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### The Legal Industry's Second Chance to Get It Right

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**THE LEGAL INDUSTRY’S SECOND CHANCE TO GET IT  
RIGHT**

NANCY B. RAPOPORT & JOSEPH R. TIANO, JR.

Introduction..... 1  
The Great Recession of 2008 vs. COVID-19 Pandemic  
    Economics .....2  
The Difference Between Cause And Catalyst (a.k.a., Knee-Jerk  
    Reaction vs. Real Progress).....5  
The Possibility of A Legal Renaissance... ..6  
An Unprecedented “Do-Over”.....9

INTRODUCTION

We’re living in challenging times as societies throughout the world continue to fight a war against the COVID-19 pandemic. With the dreadful health crisis having now been compounded by the utter economic and political turmoil that we’re experiencing, it’s no surprise that pessimism abounds. Since March of 2020, most articles about the legal industry’s future have been bleak,<sup>1</sup> reporting on current industry troubles and forecasting more challenges for years to come. Decreases in partner draws, compensation cuts for non-partner personnel, headcount adjustments, and similar “retrenchment” measures are grabbing the headlines.<sup>2</sup> Even in the most widely circulated and well-respected publications, legal industry pundits are rashly recycling post-

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1. We have, of course, already published a contrarian view in *Above the Law*. See Nancy B. Rapoport & Joe Tiano, *COVID-19 Could Catalyze The Legal Industry Renaissance*, ABOVE THE L. (April 29, 2020, 10:46 AM), <https://abovethelaw.com/2020/04/covid-19-could-catalyze-the-legal-industry-renaissance/>. This essay builds upon that post.

2. See ALM Staff, *Pay Cuts, Layoffs, and More: How Law Firms Are Managing the Pandemic*, THE AM. LAW. (July, 31, 2020, 5:00 AM), <https://www.law.com/americanlawyer/2020/05/04/pay-cuts-layoffs-and-more-how-law-firms-are-managing-the-pandemic/?slreturn=20200408114522>. Several outlets are publishing a firm-by-firm guide to how law firms are protecting their bottom lines.

2008 Great Recession thinking with obsolete analyses, forecasts, rhetoric, and recommendations for legal departments and law firms. The state of the legal market, in their view, has not been strong and remains in peril.

We have a contrary view on the state of the legal market. The legal industry's doom and gloom pundits have gotten it wrong. By mistakenly conflating the characteristics of the 2008 Great Recession with COVID-19 pandemic economics, those pundits have misapprehended the severity of the legal industry's near-term challenges and espoused irrationally pessimistic forecasts regarding its longer term outlook. Consequently, most recent legal industry publications, media reports, and webinars are offering inapposite advice and recommendations to industry leaders.

We think that, over the next twelve months, the 400 largest U.S. law firms (i.e., "BigLaw") and the legal departments of BigLaw's largest clients will dust themselves off after some initial retrenchment, quickly stabilize, and start showing positive trends.<sup>3</sup> Over the longer term, BigLaw (at least that part of BigLaw that made sensible internal economic decisions over the past several years) should gain positive momentum. Legal industry leaders should be bullish about their industry's economic future. The remainder of this essay will discuss why the doom and gloom perspective is misguided and why we think that the legal industry has caught a lucky break. It has a second chance to shape how legal services will be bought, sold, delivered, and economically evaluated in the future.

## THE GREAT RECESSION OF 2008 VS. COVID-19 PANDEMIC ECONOMICS

As we said in our *Above the Law* post,<sup>4</sup> we'll let the actual economists parse a comparison of the Great Recession and our current situation. That said, we need to make a few overly simplified remarks on how the two economic crises affected the legal industry. We make these remarks in response to misguidance offered by those doom and gloom industry pundits. The Great Recession of 2008 and the COVID-19 economic crisis, as discrete economic catastrophes, have as many dissimilarities as similarities. Due to the dissimilarities, legal industry

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3. Or they'll reorganize. J. Crew and Neiman Marcus filed for Chapter 11 protection, and there will be many more such bankruptcies to follow. Bankruptcy lawyers and other insolvency professionals will be busy for years to come.

