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Laurel S. Terry

Pennsylvania State University

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The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-Global Law Firms

*Laurel S. Terry**

I. INTRODUCTION

Pulitzer Prize winning journalist Thomas Friedman has stimulated and changed the popular dialogue in the United States about globalization. His best-selling books *The Lexus and the Olive Tree* and *The World is Flat* have added new vocabulary to the U.S. lexicon, with phrases such as the “flattening” of the globe and Globalization 1.0, 2.0 and 3.0 now being used regularly.¹ Numerous examples illustrate the terms’ widespread use in legal scholarship and practice. To illustrate the impact of Friedman’s work, Mary Daly and Carole Silver recently wrote an article about the offshore outsourcing of legal services (primarily to India) in which they explained that the purpose of their article was to “ask whether the market for these [legal] services is ‘flattened’ by globalization in the same ways described

* Professor, Penn State Dickinson School of Law (LTerry@psu.edu). This article was inspired by the materials prepared for and discussion at the January 2008 New York State Bar Presidential Summit on Globalization. The author would like to thank President Kathryn Grant Madigan, moderator Steven Krane, coordinator Gary Munneke, panelists Mary C. Daly, James P. Duffy, III, Calvin Hamilton, James C. Moore, and the Summit audience for the provocative discussions and materials that led to this article. Thanks are also due to Carole Silver and to the staff of this journal.

¹ Friedman’s “flattening” concept has many aspects, but basically refers to the idea that because of technological and other breakthroughs, individuals around the world can communicate, collaborate and compete with one another. THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY*, RELEASE 3.0 5–8 (2007) [hereinafter *THE WORLD IS FLAT*]; see generally THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* (1999) [hereinafter *THE LEXUS AND THE OLIVE TREE*]. According to Friedman, Globalization 1.0 occurred from 1492 to 1800 and shrank the world from a size large to a size medium. *Id.* at 9. Globalization 2.0 ran from 1800–2000 and shrank the world from a size medium to a size small. *Id.* Globalization 3.0 started in 2000 and shrank the world to a size tiny. *Id.* at 10. See *infra* Part II.B. (discussing in detail Friedman’s ten “flattening” factors).

by Friedman. Our focus here is on offshore outsourcing. . . .”² Another example is a recent article in the American Bar Association’s Law Practice Management online journal entitled “Is Your World Flat?”³ A third example is the globalization program at the 2008 New York State Bar Association Presidential Summit.⁴ This program’s written introduction used Friedman’s work to frame the discussion, noting that although some of Friedman’s analysis might be subject to criticism, the basic premise was unassailable.⁵ The introduction posed a challenge to the Summit attendees, stating:

Change begets opportunity for those who prepare to seize the day; those who wait to respond may find themselves marginalized in a professional world they do not know or understand. In either case, the future is here.⁶

One of the eight questions listed in the introduction was “Why would economic globalization be important to a lawyer or law firm practicing real estate, trusts and estates and personal injury litigation in Upstate New York?”⁷ This final question is an exceedingly important one and might easily have been asked about lawyers in cities and towns all over the United States.

This question is also one that we often neglect to ask. Many of the statistics about globalization focus on global law firms. Perhaps this should not be surprising in light of the tremendous growth in global law firms. As Professor Bill Henderson recently pointed out, the number of lawyers working for the Am Law 200 firms grew eighty-four percent between 1993 and 2003.⁸ Most of the ten largest global law firms now have more lawyers located outside their home-country office than in their home country.⁹ All

² Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT’L L. 401, 402 (2007).

³ Edward Poll, *Is Your World Flat?*, LAW PRACTICE TODAY, Nov. 2007, <http://www.abanet.org/lpm/lpt/articles/mtt11071.shtml> [hereinafter *ABA Webzine*].

⁴ New York State Bar Assoc., Agenda, Presidential Summit (Jan. 30, 2008), available at http://nylaw.typepad.com/new_york_civil_law/files/presidential_summit_agenda.pdf.

⁵ Gary A. Munneke, Introduction, New York State Bar Association Annual Meeting 2008, Presidential Summit, Providing Legal Services in a Globalized World: Radical Change, Opportunity or Both? 290 (Jan. 30, 2008) (on file with author).

⁶ *Id.* at 292.

⁷ *Id.* at 291.

⁸ William D. Henderson, *The Globalization of the Legal Profession*, 14 IND. J. GLOBAL LEGAL STUD. 1, 2 (2007).

⁹ Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUD. L. REV. 463, 495 tbl. 4 (2005) (citing *The Global 100*, AM. LAWYER, 2004.).

of them have offices outside their home country.¹⁰ Carole Silver has documented the dramatic growth in the foreign offices of sixty U.S.-based law firms.¹¹ Anglo-American firms are increasingly dominant in various kinds of legal work outside of the United Kingdom and the United States, such as in the practice area of capital markets.¹² Moreover, it is not just U.S. lawyers who are exporting their services to other countries. Foreign lawyers have imported their services into the United States in increasing numbers. For example, between 1993 and 2003, U.S. exports of legal services grew 134%, but imports grew 174%.¹³

Despite all the attention that has been paid to global law firms, the fact remains that this is not the dominant model of law practice in the United States. According to the American Bar Foundation, in 2000 approximately 48.3% of the lawyers in private practice were sole practitioners and only 14.3% worked in firms of more than 100 lawyers.¹⁴ Even among more recent law school graduates, less than half of the graduates go into practice with firms of more than 100 lawyers.¹⁵ Thus, the average U.S. lawyer does not practice in a large, global law firm. This article examines whether globalization is relevant for these lawyers.

While lawyers in these large global law firms usually are aware of why globalization is relevant to them, other U.S. lawyers may not think that the globalization phenomenon affects them. A comment frequently heard is “Law is local so I don’t have to worry about globalization affecting me or

¹⁰ *The Global 100*, AM. LAWYER, Oct. 2006, at 139.

¹¹ Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT’L L. 897, 916–20 (2005). For a group of forty-seven U.S. law firms with foreign branch offices in London, the average firm size in 1999 was twenty lawyers; five years later, in 2004, it was forty-four lawyers. *Id.* at 918–19. By 1999, a group of sixty U.S. law firms operated a total of 335 offices in forty-eight countries. *Id.* at 916. See also Carole Silver, *Globalization and the U.S. Market in Legal Services—Shifting Identities*, 31 LAW & POL’Y INT’L BUS. 1093 (2000) (describing the international expansion of U.S. law firms through foreign offices).

¹² D. Daniel Sokol, *Globalization of Law Firms: A Survey of the Literature and a Research Agenda for Future Study*, 14 IND. J. GLOBAL LEGAL STUD. 5, 10 (2007) (pointing out that in the China/Hong Kong market, only three of the top twenty-eight firms were local).

¹³ Laurel S. Terry, *A “How To” Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course*, 51 ST. LOUIS U. L.J. 1135, 1138 n.9 (2007) (summarizing data in Terry, *supra* note 9, at 494 tbl. 3 to explain globalization’s effects on the legal profession).

¹⁴ AMERICAN BAR FOUNDATION, *THE LAWYER STATISTICAL REPORT: THE LEGAL PROFESSION IN 2000* 6–8 (2004), <http://www.abf-sociolegal.org/lawstat.html> (last visited May 1, 2008).

¹⁵ National Association of Legal Practitioners, *Employment Patterns, 1982–2006*, <http://www.nalp.org/content/index.php?pid=515> (showing that in 2006, 36.5% of men, 40.1% of women, 34.8% of non-minorities, and 48.5% of minorities went into firms of more than 100 lawyers).

my practice.” The goal of this article is to look at Friedman’s work through the lens of legal services and to answer several questions, including:

- Whether Friedman’s analysis is relevant to what has happened in the field of legal services;
- Whether a U.S. lawyer who doesn’t practice in a global law firm should care about globalization and what Friedman says; and
- If so, what, if anything, can or should a U.S. lawyer do in response to globalization?

II. IS FRIEDMAN’S ANALYSIS RELEVANT TO WHAT HAS HAPPENED IN THE FIELD OF LEGAL SERVICES?

A. Globalization According to Friedman

Because many readers may not be familiar with Friedman’s work, a brief review is in order. *The Lexus and the Olive Tree* was Friedman’s first globalization book and offered globalization as the new framework to understand the post-Cold War era. Friedman observed that after World War II, the Cold War was used as the framework for understanding and shaping the world.¹⁶ Friedman’s books argue that globalization should be used as the frame to understand the post-Cold War era and that this era was different, both politically and technologically, from the prior era.¹⁷ Friedman’s first book pointed to the increasingly powerful role of the individual as a result of technological developments.¹⁸ The “Lexus” in the book’s title referred to the car and was a metaphor for the fact that technological developments have spread rapidly and many more individuals around the world now compete to own a Lexus and to build its equivalent.¹⁹ The “olive tree” in the book illustrated the point that at the same time they are “going global,” individuals also remain rooted to physical geography because it anchors individuals, locates them in the world, and provides a sense of home, self-esteem, and belonging.²⁰ But the “olive tree” can also be a source of conflict as individuals and groups fight over specific olive trees. Friedman argued that one of the challenges of globalization was to find the right balance between these two forces.²¹ Friedman also identified a number of factors that he believed would help determine which companies and countries would be the winners and losers in the new area of

¹⁶ See THE LEXUS AND THE OLIVE TREE, *supra* note 1, at xviii.

¹⁷ *Id.*; see generally THE WORLD IS FLAT, *supra* note 1.

¹⁸ THE LEXUS AND THE OLIVE TREE, *supra* note 1. According to this book, the globalization system is built around three overlapping balances: between national states, between nation states and global markets, and between individuals and nation states. *Id.*

¹⁹ *Id.* at 32–33.

