

# The Future of Law Post-Pandemic: A Roller Coaster Revolution



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# The Next Chapter in the Future of Law Practice

by Sharon D. Nelson, Esq. and John W. Simek

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## Introduction

As the pandemic morphs into an endemic and law offices across the country are re-opening or planning to re-open, there's no going back to the way law was practiced in 2019. We embraced change so quickly in 2020 that many lawyers are still reeling from all the innovations – and wondering what comes next.

## How Law Firms Survived 2020

In Thomson Reuters' 2021 Report on the State of the Legal Market, the conclusion was that the pandemic was a tipping point for innovation in law. The ultimate outcome? Legal services became more efficient, predictable and cost effective.

But it wasn't easy getting there. The road in the first half of 2020 was bumpy. Here is some of what happened in those troubled months:

- 46 percent of firms reduced partner draws
- 40 percent reduced the salaries of fee earners
- 34 percent furloughed support staff
- 32 percent reduced the salaries of support staff
- 36 percent discharged support staff
- 11 percent discharged fee earners

How did law firms respond? Many aggressively cut costs – and then there was suddenly the boon of the PPP monies coming in. Add this to the other moves law firms took to become more client-centric and efficient, and most larger firms (and many small and mid-sized firms) saw an overall growth in profits by year's end. It was an astonishing bounceback.

## Permanent Changes? Challenges?

As law firms scanned the horizon, it became clear that brick and mortar offices were less important. Even some of the larger firms concluded that they needed a smaller office footprint, more efficiently configured.

Many made changes in staffing, particularly reducing the levels of secretarial support. Larger law firms began routinely hiring non-lawyer executives including CEOs, CMOs, CFOs, CISOs, etc. (and these functions are more often being outsourced by smaller firms)

The expectations for in-person meetings decreased considerably. Knowing that there would be more employees working from home in the future, it became an imperative to increase the efficiency of digital connections. Everyone was looking for more bandwidth. As for travel, it became obvious that lawyers had been traveling pre-pandemic far more than warranted. Even as travel became safer, the question became, "Is travel necessary or can we do this remotely?"

The most striking thing employees want is a hybrid working environment – and that desire seems to be replicated throughout much of the work force. An April 2021 survey by global staffing firm Robert Half showed that 1 in 3 professionals who worked at home during the pandemic would seek a new job if required to be in the office full time.

How do employees want to work? 26% want to be fully remote, 25% want to be fully in the office and 49% want a hybrid of work-from-home and work in the office.

If given the chance to be fully remote, 28% of employees are concerned about relationships with coworkers suffering, 26% worry about decreased productivity at home and 20% are concerned that there may be fewer opportunities for advance if they are less visible at the office.

The “wish list” of professionals included:

- Freedom to set preferred working hours
- A personal, distraction-free workspace
- Employers paying for commuting costs
- A relaxed dress code
- Employer-provided childcare

Employers are facing a mountain of challenges. Not all employers are ready to re-open. Not all employees are ready to return to the office. Many worry about their safety. Should employers mandate that all employees be vaccinated? Require proof of vaccination? How do they handle employees who do not want to get vaccinated? While employers are legally required to respect sincerely held religious beliefs and respect the underlying medical conditions that might keep some employees from being vaccinated, being afraid of the vaccine or simply opposed to the vaccine is not sufficient if an employer wants the employee back at work in the office.

Can a law firm fire an employee who refuses to get vaccinated but is required to be at work? The answer appears to be yes but trying to be flexible and accommodating is also encouraged by the experts. It leaves law firms in a quandary.

Many post-pandemic challenges remain. How do we deal with wellness issues of legal professionals affected by the pandemic? And we all know that lawyer wellness issues were crushing before the pandemic. If we have an ongoing hybrid workforce (some at home and some at the office), how do we maintain the corporate culture?

### Technology Adoption Accelerates

To remain relevant, lawyers have to be willing to change. In 2020, lawyers proved up to the challenge as they doggedly and rapidly began to incorporate new technology into the practice of law.