4. See Rapoport & Tiano, *supra* note 1.

pundits shouldn't blindly rely on lessons learned from the 2008 Great Recession.

| The Great Recession   | COVID-19 economic crisis  |
|---|---|
| Multiple bad decisions, such as subprime mortgages, predatory lending, inept government regulation, a credit crunch, and securities fraud; in other words, there were a lot of purportedly smart people making bad decisions. | Instead of multiple causes, there's one: COVID-19.                          |
| Slow unraveling of a U.S. economy based on bad assumptions, such as the assumption that housing prices would always increase and that banks only lent money to credit-worthy borrowers.                                       | Abrupt, discrete cause that caused a global shutdown in a matter of months. |

Unlike the 2008 Great Recession, which could have been contained by better prophylactic regulatory measures and self-governance, the COVID-19 health crisis simply struck too quickly, too furiously, and too unpredictably for any type of recycled countermeasure to work.

Second, the pain of what we call "Pandemic Economics" has proven to be nearly universal. Unlike the 2008 Great Recession, which hit the financial, real estate, and building and commercial materials industries disproportionately hard (while sparing others), no industry has been left unscathed by the COVID-19 crisis.<sup>5</sup> Without question, the travel, leisure, and hospitality industry, commercial real estate and most retail businesses, and education have been hit the hardest, but all industries have been negatively affected in some manner. Third, the 2008 Great Recession, unlike Pandemic Economics, was geographically concentrated. In 2008, the hardest-hit economies were the United States and regions that depended heavily on the U.S. economy (i.e., Europe and South America). These regions felt a severe, sustained recession, while other evolving economies, like China and

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5. *But see supra* note 3. Business is good for insolvency professionals.

India, enjoyed modest growth. However, economic fallout from the COVID-19 pandemic is universal. Virtually nobody will be spared economic pain. For the U.S. generally, and for BigLaw in particular, there is a glimmer of positive news in terms of analyzing the potential for recovery. Relative to the rest of the world, many people and businesses in the U.S. enduring heartrending economic woes and hardships now are better positioned to rebuild than are some of our foreign counterparts.<sup>6</sup> Indeed, U.S. financial institutions have dealt with two major financial crises in the past twenty years, so the economic challenges occasioned by the pandemic are not completely uncharted waters. The U.S. government has reached into its bag of economic tricks, recently enacting two stimulus packages to buttress the economy. The Federal Reserve also has acted to keep interest rates at record lows to ensure sufficient liquidity in the economy.<sup>7</sup> These measures have been largely successful, as the U.S. stock markets have not just maintained value but are now setting records. Quarantining measures and the movement towards a remote workforce throughout the pandemic has accelerated the adoption of technologies that form the foundation of a “digital economy.”

Unfortunately, unlike the post-2008 world in which smart economists could build and test financial models to address the Great Recession’s impact and enact or recommend sensible countermeasures, there is no clarity yet on when there will be a return to normal or even what “normal” will look like. From both a healthcare and an economic perspective, the full impact of the crisis is entirely unknowable, and it’s similarly difficult to predict when consumer confidence will rebound. In other words, although doom and gloom is a possible outcome, it’s far from the likely one—at least for BigLaw.

Our point here is that the COVID-19 economic crisis originated in a manner that we’ve never encountered; it’s been damaging the global economy in an unprecedented way, and the end result is indeterminate. However, that knowledge shouldn’t paralyze BigLaw.

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6. That’s not true, of course, for hourly workers in certain industries, such as restaurants, hotels, movie studios, and casinos. As those industries struggle, so will the workers whose jobs have disappeared—as will the economies that depend on the economic health of *those* workers.

7. Jeffrey Cheng, Tyler Powell, Dave Skidmore & David Wessel, *What’s the Fed doing in response to the COVID-19 crisis? What more could it do?*, BROOKINGS: THE HUTCHINS CENTER EXPLAINS (Dec. 11, 2020), <https://www.brookings.edu/research/fed-response-to-covid19/>.

