

**Corporate Legal Services Market in California: Report for the State Bar of California**  
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**October 2019**

**I. Introduction**

Starting in 2017, the California State Bar undertook to study the use of technology and the internet in delivering legal services to Californians and to assess whether regulatory changes were necessary to expand access to justice through the use of technology.<sup>2</sup> In July 2018, Professor William Henderson provided a comprehensive report to the Bar's Board of Trustees outlining the landscape of legal service delivery nationally and in California.<sup>3</sup> The report clarified that while technology is the medium through which legal service engagement, communication, and delivery increasingly occurs, the changes to the legal economy in California reflect significant changes to the models through which legal services are delivered, particularly in what Henderson labeled the Organizational Client Sector.

In the Organizational Client Sector, or corporate legal market, lagging productivity by legal service providers (law firms and in-house legal departments) and a corresponding drive for increased efficiency and decreased cost from clients have led to a growing disaggregation of the corporate legal services market. Law firms are no longer the first or only source for legal services; rather, a new legal supply chain has emerged, facilitated by the "functional exception" to Rules 5.4 and 5.5 created by Rule 5.3 and associated bar opinions.<sup>4</sup> As Professor Henderson outlined, over the past decade, corporations have sought increased productivity and efficiency through "in-sourcing" (growing the internal legal department), triaging work across

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<sup>2</sup> Memorandum from Randall Difuntorum to the Members and Board of Trustees of the California State Bar, "State Bar Study of Online Delivery of Legal Services - Discussion of Preliminary Landscape Analysis," at 1-2 (July 19, 2018), *available at* <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf>.

<sup>3</sup> WILLIAM D. HENDERSON, LEGAL MARKET LANDSCAPE REPORT: COMMISSIONED BY THE STATE BAR OF CALIFORNIA, State Bar of California (July 2018), *available at* <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022382.pdf> [hereinafter HENDERSON REPORT].

<sup>4</sup> CA. RULES OF PROF'L CONDUCT R. 5.3 (outlining lawyers' duties regarding supervision of non-lawyer assistants); A.B.A. Formal Opinion 08-451, Lawyer Obligations When Outsourcing Legal and Non-Legal Support Services (Aug. 8, 2008), *available at* <https://www.americanbar.org/content/dam/aba/migrated/ethics2020/pdfs/ethicsopinion08451.authcheckdam.pdf>. This exception to non-lawyer ownership and unauthorized practice of law hinges, of course, on the concept of supervision. The rules permit non-lawyers to perform certain tasks in assisting a lawyer to render her professional services and impose upon the lawyer the duty of giving appropriate instructions and supervision. As the ABA Formal Opinion 08-451 makes clear, the ultimate responsibility for the legal work performed is the lawyer's. The "functional exception" is therefore understood to be a "supervision exception." Whether appropriate supervision occurs in any individual case is a question of fact.

different outside legal service providers (firms, alternative legal service providers (ALSPs), legal staffing agencies and online marketplaces, and legal technology).<sup>5</sup> In the corporate sector, legal work is being done in different ways, by different people, and with new tools.<sup>6</sup> In many cases, corporate legal work is being provided by entities beyond the scope of traditional legal regulation.

This report is a follow-up to Professor Henderson's landscape report and seeks to describe the growing "new" corporate legal supply chain: what does it look like? Who are the people and entities offering services? What services and products are being offered? What business and service models are being developed? Who are the purchasers and why are they buying? Based on a media and literature review and a number of interviews with market participants, this report provides a description of the way legal work is being done today in California's corporate legal market.<sup>7</sup>

As Professor Henderson's report indicated, a very different picture is emerging in the legal market serving individual clients (the "People Law" sector). This market is one with some similar underlying drivers (lots of law and legal work, high cost, and low productivity) but with very different responses (limited growth, limited reach by providing only legal information or perhaps referrals, more enforcement). This will be addressed in a following report but it should be noted that the dynamic market described in this report is not paralleled in the market for individual consumers (much less for the poorest Californians).

## **II. In-House Legal Departments**

Any discussion of the changing market for corporate legal services, particularly in California, should start with in-house legal departments. Functioning both as clients and providers, they are both the driver and leading indicator of the changes in the corporate market. As Professor Henderson's report indicated, over the past 10-15 years, in-house legal departments, under increasing pressure to increase productivity and efficiency, have changed the way corporate legal work is performed. The two most salient trends are in-sourcing of legal work (taking more legal functions inside the corporation, as opposed to sending the work to outside law firms) and

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<sup>5</sup> HENDERSON REPORT, *supra* note 3. See also Larry Ribstein, *Delawyerizing the Corporation*, 2012 Wis. L. Rev. 305, 306 (2012) ("The evolution of law-trained corporate employees also could profoundly affect the legal profession. Corporations' substantial resources could increase demand for alternatives to high-priced customized legal services and erode regulatory barriers to new legal information products. This, in turn, could reduce the price of law for individual clients.")

<sup>6</sup> Term "legal work" elides (for now) the argument over whether or not any particular type of legal work is the practice of law. Included in the term legal work is work that is legal support work, work that was once considered the practice of law (at least in the fact that young associates practiced at this type of work in the first few years as a lawyer), work that is closely tied to the practice of law (compliance for example), and work that is the practice of law.

<sup>7</sup> This report is not an empirical study nor does it seek to make any normative or policy arguments around the questions of regulatory reform. The report will follow the taxonomy of Professor Henderson's report, assessing in-house legal departments, legal technology companies, alternative legal service providers, and lawyers working in the gig economy. There are many overlaps between these categories. Further, this report will not devote a great deal of time to law firms, in the traditional sense or in the ways they are responding to these changes. Many law firms are responding through the creation of technologies, development of venture capital funds and incubators, and other innovations.

disaggregation of legal work (separating legal functions and using different sources (technology and people) to perform those different aspects of the work.

In-sourcing of corporate legal work essentially means that legal departments have grown their internal staff and perform more of the work in-house, rather than using outside law firms or other providers.<sup>8</sup> Some of the largest California companies have legal departments of over 1000 people (lawyers, paralegals, engineers, process managers, assistants, etc.) performing work across practice areas (or functions as they say in-house) such as employment, mergers and acquisitions, IP, contracts, and litigation. A recent study by Thomson Reuters found that the proportion of the corporate legal budget allocated internally has increased from 37 percent in 2013 to 43 percent in 2017.<sup>9</sup> One in-house legal operations leader at a large technology company described the shift this way:

“I started about a decade ago. Everything was done by attorneys and the company was growing so quickly. The only source we had was outside counsel and the only question was which firm. Outside counsel spend was growing far too fast and we started to get concerned. The CFO started coming to legal and saying every other group has controls over their spend but you guys just tell us you have no control and no budget and you just spend money. So we had to start asking, ‘Are we getting good value?’ There was a big push to hire people in-house. We started growing really quickly internally. We grew 5x over the past 10 years, mainly through hiring internal resources and growing the attorney staff.”<sup>10</sup>

In-sourcing attorneys, of course, has its cost-saving limits. The continued search for increased productivity and efficiency by general counsel led to both the creation and expansion of the role of legal operations and the development of outside alternatives for sourcing legal work.<sup>11</sup> Both of these particular developments reflect the disaggregation of corporate legal work.

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<sup>8</sup> As Professor David Wilkins and Maria José Esteban Ferrer note, in-sourcing of legal work as an alternative to reliance on outside firms started in the 1980s when large corporations started hiring general counsel to oversee and manage their legal risk and needs. David Wilkins and Maria José Esteban Ferrer, *Taking the “Alternative” out of Alternative Legal Service Providers*, The Practice, July/Aug. 2019, at <https://thepractice.law.harvard.edu/article/taking-the-alternative-out-of-alternative-legal-service-providers/> [hereinafter Wilkins and Ferrer].

<sup>9</sup> THOMSON REUTERS, 2018 STATE OF CORPORATE LAW DEPARTMENTS REPORT, 5 (2018), at <http://www.legalexecutiveinstitute.com/wp-content/uploads/2018/02/2018-State-of-Corporate-Law-Departments-Report.pdf>.

<sup>10</sup> Telephone Interview with Anonymous (Aug. 19, 2019).

<sup>11</sup> See Caroline Speizio, *General Counsel Share Their Legal Ops Stories, Implementation Tips at CLOC 2019*, Law.com (May 19, 2019), at <https://www.law.com/corpcounsel/2019/05/15/general-counsel-share-their-legal-ops-stories-implementation-tips-at-cloc-2019/>. See also Wilkins and Ferrer, *supra* note 8.

Legal operations is, essentially, the discipline of structuring legal work as a series of processes and determining the optimal resources to complete those processes in the most cost-effective and efficient manner.<sup>12</sup> One legal operations leader described her role as follows,

It is essentially like a Chief Operating Officer (“COO”) role for the legal department. I oversee all the operations of the department: internal and external (all money spent outside the department) financial management, manage all systems and tools that we use inside, professional development and training, internal business operations (process improvement (internal consulting) and strategic program management (these are big strategic programs led from legal (such as GDPR, copyright changes, any programs with impacts on products); project management across whole company but led from legal.<sup>13</sup>

Another leader described the role as, “My team is responsible for everything that is not legal advice or legal advice related. We manage resourcing, technology, processes, and operations of the entire department: budgeting, head count, org design, project management, training, career development, and spend on outside counsel.”

For most legal departments the legal operations focus on process means taking apart the large mass of legal work and separating it into distinct buckets, each with a potentially different provider. One legal operations professional noted, “Legal practice is very little of what in-house lawyers do on a daily basis (e.g. negotiation of a sales contract doesn’t require a law license). Over the past 10 years, I’ve seen a concerted effort to get very discrete about assigning the right level of service to the right task. Take a task and see which things can be done by technology or by the right person (lawyer or not) and which tasks you can stop doing. All with an eye toward enabling the business.”<sup>14</sup> Another stated, “I call this ‘right-sourcing.’ How do we match the right person, machine, or company with the right work. We can’t have our attorneys doing low-value work.”<sup>15</sup>

Legal operations professionals look at “people, processes, and technology” when considering solutions for their legal departments and business clients.<sup>16</sup> These categories are useful for

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<sup>12</sup> Many legal departments do not have a legal operations function. The role is much more common in larger legal departments and, seemingly, in California-based technology companies. However, the impact of the business discipline of operations on the legal department has been felt across the corporate legal market.

<sup>13</sup> Interview with Anonymous (Aug. 19, 2019).

<sup>14</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>15</sup> Interview with Anonymous (Aug. 19, 2019). See also The Practice, *Everyone’s a Law Company* (July/Aug. 2019), at <https://thepractice.law.harvard.edu/article/everyones-a-law-company/> (“As the legal ops function has grown in the last 10-15 years, there’s this drive to not only make legal departments more efficient but to also be more thoughtful and value-minded about evaluating each problem and then assembling the right mixture of people for each, as defined by the needs of the issue and the in-house team.”).

<sup>16</sup> Interview with Anonymous (Sept. 20, 2019) (“It’s a people, process, tech game. We do solutions on all three.”) CLOC (the Corporate Legal Operations Consortium) outlines 12 core competencies for legal operations, including financial management, vendor management, technology and process support, service delivery and alternative support models, data analytics, and knowledge management. See What

thinking about what, how, and by whom legal work is getting done inside corporations today. Attorneys remain the providers of legal advice and strategy to their business clients. As one legal operations leader said:

Our attorneys are partnering with our business groups and advising on risk. They are making sure our business partners are informed of what the risks are and able to make the best decisions that work for the business and from a legal perspective. So, for example, the corporate legal teams are working on corporate filings, M&A advice, legal management (if we acquire a company do we need to maintain that entity), employment (advising from a legal perspective on employment issues), go to market legal team (sales, deals, what legal terms we can change, complex negotiations).<sup>17</sup>

Another explained, “Lawyers are going to do lawyering (e.g., negotiating, mitigating risk in designing deals for the company) the best. Non-lawyers, especially business people with tech backgrounds, are going to do business and tech the best. The lawyers should be focused on high-end legal risk, deals that are unprecedented for the company. Give me everything else and I will automate it and get it done.”<sup>18</sup> Jamal Stockton, head of Legal Innovation at Fidelity Investments stated, “The company we go to will depend upon the service that we are looking for. If we need specialized legal advice, we will always go to a law firm. But if we’re looking to do any sort of repeatable and predictable work that involves the collection and analysis of data or black-letter-of-the-law legal work, we now have a plethora of other options to choose from.”<sup>19</sup>

So what are the legal solutions developing in-house that do not involve company lawyers?<sup>20</sup> Dis-aggregation started with eDiscovery: “[A] rote task that required comparatively little legal expertise but needed to be done frequently.”<sup>21</sup> Those three characteristics -- routine, frequent, and relatively simple -- mark much of the legal work that is siphoned off to other providers (contract attorneys, law companies, and technology). This work continues to include eDiscovery, as well as contract negotiation and management, diligence, some IP tracking and management, and compliance.<sup>22</sup> Legal operations leaders interviewed described the following specific examples include:<sup>23</sup>

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is Legal Operations?, CLOC Website, <https://cloc.org/what-is-legal-operations/> (last visited Sept. 24, 2019).

