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## Pandemic as Panacea: The Positive Long-Term Impact of Forced Innovation in the Legal Industry

J. Mark Phillips

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**PANDEMIC AS PANACEA:  
THE POSITIVE LONG-TERM IMPACT OF  
FORCED INNOVATION IN THE LEGAL  
INDUSTRY**

J. Mark Phillips, PhD, JD/MBA<sup>1</sup>

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ABSTRACT

Despite the untold disruption the COVID-19 pandemic continues to inflict upon the legal industry, several positive outcomes may ultimately emerge. These unexpected gains may not only improve the practice of law but also address long-standing weaknesses in the industry. In this article, I utilize Roger’s Innovation Diffusion model<sup>2</sup> to shed preliminary light on

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<sup>2</sup> See Evan T. Straub, *Understanding Technology Adoption: Theory and Future Directions for Informal Learning*, 79 No. 2 REV. OF EDUC. RSCH. 625, 625–49 (June 2009) (discussing Roger’s Innovation Diffusion Theory (1995)).

the unprecedented phenomenon of *forced, comprehensive, and immediate* adoption of new technology throughout the legal industry. While doing so, I highlight the way this sudden adoption will likely change perceptions regarding perennial areas of tension, such as mental health and work-life balance. Finally, I argue that the sheer scale of change within the industry will ultimately lead to improvements in work-life balance, increased access to legal services, and a stronger appetite and capacity for adopting future technological innovations in law.

## INTRODUCTION

As the long-term ramifications of Coronavirus Disease of 2019 (“COVID”) are still materializing,<sup>3</sup> emerging trends are revealing the short-term and long-term changes in the legal industry. In this article, I evaluate some key changes identified thus far, and then draw initial conclusions about the post-COVID legal industry.

### I. RELATIVE IMPACT OF COVID

The COVID pandemic has wrought physical, psychological, and economic damage to the legal industry. First and foremost, the physical threat posed by the disease upended the legal industry in the same manner as most professions. In short, most legal professionals never had to consider the prospect of being infected by a deadly pathogen within the workplace. Prior to the pandemic, the prevailing dangers in the practice of law were stress, over-work, and substance abuse.<sup>4</sup> This relative calm was shattered by a viral threat that emerged suddenly, with an initial air of uncertainty as to scope and intensity. Eventually it developed into a less

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<sup>3</sup> As of this writing, the rates of COVID appear to finally be plateauing in the U.S. See *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last updated Apr. 17, 2021). Three vaccines have been developed and approved by the FDA, and approximately thirty-nine percent of the U.S. population has been vaccinated. See *How the Vaccine Rollout Is Going in Your State*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html> (last updated Apr. 17, 2021).

<sup>4</sup> See Harrison Barnes, *Why Big Law Firms Attorneys Are So Likely to Get Divorced: Stressed, Tired, Mad and with Nothing More to Give*, BCG ATT’Y SEARCH, <https://www.bcgsearch.com/article/900049580/Why-Big-Firm-Attorneys-Are-So-Likely-to-Get-Divorced/> (last visited Apr. 18, 2021); see also SUSAN SWAIM DAICOFF, *LAWYER KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES* (2004).

murky, but sustained specter of potential harm that promises to taint most professional workplaces for the near future.

This physical threat brought with it a psychological burden. At best, a professional workforce that depends upon sustained focus and close interaction with colleagues would become distracted and inefficient. At worst, the trauma of losing loved ones and colleagues disrupts not only individual psyches, but also that of communities and networks. These psychological challenges were by no means unique to the legal industry, and in fact, this article will later demonstrate that the similarity of their struggles to their clients is one of the key drivers of institutional and cultural change in law.

Economically, the legal industry endured the same dire response as other industries to the abrupt, nation-wide economic shutdown. While firms attempted to carry on remotely, much of the transactional work halted, while litigation strained to continue within a nearly universal shutdown of most governmental offices and courthouses.<sup>5</sup> However, traditionally, the legal industry endures economic downturns better than other industries.<sup>6</sup> Economically, the legal industry endured the same dire response as other industries to the abrupt, nationwide economic shutdown. While firms attempted to carry on remotely, much of the transactional work halted, while litigation strained to continue within a nearly universal shutdown of most governmental offices and courthouses.<sup>7</sup> However, traditionally, the legal industry endures economic downturns better than other industries.<sup>8</sup> Legal sectors expand or detract in adjustment to current conditions, and the overall legal demand suffers less and revives faster

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<sup>5</sup> *Law Firm Updates: COVID-19's Impact on the Business of Law*, THOMAS REUTERS INST. (July 20, 2020), <https://www.legalexecutiveinstitute.com/law-firm-updates-covid-19/>.