## THE DIFFERENCE BETWEEN CAUSE AND CATALYST (A.K.A., KNEE-JERK REACTION VS. REAL PROGRESS)

Every day, we see media reports in which various legal industry pundits are discussing decreased demand for legal services. Mass law firm and legal department layoffs,<sup>8</sup> partner de-equitizations, price relief and rate cut requests by clients, quick-pay discount offers, client work stoppages, and other uninspiring tactics are helping law firms retain clients and survive. Pundits speculate about which combination of the aforementioned knee-jerk reactions offers the best approach if the COVID-19 economic crisis looks, on an economist's graph, to be V-shaped, U-shaped, K-shaped, or L-shaped. Then, they're taking their recycled Great Recession theories and misperceiving the likely outcome and opportunity for the legal industry over the next decade.

Notwithstanding some good years recently—which can be attributed more to a thriving economy than to the legal industry's own contributions to the economy—our view is that the legal industry has been in a precarious position since the post-2008 Great Recession days. Faced with “New Law” battle cries, the “Death of the Billable Hour,” the rise of alternative fee agreements,<sup>9</sup> disruptive challenges from alternative legal providers, the advent of more useful legal technology and legal analytics, and other calls to innovate, some legal industry leaders have pivoted to more creative ideas. Those forward-thinking

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8. For example, *Above the Law* is gathering information about layoffs and salary cuts (and of the return of some law firm bonus programs). See Staci Zaretsky, *Associate Compensation Scorecard: Biglaw's 2020 Bonus Bonanza*, ABOVE THE LAW: BIG LAW (Nov. 25, 2020, 10:28 AM), <https://abovethelaw.com/2020/11/biglaw-bonus-chart-2020/>; Staci Zaretsky, *Biglaw Fall Special Bonus Tracker: Which Biglaw Firms Are Handing Out Cash For Associates' Hard Work During The Pandemic?*, ABOVE THE LAW: BIG LAW (Sep. 29, 2020, 10:43 AM), <https://abovethelaw.com/2020/09/biglaw-fall-special-bonus-tracker-which-biglaw-firms-are-handing-out-cash-for-associates-hard-work-during-the-pandemic/>; Staci Zaretsky, *The COVID Crisis Law Firm Layoff Tracker: What's Your Firm Doing to Survive?*, ABOVE THE LAW (Apr. 2, 2020, 3:45 PM), <https://abovethelaw.com/2020/04/the-covid-crisis-law-firm-layoff-tracker-whats-your-firm-doing-to-survive/>. See also *Layoffs*, ABOVE THE LAW, <https://abovethelaw.com/tag/layoffs/> (last updated Dec. 28, 2020) (a selection of legal employment issue posts).

9. Not to tout our own horns too much, but you can read some of our earlier work to get a feel for our take on the changes coming to BigLaw. See, e.g., Nancy B. Rapoport, *Using General Counsel to Set the Tone for Work in Large Chapter 11 Cases*, 88 FORDHAM L. REV. 1727 (2020); see also Nancy B. Rapoport, *Client-Focused Management of Expectations for Legal Fees in Large Chapter 11 Cases*, 28 AM. BANKR. INST. L. REV. 39 (2020); Nancy B. Rapoport & Joseph R. Tiano, Jr., *Leveraging Legal Analytics and Spend Data as a Law Firm Self-Governance Tool*, XIII J. BUS., ENTREPRENEURSHIP & L. 71 (2019); Nancy B. Rapoport & Joseph R. Tiano, Jr., *Legal Analytics, Social Science, and Legal Fees: Reimagining “Legal Spend” Decisions in an Evolving Industry*, 35 GA. ST. U. L. REV. 1269 (2019).

leaders have proven to be creative and adaptive, having often made difficult financial, operational, and strategic decisions in the prior decade. They did the smart things, like responding to client demands for innovation, shedding underproducing partners, and adopting new technology to drive efficiency, when emerging from post-2008 challenges to position themselves and their organizations for future success.<sup>10</sup>