<sup>17</sup> Interview with Anonymous (Sept. 23, 2019).

<sup>18</sup> Interview with Anonymous (Sept. 20, 2019).

<sup>19</sup> The Practice, *supra* note 15.

<sup>20</sup> A significant part of this work is the business of running the legal department: budgets, invoicing, case management, etc. This work is, to the author’s mind, in a separate category to the work that aligns with substantive legal work. Much of this work is managed through technology platforms.

<sup>21</sup> The Practice, *supra* note 15.

<sup>22</sup> Compliance is a complicated area and one that is handled differently in each company. In some companies, compliance is within the legal department and managed by lawyers. In others, it is a separate function, staffed by both lawyers and non-lawyers. As one law department leader said, “I am struggling with this because at this point everything is compliance. But each company approaches it differently. Our compliance used to be within legal but then was pulled out to global affairs.” Interview with Anonymous (Aug. 19, 2019). This report will not address the question of compliance but notes that

- We started using ALSPs for contract management, specifically intake and management of Statements of Work (“SOWs”). This is work that is high volume, repeat, and not that interesting. So now we have outside teams reviewing the SOWs.<sup>24</sup>
- We had a giant contract backlog, say 30,000 contracts that needed 20 metadata fields pulled out for rights extraction. All of the deals and contracts for the company, everything we make money out of, gets pulled into enterprise systems that keep, maintain, and extract data. The team did not have enough employees to cover it and needed people with the right skill set to extract and interpret the rights across the contracts. This work does not need to be done by lawyers. Lawyers don’t want to do data entry and extraction. This is done by specialized rights people.<sup>25</sup>
- Our goal is to have every contract on our paper negotiated by our non-lawyer contract negotiation experts. We want our internal lawyers focused on third-party paper (where the customer insists we use their contracts). It’s pretty easy to see how that can be standardized - if you are using your own paper and you are doing repeat transactions, you can easily standardize and routinize the approach. We have entire classes of agreements (data protection agreements, NDAs, sales contracts to our commercial customer segment) that are negotiated and executed by this specialized non-lawyer team. We also aspire to have as many of our contracts originate through document assembly tools as possible - any time we are doing enough agreements in a certain area, we look to document assembly tools to facilitate that.<sup>26</sup>
- We are in the early phases of really building technology tools and platforms to replace more lawyer work. This is hard stuff. But one successful example is in patent categorization. We have a lot of patents and we don’t have a good system for knowing what we have. Often we are presented with a large portfolio of patents and in the past we had to throw a big group of attorneys at them to analyze, assess, and categorize. It was very manual and very attorney heavy. But now we have trained a machine to do this. It knows

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many of the issues around legal work apply to compliance, including the fundamental one of whether compliance is legal work or not. Most compliance departments, although often led by lawyers, are staffed by compliance professionals, who may or may not be lawyers, and compliance is a large and growing market for technological solutions. Palantir, the California company known for big data analytics, offers a variety of compliance focused services for corporate clients. See Solutions, [palantir.com](https://www.palantir.com/solutions/), <https://www.palantir.com/solutions/> (last visited Sept. 25, 2019). SixFifty, a subsidiary of the California firm Wilson, Sonsini, Goodrich & Rosati, LLP, offers a tech platform to assist companies with compliance with the implementation of the California Consumer Privacy Act. CCPA Solutions, SixFifty.com, <https://www.sixfifty.com/solutions/ccpa/> (last visited Sept. 25, 2019).

<sup>23</sup> These examples are in addition to eDiscovery services (document management, review, production). Some companies build internal eDiscovery competencies, using tech and flexible staffing. Many outsource eDiscovery either via outside law firms (who then contract with vendors to staff reviews) or ALSPs.

<sup>24</sup> Interview with Anonymous (Aug. 19, 2019).

<sup>25</sup> Interview with Anonymous (Sept. 20, 2019).

<sup>26</sup> Interview with Anonymous (Sept. 4, 2019).

- what is in our portfolio and we can just run a new portfolio through the tool to alert us to the most relevant patents. It eliminates this boring work for attorneys. And we built this ourselves.<sup>27</sup>
- We acquire companies whose contracts are vastly different from our contracts. We get a dump of unstructured data and we face the daunting task of determining what is in those agreements and what we are going to do with them (e.g. for all the agreements where the sales channels of the new company overlap with our, can those overlapping contracts can be terminated). If you use an AI tool that can do the task of finding the agreements and where in the agreement the relevant language is, that enables the lawyer to go in and assess the language to determine whether assignment or termination is doable. But, at the stage, the minute you try to use the tool to answer the question of whether we should assign the agreement or not, then people are less trusting of the machines. These tools are going to start with access to information not judgement.<sup>28</sup>

As evidenced by these examples, the legal work moving away from in-house attorneys is, at least to their minds, work they should not be doing (because they are overqualified and overpaid for it) and work they do not want to be doing (because it is boring). That does not mean that this work could not be categorized as the practice of law.<sup>29</sup> It is work that lawyers used to do, at the very least. But the argument over whether this kind of work is the practice of law is relatively irrelevant in the corporate sector. Legal departments have been able to achieve this creativity and flexibility around legal work, despite the prohibition on the unauthorized practice of law and the corporate practice of law, because of the carve out of Rule 5.3 and bar ethics opinions approving the outsourcing of legal work.<sup>30</sup> This “functional exception” has opened up the corporate legal market and allowed “Organizational Clients” to shift to an understanding of legal work that is focused on the service or solution to be provided to the client. As we have seen, in the corporate sector legal work is no longer something that a lawyer does but rather a service or solution provided to a client by some combination of people, process, and technology. This shift allows the “right-sourcing” described. It allows for increased efficiency. It allows for measurement of the quality of services and solutions. And it allows for increased consumer choice.

### **III. Legal tech companies**

<sup>27</sup> Interview with Anonymous (Aug. 19, 2019).

<sup>28</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>29</sup> See Cal. Bus. & Prof. Code § 6125 (2019) (states that no person may practice law in California without an active license from the state bar and that no lawyer may assist any person in the unauthorized practice of law). See also *Birbrower, Montalbano, Condon & Frank v. Superior Ct.*, 17 Cal.4th 119, 128 (1998) (finding that the practice of the law is “doing and performing services in a court of justice in any matter depending therein throughout its various stages and in conformity with the adopted rules of procedure.”) *Birbrower* also included in the scope of the practice of law legal advice, legal instrument and contract preparation, whether rendered as part of litigation or not. *Id.*

<sup>30</sup> Henderson Report, *supra* note 3, at 25.

This report defines “legal technology companies” as those entities primarily offering a technology solution (service or product) for legal work. Some solutions in this space are not new: eDiscovery programs using software to manage litigation discovery have been around for at least 20 years. In recent years however, as artificial intelligence (“AI”) and natural language processing (“NLP”) capabilities have increased, legal technology has matured as an industry.<sup>31</sup> Investments in legal tech in 2018 totaled \$1.7 billion, up dramatically from \$233 million in 2017.<sup>32</sup>

Much of the growth of the sector has been driven by corporate legal demand for specific legal services to meet their needs.<sup>33</sup> Across the legal tech sector, technology is performing an increasing amount of legal work previously done by people (both lawyers and non-lawyers).<sup>34</sup> That said, the capability of technology (AI and NLP specifically) for legal work is likely more limited than much of the commentary would indicate.<sup>35</sup> At least at this point, much of the legal

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<sup>31</sup> Artificial intelligence is a broad and overused term. In this report, it is used to identify technology solutions that leverage machine learning: the approach in which a software program is fed many examples of a particular task and through that process learns to do the task itself. In machine learning, the program “improves its performance at a task over time.” See Ryan Calo, *Artificial Intelligence Policy: A Primer and a Roadmap*, 51 U.C. Davis L. Rev. 399, 405 (2017). In the ediscovery space, the use of AI is termed “predictive coding,” which will be explained in detail below. Natural Language Processing (“NLP”) is, essentially, the branch of AI that seeks to enable computer programs to understand human language. See Peng Lai “Perry” Li, *Natural Language Processing*, 1 Geo. L. Tech Rev. 98, 99 (2016) (“Computers operate on the foundation of if/then logic statements, whereas natural human language systems do not; NLP endeavors to bridge this divide by enabling a computer to analyze what a user *said* (input speech recognition) and process what the user *meant*.”)

<sup>32</sup> Sam Skolnik, *Silicon Valley Execs May Be Drawn to Legal Tech as Revenues Rise*, Bloomberg Law (July 2, 2019). The dramatic increase was due in part to the \$500 million investment in Legalzoom which valued the company at \$2 billion. See *Legalzoom Announces \$500 Million Investment, Among Largest in Legal Tech History*, LegalTech News (July 21, 2018), at <https://www.legalzoom.com/press/press-mentions/legalzoom-announces-500-million-investment-among-largest-in-legal-tech-history>. Law firms have involved themselves here in a couple of interesting ways: as venture capital funders and as incubators. See Press Release, Orrick, Herrington & Sutcliffe LLP, Orrick Announces New Corporate Venture Fund to Advance Legal Tech Innovation (Nov. 15, 2018), available at <https://www.orrick.com/en/News/2018/11/Orrick-Announces-New-Corporate-Venture-Fund-to-Advance-Legal-Tech-Innovation>; Press Release, Dentons, Dentons Launches NextLaw Labs and Creates Legal Business Accelerator (May 19, 2015), available at <https://www.dentons.com/en/whats-different-about-dentons/connecting-you-to-talented-lawyers-around-the-globe/news/2015/may/dentons-launches-nextlaw-labs-creates-legal-business-accelerator>.

<sup>33</sup> The two major exceptions to this are Legalzoom and RocketLawyer.

<sup>34</sup> Daniel W. Linna, Jr., *What We Know and Need to Know About Legal Startups*, 67 S.C.L. Rev. 389, 400 (2016) (citing Frederic S. Ury & Jordan Furlong, *What the Future Legal Market Means for Lawyers and Bar Associations*, 37(6) Bar Leader (July-Aug. 2013), [http://www.americanbar.org/publications/bar\\_leader/2012\\_13/july\\_august/what\\_future\\_legal\\_market\\_means\\_lawyers\\_bar\\_associations.html](http://www.americanbar.org/publications/bar_leader/2012_13/july_august/what_future_legal_market_means_lawyers_bar_associations.html))).

<sup>35</sup> A 2017 study by McKinsey found that 23 percent of what lawyers do could be automated with currently available technologies. That compared to 50 percent of all the activities people are currently paid to do in the world’s workforce. See Steve Lohr, *AI is Doing Legal Work. But it Won’t Replace Lawyers, Yet*, N.Y. Times (Mar. 19, 2017); Michael Chui, James Manyika, and Mehdi Miremadi, *Four Fundamentals of Workplace Automation*, McKinsey Digital (Nov. 2015), at <https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/four-fundamentals-of-workplace-automation>.



work amenable to technological solutions is, again, routine, frequent, and relatively simple. As Dr. Khalid Al-Kofahi, head of AI for Thomson Reuters stated:

I don't believe that AI or automation will replace jobs in their entirety, at least not any time soon. I expect AI to have a much bigger impact at the task level. This includes both task automation as well as task augmentation, where knowledge worker and machine interact and collaborate on a specific task. And as machines learn from human interactions, the balance between what is a human task vs machine-task will continue to shift in favor of the machine, thus freeing knowledge workers to focus on more meaningful tasks.<sup>36</sup>

However, even limited automation can have a significant impact on the larger scope of work at issue. A McKinsey report on workplace automation states it well: "Very few occupations will be automated in their entirety in the near or medium term. Rather, certain *activities* are more likely to be automated, requiring entire business processes to be transformed, and jobs performed by people to be redefined, much like the bank teller's job was redefined with the advent of ATMs."<sup>37</sup>

Another important characteristic of the legal tech companies is their organization as corporate entities with the ability to take on venture capital funding in the amounts necessary to recruit and retain highly qualified computer scientists and engineers (including incentivizing through equity) and to build highly capital intensive software. Most of the recent rapid growth of the legal tech sector has been in the corporate legal market, developing and selling technology to lawyers, law firms, and in-house counsel. The "functional exception" to Rule 5.4 and UPL restrictions also has worked here to allow what is accurately described as a vibrant legal tech market for corporate clients.

This section will describe how technology is replacing or assisting people in completing legal work across the main categories of corporate-focused legal tech: eDiscovery, legal research, analytics, contract creation, review, and management, and legal practice management.<sup>38</sup> In each category, the report will identify leading entities in the category to provide concrete examples of the services provided.

## **i. Legal Research**

Not surprisingly, legal research has proven to be a significant market for growth of legal technology solutions. Law has always required systemic solutions to organizing and categorizing large amounts of information (case law, statutes, legislative history, secondary sources, etc.) to be used by lawyers in the practice of law. The movement of those systems from books to online databases was, it now seems, inevitable. The function remains the same.