²⁰ *Id.*

²¹ *Id.* at 42.

globalization.²²

Friedman's second globalization book is entitled *The World is Flat*. In the first chapter, which is entitled "While I was Sleeping," Friedman observed that while he was busy writing about 9-11 and terrorism, globalization exploded and entered into phase 3.0, in which the world was no longer just small, but was tiny. This is what Friedman meant by the term flat—individuals (and companies and governments) around the world are now able to interact with one another horizontally with lightning speed and connect with one another in ways that were unimaginable just a few years ago. Friedman identified ten forces that had contributed to this "flattening" of the world.²³ Although many of these flatteners had been around for years, Friedman argued that as a result of several convergences, these flattening forces had acquired added power at the beginning of the twenty-first century. The first convergence he referred to was the fact that the ten flatteners had created a new global web-enabled platform that allowed multiple forms of collaboration.²⁴ Friedman called the second convergence "horizontalization" and stated that the ten flatteners "begat the convergence of a set of business factors and skills that would get the most out of the flat world," including a more horizontal chain of command that allowed for greater value creation.²⁵ The third convergence he cited was the scale of the global community now contributing innovations.²⁶ He argued that in the future, the new players, the new playing field, and the habits for horizontal collaboration would be the most important forces shaping global economics and politics.²⁷

What were Friedman's conclusions about this new flatter, Globalization 3.0 world? He argued that as the world moves from a primarily vertical command-and-control system for creating value to a more horizontal connect-and-collaborate value-creation model, societies will find themselves facing profound changes and that there will be a "great sorting out."²⁸ As a result, every American would be wise to think of him- or herself as competing against every young Chinese, Indian, and Brazilian.²⁹ He also argued that the jobs that will not become fungible are those that are really special or specialized, those that are localized or anchored, and those that will come into being to replace the fungible jobs now employing the

²² *Id.* at 190–237.

²³ *See infra* Part II.B.

²⁴ THE WORLD IS FLAT, *supra* note 1, at 205.

²⁵ *Id.* at 207.

²⁶ *Id.* at 211.

²⁷ *Id.*

²⁸ *Id.* at 233.

²⁹ THE WORLD IS FLAT, *supra* note 1, at 278.

majority of Americans.³⁰ Among other things, the remainder of the book included an analysis of the preparedness of the United States and a number of other countries for the Globalization 3.0 world and advice on how companies could cope in the new reality.³¹

B. Applying Friedman to the Legal World: Is Any of This Relevant to the Average U.S. Lawyer?

So . . . what does Friedman's message mean for the average U.S. lawyer? Has there been a "flattening" of the world and if so, does it matter to a U.S. lawyer who is practicing law in a small or medium-sized law firm? I submit that the answer is a resounding "yes!" The Globalization 3.0 phenomenon is real and it does matter to U.S. lawyers who do not practice in global law firms. The discussion that follows illustrates how most, if not all, of the "flattening" forces Friedman cited already have affected U.S. law practice and will continue to do so.

The first "flattening force" Friedman referred to was November 9, 1989, when the Berlin Wall came down. According to Friedman, this event unleashed the forces that led to the fall of the Soviet Union and tipped the balance of power towards those advocating democratic, consensual free-market oriented governance.³² According to Friedman, this event not only flattened the alternatives to capitalism and unlocked the pent-up energies of millions of people in places like China, India, Brazil, and the former Soviet

³⁰ *Id.* at 281–82.

³¹ The advice to companies is contained in Chapter 11 and included the following rules. Rule #1 is that whatever can be done will be done. The only question is whether you do it or it is done to you. Thus, Rule #2 is that the most important competition is between you and your imagination. Rule #3 is that small companies should act big (and take advantage of their flexibility and their collaborative tools to reach faster, farther, wider and deeper). Rule #4 is that companies act small to let their customers act bigger. Rule #5 is that the best companies are the best collaborators. Rule #6 is that the best companies stay healthy by getting chest x-rays and selling them to their clients. Rule #7 is that the best companies outsource to win, not to shrink. Rule #8 is that how a company does something matters more than ever. Rule #9 is that when you are feeling flattened, don't try to build walls, but reach for a shovel and dig inside yourself. *Id.* at 441–74. In Chapter 6, which provides advice to the United States, Friedman writes that one of the most important things is to identify the new middle jobs that will be less vulnerable to the downward wage pressures of outsourcing, automation, and technological skills and to identify the particular skills and education these jobs will demand. The new skills will place a premium on those who are great collaborators and orchestrators, synthesizers, explainers, leveragers, adapters, green people, passionate personalizers, math lovers, and great localizers. *Id.* at 278–307. In Chapters 7 and 8, Friedman discusses education and the skills he recommends for schoolchildren. He also wrote about some of the challenges for the United States, including the need to improve children's education, the numbers gap in U.S. engineering and math majors, the ambition gap, the education gap at the top and at the bottom, the funding gap, and the infrastructure gap. *Id.* at 308–73.

³² *Id.* at 51–59.

Empire, but it also allowed many people to see the world differently, as “a seamless whole.”³³ Friedman cites the fall of the Berlin Wall as one of the forces that contributed to people seeing the world in “global” terms rather than in East and West terms, as they had previously.³⁴

This first flattening force clearly has had an impact on global law firms, which are active not only in former Soviet Bloc countries, but in a reunited Germany.³⁵ But has this “flattening force” had an impact on U.S. lawyers who do not work in global law firms? I submit that the answer is “yes” even if the impact is indirect. Much as it did in other contexts, the fall of the Berlin Wall changed the frame of reference in which all U.S. lawyers operate. This may not have had a direct impact on the average U.S. lawyer, but it is one of the forces that, when combined with the other forces described below, has contributed to globalization and fundamental changes in the ways in which U.S. lawyers work.

The second “flattening” factor Friedman described was Netscape’s August 1995 initial public offering, which signaled, in a concrete way, the new Internet era in which we live.³⁶ Are there many lawyers in the United States who have not had their work lives profoundly changed by the Internet? Are there lawyers who don’t do legal research or factual research on the Internet? If so, their ranks will shrink to the point of disappearing as the years pass. Like the computer, the Internet has become part of the fabric of a U.S. lawyer’s life, regardless of the location in which the lawyer works, the size of the law firm, or the type of work the lawyer performs.³⁷

The third “flattening” factor Friedman cited was work flow software, which enabled individuals in different locations to work on different tasks in real time and communicate effectively with one another.³⁸ One example was the creation of the simple mail transfer protocol or “smtp,” which allowed email users on different systems to communicate with each other. Friedman also cited the development of html and TCP/IP protocols, which allowed users to exchange webpages and things other than email or Word documents.³⁹ This third flattening force included the emergence of standards, such as the widespread use of Paypal, which opened up the power of the Internet to individuals as well as companies. Friedman noted

³³ *Id.* at 54.

³⁴ THE WORLD IS FLAT, *supra* note 1, at 54.

³⁵ See, e.g., Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition: Is Bigger Really Better? An International Comparison*, 40 VAND. J. TRANSNAT’L L. 763, 798–801 (2007).

³⁶ THE WORLD IS FLAT, *supra* note 1, at 61–62.

³⁷ See Leonard Bierman & Michael A. Hitt, *The Globalization of Legal Practice in the Internet Age*, 14 IND. J. GLOBAL LEGAL STUD. 29 (2007) (providing in-depth analysis of the Internet’s effect on legal practice).

³⁸ THE WORLD IS FLAT, *supra* note 1, at 77.

³⁹ *Id.* at 81.

that while U.S. citizens have access to these standardized work flow tools, everyone else does also and that this near-universal access will contribute to an explosion of experimentation and innovation.⁴⁰ He quoted someone who said that work flow platforms have done for the service industry what Henry Ford did for manufacturing—they allow one to take apart each task, standardize it, and send it around to whoever can do it best.⁴¹ And because we now operate in a virtual—*i.e.*, flat—world, portions of the work can be sent anywhere in the world.

This third “flattening” force has become an integral part of U.S. law practice, regardless of the location, size, or type of law firm. Whether they do transactional work or litigation, lawyers routinely take advantage of these new work flow tools. Most lawyers send email and the number who do not is shrinking daily. As noted earlier, lawyers use webpages in a myriad of ways. These types of work flow tools are what allow courts to adopt electronic filing rules. As a result, a court may not know whether a lawyer files a document from his or her desktop computer or from a laptop located on a beach in Bermuda. I recently overheard a lawyer tell a story about how the information necessary to be included in a real estate title report would be prepared by the end of the U.S. work day, emailed to Israel, where it was then formatted into the report, emailed back, and waiting for the title company and lawyer in the morning. This is the type of event that is now made possible by the “work flow platform” flattening force Friedman described. In addition to the developments to date, one must expect that there will be future work flow platform innovations that will be relevant to lawyers. As you read this, there are people who are busy trying to think of new ways in which to divide up legal services tasks, and the most efficient and cost-effective way to address each separate part.⁴²

The fourth “flattening” force Friedman cited was “uploading” and “open-sourcing,” which allows individuals to harness the new powers of communication and send their products out into the world, often for free.⁴³ The examples he cited included blogs, Wikipedia, Amazon.com’s offer to publish authors’ books for them, community-developed open source software, such as APACHE and Linux, and community-developed answers, including prizes offered for those (anywhere in the world) who find a solution to a given problem.⁴⁴

Can there be any doubt that this “uploading” factor has hit the legal world? Lawyers (along with doctors and many others), now have to compete for their clients not only with the lawyer located on the next street

⁴⁰ *Id.* at 90.

⁴¹ *Id.* at 91.

⁴² See Bierman & Hitt, *supra* note 37, at 32–33.

⁴³ THE WORLD IS FLAT, *supra* note 1, at 93.

⁴⁴ *Id.* at 93–126.

or the next town, but with the free advice available to the clients on the web. Many argue that such Internet advice is not reliable. Regardless of whether that is true, it does not change the fact that some potential clients will seek advice on the web before consulting a lawyer, and that as a result, some of these clients may never make it to a lawyer's office. This uploading phenomenon also means that barriers to entry have shrunk dramatically. A smart, tech-savvy lawyer can now create a very impressive website, loaded with content. There are many lawyers (and law firms) that have blogs and there are even businesses that—for a fee—show lawyers how to use blogging as a marketing device:

Three separate worlds must come together for effective attorney blogs: law, technology and marketing. So naturally, our team at LexBlog reflects that—we combine a seasoned lawyer's experience (both in legal expertise and in the business of running a thriving law practice) with technical specialists and Internet marketing pros. The common thread is that everyone at LexBlog is an e-business savvy Internet fanatic, and very excited about pushing the limits of technology and communication.⁴⁵

Moreover, we may have only scratched the surface of the possible development of this open-source phenomenon. For example, one commentator has called for even greater use of open-sourcing in the legal world, allowing experts from around the world to collaborate on particular subject matter areas, such as human rights.⁴⁶ One of the legal ethics listservs that I am on regularly includes requests for help, such as requests for analysis, citations, and case examples.⁴⁷ During the year that I have been on this list-serv, almost all of these requests for help have been answered—for free—by a diverse group of lawyers from around the country.