Others in the legal industry have ignored the market's calls for change and innovation, instead riding a hot economy for nearly a decade without making the hard decisions when they should have been made—*before* a crisis. Now, these law firm leaders are forced into knee-jerk reactions, catalyzed by COVID-19. However discomfoting, decisions by BigLaw firms to embrace change and innovation, exercise fiscal responsibility, implement client-driven firm strategies, and exercise prudent organizational management should have been made well before the COVID-19 crisis. For the legal industry, it just doesn't matter what the recovery curve looks like. As James Goodnow, a highly astute industry pundit, wrote in a relatively recent *Above the Law* column, "[f]irms that spent the past few years with their heads in the sand will be lucky to make it out of this at all . . . . We knew the profession was going to go through some fundamental changes, but that always seemed like a problem for tomorrow."<sup>11</sup>

Well, tomorrow is here. What does all of this mean?

### THE POSSIBILITY OF A LEGAL RENAISSANCE

Most businesses that are tone deaf to the demands of the market simply die. The legal industry seems to be the proverbial exception to the rule (other than those organizations engaging in gross mismanagement). It's either incredibly resilient, incredibly lucky, or both.

With apologies in advance to the lawyer-haters out there, we envision unprecedented levels of prosperity in the U.S. legal industry and, perhaps even a quasi-renaissance within the industry over the next decade.

First, let's take the obvious off the table. The first wave of BigLaw activity is focusing on healthcare, bankruptcy and restructuring,

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10. If not positioned for immediate success, the forward-thinking leaders are at least better positioned to ride out the storm.

11. James Goodnow, *Tomorrow is Here*, ABOVE THE LAW (Apr. 3, 2020, 10:46 AM), <https://abovethelaw.com/legal-innovation-center/2020/04/03/tomorrow-is-here/>.

employment and labor law, and criminal law. But that's just the first wave. After that, demand for legal services in a variety of areas will skyrocket. Think about insurance and contract law as two clear examples.

Unlike the aftermath of the 2008 Great Recession in which the legal industry was in a third-tier, follower position, unable to drive any aspects of a recovery, the U.S. legal industry *can* be a first-tier critical force behind any recovery from the COVID-19 pandemic. Practically speaking, we envision a four-phase path to recovery involving BigLaw at every phase: Triage, Assessment, Enforcement, and Implementation.

**Triage (now happening).** In this phase, U.S. lawyers are acting quickly to help fortify economically devastated organizations and individuals through a period focused on survival. Bankruptcy and restructuring, employment law, and healthcare-focused legal services are the cornerstone of practitioners who are working to help clients curtail losses, preserve assets, and, most important, keep people physically and mentally healthy. The personal touch of lawyers and paraprofessionals, as caring and empathetic human beings (as opposed to LegalTech software or robots), shines bright here and sets the foundation for the legal industry's renaissance. This is where BigLaw is stepping up to the plate by using its *pro bono* work to help with the consumer side of the house, such as with landlord-tenant disputes or denial of benefits.<sup>12</sup> In this phase, immediacy of action is at a premium. The luxury of time only happens in later phases.

**Assessment (in process).** Throughout the Assessment Phase, U.S. legal professionals will continue to help afflicted organizations and individuals understand their legal rights. The volume and type of legal work being performed during the Assessment Phase is almost unimaginable. Insurance policies, leases, commercial contracts, and disclosure documents have been dusted off and analyzed in large part by U.S. legal professionals, not by legal process outsourcing teams and not by contract review software tools. Although document review has never been viewed as "bet-the-company" work, we're not talking about

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12. See generally Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020) (CDC issues eviction moratorium order under Section 361 of the Public Health Service Act (42 U.S.C. 264 (2018))). These moratoriums have created enormous pressure for landlords, already resulting in litigation. See, e.g., David Thomas, *In an Uncertain Era for Law Firm Real Estate, Landlords Face New Pressures on Rent*, THE AM. LAWYER (June 10, 2020, 3:54 PM), <https://www.law.com/americanlawyer/2020/06/10/in-an-uncertain-era-for-law-firm-real-estate-landlords-face-new-pressures-on-rent/>.