<sup>36</sup> *Executive Interview: Khalid Al-Kofahi, Head of AI at Thomson Reuters*, AITrends (Aug. 15, 2019), at <https://www.aitrends.com/executive-interview/executive-interview-khalid-a-al-kofahi-head-of-ai-at-thomson-reuters/>.

<sup>37</sup> Michael Chui, et al., *supra* note 35.

<sup>38</sup> There is overlap across these categories but because this report is focused on legal work, it is helpful to use categories of work as the framework for discussion.

Technology-based legal research tools help lawyers provide legal service by providing them with relevant and up-to-date information.

LexisNexis and Westlaw were the among the first two companies to use computers to develop legal research databases and those companies, now enormous global information companies, continue to dominate the market. Both have focused on using AI and NLP to create better research tools for their lawyer clients and both companies appear to have an expansive vision for their future reach. Indeed, it is perhaps no longer accurate to include Lexis and Westlaw in the pure legal research category. For example, in addition to Westlaw's legal research search engines, the platform also offers applications to "help professionals author documents, analyze their own as well as other documents, perform large scale document review tasks, perform risk mining tasks and so on."<sup>39</sup> Both companies have also used acquisitions of legal tech startups, particularly in the legal analytics space, to shore up their market strength in emerging areas.<sup>40</sup> Bloomberg Law is also a significant player in the legal research area, with a particular strength in business research. Wolters Kluwer's research platform is focused on taxation and regulation.<sup>41</sup>

The legal tech startups trying to disrupt Lexis and Westlaw generally use AI and NLP, as well as design-thinking and visualization, to create research tools and platforms that, they argue, are smarter, more responsive, and more accessible to lawyers' needs. Companies seeking to disrupt Lexis and Westlaw's dominance in legal research include Ross Intelligence, Casetext, Fastcase, and Judicata. Some examples of new approaches or tools include:

- Casetext CARA: An AI-based tool that allows the user to upload a brief, memo, or complaint and then identifies relevant case law (similar facts or issues, jurisdiction, motion) and similar briefs, motions, or articles.<sup>42</sup>
- Ross: Allows lawyers to query the database using "natural" legal language. The system then asks the lawyer questions to help refine the search. The system also allows the lawyer to refine by procedural posture and particularly relevant facts. The system can also write an instantaneous case summary, specific to the queried question of law, facts, or posture. Ross also has a legal document analyzer which can review an uploaded document to identify cited cases, whether they are still good law, and find cases with similar language to the uploaded document.<sup>43</sup>

<sup>39</sup> *Executive Interview: Khalid Al-Kofahi*, *supra* note 36.

<sup>40</sup> See *infra* Section III(ii). In summer 2019, Lexis expanded into the contract analytics space with the acquisition of Knowable, a startup spun off from Axiom in February 2019. See Zach Warren, *Ten Deals that Made this the Summer of Legal Tech M&A*, Law.com (Sept. 3, 2019), at <https://www.law.com/legaltechnews/2019/09/03/10-deals-that-made-this-the-summer-of-legal-tech-ma/>.

<sup>41</sup> Rhys Dipshan, *Legal Research Tools are Changing Law Practices - To a Point*, (Aug. 22, 2019), at <https://www.law.com/legaltechnews/2019/08/22/legal-research-tools-are-changing-law-practices-to-a-point/>.

<sup>42</sup> See *Product*, Casetext.com, <https://casetext.com/product> (last visited Sept. 24, 2019).

<sup>43</sup> See *Features*, RossIntelligence.com, <https://rossintelligence.com/features.html> (last visited Sept. 24, 2019).

Another area of increasing focus and competition for legal research companies is in legal analytics.<sup>44</sup>

## ii. Legal Analytics

Legal analytics software uses AI and machine learning to analyze massive amounts of raw data, draw out insights, and make predictions. The raw data at issue is, for the most part, contained in case documents, docket entries, filings, and other public material associated with litigation. The software aggregates and analyzes the data to “provide previously unknowable insights into the behavior of the individuals (judges and lawyers), organizations (parties, courts, law firms), and the subjects of lawsuits (such as patents) that populate the litigation ecosystem.”<sup>45</sup> In some ways, legal analytics tools do exactly what lawyers have done for centuries: make predictions to inform strategy based on analysis of past actions (by a judge, an opponent, a potential juror). But in another view, legal analytics does what no lawyer has ever been able to do: inform strategy based on enormous amounts of real data evidencing past actions.<sup>46</sup>

Perhaps the best way to understand legal analytics is through the story of one of the first companies so defined: Lex Machina. Founded out of Stanford’s Law School and Computer Science department in 2007, the company started as a public interest project focused on finding insights into intellectual property litigation through compiling a massive database of information on cases, attorneys, judges, law firms, and parties.<sup>47</sup> The project was spun out from Stanford to become a startup focused on legal analytics for law firms and corporate entities.

Lex Machina’s website includes several “case studies” on how lawyers use the product. Jim Yoon, an IP partner with Wilson Sonsini in Palo Alto, describes how when a lawsuit is filed, typically immediately preceding an IPO, he uses the platform to analyze “the timing, damages, resolutions, and findings for the opposing counsel, the parties, and the judge involved. He reviews their litigation history and assesses the timing for the case.”<sup>48</sup> Lex Machina’s white paper on using analytics in contract litigation describes a hypothetical general counsel considering filing a contract dispute case in the Central District of California. Through reviewing the data on the 10,000 such cases (breach of contract or business tort), the general counsel can

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<sup>44</sup> There is a very thin and increasingly blurred line between legal research companies and legal analytics companies. The author has chosen to maintain separate categories to facilitate understanding of the functions of each category.

<sup>45</sup> Owen Byrd, *Legal Analytics vs. Legal Research: What’s the Difference?*, Law Technology Today (Jun. 12, 2017), at <https://www.lawtechnologytoday.org/2017/06/legal-analytics-vs-legal-research/>.

<sup>46</sup> There are, of course, limits to the capacity of legal analytics. One of the most significant challenges is presented by form and quality of a major source of input data for federal litigation: PACER. See Josh Becker, *Legal Analytics Tools are Not Created Equal*, Law Technology Today (Dec. 4, 2018), at <https://www.lawtechnologytoday.org/2018/12/legal-analytics-tools-are-not-created-equal/>.

<sup>47</sup> *The Lex Machina Story: From Startup to LexisNexis*, Artificial Lawyer (Mar. 21, 2017), at <https://www.artificiallawyer.com/2017/03/21/the-lex-machina-story-from-start-up-to-lexisnexis/>. See also How It Works, Lex Machina Website, <https://lexmachina.com/what-we-do/how-it-works/> (last visited Sept. 19, 2019).

<sup>48</sup> Case Study, *Wilson Sonsini Goodrich & Rosati Lands Clients with Legal Analytics*, LexisNexis Website, <https://lexmachina.com/wp-content/uploads/2018/02/WSRG-casestudy.pdf> (last visited Sept. 19, 2019).

assess average time of litigation or to certain motions (such as summary judgement), the experience and strategy of opposing counsel, and the range of potential damages.<sup>49</sup>

Lex Machina was purchased by LexisNexis in 2015 and now offers analytics tools in areas such as environmental litigation, antitrust litigation, Delaware Chancery Court, contract litigation, and ERISA litigation.<sup>50</sup> LexisNexis also purchased another Stanford-founded analytics startup Ravel Law.<sup>51</sup> Using the software developed by Ravel, Lexis offers a tool called Context which analyzes a judge's opinions to identify the language and arguments the judge finds persuasive.<sup>52</sup>

The company offers its services for free to academics and students engaged in public interest research or work. The company states that this service reflects its commitment to "bring openness and transparency to the law."<sup>53</sup> The company does not offer its services to the public or to self-represented litigants.

There are many other analytics companies offering various angles and insights to lawyers derived from court docket data. Westlaw's Edge platform includes analytics on judges, courts, attorneys, and firms and covering more data and practice areas than any other product.<sup>54</sup> Bloomberg Law also offers analytics on health care fraud, labor and employment, and SEC administrative judges.<sup>55</sup> Startups like Fastcase, Gavelytics, and Premonition all offer various options.<sup>56</sup>

### iii. EDiscovery

As discussed above, eDiscovery has been the leading indicator for the impact of technology on legal functions and processes, and for the growth of the legal technology space. As business communications and processes increasingly moved online and increased in volume (and as the cost of data storage decreased), the time required to manage discovery dramatically increased.

Early eDiscovery programs simply provided storage, search, and categorization capabilities for the massive amounts of data collected during litigation discovery. Document review was performed by young associates using key search words to find relevant documents and then

<sup>49</sup> White Paper, Lex Machina, *Contracts Litigation Analytics for In-House Professionals*, (undated), available at [http://pages.lexmachina.com/Contracts-Use-Case\\_LP-Use-Case.html](http://pages.lexmachina.com/Contracts-Use-Case_LP-Use-Case.html).

<sup>50</sup> Press Release, Lex Machina, LexisNexis Acquires Lex Machina, (Nov. 13, 2015), <https://lexmachina.com/media/press/lexisnexis-acquires-lex-machina/>. See also Lex Machina Website, Practice Areas, <https://lexmachina.com/practice-areas/> (last visited Sept. 18, 2019).

<sup>51</sup> Connie Loizos, *Venture Backed Ravel Law Sells to LexisNexis*, TechCrunch (Jun. 10, 2017), at <https://techcrunch.com/2017/06/10/venture-backed-ravel-law-sells-to-lexisnexis/>.

<sup>52</sup> Robert Ambrogi, *This Tech Can Turn the Tables in Litigation*, Above The Law (Dec. 3, 2018), at <https://abovethelaw.com/2018/12/this-tech-can-turn-the-tables-in-litigation/> ("Specifically, Context gives you an overview of how a judge has ruled in the past on your type of motion. It covers 100 different motion types. It also tells you the judges, cases and text the judge most commonly relies on in making those rulings.")

<sup>53</sup> Public Interest, LexMachina.com, <https://lexmachina.com/public-interest/> (last visited Sept. 19, 2019).

<sup>54</sup> Robert Ambrogi, *supra* note 52.

<sup>55</sup> *Id.*

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

review and tag those documents according to the parameters of the discovery requests. Predictive coding (the term of art for the use of machine learning in eDiscovery) enables software to perform parts of these tasks. In an approach using predictive coding, an attorney reviews a “seed set” of approximately 2000 documents and codes those documents according to the discovery parameters (non-responsive, responsive, a/c privilege, hot, etc.).<sup>57</sup> The seed set is used to teach the software how to perform the review:

The predictive coding system then analyzes the initial seed examples and identifies references in the text such as people, concepts, places, products and materials to generate rules that will find further concepts of the same type. The system then uses mathematical algorithms to apply these rules across the entire universe of documents (again, this number is unlimited) and rank or code them correspondingly.<sup>58</sup>

The firm can then choose to rely on the software review and produce the documents or can have another targeted review performed by attorneys. Despite the increasing role of tech in eDiscovery, the process still requires a great deal of human document review after the first or second round completed by technology.<sup>59</sup>

EDiscovery is a huge industry. The market was estimated at \$10.76 billion globally in 2018 and data organization and control needs continue to grow within all businesses.<sup>60</sup> As one EDiscovery company founder stated, “For a long time it has just been a race.”<sup>61</sup> Major players in the eDiscovery software platform space include Relativity, Exterro, Catalyst, Symantec, IBM, HP, and Kroll Ontrack.<sup>62</sup> Both Thomson Reuters and LexisNexis offer eDiscovery platforms.<sup>63</sup> There is also an ever-changing number of startups, including Everlaw, Palantir, and TextIQ.

TextIQ recently raised \$12.6 million in Series A funding. The startup, based in New York with an office in San Francisco, presents itself as “a machine learning system that parses and

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<sup>57</sup> Caitlin Murphy, *5 Things You Should Know About Predictive Coding*, EDiscovery Insight (Jan. 25, 2011), at <http://ediscoveryinsight.com/2011/01/5-things-you-should-know-about-predictive-coding>.

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

<sup>59</sup> See *infra* Sections IV and V. Indeed, a 2012 study by the Rand Institute for Civil Justice found that median eDiscovery costs on a matter were \$1.8 million. 73% of total eDiscovery costs were review of documents for relevance, responsiveness, and privilege. NICHOLAS M. PACE AND LAURA ZAKARAS, *WHERE THE MONEY GOES: UNDERSTANDING LITIGANT EXPENDITURES FOR PRODUCING ELECTRONIC DISCOVERY*, Rand Institute for Civil Justice (2012), available at [https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND\\_MG1208.pdf](https://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1208.pdf).

<sup>60</sup> *\$17.3 Billion eDiscovery Market: Global Forecast to 2023*, PRNewswire (July 19, 2018), at <https://www.prnewswire.com/news-releases/17-3-billion-ediscovery-market---global-forecast-to-2023--300668568.html>.