Global research company Gartner now predicts that 50% of legal transactional work will be automated by 2024. And that year seems closer day by day! Gartner also predicts that legal

tech budgets will increase three times over in the next five years as law firms look to solidify their future.

“Take me to the cloud.” This was mantra of law firms post-pandemic. Why? The cloud offers extraordinary physical security, end-to-end encryption, reliable backups, teams of expert IT and cybersecurity professionals, 24/7 monitoring by excellent camera systems and 24/7 automated monitoring of networks designed to alert experts to signs of intrusion/compromise. And clouds offer what is called the five nines of uptime: 99.999%.

Those who couldn't, for budget or scope reasons, move to the cloud completely at one time, developed a mantra, “With every upgrade, cloud.” Those law firms took it piece by piece.

The majority of solo/small firms who were not already on the cloud clamored to have everything transferred to the cloud ASAP, particularly after the successful attacks against on-premise Exchange Servers in 2020. Exchange Online was not impacted.

To no one's surprise, the increased reliance on technology has led to a tipping point for advanced AI. AI is proving its worth in e-discovery document review, billing and litigation support, contract review, legal research, predictive analytics, jury screening, online dispute resolution and many other areas. This trend is bound to continue in the new normal.

Look for more start-ups in legal tech. The thirst is there to ensure a successful future and you no longer have to lead this horse to water.

### Technology Challenges

Change management has always been difficult in law firms. Lawyers want to do things the way they have always done things. The C-Suite is particularly hidebound in most firms. When you adopt new technology, there is a cost – and not just in money to install and configure the new technology – time must be invested in training.

Legal tech clients and vendors have both noted that the legal sector still lags behind with providing application programming interfaces (APIs) that interconnect platforms. This is a core problem.

Legal tech vendors are listening. More and more offer APIs that can integrate seamlessly into the law department's daily processes to ease implementation headaches.

Legal tech vendors often overpromise and underdeliver. That often leads to a product being abandoned. Customization of legal products is possible, but expensive – and it can take a long time.

### Cybersecurity

As ransomware attacks proliferated, throughout the pandemic, firms began to layer and harden their defenses against the encryption and/or theft of their data. Endpoint protection (of every device connected to the network) has now become standardized.

For quite a while, law firms did not offer cybersecurity training to their employees. We theorize that they were simply too consumed with getting their lawyers up and running – and getting billable hours on the books. As 2020 drew to a close, more and more firms were recognizing the need for employee security awareness training and began offering webinars taught by experts – some of them a bit late as they had already suffered successful phishing or business email compromises (BEC).

By the beginning of 2021, our calendars were full of cybersecurity awareness training webinars as the dangers of having legal professionals not sensitized to cybersecurity became more and more clear. And it is a rinse and repeat proposition. Employees simply forget some of what they learn over time. More and more firms are now wisely offering employee cybersecurity training once or twice a year.

It is also true, of course, that the nature of the threats – and the defenses – evolve over time so there is always new subject matter to cover. Insurance companies, stunned by the ransomware payouts of 2020 and 2021, have begun to require such training – and law firms are learning that the average increase cost in law firm cyberinsurance is 30% or more, often with less coverage. In particular, some insurance companies are moving away from covering ransom payments. We are still at the beginning of that development but watching it carefully.

To this day, lawyers remain hostile to implementing multifactor authentication (MFA). That hostility comes at a price. Two of our clients recently suffered account compromises after declining our advice to use MFA. As a consequence, their email was used to send out hundreds of phishing attacks to their contacts.

Multi-factor authentication (MFA) is the best way to protect access to all of your accounts, especially your Microsoft account. MFA is a secure two-step verification for your account. You will not have to enter a code every time – Microsoft allows you to have trusted devices like your laptop or phone as do a lot of other technology providers. Microsoft itself has determined that MFA will stop 99.9% of credential-based compromises.

MFA is included with your Microsoft 365 subscription at no additional charge. It just needs to be configured for your account. While we have seen a steady growth in MFA adoption, it seems like many people need to suffer a successful attack before they decide that security is more important than the modest inconvenience of providing a second factor to authenticate their identity.

