LEADERS IN LEGAL BUSINESS - 2022

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12,000 Offices in 160 Countries
$300 billion Annual Services

2022

Leaders in Legal Business

Media
Legal Networks
Products & Services
Bar Associations
Directories
Law Firms
Technology
ALSPs
Consultants
Associations
Future of Legal Business
Software

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Requests for Qualifications (RFQ)
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Dedication

This book is dedicated to those leaders and influencers who are moving the profession of law into the future. I would like to thank the authors for their contributions to the book. As leaders in their fields, each is creating the future of the world's legal profession. Their insights into the business of law will prove invaluable to those wanting to view the panorama of these developments. Lawyers, law firms, and corporate legal departments purchasing services and products have been provided a roadmap that extends to the horizon. The beneficiaries of this information are their clients.

I would like in particular to recognize and thank Jennifer Kain Kilgore — the editor of LLB — who was instrumental in editing and producing the 2015, 2018, and 2019 editions of this publication.

Stephen J. McGarry

2022 Leaders in Legal Business

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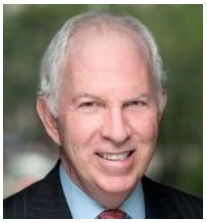

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At its core, the argument (against advertising) presumes that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar. We suspect that few attorneys engage in such self-deception ... Bankers and engineers advertise, and yet these professions are not regarded as undignified.

Bates v. Arizona, 433 U.S. 350, 369 (1977).

Chapter 1 – Introduction to *Leaders in Legal Business*

Stephen J. McGarry[1]
Founder, AILFN, Lex Mundi, WSG, & HG.org
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Is law a profession, a business, or both? For decades, every law school, bar association, and law society has posed this proverbial question.[2] The fact is that today, the profession of law annually generates more than $700 billion dollars in revenue. There are several million people employed in the legal profession, and hundreds of thousands support it through products and services.[3] Essentially, the business of law is to manage the profession: the revenue, the people, and the processes required to achieve outcomes that benefit clients.

The legal profession exists because of the need for advice about the law as well as the relationships defined by the law. Attorneys earn their living through their respective clients who enter daily into legal relationships. The use of lawyers varies from country to country. Aside from criminal cases, hiring an attorney is generally optional. Because representation by a lawyer may not be necessary, there is usually no specific requirement that a consumer or a business use a lawyer; the lawyer must add value. For example, a contract between two parties is still a contract regardless of who the parties are. Therefore, a lawyer adds value for the client when he or she can demonstrate the ability and has the resources to achieve the client's desired objectives.

The business of law ranges from providing ideas to supplying equipment in order to make the practice of law more effective and efficient. There are individuals and companies for which law is purely a business. They support the business of law through the services and products they provide. Their activity is commonly referred to as "law practice management."[4] *Leaders in Legal Business* is an overview of these businesses and the thousands of people who manage, develop, and influence the business — which is law.

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[1] **Stephen McGarry,** B.A., M.A., J.D., and LL.M. (Taxation), founded World Services Group (WSG), a multidisciplinary network, in 2002. As president, he grew it to 150 firms that have 21,000 professionals in 600 offices in more than 100 countries. In 1989 McGarry founded Lex Mundi, the world's largest law firm network. As president, he grew it to 160 law firms that today have 21,000 attorneys in 600 offices in 100-plus countries. These two networks represent 2 percent of all the lawyers on earth. In 1995, he founded HG.org, one of the first legal websites. Today, it is among the world's largest sites with more than five million pages and 1,100,000 users each month who download almost two million pages. McGarry is admitted by exam to the bars of Minnesota, Texas, and Louisiana. In 2002, American Lawyer Media (ALM) published McGarry's treatise on Multidisciplinary Practices. McGarry has authored numerous articles on associations and international business transactions.
VP of Editorial: Jennifer Kain Kilgore is the VP of Editorial for AILFN and eDiscovery Specialist at Datamine Discovery. She was an associate attorney with MALIS | LAW and he previously worked as an associate attorney with the Boston-area law firm of Brown & Knight, LLC and concentrated her practice in the areas of estate planning, probate, business planning, and real estate. She is also the principal of Writmore, LLC, providing editorial, research, and writing services. She was the managing editor of the *New England Journal of International & Comparative Law* and was published in Volume 18.1. Ms. Kilgore has worked with the Massachusetts Reporter of Decisions of the Supreme Judicial Court of Massachusetts, the Medical-Legal Partnership | Boston, and the Boston Municipal Court. She served as attorney editor for the popular financial news website *Benzinga.com* and was also the editorial assistant for two award-winning regional magazines, *Berkshire Living* and *Berkshire Business Quarterly*. She is a member of the Massachusetts Bar. Ms. Kilgore graduated from Ohio University (B.S., Journalism, cum laude, 2005) and the New England School of Law (J.D., 2012).

[2] *See* Champ S. Andrews, *The Law: A Business or a Profession?* (June 1908), 107 YALE L. J. 602 (JUNE 1908); Jeremy M. Miller, *Is Law a Business or a Profession – And Does It Really Matter?* 107 LOS ANGELES D. J. (1994).

[3] Mari Sako, *Make-or-Buy Decisions in Legal Services: A Strategic Perspective*, UNIVERSITY OF OXFORD (2010), http://www.sbs.ox.ac.uk/sites/default/files/tile_image/sako-make-or-buy-in-legal-services.pdf.

[4] Law practice management is the study and practice of business administration in the legal context, including such topics as workload and staff management, financial management, office management, and marketing, including legal advertising.

This book focuses on the leaders and influencers in each segment of legal business: law firms, publications, consultants, law firm networks, associations, legal process outsourcing, and those companies providing other products and services. Every business organization has its own leading individuals along with companies they head. They are more than intermediaries providing the conduit for ideas; they develop ideas and then implement them. Taken as a whole, these leaders are the global influencers changing the direction of legal business. They are an integral part of the business foundation on which the legal profession rests.

This book is aimed at those who are the forefront of business ideas. These professionals and their firms are daily shaping the future of not only the business of law, but also, ultimately, the legal profession. Their activities touch thousands in their own firms, tens of thousands of their clients, and ultimately, the millions of lawyers practicing the profession of law. As a group of leaders and influencers, they define and shape the future of legal business.

The Legal Business Market

Jordan Furlong[1]
Principal, Law21

Introduction: The Past, Present, and Future of the Legal Support Ecosystem

The practice of law is hundreds of years old. Today's complex ecosystem of professionals that supports, manages, and improves the practice of law is considerably younger.

Think back 30 years from the date of this book's publication. If you were a lawyer in 1988, your law practice support system likely included a secretary, an accountant, a courier, and maybe someone to explain how the telex worked. Outside the office, resources to help you run your practice effectively and profitably were few and far between. The idea of professionalized law practice management support was foreign to most lawyers.

Sure, an attorney might read a magazine article and learn a few tips for running his practice (David Maister's seminal "Managing the Professional Services Firm" was still five years away), but that lawyer would never countenance the idea of a non-lawyer firm CEO, a full-time director of marketing, a professional development department, or a Rolodex full of outside business consultants. That kind of thing was as unseemly as it was unnecessary.

The real story of modern law practice management is how quickly this kind of support system moved from unimaginable to unremarkable. Starting with solo and small-firm lawyers, then gradually making its way into the ranks of larger firms, professional assistance for running a law practice has become part of the mainstream — and has gone a long way toward transforming the legal profession in a very short period of time.

The Legal Ecosystem

Why did this happen so fast? Primarily, because law practice is hard; it takes an enormous amount of attention and effort just to serve clients well. Lawyers needed and eventually welcomed all the help they could get in doing everything else, like running their businesses. The value these services provided to lawyers was immediate and self-evident, which accelerated their adoption.

[1] **Jordan Furlong** of Ottawa, Canada, is a consultant, author, and legal market analyst who forecasts the impact of changing market conditions on lawyers and law firms. He has given dozens of presentations to audiences in the US, Canada, Europe, and Australia over the past several years, including to law firms, state bars, courts, and many legal associations. Formerly an award-winning editor of three major Canadian legal periodicals, Jordan is also a Fellow of the College of Law Practice Management and a member of the Advisory Board of the American Bar Association's Center for Innovation. He is the author, most recently, of *Law is a Buyer's Market: Building a Client-First Law Firm*, and he writes regularly about the changing legal market at his website, law21.ca.

Furthermore, these services naturally cross-pollinated: Technology helped with networking, which aided marketing and abetted consulting, which intersected with process improvement, and so forth.

This is why we refer to this as an ecosystem: a diversified, interconnected array of professional business support systems for legal services providers. To use the classic definition by James F. Moore, a business ecosystem is "an economic community, supported by a foundation of interacting organizations and individuals … [that] produces goods and services of value to customers, who are themselves members of the ecosystem … [along with] suppliers, lead producers, competitors, and other stakeholders."

In this market, the customers are lawyers and law firms. So, who are the members of the "community" — the suppliers of value in the modern legal ecosystem? As the legal market generally and the legal profession in particular undergo rapid and extensive change, what does the future hold for all these suppliers? Here are my thoughts on seven select members of the present legal support ecosystem, and how each will evolve in the years to come.

Outside Consultants

Third-party consultants in the legal market are a relatively recent development, and for the last couple of decades of the 20th century, strategic consulting was the dominant offering. Law firms, at that time managed almost exclusively by lawyers, needed expert guidance on growth strategies, compensation systems, and business development efforts. Today, however, law firm management and even leadership have become much more professionalized, and a great deal of traditional strategic and tactical consulting capacity has been brought in-house. There is still a role for strategic consulting; law firms require big-picture perspectives and authoritative analyses of their businesses compared with market leaders. As many law firms enter a period of generational transition amid market upheaval, however, strategic consulting's focus has shifted from merely growing firms' annual profits to overseeing fundamental reconsiderations of firms' purpose, markets, clients, and services.

At the same time, a wealth of other consulting opportunities is opening up in the law firm world. As law firms become more sophisticated, multi-dimensional businesses, they will require assistance from increasingly specialized advisers. In addition to the subjects explored elsewhere in this chapter (sales and marketing, professional development, technology, and process improvement), outside consultants will be called upon to help law firms improve the diversity of their personnel, price their services both predictably and profitably, develop new product and service lines, and train their future leaders. Even as law firms continue to insource such expertise with full-time staff members, there should still be plenty of opportunities for outside consultants to help law firms achieve their strategic and tactical goals.

Law Firm Networks

Founded in the pre-globalization era, law firm networks offered their members cross-border connections, perspectives, and business development opportunities otherwise available only to a small handful of international law firms. Today, however, as global mergers and expansions have become more common, these networks must reexamine their purpose and grow their value beyond the merely cross-jurisdictional. This is especially the case given the increasing number of such networks and the rise of unexpected competition from sources such as Dentons LLP, which is aggressively expanding its own international referral network.

Success is likely to flow to those networks that can build a truly integrated and collaborative environment for their members. It will not be enough simply to help facilitate referrals between member law firms; networks will have to build solid, long-term relationships among their law firms in which numerous types of collaboration can thrive. These will include industry group conferences, management summits, "best practices" databases, associate exchanges and secondments, and so forth. The goal should be to tighten the bonds that hold the firms together, to build a "most favoured nation" alliance of similarly situated but non-competing firms. The networks' administrators will do what they can, but ultimately, the fate of these networks rides on the willingness and ability of member firms to take concrete steps to foster bonds of collegial inter-dependence among themselves. The degree of active commitment by their firms to the whole project might determine the fate of many law firm networks.

Professional Developers

Over the past decade or so, in response to a more competitive market environment, law firms have begun to pay more attention to many internal business and human resources matters. But perhaps no area has experienced as much growth in this regard as legal professional development. Whereas many firms were once content to let lawyers thrash away on straightforward tasks in order to "learn the ropes," most firms have now instituted formal, structured programs for upgrading the skills of their lawyers in several dimensions. Almost every midsize or larger firm has a PD director and staff, and many have established their own bespoke training systems, practice update services, and even internal "academies" or "universities."

Tomorrow's law firm professional development will bear little resemblance to yesterday's "CLE" culture of one-to-many, in-person, knowledge-update gatherings of unpaid lecturers and expert panels of talking heads. Both private sector and in-house providers of professional development will shift their focus away from "what's new in the law" toward skill-building sessions, client-relationship role-playing, hands-on legal technology engineering, and other practical applications of legal expertise. Major firms will tailor their PD plans for each individual lawyer, customized to his or her needs and interests. Lifelong, multi-dimensional learning will be seen as a natural part of basic lawyer competence, and likely will be regulated, administered, and enforced as such. The professionalization of law firm PD, already well underway, will only accelerate and add new dimensions in the coming years.

Marketers and Salespeople

It wasn't easy to be a legal marketer when lawyer advertising was a *de facto* ethical violation or when the typical lawyer's view on the subject was that "the good work I do is all the marketing I need." But times have changed, and by any measure, legal marketing has matured and flourished within the legal profession incredibly rapidly. Every major law firm now employs marketing personnel, including C-level marketing directors who play a growing role in strategy and business development. As data and analytics flourish in the legal industry and new opportunities for competitive intelligence-gathering open up, marketing will continue to expand its influence in law firm decision-making.

But the real growth story of the next several years will be in sales. Law firms have long resisted the use of the "s" word, preferring the euphemistic term "business development" to preserve lawyerly dignity. It will become increasingly clear to law firms, however, that most

lawyers are mediocre salespeople at best, and that asking legal subject experts to also be accomplished rainmakers is a distracting and discouraging exercise for all but the most preternaturally gifted practitioners. Faced with far more discerning and demanding clients, as well as substantially more aggressive competitors, law firms will begin employing salespeople to develop and eventually manage the law firm sales process, relegating lawyers to their proper role of subject-matter authorities and skilled legal practitioners. Bonuses and even commissions for salespeople will become a reality in law firms, and regulators will reluctantly but inevitably change ethics codes as a result. It will happen sooner than you might think.

Technologists

Any tool or process that increases the quality, efficiency, or effectiveness of a lawyer's work is "technology." The typewriter was technology, as were the photocopier, the fax machine, and dial-up modems that accessed the "information superhighway," but each of these new tools faced higher hurdles to acceptance in law firms than in other businesses. That resistance probably won't disappear entirely, so long as lawyers constitute the bulk of law firm workers, but it has already decreased substantially and will continue to do so.

The next stage in technology's infiltration of law firms is the role of technologists themselves. This broad term encompasses a range of technical and professional experts. Some will be programmers who design both internal systems for the creation and delivery of client services and external systems for standalone access by clients to the firm's distilled and productized expertise. Others will be artificial intelligence engineers who advise firms about the potential for machine-learning and cognitive-reasoning systems to improve the quality of legal advice (say, predictive analytics for litigation groups) or create new offerings altogether. And others will be data-collecting bloodhounds who derive insights from the firm's own vast storehouses of unstructured information and who team up with library and knowledge professionals to turn that data into value for the firm and its clients. "Every company is going to become a tech company in some capacity," said Marcie Borgal Shunk, founder of the Tilt Institute. "That ultimately is going to be true of professional service firms and law firms as well."

Process Analysts

The last frontier in the professionalization of law firms is the reinvention of workflow and operations. Traditionally, it didn't really matter how a law firm went about its work, so long as a top-quality product or service emerged at the end and so long as the lawyers who rendered the service were compensated for their hours of effort. In a cost-plus business model, efficiency was not only not especially valuable, it arguably was also counterproductive to the goal of higher revenue. But as clients began pushing their law firms harder for fixed-fee arrangements and more competitive prices, inefficiency gradually came to be seen as a liability to law firm profitability. Inevitably, law firms slowly began turning to process analysts to help them re-engineer their approach to service delivery.

In some respects, "systems" are the new technology. Process improvement initiatives are gaining traction in select law firms — from legal project management, which places structured frameworks of timelines, budgets, and reporting responsibilities around legal work, to legal process mapping, which involves the step-by-step breakdown and efficiency analysis of the stages involved in frequently undertaken tasks. It's not enough for law firms to offer the best "product"

anymore; the race now is to provide the best productivity and the best operational platform for lawyers, and thereby generate the most effective outcomes and solutions for clients. Process analysts will often make the difference between the winners and losers of this race.

NewLaw

A term first coined by Dr. George Beaton of Australia, "NewLaw" can be broadly defined as any model, process, or tool that represents a significantly different approach to the creation or provision of legal services than what the legal profession traditionally has employed. NewLaw providers are a unique hybrid of buyer and seller, providing services and support both to law firms and to clients (as well as to each other). Over the past five years, a virtual Cambrian Explosion of NewLaw providers has jolted the global legal marketplace. A powerful NewLaw player is as likely to disrupt and unseat a traditional law firm as it is to overturn a strategic consultancy, a marketing platform, or a technology offering. Examples of NewLaw entities include:

- New-model law firms such as Riverview Law, Valorem Law, and Keystone Law
- Project-based legal talent providers such as Axiom, Caravel, and Lawyers On Demand
- Managed legal support services like Novus Law, Radiant Law, and Elevate
- A host of technology-powered law business such as Lex Machina, Premonition, KMStandards, MetaJure, Neota Logic, Avvo, Kira Systems, Relativity, Koncision, Clio, Ravel Law, ROSS Intelligence, LexPredict, and Modria.

NewLaw firms refuse to fit easily into either the "supplier" or the "provider" categories of the legal support ecosystem. More such entities will emerge in the coming years, further blurring the lines between direct suppliers of legal services to clients and complementary providers of support and guidance to those suppliers. This ecosystem is going to become more complex and diverse, not less.

So, when you read through the comprehensive and incisive essays to follow, cataloguing and analyzing today's legal support ecosystem and the challenges it faces in future, keep two things in mind: just how quickly this entire professional support structure emerged, developed, and established itself over the past 30 years; and just how quickly and completely everything we know and recognize.

Chapter 2 –Legal Business Publishers and Publications

Publishers on the Business of Law	**Bill Carter** – President and CEO, ALM
Legal Business News Publications	**John Malpas** – Publishing Director, *Legal Week*
Legal Directories and Rankings	**Lloyd Pearson** – Principal and Founder, Pearson Communications

Legal Business Publishers and Publications

Bill Carter[1]
President & CEO, ALM
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Overview of the Offering

News and current awareness offerings for the legal professional serve the same purpose as general newspapers and magazines. They inform, interpret, and entertain. For the first 140-plus years, these offerings were focused on news and information for the attorney, with at best a limited coverage of firms, their clients, and the industry overall. In the 1970s, a series of events dramatically changed the landscape and coverage of the legal profession.

At the broadest level, the current awareness sources relied upon by lawyers are focused on either the practice of law or the business of law. Practice of law publishers produce content that helps legal professionals provide better legal service to their clients. These sources might provide alerts on new court decisions or legislation, or provide daily analysis on a practice area such as employment law, bankruptcy, or intellectual property.

Business of law publishers provide industry, competition, and people intelligence, supporting lawyers in the management of the law firm and their practice. Sample topics include new client relationships, law firm mergers, and business trends in the legal industry.

Many general and business-oriented news organizations include coverage of the business of law for business and general audiences. Examples include *The Wall Street Journal*, *The New York Times*, and *Reuters*. This chapter excludes these generalists, instead focusing on offerings intended for the legal professional.

[1] **Bill Carter** took leadership of ALM as president and chief executive officer in March 2012. Carter has championed various acquisition strategies advancing the growth and expansion of markets ALM serves. In 2013, Bill was honored as a C-Level Visionary with a Folio: 100 Award. He joined ALM from Thomson Reuters, where he was senior vice president of the Small Law Business Unit since 2010 and led its successful reorganization and growth. An accomplished expert in the digital and legal services industry, he has also driven significant value creation as a senior executive at LexisNexis, Epiq Systems, Gerson Lehrman Group, and GES Exposition Services. Carter earned a B.S. in Computer Science at Tulane University, a Master's in Computer Science from Georgia Tech, and an MBA with honors from The Wharton School at the University of Pennsylvania.

History of Business of Law Offerings

The concept of the modern newspaper emerged in 17th-century Europe when printed periodicals began rapidly replacing hand-written newssheets. The spread of the printing press enabled the emergence of this new media.

America's oldest daily legal newspaper is *The Legal Intelligencer*, which serves Philadelphia, PA and the surrounding areas. Since its founding in 1843, it has set the standard for subsequent legal newspapers. It covers legal news, decisions, court calendars, and legislation, and provides analysis and insight in columns written by leading professionals.

Over the next 170 years, daily and weekly newspapers with a geographical focus were introduced in large legal markets worldwide. In the United States, major titles include *The Chicago Daily Law Bulletin*, *The New York Law Journal*, *The New Jersey Law Journal*, *The San Francisco Daily Journal*, *The Connecticut Law Tribune*, and *Massachusetts Lawyers Weekly*. *The Lawyer* and *Legal Week* cover the United Kingdom, the second largest legal market in the world. Other geographically focused titles include *The Canadian Lawyer*, *The Asian Lawyer*, *The Latin Lawyer*, and *The Iberian Lawyer*.

Independent publishers formed most of these geographically focused publications. These businesses thrived for many years, monetizing through subscriptions and advertising. Many became the official newspapers of record, enabling them to publish public notices, which are required by state regulations to keep the public and businesses aware of key private and governmental actions. Foreclosures and LLC/LLP incorporations are typical notices.

In addition to the privately-owned publications, associations serving segments of the legal market established monthly publications for their memberships. The American Bar Association, which serves U.S. attorneys, publishes the *ABA Journal*. The Association of Corporate Counsel publishes the *ACC Docket*.

The legal news and current awareness industry changed dramatically in the 1970s. The U.S. Supreme Court in *Bates v. State Bar of Arizona* (1977) struck down professional barriers against advertising. Marc Galanter and Thomas Palay wrote in their 1991 book covering the transformation of big law firms, "A few years later the interested reader could find an abundance of information about firm organization, finances, relations to clients, office politics, and so forth."[1]

Two competing publications were launched. *The National Law Journal*, a weekly newspaper introduced in 1978, covers legal information of national importance, including federal circuit court decisions, practitioners' columns, and coverage of legislative issues. In 1978 the paper began its annual survey of the nation's 200 largest law firms; this survey of the nation's largest law firms ranked by the number of attorneys each firm has continues to this day.

The American Lawyer magazine soon followed in 1979. The first issue emphasized law firm finances and executive compensation, a topic usually not discussed by lawyers. In the 1980s, *The American Lawyer* began to publish its own ranking of the top 100 law firms. Unlike *The National Law Journal*, it ranked firms based on annual revenues and subsequently expanded to include partners' compensation, profitability, and more detailed attorney counts. By the late 1980s some firms were striving to be included in *The American Lawyer*'s list.

The 1980s until the early 2000s were a period of consolidation in the U.S. *The American Lawyer* acquired regional publications in the 1980s. A new company, ALM, was formed in 1997 through the merger of *The American Lawyer*, *The New York Law Journal*, *The National Law*

[1] MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM (1991).

Journal, and other regional newspapers. ALM continued acquiring and by 2010 had established a presence in eight of the top 10 U.S. legal markets, in addition to international publications. Dolan Media acquired *Lawyers Weekly*, a publisher of weekly newspapers in Massachusetts and various secondary markets, and combined it with other regional publications. The two companies became the largest legal news and current awareness companies. The emergence of the Internet spawned a new era of innovation in business of law coverage. *The Greedy Associates* message boards enabled newly hired associates to share compensation information at the largest law firms. *Above the Law* was founded in 2006, providing content and commentary on salaries, bonuses, law schools, and firms.

Blogs and other social media became an important part of the information network for legal professionals, providing notification of early events. *SCOTUSblog* is one of the better known, as it covers the U.S. Supreme Court. These blogs pushed the commercial players, forcing them to speed up their coverage and strengthen their comprehensiveness.

In 2004, *Law360* began using technology and quick, efficient processes to provide timely coverage of countless practice areas. They extract updates from PACER, the U.S. federal court filing system, tagging companies and people. This practice-specific news offering enables legal professionals to keep track of customers and competitors.

Beginning in the 1990s, business of law publishers expanded their product offerings to events and books. They brought their communities together through the strength of their brands for education, recognition, and networking. The publishers' local connections led to books focused on state-specific legal issues written by local authors. These new monetization streams fit into the publishers' vision of helping their legal communities thrive while helping to offset declining classified and print advertising.

The economic downturn in 2008 forced leaders of law firms and in-house counsel to focus more broadly on the management of their organizations. These days, in addition to finding business development opportunities and issues, law firms gather information on their competitors in order to improve their operations; meanwhile, in-house counsel seek best practices to reduce outside counsel spending.

Additionally, clients keep pushing private practice attorneys into narrower niches and specialties. Instead of being an intellectual property generalist, an attorney may now be defined as a specialist in patent litigation for large global corporations with operations in the U.S. and Asia. This trend toward specialization has happened to other professional services industries and is not expected to reverse.

The consequence of these shifts is that legal professionals have become more reliant on current awareness offerings covering the practice areas and the markets they serve. They seek news tailored to their specific interests.

These developments are leading to the integration of business of law content with substantive (or practice of law) content. This trend accelerated in 2011 when the large legal information providers – Thomson Reuters, LexisNexis, and Bloomberg – moved to expand the news offerings available with their legal research systems, resulting in increased partnership and acquisition activity. LexisNexis signed an exclusive license agreement with ALM to provide its content through the Lexis legal research system. This was followed by Bloomberg's acquisition of BNA, a daily practice of law and current awareness provider focused on particular specialty areas. In March of 2012, LexisNexis acquired *Law360*. Thomson Reuters responded by forming a partnership with Wolters Kluwer, providing daily current awareness content to users of Thomson's legal research system, Westlaw. ALM acquired RivalEdge, a media company that allows lawyers

to monitor a variety of sources for changes in law firm activity and personnel. In October 2014, LexisNexis acquired Moreover Technologies, an online tool that aggregates, monitors, and analyzes large volumes of news, legal, and social media data to help law firms and corporations understand key market trends.

This increased investment in the legal professional news space has led to a new wave of experimentation and innovation. The goal is to deliver exactly the content a legal professional needs to be successful.

Market Size

The worldwide legal current awareness market is estimated to be approximately $400-$500 million in annual revenues with low-single-digit growth.

The U.S. market is the largest at approximately $300 million. ALM is the top player with $175-$200 million in revenues, or about 40 percent market share. Dolan Media is the second largest player with $50-$75 million in revenues.[1] *Law360* has estimated annual revenues of $25-$30 million, followed by Law Bulletin Media with estimated $10-$15 million.[2] *The Daily Journal* has revenues of $5-15 million.[3]

The United Kingdom is the second largest market with $25-$50 million in revenues. Three of the larger players in the market are *The Lawyer*, *Law Business Research*, and *Legal Week*.

Publishers in the emerging markets are typically independent organizations owned and operated by the founders. The largest of these rely on print products for the majority of their revenues.

Future Trends

A significant challenge to delivering legal professionals the information they need is the flood of content; it can overwhelm. Recognizing this, the largest of the legal news and current awareness providers are developing online platforms allowing for unified offerings tailored to the legal professional, requiring investment in metadata and filtering technologies.

It is unknown how much technology can solve the filtering issue. Human intervention and their ability to curate is highly valued today. Will technology be able to distinguish the important from the routine? Will it be able to identify relevant broader stories on companies or industries? Will human editors always be required?

The business of law publishing market is expected to continue consolidation. The ongoing shift of the readership to online publications will require more advanced digital platforms. Smaller players will struggle to generate the required investments while realizing fewer ad dollars online versus print. Additionally, integration and linking of news and information will advance and become an expected part of the reader's experience. Legal professionals will anticipate unified, personalized news offerings with global coverage.

The next decade promises to be another period of innovation for the business of law publishing industry.

[1] Dolan Co., Quarterly Report (Form 10Q) (Nov. 12, 2013).
[2] David Curle, *U.S. Legal News and Current Awareness Market: Evolution and Prospects for Growth*, OUTSELL INC. (Sep. 18, 2012).
[3] Daily Journal Corp., Annual Report (Form 10-K) (June 24, 2014).

Legal Business News Publications

John Malpas[1]
Publishing Director,
Legal Week
LinkedIn

The birth of modern legal business news probably dates back to 1978, when Steve Brill founded *The American Lawyer* magazine. Brill struck upon the idea of writing about the business of law while studying law at Yale Law School when he saw a noticeboard on which law firms were advertising for recruits. "I was writing magazine articles at the time," he told David Lat, founder of the online news site Above the Law, in a video interview, "and I remember thinking to myself they [law firms] all can't be the same — they have different people, some of them have to be more energetic than others, more successful than others, some of them probably offer more opportunities to non-whites than others… and I just kept thinking I'd like to write about a law firm or two as an institution."

The American Lawyer remains one of the world's leading legal business titles, but it has become a crowded marketplace. There are several major magazines and websites that specialize in business law news and analysis, and these are not confined to the world's two leading legal centers of New York and London. In Germany, for example, there is JUVE, while Italian lawyers seeking the latest news about the local legal market can turn to TopLegal.

The rise of the legal business press has mirrored the transformation of the legal profession into a multibillion-dollar global business. When Brill conceived the idea of writing about the business of law firms, they were relatively small, privately-run institutions unused to public scrutiny. Brill recalled the resistance he received when setting out to report on the inner workings of law firms, even when it came to such straightforward issues as what deals they were acting on. Despite a move to public ownership in some jurisdictions, the vast majority of law firms continue to be privately run. The world's leading commercial firms have grown exponentially since the 1980s on the coattails of globalization. At the same time, in most

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jurisdictions, regulations restricting the ability of law firms to advertise and market their services have steadily been lifted. The emergence of the internet in the early 2000s provided an additional impetus to the legal press as it significantly reduced the barriers to entry for legal news providers, given the possibility of accessing readers without the need to print and distribute a magazine. The U.K. site RollOnFriday, which was set up in 2000, and the U.S.'s Above the Law, which was in launched in 2006, are two prominent examples of online-only news sites.

What do these media outlets cover? The same principal outlined by Brill when he struck upon the idea of founding a magazine covering legal business applies today as it did then. While all the world's legal business magazines and websites have their areas of specialty, the common denominator between them is that they provide news, commentary, and analysis about the business of the law. Typically, there is a focus on the activities of law firms — information about the work that they are undertaking, the strategies they are pursuing, and their financial performance. There is also coverage about the markets in which law firms operate that seeks to identify trends, opportunities, and threats. While recent years have witnessed an explosion in the number of legal blogs that provide commentary about the legal market from all sorts of angles, there remains a need for a body of trained, professional journalists whose job it is to seek out the information about law firms and their markets that bloggers use as material for their blogs and tweets.

Given the plethora of legal business magazines and websites plying their trade, and the even larger number of bloggers writing about the market, large commercial law firms employ public relations teams to manage their relationships with the media, thereby maximizing the benefits of positive news about and minimizing the impact of bad news. While smaller firms, which lack the resources to run their own media departments, may live in fear of a negative story making the headlines, arguably it is the lack of positive coverage about the good work they do that has the biggest impact on them. There are, however, plenty of examples of smaller firms that have successfully raised their profile by generating positive publicity in the legal and national press. Such success is invariably hard earned, reflecting a conscious decision to regard media relations as a central part of a firm's strategy. Firms that are serious about gaining positive media coverage need to do their homework. They need to research the legal business media in their jurisdictions, decide which outlets they want to target, and then get to know how they operate, a process that should include, if possible, meeting reporters and editors, and seeking to gain an understanding of the kind of news in which they are interested. Pitching an inappropriate piece of news to a magazine is not just a waste of time, but can also be counterproductive.

Ultimately, though, it is difficult to see how firms can thrive in the field of media relations without the help of regular professional advice and training harnessed to a genuine desire from key partners to engage with the media. The good news for those firms that do succeed in getting it right is that most firms — certainly in jurisdictions with which I am familiar — do it badly. This means that law firms that strike on the correct formula can gain a significant advantage. And while the legal business media market continues to evolve, there seems little doubt that it will also continue to thrive.

Legal Directories and Rankings

Lloyd Pearson[1]
Founder and Director,
Pearson Communications
LinkedIn

What is a Legal Directory?

The term "legal directories" describes a broad range of products and services that research, list, rank, analyze, and assess lawyers and law firms.

Depending on whether you are in a large international firm or a small consumer-focused firm, a directory can be a basic, Yellow Pages-style listing, or synonymous with preparing detailed written submissions.

Legal directories are a fixture of the legal industry, and most law firms engage to some extent with them as a way of promoting their practices to the outside world.

The Legal Directory Industry

As a distinct industry in its own right, reports suggest that the legal directories business (as a subset of the broader legal publishing and media industry) is worth $250 million a year.

Legal directories are not new — the first directory, Martindale-Hubbell, began publication in the nineteenth century — but the modern form of the industry took shape in the 1980s and 1990s.

Driven by the relaxation of professional rules that limited the ability of law firms to advertise their services, a raft of new products emerged that sought to rank and recommend lawyers.

These directories vary considerably from those that employ teams of researchers to assess the relative qualities of different law firms to those that are more speculative and commercial in nature.

Over the years, the number of such products has grown to include several thousand directories, listings, rankings, league tables, and awards.

[1] **Lloyd Pearson** is a legal directories specialist and the founder of Pearson Communications. He has held senior editorial positions at the market's leading legal directories and in-house directories management roles at top law firms in the U.S. and U.K. In the late 1990s he was part of the launch and development of Chambers Global, one of the leading international guidebooks, where he later became editor; he worked extensively on editions of Chambers USA and contributed to Chambers UK. In 2004, he joined the international law firm of Herbert Smith and ran their press office, working on legal directories, communications, and media relations initiatives. In 2006, he moved to White & Case to manage their global directories' program. He then consulted with Best Lawyers, helping to develop the Best Lawyers-US News "Best Law Firms" survey, and in 2008 became a legal directories consultant.

Why Do Law Firms Work with Legal Directories?

Because Clients Read Them

Directories provide buyers of legal services with helpful information that enables them to make a more informed choice as to legal advisor.

Arguments rage over the extent to which clients read and value legal directories.

While directories are rarely the biggest factor that influences buyer behavior, numerous surveys show that consumers of legal services read directories, and that directories play a role in helping them to decide which law firm to select.

Some companies insist that only law firms featured in certain directories, or those that have attained a certain ranking, will be considered.

Other clients use directories to assemble a shortlist of potential law firms, to narrow down a long list of potential advisors to a shortlist, and to locate specialist firms in unfamiliar jurisdictions.

Buyers of legal services treat directories as a "tiebreaker" to choose between two potential firms who are otherwise equal in all respects — the higher-ranked firm will get the job.

Differentiation

All industries have their own ways to recognize professional achievements, but the directories industry is proportionally larger and more influential within the legal sector because of the fragmentation of the profession.

Despite the consolidation of the industry through law firm mergers and the emergence of global "mega-firms," the largest law firms in the world still only account for a small percentage of market share.

A buyer of legal services can choose from a large range of potential providers for most projects.

That creates demand for legal directories, as law firms seek to promote and differentiate themselves from other firms in the market.

Third-Party Endorsement

Legal directories and awards provide a credible third-party endorsement.

Law firms make claims about their skills, expertise, and experience through promotional channels such as the firm's website, brochures, newsletters, and social media, but prospective buyers of legal services may be skeptical about those claims or find it difficult to verify them.

On the other hand, an independent assessment from a credible organization, such as an award given out by a prestigious legal publisher or a top-tier ranking in a respected legal directory, will often carry more weight.

Law firms should continue to tell clients directly about their strengths, but prospective buyers of legal services want to hear an unbiased voice — and directories provide that.

Championing Achievements

Lawyers are hardworking and conscientious professionals who dedicate themselves to their clients rather than seek glory themselves.

Naturally much of their work is sensitive and takes place behind the scenes, but occasionally they work on a career-defining case or transaction that leads to a great outcome for a client.

Directories recognize such achievements, and celebrate the excellence and success of lawyers.

Everyone wants to be part of a winning team, and a strong legal directory performance is good for internal morale within law firms.

Profile Raising

Law firms are low key and will rarely grab the headlines in the mainstream news and business media, so specialist publications like legal directories have emerged to publicize law firms' activities.

Directories will typically request written information from law firms to enable them to learn more about their work.

Law firms engage in this process because it provides a valuable outlet for them to raise their profile and bring the quality of their work to the wider market — to clients, prospective buyers of legal services, potential hires, students, and others involved in the legal sector.

Different Types of Directories

Directory/Listing

This is a straightforward listing of law firms, broken down by a range of categories such as location and practice.

The best-known directory of this type in the legal sector is Martindale-Hubbell.

Formed by James Martindale in New Jersey in 1868, it later linked up with "Hubbell's Legal Directory," and the first edition of the "Martindale-Hubbell Law Directory" was published in 1931.

Later owned by the LexisNexis division of Reed Elsevier, the product became the major force in legal directory publishing in the twentieth century.

Martindale has passed into new ownership in recent years and refocused as a marketing services provider for smaller law firms.

As the internet took off in the mid-to-late 1990s, a new generation of online directories emerged.

HG.org (formerly Hieros Gamos) was one of the early pioneers in the legal directory world, with its online site dating back to 1995.

That was soon followed by Lawyers.com (later owned by LexisNexis), FindLaw (Thomson Reuters), and others.

Avvo, which launched in 2006, has become the most heavily trafficked legal directory — offering a modern take on the traditional lawyer listing with a host of additional features, such as online reviews, question and answers, and a proprietary scoring system.

Other prominent directories of this type include Justia, Nolo (now owned by Internet Brands, the new parent of Martindale-Hubbell) and LawInfo (Thomson Reuters).

Yelp.com and other consumer review sites are also popular in the consumer legal space.

At the time of writing (October 2017), Best Lawyers, in partnership with *U.S. News & World Report*, has just announced the launch of a comprehensive listing directory that will feature every lawyer in the U.S. — 1.3 million people.

Peer Review

Martindale-Hubbell established peer review-driven ratings in the 1930s — the idea being that a lawyer in a U.S. state may want a referral source for a lawyer in another U.S. state — but the concept of "validation" took off in the 1980s in the legal directory world.

As a lawyer, or a law firm, no longer were you simply listed in a directory, but you were formally endorsed after picking up recommendations from other lawyers.

The key mover was Best Lawyers.

Formed by two Harvard graduates, Steven Naifeh and Gregory White Smith, Best Lawyers established a leading lawyer directory around the concept of "peer review."

Lawyers would only get labeled a "Best Lawyer" and listed in the directory if they received enough recommendations from other lawyers in private practice.

Other businesses followed their lead, and by the 1990s, the likes of Super Lawyers (launched in Minneapolis, and now owned by Thomson Reuters), Who's Who Legal (from the U.K.-based Law Business Research), Expert Guides (Euromoney), and others produced similar products.

Research/Submission

Two British legal publishing entrepreneurs, Michael Chambers and John Pritchard, developed a new style of directory in the mid-1980s in London.

The founders of Chambers & Partners and Legalease (Legal 500), respectively, pioneered a new concept in legal directory publishing in which law firms were asked to prepare written submissions highlighting their achievements over the last year.

Teams of researchers and editors would review the materials and supplement them with interviews with lawyers and clients.

Once the research was finalized, the directories published tiered rankings of firms and lawyers, broken down by practice, with accompanying editorial commentary.

It was novel idea in the 1980s and 1990s: before the internet, when information about law firms was scarce, and when law firms were far more private about their dealings.

The Chambers/Legal 500 formula has been successful over the last 20 years, despite competition from technology-driven rivals, and both organizations have expanded globally to the point where most commercial law firms of a certain size are now exposed to them and/or engage with them.

Further directories of this type emerged in the 1990s, such as Practical Law Company's Global Counsel 3000 (later, "PLC Which Lawyer?") and variations limited to a particular practice or industry — Euromoney's IFLR1000 and Benchmark Litigation, for example, or the IAM Patent 1000.

A U.K. concept originally, similar products were established in markets such as Canada (Lexpert), Germany (Juve), Latin America (Latin Lawyer 250), and Asia (Asialaw Profiles)

Research-led directories such as Chambers & Partners and Legal 500 are considered to be the most sophisticated type of legal directory and are most favored by large business law firms because of their more rigorous methodology and selection process.

Because of the expansion of these products, the largest law firms send more than 1,000 submissions a year to various directories and awards organizations, and employ staff to manage the submission process.

Chambers, Legal 500, and others draw their revenue from firms advertising in the directories, although the placement of ads and profiles does not influence the performance of the firm in the independent research assessment, and this "arm's length" model gives these directories credibility.

As repositories of large amounts of market feedback on law firms, Chambers and Legal 500 have branched out in recent years to offer customized private research reports for law firms that provide greater levels of feedback and analysis of firms' market positions than is made available publicly.

Companies like BTI Consulting and Acritas have also developed successful businesses based on legal market research and client feedback, presented through surveys and rankings.

Surveys & Awards

Surveys share similarities with legal directories, and many are published by the same companies, although they are typically specialized around a particular practice, industry, or market.

The *Financial Times* "Innovative Lawyers" has blazed a trail over the last 10 years, and *U.S. News & World Report*, which partnered with Best Lawyers in 2010 to produce the "Best Law Firms" survey, is a major player in the U.S.

In addition, there are many other surveys that cater to all areas of the legal sector — whether it's the annual American Lawyer Litigation Department of the Year, or IFLR's Middle East Deal of the Year, or the annual Global Competition Review 100 survey.

Outside of legal publishing, most industry sectors have a healthy trade press.

As well as covering news and features, many produce an annual survey or supplement akin to a directory — and they will often include lawyers.

While the circulations of such journals and magazines are lower than the more comprehensive, multi-practice, multi-country directories, their focus is a strength.

Lawyers want to get noticed by the people who work in the industries that they advise on, so with dedicated teams of journalists who know their field, such surveys and directories can be influential within a certain niche.

There are too many to mention, but whether it's private client or healthcare or intellectual property, lawyers should always consider promoting their practice to industry-focused publications.

Awards are distinct from directories to some extent, but they perform a similar function, and are often produced by the same legal and business publishers that run annual directories and surveys, and draw on the same resources.

Hundreds, if not thousands, of awards cater to almost every legal practice, industry, and market.

League Tables

League tables can be broadly described as those products that measure law firm deal activity through factual data rather than more subjective methodologies.

Many league tables originated in the 1990s as demand rose for more sophisticated and transparent deal reporting.

The likes of MergerMarket, Dealogic, Thomson Reuters, Bloomberg, and others are well known in this space.

For many deal-focused firms, league table performance is just as — if not more important — than how they fare in directories.

As well as areas that lend themselves easily to deal reporting — M&A, finance, capital markets, project finance — league table-style surveys are prevalent in other practice areas where quantitative data can be collected, measured, and assessed.

For example, there are surveys that list those law firms handling the most patent prosecutions filed at the patent office.

Google

As traditional print directories were replaced by internet-based sites in the 1990s and 2000s, Google became the primary way that people accessed information.

Surveys show that a large percentage of buyers of legal services, particularly in the retail and consumer sectors, search for information about lawyers online.

When they do go online, Google is often their first port of call, and that will lead them to law firms' own websites, legal directories, blogs, news articles, and other sources of information about lawyers.

It is clear, therefore, that lawyers need to manage and maintain a strong and credible online presence.

Securing high visibility on Google is paramount for some lawyers and firms, and an industry of experts in search engine optimization (SEO) has built up to help lawyers secure online prominence.

Several online directories exist to provide law firms with a means to list themselves to gain greater search engine visibility.

Social Media

Social media has — and will continue to have — a profound effect on the legal directory landscape by changing the way in which information is delivered and consumed.

No longer do we just passively read information; we interact, promote, share, and collaborate — whether it's through Twitter, blogs, online forums, or Q+A sites.

LinkedIn has become arguably one of the largest legal directories in the world, with buyers of legal services regularly using the site to check out potential partnerships.

Traditional print-based legal directories are also getting in on the act, with Chambers & Partners launching its own "ChambersConnect" network in 2016.

Trade Associations

Many bar associations and law societies that oversee the legal profession in their respective jurisdictions maintain legal directories.

While they lack the dynamism of private sector offerings and they do not offer law firms the opportunity to differentiate themselves from other firms (the format being largely a member list), they can be a useful means of identifying lawyers officially licensed to practice in certain jurisdictions.

Notably, the Association of Corporate Counsel developed a "Value Challenge" to highlight those firms providing a high level of value when delivering legal services.

"Gray" Directories/Awards

With the growth of the legal directories industry, there has been a proliferation of speculative products with minimal credibility that use pushy sales tactics.

Some are outright scams while others are legitimate, but make exaggerated claims about the quality of their products and readership.

Law firms should develop guidelines that enable them to focus on more credible products and not those with questionable value.

New Generation/Convergence

Skeptics have written off legal directories for 30 years, but they have proved to be remarkably resilient and adaptable.

The legal sector has entered a new era: one shaped by technology, social media, globalization, emerging markets, the fallout from the financial crisis, competition from alternative providers of legal services, and a heightened sensitivity to cost.

In response to these shifts, sites like Avvo have blended the concept of a traditional legal directory with features borrowed from the consumer world like ratings, user-generated content, reviews, and question-and-answer forums.

Indeed, some directories, like Avvo and others, have become quasi-providers of legal services themselves — offering low-priced fixed-fee legal services to consumers.

Offering a counterpoint to the qualitative directories that have been in the ascendancy in this last 15-to-20 years, the likes of legal analytics company Premonition have entered the legal rankings space by using artificial intelligence to extract information from public court documents to find out how many cases firms won or lost.

On the horizon you have the likes of the Meisterline Index, which uses cognitive science to measure the expertise of legal specialists.

It is likely therefore that the directories of the future will like combine elements of both objective (fact-based, measurable) and subjective (opinions, interpretations, points of view) research to create powerful information platforms.

Chapter 3 – Legal Business Consultants and Advisors

Consultants to the Legal Profession	**Michael Roch** – Extended Enterprise and Professional Services Advisor, Internal Consulting Group
Law Firm Business Strategies	**Timothy B. Corcoran** – Principal, Corcoran Consulting Group
Business Development, Coaching, & Sales	**Sylvia Coulter** – Principal Consultant, LawVision Group
Online Content Marketing	**Kevin O'Keefe** – CEO, LexBlog
Online Social Media Marketing	**Nancy Myrland -** Myrland Marketing & Social Media
Litigation Communications in the Information Age	**Richard Levick** – CEO, LEVICK
Law Department Management Consulting	**Susan Hackett** Founder and CEO, Legal Executive Management
Legal Recruiting and Staffing	**Jon Lindsey** – New York Founding Partner, Major, Lindsey & Africa
What You Should Know About Legal Procurement	**Silvia Hodges Silverstein** – Executive Director, Buying Legal Council

Consultants to the Legal Profession

Michael Roch[1]
Extended Enterprise and Professional Services Advisor, Internal Consulting Group
LinkedIn

Hiring a Consultant or Advisor

"Who cannot give good counsel? 'T is cheap, it costs them nothing." (Robert Burton, Anatomy of Melancholy, 1621)

Law firm leaders get input, information, ideas, suggestions, and advice from myriad external sources, including conferences, universities, colleagues of managing partner, information distribution lists — and the list goes on. Internally, the leaders of the most successful firms often have good systems in place, good people to run them, and good partners who provide constructive input regarding how the business should best be run.

With all of this knowledge, expertise, and experience around, why would you wish to engage with management consultants? It's a fair question, given the amount of scrutiny (and sometimes worse) you may expect from colleagues anytime you suggest that your law firm may need assistance from the outside. This chapter addresses:

1) Why law firms hire consulting firms or consultants in the first place;
2) Subject matter areas for consulting that add value;
3) What to expect from each of the three broad approaches to consulting;
4) What a typical consulting process looks like; and
5) How to hire a consulting firm or consultant (and how not to).

1) Why Law Firms Hire Consulting Firms

Even the largest firms with significant internal resources in finance, human resources, marketing, business development, knowledge management, and operational management

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eventually end up with opportunities or challenges that neither their usual external informal networks nor the internal management team can solve. These issues usually have one or more of the following attributes:

The topic is too big: The expertise within the management firm simply isn't broad or deep enough to resolve the topic. For example, the management team knows that knowledge management is an ineffective way to drive down costs, and the practice heads and management team have done all they can do within their level of expertise. Consulting firms that are subject matter experts in a given area can fill in the missing expertise.

The topic is too politically sensitive: The expertise may or may not exist within the firm, but too many of the partners involved in developing a solution either can't sufficiently separate their own interests from those of the firm or will be perceived by their other partners as having an axe to grind. For instance, changes to how partners are remunerated or how their performance is measured and assessed often falls into this category. This requires consulting firms that not only have the subject matter expertise, but are also experts in stakeholder management and process design. This leads to designing partner involvement interventions that achieve a resolution passing the required voting threshold.

The topic is too important to handle in-house: The expertise may exist, and the topic may not be all that controversial, but the risk of getting it wrong is so great that external validation helps weld partners to a decision that they will comfortably implement. For example, a firm has been approached by a larger firm that seems like the ideal merger partner, the financials look good — but there is lingering doubt about whether the combined platform really will increase profits or whether the partners of both firms really are as culturally — behaviorally — compatible as the initial meetings and cocktails suggest.