<sup>61</sup> Interview with Anonymous (Aug. 20, 2019).

<sup>62</sup> This is only a fraction of the number of companies in the market.

<sup>63</sup> See *Litigation Strategy and eDiscovery Solutions*, LexisNexis.com, <https://www.lexisnexis.com/en-us/litigation-strategy-ediscovery/all-products.page>, last visited Sept. 25, 2019; *eDiscovery Point*, LegalThomsonReuters.com, <https://legal.thomsonreuters.com/en/products/ediscovery-point>, last visited Sept. 25, 2019.

understands sensitive corporate data.”<sup>64</sup> The software developed out of founder Apoorv Agarwal’s PhD thesis project on extracting social networks from text and uses machine learning focused on people and relationships to better understand and pull information from company data.<sup>65</sup> Agarwal explained that TextIQ’s innovation is the software’s ability to identify relationships or issues that are not spelled out in the text: “That could be 10 medical documents that when combined allow a reader to reasonably infer the identity of the individual involved...or spotting attorney-client privilege just from the tone a lawyer typically uses.”<sup>66</sup> He explained further, “There’s all kinds of personal information that can be structured, like social security numbers [and] credit card numbers, but those are more or less solved problems. What remains ... unsolved are more unstructured mentions of personal information. Something like, ‘Hey, I was diagnosed with cancer, need three weeks of vacation.’ That’s very sensitive, personal health information.”<sup>67</sup> The software started as a tool specifically for eDiscovery but now has expanded into the proactive world of regulatory compliance.<sup>68</sup>

As the example of TextIQ indicates, the questions around software’s ability to “practice law” are becoming more complicated. For some time, eDiscovery technology has taken over at least the first level of document review and, in that way, performs work formerly done by lawyers (albeit usually the youngest and least experienced ones). The ability to parse relatively vague information based on context and make determinations as to legal status (attorney-client privilege, exempt status, etc.), as TextIQ claims to be able to do, moves up the level of complexity of analysis and therefore more squarely into the traditional scope of the practice of law. The question is, of course, relatively moot in this context because of the “functional exception” of Rule 5.3. It should be noted that TextIQ claims that the reliability and quality of its product exceeds the dominant approach to eDiscovery and creates significant efficiencies for clients.<sup>69</sup>

#### iv. Contracts Creation, Review, Management

<sup>64</sup> Jordan Crook, *TextIQ, a Machine Learning Platform for Parsing Sensitive Corporate Data, Raises \$12.6M*, TechCrunch (Jun. 19, 2019), at <https://techcrunch.com/2019/06/19/textiq-a-machine-learning-platform-for-parsing-sensitive-corporate-data-raises-12-6m/>.

<sup>65</sup> *Id.* The algorithm was able to read Jane Austen’s *Emma* and map out the character’s social relationships. More than 70% of the TextIQ team holds a PhD or Masters in Computer Science. Alex Konrad, *How AI Startup Text IQ Got Profitable By Shaving Millions Off Customers’ Legal Costs*, Forbes (Feb. 1, 2017), at <https://www.forbes.com/sites/alexkonrad/2017/02/01/ai-startup-textiq-shaves-millions-off-legal-costs/#7a2722476692>.

<sup>66</sup> See Konrad, *supra* note 65.

<sup>67</sup> Khari Johnson, *Text IQ Raises \$12.6 Million for AI-powered Sensitive Information Detection*, VentureBeat (Jun. 18, 2019), <https://venturebeat.com/2019/06/18/text-iq-raises-12-6-million-for-ai-powered-sensitive-information-detection/>.

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

<sup>69</sup> Crook, *supra* note 64 (“The status quo for this is to use search terms and hire hundreds of humans, if not thousands, to look for things that match their search terms,” said Agarwal. “It’s super expensive, and it can take months to go through millions of documents. And it’s still risky, because they could be missing sensitive information. Compared to the status quo, Text IQ is not only cheaper and faster but, most interestingly, it’s much more accurate.”) See also Konrad, *supra* note 65 (noting that TextIQ’s software has won every direct competition with other eDiscovery platforms in which it has competed).

As indicated above, contracts are a significant source of legal work in corporate legal departments.<sup>70</sup> Lucy Endel Bassli, formerly Assistant General Counsel, Legal Operations and Contracting at Microsoft Corp. and current founder and principal of InnoLegal Services, PLLC, stated, “Every single company, no matter the size, has contractual transactions and has trouble managing them.”<sup>71</sup> The number of companies and the amount of venture capital dollars flowing into contract technology reflects this importance.<sup>72</sup>

To understand how technology is becoming increasingly impactful in the area of corporate contracts, it is helpful to consider the lifecycle of a corporate contract.<sup>73</sup> The lifecycle starts when someone from the business comes to legal and asks for [a contract] (request). From that point, the document is drafted, negotiated, and approved. It then moves into the execution phase, when the terms of the document set out the obligations for performance and it is necessary to track those obligations. The contract may also trigger other obligations, such as regulatory compliance requirements. Finally, when the execution phase comes to a close, the parties may want to amend or renew the contract. All of this happens at volume for any individual company, and at extremely high volume for the largest companies, and represents the core functioning of any business. Typical contracts include NDAs, licenses, supplier agreements, and purchase orders.

In the past, both the management of this lifecycle and many of the individual tasks within the lifecycle were done by lawyers. Over the past 10-20 years, this legal work has been subject to disaggregation. As Bassli explains, “The resource spectrum for this work has become more broad: senior lawyers, junior lawyers, expert negotiators, robots.”<sup>74</sup> Technology is becoming an increasingly important part of that resource spectrum.

Technology serves to facilitate the contract lifecycle both by systematizing the management of the lifecycle via online platforms and by application at certain points in the lifecycle, either to facilitate lawyers’ work or take on some of that work. Ironclad, a Silicon Valley company which

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<sup>70</sup> See *supra* Section II.

<sup>71</sup> Telephone Interview with Lucy Endel Bassli, Founder and Principal, InnoLegal Services, PLLC (Sept. 27, 2019). See also *Comparing the Performance of Artificial Intelligence to Human Lawyers in the Review of Standard Business Contracts*, LawGeex (Feb. 2018), available at <https://www.lawgeex.com/resources/aivslawyer/> (stating that the typical Fortune 1000 company maintains between 20,000 and 40,000 active contracts at any point in time).

<sup>72</sup> Ironclad, a Silicon Valley contract management platform, recently raised \$50 million in Series C funding; Concord, also a contract management offering, raised \$25 million; Luminance, an AI contract company raised \$10 million; Evisort, an AI contract management platform raised \$2.5 million; and Clause, a smart contract technology platform, raised \$5.5 million. Victoria Hudgins, *Riding Wave of Investment in Contracts, Ironclad Secures \$50M for Expansion*, Law.com (Sept. 18, 2019), at <https://www.law.com/legaltechnews/2019/09/18/riding-wave-of-investment-in-contracts-ironclad-secures-50m-for-expansion/>.

<sup>73</sup> See generally Zack Alspaugh, *Navigating the Full Contract Lifecycle*, Apttus Blog (Oct. 18, 2018), <https://apttus.com/blog/navigating-the-full-contract-lifecycle/>; Kellsey Rupel, *Oracle Web Center Contract Lifecycle Management*, Oracle Blog (Oct. 29, 2014), <https://blogs.oracle.com/content/oracle-webcenter-contract-lifecycle-management>.

<sup>74</sup> Telephone Interview with Lucy Endel Bassli, Founder and Principal, InnoLegal Services, PLLC (Sept. 27, 2019).

has raised \$34 million in venture capital, is a process-oriented contract management platform, facilitating contract intake, tracking, and compliance.<sup>75</sup>

AI-based software is increasingly being used to analyze and extract key terms from large sets of contracts.<sup>76</sup> Companies such as Kira Systems (Toronto), and Luminance (UK), offer such software.<sup>77</sup> Even more robust use of AI is during the actual negotiation process, which is where the bulk of commercial attorney time is spent in-house. For example, the software created by Israeli company LawGeex is designed to answer the business partner's question, "Can I sign this?"<sup>78</sup> When a new contract is sent into a company, the business partner uploads it into the LawGeex system and the software reviews the contract, checking it against the company's predefined legal policies. "If everything looks good, we can automatically approve the contract for signing right then and there," explained former LawGeex VP of Marketing, Shmuli Goldberg. "If we spot any issues that need to be corrected, we escalate the contract to the legal team, and highlight the exact sentence they need to fix, and what they need to do to fix it".<sup>79</sup> In a study performed in 2018 by LawGeex, twenty experienced American corporate lawyers competed against the LawGeex software to review and issue spot five NDAs. The software attained a 94 percent accuracy rate as compared to 85 percent for the lawyers.<sup>80</sup>

The contract lifecycle also offers multiple opportunities for blockchain application.<sup>81</sup> Blockchain contracts, or smart contracts, are contracts converted to code, stored, replicated, and supervised on the blockchain system.<sup>82</sup> Because the contract is in code and in the blockchain network, the contract not only establishes rules around performance and penalties for non-performance and breach, but it automatically enforces those rules.<sup>83</sup> Once a smart contract is formed, it operates without human intervention.<sup>84</sup> Theoretically, smart contracts obviate external (read: human) enforcement mechanisms (lawyers, courts, etc.); in reality, the scope of smart contracts is more limited. Although there is great interest in the potential for smart contracts, adoption appears to be relatively limited at this point.<sup>85</sup> Dan Puterbaugh, Director of Strategic

<sup>75</sup> Dan Anderson, *Contract Management Company Ironclad Raises \$23 Million*, Pulse 2.0 (Feb. 5, 2019), at <https://pulse2.com/ironclad-raises-23-million/>.

<sup>76</sup> See *supra* Section II.

<sup>77</sup> With the recent influx of capital, Ironclad will also be moving into this space. *Id.*

<sup>78</sup> Steve O'Hear, *LawGeex Raises \$12M for its AI-powered Contract Review Technology*, TechCrunch (Apr. 17, 2018), <https://techcrunch.com/2018/04/17/lawgeex-raises-12m-for-its-ai-powered-contract-review-technology/>. LawGeex is an Israeli company with a New York office.

<sup>79</sup> *Id.*

<sup>80</sup> See *Comparing the Performance of Artificial Intelligence to Human Lawyers in the Review of Standard Business Contracts*, LawGeex (Feb. 2018), available at <https://www.lawgeex.com/resources/aivslawyer/>.

<sup>81</sup> Blockchain is, essentially, a distributed, cryptographically-secure ledger. See Klint Finley and Gregory Barber, *The WIRED Guide to Blockchain*, WIRED (Jul. 9, 2019), at <https://www.wired.com/story/guide-blockchain/>.

<sup>82</sup> See Ameer Rosic, *Smart Contracts: The Blockchain Technology that will Replace Lawyers*, Blockgeeks (2016), at <https://blockgeeks.com/guides/smart-contracts/>.

<sup>83</sup> *Id.*

<sup>84</sup> See Adam J. Kolber, *Not So Smart Blockchain Contracts and Artificial Responsibility*, 21 Stan. Tec. L. Rev. 198, 209 (2018).

<sup>85</sup> Smart contracts legal status is unclear, which likely contributes to the adoption challenge. See generally Jared Arcari, *Decoding Smart Contracts: Technology, Legitimacy, and Legislative Uniformity*, 24 Fordham J. Corp. & Fin. L. 363 (2019).



Development for Adobe Document Cloud, wrote, “Even companies eager to use [smart contracts] will probably end up relying on a hybrid version that uses natural language in the usual manner and smart contract code to automate enforcement. That approach would deliver the benefits of automation while still allowing for negotiation and providing assurance that the agreement would be litigable.”<sup>86</sup>

#### **v. Legal Practice Management**

The category of legal tech companies, products, and services working to facilitate the business of the practice of law is a large one. Offerings include case/matter management systems, timekeeping systems, billing systems, email and calendaring applications, client contact and communications trackers, conflicts check systems, trust accounting and general accounting, and knowledge management systems.<sup>87</sup> Legal practice management software falls squarely within the scope of work generally performed by non-lawyer support staff (paralegals, legal secretaries, calendar departments, HR, billing departments, etc.). For that reason, this report will not go into the myriad offerings in the space other than to note it is a booming business.<sup>88</sup>

#### **vi. Legal Tech App Store**

As a sign of the significance of the corporate legal tech market, a Big Law-backed legal app store for corporate clients was launched in fall of 2018.<sup>89</sup> The app store is not simply a marketplace. It actually facilitates adoption and scaling of technologies by firms because the applications offered are already secure and containerized, meaning the firm or legal department can buy the application essentially ready-to-go in their particular IT infrastructure.<sup>90</sup> Reynan Court is backed by 19 of the top law firms and lists over 50 legal tech vendors on its site, including ALSP Elevate, NeotaLogic, and other legal tech startups.<sup>91</sup> The goal of the platform is “massive acceleration” of legal technology into firm and corporate legal department practice: individual firms and clients will not have to vet or adapt the technology to their individual systems (a significant challenge to adoption). Current offerings on the site include “time and

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<sup>86</sup> Dan Puterbaugh, *The Future of Contracts: Automation, Blockchain, and Smart Contracts*, 34 No. 10 ACC Docket 48, 53 (Dec. 2016).

