance feedback for young lawyers when it scrapped its annual review-based approach following a year and half internal process.<sup>90</sup> The firm acknowledged that the reason for the changes is that today's young lawyers who it hopes to recruit and to retain have different goals and expectations than the senior management had many years ago when the annual performance review process was designed. Other firms have attempted to entice new associates with meaningful work, such as pro bono representation of indigent and/or under-represented clients, developing formal and informal mentoring systems for associates,

---

85. Ed Poll, *What is An Associate Worth?- How to Identify Value and Grow the Earning Capabilities of Your Attorneys*, LAW BIZ (July 1, 2013), <https://www.lawbiz.com/article-what-is-an-associate-worth.php>.

86. Elizabeth Olson, *Welcome to Your First Year as a Lawyer. Your Salary is \$160,000*, N. Y. TIMES, (Apr. 16, 2015), <https://www.nytimes.com/2015/04/17/business/dealbook/welcome-to-your-first-year-as-a-lawyer-your-salary-is-160000-a-year.html>.

87. *Id.* See Nicholas Bruch, *Associate Salary Increases: Don't Follow Milbank's Lead*, LAW.COM (June 5, 2018), <https://www.law.com/2018/06/05/associate-salary-increases-dont-follow-milbanks-lead/> (arguing that firms should not follow Milbank's lead because "it makes no sense in today's legal market.").

88. *Leadership Matters*, *supra* note 4, at 910-19.

89. Dan Packel, *Law Firms Make a Push to Improve the Associate Experience*, AM. LAW. (June 28, 2018), <https://www.law.com/americanlawyer/2018/06/28/law-firms-make-a-push-to-improve-the-associate-experience/>.

90. Ryan Lovelace, *Hogan Lovells Scraps 'Broker' Review System for Associates*, AM. LAW. (Apr. 12, 2018), <https://www.law.com/americanlawyer/2018/04/12/hogan-lovelles-scraps-broken-review-system-for-associates/>.

implementing methods of providing associates with greater autonomy while engaged in law firm work, and other creative methods of inspiring associates.<sup>91</sup>

Clearly, effective and sustained management of the firm's talent is one of the greatest predictors of a law organization's likely success in the current environment. Effective talent management includes both engaging and rewarding lawyers at the associate level and thoughtfully pruning partners who can no longer support the firm's needs and aspirations.

*b. Technology and Communications*

Many law firms struggle to maintain a contemporary technology platform and client communication presence, as these areas have evolved dramatically and quickly in recent years. Law firm marketing (like many other areas of the economy) is increasingly online, as are the methods of clients and suppliers in locating and engaging the firms, reviewing their talent, and contracting for services. Without an aggressive online marketing approach, firms will lose business to other firms—both to traditional law firms and to other providers of legal services. The Firms in Transition Report found that more successful law firms were highly engaged in the process of developing their critical technology capabilities.<sup>92</sup>

The development of legal services technology outside of law firms and corporate legal departments is brisk and competitive. Even a casual review of Stanford Law School's Legal Tech Index reveals more than 800 companies across the globe that develop and sell technology for legal markets.<sup>93</sup> The global providers of these technologies include areas such as practice management, document automation, legal research, legal education (from basic to advanced), e-discovery, compliance, analytics, and other technology-related support for legal practitioners.

Generational divides—between very “tech savvy” young attorneys and more senior, less “tech savvy” attorneys—create both chasms to bridges and great opportunities for law firms and law practice offices. The law firm Reed Smith recently addressed the firm's effort to enhance its technology capabilities in a creative manner. It began a project to introduce technology proficiency by tasking several summer associates

---

91. See LORI BERMAN, HEATHER BOCK & JULIET AIKEN, ACCELERATING LAWYER SUCCESS (2016).

92. See *2018 Firms in Transition Report*, *supra* note 19, at xiv.

93. The Index provides a curated list of all known and reported legal technology companies broken down by the services and technologies they provide. See *About Tech.law.stanford.edu*, STAN. CTR. FOR LEGAL INFORMATICS, <https://techindex.law.stanford.edu/about>.

with work on developing projects that use technology to improve legal services (in addition to other work that associates perform during summer appointments).<sup>94</sup> According to the firm, it wants “to start developing lawyers that are not only great lawyers, but also understand how technology can deliver services more efficiently and more collaboratively and can offer new solutions for clients.”<sup>95</sup> Building in-house expertise for the next generation of technology capabilities for law firms and law offices is a wise investment of new lawyer’s time and interests.

