Syracuse University
College of Law
Legal Writer's Toolkit

Focus Questions for "Tomorrow's Lawyers"

These focus questions are intended to aid you in the active reading of Richard Susskind's "Tomorrow's Lawyers," one of the books selected by the faculty of the Syracuse University College of Law to help prepare you for your time studying law. This book was chosen by the Dean of the College of Law, Craig Boise.

The questions are written with the intention of helping you. You won't be tested on your answers and you can feel free to read the book without them should you choose. And there aren't any correct answers for these questions. It's more important to question the text and reflect on what the answers might be than to seek for a definitive "correct" answer.

The questions are designed to model the process of active reading, which is a skill with which you should already be familiar. Active reading is a crucial skill for doing well in law school, and the more adept you become at it before you come to school, the better you will do during your time here. If you would like to learn more about active reading, there will be content discussing the topic in more depth on the Legal Writer's Toolkit site.

You shouldn't assume that these questions indicate a point of view or that they're trying to steer you to answer them in a particular way. Rather, they're intended to provoke you to think critically about what you read and to help you form your own conclusions, based on the information the author gives you about the topics discussed in the book.

We hope you enjoy Tomorrow's Lawyers, and we look forward to meeting you and working with you over the course of the next few years.

Foreword

1. It's no secret that in our technological world the "pace of change is accelerating" as the author notes. Had you considered before that the speed with which things change these days would also affect the way law is practiced? Do you think that law schools are staying ahead of developments in the way law is practiced? Should they?

2. This book was published in 2013 and three years later the author concluded that it was out-of-date. The second edition of the book was published in 2017. Given its central premise that life is changing rapidly, do you think the book is again out-of-date? Even if so, might the book offer insights into the way the legal world might be changing?

Introduction

1. The author claims that "[l]egal institutions and lawyers are at a crossroads, . . . and will change more radically over the next two decades than they have over the last two centuries." Given that lawyers in 1820 were still using quill pens to write and that American legal institutions were less than fifty years old at the time, does this seem to be a credible claim? If so, do you imagine the lawyers practicing today are ready for such dramatic changes?

2. The author talks of the future of legal services being neither "Grisham nor Rumpole." Have you read any books by John Grisham? Do you know who "Rumpole" is? The next sentence, that speaks of "wigs and wood-paneled courtrooms . . ." and so on, reminds us that the author is from Scotland, and is writing from a U.K. perspective. Do you think that his observations will be relevant in the U.S.?

3. The author is confident that many, if not all, of his predictions of change in the legal profession will come to pass. Is this exciting or disturbing to you? Why? To use the author's metaphor, are you more comfortable skating to where the puck is going to be, or do you prefer to skate to where the puck is now?

The Drivers of Change

1. The author writes of the "more-for-less" challenge. This is not a new problem, but the pace at which clients are seeking the same, or even more, access to legal services for the same or lower cost is accelerating. How do you imagine legal employers are responding to the challenge?

2. Much of the discussion of liberalization in legal services centers on changes being made in the U.K. What do you know about similar initiatives in the U.S.? Do you imagine that market pressures here will lead to greater or lesser liberalization than in the U.K.? Do you think the result you predict is a good or bad one?

3. The author refers to Moore's Law, the projection that the processing power of computers would double each two years while the cost of that processing power would halve. The author cites to a prediction that in 2050, the average desktop computer will have more processing power than all humanity combined. But many commentators, including Moore himself, predict that Moore's Law will cease to predict the future in around 2025. Does this invalidate the author's claims for the importance of IT in law practice? Similarly, does the author's reliance on the processing power of desktop computers, at a time when desktops are becoming less common, weaken the author's point's here?

4. The proliferation of cloud-based computing solutions has arisen since this book was written. What would the author say about this development? Would he have privacy or confidentiality concerns if lawyers relied on the cloud for their computing needs?

5. The coronavirus pandemic could not have been foreseen by the author. What changes do you think the pandemic will bring about in the way law is practiced? Will the pandemic accelerate or slow down some of the changes the author writes about in this book?

6. This book was written before the use of Twitter had become commonplace among politicians. Has their use of this technology brought it into the mainstream making it likely that lawyers will use it more? Or is Twitter already an old-fashioned form of communication?

7. The author writes of IBM's "Watson" Artificial Intelligence system. Watson is the technology behind "ROSS," an AI-based legal research system that became commercially available in 2019. Do you imagine that AI will become the default model for legal research? Legal writing? If so, what will lawyers do?

Strategies for Success

1. The author stresses the cost pressures and the current business environment as concerns facing clients and notes that these concerns are driving changes in the legal profession. Had you considered that business concerns would have such an effect on the practice of law? Do you have any concerns that business pressures will also affect the way lawyers deliver services to individual clients?