The fifth “flattening” force Friedman mentioned was outsourcing, much of which originally came about as a result of the Y2K computer bug.⁴⁸ Friedman explained that as a result of the United States' great investment in fiber optic cable, India's large number of engineers and

⁴⁵ Lex Blog, A Little Bit About Us, <http://www.lexblog.com/cat-company.html> (last visited May 1, 2008).

⁴⁶ Roger Alford, *If The World is Flat...*, Opinio Juris Blog, June 8, 2005, <http://lawofnations.blogspot.com/2005/06/if-world-is-flat.html> (“If an Indian human rights lawyer is writing a legal brief on what constitutes slavery under Indian law and he has reason to believe that reference to Pakistani, Sri Lankan, English, or Canadian law might be useful to the brief, he should be able to request a legal ‘patch’ and easily secure the answer. . . . Perhaps specialized legal blogs are the beginnings of such open sourcing, although they rarely are used to provide legal “patches” in the manner I have described.”)

⁴⁷ Association of Professional Responsibility Lawyers, <http://www.aprl.net/login.htm> (listserv access for members only—materials on file with author).

⁴⁸ THE WORLD IS FLAT, *supra* note 1, at 126–36.

computer scientists, and the need to fix the Y2K bug, where many computers were not programmed to handle the shift from the twentieth to the twenty-first century, there was an explosion of outsourcing to India.⁴⁹

This “flattening” force is as relevant to legal services as it is to other service sectors. Mary Daly and Carole Silver published their offshore outsourcing article in early 2007. In the year or so since that article was published, there have been numerous developments that suggest the pace of this outsourcing is increasing dramatically. During April–May 2008, for example, I will be attending three conferences that will address legal outsourcing and one of these conferences (at the University of Berkeley School of Law) will be entirely devoted to this topic. Another example is the recent summit of legal outsourcing companies, which was the first such summit.⁵⁰ Reports of this summit included comments noting the increased use of offshore outsourcing for legal services and that it isn’t just about cost any more since some offshore outsourcing firms are trying to figure out how to do things better than U.S. lawyers:

Outsourcing legal work to India is no longer a novelty. It’s a reality.

...

But despite the hoopla, industry leaders acknowledge legal outsourcing remains very much in its infancy, with fundamental choices still being made about how to market the services of Indian lawyers. Is it just about cost? Or can Indian lawyers actually do many things better than their American counterparts? Should outsourcing firms seek to wholly supplant other service providers or cooperate with them?

The good experiences that some clients have had with legal outsourcing has led to many other companies being receptive to the idea, said Perla. He declined to name any clients but said they included some of the 10 largest companies in the Fortune 500.

“The resistance level has gone way down,” he said.

Legal process outsourcing vendors target the more mundane but nonetheless time-intensive tasks associated with legal practice, reviewing mountains of documents for discovery rather than drafting appellate briefs. Once the province of junior associates, such work is now more commonly handled by domestic staffing agencies fielding large teams of temporary attorneys.

⁴⁹ *Id.*

⁵⁰ Martha Neil, *1st Legal Outsourcing Summit: Good Contracts Needed in Growing Industry*, A.B.A. J., Jan. 22, 2008, available at http://www.abajournal.com/news/1st_legal_outsourcing_summit_good_contracts_needed_in_growing_industry [hereinafter *First LPO Summit*].

LPO salaries for Indian lawyers are generally well below \$10,000 a year. By comparison, a U.S. contract lawyer usually earns around \$30 an hour while associate base salaries at major firms in New York start at \$160,000 a year.⁵¹

U.S. corporate clients are among those who have chosen offshore outsourcing of legal services. Cost concerns are one of the main reasons corporate counsel consider offshoring:

High rates and the increasing bulk of e-discovery have pushed the associate general counsel at San Francisco-based Del Monte Foods to seriously consider using sources outside his outside law firm for the grunt work of litigation. “What caused me to start to look into this issue was just the tremendous cost involved in discovery,” said Rickman. “It doesn’t make sense to pay 150 or 250 dollars an hour at some of the larger firms to do the document review—it just seems like overkill.” Some in-house departments have already reached that conclusion. It has been reported in recent years that big companies like Microsoft Corp. and Cisco Systems Inc. offshore some patent application work. Companies like San Jose’s Cadence Design Systems Inc. dabble, occasionally using Indian companies for large document review projects.⁵²

Some of the legal work that already has been sent offshore includes litigation document review, portions of patent applications, drafting of pretrial motions and briefs, due diligence, parts of mergers and acquisition deals and even briefs prepared for submission to the U.S. Courts of Appeal and the U.S. Supreme Court.⁵³

While the offshore outsourcing phenomenon is fairly limited to date, observers predict that it is likely to grow.⁵⁴ According to GlobalSourcingNow, which is a leading source of information about

⁵¹ Anthony Lin, *Legal Outsourcing to India Is Growing, but Still Confronts Fundamental Issues*, N.Y. L.J., Jan. 23, 2008, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1200996336809>. See also Arin Greenwood, *Manhattan Work at Mumbai Prices: Inside India’s Hottest Legal Outsourcing Team*, A.B.A. J., Oct. 2007, available at http://abajournal.com/magazine/manhattan_work_at_mumbai_prices/print; Richard Lloyd, *Outsourcing and Offshoring Gain Traction in U.K. Legal Market*, AM. LAWYER, Sept. 19, 2007, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1190106180638>; Posting of Carolyn Elefant to Legal Blog Watch, http://legalblogwatch.typepad.com/legal_blog_watch/2008/01/lawyer-outsorc.html (Jan. 25, 2008, 1:52 pm).

⁵² Zusha Elinson, *GCs Embrace Outsourced Work*, THE RECORDER, Jan. 25, 2008, available at <http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1201169145867>. See also Daly & Silver, *supra* note 2, at 414–15 & nn.61–69 (discussing general counsel’s use of outsourcing, including GE).

⁵³ See, e.g., Daly & Silver, *supra* note 2, at 409–10 & nn.35–43.

⁵⁴ See Lin, *supra* note 51.

offshoring, the “knowledge process outsourcing” (“KPO”) market, (which is distinct from the “business process outsourcing” or back-office services market), is approximately \$1 to \$3 billion, but will reach \$17 billion by 2010.⁵⁵ They have predicted that India will employ more than 250,000 KPO professionals by 2010, a significant increase from the 25,000 it currently employs.⁵⁶ Many of these new jobs will involve legal services; they have predicted 79,000 legal process outsourcing jobs in India by 2015.⁵⁷ Another research company has predicted that the revenues from legal services offshoring will grow from \$146 million in 2006 to \$640 million by the end of 2010.⁵⁸ Some of these legal offshoring intermediary companies were founded by U.S. lawyers with elite credentials.⁵⁹ In short, there are a number of companies and individuals who are working very hard to establish offshore outsourcing in the legal services field. Moreover, some of those who are involved in the offshore outsourcing phenomenon are sophisticated U.S. lawyers who understand the U.S. market and may understand places in which Indian lawyers might be competitive with U.S. lawyers.

Few of the outsourcing news stories have focused on its effect on lawyers practicing in small law firms. Even without direct competition, however, it is quite possible that U.S. lawyers will end up competing indirectly with offshore lawyers for clients. This is because of the role that such lawyers might play in the interface between U.S. law and technology. The “Quicken Willmaker” software jointly published by Nolo Press and Intuit (maker of TurboTax) recently disclosed that its Quicken WillMaker Plus sales increased nearly 33% during 2006.⁶⁰ Another software maker, LegalZoom, has stated that it has served 500,000 people since it opened in 2000 and that sales have grown 50–75% per year.⁶¹ Who will be doing the annual software updates—especially if the underlying research about new

⁵⁵ Savita Iyer, *KPO—The Next Big Thing: Legal Services Now Riding the Knowledge Process Off-Shoring Wave*, http://www.sddglobal.com/offshoring_legal_process_lpo_kpo_india.htm (last visited May 1, 2008).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Mark Ross, *Legal Process Outsourcing (LPO): 2007 and Beyond*, IMMIGRATION DAILY, Jan. 25, 2008, <http://www.ilw.com/articles/2008,0125-ross.shtm> (citing VALUE NOTES, OFFSHORING LEGAL SERVICES TO INDIA—AN UPDATE (July 2007), available at <http://www.sourcingtonotes.com/content/view/71/54>). A 2005 Forrester Research study came with even higher figures, estimating that \$4 billion of legal work may head to India by 2015. Ken Wollins, *Outsourcing Legal Services Overseas: Choosing the Solution That’s Best for You*, 17 A.B.A. BUS. L. TODAY 2 (2007), available at <http://www.abanet.org/buslaw/blt/2007-11-12/wollins.shtml>.

⁵⁹ See Daly & Silver, *supra* note 2, at 407 & nn.27–29.

⁶⁰ Gene Meyer, *Without Lawyer’s Help: Companies See Potential Sales in Do-It-Yourself Legal Kits*, ORLANDO SENTINEL, Jan. 20, 2008, at G3.

⁶¹ *Id.*

developments isn't complicated?

As these sales figures show, this type of legal software is attractive to many potential clients. According to recent news reports, there is a significant price differential between this kind of software and the services of a lawyer.⁶² These reports state that a basic, commercially-available do-it-yourself wills and estate planning kit costs \$20–\$120 in most states.⁶³ In contrast, hiring a lawyer to do the same work appears to run between \$700 and \$1,500 in many places, but can vary widely.⁶⁴ Presumably, some of these software sales represent potential clients that U.S. lawyers will never see. One Texas court declared the software Quicken Family Lawyer to constitute the unauthorized practice of law because it was too interactive and sophisticated.⁶⁵ Thus, Friedman's fifth flattening factor applies to the legal services, just as it does to other areas.⁶⁶

The sixth flattening factor Friedman cited was offshoring, which is related to outsourcing and often includes the situation in which one takes the entire production and not merely a specific function to a lower cost-higher productivity area.⁶⁷ In writing about this flattening force, Friedman used the subtitle "running with the gazelles, eating with the lions." This phrase came from an African proverb that Friedman found translated into Mandarin on a Chinese factory floor. The proverb notes that the lion must outrun the slowest gazelle or it will starve to death and the gazelle must run faster than the fastest lion or it will be killed. So it doesn't matter if you are a lion or gazelle, when the sun comes up, you better start running.⁶⁸ Friedman used this proverb to illustrate the point that if Americans and Europeans want to benefit from the flattening of the world and the interconnectedness of markets and knowledge centers, they will have to run as fast as the fastest lion (which Friedman speculated would be China because of its entrepreneurial and "new China" spirit.)⁶⁹

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Unauthorized Practice of Law Committee v. Parsons Technology, Inc.*, No. Civ.A. 3:97CV-2859H, 1999 WL 47235 at *6–7 (N.D. Tex. 1999), *superseded by statute*, 1999 Tex. Gen. Laws 799, *as recognized in* 179 F.3d 956 (5th Cir. 1999). The Fifth Circuit vacated the case as moot because the Texas legislature amended the statute so that the Quicken Family Lawyer software could not be viewed as violating the UPL statute.