<sup>6</sup> Todd Babbitz et al., *COVID-19: Implications for Law Firms*, MCKINSEY & Co. (May 4, 2020), <https://www.mckinsey.com/industries/financial-services/our-insights/covid-19-implications-for-law-firms>.

<sup>7</sup> *Law Firm Updates: COVID-19's Impact on the Business of Law*, THOMSON REUTERS INST. (July 20, 2020), <https://www.legalexecutiveinstitute.com/law-firm-updates-covid-19/>.

<sup>8</sup> *COVID-19: Implications for Law Firms*, MCKINSEY & Co. (May, 4, 2020), <https://www.mckinsey.com/industries/financial-services/our-insights/covid-19-implications-for-law-firms>.

than other industries.<sup>9</sup> Although the onset of COVID initially caused predictable layoffs, hiring freezes, and salary reductions,<sup>10</sup> there appear some indicators of economic hope for the future. On a global scale, the legal services market was predicted to decline from \$734.1 billion in 2019 to \$728.5 billion in 2020, however the market is predicted to recover by five percent in 2021.<sup>11</sup>

As of this writing, the US legal workforce appears to have developed a sustainable approach to continue servicing clients at a respectable rate. However, the threat of the disease remains present, and the ebb and flow of transmission rates continues to add uncertainty. As such, the economic toll remains to be seen.

## II. COVID DWARFS THE GREAT RECESSION

While none of the forgoing is unexpected, the landscape of physical and economic damages of COVID set the stage for a discussion of how this situation is unique from prior economic shocks, and how those unique attributes promise to transform the practice of law in the future. Importantly, the current crisis is vastly different than the most recent crisis of the great recession. According to Jennifer Leonard, the Chief Innovation Officer at the University of Pennsylvania Carey School of Law, the current crisis is significantly different from the great recession because “[i]t is fundamentally disrupting overnight every single component of the legal system.”<sup>12</sup> Not only are law firms of every size and sector forced to respond to an immediate economic stop, they are also forced to immediately adopt technology enabling them to work remotely from a variety of home work environments, and collaborate virtually with both clients, colleagues and courts and governmental agencies.<sup>13</sup>

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<sup>9</sup> *Id.* For instance, during many downturns, bankruptcy practice may thrive while transactional M&A work may struggle. *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Laura Wood, *Legal Services and COVID-19: Industry Expected to Recover and Reach \$845 Billion by 2023*, RESEARCH AND MARKETS (June 19, 2020, 8:15AM), <https://www.prnewswire.com/news-releases/legal-services-and-covid-19-industry-expected-to-recover-and-reach-845-billion-by-2023-301080243.html>.

<sup>12</sup> Lyle Moran, *Will the COVID-19 Pandemic Fundamentally Remake the Legal Industry?*, 106 AM. BAR ASS’N J. 1, 1–8 (2020), <https://www.abajournal.com/magazine/article/will-the-covid-19-pandemic-fundamentally-remake-the-legal-industry>.

<sup>13</sup> *Id.*

The nature and scope of these changes also portend several corollary problems. First, there is the uncertainty of the duration of the disease's effects, and although there may have been similar uncertainty about recovery in economic terms, the forecasts of economic recovery *then* did not depend upon the forecasted control of a biological agent such as COVID<sup>14</sup>. Battling the disease requires a host of mitigation efforts that range in their severity, level of adoption, and effectiveness. While many COVID vaccines are developed or developing,<sup>15</sup> the challenges of distribution and access have come to the fore, and while progress is being made, the prospect for new, more contagious variants extends the level of uncertainty in terms of both time and severity.

Further uncertainty may be found in the global nature of this disease. The response strategy and capacity of the world-wide community over the immediate future promises to be widely variable. As such, the only apparent area concerning the overall international response will be its regional uncertainty and unpredictability.

