

# Living Through a Paradigm Shift

by William D. Henderson

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The initial two paragraphs of Richard Susskind's newest book, *Tomorrow's Lawyers*, are perhaps the boldest and most confident of any commentator currently writing on the legal industry:

*This book is a short introduction to the future for young and aspiring lawyers.*

*Tomorrow's legal world, as predicted and described here, bears little resemblance to that of the past. Legal institutions and lawyers are at a crossroads, I claim, and are poised to change more radically over the next two decades than they have over the last two centuries. If you are a young lawyer, this revolution will happen on your watch.*

Susskind is a British author, lawyer, and technology expert who was working in the legal industry in the mid-1980s when he completed his PhD at Oxford. His dissertation examined the unexplored terrain between law and computers. For the last 20 years, Susskind has been describing the future to a disbelieving and often dyspeptic audience of lawyers.

Yet, for the most part, Susskind has been right. Until recently, Susskind's most famous predic-

tion occurred in 1996, when he said that email would someday replace the telephone as the dominant method for lawyers and clients to communicate. At the time, the Internet was largely a novelty that existed inside universities. The leaders of the organized bar were outraged by Susskind's comments, as they believed that no prudent, ethical lawyers would ever transmit sensitive client information across such an insecure medium. Of course, in the intervening 20 years, email and the smartphone have taken over the lives of even senior partners.

If the legal industry is in the midst of a paradigm shift, surely the stakeholders of NALP — law schools and law firms that hire and train traditionally educated lawyers — would want to understand how and why the industry is changing. This essay is not a substitute for Susskind's book, which every NALP member should buy and read. (It is a slender 165 pages and highly accessible since it was written for a student audience.)

Instead, in this essay I want to deal head-on with the mystery of why today's market leaders — both law schools and law firms — might struggle to recognize, understand, and adapt to the changes described by Susskind.

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## If the Traditional Legal Services Paradigm Is Shifting, What Is Causing the Shift?

The answer to this question is simple: clients. One group of clients — individuals — struggle to pay for a few hours of a lawyer's time to handle the legal dimensions of many of life's problems, such as divorce, child custody, estate planning, disability, or consumer bankruptcy. Although some industrious lawyers are able to serve this clientele through a well-organized, volume practice, there remains a large and underserved market. Another group of clients — large corporations — are awash in a sea of complexity related to globalization, technology, and regulations. These clients need legal solutions to stay in business. But here is the catch: They don't necessarily have to buy those solutions from traditional large firm lawyers.

Susskind's core insight is that there are a host of legal problems that can be solved, at least in part, through greater reliance on technology, data, and process. This enables better, faster, and cheaper legal output, which in turn creates opportunities to do good (by lowering costs and improving access to legal solutions) and to do well (because the legal solutions Susskind discusses are highly scalable and can be sold over and over again to a large mass audience).

This combination of doing good and doing well ought to be irresistible to many lawyers. Yet, for a variety of reasons, the changes that Susskind describes are more likely to be greeted with confusion rather than excitement. Here are the top three reasons:

**Education.** The first source of confusion is our educational backgrounds. If we hold a law degree, we have been trained within an artisan tradition. Our concept of legal problem-solving focuses on one-to-one consultative legal services. When things get really complicated, we bring in experienced and highly specialized lawyers, not a computer or a team of information scientists. Nothing in our formal training suggests that our work involves extensive collaborations with other professionals, particularly on a co-equal basis. We lawyers are used to

being the smartest people in the room. This perception is deeply engrained in our psyches.

**Experience.** The second source of confusion is our experience. Over the last 30 years, large law firms have grown by over 500% and profits have climbed dramatically. Many large law firm partners continue to make incomes that are on a par with professional athletes. Although entry-level lawyers are having a tough time finding employment as a lawyer, the incomes of large law firm owners remain at historical highs. The latter group will need a lot more evidence to convince them that their model is broken.