2. The author discusses the use of an hourly billing system as the dominant way of charging for legal services and criticizes it as a disincentive to efficiency. Do you think that business clients accept unhesitatingly the bills law firms send them each month? What corrective measures do you think clients and law firms might use to encourage efficiency within an hourly billing system?

3. The author writes of the increasing indignation clients express when asked to pay high rates for relatively junior lawyers to undertake routine and repetitive work. You will be these junior lawyers in three or four years. Do you think the clients are right? How do lawyers gain experience if clients will not pay for their work when they are relatively junior?

4. The collaborative strategy discussed by the author presents attractive possibilities for clients in banking and other highly regulated areas. How relevant would this strategy be to, for example, litigation? Individual client representation like wills and estate work?

Commoditizing the Law

1. Have you considered the idea that the law is "bespoke" work, in the way the author describes? Or had you assumed that the law is a commodity that, with little crafting, can be made to fit multiple clients?

2. The description the author gives for the current practice of law – in which lawyers apply their experience of an area of the law to address a client's needs – suggests that there is little "bespoke" lawyering going on. Why, then, did the author start this chapter with a description of this process? Is it wrong to conclude that "bespoke" lawyering is not frequently practiced these days?

3. At the very end of this chapter, the author proposes that "commoditization will be fundamental in radically increasing access to justice for those who cannot currently afford legal services." What do you think of this claim? Is there the possibility that we might end up a two-tiered legal services system – commoditized and automated for low-income individuals and bespoke and in-person representation for wealthy clients? Is this a problem? Would this be an improvement over the present system? Or would it be worse?

Working Differently

1. The author breaks down the practice of litigation into nine tasks. How closely do you think these nine tasks apply to all types of litigation?

2. Does the author's list of sourcing legal work apply to only large law firms or can you see ways in which even medium and small sized firms could employ these strategies to lower their costs to clients?

3. Do you think currently practicing lawyers will accept the changes the author proposes? If so, will their acceptance be enthusiastic or grudging? Given that his book was published three years ago, how many of these changes do you think have been universally adopted by now?

Disruptive Legal Technologies

1. The author lists thirteen types of disruptive technology in the law. Since this book was written, at least one more type – Artificial Intelligence-based legal research – has emerged. If the author is correct that these disruptive technologies will "transform the entire legal landscape," what do you think a law school's response to them should be?

2. The author cites to the specific example of Legal Zoom (not to be mistaken for the communications program that experienced explosive growth during the spring of 2020 amid the coronavirus pandemic) and notes that "its brand is claimed to be better known in the U.S. than that of any law firm." Who do you think makes such a claim? Do you think it is accurate? How relevant is brand recognition to the practice of law?

3. The author refers to the Legal Information Institute at Cornell University Law School, and notes that it has been publishing "law" online since 1992. How important is it for non-lawyers to have access to "the law" without the training or expertise to understand "the law" in the specific context of a person's legal issue?

The Future of Law Firms

1. The author writes that he did not see much future for most traditional small firms beyond 2020. That year has now arrived and there are still many "small" law firms practicing law and hiring lawyers. Does this mean that the author is wrong in his view of the legal market? Is his general prediction still valid even though he appears to have missed the date on which small firm practice will disappear?

2. The author writes that most law firm leaders have only a few years of practice left and are more focused on short-term profitability than on long-term strategic health. The author first wrote this in 2013, however, for the first edition of this book. Do you think law firms are better prepared today to face the challenges presented by law practice? Or do you think the current leaders of law firms are in the same situation as those in 2012, and that law firms are in constant state of seeking short-term gains instead of preparing for long-term structural changes in the legal practice market?

The Shifting Roles of In-House Lawyers

1. The author notes that very few law firms have recognized the commercial opportunities presented by the rise in importance of legal risk management. What role do you think law firms could play in helping clients manage legal risk? Should play?

2. The author writes of the importance of law firms empathizing with their clients. Does that concept surprise you? We often think of empathy as a uniquely human-to-human concept, so is it strange to read about it in the law firm-to-corporate client context? How might such empathy manifest itself?

3. How difficult do you think it is for law firms to collaborate among themselves for the benefit of a corporate client? The author writes of law firms working together as a "family." Do you imagine this a comfortable model of law practice for most lawyers or law firms? Do you think it happens often?

4. The author focuses here on corporate practice. How relevant is what he says here to law firms representing individuals who claim to have been injured by corporate behavior? Is the author writing only to one side of law practice here?

The Timing of the Changes

1. The author uses 2007 as a time when things began to change in law practice. Do you think he is correct in using this date as a hard line between the past and the future, or do you think

changes such as the ones he describes in the book had already been happening in the legal market?