### III. PANDEMIC AS PANACEA

While all the above may paint a bleak and uncertain future for legal practitioners, there appears to be light at the end of the tunnel. The very qualities that make the timing and degree of recovery so daunting, ironically, provide a platform for resolving long-standing weaknesses in the legal industry.

Three issues have plagued the industry in the years (if not decades) preceding the pandemic. First, the legal industry as a whole has been slow, though not stagnant, in adapting to the technological advances embraced widely by other industries.<sup>16</sup> Second, attorneys uniformly struggle to

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<sup>14</sup> *Id.*

<sup>15</sup> Jeff Craven, *COVID-19 Vaccine Tracker*, REGUL. FOCUS (Apr. 15, 2021), <https://www.raps.org/news-and-articles/news-articles/2020/3/covid-19-vaccine-tracker>.

<sup>16</sup> *2020 Report on the State of the Legal Market*, GEORGETOWN LAW CENTER ON ETHICS AND THE LEGAL PROFESSION, THOMSON REUTERS, and PEER MONITOR (2020), [https://images.thomsonreuters.com/Web/TRlegalUS/%7B169f0d36-6fcd-4cc1-bd84-878b713055cb%7D\\_2020\\_Report\\_on\\_the\\_State\\_of\\_the\\_Legal\\_Market-191231.pdf](https://images.thomsonreuters.com/Web/TRlegalUS/%7B169f0d36-6fcd-4cc1-bd84-878b713055cb%7D_2020_Report_on_the_State_of_the_Legal_Market-191231.pdf).

maintain work-life balance and avoid substance abuse.<sup>17</sup> Third, there remains a long-standing recognition of a lack of available legal services for lower income individuals.<sup>18</sup> Since well before the great recession, each of these three trends have slowly risen to the forefront of the legal community's attention, albeit at a measured and uneven pace.

These longstanding trends remained entrenched even as the COVID hit and quickly developed into a global pandemic. The sudden rise of the pandemic forced the legal community to adopt immediate change to both its workplace culture and technology.<sup>19</sup> While a comprehensive treatment of those changes is beyond the scope of this article, arguably the most impactful change in workflow came from (1) the sudden, whole-scale integration of technology and (2) the immediate shift to working from home.<sup>20</sup> Importantly, these two changes occurred *immediately* (within the span of weeks or months), *comprehensively* (among attorneys of all ranks and practice areas) and *uniformly* (across all members of the legal industry, as well as their clientele).

Never in this century, aside from September 11th, has such an immediate confluence of events required the immediate adoption of both technological modalities and work-at-home arrangements.<sup>21</sup>

The nature of this sudden technological adoption, coupled with the variety of workplace environments, presents a myriad of points for

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<sup>17</sup> Nefra MacDonald, *Work-life Balance for Lawyers*, CLIO (July 9, 2020).

<sup>18</sup> *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP., <https://www.lsc.gov/what-legal-aid/unmet-need-legal-aid>.

<sup>19</sup> Catherine Wilson, *'Awful Impact': The Long-Lasting Effects of COVID-19 on the Practice of Law*, LAW.COM (Dec. 7, 2020), <https://www.law.com/dailybusinessreview/2020/12/07/awful-impact-the-long-lasting-effects-of-covid-19-on-the-practice-of-law/>.

<sup>20</sup> These changes have been well-documented across the legal industry and spanned nearly every industry in the US workforce.

<sup>21</sup> See, e.g., PARTNERSHIP FOR NEW YORK CITY, WORKING TOGETHER TO ACCELERATE NEW YORK'S RECOVERY: ECONOMIC IMPACT ANALYSIS OF THE SEPTEMBER 11TH ATTACK ON NEW YORK CITY 106 (Nov. 2001), [https://www.pfnyc.org/reports/2001\\_11\\_ImpactStudy.pdf](https://www.pfnyc.org/reports/2001_11_ImpactStudy.pdf) (stating: "As a result of the attack, companies have grown more cognizant of security issues and are apt to bolster spending for enhanced system and data security. Additionally, capabilities such as secure video conferencing and remote access to the office for employees have grown in importance.").

investigation.<sup>22</sup> However, a brief review of the theoretical foundations of technological adoption and diffusion will enable a deeper understanding. The following section will provide an overview of one relevant strain of the academic literature, which provides the proper lens to view the changes already underway during this pandemic.