### [Law Firm Marketing: A Whole New World](#)

The 2021 InterAction Marketing & Business Development Survey was published in May 2021 by LexisNexis InterAction. Over two-thirds of firms reported that business development was more difficult in 2020. No surprise there. Unable to have in-person marketing, conferences, meetings, etc., most firms changed up their marketing, turning to webinars, podcasts, social media, email

alerts and Zoom. It was particularly remarkable to us that a third of the firms in the survey said they now have podcasts.

Seventy percent of firms reported that their strategies to gain new business changed a great deal in 2020 and 66% of firms said that the pandemic had made business development and sales more difficult.

“Cancelled or postponed client work, delayed payments, video conference meetings, and new court procedures all wreaked havoc on law firms,” the survey says. “A lack of referrals, conferences, and trade shows, and client growth during the pandemic also impacted the business development of many law practices.”

To more accurately analyze results, the survey grouped firms into three categories based on their annual growth from 2019 to 2020, with roughly a third of firms falling into each category:

- High-growth firms had annual revenue growth of 11% or higher.
- Average-growth firms had annual growth of 0-10%.
- No-growth firms had negative annual growth.

High-growth firms adapted more quickly to the situation, embracing digital marketing and technology, while no-growth firms tended to take more reactive approaches, such as cutting operational costs.

While the survey found that firms in all three categories are using these techniques, it found that high-growth firms use certain techniques more often. High-growth firms use webinars and virtual events significantly more than no-growth firms. They also use video content and podcasts two to three times as much as no-growth firms.

“These channels allow speakers to showcase their expertise and personality so that listeners feel more comfortable with them,” the report says.

A third of firms that self-identify as having high business development maturity say tracking metrics is important, and firms that saw high growth were four times more likely to use tracking metrics in their marketing and business development.

Law firms’ use of technology in marketing is on the rise, the survey found. Almost three-quarters of firms use email marketing, nearly 60% use a client relationship management (CRM) tool, and nearly half use analytics.

High-growth firms use content management technology nearly twice as much as no-growth firms (51.4% vs. 27%).

“These technologies can provide more visibility around thought leadership and subject matter expertise, as well as more opportunities to show that a law firm understands — and knows how to solve — key client issues,” according to the report.

No doubt law firm business development will continue to evolve and innovate. Remember that clients are going through this evolution and will expect their law firms to do the same. That gives law firms using technology a competitive advantage.

### What's Happening to the AM LAW 200?

There was a great deal of angst among the AM LAW 200 at the beginning of the pandemic but it turns out that everyone did pretty well. The American Lawyer published its Am Law 200 rankings and accompanying report in May 2021.

The country's 100 largest law firms by revenue, hit new highs in terms of gross revenue, revenue per lawyer, and profits per equity partner. How about the firms that the American Lawyer refers to as the "Second Hundred," the firms ranked #101 to #200 in terms of total revenue? They did reasonably well.

Here's how the Second Hundred performed as a group:

- Total revenue: \$20.8 billion, up 1.1 percent.
- Average revenue per lawyer (RPL): \$707,506, up 3 percent.
- Profits per equity partner (PPEP): \$863,449, up 8.8 percent.

Pretty good numbers, but your eyeballs will pop out looking at the numbers for the Am Law 100:

- Total revenue: \$111 billion, up by 6.6 percent.
- Average revenue per lawyer (RPL): \$1.05 million, up by 5 percent.
- Profits per equity partner (PPEP): \$2.23 million, up by 13.4 percent.

The total revenue of the Am Law 100 is more than five times the total revenue of the Second Hundred. Average revenue per lawyer at an Am Law 100 firm is almost 50 percent higher than RPL at a Second Hundred firm. Profits per equity partner at an Am Law 100 firm are 2.5 times the PPEP at a Second Hundred firm.

The distance between the Am Law 100 and the Second Hundred firms increased in 2020. Brad Hildebrandt, founder of the legal management consultancy Hildebrandt Inc., has said that comparing the Am Law 100 to the Second Hundred is the proverbial apples-to-oranges comparison.