**Risk.** There is perennial debate in the nation's leading business schools on whether it is better to be a "fast follower" rather than a "first mover." This is because brilliant new ideas are often difficult and costly to implement, so the best strategy is sometimes to sit back and learn from the (expensive) mistakes of our competitors. Because of our risk-averse nature, lawyers, whether BigLaw or in-house, are probably drawn to the fast-follower approach. Yet, who is there to follow? Back in 2013, Clearspire, one of

the standard bearers of the NewLaw movement, garnered lots of legal press when it announced it would be hiring hundreds of lawyers. Only a year later, however, the company closed its doors. This turn of events surely tempers enthusiasm for a new law firm model.

The factors described above reduce the likelihood that lawyers will recognize and embrace change, yet these factors lack the power to stop the change process itself.

The paradigm shift described by Susskind is occurring because of two broader trends: individual and corporate clients increasingly need and want better, faster, and cheaper legal solutions, and the tools and methodologies that can make that happen are becoming cheaper and less complex to implement. As the economist Herbert Stein famously quipped, "What can't go on forever, won't." Likewise, if legal services can be provisioned better, faster, and more cheaply, a group of clever legal entrepreneurs will eventually make it happen. Money and glory will flow to those who create innovation that the market will accept.

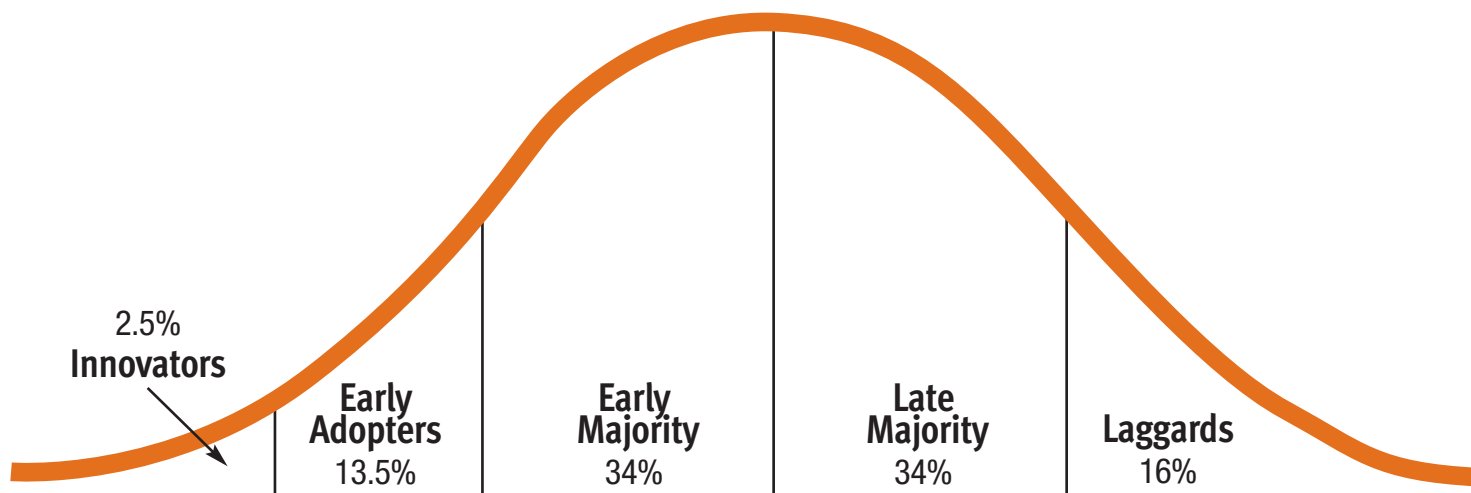
## How Will the Change Unfold?

Although innovation can bring about significant disruption within an industry, the innovation process itself unfolds in a remarkably predictable way. This observation was established empirically by Everett Rogers, a sociologist who spent his entire academic career studying how innovations spread in a variety of contexts, including manufacturing methods, hi-tech products, mass media, environmental regulation, public health, and the military. Rogers' research is chronicled in his seminal book, *Diffusions of Innovation*, which was first published in 1963 and then updated several times over the next 40 years as Rogers continued to compile evidence to support this thesis.

