

Are Lawyers Doomed?

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► **In this issue:** *The commoditization of legal services and the IT revolution are transforming the legal profession. Richard Susskind's new book challenges lawyers to embrace a new legal playbook that focuses on value, efficiency and alignment of interests with their clients – a fundamental and necessary change from the traditional law firm business model.*



Forces transforming the legal industry promise the emergence of new models that will allow clients to reap huge efficiencies, but at the expense of law firms that fail to adapt.

The arrival of Richard Susskind's new book, *The End of Lawyers? Rethinking the Nature of Legal Services*, could not have come at a more opportune time.

While the title might have provoked laughter at major law firms a year ago – when profits per partner were at an all-time high – it deserves more sober consideration now.

There are certainly signs that the legal profession, as currently structured, is in deep trouble. Most obvious are the daily tales of mass lay-offs at the major firms, with more predicted to come, as well as the implosion of brand-name law firms such as Heller Erhman.

But the roots of the distress go deeper than the current economic crisis. As Cisco General Counsel Mark Chandler bluntly observed in a widely circulated 2007 speech: The law firm business model “looks like the last vestige of the medieval guild system to survive into the 21st century.”

Susskind clearly agrees with Chandler (and in fact credits Chandler in the preface for his assistance with the book). Susskind, himself an English lawyer as well as a technologist, has been studying and writing about the legal profession for several decades. His 1996 book *The Future of Law* made such then-radical predictions as the coming ubiquity of email for lawyer-client communications. Naysayers argued that Susskind did not understand anything about security or confidentiality, yet his email prediction – and many others – have come to pass.

On the Brink of a Fundamental Transformation

The End of Lawyers? picks up where *The Future of Law* left off. In simple terms, Susskind's message is that the legal profession is on the brink of a fundamental transformation. This transformation is being driven by two irresistible forces: the commoditization of legal services and the IT revolution.

Commoditization refers to the evolutionary “pull” of the law toward greater standardization, systemization and packaging, in contrast to the more traditional model of lawyer as personal adviser (what Susskind refers to as “bespoke” services). The IT revolution is transformative because disruptive technologies such as automated document assembly, online legal guidance and legal open-sourcing are allowing clients to by-pass the lawyer as intermediary.

Both of these forces – commoditization and the IT revolution – are rapidly undermining the traditional methods of delivering legal services. They promise the emergence of new models that will allow clients to reap huge efficiencies, but at the expense of law firms that fail to adapt to the new models.

Susskind covers a wide canvas, from the emergence of alternative legal service providers in low-cost centers like India and the Philippines, to the development of collaborative “wikis” for the sharing of legal information among law firms and clients, to the embedding of legal knowledge into corporate processes and work practices (for which Susskind uses the analogy of a car that won't start unless the occupants have fastened their seatbelts). But he keeps the discussion constantly grounded in real-life specifics. This is not “space colonies on Mars” stuff; it's around the next corner. That news can be either exhilarating or depressing, depending upon how wedded you are to the status quo.

The Future of In-House Legal Counsel

Susskind paints a stark picture of life as a corporate general counsel. Because corporations tend to regard legal expenses as an overhead, “to be monitored, managed and trimmed,” they face pressure from their boards to:

- ▶ Reduce internal head count, by natural attrition or harsher means
- ▶ Reduce the fees paid to external law firms, which are regarded as spiraling out of control
- ▶ Bear an increasingly heavy legal and compliance workload, in an environment where compliance requirements and legal risks are rising in tandem

In short, they must do more with less.

Some fundamental changes clearly are needed. Susskind submits that there are “only two sustainable strategies” available to general counsel:

Efficiency strategy: Continue working in the traditional way, using a combination of in-house and external resources, but do so in radically more efficient ways. This is the “cut costs” strategy.

Collaboration strategy: Collaborate – either with other in-house counsel or with law firms – to share the costs of some common legal expenses. This is the “share costs” strategy.