There are some interesting ideas about how this came to be. The Am Law 100 has more resources and better technology, enabling them to transition to remote working faster and more efficiently. They have greater diversity in terms of practice areas, industries, and geographies, which may have insulated them from the damage to specific business sectors - and they have a stronger client base.

But overall, it makes us wonder if there are now MEGA (caps required for emphasis!) firms like we've never seen before. Mind you, we're not shedding tears for the Second Hundred firms.

They did just fine, but there may be a trend here that small and mid-sized law firms want to watch. Most of those firms did not have numbers like these. Are the larger firms hoovering up the most desirable clients en masse? And what does that mean in the future for small and mid-sized firms. Oh, for a crystal ball . . .

### [Law Practice is a Team Sport and it Has a New Playbook](#)

A 2021 Bloomberg Law article reported 82% of lawyers surveyed believe multidisciplinary teams can consist solely of licensed attorneys; different practice areas, seniority levels, and firms are a “multidisciplinary” team in their view. The data emanates from Bloomberg Law’s 2021 Legal Operations Survey of 429 law firm and in-house attorneys at various career stages.

Lawyers have long misunderstood the meaning of “multidisciplinary.” The profession’s insular, lawyer-centric culture comes as its business clients are digitally transforming. A lawyer-centric approach is not going to sit well with clients who understand that multidisciplinary provides seamless, multidisciplinary, cross-functional collaboration.

“Multidisciplinary” teams are not just about lawyers. They are comprised of lawyers, allied professionals, and paraprofessionals. To serve clients in the new normal successfully, lawyers must work with business, technology and other experts to advance client goals. Teams must have a common goal and work collectively to achieve that goal. This is where we are headed but we are not there yet.

Departmental silos should be obsolete, but they are not. And no wonder – this is not how lawyers were trained. We need something of a cultural reboot.

Law firms are beginning to look to their clients to achieve a team mindset. In some ways, the pandemic made that easier. Law firms are starting to assemble fluid workforces whose skillsets, experience, and expertise can be assembled rapidly to solve complex, time-sensitive business needs.

As Jack Newton, Clio’s CEO, has often lamented, law has always been about lawyers, not customers, and the individual lawyer, not the team. To be client-focused, a recurring theme for Newton, we must operate as teams with the client – and the client’s experience – as the focal point.

Customers want lawyers to be proactive problem solvers. And they want to understand what lawyers are saying. Legalese is a barrier. More and more, we are seeing law firms develop multi-disciplinary teams to service clients. Clients want fast, data-based solutions and expert advice that they can comprehend.

Technology is the backbone of the team. The team can be at home, at work, in different geographic locations and help serve clients giving them a positive beginning to end experience.



Remember the old saying: “Teamwork Makes the Dream Work.” More and more, we are seeing law firms recognize just how much they need to focus on teamwork to provide their clients with the best advice and the most positive client experience.

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## What's On the Horizon for Law Firms in 2021?

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Jim Calloway, Director of the Oklahoma Bar Association's Management Program, frequently speaks with us about the future of law. Recently, Jim recorded a Legal Talk Network podcast with Sharon which bears the same name as this article. You can find the podcast at <https://legaltalknetwork.com/podcasts/digital-edge/2020/12/whats-on-the-horizon-for-law-firms-in-2021/>.

The authors continue the discussion below.

We were glad to see the backside of 2020. But 2021 carries many uncertainties with it and that makes predictions risky. Fortunately, we are not averse to risk-taking and it is a worthwhile effort to make predictions, especially about things we're fairly certain will come to pass.

One thing that both lawyers and clients seem to have changed their minds about is the importance of physical office space. Until we read the Clio 2020 Legal Trends Report which surveyed a combination of Clio users and non-Clio users, we had no idea that 21% of law firms were already operating without commercial office space and since the pandemic, another 7% of lawyers have given up their commercial offices and 12% are unsure they'll keep them going forward.

It's a pretty good bet that those numbers are higher today. We have heard from some of our big law friends that they are actively looking to sublet some of their space. Those that were near the end of their leases were the lucky ones because they can negotiate for downsized space. We, on the other hand, signed a five-year lease in February 2020. Great timing, huh?