The primary insight that knits together Rogers' research is that the diffusion of innovation is primarily a social phenomenon rather than a process driven by logic, data, or economic self-interest. According to Rogers, the spreading of all innovations follows a strict bell curve in which only a small minority of people in any community or organization, or companies within an industry, are truly open to new approaches to existing problems. These are the innovators and early adopters. See Figure 1.

*Continued on page 12*

### Figure 1. Rogers Diffusion Curve



The innovators are important because they are driven primarily by a love for the creative process. The ideas in their heads appear real to them, so they have tremendous patience for trial and error experimentation. Because the more pragmatic majority often views innovators with suspicion, the innovators depend upon the early adopters to legitimize their ideas to a broader audience. Early adopters tend to be high-status and influential among their peers. Compared to their early and late majority counterparts, they also tend to be younger, more cosmopolitan, more drawn to data and scientific methods, and more willing to take risks in order to secure a competitive advantage.

After the early adopters obtain conspicuous success for a new innovation, the innovation appears less risky. Thus, the diffusion process picks up steam as the early majority copies the methods and know-how of the early adopters.

As they obtain a competitive advantage, the late majority quickly follows. Eventually, even the laggards adopt the innovation, albeit their motivation is less about competitive advantage than the desire to avoid the stigma of irrelevance or failure.

The most striking feature of the Rogers' diffusion model is that rational self-interest plays such a limited role. Indeed, despite the prospect of obtaining a competitive advantage, more than 80% of any market is incapable of adopting an innovation based on abstract theories and data. Before they are willing to supplant their established methods, they will need to directly observe in concrete form the alleged benefits of a proposed innovation. Often this demonstration will occur by observing the success of their direct competitors or peers.

### An Example of Diffusion

One of the most vivid examples of Rogers' diffusion model is the adoption of hybrid seeds among farmers during the first half of the 20th

century. The technology behind hybrid seeds was invented in university agronomy departments during the early 1920s. The resulting hybrid seeds produced crops that were more drought resistant, disease resistant, and generally more bountiful than conventional farming methods. Yet, despite these enormous advantages, the diffusion of this relatively simple technology took several decades to take hold.