There are too many topics: The management team knows there are many facets to a single challenge or too many opportunities to pursue. For example, the firm has experienced sliding margins for the last five years, its market is contracting, and prices (rates and structure) are under increasing pressure. Do we have a profile problem, a business development problem, a pricing problem, a problem with our culture that our partners don't sell enough, a cost problem, a people problem, a partner underperformance problem, some of the above, or all of the above? This scenario requires less of a deep subject matter expert, but rather a business consulting team that understands how law firms work, with an analysis methodology that achieves a hard diagnosis, and helps management break down and prioritize the challenge.

Management capacity is too limited: Sometimes the challenge and the path to resolving that challenge are both clear, but the firm simply doesn't have a sufficient number of bodies to carry out the actions required. Depending on the nature of the challenge, a consulting firm can serve as a stopgap by seconding one or more consultants to turn the situation around and to then hire someone to be employed by the firm.

2) Subject Matter Areas to Add Value

There is no consulting firm capable of advising on every business challenge or opportunity. The subject areas are endless, from blue-sky thinking about a possible new practice to enter to working hands-on on the day-to-day implementation of a new robotics process.

The following broad categories provide a small cross-section of the spectrum:

Strategy: This is ably covered elsewhere in this e-book. Topics might include:

– Where to compete and how;
– Finding growth markets and coping with declining markets;
– Entering new practice areas or getting out of unprofitable ones;
– Geographic strategy (cities, regions, and countries) — getting in, working profitably, or getting out;
– Innovating how work is done and progressing the firm's operating model;
– Developing the firm's strategic intent and business model;
– Implementing strategies to reach that intent; and
– Designing an M&A strategy, and deciding whether to merge.

Relational capital: This includes everything that is market-facing, such as:

– Increasing business development returns;
– Managing key client relationships;
– Developing referral sources;
– Brand building and profile raising; and
– External communications.

Service platform: This area covers everything having to do with service delivery, such as:

– Developing and growing the firm's portfolio of services;
– Pricing, alternative fee arrangements, and pricing management;
– Delivery processes such as legal project management and process mapping;
– Knowledge, intellectual property, and innovation development;
– Intelligent process automation / robotics; and
– Sourcing, flexible working, and outsourcing of legal work.

Human capital: This area covers a number of topics related to talent (after all, law firms are, first and foremost, people businesses), such as:

– Winning the war on talent;
– Recruiting the best partners, business managers, and fee earners;
– Leadership development and assessments;
– Diversity development;
– Learning, professional development, and training;
– Talent management and human resources; and
– Internal communications.

Organization: This covers everything around the organization that supports the firm's client work and includes:

– Organizational design and structure;
– Decision-making, accountabilities, and overall governance;
– Incentives and remuneration of partners and senior managers;
– Partnership structure;
– Culture, values, and behaviors;
– Management system; and
– Succession planning.

Operations, finance, and risk: These cover all of the back-office functions, such as:

– Information technology;
– Facilities management;
– Risk management;
– Financial management;
– Administration; and
– Sourcing and outsourcing of non-core business functions.

The above can serve merely as examples of consulting areas. Each area will have hot topics, trends, and themes and will differ somewhat from country to country. For example, a country with a closed legal market that is opening up to international firms will see a flurry of market entry, strategic, and merger advice; in countries with mixed ethnicities, law firms seek consulting in relation to talent, diversity, social mobility, and economic empowerment.

No matter what the subject matter area, there often are more subtle topics to be addressed, such as:

–Collecting fact bases and evidence to support recommendations. Through research and market knowledge this may extend to peer group comparisons, sector analysis, client and market opinion gathering, etc.;
– Identifying the options that are realistically available, the consequences of taking such courses, promoting the preferred option, and offering clear rationale for such preference;
– Focusing the minds of partners and other stakeholders on the things that are important and relevant;
– Leading an intellectual journey designed to reconcile (if possible) disparate views and/or preferences and/or prejudices into a common or substantial majority understanding;
– Identifying blockages (whether in systems, organization, or culture) that stop firms being able to change or improve themselves, and showing what must be done to make it happen. Paying for consultancy is wasteful unless the people who will have to do things differently understand what must change, why it must change, and, crucially, agree to do it;
– Helping leaders to understand what must be done to implement the solutions successfully; and
– Working with leaders hand-on as quasi-internals to help achieve the desired outcomes.

All of that said, a good consulting firm will not seek to push their product or service, and won't try to put your problem into their box; instead, the lead partner will seek to deeply understand the needs of the firm and its management team, and then craft a process by which their challenges can be overcome.

3) What You Can Expect

A good consulting firm should always distinguish between a.) the subject/content area of client's challenge or goal, and b.) the process by which that challenge is overcome or goal is realized. The last section dealt with the subject/content area; this section explains why the process is important and the type of process that a law firm should expect of a consulting firm.

The process by which a consulting firm helps firm management overcome a challenge or realize a goal is critical for several reasons. First, while firms in similar market positions and of similar sizes may have similar challenges and goals, each firm is different; a pre-packaged solution often does not work out of the box. Second, it is highly likely that the firm's management, with or without partner consultation, has already thought about an issue and is calling the consulting firm because the firm is stuck and can't make progress on the issue. Third, the consultant's first rule of engagement is that s/he must do no harm, and proper advice can be given only once the firm and its challenge are understood fully and deeply.

We distinguish between three types of consulting engagements: a consulting project around a given set of challenges (perceived or real) or goals, retained advice, and ad hoc advisory work. We consider these in turn, followed by a note regarding implementation and related services.

4) Projects-Based Consultancy

Consulting takes various forms, depending on the client's situation and needs. Our organisation usually takes on discrete assignments that have multiple stages or overlapping/parallel elements, and can range from two weeks' duration to 24 months. With such large assignments, it is essential to have a clearly defined objective and a detailed project plan agreed upon in advance with the client, and there will usually be a specified outcome. Most consulting projects — whether it's a few meetings with experts or a project lasting 12 months or longer — usually have the following five broad components:

First, definition and diagnostics: This simply asks the following question: "What's going on here?" The purpose of this element is to determine the actual underlying challenge, and whether this challenge is the same or different from the one perceived by firm management. Second, this element seeks to fully understand this challenge or, depending on the objective, to understand the goals that the firm needs to achieve relative to its competition. Third, depending on the project, this element also seeks to validate assumptions, develop and validate hypotheses, and to uncover insights that help develop options for a solution to the issue in the steps that follow.

Depending on what needs to be done, this element may simply take the form of a structured management interview, though additional assessment work is likely (financial, client, process, culture, talent, etc.). Even our best-structured assessment tools need to be tailored to each law firm in order to accommodate its unique features, and often to accommodate the lack of sound management information that goes beyond basic financial data.

For a major project that seeks to change how partners operate the business (and their practices) or to help a partnership make fundamental decisions about their future, we usually encourage that partners outside the firm's management are involved early in the diagnostics process.

If this initial stage discovers that the problem the firm's management wants the consulting firm to address isn't the most important issue, a good consultancy will not blindly carry through the project that was sold but have a candid discussion with the client about a fundamental adjustment to project scope.

Second, developing and testing options: Unlike in law, in business there usually is more than one right answer to a challenge or more than one way to reach a goal – it is the constraint of resources (partner time and money available for investment) that often helps determine the best way ahead. Developing different options and testing which option will provide the maximum benefit to the law firm with the least investment of partners' cash and time is a better approach than to provide one solution and ask the partners to accept or decline this single option. In our experience having worked with major law firms in more than 50 countries, we find time and time again that most well-meaning initiatives put forth by firm management end up not being implemented or adopted by partners because firm management concluded on a single path too early.

Third, involving partners in decision-making: Most readers of this e-book will belong to law firms with 150 or fewer partners; most if not all partners will know one another and expect some degree of understanding about what management is doing and why. "Horror stories" within law firms abound of Big 4 accounting firms where "partners" are employees who are paid high bonuses but who do not even have a say when their firm undertakes a major merger or acquisition, let alone a lesser decision to acquire a certain piece of software.

We have seen even the simplest measures fail because an insufficient number of partners were involved in the creation of the solution. Diversity and social mobility initiatives are a key example where well-meaning and well-designed initiatives by heads of human resources fail to be implemented properly and, thus, provide a questionable return to the firm simply because the partners were merely informed about how that initiative will add value to the firm but are now sufficiently involved in understanding and shaping how that initiative will change their practices.

The approach that will work best really depends on the size, style, and sophistication of the firm, and the nature and complexity of the problem. In some cases, a factual and directive report is all that is required, but the range of issues that a consultancy deals with tends to be contentious and involve a range of overlapping factors (e.g., culture, governance, and process). Thus, a bespoke engagement plan will need to be designed that steers over time a course of fact and opinion gathering; stakeholder (client, staff, partner) involvement; and communication, which will lead to consensus and usually a vote. The "consultation" is particularly important: People want to feel that they have had a chance to contribute to the debate, air their views, and feel they are being taken into account. You cannot satisfy everyone, but even if the final outcome is not everything that the partners had wanted, they are much more likely to accept and support if they feel that the consultation was fair, open-minded, thorough, inclusive, balanced, and transparent. If you fail to get the consultation right, then the outcome will feel like an imposition; with people of high intellect and egalitarian principles, you can expect heels to dig in!

Fourth, implementation testing and day-to-day implementation: A consulting firm usually assists with implementation in some way, whether by pilot testing the implementation; conducting the full, hands-on implementation as part of the internal team; training and coaching firm members through their own implementation; or simply reflecting the progress of implementation with the relevant members of the firm.

Fifth, establishing and managing feedback loops: The above elements rarely work sequentially; overcoming a challenge or reaching a goal often requires the above elements to be applied iteratively. For instance, a high-level development of broad options for a solution may follow an initial shallow-dive diagnosis, followed by additional analysis work as options solidify and others are discarded. Various groups of partners and other stakeholders may be involved at different stages of the consulting project. Feedback and learning loops may be agreed upon in advance or throughout a project as the scope changes. Note that the above five elements apply very broadly and in principle to any consulting project, whether it's as operational as a major IT implementation of a new practice management software, a change to how partners develop business, or as strategic and fundamental as a change of the partner remuneration system. The work to be carried out and the exact structure of each element will of course vary widely given the law firm's objective for the project.

Process design: A law firm should expect its consulting firm to assist in designing a process that helps achieve the client's objectives so that the subject matter advice provided fits the business, is capable of implementation and takes hold within the firm. This is to ensure the law firm can earn a return from its financial and time investment in the acquired consulting services.

Project management: We stress the importance of project management in consulting projects. A well-managed project, following accepted project management norms, almost always achieves better outcomes and does so more easily, with less time wasted, than a project that is "defined as we go along." Besides the substantive and process expertise, you should ask your consulting firm about its project management expertise, skills, and approach.

Retained Advisory

Sometimes the needs are of a different nature, and then it may make sense to retain a consulting firm or very senior advisor for a period of time. This works best if the managing partner or executive committee is to have an ongoing sounding board providing an external perspective on a myriad of issues that can't easily be distilled into a consulting project.

The reasons may vary; the three most common retained advisories we see are:

First, most firms now have at least one permanent external advisor who really understands the business, firm management, and the partnership to provide impartial advice on a broad range of strategic, tactical, and operational business issues. This may take the form of a consulting firm (with access to a number of partner experts within that firm), an individual consultant, or a non-executive director.

Second, consultants may provide ongoing implementation advice following a consulting project and to help firm management reflect on necessary changes until a new idea, process, or decision is implemented the way it was intended and in the best, most profitable way for the firm. For example, it is invariably helpful to any remuneration committee or other decision-maker for

the consulting firm to ensure that change to the system of how partners are paid is being implemented as intended (and has been "sold" to the partners!).

Third, we have seen a number of firms with a single trusted external advisor who manages the relationships with all other advisory firms to guarantee a consistency of approach and to ensure that all consulting firms advising the law firm provide value for money.

Common also are a small number of design-and-implementation projects that are executed by small teams alongside the retained advisory.

Ad Hoc Advisory

Sometimes there is the need for a looser, more ad hoc relationship. A new managing partner may wish to have some advice on how he should shape his agenda or how she might seek to convince the board on a particular approach to an issue. There is plenty of this level of advice being given, which tends to be paid for by the hour or the day. Sometimes this advice may be given more formality and delivered as part of a retained advisory, even as a coaching plan, with some specific objectives agreed upon.

Sometimes a managing partner merely needs the comfort of hearing about the experiences of someone who has done it all before as a managing partner. There are a number of eminent ex-managing partners who have offered a lot of help, comfort, and reassurance by selling the stories of the very real scars on their backs.

Using Consulting-Related Fields for Effective Implementation

Implementation work means helping to get things done. For example, when a new invoicing and collections process has been designed and decided upon, implementation is about ensuring the process works, the IT works, the partners comply, and that the new process works in the most effective and efficient way possible. The consultants who designed the solution often do this implementation work. It is usually most effective for this work to be done in conjunction with disciplines that are closely related to consulting. Often the line of what is "consulting" according to its textbook definition and what is a related service can be fluid. In our experience, it makes little sense to be purist about this; what matters is what helps the client overcome the challenge or reach the goal, not what label we as professionals put on the type of work being done.

Some of these related services are covered elsewhere in this e-book; we only touch on a few examples here:

Training: This involves the transfer of skills. In our experience, law firms and lawyers absorb knowledge easily; acquiring skills is more difficult, especially if this involves changing how lawyers work in their day-today client matters. For example, implementing a consulting project about how partners should price their services to achieve higher matter profitability nearly always involves an element of training in assessing price sensitivity and using an IT tool for discount/premium analysis for the implementation of the consulting project to be effective.

Coaching: In the consulting context, coaching involves a one-on-one or team-level resolution of barriers that hold back that individual or team from achieving certain goals. In the pricing example above, one-on-one sessions with practice leaders can help them work with and manage those partners who are reticent to engage with a discount/premium analysis for their matters.

M&A and executive search: When a law firm seeks to acquire another firm, be acquired, or seeks a merger of equals, it may engage a consulting firm that specializes in M&A advisory services; it may also engage with an executive search firm, or it might try a combination of both. When opening up in a new city or seeking to extend into a new practice area, the firm may also engage with an executive search firm to find the right talent. This is a good and effective route. Here, the lines of where consulting ends and M&A advisory or executive search begins may be fluid and not transparent. It is best if the firm's advisors work together to define and achieve the best outcome. Good M&A brokers and executive search firms will work with firm management and its management consultants, accountants, and other specialist advisors to ensure that the project is well defined and that the firm's objectives are achievable. A battle among advisors for "the lead" rarely provides a good outcome for the client.

Interim resourcing. For some types of needs, it is more cost-effective to hire an interim manager or resource than an entire consulting team. An interim resource can add value where the challenge or goal is well defined, the firm has agreed on a path to action, and the interim manager is to lead the implementation. The key challenge for most interim managers is that they very quickly become part of the firm's internal political system and thus may be viewed by some partners as "having an agenda" Or may lose their effectiveness because they start playing firm politics. Experienced interim consultants and professional interim managers know well how to best retain their "external internal" status, implement the change that is needed, and then turn their brief over to a permanent hire before going to the next assignment.

Non-executive directors. A number of large firms have hired one or more professional non-executive directors. Typically, these are retired executives, providing deep leadership and management expertise form outside the legal industry and can add a tremendous amount of value to a law firm leadership team. They often work alongside retained consultants or help senior management manage the value-add consultants are intended to provide.

What You Should Always Expect

No matter how a consulting firm or solo consultant works with you, you always should expect that the consulting firm is focused on your firm's challenges and goals, and that the consultant has your firm's best interests in mind. This sounds like "motherhood and apple pie," yet one of the biggest complaints that we hear from our clients about working with consultants is that the additional hour or the additional day charged is more important than the client reaching his/her goals. It is appropriate that consultants look where else their organisation can add value; prioritising selling the next project is not.

5) How to Hire a Consulting Firm or Consultant

In this section, I will provide an approach that works well for most law firm clients.

Initial consultations: When you know you've got an issue but you don't quite know how to define the challenge yet, or if you know you want to achieve something different from your predecessor but you don't quite know how to go about it, it is perfectly legitimate to call on a consulting firm or a solo consultant. You can sound them out about how they would approach the topic if they were in your shoes once internal resources and the thoughts by retained advisors are exhausted. That initial conversation, or even two, should always be free of charge, as the consultant

should be pleased to build a relationship with you. If the problem resolves itself in these conversations, fine. Undoubtedly you will show your gratitude and call that same consultant again when the next topic comes around for which external input may be valuable.

Defining a scope: If these informal soundings are not sufficient, it is most effective to develop a short brief and get input from your consulting firm of choice. If that consulting firm is an expert in the subject matter, it will be able to assist you in shaping project parameters that help you overcome your challenge or achieve your goal. As is true for any type of project, you then agree on a scope and a fee basis for the work to be done if it's a project (see above), or the terms of a retainer or indeed a combination of the two along with a success fee, as appropriate.

Defining objectives and scope is critical, no matter how the consulting firm wishes to price the work to ensure the law firm in the end gets the value it wants.

Consulting fees: Consulting firms often charge by the hour or the day. This is appropriate for work where the scope cannot be defined easily or if there are too many "known unknowns" in the work to be done. In most cases, any efforts-based pricing will put the interests of the consulting firm squarely against the interests of the law firm; the consulting firm will want to maximize days spent, and the law firm will want to minimize the time spent to save costs.

We posit that in many cases, a clearly defined scope and a fixed fee or retainer, sometimes coupled with a success element as appropriate, often is fairest to both sides. This is because this approach focuses on the challenge to be overcome or the goal to be achieved, not the inputs to get there. This approach helps establish clarity at the outset, allows both sides to plan their cash flows, and can avoid often tedious discussions about why our team needs to involve two or three team members.

This approach does require for both sides to be willing to have early and candid discussions about scope changes.

Competitive bids: It may be helpful to get input from several consulting firms and to select the firm that provides the best approach combined with the best price. This approach works so long as the challenge and goals are well defined. In our experience, we can achieve the best results when the client remains open to changing its approach, both on how it wants to work with the external firm and on its selection process. Rigidity often provides a result that falls short of what the firm hopes to achieve. I remember vividly receiving a request for proposal (RFP) to advise a firm on changing how partners are paid; I had to go as far as advising the managing partner that his partners would likely depose him if he insisted on the methodology provided in the RFP. We then could suggest an alternative approach that ended up not only saving the firm money but also achieved a high-quality result.

Approach, methodology, technology: We distinguish between approach and methodology that the consulting firm intends to apply to the work at hand; both are very important. There is a big difference in approach and result among consulting firms that labor through structured workshops, rely on a lot of data mining, or rely solely on the "grey hair" and experience of its consultants. Each approach is appropriate sometimes, and likely a combination will help achieve the desired outcomes.

The methodology that a consulting firm applies is equally important. This is because the field of consulting does not have an easy reference point similar to codified law or generally

accepted accounting standards that define lawyers' and accountants' advice they provide to their clients. Experienced consultancies continuously refine their methodologies as their main reference points in how they provide and tailor advice to help solve their clients' challenges. For example, we often rely on a proprietary assessment methodology that allows us to get to the heart of any professional services firm quickly; the methodology combines the Balanced Scorecard, Intellectual Capital, and the McKinsey 7S, and is uniquely suited to law and other professional services firms. We also have developed a certain way of designing our partner workshops in a way that is particularly engaging (and disarming!) of highly intelligent and equally critical law firm partners.

Proprietary analytics technology plays an increasing role in consulting projects on the operational end. This includes legal project management, law firm cost management, e-billing effectiveness, and the like. Less "legal" areas include pipeline effectiveness analytics, talent turnover cost projections, and robotics /intelligent process automation implementation.

In short, the firm's approaches, methodologies and technologies need to be appropriate for the challenge to be overcome or goal to be reached, and both approach and methodology need to resonate with the law firm's approach, culture, and way of doing business.

Additional things to expect in a proposal:

In addition to scope and fees, any proposal should contain a clear understanding of what value-add the law firm seeks to gain from the consultancy's involvement. Measuring this value-add sometimes is simple ("help us achieve a reduction in WIP days by 20 days"); sometimes it is not ("help us overcome our non-confrontational partner culture"). Where hard financial measures are difficult to come by, law firm and consultancy could agree at least on a qualitative indication of what the client hopes to achieve.

The consultancy also will usually spell out a short track record that proves the consulting firm's expertise in handling similar issues. Where relevant, specialist, or professional qualifications of the team members also should be explained. In our experience, it is helpful to have a team of several qualifications working with a client organization, whether this is in consulting or in accounting, psychology, finance, law, economics, or banking, just to name a few examples.

Terms of business should include assurances of confidentiality of your sensitive information for a number of years. It is also common for consultants to ask that the client's name be included in their pitch materials but, if it's non-competitive, to keep the nature of the work confidential. We do make proper introductions to existing clients once a new client has made the "but for" decision to work with us.

Some firms provide an unconditional satisfaction guarantee for most work. We are comfortable providing this because we are experts at what we do, and we can always deliver against the scope upon which we have agreed. This approach also sets up early discussions if there is dissatisfaction looming instead of a soured relationship at the end of the engagement.

A Final Word on Consultancy

A statement of the blindingly obvious is that no law firm should seek to spend money unnecessarily on engaging outside consultants. Some larger firms have dedicated internal resources in order to help them find most answers for themselves. On the other hand, many firms

labour on, making unnecessary mistakes and missing opportunities because the MP or some of the senior partners have a jaundiced view of consultants. When clients have had poor experiences with consultants, this is so often for one fundamental reason: usually it turns out that the client and consultancy didn't work hard enough to clearly spell out expectations, outcomes, and value-add the work was to achieve at the outset of the engagement. Sometimes, of course, insufficient expertise by the consultancy of the subject matter, knowledge of the legal sector, or an understanding of how professional partnerships work is also to blame.

Faced with a real problem impacting competitive capability that is beyond the ability, experience, and resources of the firm to resolve in-house, the timely involvement of a properly selected consultancy can produce huge value, open up possibilities that were closed, and increase the satisfaction and sense of purpose of the partnership. Not to overstate the case, but having the right people on your side can even help ensure survival in the most intensely competitive markets we have ever experienced.

Law Firm Business Strategies

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Every successful business must periodically review and adjust its service offerings in light of changing market dynamics. New entrants pose threats to entrenched players; emerging technology automates at a low cost what was once a lucrative manual undertaking; and leaders must engage in continuous game theory, acting and reacting to changing circumstances and competitors' moves. In the global legal marketplace, rapid changes have increased the pressure on law firms and law departments alike to examine what and how they deliver legal services to clients, and leaders of these organizations must step up their game.

Redefining Strategy

In prior years, with near unlimited demand for legal services, legal services strategy required less rigor to identify new markets and new offerings. For law firm leaders, strategy was more closely aligned with branding and positioning — what do we want to look like in the future — with the expectation that whatever we choose to be, we will be. For law department leaders, strategy often followed the cadence of corporate strategy: decentralizing and aligning in-house counsel with business units one year; centralizing and consolidating legal services the next; but always with an eye on slowing the growth of overall legal services spending. As a result, the strategic planning process carried with it an unstated perspective: "We lawyers are here to stay, for what we offer will always be necessary." The growth plans that resulted were quite often tactical in nature.

For law firm leaders, there was little need to engage in an organized process of internal advocacy, aligning the firm's capital investments toward the practices, markets, and resources that generated the best return, for all practices generated increasing revenue year after year. Indeed, many firms have only recently begun to calculate profit margin at the practice or matter level, so it was often impossible or highly impractical to measure performance in any way other than top line revenue growth. Strategy plans, therefore, focused primarily on tactics to raise the firm's visibility in target markets, employing vague financial metrics to measure performance, with

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minimal accountability for the partners expected to deliver results. After all, so long as aggregate revenues exceeded aggregate costs by a comfortable and increasing margin each year, the details of how firms reached their targets were less critical.

Tactics also ruled the day for many in-house law departments, as there was a prevailing expectation that legal services are, and always will be, a cost center rather than a profit center. As a service organization to its internal corporate clients, the law department's reactive posture to whatever new strategy the corporate executives dreamed up left its leaders in a perpetual state of keeping up — hardly the best position from which to proactively organize and reexamine the role of the legal function.

The global economic recession that began in 2008 demonstrated beyond a shadow of doubt that legal services organizations are subject to the same economic realities of other businesses, and with declining demand — or, in the face of emerging substitutes and alternatives for the provision of legal services, at least declining demand for the old ways and old prices — law firms and law department leaders have finally recognized that engaging in more formal strategic planning is not just a good idea, it's also most likely the difference between a thriving organization and one that is facing an inevitable decline.

Law firm leaders must account for both internal and external factors: not only what practices we want to offer, but what services are the market willing to buy, and at what price? They should no longer be deluded by the notion that "all revenue is good revenue." Profitable revenue streams take precedence and deserve, and should consume, a greater portion of the firm's resources and investment. Law department leaders, in turn, have come to realize that senior corporate leadership simply do not find credible that legal costs increase every year, in all areas, at a rate greater than other corporate costs, and cannot be predicted with any confidence, and furthermore that reducing legal spend will inevitably expose the business to greater risk. So, with these realizations, what are they doing about it?

Asking for Help

Perhaps the most notable change in post-recession legal organizations is the increasing influence of business practices and trained business managers to help guide strategy and operations. To be sure, many law firms and law departments have long employed experienced and sophisticated executives, some with long experience in law firms and others from industry. But by and large, these voices were muted, as those tasked with practicing law have always been afforded the benefit of the doubt when building an infrastructure to support their needs.

Second-guessing a partner's demand for resources, or marketing tactics, or staffing preferences, or use (or avoidance) of technology tools, or approach to pricing and discounting, was deemed to interfere with and potentially impair the quality delivery of legal services and expose the law firm to client dissatisfaction at the very least. In recent years, a U.S. state bar ethics panel ruled,[2] in so many words, that even allowing a business person to have a "chief" title implies that businesspeople have undue influence over a law firm's practices, creating an ethical breach and a conflict between good business sense and the practice of law.

Leaders have discovered, however, that good business sense prevails. In law departments, there is a rise of legal operations executives tasked both with managing the day-to-day activities of the legal function and with finding ways to improve quality, throughput, and responsiveness while decreasing costs. Law firms have sought highly-experienced corporate executives to lead

[2] Opinion 642, TEXAS CENTER FOR LEGAL ETHICS, http://legalethicstexas.com/Ethics-Resources/Opinions/Opinion-642.aspx.

practices (sitting alongside the practice group chair who is, as often as not, deemed worthy of the role based on the ability to generate business rather than any observable capabilities in running a complex business) and the sophistication of those in longtime C-level roles, e.g., the CFO, CMO, or CIO, continues to increase as the duties of these functional siloes intersect at an increasing pace. One of the fastest growing roles in large law firms in recent years is the pricing director, which is often combined with supervision over project management and process improvement. However, law firm leaders are slowly but steadily recognizing that these are distinct business functions requiring unique skill sets.

Both law firm chairs and chief legal officers of law departments are increasingly turning to consultants to help them navigate the organizational and market changes. Just as some leaders who became rock stars and thrived in the earlier era are now embattled or have stepped off the stage, there are some notable consultants whose expertise was also attuned to a bygone era. Many, however, have long been encouraging firm management to adapt to the new economy, and can provide expertise gained from experience in industry or in other professional services fields and this expertise is in great demand. The role of a consultant may vary. In one organization, the management has a clear growth vision but need help selling it internally, and an objective and respected outside voice is additive. In another, the executive committee may have good intentions, but has a limited understanding of how to conduct a rigorous strategic review or initiate enterprise-wide multiyear business process improvement efforts, so they seek specific subject matter expertise. Still others may seek a consigliere, as trading ideas with a respected and independent peer can offer more benefits with fewer downsides than revealing confidences and asking for help from one's law firm partners or law department senior staff.

Change Management

A principal role of a consultant is to help the organization embrace change. There are plenty of good ideas, but many organizations falter upon execution because of a poorly designed process to engage stakeholders, or they fail to factor in the *how* when devising the *why* and the *what*.

The chief legal officer for a brand name multinational corporation recently solicited proposals for a consultant to assist her in reengineering the global legal function. During the open Q&A session with prospective consultants, she shared that while her deputies were aware of the initiative and had offered their unconditional support, none would be involved in the process beyond providing access to financial information and easing access to interview internal stakeholders. Furthermore, her internal clients in business management had no idea that this effort was under consideration, and their participation was deemed unnecessary to produce a quality recommendation.

We advised that the project was unlikely to achieve glorious success because key stakeholders, namely the deputies whose organizations would be most impacted by any reorganization recommendation, were not part of the process and would most likely, if not intentionally, obfuscate any investigation that didn't confirm the sensibility of keeping their empires intact. Furthermore, the internal business clients, whose service posture would be disrupted if a new law department organizational chart were to be sprung upon them, very likely have critical insights that could inform the analysis. She was incredulous, believing that the point of hiring outside consultants was to avoid distracting internal stakeholders.

An independent consultant can ask questions, interview stakeholders, conduct objective and unbiased research, and make recommendations without undue political influence. The best

outcomes, however, result from a participatory and cross-functional process in which stakeholders from across the organization are involved; when there is a clear communication plan about the effort underway that helps those not involved in the details stay abreast of progress; and when those who are impacted have the opportunity to see both how decisions are made and what data supports the various conclusions. This is often contrary to the paternalistic mindset employed by many managers, where information is closely guarded. The rank and file, perhaps via designated representatives, can and should have the opportunity to offer insights into the day-to-day operations of an organization, and to illuminate and often dispel beliefs leaders have about "how the sausage is made"; this creates more informed analysis and acceptance on implementation.

Building a Data-Driven Culture

Good business leaders and consultants rely on objective data to inform decisions. Even when data are limited, such as understanding how a competitor's cost structure impacts its pricing strategy, there is still a framework for plugging in whatever data are available and assigning a corresponding confidence level. Many legal organizations lack data. Law departments are beginning to understand the power of analyzing years of electronic billing records to identify quality and performance metrics and to distinguish between reliable and unreliable service providers. Law firms who have long treated "knowledge management" as a document archiving exercise now embrace cost accounting and experience tracking in order to better staff and price future services. Even so, data often still take a backseat in the strategic planning decision framework.

In a recent strategic planning effort for a mid-sized U.S. law firm, there was strong resistance to including any voices other than management committee members and top rainmakers. The partners felt that sharing any financial data, revealing any organizational "dirty laundry," or even exposing strategic deliberations to anyone outside this group would likely generate disastrous consequences. These partners had yet to learn what corporate strategists have long known: Insulating those who devise strategy will create an echo chamber. Strong opinions will override sound analysis; political considerations will gain undue influence; confirmation bias will lead to analysis that supports the status quo and minimizes negative input; and, not surprisingly, few decisions will be made that negatively impact the leaders devising the strategy in any material way.

In a law firm this challenge is particularly acute: Partners are also owners, and they feel they have a right to assert their voice in business strategy, so a common result is that partner preference prevails over sound business judgment. The largest waste of time in a law firm strategic planning process is to allow partners to endlessly debate esoteric concepts when neither side has supporting data, and no matter what's decided the partners have veto power if they don't like it. The single greatest approach to overcoming uninformed partner input is to have relevant data on hand that supports a conclusion.

To be clear, partners may make decisions that are not in their economic self-interest, and many do, but these can and should be conscious decisions. For example, many law firms continue to offer practices that contribute little to the firm's bottom line and provide minimal cross-sell or upsell potential. While allocating capital to a different practice may generate a better return, there's nothing wrong with maintaining a legacy practice that is closely tied to a firm's history or that occupies a longtime partner who is nearing retirement. Adopting sound business practices and

relying on data to inform decisions does not mean that *all* decisions must be based solely on short-term financial benefits.

It is often the role of the consultant to advise leaders when their data infrastructure is lacking… and it often is. Still, a good strategic planning framework can help both to analyze external and internal forces and to generate reasonably informed outcomes. But nothing replaces building a data-driven culture where information, and the processes and tools necessary to capture the information, are deemed critical to the organization's success rather than costly distractions.

Revisiting Incentives

The challenge of aligning and realigning incentives is greater in law firms than in law departments. A partner who has learned over time how to maximize the firm's compensation plan to generate a healthy income year after year is generally resistant to any change, even one that on paper can be demonstrated to be more lucrative for the partner. The inherent risk that a change might reduce a partner's take, even balanced against the corresponding potential to generate greater rewards, more often than not leads to stasis. A good consultant understands that when an organization's compensation plan is in conflict with the firm strategy, the compensation plan *is* the firm strategy. Devising a strategy requires an examination of current and potential incentives to determine where there is alignment and where there is conflict. Conflict must be resolved, and this can be done most effectively by demonstrating with reliable data the positive outcomes associated with new behaviors.

Law department incentives are also in play, however. In corporations where legal costs are allocated to the business units, the executives in charge care deeply about the management of legal spend. When these internal business clients participate in some variation of a 360-degree performance evaluation of in-house counsel, their satisfaction influences in-house lawyer compensation. It's now a fairly common factor in general counsel compensation that adherence to a budget has financial benefits or consequences. When devising a strategy to better serve internal clients, aligning the incentives of those managing the effort will help maintain focus.

Sustainability

As with any strategic plan, a law firm or law department must revisit it periodically. However, while tactics will surely change, and market dynamics may change the emphasis and direction of investments over time, the fundamental and underlying strategy rarely lurches dramatically in every three- to five-year cycle. A good consultant can help minimize the impact of short-term concerns and maintain the focus on matching the organization's long-term capabilities to the relevant sustainable market opportunities. The secret to effective strategic planning is not all that elusive. It requires a rigorous process, data to guide decisions, wide stakeholder participation to help pave the way for implementation, and thorough communication to ensure transparency. A seasoned consultant can help legal organization leaders adopt this approach and can contribute to the analysis and recommendations. Done well, the impact of a strategic plan will be meaningful and material. Done poorly, however, strategic planning can be a costly distraction.

Business Development, Coaching, and Sales

Silvia Coulter[1]
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Firms are faced with many challenges from a mature and changing industry. While some may say disruption is now happening to the legal industry, it's been a slow steady happening for 20 years now and is approaching the tipping point. Law firms have been challenged to find new ways to maintain profitability, to increase responsiveness, throughput, and consistency in the deliverable work product and to keep the fees reasonable. This brings us to today: a fiercely competitive legal landscape where we see three types of firms: "Leaders" — those firms that are well managed and making notable changes in the way they lead, manage, compete, and retain and grow talent and clients; "Followers" — those firms that may be well managed but are still trying to manage change by consensus and wait until others show the way before they realize they need to do things differently; and lastly, "Sanders" — those firms with their heads in the sand and for unclear reasons, are frozen in time, afraid to make the necessary changes to meet the market demands and the changing competitive landscape.

The Leaders know that focusing on the client is one key way to retain and grow revenue. Hiring business professionals who are experienced at guiding the firm's revenue growth sales strategy is essential if a firm wants to make the leap from firm-focused to client-focused and from Follower to Leader. The sales and marketing professionals may be very good resources to help a firm achieve the next level of profitability. First, it's important to note that without experienced and seasoned business professionals, most law firms, regardless of how successful they are today, will not make it long into the future. And it's not about just adding staff; it's about making these business professionals partners of the firm who are respected and listened to for their areas of expertise.

These individuals include professionals with strong backgrounds in finance, sales (including strategic account management), and HR (including talent acquisition, talent management, and leadership development). While we focus on sales in this section, without the "products" to sell — the legal professionals and their work, or the financial expertise to direct the firm into profitable practices (regardless of who gets bruised in the process) — the sales experts, and thus the firm, will not be as successful as they possibly can be. It's time to really respect these

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individuals who historically have been referred to as "non-lawyers" and include them in the decision-making about the strategic direction of the firm. Now onto purely sales.

One operational area of today's firms is the sales and marketing group that focuses on marketing, business development, and sales.

To clarify the difference between sales, business development, and marketing, here are some definitions. The term *sales* describes the process of pursuing a specific revenue opportunity. It is the face-to-face, relationship-building activity that will help build new business from existing clients and new clients, or direct contact with the end buyer(s). Direct selling in the legal industry has become competitive and strategic.

Business development is a "softer" side of sales and generally includes those activities that support sales efforts, such as RFP writing and responses; proposal writing; client relationship management support tools (databases that keep track of contacts); and internal support of the lawyers' sales efforts and needs, including BD coaching and training. In short, business development is closer to marketing than it is to sales on the spectrum. The terms are used interchangeably by some professionals to avoid the negative connotation they perceive the word "sales" may have. Business development managers support lawyers who are often in direct contact with the end user of the legal services.

Marketing is often described as brand-building efforts like article writing; speaking; attending conferences; or running firm seminars, public relations/marketing communications, website management, and other related activities that help raise visibility in the marketplace or support efforts to do so. Marketing research is another important area. Conducting research to help identify potential opportunities is a wise investment before spending unnecessary dollars in branding a firm. Marketing activities are those that support business development and sales efforts.

We sometimes describe sales as "one to one" and marketing as "one to many." These three terms — sales, marketing, and business development — are used interchangeably, often because there is confusion among legal professionals about the various activities, and also because the word "sales" can be seen as a very negative word among lawyers. The fact of the matter is, most of law firms' clients have sales teams, and all firms have one or more rainmakers. These people help to drive revenue and to bring new business to their firms. They perform in the same manner as salespeople in the business world.

An example of how these activities all connect is as follows. A lawyer writing an article or giving a speech (marketing activities) may continue to leverage the article or the presentation in a number of ways that expand their marketing use, including linking the article or presentation to the firm's website, adding them to one's LinkedIn profile, and/or sending them to other lawyers in the firm to share with their clients and contacts. An article may be used to generate interest in one's services through a more direct approach — in other words, as a sales tool. Reaching out to a prospective client with information about a current trend, regulatory change, or creative approach to a project is a sales outreach and offers the opportunity to connect directly with an individual to discuss their business goals and, therefore, anticipated legal needs. These marketing activities give lawyers the opportunity to use the time invested in preparing an article or speech (for example) and turning it into a sales opportunity.

To summarize, directly driving revenue is selling, and maintaining and growing relationships (or supporting those who do) is business development. Both are necessary to sustain a firm. Both have value and should be recognized.

For assistance with the next step — turning a contact into a client — more firms are hiring business professionals to help out.

A more recent development in the legal industry is the use of highly skilled sales professionals who are adept at helping others with sales strategy and sales planning. Often call "coaches," these individuals will assist lawyers to be more effective at building a book of business, developing a strategy to win a specific client engagement, or improving upon their existing business development efforts. Research conducted by Thomson Reuters/West shows that in 2012, about 4 percent of the reporting firms had structurally distinct sales departments from their marketing departments. In 2015, that number jumped to 14 percent of reporting firms. With titles like director of sales, business development officer, and client relationship executive, these individuals are helping lawyers to sharpen their sales skills and therefore their "win" rates to build new business opportunities for their firms.

While controversial for some firms, others — again, some of the Leader firms — are embracing these individuals, and see their expertise and experience as an essential element of their firm's client retention, client growth, and new business strategy. In some cases, these individuals act as internal sales coaches or partner with outside resources to provide the needed coaching support if demand is high. Emphasis is placed on helping to facilitate the sales process, including where someone may be along the spectrum of the sales process and developing sales forecasts that predict with some accuracy where the business and associated revenue will come from. The sales professionals' popularity is growing and many of them are partnering with outside sales coaches.

There are many individuals offering up their services as sales coaches. The individuals who have actual sales experience, with a proven track record and a history of working with lawyers in this capacity, will be the most effective at coaching. This is especially true when it comes to helping rainmakers grow their books of business. While many say they are good at coaching, few possess the necessary selling skills and prowess to help the top rainmakers increase their books of business. But of course, those are not the only individuals who coach. Scaling a coaching program to a specific individual's needs is what a good coach will do best. Just as some of the best athletes in the world have coaches to help them refine their performance, the same is true of lawyers and their coaches.

So, who do these firms hire if they are hiring sales people? Do they have to have a law degree? Do clients actually like being approached by a "non-practicing lawyer?" The answers vary depending on which firm is asked. Generally speaking, the critical skill is sales. One must possess the necessary selling skills to a) be effective at selling legal services and b) to "partner" with highly-skilled lawyers who may already be good at relationship-building.

Some firms believe it is necessary to have a law degree for two reasons: first, to add credibility to the individual in the eyes of the lawyers with whom she/he is working; and second, for their knowledge of the legal services (albeit general knowledge across the spectrum of services). We do not think it is critical to have a law degree in order to be successful at selling legal services. What is important, though, is that the firm is comfortable with this role and the individual, so whatever will work best for the firm is what should guide the decision about who to hire.

Sales, Business Development, and Coaching Resources

Products for tracking progress with sales include client relationship management tools such as SalesForce.com. The user interface has been greatly enhanced by a company from Australia and more information may be found at their website.

InterAction, a relationship management tool sold by LexisNexis, was the frontrunner for quite some time and remains popular particularly with the larger firms. Another popular relationship management/sales tracking tool is ContactEase, which is offered by Cole Valley. Their software has been the favorite of mid-size firms for more than 20 years. Some firms find it helpful to use a simple spreadsheet to track sales performance of individuals, practices, offices, or the firm. These tools, in general, help individual lawyers with their sales efforts by providing a format to keep track of the best revenue-generating pursuits. These tools have largely been adapted from business.

Lawyer coaching resources include LawVision Group, which has four well-established, experienced coaches, all of whom have been inside law firms and in sales.

There are some organizations that also have useful resources and conferences. The Legal Sales and Service Organization was founded to provide resources and a forum for members of law firms who focus on sales. Their annual conference, The RainDance Conference, brings together members in the legal profession whose job it is to oversee the sales and business development efforts at their firms. The Legal Marketing Association also provides tools and resources for sales and marketing members at firms. The association's focus is broader since it includes in large part sales and public relations and technology, their annual conference combines all the specialties along the spectrum from marketing to sales.

Online Content Marketing – Blogs, Websites, and SEO

Kevin O'Keefe[1]
CEO, LexBlog
LinkedIn

Blogging: Networking Through the Internet to Build a Reputation and Relationships

Good lawyers get their best work via relationships and word of mouth — always have and always will. The Internet has not changed this.

Blogging accelerates a legal professional's relationships and reputation. What may have taken a lawyer 15 or 20 years to accomplish in professional and business development is being accomplished by good lawyers, through blogging, in two or three years.

Take attorney Peter Mahler of Farrell Fritz, a mid-sized New York-based general practice law firm. He generates 100 percent of his business from relationships he has built through blogging. Mahler's New York Business Divorce blog,[2] which focuses on business dissolution matters, has enabled him to build a national reputation and referral base that allows him to work on sophisticated matters with high-quality clients.

Here are just four reasons why you should consider blogging.

- Nearly 60 percent of a typical B2B purchasing decision is made before even having a conversation with the provider.[3]

- Your future clients are Googling you. Seventy-eight percent of executive-level buyers go online to look for legal counsel.[4] What are they seeing?

[1] **Kevin O'Keefe** is the founder and CEO of LexBlog, a blog devoted to helping legal professionals establish networks, build online visibility, and create organic interactions via their respective contributions. In addition to LexBlog, Kevin also founded Prairie Group Trial Lawyers, a virtual law group, after a 17-year tenure as a practicing attorney. He has a B.B.A. and a J.D., and has spent almost 20 years serving as a board member on two Wisconsin area banks. Kevin's grassroots approach to legal networking is the reason why LexBlog is one of the largest legal blogs in the world.

[2] Peter Mahler, NEW YORK BUSINESS DIVORCE BLOG, http://www.nybusinessdivorce.com.

[3] Brent Adamson, et al, *The End of Solution Sales*, HARVARD BUS. REV. (July-August 2012), https://hbr.org/2012/07/the-end-of-solution-sales.

[4] Burkey Belser, *Heavy Executive Level Reliance on the Internet for Finding and Working with Professional Service Providers*, GREENFIELD/BELSER (Dec. 12, 2010), http://www.greenfieldbelser.com/articles/heavy-executive-level-reliance-on-the-internet-for-finding-and-working-with- professional-service-providers.

- Your competition is blogging. Attorneys from AmLaw 200 U.S. firms publish more than 750 blogs. In-house counsel are blogging and contributing to online publications.

- Be more profitable. Online business development is efficient and productive. The greater the proportion of work generated online at professional services firms, the greater their profitability.

Lawyers do not blog for visibility per se. If getting seen, alone, were the goal, every lawyer would have his or her face on billboards and in magazines. Visibility means something more for good lawyers. What do people discover about you and your reputation when they ask around?

Online, people are looking for your insight and commentary, how other leaders in your field cite and share what you are saying, how reporters are quoting you, and at which conferences you are speaking.

Your law blog delivers this form of visibility.

Blogging is more than writing content. It requires a strategy. You begin with the end in mind.

How Do You Develop a Blog Strategy?

You need not have everything resolved in advance. On some things, you develop a feel as you go — but here are a few considerations as you start.

- Identify your passion. If you're not passionate about an area of the law or business, what could you be passionate about? Blogging can be hard at times; make sure it's an area you enjoy and can get excited about. It may be privacy and cybersecurity law. It may be probate litigation in Florida. We're all different, but in blogging, a lot of the finer points on strategy come naturally to those with passion.

- What area do you want to excel in and be known for? What type of clients do you want to work for? Be aspirational, throw your heart over the bar, and let your body follow. If lawyers are developing local, national, and international reputations as a result of blogging, why not you? Want to be the go-to lawyer for immigration issues for international professional basketball players? Blog.

- Focus on a niche. Broadly focused blogs are more challenging. People do not follow blogs covering multiple areas of the law; they look for the "go-to" publication on a niche. Niche blogs get cited and shared more often. Their authors are more likely to be quoted by the media. Niches do not restrict your practice; niches open doors. "Niches lead to riches" is a worn cliché, but some things are a cliché for a reason. Here are a few examples of those who have done it right:

    - CommLawBlog[5] is regularly read by not only in-house counsel, but also by the FCC;

[5] COMMLAWBLOG, http://www.commlawblog.com/.

- Canna Law Blog[6] puts a Seattle law firm and young lawyer on the national stage in the burgeoning cannabis industry;

- New Miami Blog[7] puts an innovative general practice law firm square and center in the Miami business community; and

- Connecticut Employment Law Blog[8] has made a Hartford lawyer a household name for HR executives both state- and nationwide.

- Identify your audience. Clients, prospective clients, and referral sources are the obvious audience, but they are not the most important. Think about the people and organizations that influence this core audience: mainstream and trade media, bloggers, association leaders, influencers on social media, publishers, and conference coordinators.

- Who do you want to know that you exist? Who do you want to know personally that you don't now? Engage the influencers, and you'll grow your influence as they engage you in various ways in return. Unlike offline engagement, online engagement leaves a permanent record. When Googling your name or participating on social media, your core audience will see you cited by bloggers and the media, see your blog posts getting shared, and see you speaking at conferences.

Measuring Success

It's not primarily traffic, search engine results, and subscribers.

Ask yourself, "Am I growing my relationship network?" "Am I becoming a better lawyer?" "Am I establishing a reputation as a 'go-to' attorney in my niche or locale?" "Am I procuring not just any work, but high-quality clients?"

Chicago attorney R. David Donoghue of Holland & Knight is an example of the strategy, passion, and niche focus that makes for a successful blogger.

Working as an attorney for an auto supply company in Detroit, Donoghue wanted something more. As a young attorney, Donoghue didn't think he was seasoned enough to be recognized as a thought-leader, but discovering that one of the most popular legal blogs at the time was written by a smart, second-year associate, he figured he was just as capable.

Donoghue instinctively knew he needed a narrow focus for his blog to stand out. "I knew that I couldn't be a generalist; that no one was going to come to me for news he or she could get in *The New York Times*. I wanted to create the kind of content readers couldn't get anywhere else."

Six months after starting his blog, Donoghue walked into an IP-related legal function in Chicago, and people knew him. "This was a big deal — to have this kind of recognition as a relatively young lawyer in a big city. Because of my blog, I stood out." Donoghue has gone on to earn millions because of his Chicago IP Litigation[9] blog and now launched a second blog, Retail Patent Litigation.[10]

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[6] CANNA LAW BLOG, http://www.cannalawblog.com/.
[7] BILZIN SUMBERG'S NEW MIAMI BLOG, http://www.newmiamiblog.com/.
[8] CONNECTICUT EMPLOYMENT LAW BLOG, http://www.ctemploymentlawblog.com/.
[9] CHICAGO IP LITIGATION, http://www.chicagoiplitigation.com/.
[10] RETAIL PATENT LITIGATION, http://www.retailpatentlitigation.com/.

As you move ahead, here are tips to make your blogging experience more worthwhile:

1.) Listen to What's Happening in the World Around You

Blogging involves authentic audience engagement that requires you to listen (read) first and then talk (write) later.