We may also see rotating offices (yes, there will be institutional resistance), where lawyers showing up to work get assigned to an office with the office space rotating among the firm's lawyers. Large, luxurious partner offices may also become a thing of the past. The physical footprint of the office may be reduced but virtually everyone seems to agree that firms of a certain size need some kind of office in which to conduct meetings, have a receptionist to deal with mail, packages, etc.

Another topic that comes up frequently is the cloud. We've been saying for a very long time that the cloud protects the security of law firm data better than the lawyers would and that is so true. We regularly hear stories of cloud breaches but lawyers often misunderstand their cause. The majority of those breaches are caused by users who misconfigured the security of the cloud and their presence in the cloud.

Recently, we've begun to say that the best time to move to the cloud was five years ago and the second-best time is today. Clio CEO Jack Newton has said that if you're not in the cloud, you're not in the game. He calls the cloud table stakes, which we thought was a very interesting term. Also of note is the ILTA 2020 survey where the majority of respondents said, with every upgrade, they were going to the cloud. So, it's a staged process but it's in place for every upgrade.

In the beginning of the pandemic, those lawyers that had all their data in the cloud were way ahead of those who still had all their data locked in physical files. If your files were in the cloud, you could work. You weren't stuck with lugging files back and forth from the office.

We worry sometimes that lawyers are rearranging the deck chairs on the Titanic because they've been holding on to the past so much, not adapting to the future. We did see a lot of change caused by the pandemic and we're hopeful that we will continue to innovate. Lawyers need to take a look at what they've always done and say, "Is this what we always should do? Is there a better way?" The seven most dangerous words might be "But we've always done it that way."

Cybersecurity has been a huge issue and will continue to be. The pandemic has been a nightmare of people calling and saying, "We're down, we're down, we're down. We have a ransom demand that we're supposed to pay. What is all this about? What do we do?"

It was clear that there is not a lot of incident response planning going on because any incident response plans they had (if any) were just frozen in time, never updated. Cyber criminals of course are always sniffing for new opportunities and we certainly gave it to them with our new work from home environment. We saw more than a 750% rise in ransomware in the first six months of 2020 and home networks are about three and a half times more vulnerable than law firm networks. Using home machines rather than work-issued laptops that we bring

home that are secured by the law firms – well, those home machines just complicate the problems.

As a result, one change we are seeing is that law firms are warming to the idea of making sure that all devices connected to the law firm network must be owned and secured by the law firm. That's one trend we are sure will continue.

We have fond memories of the days when a thousand dollars was a big ransom. Seems like a long time ago. In the third quarter of 2020, the average cost of a ransomware demand was approximately \$233,000 according to the cybersecurity and ransomware specialist firm Coveware.

Law firms are getting hit left and right among many other entities and, of course, recently, we've had government agencies and others hit in the SolarWinds attack which seems to be more about espionage than it does about ransomware.

With law firms, we now have the double ransom where the bad guys steal your data before they encrypt it. If you're able to recover from backups without paying the first ransom demand, you will then get a second ransom demand for supposedly destroying your data and, of course, since we always trust cybercriminals, paying the ransom is often what we do. We pay them and trust them that our data has been deleted. When they make the demand, they will send you samples to show you that they have the data or they'll post it on the dark web to scare you into paying. If you chose to pay for the decryption key in the beginning, you may still get that second ransom demand.

Insurance companies are often choosing to pay the ransom rather than pay for an extended business interruption and possibly the costs associated with the theft of the data. So, as of the end of 2020, fully 25% of victims today were paying ransoms.

We saw a 75% increase in business email compromise in the first three months of 2020, but the whopping great statistic was that we then saw a 200% increase **each week** from April to May. We have to assume that this means that cyber criminals are having a great degree of success using these compromised accounts.

Worse yet, once the criminals have all of your email, your contacts, your calendar, et cetera, you can't do anything about that. That horse has left the barn. What

everyone should do is have multi-factor authentication enabled, which prevents 99.9% of business email compromise attacks. Wherever you can, you should enable MFA. It's almost everywhere these days. But it's a matter of security versus convenience because lawyers don't want to have to enter a text code from their phone. If you can block 99.9% of these attacks, focus on security instead of convenience. Microsoft itself thought it was so important that they made MFA free.