document review to confirm the existence of an assignability clause or to identify governing law. Both of those tasks can be offshored or handled programmatically. Instead, the Assessment Phase involves novel questions of law and the use of existing principles of law to once-in-a-lifetime fact patterns: for example, the relationship of a pandemic to business interruption insurance during stay-at-home orders.<sup>13</sup> The financial survival of individuals and organizations depends upon getting the legal assessment answer(s) correct in this phase. Only good legal professionals can pioneer these assessments.

**Enforcement.** The U.S. legal industry's bonanza happens in the Enforcement Phase, which is likely to continue for many years. Everyone who's gotten an assessment of his or her legal rights in the previous phase may not be happy with the outcome. The severity of losses and the need for truly meaningful recoveries will beget a tsunami of litigation in the United States. Given the novelty and complexity of the issues to be litigated, quick resolutions are improbable. We think that enormous increases in bankruptcy filings,<sup>14</sup> commercial litigation, real estate litigation, employment litigation, and healthcare-related litigation will start soon and last for years, if not decades. Unlike the 2008 Great Recession, financial losses from the COVID-19 crisis span the entire globe. We imagine that U.S. residents and organizations will seek to enforce their rights vigorously. We also expect litigation involving U.S. and non-U.S. litigants to skyrocket. Chances are that much of the litigation involving non-U.S. parties will occur in the United States in our judicial system, where U.S. licensed lawyers operate as quasi-monopolists. As we ruminate on the volume, duration,

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13. See Jonathan D. Nelson, *COVID-19 & Force Majeure*, 34 COM L. WORLD 30 (2020); Russell Lewis, Jonathan Havens, Cornelius Sweers & Charles H. Barnett IV, *COVID-19 Force Majeure to the Rescue?*, 56 TENN. B.J. 20 (2020) (suggesting *force majeure* (or "act of God") defenses may be available to help renters avoid their obligation to pay rent due to social distancing guidelines and mandated business closures for "non-essential" businesses). Even some law firms are using the law (and clever negotiations of their own lease terms) to push back on paying rent. See, e.g., Debra Cassens Weiss, *Second BigLaw Firm Litigates Over Rent on Unoccupied Offices During COVID-19 Pandemic*, AM. B. ASS'N J. (July 29, 2020, 10:24 AM), <https://www.abajournal.com/news/article/second-biglaw-firm-litigates-over-rent-on-unoccupied-offices-during-pandemic>.

14. Commercial bankruptcy filings are escalating, but the consumer-side filings are delayed, we think, because of rent moratoriums. See, e.g., Jialan Wang, Jeyul Yang, Benjamin Iverson & Raymond Kluender, *Bankruptcy and the COVID-19 Crisis* 8 (Harvard Bus. Sch., Working Paper No. 21-041, 2020); *Fewer Americans have filed for bankruptcy in 2020 than in 2019*, THE ECONOMIST: GRAPHIC DETAIL (Oct. 5, 2020), <https://www.economist.com/graphic-detail/2020/10/05/fewer-americans-have-filed-for-bankruptcy-in-2020-than-in-2019>.

and complexity of future litigation, as well as the enforcement of one's legal rights, it seems that U.S. litigators will be busy for years to come.

**Implementation.** As life returns to normal (or quasi-normal), the Implementation Phase will take root. This phase involves effectuating the outcomes realized in prior phases, such as confirming plans of reorganization, repopulating vacated commercial space with new tenants and leases, onboarding re-entrants into the job market, and renegotiating commercial arrangements. The Implementation Phase requires savvy legal professionals at every step of the journey, from understanding the legal rights of all of the parties as they emerge from prior phases to memorializing those rights for the future. In this phase, transactional lawyers will rejoin the already-engaged litigators.<sup>15</sup>

### AN UNPRECEDENTED "DO-OVER"

A portion of the legal industry leaders who ignored the market demands in the aftermath of the 2008 recession, and who made few or no meaningful changes, may find that their organizations or departments are facing extinction as we navigate the COVID-19 financial crisis.<sup>16</sup> In our view, the outlook for the legal industry is promising, but only if today's legal industry leaders don't fall into the "mostly talk, little action" mode or reuse the stale playbook from the post-2008 era, as the doom-and-gloomers suggest. In fact, we believe that BigLaw is sitting in the pole position, having caught a lucky break with a second chance to influence how legal services will be bought, sold, delivered, and economically evaluated in the future.