<sup>87</sup> *Law Practice Management Software*, The Lawyerist (last updated Sept. 25, 2019), at <https://lawyerist.com/reviews/law-practice-management-software/>.

<sup>88</sup> Clio, arguably the dominant cloud-based legal management software company, recently announced venture capital investment of \$250 million. See *Cloud Technology Leader Clio Announces \$250 Million Investment from TCV and JMI to Transform Legal Industry*, Business Wire (Sept. 4, 2019), at <https://www.businesswire.com/news/home/20190904005370/en/Cloud-Technology-Leader-Clio-Announces-250-Million>.

<sup>89</sup> *Are you Aware of Reynan Court? You Need to Be.*, LegallIT Insider (Nov. 13, 2018), at <https://www.legaltechnology.com/latest-news/are-you-aware-of-reynan-court-you-need-to-be/>.

<sup>90</sup> Mike Quartararo, *Does Reynan Court Solve the Technology Puzzle for Legal Operations?*, Above The Law (Sept. 10, 2019), at <https://abovethelaw.com/2019/09/does-reynan-court-solve-the-technology-puzzle-for-legal-operations/>.

<sup>91</sup> *Id.*

billing software, business intelligence, research, case management and budgeting tools, and yes, eDiscovery and machine learning tools.”<sup>92</sup>

#### IV. Alternative Legal Service Providers

The term “alternative legal service providers” has been used to cover everything from legal tech companies to legal staffing companies to eDiscovery vendors (i.e. everything covered by this report).<sup>93</sup> Thomson Reuter’s 2019 report on ALSPs divides the market into five categories:

- Big Four: the largest accounting and audit firms which derive a large amount of revenue from legal services.
- Captive LPOs: law firms’ wholly-owned captive legal services units, often located in lower cost locations.
- Independent LPOs: perform legal work on behalf of corporate legal departments and law firms, often on matter- or project-based engagements.
- Managed Services: contract for all or part of the function of an in-house legal team, typically ongoing work.
- Contract and Staffing Companies: provide lawyers on a temporary basis to companies and law firms, ranging from entry-level document review to highly skilled specialists.<sup>94</sup>

The ALSP sector has experienced dramatic growth in recent years.<sup>95</sup> In two years, revenues for ALSPs have grown from \$8.4 billion in 2015 to about \$10.7 billion in 2017, an annual growth rate of 12.9 percent.<sup>96</sup> These are, for the most part, privately-held corporate entities funded by private equity or other sources of external capital.

The work performed by ALSPs is expanding. Previously, ALSPs focused on what we have identified as the repeat, high volume, low complexity corporate legal work (document review in particular, as well as other legal support work). That has expanded now to include a range of other legal work of varying complexity. Cornelius Grossman, Global Law Leader at EY, noted “there appears to be a general appetite for outsourcing a number of legal activities, such as contract life cycle management, legal entity management and compliance, document review, due diligence, litigation and investigation support and regulatory response work.”<sup>97</sup> Using lawyers, non-lawyers (engineers, project management experts, designers, etc.) and technology, ALSPs are performing work that was traditionally done within law firms, including litigation and investigation support, legal research, eDiscovery and document review, and regulatory risk and

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<sup>92</sup> *Id.*

<sup>93</sup> Wilkins and Ferrer, *supra* note 8.

<sup>94</sup> THOMSON REUTERS, ET AL., ALTERNATIVE LEGAL SERVICE PROVIDERS 2019: FAST GROWTH, EXPANDING USE AND INCREASING OPPORTUNITY, at 1 (2019) [hereinafter Thomson Reuters 2019 ALSP Report].

<sup>95</sup> Wilkins and Ferrer, *supra* note 8 (noting that then GE General Counsel Ben Heineman started a GE legal office in India, staffed by Indian lawyers, to handle GE’s plastics and consumer finance divisions).

<sup>96</sup> THOMSON REUTERS 2019 ALSP REPORT, *supra* note 95.

<sup>97</sup> Cornelius Grossman and Eric Laughlin, *Why Alternative Legal Service Providers are on the Rise* (Aug. 20, 2019), at [https://www.ey.com/en\\_gl/tax/why-alternative-legal-service-providers-are-on-the-rise](https://www.ey.com/en_gl/tax/why-alternative-legal-service-providers-are-on-the-rise).

compliance.<sup>98</sup> Litigation and investigation support is the most common use case for corporations.<sup>99</sup> Increasingly, ALSPs are also providing legal research capacity to in-house legal departments.<sup>100</sup> Mark Chandler, General Counsel of Cisco Systems, Inc., stated:

I don't really like the concept of ALSPs anymore than I like the concept of alternative fee arrangements. Because it assumes there's a standard and a deviation from the standard. There are a lot of ways of providing legal services and getting the outcomes that people want. People don't want to pay for an hour of a lawyer's time. They want an outcome that helps them get a contract done, or collect money that they're owed, or vindicate a right. I think clients are largely indifferent to how that gets done - it is the result that counts. For different types of services that clients need, there are multiple ways of accomplishing the goal.<sup>101</sup>

ALSPs use of technology, and particularly AI-enabled technological solutions, appear to be particularly appealing to corporate clients.<sup>102</sup> Another strength of ALSPs for these types of solutions is the flexible employment model, offering lawyers or other legal professionals for limited duration work as needed.<sup>103</sup> Lawyers work for ALSPs in a variety of capabilities. ALSPs may staff lawyers with clients either in a consulting role or in a secondment role. ALSPs may staff client projects with lawyers, technically working under the supervision of the in-house or firm attorneys running the matter. ALSPs also hire lawyers

ALSPs are focused on quantifying and measuring their productivity so that they can report out to their customers. Connie Brenton, NetApp's head of legal operations and founder of CLOC, explained: "In-house counsel can ask their ALSPs for metrics related to every task, or even for each person, which the ALSPs are generally capturing as a matter of course. I can find out how long it took for something to be uploaded. I can ask an ALSP to re-create their process for me and provide metrics for every person who worked on my account over the past two weeks (or

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<sup>98</sup> Thomson Reuters 2019 ALSP Report, *supra* note 95.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 2.

<sup>101</sup> Interview by Robert Ambrogi with Mark Chandler, General Counsel, Cisco Systems, Inc., LawNext Podcast (Feb. 11, 2019) (downloaded via iTunes), *available at* <https://www.lawsitesblog.com/category/lawnnext/page/3>.

<sup>102</sup> Cornelius Grossman and Eric Laughlin, *supra* note 98 (quoting Eric Laughlin as noting, "technology adoption marks an important attribute of ALSPs. Technology-enabled services allow them to provide higher value and take on different and more complex tasks. ALSPs also help bear the burden of technology selection and deployment, while still allowing legal departments to receive the benefits of its use. ALSPs often rely on third-party technology to select the best of class tools for their clients; others are developing proprietary systems in search of sustainable competitive advantage.").

<sup>103</sup> THOMSON REUTERS 2019 ALSP REPORT, *supra* note 95, at 1 ("Where law firms lead with specialized expertise and highly trained legal judgment, ALSPs may employ contract lawyers for specific time-bound needs, implement rigorous process and project management across massive volumes of work, or deeply integrate technology to gain efficiency.")

any other time frame).<sup>104</sup> Law firms use ALSPs, particularly for eDiscovery and other litigation support.<sup>105</sup> They are also partnering with ALSPs to offer solutions to clients.<sup>106</sup>

Each of the representatives of ALSPs with whom the author spoke for this report explained that they had spent a great deal of time and resources considering the regulatory boundaries around the practice of law when building out their business model, understanding that the “functional exception” of Rule 5.3, as outlined in A.B.A. Formal Opinion 08-451, permitted a relatively expansive approach as long as supervisory duties are fulfilled.<sup>107</sup> Generally, the consensus emerging both from the interviews conducted and review of the media and literature around this assumes that the practice of law (the “restricted practice of law”) applies to activities like in-court appearance, depositions, motion and brief drafting, preparing a legal opinion, and providing strategy on a case.<sup>108</sup> Activities like contract negotiation, which many business people engage in on a daily basis, and diligence and document review are increasingly considered outside the boundaries of the practice of law.

This report will review the five key sectors of the ALSP market, spending the most time on the Big Four and managed services firms.<sup>109</sup>

#### **i. The Big Four Accounting Firms**

The Big Four accounting firms (KPMG, Deloitte, EY, and PwC) have significantly expanded into the legal sector, leveraging their capabilities in tax, accounting, data and forensics, and consulting to offer large scale business solutions to global clients.<sup>110</sup> This expansion is a global

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<sup>104</sup> Connie Brenton, *Why Corporations are Using ALSPs...and Why Law Firms Should be Concerned*, Thomson Reuters Legal Executive Institute (May 30, 2019), at <http://www.legalexecutiveinstitute.com/corporations-using-alsps-law-firms-concerned/>.

<sup>105</sup> Thomson Reuters 2019 ALSP Report, 4, *supra* note 95 (finding that around 65% of large law firms are using ALSPs).

<sup>106</sup> *Id.* at 13.

<sup>107</sup> See A.B.A. Formal Opinion 08-451, *supra* note 4.

<sup>108</sup> To further illustrate the definitional challenge, many of the above activities can and are be outsourced or performed by contract or associated lawyers.

<sup>109</sup> The lines between managed service companies, LPOs, and legal staffing companies can get somewhat blurry.

<sup>110</sup> As journalist Robert Ambrogi notes, these four firms are no longer accurately labeled accounting firms. They are “global professional services firms.” See Robert Ambrogi, *Why EY’s Purchase of Pangea3 Should be a Wake Up Call for Law Firms*, Above The Law (Apr. 8, 2019), at <https://abovethelaw.com/2019/04/why-eys-purchase-of-pangea3-should-be-a-wake-up-call-for-law-firms/>. Their push into legal is not a new development. Indeed, in 1999 the ABA issued a background paper on multidisciplinary practice, a large part of which was devoted to the then Big Five’s encroachment into legal services via accounting and consulting services. See American Bar Association, *Background Paper on Multidisciplinary Services* (Jan. 1999), available at [https://www.americanbar.org/groups/professional\\_responsibility/commission\\_multidisciplinary\\_practice/multicomreport0199/](https://www.americanbar.org/groups/professional_responsibility/commission_multidisciplinary_practice/multicomreport0199/) (“Adding to the complexity and urgency of the debate is the emergence of consulting firms that are aggressively soliciting clients, offering services remarkably similar to those traditionally offered by law firms, such as advice on mergers and acquisitions, estate planning, human resources, and litigation support systems. The biggest of these consulting firms are closely affiliated with the Big-5 accounting firms and derive substantial benefit from the cross-selling initiatives of the accounting/auditing partners.”)

phenomenon.<sup>111</sup> Each of the Big Four, for example, has received a license to provide legal services in the UK as an Alternative Business Structure under the Legal Services Act.<sup>112</sup>

Although each of the Big Four appears to have a slightly different strategy for legal, they are all currently leveraging their size and expertise in technology to offer a variation of co-sourcing or outsourcing of high volume, data driven legal tasks. They each offer a range of options including managed services, flexible resourcing, technology assistance, and consulting all generally around modernization of the corporate legal department. In the United States, because of Rule 5.4 and UPL restrictions, the Big Four have been slightly more limited in their expansion. However, the “functional exception” to these limitations has allowed them to expand via the ALSP model, focusing on legal process solutions for law firms and legal departments. For example, KPMG’s legal services division revenue rose by more than 30 percent in 2018.<sup>113</sup> The growth was due, in part, to KPMG’s launch of Legal Operations and Transformation Services units to advise corporate legal departments on streamlining their services (advising on sourcing solutions through legal technology and other areas).<sup>114</sup>

EY has also dramatically grown its legal function. In early 2019, EY purchased Pangea3 Legal Managed Services from Thomson Reuters.<sup>115</sup> The press release stated, “With Pangea3, more than 1,100 legal project managers, services professionals and technologists join EY, bringing the total number of EY Law professionals across the globe to 3,500. The acquisition will enhance EY technology-enabled LMS in the three core areas of contract life cycle management, regulatory risk and compliance, and investigations.”<sup>116</sup> PWC, as noted in Professor Henderson’s report, acquired the entire tax department of GE (lawyers and accounting professionals).<sup>117</sup> The team will continue to do GE’s tax work while also developing new products and services for PWC to sell to other clients.<sup>118</sup> PWC also opened a law firm in Washington, D.C. offering international legal services, including tax consultation, from lawyers

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<sup>111</sup> Each of the heads of the Big Four’s legal services divisions is located outside the United States. As they increase their legal services, the Big Four grow the number of lawyers in their firms. In 2018, PWC employed about 3600 lawyers in 98 countries; EY employed about 2200 lawyers in 81 countries; KPMG employed 1800 lawyers in 75 countries; and Deloitte employed about 2400 lawyers globally. Jonathan Derbyshire, *Big Four Circle the Legal Profession*, Financial Times (Nov. 14, 2018), at <https://www.ft.com/content/9b1fdab2-cd3c-11e8-8d0b-a6539b949662>.

