

## ARTICLE

# The Emerging Competitive Frontier Is Practice Venturing:

Law firms as platforms, practice groups as businesses, partners as customers, and building captive alternative models.

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## Summary

While law firms are formed on the basis of a profession, that profession rests on and is delivered by a business model. The knowledge, skill, and tradecraft involved in the practice of law remain crucial: they are the precious raw materials that can be translated into enormous value for clients. But how that value is generated and delivered to the client is dictated by the business of law ecosystem which should house the requisite resources, systems, and business practices to successfully sustain a practice.

As market and client dynamics shift, more practice groups are finding the opportunity (or need) to also shift. Given that the traditional law firm business model is incredibly resilient and successful at supporting a traditional approach to the practice, it is no wonder why this “status quo” can also be a significant obstacle for any practice that seek to change.

By adopting a new mindset and using a new perspective in how it views itself, its current firm, and how and what it needs to deliver value to its clients, a practice group can venture into a new non-traditional approach. More practice groups are exploring alternative models. More alternative models are coming on-line outside the law firm market, through the Big4 and ALPSs. For those practice groups housed within a law firm, there is a way forward.

## Leading Question

How can a practice group begin to transform from a traditional model to a non-traditional model while still operating within their current firm?

## Findings

**Non-traditional practice groups are emerging within law firms at a greater rate.** These “captive” groups are housed in law firms and are demanding changes to the status quo in order to scale and thrive. Often their creation and design stress a firm’s systems and culture.

Accept that **your practice group is a business.** Explore its service and business model, not just the legal work you do, but how the all work gets done. Find and seek to understand the dependencies on internal firm functions and resources.

**Think of yourself as a customer** of your firm. Explore your current firm based on what you are “buying” from it. Determine if you have adequately articulated your needs and if it has capacity to provide them.

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*This article is based on the applied research of Josh Kubicki and Bold Duck Studio. It introduces the concept of practice venturing; an innovation framework that is proving to be highly succesful in generating new insights and outcomes for emerging non-traditional*

## BERRY APPLEMAN & LEIDEN; EPSTEIN BECKER, AND DELOITTE LEGAL

The following is a good problem to have: “We were busting at the seams. We needed to find a new landing-place. They couldn’t handle us the way we were growing. It was a recognition by them that either we change, they change or we [leave].” This from Robert Groban, who formally led Epstein Becker’s immigration practice, and who in October of 2019, left that firm, along with roughly 60 other professionals (10 lawyers and 50 para/business professionals).

Was it a typical lateral deal? No. There are clues that this was something entirely different.

First, Epstein Becker is on record stating that this was not just a mutual decision, but a collaborative one. The firm leaders made the decision to shift strategies and so worked to find a new home for this group.

As Jeremy Fudge, Managing Partner of the acquiring firm, Berry Appleman & Leiden (“BAL”), shared Epstein Becker was really good and professional about the whole situation and a little bit unique. It was out in the open, how do we help each other, how do we work on this together, that kind of a deal. It was really, really positive in that sense.”

Echoing that sentiment, David Garland, a member of Epstein’s board of directors shared, “[w]e are pleased to have found a home for our New York City-based immigration practice, a transition on which we had planned and have worked with BAL during most of 2018.”

Two firms, working together for close to a year to manage a transition of a group of 60 people. This does not happen every day.