#### IV. ROGER'S INNOVATION ADOPTION MODEL

Several well-established models of technology adoption and diffusion exist within academic literature. Perhaps the most established and validated of these models is the Roger's Innovation Diffusion Theory (IDT).<sup>23</sup> According to Roger's Theory, there is a key distinction between technological adoption and diffusion.<sup>24</sup> *Adoption* may be described as an individual's choice to utilize a given innovation, and *diffusion* refers to a larger group's adoption of a given technology or innovation.<sup>25</sup> In other words, diffusion is merely the widespread aggregate of individual adoptions.<sup>26,27</sup> Rogers provides a model of adoption composed of five stages, and an explanation of diffusion that relies upon four different components.<sup>28</sup>

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<sup>22</sup> See M. Gajjar, *Members of the Bench & Bar Discuss the Future of Virtual Courts*, THOMPSON REUTERS (Jul. 16, 2020), <https://www.thomsonreuters.com/en-us/posts/government/discussing-virtual-courts/> (discussing the many questions highlighted by the sudden use of technology amidst the pandemic).

<sup>23</sup> See Straub, *supra* note 2.

<sup>24</sup> *Id.* at 630.

<sup>25</sup> See *id.*

<sup>26</sup> See Straub, *supra* note 2

<sup>27</sup> Applying models of adoption and diffusion in the organizational setting provide several benefits. First, managers attempting to integrate innovative technologies may develop strategies focused upon early adopters and phase-by-phase diffusion. Such strategies may provide a faster pathway to the potential efficiencies provided by technological adoption. Second, firms may gain insights into their competitive advantage or disadvantage relative to the relative ability to adapt to technological change. Third, organizations may provide better service to clients by understanding the client's capacity for technological adoption, which may enable a truer management of expectations and service delivery.

<sup>28</sup> See Straub, *supra* note 2



Individual adoption begins with a general awareness of the technology, which comprises stage one.<sup>29</sup> Stage two entails the individual being persuaded to use the product by learning enough information about it to decide about it.<sup>30</sup> In stage three, the individual decides whether to adopt the innovation or not, while stage four entails the individual actually implementing the technological innovation.<sup>31</sup> Finally, in stage five the individual confirms their adoption by evaluating the outcome of the adoption and endeavoring to continue using the innovation.<sup>32</sup>

While these five phases chart the course of individual adoption, there are a number of factors that impact the course of widespread diffusion of technology as well. According to Rogers, the diffusion of technology across an organization relies upon four distinct factors.<sup>33</sup> The first factor is the nature of the technology, which consists of the perceived advantage of the technology, the relative complexity and compatibility of the technology, and the trialability and observability of the technology.<sup>34</sup> Secondly, the nature of the communication channels within an organization impacts the diffusion of innovation.<sup>35</sup> Thirdly, the social system, comprised predominantly of the culture of the company, impact the nature of the diffusion of technology.<sup>36</sup> Finally, and perhaps most importantly for our purposes here, the component of time impacts the adoption of technology.<sup>37</sup> Individuals adopt innovation at varied rates due to their personalities and skill sets, and those individual timeframes typically aggregate into an organization's overall rate of adoption.<sup>38</sup>

Rogers conceives the rate of adoption as following a standard bell curve. A few early adopters precede a relatively large middle area of early

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* (quoting Everette M. Rogers, *Diffusion of Innovations* (4th ed. 1995)). It bears noting that although the final stage presented here presumes the ultimate adoption of the technology, this final stage may also be the point at which the technology is abandoned.

<sup>33</sup> See Straub, *supra* note 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

and late majority adopters, followed by the laggards, or late adopters.<sup>39</sup> The figure below, as provided by Roberts, represents this distribution.<sup>40</sup>



**Figure 1**

Other analyses may warrant a deeper dive into Roger’s theory, but for this article’s purpose, a cursory review of the salient features yields sufficient theoretical implications.