<sup>112</sup> Joseph Evans, *Deloitte Becomes Last of the Big Four to get ABS License*, Law.com (Jun. 22, 2018), at <https://www.law.com/americanlawyer/2018/06/22/deloitte-becomes-last-of-big-four-to-get-abs-license-for-legal-services/>.

<sup>113</sup> Sam Skolnik, *KPMG Legal Services Division Reports Record Revenue Growth*, Bloomberg Law (Feb. 6, 2019), <https://news.bloomberglaw.com/us-law-week/kpmg-legal-services-division-reports-record-revenue-growth-1>.

<sup>114</sup> *Id.*

<sup>115</sup> Press Release, EY, EY Announces Completion of Pangea3 Legal Managed Services Acquisition (Jun. 3, 2019), available at [https://www.ey.com/en\\_gl/news/2019/06/ey-announces-completion-of-pangea3-legal-managed-services-acquisition](https://www.ey.com/en_gl/news/2019/06/ey-announces-completion-of-pangea3-legal-managed-services-acquisition). Pangea3 had been one of the pioneering companies for legal outsourcing to India.

<sup>116</sup> *Id.*

<sup>117</sup> Neil Amato, *600 GE Tax Professionals Moving to GE*, Journal of Accountancy (Jan. 13, 2017), available at <https://www.journalofaccountancy.com/news/2017/jan/pwc-to-add-ge-tax-team-201715836.html>.

<sup>118</sup> David Wilkins and Ferrer, *supra* note 8.



authorized as “Special Legal Consultants” by the District.<sup>119</sup> Deloitte launched Legal Management Consulting in 2018 to advise in-house legal teams on process and technology.<sup>120</sup> Deloitte has also aligned with multiple law firms to assist clients with immigration, employment, and workforce challenges.<sup>121</sup>

Each of these examples highlight the fact that much of the service work offered by the Big Four can already be performed in the United States, despite continuing ownership and practice of law limitations. The success of the Big Four would indicate that this is often the kind of service corporate clients want. Thomson Reuter’s 2019 report found that about 23 percent of firms surveyed said they had competed with and lost business to one of the Big Four over the past year.<sup>122</sup> According to the report, the bulk of that competitive work was in regulatory compliance and mergers and acquisitions due diligence.<sup>123</sup>

## ii. Managed Services Companies

Managed services companies are those ALSPs most actively competing with the Big Four in seeking to offer end-to-end legal services for a particular matter or project, as well as technology and process advice and consulting. Leading companies in this category include Elevate and UnitedLex.<sup>124</sup> Both companies perform the high volume, low complexity work discussed throughout this report. Both offer the running of large scale eDiscovery operations, including staffing large scale document reviews, as well as diligence services, contract management, and compliance assistance. They also partner with customers to develop comprehensive process and tech solutions for legal work. Both companies are funded by significant private equity capital, enabling their rapid growth and expansive technological focus.<sup>125</sup>

Elevate, a law company started in California, but with operations throughout the U.S., U.K., continental Europe, Asia Pacific and Australia, offers a range of services to both law firms and law departments. Chairman and CEO Liam Brown explained that he saw an opportunity for a company that offered software and service solutions but also saw its role as helping its

<sup>119</sup> Home Page, ILCLegal.com, <https://www.ilclegal.com/> (last visited Sept. 20, 2019).

<sup>120</sup> Legal Management Consulting, Deloitte.com, <https://www2.deloitte.com/global/en/pages/legal/solutions/legal-management-consulting-lmc.html> (last visited Sept. 30, 2019).

<sup>121</sup> Dan Packel, *Deloitte Expands US Legal Ambitions with Epstein Becker Alliance*, The American Lawyer (May 7, 2019), available at <https://www.law.com/americanlawyer/2019/05/07/deloitte-expands-u-s-legal-ambitions-with-epstein-becker-alliance-405-36515/>.

<sup>122</sup> THOMSON REUTERS 2019 ALSP REPORT, *supra* note 95, at 1.

<sup>123</sup> *Id.* at 4.

<sup>124</sup> Thomson Reuter’s also has a Managed Legal Services division. *Id.* Elevate’s main U.S. office is in Los Angeles. UnitedLex has offices in several cities in the Midwest and Southern U.S. but not in California. Blackstone Discovery is another California company in this space.

<sup>125</sup> See Press Release, Elevate Services, Elevate Secures Growth Financing from Morgan Stanley Expansion Capital (Apr. 18, 2018), available at <https://elevateservices.com/elevate-secures-growth-financing-from-morgan-stanley-expansion-capital/>; Press Release, UnitedLex, CVC Capital Partners Announces a Majority Interest Investment in UnitedLex (Sept. 20, 2018), available at <https://www.unitedlex.com/news/cvc-capital-partners-announces-majority-interest-investment>.

customers (both firms and legal departments) manage through the changing legal economy.<sup>126</sup> Services offered to law departments include consulting, enterprise legal management software, disputes and investigations services, contract management services, legal ops services, and a flexible lawyering program; those offered to law firms include consulting, enterprise legal management software, disputes and investigations services, procurement services, business services, and flexible lawyering.<sup>127</sup> Elevate's employees range from senior level former general counsels who are seconded to Elevate's customers ("Elevated Lawyers"), to junior lawyers with a business background, and everyone in the middle.<sup>128</sup> One legal department leader described using Elevate for a project involving intake, cataloging, and processing a huge number of incoming proposals to her company. She explained, "We needed a formal structure for logging the incoming proposal, responding to it, logging the response, and capturing the metadata on all of this. We scoped and designed the whole process with Elevate and it will be managed through their legal services center in Arizona."<sup>129</sup>

Elevate also has an associated law firm, Elevate Next Law, with which it partners on engagements as needed.<sup>130</sup> Elevate Next's model is similar to Atrium (discussed *infra* Section VI), a dual-entity model alongside Elevate Services, in which the partners in Elevate Next also have equity in the ALSP company.<sup>131</sup> Elevate Next lawyers will engage with a client as lawyers, handling legal matters, but also oversee deployment of technology and process changes implemented through Elevate Services.<sup>132</sup>

UnitedLex has an explicit consulting-driven approach to its clients' challenges. CEO Dan Reed explained, "When we look at an engagement with a client, we look at how law permeates the entire business. How do you improve all these pieces - including the profession? We ask, 'What is the holistic value that we can provide as lawyers that drives value throughout the whole institution?' It is a solution that is multidisciplinary, including staffing, training techniques, process, IT, etc."<sup>133</sup> UnitedLex offers services including law department consulting, IP asset identification and capture, digital contracting and commercial solutions (advising on contracting processes and assuming responsibility for portions of the lifecycle management), litigation and regulatory, compliance, and financial documentation.<sup>134</sup> Reed described a sample engagement:

"We would be hired by a company to work alongside a law firm to handle a post-acquisition integration. The law firm handles the legal work, a consulting firm handles all the non-law integration pieces (HR, IT, supply chain). We would come in to assess and improve the entire technology environment that touches anything legal: software;

<sup>126</sup> Telephone Interview with Liam Brown, Chairman and CEO, Elevate Services, Co. (Aug. 26, 2019).

<sup>127</sup> Services, ElevateServices.com, <https://elevateservices.com/services/> (last visited Sept. 20, 2019).

<sup>128</sup> Telephone Interview with Liam Brown, Chairman and CEO, Elevate Services, Co. (Aug. 26, 2019).

<sup>129</sup> Interview with Anonymous (Sept. 20, 2019).

<sup>130</sup> Homepage, ElevateNextLaw.com, <https://elevatenextlaw.com/> (last visited Sept. 20, 2019).

<sup>131</sup> *Id.*

<sup>132</sup> How, ElevateNextLaw.com, <https://elevatenextlaw.com/how/> (last visited Sept. 20, 2019) (explaining how Elevate Next and Elevate Services engaged with Univar to reduce legal department spend by 50%).

<sup>133</sup> Interview with Dan Reed, CEO, UnitedLex (Sept. 23, 2019).

<sup>134</sup> See Services, UnitedLex.com, <https://unitedlex.com/services/litigation-regulatory-services> (last visited Sept. 23 2019).

workflow; AI usage; sources; training. Anything that touches a legal service, we ask how can it be improved to drive more efficiency: can we improve cycle times in contracting; can we eliminate unneeded data; how can we measure this. We provide a blueprint for the organization moving forward.”<sup>135</sup>

UnitedLex recently entered into an agreement with DXC Technology (company resulting from the merger of IT companies Computer Sciences Corp. and Hewlett-Packard Enterprise Services).<sup>136</sup> UnitedLex will be providing legal support to DXC in 26 global locations. Most interestingly, 150 DXC attorneys became UnitedLex employees and over “250 UnitedLex senior attorneys, contract and commercial professionals, engineers, and subject matter experts support DXC globally in sales transactions (majority of team), legal operations, litigation, immigration, and other corporate legal activities.”<sup>137</sup> UnitedLex entered into a similar arrangement with GE in 2018.<sup>138</sup>

### iii. Legal Process Outsourcing (both captive and independent)

Legal Process Outsourcing (“LPO”) are those companies offering primarily (or exclusively) high volume, “low skill” work, including back office work for law firms and legal departments. The work performed by LPOs includes eDiscovery, document review, litigation support, contract management, translation services, and compliance services.<sup>139</sup> Legal outsourcing gained traction in the early 2000s, in line with the larger corporate trend in outsourcing, and the first generation of companies focused on international outsourcing, often to India.<sup>140</sup> However, concerns about quality and control kept that solution from gaining much ground at that point and outsourcing to closer (i.e. American) regions expanded.<sup>141</sup> At present, both domestic and international LPOs compete in the market.

There are many companies offering these services, including LPOs run by law firms.<sup>142</sup> Key independent players include Integreon, QuisLex, and Fronto. These companies have different business models, some moving more directly toward the managed services model (offering enterprise solutions for clients and work performed primarily by full-time employees) and others focusing on discrete engagements with work performed by contract and temporary lawyers. Often the LPOs will work with the contract staffing companies to ramp up staffing for large scale projects such as document review. The LPO will then run the review, with some form of oversight by the law firm or legal department client. As one leader of an LPO/managed services company explained, “We are really focused on remote capability alongside supervision. The

<sup>135</sup> Interview with Dan Reed, CEO, UnitedLex (Sept. 23, 2019).

<sup>136</sup> Jennifer J. Salopek, *Taking Managed Services to a New Level*, ACC Value Challenge (2018), at <https://www2.acc.com/valuechallenge/valuechamps/dxc-technology-and-unitedlex.cfm>.

<sup>137</sup> *Id.*

<sup>138</sup> Wilkins and Ferrer, *supra* note 8.

<sup>139</sup> There are cases of outsourced work including more complex and substantive legal work. See Russell Smith, *India Legal Team Wins Big Appeal Victory In California*, Law Without Borders (Apr. 7, 2010), at <https://lawwithoutborders.typepad.com/legaloutsourcing/2010/04/india-legal-team-wins-big-appeal-victory-in-california.html>.

<sup>140</sup> Wilkins and Ferrer, *supra* note 8.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*



vendor needs to get the client and the attorneys to sign off on the remote structure with quality people working full-time. You have to have constant communication with the attorneys either through the review manager or the decision log. You also need security: the virtual machine needs to be tied into the server so that you know and control who sees what and when.”<sup>143</sup>

It is apparent there is a range of professionalism and quality to LPOs. The author conducted interviews with “gig economy” lawyers, *see infra* Section V, in which a repeated theme was that both the work experience of those lawyers and the management and oversight of the work ranged from highly professionalized to minimal. Ultimately, as has been made clear in bar opinions and the ABA Formal Opinion 08-451, it is the responsibility of the client lawyer or law firm to ensure sufficient management and oversight of lawyers and non-lawyers completing outsourced work.<sup>144</sup> The question becomes, what is supervision? One LPO leader stated, “Supervision is mostly done through QC and software that can do sampling and find outliers for the lawyers to review.”<sup>145</sup> Whether this is the supervision norm across this field is unclear.

#### **iv. Contract and Staffing Companies / Marketplaces**

As this report makes clear, a significant part of the “new” legal economy is that of flexible working arrangements. As legal work is disaggregated across time, project, and task, temporary work arrangements have become more important, as has the ability to access people, expertise, and technology on a flexible basis from both inside and outside the company. Traditional staffing companies have long worked with firms and legal departments to provide permanent and temporary staffing and this function continues. But increasingly, these companies are looking to respond to the need for “agile workforces,” individuals or teams of lawyers able to perform for a customer as needed and where needed (or remotely).<sup>146</sup> Generally, the model for these engagements is that the client (firm or legal department) hires the staffing agency which then provides the attorneys, and bills the client for the work performed, paying a portion of that to the contracted attorney. The attorneys are either employees of the staffing agency or independent contractors of the staffing agency.