For most bloggers, advanced listening tools are integral. You can set up listening tools to follow influential bloggers, reporters, and news publications. In addition to these sources, follow subjects relevant to your niche. The listening tools of choice for lawyers are Feedly, a popular news aggregator, and Twitter.

Reference and share what you have read while providing your own insight and commentary. More important than simply covering legal updates, joining the "conversation" and demonstrating that you are tracking developments grows influence and a following.

2.) Write to the Medium

This is a blog, not a legal alert, corporate whitepaper, or newsletter. The best law bloggers write conversationally and with personality.

Write on general news and apply it to your niche. For example, if a hurricane is hitting the Gulf Coast, write about how HR professionals should treat those missed workdays. With the Apple iWatch and other wearable tech, how does that stand to impact privacy issues? Unlike writing on the latest legislation, litigation, and regulation, the opportunities are limitless.

Proper formatting is important. Avoid long block paragraphs. People scan on the web, so use short paragraphs — one to three sentences long — and bullets as appropriate. Use block quotes to make sources stand out. Use subheads to break up sections. Don't worry about an exact word count, but a post as brief as 300 to 500 words may be appropriate.

Use images for every post. It's low-hanging fruit that many lawyers miss, but images show personality and subtly add a great deal of visual appeal. Posts without images are less attractive on social media such as Facebook, Twitter, and LinkedIn. Such posts are also less likely to be shared on social media.

Keep titles short (65 characters) but descriptive. Your titles determine how your posts get indexed on Google and how they are displayed in news aggregators. Do not pack your titles with keywords; just make sure they describe what you've written. Short, professional, and enticing titles get shared on social media.

3.) Be Proactive

Too many lawyers get tunnel vision when it comes to blogging, only reacting to the latest legal tidbits. Merely reporting on litigation, legislation, regulations, and narrow news stories in a reactive fashion won't cut it; you need to add value. Readers want to know what's inside your head. What's your take? What's it mean for them? What's coming next?

Depending on your niche and firm, being an advocate can work well. Immigration, food safety, employment, privacy, cruise, medical malpractice, IP litigation, and divorce lawyers have developed large followings because they take stands on issues that matter to their clients. They champion the cause of the people they want to represent. Lawyers who take a stand will be surprised at their ability to instill change.

If you are not going to engage in other ways, answer questions from clients and prospective clients. For every person with that question, there are hundreds of people asking the same question. It's essential to respect attorney-client privilege, but answering questions shows that you're listening and that you care. You will build trust, and people asking these questions on search will discover you on Google.

4.) Think About Your Audience

Effective posts are written with an audience in mind, even an audience of one. Make up that one person in your mind when you start to blog. Talk with them as a late-night talk radio host might, or as you might describe a newsworthy item to your neighbor.

Who do you want to know you exist? With whom do you want to build a relationship? What groups or industries do you want an in with? Talk with them. Blogs are a great excuse to make an introduction — sometimes even with something as deliberate as an email interview.

If you reach one person and they share your insight with their peers, you've reached a highly targeted, and potentially influential, audience.

When citing a blogger, reporter, or industry leader, follow up with a soft touch. "As a courtesy to you, I wanted you to know I referenced your post/story in a piece I shared with the readers of my blog (sharing a link to your post). Keep up the great work."

You'll get a "thank you." You'll get an opportunity to connect on LinkedIn. You'll get an opportunity to meet. How many of your competitors are meeting reporters of the local business journal or an executive or general counsel with a prospective client corporation for lunch as a result of something they wrote?

5.) Get the Right Setup

Some lawyers like to tinker, others do not. If you are not the tinkering type, get a professional's help and ongoing coaching and support. Though WordPress is theoretically free, so is rewiring your house.

A key point that lawyers sometimes avoid: A blog belongs on a site independent of your website. Blogs complement a law firm website.

You don't want to put a blog inside a website, but there are ways to make them complement each other: similar colors, a blog title, firm branding in the design of the blog being "published by the law firm," and strategic linking back to the law firm website and lawyer bios.

A blog on your website will be viewed as a marketing and advertising effort, no matter what you say or do. You will forfeit the mantle of expertise that an independent publication provides you. You will be limited in how you can use your blog for strategic engagement. In-house counsel do not publish guest posts on a website, yet they do them on an independent blog.

Blog posts on an independent site from your website on an independent domain get cited by reporters and other bloggers, shared on social media, and are viewed as more credible than posts on a website. You'll still get the attention and traffic you may be looking for.

Many solo lawyers and small firm lawyers with focused practices use a blog exclusively and forgo a website altogether. Who they are, what they do, and how to contact them are all set out on separate pages on the blog, just like on a website.

Design and develop for mobile first, desktop second. A mobile-optimized blog, preferably with a responsive design, is critical today. People, especially influencers, are consuming and

sharing content on tablets and smartphones. A responsive design ensures that content looks right on all of them. A responsive design is also important for Google.

Content distribution has moved beyond email and Google searches. Law blog posts, just like articles from *The New York Times* or *The Wall Street Journal*, are distributed socially via Twitter, Facebook, and LinkedIn. Social media is bigger on mobile than on non-mobile devices.

SSL, a standard protocol for ensuring that all data transmitted between the web server and browser remains encrypted, should also be deployed on your blog site. SSL is important for establishing trust, and ranking, with Google.

A simple and professional design with an eye toward publishing is key. A blog is not the time to have neon, large logos, lawyer pictures, and other bells and whistles. Design with the reader, on a smart-phone, in mind.

6.) Use Social Media

As of 2017, daily social media usage of global internet users amounted to 135 minutes per day, up from 126 daily minutes in the previous year.

Social media, whether it be Twitter, Facebook, or LinkedIn, is where people are spending significant time. Users of these three mediums tend to be older, highly educated, and more affluent.

Taking your blog to social media — to the people — is as critical to your success as it is for a reporter in well-known newspapers to take their stories to social media.

Social media is learned through trial and error. Legal professionals should focus on the major three — Facebook, Twitter, and LinkedIn. It may take a year or more to become effective and comfortable on social media. Begin with one at a time.

On Facebook, share your blog posts (in their entirety or in an excerpt) from your personal account, not your law firm's account. Facebook's algorithms will determine which of your posts are displayed on the newsfeeds of your Facebook friends. Facebook users see what is of value and relevant to them, they do not see every post shared by friends.

Facebook will work best for you if you are building a network of personal and professional friends and engaging (sharing other stories, liking, and commenting) regularly.

You will of course want to share your posts on Twitter. But it's most important that you liberally share other people's stories and posts. Not only will you establish yourself as a well-read authority on your niche, but you'll be seen as someone who "gives" more than they ask in return. Feedly makes this easy.

Include the Twitter handle of the people whose stories and posts you tweet. This way they'll see that you have shared their work on Twitter. Relationships and followers ensue.

When sharing your blog posts on Twitter, give a "hat tip" to the subject of your post and to any blogger or reporter whose story you may have quoted. They'll appreciate the coverage and your reputation will grow. A hat tip is given by merely penning "h/t @kevinokeefe" at the end of your tweet following the url.

LinkedIn is a growing as a social network for legal bloggers. Share your blog posts in the status update with a brief summary of your post. Your posts will then appear in the LinkedIn feed of users. Again, algorithms will determine what gets seen and by whom.

Look for the professionals who like and comment on your posts. Engage these professionals as appropriate. Some you may wish to connect with on LinkedIn. Others you may ask to get together for lunch or coffee.

Look at your blog not as the end game. Content is the currency by which relationships and a reputation are built. Social media enables you to use your blog to build relationships and a reputation.

Done right, blogging is the great equalizer for lawyers who have not had their day in the sun — yet. Rather than using the Internet as a broadcast medium, blogging enables good lawyers to develop business the old-fashioned way: through relationships and a word-of-mouth reputation.

Online Social Media Marketing

Nancy Myrland[1]
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What are Social Media?

We see social media referred to in two ways. One is a substitution for what is called social networking. You will hear people say, "Yes, our firm does social media," or "No, I have no idea what I'm doing in social media." These comments tend to refer more to the actions, which are social networking, than the platforms, social media, which leads to my definition of social media.

Social media are those platforms, or media, that are virtual, and that offer the ability to interact and establish relationships by being "social" with our intended audiences. The latter enables the former. Just like broadcast media (what we see on TV) is a platform that delivers a message, so, too, social media deliver messages.

The main difference between broadcast and social media — and it is an important distinction to make — is that broadcast media enable one-way conversations, and social media enable, and even thrive, when there are conversations between at least two people.

These media are relatively new to the entire world and are certainly new to the legal profession, where we tend to follow marketing and communication trends started elsewhere. The fact that we were not allowed to advertise or promote before *Bates v. State Bar of Arizona* in 1977 has resulted in our profession's adoption of many marketing practices to be a few years behind those outside the legal profession.

Why Is Social Media Important?

The use of social media in law firms at the individual, team, group, business unit, and firm level is the most comprehensive development in communication that the profession has seen since the advent of email. This statement might seem far-reaching to some, but it was not that long ago that firms introduced email as a new way of communicating with the outside world via a simple

[1] With an early career in sales, management and marketing in corporate America, **Nancy Myrland** entered legal marketing as an in-house marketing director for then Baker & Daniels, now Faegre Baker Daniels. Nancy founded Myrland Marketing & Social Media in early 2002, where she helps lawyers and legal marketers understand marketing, content, and social & digital media, and how they can fit together to help retain and grow their client base. She frequently consults, trains and speaks on LinkedIn and other social media, and can be found blogging at The Myrland Marketing Minute Blog at www.myrlandmarketing.com.

keyboard and computer. What was exciting to some was overwhelming and scary to others. This newfangled method of communicating with clients changed communication forever.

So too has the development of social media and the use of social networking, not only for attorneys and administrators, but also, more importantly, for our clients. Instead of the introduction of one tool (email), we now see the introduction of an entire set of tools, or media, that enable us to reach out and touch many people at a moment's notice, as well as to listen and learn from them.

This ability to communicate with the masses has opened up new opportunities for lawyers, whether they are solo practitioners or are one of 7,000 professionals in a firm. You now have tools at your disposal that provide ways for you to show your clients, potential clients, referral sources, media, and other important parties what makes you qualified in the areas in which you practice and what makes you different than other lawyers with whom you compete.

Even more important is that these tools allow you to see what is important to your clients and prospects; the issues that have an impact on them; the changes they are facing on a daily basis; and for you to then stay in touch with, if not ahead of, what they need and how you might fit into that equation. With this much opportunity, these are not tools to take lightly.

What Can Social Media Do for Me?

Let's take a look at a few of the main opportunities that social media present to you.

Positioning

It doesn't take long to realize that human beings are bombarded by thousands of messages every day and are finding it increasingly difficult to wade through all of those messages. You face a great deal of competition for that coveted space in the minds of your clients and potential clients, which is referred to as the *position* you would like to take in their minds when they have a need for services like yours. No two attorneys have the same goals, so where you might want to be thought of as having the position as the top lawyer in your practice area, one of your competitors might be fighting to take over what he perceives to be the second position in the minds of his clients. He might feel that is better than where he currently resides when it comes to being called to the table in your and his practice area.

The Level Playing Field

Social media can be the great equalizer because it can help accomplish your positioning goals. The playing field has now become more level than ever before. Just because you come from a firm of 2,000 lawyers with an amazing industry team that is devoted to taking care of the largest brands on Earth does not mean you will come across that way online. Conversely, just because you are one of 10 lawyers in a boutique firm tucked away in a corner in a tiny suburb of Minneapolis, Minnesota, this definitely does not mean that you can't showcase the skills and personality that exist in your firm in such a way that your potential clients take notice. You have an opportunity to stand out if you and your firm take charge of your online presence, and if you commit to learning and using these tools that seem much more daunting than they really are.

Relationship Building

There is no doubt that these tools can help peel back the layers of unfamiliarity that often exist for quite a while with clients and potential clients. When you take the time to get to know others online, it makes your offline, or face-to-face, communication that much easier and richer because you have already dispensed with the pleasantries and issues that often fill the initial few meetings you have in person. I have experienced this first- hand many times. When I get to know someone online first, by the time we meet face-to-face, we both feel as if we had already met and that we know a great deal about one another. This lessens the barriers to forming strong relationships, which is a definite goal of networking and business development.

One to Many vs. One to One

You also have the ability to form connections with more people at the same time, thus making your networking efforts much more productive and efficient. When you interact with others via social media, there is the potential for the friendly exchange to be witnessed by tens, hundreds, or thousands of others who are also getting to know you at the same time. This is not, of course, the exchange of legal advice, but rather conversations that help break the ice. Being able to communicate one to many is one of the gifts of social networking that you should be taking advantage of in your daily routine.

More Control Over Your Messages

Another very important aspect of social media involves controlling your messages in public spaces, in media, and in the marketplace, which has been and always will be critically important to communicating your brand. I remember my days as an in-house director of marketing at a law firm and the frustration I, our department, and many lawyers often had when we would work to place a story in the media, finally earning a mention in a story, and then discover that neither the firm's name nor any sufficient information about the attorney involved were included in that story. All that work for no mention! We understood why this happened, as journalists often shared that it was not their job to promote our law firm, or any firm. Their job was to tell the story.

Given all of that, one of the most important and most powerful reasons I can give you to spend time learning how to use social media is that you can now take better control of the messages that you and your firm need to send. No longer do you have to rely solely on publications to write and speak on your behalf, hoping that your 30-minute interview ends up with more than a five-second sound bite, or a sentence, or even a blind mention in an article. When you do get those, that will be gravy, but you can now craft those messages, and decide where and how you would like them to distribute them on self-owned media. You get to control the message and the medium much more than ever before. You become the publisher of your information, your brand, and your message.

The Process of Implementing a Social Media Plan for Your Firm

In the perfect world, your social media plan should fall out of a larger marketing plan, which then gives birth to a content marketing plan, which then helps build your social media plan, but having all of those pieces in place in a law firm is often a luxury. It is my job to eliminate the

inertia that can come from not having all of those pieces in place first, which is why we need to discuss how to move ahead with a social media and social networking initiative in your firm even if all of the other pieces are not in place. Progress can often be made by taking baby steps, and is often accomplished through a side-door strategy such as the introduction and efficient use of social media. We can tackle Rome later!

Here are the concepts I'd like you to keep in mind as you create your social media plan.

To get started:

- **Establish need**. Sell your firm based on the knowledge and need we have discussed here.
- **Strengthen your weaknesses**. If skills and knowledge are needed, hire them.
- **Make sure commitment is secure**. To go this alone with no support is a surefire recipe for frustration and even disaster.
- **Decide who will be in charge**. Too many cooks managing this process can cause frustration, a lack of focus, conflicting messages being distributed, and a lack of common vision. Conversely, many cooks moving in the same direction are a recipe for success.
- **Build social media guidelines**. These don't have to be rocket science, but they do need to take accepted ethical restrictions into account, as well as best practices for effective online networking.
- **Practice the 3 Cs**: Communicate, communicate, and communicate! You need to let everyone in the firm know what is going on at every step of this process in order to achieve buy-in and consistency. If not, dropping a social media plan on everyone after it has already been decided can cause dissention and a lack of ownership in the effort, which can be destructive.
- **Adjust expectations:** Know that using social media is not a cure-all for internal weaknesses. You can't communicate what you wish was happening in your practice or at the firm because it will come back to haunt you when your prospects discover otherwise.

The Process for Building Your Social Media Plan

Start with the basics. This process resembles the process you undertake to create a marketing and business development plan.

- Benchmark your and your competitors' digital presence.
- Set realistic goals based on existing plans.
- Decide how you are going to measure success.
- Decide what your social media brand is going to be.
- Identify clients, influencers, and advocates.
- Decide what position you are targeting in your clients' and prospects' minds.

- Create a strategy for each target audience you want to reach.
- Decide what messages you want each target to hear and understand about you.
- Create an editorial calendar.
- Seek training for those social networking basics and practices that need to be in place for all of this to work smoothly.

Final Words of Advice

Don't overthink it.

By this, I mean don't make it more difficult than it needs to be. You want people to come to know and trust you, and to understand how you can help them. That is one of the main benefits of social networking. It can pave the way for advancing your business relationship. Remember to act like you would anywhere else where you are in front of people.

Listen and speak to people.

Listen to what people are saying and writing online. Ask them questions, following up on what they've written or said. Share their thoughts and content with others. Be interesting by providing feedback and perspective on issues that have to do with your practice area. Have some fun with your connections, which doesn't mean throwing caution to the wind, but simply to show a side of you that is approachable and easy to talk to. Then, every once in a while, after you've done all of this for a time, you may have then earned the right and the trust to talk about yourself now and then.

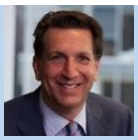
Play nicely.

Be sensible, kind, wise, and ethical in your online interaction with others. Don't get involved in heated debates and arguments unless that is the brand you have decided you want to convey online, and only then if it serves your practice well. Many use their keyboard and the safety of their digital screens as a buffer zone that allows them to engage people when they wouldn't otherwise do so if they were face to face. This is not a best practice.

Remember that social networking is a contact sport.

Social networking can't survive on its own. It takes more than one person to be effective. It is definitely not broadcast media where you shout and promote in a one-sided manner. It is a process of consistent interaction with those you care about in order to discover ways to serve them. Always strive to find ways to bring value to those you connect with, and you will earn a reputation as a trusted advisor much more effectively than had you only promoted yourself constantly, which can get *very* old *very* fast.

Litigation Communications in the Information Age: What Every Lawyer Needs to Know



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Introduction

The accelerated information revolution of the last generation is giving way to the nascent Artificial Intelligence (AI) revolution in which apps are already making rudimentary arguments in legal proceedings. As such, lawyers face obviously dramatic new challenges in litigation and other high-profile matters. How do we control the narrative amid ever-faster-moving media that hardly anyone can comprehend, much less command? The plaintiffs' bar, NGOs, and activist investors are among the leaders in the effective use of these new technologies, which increasingly put companies and their lawyers on the defense, often after it is largely too late to control the message.

This information revolution has changed the power dynamic. For our entire careers, information flowed from the top down through advertising, public relations, candidate funding, and lobbying. It was a *republican* form of communications; that is, a few groups of people served as gatekeepers to the masses. As a result, credible journalists, committee staff, and financial analysts were the purported truth-tellers. What they wrote, said, or did controlled the narrative. Today, we exist in a *democratic* form of communications, and the narrative comes from the other end — the grassroots. Information works its way up into the mainstream narrative, and that content determines how consumers, legislators, shareholders, jury pools, and influencers think, feel, and act. The difference between republican and democratic forms of communications is akin to the difference between monologue and dialogue. Listening — social, critical, risk-mapping — is now essential.

In this environment, litigation (real or potential) is only one concomitant factor that C-Suites, boards of directors, and law departments must weigh in order to determine a best course of action. Today, those decision-makers have to manage risk in an exponentially broader context where, for example, an inopportune firing or victory in a court of law can be disastrously Pyrrhic if it ignites a social media firestorm or social activism that may lead anywhere from adverse regulatory or legislative initiatives to consumer boycotts. As such, any decision regarding high-profile

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litigation — e.g., to settle or not to settle — must be made with a more prescient eye to the business consequence of that decision. If technological innovation means anything, it means transparency and speed. Anything that is not sealed will almost instantly become public.

Lawyers can, amid this maelstrom, carefully limit their "proper" roles as advisors on legal liability. They can, if they want, dutifully take themselves out of the larger fray, separating themselves from functions more traditionally associated with "corporate communications," "investor relations," "risk management," "government relations," etc. Alas, those who do so will simply make themselves less relevant. As challenging as it is, wiser corporate leaders eschew silos; they are moving instead toward seamless corporate teams that bring multidisciplinary skills to bear in order to determine what's coming next and prepare for the alternative contingencies. Of course, with this seamlessness comes the realization that the lawyer cannot — and should not — always control the decision, much less the internal conversation.

Two recent watersheds underscore the anger as well as the unprecedented empowerment of diverse stakeholder segments. First, with Donald Trump's election, a "Rule by Tweet" was ushered in. It soon became obvious that any company — large or small, public or private — is potentially implicated in a complex political dynamic and cast as hero or villain, depending on one's point of view, with respect to a potentially infinite number of policy issues, from trade to immigration. All that is required is an accusation — *any* accusation — on a topic that fits a preexisting bias held by an angry mob, especially a digital one. The days of reflection and discussion in the marketplace of ideas is over, replaced by so much shouting (sometimes all in caps).

It isn't, of course, just the Presidential Tweet, a tactic that quickly lost its power — a power, by the way, initially considered so vast that the Eurasia Group listed it as the number-one enterprise risk at the start of 2017. In any event, fake news has supplanted real news as an essential risk index. We have gone from the inveterate "two-source" rule used by journalists to verify their facts, to the "one-source" rule that was the norm during the Clinton impeachment, to the "no source" rule that governs today. Risk is no longer about what is real, but what is perceived.

The second seminal business event of 2017 occurred some months later when the United Airlines scandal further underscored the extent to which major corporations remain woefully ill-equipped to manage crises in any marketplace where crises have become the norm. As the stakes get higher, it is painfully obvious that such companies have made little if any perceptible progress in terms of evolving best practices to meet the importunate demands of global communications. Companies, it seems, understand the power of digital and social communications in building brands, but not so much when they are under attack.

The United example featured a CEO, Oscar Munoz, who previously showed powerful and decisive crisis leadership at the helm of freight rail CSX. Yet, under Munoz, United waited a full 17 hours after the horrific "sanctioned mugging" video first gained traction before it responded in any fashion — waiting, in fact, for the *Chicago Tribune* to cover the story. In other words, United remained silent until traditional media determined the matter important enough to merit the airline's attention. In the digital age, that's like resting the company's future on a sundial. Based on Mr. Munoz' stellar leadership over the years, the inevitable conclusion is that, if such a disaster can happen at United, it can happen anywhere. Past is no longer prologue.

Equally important was United's myopia; the airline saw the problem as mainly an investor relations issue, on the one hand, and as a uniquely American event, on the other. Yet profit alone cannot dictate wisdom and an exclusively American lens misses the instantly global nature of crisis in the digital age. By the time United finally figured out how to respond properly — three full days

into the expanding crisis — 20 million Chinese per *hour* were downloading the inculpatory video. That was a dangerous critical mass in United's most important expansion market.

In this context, multifaceted and multicultural crisis teams are critical. When response time is limited to hours, if not minutes, teams that know and trust one another *before* the adverse event happens are critical in providing an indispensable 360-degree perspective. Do you already know your crisis team and trust them enough to rest your future with them?

Suddenly, if lawyers are to be considered a truly strategic asset during a potentially high-profile legal matter, much more is required of them than simply telling your client and team, "No comment" and "Stay off Facebook." When liberty, market share, and regulatory fines are at stake, the brand is paramount and the strategy must be, well, strategic. The legal issues are critical, but they are part of the equation and not necessarily the sum.

May 1, 2012 – The Revolution Will Be Televised

It's not just the audience, but the Internet itself that is also constantly changing to an extent that demands persistent attentiveness to the actual means of communication. The challenge is therefore both strategic and tactical; in other words, companies must have both a game plan and a familiarity with the ever-evolving digital tools by which that plan can be made to succeed.

It's not about the new "shiny" thing, but rather about separating the wheat from the chaff. Of all the hundreds of new media platforms and hardware, which ones change the way in which people receive and share information? Both receiving and sharing are pivotal; receiving, for the obvious reason that democratized news choices undermine the nearly three-century-old Fourth Estate oligopolies. But sharing is equally powerful because how information is exchanged changes the equation. If a news consumer can now share their stream of information, they have the power of William Randolph Hearst ("You furnish the pictures, and I'll furnish the war") to develop and sway trends. Since truth is usually only what people learn *first* — "A lie can travel halfway around the world while the truth is putting on its shoes" — you concede the argument by ignoring seismic trends.

On May 1, 2012, the trend grew ever more seismic when Google changed its analytics to give optimization precedence to spoken versus written content: i.e., that content which shows up first at the top of their dominant search engine listings. (If you want to keep something a secret, the safest place is the *second* page of a Google search result.) Changes in analytics happen maybe 100 times a year at Google. It's always kept secret until it's implemented, so no one can game the system. But the May 1, 2012 change was historic because, for the first time, audio changed the game. Suddenly, videos could control the narrative of a case or a controversy largely by controlling the search results. While the defense bar still has largely not figured it out, the plaintiffs' bar and activist investors merrily control the narrative in matter after matter.

It was precisely the sort of decisive "event" that should inform how lawyers and corporate communicators go about their business. At a crucial moment during a litigation, crisis, or other brand-impacting scenario, global corporations and those who advise them must know, not just what to communicate, but *how* to communicate it. Emotions, not facts, control the narrative and therefore jury pools.

The Three Lessons of the Information Revolution

There are three critical takeaways from this transformative shift in communications. While they may seem obvious, they are indeed so transformative as to demand separate consideration.

1. **Speed:** To say that the Internet has sped up our lives is to repeat the painfully obvious, yet we usually miss the real lesson because we think it's all about doing the same thing, only faster. But that is a drastic misreading of the fact and a sure-fire recipe for disaster. Speed really means that we can no longer base litigation or crisis communications strategy on being *reactive*. We must now enter the far riskier, unfamiliar world of the *proactive*. There is no longer any time to be reactive because minds are already made up by the time you have done so.

   This new proactivity doesn't necessarily mean going first, and it certainly doesn't mean taking unnecessary risks. Agile proactivity entails instead the kind of in-depth and substantive risk assessment that informs you as to what's going to happen next. All communications strategy must be built on the kind of risk intelligence that is gained from a far deeper dive than Google searches or a discussion with traditional Enterprise Risk Management professionals. We're talking instead about the resources, human and otherwise, that can spot the canary in the coal mine.

   For Wells Fargo, Mylan's EpiPen, fracking, the TransCanada Keystone Pipeline, Fox News litigation, offshore drilling, sugar, and thousands of other matters and entire industries, there are key patterns evident months or years ahead. You must look for them; understand who's saying what, from where, and why. Who is the first to tweet? What is the URL? Who is funding it? Are they purchasing Search Engine Marketing (SEM) advertisements? Where is the information coming from? What does relevant NGO fundraising cover? Who's behind the video? To which journalists are your adversaries pitching their sides of the story? Who's hacking whom, and what information has now become available? In all cases, *intelligence informs strategy*. Forewarned is proverbially forearmed, and everything else is guesswork.

2. **Transparency:** We all claim to be in favor of transparency until we're the one called upon to be transparent; our enthusiasm then wanes. Information leaks as hacks are veritable 100 percent inevitabilities. The reason for the hack may have nothing to do with the litigation or matter that you're working on, but once in the ether, the information is fair game for anyone to exploit, including your adversaries. If you don't want it public, don't write it down. Difficult advice to follow some of the time, but a very sound practice all of the time! If you have written it down, if you're running that risk for whatever sound business or legal reason, anticipate in your contingency planning how you'll respond when the worst happens and the information is shared publicly from the least flattering point of view.

3. **Anger:** We've mentioned anger as a decisive component of the New Normal; let's understand what it means. People are angry in ways we have not seen since the 1968-72 period at the height of the anti-Vietnam War movement, and at times it feels like we are moving toward an 1856-1860 pre-Civil War environment. Trust is at a premium, and your

corporate trust bank may be overdrawn. Indeed, the five big tech companies — Facebook, Apple, Amazon, Netflix, and Google (or FAANG) — are moving from gods to robber barons before our eyes. No time on Mount Olympus is ever permanent, as trust is now measured in terms of days and weeks: Yesterday, you or your client might have gotten the benefit of the doubt. "That's not the company I've come to know and trust," said your stakeholders. But now they're wavering and, in a week or two at most, you will be perceived guilty until proven innocent.

Now, more than ever, you have to use your peacetime wisely and build a brand like Hershey's or Harley-Davidson's. Such companies have armies of true believers who *know* that problems are the exception rather than the norm. To aspire to this favored circle, you have no choice but to build your trust bank now, before the litigation or crisis tests your brand loyalty. Once the blockbuster lawsuit is filed, the lawyers need to ask the communications professionals what they are doing outside of the litigation to earn trust in an environment where trust is no longer a given.

What Separates Success and Failure in High-Profile Litigation and Crisis?

In working on hundreds if not thousands of high-profile matters around the world, we have found three consistent rules that separate success and failure:

1. **Fear:** Companies hire senior executives for their monetizing skills in order to grow the company. They spend precious little time during the hiring and integration stage focusing on the descendant side of the curve. How will they do in a crisis? Most people have never been in the foxhole and they are just not at their best under fire. Even in the military, when highly trained soldiers go to battle, it is assumed that 50 percent won't discharge their weapons when they need to. If your teams are not tested, haven't prepared for a crisis, are not accustomed to making rapid, critical decisions with the information at hand, they will be ruled by fear. Fear never allows for the best decisions. Only through practice and drilling do we develop the instincts that overcome the power of fear.

2. **"What got you here won't get you there.**" Because the careers of most crisis team members are all about building the company and success, their perception is to just keep doing more of the same in a crisis; presumably, that will work as well as it did prior to the crisis. The presumption is natural, but it's wildly unjustified. In a high-profile matter, all the rules change. Your audience is different because it's now comprised largely of non-customers and non-shareholders. You are no longer *trusted*. Prior to the high-profile event, all you needed to do to be on the side of truth was to say you are. Now, you need others to do the evangelizing and it's all subject to proof in any event. Nor is everyone within the company rowing in the same direction. The longer a crisis goes on, the likelier it is that people will start worrying about their division, their personal liability, and, of course, their job. It's no longer the brand first, no longer command and control. You need to look at the situation differently, and act differently.

3. **"Why we can't."** These three simple words are the most damaging at the critical moment of a high-profile matter. A smart company gets its crisis team together and HR makes a

suggestion about firing someone and legal will say "why we can't." Or legal will make a suggestion and IR will say "why we can't." It goes on and on until the moment of opportunity when a sacrifice, an apology, an act of contrition, or simply generosity would contain the cancer. But at that moment, no team member has the stomach to take the risk and recommend a sacrifice, be it a temporary dip in share value, a product recall, or the firing of a division head. So the team makes no decision at all until they can "gather all the facts." Alas, in a crisis, such moments of opportunity do not return — and failures to seize such moments are far commoner and far more damaging than most of our less-than-perfect decisions. "Why we can't" is the opposite of opportunity.

The Eight Rules of Litigation and Crisis Communications in the Information Age

To some extent, the following best practices are not new; they evolved under circumstances that were exigent at the dawn of the century during the early stages of Internet influence. That said, they are more important and more urgent now than ever before. Companies and their counselors who, at that earlier juncture, saw the need to fundamentally rethink their priorities are today reaping the benefits. But most companies must now play catch-up, a task all the more daunting in light of the accelerated speed with which the social media are expanding even as regulators, plaintiffs' lawyers, activist investors, the media, and NGOs relentlessly up the ante.

Daunting or not, 21st century businesses and their lawyers have no choice but to play the game. Here are a few essential rules of that game.

Risk Intelligence – The New ERM.

It is worth repeating: *Intelligence informs strategy*. Almost all defense lawyers and even most communications professionals operate on what they have learned over a lifetime. As valuable as that has been, it means they operate backwards in a pre-Information Revolution-style.

Nixon opened relations with China by taking only a dozen reporters with him — yet he was assured of communicating with all of America. You simply cannot do that today.

When truth was dominated by those with access to treasured gatekeepers (journalists, op-ed writers, think tanks, financial analysts, Hill staff, etc.) and those who had the largest advertising budgets, strategy was easy. In fact, it really wasn't strategy at all, but rather a series of tactics: press conferences, press releases, photos, advertisements, or a liberally oiled echo chamber. You were a communications genius if you knew to focus on the morning or afternoon newspaper or with which of the three television networks to advertise. Today, though, real strategy matters. If it doesn't feel genuine, it doesn't work.

Too many companies still look at Enterprise Risk Management as if it's about studying history and extrapolating the future. While that has a place, it misses the most significant side of the Ouija Board. In order to respond ASAP, you must know ASAP what you'll have to be responding to. To that end, the legal and/or crisis team should have regular access to risk experts who deploy the most efficient technology in order to monitor the digital and social media and to develop risk maps. Effective risk-mapping identifies, from whom trouble is likely to arise, what they're saying, and what their weaknesses are. If you understand who your adversary is and what motivates them, you can develop strategy. Without it, you are just guessing.

Once you know what you're dealing with, then and only then can you engage in strategy. In industry after industry, high-profile matter after high-profile matter, litigation after litigation,

defense lawyers digest tons of information but almost nothing as to the deep background of their potential or actual adversaries. Yet there are highly sophisticated plaintiffs' lawyers who know precisely with which reporters to plant leaks in a given industry in order to effect maximum pain. Or how to control search engines to dominate results. Or when to release an emotion-packed video to change perceptions about who the villain and hero are. Or how to engage state attorneys-general, thereby mounting a highly effective one-two punch of regulation and litigation. Some activist investors are so savvy in both the traditional and social media that they can clandestinely deploy NGOs in a public attack in order to advance their private agendas. Absent an awareness of these subtle powers, targeted companies are only punching at shadows in their attempts to keep pace and influence the governing narrative.

Here's the key: This level of risk intelligence is not about "big data." It is about *human intelligence* in the study of social media users, trends, and activities; it's about looking at lobbying disclosures, foreign country representations, and other public databases to see who's in bed with whom. It includes the study of foreign regulation and litigation to discern patterns and practices; it's about political donations and activities and reviewing dozens if not hundreds of other sources in order to disclose the intricate interrelationships of relevant parties. Once you understand the factors that drive your adversaries, you can develop the strategies to win.

With a robust risk monitoring and analysis system in place, decisions can then be made about the importance of any mention — which can be simply ignored, or publicly refuted, or deciphered as an early warning sign of a much larger storm that might be brewing. Certain bloggers are "high-authority" and usually justify the team's attention. Certain patterns may emerge when, for example, an outlier, earlier dismissed as a crank, now seems to be gaining attention and credibility among more traditional audiences.

Teams.

Quick, who acted more quickly — Jim Burke in the famous 1982 Tylenol murders or Tony Hayward in the 2010 BP Deepwater Horizon oil spill? We all want to say Jim Burke of Tylenol, as that remains the gold standard for crisis response to this day, some four decades later. The late Mr. Burke was a hero and his team did respond brilliantly as it put people over profits, but they did not act with literal speed. In fact, they were not allowed to do so; Johnson & Johnson was prohibited by the FBI from acting amid fears of copycat activity. Five days in, however, Burke insisted on acting and the rest, as they say, is history. Tony Hayward at BP not only acted instantly, but also chose transparency as the best way to establish credibility. This comparison is not meant as criticism in any way toward either company or leadership, but instead a testament to the speed of change. The fact is emblematic: In the early 1980s you could wait five days and still claim the mantle of instantaneous response — while, three decades later, literally acting instantly, you still pay more than $20 billion in fines, incur $62 billion in total costs, and get no credit for it. The difference bespeaks the exponentially accelerated speed of communications as well as the necessity to know and trust your crisis team now, long before the high-profile moment actually happens.

When the phone rings at 4 a.m., it's seldom good news. From the moment a company is alerted to a crisis through the moment it finally fades from view, decisions are required at the speed of the *crisis*, not at the speed of *decisions* based on fact-gathering or discussions of legal exposure. Yes, information is as critical as we have suggested, yet you are still going to have to make decisions about issues that the public deems critical before you've gathered all the facts.

Needless to say, you never publicly communicate what you aren't certain of, nor do you ever comment on something in a way that will limit your legal options. But that doesn't mean some comments shouldn't be made or that allies can't provide important and timely messages. The bigger the crisis — the more time zones it impacts, the faster it moves without the benefit of any downtime — the more you already need to know and trust your response team if you want to get ahead of the game.

In an age of permanent crisis, crisis teams cannot be ad hoc; businesses must operate on the assumption that deployment isn't a matter of "if" but "when." Initial leadership begins at the top, in the C-Suite. Absent leadership from that quarter, it becomes a fiduciary duty of the board to demand that crisis teams be selected and trained, and to ensure that the make-up of the crisis team reflects the aforesaid multidisciplinary spectrum, which also includes IT and social media expertise as well as legal, IR, HR, financial, etc. Ideally, though, the team should be a direct arm of the CEO, an elite squad of trusted managers assigned by him or her, and who, when the crisis occurs, will help maximize the CEO's impact as a leader.

In this process, in-house counsel is well-positioned to support and inform the team formation. As lawyers with presumably close involvement at multiple operational levels, they have a unique grasp of corporate liability on a day-to-day basis along with a telescopic view of the trending laws, policies, and more that signal future liabilities or opportunities in the making. In-house counsel is indeed better positioned than ever to play a leadership role to both support compliance and help create safeguards against the sort of systemic breakdown that, for example, happened at United Airlines.

Formal training should begin immediately upon the formation of the team and should include tabletop exercises, role-plays, and test runs. The larger benefits are manifold as an essential trust is built among team members. Protocols and lines of intra-team communication are established; new trends are reviewed; new contingencies evaluated; and new Internet tools assessed. In most cases, the tabletop exercises are best conducted by outside communications counsel who can bring a fresh perspective to the problems themselves, with a judicious eye as to how well the organization is actually prepared to respond.

Here are three rules to keep in mind about your team:

1. **Go/No Go:** Gene Kranz, former NASA flight director at Mission Control, effectively used "Go/No Go" decision making. The biggest mistake crisis teams make is *failure to make a decision*. Paralysis by analysis. They lose whatever advantage they have (that of acting quickly, no matter how bad the situation) and let others — adversaries, plaintiffs' lawyers, victims, journalists, etc. — control the narrative and thereby write the history. Fear of failure negates the power of action.
2. **Team Size:** The team should be as large as it needs to be to actively invite multiple perspectives, but small enough to act efficiently. Speed and decision-making are key.
3. **It's the DNA:** You cannot anticipate or plan for all contingencies. Don't try. What you are looking for in your team is chemistry and DNA. A team that trusts and knows one another understands the right priorities. Having people comfortable in the crisis-planning process results in a well-functioning team adapted to the situation at hand. You'll know you have a team with the right DNA when they are not stressed by the need for rapid decision-making — and when they all genuflect to the corporate brand, not their own fiefdoms.

Privilege.

While the ultimate question of what is privileged is evolving and determined by jurisdiction, it is always wise to anticipate attempts to pierce the veil. By hiring a litigation and crisis communications firm *early* in the process, and integrating it as part of legal strategy development, you show credible intent to protect the privilege. It may not be a perfect defense, but it helps make the argument (should it later be needed) that any pursuit of information must be limited to a specific narrow scope. The failure to build this wall invites plaintiffs' lawyers to engage in discovery about *everything* that your internal corporate communications officers and agency of record may have discussed with the lawyers, even if entirely unrelated to the case. Don't make trade secrets fair game in a fishing expedition.

The agency of record must be included and protected. Their outside perspective is essential; corporations in or out of litigation and crisis must, after all, see themselves as others see them. To that end, the most successful risk management successes have typically entailed a close working relationship between law and communications firms. In most instances, the law firm thereby plays an additionally needed role with best-effort attempts to extend privilege to the communications or risk management experts with whom they partner.

Chronology – Exposure – Gating Events.

Thirteen years elapsed between the first anti-GMO site on the Web and the food industry's first pro-GMO site. Wells Fargo had five years' notice after the *Los Angeles Times* published the first story on fraudulent accounts. The energy industry had nearly a decade of notice after the Sierra Club removed official notice of its support for the low carbon-footprint fracking extraction method from its website. The very next year HBO released the film *Gasland*, which lambasted fracking; six months after release, the movie's website topped the Google search engine for searches of the word, "fracking." A movie had morphed into a movement and a 40-year energy extraction method supported by environmentalists had suddenly become a target. But it really wasn't sudden at all.

Crisis moves so quickly, teams need a written *and* drawn chronology in order to comprehend what is happening. Once the stars in the constellation are seen in order, many things come into focus: early warnings, fact patterns, legal exposures, credible responses, allies and adversaries. Such a chronology may seem too basic a tactic to justify mention in a larger discussion of strategy, but it is a kind of strategy itself. The very fact that teams engage in this exercise ensures that every crisis team member is on the same page (literally). We all know what the facts are and when they happened. We can now anticipate what's likely to come next; just as important, we see our crisis the way our critics do, with its tsunami of information.

Don't stop with just the chronology. Map out legal risks and liabilities in order to clearly decide between taking a brand/market risk and a legal one. It's a skill that will prove crucial when the time arrives to decide on a sacrifice. Follow up by creating a calendar of gating events, mainly future public events that may impact your private crisis. What's dead ahead in the equity markets, in Congress, in the states, or anywhere else a new news cycle may arise? The answers will help you see — and plan for — the near future rather than be taken prisoner by it.

Welcoming Dissent.

Strong crisis teams need to genuinely invite dissent because that's how ideas and strategies are fully vetted — and the failure to do so almost guarantees that the communications strategy will miss the mark.

Once the team understands chronology; potential legal, brand, and investor liabilities; and an approximate timeline of near-future gating events, then it becomes easier to manage the various priorities and biases. If the potential legal liability is greatest, then legal priorities lead. If, on the other hand (and I know this is anathema to many lawyers) brand vulnerabilities are the most threatening, then brand leads. If it is share value, then IR leads. The lead disciplines do not dominate at the expense of all the others, but they are given priority consideration.

In a meeting I was part of during the Gulf oil spill, Tom Campbell, a partner with the Pillsbury law firm, who was representing the interest of a foreign company invested in the Gulf, identified the legal liabilities after the fact-gathering and chronology were complete. He then said: "We calculate the company's potential federal and state liability to be $2 billion. I don't see any other area — IR, HR, PR, brand, etc. — with higher liability. But if I'm wrong, please *tell me why I'm stupid*."

Such integrity, transparency, and fairness are rare in crisis teams, especially among the lawyers on those teams, but we're talking about the organization's highest aspirational value. It says that the best, most practical strategy wins. Winning everything isn't possible, except in the movies. Instead, successful crisis resolution is all about making the decisions that minimize the sacrifice that the client is going to have to make.

"Tell me why I'm stupid" was not just a factual question — i.e., does anyone have a better argument to make? — but an emotional one as well. Campbell was demonstrating leadership through vulnerability. It is a risky action style, but it is demonstratively courageous and it allows your team to be at its best. Telling truth to power intimidates even the most senior and experienced executive. Inviting dissent requires more than asking for it. As leaders, we need to demonstrate that there is no recrimination for disagreement and that open discussion is warmly welcomed. Remember, the ultimate arbiter is not the ego in the war room, but the value of the brand, minimization of the legal liability, and responsiveness to the marketplace. Nothing else matters.

Sacrifice.

When companies drill down on chronology, garner facts, measure liability, and identify adversaries and allies early in the high-profile litigation or crisis process, they enable their teams to assess the cost and value of assets, both real and goodwill. While crisis teams have a strong sense of the cost in terms of dollars and cents, their newer audiences in a high-profile matter — i.e., no longer just customers and shareholders but, now, regulators, NGOs, motivated citizens, plaintiffs' lawyers, media, and others — have their own sense of justice. Nothing makes a story fade from view faster than a meaningful sacrifice to appease that sense. By sacrifice, we mean doing something that costs you in the short term and that this new, expanded audience will appreciate enough to no longer consider you the villain.

In 1982, Jim Burke removed *all* of Johnson & Johnson's over-the-counter products from store shelves *before* the company was required to do so by the FDA. It is still the definitive model of sacrifice because it included two critical elements:

1. J&J clearly put people before profits by doing more than the company needed to, a move so bold it became J&J's brand for nearly three decades: "It is the company that cares." As to the cost of that sacrifice, do the arithmetic: Three decades of growth followed one quarter of acceptable loss.

2. J&J acted *before* it needed to, *before* any federal regulator required action. While it's tempting to wait and see just how ineffectual the oversight may turn out to be, you'd lose all the gains with which the public will lavish on your leadership. No parents give their kids credit for cleaning up their rooms *after* they've been told to clean up their rooms.

By contrast, BP, in the Gulf oil spill, paid one of the largest corporate fines in history, yet, as we've noted, received virtually no credit for cooperation because it all came after the White House and others had taken them to the woodshed. The fastest way to rebuild brand credibility is by volunteering your own punishment. If you look at 2007, the so-called "year of the recall," three industries — pet food, spinach, and toys — all had subsequent record quarters after their recalls because they made sacrifices, took responsibility, and volunteered to fix the problems.

Some sacrifices may be as simple as an apology, which is indeed a form of genuine sacrifice, from the appropriate spokesperson. While many lawyers will parse each word of an apology, the critical value is in its voluntary nature, its genuineness, and integrity. Here, lawyers must be particularly open to rethinking their instincts. An apology acknowledges culpability and culpability equals exposure, which lawyers are trained to avoid. But if the brand is at risk, the brand comes first, even if it means a partially disadvantaged position at the settlement table.

On the other extreme, sacrifice often takes the form of a product, division, or personnel change; CEOs themselves are occasionally the sacrificial lambs. The option to discuss any sacrifice, involving anyone and anything, is something the team must feel empowered to exercise at any point during a crisis. It is here that the "telling-truth-to-power" courage gets truly tested. At the end of the day, the paramount question is, "What is in the best interest of the brand?"

Sacrifice often entails *goal-switching*, which is the single most difficult thing for executives. Of the three things that people fear the most — death, failure, and change — goal-switching touches two of the three hot buttons. When U.S. Airways Captain Sully Sullenberger had his close encounter with the Hudson River, he instantly understood the need to switch goals and focus on saving the 155 lives, not the $60-million plane. At a critical moment — actually, the fateful one — saving the airplane was no longer the priority; saving the passengers was. Sullenberger's airplane was just one company asset among many; likewise, in less dramatic situations, there are often much more important considerations than a lawsuit. As straightforward and obvious as the need may seem, getting people to let go of the assets they represent will be the most difficult challenge.

Lawyers and crisis teams that understand the significance and timing of sacrifice have successfully recognized this single most important factor in determining success or failure in a crisis.

Culture.

Culture dictates outcomes. It has an unspoken yet outsized influence on almost all high-profile matters. The culture factor soon becomes obvious and critical during any Chinese, Japanese, or Korean crisis that plays out on Western soil, even down to how information is shared

internally. It's likewise obvious when Middle East matters touch American markets. Great leadership comes from those who understand and appreciate that the culture of the market where the crisis arises has to be the culture of the crisis team. Asians must defer to American culture if their challenge is in the U.S. Americans must in turn defer to Korean culture if their problem occurs in Seoul.

Less obvious, but no less important, are the cultural differences between Wall Street and K Street and Main Street, or between legal cultures and brand marketing cultures. Everyone comes to the crisis/litigation table with their own views based on daily experience and expertise. But high-profile matters require us to be more holistic, to consider the world — or at least the crisis — from the viewpoint of others.

Third Parties.

There is an old saying on Capitol Hill: "Never kick a man while he's up, it's too much work." Wait until he's down, the wisdom goes, so you can pile on, without any cost to you. As bad as a crisis seems in the opening hours and days, it is never as bad as it can be once it spirals out of control. There is a narrative arch to high-profile matters that is dependent upon the response to the opening act. If the defendant mishandles it and extends the life of the story, the results are obvious.

There is also the Greek chorus who will determine history, or at least the short-term version. So, take your own version of the Hippocratic Oath: First, do no harm. But use your peacetime wisely as well; arrange for supportive thought leaders who can weigh in early and put things in context. These third parties will certainly include prominent social media voices with industry or media followers; the list is also likely to include academics, retired politicians, members of NGOs, unions, editorial writers, and others who can speak on your behalf, or on behalf of positions you want espoused. It might take enough of their courage to weigh in early so don't make it more difficult for them by asking their help only at the urgent moment when you need it. Know them before you need them.

Pursue Corporate Social Responsibility (CSR) strategically, not just philanthropically. Know the NGOs that care about your causes. Develop relationships ahead of time so that, at the very least, you can have honest conversations without fear of it backfiring. Have your PR team likewise know and connect to high-authority bloggers just as they do journalists.

At the end of the day, people get too much information — 3,000 to 5,000 messages a day — to do much more than categorize and stereotype. All they can numbly ask is: "Is this good or bad?" So help them categorize your company and position, not by trying to educate them with the facts, but through messengers they already know and trust. All communications are tribal. Corporate communications is pleasant enough work on the way up when everyone is happy or at least content. But on the way down, in crisis and litigation, new audiences and old need more personalized non-corporate messengers to whom their tribe relates. It is less about the message than the messenger.

When public audiences see a messenger they trust, they'll defer or will at least be less inclined to pile on. Apple has spent nearly three decades building a relationship with its audiences, elevating the name from a brand to a religion. It has millions of customers and critics who double as company evangelists. Such fervid dedication may not protect the company from every crisis, but the investment has already paid dividends multiple times.

Conclusion

When was the last time you thought about the power of symbols? Seldom do high-profile litigation and crisis teams adequately focus on symbols. Yet symbols are far more important than anything else we do. The AIG bonuses; the auto executives flying private planes to TARP hearings in Washington; the Australian pictures of a far less expensive version of EpiPen; George W. Bush's fortunate bullhorn and unfortunate "Great job, Brownie" moments — symbols control our emotions, and emotions control our thinking. If you want to win the day in high-profile matters, you need to own the symbols.