⁶⁶ One could argue that outsourcing is also prevalent in global law firms. Professor Silver has documented the change in staffing of the foreign offices of U.S.-based global law firms over time, with such offices much more likely to employ local lawyers than U.S. lawyers. See Carole Silver, *Local Matters: Internationalizing Strategies for U.S. Law Firms*, 14 *IND. J. GLOBAL LEGAL STUD.* 67 (2007). One can think of this phenomenon as a type of outsourcing.

⁶⁷ *THE WORLD IS FLAT*, *supra* note 1, at 137.

⁶⁸ *Id.*

⁶⁹ *Id.* at 137, 151.

Is this factor relevant to U.S. lawyers? At first blush, this factor might seem less likely to have an impact on the average U.S. lawyer than the other flattening factors. One might argue that it is much less likely that an entire legal service will be outsourced, as compared to a specific function or subset of tasks. One could also argue that in the legal services area, there is much less reason to worry about China as a competitor. After all, Chinese lawyers do not speak English as their native-language nor do they come from a common law system. And while it is true that China is an important market for global U.S. law firms and one might perhaps imagine competition among those firms,⁷⁰ it is much more difficult to see how the awakening of China's entrepreneurial spirit could affect the average U.S. lawyer who does not practice in a global law firm.

Such complete complacency may be misplaced, however. It is possible that in the not too distant future, U.S. lawyers and firms will have to compete with Chinese law firms and their entrepreneurial spirit. For example, there already are a handful of Chinese law firms practicing in Silicon Valley.⁷¹ One of those firms is King and Wood, a large Chinese law firm whose name was chosen in order to appeal to Western clients:

“Actually, we do not have a Mr. King and a Mr. Wood,” says Wei Zhang, a Palo Alto, Calif.-based partner in the firm. Instead, the firm, hoping to appeal to Western clients, named itself with two Chinese characters that, when pronounced, sound like King and Wood.⁷²

Even if the average U.S. lawyer will never have to compete directly with a Chinese law firm, he or she might still be influenced by China's growth in the Globalization 3.0 world. Law firms around the country have lost business as clients merged, consolidated and downsized their legal needs and legal providers. This phenomenon has affected the smallest towns and the largest cities in the United States. Thus, if and when China becomes more of an economic powerhouse, there is the potential of business alliances, mergers, consolidations, and takeovers that could result in a change in legal needs and the hiring of Chinese rather than U.S. firms to do a substantial amount of the legal work.

In the spirit of Friedman's book, which is filled with anecdotes, I will offer a small personal anecdote here. When I first moved to the small town where I currently live (population 18,000), I was amused (and delighted) to

⁷⁰ See Silver, *Shifting Identities*, *supra* note 11. See also Susan Beck, *McDermott Entering into Alliance with Chinese Law Firm*, AM. LAWYER, Jan. 30, 2007, available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1170077830027>.

⁷¹ See Marie-Anne Hogarth, *Beijing by the Bay*, THE RECORDER, May 11, 2005, available at <http://www.law.com/jsp/article.jsp?id=1115715916698>.

⁷² *Id.*

discover that the main bank in town was called “Farmers Trust.” Having come from a suburban Southern California background and being quite far removed from the “farm” life, I got a kick out of banking with “Farmers Trust.” My bank was a pillar of the local charitable community and used local lawyers for its legal work. Farmers Trust has now gone through several mergers and buyouts and is part of a large regional bank chain that has over 650 branches and is one of the twenty largest commercial bank holding companies in the United States. While my new bank is still a good corporate citizen, its role in the community has changed dramatically. Although I have no personal knowledge, I would be shocked if its local legal needs had not also changed dramatically. I am sure that it now uses out-of-state lawyers for much of its legal needs. I know that this same scenario has occurred throughout the U.S.—banks have undergone tremendous mergers and consolidation in the last twenty years.

One of China’s largest banks recently opened its first branch in the United States.⁷³ I suspect that this bank, like my new bank, will not rely exclusively on local legal services. I also think it likely that a Chinese bank will rely, at least in part, on Chinese lawyers. Thus, this sixth flattening factor Friedman describes has the potential to affect small town lawyers throughout the United States. Moreover, in light of the prior information on outsourcing,” it is certainly possible to imagine that at least in some contexts, specific-task outsourcing could turn into complete task offshoring, with U.S. lawyers limited to conveying (and perhaps checking) the results.

The seventh flattening factor Friedman cited was “supply-chaining,” which he described as a “method of collaborating horizontally—among suppliers, retailers and customers—to create value.”⁷⁴ Friedman cited Wal-Mart as an example of a company that had perfected supply-chaining, noting that Wal-Mart is the biggest retail company in the world and it does not make a single thing except a hyper-efficient supply-chain.⁷⁵ As Friedman observed, in a flat world, products are turned from innovations into commodities faster than ever, competition comes from around the globe, and consumer demand is volatile. As a result, a smart and fast global supply chain is one of the most important ways for a company to distinguish itself from its competitors.⁷⁶

Is this flattening factor relevant to legal services? One could argue that supply-chaining is one of the most important services lawyers provide, regardless of their location or type of firm or the nature of their legal

⁷³ *Chinese Bank to Open in New York*, N.Y. TIMES, Nov. 9, 2007, available at <http://www.nytimes.com/2007/11/09/business/worldbusiness/09bank.html>.

⁷⁴ THE WORLD IS FLAT, *supra* note 1, at 152.

⁷⁵ *Id.* at 152.

⁷⁶ *Id.* at 155.

practice. Although one typically does not hear it phrased this way, “supply-chaining” might be another way to describe the important services lawyers offer when they provide horizontal coordination for all of a client’s needs. To take just one example, think of a high-stakes personal injury case. A lawyer handling such a case probably will need to locate an appropriate medical expert, understand the analysis provided by that expert, translate that medical information into terms understandable to a jury, and understand tax law and financial principles in order to advise a client about the advantages and disadvantages of several different kinds of settlement options. And that’s just for a start! Although lawyers may not typically think of it in this fashion, what they are doing is managing a supply chain. Their ability to do so effectively and efficiently may determine the level of service they offer their clients and their ability to attract new clients. As the world becomes more complex and clients’ needs more multi-disciplinary, lawyers will need stronger and stronger “supply chain” skills. In the future, a lawyer’s success is likely to be closely related to the lawyer’s ability to provide effective horizontal management for a client.

The eighth flattening factor Friedman mentioned was in-sourcing, in which companies find new businesses and needs they can provide and do so in-house.⁷⁷ The example he provided was UPS. Having developed a top-notch logistics system for its original messenger business, UPS has now leveraged its abilities into other areas, including work for Papa John’s Pizza, in which UPS dispatches the drivers and schedules the pickup of supplies.⁷⁸ Friedman pointed out that when Toshiba tells you to drop your broken computer off at your local UPS store to be shipped off for repair, it is UPS itself that will repair the computer at the UPS-run workshop it set up at its Louisville hub.⁷⁹

Is this development relevant to legal services? There certainly are a number of law firms that think so. They have established what used to be called “ancillary businesses” to sell the new expertise they have developed. While large U.S. law firms were among the first to do so,⁸⁰ this

⁷⁷ *Id.* at 167.

⁷⁸ *Id.* at 165.

⁷⁹ *Id.* at 168.

⁸⁰ See James W. Jones, Vice Chairman and General Counsel of APCO Associates Inc., Statement to the ABA Commission on Multidisciplinary Practice (Feb. 6, 1999), available at <http://www.abanet.org/cpr/mdp/johnson2.html> (describing APCO, MPC Associations, and The Secura Group, which are the lobbying, real estate consulting and financial institution consulting firms that were established as subsidiaries of Arnold and Porter, a large law firm founded in Washington, D.C.). See also Duane Morris LLP—Affiliates, <http://www.duanemorris.com/site/affiliates.html> (last visited May 1, 2008). This large law firm, which has more than 650 lawyers, lists ten separate affiliates on its law firm webpage, stating:

Duane Morris has established a number of independent affiliates in nonlaw fields

phenomenon is not limited to large firms. Consider, for example, the Mid-Atlantic mid-sized law firm of Stevens & Lee, which has more than 185 lawyers and more than forty non-lawyer business and consulting professionals.⁸¹ Although it is not obvious from its webpage, Stevens & Lee lawyers are connected with several non-legal businesses, including an investment bank,⁸² whose clients are not limited to clients of the law firm:

We are an investment banking firm that combines skill sets and experience unparalleled in the primary markets we serve with rigorous research and analysis.

We provide merger and acquisition advisory services and strategic consulting services. We assist companies in obtaining financing through institutional placements of debt, mezzanine capital and equity, including businesses in financial difficulty or operating under the protection of a bankruptcy court. We also provide outsourced corporate development services to our clients.

We have particular segment expertise in the financial services, manufacturing and distribution, building products, higher education and healthcare industries.

We are affiliated with a large, multidisciplinary professional services firm. This affiliation gives us access to services, if needed, that enhance our investment banking services and our ability to deliver results to our clients.

Originally formed in 1996, we began operations as Griffin Financial Group LLC in 2001 following significant expansion through attracting additional senior bankers, analysts and former senior executive officers of the industries we serve. Griffin is licensed by FINRA and is a member of the SIPC.⁸³

Small law firms have also developed expertise they market that goes beyond pure legal skills. For example, in the elder law field, many small law firms that advise older clients offer the services of other professionals,

in addition to the law firm's full range of legal services. By bringing together specialists from a variety of other disciplines and industry backgrounds, these businesses strive to respond to your business objectives pursuant to separate, non-legal services engagements.

⁸¹ Stevens & Lee, About, <http://www.stevenslee.com/about.htm> (last visited May 1, 2008).

⁸² Telephone Interview with Peter G. Glenn, General Counsel, Stevens & Lee (Feb. 4, 2008).