Of course, any essay that lambasts the views of many legal industry pundits wouldn't be complete without our obligatory list of "industry pointers" for others to bash. All kidding aside, legal industry leaders will realize the greatest value for each dollar allocated to their budget for legal services, both internally and externally, and realize the

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15. A recent McKinsey & Co. article likewise recognized that "economic downturns do not directly translate into a decline for transactional practices, as market difficulties, regulatory responses, stimulus programs, changes in employment, and other stressors provide potential sources of demand for legal services." McKinsey's Fin. Servs. Practice, *COVID-19: Implications For Law Firms*, MCKINSEY & CO. (May 4, 2020), <https://www.mckinsey.com/industries/financial-services/our-insights/covid-19-implications-for-law-firms>.

16. After watching the legal industry's largely head-in-the-sand reaction to the 2008 financial crisis, we think that legal industry leaders would benefit from listening to Elvis Presley's 1970s classic *A Little Less Conversation*. See ELVIS PRESLEY, *A Little Less Conversation*, on ALMOST IN LOVE (RCA 1968); see also Jimmy Cool, *Elvis Presley – A Little Less Conversation (Album Master)*, YOUTUBE (Mar. 30, 2012), <https://www.youtube.com/watch?v=WWVMXLSS1cA>.

benefits that we see on the horizon, but only if those leaders think dynamically. We're heading into uncertain times, which is why it's foolhardy to try to overcome tomorrow's uncertainties with yesterday's solutions. The successful legal industry leaders, both those in BigLaw and those working in in-house legal departments, will focus on principles and actionable steps that can make a real economic and operational difference. Below are a few key takeaways on how to best position for individual and organizational success as the global society re-engages.

***Reinvest in professional and business relationships.*** On the business front, it's clear that many businesses, and possibly entire industries, will struggle mightily or fail altogether, leaving many of our clients and colleagues in financial peril. Many of us in the legal industry made an extraordinarily good living for a long time. If the legal industry sees the promising times that we expect, we need to make sure to reinvest in our current and former clients and colleagues, perhaps through *pro bono* work, financial accommodations, re-employment assistance, and the like. Our clients and colleagues have been successful and made many of us in the legal industry successful as well. Thus, we should reinvest in supporting them and their new efforts.

***Embrace and promote value and efficiency-focused economics.*** There's no doubt that CFOs will be slashing budgets across the board. In the short term, these cuts will affect legal departments and law firms negatively. As the legal industry rebounds, and demands for legal services increase, BigLaw leaders need to focus on efficiency levels, value and outcome—not on billable rates, alternative fee arrangements, or fixed fee arrangements. If you were to ask 100 clients (CFOs/CEOs/COOs and in-house counsel) whether they would prefer: (a) a 10% rate discount (or an alternative fee arrangement), or (b) the assurance that a legal professional worked a “good” hour at normal rates (i.e., the right level of legal professional efficiently handled a task appropriate for his or her skill set), we think that 99 out of 100 would prefer the “good” hour. Discussions about rates and alternative fee arrangements are just door openers to a more meaningful, transparent economic discussion about the value and cost of legal services. Extreme value can be delivered by the legal industry over the next decade by using data to embrace and promote value and efficiency-focused economics.