In all high-profile matters, perception trumps reality. Those caught up in what should be, as opposed to what is, are roadkill in the race to the "truth." Sticking to the facts of your matter will guarantee you miss out on opportunities to reduce the damage and make the crisis go away. A high-profile crisis is as we find it, not as we wish it to be. By seeing the world through the eyes of our new and varied audiences, lawyers become the counselors that our clients need us to be.

Law Department Management Consulting

Susan Hackett[1]
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Introduction: In-House DNA

In-house counsel are legal advisors employed within companies to provide and coordinate legal services required by the corporate entity. While government and public interest lawyers are also considered employed counsel, this article is written to address corporate counsel who work in private organizations, such as companies or non-profit entities, and who solely represent their organizational clients. Thus, the in-house lawyer has only one client (even if that client has many facets and representatives), and they do not hold themselves out for retention by others.

Most in-house counsel work in jurisdictions where they are trained as lawyers and "graduate" to their in-house job after spending several years as outside counsel in law firms or sometimes as government lawyers. It is rare for junior lawyers or lawyers fresh out of law school to secure an in-house placement; most departments hire experienced counsel (laterals) who have demonstrated expertise. There are some jurisdictions that do not confer professional status on local in-house counsel, even if they are otherwise licensed lawyers.

While all lawyers are subject to the same rules regulating legal practice, in-house counsel's work and operational focus is often very different from the work and focus of those who are employed in law firms. Law firm lawyers are called upon to remediate or resolve problems that have already arisen, while in-house counsel spend most of their time managing the varied remedial projects being handled by outside counsel and thinking about how to prevent those problems from arising in the first place (keeping the milk in the glass, as it were, rather than cleaning it up after it's spilled).[2]

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[2] *See* Susan Hackett, *Corporate Counsel and the Evolution of Practical Ethical Navigation: An Overview of the Changing Dynamics of Professional Responsibility in In-House Practice*, 25 GEO. J. LEGAL ETHICS 317 (Spring 2012) (for more on the differences and similarities of inside counsel compared to other lawyers, and how [or not] the rules of professional regulation apply to and shape their work).

How Departments Insource, Determine What Departments Outsource

Historically, law departments were created to provide some services to the company directly, and to select, retain, and manage outside counsel who performed the majority of the company's legal work ("majority" referring to the proportion of budget spend, the number of lawyers deployed, and hours worked). Thus, the organizational premise selected by corporate management for most law departments is an "outsource" model. Of course, there are and always have been exceptions to this rule, with some solo practitioner law departments providing pretty much all service through their single in-house lawyer (because the legal agenda is minimal), and some very large law departments that, in spite of hiring outside firms to handle litigation or specialized work, for instance, internally provide most of the work required by the client in-house via the hundreds of lawyers they keep on staff.

Even though the ACC (Association of Corporate Counsel), the ABA (the American Bar Association, the IBA (International Bar Association), and national bars conduct regular census surveys of their members, there is no definitive understanding of the actual number of in-house counsel or law departments practicing in any particular jurisdiction or globally. Many law departments literally operate below radar; they are not visible outside the company and little is known about their structure. Even less is known about aggregates of how law departments are run in terms of shared common practices; unlike the business models of law firms, which are usually not terribly different from firm to firm within segments of the profession (solo practices, mid-tier firms, boutiques, BigLaw, global firms, etc.), the business models of law departments can be as diverse as the companies they serve. Since they are not in the business of practicing law to make money, their drive is to deliver the services that their particular client needs in real time … and so they are often a reflection of the management style or the industry in which their management teams work.

This means that while most departments outsource more work than they insource (regardless of their department size), they may choose to outsource different kinds or work, or select different kinds of providers or products in a manner that defies easy categorization. Low-tech companies may have the most tech-savvy departments, and there are lots of finance-, information-, and technology-based companies whose legal teams are relative tech Luddites. Some departments are in relentless pursuit of lower costs, and others may choose to hire the most expensive providers in the marketplace without much regard to the financial health of their parent companies.

It's Not What Vendors Want to Sell, but What Clients Want to Buy …

Here are some categories of products and services that are most common in legal departments (in no particular order):

1. **Outsourcing legal work to law firms:**

Law firms are retained either to be an extension of the in-house department that doesn't have enough hands to get work done, or they are retained to provide services or expertise that the law department doesn't have and doesn't wish to hire folks to provide internally on an ongoing basis.

Because there is a ton of attention to historical over-charging and over-spending with top-line law firms, a trending in-house practice is to increase the scrutiny on and improve the management of law firms. This can range from convergence projects that concentrate more work with fewer firms that are more tightly regulated and partnered to align with the legal department, to collecting data and developing strategies to concentrate attention on cost control, better work processes, and project management. Because so much work and therefore so much of the department's expenses are concentrated on law firms, many departments are increasing their use of technologies that allow them to better communicate and coordinate with their firms, from matter management and e-billing systems, to knowledge management and collaboration platforms that allow firms and clients to work more seamlessly as a team. While it's clear that not as many departments use these kinds of technologies as well or as fully as they should, and that even more don't use them at all, they are the focus of most department technology conversations (rather than technologies that are limited in use to the in-house team), and they drive whatever data the in-house team regularly collects.

2. **Partnering legal work with law firms:**

Both firm and department leaders will tell you that there should be a great partnership between a firm and its corporate legal clients, but it's only been in recent years that the talk has been forced into practical application. There's a rise in the number of departments bringing law firm lawyers onto their staffs — for the duration of a large project, for instance, or as a tour or rotation that is part of the firm lawyers' advancement on the client relationship team. It's also more and more common to see matters staffed by a defined team of in-house and outside counsel who operate on a virtual and highly collaborative plane; sometimes the demarcation between the in-house and outside folks is blurred and seen as irrelevant in such a collaboration.

3. **Staffing agencies and contract lawyers:**

Many departments have drastically increased their use of staff lawyers and contract lawyers. Once seen as second-class workers, these kinds of placement companies are now known for peddling incredibly well-trained and sophisticated lawyers (partly because of the changing economy and partly because of changing lifestyle interests of millennials, among various other factors). Whether it's to cover for a new parent or a caregiver who has to leave the workplace for a few months; staff a regularly occurring task that's only one day a week; or provide surge capacity for an intense deal that's snowballing toward deadline, being able to pick up a phone and have a competent lawyer show up in two hours to stay for any relevant period (and then leave without further obligations!) when no longer needed is incredibly efficient and convenient for department leaders. While these lawyers used to just do document review or other mundane tasks, you can now replace the need to retain expensive outside firms with a deeply competent staffing company that can provide most any kind of worker expertise imaginable.

4. **ABS — Alternative business structures — MDPs are coming!**

As of this writing, a few jurisdictions have authorized the creation of ABS (alternative business structure) firms that allow lawyers and other kinds of experts (whether via financing or via the creation of a multidisciplinary practice, or MDP) to co-own/share profits in the same firm.

This means that clients may now consider hiring such firms for regularly repeating work or to do work out of the country if the ABS firm doesn't operate in the client's home jurisdiction. The entrants in this market — unlike some of their vendor counterparts that start small and have to grow the hard way — are often large and well financed. This draws participation from the likes of the traditional accounting firms/consulting practices (such as PricewaterhouseCoopers, KPMG, Deloitte, etc.) and newly-structured law firms with outside investors (such as Riverview Law) and more, to do their work. How these firms will fit into clients' portfolios and the larger legal landscape (whether their entry will change everything or very little) remains to be seen, but clearly they will create greater competition via more definite and clearly articulated pricing and service strategies; a re-shifting of top talent as new practices open and steal top-name experts and practice groups; and probably some firm merger mania, all of which will inevitably affect clients' decisions about which firms to hire with the correct value proposition for their work…

5. **Outsourcing to vendors:**

Clients are being offered an ever-increasing number of options beyond sending work they can't staff internally to lawyers in firms or some other structure that contracts lawyers to staff client matters. They're making more and more use of them each year, sometimes exponentially growing the percentage of work they're sending on an annual basis as they get more comfortable with the concepts. LPOs (on-shore and off-shore legal process outsourcers), e-discovery vendors, litigation support companies, firm service centers, and more are creating predictably priced service options for clients who wish to buy a particular "product" or a talented and highly trained team to deliver a pre-defined set of results at a fixed cost (as opposed to undefined work often thrown over the wall to a law firm that was told to get going on it, figure it out, and then anticipate that the client would argue with the firms over the invoice later). These kinds of companies first showed up in India, Singapore, and other cheaper-workforce/highly-educated labor markets, but now are just as likely to be found in West Virginia, Northern Ireland, or even in a big law firms' back office operations somewhere in the hinterlands, away from the high-price real estate and labor market where the big firm opens its offices.

6. **Hot technologies in law departments:**

There's a lot of attention (even if relatively little actual action) on knowledge-based systems that allow the department to automate or process-manage routine functions. These are extremely popular, even if only fully implemented in relatively few departments in a sophisticated fashion (something beyond a Word or Excel spreadsheet, for instance). These include contract management systems that allow departments to encourage business managers to self-serve their own negotiation and contracting processes, as well as work platforms that drive the increased use of template work processes or decision-trees for commonly repeating matters.

No matter what a law office chooses to use or what sort of projects they have, there is an option for legal outsourcing that will fit into any budget. This is true whether the firm brings in an experienced professional or sends the work overseas to vendors; the end result will be a quality product — and a new professional contact in a rapidly shrinking legal landscape.

Legal Recruiting and Staffing

Jon Lindsey[1]
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During the three and a half decades since the 1982 founding of our firm — Major, Lindsey & Africa (MLA) — the legal recruiting and staffing industry has undergone enormous changes; indeed, in many respects, it has changed more than the legal industry it serves.

The Role of Legal Recruiting and Staffing Firms

Legal recruiting and staffing firms make professional placements for a variety of positions and professional roles at client companies and law firms, either for permanent placement or for more limited durations of time. They include:

- **In-House Legal Departments**: in-house counsel positions, e.g., general counsel (GC), corporate counsel, or legal secretary.
- **Law Firms**: partner and associate candidates who typically work exclusively with a single recruiter to identify firms that would be the best cultural, financial, and practice fit.
- **Business Management**: retained searches for firms' business management professionals, e.g., chief operating officer (COO), chief marketing officer (CMO), chief strategy officer (CSO), chief financial officer (CFO), and corporate legal department operations professionals.
- **Permanent**: full-time employees, whether at law firms or in-house at companies.
- **Specialized/Temporary**: legal professionals for specific projects or on an interim and temporary-to-permanent hire basis (both at companies and law firms).

Most of the scores of legal recruiting firms in the U.S. have a small handful of recruiters in a single city; several have offices in more than one city. Our firm is unique in having more than 200 recruiting professionals in more than 25 locations worldwide, including London, Hong Kong, Tokyo, Singapore, Amsterdam, Sydney, Delhi, and cities across the U.S. This provides the distinct

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advantage of having market information about law firms, corporate clients, and practice trends globally rather than just for a single city.

Why Use a Recruiter?

There are five main reasons that law firms and companies utilize legal recruiters:

1. **Attract top talent**: Top legal talent is difficult to find because those professionals are usually not looking for new opportunities; one must "search" for them, thus necessitating the role of legal recruiters and staffers.
2. **Save money**: The cost of hiring mistakes often exceeds the annual salary of the person hired. The fees for a legal recruiter are relatively modest in comparison. A successful recruiter should find candidates of the highest quality who match specific needs and efficiently complete the placement, making the search cost effective.
3. **Save valuable time**: Time spent by a company's or firm's internal team directing a search is time lost on other important business tasks. Legal recruiting and staffing by an outside professional saves valuable time, considerable effort, and the associated costs of internal resources.
4. **Minimize hiring mistakes**: The right fit is critical to business objectives and company culture. Top-notch legal recruiters and staffing consultants who know the legal market intimately are able to look beyond the resume, providing frank assessments of potential candidates.
5. **Ensure that your offer is competitive**: The market changes rapidly. Legal recruiting and staffing firms should work with clients (companies or law firms) to ensure the compensation package is competitive and will attract the right candidates.

Law firm partners and associates utilize a recruiter to assist in assessing the market of firms that might be a good fit; to provide information about the firms' cultures, finances, practices, and other pluses and minuses; to serve as an intermediary throughout what can sometimes seem like an interminable recruiting process; and (in appropriate instances) to help in negotiating aspects of the lateral's compensation package.

For partners, this process often includes the recruiter's assistance in fashioning a business plan to help firms evaluate how a lateral can be accretive and help advance the firm's long-term strategic goals. An experienced recruiter familiar with client firms can also provide critical information about issues such as capital contributions, pension arrangements, partner compensation systems,[2] lease obligations, potential client conflicts, and the like.

As noted in MLA's most recent **Lateral Partner Satisfaction Survey**,[3] partners who used the services of a recruiter when changing firms had significantly higher rates of satisfaction with their move than those who did not, especially when the search consultant had:

- Analyzed the fit between their client base/practice area and the firm's;
- Acted as intermediary or otherwise assisted in negotiations; and
- Provided detailed information about potential firms.

[2] Jeffrey A. Lowe, *2016 Partner Compensation Survey*, MAJOR, LINDSEY & AFRICA, 2016, https://www.mlaglobal.com/publications/research/compensation-survey-2016.
[3] Jon Lindsey & Jeffrey A. Lowe, *Lateral Partner Satisfaction Survey*, MAJOR, LINDSEY & AFRICA, 2014, http://www.mlaglobal.com/~/media/Allegis/MLAGlobal/Files/Articles/LateralPartnerSatisfactionSurvey_2013_MLA_Web.pdf.

Partners who worked with recruiters were also more likely to review a firm's financials before moving than those who moved without assistance.[4] For both groups, however, the percentage doing thorough due diligence before investing their professional future and their capital in a new partnership was shockingly low.

Keeping the Keepers III: Mobility & Management of Associate Talent, a national study and report of law firm associate hiring and retention from 2006–2011, includes findings from more than 22,000 associate hires and more than 17,000 associate departures. The report found that very few firms anticipated changes in non-partner recruiting budgets or the number of administrative staff who are dedicated to non-partner recruiting in the near term. At the same time, however, a significant number of participating law firms (56 percent) reported an expected increase in lateral hiring.[5] The report's supplemental study of 85 law firm administrators found that search firms, internal referrals, and online searches or solicitations initiated by the firm accounted for the largest percentage of lateral hires within the last two years. The majority of firms reported that law school job postings, external referrals, and unsolicited write-ins each accounted for 10 percent or less of lateral hires.[6]

Law firms recognize that while recruiting fees are not immaterial, search consultants can add enormous value in helping them add senior laterals who can in turn add significant revenues, expand the firm's talent and client bases, and bring new energy and vitality. For that reason, lateral partner hiring is more competitive than ever — e.g., in a recent survey, 96 percent of law firm managing partners said they viewed lateral partner recruiting as a primary growth strategy.[7] To be successful in implementing that strategy, firms need to be nimble, creative, flexible, decisive, and visionary (read more specific suggestions for law firms in "To Compete for Laterals — Linger Not, Partners").[8] In short, law firms and their management teams have concluded that employing the services of savvy recruiting professionals is a productive allocation of firm resources.

Law Firm Business Management Recruiting

This focuses on business management roles at firms, e.g., chiefs and directors of various verticals such as operations, finance, business development, marketing, technology, pricing, and more. The prominence of these professional management positions within law firms has expanded dramatically in recent years. For example, as clients continue pushing for alternatives to the billable hour and greater accountability as to how their law firms manage and staff their matters, there has been a continued interest in the pricing of legal work. Perhaps more importantly, though, is the realization that "pricing" does not exist in a vacuum, but instead is necessarily dependent upon solid legal project management (LPM) and more sophisticated practice management. Consequently, there has been an explosion in the demand for pricing and practice management professionals who play critical roles in pitching, pricing, and ensuring efficient delivery of the work.[9]

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[4] *Id.* at 42.
[5] *Keeping the Keepers III: Mobility & Management of Associate Talent*, MAJOR, LINDSEY & AFRICA & THE NALP FOUNDATION, 2014, at 16.
[6] *Id.* at 17.
[7] LEXISNEXIS & ALM LEGAL INTELLIGENCE, Oct. 2012, at 21.
[8] *See* Jon Lindsey & Robert Brigham, *To Compete for Laterals – Linger Not, Partners*, NAT. L. J. (Dec. 8, 2014), http://www.nationallawjournal.com/id=1202678232309/To-Compete-for-Laterals-mdash-Linger-Not-Partners.
[9] These newer positions are typically at the director and chief level, and include such titles as: director of pricing and project management; director of pricing and profitability; director of strategic pricing & analytics; director legal pricing, practice and profitability optimization; director, global pricing and legal project management; chief practice management officer; chief practice officer; and department operating officer.

In order to remain competitive in an increasingly challenging economic environment, firms continue to recognize the value professional managers and administrators bring to the firm; with that value comes increased responsibilities and corresponding compensation. These professionals play a pivotal role in the success of law firms; thus, the support from experienced recruiters is paramount to finding the right match in candidates for those positions.[10]

General Counsel and Other In-House Positions

These are very different from law firm associates, partners, and business management roles. They, too, benefit greatly by utilizing legal recruiters for a range of levels in corporate law departments and across various legal disciplines, whether generalist or subject-matter specific. Searches range from positions at start-ups with fewer than 10 employees to the GC search at Fortune 500 companies and everything in between. Adept legal recruiters help find and place the best-matched candidate for each role, depending on the specific needs of the corporate legal department.

Since our firm began in 1982, in-house law departments have become an increasingly attractive destination for law firm lawyers, including partners. This growing popularity compounds the barrage of applications by interested candidates, which are effectively managed by legal recruiting and staffing firms well versed in the arena.

Typically, the CEO, VP of human resources, chief human resources officer (CHRO), or other senior executive at a company is faced with the task of recruiting a first or new GC. Thus, it is hugely beneficial to defer to well-equipped legal recruiters with high-caliber expertise and experience who work on a daily basis with senior-level lawyers. This is especially true when the hiring authority has not previously faced such a task frequently, if at all. Consequently, senior executives routinely seek the advice of legal recruiting firms to determine whether it makes economic sense to hire an inside lawyer based on a company's legal workload.

Many legal search consultants have graduated from top law schools and worked in the law departments of some of the nation's largest and best-managed corporations. This experience provides an unmatched depth of knowledge and contacts. Established recruiters with an extensive track record of successful searches for senior in-house lawyers also have the advantage of a longitudinal view of the candidate market. This knowledge can provide a valuable and long-term perspective on each slate of candidates for in-house legal departments.

Temporary Project Staffing

This previously consisted primarily of support for document review, M&A due diligence work, and project staffing for maternity leave, offshoring, and onshoring. Today, however, it encompasses a more substantial portion of the legal landscape. After the 2008 recession, global demand for legal services contracted, and it has taken several years to get back to a baseline. Now, the legal market is regaining strength as it continues to expand into new and emerging markets worldwide.[11]

While global growth is on the uptick, BigLaw has been and will continue to give up market share to new entrants to the legal services market. Firms such as Axiom, Laterally, Thomson

[10] *Id.*
[11] *See, e.g.*, Jeffrey A. Lowe, *BigLaw 2017: A Look Ahead*, MAJOR, LINDSEY & AFRICA (Jan.13, 2017), https://www.mlaglobal.com/publications/articles/biglaw-2017-a-look-ahead.

Reuters' Legal Managed Services, and MLA's own highly specialized, temporary legal staffing solutions provider, the Solutions Practice Group (SPG), are capturing increased market share and will continue to have a major influence on how legal work will be performed and disaggregated. Major consulting firms are also reentering the legal market and looking to capture some of this revenue.

"Since the recession, businesses across the country have been pushing their employees to do more with less," explains *Inside Counsel*'s Ashley Post, regarding why temporary staffing has become crucial for companies, in *Strategies for Leaner Legal Departments: Part 1*. She adds, "Members of corporate legal departments have encountered the same challenge. Facing heightened performance expectations and heavier workloads, in-house lawyers and their staffs have had to alter their workplaces to conform to leaner budgets — all while maintaining productivity and excellence."[12]

Law firms are still learning how to effectively use the temporary staffing model, as described by *Law360* reporter Erin Coe in *5 Mistakes Law Firms Make with Temp Lawyers*:

> Firms are increasingly relying on temporary attorneys to scale up legal teams on large matters while controlling costs for clients, but experts say they could take more initiative in offering these lawyers as a staffing option when pitching for business and could improve how they integrate them into the legal team.[13]

Coe includes perspective from MLA partner and global head of MLA's In-House and Solutions Practice Groups, Gregory Richter, who said: "Big firms have to be mindful that disaggregating workloads is something clients will demand of them. Clients want different price points for different levels of work and different people delivering that work. Firms have to think outside the box and do things differently in this new-normal environment we are in."[14]

MLA launched its Solutions Practice Group with the goal of finding ways for law firm and corporate leaders to meet evolving needs with appropriate staffing and up-to-date solutions. The methodology and service makes it easier to find highly-qualified lawyers and legal professionals for substantive assignments on a cost-effective, contractual basis. A partnership with the SPG and others in this space provides corporate and law firm clients with the ability to maintain quality of work while enabling it to better manage staffing needs thus increasing efficiency and profitability. Staffing arrangements in this area include long-term, on-site temporary placements; flexible work arrangements; and project staffing for peak periods or interim needs.

Whether the position is at a law firm or in-house at a company, legal recruiters and staffers guide firms and companies to choose the ideal candidate for future business success. The truly adept legal recruiting and staffing firms are those that are also prepared to adapt to change and are skillful at doing so.

Changes to the Legal Landscape Affect Recruiting

Supply and demand accounts for a more competitive legal job market. While the 2008 recession certainly took away legal positions, law students still continue to graduate and look for jobs.

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[12] Ashley Post, *Strategies for Leaner Legal Departments, Part 1*, INSIDE COUNSEL (Feb. 26, 2013).
[13] Erin Coe, *5 Mistakes Law Firms Make with Temp Lawyers*, LAW360 (Aug. 22, 2014), http://www.mlaglobal.com/community/news/5-mistakes-lawfirms-make-with-temp-lawyers.
[14] *Id.*

"We are paying the price for having more law schools produce more graduates at a time when demand for legal services has slackened and the landscape has changed," explains Robert A. Major, Jr., MLA's founding partner.[15] "As the differential grows between supply and demand, the 'price' goes up, and, in a recruiter's world, that price is quality of resume and the closest match possible between what a candidate offers and what a client requires."

Specific to the in-house world, there has also been an increased interest in and popularity of in-house positions.

"There are many reasons stated for the rising attraction of in-house practice," explains Major. "Some relate to the deteriorating lifestyle found in the firms: the grim billable hour demands; the never-ending pressure to bring in business; client conflicts; 'prima donna fatigue;' and the feeling that one is being brought in as a lawyer to 'clean up messes,' rather than advising on a strategy and course of action that won't result in messes to begin with."[16]

Major also listed several perks of going in-house: developing a close relationship with a single client; knowing that your contribution leads to long-term impacts; being part of a team that in many cases creates an instantly identifiable product; strengthening management and teamwork skills that would not otherwise be utilized; and being exposed to a larger variety of legal issues. These other skills, which in a law firm would only be used on an infrequent basis, can help lawyers evolve into other roles within an organization, such as business development, sales, marketing, or even as CEO.[17]

Of course, this is hardly to say that working as an in-house lawyer is preferable to working at a law firm; that depends on the individual. Again, this is where an experienced legal recruiter can guide candidates and clients toward the best match.

The Influence of Technology

Technology directly impacts the legal industry at large and thus legal recruiting and staffing. Perhaps the most significant advancement has been the global connectivity provided by the Internet, email, and social media.

"Years ago when we recruiters relied primarily on the telephone, the mode of communicating with candidates put a premium on brevity," explains Major in *Why Didn't I Get a Job Interview? I'm the Perfect Fit...* in his recent post to *In Brief*. "If asked to provide a detailed explanation of a job opportunity, you were forced to severely limit the number of candidates with whom you would speak on a daily basis. … However, the advent of websites and email changed that."[18]

Major also adds that the ever-increasing amount of information on the Internet has provided a lot more "noise" for clients and candidates alike. "What has not changed, but become more essential, is the clients' and candidates' need to work with highly qualified, savvy, knowledgeable legal recruiters and staffing professionals. Technology will continue driving changes to the legal market, and the successful legal recruiting and staffing professionals will always need to adapt to the oncoming wave of technological advancements."

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[15] Robert A. Major, Jr., *Why Didn't I Get a Job Interview? I'm the Perfect Fit…* MAJOR, LINDSEY & AFRICA (Oct. 7, 2014), https://www.mlaglobal.com/publications/articles/why-didnt-i-get-a-job-interview.

[16] *Id.*

[17] *Id*. *See also* David Maurer, *Law Firm to In-House: Things to Consider before Climbing Mountains*, MAJOR, LINDSEY & AFRICA (Oct. 23, 2014), https://www.mlaglobal.com/publications/articles/law-firm-to-in-house-things-to-consider-before-climbing-mountains; *contra* Michael Sachs, *Law Firm to In-House: a Different Type of Mountain, but not Insurmountable*, MAJOR, LINDSEY & AFRICA (Nov. 11, 2013), https://www.mlaglobal.com/publications/articles/law-firm-to-in-house-a-different-type-of-mountain-but-not-insurmountable.

[18] *Id.*

"In our search-optimized, app-laden world, anyone with access to the Internet can get a decent snapshot of available options in a given market," explains Michelle Fivel, a partner in the Associate Practice Group of MLA's Los Angeles office, and Ru Bhatt, a managing director in the Associate Practice Group of MLA's New York office.[19] As this generation of lawyers is more technologically savvy than any of its predecessors, it becomes apparent why creating greater access to both openings and candidates is enticing. However, simply sending in a resume to an online database will not get a candidate in the door.

"Unfortunately, the process of lateral movement is not that simple," said Fivel and Bhatt, as there are numerous additional factors to consider, including the unknowns that only a trusted advisor can identify and address for all parties involved."[20] Posting jobs online is passive and will not yield the same results as a good recruiter, one who is familiar with the firm's needs regarding a new candidate. For instance, the ideal candidate might not even be actively searching for a new job. A recruiter, on the other hand, knows who is working where and can get ahead of the game by actively finding these lawyers. "The waiting game isn't aggressive enough because targeting only those active job seekers can delay finding the perfect fit, costing money in missed business opportunities for the firm."[21]

Technology can be a useful tool for an experienced legal recruiter, but in the same way that it cannot replace high-level professionals who are lawyers, it cannot (at least for the foreseeable future) replace legal recruiting and staffing professionals.

Conclusion: Legal Recruiting and Staffing Are More Significant Than Ever

Change is in the air, but certain constants remain:

- Nearly half of 85 law firm administrators in a recent survey reported an increase in alternative career path/non-partner track lawyer recruitment and temporary lawyer recruitment.[22]
- Alternative business solutions have forced the legal industry to take a hard look at how it provides high-quality, cost-effective, efficient legal services.
- Law firms are embracing the non-partner track and other staffing alternatives, and legal recruiters and staffing firms are specializing in order to provide those options as well.
- Law firm partners faced with multiple options increasingly rely on professional counsel from recruiters with market intelligence in order to make the most informed choices.

Legal roles in firms and corporate legal departments have always been competitive. However, increased supply and demand and the global connectivity provided by technology make it essential for companies and law firms alike to work with legal recruiting and staffing experts to navigate the continually changing legal landscape.

[19] Michelle Fivel & Ru Bhatt, *Don't Click Through Your Career*, MAJOR, LINDSEY & AFRICA (Oct. 2, 2014), https://www.mlaglobal.com/publications/articles/do-not-click-through-your-career.
[20] *Id.*
[21] *Id.*
[22] *Supra* note 4.

What You Should Know About Legal Procurement

Dr. Silvia Hodges Silverstein[1]
Executive Director,
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In many large companies, legal procurement professionals now work alongside in-house counsel to buy corporate legal and ancillary legal services. They analyze, use data and develop evidence-based rationale for major reductions in legal spend. Choosing a law firm has to make business sense. The 2008 financial crisis accelerated the process for the adoption of legal procurement, but publicity about billing practices, big ticket spending by large corporations, and corporate profit pressures are at the root of this change. The same development happened in other professional services, including management consulting and tax and audit services.

Companies with significant legal spending were the first to involve procurement in the purchasing of legal services providers well before the crisis, in the early/mid-2000s. Highly regulated industries first embraced legal procurement, particularly the pharmaceutical industry and financial services, as well as energy companies and utilities.[2] Today, many large companies around the world from a wide range of industries employ legal procurement professionals. There is no reason to believe that large corporations will return to the traditional approach of in-house counsel as sole buyers of legal services.

Why Do Your Clients Involve Legal Procurement?

It is typically the organization's top management, often the CFO, who mandates procurement's involvement with the buying of legal services. The goal is to help in-house counsel better manage cost and reduce supplier spending, and to ensure that they buy legal services in compliance with company policies. Other drivers of bringing in procurement include the desire to achieve more objective comparisons of legal service providers through measuring and

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[2] *See, e.g.*, Heidi K. Gardner & Silvia Hodges Silverstein, *GlaxoSmithKline: Sourcing Complex Professional Services* 2, 4 (Harv. Bus. Sch. Case No. 414-003, rev. 2014); Silvia Hodges, *Power of the Purse: How Corporate Procurement is Influencing Law Firm*, LAW PRACTICE TODAY (Jan. 2012), https://www.americanbar.org/content/dam/aba/publications/law_practice_today/power-of-the-purse-how-corporate-procurement-is-influencing-law-firm.authcheckdam.pdf [hereinafter *Power of the Purse*].

benchmarking outside counsel's value and the desire to streamline operations, improve efficiencies, find better ways to structure both fee arrangements and budgeting, and increase predictability and transparency.

When souring legal services, procurement commonly takes a process-driven, business-to-business approach used in other "categories" or areas of spending. Legal procurement supports in-house counsel with decision-grade data and develops the purchasing strategy, process, and criteria, as well as in negotiation and contract development phases, engagement letter, retainer, or framework agreements. Typically, procurement issues requests for proposals (RFPs) and manages the proposal process. This can take the form of matter-specific RFPs or panel RFPs for a group of preferred providers.

Many legal procurement professionals today are also responsible for fee negotiations. Procurement's expertise in negotiating favorable economics and contracts for their employers has the potential to put law firms under significant and often new pressure to deliver more for less in the future.

Procurement is often also responsible for monitoring firms' billing behavior and adherence to billing guidelines. Legal procurement checks firms' compliance to billing agreements, and — if necessary — intervenes. What's more, procurement conducts post-purchase performance evaluations. The above-mentioned GlaxoSmithKline case study describes the pharmaceutical company's approach of firm evaluations, asking both in-house counsel and outside counsel to evaluate outside counsel's performance on a given matter using a set number of dimensions (such as overall management of a matter).[3]

***Does Procurement Influence the Purchasing of Your Type of Legal Services*?**

Legal procurement professionals typically source and manage "ancillary" legal services including e-Discovery, court reporting, medical records, or registered agent services. They are often responsible for shortlisting the providers, evaluating the offers, and even selecting the providers.

Routine legal services such as document review and due diligence are also commonly sourced by legal procurement. However, it is more common that in-house counsel are involved in shortlisting different providers and making the final decision.

At more and more companies, legal procurement is even involved in sourcing complex, high-value, high-stakes legal services. It typically leads the procurement process, ensuring that robust criteria for evaluation and selection are established and applied in compliance with corporate policies. Today, procurement is also regularly involved in sourcing, managing, and influencing so-called "bread and butter" legal services (those between high-stakes work and more routine, repetitive work).

Procurement is involved in a broad range of legal services from litigation, transactional, and — to a somewhat lesser degree — advisory work, in a wide range of practice areas: from commercial law, M&A, real estate, and employment, to intellectual property law, and more.

While legal procurement professionals often decides on ancillary legal services providers, they rarely — if ever — make the final decision on which firm to choose, nor do they have the ability to veto in-house counsel's decision. Although procurement may make suggestions about firms to invite to tender for work, it is generally the legal department's prerogative to name the firms it deems capable and appropriate to do the work, and to establish which legal and subject

[3] *See* Gardner & Silverstein, *supra* note 2.

matter expertise is needed. The general counsel and designated in-house legal team also make the final decision. This is unlikely to change in the future.

What is Important to Legal Procurement Professionals?

Legal procurement professionals look for lawyers and law firms who have experience with legal issues similar to the one at hand (for matter-specific RFPs) or for types of services the company typically faces (when looking for panel firms). The firms' and their lawyers' know-how and skills must be well matched. As a rule, procurement will want to know if the firm has done similar work or solved a similar issue for another client. More advanced versions of this are whether the lawyer or firm has argued in front of a particular judge or court. Procurement wants to be sure outside counsel will be able to deliver the desired outcome and be efficient.

Procurement naturally looks to match the right firm with the right expertise for the right amount of money: Value for money and service excellence is central to procurement when evaluating firms' offerings.

Procurement also looks for firms offering value-added options. Continued legal education (CLE) seminars for in-house counsel and business-level training as well as hotline/helpline access for in-house counsel and line management to ask quick questions are favorites among procurement professionals. Other desired value-adds include in-person visits of the client's office/plant/facility to get to know their business; participation on internal calls that provide insight into a specific business or practice area; Secondments of lawyers; provision or development of basic templates and forms; conducting pre-matter planning sessions; and share-points with real-time access to the company's documents. (See the Buying Legal Council's annual survey for further information.)

Procurement also looks at law firm's approach to staffing (What is the lawyer to paralegal ratio? What is the percentage of partner hours?) and how firms deliver the service. Project management and process improvement capabilities have become important to legal procurement professionals.

Procurement is certainly not shy about its intent to lower legal spending, and unless alternative fee arrangements are used, legal procurement professionals clearly expect discounts on law firm's standard rates. It is untrue, however, that procurement professionals only look at the lowest price without consideration of a firm's expertise and experience.

What You Should Do Today

If your clients involve procurement, you may need to rethink how you deliver legal services, reengineer your processes, improve your project management capabilities, boost your pricing prowess, and perfect your cost management.

It is highly advised that you to develop relationships with your current and prospective clients' legal procurement professionals if you haven't done so already. Do not wait until they issue the next RFP. Get to know them, understand what is important to them and what drives their decisions. You are more likely to prepare a proposal offer that is aligned with their intentions and more likely to win the work. (See the Buying Legal Council's latest book, "Winning Proposals," for further information.)

Think also about which legal tasks and projects you could or should standardize, and automate and work with procurement to discuss the options. Show how you plan to bring real efficiencies to their matters. Show that you are a great partner for their company.

Chapter 4 – Technology

The Business of Law and Technology	**Roland Vogl** – Executive Director, Stanford Program in Law, Science and Technology / CodeX
E-Discovery Consultants and Companies	**Carolyn Southerland** – Senior EDiscovery Consultant; CDE Legal
Knowledge Management	**Ron Friedmann** – C Senior Director Analyst at Gartner
Technology Implementation for Law Firms and General Counsel Offices	**Robin Snasdell** – Managing Director, Consilio
An Introduction to Legal AI	**Richard Tromans** – Founder, Tromans Consulting
Pricing Legal Services	**Ben Weinberger** – Law Related Survey Guru.
Why is Data Important for Law Firm Managers' Decision-Making?	**Rees W. Morrison** – Guru for Online, Law-Related Surveys
Unhappy Clients Are Hurting Your Business	**Jack Newton** – CEO and Founder, Clio

The Business of Law and Technology

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More than ever before, lawyers in the U.S. and other parts of the world pay attention to legal innovation. Many firms have hired chief innovation officers and/or put a partner in charge of tracking innovation pertaining to the firm's particular area of business. They are also hiring more and more legal project managers who are tasked with making sure that a firm's expertise is packaged and made available to the clients in the most cost- and time-efficient way possible. At the same time, corporate legal departments are hiring legal operations professionals who specialize in the many ways that technology can make legal processes more efficient. In recent years, we have also witnessed an explosion of legal tech startups that provide a broad range of services to law firm or in-house customers. Generally speaking, we see innovation in legal research technologies, in big data analytics, in legal expert systems, in legal infrastructure (such as practice management and lawyer-client match-making marketplaces), and in online dispute resolution. At times, law firms and corporate legal department find themselves overwhelmed with the sheer number of new offerings in the legal tech space, sometimes resulting in a reluctance to try out new solutions.

CodeX — the Stanford Center for Legal Informatics — is focused on researching and developing technologies in the realm of computational law. Computational law is the branch of legal informatics concerned with the automation and mechanization of legal analysis. To that end, it leverages rule-based as well as statistical AI-based techniques (e.g., machine learning and Natural Language Processing). The former rule-based techniques are used to create new "TurboTax"-like solutions for specific areas of the law or for computable self-executing contracts. The latter statistical AI techniques are used to conduct analytics in legal settings, including so-called "predictive analytics." In essence, predictive analytics is the use of data, statistical algorithms, and machine learning techniques to identify the likelihood of future outcomes based on historical data. The CodeX LegalTech Index, an open source database that at this point counts more than 730 legal tech companies, currently includes more than 38 companies in the analytics space. Those companies are innovating in search, eDiscovery, judicial/litigation analytics, contract analysis, IP analytics, legislative prediction, predictive policing, and lawsuit financing. The use of

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predictive analytics in law raises important questions. First, there are questions around technical feasibility. Getting access to high-quality training data to build predictions is challenging because most legal documents are in unstructured text form. Secondly, there are questions around transparency and explicability. These become problematic when data is used to not only show trends or patterns to a lawyer, but also to predict legal outcomes or to automate certain legal decisions. Systems that leverage predictive analytics and mechanize certain aspects of legal decision-making must be transparent and verifiable.

We are also seeing an increasing use of multi-sided lawyer platforms to foster new ways of finding or collaborating with clients or other lawyers. Some companies provide both platforms for lawyers as well as predictive analytics capabilities for their users (e.g., contract life cycle management solutions that also provide contracts analytics aimed at predicting risk in transactions; or lawyer client match-making platforms using machine learning and big data analytics to make the perfect match).

Adopting new legal technologies in any legal operation — be it in a law firm, corporate legal department, in government, or the judiciary — is a non-trivial undertaking that frequently reveals the challenges a particular organization faces when undergoing change.

There is no doubt in my mind that future legal professionals will have to approach legal solutions through the lens that an engineer might use when solving a computational problem. In addition to providing their legal expertise, they will have to think about how technology can be leveraged to distribute their expertise in the most efficient and cost-effective way. There will be technologies that replace certain tasks that are currently handled by human legal professionals, and there will be technologies that *enhance* human legal professionals. In any event, this is the time to rethink how the business of law can work. And there are already many great examples out there that show how legal services can be provided to clients in efficient and cost-effective ways, while still being profitable for lawyers.

E-Discovery Consultants and Companies

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More than 90 percent of today's records are created in electronic format.[2] The continuing evolution of legal and regulatory requirements place a great responsibility — as well as a great burden — on organizations to preserve, collect, and produce this information. Complying with these laws and regulations is challenging in light of the avalanche of electronic evidence, particularly as it is created in ever more diverse forms, whether in the cloud, on mobile devices, or in social media.

E-discovery is more than a litigation phenomenon; it has implications for activities well beyond the scope of the courtroom such as records retention, risk management, and the archiving of information. When these processes are poorly managed, it leads to serious ramifications for corporations such as sanctions for the loss of information.

Although most attorneys did not study metadata and cloud computing in law school, they are nonetheless responsible for guiding clients through the maze of issues that e-discovery raises, including navigating the phases of discovery and choosing the right service providers, service models, and tools.

Managing the Life Cycle of an E-Discovery Matter

Counsel must have a complete understanding of the life cycle of an e-discovery matter. According to the Electronic Discovery Reference Model (EDRM), a framework for the discovery of electronically stored information (ESI), the life cycle consists of nine stages: information management, identification, preservation, collection, processing, review, analysis, production, and presentation.[3] If an organization has litigation on a regular basis, ideally it should have processes in place for handling each of these phases.

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[2] The Sedona Conference, The Sedona Principles Addressing Electronic Document Production, Second Edition (June 2007), https://thesedonaconference.org/download-pub/81.

[3] EDRM, Electronic Discovery Reference Model Stages, http://www.edrm.net/resources/edrm-stages-explained.

Information Management

Information management is an ongoing program that actually precedes litigation, but it is included in the EDRM because a client's ability to successfully navigate the e-discovery process relies in part on its information management practices. The more information a client has, the greater the risk that information poses, particularly when the client does not understand why it creates, uses, and saves that information.

Ideally an organization's information policy is developed with the input of representatives from various departments, including legal, records, compliance, human resources, and key business units that will share insight into the potential risks and give input on retention guidelines for each category of data. The goal is to preserve data only as long as it is needed for operational or legal reasons.

One important caveat: Establishing an information management program and/or disposing of records pursuant to the retention program are tasks that should be done in the ordinary course of business and not in connection with specific litigation. Disposing of data in anticipation of or at the onset of litigation is a red flag to courts and opposing counsel, increasing the risk of potential sanctions.

Identification

Once litigation (or an investigation) actually ensues, the first phase of e-discovery is identification of potentially relevant information. Part of this process is working with the client — particularly its legal team and IT personnel — to determine the scope and budget for the project and to learn about the client's systems.

It is important to identify custodians who have potentially relevant information, narrow the range of dates applicable to the litigation, and determine where relevant information might be located. Once these pieces of information are assembled, counsel can more accurately estimate the volume of potentially relevant data, create an e-discovery budget, and assess any potential risks.

Organizations that have regular litigation may find it helpful to construct a map identifying types and locations of data that may be potentially relevant to litigation or an investigation. A comprehensive data map can serve as a starting point for cost-effective, defensible discovery responses and will avoid the time and expense of duplicative preliminary legwork in future litigation. The most useful data maps include the following information:

- the subject matter and relevance of information;
- the primary data sources, location, and accessibility of information;
- the status of the system (e.g., when it was commissioned, decommissioned, retired, or upgraded);
- the person or persons responsible for maintaining the systems and/or data; and
- retention dates.

Preservation

Preservation of potentially relevant evidence is the next phase of the e-discovery process. The duty to preserve typically arises as soon as the party anticipates litigation or should reasonably anticipate it. During the preservation stage, clients must protect their data from intentional or inadvertent deletion, destruction, or modification.

Parties that fail to uphold the duty to preserve face the possibility of serious sanctions for the loss of evidence, which is called "spoliation." The severity of sanctions depends on several factors, including the prejudice to the opposing party as well as the steps the producing party took to preserve the information. There is a continuum of sanctions a court may impose, ranging from requiring parties to redo discovery, imposing monetary sanctions, and issuing an adverse inference instruction, to making other dispositive rulings, which can include dismissal. Courts have also sanctioned counsel who fail to take affirmative steps to ensure their clients are preserving data.

Three steps are critical during the preservation stage:

1) The first step is to issue a litigation hold to all custodians of potentially relevant documents. The hold should also be sent to personnel from IT and the records departments, notifying them to suspend any automatic deletion of data (which is common in email systems, for example). Sending a preservation notice is not enough to meet counsel's duty, however; counsel must ensure that recipients understood the notice and plan to comply with it. Throughout the litigation, reminders of the ongoing duty to preserve should be sent to all custodians, and counsel should update the hold if necessary. Furthermore, lawyers should follow up with custodians as well as IT and records, and monitor their adherence to the hold.
2) The second step is to protect the ESI either by collecting it or otherwise sequestering it to prevent its loss.
3) The final step is to release the hold at the conclusion of the matter and reinstate the normal records retention schedule.

Collection

In the collection phase, all potentially responsive ESI from custodians and other client data sources are gathered. The failure to collect the data early can drive up the expense of discovery.

Data can come from a variety of sources, including but not limited to servers, individual computers, cloud storage, mobile devices, backup tapes, personal computers and devices, and social media. Tools are available to help manage the headaches associated with mobile data: For example, mobile device management software can help secure, monitor, and support company- or employee-owned mobile devices. Any technique or tool used to collect the data must be forensically sound to ensure the integrity of the data. Counsel should also ensure that the client has clear records demonstrating the chain of custody for collected information, including where the data originated, who handled it, what steps were taken to collect it and when, what tools were used, and where the data went after collection. If the data is not reasonably accessible, it may be appropriate to negotiate with the requesting party or seek relief from the court.

Meeting collection requirements often requires the expertise of a reputable discovery provider; relying on self-collection risks the omission of key data, the inadvertent loss or modification of metadata, or a claim of self-interest by the opposing party.

Processing

The processing stage converts collected data to a form that can be systematically analyzed and reviewed in a software platform. During this phase, an e-discovery provider can employ strategies to reduce the volume of data such as removing duplicate documents (a process called "deduplication"), system files, and other irrelevant noise from the collection, ultimately lowering the cost of the priciest stage of discovery: review.

Review

During this stage, the client's data is reviewed and coded for responsiveness and privilege to prepare it for production. Studies have shown that review is the most expensive phase of the process, with some researchers maintaining that it accounts for up to 73 percent of discovery budgets.[4]

Clients have panoply of options at their disposal for reviewing data. Traditionally clients have relied on manual (or linear) review, wherein an army of lawyers pores over each document. Today many organizations employ tools to sort the data electronically, using search terms to isolate potentially relevant data, which then is sent to reviewers for responsiveness and privilege review and coding. Other analytic techniques, such as e-mail threading, can eliminate the need to review multiple chains of the same e-mail. Advanced technology-assisted review solutions, including predictive coding, can speed the process of review by applying computer logic to the data population, enhancing and in some cases replacing the first levels of human review. A knowledgeable discovery provider can discuss the best options for the particular matter based on scope, cost, and the nature of the data.

Analysis

The analysis of information plays an essential role in the early assessment of cases. Evaluating ESI for content and context can highlight critical fact patterns such as timelines, revisions to documents, and the roles of various players in the litigation. Data analysis can also help determine potential exposure that can drive decisions such as whether it makes economic sense to settle early or proceed to trial.

Production

Production is the phase in which the responsive data is made available to the other parties. In some jurisdictions, local rules may specify the appropriate form of production for data; otherwise, the parties should address the format for production during the Fed. R. Civ. P. 26(f) conference to avoid costly disputes that may arise after data is produced, which could require a second production of data in a different form.

Typically, parties will elect to produce data as single-page, Bates-stamped TIFF images along with their metadata, accompanied by a standard database load file. However, some documents, such as spreadsheets, databases, and presentations, do not lend themselves to that

[4] Nicholas M. Pace & Laura Zakaras, *Where the Money Goes: Understanding Litigant Expenditures for Producing Electronic Discovery*, 41-42 (2012), http://www.rand.org/content/dam/rand/pubs/monographs/2012/RAND_MG1208.pdf.

format. Those files are best produced in their native format.

Presentation

In the final stage of the discovery framework, parties display ESI at trials, hearings, depositions, and the like to gather additional information, validate existing facts, or persuade a judge or jury.

The "Meet and Confer"

Fed. R. Civ. P. 26(f) requires a pre-trial conference among the parties "as soon as practicable" to discuss a variety of issues, sometimes called a "meet and confer." Some state courts have similar requirements. As the client's representative, counsel should be prepared to discuss the discovery of ESI at the meet and confer. Ideally the conference will address a host of issues, including the following:

- the scope of discovery, including the subject matter, time frame for relevant information, and potential custodians;
- the accessibility of data, including legacy data and backup systems, as well as any legal restrictions on access such as data privacy laws;
- the scope of the preservation of data, including metadata, and the preservation efforts that are underway;
- the form of production of the data;
- the use of search terms and other selection criteria to filter the data;
- the use of technology such as predictive coding to expedite review;
- the timing of data production, including whether production should occur in phases;
- the need to protect proprietary or privileged data, including provisions such as a "clawback" agreement to prevent the waiver of the attorney-client privilege or work-product protection; and
- the shifting of costs to the requesting party if discovery will be unduly burdensome or expensive.

Given the breadth of issues that must be addressed, counsel must arrive at the conference well versed in the client's data and systems. In many cases, this may require the expertise of an e-discovery consultant who can advise on any potential problems. Having a knowledgeable third party available for the conference can also satisfy the lawyer's duty of competence under a comment recently added to ABA Model Rule 1.1, which requires counsel to be aware of "the benefits and risks associated with relevant technology."[5]

The result of the conference should be a comprehensive discovery plan, which can control discovery costs and avoid excessive motion practice. It can also serve as evidence of good faith efforts to cooperate should a dispute arise. The court should enter an order memorializing

[5] MODEL RULES OF PROF'L CONDUCT R 1.1 CMT. 8 (2012).

agreements on key issues, particularly clawback agreements; Fed. R. Evid. 502(d) orders prevent the waiver of the privilege in the pending matter as well as in all other federal or state proceedings.