Orrick Herrington & Sutcliffe, LLP recently created a unit within the firm, called “Orrick Labs” to develop the capacity to do data analytics (such as studying the influence of blockchain technology) on how law will be practiced in the future and to turn lawyers ideas into greater efficiency for clients.<sup>96</sup> The Orrick Labs was initiated by the hiring of a technology “architect” to help design and implement technologies that support the firm’s lawyers such as by creating a document management dashboard platform.<sup>97</sup> Further, Orrick has launched its Orrick Analytics to develop the capacity to do data analytics in house.<sup>98</sup> Other national law firms are creating incentives within the firm to invest in law practice start-up companies in order to reap the benefit of new emerging law practice technologies.<sup>99</sup>

### *c. Building Value for Clients*

Another critical area that is challenging law firms today is to create more value for their clients from the attorney-client relationship. This is, of course, a long-standing challenge for all law firms, but, as pointed out in the Law Firms in Transition Report, the need for reducing clients’

---

94. Dan Packel, *Reed Smith Launches Tech Program for Select Summer Associates*, AM. LAW. (Apr. 19, 2018), <https://www.law.com/americanlawyer/2018/04/19/reed-smith-launches-tech-program-for-select-summer-associates/>.

95. *Id.* According to the firm’s Chief Technology Officer, the students, who have backgrounds in computer science, will work on several technology initiatives in the firm such as applying blockchain to real estate transactions and improving artificial intelligence for document review.

96. Gabe Friedman, *Law Firm Creates Internal ‘Skunkworks’ to Develop Tech*, BIG LAW BUS. (Nov. 14, 2017), <https://biglawbusiness.com/law-firm-creates-internal-skunkworks-to-develop-tech/>.

97. *Orrick Launches New Technology Lab*, ORRICK (Nov. 15, 2017), <https://www.orrick.com/News/2017/11/Orrick-Launches-New-Technology-Lab>.

98. *Orrick Analytics*, ORRICK, <https://www.orrick.com/Innovation/Orrick-Analytics> (last visited Aug. 31, 2018).

99. Friedman, *supra* note 96 (“By making a concerted, publicized effort to invest in technology, Orrick joins a growing number of law firms seeking to shake off the boilerplate reputation of law firms as stale organizations that cling to outmoded and inefficient work methods. Instead, the firm wants to be known as responsive to client demands for better value and efficiency. It has already unveiled or is developing tools such as a collaboration and workflow tool for lawyers to organize or draft documents.”).

costs while improving service and quality is a particularly acute challenge to today's law firms.<sup>100</sup> Global and highly technologically-proficient providers in many segments of traditional law firm business are forcing firms to pay more attention to the value proposition important to clients. According to the Survey Report, clients want greater cost efficiencies and value quality legal services. Thus, legal providers must develop more expertise and think more deeply about how to deliver this level of service and value. Innovation processes remain the most important way to permit a firm to stay on the "cutting edge" of its business by enhancing client value. It is therefore surprising that Law Firm in Transition Report found that only thirty-eight percent of the law firms they surveyed are actively engaged in experiments to test innovative ideas or methods, notwithstanding the fact that law firm leaders know that clients expect, and are looking for, cost-reduction efficiencies in providing legal services.<sup>101</sup>