Susskind contends that both strategies are more achievable today than ever before. What are Susskind’s specific proposals for pursuing these strategies? They include:

- ▶ Drafting of legal documents more quickly, cheaply and reliably via automated document assembly tools.
- ▶ Staying connected and ensuring responsiveness via instant messaging and social networking systems.
- ▶ Procuring legal services via online utilities.
- ▶ Participating in legal e-learning.
- ▶ Obtaining online legal guidance.
- ▶ Reaping the benefits of legal open-sourcing, for instance via legal wikis and other freely available legal resources.
- ▶ Participating in closed legal communities, and thus building up knowledge on the basis of peer production.
- ▶ Using workflow and project management tools.

So surely, Susskind posits, general counsel are rushing to the ramparts in support of these strategies that will improve their performance and ease the stresses on their lives? Well, not exactly. There are major hurdles:

First, general counsel are too busy to invest time, energy and money in actually developing efficiency or collaboration solutions. Moreover, technology planning and implementation is rarely their core competency. As Susskind nicely puts it, “Asking them to pause to reinvent their services and the way they work is like urging them to change the wheel on a moving car.”

Second, general counsel cannot reasonably expect their outside law firms to support efficiency or collaboration strategies, because it destabilizes their core business model, as discussed below.

Will Traditional Law Firms Adapt?

Susskind is at his tongue-in-cheek best when discussing the traditional law firm model.

In an ideal world, Susskind notes, law firms would be driven to align their commercial interests with those of their clients. They would innovate, and try to anticipate their clients’ needs ahead of competitors, so as to create a competitive advantage. They would share with their clients the expectation of mitigating risks and keeping legal difficulties and expenses to a minimum. In a nutshell, they would share risks and rewards.

Susskind submits that there are “only two sustainable strategies” available to general counsel: improving efficiency (cutting costs) and collaboration (sharing costs).

We have a world in which law firms have little understanding of – or alignment with – the client organizations they advise.

That world, of course, is pure fantasy.

Instead, we have a world in which law firms have little understanding of the client organizations that they advise. Billing rates and staffing are determined based upon how much money law firm partners want to make, not on what makes sense to the client or given market conditions. To quote Susskind: “In the language of popular psychology, I say that law firms are from Mars while clients are from Venus.”

Hourly billing must bear part of the blame. Susskind states the obvious:

“So long as the focal point of law firms’ profitability is premised on the number of hours spent advising clients, their motivation will always be to spend more rather than less time on the work, where clients would prefer precisely the contrary. Only when the fees rendered reflect the value of the work to the client will law firms and their clients share the same commercial perspective.”

Susskind recounts a telling anecdote: he cites a litigator friend who was relishing the prospect of representing a client with serious legal problems and who added, “I smell first class travel.” What client would not be horrified by such an attitude? Yet such are the incentives created by the billable hour.

Little wonder, then, that according to surveys, the vast majority of general counsel would not recommend their primary outside law firm to another GC.

Will major law firms be able to undergo the kind of massive restructuring that Susskind predicts will be necessary to meet 21st century corporate legal requirements? Susskind is doubtful. The traditional law firm’s leveraged model is antithetical to the kind of nimble, tech-friendly, client-focused approaches that the new era in legal services will require. The asymmetries between the traditional law firm and modern client demands run too deep.

This is a grim portrait, but Susskind holds out hope: “[W]hat might break this mould? A genuinely innovative law firm could; one that went out on a limb and launched ground breaking solutions.”

Is It Really the End?

Susskind was careful to punctuate the title of his book with a question mark. His answer? Many lawyers will indeed face extinction; for them, “the party will soon be over.” There will be no demand for legal counsel who refuse to adapt to a legal landscape that is changing beyond recognition. The old legal playbook and its business models are going the way of the dodo.

But for lawyers – in-house and private practice alike – who are ready to embrace the new legal playbook, with its focus on value, efficiency and alignment of interests between clients and legal advisers, the changes afoot in the legal profession hold the promise of being downright thrilling.