Choosing the Appropriate Service Model

In many cases clients can realize significant savings by sharing the responsibility for e-discovery with outside counsel and third-party service providers. In recent years, the e-discovery service industry has developed three service models to choose from:

1. a firm-hosted model;
2. a fully outsourced mode; and
3. a hybrid model.

The right choice will depend on a variety of factors. In many instances, depending on the client's e-discovery capabilities, an approach that blends internal and external resources is most effective. It may make sense to divide the responsibilities according to the discovery phase, depending on the client's sophistication and budget.

Some factors to consider in choosing a model include the following:

- the client's volume and type of litigation;
- the client's volume and types of data;
- the skill sets of lawyers and other legal professionals on the client's team of outside counsel;
- the skills and resources of the client's in-house legal and IT teams; and
- the costs and risks associated with the client's information.

Outsourcing all or part of the discovery process to third-party service providers benefits clients and their counsel in many ways. First, discovery providers often have superior expertise, including knowledge of best practices and cost-saving strategies. Second, service providers have access to scalable resources, including trained legal reviewers; this means they can mobilize their teams quickly and jump-start projects to meet tough deadlines. Third, service providers typically have access to the latest e-discovery technology and tools. Finally, using a service provider can often be more cost-effective than using outside counsel or in-house resources.

Establishing a relationship with a preferred provider of e-discovery services can lead to even more lucrative benefits: Costs will become predictable, and more favorable rates can be negotiated if discovery work is consolidated with a single provider. Moreover, sharing the load of discovery with a trusted specialist allows external and internal counsel to focus on their core responsibilities: handling substantive issues and developing legal strategy.

Finding the Right Strategic Partner

With the right investment of time and resources, counsel can find a strategic partner that will complement its services and delivery model. The Sedona Conference®'s publication, "Navigating the Vendor Proposal Process: Best Practices for the Selection of Electronic Discovery

Vendors,"[6] is a useful reference for engaging in this process.

Keep in mind that retaining an e-discovery provider implicates ethical responsibilities such as the duty to protect a client's data, so counsel should spend a sufficient amount of time evaluating potential providers. In general, at a minimum, the following topics should be addressed during the screening process:

1) ***Experience***: Make sure the provider has handled similar e-discovery matters in the past. Discuss the types of data involved in the project, and make sure the provider is equipped to handle it. Evaluate the provider's strategy for handling each stage of e-discovery.
2) ***Cost***: What is the provider's pricing plan? Determine whether prices will differ depending on the task. For example, some providers offer different rates for processing and hosting data. Ask whether the provider charges any fees for setting up the project or project management services.
3) ***Location***: First, consider where the data resides. If it is located in a foreign country, it will likely be necessary to retain an e-discovery provider well versed in data privacy laws. The next step is to figure out where the data will be processed and hosted. If the provider offers managed review services, what is the provider's capacity to provide a staffed review in the location of the client's choice?
4) ***Security***: What security features does the provider offer? At a minimum, the provider should offer physical measures as well as technological defenses. Find out whether the provider has had any security breaches. In addition, make sure the provider offers redundancy to protect client data in the event of a disaster. Furthermore, the need for security extends to the people working for the provider; background checks are a necessity.
5) ***Support***: Look for a provider that offers 24/7 customer service. An inquiry into support should also involve a discussion of uptime; some providers guarantee a level of uptime for their data. Find out how many interruptions have occurred in the past and what the effect of those interruptions is on the cost of their service. If you are not well versed in the e-discovery process, consider a provider who has the skillset to consult with you on particular issues or options with respect to the various decision points in the process to ensure that your e-discovery plan is cost effective and defensible.
6) ***Technology***: Does the provider offer its own review platform? If not, what platforms does it support? Make sure the provider has experience with cost-saving tools such as predictive coding, which can expedite review, and other volume-reduction tools.

Conclusion

Success in e-discovery discovery is largely determined well before a complaint is filed or before an investigation begins. Counsel who work proactively with their clients to design information governance protocols, to craft workflows for managing the stages of e-discovery, and to choose third-party providers and delivery models will be best prepared to take a comprehensive, consistent, and defensible approach that curtails risk, avoids peril, protects their client, and upholds their ethical responsibilities.

[6] *Navigating the Vendor Proposal Process: Best Practices for the Selection of Electronic Discovery Vendors*, THE SEDONA CONFERENCE (Second Edition, June 2007), https://thesedonaconference.org/download-pub/80.

Knowledge Management

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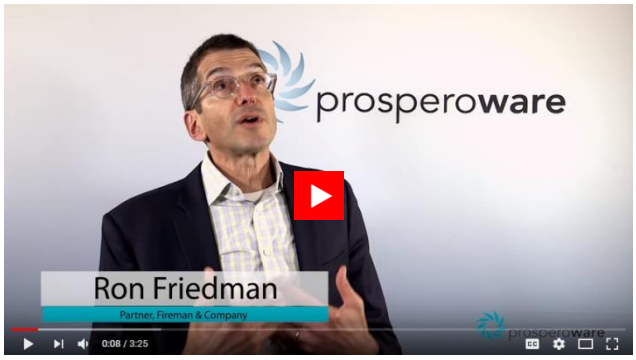
KM Definition and Benefits

Knowledge Management (or "KM") helps law firms win and keep business. For law departments, it supports more efficient and effective operation. In a market where clients demand value and efficiency, KM is essential to reduce cost while maintaining quality.

KM captures and reuses lawyers' collective wisdom and helps identify lawyers with relevant experience. It consists of both processes and systems that identify, save, profile, disseminate, and use prior work and accumulated expertise to solve legal and business problems. KM means many things to many people; this short article provides an overview of how leading legal KM professionals view their own discipline. This includes the recent expansion of KM to related disciplines, including artificial intelligence (AI), legal project management (LPM), and process improvement.

Early KM Focus: Documents, Precedents, and Professional Support Lawyers



Legal KM started with a focus on documents: identify and index prior work product, and create precedents. Work product is any substantive document lawyers create; in contrast, precedents refer to vetted, more general documents specifically designed for regular reference and reuse. Precedents can include legal research, templates of litigation filings, model transaction documents, and checklists.

Early work product retrieval systems relied on key word (or "Boolean") searches. These systems turned out to be only somewhat helpful because they often yielded too many irrelevant results. Moreover, even a relevant result might prove not as helpful as hoped because it is so situation specific.

The limited reuse value of work product led lawyers to try to develop precedents. They quickly discovered, however, that creating precedents requires dedicated resources. Good intentions notwithstanding, busy lawyers lack the time to convert client-specific documents into

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more general precedents. To address this gap, law firms hired professional support lawyers (PSLs) whose job includes creating precedents. PSLs also monitor legal updates and perform other functions.

PSLs are expensive and typically only partially billable. This led to rise of commercial services from Thomson Reuters, LexisNexis, and Bloomberg Law, which serve as centralized, outsourced PSLs. Of note is that U.S. law firms hire fewer PSLs than the U.K., Australia, and Canada. Few law departments have PSLs.

The explosion in the volume of email has challenged the document paradigm, and not in a good way. Many lawyers now dispense advice via email. Furthermore, too many lawyers use email software such as Outlook as a way to manage documents instead of using central document management systems. Capturing and reusing the advice rendered in email turns out to be even harder than doing the same with documents. Approaches to managing email are still maturing.

KM Evolves from Documents to Experience

Even when lawyers can find relevant documents, precedents, or email messages with good content, these materials have less reuse value than expected. The context in which they were originally used is key to understanding and reusing them; rarely, however, do documents convey that context.

An example of capturing context — and immediate learning — is the U.S. military's "after action reviews" (AARs), a technique to debrief after an action (typically at least daily) and capture the learning from it. A few firms and departments do engage in AARs, but that is the exception.

Consequently, KM emphasis shifted from finding documents to finding experts. The expert could both identify useful documents *and* explain their context and use. Early expertise location efforts relied primarily on self-rating. These attempts almost always failed because lawyers would not participate and, if they did, they typically under- or over-rated themselves. As discussed below, search systems initially and now, specialized systems help manage and locate experience.

Other, bigger forces also shifted the emphasis from documents to experience. The 2008 economic crisis spawned many changes in law firms: First, marketing and business development grew in importance. Second, firms hired pricing professionals to set budgets and alternative fees. Third, management started analyzing profitability by matter, client, partner, and type of matter. And fourth, lateral partner movements markedly increased.

These new initiatives require accurate information about both a lawyer's experience and the matter's area of law:

- *Winning Pitches Require Presenting the Most Relevant Experience.* Companies want lawyers with proven expertise to solve their problems. Proving expertise — whether in formal, written proposals or informally in discussions — requires assembling a dossier showing the firm's relevant experience and best-fitting lawyers.
- *Establishing Expertise Publicly.* To win the opportunity to pitch, firms must establish their expertise publicly. This requires presenting specific matter experience by practice, earning league table-top rankings, and winning awards. All three require locating relevant lawyer experience and matters.
- *Pricing and Profitability Analysis Requires Accurate Historical Experience.* Pricing professionals need to find similar matters to estimate costs and set prices. To do so, they

need an accurate record of matter type and experience. Likewise, analyzing profitability by matter type has the same requirement.

- *Integrating Laterals and Cross-Selling.* With lawyers regularly moving laterally to new firms, the complexion of cross-selling has changed. Personal connections and memory of prior matters no longer suffices. To cross-sell effectively, partners need a constantly refreshed source of information on matters and lawyers.

Enterprise Search Solved Many Problems – and New Products Will Do Even More

Around 2005, technology emerged that helped address the challenges of PSL costs, absence of context, increasing email volume, and an inability to systematically identify experienced experts. Enterprise Search, a method of organizing information derived from multiple sources, went well beyond keyword searches of Word and PDF documents. This technology searches multiple sources of information — documents, email, time entries, matter intake databases, and client relationship management systems — and applies sophisticated algorithms to create a retail-shopping-like search experience inside of law firms and departments. These systems also demonstrated that finding a related matter is very helpful, as finding a case similar to the one at hand identifies both lawyers with experience and relevant documents.

With a few words, lawyers can search for documents, email, matters, or experts and have a very good chance that the system would show highly relevant results at the top of a search result hit list. They also display search filters to narrow results (for example, by jurisdiction, lawyer, or file type). Today, several products are available to accomplish this, as described in more detail in the next section.

Starting in 2016 and continuing into 2017 and beyond, Enterprise Search options have changed and improved. Many law firms are moving or are planning moves to newer software with greater capabilities. Some choices incorporate sophisticated artificial intelligence that will improve search. First, the software will "know" who the user is, his or her practice, and recent work. Those factors, previously untapped, will improve search results. And second, search likely will become embedded in other platforms such as document management or Microsoft Word. In that scenario, "search comes to the lawyer instead of the lawyer going to the search." This has significant potential to improve lawyer efficiency. (For more detail on this point, see an August 2017 article my colleagues and I wrote, *Transforming How Lawyers Work: AI-enabled Document Management*.)

The Emergence of Specialized Experience Management Software

Around 2014, a new class of software came to market designed specifically to manage experience. Examples of brands include Foundation Software, Prosperoware Umbria, and Neudesic Firm Directory. These offer a single enterprise system that can power marketing, KM, finance, and other functions. The software allows for collecting important details about lawyers and matters, offers flexible reporting, integrates with other law firm systems, and has a simple-to-use interface. Certain key information in these systems can be populated by Enterprise Search discussed above, but experience software collects and manages much valuable data beyond that.

For robust experience management, however, software alone is not enough. Someone must populate the data, if not lawyers, then staff to take a first cut and, ultimately, to visit lawyers to collect the correct information. Reluctance to hire staff for this has fallen as firms respond to the

need to pitch, price, and analyze profitability. Many marketing departments already invest heavily to capture this type of data. Finance and new business intakes often contribute. Likewise, KM departments happily contribute because they can ride on the experience system coattails.

The Rebirth of Intranets as Practice Portals

Law firms and law departments started building Intranets around 1995, shortly after HTML was invented. Early Intranets focused on administrative information and static legal content. With tremendous advances in the Web and content management, forward-thinking legal organizations now build portals with dynamic legal content.

Dynamic content alone, however, is not enough. The advent of the iPad and iPhone has dramatically affected design sensibility for all computer interfaces. Today, a good user experience and user interface (UI/UX) is critical if lawyers are to use any tool, especially a portal designed to support practicing lawyers.

Modern portals are a great way to share KM content because they allow ready access to large quantities of information with just a few mouse clicks or easy-to-use and comprehensive search. It is essential, however, to understand that they do not create content; they merely present it. Consistent work is required to collect and categorize content and then to design an interface suitable for a lawyer's workflow

But few U.S. firms have enough KM content to populate more than a few areas of an Intranet. Additional value comes from using the Intranet to provide lawyers with information to manage matters and clients. Modern Intranets have pages for both clients and matters. Content displayed on those pages comes from other systems — document management, financial, and news services — so that updates are all automatic. Firms increasingly use matter pages to present financial dashboards that allow lawyers to monitor time they bill and partners to monitor total matter spend.

Making sure the right people see the right data requires using "personas," or user profiles, to drive what the portal displays. A persona can be as general as a lawyer or staff, or as specific a senior associate in a certain practice. Since network login credentials identify a particular persona, the system can display the appropriate legal content. The next level of sophistication is when portals "know" what a lawyer is working on based on recent time entries, email, or documents, and further customizes content based on that information.

The best portals rely on searches to populate some content, humans to populate other content, and an "app store" to allow for customization of the experience and quickly performing common functions such as looking up a client-matter number.

Specialized Content and Tools, including Artificial Intelligence, to Enhance KM

Law firms and law departments can deploy a range of specialized tools to enhance KM across practices. For litigation, West km and Lexis Search Advantage, products offered by Thomson Reuters and LexisNexis, respectively, enhance enterprise search by building document profiles, which then allow users easily to filter search results by, for example, jurisdiction, judge, opposing counsel, or legal topic. They also link online research to a firm's work products.

More recently, a whole class of AI products has come to market that helps lawyers work with deal documents and contracts. Machine learning products such as Kira, RAVN, eBrevia, and Seal automatically extract contract provisions, which accelerates due diligence reviews. This type

of product can also be used to construct clause banks and determine "what's market" within a firm for deal terms. (Numerous start-ups offer other AI software for other aspects of contracts such as negotiating contracts or comparing a contract to a corporate standard. These companies typically target law departments and business users as much if not more than law firms.)

Another new or perhaps reinvigorated class of software is for deal management. This class of software helps deal teams manage the multiple documents — and their signature pages — within a law firm and across all parties in a transaction. Brands include Doxly, Closing Folders, and Workshare Transact.

Not all useful tools are new. A wide range of document assembly tools allows automating frequently used documents. For corporate law departments, contract management lifecycle software helps with drafting, storing executed versions, managing rights and obligation, and anticipating renewal dates.

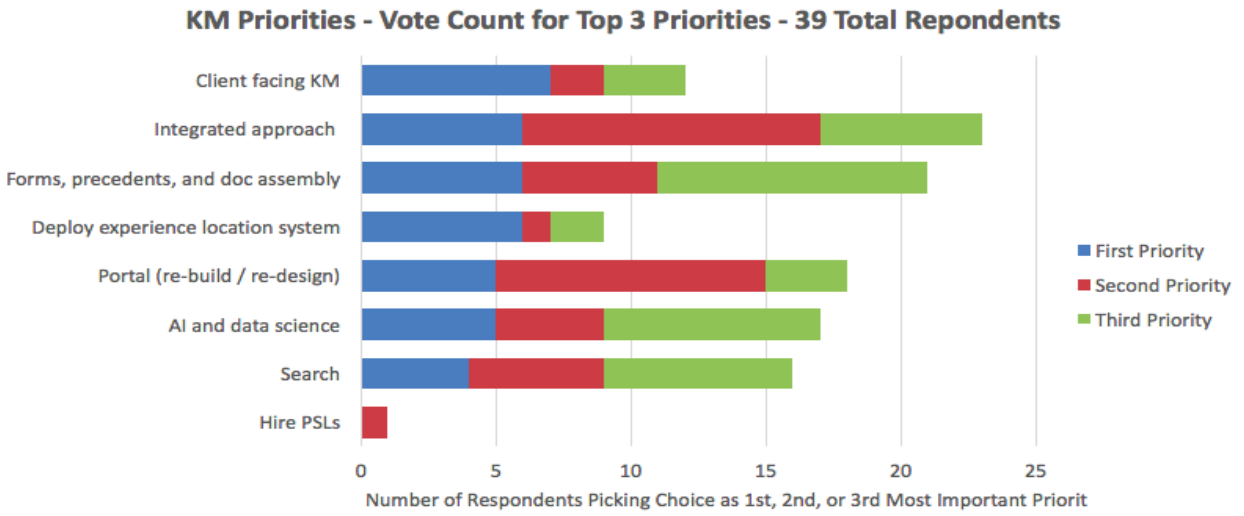
Even with Technology, Organizations Need Dedicated KM Staff

KM does not happen by itself. Few lawyers complete document profile fields or conduct after-action reviews. Many give documents titles that have little meaning to colleagues (or to the author, after a few weeks pass). Machine learning tools for due diligence must be evaluated, selected, and sometimes trained for a specific firm's document types. And even with enterprise search and especially with portals, someone must be in charge of KM. Many law firms have directors of KM, and some have chief knowledge officers. Note that these roles are separate from PSLs, who may report to the CKO or to practice group leaders. PSL typically reports (sometimes directly, sometime with a dotted line) to the head of KM.

KM Remit and Priorities Vary Considerably

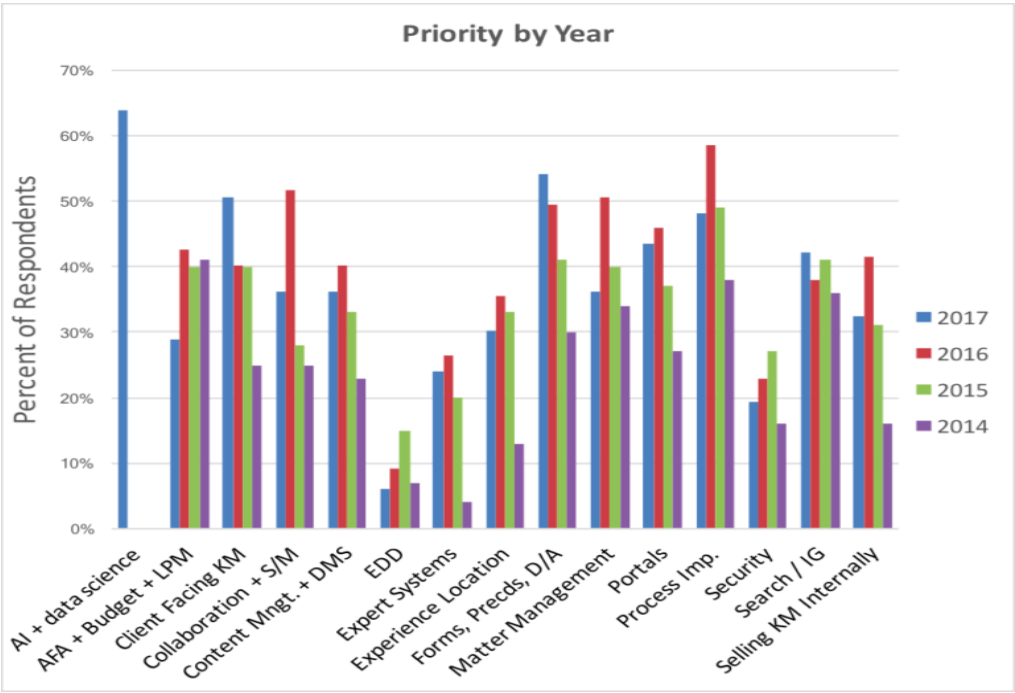
KM in law started in the 1990s, usually under a different label, and by 2000, firms were hiring KM directors or chief knowledge officers. By 2005, it became clear that KM was not a monolithic discipline — and that it was changing regularly.

A June 2017 survey (that I designed and analyzed) of about 40 KM professionals from 40 large U.S. and Canadian law firms conducted under the auspices ILTA (International Legal Technology Association — the leading professional group of legal IT and KM professionals) shows the significant variation in current KM priorities:



As for change, take as an example a trend that started around 2010. The legal market began embracing alternative fee arrangements (AFA), legal project management (LPM), and professionals to support both. The legal market is still at the early stages of fully integrating and adopting these disciplines. In many law firms, KM professionals lead or contribute significantly to AFA (and other pricing issues) and LPM. But as those disciplines mature, law firms often hire dedicated professionals to focus on them. That in turn causes further shifts in KM.

Another survey, one that I conducted for a private group of large law firm KM professionals that meets annually, shows how priorities of KM professionals shift over time. This survey, conducted in January 2017, had about 80 respondents from large firms in the U.S., U.K., and Canada. The details may be hard to read, but two points stand out: First, KM professionals focus on many activities, and second, priorities have, in many instances, shifted significantly over time:



Opportunity Lost and Now Regained? Collaboration and Social Media

Knowledge management often includes efforts to improve collaboration within firms and law departments and between clients and firms. Many lawyers and KM professionals initially thought that the firms and departments could borrow from the advent of Web 2.0 and an array of consumer social media services. Starting around 2010, many law firms experimented with internal social media tools (e.g., Yammer), but few if any of these efforts succeeded. Early disappointment led to several years of low interest in trying collaborative tools.

More recently, a new generation of legal-specific products has come to market holding new promise. Examples include ThreadKM and Neudesic Pulse. These products tie either to the document management system or sit inside of a law firm portal and offer the promise of success. In addition to the goal of reducing the volume of email traffic and making email relate more clearly to matters, information governance considerations also drive some of these efforts.

Information Governance, Records Management, Document Management, and KM

For several years, driven by eDiscovery and other legal requirements, lawyers focused on records management. RM generally means classifying documents and email so that they can be preserved or destroyed according to defined schedules. The RM concern has recently broadened to Information Governance (or "IG"), which deals with security, acceptable uses, and retention. For example, organizations may need to lock down documents with personally identifiable information such as social security or credit card numbers.

Some of the goals of IG, for example, limiting document access to just the team working on a matter, are at odds with the goals of KM. This trend is accelerating rapidly now with cyber breaches occurring regularly. A common practice is to assume that hackers will breach a law firm perimeter, often by phishing, which means gaining a specific user's credentials. Once a hacker is inside, locking documents to the team working on them minimizes the amount of information a hacker can access.

These changes may end up rewriting the KM playbook. Part of the rewrite will be a fresh look at document management systems (DMS) in law firms. Virtually every large firm has a DMS. But in many if not most firms, roughly half of lawyers do not regularly use it. That creates enormous security risks. Fortunately, a new generation of document management products is coming to market that help the security issues, and via better tracking of document history and/or artificial intelligence, provide strong pointers to lawyers who have knowledge of the matter, legal issues, and documents involved.

Developing a KM Plan

So how should a law firm or department start with or integrate KM? The answer, of course, depends on where that law firm is now, what competitive pressures it faces, and what resources it has. What follows is a rough inventory and sequence that applies to many firms and departments.

- Deploy Enterprise Search
    - Make it easier for lawyers to find work product and colleagues with expertise.

- Improve Experience Management with Better Matter Intake and an Experience Management System
    - More systematic matter intake that collects richer profile information will enhance search results. A reasonably-sized taxonomy helps here.
    - In law firms, marketing and finance will also benefit from better matter profile data that allow, for example, more easily identifying prior matters related to an RFP and aggregating like matters for profitability analysis.
    - Licensing specialized experience management software allows capturing additional information about lawyers and matters, and then using that for pitches, staffing, and helping lawyers find experienced colleagues.
- Evaluate Specialized Search for Litigation Documents
    - West km and Lexis Search Advantage extract citations, jurisdictions, judges, and law firm names from litigation documents. It enhances searches and integrates online legal research to a firm's or department's work product.
- Try Professional Support Lawyers (PSLs)
    - Test the value of one or more full-time professional support lawyers (PSLs) to find, create, and maintain KM content.
    - Metrics for proving ROI are hard to define, so the value is a judgment call.
- Develop an Email Management Strategy
    - Look for a proven email filing and search systems, which means keeping an eye on specialized products
- Hire a KM Professional
    - Deploying search, email management, and building KM resources requires that this be someone's full-time job.
- Develop a Portal Strategy
    - Develop plans for a new, continuously maintained portal with a practice-focused user experience that is rich in content. Make sure to use personas and to invest in good design.
- Evaluate and Consider Deploying AI tools
    - Many firms have already licenses AI tools, especially machine learning for accelerating due diligence.
    - So develop a program to evaluate AI tools and their economic impact. Be prepared to deploy, depending on the evaluation outcome.
- Evaluate New Ways to Collaborate and Communicate
    - Lawyers are drowning in email. In their personal lives, lawyers use social media and collaborative software.
    - Despite early experiments that have failed, keep trying new tools for and approaches to web-based collaboration.
- Develop a Vision for the Electronic Matter File
    - In the digital world, there is no single place for all of the materials related to a matter.
    - Technology is improving to pull different types of information from multiple systems into a single, easy-to-use program that consolidates the data and provides context-sensitive views of it.

Technology Implementation for Law Firms and General Counsel Offices

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There is a vast array of legal technology available today, ranging from core products like matter management/e-billing systems to highly sophisticated analytics reporting tools and collaborative portals that allow for the communication of information inside and outside an organization. Within the past few years legal technology has continued to evolve, with more options for platforms such as enterprise legal management (ELM) software, more systems being based in the cloud, and the development of specialized rapid deployment tools that can address specific "fill the gap" needs. For each technology tool there is also a variety of vendors, and every vendor's product has its strengths and weaknesses. With all of these options, identifying the right technology and justifying its expense can be a challenge. A systematic approach to technology planning — understanding the available options, identifying what is actually needed, and evaluating the proposed system's cost effectiveness and return on investment (ROI) — will help avoid expensive mistakes and lead to the selection of the right technology to yield the most effective long-term benefits.

Technology Benefits

The right technology offers a number of benefits. First and foremost, it helps law departments and law firms meet their clients' evolving needs and expectations. Today's clients expect their in-house counsel to have business acumen in addition to legal proficiency, and to provide legal services in an efficient, cost-effective manner. In turn, law departments impose similar expectations on their law firms, with a heightened emphasis on value, efficiency, and cost effectiveness of the services provided, in addition to the actual results. Technology can help law departments and law firms operate more efficiently and cost effectively. Beyond basic functions such as tracking and organizing work and cost, the emphasis of the newest technology is on enabling the efficient execution of work by legal professionals. Technology can improve communication, both internally and between inside and outside counsel. It can assist in benchmarking and provide information for advocacy regarding achieved results. Through the opportunities it offers for consistency and timeliness, it can reduce risk. Finally, it allows counsel to be more proactive, facilitating the collection of information to make better-informed decisions, allowing counsel to answer business questions on a timely basis and to communicate insights based on the most current information.

Technology Options

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He has experience working with organizations in a variety of industries including energy, pharmaceutical, automotive, technology, and financial. He has successfully implemented performance improvement initiatives in multiple Fortune 50 companies.

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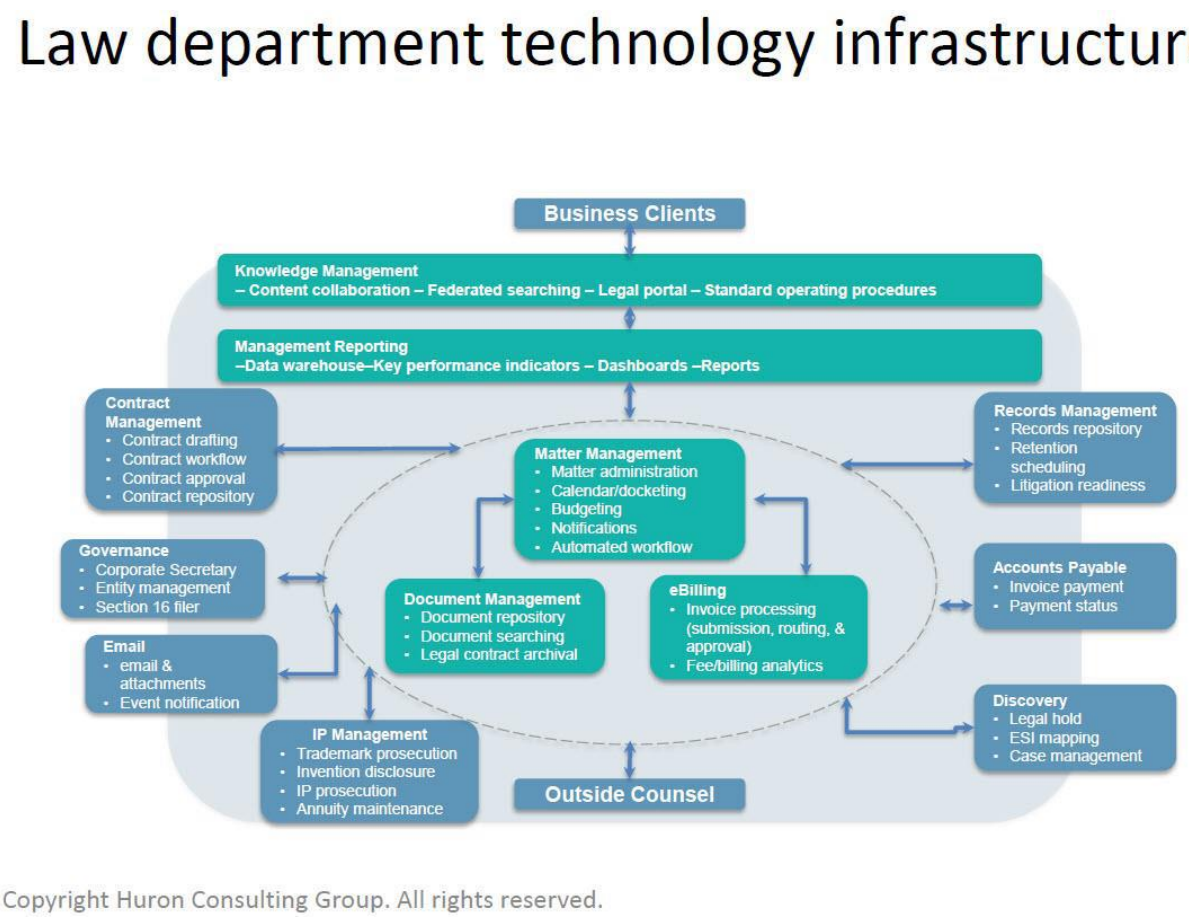
Organizations' technology maturity varies widely, from having no technology or using it on an ad hoc basis, to some processes and tools that facilitate repeatable functions, all the way to fully mature programs in which technology facilitates the improvement of processes through qualitative feedback. Where an organization falls on the technology maturity spectrum may depend on its size, the nature of its business, or a variety of other factors.

Law Departments

As a best practice, law departments should begin with the core systems that facilitate the department's ability to track and provide legal services, and are the foundations for other, more sophisticated technologies. Below is an illustration of a mature law department's technology infrastructure, based on a "matter-centric" design in which all systems are linked by a common matter identifier (for example, a "matter number.")



Core Systems

Law department core technologies are generally thought to be matter management/e-billing systems, document management systems, or intellectual property (IP) management systems if the department has an IP portfolio.

Systems Supporting Legal Services and Company Functions

Ideally, a department's core technologies can integrate with other technology used by the department such as management reporting systems; systems supporting specific legal services (for example, e-discovery and legal holds, the latter being a process in which information is preserved in anticipation of litigation) or company functions in which the law department is a stakeholder (records and information management, contract management, etc.); and systems that support operations, including enterprise-wide technologies.

Legal Holds and E-Discovery Systems

Organizations must choose which, if any, e-discovery functions to perform in-house versus those they wish to outsource. The most commonly in-sourced e-discovery functions include legal holds and collection. Most organizations outsource the traditionally commoditized e-discovery functions of processing, hosting, review/managed review, and production.

Legal Hold Systems

Effective management of legal holds increasingly requires the use of technology. The most widely recognized benefit of legal hold systems is that they automate the tracking of custodian acknowledgements/responses to legal holds and the necessary follow-up procedures (e.g., automated resends, manager escalation, and periodic reminders). Their reporting capabilities help demonstrate defensibility of the organization's legal hold process. Legal hold systems commonly integrate with matter management systems to readily share important matter information, avoiding the need to re-key the same information multiple times or manage it in disparate systems. Legal hold systems can also integrate with HR systems, IT inventories, and RIM (records and information management) systems, aiding in custodian and data source identification, and thereby improving scoping efforts. All organizations must have a sound legal hold process, and those with a moderate amount of litigation should consider investing in legal hold systems.

Collections Technology

Organizations are increasingly building dedicated in-house teams equipped with a toolbox of collection technologies ranging from IT backup software to highly specialized stand-alone and network tools. Organizations should exercise caution when in-sourcing collection, however, because it can be complex, and the process must be forensically sound and legally defensible. In many instances, companies continue to look to external assistance for highly contentious matters or when expert-level forensics, analysis, and/or testimony may be needed.

Records and Information Management Systems

RIM systems assist in the indexing, storage, retrieval, and disposition of records. Some track and control documents, folders, and/or boxes from creation to final disposition, and can automate records retention schedules. RIM systems can be integrated with enterprise content management (ECM) systems and litigation hold systems.

Contract Management Systems

Today's contract management systems span the entire contract lifecycle. Many contract lifecycle management (CLM) systems include functionalities that track approvals and other steps in the process, send email reminders to the parties involved, and have built-in redundancies that allow for escalation or sidestepping in certain circumstances, facilitating better management of the approval process. These systems now often provide for electronic signature. New tools are available, some embedded in traditional CLM platforms and others that are add-ons, which can automate aspects of contract generation and greatly expedite time to market, ensuring compliance for internal or external requirements. Some of the newest tools are custom-designed and incorporate logic components so that they can be used on more sophisticated contracts that may previously not have lent themselves to more basic template-based technology. These new tools are simple to use, powerfully dynamic, and can be client-facing, allowing self-service. The technology currently available helps speed time to market and manage contract obligations, both of which enhance the organization's revenue capture.

Law Firms

Law firms' core technology includes the systems that allow firms to conduct their business on a day-to-day basis. This core technology includes time and billing systems; financial management systems; financial analytics/business systems, and document management systems. Most firms have cost recovery systems (connected with copiers, phone calls, etc.), although those may be becoming antiquated as more clients disallow those expenses. File management systems were essential in the past, but they are now evolving to more sophisticated records management systems. HR systems are also useful. Depending on the size and market position of the firm, customer relationship management (CRM) systems may be important.

Beyond these core systems, many law firms find case management, project management, and budgeting technology useful, as corporate clients in particular become more insistent that their outside counsel have these capabilities. Workflow management technology serves a similar function. Knowledge management systems are becoming common as well in order to keep better track of the firm's work product and research.

Communications within and outside of law firms are evolving, and firms' technology has evolved as well, including email, cell phone communications, shared platforms such as Microsoft SharePoint, video conferencing, messaging, and more. These technology developments create new challenges with respect to maintaining privilege and confidentiality along with data privacy and security.

Finally, depending on a law firm's philosophy about e-discovery (meaning whether it wants to provide direct e-discovery services to its clients), it may have various types of e-discovery

and litigation support technology. Almost all firms that serve corporations have a document review tool of some type.

Assessing the Organization's Technology Needs

Before diving into new technology, it is important to assess the organization's needs; the law department's or law firm's business objectives and process requirements should drive technology solutions, rather than the technology itself. Acquiring technology before assessing the real need can result in disappointment and failure to gain the anticipated return on investment. There are a number of triggers that may indicate the potential need to acquire or refresh technology, ranging from lack of the basics to gaps in the performance of existing technology, such as the need for better financial reporting; better project management tracking; better risk or compliance management; or consistent use of existing technology. There could be a specific client request or need to be addressed, such as specific compliance areas. When the time comes to make that assessment, the following questions can help:

What is the business need for the technology?

Business needs should be the lens through which to examine technology. For purposes of the assessment, business needs should include the strategic objectives the law department or law firm wants to achieve. Potential objectives might include exceptional client satisfaction, improved cost management, enhanced revenue, improved teamwork, or increased productivity, to provide some examples. For these objectives, what are the essential functions and what are the essential processes for these functions?

It is important to take into consideration future expectations such as the law department's and organization's current size, expected growth, anticipated spending, and other factors.

What technologies are currently in place, and what is the age and current usage of existing technologies?

Does the department or firm have the core technologies in place? Are they performing all the needed functions, or should they be updated? At a minimum, most law departments and law firms should have the core technologies identified above.

If the technology is seriously dated, it may lack new, cutting-edge functionality that could significantly improve productivity, such as Outlook integration or portals for collaboration between law departments and their outside counsel. If people are not using a certain technology, it is an indication that it may not be doing what it is supposed to do or is considered an administrative burden, and the return on investment is not being maximized or has been diluted over time.

What are the perceived opportunities for improvement?

Are there existing problems that technology could alleviate or opportunities it could facilitate? For example, could a law department increase collaboration and communication, and eliminate silos by putting in a new matter management platform, or begin to do a better job managing compliance risks by installing an enterprise governance, risk management, and

compliance (GRC) system? Does a law firm's knowledge management system do the best job of preserving existing knowledge and making it more universally available?

What are the relevant best practices, and what are the trends in the legal technology industry?

A clear understanding of the functions that need to be accomplished and the processes that can potentially be improved with technology mapped against the department's current technology maturity level provides the starting point for prioritizing needs and developing a technology strategy. From there, in order to identify potential technology solutions, look to best practices for entities that share the same size, scope, and risk profile as the organization in question, and examine current trends. Peer organizations can be excellent sources of information about technology choices.

A note about the cloud

A note about the cloud One question that has generated some attention and debate in the market is whether to use cloud-based technology. The pendulum is swinging toward cloud-based technology, primarily because of lower supporting IT costs. Many law departments and law firms that were initially hesitant about the cloud have now determined that the benefits of cloud-based solutions may outweigh the shortfalls, although there are still some organizations that are reluctant to go in that direction for security or other reasons. While a detailed analysis is beyond the scope of this chapter, in general, keeping technology in-house offers more control and more security, but it also costs more to support and utilizes storage capacity. The cloud is typically lower cost, has virtually unlimited storage capacity, allows for smoother upgrades, requires less IT involvement, and allows external access, but also has more associated risk. Some of the potential risk considerations can include data security and privacy; access control; back-up and archiving policies; records management and e-discovery issues; difficulties with integration and data usage; and an exit strategy for terminating the relationship and transitioning the data.

With the answers to these questions, examine the current technology infrastructure through the lens of the identified strategic objectives. Develop a prioritized plan for technology improvement, taking into account the current infrastructure, strategic objectives, future requirements, perceived needs, and best practices.

Technology Return on Investment

Especially with today's shrinking budgets, it is important to be able to financially justify any technology investment. Many find it helpful to use return on investment (ROI) models when making the case for technology purchases. Being able to articulate the ROI will help answer the question of why (and whether) new or upgraded technology is needed.

Most vendors will provide ROI information that can serve as a starting point. Since vendor ROI models tend to be fairly generic, it may be a good idea to expand on the vendor-provided information or use it as a benchmark against which to make organization-specific calculations.

The following are a few practical tips to consider when developing the ROI model:

- Extend the analysis over several years. The expenses are likely to be heaviest on the front end of the investment, whereas the projected gains are likely to increase over the course of several years as use of the system matures.
- Include costs for system selection; licensing and hosting costs; basic implementation costs; costs for integrating with other in-house systems; project initiation costs; and the cost for any advanced features or customization of the system.
- Carefully consider the assumptions built into the cost calculations. Make sure the model takes into account variables such as growth or other factors that will add to the cost. For example, many providers bill for software licenses based on the number of users, so if the law department or law firm is expected to grow in the next few years, licensing costs may increase.
- Take into account both hard and soft savings when looking at the projected gain. For instance, when law departments implement e-billing systems, they typically see savings through better invoice validation and control over timekeepers, rates, and fees. E-billing/matter management systems also can trigger indirect savings by providing data for more effective rate negotiation or for development of convergence programs, or by facilitating improved management of internal and external human resources.
- Do not forget to include savings related to the improved efficiency and cost avoidance from using technology instead of people for various tasks.

System Implementation

Beyond assessing business process requirements and the functional and technical needs they drive, a comprehensive selection process should also consider vendors' implementation capabilities and the support needed to oversee the successful rollout and adoption of new technology. Implementation support should extend beyond standard system configuration and delivery to include process design, user acceptance testing, process training, change management, and post-production support. Third-party implementation partners can often provide considerable value and increase ROI potential.

Conclusion

Technology selection and implementation is most successful when it is part of a well-planned strategy based on a careful assessment of actual needs and priorities. Many law departments and law firms find it helpful to seek outside assistance for some or all stages of this process. For example, a consultant with specific knowledge of the legal technology industry can conduct a technology assessment to evaluate the organization's technology maturity and opportunities for improvement, and can work with management to prioritize needs and develop a strategy and plan. A consultant may also be helpful in the vendor selection process, as reputable consultants work with a variety of vendors and are familiar with their pros and cons, the degree to which their products can be customized, and other factors, and can offer advice regarding how their specific products will most closely meet the organization's needs. If there are multiple potential options, a consultant can assist with the process of requesting and evaluating proposals, and can also help develop an ROI model to support the technology acquisition. Finally, a consultant can assist with the full implementation process, overseeing everything from system

configuration and delivery, to data migration, to process development, to training and change management, and much more.

An Introduction to Legal AI

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Although several legal AI companies launched as early as 2010, the technology and how to make use of it has since 2016 become a headline issue for many law firms and large corporations.

This is not because the technology has radically changed between 2010 and now, but rather that the traditionally risk-averse and often conservative legal market is now finally ready to adopt software solutions making use of natural language processing and machine learning.

This move toward AI adoption in part has been driven by increasing client pressure on law firms to be more efficient and a growing unwillingness to pay for what they regard as process level work. As clients demand fixed fees for large projects, law firms have little choice but to make use of technology to improve efficiency and protect margins. Clients are also increasingly asking law firms to show them proof that they are innovating and embracing the latest wave of legal tech to provide a better service and value proposition.

And, it is probably fair to say, that as more lawyers see rival firms adopting AI systems and clients welcoming such moves, then more firms will seek to embrace the same technology tools. No firm wants to allow a rival to get so far ahead in terms of using new technology that they begin to have too great a competitive advantage.

This report describes the current shape of legal AI and suggests some uses of AI, as well as some that may emerge. It should be seen as an initial starting place for those interested to learn more.

What is Legal AI?

"Legal AI" is the use of AI technologies, such as natural language processing (NLP) and machine learning (ML) in relation to legal tasks.

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NLP is the use of a special type of software that is able to read "natural language," i.e., normal text that we all use. As the law is in large part constructed from the written word, the power to read, at great speed, legal texts using NLP provides a considerable new capability to which lawyers and clients did not previously have access.

NLP, for example, could be used to read a contract and tell you what the key clauses were and if they differed from standard clauses you would normally expect in that type of contract. Or, it could be used to understand a user's legal query and then search legal data to find not just any document that used certain key words, but rather return information that truly matched the concepts in the user's question.

While such sophistication is not infallible or as subtle as an experienced lawyer's work, it can provide a junior lawyer or paralegal with some very compelling competition.

Machine learning refers to the ability for software to learn and to become more accurate in its outcomes. In the context of legal AI and reading text, this would mean having the ability, often with some human intervention, to improve its level of accuracy.

AI can be used within a law firm or by in-house lawyers. We should not be too proscriptive about how and where certain systems can be used, even if they are used by a certain customer group today.

Because AI applications are in effect "tools," any lawyer could make use of the systems when and if there is a use case to do so. They are not specific to any one practice. The limits on AI's use are often more about the imagination of the users than the technology itself. That is to say, NLP can be used in a wide variety of ways and become a useful tool in multiple legal tasks.

In fact, because non-lawyers also need to deal with legal issues such as agreeing to or referring to legal contracts, some legal AI "tools" are also designed to be utilised by non-lawyers. This is already becoming a growing segment of the legal AI market, for example, in relation to contract generation and completion.

In short, legal AI has a potential use wherever there are people who must deal with legal documents or address legal queries, especially where those legal needs are expressed through text, which AI experts refer to as "unstructured data."

With regard to eDiscovery, some vendors in this space are making use of AI software, but not all. For this reason it isn't listed as an AI group of its own. However, AI-driven eDiscovery is most similar to contract analysis.

Legal AI: A Beginner's Guide

One can divide up the many applications of legal AI into roughly three main branches, though these will be, and to some extent already are, added to by new inventions. That said, an easy way to start is to focus on the following three groups of uses:

1. Contract review: Reading and analysing legal agreements, such as commercial contracts and leases, then extracting useful data from them, and/or checking them against rules/current law. In some cases this also means helping people to finalise contracts.

2. Legal data research: Legal research and litigation prediction systems, covering statute and case law as well as case outcomes, i.e., not specifically looking at contracts, but rather examining the data produced from the practice of law and from laws/regulations.

3. Intelligent interfaces: Interactive, web-based Q&A systems that clients can engage with via text input to gain legal information or that can guide lawyers/non-lawyers in completing basic legal documents and forms.

To some degree there can be some overlap between these three. They could also be linked together in some applications that will emerge. But as far as the present day is concerned, the main vendors of legal AI appear to branch into these three general groups.

Legal AI

Contract Review

Contract review covers the reading via NLP of legal agreements, such as leases or due diligence documents.

What a user wants to look for, or what certain vendors tailor their systems to do, varies. But the fundamental process is the same in each case. There are many potential uses for such technology; some of the applications that law firms and/or vendors have already identified include:

- Due diligence
- Lease review
- Compliance and risk review
- Sales/procurement contract review
- Employment contract review
- Financing/OTC derivative agreement review
- And, as noted, some types of eDiscovery.

Natural language processing is many times faster than human lawyers at reading contracts, while accuracy levels in matters such as due diligence is generally higher than that achieved by human lawyers.

Legal AI: A Beginner's Guide

Structure of Contract Analysis Market

Although there are hybrids in the AI contract review market, it can still be said to have two main product varieties:

Volume Contract Review

These are systems that are focused on analysing large numbers of documents. The objective is usually to seek out specific legal issues in contracts and leases. Sometimes this is to give an overall picture to the client of the legal status derived from the document group; in other cases the aim is to find anomalies (such as in due diligence) or to spot areas that need further legal attention (such as in compliance review).

Contract Assistance

These are systems that tend to be focused on smaller numbers of contracts, sometimes even single contracts. Some vendors aim such systems at non-lawyers who wish to understand what a contract contains (for example, a procurement executive who wants to know what is in the 50-page procurement contract on his desk). Some of the systems are also focused on the pre-signing phase and help the client to spot clauses the other party has included in a contract that they may need to reexamine, or where they may need to add in certain legal clauses to meet standard internal practices/rules for that type of contract.

A Note on eDiscovery

People often ask whether AI contract review is the same as eDiscovery. The simple answer is that although some of the latest litigation eDiscovery platforms do seek to make use of NLP and machine learning to analyse documents, it is perhaps better to see such uses of AI techniques as operating with a parallel, but often quite different use case to contract review for due diligence or lease review, for example.

In fact, as most readers will appreciate, eDiscovery is already a vast legal technology industry in its own right, with more than 200 vendors providing a wide range of technologies and methodologies.

Legal Data Research

AI systems can also be used in a broader support role beyond contract review. These uses can be roughly divided into:

- Knowledge systems: e.g., legal research along practice lines; and
- Predictive systems: e.g., case outcome prediction based on specific matters and/or litigation trends based on court outcomes.

Knowledge Systems

An AI-driven knowledge system is a piece of software that taps data held or linked to a law firm or in-house team. Data could be expert opinions on legal matters by the partners of the firm; statements of fact about laws and regulation; relevant cases and commentary by judges; and any associated case notes or updates that the firm has created itself or is linked to.

In short, the system can do an "intelligent deep dive" into the material available, working in natural language (i.e., normal English, often in sentence form) to provide the answers you require.

What makes these research systems better than simply an enterprise search or a database trawl is that the system is not only learning from the questions a lawyer is asking, but also seeking to infer the best responses from the data. It is not just a key word search that brings back hundreds of documents; instead, the NLP seeks to isolate what the lawyer actually needs.

Such research alone clearly does not remove the need for detailed analysis by senior lawyers of the research that has been delivered. However, it may significantly speed up basic legal research conducted by junior lawyers who are working as part of a larger team. It may also be

made more valuable when and if it links to other AI systems and document automation processes; for example, where a document may take note of certain key, though "vanilla" legal points that the firm wishes to add for the client's benefit.

It may also reduce the need for lawyers working in PSL (professional support lawyer) roles, or at least those handling relatively straightforward research matters.

Predictive Systems

Predictive systems are a variation on the above knowledge systems and could arguably be called a subset of them, though they could also operate on a standalone basis. They are seen as primarily of use in pre-litigation planning.

AI-driven software can examine huge numbers of cases and all the publicly available court documents and rulings made by judges in the past up to the present day that are relevant to a case along, with many other types of useful public data.