Yes, most lawyers are afraid they'll have to enter a code from their smartphone, on their laptop or other device, but in most cases, that's not true. It might be true of your doctor's office. It might be true of your bank or your stockbroker but most of the time, you can make your devices "trusted devices" so that no code is needed unless you buy a new device, you change your password or perhaps you're visiting someone and using their device for some reason.

Recently, we're trying to move people away from text messages because SMS text messages can be so easily compromised. But if that's all you have, it's infinitely better than nothing. Authenticator apps and authenticator tools are what's going to replace both two-factor authentication and multi-factor authentication. There are actually hardware tokens like Yubico's YubiKey line or CryptoTrust OnlyKey where you have a physical thing you carry on your key ring or in your purse and it plugs into either your USB-A slot or USB-C slot or Lightning for iPhone users.

Most people are going to prefer the software tokens - Microsoft authenticator, Google authenticator, etc. These apps constantly generate new codes that are only valid for about 30 seconds, so when you log into an account and you're prompted for a code, you just open your app and enter that most recent code and you're good to go.

Obviously, there's a lot of change in cybersecurity.

But let's go back to the daily business of law.

Some things are going to stick post-pandemic. Virtually all law firms now do electronic contracting, most using DocuSign (our preference) or Adobe Sign.

Every lawyer now knows about e-notarization, which they didn't before. People who didn't have case management software are getting it and recognizing the value of secure client portals. Clients love the security of client portals where they

can go in anytime and see their documents, review/pay their bills, etc. This has become part of being a client-centric law firm.

There are still an amazing number of lawyers who refuse to accept credit card payments. We've never understood that because 40% of consumers, according to one of the Clio surveys, would never hire a lawyer who didn't take debit or credit cards. We've accepted credit cards for a very long time, but the pandemic caused cash flow to slow (slow mail delivery may have been a part of that). We began emailing our clients asking those who were writing checks to shift over to credit card payment. We immediately saw a marked increase in people paying promptly and the cash flow is much more dependable. It is critical these days to send out bills electronically with a payment link.

The thing that we are most certain will stick is the dependence on video conferencing. Yes, we'll go back to in-person meetings and courtrooms again, but now that the legal world and even the judicial world has learned to use virtual conferencing software, we doubt that we'll ever totally go back to our old ways. Too much money and time is saved by meeting clients via Zoom (the clear winner of the video conferencing software wars) – the same is true of court proceedings.

There are drawbacks of course. Some things are just better in person – when you can look a client or opposing counsel in the eye, you may “read” them better – and you may be more persuasive in-person. There are trade-offs and we're still figuring out what works when.

Clients are totally sold on video conferencing – they don't want to be waiting in your well-appointed reception area, which they are now keenly aware that they are paying for. They don't want to travel to your office. They don't want to take time off from work. Clients and prospective clients all seem to have mastered Zoom – at least its fundamentals – so we doubt it will lose its dominance no matter how many of its features are imitated by its competitors.

Finally, we are seeing artificial intelligence being adopted more rapidly by firms of all sizes and that's likely to be a continuing trend in 2021. Could it be unethical NOT to use AI? We just read an article with that title. The answer is yes!

Though there are several ethical rules which may be implicated, notably a lawyer's failure to use AI could implicate ABA Model Rule 1.5, which requires

lawyer's fees to be reasonable. If AI reduces costs, limits risks and is much faster, not using AI may result in a lawyer charging an unreasonable fee to a client." We are seeing more and more lawyers, even in small firms, beginning to use AI in e-discovery, legal research, contract analytics, predictive analytics, document management and expertise automation, among many other arenas.

These are just some of the changes that law firms will see in the future. Nothing is more worthwhile to the thoughtful lawyer than to constantly scan the horizon for changes that can enhance the successful practice of law. If there's any silver lining to the pandemic, it is that it has shaken the legal world up and brought it years into the future.

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