2. If the author is correct in his predictions, we should have passed through the "denial" stage of change and be well into the "re-sourcing" stage, moving into the "disruption" stage. Do you think he is correct? Do you imagine law firms are no longer in denial that disruption to the legal markets is upon them?

3. The author predicts that it will be commonplace, by 2020, for law firms to be converting their business practices from human production to IT-based production. Do you think the author is correct? If not, do you think he is completely wrong or that he missed his prediction by a few years and that the changes he predicts will come about sooner rather than later?

Access to Justice and Online Legal Services

1. The author writes about England and Wales when he speaks of the majority of citizens not having access to justice. Do you think the situation in this country is better? Worse? The same?

2. The author raises some ways in which IT can help to secure access to justice: it can assist non-lawyers to recognize that they might benefit from legal input; online triage, in which a diagnostic system would ask a series of questions and, based on the responses, identify if the user has a legal issue; the embedding of legal rules into systems, preventing citizens from non-compliance; and the development of social networks that will help citizens to "learn of legal issues that might affect them." What do you think of these proposals? Do you see advantages to them? Do you see potential dangers in them?

3. The proposals in this chapter appear mostly, if not exclusively, to be aimed at providing legal services for those who cannot currently afford them. Do you see any benefits to the approaches proposed here? Dangers? Is there the possibility of two systems developing, one for the poor and one for those who can afford individualized legal services? What should the role of lawyers be in developing and maintain IT-based legal services solutions?

Judges, Technology, and Virtual Courts

1. The author speaks of his experiences with judges who are "committed users of technology and [who] are keen to embrace all basic systems that offer potential benefits in their everyday work, such as email, word processing, and online research." The judges the author speaks of are in England and Wales. Do you think the same description applies to U.S.

judges? The three technologies the author identifies are all relatively old. Do you think judges are willing to adopt more recent technology?

2. The author describes a 2015 announcement by the British government that it was to invest a substantial amount of money to "modernize and fully digitize the courts." Do you think U.S. courts will follow this path? How successful do you think the U.K. has been in its goal to modernize its court process?

3. To what extent do you think we will see the types of virtual courts the author describes in the next five years in the United States? Ten years? Twenty years?

Online Courts and Online Dispute Resolution

1. The author describes a report that recommended the adoption of an internet-based court service. In the five years since the report was released, however, it appears that its proposals have not yet been implemented. Why do you think this is? Would a similar approach to online courts work in the U.S.? How would it accommodate the patchwork of state court systems in this country, something that does not exist in the U.K.? What would happen if those seeking relief from an online court did not have meaningful access to the internet?

2. This chapter discusses two different things: online dispute resolution and virtual trials. Do the same benefits and problems apply equally to both of these proposed approaches? Does technology offer more possibilities in one area over the other? If so, which and why?

The Future of Law, Revisited

1. The author suggests that it is "foolhardy" to make a twenty-year prediction about the future of the law. Do you agree? Is it foolhardy to act on the assumption that such predictions will be accurate? Or is it foolhardy to not act and risk being substantially behind the curve of change?

2. Do you suppose that the internet has had a substantial impact on what the author describes as the "latent legal market?" As the author notes, the internet contains "vast resources" available to those who seek legal advice. If you were one of those seeking legal advice, how confident would you be in relying on the advice to be found on the internet? If you would not be happy to trust your rights to unmediated, and non-individualized, advice found on the internet (especially without recourse to a malpractice action for incorrect advice), how big a change has the internet really brought about? Does the author suggest ways in which the dangers of unfiltered legal information on the internet might be mitigated?

New Jobs for Lawyers

1. The author describes a potential near-term future in which traditional lawyering roles have changed and most lawyers are occupying the ten new market positions he describes, such as legal knowledge engineer, legal technologist, expert trusted advisor, enhanced practitioner, and so on. This proposed future is not yet the present, though. How should the author's predictions affect the training you receive in law school? How should they affect the way you prepare for the practice of law? How do you think they will affect the way you practice law during the course of your careers as lawyers?

2. The author describes several potential new roles for young lawyers in this chapter. Where do you see yourself in this predicted future? Do any of these new roles seem particularly interesting to you? Particularly uninteresting? Can you think of potential dual-degree options you could pursue in law school that might make you better prepared for these new roles?

Who Will Employ New Lawyers?

1. The author describes the demise of Arthur Anderson in a way that suggests it was a temporary blip in the steady progress of accounting firms into the legal market. But that event indicates that law firms who rely on other businesses for their survival are subject to market influences outside their control. Does the Anderson Legal experience cause you to question some of the assertions the author makes in this book or do you agree with him that it was, at most, a temporary setback in the steady march of outside businesses to become involved in providing legal services?