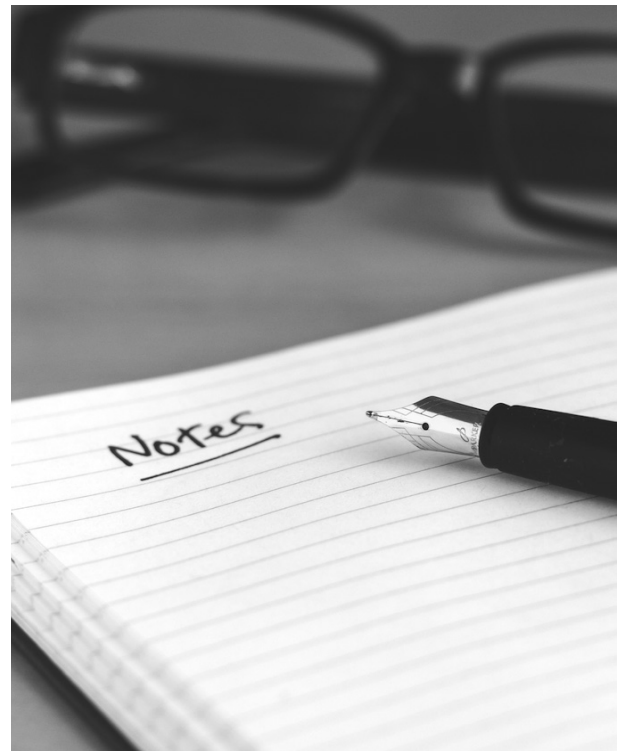
The second unique element to this deal is the texture of the group. The vast majority of the group were para and business professionals. The lawyers involved were mostly associates. Typically, we only hear of the partners when a group moves from one firm to the other. This deal speaks to the recognition that this team was not just about partners, but that it was a collection of legal and business professionals. It is safe to say that the sum was greater than the parts: a 60-person team, experiencing significant growth, that had integrated technology, processes, client experience, and, more than likely, a non-

billable hour re-occurring revenue model, that looks and acts more like an actual business, rather than a practice group. That is exactly what it is. An actual business with a unique and scalable business model.

The third element that adds to this deal’s uniqueness exists outside this transaction itself, but no doubt, teed it up and is perhaps just as significant. Earlier in 2018, BAL “spun off” its international business, “selling” it to Deloitte Global. As it was reported, this acquisition consisted of certain non-US law firms from BAL including the assets and operations in the UK, and also in Australia, Brazil, China, Dubai, Mozambique, Singapore and South Africa through its respective member firms.

When asked about any proceeds from the divestiture, Fudge responded, “[w]ell, we didn’t give it away.” One can surmise that there was a payment made which if true, makes this deal look more like a typical M&A deal rather than a typical lateral transaction.

**All of this is extremely rare in the legal market right now.**



## THE LAW FIRM BUSINESS MODEL, IT'S NOT WHAT YOU THINK

It is common practice to refer to law firms as partnerships and professional service firms. While these terms are somewhat accurate and fine to use in the normal course of dialogue, they become opaque and ambiguous when examining the actual business model of a law firm.

To truly pinpoint what the firm is doing and what type of business it is, requires an accounting of all of its components and, here is the key, who uses these components and for what purpose.

Large law firms typically have two broad functions: (1) facilitate the practice of law and (2) manage business operations.

The legal practice component is populated with the people and resources necessary to actually serve and work with clients. This component traditionally consists of lawyers and other fee-earners. This is the component that clients generally think they are buying.

This component is typically organized by practice group, industry team, geography, and in some cases, by specific matters. Large law firms house multiple and diverse practice groups and specialty teams.

Each of these teams and groups has its own strategy (preconceived or not) and, whether it is recognized or not, is either aligned, irrelevant, or distracting to the overall firm strategy. This is where the value of managing a firm's portfolio of practices comes in.

But these groups are not simply legal practices. When looked at critically, each of these groups and teams is actually a business in-and-of-themselves. Yes, these distinct practice groups and specialty teams are in essence real businesses. They possess all of the elements of a complete business model, which for review are, basically, skills provided through services that solve distinct challenges for a defined set of clients who pay for these services. To be clear, some are more mature and sophisticated than others.

As such, **law firms are housing dozens, if not hundreds, of small to large businesses.**

The other main component of a law firm, its business operations, is populated with the people and resources necessary to actually run and operate a large business such as a law firm. It generally consists of IT, HR, Finance, Marketing, Operations, Facilities, Administration and other business functions. While these are tailored towards legal services businesses, they perform similar functions as their peers across the business landscape.

Collectively the business functions are interrelated and interact across many lines of work. Clients do not typically think they are buying this part of the firm, but that does not mean that these functions do not interact or influence the service experience of the client. They do.

So far this may not be all that interesting or profound, except there is more.

While we tend to think of law firms and lawyers as having clients, there is, in reality, an entirely different category of customer that the law firm itself serves. This group primarily consumes and uses the business component of a law firm in the effort to maintain and grow their respective businesses. It is the equity partner.

The **equity partner** is a completely separate and **unique customer segment** for the law firm.