**“Surge” lawyering.** We spoke of the “surge lawyering” idea in our *Above the Law* column, but here’s a short recap.<sup>17</sup> Why not consider a more robust model of redeploying lawyers where they’re needed the most? Why can’t law firms maintain a baseline level of paralegals, associates, “of-counsel” lawyers, and partners, and then add to that baseline some “surge” lawyers on an as-needed basis. Law firms have used surge lawyering for years by hiring contract attorneys to handle large document production activities. That use is by no means the only possible use of surge lawyering. Moreover, nothing stops law firms from seconding their junior lawyers to in-house work with clients for a year or two to better learn a client’s business demands. Today’s newly minted lawyers understand and embrace the gig economy. They can probably handle more fluid work assignments.

**“Teleworking.”** Many of us had the good fortune to be able to work from home yesterday and today. Many of us will be working from home tomorrow. If the COVID-19 crisis has shown us anything about working from home, it has shown that it’s a good way for many industries, including the legal industry, to conduct business.<sup>18</sup> Only time will tell whether “tele-lawyering” productivity levels are comparable to the traditional, in-person environment. But productivity is only one of the considerations (although it’s by far the most important). Over the past century, legal industry leaders have gotten used to conducting business in fancy, physical office locations. If the legal industry can reduce the fixed real estate costs associated with its physical footprint by allowing more teleworking by certain personnel, we think that those savings can be passed onto cost-conscious clients or other business units. In fact, nothing stops us from making other measures permanent as well. Some of these measures, such as the increased use of telephonic and video conferencing for court hearings,<sup>19</sup> offers clients an increased level of efficiency. Instead of lawyers sitting in court waiting for their matters to be called, a senior lawyer can have someone else monitor the hearing while she works on

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17. See Rapoport & Tiano, *supra* note 1.

18. The American Bar Association has just released a Formal Opinion regarding lawyers who are working from home in locations that are outside of those jurisdictions in which they hold bar cards. See ABA Comm. On Ethics & Prof’l Responsibility, Formal Op. 495 (2020).

19. But Zoom-lawyers, beware: Below-camera clothes are not optional. See Elizabeth Dye, *Miami Judge Reminds Attorneys to Wear Pants for Zoom Hearings*, ABOVE THE LAW (Apr. 14, 2020, 2:14 PM), <https://abovethelaw.com/2020/04/miami-judge-reminds-attorneys-to-wear-pants-for-zoom-hearings/>. In case you’re curious, both of us still dress up for hearings and CLEs in exactly the same way that we used to do for in-person appearances.

other matters—all without wasted time cooling her heels in court or traveling to and from in-person hearings. Why go back to in-person hearings for everything?<sup>20</sup> Instead, save the in-person hearings for instances in which in-person lawyering delivers significantly greater benefits.

***Don't obsess about change management with lawyers.*** In a previous article about legal analytics, we wrote “[c]onsider carefully the issue of change management when introducing legal analytics.”<sup>21</sup> Our (really, Tiano’s) thesis was that attorneys needed to be coddled and coached when it came to managing change in the legal industry. After all of the coddling and coaching, the number of meaningful changes seen in the legal industry during the post-2008 era shows us that “change management” impedes real change. The legal industry was so worried about change management that it forgot to implement any actual changes. The COVID-19 crisis has shown us that everyone in the world can adapt to change, even lawyers. If the right changes are being implemented for the right reasons, there’s no need to sugarcoat, postpone, or avoid making meaningful and positive changes to the way the legal industry operates.

***Don't postpone the hard decisions. Res ipsa loquitur.***

***Innovation drives growth.*** The winners here will be those brave enough to apply the lessons of COVID-19 to their businesses. Those who use the same tired playbook are unlikely to survive.

Legal industry leaders must change for the better regarding the way that legal services are bought, sold, delivered, and economically evaluated. We’ve talked about disruption for years. Now it’s time to do more than talk.

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20. And, yes, we know that criminal trials are different. Those, we suspect, will need to continue to use in-person appearances.

21. Rapoport & Tiano, *Legal Analytics, Social Science, and Legal Fees: Reimagining “Legal Spend” Decisions in an Evolving Industry*, *supra* note 9, at 1301.