⁸³ Griffin Financial Group, LLC, About Us, <http://www.go2griffin.com/about/index.html> (last visited May 1, 2008).

including social workers and financial planners.⁸⁴ Another approach is illustrated by the firm Third Age Incorporated, which is not a law firm, but a group of diverse professionals—including a lawyer—who offer consulting services to senior housing providers.⁸⁵ There are examples in numerous other fields as well.⁸⁶ As these examples show, the “in-sourcing” phenomenon Friedman described is something that at least some law firms have embraced.

According to Friedman, the ninth “flattener” is “in-forming,” by which he means the ability of individuals to search the world’s knowledge base using tools such as Google, Yahoo! and MSN.⁸⁷ He argued that never before in the history of the planet have so many people—on their own—had the ability to find so much information about so many things and about so many people.⁸⁸ This phenomenon not only empowers the searchers, who have tremendous information at their fingertips, but also empowers the

⁸⁴ See, e.g., Elder Law Firm of Marshall and Associates, Meet Our Staff, <http://www.paelderlaw.com/staff.html> (last visited May 1, 2008).

⁸⁵ Third Age, Incorporated, Our Staff, Scott E. Townsley, Principal, http://www.thirdageconsulting.com/s_townsley.htm (last visited May 1, 2008) (noting his credentials as a Pennsylvania lawyer). The Third Age site says:

Since 1971, Third Age, Inc. has offered a comprehensive and integrated array of consulting services to a variety of continuing care and long-term care providers.

Our extensive experience has enabled us to develop a special sensitivity and unique understanding of the mission, goals and organizational needs of providers of care and housing services to the senior market.

We take pride in being only one of a handful of consulting firms that exclusively serves providers of seniors housing, healthcare and related services—a specialization that distinguishes us from general consulting and accounting firms that serve a varied client base.

Third Age Incorporated, <http://www.thirdageconsulting.com> (last visited May 1, 2008).

⁸⁶ See, e.g., Digital Evidence Group, <http://www.digitalevidencegroup.com> (last visited May 1, 2008):

Digital Evidence Group LLC (DEG) provides litigation support services from complaint to verdict. The services we provide include court reporting, legal videography, and trial consulting. Our technological tools and expertise provide attorneys with a competitive advantage to win trials. Owned and managed by Curt Evans, Esq., David Wiseman and Paul Hugo, DEG brings a unique skill set and arsenal of experience to trial. We create efficient, persuasive, and powerful presentations.

⁸⁷ See THE WORLD IS FLAT, *supra* note 1, at 176.

⁸⁸ *Id.* at 177.

search providers or search engines, which collect a tremendous amount of information in the process of the search.⁸⁹

Is this factor relevant to non-global law firms? I submit that the answer is yes. One result of “in-forming” is that clients are likely to be much more well-informed before selecting a lawyer and much more discriminating. For example, as one thinks about the aging of the U.S. population, it is easy to imagine that many people will want to consult a lawyer with questions related to an elderly relative. In the pre-globalization days, this client might have gone to the lawyer down the street or the lawyer in the client’s civic club, PTA, etc. In the Globalization 3.0 era, however, a client is much more likely to conduct a Google search for someone with elder law expertise. I recently spoke with a Florida lawyer who was a certified elder law specialist and was told that many of the people he consults with are non-Florida residents who are the children of elderly Florida citizens. How do these adult children from the Northeast find this Florida lawyer who practices in a firm of five lawyers? I suspect they find him the same way I did—by “in-forming” myself through a web search. Thus, it appears that this ninth “flattener” is relevant to the world of legal services.

The tenth “flattening” force Friedman discussed was “the steroids,” referring to rapid advancements in the speed and capacity of digital, mobile, personal, and virtual technologies.⁹⁰ Friedman explained that this new technology is like steroids because it is amplifying and turbo-charging all the other flatteners.⁹¹ Digital technology allows all sorts of analog content to be digitized and therefore shaped, manipulated and transmitted over computers, the Internet and satellites; virtual refers to this process of shaping and manipulating such data; mobile technology means that this can now be done from virtually anywhere with any device, and personal refers to the fact that it can be done for a single individual on his or her own device.⁹² The steroids that amplify these technologies include increases in computers’ computational, storage and input-output capability; breakthroughs instant messaging and file-sharing; and phone calls over the Internet.⁹³

Can anyone doubt that U.S. lawyers’ work lives have been shaped by these steroids’ flattening force? There are probably few lawyers in the United States that have not used digital technology such as a computer, fax, or pdf document. Lawyers regularly use this virtual technology to shape and manipulate data, whether it is editing a brief or deal documents, or

⁸⁹ *Id.* at 184.

⁹⁰ THE WORLD IS FLAT, *supra* note 1, at 185–199.

⁹¹ *Id.* at 187.

⁹² *Id.*

⁹³ *Id.* at 189–91.

importing pictures, diagrams or other information into a presentation. Lawyers are masters of mobile technology—how many clients have received a call from a cell phone while a lawyer is located in an airport, another city, or simply caught in traffic? And many, many lawyers have embraced the personal nature of this technology as they own a pda, Blackberry, or laptop computer. Lawyers are among those who have embraced the “steroids” of greater computer capabilities and file sharing. While it may not be the norm, many lawyers and indeed offices have embraced Internet phone call technologies such as Skype.

After identifying these ten “flattening forces,” Friedman conceded that many of these flatteners had been around for years: what was important was not just the flattening factors—but their convergence.⁹⁴ The first convergence was the merging of hardware and software in a manner that allowed one to have a single machine that could scan, email, print, fax, and copy.⁹⁵ The second convergence was a massive change in habits as more people acquired access to the new platforms and became comfortable using them.⁹⁶ Friedman argued that the technology and flattening forces were not enough—you needed the emergence of individuals who were comfortable with and could take advantage of the new sorts of technology, processes, and horizontal collaboration.⁹⁷ He noted that “the convergence of the ten flatteners begat the convergence of a set of business practices and skills that would get the most out of the flat world. And the two began to mutually reinforce each other.”⁹⁸ A triple convergence occurred when these flattening factors met a huge influx of “new players on a new playing field, developing new processes and habits for horizontal collaboration.”⁹⁹ He argued that the scale of the global community that is going to participate in discovery and innovation is something the world has never seen and that many of these players will come from China and India.¹⁰⁰

These convergence factors have also affected the legal world. Lawyers and law offices around the country routinely use technology that combines the sorts of software and hardware Friedman mentioned. Nor can anyone doubt that there has been a massive change in habits, with more changes underway. During the recent New York State Bar Globalization Presidential Summit, the moderator noted that many years ago, he had asked his law firm for a computer. He initially was told “no” and was advised that “computers were only for secretaries.” The moderator then

⁹⁴ *Id.* at 203.

⁹⁵ THE WORLD IS FLAT, *supra* note 1, at 203.

⁹⁶ *Id.* at 206.

⁹⁷ *Id.*

⁹⁸ *Id.* at 207.

⁹⁹ *Id.* at 211.

¹⁰⁰ THE WORLD IS FLAT, *supra* note 1, at 211.

asked for a show of hands of the 500 or so lawyers at the Summit who personally used a computer for their law work—and those who did not. Not a single individual raised their hand to indicate that they did not use a computer. As this anecdote reveals, in the decades since the moderator first asked his question, the computer has become part of the fabric of the U.S. lawyer's work life. This is true regardless of the city in which the lawyer works, regardless of the size of the firm in which the lawyer works, and regardless of the type of work the lawyer performs. This point illustrates that lawyers' comfort level has changed dramatically.

Within the legal academy, it has become popular to talk about how the "Millennial Generation," which are students born between 1982 and 2002, differs from prior generations and how to teach such students.¹⁰¹ One of the messages is that students expect integrated education technology, including user orientation, access, speed, reliability and portability, IT integration with learning, and access to information 24/7 worldwide, and connections with friends, faculty and family.¹⁰² There is no doubt the incoming lawyers are more accustomed to these convergences than long-time lawyers and no doubt that the innovation and comfort level with these convergences will only increase with time.

In sum, the legal services world has not been isolated or immune from the "flattening" and "convergence" forces Friedman described. Moreover, these forces have had an impact across the board on legal services and are not just limited to the mega-sized global law firms.

III. SHOULD A U.S. LAWYER WHO DOES NOT PRACTICE IN A GLOBAL LAW FIRM CARE ABOUT GLOBALIZATION AND FRIEDMAN?

It is certainly possible that a U.S. lawyer reading this article will conclude that it has no relevance to his or her own practice. One might find, as some scholars have done, that Friedman's overall conclusions are not correct even if individual points are correct or well-known. For example, UCLA management professor Edward Leamer has written a review of Friedman's book in which he concludes that a number of Friedman's points are either old news, exaggerated or wrong, or that he omits important information and perspectives, such as the United States'

¹⁰¹ I heard several such references at the 2008 Annual Meeting of the Association of American Law Schools. See also NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING: THE NEXT GREAT GENERATION* (Vintage Books 2000); Neil Howe & William Strauss, *The Next 20 Years: How Customer and Workforce Attitudes Will Evolve*, HARV. BUS. REV., July–Aug. 2007, at 41.

¹⁰² See, e.g., Robert D. Reason, Powerpoint Presentation, *Look Who's Coming to College: Engaging Today's College Students* (Oct. 2007) (citing the work of Dr. Stephen R. Merritt, Villanova) (on file with author).

advantage in Internet penetration.¹⁰³ Even if one concludes that Friedman's analysis is generally accurate, a lawyer might believe that Friedman's message has no relevance to the lawyer's own law practice. I have heard a number of lawyers argue, for example, that they do not need to worry about the globalization phenomenon because law is fundamentally "local." In other words, someone might conclude that Friedman's whole is less than the sum of the parts when applied to a lawyer who does not practice in a global law firm.

Despite the possibility that Friedman's conclusions are wrong, I recommend that U.S. lawyers who do not practice in global firms carefully consider his message and consider how they might respond in the event that Friedman is correct. It is certainly quite possible (and I hope it is true) that many of Professor Leamer's critiques are correct and that it is unlikely that U.S. workers will have to worry significantly about off-shoring or the United States losing its competitive advantage in the world.¹⁰⁴ Nevertheless, it is undeniable that the world has changed in significant ways, these changes have already affected the law practices of the average U.S. lawyer, and that globalization is likely to lead to continued changes.