Predictive Analysis

The main aim is to reduce the volume of manual research and provide lawyers and clients with actionable insight into previous cases, the actions of lawyers on similar matters, and — where possible — to gather evidence on the terms of likely success of a matter compared to previous similar matters, and/or give some indication of the damages that could be awarded by such a matter and/or other fee/value data.

Intelligent Interfaces

The third main branch of legal AI is the development of intelligent interfaces that can guide lawyers or clients to specific legal information, or to "triage" their legal needs. The aim of the technology here is not so much to conduct primary research or analysis, as the above applications do, but to help guide a user through to the right outcome.

Expert Systems

AI-enabled systems can help clients and lawyers to conduct rapid and routine legal tasks that require some "expert" information to complete.

In some cases they may be using NLP to understand queries a lawyer or client has typed into a dialogue box. Machine learning may also be used to help the system better provide the right answer that is tailored to the user's needs.

That said, some expert system are not using AI technology, but rather conditional logic and/or word tagging to understand queries and respond to them. The reality is there is a grey area here that is still being explored by vendors. But even those not making use of AI systems look likely to move in that direction eventually.

These applications are often used when a person is guided through an "intelligent checklist" that allows them to gain the right knowledge, or in some cases to complete very simple legal documents, such as NDAs.

The software usually uses drop-down menus and check-boxes to move the user through a series of steps so that they can either be given the correct data they need, for example in response to a specific legal question, or be used to fill in the missing elements of a standard document.

They may be outward-facing for clients to use, or inward-facing, allowing lawyers to interrogate the expert system for their own specific needs and/or help them to complete a legal document.

Expert systems, whether outward-facing or inward-facing, are carefully designed to provide informational support to a specific need, such as how to respond to a certain type of employment dispute, or to help add in data to a certain type of legal form.

Triage Services

The potential exists to use an outward-facing AI system to act as a triage service. At present, most law firms do not use these types of systems, though banks and other financial service companies are developing automated customer relations systems. A hypothetical example for a law firm is set out below:

Such triage/customer-directing interfaces already exist in a very basic way at some law firms — usually those that deal with the public and ask clients to write a short email to describe the matter. However, these could be far more effective and not just serve individual clients.

Rather than asking the client to do all the work, an AI system could be used to help guide clients to the right outcome in terms of an advisory path and understand their queries using NLP. It could also make use of machine learning to steadily improve its responses to certain types of client query over time. The AI could also immediately link the information provided via the triage system to the firm's own research into the types of case worth pursuing, as well as link to the firm's CRM system.

Legal Bots

Many lawyers will be aware of "bots" or "chat bots," though perhaps without considering how they could be used in the legal space. Apple's Siri is probably the best known "bot" — what one might call an AI-driven personal assistant. Essentially, this is an interactive interface that operates in natural language, whether written or spoken, with the latter clearly being far more complex.

At present there are "access to justice" legal bots that operate using written text, which help to give preliminary advice on matters such as criminal law to members of the public. Another example is a bot that guides members of the public through the process of completing a challenge to a parking ne.

However, these systems are, as yet, relatively narrow. That said, the market for legal bots is continually evolving, and there are already new bots surfacing that are capable of a far broader range of legal topics.

Legal AI conclusion

This is a relatively short and succinct overview of legal AI, which is a market that is rapidly evolving.

Nearly every week a new legal tech start-up launches an application that makes use of NLP and machine learning techniques, and so the picture inevitably is more complex than the simplified version set out here. But, we all have to start somewhere, and getting to know some of the key strands of legal AI is probably a good way to begin to structure one's thoughts.

We have now moved past what was a period of speculation, and into a period of factual and real-world uses of legal AI systems.

The shape of the legal AI market will no doubt also be quite different by 2018. More AI companies will emerge that may bring together several of the strands set out above. Others may perhaps merge together, or invent entirely new ways of using NLP and machine learning in the legal sector. It is truly a dynamic area and therefore all the more necessary to stay up to date with.

One thing is certain: We have now moved past what was a period of speculation and into a period of factual and real-world uses of legal AI systems. The number of vendors will increase; the number of law firms, in-house teams and non-lawyers using these AI systems will grow. Eventually legal AI will become a key element of the legal sector that many thousands of people rely upon and use every day, just as many other technologies have done so before.

Pricing Legal Services

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In the "good old days" of law practice, pricing was a simple concept. It was a sellers' market, and law firms could name their price. Estimates were used for guidance at best. In fact, a colleague of mine, a former law firm managing partner, regales audiences with tales of how when he first entered practice, his mentor taught him a simple method for pricing work. It was less than exact: At the end of the matter, hold the file of paperwork in one hand and set your price based on the general weight of it ("That feels like it's about $45,000' worth of work"). Somehow, that used to be acceptable. Even for those firms that didn't subscribe to the "weight = cost" formula, a simple ballpark figure quoted along with a minimum retainer accompanied by an hourly rate was commonplace. Firms even passed on a bevy of expenses on top of that formula, charging for faxes, photocopies, long-distance, and other creative concerns. In 2008, that all changed and has continued to evolve.

Firms today need to embrace the best practice of evaluating pricing before a matter is opened, as it allows the firm to have the appropriate enterprise controls. There are two elements to proper pricing of a matter: (1) determining scope (or budgeting) and (2) what pricing or fee type should be used with the matter. Firms are becoming better at the latter but are quite unskilled in the former. Both must be razor sharp and working in concert to form the bedrock of profitability in the new market for legal services.

Legal services has become a buyer's market, which is why we must reshape profitability. Corporate clients expect the same quality of work but now delivered within price guidelines they set at the outset of a matter. When dealing with outside law firms, there's no more "guesstimation" in legal billings, and there's little room to negotiate. A firm's value is found in the delivery of quality matters at the price and level of expertise they expect. The insertion of price and client-set budgets has upended the law firm business model.

The challenge for firms adjusting to this tectonic shift is that historically, there was little to no understanding of the true cost of delivery for their services, complicating the transition to delivering work — profitably — to budget. Firms must reengineer themselves, and quickly. Clients are aggressively interested in managing rates, are refusing to pay for firms' inefficiencies, and simply need predictability so they can manage their own intensely scrutinized budgets. It doesn't get much more essential, economically speaking, than understanding cost and creating the right processes around that cost to ensure the profitability of your business — and that's what firms must do.

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Rates are a Profit Driver

Although this is obvious, the point still needs to be made: Billing rates remain the core pricing structure used in the legal industry, and the level of a firm's rates is key in determining its level of profitability. As a rule of thumb, a one-point increase in rates leads to a two-point increase in profit. The reverse applies as well. In our experience, firms typically have a range of 1 – 3 percent increase in profit for each point of rate change. The range exists because it depends on the specific timekeepers involved, and the relationship between the billing rates and the timekeepers' cost rates.

Discounts happen when clients tell us our prices are too high for particular pieces of work. Specifically, write-downs are reductions from a bill before it goes to the client, and write-offs are reductions requested by the client after they have seen the bill. Write-downs signal that the firm or a partner has decided that a particular effort had no value. Examples of write-downs include:

- The work is out of scope, and the partner knows the client will not pay for it.
- The associate was inefficient in their work.
- The associate did not understand the assignment and did the wrong thing.

Write-downs become important as firms look for ways to lower the cost of delivering a service. By identifying recurring types of write-downs and eliminating the effort before the work is performed, a firm can lower the cost of the service.

Write-offs signal that the client did not see value in a particular effort. This may occur because the firm did not communicate the value of the effort properly, or it may just be that the work should not have been done. Note that, in some cases, write-offs are just good old-fashioned flaky clients who don't pay their bills (a cost of doing business).

Citi Private Bank Law Firm Group recently reported revenue growth has fallen to 3.6 percent throughout 2017, down from 3.7 percent in 2016. Oddly, this is almost entirely in response to increased billing rates — an increase of 4 percent, to be exact. While the difference is marginal, when you consider that the 4 percent increase is much greater than normal, that demand has dropped by 0.2 percent, and that collection cycles are lengthening — it illustrates that raising rates is not a good long-term strategy.

Firms need to adjust their pricing and pricing strategies in response to the market. The challenge is for firms to understand and adequately address the many moving parts of pricing in today's market and reflect the actual cost of their matter delivery. This requires technology to harness data.

Beyond the Billable Hour

So, how do firms now need to price? First, there are two classifications of fee types: hourly and non-hourly. The hourly fee types are those that are still based on per-hour rates. Non-hourly fees have no billable rate and are set using many different criteria. The table below lists the most typical fee types.

Fee Type	**Definition**
Hourly – Standard	Client agrees to pay hourly
Hourly – Fee Cap	Client agrees to pay hourly up to a certain amount for the matter or phase

Fee Type	**Definition**
Hourly – Recurring Fee Cap	Client agrees to pay hourly up to a certain amount for the matter or phase on a recurring basis
Hourly – Collar	A pseudo-fixed fee. The client and firm agree on a fixed fee. They also agree on a percentage above (top collar) and below (bottom collar) the fixed fee. The client pays a bonus if the matter comes in under the bottom collar or gets a discount if the matter comes in over the top collar. Example: Fixed fee element $1,000,0000 Range 10% above or 10% below If fees are below $900,000, a bonus is provided of 5% or so up to the fixed fee amount. If fees are $1,100,000, then the matter is billed hourly with a large discount.
Hourly – Partial Contingency	An hourly contingent fee. Generally, the concept around any contingency is that the firm accepts some of the risk. They discount the rate and then the firm will receive a bonus if the deal succeeds and pays a penalty for failure. Sometimes only the penalty feature is provided, which is also known as a "busted deal." This is typically then done with a rate closer to a standard rate. This also could be a lower fixed-fee amount. The reward is either based on fees or an outcome amount. The busted deal element is just fees. With a partial contingency arrangement based on outcome, there will be negotiations over what expenses will be paid by the client and whether expenses come out before or after calculation of the reward.
Hourly – Partial Contingency (Holdback)	Holdback is a fee-based success. The client typically agrees to a standard rate card. The firm then discounts off standard but can recover the "discount amount" if the matter is successful. An example would be if the matter is billed at 80% of standard rates, but if the deal succeeds, the firm recovers the remaining 20%.
Non-Hourly Fixed Fee	A fixed-fee service provides an agreed amount.
Non-Hourly Recurring Fixed Fee (Retainer)	The fixed-fee service will be provided on a scheduled basis, usually monthly.
Non-Hourly Partial Contingent Fee	The only difference between an hourly versus non-hourly fee is that a specific set of payments are typically agreed upon based on agreed-upon milestones or phases.

Fee Type	**Definition**
Non-Hourly Contingent Fee	With contingent fees, the firm assumes most of the risk but is usually eligible for a large reward upon success. There is an agreement that fees are completely based on the recovery of funds, which is normally a percentage of the amount recovered. How expenses are paid and who is responsible for them is part of the negotiation.
Non-Hourly Procedure Pricing (or Flat Fees)	This is selling services like a product. There is a name of a service with an assigned dollar amount, for example: Medium Plaintiff Deposition, $XXXX

The typical mix of firms' arrangements as seen today:

- 20% Standard Rate
- 60% Unique client arrangement (rate plus outside counsel guidelines)
- 20% Non-standard fee types

Best Practice
Data aggregation should be driven from a data engine within a configurable platform that ensures long-term performance and knowledge tracking; this system would incorporate cost allocation and margin calculation to aid more accurate pricing and budgeting modeling. It would typically include:

- Flexible views of income basis from multiple angles
- Flexible cost allocation models, such as:
  - Direct:
    - Compensation/bonus decisions
    - Partner compensation
    - Other direct allocations – (administrative assistant, bus. dev., etc.)
    - Management reallocation
  - Overhead:
    - Distribution
    - Weighting
    - FTE
  - Margin calculations
- Unit cost information (specifically for pricing and budgeting)
- Simple reporting/analytics paired with targets

As firms absorb how much they need to understand how to price, the value of their data has grown significantly, as has the value of correlating data from various systems and siloes of information within a firm. Since the fundamental question both clients and firms need to resolve is whether it is less costly to go to some form of non-hourly fee or absorb the inevitable

discounting, write-downs, and write-offs, a firm's ability to pull together its own information about the time, effort, staffing power, and ancillary costs (such as eDiscovery) of delivering a matter will inform its pricing.

This is best facilitated by software that reaches across departments and is capable of correlating and compiling data on what was required to prepare similar, previous matters, and the historic resolutions of matters in courts or arbitration, and it provides analyses of part discounts and write-downs. The collected data, properly analyzed, becomes a vital part of informing non-hourly pricing structures that focus on matter profitability. Modern systems can correlate massive volumes of data via warehouses and structured tables or cubes, and then leverage this data to calculate more accurate costs. These can then be modeled alongside appropriate matter staffing and margin to understand both delivery costs and expected matter profitability. These types of systems present a significant improvement over "weighing the file" or "back of the napkin" pricing, and are superior to even complex spreadsheet modeling as relied upon by many firms today that have yet to implement newer technologies.

Matter-Level Pricing and Scoping

The struggle of scope is the most difficult issue facing the industry. If the matter is not scoped correctly, the pricing is going to be wrong and jeopardize the partner's ability to deliver the matter profitably. The reality is that partners or senior associates who are responsible for delivering matters are in the best position to scope them.

As the work of pricing teams becomes more sophisticated and accurate, the need to further develop and standardize different pieces of a matter — phases or tasks — becomes important for allowing technology to refine the process. Clear and accurate categorization of the components of a matter to be delivered to a client will inform the pricing of future matters, and assist firms in presenting transparent, easily understood matter pricing to their clients.

Phase/Task Code

One of the messiest current data problems in the industry concerns inadequate phase and task codes. The first point of confusion is the meaning of a task code. A task code should be thought of as a sub-phase. It is not a task. The challenge is that many of the coding standards have not been updated since they were originally created in the 1990s.

Their original purpose was for e-billing, rather than budget management. As clients began to use them in their budgeting and monitoring, they also began adding new task codes (e.g., first-level review in discovery) or rearranged existing codes. The worst outcome was that some firms used completely unique or one-time codes to act as substitutes for sub-matters, making standardization impossible.

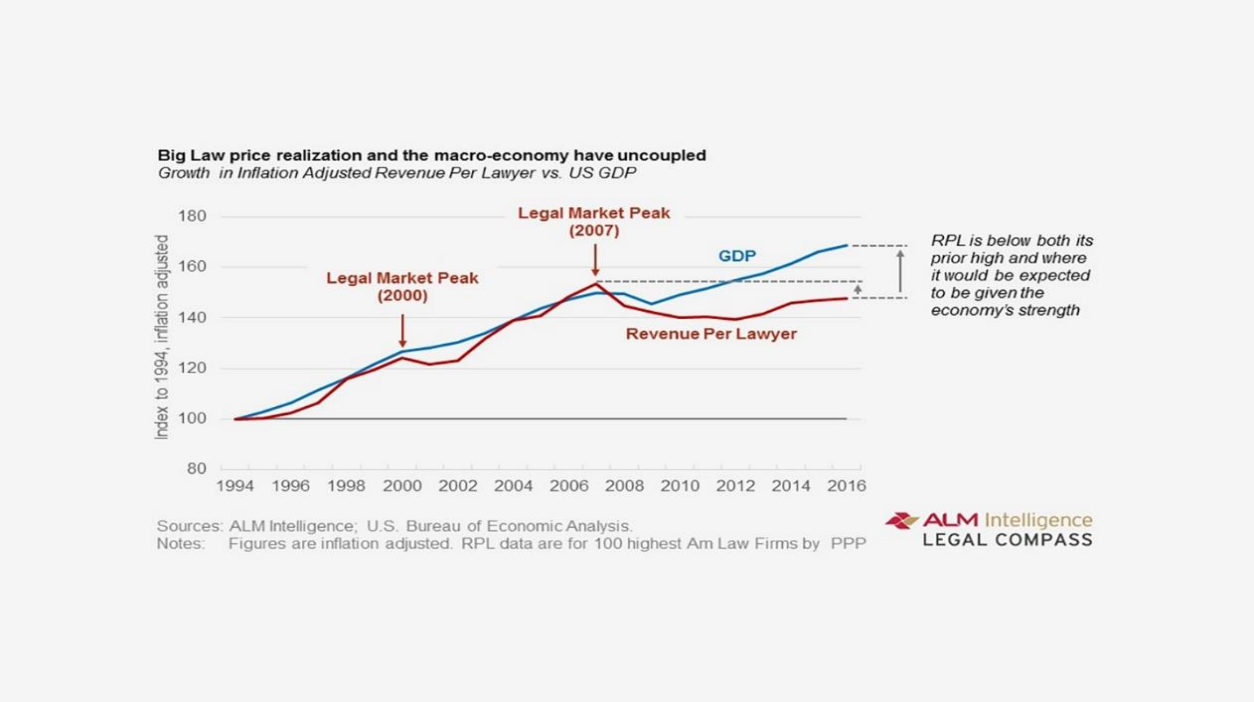
Another core problem with phase and task codes is how firms implemented them in time entry. The result was a lack of accuracy. In any data look-up, you want to ideally limit available choices between four and 10 entries. In many cases, the firm would provide an extensive list of codes for a lawyer to select, and many times, the lawyer made the wrong choice. The result is that these nonstandard, haphazardly entered codes have created a mess, adding to the difficulty of understanding internal data and doing effective client value management.

As new standards have not developed, a best practice approach is to develop a list of phases. If the client uses a specific code set, you need to have the lawyers use the client's code and

otherwise use the firm's code set. In U.S. litigation, leading firms are using eight to nine phases. For transactions, most firms use the new ABA Mergers & Acquisition Code Set for all transactions. Since most client code sets are more detailed, it is possible in most cases to map the client code back to the firm phases.

Modeling Margin

As firms continue to discover, based on annual declines in overall revenue per lawyer figures, matters can quickly become unprofitable when simple discounting is used — see the chart below.



Raising rates and discounting is not working over the long term. Firms have more recently instituted approval processes to make sure that work being undertaken is profitable. Such processes typically require modeling at the client or even matter level. Often, a highly discounted client rate will also require each individual matter to be modeled to ensure that it can be delivered profitably.

While firms may not necessarily share matter costing models with their partners, most finance teams will typically create them. The models determine the cost per hour to perform work and provide a simple mechanism for computing profit margin. The numerous different approaches to calculating cost models require their own separate white paper. Without such cost models, the only other mechanisms for measuring profitability are via combinations of realization/recovery and leverage/gearing.

For new work, the modeling of a potential matter or client relationship can be based on either:

- Hours and resources (person or class/level)
- An amount with a ratio of staffing

- Leveraging a priori matters as the starting point
- Unit pricing/procedures

Guidelines for outside counsel add another layer to the modeling process. As clients focus on controlling costs, they may offer stipulations and conditions to firms seeking work, and these must be considered in evaluating the profitability of such a relationship. The reality is that most matters are still priced on an hourly basis, and the budget communicated to the client acts as a *de facto* fee cap. Factor in the customary practice of giving many clients significant discounts on their hourly rates, and it's clear that firms have shifted the risk completely onto themselves.

To survive in a market where previous billing and pricing models are now regarded as gentle suggestions at best, firms must harness their own data — and the technology that helps them to effectively reshape their pricing practices — or struggle to remain profitable in a new economic era.

Why is Data Important for Law Firm Managers' Decision-Making?

Rees W. Morrison[4]
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Day after day, law firm partners and managers confront operational problems, think about them, and make choices about what to do or not to do. In other words, they decide something. They would make better decisions if they took into account the data available to them. If they collect metrics and weave them into their deliberations, the outcomes will be both sounder and easier to explain.

Two subtler and broader advantages from decision-making that incorporates numbers should be emphasized. First, it encourages a different way of thinking about decision-making than traditional approaches. Make it a practice throughout the firm to ground arguments in data and to present arguments buttressed with numbers, or else accept that a resolution rests on power, values, or ideology more than quantifiable evidence.

Second, being mindful of data is being mindful of what you do. This is a deeper benefit arising from a law firm's receptivity to data. A general awareness of metrics helps lawyers and others in law firms take stock of their processes, describe them and their output in more tangible, numerate terms ("15 10Ks reviewed this month" rather than "Lots of 10Ks"). They become more aware and reflective about what they are doing and how they might do better.

But let's consider our claim — "data helps decision-making" — and ground it by walking through a scenario for a management decision. Assume that three partners want to figure out whether to hire another paralegal. Further, assume that the partners disagree. Their decision will

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He has written extensively on law department management, including nearly two-hundred articles, six books, and a well-known blog on law department metrics. For two years he wrote a bi-weekly column, Morrison on Metrics, for *InsideCounsel*. Among his books are "Law Department Benchmarks: Myths Metrics and Management"; "Client Satisfaction for Law Departments"; and "Law Department Administrators: Lessons from Leaders."

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improve if they marshal relevant data, analyze it effectively, and apply it to their discussion. How can numbers help them objectively think through the problem and potential solutions better than they would have without? Here are five ways.

1. *Sidestep Cognitive Fallacies.*

Data can counteract many of the cognitive biases that afflict decision-makers. Often we are unaware of the gremlins in our minds that attack what we believe to be our clear-headed, balanced evaluations. Consider four well-known cognitive fallacies and how data might correct for them:

Table 1: Sources or Types of Law Firm Data

Clients	**Marketing**	**People**
benchmarks	activities	CAGR staff
concentration	alum	mergers and acquisitions
directing level	client proximity	office open and close dates
domestic or foreign	competitors	associates billable hours
global revenue	competitors offices	associates gender
industries	cross selling	associates law school year
industry size	organizations	associates levels
key	practice groups budgets	associates number
publicly traded	RFPs	associates sources
regulatory load	**Matters**	lawyers engagement
years using firm	cases	lawyers evaluations
Finances	cases duration	lawyers level
accounts payable	numbers	lawyers pro bono time
AFAs	type	of counsel number
ancillary investments	**Practice Groups**	paralegals
billing rates	lawyers	partners mgt hours
client and realization	litigation	partners mrkt hours
client profitability	litigation e-discovery	partners number
days invoice outstanding	revenue	partners sources
fees	**Resources**	partners status change
operating cash sources	e-mails	partners work originate fees
lawyers compensation	knowledge capital	support number and type
profit	tech expenditures	
timekeepers		

Framing: An antidote to framing could be benchmark data on paralegals per lawyer in firms.

Salience: To blunt its potential impact, someone could gather articles that report average lawyer/paralegal ratios based on surveys of many companies.

Confirmation bias: Perhaps the partners' practice group submitted the mixed evaluations on a survey of paralegals, which would be data that challenges a one-sided view.

Risk aversion: A risk-averse partner may argue for more paralegals because the group never wants to be over-extended; past data on large bumps in hours might dispel the concern.

2. *Uncover and Query Empirical Assumptions.*

When people make decisions, they often neglect to articulate the factual assumptions on which they base them. Worse, they may not even realize that they have been motivated by unstated (and usually untested) beliefs about how common something is or how much there is of something measurable. For example, one partner might accept on faith that lawyers will delegate work to paralegals, while another could trust without verifying that it will be easy to find, hire, and retain capable paralegals. If underlying assumptions such as these are not identified and if there is no data either way, decisions will likely be weaker (and take longer).

3. *Disrupt Entrenched Convictions.*

As data becomes available for decision-makers, they should incorporate it and change how they view the probability of being correct. In a Bayesian view (a fundamental technique of statistics), new data changes what are called *priors* and helps make predicted outcomes more accurate. New findings and facts should cause thoughtful people to recognize and reconsider their animating beliefs.

4. Delay Premature Conclusions.

When making a decision, it is crucial not to seize upon the first plausible solution to the problem. Much better, instead, is to keep exploring alternative possibilities. Data helps stimulate new possibilities to address a problem or to encourage managers to think about the problem longer.

5. Counter Peer Pressure.

In groups, solid data can serve as a talisman against the fancy (or loutish) talker, the zealot, or the high-ranking executive. A partner who disagrees with her colleague might be more inclined to back them if some metrics bolster the point.

This is not to claim that good data automatically means good decisions. It is to claim that operational data can frequently help steer managers to reach a sounder decision. To be sure, the toughest decisions tend not to have decisive metrics. But even the gnarliest decisions — those that entangle personalities, tradition, long-term visions, or fights over fundamental values — can benefit from whatever dollops of data are available.

I. WHAT DATA DO LAW FIRMS HAVE THAT CAN CONTRIBUTE TO BETTER DECISIONS?

Analytic tools require data, and law firms have data sets aplenty. From this author's recent book, "Data Graphs for Legal Managers,"[5] the table below shows a wide array of firm data.

1. Types of data law firms have.

Starting with such internal data, firms can mix in information from other sources, possibly within the firm or from data outside the firm. As for client information, supplemental information might include whether it is publicly traded, whether it has an in-house law department, its revenue, the number of employees, SIC codes, and more. For example, you might want to combine time and billing data or input information from your HR system. Years of experience or academic degrees of timekeepers could be mixed in from the firm's HR database.

2. Repositories of data.

All this potentially useful data lives in paper files, people's memory, time and billing software, customer relationships software (CRM), marketing records, personnel files, exhaust (data that is created by someone doing something else, like making phone calls or scheduling conference rooms), general ledgers, status reports, surveys, and counts of all kinds of events. A

[5] REES MORRISON, DATA GRAPHS FOR LEGAL MANAGEMENT: A COMPETITIVE ADVANTAGE FOR DECISIONS (LeanPub, 2017).

law firm that wants to capitalize on data needs to extract and store it in databases, spreadsheets, in the cloud, or wherever it can best make use of it.

3. *Data cleaning*.

A key part of data analytics is the unglamorous slog of grooming it for analysis. Software can help users correct the data, such as when there are missing or highly unusual values, the latter being what data analysts call *outliers*.

Clean data also cannot have too many missing values or different styles in cells of the same column. If the fees column has cells with a dollar sign and other cells without the sign, for example, the software might stumble. If some cells in the spreadsheet show "NA" when data is not available, but others show "—", you need to clean that. Clean data is also reasonably accurate data (it was not a data entry error that some associate billed 4,299 hours last year!) and not pockmarked with bizarre values.

Still, you can actually do useful analyses and, more fruitfully, make predictions with modest amounts of data. For example, with a spreadsheet having details on 50 or more closed cases or matters of a similar type, you can infer a great deal.

II. WHAT ARE POTENTIAL USES OF DATA ANALYTICS BY LAW FIRMS?

Metrics and their exploration can benefit law firms everywhere that partners contemplate management decisions. The next section sketches several decisions that could benefit from data analysis and metrics.

1. *Increase Revenue.*

The recent surge in law firms collecting, analyzing, and visualizing information aims — quite understandably — to increase firm revenue. Why, managing partners ask, should we invest the time and money to do predictive analytics (AKA machine learning) if we don't expect to hear the cash register ring? That goal of increased fees (or improved profitability) makes sense. It also orients firms to focus analytic tools on substantive legal analyses. Much can be done to transform the straw of data into the gold of profitable clients, practice groups, or billing arrangements. Analyzing cost drivers of lawsuits to make more money on fixed-fee arrangements would be an example.

2. *Retain and Wisely Promote Associates.*

One benefit of data is when the firm is hiring lawyers. When firm ambassadors make their pitch to hire associates or lure lateral partners, they deserve to be able to describe the firm glowingly and convincingly. Solid, impressive numbers on growth, revenue, quality, and associates, not to mention clients, persuade recruits, especially when made clear with effective graphs. Or they will let machine-learning software loose to study who makes partner and why, or to tackle attrition in terms of which desirable associates are at risk of leaving the firm.

3. *Improve Firm Operations.*

A number of benefits of predictive data analytics should be recognized in the domain of law firm operational management. As much as managing partners want to grow or increase profitability and bring in more fees and add more lawyers, they may overlook or discount secondary uses of law firm data for running the firm as leaders focus almost exclusively on the short-term return on investment in business development.

Facilities. Another use of data arises frequently in infrastructure planning. Should we sublet additional space? Should we move to another location or open a branch office? Sometimes there are questions about installing a larger server or rewiring the existing offices. Answers to questions like these, and decisions made thereafter, are wiser when there is data available to support them.

Proposals. Almost every Request for Proposal that a firm receives asks for data. The law department that issued the RFP wants to know about diversity, or about practice groups and their numbers of lawyers, or about the size of transactions handled recently. It is efficient to have the raw data already compiled and curated in a spreadsheet or database.

Press Relations. When reporters call, the partner who responds will make points more tellingly if they can rapidly cite reliable facts about the firm or topic. "Almost 40 percent of our clients do business in more than 10 countries" impresses reporters far more than getting back two days later with "Lots of our clients are multinationals." The first statement, with its impressive precision and prompt delivery, can only be made if the appropriate numbers have been tracked, analyzed, and made available.

Vendors: Any time a law firm considers buying something, it will make sounder decisions if it precedes the decision with tallies and tracking. Do we need to buy more user seats under a software license? Have people made sufficient use of the expensive subscription? Research into these kinds of questions pays off; research should be captured as data for decisions.

Law firms focus on data associated either with client matters, or with the effective deployment of their own lawyers and staff. They won't regard their spending on vendors as nearly as vital as matter productivity, investment, and outcomes.

III. WHAT KINDS OF ANALYTICAL TOOLS ARE AVAILABLE?

Some partners in law firms may not be aware of the full panoply of data analytics that their firm might employ. Let's briefly review eight different analyses that software can produce.

Descriptions and summaries of data.

At the most basic level, software can take data, such as the billable hours of lawyers, and describe with varying degrees of summarization the key numeric features of the data. Software can calculate the average billable hour, the median of the billable hours, or how dispersed it is (usually expressed as *standard deviations*). Software can pick out the lowest value and the highest, break them into groups (called *quantiles*), and tell us ranges. *Contingency tables* can also illuminate the

data. Furthermore, software can depict those features of the data in graphics, such as histograms, density plots, scatterplots, and bar charts.

Correlations between variables in the data.

It may be useful for legal managers to see how one variable (an element of data tracked for every associate, client, lawyer, or whatever) moves up or down in relation to the average when another variable changes. Thus, for instance, the software can show the correlation between the number of matters worked on by a lawyer and billable hours reported. A correlation tells you whether there is an association between two variables, how strong it is, and in what direction the variables move. It is a positive correlation if both numbers move in the same direction (such as higher billable hours and higher bonuses); it is a negative correlation if the numbers move in the opposite direction (such as higher billable hours and lower psychological well-being).

Comparisons of averages and differences.

Several statistical tools can detect whether the difference between two or more numbers has significance mathematically. So, for example, there are many techniques to tell whether the average billable hours in a year between two offices of a law firm vary enough for managers to consider intervening and taking some action. These tools, such as *ANOVA* and the *Student's T-Test*, help to determine whether variations are important enough to deserve discussion.

Measures of inequality.

Managers of lawyers may want to assess the quality of a set of numbers, such as bonus distributions. Along with the well-known *Gini coefficient*, several other measures allow software to put a number on inequality and even pinpoint where in the set of numbers the actual data diverges from theoretical equality. These analytics help managers explain their decisions and make better decisions in the first place, if equality is sought.

Understand influence of variables and make predictions.

A whole family of regression tools goes beyond correlations. If, for example, a firm wants to predict the estimated amount of fees to be paid to it during the coming year, it could run a linear regression. The software would then point out which of the variables was more influential in predicting total fees paid and how much of the total fee paid is accounted for by the variables. One of the best-known techniques is *multiple linear regression*. It makes some assumptions about the relationships between whatever value is being predicted and the variables that are associated with it (e.g., level of the person retaining the firm, presence of a law department, range of practice groups involved, and years as a client).

The regression algorithms generate a "model." Once you have a model, you can extract information from it. A model often takes in data and makes predictions regarding new cases, clients, or matters. Think of a model as the software learning on a "training set" of data that has been labeled, such as settled for less than $10,000 or not) and applying that learning to predict something (maybe total fees) for a new case or example. With multiple regression, naïve Bayes algorithm, or neural nets prediction is a common output. For example, given a few dozen instances

of a type of lawsuit, any of those machine-learning algorithms could predict the likely cost of a new matter once sufficient information is available and tell you how probable that cost would be.

As another example of machine learning, a regression model might explain and forecast how fees and hours devoted to five common litigation tasks are associated with outcomes and therefore can predict the likely outcomes for the next case that can identify the corresponding data. Moreover, the machine-learning software can tell you which of the five tasks underpin the strongest association with the outcomes as well as how confident you can be that your prediction is correct.

Extracting insights from text.

Words in documents can be handled statistically by software as *text mining*. When a survey returns free-text comments, for example, software can pick out not only which terms are used most frequently, but also assess the sentiment (the positive or negative vibes of the comments). Even more powerful are the algorithms that can assemble words from the survey comments into topics. A person has to examine the words and identify the actual topic, but the laborious work of parsing all the documents and doing the math can be done quickly by the computer. If you want to show off, mention *latent Dirichlet allocation* (LDA) as your topic-modeling algorithm of choice!

A second form of machine learning would be at work when text mining software takes thousands of emails, identifies patterns in words such as repetition or proximity to each other, or pores through email messages to tag possible indicators of insider trading.

Classification and clustering.

Whenever a law firm or law department has collected a set of data, it can use a range of software tools to cluster the observations. This means that the software brings together related clients, matters, or law firms based on the information available to it about them. Once the software has clustered the observations, managers can more easily detect patterns and understand similarities and differences. A chart known as a *dendrogram* can depict the clustering of data and how clusters relate to each other. Somewhat similarly, software can classify observations into similar groups. Both of these types of analytics help partners see patterns that they could not otherwise detect from a massive set of data.

Other models can also classify new observations into the most appropriately fitting group. With several types of algorithms, including K-Nearest Neighbor or Support Vector Machines, you can classify clients or other data. You would be able, for example, to identify publicly-traded clients or clients likely to reach a certain realization level.

Other varieties of machine-learning software do not require labels. Their models cluster the data into groupings that will reveal something. For example, they might cluster a firm's clients by profitability. The K-Means algorithm can do this, and with the Principal Components Analysis you can aggregate "variables" to find out which of them is more influential.

Machine learning.

At this time, the most sophisticated data analytics that can help partners resides in a branch of artificial intelligence known as *machine learning*. The term encompasses a range of methods by which software chews its way through mounds of data and detects patterns. In one broad

category, *supervised learning*, someone has to classify enough of the instances so that the computer can figure out a pattern. In another category of machine learning, *unsupervised*, the computer "does its own thing," so to speak. The output can be a classification, or a regression, or other kinds of results. These tools include *neural nets*, *support vector machines*, *deep learning*, and Bayesian tools, among many others. This field is currently a hot spring of innovation.

IV. WHAT DO YOU NEED TO DO TO INCORPORATE DATA ANALYTICS MORE INTO YOUR DELIBERATIONS?

1. *Champion.*

Your firm needs a partner who is influential and exudes enthusiasm to push the initiative. Ideally, the champion will proselytize for data analytics and secure funding. Sad, but true; you will need to ante up to find out whether and how your firm can take advantage of machine learning.

The champion ought to be persuasive, eager to learn something about new computational tools, and adept at conveying a vision of how the firm should take advantage of the evolving capabilities of data analytics for legal management.

The champion will need to handle objections skillfully. Data can actually be feared as conspiring against the humanistic values of the partnership. Many partners in law firms shy away from data analytics because the findings invite divisive comparisons. All data discriminates. Moreover, many partners don't really want their clients thinking about performance metrics and costs.

At this early stage of law firms exploring predictive analytics, it is very important for someone influential to explain what the benefits are and how the firm can achieve those benefits. The domain of data, software, statistics, programming, and algorithms will be mostly unfamiliar within your firm, and explanations will be welcome. A partners' off-site conference is a good opportunity to raise awareness and attract supporters.

If IT, a practice group, HR, marketing, and a champion all have roles in a machine learning initiative, it will likely either bog down or take far too much time and money. Each group has a different interest. Someone needs to coordinate meetings, decisions, and timelines. That project management role might fall to a junior person, or the champion might take it on.

2. *Programming and IT Support.*

Your firm will also need programming, perhaps from a consultant or an employee. Programmers and consultants aren't cheap, but they are crucial. Also crucial is that any coding be work for hire, heavily commented so that someone else can follow the steps and logic, and adhere to the tenets of *reproducible research*.

People who have not written code for a computer to run probably don't realize how difficult it is to code well. It is challenging to get a computer to do what you want it to do. This hurdle becomes greater as the sophistication of the programming increases, and sophisticated programming is undoubtedly required to command machine-learning algorithms.

Your firm will need to choose software that can carry out the analyses. Those algorithms exceed the capabilities of Excel, but many other choices exist. This author relies on the open-source R programming language, which has been optimized for statistical analyses and data visualization. Another open-source choice would be Python. Many commercial packages jostle in the market, including SPSS, Tableau, SAS, and Mathematica.

As with most change initiatives, your firm should start with a pilot study and learn from it before you roll out a more ambitious project. A practice group that wants to be able to predict results, costs, or duration of matters from a subset of its past matters would be a good choice. The HR group might also apply multiple regressions on data to reduce attrition or understand better who makes partner.

3. *Subject Matter Expert.*

Your firm will need a lawyer who not only supports the initiative but also qualifies as a "subject matter expert." A SME can look at the data set and understand the relative importance of pieces of it, what's missing or odd, and what the firm might learn from it. A SME can translate in-the-trenches reality to the champion and programmer. For instance, looking at a set of information about certain kinds of cases, a subject matter expert could point out that the tenure of the judge — senior, mid-career, newly appointed — seems likely to correlate with the decision. An SME might also say that the duration of a case is not particularly useful because there are long stretches where neither party takes any actions. Even more usefully, an SME could classify matters as successful, unclear, or unsuccessful so that the software can tease out patterns and influential variables.

Appendix – Source articles

Portions of this chapter came from the articles cited below, albeit with significant re-arrangement and revisions.

Rees W. Morrison, *Mind the Machines: Time to Explore the Potential of Machine Learning*, INSIDECOUNSEL (Oct. 21, 2016).

Rees W. Morrison, *The Math Behind AI, as Explained to Lawyers*, INSIDECOUNSEL (Dec. 26, 2016).

Rees W. Morrison, *Drawing ACES*, LEGALTECH NEWS, L12 (Feb. 2017).

Rees W. Morrison, *Making the Machine-Learning Switch*, 25 MET. CORP. COUNSEL 31 (Feb. 29, 2017).

Rees W. Morrison, *With Data Analytics, It's Not Always 'Follow the Money!'*, LEGALTECH NEWS (March 2017).

Rees W. Morrison, *Fairness Calculations: Letting the Gini out of the Lamp*, LEGALTECH NEWS (Sept. 28, 2017).

Rees W. Morrison, *The Power of LDA Algorithms and How They Help Text Mine Your Documents*, LEGALTECH NEWS (June 8, 2017). [Text mining]

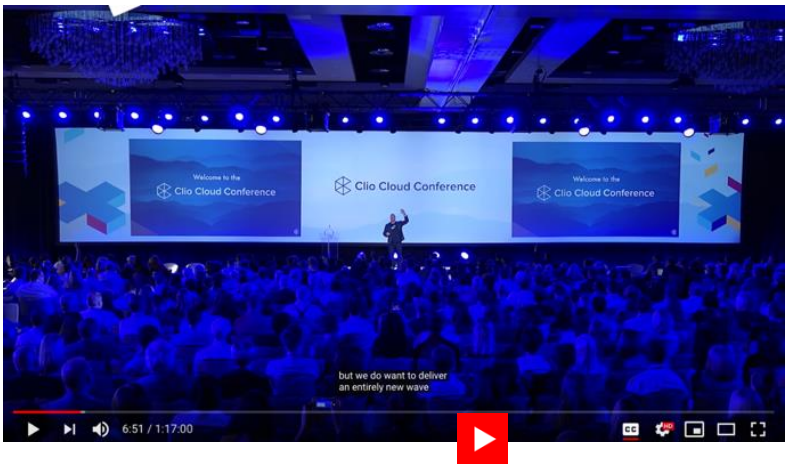
Rees W. Morrison, *ANOVA Apart: How to Tell If Your Firm Averages are Actually Significant*, LEGALTECH NEWS (Aug. 10, 2017). [ANOVA

Unhappy Clients Are Hurting Your Business

Jack Newton[1]
Co-Founder & CEO, Clio
LinkedIn

How satisfied are your clients? The data indicates most lawyers don't know. When we surveyed nearly 2,000 lawyers in the U.S., we discovered 37 percent don't collect client feedback at all — and for the firms that do, 42 percent collect feedback casually and informally in person, meaning they may only be hearing positive feedback affected by courtesy bias. The implication of this is that poor client satisfaction could be the most critical blind spot for today's law firms.

Poor satisfaction is what ruins businesses. If your clients aren't satisfied, there's little chance they'll hire you again or recommend you to someone else — and they may even deter others through word of mouth or negative online reviews. It's a bad prospect for any law firm that wants to succeed.



On the other hand, the types of businesses that thrive in today's digital economy are the ones obsessed with customer satisfaction. The internet has leveled the playing field, and your competitors are just a click away for your prospective clients; more than ever, your clients need to see a clear reason to hire you over another firm. Law firms that earn the satisfaction of their clients are the ones that see significant momentum in the future success and profitability of their business.

The State of Client Satisfaction in the Legal Industry

To better understand the state of legal services in the 21st century, we set out to assess client satisfaction on an industry-wide scale by using a metric known as a Net Promoter Score (NPS). Research has shown that NPS is one of the most reliable predictors for business growth, and it's based on more than just satisfaction or loyalty — it's based on the likelihood to

[1] **Jack Newton** is the founder of Clio and a pioneer of cloud-based legal technology. Jack has spearheaded efforts to educate the legal community on the security, ethics and privacy issues surrounding cloud computing, and has become a nationally recognized writer and speaker on these topics. Jack also co-founded and is acting President of the Legal Cloud Computing Association (LCCA), a consortium of leading cloud computing providers with a mandate to help accelerate the adoption of cloud computing in the legal industry.

recommend. Given that lawyers typically rely heavily on referrals, NPS should be considered especially salient for law firms.

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Calculating NPS starts with asking a cohort of clients a standardized question: *On a scale of 0 to 10, how likely are you to recommend your lawyer to a friend or colleague?* You then calculate the percentage of respondents who answered within the 0 to 6 range (known as "Detractors") and subtract that from the percentage that responded with a 9 or 10 (known as "Promoters"). Those responding with 7 or 8 (known as "Passives") neither subtract nor add to an NPS. What you're left with is a minimum score of -100 (100% Detractors) and a maximum score of 100 (100% Promoters).

For perspective, some of the most successful businesses in the 21st century have achieved incredible growth based significantly on highly favorable NPS. These companies (and scores) include Amazon (62), Netflix (68), Apple (76), Starbucks (77), and Costco (79).[1]

Where does NPS net out for the legal profession? After collecting data from a cohort of over 1,300 American consumers on their experiences working with a lawyer, we calculated a benchmark NPS of 25 for the legal profession as a whole. This is based on a breakdown of 48% Promoters, 30% Passives, and 23% Detractors. While nearly half of clients would highly recommend their lawyer, nearly a quarter of all clients would actually *dissuade* others from their lawyer.

While an NPS of 25 isn't entirely bad, it's nothing to celebrate. Other industry benchmarking studies put this number at the same level as airlines (26), banks (26), wireless

[1] *What Do Companies with High Net Promoter Score Have in Common?* RETENTLY (March 19, 2019), https://www.retently.com/blog/companies-high-nps/ (e.g., Amazon, Netflix, Starbucks); Tom Smith, *Top 10 U.S. Net Promoter Scores (NPS) for 2013*, INSIGHTS FROM ANALYTICS (Aug. 14, 2013), http://www.insightsfromanalytics.com/blog/bid/324678/Top-10-U-S-Net-Promoter-Scores-NPS-for-2013 (e.g., Apple); *Net Promoter Score Benchmarks for Fortune 500 Companies*, CUSTOMER GURU, https://customer.guru/net-promoter-score/fortune-500 (e.g., Costco).

carriers (25), and credit card companies (23)—none of which are known for exceptional service.[1] The deeper implications imply that poor client satisfaction is hindering growth in the average law firm.

The Power of Satisfaction in Driving New Business

In speaking with countless lawyers and other legal professionals, one of the most common sentiments they share is that managing a business is incredibly difficult. Most wish it were easier.

One of the most difficult challenges for lawyers is generating business for their firm. Many see this as an uphill battle, where every step is a part of a grind that never gets easier. The problem with this mind frame is it fixates on effort as a burden. But effort is only one side of the equation, one that's focused entirely on inputs. On the other side are your business outputs. Unlike inputs, which are a limited resource, the work put into maximizing outputs can have exponential returns. In other words, rather than putting more effort into your business, think about how to get more returns from the effort you already put in.

The business researcher and consultant Jim Collins has written and spoken prolifically about the concept of "the flywheel." The idea behind the flywheel is that it takes a sustained and constant effort to build momentum; but once that wheel starts to turn, it serves as an energy store, and maintains much of its momentum even once force is no longer applied to it. The wheel wants to turn of its own volition, and any ongoing effort only speeds it up. The effect is a perpetual compounding of return-energy for every bit of continued effort.

The key to developing a flywheel effect for your business is to (1) understand what components will build momentum and then (2) aligning your efforts in the right direction.

Which brings us back to NPS. Client satisfaction, reputation, referrals, and repeat business are all components that build off each other to create momentum and drive law firm success. A positive client experience will drive more repeat business and referrals, which in turn will bring more clients to your firm, who in turn will drive more repeat business and referrals. Success begets more success. This is the client experience-driven flywheel in motion, and it's one of the most powerful growth levers law firms have at their disposal.

What contributes to positive client experiences? Our NPS research demonstrated a strong connection between NPS and factors that were intrinsically related to the ease (or difficulty) of working with a law firm: ease in understanding case expectations, bedside manner, and overall responsiveness to communications. Since the growth prospects of any law firm rely so heavily on client satisfaction (as measured by NPS), focusing on client experiences should be how lawyers think about their future success.

Forecasting the Future of Success in the Legal Industry

The legal industry is transitioning in a way similar to any other during times of rapid technological change. The key to weathering these changes — and prospering through these times — is to recognize where problems lie and what efforts will have the most returns in solving them.

Today, technologies are unlocking new opportunities for lawyers to get more from their efforts. With these opportunities, lawyers have more options for how they structure and deliver legal services, and in how they design client experiences. Technology also has the potential to

[1] *Net Promoter Score Benchmark Study*, TEMKIN GROUP (2017), https://temkingroup.com/product/net-promoter-score-benchmark-study-2017/.

provide better data in understanding what's working in today's law firms and what needs improvement.

It's an exciting time to be practicing law, but it's also a time that will require firms to focus on client experience in order to be truly successful.

Chapter 5 –Legal Business Structures

Law Firm and Multidisciplinary Networks	**Michael Reiss von Filski** – Global CEO, GGI Geneva Group International
MPs and COOs – 100 Largest Law Firms	**Tony Williams** – Principal, Jomati Consultants
The Rise of Alternative Legal Services Providers	**Mark Ross & Vince Neicho** – Principal, Deloitte - Legal Business Services; Former Vice President, Legal Services, Integreon
21st Century Resourcing Options	**Janvi Patel & Denise Nurse** – Past VPs, Elevate Services, Co-Founders, Halebury, an Elevate Business
The Big 4 Are Not a Threat. They Are a Reality.	**Lucy Endel Bassli** – Founder and Principal, InnoLegal Services, PLLC

Law Firms and Multidisciplinary Networks

Michael Reiss von Filski[1]
Global CEO, GGI Geneva Group International
LinkedIn

For the past five decades, law firms as well as accounting firms have tried to achieve broader coverage and obtain referrals through establishing and joining networks and associations of professional firms. The prevailing legal structures are mainly companies limited by guarantee, Delaware member corporations, and Swiss Vereins.[2]

The collapse of Italian dairy product giant Parmalat and the Enron case led to a restructuring of the regulatory framework for accounting Transnational Organisations and Practices (TOPS), resulting in higher regulation through the 8th EU Directive and the Statutory Audit Directive from 2006 as well as in the commonly accepted network definitions according to the International Federation of Accountants (IFAC). Consequently, there needs to be a differentiation between integrated networks of accounting firms and loose networks of accounting firms referred to as "alliances" or "associations," regardless of their effective legal structure. Integrated networks of accounting firms require thorough independence checks prior to accepting new clients and are potentially exposed to more vicarious liability.[3]

Organisations consisting purely of law firms enjoy much more flexibility and are not yet subject to global regulations, restrictions, or limitations. It is unavoidable that potential conflicts arise from the different corporate structures chosen; in particular, conflicts of interest can even lead to malpractice suits against law firms, members of TOPS. The choice of the legal structure has, however, very little impact on vicarious liability for law firm networks. A substantial conflict can be identified by the market perception of clients and by elements of misrepresentation, in particular if networks of law firms label themselves as global law firms when in fact they are Swiss

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Michael has a truly international background. His activities include several selected board memberships of national and international companies including holding companies, real estate companies, financial services providers, and luxury good corporations. He has executed many cross-border M&A transactions and participated in transnational tax and estate planning for individuals of high net worth. Michael was executive director of the Spanish Chamber of Commerce in Switzerland. Prior to that, he worked as a diplomat in Rome, New York, and Buenos Aires, finishing his diplomatic career in the rank of First Counsellor.