Legal staffing companies, many of which have been around for decades, are branding themselves as flexible staffing companies, offering individual lawyers to work on-site or remotely, teams of lawyers on-site or remotely, and sometimes service solutions around eDiscovery. Companies operating in California include Robert Half Legal, The Agency, and Trustpoint One. Generally, these companies use human recruiters to gather and deploy talent on behalf of clients.

<sup>143</sup> Interview with Anonymous (Aug. 29, 2019).

<sup>144</sup> See A.B.A. Formal Opinion 08-451, *supra* note 4.

<sup>145</sup> Interview with Anonymous (Aug. 20, 2019).

<sup>146</sup> Wilkins and Ferrer, *supra* note 8. Some of these companies are bridging the gap between traditional staffing and LPOs. See Homepage, HireCounsel.com, <https://www.hirecounsel.com/> (last visited Sept. 30, 2019) (Founded in 1987 as a staffing company, HireCounsel now also offers eDiscovery solutions including managed review, document review centers, etc. The company has locations in Los Angeles and the San Francisco Bay Area.).

In addition to these more traditional staffing companies, a host of newer companies have emerged offering more online platform-based marketplace option for finding contract legal workers. Several of these companies stress the caliber and quality of their lawyers as well as ease of use of their technology platforms. Founded in the early 2000s as an “on-demand corporate legal talent” company, Axiom is (arguably) one of the first of these newer legal talent companies.<sup>147</sup> The company offers a pool of highly qualified lawyers (over 2000) throughout the world.<sup>148</sup>

Other such marketplaces include Hire an Esquire, LawClerk.legal, and UpCounsel (a San Francisco-based company). Each of these companies operates differently but they each rely on a tech platform to facilitate their lawyer marketplace. As Julia Shapiro, founder and CEO of Hire an Esquire explained, “We created a thoroughly vetted network, vetted on both sides of the network (contract attorneys and clients). We make sure the client is a law firm or a legal department has a lawyer on staff to supervise the work. Our attorney and paralegal onboarding process is primarily automated with a few key touchpoints from our human recruiters. The client can then post their job and qualifications and our software produces instant relevant matches from our pre-vetted network of 12,000 attorneys and paralegals. Clients can immediately and directly communicate with their matches. In 2019, over 70 percent of the placements were machine-made.”<sup>149</sup> One significant difference of Hire an Esquire and LawClerk.legal from UpCounsel is that the two former companies only supply contract lawyers to firms or departments with an attorney on staff. UpCounsel serves as a marketplace not just to lawyers but to other corporate entities, including small businesses, who need legal work.<sup>150</sup>

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<sup>147</sup> Mark A. Cohen, *What’s Up With Axiom?*, Forbes (Jun. 4, 2019), at <https://www.forbes.com/sites/markcohen1/2019/06/04/whats-up-with-axiom/#9b96ad055b2c>. Over the years, the company expanded its tech platform and offered managed legal services as well. In early 2019, the company announced plans to go public and the spin-offs of its managed services division (Axiom Managed Services) and its contracts platform (Knowable). On October 1, 2019, the company announced the private equity firm Permira had taken a significant investment in its remaining entity, a return to the core on-demand corporate legal talent. Press Release, Axiom Group, Inc., Permira Funds Complete Investment in Axiom (Oct. 1, 2019), *available at* [https://www.axiomlaw.com/resources/press-releases/permira-funds-complete-investment-in-axiom?utm\\_content=102285741&utm\\_medium=social&utm\\_source=linkedin&hss\\_channel=lcp-18137](https://www.axiomlaw.com/resources/press-releases/permira-funds-complete-investment-in-axiom?utm_content=102285741&utm_medium=social&utm_source=linkedin&hss_channel=lcp-18137).

<sup>148</sup> Mark A. Cohen, *supra* note 148 (noting that after its spinoffs Axiom is a “21st century talent marketplace”).

<sup>149</sup> Interview with Julia Shapiro, Founder and CEO, HireanEsquire.com (Sept. 5, 2019).

<sup>150</sup> In this way, UpCounsel is less like a legal staffing company and more like a true marketplace for freelance attorneys. See Christine Magee, *\$10 Million for UpCounsel Means Small Businesses Can Hire BigLaw Attorneys*, TechCrunch (July 28, 2015). UpCounsel has experienced some regulatory friction in the form of concern around potential fee-splitting, although that does not appear to have developed further. The company’s fee model is that the lawyers contract directly with the clients through the UpCounsel platform and negotiate whatever fee they agree upon. UpCounsel then adds a 5% fee on top of the lawyer’s fee; the platform facilitates payment, insuring that the lawyer’s fee goes directly into the lawyer’s account and UpCounsel service fee goes directly to UpCounsel. Terms of Use, UpCounsel.com, <https://www.upcounsel.com/termsfuse> (last visited Sept. 27, 2019); See Priyanka Prakash, *UpCounsel Review 2019: Pros, Cons, and Alternatives*, Fundera (July 2, 2019), at <https://www.fundera.com/blog/upcounsel-reviews>.

The type of work performed by the lawyers via these marketplaces tends to be more specialized and highly-skilled. Indeed, Axiom and UpCounsel specifically require “elite” lawyers.<sup>151</sup> Shapiro explained, “Document review is probably the smallest portion of work that we do. Increasingly the contract attorney work is going to be more experienced and more substantive work; people looking for that associate level attorney.”<sup>152</sup> Matthew Faustman, founder and CEO of UpCounsel, described the range of work his company sources as follows:

It’s a spectrum. On one end is more the small business without an in-house lawyer which has sporadic legal needs (a contract, a tax need, IP, etc.) that can be performed by a virtual lawyer. The next step is a small business, still often without an in-house lawyer, which has about 10 hours of legal work each month and wants a remote lawyer on call for those 10 hours. The next step is a company with an in-house lawyer who needs help (remote) about 20 hours or so per week on contracts, IP, employment, and privacy matters for example. The final step will be more of a secondment model in which UpCounsel is the employer of record and the attorney works on site for between 20-30 hours per week. This is more of the overflow work, often contracts.<sup>153</sup>

There appears to be more than enough work to go around. Each of these companies has grown rapidly over the past few years. UpCounsel’s platform now includes over 5000 attorneys and Hire an Esquire claims over 12,000 attorneys and legal professionals on the platform.<sup>154</sup> Some law firms have also gotten into the temporary staffing business. Fenwick & West LLP created Flex by Fenwick in 2010, providing temporary, highly-qualified lawyers to in-house legal departments.<sup>155</sup>

## V. Legal Gig Work

The legal staffing market has grown and, as Professor Henderson describes, a “gig economy” for legal work has surged. This report and industry media have covered what kind of work gig lawyers might be doing but little has been heard from the attorneys themselves about who they are or what their work is. As we have seen, gig legal work occurs at many levels of the corporate legal market, from secondment models, freelance high level legal work, and contract associates for overflow work, to massive document and diligence reviews.

Historically, the legal profession has viewed contract work as significantly less prestigious than full-time employment. Although aspects of that view remain, the appeal of contract work appears to have increased as opportunities have increased, platforms for finding work have mushroomed, and as our larger economy has opened up to contract work, or gig work, as it is

<sup>151</sup> Mark A. Cohen, *supra* note 148.

<sup>152</sup> Interview with Julia Shapiro, *supra* note 150.

<sup>153</sup> Interview with Matthew Faustmann, Founder and CEO, UpCounsel (Sept. 13, 2019).

<sup>154</sup> Homepage, UpCounsel.com, <https://www.upcounsel.com/> (last visited Sept. 29, 2019); Homepage, HireanEsquire.com, <https://hireanesquire.com/> (last visited Sept. 29, 2019).

<sup>155</sup> About Us, FlexbyFenwick.com, <https://flexbyfenwick.com/about-us/> (last visited Sept. 28, 2019).

now labeled.<sup>156</sup> However, the large-scale document review and associated work remain the dominant opportunity for most gig lawyers and this work retains much of the stigma associated with contract work.<sup>157</sup>

As Professor Henderson described, a remarkable window into the demand and nature of this work is through the Posse List, a website with associated regional listservs through which temporary and permanent legal work is sourced.<sup>158</sup> Many of the postings for legal work in California seek temporary document reviewers.<sup>159</sup> The postings vary in the qualifications they seek, from unlicensed J.D.'s, to lawyers licensed in any state, to California-bar-qualified lawyers. There are relatively frequent postings for lawyers with fluency in a particular language.

The author spoke with multiple attorneys who found work through the Posse List.<sup>160</sup> Although these interviews can in no way be considered any sort of representative sample, they do provide some insight into this somewhat hidden part of the corporate legal market. All said that their experiences doing contract work were primarily of document review and that each work experience differed slightly depending on the staffing agency or eDiscovery vendor, the law firm client (hardly any worked on matters where the client of the vendor was a legal department), and the subject matter of the work. Some examples:

- My first experience in 2006 was my best experience. I was making \$60/hour for four months doing Spanish-language document review. We were working at the law firm, they gave us food, we had access to the attorneys. The project I'm currently on is the most lax I've ever been on - not even the supervising attorney is on hand to answer questions. Everything is by email. We are supervised but it is remote supervision. We are still getting answers to our questions and they are providing answers but it is remote. The worksite is run by the staffing agency. The project manager was there on the first day of the project when we had our training but we have not seen him since - it is just us. All of the other projects I've worked on between 2006 and now are variations on these extremes. There are a few where I've done work at the actual law firm and the attorneys are right there. Most of them are at a remote site and the attorney is there but in a separate office.<sup>161</sup>
- Usually, day one they have an associate or someone come in and tell us about the case. On some projects I've been on you never see them again - on others they are there every day or once a week. It varies. In the last review I was on, we were at the firm and someone (I guess our supervisor

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<sup>156</sup> This report has not touched on the opportunities for temporary lawyers associating with other lawyers to cover appearances, depositions, and other more specialized areas but it should be noted that this is another growing area of temporary staffing.

<sup>157</sup> HENDERSON REPORT, *supra* note 3, at 8.

<sup>158</sup> Homepage, ThePosseList.com, <https://www.theposselist.com/> (last visited Sept. 30, 2019).

<sup>159</sup> The author subscribed to the listserv for California to review the postings over the months of August and September 2019. Over those two months, she received 64 emails from the listserv. Of those, approximately 35 appeared to be recruiting for document review projects.

<sup>160</sup> The author posted an interview request to the Posse List and conducted interviews with 9 people.

<sup>161</sup> Interview with Anonymous (Aug. 29, 2019). This person is not barred in any state.

- from the firm) would come in every day at 3pm and ask us if we had any questions. At off-site we would use email more. Sometimes in a room we would discuss a question and if we couldn't come to a consensus then we would ask someone. I have been on projects where no one ever manages it - or at least it feels that way. Someone might come once a week or so.<sup>162</sup>
- I have done both on-site and off-site work. I think it is most common to be off-site. The way things are run can really vary - sometimes things are very actively managed by the firm, sometimes it is just the staffing agencies project manager will be managing the project. Sometimes they are very hands-off which I think makes for poorer work product. If there is an associate or project manager on-site, then you get real time with questions. Otherwise it is generally emails. It works better with better communication early on.<sup>163</sup>
  - I'm working in a document review facility. The attorneys from the firm are there may be the first week or the first few days and they give the training. Then the projects are usually run by the project manager unless the firm wants to be involved. The project manager is an employee of the staffing agency or hired on contract with the staffing agency.<sup>164</sup>
  - There is a spectrum. On one end I've worked for boutique staffing firms who actually do it as a placement firm providing offices and have little to do with the work which is run by the firms. Then all the way to the other end of the spectrum where there are off-site facilities, document review attorneys elbow to elbow, facility is filthy, air conditioning is cut back, video cameras all over the document review room, and non-attorney managers.<sup>165</sup>

Most people appreciated the flexibility of the work and the opportunity to work on many different substantive projects. However, each person indicated they would rather have a full-time position in a firm or company. None of those interviewed had "chosen" contract work as a lifestyle choice. Rather, each had ended up doing the work because of other factors (not being able to pass the bar, not finding any other employment, coming out of law school during the financial crisis).<sup>166</sup>

One of the themes that emerged from these interviews was that many of these attorneys feel trapped in a lower status world of legal work and work status more generally. One interviewee said, "It is very difficult work to do document review and I'm only continuing to do it because I

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<sup>162</sup> Interview with Anonymous (Sept. 3, 2019).

<sup>163</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>164</sup> Interview with Anonymous (Aug. 27, 2019).