When looking at the law firm model through this lens it becomes clear that a multi-practice firm is not a service business at all, **it is a platform business that houses a number of service businesses.** At its core the typical law firm business model is a platform for shared services. It does have a business model, but it is not about the practice of law. From a purely technical perspective, the law firm is a business designed to house a collection of business models (aka practices). Call it a holding company, a parent with many subsidiaries or a conglomerate. Regardless, **the equity partner is the most important customer of a law firm.**

The firm is providing an ecosystem in which buyers (clients) and sellers (partners) can more easily connect and transact business. The firm itself is not producing or making anything other than facilitating exchanges of value between these two interdependent groups.

While clients of the lawyers are paying a fee-for-service, the customers of the law firm, the equity partners, are paying for access to a business platform, much like store owners pay to be part of a shopping mall. The costs of running the firm are allocated and distributed across the partnership and impact compensation.

## A law firm business platform “sells” the following to its equity partner customers:

1. **Risk pooling** - larger numbers of partners and practices help even out market volatility and cyclicity that an individual partner would be severely challenged to manage alone.
2. **Shared business services** – partners use and share essential business functions such as accounting and billing, marketing, technology and communications, and human resources; along with other important/helpful resources such as real estate, furniture, equipment, and supplies.
3. **Branding** – the reach and notoriety of the law firm name and reputation often eclipses that of the individual partner.
4. **Access to other specialties from other partners** – one partner generally cannot serve all of the needs of a client and so by associating with other lawyers, the partner can orchestrate more complete services to better serve clients.
5. **Talent funnel** – attracting legal and business talent is essential to the practices of most

These elements of the law firm business platform can generally be thought of as enhancing the ability of the partner to find, serve, and keep a client. They can also be obstacles to progress and growth.

In the case of Groban and his immigration business, it is a safe assumption that as a customer of Epstein, the value he was getting out of the platform was diminishing as the immigration business evolved and changed. Perhaps these shared services were beginning to become an obstacle rather than an accelerant, or at the very least, neutral.

Epstein also seems to have recognized that in order to serve this customer (Groban et al.) better and in the future, it would have required change to these services. That is always a challenging and complicated decision for any incumbent organization – how much can you carve out specific considerations, operations support, and systems/processes that depart from the primary objective of the operational functions, which is to support and maintain the status quo?

For its part, BAL has been an immigration focused business since its inception and so its platform is more suitable and prepared for what the Epstein immigration business needed to succeed.

## RISE OF CAPTIVE NEWLAW AND ALSPS

**Competition in legal occurs at the practice and sector level, not at the firm or organizational level.** So while overall 2019 will be viewed as an “up” year for the AmLaw 200, many practice areas are underperforming and under stress. Assessing firm performance only at the firm aggregate level masks many strategic and performance challenges within the portfolio of businesses they house.

Many traditional practice areas are experiencing more pressure to compete and remain profitable as competition increases, price pressures mount,

new providers emerge, and client demands intensify and change. While there are still many practice areas that can operate within the more traditional platform of a law firm, more and more firms are experiencing the pressure to respond to market changes by augmenting or completely overhauling certain practice group business models. This is creating significant structural, cultural, and financial stress within firms as they struggle to operate the existing business platform while they also explore, test, and launch new models.

## As the 2019 Citi/Hildebrandt Private Client Advisory found:

*“[g]iven the challenges firms will face in a market where competition is likely to remain fierce, pricing pressure will remain and costs are likely to rise, firms are likely to make changes to their business model to focus on growth and efficiency. As mentioned earlier, in addition to investing more in the practices that they are best known for, and that deliver the greatest profits, they tell us that they are addressing underperforming practices and offices. Driven to become more efficient, they tell us that they will introduce more alternatives to traditional leverage and look to use more technology . . . Above all else, many have told us that **the biggest changes to their business models will be a shift in how they approach the delivery of legal services** based even more from the mindset of the client, solving their complex business issues within defined budgets, using alternative pricing, project management and emerging technologies.”*

In short, law firm leaders are beginning to understand that to compete and win, they have to begin to reengineer how they work today, not just add laterals. This is leading to the growing trend of partners experimenting to discover new types of service and business models, or in other words, captive Alternative Service Providers (“ALPSs”) models.