Michael studied international law, history, and modern literature in Zurich, Hagen, Madrid, and Manchester and holds an LL.M. in international commercial law. He is an honorary professor of international law.

Michael received the Presidential Lifetime Achievement Award from the Hon. President Barack Obama in 2016. He has been awarded several grand crosses, honours, and knighthoods from the Vatican, Spain, Portugal, Italy, Georgia, Hungary, Indonesia, and Vietnam, among others.

[2] Douglas R. Richmond & Matthew K. Corbin, *Professional Responsibility and Liability Aspects of Vereins, the Swiss Army Knife of Global Law Firm Combinations*, 88 ST. JOHN'S L. REV. 917 (2014).

[3] BDO Seidman, LLP, v. Banco Espirito Santo International, etc., et al., Nos. 3D09-324, 09-197, 07-2746, 07-2472 (2010).

Vereins and therefore factually single-branded networks of independent firms.[4] A series of law firm networks may promote themselves as global law firms and be perceived as such, despite their structure as a Swiss Verein.[5]

Professional service firms have over the past century cooperated on an international scale in different ways. Similar to the correspondent bank network of the 19th century, international law firms and accounting firms have come to understand that it is essential for them to rely on strategic partners or associates abroad in order to serve clients better, particularly when it comes to transnational assignments.[6] Historically, a broad variety of different models has arisen, from very loose "clubs of friends" with no formal corporate structure to the more modern and often highly integrated and monitored firm model, using a single brand and following global standards, such as the "Big Four."

The differentiation between accounting networks or alliances and their corresponding legal networks has initially been very easy; however, as a consequence of the Parmalat case and of a series of legal and regulatory alterations, governance and regulations changed considerably for accounting networks and associations, while they did not for the legal profession. The origin of accounting networks can be found in the need for listed U.S. companies to be audited in order to comply with the regulations of the Securities Exchange Commission (SEC).[7]

Law firm networks began to internationalise much later than the accounting profession,[8] since their clients' needs differ from those of accounting firms. The latter had to be able to conduct standardised audits globally to comply with consolidated reporting for their nationally regulated clients. Law firms, however, could rely on vetted correspondent firms if and when a matter involved another jurisdiction. After the Second World War, law firms followed U.S. clients in particular, who began to expand abroad as a result of increased internationalisation, consequently referred to as "globalisation."[9]

The global or multijurisdictional aspect of organisations of professional firms allowed loopholes and a flexibility in the structure and running of transnational organisations of professional firms. Bad governance together with poor financial reporting led to the Enron collapse and the introduction of Sarbanes-Oxley.[10] The Parmalat case triggered at the EU level the introduction of the Statutory Audit Directives and a regulatory change regarding transnational networks of accounting firms.

These regulatory changes have also led to the clear differentiation between "networks" and "associations" for transnational accounting organisations as defined in the EU Statutory Audit

[4] Baker & McKenzie (numerous national partnerships); Dentons (Canadian, Chinese, European, U.K. and U.S. partnerships); DLA Piper (U.S. and international partnerships); Hogan Lovells (U.S. and international partnerships); King & Wood Mallesons (Australian, Chinese, Hong Kong, and European partnerships); Norton Rose Fulbright (U.S. and international partnerships); and Squire Patton Boggs (U.S., U.K., and Australian partnerships).

[5] Peter Kalis, *Grand Illusion*, AMERICAN LAWYER (May 2011), https://www.law.com/americanlawyer/almID/1202490654307/.

[6] Marshall Van Alstyne, *The State of Network Organizations: A Survey of Three Frameworks* (1996), and his citations,
J. OF ORG. COMPUTING 1: "Sociologists argue that social patterns of human interaction transcend reductionist economic agendas: 'The pursuit of economic goals is typically accompanied by [such] noneconomic [goals] as sociability, approval, status, and power... Economic action is socially situated and cannot be explained by reference to individual motives alone,'" citing M. Granovetter, *Problems of Explanation in Economic Sociology* in NETWORKS AND ORGANIZATIONS: STRUCTURE, FORM AND ACTION 471-491 (N. Nohria & Robert G. Eccles, eds., Harvard Business School Press 1992).

[7] M. Barrett et al., *Globalization and the Coordinating of Work in Multinational Audits*, 30 ACCT., ORGS. AND SOC'Y 1 (2005).

[8] Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994).

[9] James R. Faulconbridge et al., *Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work*, 28 N.W. J. OF INT'L L. & BUS. 455 (Spring 2008).

[10] The Sarbanes-Oxley Act of 2002 (Pub.L. 107–204, 116 Stat. 745, enacted July 30, 2002), also known as the Public Company Accounting Reform and Investor Protection Act in the U.S. Senate, commonly called Sarbanes-Oxley, Sarbox, or SOX, is a United States federal law that set new or expanded requirements for all U.S. public company boards, management, and public accounting firms.

Directive[11] and the derived IFAC definition. According to the IFAC Code of Ethics 290.17, the determination should be "made in light of whether a reasonable and informed third party would be likely to conclude … that a network exists." A referral network is not a network by this definition. The shared costs must be significant. Common quality control systems and business strategies are important considerations.

This differentiation between network and association materialises in the level of potential vicarious liability and in a more stringent regulatory framework, with, for example, the requirement for the formal registration of networks with the national regulatory or supervisory body, clear conflict checks, and ultimately a formal or perceived proximity between the individual affiliated member firms. Where, for instance, the use of a common brand and coordinated or monitored management and control can be identified, the acknowledgement of an agent structure can be positive. The member firm agreement, reserved ownership of IP regarding manuals and software, and a centralised implementation of quality control and training programmes are clear indicators of the existence of an integrated network.

Therefore, the network definition represents an additional layer of liability for accounting firms organised as members in a transnational entity, regardless of the legal structure this entity has chosen. Depending on the jurisdiction, this can result in a piercing of the corporate veil.[12]

Managed organisations of professional service firms are incorporated under the laws of a wide variety of countries; however, the main legal structures are common law companies limited by guarantee, Delaware non-stock member corporations and Swiss Vereins. Network organisations are defined mostly by their purpose, structure, and process. This chapter will include multidisciplinary organisations, i.e., networks or alliances including both law firms and accounting firms.

The striking differences between networks in a generic sense and transnational partnerships cannot necessarily be found by looking at their legal and operational structure. The aim of most transnational organisations is to have a broad or at least strategic coverage and to be perceived as such while vicarious liability and burdensome regulatory matters should be mitigated.

Regulatory matters have thus changed the concept of independence checks and vicarious liability for global accounting organisations or multidisciplinary organisations consisting of both accounting firms and law firms. Networks of law firms, however, do not face the same degree of regulation and are much more flexible. In both the accounting and the law firm cases, this is regardless of the structure or legal entity chosen. The reason therefore is mainly because law firm networks are regulated by ethics and not by any governmental agencies, while accounting firm networks and associations are regulated in accordance with national or supranational laws. The fact that accounting firm networks were established out of a transnational need based on reporting requirements and securities laws of individual member firms also underlines the different scope and the public interest character of these entities. Transnational accounting networks and associations are usually not directly affected by national regulations; they are affected when their individual members do not comply with them.

Some law firm networks have in the past five years benefitted from a less regulated environment compared to the accounting profession. This explains why some law firm networks

[11] Directive 2006/43/EC: "'[N]etwork' means the larger structure: which is aimed at cooperation and to which a statutory auditor or an audit firm belongs; and which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality control policies and procedures, a common business strategy, the use of a common brand name or a significant part of professional resources…" *available at* http://ec.europa.eu/internal_market/finances/docs/terminology/annex_2_analysis_of_undertakings_terminology_rev_g3_en.pdf.

[12] Gutierrez v. Cayman Islands Firm of Deloitte Touche, 100 S.W. 3d 261 (Tex. App. 2002); *see also* Deloitte & Touche Netherlands Antilles & Aruba v. Ulrich 172 SW 3d 255 (Tex. App. 2005).

consisting of independent member firms organised or bundled in, for example, a Swiss Verein appear to the clients as global firms when in fact they are not.[13] In the United States, the alleged cases of conflicts of interest of Norton Rose Fulbright[14] and Dentons,[15] both organised as Swiss Vereins, underline the problem of alleged appearance of impropriety.

Multidisciplinary networks and associations are basically those organisations, or TOPS, that consist of both law firms and accounting firms, together as member firms of the coordinating entity. Multidisciplinarity exists in some countries on a national level. It is common practice, for example, to find in Germany or in Italy professional service firms consisting of both statutory auditors and lawyers admitted to the bar.

Commonly, the most prominent level 4 networks, the "Big Four," are identified as accounting firms or accounting firm networks; however, they comprise considerable numbers of lawyers and are therefore also ranked as leading law firms in several countries, for example in Spain.

When accounting firm networks expanded their reach by also adding legal services, there was initially much controversy.[16] The dissolution of Arthur Andersen after the Enron scandal seemed to temporarily put an end to the multidisciplinary ambitions of the large accounting TOPS, but the fact is that, today, the "Big Four" comprise large single-branded law firm networks in each of their organisations outside of the United States, since the Sarbanes-Oxley Act does not prevent them from providing non-audit and non-accounting services outside of the United States.[17]

Today, the multidisciplinary structure of the "Big Four" is evident: PwC comprises more than 2,500 lawyers in 85 countries; KPMG Legal counts more than 1,200 lawyers in more than 50 jurisdictions; Deloitte's legal network employs more than 1,700 lawyers in 73 countries; and EY comprises more than 1,800 lawyers in 75 countries.

Professional magazines such as the IAB (*International Accounting Bulletin*) usually take into account in their rankings the total revenue of accounting networks like the "Big Four," and this also includes the revenue generated by their law firm departments. Multidisciplinary associations of independent firms like GGI Geneva Group International, MSI Global Alliance, and Alliott Group are obliged to exclude the revenue generated by law firms affiliated to their organisation for the global rankings.[18]

Generally, multidisciplinary networks or associations are considered networks or associations of accounting firms for regulatory purposes.

Conclusions

The legal profession and the accounting profession cannot be compared without stressing the clear and evident differences. Both professions are consultants or advisors in the broader sense to their clients. Disciplines cannot strictly be separated, and blurred lines between tax advice, legal advice, transactional services, consulting, or trust services are part of the daily reality of dozens of the leading networks or associations of law firms and accounting firms. Multidisciplinarity

[13] Michael Siebold, *Are Global Law Firms Networks in Disguise?* THE LAWYER (Jan. 25, 2016), http://www.thelawyer.com/are-global-law-firms-networks-in-disguise.
[14] John Wayne Enterprises, LLC v. Duke University, et al, No 14 Civ. 1020 (CD Cal).
[15] RevoLaze LLP v. Dentons U.S. LLP, Ohio Ct. Common Pleas, Cuyahoga Cnty., No. CV 16 861410 (2016).
[16] Stephen McGarry, *Multidisciplinary Practices and Partnerships*, AMERICAN LAWYER MEDIA (2002); *see also* C. HANCOCK, MASTERS OF THE UNIVERSE. A NEW WORLD ORDER IN ACCOUNTING AND CONSULTING (Lafferty Publications Ltd., 1998); *see also* Benito Arruñada, *Non-Audit Services: Let an Informed Market Decide*, 4 ACCT. 63 (1998).
[17] William Villanueva v. United States Department of Labor, No 12–60122 (2014).
[18] *World Survey: Strong Performance in Tough Conditions*, 557 INT'L ACCT. BULL. (Feb 2016).

therefore also exists in networks or associations apparently being dedicated to only one discipline. The commonalities are differentiated by the very nature of the professions. Law firms employ solicitors eventually pleading in court, admitted to bars and subject to ethical standards of their respective national or state bars. Clients benefit from a series of long-established principles, such as privilege, but also the essential factor of independence. The nature of the legal business is not as recurring and perpetual as that of an accounting firm.

Accounting firms need to ensure independence when it comes to audits of their clients.[19] Statutes have led accounting firms organised in networks or associations to choose which type of transnational organisation they want to be affiliated with, having to bear the consequences of, for example, additional global independence checks in the case of being part of an integrated network. Liability matters have evolved in the accounting profession over the last few decades, leading from the unlimited liability of partnerships and their partners to limited liability through the type of partnership chosen after the 1989 and 2006 U.K. Companies Acts.

The 8th EU Company Law Directive on the Statutory Audit, Directive 2006/43/EC ensures a more accurate view of the transnational networks and associations of accounting firms but also of TOPS. Ultimately, the expectations of clients of accounting firms and third parties are the accuracy of the provided audit report, which leaves very little room for interpretation, provided that the information submitted by the respective company and its directors is accurate. On the other hand, legal representation of course also needs to be handled with utmost professionalism, but the outcome also is conditioned by a variety of external factors and is, alas, less of a commodity. Nevertheless, the main pillars of the professions are the independence for accountants and the lack of any conflicts of interest for lawyers. Clients should be sure of the loyalty of lawyers — it is the most important of all fiduciary duties the lawyer owes to his client.[20]

The legislator has tried to ensure that accounting firm networks and associations are what they seem and no longer have the potential to mislead clients by alleging a global presence as a multinational group while in fact being a franchise or a loose cooperation of independent legal entities owned by separate persons. The rationale of regulation is embedded in the public interest, in particular, in audits of public companies. The potential damage a law firm or a law firm network could cause to a client is not fully perceived.

The financial collapse of a public company because of poor audit services without a doubt would have a major impact, but the collapse of a global law firm or a single branded global law firm network would certainly have a severe negative impact on their clients, too. The question of whether a global law firm is a safer option than a network of independent firms cannot clearly be answered, as the totality of the needs of a client must be taken into consideration — if there are ongoing mandates, specific ones, in various jurisdictions, in specific disciplines or just randomly. It is, however, alarming that the Swiss Verein law firm imbroglio has systematically evolved over the past decades, starting with the inclusion of Swiss Vereins in law firm rankings.

Several cases of conflicts of interest underline the considerable lack of care and disregard of client loyalty; future ones should be addressed and sanctioned accordingly. The accounting profession has found a potentially viable way forward with the "network" definition and therefore an approach that better safeguards concepts of independence and ultimately the necessary ethical

[19] *See, e.g.*, in the U.K.: APB ES (Ethical Standard) 1, produced by the Auditing Practices Board, part of the Financial Reporting Council (FRC). The FRC regulates and oversees the accountancy profession in the U.K. It is responsible for the implementation of codes and standards to which auditors in the U.K. adhere. The EU Statutory Audit Directives are implemented mainly by the Companies Act 2006 and the Statutory Auditors and Third Country Auditors Regulations 2007.

[20] Lawrence Fox, *The Gang of Thirty-Three: Taking the Wrecking Ball to Client Loyalty*, 121 YALE L. J. (2012); *see also* Strickland v. Washington, 466 U.S. 668, 692 (1984).

standards of a sophisticated and regulated profession. The lack of uniformity in the detailed application of the regulations for the accounting profession, for example throughout the different countries of the EU, however, weakens to a certain extent this achievement.

Vicarious liability, a specific concept of tort, is an essential doctrine beyond the borders of common law. The necessary clarity cannot be found in recent case law. There is a tendency that law firm networks opt for the Swiss Verein, while accounting firm networks and associations avoid this structure and currently prefer companies limited by guarantee.

Whatever the choice of corporate structure for networks, associations, or TOPS, whether it is a law firm, accounting firm, or multidisciplinary organisation, both statute and ethical principles and regulations should supersede corporate veils,[21] national borders, and potential loopholes to ensure that auditor independence, client loyalty, duty of care, privilege, and strict avoidance of conflict of interest prevail. This should be ensured for the benefit of clients and consumers, regardless if an organisation is multidisciplinary or not.

[21] LORRAINE TALBOT, CRITICAL COMPANY LAW 49 (Routledge-Cavendish, 2016): "Misuse of the corporate veil has the most pernicious consequences for society in the context of businesses that have been organized as groups of companies. Groups of companies can be used, inter alia, to avoid liabilities arising from the injury to persons, damage to the environment or to avoid tax."

MPs and COOs – 100 Largest Law Firms

Tony Williams[1]
Principal, Jomati Consultants
LinkedIn

The development of the world's 100 largest law firms has been quite amazing over the last 10 years and looks to be even more substantial over the next decade.

According to *The American Lawyer* figures, we now have 30 law firms with annual revenues of more than $1 billion USD; six of those firms have annual revenues of more than $2 billion. In 2008 there were only 18 law firms that passed the $1 billion mark, one of which was Dewey & LeBoeuf, which subsequently crashed and burned. However, in 2008 there were seven firms with revenues of more than $2 billion, primarily as a result of an exchange rate of U.S. $2 : £1, which propelled the four U.K. Magic Circle firms into that top echelon, whereas now with U.S. $1.50 : £1, only Clifford Chance makes that particular cut.

The total revenue generated by the 100 largest firms was $78.63 billion in 2008 and reached $84.90 billion by the end of 2013. Although much of this revenue growth was the result of merger activity, it does show that most of this group has navigated the global financial crisis well and have in many cases improved their market position, market share, and equity partner profitability.

It is, however, necessary to look at the drivers for this growth in law firms (especially during a time of recession and subdued recovery for most Western economies) and to consider how the market will develop further over the next 10 years.

Traditionally, it has been thought that there were relatively few economies of scale in a legal business. Size brought more significant conflict issues and consumed large amounts of partner time on "management" issues — so why the urge to become bigger?

In the last 10 years, the key drivers appear to have been:

1) Globalization;

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2) The need to demonstrate U.K. and U.S. law capability;
3) The wish to build a U.S. practice; and
4) Branding and recognition.

Globalization

One of the encouraging outcomes of the financial crisis is that no country reverted to significant amounts of protectionism and that regional and bilateral trade deals continue to be made. The world is now far more interconnected than ever before. Trade, investment and know-how move relatively easily across borders. Although New York and London remain the world's primary financial centers, others such as Singapore, Shanghai and Sao Paulo are becoming increasingly relevant. Other countries are rapidly developing. Most of the world's megacities are now in the developing rather than developed world. Big acquisitions, funding and disputes no longer necessarily need to pass through New York or London. Some of the world's largest country funds are based in Asia and the Middle East, recycling either commodity income or pensions savings into the global equities, bonds and real estate markets.

While trade and investment flows have increased and become more diverse, it is important to note that the corporate giants of today are no longer the monopoly of the U.S. and Europe. Indeed, very soon, corporations from these countries will be a minority in the Fortune Global 500.

The Fortune Global 500[2]

Country/Region	2008	2014	Increase/Decrease over Six Years
EU	**163**	**128**	**-21.5%**
US	**153**	**128**	**-16.3%**
BRICs	**45**	**118**	**162.2%**
China	29	95	227.6%
South Korea	15	17	13.3%
Singapore	1	2	100.0%
UK	**34**	**27**	**-20.6%**
Malaysia	1	1	0.0%
Australia	8	8	0.0%
Brazil	4	7	75%
India	7	8	14.3%
Russia	5	8	60.0%
Switzerland	14	13	-7.1%
Indonesia	0	2	
Japan	64	57	-10.9%

These trends have not been lost on law firms. They realize that their domestic clients are

[2] FORTUNE GLOBAL 500, http://fortune.com/global500.

increasingly operating abroad, whether making investments, sourcing raw materials, selling finished products, manufacturing, or protecting intellectual property. In addition, companies abroad may be investing in the firm's home market and undertaking a range of other activities. Since the financial crisis we have had a significant oversupply of lawyers in many Western markets, so firms are keen not only to safeguard their own client relationships, but also to gain new clients. Globalization gives firms an opportunity to stay relevant to their clients by offering the services clients need wherever they need them in the world. Conversely, if a firm does not respond to a client's changing geographic need, it risks having a less significant or strategic role for that client and a smaller share of the client's legal spend. Furthermore, a commitment to, and connections in, locations where a major corporate is based, which is now a more varied choice of location, is often seen as critical to gaining the most high-profile and lucrative engagements.

Many firms, when given a choice, would often prefer not to establish outside their home jurisdiction, but the growth potential of new markets and the need to defend their existing client relationships from firms with a more international footprint (which will seek to work for the client abroad and then bring the relationship home) has left many firms with little choice but to consider some level of international development.

Unfortunately, the cost of developing an international practice, especially in mature and competitive markets like those in Europe and Asia, is high. Many international firms have been established in locations such as Hong Kong and Singapore for more than 30 years. They are now an established part of the local business community. A new entrant will often struggle to hire the right quality talent, and to demonstrate a service offering that is credible in the market and positively differentiated from incumbent firms. Given the subdued recovery in Western markets with PEP still, in real terms, below its 2007 and 2008 highs, any investments inevitably receive close scrutiny by partners. Accordingly, the investment pot is limited and needs to be spent wisely and strategically. It is for this reason that firms have increasingly been considering mergers or large team hires as a quicker, potentially cheaper and more effective means of achieving a credible international presence in a relatively short period of time.

While a merger may have certain advantages, it is not an easy or risk-free option. The number of firms in a particular market with the right client mix, practice profile, compatible culture and comparable economies will be limited. Care and time will be needed to achieve the right deal. Law firm mergers are not for speed daters.

It is against this context, where firms see the need for an international platform but find the range of compatible firms for a full merger limited, that the use of the Swiss verein and similar structures has emerged. With this structure, the firms come together under a global brand; however, the member firms, their management and financial performance are independent. Some firms appear to be using this structure on a short-term basis before achieving de facto full financial, management, and practice integration, as in the case of Hogan Lovells, while others appear to be using this structure as a long-term business model, as in the case of Dentons and Norton Rose Fulbright. Whatever the structural choice, the challenge is for any firm to integrate its offering so that it can present the right level of capability to its clients where it is needed, provide an efficient and effectively coordinated service while meeting the client's expectations as to pricing, and delivering a credible return to the firm's partners. This is a tall order.

The Development of a U.S. and U.K. Law Capability

Despite the emergence of other new business and financial centers, English and New York

law currently govern an overwhelming majority of cross-border transactions, financings, and disputes. Any firm seriously wanting to work on higher-value international transactions will need to demonstrate either a credible capability to work under English or New York law firms, or choose an effective relationship with other law firms so that the client receives as seamless a service as possible. This has been the key driver for U.S. firms to develop in London. In the U.K., more than 5,000 lawyers work in U.S.-headquartered law firms, which is a clear demonstration of the impact of U.S. firms in the market. Some U.S. firms have performed extremely well in London and have developed top-tier practices, but others have struggled to make an impact in what is one of the most competitive legal markets in the world. The progress of U.K. firms in the U.S. had been more mixed, with Clifford Chance's troubled merger with Rogers & Wells in 2000 probably being the most high-profile move into New York.

However, the big four U.K. firms — Allen & Overy, Clifford Chance, Freshfields, and Linklaters — now seem to be making effective progress in the U.S., although they now recognize that this will be a difficult market to crack. The Hogan & Hartson and Lovells merger in 2010 to create Hogan Lovells appears to be working well, although Hogan & Hartson was not a primarily New York-focused firm.

Building out a U.S. Practice

The U.S. is the world's biggest, most diverse, and most profitable market for legal services. Various estimates attribute between 40 percent and 50 percent of external legal spend occurring in the U.S. Even the financial crisis and the emergence of developing markets do not appear to be threatening the primacy of the U.S. legal market. Indeed, the litigious nature of U.S. society and the new, post-crisis assertiveness (or rapacity, depending on your views) of U.S. regulators has helped U.S. firms to exceed pre-crisis levels of revenue (although not necessarily in real terms). As a result, many U.S. firms rightly see the U.S. as a primary market for development. The U.S. legal market is not just about New York. Washington D.C., Chicago, Atlanta, Houston, Boston, Los Angeles, and San Francisco, to name but a few, are all major centers of legal services, and many would probably rank in the top 10 cities of the world in terms of legal spend.

Our strategic alliance partners, Altman Weil, track mergers involving U.S. firms[3] and 2012, 2013, and 2014 were the three most active years ever in terms of U.S.-related law firm mergers. This is no surprise, as firms have been seeking to develop the depth and breadth of practice across the key U.S. markets. Some of these mergers have or will create $1 billion or $2 billion firms in their own right. The U.S. as a whole is still a relatively fragmented market, but if this merger trend continues over the next few years, a far smaller group of truly national firms will emerge, operating at different levels in the market. It has to be appreciated that once these mergers are integrated, it can be expected that many of these firms will use their size and financial strength to build even more significant international practices, either by further mergers, team hires, lateral additions, or Greenfield openings.

Branding and Recognition

Many firms have established strong reputations in their local markets, regionally, or

[3] ALTMAN WEIL, http://www.altmanweil.com/mergerline.

internationally for particular types of work. Outside the legal community, however, it is often surprising how little recognition there is in the wider business world of law firm names and what they do. In global branding surveys, law firms tend to rank quite low and often a few hundred places below the Big Four accounting firms. Some would counter that this does not matter, provided that they are known and recognized by their current and future clients, and to some extent this is correct. However, in an era of national, regional, and global consolidation, branding will assume greater significance. General counsel are increasingly reviewing their law firm relationships and tending to significantly reduce the number of law firms they use both nationally and internationally. This is increasingly important to law firms, as if they "miss the cut" on a panel review they risk being excluded from future work for that client.

Branding does not mean the firm's name or its logo. What it means is how the firm is positioned in its market, what it stands for and what the client can expect in terms of expertise, service delivery, and cost. Put simply, a brand is a promise: "If I buy that brand I know what to expect, and it will be delivered consistently wherever that brand is displayed." Legal services firms have found it troublesome to develop a level of differentiation from their peers, as they argue that legal services are fundamentally indistinguishable except in terms of quality or price. This is probably too simplistic, as industry knowledge, client empathy and efficient service delivery are increasingly important to clients. Any meaningful differentiation, however, is not easy to achieve; it can also be discussed in terms of differentiating a small group of firms from other players in the market. For example, when one talks of the Big Four accounting firms, there may be little to distinguish between Deloitte, EY, KPMG and PWC, but they are clearly, as a group, providing a fundamentally different offering than all other accounting firms in the market.

Probably the most comprehensive research done into legal brands is undertaken by Acritas. Its 2014 global brands survey illustrated the following:

Acritas Global Elite Law Firm Brand Index 2014[4]

Rank	Firm		Brand Index
1	Baker & McKenzie	Baker & McKenzie	100
2	Clifford Chance	Clifford Chance	61
3	Norton Rose Fulbright	Norton Rose Fulbright	53
4	DLA Piper	DLA Piper	48
5	Linklaters	Linklaters	45
6	Freshfields Bruckhaus Deringer	Freshfields	44
7	Allen & Overy	Allen & Overy	42
8	Hogan Lovells	Hogan Lovells	37
9	Jones Day	Jones Day	36
10	Skadden	Skadden	32
11	Herbert Smith Freehills	Herbert Smith Freehills	29
12	White & Case	White & Case	22
13	Latham & Watkins	Latham & Watkins	19
14=	King & Wood Mallesons	King & Wood Mallesons	18
14=	Eversheds	Eversheds	18
16	Sidley	Sidley Austin	17
17=	ReedSmith	Reed Smith	16
17=	Dentons	Dentons	16
19	Slaughter and May	Slaughter and May	14
20=	Amarchand Mangaldas	Amarchand & Mangaldas	13
20=	Simpson Thacher	Simpson Thacher	13
20=	CMS	CMS	13

Clearly many firms will argue with the position of specific firms in the table, but it needs

[4] ACRITAS, http://www.acritas.com/GlobalEliteBrandIndex2014.

to be appreciated that these are based on global responses, not just a handful of business centers. It is also notable that there is a direct correlation between the size and breadth of a firm, and its level of global brand recognition. To some extent, in branding terms, bigger really is better. While individual tables may be contentious, firms should not lose track of the fact that their wider reputation is important. Name recognition in the boardroom (which may be thousands of miles away from the law firm's head office), credibility with key regulators, acceptance by investment banks, and name awareness by key shareholder groups can be important factors in a law firm's ability to win and keep work from a client.

Really Global?

Despite the trends mentioned above and the development of $1 billion and $2 billion law firms, it is questionable as to how close we are to the creation of truly global law firms. The $1 billion firms are dominated by U.S.- or U.K.-originated firms, with King & Wood Mallesons being the honorable exception. Indeed, of the Global 100 firms, only seven do not have a major U.K. or U.S. presence, and all of these are ranked 80 or below in the Global 100. This is understandable, given that the U.S. and U.K. are the two largest legal markets in the world. Of the 30 law firms with revenues more than $1 billion, in 2013 only 11 had more than half of their lawyers outside their home country and nine (all from the U.S.) had fewer than 25 percent of their lawyers based outside their home country. In part this reflects the depth and maturity of the U.S. legal market, but, given the global dispersion of GDP and the growth rates achieved in developing markets, it is probably fair to say that firms with say less than half of their lawyers outside their home market are not truly developing a global capability. Of course, many firms will not want to develop a global capability — and for good reason. If you are highly placed in a major business and financial center running a very profitable law firm, then investment outside your home city (even into your home country) is likely to be expensive and ultimately dilutive of firm profitability. Spending money to lose money is not a great investment decision. For this reason, many of the most profitable firms in major markets (especially New York) will take a rather jaundiced view of international expansion and only make any such investments when they need to do so in order to protect their major investment bank and other key client relationships. Even then they will (probably rightly) build the smallest international outpost that is acceptable to those clients. It is partly for this reason and differential profitability, culture and control issues that we have never seen a truly top-tier combination between a U.K. and U.S. law firm.

The different approaches taken by different firms means, for perfectly understandable reasons, that neither the global legal market nor the firms inhabiting it will, or will need to, develop in a consistent way. Firms will identify their own markets. Some will succeed and some will fail, but so be it. The diversity of the business models in the legal sector enhances creativity and client choice, so even as the global legal market develops, firms are unlikely to be fixed with purely binary choices.

Leadership

In an era of larger law firms, whether with multiple offices in the home country and/or a significant international presence, the challenge of leading and managing such firms become more challenging and time consuming. No longer will the partners come from the same cultural, educational, or ethnic background. Language issues will inhibit communication. The sheer size of

the firm will mean that partners will not know one another well or at all. The scope for misunderstanding and inappropriate behavior is compounded as a firm gets larger and more diverse both geographically and culturally. Defining a firm's culture and the glue that holds the partners together becomes more complex.

In many ways the most important issue for a leader in these circumstances is to know when to let go and to realize that firms of that size and complexity, often operating in different time zones, cannot be micromanaged. Leaders of offices, practices, client teams and sectors need to be empowered and given clear responsibility for the effective performance of their team. They certainly need to be held accountable by the firm's leadership, but not second-guessed or required to seek approval for every minor decision. This is difficult, as the pool of real leaders in a firm is often limited. Training and mentoring may be necessary, as certainly will be succession planning.

The firm's leaders need to paint a clear vision for the firm and devise its strategy. They should be visible inside and outside of the firm. Furthermore, they must understand the issues the firm's clients are facing, and have a good grasp of the firm's financial performance and key metrics. The balance between being decisive or dictatorial needs to be achieved.

As firms have been growing both organically and by merger, especially in a subdued trading environment, the interpersonal skills, communication skills, empathy and sheer stamina of the leadership team is increasingly a determinant of the success of the firm. Some leaders have been found wanting.

Communication

As firms become more diverse, effective communication to and from leadership, among offices, and at a purely personal level becomes more difficult. A default to email can depersonalize relationships. It can also result in a leadership group permanently being on "transmit" mode rather than ensuring that they "receive" key insights and constructive challenges from their colleagues.

Communication challenges are compounded by language and cultural sensitivities. Even "yes" can have many different messages:

The Seven Meanings of Yes

- Yes, I hear you
- Yes, I understand you
- Yes, I understand you and will do as you ask
- Yes, I understand you but will do nothing
- Yes, I understand you but will do the opposite
- Yes, I understand you, but I will speak to others to try to get you overruled
- Yes, I understand you, but I dislike you and will try to do this in a way that makes you look bad

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Considerable effort is required to ensure that every issue is not seen through the lens of "head office." No one location is the source of all wisdom, whatever those based there may think. Indeed, it is by welcoming and harnessing diverse views and experiences that a firm is able to give the best service to its increasingly multinational and multicultural clients.

The Future

We are only partway through the process of developing truly global firms and the segmentation of the global market by types of work, target clients, service offering, price, and profitability.

It is likely that over the next five years the number of $1 billion firms will increase by organic growth and merger to 40 or perhaps 50 firms. In the medium term, U.S.- and U.K.-based firms will dominate this end of the market, but we may see more Australian, Continental European, Canadian, ASEAN, and Chinese firms taking a leading role in the creation of larger and more geographically diverse firms. After the initial phase of development, it is likely that we will see mergers within the top 50 firms that will create truly global firms and an increasing segmentation of the international legal market into firms of different types, e.g., capital markets "bet the farm" firms, high-value firms, upper-mid-tier firms, wide coverage firms, mid-tier firms, and process organizations (the precise categories have yet to emerge, and currently the classification of specific firms and their position in the market is in a state of flux). A firm's branding and what it stands for will become increasingly relevant as this process develops. It is not inconceivable that by 2020 or shortly thereafter we will see a $5 billion law firm.

For those who think this is impossible, it is important to appreciate that a $5 billion law firm will have a market share of less than 1 percent of the global legal market at that time. It also needs to be appreciated that new entrants of the sort allowed in Australia and the U.K. and being considered in other countries are likely to make the Global 100 list. Indeed, PWC, KPMG, and EY all have alternative business structure licenses in the U.K., so they can offer legal services there. They have made no secret of their wish to expand their legal services offerings, especially when bundled with their other services so that they can provide "business solutions." It should be remembered that in 2001 Andersen Legal was the ninth-largest law firm in the world by revenue, but it crashed in 2002 when Arthur Andersen collapsed in the wake of the Enron scandal. The Big Four may make mistakes, but they are impressive organizations with client relationships and investment capabilities that most law firms can only dream of. To put them in context, the revenue of the three largest Big Four accounting firms, in aggregate, exceeds the aggregate revenues of the Global 100 law firms.

This analysis assumes a "business as usual" approach. The impact of pricing pressure, new working methods, and AI (artificial intelligence) on law firms could be massive if law firm clients consistently demand change (and despite what law firms may think, general counsel have generally been pretty benign buyers). This could fundamentally transform the market, especially at the mid- and lower tiers of the segmentation. This inevitably will produce winners and losers, and some may be both at different times (consider the fortunes of Apple, Blackberry, and Nokia over the last 20 years).

Absent some cataclysmic event, globalization is likely to continue. Firms will need to map their own course in order to stay relevant to their clients and to carve out a clear position in their chosen market. The market will be dynamic. The Global 100 firms will have revenues more than $100 billion, possibly moving toward $200 billion. The global top 50 will probably be stronger and more diverse than the next 50. Some will shun the global approach; others may develop a more regional role, e.g., ASEAN. New entrants will join the rankings. Never has there been a more interesting yet more demanding time to lead a Global 100 law firm.

The Rise of Alternative Legal Services Providers


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Even before the onset of the global financial crisis in 2008, in-house legal departments and their outside counsel were under considerable pressure to do more with less. The Great Recession exacerbated this pressure and led to a surge in the exploration of innovative legal services delivery models. Two key questions came to the fore for the in-house legal department: 1) Can we reduce or eliminate the need to undertake certain legal services? 2) For the services we must consume, how can we do so as cost-effectively as possible?

Stemming from these questions, a new legal ecosystem emerged in which, alongside in-house resources and outside counsel, legal process outsourcing (LPO) began to play a crucial role in the efficient delivery of legal services. Initially, the LPO industry's raison d'être was the labor arbitrage benefits available from outsourcing certain routine legal tasks to lower-cost locations such as India, South Africa, and the Philippines. The class of providers augmenting the work of in-house departments and outside counsel has since matured and grown significantly — to the point that the "LPO" terminology is not inclusive enough to capture them. Today, a robust group of companies more accurately described as alternative legal services providers (ALSPs) are handling sophisticated work at a level we could not have anticipated even a few years ago.

Much of that transformation is because of ALSPs increasingly leveraging technology, particularly artificial intelligence (AI). This article will discuss the impact of ALSPs (and the AI that some of them employ) on the legal landscape. It will then address the journey law firms have navigated in their use of ALSPs to date and what to expect in the future.

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Mark is a recognized thought leader in the Legal Process Outsourcing (LPO) field. He is a former partner at the first U.K. law firm to offshore legal work, and is the only person to have been invited to address the ABA, the Law Societies of England & Wales and South Africa, The Solicitors Regulation Authority, and the International Bar Association on the topic of LPO.

Mark pioneered the development of the collaborative law firm and LPO delivery model for end-to-end contract management and led the integration of artificial intelligence into Integreon's contract review services. He also developed the first State Bar minimum continuing legal education (MCLE) and continuing professional development (CPD) accredited courses on the ethical implications of outsourcing legal work.

He has been interviewed by numerous publications, including *The New York Times*, *Wall Street Journal*, and *Time* magazine, and has also been invited to speak as a leading authority on LPO by organizations that include: *Financial Times*, U.C. Berkeley School of Law, Northwestern University School of Law, Stanford Center for the Legal Profession, and the International Legal Ethics conference.

Mark is on the editorial board of *Outsource Magazine*, and is on the Advisory Boards of Suffolk Law School's Institute on Law Practice Technology and Innovation, and Northwestern University Law School's Center for Practice Engagement and Innovation.

In September 2016 Mark was inducted as a Fellow of the College of Law Practice Management.

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Neicho was previously Litigation Support Senior Manager at Allen & Overy, a global Magic Circle firm, where he introduced the concept of outsourced document review. At A&O he amassed years of experience working with the firm's extensive corporate and financial institution clientele on hundreds of matters, designing and managing a wide variety of litigation support solutions and technologies.

Artificial Intelligence: Does It Play Well With Others in the Legal Industry?

To appreciate how rapidly the ground has shifted in the legal industry, consider the question we raised in the first edition of this text just three years ago. We noted then, as we did above, that LPOs (what we might now think of as first-generation ALSPs) were powered by human labor; they leveraged the low cost of labor in remote locations to drive down the cost of document review. It seems a quaint concern now, but it is understandable that many wondered at the time whether the introduction of technology into the field of legal services would threaten the existence of LPOs. In a passage that has stood up well, we addressed the concern as follows:

> While some might argue that technological advances represent a competitive challenge to LPO, nothing could be further from the truth. It is technology that led to the advent of LPO, enabling offshore locations to interact with clients thousands of miles away, and it is the LPO industry that has since continued embracing and incorporating technology into virtually every element of its legal services delivery offerings, including assisting and advising corporations and law firms on the selection and implementation of enabling technologies. It is the LPO industry that now pushes the envelope to redefine the art of possibility in the legal field, providing expert consultants who can weave together advanced technologies as an integral thread in overall legal process transformation.

In retrospect, we were correct to note that technology made LPOs — or first-generation ALSPs — possible in the first place, and even more correct to emphasize that future ALSPs would "continue embracing and incorporating technology" into legal services. This has proved emphatically true. The leading ALSPs of today are almost exclusively thought of as companies pioneering the utilization of enabling technologies, and correctly so.

In fact, the question being asked now is almost a complete reversal from the one we discussed in the first edition. It is not whether technology will kill ALSPs, but whether ALSPs powered by technology — specifically, artificial intelligence — will kill law firms. Again, our answer is no.

It is indisputable, of course, that technology-assisted document review, legal research, deal rooms, e-billing software, data analytics, knowledge management, and document assembly have eliminated the need for firms to devote man hours to certain tasks. It's also true that the application of artificial intelligence is only making the tools of automation more powerful. But the ways in which ALSPs are applying technology to various areas of legal practice are illuminating, revealing that technology tools remain complements to human legal practice, not a replacement for it.

Litigation

The days are gone in which huge teams of attorneys reviewed hundreds of thousands — or millions — of unfiltered documents. And it is no longer relatively inexpensive, remote labor that performs the task of document review. The leading ALSPs have long been proselytizers of technology-assisted review (TAR) and have been constantly developing, testing, and refining their workflows to deliver smarter and less costly review processes. ALSPs deploy these technologies in a variety of ways, from supporting a quality control process to leveraging artificial intelligence to perform predictive coding.

Likewise, many ALSPs have created platforms to apply natural language processing, machine learning, and artificial intelligence to the task of legal research. Entrants such as Casetext and Ravel Law offer AI-backed research capabilities and other features. Ravel Law's Judge Analytics, to cite one example, allows litigants to view a judge's entire history of decisions in different types of cases. Meanwhile, Allegory, a recent Integreon acquisition, uses what it calls "augmented intelligence" to automate litigation management. Allegory makes it much easier for trial lawyers to access relevant information and makes formerly cumbersome litigation tasks like creating evidence binders a painless process.

Contract Management and Review

In corporate departments, AI has led to impressive developments in the areas of due diligence, contract extraction, and contract data analytics. As with litigation, ALSPs have been at the forefront of these developments. Often triggered by the implementation of a CLM platform, an acquisition, or an audit, corporations can be faced with the need to locate, review, and extract information from thousands of contracts. ALSPs offer technological tools available that can support such an engagement. Integreon, for example, uses Kira's machine-learning-based technology to assist clients with contract extraction, due diligence, contract analysis, and lease abstraction.

Automated metadata extraction, categorization, and related technologies greatly reduce the cost of a contract-by-contract review performed by lawyers. Even when performing those tasks, however, ALSPs frequently support their technological tools with a review by legally trained personnel; it is this combination of human- and technology-driven analysis that provides the most effective end-to-end solution.

Legal Spend Analytics

Legal spend analytics is another area in which technology is being used to achieve more cost-effective legal services. By analyzing data from legal invoices, corporate legal departments can benchmark historical charges from outside counsel and vendors for a variety of legal services. ALSPs in this area use technology to produce reports that not only track outside counsel spending (broken down by firm, practice areas, timekeeper), but also include savings opportunities, progress against budgets, and other key metrics.

Knowledge is power, and these technology-driven legal-spend analytics tools allow corporate legal departments to revisit their entire relationship with outside counsel — from how they select firms, to how they manage them, to when they cut ties with them — from the position of power. The end game is one in which resource allocation is optimized, using the right legal professionals and technology for the jobs to which they are best suited.

The Impact of AI

The takeaway from the above should not be that ALSPs, and the artificial intelligence they sometimes employ, is encroaching meaningfully on the territory of law firms. Instead, in each area, the theme is the same: While technology solutions are automating certain tasks and offering lawyers new insights, the human element remains as important as ever in delivering legal services. AI tools still require that lawyers perform a quality-control check, as they routinely do for contract-

and document-review solutions. Lawyers are also needed to provide the input that trains the AI tools to become more powerful.

Most importantly, even with the introduction of artificial intelligence in the legal industry, the heart of a lawyer's work — legal reasoning, crafting strategy, negotiating with counter-parties, arguing in court, and more — remains largely untouched by technology. Indeed, technology-driven ALSPs are not replacing law firms, but rather: 1) reducing the cost of certain services and 2) allowing them to make more informed strategic decisions. In this sense, ALSPs have advanced beyond LPOs, which were initially aimed exclusively at the first goal. But in another sense, the introduction of AI is similar to the arrival of LPOs: It is a disruption to which some law firms will react better than others. The history of law firms' reaction to ALSPs, which follows, shows us as much.

Redefining the Law Firm Delivery Model: a Journey of ALSP Acceptance

In order to survive in today's economy and to thrive in the future, many law firms are actively rethinking their business models. This rethink frequently includes an embrace of ALSPs and a reexamination of the traditional pyramid structure as the usual modus operandi for legal services delivery.

Although some believe ALSPs will increasingly contract directly with corporate clients, it is important to consider that they do not practice law and therefore cannot replace law firms entirely. A more natural fit for ALSPs is to supplant the base of the law firm pyramid. This is not to suggest the only benefit of ALSPs is labor arbitrage. As discussed above, we have ample proof this it is not. What ALSPs are doing is leading the way in incorporation of technology into legal services delivery.

Figure 1: Law Firm Adoption Timeline for ALSPs

Kicking and Screaming

In or around 2006, it was not law firms but corporate legal departments that were the first proponents of ALSPs. Back in these early days, a cocktail of incredulity with a dash of disdain was the tipple of choice for many a law firm partner when confronted with the ALSP elevator pitch. Big Law executives would protest that ALSPs were win-win-lose: win for the firm's clients, win for the ALSP, and yet lose for the law firm.

This viewpoint presupposes the adequacy of two hypotheses that simply do not hold water any longer: the zero-sum game (the more the client loses, the more the law firm wins) and that every penny of revenue generated by an ALSP is a penny of revenue lost by the law firm.

In any event, these first couple of years can be characterized, perhaps somewhat harshly, as the phase where law firms were dragged "kicking and screaming" into the arms of ALSPs. On a case-by-case basis, in-house counsel started to advise their outside counsel that in order to retain their business, the firms must begin to use ALSPs. In fairness to BigLaw, this phase has largely passed and did so fairly quickly. Whether the Great Recession forced them to adapt quickly or merely coincided with a change in attitude is a debate for another day.

Checking the Box

Law firms have many constituencies, but their clients always come first. Large firm clients are, by and large, cost-sensitive in-house counsel. Firms can gain both a perception and actual advantage with clients by making clear they understand and are responding to the cost pressures facing their clients.

In-house counsel muscle-flexing manifested itself not only in ad hoc requests that their outside counsel use an ALSP, but also in the increasing prevalence of requests for proposals (RFPs) asking outside counsel whether they had relationships in place with ALSPs.

Law firms responded in turn by undertaking selection processes of their own to choose one or more preferred ALSPs. The end result was that when asked the question in an RFP, law firms could respond in the affirmative. This is the "checking the box" phase. Many of the firms during this phase were simply looking to place a check in the box, and once a master services agreement was put in place between the firm and the ALSP, it was considered a job well done with no further action required. Many firms today are struggling with how to navigate the transition from the "checking the box" phase into the phase that follows: "strategic collaboration."

Strategic Collaboration

In 2011, our employer Integreon commissioned research tracking the adoption of ALSPs among law firms and in-house counsel. While a minority of firms seemed to worry that using an ALSP might send clients the wrong signal, the results of the research showed such fear to be unfounded. A significant majority, about 75 percent, of both in-house and law firm lawyers believed using an ALSP did not "diminish the brand." Rather, those that embraced ALSPs were perceived as cognizant of the cost, efficiency, and quality demands of their clients, and consequently appeared to gain a competitive advantage. Today, a significant number of innovative law firms now publicly acknowledge their relationships with ALSPs. These firms are at various stages of the journey that can be termed as "strategic collaboration."

The end of this journey, one that arguably no firm has yet reached, is when ALSP solutions are so closely integrated into the firm's overall value proposition that they are simply viewed as part of a suite of solutions that the firm provides to its clients across all of its practice groups. This requires firms to embrace ALSPs at a strategic level, welcoming them into the firm, lifting open the hood, and working with the provider, as Professor Richard Susskind would say, to "decompose" legal functions, map out "as is" workflows, and then reengineer the processes to incorporate ALSP best practices, lower-cost labor, and technology.

The theory behind strategic collaboration is not rocket science. The premise is that the whole is greater than the sum of the parts. Contrary to early concerns that ALSPs would compete directly with law firms, it has become abundantly clear to those firms embracing strategic collaboration that the most effective legal services delivery model is a symbiotic one in which law

firms and ALSPs help each other thrive.

ALSPs do not practice law and so are not true alternatives to law firms. Neither ALSPs nor law firms can individually deliver the holistic, end-to-end services corporate clients are now demanding. While one could argue that law firms with captive ALSP units can do so, the fact is that running a captive center, especially offshore, requires a scale that only the largest law firms possess. Even with respect to those few firms, ALSPs offer several other advantages over a captive. These include better capacity utilization by aggregating demand across many clients; conversion of fixed to variable costs; ongoing investments in technology and continuous improvement; and, of course, business continuity assurance with multiple delivery locations.

A common misconception held by proponents of captives is that working with a third-party ALSP means loss of control. This is not the case. Control is more about governance than ownership. For example, some captives are out of control because they have not been properly set up with service level agreements (SLAs). Conversely, a proper SLA and governance structure can give the law firm more control over a third-party ALSP than they might typically have over their own staff.

Law firms that strategically collaborate with ALSPs, meanwhile, can expand their offerings and deliver a complete, end-to-end approach, efficiently providing the appropriate level of legal services required for each type of work product.

Bifurcated Ownership

Unrelenting cost pressure, deregulation, disaggregation, globalization, and technological advances were the genesis of the ALSP sector. Today, the challenge and the opportunity are for ALSPs and law firm clients to develop new service delivery models that will drive even greater innovation. One can either shape the change or be shaped by it. It is incumbent upon all the key constituent stakeholders in the legal services industry to find better ways of working together.