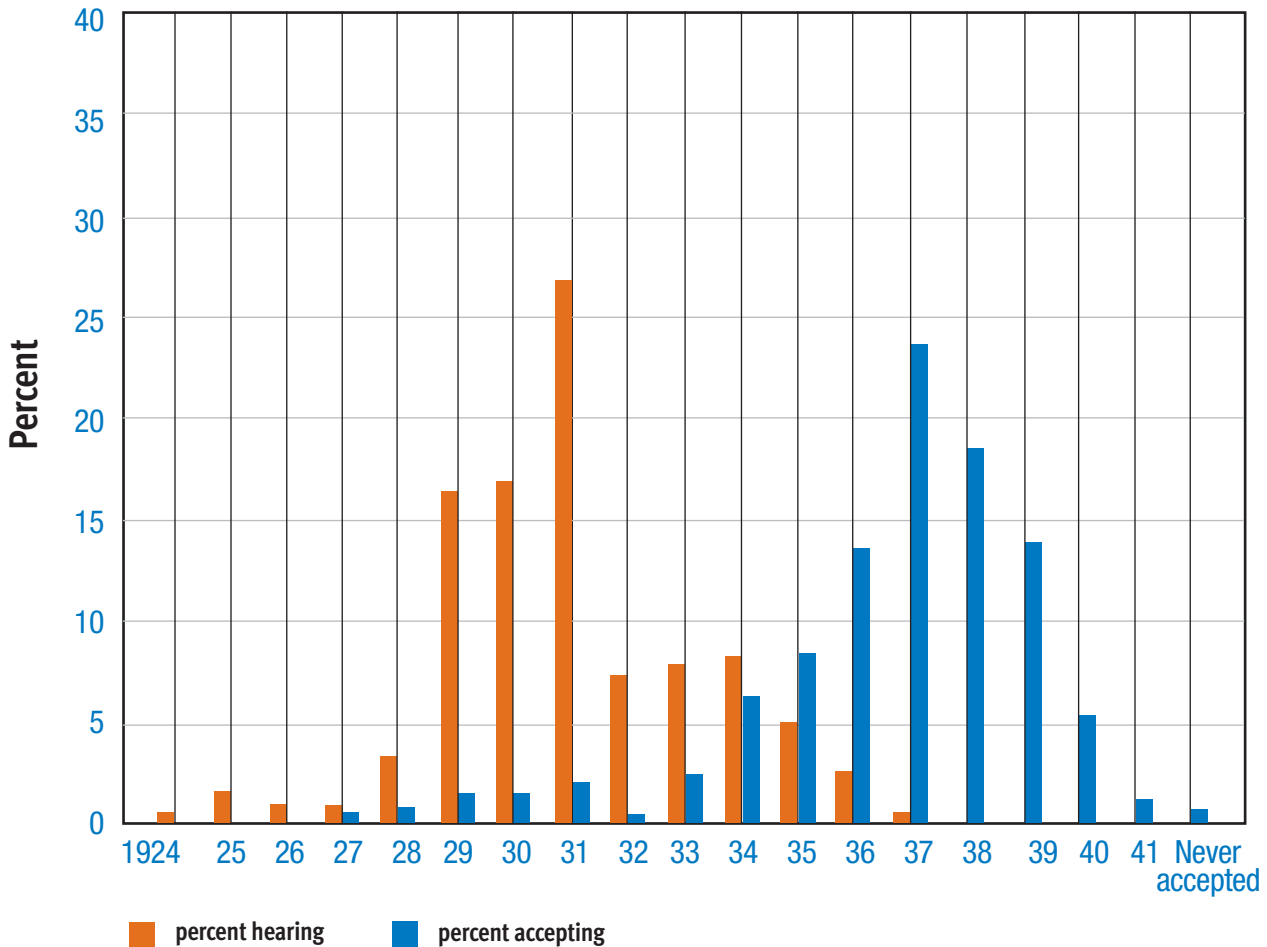
The initial obstacle to adoption was the communication gap between the farmer and the college-educated agronomists. Only a small handful of relatively sophisticated farmers had the intellect and interest to carefully listen to these outsiders. In turn, these early adopters planted a portion of their acreage with the new seeds. When the resulting corn was better and more bountiful, farms converted their entire acreages to hybrid seeds. The adoption then spread geographically over a period of years as farmers directly observed the superior performance of hybrid seed planted on adjacent land. If it was working for their neighbors, it would likely work for them. Simple imitation was the driving force for change.

Figure 2 shows the diffusion of two distinct events: hearing about hybrid seed technology and then, by an average lag of about six years, actually adopting it.

*“The dynamics in Figure 2 ought to be familiar to anyone who has participated in law firm strategic planning.”*



**Figure 2. Percentage of Farmers Hearing About Hybrid Seed Corn vs. Percentage Accepting, By Year**



The dynamics in Figure 2 ought to be familiar to anyone who has participated in law firm strategic planning. The first question is typically the same: “What is everyone else doing?” The logic runs, “If they are doing it, maybe we should too.”

A more serious point from Figure 2 is that during this transition period, the Iowa farmers were probably in a state of confusion and turmoil. In particular, by 1931, there had been lots of discussion about the new hybrid seed technology, yet only a tiny proportion of farmers had actually adopted it. With so much talk and

so little action, many farmers probably decided to ignore the college-boy agronomists and stick to their established methods. Yet, within a few short years, the benefits to early adopters became too big to ignore. Thereafter, the entire market shifted very rapidly. (Source: Ryan, B., & Gross, N. C., 1943. “The Diffusion of Hybrid Seed Corn in Two Iowa Communities,” *Rural Sociology* 8:15-24.)

When it comes to many of the innovations predicted by Richard Susskind, is it possible that we are in a similar high-noise environment? Sure, we can listen to abstract discussions of

how technology, process, and data can be applied to legal problems. But most legal industry stakeholders — the early majority, the late majority, and the laggards — would prefer to see concrete evidence that these innovations actually work.

During this time of industry tumult, however, it is important to separate out our positions that are based in natural human impulses such as fear and inertia versus positions we shape based on careful research, data, and reason. We are lawyers, after all. We get paid for our brain power and our judgment. ■