This is not a new phenomenon, but it is growing and will accelerate quickly. Outside of legal, exploring new business models is a recognized way for mature companies to renew their competitive advantage. Companies explore new value propositions, enter new segments, reshape the value chain, or experiment with alternative revenue models — all in search of a different logic for value creation and capture. This is often referred to as corporate venturing, intrapreneurship, or corporate startup initiative.

The drive of firm practice leaders and practitioners to stay competitive or gain an advantage is what is driving real innovation (often #unsexy and rarely reported on within the legal press). These are the lawyers who “get it” or are close to “getting it.” The “it” being that technology, process, talent, and client experience are all levers they can pull to reengineer their practice or redesign it completely.

And to what end? More clients. More money. More growth. More security.

What happens though when the appetite for a practice group to change or grow begins to stress the current law firm platform they are on? What are the options? All too often the path of least resistance is taken by both firm leadership and the practice group. That is to die slowly on the vine and all that entails. While still common, there is a growing number of lawyers that want to part ways with this apathetic approach. They want to take action. They want to both evolve and grow as well as assess what platform elements they will need.

Right now, there is no formula for doing either. These types of decisions are typically made ad hoc or with limited views of the market or appreciation for the demands on the practice and law firm business models. Relying on too many hunches and not enough rigor, these businesses and firms are limited in their clarity and options set.

**Practice venturing is the method for addressing these challenges with clarity of need and confidence for growth.**

## PRACTICE VENTURING

Practice venturing is **designing a new business** model through the process of discovering, testing, validating, and launching (and perhaps buying or selling) a new strategy and value proposition, a new market or customer segment, and a new business model. It uses a rising discipline called legal business design.

This is about making legal services easier to use and deliver while creating financial benefits to the client and provider. It is about executing in the most effective and efficient manner, in the real world. It clarifies ideas. It de-risks experimentation. It amplifies outcomes. It applies proven design methods with business rigor to produce material and meaningful impact. Practice venturing (legal business design) is not to be confused with adding expertise to an existing practice to extend reach or increase capacity. It is about reengineering a practice to better address client needs and opportunities. When done correctly, often something new that departs from the traditional legal service model, is created.

The former Epstein Becker immigration group, now at BAL, appears to have gone through this evolution. This group’s business model was apparently stressing or bending the overall strategy and operations platform of Epstein to such a degree that it made sense to part ways.



It is a common misunderstanding that a practice group is not a business. This is a costly mistake. Practice groups/legal teams use and consume many resources beyond legal expertise in delivering services. In emerging non-traditional practice groups, the failure to understand this creates drag and friction between the firm and the team. This obviously leads to many unappealing outcomes.

A growing non-traditional practice group, therefore, must contemplate its business and service model, and anchor its goals to making itself as efficient and effective as possible. Every service is comprised of four elements:

**People:** The humans who perform work as well as those that interact with and use the service and its output. This considers skills, capabilities, roles, interactions, and incentives.

**Process:** The streams of activities and tasks necessary to acquire, produce, and deliver the service. This includes both work product creation (what the customer is buying) and back-end operational processes (everything it takes to support the team in getting its work done and executing its strategy).

**Technology:** The applied capabilities (informational, digital, automation) of software and applications that support the performance of the service. Both enterprise-grade technology and client-facing applications are included.

**Experience:** The human factor: How the service providers, supporters, and customers/clients/users experience the service. This takes into account how easy and pleasant it is to do business with the team as the customer and work within the group as a team member.

Optimizing services often requires a reengineering of each of these four elements. Sometimes a team has all the resources it needs to do this without having to incur significant capital expense or time commitment. Other times, a major investment in new resources will be required. Because each team and organization are unique, there is no plug-and-play approach.

When designing new services, it is imperative to do the necessary fact-finding and stress-testing of the current state of how the service works, operates and interacts with its clients and its firm. Avoiding this greatly decreases the likelihood of success and increases the risk to the group and firm in many ways. While the revenue, realization, and relationships that new or “alternative practices” enjoy and provide the firm are clear benefits, the burdens that can be created to support these businesses can often mitigate and neutralize these benefits.