<sup>165</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>166</sup> Almost all of the people interviewed came from some kind of minority background (gender, age, nationality, race). Although there do not appear to be any comprehensive studies of this sector of the market particularly along demographic lines, one potentially concerning possibility is that marginalized groups are overly represented in this sector because of systemic exclusion from full employment. As one LPO leader stated, "Our workers are everything but we have a lot of people who are systematically disenfranchised, big firm lawyers who didn't make the cut, and people from lower tier law schools."

can't get anyone to hire me because I've been doing document review."<sup>167</sup> Another said, "I feel like you get trapped in this kind of work and it isn't easy to figure out a way to go to some other kind of legal work. It is almost demeaning - even when you are working at the firm, they don't treat you like an employee of the firm. Then you just get experience in this one area that it doesn't even seem to matter that you have experience - even though I've been doing this 12 years, it doesn't matter for my role or compensation or anything."<sup>168</sup> Most of those interviewed expressed frustration at the experience of being put to work in a location or floor separate from "the real attorneys" and concern at the continued decreasing level of compensation for this work (multiple people stated that several years ago the going rate was \$50/hour and now it is \$30-35 per hour). One person noted that non-legal consultants, those who are brought into a company on a temporary basis to perform some task (i.e. design, marketing, etc.) are paid significantly more than attorneys brought in on a contract basis.<sup>169</sup> Another concluded, It is really not so much a career. You can only do this for a while and I think the mentality is very detrimental for the people because it really gets you off the track to being a person who practices law."<sup>170</sup>

Julia Shapiro, founder of Hire an Esquire, worked as a contract lawyer before founding her company. She explained,

I was a gig worker. I wanted Hire an Esquire to address some of the issues in the market. The gig economy is here whether we want it or not and there are a lot of downsides: stress, financial instability, lack of transparency. Many of the document review projects - they are trying to staff 80 people on a project in a day or two - they are treated like cattle. The recruiters and their manual processes can't vet or communicate with this volume of people in a way that feels respectful and keeps them informed. We focused on building in automation and transparency to keep everyone updated and informed automatically as well as empowering our contractors who are generally seasoned experienced attorneys to speak with the end client directly without a recruiter as a gatekeeper. Also, we focused on automating the more rote tasks of vetting and notifications so that our recruiting team could focus on more valuable and meaningful interactions with our candidates. We also felt very strongly about hiring our people as employees and giving them health insurance and other community features. We flat out refuse to staff certain LPOs and document review projects because the margins are so thin that we can't give our attorneys health insurance. The challenges of the gig economy are real and need to be addressed at a policy level across the entire economy.<sup>171</sup>

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<sup>167</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>168</sup> Interview with Anonymous (Sept. 3, 2019).

<sup>169</sup> "The main issue is the compensation falls woefully short - about 50 percent less than I made in a previous full-time corporate role. Not to mention no benefits. Basically, the employer shifts the burden of having to pay double compensation (the person on maternity leave + the contractor) on to the contract attorney to accept less. And to a great extent they get away with it because the market is saturated with attorneys. Comparatively, consultants charge an inflated rate accounting for (1) no job security or longevity; (2) no benefits; and (3) no paid time off or holidays. So their rate actually winds up being 20-40% higher than what a FTE would be paid. It's the complete opposite with devaluing contract attorneys."

Interview with Anonymous (Aug. 27, 2019).

<sup>170</sup> Interview with Anonymous (Aug. 27, 2019).

<sup>171</sup> Interview with Julia Shapiro, *supra* note 150.

Those interviewed also offered a range of opinions on whether they believed what they were doing, as document reviewers, was the practice of law. One said, “Document review is not really legal work. It can be performed by attorneys and that is preferred but can also be performed by law students.”<sup>172</sup> Another said, “It is to the benefit of the management review companies to present the argument that document review is not the practice of law. The reviewer is responsible for determining what the other side is going to get in response to request for productions as modified by objections by your side, attorney-client privilege determinations (these can be difficult as well, just because an attorney is cc’d, that doesn’t make it privileged, an attorney opining on a business issue is not privileged, same with work product). This is the practice of law.”<sup>173</sup> In some ways, they are both right under the varied current interpretation of and practical application of the rules.<sup>174</sup>

## **VI. Hybrid Business Models**

There are a growing number of entities that do not fit exactly into any of the above categories.

### **i. Atrium: Dual Entity Structure**

Atrium was founded by non-lawyer and successful tech entrepreneur Justin Kan and former Orrick, Herrington & Sutcliffe LLP partner Augie Rakow. Business Insider described the model, “Atrium is like the offspring of a law firm and a tech startup. It uses machine learning software to deal with ordinary legal documents and has lawyers who work on the complex legal issues.”<sup>175</sup> In fact, Atrium, headquartered in San Francisco, is actually both a law firm and a tech startup. Atrium LLP is a traditional law firm with elite lawyers targeting high-end clients. The lawyers are expected to spend 80 percent of their time on traditional client work. They are also expected to spend 20 percent of their time advising and testing products for the firm’s sister technology company, Atrium Legal Technology Solutions, Inc. (“LTS”).<sup>176</sup> Atrium LTS is a venture-funded, legal tech startup which is tied to the law firm via service agreements. Kan is the CEO of Atrium LTS; Hans Kim is the Managing Partner of Atrium LLP. There is one website for Atrium which seems to describe a single entity, “Atrium is a corporate law firm and a technology company providing fast, transparent, and price-predictable professional services to startups.”<sup>177</sup>

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<sup>172</sup> Interview with Anonymous (Aug. 27, 2019).

<sup>173</sup> Interview with Anonymous (Sept. 4, 2019).

<sup>174</sup> Ultimately, the challenge of legal gig workers is more of an employment issue than a professional regulation issue. Lawyers are exempted from California’s new gig economy employment legislation. But as has been seen in other cases, the question of whether contract document reviewers are considered lawyers practicing law is far from settled. See Leslie A. Gordon, *Contract Lawyers Pushing for Better Pay*, ABA Journal (Jun. 1, 2017), at

[http://www.abajournal.com/magazine/article/contract\\_lawyer\\_pay\\_lawsuits](http://www.abajournal.com/magazine/article/contract_lawyer_pay_lawsuits)

<sup>175</sup> Julie Bort, *57 Startups That Will Boom in 2019, According to VCs*, Business Insider (Feb. 6, 2019), at <https://www.businessinsider.com/57-tech-startups-vc-insiders-say-will-boom-in-2019-2019-1>.

<sup>176</sup> Joe Borstein, *Competition is for Losers: The Rise of Atrium (Part One)*, Above The Law (Sept. 27, 2017), at <https://abovethelaw.com/2017/09/competition-is-for-losers-the-rise-of-atrimum-part-i/?rf=1>.

<sup>177</sup> Homepage, Atrium.co, <https://www.atrimum.co/> (last visited Sept. 25, 2019).

As the *ABA Journal* noted, “While separate entities, the financial relationship between Atrium LTS and Atrium LLP is inextricable. Atrium LTS provided the firm a loan to cover all startup costs, and Atrium attorneys are being paid through options in Atrium LTS or a salary for advising the technology company.”<sup>178</sup> Partners and associates at Atrium LLP are compensated through client work (whether billable hours or via other fee arrangements) and through equity in the tech company.<sup>179</sup> The model circumvents the restrictions of Rule 5.4, allowing significant capital to flow into Atrium LTS to enable retention of high-level engineering, computer science, sales, and marketing talent and development of serious technology capabilities.<sup>180</sup> Those technology capabilities include business and practice management for lawyers, client/lawyer collaboration tools, and legal tools for Atrium clients.<sup>181</sup> Rakow, the attorney co-founder and the first managing partner of Atrium LLP, explained, ““Law firms are stuck in the past because evolution in the legal industry is left only to lawyers,” he said. “Law firms don’t invest in their own future like good businesses. A two-entity structure allows us to take bigger risks and innovate.”<sup>182</sup> For example, one of the tools automatically creates Excel cap tables from startup funding documents.<sup>183</sup> As one article commented, “Done right, [Atrium’s clients] shouldn’t even know that it’s machine vision software, not junior associates, pouring over their docs.”<sup>184</sup>

Atrium is not a completely new business model, nor is it the only legal services entity so structured.<sup>185</sup> As mentioned, Elevate Next Law is a dual-entity alongside Elevate Services. Clearspire, a firm with an associated tech company, was founded in 2010 and shut down four years later.<sup>186</sup> Atticus Law, a public benefit corporation tech company and sister law firm targeting consumers, offers free legal triage and referrals from the law firm in a variety of consumer law areas.<sup>187</sup>

## VII. Conclusion

<sup>178</sup> Jason Tashea, *Venture-backed, Technology-focused Law Firm Launches*, *ABA Journal* (Sept. 14, 2017), at [http://www.abajournal.com/news/article/venture\\_backed\\_technology\\_focused\\_law\\_firm\\_launches](http://www.abajournal.com/news/article/venture_backed_technology_focused_law_firm_launches).

<sup>179</sup> Atrium has taken on a significant amount of venture capital financing, including \$65 million from a16z (Andreessen Horowitz). The funding flows to the technology company, not the law firm. See Josh Constine, *Atrium Raises \$65M from a16z to Replace Lawyers with Machine Learning*, *TechCrunch* (Sept. 10, 2018), at <https://techcrunch.com/2018/09/10/atrium-legal/>.

<sup>181</sup> Platform, Atrium.co, <https://www.atrium.co/services/platform> (last visited Sept. 25, 2019).

<sup>182</sup> *Augie Rakow ‘07 Launches Atrium in SF to Support Tech Startups and Investors*, UC Hastings Website (Aug. 5, 2018), at <https://www.uchastings.edu/2018/08/05/augie-rakow-07-launches-atrium-in-sf-to-support-tech-startups-and-investors/>.

<sup>183</sup> Josh Constine, *Atrium Raises \$65M from a16z to Replace Lawyers with Machine Learning*, *TechCrunch* (Sept. 10, 2018), at <https://techcrunch.com/2018/09/10/atrium-legal/>.

<sup>184</sup> *Id.*

<sup>185</sup> As noted earlier, many law firms are also creating tech offerings or related entities (venture funds, incubators). These tend to be structured as subsidiaries rather than the dual-entity model.

<sup>186</sup> Robert Ambrogi, *Is ‘Revolutionary’ Law Firm Atrium A Case of Clearspire Déjà Vu?*, *Above The Law* (Sept. 18, 2017), at <https://abovethelaw.com/2017/09/is-revolutionary-law-firm-atrium-a-case-of-clearspire-deja-vu/>.

<sup>187</sup> See *Why Atticus?*, Atticus.law, <https://www.atticus.law/why-atticus> (last visited Sept. 27, 2019).



There are several clear themes emerging from a comprehensive review of the corporate legal market:

- **Disaggregation:** Corporate legal work is being assessed as a process, taken apart into distinct buckets of work, and siphoned off to a variety of providers depending on volume, frequency, and complexity. High volume, high frequency, lower complexity work is often performed, in whole or in part, by “new” providers. This work is predominantly: eDiscovery and document review, contracts life-cycle management and points therein, certain aspects of IP legal work, and compliance.
- **Functional Exception:** The “functional exception” created by Rule 5.3 and the associated bar opinions has enabled this disaggregation and facilitated the growth of a variety corporate entities offering legal services to lawyers.
- **Corporate Legal Service Providers:** Many types of corporate legal work are being performed by technology, non-lawyers, and lawyers used or employed by non-lawyer owned, for-profit, corporate entities.
- **Growth of Gig Work:** The increasing disaggregation of legal work has created an economy in which flexible and temporary work arrangements are growing in importance.
- **Impact of Tech:** Technological solutions for legal work are fundamental in the corporate market but significant impact is in the area of high volume, high frequency, and lower complexity work. There are a couple of areas in which technology has facilitated new legal approaches (analytics, blockchain) and a couple of areas in which AI-based technology is doing the first cut of what lawyers do (document review via predictive coding and contract review).
- **Definitional shifts:** The definition of the practice of law, to the extent a coherent definition ever existed, may be undergoing a de facto shift in response to the realities of a “law thick” corporate economy (i.e. the volume of legal work is too high for it all to be caught in the definition of the practice of law).<sup>188</sup>

Ultimately, the picture emerging of the corporate legal market in California is one of growth and flux in spite of regulatory restrictions on business models and sources of capital. The entities described in this report, with the exception of in-house legal (at a bare minimum) and law firm owned businesses, are mostly outside the reach of the professional regulations because their business and service models are carefully designed to avoid the unauthorized practice of law, corporate practice of law, or fee-splitting and because they have a relatively wide playing field by virtue of the “functional exception” in the rules. The result, as this report has attempted to show, is a legal economy leveraging a variety of business, employment, and technological solutions to respond to the needs of their corporate clients.

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<sup>188</sup> See Gillian K. Hadfield & Jamie Heine, *Life in the Law Thick World: The Legal Resource Landscape for Ordinary Americans*, in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA 21 (Samuel Estreicher & Joy Radice eds. 2016).