One could rightly argue many attorneys, especially at particularly forward-looking law firms, may have been further along the curve than other individuals at the time the pandemic hit. While the legal market traditionally trails other industries in their adoption of innovation and technology, a broad consensus settled on a slow, but steady approach toward the gradual adoption of technological advancement and innovation within the field of law.<sup>41</sup>

Notwithstanding the varied pace of individual adoption, there still existed an extraordinarily compressed timeline for *diffusion* of technology on both an organizational and industry-wide level. This pace of technological diffusion took place in many different industries during the pandemic, but it was uniquely unprecedented in the field of law.<sup>42</sup>

<sup>39</sup> *Id.*

<sup>40</sup> EVERETT M. ROGERS, *DIFFUSIONS OF INNOVATIONS*, Everett M. Rogers, Diffusions of Innovations, pg281. Figure 7-3., Free Press, (5th ed. 2003) (describing the “relationship between types of adopters classified by innovativeness and their location on the adoption curve”).

<sup>41</sup> See Moran, *supra* note 12, at 2.

<sup>42</sup> Lyle Moran, *Covid-19 Sparks Rabid Tech Adoption that has Helped Lawyers Weather Economic Downturn*, ABA JOURNAL, (Oct 13, 2020),

## V. IMMEDIATE, COMPREHENSIVE TECHNOLOGY ADOPTION

The foregoing begs the question—What is the impact of *forced, immediate, and comprehensive* diffusion of telecommuting technology within the staid legal industry at the individual, firm, and industry level?

The full answer to this question is unfolding concurrently with the writing of this article—in other words, the dust has not even settled enough to reveal the short-term and long-term implications. However, based upon the current state of the industry, as well as the predicted course of the pandemic, some meaningful claims may be set forth.

I propose that the pandemic's impact upon the legal market may ultimately produce several important positive outcomes.<sup>43</sup> In short, I argue that pandemic may yield meaningful progress in the legal industry's long-standing struggles with lagging technological adoption, poor work-life balance, and limited access to legal services. The following sections detail each of these topics in turn.

## VI. ABANDONING FEAR OF CHANGE

The current situation, though bleak on many levels, provides some hope that the legal industry's long-standing resistance to change and technological adoption may finally improve. Law firms have consistently resisted innovation. The driver of this long-standing tentativeness—be it the relative cost of implementing change, the conservative skepticism thought to be central to the lawyer's DNA, or from the top-heavy composition of late-adopters and laggards at the upper tiers of the law firm partnerships—remains open for discussion.

Yet regardless of the cause of such obstinacy, the pandemic effectively shattered all rationales for change—for the short and long-term timeframes alike. Within a matter of weeks, the pandemic forced most law

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(<https://www.abajournal.com/news/article/covid-19-sparks-rapid-tech-adoption-among-lawyers-that-has-helped-them-weather-economic-downturn>)

<sup>43</sup> Please note, I make this assertion with the full and grievous acknowledgement of the profound damages in terms of loss of life, degradation of health and welfare, and economic trauma caused by the pandemic. This article makes no attempt to make light of or understate the devastation caused by COVID. I merely hope to limit the scope of this early and brief evaluation of COVID's impact to highlight some possible positive implications that may ultimately improve the long-term practice of law.

firms to implement a system of remote working.<sup>44</sup> This remote working necessarily involved two key features: (1) the instantaneous infusion and reliance upon telecommuting technology, and (2) the immediate adoption and acceptance of working from home environments.<sup>45</sup>

Importantly, these two changes occurred unilaterally among all tiers of legal professionals within law firms, as well as among all legal service providers within the legal industry.<sup>46</sup> This egalitarian implementation forced individuals of all levels of experience, technological capability, and seniority to subscribe to the same modalities of work simultaneously regardless of their prior skepticism or biases.

As such, the legal purists who believed that the legal profession would be sullied by the implementation of technology between lawyer and client were forced to test their beliefs. The technological laggards who believed they could ride out their remaining years until retirement without the need to incorporate the technologies spreading throughout their client's industries may have likewise been forced to change.

Similar revelations occurred with respect to industry opinions regarding working at home or telecommuting. Despite significant gains in recent years, the legal profession has traditionally lagged in implementing flexible work arrangements for working from home and telecommuting.<sup>47</sup> Resistance to such work arrangements stemmed from fears of inefficiency, worries about damage to firm culture and reputation, or merely an adherence to the rationalized myth of traditionalism.<sup>48</sup>

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<sup>44</sup> See Danielle Braff, *Thanks to the COVID-19 Pandemic, Law Firms are Starting to Embrace Virtual Offices—But Will it Last?*, AM. BAR ASS'N J. (Feb. 1, 2021), <https://www.abajournal.com/magazine/article/thanks-to-the-covid-19-pandemic-law-firms-are-starting-to-embrace-virtual-officesbut-will-it-last>.