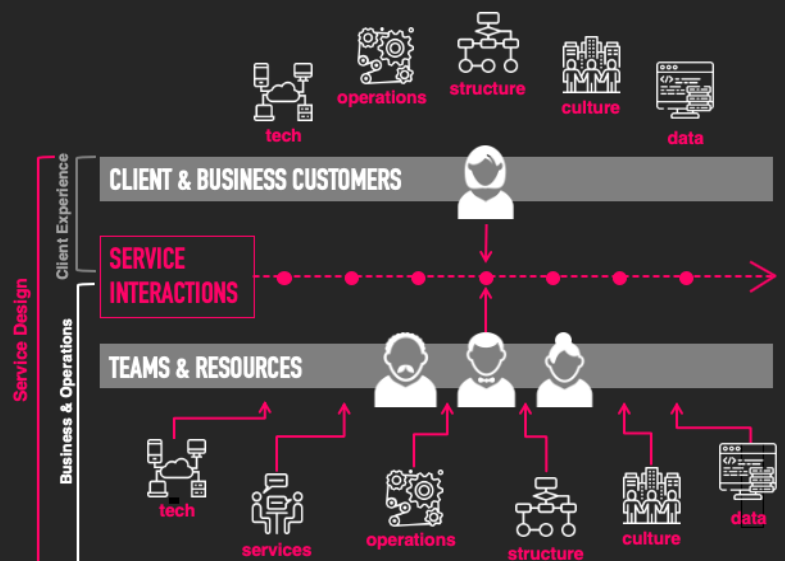
To generate visibility into the benefits and the burdens of any emerging model, it is immensely valuable to understand and appreciate how the people, structures, business practices, systems, interactions, and resources of the firm must be orchestrated.

**Delivering legal services to clients demands more than just lawyers; there is an entire ecosystem at work.**

## Legal Service Design Blueprint

A blueprint is an operational tool that visualizes the components of a service in enough detail to analyze, test, implement, and sustain it. Blueprints show the orchestrations of people, touchpoints, processes, and technology both frontstage (what the client experiences) and backstage (what is behind the scenes). They can be used to describe the existing state of a service experience as well as to support defining and implementing new or improved services.

**When you can look at legal services this way, opportunities and constraints become obvious.**



Practice venturing does bend (and sometimes breaks) the law firm business model. That is because practice venturing happens inside the incumbent firm. As noted earlier, all of its systems, operations, and business practices are designed to serve status quo. This is not a bad thing. It is in fact evidence of a mature and successful business. However, it does mean that to succeed at practice venturing, the groups not only need to focus on validating their changing business but also have to focus on organization adoption of their changing business. This creates stress, dissonance, confusion, and often outright hostility toward the practice group. Our research and experience show that there are several dilemmas that the firm and the practice face, such as:

- How to measure using non-traditional means and metrics (*the CFO dilemma*)
- How to brand and market avoiding brand confusion/dilution (*the CMO dilemma*)
- How to staff/compensate/reward people (*the Incentive dilemma*)
- How to market internally (*the Antibody dilemma*)
- How to manage (*the Survival and Sustainability dilemma*)
- How to test and validate (*the "Hurry Up!" dilemma*)
- The role of digital (*the Shiny Object dilemma*)
- How to navigate ethics and professional responsibilities (*the Regulatory dilemma*)

To sum up, every practice venture faces a two-pronged challenge:

The first is the (re)design challenge. This is the process of searching for a new, repeatable and scalable business (practice) model that better addresses or takes advantage of market/client conditions. It requires partners to work long hours outside their normal duties, and make many pivots, to identify the market fit, validate the business, and articulate a winning business model that can then be repeated and scaled. Most lawyers are inexperienced with this process and therefore struggle through it. Most only do part of the work, fail the change management of firm leaders and business functions, miss the mark on strategy, or outright abandon the effort only after significant effort has been applied.

The second is the organizational challenge. This is as equally challenging as, if not more than, the (re) design challenge. And it must be waged in parallel to it. The venture must obtain the permissions, protection, resources, etc. needed to launch the initiative, and then

must work to retain that support over time as conflicts (political, operational, strategic) arise, which they always do. This too is often overlooked or simply overwhelming to partners and leads to organization adoption failure.