For these reasons, even if Friedman's analysis ultimately turns out to be wrong or exaggerated, I believe it is worthwhile for lawyers to consider how they should respond in the event Friedman's analysis is correct. It is undeniably true that as a result of technological developments, legal services can now be divided into discrete tasks capable of being performed by different individuals and later integrated. (As Silver and Daly pointed out with their example of Case Study #1, this phenomenon has been happening for years, as when a partner assigns part of a project to one or more associates or to a partner with specialized expertise and later integrates the results for the client.)¹⁰⁵ What is new is that the technological advances have made it much easier than previously to send these discrete tasks not only out of the office, but to remote geographic locations. This is true for both litigation work and transactional work. Thus, it makes sense

¹⁰³ See, e.g., Edward E. Leamer, *A Flat World, A Level Playing Field, a Small World After All or None of the Above: Review of Thomas L. Friedman's The World is Flat*, 16 J. ECON. LITERATURE 83 (2007), available at http://www.anderson.ucla.edu/faculty/edward.leamer/pdf_files/mar07_leamer.pdf. Dr. Leamer is a professor at the UCLA Anderson Graduate School of Management. His critiques of Friedman's book were wide-ranging and included, *inter alia*, the point that flatness is not a new concept in economics, his failure to adequately define what he means by flatness, the depth of Friedman's analysis about commoditization and contestable activities, and the failure to account for the United States' extraordinary advantage with respect to the Internet, among other issues.

¹⁰⁴ Leamer concluded that "we do not know the breadth and intensity of global contestability of U.S. jobs and, until we do, we will not have a real handle on the impact of global competition on the U.S. workforce." *Id.* at 117.

¹⁰⁵ Daly & Silver, *supra* note 2, at n. 83 and accompanying text.

for U.S. lawyers who practice outside of global law firms to consider the implications of a “flat legal world.”

IV. HOW SHOULD U.S. LAWYERS WHO DON'T PRACTICE IN A GLOBAL LAW FIRM RESPOND TO GLOBALIZATION?

When thinking about globalization, it is useful for a lawyer to think about its possible advantages or opportunities and its possible disadvantages or risks. To state it in a somewhat crass form, U.S. lawyers practicing in non-global law firms can think about globalization in both offensive and defensive terms.

There a number of different ways in which a U.S. lawyer in a non-global firm could try to take advantage of opportunities created by globalization. As a result of globalization, more and more clients in this country will be involved in business interactions with individual suppliers, distributors or customers and businesses in other countries.¹⁰⁶ Thus, even U.S. lawyers who do not practice in global law firms might consider whether they would like to work for such clients, what additional skills, contacts or expertise, if any, they need to work for such clients, and how to reach out to this potential client base. Some U.S. law firms—large, mid-size and small—have decided that one answer is to join an international network.¹⁰⁷ These networks are used by global firms, but they also allow non-global firms to serve U.S. clients who occasionally have global needs.¹⁰⁸ Firms that do not participate in network can nevertheless signal to

¹⁰⁶ See, e.g., Terry, *Coming of Age*, *supra* note 9, at 492 tbl.1 (showing the increase in U.S. international trade in goods and services between 1960 and 2004).

¹⁰⁷ See, e.g., Karen Donovan, *Some Small Law Firms Find Strength in Numbers*, N.Y. TIMES, June 8, 2007, at 6, available at <http://www.nytimes.com/2007/06/08/business/08law.html> (citing networks of small firms). An example of a network of small firms includes the International Network of Boutique Law Firms, <http://www.inblf.com> (last visited May 1, 2008). Examples of networks of mid-size and large law firms include: Lex Mundi, *Home*, <http://www.lexmundi.com/lexmundi/Default.asp> (last visited May 1, 2008) (advertises as the world's leading association of independent law firms; many U.S. members are large law firms); Home-TerraLex, <http://www.terralex.org/i4a/pages/index.cfm?pageid=1> (last visited May 1, 2008) (“Your Global Source for Business Lawyers,” includes mid-sized U.S. law firms); State Capital Global Law Firm Group, *Who We Are*, <http://www.statecapitallaw.org/whoweare> (last visited May 1, 2008). Information about law firm networks is available in Martindale Hubbell, Findlaw.com, and other places. Although there are many law firm networks, there are many substantive areas of the law that do not yet have a “network” of global law firms.

¹⁰⁸ See, e.g., Plunkett Cooney, *Our Firm: Firm Tackles International Issues With Assistance From Global Law Firm Network*, <http://www.plunkettcooney.com/firm-work-14.html> (last visited May 1, 2008) (ten-office, 150-lawyer Michigan firm states: “The world is, indeed, flat. And due to the increase of global business relationships many companies, large and small, are finding themselves confronted by international legal issues. . . . A founding member of ALFA International, one of the oldest and largest international legal networks of independent law firms, Plunkett Cooney recently helped two U.S. clients

the world on their websites their awareness that they operate in a global context.¹⁰⁹

U.S. lawyers who want to take advantage of globalization opportunities might find it worthwhile to follow current globalization trends and consider the implications for their practices. For example, given the dollar's recent downward trend, does this mean that there are now more Canadians buying property in the United States or engaging in business in the United States? If so, how would one compete for that legal work?¹¹⁰ How might one locate clients who bought second homes in other locations when the dollar and economy were stronger?

One can also think about the dramatic increase in immigration figures in the United States.¹¹¹ How could a U.S. lawyer position himself or herself to better serve the U.S. residents who were not born in the United States, many of who undoubtedly will have inheritance, family law or business connections in another country?¹¹² One might offer bilingual services, as

quickly and efficiently solve their legal issues in Europe.”)

¹⁰⁹ See, e.g., The Levenson Law Group, P.A., Florida Attorney, <http://www.levenson-law.com/index.jsp> (last visited May 1, 2008) (“[T]he Levenson Law Group is a multi-practice law firm with a special focus on Internet and computer technology law, information security and intellectual property. We serve a regional and international client base made up of both individuals and businesses.”)

¹¹⁰ One large law firm that provides Canadian and U.S. expertise is Torys LLP, which was created by the 1999–2000 merger of a Toronto-based law firm and a New York-based firm. Torys markets itself as “a globally recognized law firm with 300 lawyers in New York and Toronto. The firm offers a wealth of talent and experience, and seamless business legal services on both sides of the U.S.-Canada border and internationally.” See Torys LLP, About Torys: History, <http://www.torys.com/AboutTorys/History/Pages/default.aspx> (last visited May 1, 2008). Given the amount of trade between the United States and Canada, one can imagine that a U.S.-Canadian firm might be equally attractive for small law firms. Several U.S. law schools now have joint programs with Canadian law schools that allow their students to graduate with dual degrees that will be recognized in both countries. See Michigan State University College of Law, Joint J.D.-LL.B. Degree Program, <http://www.law.msu.edu/academics/ac-multi-llb.html> (last visited May 1, 2008); University of Detroit, Mercy School of Law and University of Windsor, J.D.-LL.B. Program, <http://www.uwindsor.ca/jdllb> (last visited May 1, 2008).

¹¹¹ See, e.g., Terry, *Coming of Age*, *supra* note 9, at 492–93 (noting, *inter alia*, that there were 31.1 million foreign-born residents in the United States in 2000, an increase of 11.3 million since 1990). Table 2 in this Article presented interesting data, including the fact that California, which had the largest absolute number of foreign-born residents, was 37th in the country in the 2000 Census in terms of its percentage growth. Missouri was close to the middle in terms of absolute number (27th) and close to the middle in terms of percentage growth (rank: 26th) and had an 80% increase in foreign born residents between the 1990 Census and 2000 Census.

¹¹² See *id.* at 493. For an example of a small law firm that has targeted a particular market, see Martensen Wright, LLP, About Us—Corporate Info, http://www.usaeurolaw.com/about_us.html (last visited May 1, 2008), which is an eleven person Sacramento, California law firm that specializes in helping Scandinavian clients in the United States. The name partners are Danish, but not all the lawyers are Danish or speak a

some firms have done.¹¹³

Even without language skills, however, a lawyer might be able to find a niche to serve this market. If one examines the current international trade figures, it is clear that there already is a need for lawyers who can serve the role of intermediary or bridge between cultures.¹¹⁴ Lawyers who are sensitive to multinational cultural, legal and ethical issues should have an advantage in representing clients whose legal needs cross international borders.¹¹⁵ The issue of finding the right people to serve the new markets and clients is an important issue for U.S. businesses and should also be an important issue for U.S. lawyers as they consider hiring for the future.¹¹⁶

Another strategy that a non-global firm might consider is to make sure that the law firm has hired individuals who have the comfort level with technology, flexibility and horizontal collaboration that Friedman described. The ABA recently reported that while large law firms upgrade their computers and software every two to three years, many small firms and sole practitioners go as long as six years between upgrades.¹¹⁷ The reasons cited for the lack of upgrades include not only cost, but also a lack of time to learn and implement the new technologies and a lack of certainty that new technology will increase efficiency and work quality. While some of these judgments may be correct, it is certainly possible that

Scandinavian language.

¹¹³ See, e.g., Technology Law Group, The Firm, <http://www.tlgdc.com/thefirm.html> (last visited May 1, 2008) (this 4 person DC-based law firms includes four attorneys, two of whom are fluent in other languages [Swedish and French]. The firm emphasizes its small, personal approach: "We have elected to remain small because it allows us to get to know each of our clients and to provide a level of personal service and attention often not available from larger firms. Our size also ensures that each and every one of our clients receives the full attention of the firm's most senior attorneys," but also signals its global reach. For example, the website bio of one lawyer [Susan Coleman] notes that she is involved in the European computer law community and is interested in exploring business opportunities in Africa.).

¹¹⁴ Accord James C. Moore, *Economic Globalization and its Impact on the Legal Profession*, 79 N.Y. St. B.J. 35, 37 (2007) ("[G]lobalization carries with it an abundance of opportunities for lawyers and their firms. For example, the globalization of markets will require lawyers capable of facilitating the merger of business entities from different cultures, or lawyers capable of bringing about the resolution of disputes among people and businesses from different societies, or who are capable of protecting intellectual property as its use expands beyond its country of origin.").

¹¹⁵ See generally Laurence Etherington & Robert Lee, *Ethics Codes and Cultural Context: Ensuring Legal Ethics in the Global Law Firm*, 14 IND. J. GLOBAL LEGAL STUD. 95, 105-08 (2007).

¹¹⁶ Cf. Jena McGregor & Steve Hamm, *Managing the Global Workforce: As the World Economic Forum Opens in Davos, Companies Ponder How to Gain an Edge by Finding the Right Talent in the Right Location*, BUS. WK., Jan. 17, 2008, available at http://www.businessweek.com/magazine/content/08_04/b4068034072937.htm.