<sup>45</sup> See Moran, *supra* note 12 (detailing impact of new normal on law firms).

<sup>46</sup> *Id.*

<sup>47</sup> See Straub, *supra* note 2.

<sup>48</sup> *Id.* (citing David Jaffe, *Institutionalized Resistance to Asynchronous Learning Networks*, 2 J. OF ASYNCHRONOUS LEARNING NETWORKS 21–32 (1998); citing John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. OF SOCIOLOGY 340–63 (1977)). All three articles discuss the formation of rationalized myths that cause organizations to adhere tradition despite evidence to the contrary; which is particularly true

The economic shutdown that accompanied the early pandemic forced the adoption of work-at-home arrangements in an immediate and universal manner. As such, all such theories that cast doubt on work at home arrangements were immediately put to the test.

## VII. A NEW AND BETTER NORMAL

Few, if any, voices within the legal community predict that legal practice will fully return to the old normal. While future predictions made in the middle of a crisis must be viewed with healthy skepticism, there are significant reasons to believe that this prediction will likely hold true.

One of the leading voices in the legal industry for the past few decades, Richard Susskind, writes of the five phases necessary for the recovery of professional firms.<sup>49</sup> The first phase he describes as mobilization, which entails the initial rapid move to remote working and comports all the culture, technology, and workflow to accommodate this. Lockdown, the second phase, entails a workforce that is working from home and isolated from coworkers and senior leaders. Emergence, the third phase, entails a relaxation of restrictions and lockdowns. The fourth phase is described as a Surge<sup>50</sup> due to the expected influx of new economic activity that will result as the virus stabilizes and recedes. Finally, the fifth phase refers to a new equilibrium.

Susskind presciently points out that there will be many pivots between lock-down and emergence, and that these cycles will vary among firms, regions, and practices areas.<sup>51</sup> This repetitive cycling is not only likely to create a tenuous and fluid working lifestyle, but a longer-standing reliance upon remote working and technology to continue safely and seamlessly servicing clients.

Furthermore, Susskind flatly states that “there will not be a reversion to professional life of late 2019.”<sup>52</sup> In essence, the learning curves previously required by both client and practitioner alike will be

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within organizations in which individuals form their identities due to associations with a professional reputation. *Id.* (including referenced sources).

<sup>49</sup> See Daniel Susskind & David Vines, *The Economics of COVID-19 Pandemic: an Assessment*, 36 *Oxford Rev. of Econ. Pol’y*, S1, S1–S13 (2020).

<sup>50</sup> Importantly, this surge is not to be confused with the surge in COVID cases, which is the current situation as of this writing.

<sup>51</sup> Susskind, *supra*, note 48.

<sup>52</sup> Susskind, *supra*, note 49, at 1.

passed, and the efficiencies and cost-savings will have been demonstrated in a way that makes a pure return to the prior analog practice untenable.

What will this new normal look like? Unpacking the new normal in law will undoubtedly be the focus of industry leaders for the decade to come. At this early stage, I present three predictions that appear likely to materialize.

#### VIII. SUSTAINED COMMITMENT TO TECHNOLOGY

The legal industry will embrace a comprehensive and sustained commitment to technological utilization in the near and long-term post-COVID future. Ample evidence points to the validity of Susskind's portrayal of a flexuous workplace for lawyers, as well as their legal clients. To effectively serve clients in such an environment, law firms must remain agile and adaptable to sudden societal disruptions in the future—regardless of the cause.

As the pandemic inevitably abates, any attempts to return to pre-pandemic legal practice will seem antiquated—perhaps even quaint. The established effectiveness of technological utilization will forever taint the expectations of clientele and lawyers alike, and these expectations will seed themselves into the culture and mores of law firm practice in the future. In short, the pandemic has imprinted an indelible technological stamp upon the broader law firm culture and ethos.

Furthermore, the expenditures of time and money already dedicated to quickly inculcating an entire workforce nimble adoption of technology will inhibit future decisions that undermine them. From a strictly economic perspective, massive amounts of capital have been invested in myriad technological changes<sup>53</sup> in the past year—many of which were done so on an emergency basis without the benefit of cost-analysis or comparative bids. Especially considering the possible overpayment for such changes, law firm leaders would be wise to reap the maximum benefit possible from such sunk costs.