2. The two legal publishers mentioned in this chapter – Thomson Reuters and Reed Elsevier – are significant providers of legal information in this country: Thomson Reuters publishes Westlaw and Reed Elsevier publishes LexisNexis. Are there any potential dangers involved with the publishers of American law being involved in providing legal services, either directly or indirectly?

3. Does the prospect of some of the alternatives to the traditional law firm described by the author in this chapter excite you? Are you concerned by their rise in prominence? Are you surprised to read that this might be the future of lawyering, or did you assume that the practice of law would move in this direction?

Training Lawyers for What?

1. The author describes a disjunctive relationship between legal practitioners and legal scholars, with both sides viewing the other with what the author describes as "unhealthy disrespect." Are you surprised by this? Did you expect that some legal scholars might not have much time for the practice of law? Should this be the way things are?

2. The author suggests that law schools are training students to become 20th Century lawyers, not 21st Century ones. Yet the author also concedes that many of the changes he predicts for the future of lawyering have not yet occurred. Do law schools have a responsibility to train their law students for a hypothetical future or should they train students to enter the practice of law as it exists today? Is it possible for law schools to hedge their bets and train students for both the present and the predicted future?

3. If this law school offers courses that are designed to prepare students for what the author describes as "key 21st-century legal skills," will you enroll in those courses? Suppose that enrolling in such a course will make it impossible for you to enroll in a course dealing with an area of the law that will be tested on the bar. Will you enroll in it now? How do your answers help to define the dilemma facing law schools at present?

Replacing the Old Training Ground

1. The author assumes that many law firms pay large salaries to attract "the most gifted [law] graduates." Others might say that law firms limit their hiring only to certain law schools and exclude from consideration the students from other law schools who might be as, or even more, gifted. Is the author's assumption a failure of vision on his part or on the part of the law firms? Does it matter?

2. The author describes the traditional way of training young lawyers employed by law firms. Does what he says about this training surprise you? Did you expect to be trained for the practice of law in law school and to arrive at your first job ready to practice? Is this a reasonable expectation?

3. The author describes the benefits of e-learning. Have you experienced a great deal of e-learning in your academic career? How did you respond to it? The American Bar Association (ABA) currently places limits on the amount of e-learning a law student can receive, especially in the first year of law school. Law schools like Syracuse, which offers the JDi program, must obtain waivers from the ABA in order to offer such programs. Should these limits continue to exist? Will the coronavirus pandemic, and the wholesale move of law school classes online during the spring 2020 semester, and perhaps beyond, cause a re-

evaluation of the benefits of e-learning? You likely experienced at least some e-learning opportunities recently. What are your thoughts about the benefits and problems of e-learning?

4. The author describes an alternative approach to legal education as represented by the simulation-based work of Paul Maharg in his "Ardcalloch" simulation. Do you think you would learn "the law" and how to be a lawyer as well with this approach as you would with the traditional lecture-based approach? Less well? Better? In Scotland, where Maharg's program was based, students go through a more traditional lecture-based law program as undergraduates, then work in law firms for some time, and then come back to school as graduate students and it is in that graduate program that some of them encounter Maharg's simulation. Does this change your answer? Would you prefer such an approach to legal education in this country? Is the U.S. approach the better one?

Questions to Ask Employers

1. This chapter proposes several questions young lawyers might pose to prospective employers. Will you ask any of these questions in an interview? How do you think a law firm would react to someone who asks some of these questions? What use you make of some of the answers to some of these questions? The author suggests, for example, that a firm that does not have a strategy document outlining its long-term strategy is not likely to provide a firm foundation for tomorrow's lawyer. Suppose such a firm offers you a job. What would your response be?

2. Many of the questions the author proposes in this chapter seem to be geared towards the large law firms he has mostly written about in this book. Are these questions also relevant to smaller law firms? If you ask these questions to small and medium-sized law firms, will the answers be relevant and helpful to you in deciding whether you want to work at such firms?

Artificial Intelligence and the Long Term

1. In the previous chapter, the author proposed, as his last question to law firms, "if you could design a law firm from scratch, what would it look like?" Turn the question around and ask it of yourself. Given everything you've read, and what you know about law, society, and the role of lawyers, what should a 21st Century law firm look like? What will the law firm you help to develop and grow look like? Ten years, or less, from today, you will be in a position to make significant changes in the way law is practiced and taught. What changes do you expect to see? What changes do you want to see?

2. The author notes that we cannot predict the future. He also quotes Allen Kay as saying that "the best way to predict the future is to invent it." What future for the practice of law will you invent? What new paths for the law will you forge?