While these challenges can be complex and induce vast amounts of unnecessary stress, they must be addressed. Avoiding them always leads to failure, either through the buildup of animosity and hostility to such a degree that relationships are ruined and debilitating. Or more often, these challenges are only partially tackled, often only addressing low-hanging fruit, while ignoring the hard stuff like sacred cows, performance and operational analysis, accountability and decision rights, and opportunity sizing.

## THE EMERGING COMPETITIVE FRONTIER

There is ample evidence and studies to confirm that competition is only intensifying for many of the practice areas and client segments that law firms serve. Equally, there is just as much evidence that in-house teams are more resource constrained and under growing pressure to address their internal clients' needs more effectively and efficiently.

While attempts to remove waste and gain efficiencies have been explored and implemented to some degree, lawyers are realizing that this is simply not enough. Labor arbitrage by itself is seldom sufficient. Technology is often purchased in a vacuum, with the buyer too often skipping over the necessary work that would help ensure impact was gained. Also, tech is only partially integrated into systems and behavior, leaving it grossly underutilized and often, ultimately, ignored.

Piecemealing may be faster and easier, but it leads to marginal gains or outright failure, providing only a temporary relief. Gaining a competitive advantage requires more than incremental or isolated attempts to improve. It demands a more holistic approach, not because the process of practice venturing is sacred, but because to properly and meaningfully address the market challenge/opportunity, a recombination of talent, technology, process, and experience (as in client/partner/employee experience) must be made.

That is why the ALSPs and Big Four are making a dent in the market. It is not about their technology, their talent, the way they operate and work, or how they interact with clients and among themselves, it is about all four of these things.

And the simple fact is that most law firms and legal teams are missing this. In truth many law firms are outright ignoring it. But, if the growth of ALSP is any indicator, in-house teams are paying attention.

As has been reported, the ALSP market has grown significantly at a compounded growth rate of 12.9 percent over the last few years, to reach about \$10.7 billion in annual revenues. The rate of adoption of inhouse teams using ALSPs is only 6% but within that group, 47% of them are giving ALSPs work that they used to give law firms. All evidence suggests that this category is growing.

It is worth noting that the general definition of an ALSP is still relatively difficult to pin down. In its report on ALSPs, Thomson Reuters offered perhaps the most succinct and complete definition to date. They stated that the definition of an ALSP tends to center around the following:

- It is an alternative to hiring a lawyer at a firm to assist in every aspect of a legal matter.
- The entity is typically not a law firm, and the services are delivered via a business model that departs from the traditional law firm model.

There seems to be some cognitive dissonance amongst law firms regarding the role ALSPs can play in their success. While recently much press has been made of the rising Big4 presence in the global legal market as well as the role of ALSPs, lawyers have not disregarded the need to design new service models.

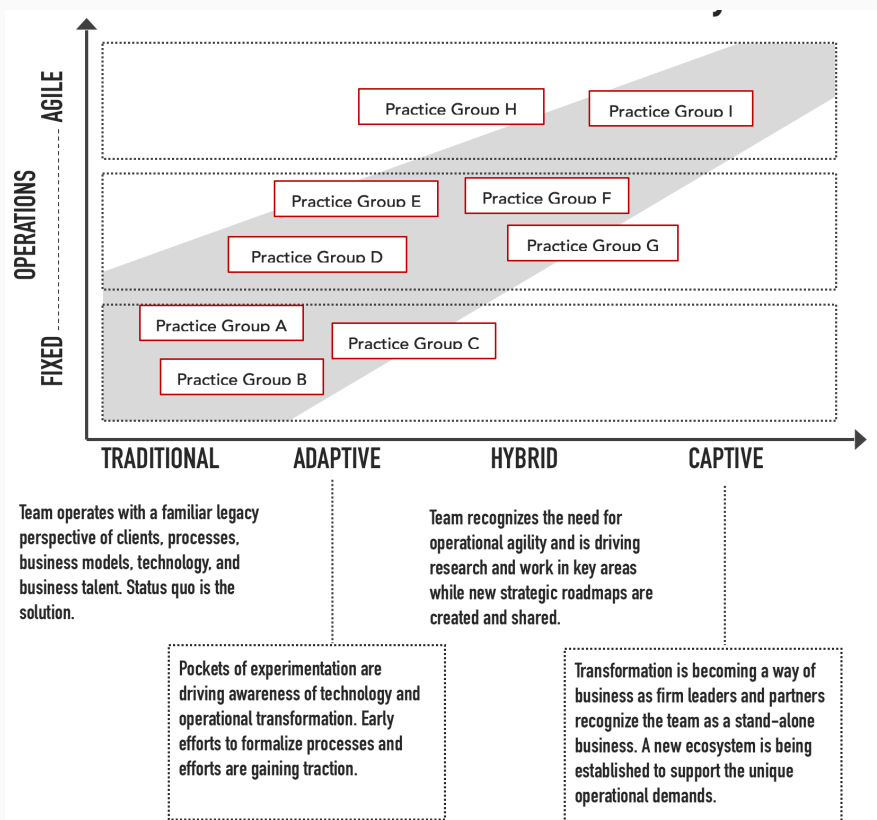
As the 2018 Altman Weil Flash Survey found that roughly 80% of law firm leaders believe that competition from non-traditional service providers will be permanent. But that recognition of need is not translating into action. As the graph below shows (adapted from the Thomson Reuters study), while there is a recognition that the traditional business model of a law firm is being challenged (37% either agree or strongly agree) the belief that establishing a captive ALSP-like model is essential to the success of the firm is much less (21%).