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<sup>53</sup> Such changes may include both the technological hardware required for all employees to fully work from home and the software and services such as online conferencing, secure cloud storage and VPN services.

## IX. WORK-LIFE BALANCE REVISITED

The legal profession struggles mightily with the issue of maintaining a work-life balance. Among the professional fields, the practice of law is particularly grueling. A billable hour system coupled with a tournament-style, up-or-out promotion structure burdens new and seasoned attorneys alike. The difficulty presented by meeting professional needs along with family demands and personal pursuits is uniformly daunting. This struggle could be the consequence of the long-standing requirement of high billable hours and the uncertainty of achieving those hour requirements. These practice characteristics typically require attorneys to spend long hours in their office and away from the family.

The raw hours spent in the office added to the time and expense of traveling to and from work ultimately affects their personal and family health.<sup>54</sup> Attorneys consistently have higher rates of divorce and substance abuse than other professions.<sup>55</sup>

A universal adoption of work-from-home by the legal industry as well as their clientele has presented an opportunity to test the viability of the modality's wider integration.<sup>56</sup> In short, the industry will answer whether attorneys can work effectively and efficiently from a remote work environment for an extended timeframe.<sup>57</sup> The data needed to provide a valid answer to this question will take additional time to collect and analyze.<sup>58</sup> However, initial feedback may cautiously be viewed as positive in this regard.

If remote work proves to be a more acceptable modality for attorneys, there is significant potential to mollify the stress on individual attorneys and mitigate the profession's demanding amount of face time. Firms may find that more flexible work arrangements will incorporate a hybrid mixture of in-office and remote work options. This may enable attorneys to spend fewer unneeded (and often, unbillable) hours commuting to and from work.

A similar benefit may accrue in terms of parental leave for parents of newborns. While firms vary widely in their approach to parental leave,

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<sup>54</sup> A factor that, admittedly, varies highly among individual attorneys, law firms, and geographic regions.

<sup>55</sup> See Barnes, *supra* note 4.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

hybrid/flex models that integrate work-from-home arrangements may improve this critical phase of reentry.<sup>59</sup> This may benefit the attorney after an extended absence by providing a smooth return to the workflow.

#### X. ENHANCED ACCESS TO LEGAL SERVICES

Another perennial issue afflicting the legal industry is the abundance of people seeking legal services and the lack of resources needed to reach them.<sup>60</sup> Whether due to prohibitive costs, geographic remoteness, or lack of education, an excessive number of communities have limited access to critical legal services.<sup>61</sup> This limitation influences not only individuals, but also communities and the broader economy and criminal justice system.<sup>62</sup>

The aforementioned inadequacy requires the legal field to promise to provide at least the *possibility* of expansion of legal services to underserved communities. A critical byproduct of many of the proposed changes in the law is the potential for lowering legal service providers' overhead. The acceptance of home working arrangements has encouraged some law firms to reconsider their need for large physical footprints for their offices.<sup>63</sup> In addition to questioning their size expectations for offices, attorneys may also begin to reassess the need for prestigious locations. This reevaluation may lead to lower fixed overhead costs for firms, and while it remains to be seen whether those cost savings will translate into lower billable rates, it at least may provide motivated

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<sup>59</sup> See Christopher Hilberath et al., *Hybrid Work is the New Remote Work*, BOS. CONSULTING GRP. (Sept. 22, 2020), <https://www.bcg.com/en-us/publications/2020/managing-remote-work-and-optimizing-hybrid-working-models>.

<sup>60</sup> See Leonard Wills, *Access to Justice: Mitigating the Justice Gap*, AM. BAR ASS'N J. (Dec. 3, 2017), <https://www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/access-to-justice-mitigating-justice-gap/>.

<sup>61</sup> See Sam Bock, *4 Barriers Blocking Access to Justice (and How to Help Break Them)*, RELATIVITY (Mar. 25, 2021), <https://www.relativity.com/blog/4-barriers-blocking-access-to-justice-and-how-to-break-them/>.

<sup>62</sup> See *id.*

<sup>63</sup> Barbara Dunn, *Reset: The Future Law Firm Workplace*, LAW PRACTICE TODAY (Apr. 15, 2021), <https://www.lawpracticetoday.org/article/reset-the-future-law-firm-workplace/>.



attorneys with additional latitude to expand their services to underserved sectors.