To quote Alan Kay of Apple: “The best way to predict the future is to invent it.”

The End of Lawyers? Rethinking the Nature of Legal Services by Richard Susskind is published by Oxford University Press.

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About VistaLaw International

VistaLaw International, with offices in Paris, London, Madrid and Washington, D.C., is a legal services firm created by former in-house counsel dedicated to providing practical, cost-effective legal advice to global companies. VistaLaw's services include corporate governance and structuring, drafting and negotiation of commercial contracts, and handling of merger and acquisition transactions. For more information, visit www.vistolaw.com.

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VistaLaw and the Emergence of a New Breed of Law Firm

Some lawyers and legal service providers already have embraced the revolution that Susskind predicts. The last few years have seen the emergence of a few “genuinely innovative law firms,” willing to launch “ground breaking solutions.”

VistaLaw International is one such firm. We get what Susskind is saying. Since VistaLaw's launch two years ago, we've strived to align our values and expectations with those of our clients, with notable success.

VistaLaw supports and embraces both the “efficiency” and “collaboration” strategies Susskind espouses:

VistaLaw Efficiency Strategies

- ▶ **We offer major law firm plus in-house experience.** All VistaLaw attorneys were trained in private practice at major law firms (including White & Case, Sidley Austin, WilmerHale and Hogan & Hartson), so our legal skills are second to none. In addition, we all have significant experience working in-house at global corporations. Our in-house experience assures that we understand the perspectives of the general counsel who are our clients, and their goals become our goals.
- ▶ **Our value proposition is unbeatable.** We keep overhead low by working from virtual offices and client sites, and we don't employ throngs of paralegals and associates. As a result, we can offer very attractive billing arrangements. We often work on a project-based, fixed-fee arrangement, or based upon a daily rate. When clients prefer that we bill by the hour, we often cap the total number of hours that we can bill, so the client has certainty of legal costs for budgeting purposes. We never bill for expenses, except in the case of client-approved travel expenses or filing fees.
- ▶ **We provide a flexible solution to legal demands.** We're a sound alternative to hiring full-time counsel or retaining a traditional law firm. Working in-house is our own background, so we're comfortable and efficient working side-by-side with a client's legal department or, where there is no in-house team, serving in that role. Our training and experience in the corporate setting means that we can hit the ground running.

VistaLaw Collaboration Strategies

- ▶ **We offer global scope and solutions.** We have offices in Paris, London, Madrid and Washington, D.C., and will soon establish presences in Singapore and Doha, Qatar. Our team members all have lived and worked extensively overseas, so we are accustomed to dealing with foreign laws and global partners. We can devise solutions to your most difficult cross-border challenges, either by working with VistaLaw attorneys or by tapping into our extensive network of legal experts overseas, including extremely low-cost resources in India.
- ▶ **We tap into open and closed legal communities.** Increasingly, legal templates, memoranda, opinions, checklists, best-practice manuals, compliance tools, etc. are available online, rather than being the proprietary property of a particular law firm or lawyer. We participate in numerous virtual communities, both open and closed, where legal solutions – or individuals who can provide the solutions – are readily accessible. (One example is the new thought-leadership organization for general counsel, Global Leaders in Law, of which VistaLaw is a sponsor.) We don't claim to have all the answers; we do claim to know where to find them. No client should ever pay to have the wheel reinvented.
- ▶ **We leverage technology to create value.** Traditional lawyers think that technology begins and ends with Google and the BlackBerry. We know that there is a vast array of technological tools available now – often at little or no cost – that exponentially increase our ability to provide fast, expert legal advice. From document assembly tools, to legal databases, to workflow and project management tools, we use them all. We never pass technology costs on to the client.

For bet-the-company legal work – major litigation or deals – the major law firms naturally serve an important function. For run-the-company legal work, there is VistaLaw.