¹¹⁷ See ABA Webzine, *supra* note 3.

improvements would be cost-justified but the firm lacks the human capital to easily implement the changes. The ABA concluded that “none of these reasons is sufficient to clients who conclude that a firm’s outdated technology makes its costs higher, and its representation less competent.”¹¹⁸ Thus, a firm that hires tech-savvy professionals and non-professionals may have a significant advantage over its competitor law firms.

To give another set of technology examples, the ABA recently cited several reports that show relatively small usage by lawyers of trial technology (11.7%), case management software (18%), and document assembly software (30%).¹¹⁹ Some lawyers may have sampled this software and found that it was not useful, but I suspect that the majority of non-users have not tried this software and fear the learning curve involved. There may be significant advantages, however, to adopting software and technology advances. For example, one blogger has reported that when global law firm Morgan Lewis began using in its mortgage loan practice the Sigma Six software originally developed by Motorola, it was able to reduce its time charges by 25% and its work quality went up.¹²⁰ Because global law firms are larger, it may be easier for them to hire individuals such as a “knowledge officer” to help them locate cost-effective, innovative technology,¹²¹ but even small law firms can make sure that they have individuals on staff who have a high comfort level with technology and are willing to experiment.¹²²

There undoubtedly are a number of other strategies that firms might consider in order to position their law firm for the future. For example, some law firms have decided that the most effective way to compete is to modify the firm’s billing system.¹²³ The ABA has published an article

¹¹⁸ *Id.*

¹¹⁹ *See id.*

¹²⁰ David Munn’s Legaltech.com Blog—Perspectives of an In-house Lawyer, *Law Firms Starting to Get It?*, <http://www.legaltech.com/cblog> (Apr. 24, 2007).

¹²¹ *See, e.g.*, Kellie Schmitt, *Reed Smith Hires Two to Run Firm as Global Business*, THE RECORDER, Jan. 9, 2008, <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1199786726992> (firm hired “chief knowledge officer” and global “chief people officer”).

¹²² *See* NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS RISING: THE NEXT GREAT GENERATION, *supra* note 101 (discussing the Millennial generation); THE WORLD IS FLAT, *supra* note 1. Friedman posited a number of questions to ask in order to determine a company’s likelihood of success in the globalization era. These included: 1) how wired the company is; 2) whether the company is an adapter or shaper; 3) how fast the company is; 4) whether the company is harvesting its knowledge; 5) how much the company weighs (where lighter is better); 6) whether the company dares to be open on the outside; 7) whether the company dares to be open on the inside; 8) whether the company’s management “gets it” and whether you can change management if they don’t; 9) whether the company is willing to shoot its wounded and suckle the survivors; 10) how good the company is at making friends; and 11) how good the company’s brand is.

¹²³ *See, e.g.*, David Gialanella, *Taming the Billable Beast*, 94 A.B.A. J. 30, 31 (Feb.

urging law firms to consider the possibility of using a “virtual” office that could replace, at least partially, some of the cost of renting “bricks and mortar” space.¹²⁴ Some commentators have argued that even small law firms should take advantage of the lower cost of offshore-outsourcing because this is what clients want.¹²⁵ At least one solo practitioner has done so and this kind of outsourcing may become easier in the future as the infrastructure develops.¹²⁶

When I go home at 6, I can have them do the grunt work, research, and proofreading that I would otherwise have other people do,” says Solan Schwab, a New York-based solo practitioner who outsources research projects like analyzing state-by-state insurance regulations with QuisLex, which has 12 lawyers in Hyderabad. “Then, when I come in in the morning, I receive a beautiful e-mail with research done exactly how I like it.”¹²⁷

Another approach to Globalization 3.0 is for lawyers to entirely reconceptualize how they should accomplish their work. U.K. Professor Emeritus Richard Susskind, who is the IT adviser to the Lord Chief Justice, has argued that lawyers must “embrace better, quicker, less costly and more convenient and publicly valued ways of working.”¹²⁸ Moreover, Susskind

2008) (reporting about one small firm that had eliminated billables and had revenue double in 2007, noting that “clients hear about flat rates and they are almost automatically interested”); Debra Cassens Weiss, *Greenberg Traurig Freezes Equity Partner Pay, Cites Cost-Conscious Clients*, A.B.A. J., Feb. 5, 2008, http://www.abajournal.com/weekly/greenberg_traurig_freezes_equity_partner_pay_cites_cost_conscious_clients (“Equity partners at Greenberg Traurig won’t be getting an immediate pay raise because of a \$10 million shortfall in year-end collections, driven in part by clients who want legal bills reduced The first memo said an increasing number of clients are asking for adjustments to hourly rates or bills and refusing to allow inexperienced lawyers to work on their cases.”).

¹²⁴ See Ron Friedmann, *The Future Law Office: Going Virtual*, LAW PRACTICE TODAY, Jan./Feb. 2004, at 30 (“Isn’t it time to question assumptions about the need for lawyers to work from the firm’s central offices? Moving toward more work from home offices and other alternative spaces could mean dollars in the pocket, increased efficiencies and more time to relax.”).

¹²⁵ See *ABA Webzine*, *supra* note 3 (“Even sole practitioners and small firm lawyers can effectively use this principle. Internet technology can connect U.S. law firms to the growing pool of highly educated talent in countries where the use of English is widespread, with India being the prime example. Such offshore legal service providers can reduce by up to 80 percent the cost of such legal services as transcription, data entry, legal research, document review and patent searches. But, this is still the exception rather than the rule and many lawyers continue to resist the way that global technology flattens the cost of legal service. They do so at their peril because it ignores what their clients want.”).

¹²⁶ The first-ever legal process outsourcing summit shows the increasing institutionalization of the phenomenon. See *First LPO Summit*, *supra* note 50.

¹²⁷ Daly & Silver, *supra* note 2, at n.41 (citing Helen Coster, *Briefed in Bangalore*, AM. LAW., Nov. 2004, at 98).

¹²⁸ Richard Susskind, *Legal Profession is on the Brink of Fundamental Change*, TIMES

had a dire message for those lawyers who did not find these kinds of opportunities:

[F]or those lawyers who cannot identify or develop the distinctive capabilities to which I refer, I certainly predict their days are numbered. The market will determine that the legal world is over-resourced, it will increasingly drive out inefficiencies and unnecessary friction and in so doing, we will indeed witness the end of outdated legal practice and the end of outdated lawyers.¹²⁹

Although Susskind is a British, not a U.S. commentator, the advice to find better, quicker, less costly, and more convenient ways of practicing seems equally valuable advice for U.S. lawyers. Indeed, this was the conclusion recently advocated by two U.S. lawyers from a global law firm. They argued that it was time to “deconstruct” the deal and rethink how it is prepared and staffed (and that their firm was doing so).¹³⁰

ONLINE, Oct. 19, 2007, <http://business.timesonline.co.uk/tol/business/law/article2522748.ece> (excerpting RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (Oxford Univ. Press 2008)).

¹²⁹ *Id.*

¹³⁰ Robert A. Profusek & Lyle G. Ganske, *It's Time To Rethink the Lawyer's Role in Dealmaking: Start by Facing Up to the New Realities*, THE METROPOLITAN CORPORATE COUNSEL, Dec. 2007, at 33. These lawyers called for radical change:

In short, the private equity players and corporate alike need globalized, trans-jurisdictional insight with real substance—not paper. And the dealmakers who understand that the real value they add is in mobilizing and managing multidisciplinary risk assessment teams, not in shuffling reams of paper, will be the dealmakers who provide the greatest service to their clients.

In sum, we think of it this way: The old legal rituals should not be permitted to obscure actual thinking and foresight. We need to clear the way for the stuff that's really important. At Jones Day, we have started moving in this direction already. We are spearheading an initiative to rethink deal documentation fundamentally, and we intend to invite other leading firms to join our effort. Our goal is to come up with an entirely new documentation regime—a regime that builds on the realities of today's environment and requires that people think through what clients really need. Our goal is to come up with standardized base documents, and common language, that can be used in any transaction, whether it's a merger, a loan, or a capital markets event. That way, we'll free ourselves to think about the business purpose of a deal, rather than its paper trail.

And by doing so, we will completely deconstruct what it is we do. We will reevaluate how we should staff our deals, what expertise our firms really need, how we serve our clients, and how we bill for our services. By rigorously rethinking our current role in deals, we will set in motion a process by which we ultimately will rethink entirely the composition of our M&A team; work to develop highly specialized documents, due diligence, and support groups; and

This brief summary of possible opportunities for U.S. lawyers in an era of Globalization 3.0 is not intended to be comprehensive. I am neither a law firm consultant nor privy to the advice, if any, that such consultants offer to their paying clients to help them cope with globalization.¹³¹ There are undoubtedly many other ideas not included in this article. The point of this article, however, is to inspire the average U.S. lawyer to recognize that the legal world, like the rest of the world, is “flat.” If one thinks proactively about globalization, one is much more likely to spot or create opportunities.

In addition to thinking about globalization opportunities, it would be useful for non-global U.S. law firms to think about what kinds of challenges they might face as a result of the developments Friedman described. As noted earlier, one possible challenge for U.S. lawyers is the challenge they might face from outsourcing. In my view, it would be prudent for U.S. lawyers to contemplate which part of their legal work might conceivably be carved off and performed by a smart¹³² but cheaper person (or software) who has been brought up to speed in the particular area of law. I find it easy to imagine that some of the legal work currently performed by U.S.

even rethink our training, promotion, and demographic requirements for the long term. We don't purport to have all the answers, of course, or even necessarily to know all the questions to ask, but we're making a start. It's the least we can do if we expect to contribute meaningfully to the deals of tomorrow. We can drive the market, or we can let the market drive us. We know in which position we'd rather be. Do you?

Id.

¹³¹ Law firm consultants include Hildebrandt International, <http://www.hildebrandt.com> (last visited May 1, 2008) and Altman Weil, Inc, <http://www.altmanweil.com> (last visited May 1, 2008).

¹³² Friedman cited Bill Gates for the notion that the “ovarian lottery” has changed:

Thirty years ago, [Gates] said, if you had a choice between being born a genius on the outskirts of Bombay or Shanghai or being born an average person in Poughkeepsie, you would take Poughkeepsie, because your chances of thriving and living a decent live there, even with average talent, were much greater. But as the world has gone flat, Gates said, and so many people can now plug and play from anywhere, nature talent has started to trump geography. “Now,” he said, “I would rather be a genius born in China than an average guy born in Poughkeepsie.”