On the other hand, there are some notable examples of thoughtful engagement by firms in innovative strategies and ideas. Holland & Knight and Baker & McKenzie have created "innovation committees" within the firms to realize their commitment to address the challenges that the firms and their clients face.<sup>102</sup> Baker & McKenzie has begun to invest in long term projects undertaken by the firm, including research and development and the hiring of a "futurist" to anticipate the direction of law practice that will affect the firm's future. In addition, Baker & McKenzie has created "The Collab," which is a creative problem-solving initiative that uses collaborative innovation methods to anticipate, address, and solve client problems.<sup>103</sup> In "The Collab," teams of Baker & McKenzie lawyers, together with clients, academics, business strategists, and many other professionals, collaborate on their work together to develop powerful and easy-to-use legal solution to client problems.<sup>104</sup> Several large, corporate legal departments have created positions within the organization for non-lawyer directors of

---

100. *2018 Law Firm in Transition Report*, *supra* note 19, at vii.

101. *Id.* at v.

102. *How Baker McKenzie are Innovating the Legal Sphere*, LAW. MONTHLY (Sept. 5, 2017), <https://www.lawyer-monthly.com/2017/09/how-baker-mckenzie-are-innovating-the-legal-sphere/>; *see also* Ian Lopez, *Innovate to Eliminate Bad Ideas? Holland & Knight Leader on Changing the Business Model*, LEGALTECH NEWS (Feb. 21, 2018), <https://www.law.com/legaltechnews/2018/02/21/innovate-to-eliminate-bad-ideas-holland-knight-leader-on-changing-the-business-model/> (The partner in charge of the Holland & Knight committee explained that the risks associated with a very uncertain environment for law practice are too high to do nothing now: "While we don't know exactly what the legal profession will look like in five years, there's a growing sense it won't look like it does today").

103. *How Baker McKenzie are Innovating the Legal Sphere*, *supra* note 102.

104. *Id.*

operations for the firm.<sup>105</sup> The purpose of these departments within the legal department is to enhance operational excellence in legal services delivery by the department, to lead the change needed to provide that level of excellence, and to develop and use the technology needed to support the legal department in times of extraordinary change.<sup>106</sup>

This brief survey of some law firms' responses to the lingering effects of the recession from 2009, along with the documented contemporary challenges they face in the "new normal," show the resourcefulness that all law firms should be demonstrating in the areas described in the Law Firms in Transition Report. Innovation processes can make a difference in the current era of legal services outsourcing, overwhelming technological advances and changes, and increasing client demands for greater law firm efficiency and better service delivery.

#### CONCLUSION

The Article has argued that law organizations cannot, in this era of grave challenges to the business and law practice models of law organizations and seismic changes to how law is practiced, merely hope for better days or a return to better days of firm profitability and genial relationships with clients. A confluence of external (to the legal profession) and internal forces have forever changed the way law is practiced and, more profoundly, the future of the legal profession. Like their clients and other business organizations, law firms and law offices must seek their "new normal" through careful planning and innovation. There is a documented and substantial recent history of law firms that were among the tops of the legal profession that have failed, resulting in personal hardship for lawyers and staff and great economic loss through bankruptcy and litigation. The stakes are high, so it is somewhat surprising that recent surveys of law firm leaders reveal so many major firms not engaged in innovation, adaptation, nor seeking innovation leadership within their firms.

This Article attempts to provide a useful framework and "guide" to innovation processes in law services providers. The advancement of the rule of law requires the availability of well-run, contemporary law firms,

---

105. *Rise of the Legal Department Operations Manager*, THOMSON REUTERS, <https://legalsolutions.thomsonreuters.com/law-products/news-views/corporate-counsel/2016-in-house-study/rise-of-the-legal-department-operations-manager> (last visited Aug. 31, 2018).

106. See D. Casey Flaherty, *CLOC Reflections: 5 First-Time Attendees Give Their Thoughts Before, During, and After the Institute*, CORP. COUNS. (May 31, 2018), <https://www.law.com/corpocounsel/2018/05/31/cloc-reflections-5-first-time-attendees-give-their-thoughts-before-during-and-after-the-institute/>.

so all steps to protect the integrity of the legal profession— especially its organizations of law service providers—should be a top priority for the organized bar, for law firms, for legal education, and for clients.