Nevertheless, these are high percentages when considering the relative size of the legal market. To have one fifth of the market view the establishment of new business models as “essential” to the firm, is noteworthy.

## MEASURING YOUR PRACTICE GROUP’S INNOVATION POTENTIAL

We have interviewed and worked with hundreds of lawyers and business leaders about their efforts to change their services, survive (if not thrive) within their current organizations, and what real change management involves. Through this we have derived best practices that have helped clients measurably improve their service performance and change management success rates.

Our research and work have uncovered clear patterns of behavior and investment that yield stronger success. Based on the market segment of a practice group, your firm’s operating model, and the culture of the team itself, **you can measure your innovation capacity**. Knowing this, you can calibrate strategy, actions, and goals with greater clarity and confidence.





## CONCLUSION

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Traditional practice groups are transforming into new types of service models. It is happening at a quickening pace throughout the market. Responding to changing market conditions and client needs, these practice groups are integrating new types of talent, digital technology, process engineering, and user experiences to create completely new and different service models. These new models can be a slight or significant departure from the traditional manner in which a law firm and its practice groups interact and co-exist.

The law firm business model is designed and managed to support and foster the traditional approach to legal service delivery. The market for traditional services is by far the largest part of the commercial market. The firm's operations, talent model, technology stack, culture, management and governance, and most importantly, its strategy, have all been built to support the existence of the traditional legal service delivery model. This is known as "status quo" and while it is often regarded as an impediment to innovation, it is in fact vital to the health of any organization.

Working within status quo, and ultimately changing it enough to adopt a new idea, is the primary challenge for any group who wants to explore, test, and deliver a non-traditional legal service or product. And it cannot be overlooked.

Typically, when a practice group or team of lawyers discover an emerging opportunity outside of this traditional approach, they have the freedom to explore it. This is one of the advantages of contemporary law firm culture – autonomy and entrepreneurialism thrive in this context. Partners have a fair amount of freedom to serve clients in any manner so long as it drives revenue and maintains profits.

At first these explorations of different services and service deliveries come at a relatively low-cost to the firm. Exceptions are made to various standards, procedures, and so-called rules, in the effort to provide the partner(s) with what they want. As these explorations mature and transform into more fully built and on-going services, this legal team's needs change. Beyond ad hoc exceptions and exploratory freedom, they need a more tailored and sustainable support mechanism that recognizes (and ideally appreciates) its unique and evolving service delivery model and its client needs. As a team seeks to define its business model and scale its services, the gaps between what the team needs and what and how the firm can support it begin to emerge.

The point is that with growing and changing market dynamics across distinct and growing client segments, more partners are realizing that their current law firm platform may be unsuitable to help them address these changes and grow. Instead of simply pulling up stakes and looking to lateral somewhere, both lawyers and firms are beginning to grasp the notion that there may be a different approach and solution. One that carries with it the promise of growth, the burden of change, and the need for creativity. Given the pace of this emerging strategic option, the rise of more business-aware firms and lawyers, and the growing market opportunity; practice venturing is maturing and ripening. It is here. It exists.

**And there are more new models being tested and built every day.**

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