Beyond cost, the law firms' practice of working from home has led to the possibility of accepting more geographically diverse clients. Due to the pandemic's urgent nature, some State Bar associations, including Washington D.C. and Florida, have lessened their geographic restrictions on the practice of law.<sup>64</sup> Attorneys traditionally may only practice law in jurisdictions in which they have been admitted.<sup>65</sup> However, due to the pandemics' sudden and overwhelming effect, some states are recognizing that attorneys may ethically provide some legal services despite lacking admission in a particular state.<sup>66</sup>

Additionally, there have been some calls to revoke the Bona Fide office requirements in place within most jurisdictions.<sup>67</sup> A common restriction of practicing law within a jurisdiction is the requirement to have a bona fide physical office within the jurisdiction.<sup>68</sup> This requirement previously made sense in an analog world in which service of process and other attorney-client ethical considerations, may demand an in-person location. However, the advent of new technology facilitating remote work, virtual client interaction, and advances in virtual court and governmental filings make this requirement anachronistic. Not only is the requirement outdated, but it places an undue burden on sole practitioners and newly licensed lawyers during the pandemic attempting to make their way in an unprecedented legal market.

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<sup>64</sup> See Tim Roberts, *Working Remotely Challenges the Idea of Practicing Within a Given Jurisdiction*, BUSINESSETHICSPLEDGE.ORG (Sept. 11, 2020), <https://www.business-ethics-pledge.org/working-remotely-challenges-the-idea-of-practicing-within-a-given-jurisdiction/>.

<sup>65</sup> See Richard J. Rosensweig, *Unauthorized Practice of Law: Rule 5.5 in the Age of COVID-19 and Beyond*, AM. BAR ASS'N (Aug. 12, 2020), <https://www.americanbar.org/groups/litigation/committees/ethics-professionalism/articles/2020/unauthorized-practice-of-law-rule-55-in-the-age-of-covid-19-and-beyond/>; see *ABA Issues New Guidance for Lawyers to Navigate Model Rules While Working Remotely*, AM. BAR ASS'N (Dec. 16, 2020), <https://www.americanbar.org/news/abanews/aba-news-archives/2020/12/aba-issues-new-guidance-for-lawyers-to-navigate-model-rules-whil/>.

<sup>66</sup> See Roberts, *supra* note 64; see Melissa Heelan Stanzione, *Covid Pressures Change to Where Lawyers Can Practice*, BLOOMBERG L. (Aug. 10, 2020, 1:51 AM), <https://news.bloomberglaw.com/us-law-week/pandemic-pressures-restriction-on-where-lawyers-can-practice>.

<sup>67</sup> See Rosensweig, *supra* note 65.

<sup>68</sup> *Id.*

If the winds of change prevail regarding these expansions of practice, attorneys may find themselves better able to serve individuals in underserved communities. They may also be able to reach clients in geographically challenging regions, providing a valuable service the legal profession has long struggled to correct.

## XI. CONCLUSION

At this stage, in a fluid, ever-changing emergency such as this pandemic, the conclusions drawn in the foregoing may warrant healthy skepticism. After all, I am proposing that this once-in-a-generation worldwide disruption will leave the industry least prepared for it in a much-improved position. Many, including myself, made such predictions after the Great Recession. The resulting change proved to be muted at best and certainly not the widespread evolution some predicted.

However, this pandemic is different from prior economic shocks in a variety of ways. Moreover, there is substantial reason to believe that the factors that make the current situation unique will lead to long-term infusion of new behaviors, practices, and technologies moving forward. Those practices and technologies, if implemented to their full effect, may ultimately prove worthy of contributing to an improvement in work-life balance, as well as a greater expansion of legal services to those in need. Perhaps only an unprecedented shock of global proportion can shake a firmly entrenched industry free from its moorings. *Perhaps* only a pandemic such as this could force an industry to face the systemic issues that perpetually plague its members. *And perhaps*, this once-in-a-lifetime event, although not remotely what the legal industry desired, serves as the long-overdue wake-up call that the industry has so desperately needed.

In short, perhaps this pandemic serves as a panacea for wounds that individual attorneys and the profession have carried with them for so long.