THE WORLD IS FLAT, *supra* note 1, at 225. This is one of the points on which Leamer disagrees with Friedman, arguing that geography still matters: “There are many advantages that children can enter this world with, including intelligence, physical power and agility, good looks, and caring parents. It also matters where you live.” Leamer, *supra* note 103, at 114. Regardless of whether Leamer or Gates/Friedman is ultimately correct about the importance of geography, there can be no doubt that there are smart people throughout the world and that it is much easier than it was previously for these “geniuses” to compete outside their geographic, sovereign borders.

lawyers could be divided into discrete tasks, some of which could be outsourced. In addition to thinking about the competition that might be provided by lower-cost individuals, one might also think about possible competition from software and on-line innovations.¹³³

Once a lawyer identifies these possible challenges, he or she is in a better position to respond to those challenges and turn them into opportunities. Even Professor Leamer, who is skeptical about the dire effects of the flattening forces Friedman describes,¹³⁴ nevertheless recommended that individuals not “fall asleep at the switch.”¹³⁵ He noted that in the past, those who were prepared for change prospered and those who did not had a harder time.¹³⁶

Friedman has argued that there are three categories of U.S. workers who will do well in the new era. These include individuals who are special, such as entertainers or star athletes; 2) individuals who are specialized and not easily replaced; and 3) individuals whose work is grounded to a particular geographic location. This description might help U.S. lawyers to think about the most effective way to respond to the challenges globalization presents. Few lawyers, for example, will be viewed as truly “special” or “irreplaceable,” but such lawyers do exist. This category might include those lawyers that a client would want to handle a “bet the firm”

¹³³ A recent ABA Law Practice Management article cited the example of General Electric, which had cut its legal bills significantly by allowing its aircraft sales force staff to use contract modification software it developed:

[General Electric’s aircraft sales force] submit[s] purchase contracts to their prospective customers. When terms or the words of the contract need to be changed to meet customer requests, the sales force formerly had to send the proposal back to GE lawyers for review and change. This process often took weeks and sometimes resulted in lost sales. That is, until now. GE has created a “tool kit” of clauses available on the company’s extranet for use by its sales force to address situations just like this. Allowing the sales force to make contract changes has apparently saved GE \$12 million in legal fees as well as increased the speed of the negotiation process and their “closing” rates. As a result, GE’s sales have increased.

ABA Webzine, supra note 3. The article suggested that this same type of phenomenon affects the average U.S. lawyer, pointing to the “do-it-yourself” websites and noting that, “clients and potential clients live their lives at Internet speed, and increasingly have little patience for the pace (and cost) of traditional lawyering.”

¹³⁴ Leamer expressed skepticism about how many U.S. jobs really are “contestable” and subject to being commoditized, and thus outsourced, arguing that the United States had fewer than one might imagine of “mundane codifiable tasks in tradables for which there are global markets.” Leamer, *supra* note 103, at 100–01.

¹³⁵ *Id.* at 110 (“The lesson of the first [Great non-Equalization] is that infrastructure and workforce quality can create deep roots that hold the best jobs firmly in place.”).

¹³⁶ *Id.*

case.¹³⁷ But most lawyers in non-global firms will fall outside this category.

More lawyers, however, might fall within Friedman's second category of specialization. If a lawyer can identify and then develop an area of specialization, and particularly if the lawyer can develop a cost-effective means of providing that service, the lawyer could turn the challenge into an opportunity.¹³⁸ Lawyers in non-global firms might also think about whether there is any efficient way for them to do some of the more commodity-oriented work that lawyers in the ultra-expensive global law firms can no longer afford to do in a "flattened" world.¹³⁹

¹³⁷ But see Richard Susskind, *Outside Investors Will Demand a Very Different Type of Law Firm*, TIMES ONLINE, Nov. 12, 2007, <http://business.timesonline.co.uk/tol/business/law/article2840923.ece> ("The major firms may feel they are beyond the scope of commoditisation and systematisation and that, on bet-the-ranch deals and disputes the legal fees represent but pocket change in the grand scheme. But this is not the attitude I find amongst the general counsel of some of the world's largest organisations. These managers are under pressure to reduce their legal budget. And these clients' loyalty to conventional firms will be limited if new legal businesses emerge that offer quicker, more convenient, lower cost alternatives to low- and high-value work that seem to be more geared to the interests of clients and are more business-like in their constitution.").

¹³⁸ This was offered by one lawyer in response to a blog article called "Just How Flat Can We Get?":

In a flat world, more of a Lawyer's work load will be out sourced. The massive amount of general paperwork will be sent where it can be prepared for much cheaper. Law firms are made up of young associates and partners. With most of the younger associates' work [being] sent out, it will [become] increasingly harder for new lawyers to gain practical experience. The Department of Labor only expects the job market for lawyer to grow about 11 percent of the next ten years. Because of the large volume of new graduates each year, it will become much more common for law graduates to take jobs outside of their field and begin the climb up the corporate ladder. Technology such as video conferencing and digital databases has greatly increased the productivity of lawyers, who can spend less time traveling and flipping pages through law books. It looks like I need to specialize so that I am more valuable to law firms.

Posting of J-Mose to <http://idst-2215.blogspot.com/2008/01/just-how-flat-can-we-get.html> (Jan. 21, 2008).

¹³⁹ See, e.g., Profusek & Ganske, *supra* note 130, at 33 ("Our corner of the profession must come to terms with the new realities of dealmaking. We've got to see that the deal documents themselves are no longer the primary focus. The basic forms of merger, divestiture, and similar transaction documents haven't changed in decades. Once the absolute domain of the big law firms, deal document creation has become a decidedly commoditized process. Deal documentation thus can be done just as easily from *Nebraska* as from *New York*. The Internet has made this so—"flattening the world," in Tom Friedman's words. So, while the process of documenting deals has remained unchanged, the business world these documents describe has been turned upside-down. Today, the emphasis is on risk, and the language of risk is a language in which deal lawyers must

Finally, lawyers might want to think about how they could “ground” their services in a particular location in a way that clients are willing to pay for. In order for this strategy to work, lawyers would need to look for the “value added” that being tied to particular location can offer. This “location” advantage might be grounded in geography or in technology or in a new way of tackling a problem or it might be grounded in the benefits from in-person relationships. One example of such thinking recently was offered by two lawyers from a global law firm. Citing the “flattening” phenomenon and the need to offer new types of services to clients, they argued that business lawyers should reassess their roles regarding corporations’ core governance processes.¹⁴⁰ They concluded that there was a great need for such services and pointed out board members are under enormous pressure to demonstrate not only that they act expeditiously, but that they act with “such level of care as a reasonable person would have exercised in similar circumstances.”¹⁴¹

Is this example a potential growth-area for the non-global law firm? Perhaps. There are a tremendous number of closely-held corporations in the United States and they worry about litigation. And because this type of advice is relationship-driven, it may be more difficult for technology or those in a remote location to provide such services. Are there other substantive areas of the law that might be reconceived? I suspect that if smart lawyers put their collective minds to this question, many creative ideas would emerge. Such opportunities for innovation are not limited to lawyer who practice in global law firms.

Some U.S. lawyers might believe that they don’t need to worry about these kinds of challenges because the “unauthorized practice of law (“UPL”)” statutes and rules will prohibit others from offering legal services from a remote location.¹⁴² This reliance may be misplaced, however. Antitrust regulators appear to be much less tolerant of UPL provisions than previously. Within the United States, the Department of Justice and Federal Trade Commission have been actively monitoring state efforts to define the practice of law and intervening when they see those efforts misplaced.¹⁴³

become fluent. That is where we can, and should, best add value.” (emphasis added)).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² For information about U.S. UPL provisions, see ABA Center for Professional Responsibility, Unlicensed Practice of Law, <http://www.abanet.org/cpr/clientpro/client.html#UPL> (last visited May 1, 2008) (includes links to ABA research, including its 2004 Survey on UPL Committees, which collects charts showing the source of UPL regulations, the definitions used, and other information).

¹⁴³ See, e.g., Federal Trade Commission and U.S. Dep’t of Justice, Comments on the American Bar Association’s Proposed Model Definition of the Practice of Law (Dec. 20, 2002), available at <http://www.abanet.org/cpr/model-def/ftc.pdf>; see also U.S. Dep’t of Justice Antitrust Division, Comments, <http://www.usdoj.gov/atr/public/comments/comments>

This oversight appears to be part of an international trend in which government antitrust authorities have looked with increasing disfavor on lawyer monopoly provisions.¹⁴⁴ Thus, U.S. lawyers who do real estate work, for example, may have an increasingly difficult time arguing that only lawyers in their jurisdiction should be able to perform such work.

In sum, even U.S. lawyers who don't work in global law firms should assume that "the legal world is flat." They should consider both the opportunities and the challenges presented by globalization, recognizing that both their client base and their competitors now come from around the world and not just from the city, county, or state in which such lawyers work. There is no "one size fits all" solution. This article is not intended as a definitive guidebook for globalization, but an illustration that globalization is relevant to all U.S. lawyers, not just those who practice in global law firms. In short, this article is a call to action.

.htm (last visited May 1, 2008) (collecting letters to the following states about UPL issues: Georgia, Indiana, Kansas, Kentucky, Massachusetts, North Carolina, Rhode Island, Virginia, and Wisconsin).

¹⁴⁴ See, e.g., EUROPA-European Commission, Competition: Professional Services, http://ec.europa.eu/comm/competition/sectors/professional_services/overview_en.html (last visited May 1, 2008) (includes a description of the EU's antitrust stocktaking that focused on professional services, including links to key documents); Legal Services Act, 2007, 2007, c. 29 (Eng.), available at http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070029_en.pdf (new legislation adopted in the United Kingdom that has affected the regulation of the legal profession, including reserved tasks). Part of the impetus for this legislation was the United Kingdom's so-called Clementi Report, available at <http://www.legal-services-review.org.uk/index.htm>, and the 2001 U.K. Office of Fair Trading Report. See JOHN VICKERS, COMPETITION IN THE PROFESSIONS: A REPORT BY THE DIRECTOR GENERAL OF FAIR TRADING, (Office of Fair Trading March 2001), available at http://www.offt.gov.uk/shared_offt/reports/professional_bodies/offt328.pdf. For additional information, see Laurel S. Terry, *The European Commission Project Regarding Competition in Professional Services*, 29 NW. J. INT'L L. & BUS. (2008) (forthcoming).