In coming years, there is no doubt we will see even closer collaboration between law firms and ALSPs, with the lines of ownership of the legal services delivery model becoming increasingly blurred as these stakeholders invest in and enter into joint ventures with one another. This can be called the “bifurcated ownership” phase.

How long will it be before an ALSP acquires a major law firm in the U.K. now that external investment in law firms is permitted via the Legal Services Act? Hardly a week goes by without the rumor mill spinning a story about this law firm or that law firm seeking to monetize either their captive ALSP operation or their high-volume practice group. For many of the reasons cited above, it is likely that the majority of those law firms with captive ALSPs today will look to divest these operations in the coming years. Global ALSPs are the most logical acquirers of these entities.

As time progresses, there is a growing optimism about and enthusiasm for reshaping the way legal services are delivered. The new bifurcated model is inevitable. The end result of the journey to this final fourth phase is a seamlessly integrated delivery model, with clients of all kinds benefiting from better, faster, more readily accessible, and cheaper legal services.

What’s Next?

We remain more bullish than ever about the prospects for ALSPs. The industry has matured and transformed over the last 10 years, but that journey, that evolution, has in reality still only just begun.

Out of all of the different stakeholders providing legal services within the new legal ecosystem, it is the ALSPs that have the deepest experience deconstructing and reengineering legal processes using Lean and Six Sigma techniques, applying best practices and flexible resources, and optimizing the mix and utilization of technology, including AI. It is the ALSPs that have the demonstrated expertise to analyze which aspects of the work done by lawyers, paralegals, and support staff can be complemented through automation or the application of AI. As the rollercoaster of legal services innovation and technological advances continues to pick up pace, not only will ALSPs be along for the ride, but they'll also have front row seats.

21st Century Resourcing Options


Janvi Patel & Denise Nurse[1]
Co-Founders; Halebury, an Elevate Business; Past VPs Elevate
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The Business of Law

For centuries, the provision of legal advice has been provided through one dominant option: practitioners of law. Like doctors, lawyers as a profession have focused on individual specialties and been licensed to practice or advise the public on legal issues. In order to create efficiencies, groups of individual practitioners formed partnerships to bring resources together, provide a wider selection of practice areas, and pool risk – businesses run *by* lawyers *for* lawyers. For recipients of this service, this has been the only option.

The dominant business model has been (and still is) "an organization or economic system where goods and services are exchanged for one another." The early part of the 21st century, however, has seen some of the most radical changes in business model options for the provision of legal services. Resourcing options play a major part in this significant evolution.

The last part of the 20th century saw the steady growth of in-house law departments within businesses. The start of the 21st century has seen the rise of flexible legal resourcing provided as a subset of services by law companies. These were named "Alternative Legal Service Providers," or ALSPs, to denote the fact that they are not structured as law firm partnerships or even businesses owned and managed by lawyers. Businesses in this area offering a broader range of services now call themselves "law companies"; at times, the names are interchangeable.

For the purposes of this chapter, we will focus on the relatively new business model of providing flexible legal resourcing options for business legal departments and law firms by ALSPs and law companies, how this works, and its impact on the overall business of law.

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Denise Nurse is co-founder of Halebury, an Elevate business, as well as a past VP of Elevated Lawyers, focusing on strategy, management, and client service. She co-founded Halebury as an opportunity to create the kind of firm that she would like to work for. Having started her career as an in-house commercial solicitor at Charles Russell (now CRS), she worked in-house as a commercial and technology lawyer for Sky before helping to develop and shape the Halebury offering. She mentors women in law and tech, as well as young entrepreneurs. She also speaks regularly on diversity and inclusion in business and is a supplier executive committee member for MSDUK, the supplier diversity organisation.

Context

The UK legal market was valued at £35.1bn in 2018. The main legal spend is for business and commercial work, and nearly 47 percent of that revenue is with the largest law firms.[2] However, within this, the ALSP market has been growing at a rapid pace. In just two years, it has seen an increase in revenue from $8.4 billion in 2015 to about $10.7 billion in 2017.[3] ASLPs as a subsector are now making a considerable dent in the market, especially as there continues to be a drive for in-house legal teams to monitor and curb their external spend and look for greater efficiencies.

While traditional law firms service customers in industry, ALSPs often service two sets of customers: the in-house legal teams of industry customers *and* traditional law firms, partnering with both to provide strategic resourcing solutions. The fact that ALSPs support traditional law firms surprises many who might consider the two entities to be competitors, but it should not. Traditional law firms are built on talent and have resourcing requirements just like any other business. However, the way ALSPs deliver to each of those customers is aligned with each operating model.

Legal Services Resourcing Models for Business

In-Source

The first phenomenon in response to the growing needs of business and limited choice in legal service provision was to in-source. Hiring lawyers to work directly for and within a business gave cost certainty and more flexibility. Initially, lawyers were often hired on the basis of the particular practice area with which a business needed the most help at the time: M&A, employment, or commercial contracts, for example. This method has been a success. The continued growth of in-house legal teams over the last decade has been largely driven by cost pressures, as corporate executives look for ways to reduce external legal spend. In fact, in-house legal teams have more than doubled over the last 15 years from nearly 13,000 in 2002 to almost 28,000 in 2017.[4] The scale of growth is considerable.

There are distinct skillsets that in-house legal teams bring to their internal stakeholders, such as the ability to work with commercial teams on the ground as well as the ability to work with businesses to provide operating and strategic advice. This commercial and operational experience is invaluable, and the training is hard to replicate within a traditional law firm. The benefit of a General Counsel (GC) working within and for a business directly is the added efficiency gained by having a trusted advisor available to support the business and understand the commercial drivers for decisions, the operational realities of a particular course of action or inaction, and the environment in which the business is operating. The GC can become preventative rather than reactive. Helping to organise and prepare business colleagues and navigate a way through the legal framework helps avoid the need for a specialist until absolutely necessary. In an added dimension, the GC can also add value by providing strategic advice on business decisions. The skills gained

[2] Laura Wood, *UK Legal Services Market Trends Report, 2019*, BUSINESS WIRE (March 4, 2019), https://www.businesswire.com/news/home/20190304005549/en/UK-Legal-Services-Market-Trends-Report-2019.
[3] *Alternative Legal Service Providers 2019*, THOMSON REUTERS, https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/alsp-report-final.pdf?cid=9008178&sfdccampaignid=7011B000002OF6AQAW&chl=pr.
[4] *Legal Innovation*, RACONTEUR (Nov. 2018), https://www.raconteur.net/legal-innovation-nov-2018.

by in-house lawyers are invaluable, and the cost effectiveness of having a lawyer in the business is evident.

As a result, some in-house legal teams are now bigger than traditional law firms and run as a business unit themselves. The operating model of each in-house team is as varied as the businesses they serve, as most tailor their operating structure to align with their corporate entity and its business goals. This makes a diverse customer base to support from a legal resourcing perspective, each with its own requirements, opportunities, and challenges around recruitment and retention.

Outsourcing

An alternative or addition to the in-source model is to outsource legal services provisions. In its purest form, this is the original model: to instruct an external law firm how to manage legal matters. The last 30 years or so, however, have provided a variety of outsource options where the legal work is unbundled and separated out into its constituent parts. The main areas of growth have been to:

1. Off-shore, on-shore, or near-shore low-value, low-risk, repetitive work to paralegals or lower-cost legal providers in a systemized process-heavy environment.
2. Bring in secondees to cover team absences, growth, or gaps, or bring in temporary resources to work with the in-house team.
3. Move work to a technology solution – for example, contract management and e-signature tools, document creation and automation tools, eDiscovery for document review, and more.

Flexible Legal Resourcing fits all of these categories. As an alternative to a traditional law firm, the ALSP model broadly provides contract lawyers who are able to work on temporary assignments or projects. Often they will also have in-house experience so they are more readily available to hit the ground running when joining a team and understand the commercial aspects of the legal advice to be provided. Costs are usually fixed on a day rate or fixed fee, providing price certainty for buyers. The lawyers will work either on- or off-site and as and when needed, so for short projects or part-time assignments. The overall relationship is managed by the ALSP, so the payment and business management of the flex lawyer is undertaken by the ALSP, reducing the burden on the customer and freeing the lawyer to focus on legal advice rather than admin.

Managing the cost of resourcing – is in-sourcing the answer?

Cost pressures remain a driving force for the continued growth of the in-house legal team, but budgets for legal spend are still being reduced. However, many GCs have started to realise that in-sourcing is not the long-term solution. GCs looking at innovative ways to manage their resourcing gaps, especially at the mid- to senior-end of the market, have started to lock in deals with ALSPs to resource and manage a pool of senior talent to support their legal and commercial teams on an *ad hoc* basis. This model provides ongoing flexibility and bespoke outsourcing, which can be aligned with business goals.

No two in-house teams have the same operating model, so each one will generally require a bespoke solution. Here are a few examples of how it works for clients with different requirements.

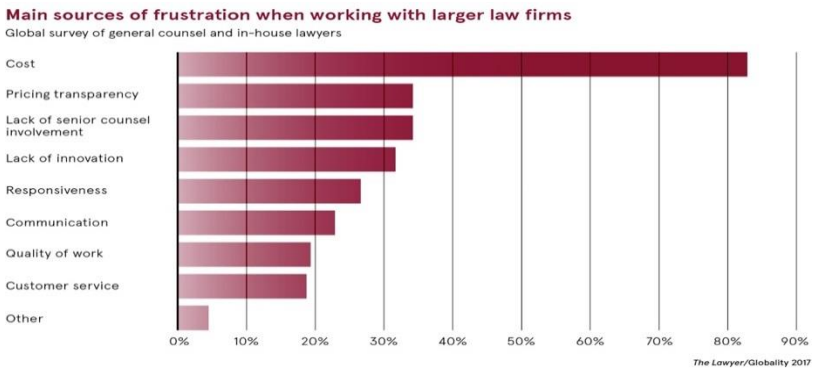
Example 1: FTSE 250 company would like to reduce their headcount, especially their senior talent pool; currently the total in-house team >400. The company retains an ALSP to provide flexible senior in-house resource on a continuous flexible basis to scale up and down as and when deals come through. The ALSP is able to manage both the projects and junior members of the team. A project manager oversees work allocation / work undertaken by the external team to ensure the pipeline always fits with the business goals and that the external team is working with the customer to ensure efficiencies in delivery of service and, ultimately, cost savings.

Example 2: Company with <5 in-house lawyers use the ALSP as an extension of their in-house legal team. The ALSP in-house lawyer trains on the company processes and is able to slot in as and when required both to help with the day to day, but also on projects operating as a flexible extension of the internal team.

Example 3: FTSE 500 company with an in-house team of >150 is looking to reduce their external legal spend but would like to continue to work with their existing law firm panel. The ALSP is able to provide consistent senior level support at a competitive AFA (alternative fee arrangement) and at partner / senior in-house lawyer level. They work directly with the law firm's customers and their in-house legal teams. The ALSP lawyers work with the associates / junior lawyers either within the in-house legal teams or in the traditional law firms for support as required. This is true collaboration between in-house legal teams, ALSPs and traditional law firms to provide an effective customer solution.

Managing external legal costs – look farther than your panel

The lack of transparency regarding costs is a key concern for in-house teams and a key driver for in-sourcing.



According to recent statistics, legal budgets being reallocated internally has increased from 37 percent in 2013 to 43 percent in 2017[5], and that increase is expected to continue. This reflects the need for more cost certainty, better commerciality of the legal advice, and the ability to flex

[5] *2018 State of Corporate Law Departments, Innovation, Data and Collaboration Drive Optimal Results*, THOMSON REUTERS (2018), http://www.legalexecutiveinstitute.com/wp-content/uploads/2018/02/2018-State-of-Corporate-Law-Departments-Report.pdf.

and manage resources when you control from within. The ALSP market has grown directly in response to this clear demand, for a type of lawyer and service not previously easily available and to allow the internal teams to manage head count costs at the same time.

Curbing the frustration:

As the table above shows, in-house legal teams are still frustrated by the lack of cost transparency and overall costs, as well as the billable hour system. By effectively managing their own resourcing, traditional law firms have the ability to manage the costs they transfer onto in-house legal teams. Using ALSPs as well as Legal Process Outsourcing (LPO) models has been invaluable for a number of law firms, as ALSPs and LPOs have the ability to offer alternative fee arrangements (AFAs). This enables traditional law firms to scale up and down and manage their bills to in-house legal teams.

Are AFAs possible?

In that same Thompson Reuters study, *2018 State of Corporate Law Departments*, it states that 76 percent of their customers state that controlling outside counsel costs are at the top of their priorities. It also states that implementing alternative fee arrangements are considered most effective to control external counsel costs.

In-house legal teams have taken charge of this concern. A number of in-house legal teams have a program of legal invoice review to ensure that not only are invoices submitted by law firms in scope and budget, but also to provide visibility on spend. Many in-house legal teams have also implemented e-billing systems to help with spend management. Despite the cottage industry that has developed because of the complexities of billing, the hourly rate remains the predominant way of charging in the legal services industry.

Providing cost transparency and certainty is core to many ALSPs' operation model, and for most work is undertaken on fixed fees or day rates to ensure customers have control and transparency over budget.

Although new ways of pricing legal services are important, better integration and collaboration between traditional law firms, ALSPs, and in-house legal teams in general is essential to provide better customer solutions. Increasing collaboration throughout the external legal supply chain is fundamental to providing customers with efficiencies in how they buy their legal services. So how do we all play nicely together?

ALSPs and Traditional Law Firms

Flexible legal resourcing has provided a solution to a gap in the market, and traditional firms are creating their own bespoke versions whilst others are partnering with ALSPs to offer this service to clients. In addition, the ability to offer alumni an alternative pathway to working with the traditional firm has arisen. It is becoming increasingly common for ALSPs to work with traditional law firms' own alumni to manage the firms' resourcing challenges and assist in managing costs and profitability.

How ALSPs work with traditional firms

The provision of flexible legal resourcing from ALSPs to traditional law firms generally works on three levels:

1. Backfilling the law firms own teams to support with gaps in resource for longer-term team absences or for spikes in workflow;
2. Provision of secondees to their clients in order to honour panel requirements in a more cost-effective way or as a way of added value/customer service; and
3. Working with the firm's alumni to offer a flexible resourcing career option for former team members and an accessible pool of pre-vetted and known talent for the law firm.

Traditional law firms tend to have more similar structures than in-house teams; the implementation of flexible legal resourcing can still vary. Here are a few examples of how it works for law firms with different requirements.

> Example 1: Magic Circle law firm, implemented own flexible resourcing programme. Branded service managed by bespoke internal team.
>
> Example 2: Leading global law firm with a multibillion-dollar revenue instructed Law Company to provide flexible legal resourcing programme presenting as a joint solution to clients demonstrating range of services and transparency.
>
> Example 3: New entrant regional law firm, working with Law Company to provide flexible work force as part of overall strategy of main law firm and to provide wider range of services to end clients by providing legal operations and project managers alongside generalist in-house and specialist private practice lawyers in curated teams.

Managed Services

The trend toward outsourcing complete tranches of end-to-end legal work has been growing. In the flex legal resourcing sector, the latest iteration of this solution is for entire legal teams or departments to be taken over by the service provider and managed to achieve cost reductions. Some recent examples include:

ElevateNext and Univar

ElevateNext, using data analytics and consulting from Elevate Services Inc. (its partner), assessed the performance of outside counsel, their efficiency, and adherence to sound budgeting and decision-making processes. They identified ways to streamline efforts, lower costs, and improve outcomes. ElevateNext now handles legal matters directly for Univar, acts as coordinating counsel for certain matters that remained with other law firms, and serves as "chief of staff" to the law department.

DXC Technology and United Lex

In December 2017, DXC Technology, a technology conglomerate of Computer Sciences Corp. (CSC) and Hewlett Packard Enterprise's Services business (HPES), engaged United Lex to restructure its in-house department and manage its team and services.

Thames Water and Eversheds Sutherland

Thames Water has worked with BCLP since 2010 as the main provider of legal services and transferred this to Eversheds Sutherland as a complete managed service of its legal team in April 2018. Eversheds' supports on operational activity under its managed legal services agreement and the existing legal team from BCLP transferred across to their team.

Unbundling Legal Services and Working Together

Whilst in-house legal teams have the ability to unbundle services, traditional law firms are well placed to unbundle the entire legal services delivery supply chain. Innovative law firms are doing just this, and some of the most progressive have fully engaged with ALSPs to partner with them on this unbundling.

A large part of the unbundling ensures that projects are led by the most cost-effective provider, which ensures it is the right person or tool for the job, creates efficiencies, and drives down spend. Some in-house legal teams have requested their panel firms partner with ALSPs to manage their secondments and further resourcing requests. ALSPs can provide a white labeled service for this, so that in-house legal teams have one point of contact and also the contracting entity has the ability to manage quality control.

The unpacking allows for a total mix of legal process outsourcing of low-cost repetitive work, automation, flex legal resources, and traditional lawyers working with in-house teams to create a seamless blend and providing the most efficient and effective advice.

The Future

The business of providing legal services to industry has evolved significantly from where it was, even at the start of this decade. Where will we be in another ten years? With the changes that have taken place within the profession and in particular the focus on the "business of law," we are lining up for greater value for our end customers as costs are more transparent and better managed, and legal services are approached increasingly like a business rather than a legal practice.

The pace of change is only going to increase. Looking at the wider economy, 43 of the companies in the *Fortune* top 100 globally were new entrants since 2008, and some of those included established names like Apple, who rose from a position of #33 in 2008 to #11 in 2018 – a phenomenal rate of change.

The legal industry, whilst notably slower to evolve, is having to keep up. Even its slow pace will ensure more radical changes appear. The need to evolve will be highlighted by the potential for disruption, as has been seen in other industries such as hotels (Airbnb), taxis (Uber), and food service (Deliveroo). Law companies are being seen as disruptors in the legal industry as

they aggregate the disaggregation that has occurred over the last decade. Expect the continuation of outside investments and law companies going public to further accelerate the pace of change.

Additional Sources:

- *2018 Legal Industry Outlook*, GREENTARGET (2018), https://greentarget.com/wp-content/uploads/2018/01/2018-Legal-Industry-Outlook_Final.pdf.

- *Alternative Legal Services Providers 2019*, THOMSON REUTERS (2019), https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/alsp-report-final.pdf?cid=9008178&sfdccampaignid=7011B000002OF6AQAW&chl=pr.

- *UK Legal Services Market Trends Report, 2019 - Revenue Growth Forecast in 2019 is 5.4% (at Current Prices) and Year-on-Year Growth of Between 5% & 6% is Expected from 2019 to 2022*, RESEARCHANDMARKETS.COM (March 4, 2019), https://www.businesswire.com/news/home/20190304005549/en/UK-Legal-Services-Market-Trends-Report-2019.

- *Report on the State of the Legal Market 2019*, THOMSON REUTERS (2019), http://images.ask.legalsolutions.thomsonreuters.com/Web/TRlegalUS/%7B7f73da9c-0789-4f63-b012-379d45d54cdf%7D_2019_Report_on_the_State_of_the_Legal_Market_NEW.pdf.

- David Holme, *2019 Will Be the Year of Real Change for the Entire Legal Industry*, GLOBAL LEGAL POST (Jan. 3, 2019), http://www.globallegalpost.com/commentary/2019-will-be-the-year-of-real-change-for-the-entire-legal-industry-81020591/.

- Catherine Baksi, *Why Are So Many Talented Lawyers Moving In-House?*, RACONTEUR (Nov. 27, 2018), https://www.raconteur.net/risk-management/in-house-lawyers-corporate.

- *Hogan Lovells Partners with Elevate to Create New 'Flexible Lawyering' Programme*, HOGAN LOVELLS (Feb. 15, 2018), https://www.hoganlovells.com/en/news/hogan-lovells-partners-with-elevate-to-create-new-flexible-lawyering-programme.

- *Elevate and New Law Firm ElevateNext Collaborate with Univar to Reduce Law Department Spend By 50 Percent*, CISION PR NEWSWIRE (April 23, 2018), https://www.prnewswire.com/news-releases/elevate-and-new-law-firm-elevatenext-collaborate-with-univar-to-reduce-law-department-spend-by-50-percent-300634526.html.

- *Thames Water Appoints New Managed Legal Services Provider*, THAMES WATER (Dec. 20, 2017), https://corporate.thameswater.co.uk/Media/News-releases/Thames-Water-appoints-new-Managed-Legal-Services-provider.

The Big Four Are Not a Threat. They Are a Reality.

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There has been a significant amount of well thought out articles in the legal press on the topic of the entry of "Big 4" accounting firms into legal services. Most recently, the announcement of EY's acquisition of UK legal service firm Riverview. It is almost impossible to keep up with this whirlwind of change.

Clearly, the Big 4 are entering the legal space in the US as well as globally; and there are many reasons for this, all of which have been explored thoroughly.

I'd like to take a different approach for this article and provide some perspective from personal experience. Setting aside the historical developments, changes in regulatory restrictions outside of the US, and the disaggregation of legal services, I'd like to focus on what it is that makes the Big 4 appealing to commercial legal departments.

Having been in-house at a leading international company, I was a purchaser of legal services for 10-plus years. While the Big 4 were a more recent entrant, it became clear to me that the characteristics of the services they delivered to other parts of the organization would be very applicable to the legal department as well and very useful. There are several attributes of the Big 4 that make their services stand apart from law firms and stand above the alternative service providers.

These firms are many things to many people, including, but not limited to:

[1] **Lucy Endel Bassli** is a legal industry expert, engaging in thought-leadership projects to drive change and evolution in the delivery of legal services. She is the founder of InnoLegal Services PLLC, a modern solution provider that offers legal advice and consults on operationalizing the practice of law. She works with law departments and law firms on innovating their legal service delivery and consumption models, and trains lawyers in innovative practices. She also serves as deputy general counsel of legal operations, contracting, and corporate G&A for Snowflake Computing. Lucy specializes in all things contracting: resource allocation, automation, process optimization and smart risk-taking. Lucy also is the Chief Legal Strategist for LawGeex, a cutting-edge AI legal tech start-up automating contract review services.

In her 13 years at Microsoft, where she ran an enterprise contracting solution, Lucy focused on complex and global outsourcing contracts and gained firsthand experience in legal outsourcing to assist her with high-volume contract transactions. She launched an innovative "managed services" engagement with law firms and actively worked on continuously improving the value received.

Prior to joining Microsoft, Lucy practiced law at Davis Wright Tremaine, LLP in Seattle, WA, focusing on commercial transactions and commercial bankruptcy. Lucy received her J.D and BA from the University of Houston in Houston, Texas, where she grew up, but has been living in the Seattle area since completing law school.

Lucy is a licensed member of the Washington and Texas state bar associations, and was named to the National Law Journal list of Outstanding Women Lawyers, 2015. She is a frequent speaker on topics of legal services innovation, legal technology, and legal process outsourcing.

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1. Experienced Consultants — The Big 4 have extensive business and management consulting practices with arguably the best professionals in the field. They provide a perspective into legal services which will inherently be grounded in business and tend to offer solutions to problems that contemplate the end business goals. They are experts in all kinds of operations and will naturally focus on efficiency and practical application of theory. Even if I would not have known to ask for this perspective, the Big 4 will always provide it. That kind of experience is priceless for the legal experts buying these services, who may not know that they even need such operational insights.

2. Process Engineers — With an expertise in management consulting, these professionals will undoubtedly and inevitably identify process improvements. After all, managing is all about aligning resources and delivering outcomes, isn't it? In legal, we desperately need to rethink our allocation of resources. Much of what the industry is going through today is about changing engagements with law firms, adding new professionals into our mix, and outsourcing certain legal work. As challenging as that is for legal professionals to consider and implement, it is very easy for management consultants. Similarly, the focus on outcomes is never lost on management consultants, yet is it often lost on lawyers. Too many lawyers think that the outcome is the production of the legal advice, in whatever format. Helping lawyers focus on outcomes is another priceless benefit the Big 4 bring to every engagement.

3. Project Managers — There is no more beautiful deliverable than a piece of work product delivered by a professional project manager. Beyond just the actual deliverable, all work and engagements run smoother with a project manager involved. People are kept on track, timelines are strict, and action items are carefully tracked. The Big 4 are very comfortable with engaging project managers and make it a common practice on many of their consulting engagements.

4. Established Trusted Relationships — The Big 4 know how to deal with big enterprises. They understand the complexities and (well, let's call it what it is) the *politics* of working with a matrixed organization with unclear decision-making authority and undefined processes. Beyond just understanding corporate culture, the Big 4 already have deep relationships with most large US and global companies. They likely have very useful contacts within the organization that may prove quite helpful when trying to accomplish a controversial goal or execute on an unpopular plan. Often these "outsiders" have contacts within the client organization at higher levels than those they are engaging with in the client company on any one particular project. Sometimes those connections help get projects over the finish line.

5. Proven Results — The demonstrated success in tax law services has set a foundation for expansion into legal services that is grounded in experience on very complicated legal principles. Surely, if the Big 4 can become experts in tax law, they can deliver just about any other legal service!

6. Scale — The Big 4 have presence in almost every country where there is business conducted by multi-nationals. They can reach a scale that few other providers can compare with. They seem to have connections to experts on every topic of interest to their corporate clients, whether internally within their own employee base, or within an intricate and powerful network of related entities and affiliates.

7. Quality and Reputation — There is an undeniable trust that comes with the Big 4, which is why so many large corporations choose to use them for broad ranges of services. That umbrella of trust seems to cover all the work they do, even in areas that are new to these providers. There is history of high quality, and there are widely accepted expectations of continued quality work from the Big 4. There is little doubt or uncertainty in their ability to deliver on their promises.

8. Technology — The Big 4 know how to invest in technology. They have sizeable R&D departments and are comfortable setting aside resources for the benefit of their future. They have been around a long time and continue to evolve by keeping up with technology advances. They are certainly interested in legal tech, and with their ability to scale and investment resources, will have an easy time catching up to anything that is leading the market, and likely become the industry leader themselves. Those are baskets that many clients would be comfortable placing their eggs in!

9. Predicable Pricing — These are not low-cost service providers, but neither are law firms. One thing the Big 4 has, however, is predictability on pricing. Long gone are their days of pricing by the hour (at least in the Big 4's world), and instead fixed fees based on the project scope are the norm. More importantly, the Big 4 are accustomed to helping clients define the scope of work during the process and will adjust their pricing accordingly.

10. Sheer Size and Locations — The Big 4 have what seems to be an unlimited number of people located in the most remote corners of the world. It feels like there is no place in the world where they don't have a presence and no end to the availability of people to put on the task. There is nothing more frustrating than hearing from a service provider that they don't have the people available when you need them. The Big 4 always have people available.

These are some of the attributes that make me confident about the Big 4 expanding into legal services. There is no question about their potential in this space, and it only makes sense that the law firms and "not-so-alternative anymore" providers would be watching closely and learning. Indeed, as I reflect on this list, I have to ask, why would a corporate legal department hire anyone else for certain work that is not worthy of law firm rates and is more complex than what the "not-so-alternative" provides deliver today?

Chapter 6 – The Bar, Corporate Counsel, and Administrative Associations

The American Bar Association	**Hilarie Bass** – Past President, American Bar Association; Founder and President, Bass Institute for Diversity and Inclusion
International Bar Associations	**Fernando Pelaez-Pier** – Past President, International Bar Association; Partner, Hoet Pelaez Castillo & Duque
Association of Corporate Counsel: The General Counsel as a Corporate Culture Influencer	**Veta T. Richardson & Mary Blatch** – President Association of Corporate Counsel; Data Privacy and Regulatory Counsel at CFA Institute
Legal Administrative Associations	**Oliver Yandle** – Past Executive Director, Association of Legal Administrators
The Strategic Legal Marketer	**Jill Weber et al.** – 2017 President, Legal Marketing Association; Chief Marketing and Business Development Officer, Stinson Leonard Street

The American Bar Association

Hilarie Bass[2]
Past President, American Bar Association
LinkedIn

The original Constitution of the American Bar Association defined the purpose of the ABA as being for "the advancement of the science of jurisprudence, the promotion of the administration of justice and a uniformity of legislation throughout the country."

While this Constitution still considerably shapes the focus of the ABA, today's legal profession is very different from what it was when the ABA was first formed 140 years ago in Saratoga Springs, New York. When 75 lawyers from 20 states and the District of Columbia met to create the American Bar Association on August 21, 1878, there was no national code of ethics.[3] Most lawyers practiced solo. There were no universal standards for law schools because most lawyers did not have law degrees, and attending law school at that time was rare. Young lawyers learned their craft through apprenticeships and by reading classic legal texts. Improving diversity within the profession was almost certainly not a topic of conversation.

Today, the ABA is as committed as ever to improving the justice system and the rule of law. It works to serve its members, the legal profession, and the public by defending liberty and pursuing justice as the national voice of the legal profession.

Goal I: Serve Our Members.

Objective:

1. Provide benefits, programs, and services that promote members' professional

[2] **Hilarie Bass** is one of the most recognized women attorneys in the United States. Bass currently serves as President of the Bass Institute for Diversity and Inclusion and is a past president of the American Bar Association, and As co-president of international law firm Greenberg Traurig, she helped chart the course for the multi-practice firm with approximately 2,000 attorneys across 38 offices worldwide. She served on the firm's Executive Committee and previously served an eight-year term as national chair of its 600-member litigation department. She was also the founder and former chair of Greenberg Traurig's Women's Initiative. Bass has successfully represented high-profile corporate clients in jury and non-jury trials involving hundreds of millions of dollars in controversy. She has worked and settled more than 100 cases, tried more than 20 cases to conclusion, and argued numerous appeals. In recognition of that success, she was inducted into the American College of Trial Lawyers. She is widely recognized for her pro bono work on behalf of two foster children that led to the elimination and declaration as unconstitutional Florida's 20-year-old ban on gay adoption.

[3] AMERICAN BAR ASSOCIATION, http://www.americanbar.org/about_the_aba/history.html.

growth and quality of life.

Goal II: Improve Our Profession.
Objectives:

1. Promote the highest-quality legal education.
2. Promote competence, ethical conduct, and professionalism.
3. Promote pro bono and public service by the legal profession.

Goal III: Eliminate Bias and Enhance Diversity.
Objectives:

1. Promote full and equal participation in the Association, our profession, and the justice system by all persons.
2. Eliminate bias in the legal profession and the justice system.

Goal IV: Advance the Rule of Law.
Objectives:

1. Increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world.
2. Hold governments accountable under law.
3. Work for just laws, including human rights, and a fair legal process.
4. Assure meaningful access to justice for all persons.
5. Preserve the independence of the legal profession and the judiciary.

The ABA takes great pride in its mission, and these four goals are at the core of everything the Association does. For almost all ABA members, the continued existence of a free and democratic society depends upon a sound system of justice that is based on the rule of law. America's lawyers are officers of the court who play a vital role in the preservation of society.

Goal I: Serve Our Members.

The ABA's strength comes from its members. Over the years, the ABA has grown from 75 founding members from across the United States to more than 400,000 members worldwide. At the founding of the Association, seven committees were created, which included Legal Education and Admissions to the Bar, Judicial Administration, International Law, and Commercial Law. Today, the ABA has 3,500 entities, including 21 Sections, seven Divisions, and six Forums, as well as thousands of committees working on programs, policies, and member development. The ABA's committees offer Association members essential information on emerging topics, skills enhancement, and timely issues facing the legal profession. Last year, ABA Sections, Divisions, and Forums hosted more than 300 live Continuing Legal Education programs and hundreds of webinars/teleconferences with tens of thousands of participants.[4]

In addition, the ABA and its members work continuously throughout the year to create original substantive content to advance the legal profession in the United States and around the globe. Each year the ABA produces more than 1,000 print offerings, creating one of the world's most comprehensive legal libraries.

[4] To learn more about the ABA Section Officers Conference and the many resources it provides, *see* ABA SECTION OFFICERS CONFERENCE, http://www.americanbar.org/groups/leadership/section_officers_conference.html.

Goal II: Improve Our Profession.

From the very beginning, the American Bar Association has been synonymous with American legal education. One of the ABA's earliest committees was the Committee on Legal Education and Admissions to the Bar. Written bar examinations were just coming into vogue at the time of the ABA's founding; while previously used and required by most states, the examinations had mostly been informal oral tests.[5] As such, legal education and subsequent admission to the bar have been intertwined from the very beginning of the ABA.

The ABA Section of Legal Education and Admissions to the Bar embodies legal leadership and offers services to those institutions and individuals that educate law students and admit lawyers to practice. The Section's Council and its Accreditation Committee are acknowledged by the U.S. Department of Education as the national accrediting agency for programs that culminate with the juris doctorate degree.[6] Both the Council and the Section, in this accreditation role, are independent from the ABA, as required by DOE regulations. ABA-approved law schools are recognized by all state supreme courts as meeting the education requirements necessary to qualify for the bar examination.[7]

In addition, those in the Section of Legal Education and Admissions to the Bar are part of a group that is 10,000 members strong and aims "to improve legal education and lawyer licensing by fostering cooperation among legal educators, practitioners and judges through workshops, conferences and publications. The Section also studies and makes recommendations for the improvement of the bar admissions process."[8]

In 2017, in response to the calls for change to our system of legal education, the ABA's Board of Governors created the Commission on the Future of Legal Education to serve as the Association's forward-thinking body on legal education. The group is charged with evaluating how we can do a better job of educating and testing the competency of the future lawyers of our country. This ABA Commission has the unique ability to bring together the disparate interests under the same tent – the bar examiners, the law school deans, the state bars, and others – to talk meaningfully about the best ways to educate the lawyers of the future. This innovative new group will thoughtfully consider what alternatives should look like and what modifications should be made to ensure that future lawyers entering the profession will be up to the task of providing the service and expertise their clients deserve.

Furthermore, the ABA works to maintain and raise the standards of the legal profession far beyond the institution of legal education. In 1906, Roscoe Pound, who would later become a Harvard Law School dean, gave an influential speech on the "Causes of Popular Dissatisfaction with the Administration of Justice" at the ABA Annual Meeting in St. Paul, Minnesota. In this speech, which was both controversial and admired at the time, Pound called for standards and reforms to restore public trust in the civil administration of justice.[9]

Today, the ABA Center for Professional Responsibility upholds professional and ethical conduct among judges and lawyers.[10] The Center, which was created in 1978, has become a

[5] *See* AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/legal_education/about_us.html.
[6] *See* AMERICAN BAR ASSOCIATION, FAQ, http://www.americanbar.org/groups/legal_education/resources/frequently_asked_questions.html.
[7] *Id.*
[8] *Supra* note 4.
[9] *Supra* note 2.
[10] AMERICAN BAR ASSOCIATION, ABOUT CPR, http://www.americanbar.org/groups/professional_responsibility/about_us.html.

national source of professional regulation, judicial and legal ethics, and client protection by developing, analyzing, and implementing standards as distilled from scholarly resources and current policies governing the regulation of the legal profession.[11] The Center does this in an effort to hold lawyers and judges to the highest standards, and to protect clients who are not as well-versed.

The Center for Professional Responsibility's Policy Implementation Committee also assists states with the enactment of changes to the ABA Model Rules of Professional Conduct. The Canons of Professional Ethics, adopted in 1908, were the first national standards for legal ethics. The ABA Model Rules of Professional Responsibility were adopted by the ABA House of Delegates in 1983 and, with amendments, continues to serve as a model for the ethics rules in each state.

The Association's commitment to judicial independence is consistent with raising the standards of the legal profession. As the National Center for State Courts said, "Justice depends upon the ability of judges to render impartial decisions based upon open-minded and unbiased consideration of the facts and the law in each case."[12] The ABA has a number of committees and task forces dedicated to preserving judicial independence; as such, recent ABA presidents have made the creation and maintenance of fair and impartial courts a priority. It is crucial to continue and support efforts to enhance public understanding about the role of the judiciary and the importance of impartial courts within the American democracy. The ABA Standing Committee on Public Education and the ABA Division for Public Education serve both ABA members and non-member attorneys by asking every practicing lawyer to further the public's understanding of the legal community and the American justice system.[13]

Furthermore, in an effort to improve legal representation, the ABA is also committed to providing access to justice for all through the encouragement of pro bono legal services. Lawyers perform more pro bono service than any other profession. The ABA established its first Legal Aid Committee in 1920 with statesman Charles Evans Hughes as its first chair.[14]

It is interesting to note that the ABA's biggest annual lobbying event, ABA Day, which is held every spring in Washington, D.C., was founded more than three decades ago to protect the Legal Services Corporation, the single largest funder of civil legal aid for low-income Americans in the nation, and to save it from being abolished.

Today, the ABA Division for Legal Services provides staff support for 10 ABA committees and commissions that promote access to justice for all and improvements in the delivery of legal services. These committees and commissions cover access to justice for poor and moderate-income people, and issues affecting the legal profession.[15]

Goal III: Eliminate Bias and Enhance Diversity.

Early gender statistics for lawyers are hard to come by, but we know that women's participation in the legal profession has grown dramatically since Mary B. Grossman of Cleveland, Ohio, and Mary Florence Lathrop of Denver, Colorado, joined as the ABA's first two women members in 1918. Women represented 3 percent of the legal population in 1951, and today female

[11] *Id.*
[12] NATIONAL CENTER FOR STATE COURTS, http://www.ncsc.org/Topics/Judicial-Officers/Judicial-Independence/Resource-Guide.aspx.
[13] *See* AMERICAN BAR ASSOCIATION, DIVISION FOR PUBLIC EDUCATION, ABOUT US, http://www.americanbar.org/groups/public_education/about_us.html.
[14] *Supra* note 2.
[15] *See* AMERICAN BAR ASSOCIATION, DIVISION FOR LEGAL SERVICES, ABOUT US, http://www.americanbar.org/groups/legal_services/about_us.html.

attorneys account for 34 percent of the profession and 33 percent of Association membership. Women make up nearly 48 percent of recent law school graduates.[16] In 1943, the ABA, which had previously restricted membership to whites only, finally passed a resolution that membership was not dependent on "race, creed or color."[17] Following this resolution, the first African-American lawyer was admitted to membership in 1950.[18]

Today, the Association is wholeheartedly committed to ensuring diversity and inclusion throughout the ABA. The effectiveness of all the ABA's pursuits is weakened as long as the justice system does not adequately reflect the population it serves. The ABA has aggressively pursued strategies to diversify both the Association and the legal profession as a whole; these efforts should be at the forefront of every bar association's agenda and is certainly at the forefront of everything the ABA does. Throughout its history, the Association has recognized that it has a duty to properly represent the legal profession and the interests of justice.

Goal III was adopted by the ABA House of Delegates in 2008, drawn from what was previously known as ABA's Goal IX, which was "[t]o promote full and equal participation in the legal profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities."[19]

The ABA has several Goal III entities:

Commission on Disability Rights — promotes the ABA's commitment to justice and full, equal participation in the legal profession for people with mental, physical, and sensory disabilities.[20]

Task Force on Gender Equity — addresses the continuing gender equity issues that exist in the legal profession and in society at large.[21]

Center for Racial and Ethnic Diversity — provides the framework to effectively utilize and coordinate ABA diversity resources and supports Goal III, which helps the ABA maintain racial and ethnic diversity as a priority.[22]

Commission on Women in the Profession — the national voice for women lawyers, which also ensures equal opportunity for professional growth and advancement.[23]

Commission on Sexual Orientation and Gender Identity (SOGI) — seeks to secure equal treatment in the ABA, the legal profession, and the justice system without regard to sexual orientation or gender identity.[24]

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[16] *See Goal III Report*, AMERICAN BAR ASSOCIATION, COMMISSION ON WOMEN IN THE PROFESSION, 5 (2014), http://www.americanbar.org/content/dam/aba/administrative/women/2014_goal3_women.authcheckdam.pdf.
[17] *Supra* note 2.
[18] William G. Paul, *Increasing Diversity*, ABA J., *available at* http://books.google.com/books?id=9mGqYXbh8WIC&pg=PA8&dq=aba+journal+admitted+black+lawyer+1950&hl=en&sa=X&ei=WguvT4vhENPdgQfv2qHHCQ&ved=0CF4Q6AEwBA#v=onepage&q=aba%20journal%20admitted%20black%20lawyer%201950&f=false.
[19] *Supra* note 15, at 4.
[20] *See* AMERICAN BAR ASSOCIATION, COMMISSION ON DISABILITY RIGHTS, http://www.americanbar.org/groups/disabilityrights.html.
[21] *See* AMERICAN BAR ASSOCIATION, GENDER EQUALITY TASK FORCE, http://www.americanbar.org/groups/women/gender_equity_task_force.html.
[22] *See* AMERICAN BAR ASSOCIATION, COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, https://www.americanbar.org/groups/diversity/DiversityCommission.html.
[23] *See* AMERICAN BAR ASSOCIATION, COMMISSION ON WOMEN IN THE PROFESSION, http://www.americanbar.org/groups/women.html.
[24] *See* AMERICAN BAR ASSOCIATION, COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY,

ABA Staff Diversity Council — works to promote full participation in the Association by all staff persons.[25]

ABA Hispanic Commission — addresses key legal issues facing Hispanics throughout the U.S. such as voting rights, immigration, civil rights, and access to the courts.[26]

The ABA Council on Racial and Ethnic Diversity in the Educational Pipeline (Pipeline Council) works to increase the number of diverse students who are on track to becoming lawyers.[27] The ABA also offers Legal Opportunity Scholarships to diverse law students, providing $15,000 of financial assistance over the course of their law school career.[28] Former ABA President William G. Paul started the scholarship fund in order to encourage racially and ethnically diverse students to attend law school. As Paul said: "We can best serve society if members of the legal profession come from all segments of the population, reflecting the diversity of the United States — and financial aid during law school must be a vital component of any effort to increase diversity in the profession."[29] The first students received Scholarship awards during the 2000-2001 academic year. Since the program was created, 360 students from across the country (at 20 students a year for 18 years) have received an ABA Legal Opportunity Scholarship. These exceptional scholarship recipients have overcome adversity and gone on to practice at some of the most prestigious firms and organizations across the country. The scholarship program is important not only to the future of the Association, but also to the legal profession as a whole.

Goal IV: Advance the Rule of Law.

International law was the focus of one of the first seven committees established by the Association. From its inception, the ABA recognized the importance of international law in laying the foundation for what would become the largest voluntary professional organization in the world. The ABA International Law Committee eventually became the ABA Section of International Law (SIL) and has focused on its mission: advancing the rule of law in the world and enhancing the quality and outreach of the legal profession worldwide.

SIL has been a key player in many important international legal issues throughout its history, including the relationship between international treaties and the U.S. Constitution, and the creation of institutions like the Permanent Court of International Justice, the World Trade Organization, the United Nations, and their predecessor bodies. The SIL was also instrumental in the creation of a number of international bar associations and legal organizations, including the Inter-American Bar Association, the Inter-Pacific Bar Association, the American Society of International Law, and the International Bar Association. SIL's international perspective also led to its involvement in technical legal assistance projects to advance the rule of law around the world.

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http://www.americanbar.org/groups/sexual_orientation.html.

[24] *See* AMERICAN BAR ASSOCIATION, STAFF DIVERSITY COUNCIL, http://www.americanbar.org/about_the_aba/aba-staff-diversity-council.html.

[25] *See* AMERICAN BAR ASSOCIATION, COMMISSION ON HISPANIC LEGAL RIGHTS, https://www.americanbar.org/groups/diversity/commission_on_hispanic_legal_rights_responsibilities.html.

[27] *See* AMERICAN BAR ASSOCIATION, COUNCIL FOR RACIAL & ETHNIC DIVERSITY IN THE EDUCATIONAL PIPELINE, http://www.americanbar.org/groups/diversity/diversity_pipeline.html.

[28] *See* AMERICAN BAR ASSOCIATION, LEGAL OPPORTUNITY SCHOLARSHIP FUND, http://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/legal_opportunity_scholarship.html.

[29] *Id.*

Today, SIL has more than 22,000 individual members in more than 90 countries.[30] It serves ABA members, the profession, and the public through continuing legal education, publications, dozens of substantive committees, the International Legal Resource Center (a partnership with the United Nations Development Programme), outreach to the global legal community, interaction with the U.S. government, policy development, and advocacy.[31] SIL leadership also led to the creation of the ABA's Central European and Eurasian Law Initiative (CEELI)[32] and the Rule of Law Initiative (ROLI).[33]

ROLI is committed to collaborative learning and innovative research that enables it to identify effective approaches to rule of law development, incorporate these into creative program design, capture lessons learned from our work, and share them with the broader development policy community. ROLI provides thought leadership through publications and events, sharing insights from our work in almost 60 countries around the world. In 2016, ROLI participated in consortia that produced an assessment of the justice system in the Central African Republic and a toolkit for advancing justice in the context of efforts to achieve the U.N.'s 2030 Sustainable Development Goals. From ROLI's work to advance the rule of law over the past 25 years, it is clear that change comes from the creativity and drive of individual people committed to the cause of advancing the rule of law. For this reason, ROLI puts partnerships with local actors at the center of all its programs. The Association proudly supports these efforts to drive change.

Conclusion

Our world grows smaller each day. Few of the ABA's founders who gathered in Saratoga Springs could have imagined the scope and implications of the changes in the legal profession, especially those resulting from the globalization of commerce and law. In fact, few lawyers just 10 years ago could have predicted the issues facing lawyers today. The Association works tirelessly to understand the changes in the legal profession and the challenges of the day, while providing resources to help members around the world become better lawyers. The ABA is the voice of the American legal profession, but it works to strengthen the rule of law worldwide. As lawyers, we are many, but as a legal profession and an Association, we are one.

[30] *See* AMERICAN BAR ASSOCIATION, ABA SECTION OF INTERNATIONAL LAW, ABOUT US, http://www.americanbar.org/groups/international_law/about_us.html.
[31] *See* AMERICAN BAR ASSOCIATION, INTERNATIONAL LEGAL RESOURCE CENTER, http://www.americanbar.org/groups/international_law/initiatives_awards/international_legal_resource_center.html.
[32] *See* AMERICAN BAR ASSOCIATION, CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE, http://apps.americanbar.org/legalservices/probono/soc/ceeli.html.
[33] *See* AMERICAN BAR ASSOCIATION, RULE OF LAW INITIATIVE, http://www.americanbar.org/advocacy/rule_of_law.html.

International Bar Associations

Fernando Pelaez-Pier[1]
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The International Bar Association: A Story of Leadership and Success

The International Bar Association was founded on February 17, 1947 by a group of 34 national bar associations who sought to follow in the footsteps of the United Nations (U.N.) by helping to institute law and justice on a global scale.

Today, 72 years later, the IBA is the leading association of lawyers and is known as the "global voice of the legal profession."[2] In this article, we will discuss the history of the IBA and why it has gained its leading position among bar associations, law societies, and practicing lawyers from around the world.

For the success of any organization, it is essential to have clear objectives in order to perform its activities and deliver its services to its constituency. The IBA leadership has adjusted its structure and objectives since its inception in order to adapt to the challenges imposed upon the legal profession and to best serve its members.

In 1969 and 1970, the IBA leadership made important changes. It decided to move the IBA headquarters form New York to London, to admit individual lawyers to the Association, and to establish the former Section on Business Law.[3] These decisions marked a turning point for the Association, attracting not only bar associations and law societies, but also business lawyers from every continent. In the following years, the IBA leadership made another important decision to establish the Section on General Practice and the Section on Energy and Natural Resources.[4]

Major changes were made in 2004 and 2011. The IBA leadership decided to conduct a careful review of the structure of the Association. As a result of such initiative, currently the structure of the Association is focused on two main divisions: the Legal Practice Division (LPD) and the Public and Professional Interest Division (PPID), the latter of which has three subdivisions: the Section on Public and Professional Interest (SPPI), the Bar Issues Commission (BIC), and the

[1] **Fernando Peláez-Pier** is a past president of the International Bar Association and a founding member of Bentata Hoet & Asociados (now Hoet Pelaez Castillo & Duque), created in 1977. He is a graduate of the Iberoamericana University, Mexico City; Paris University (diplôme d'études supérieures); and the Universidad de Los Andes, Merida, Venezuela., where he currently leads as one of its corporate partners. Mr Peláez-Pier practices in the areas of contract negotiations, mergers and acquisitions, foreign investments, project finance, and alternative dispute resolution. Prior to joining Hoet Pelaez Castillo & Duque, Mr Peláez-Pier was responsible for setting up the London office of Bomchil, Castro, Goodrich, Claro, Arosemena & Associates and was director of their Paris and London offices from 1972 to 1976. He was an associate at Goodrich, Riquelme & Associates, Mexico City from 1967 to 1972. Mr Peláez-Pier was chairman of the Federation of Binational Chambers of Commerce of the European Community (FEDEUROPA) 1981–1982; Lex Mundi chairman, 1992–1993, and served as vice president of the International Bar Association (IBA) (2007–2008); secretary-general (2005–2006), chair of the IBA Section on Business Law (2002–2004), vice-chair (2000–2002), and secretary-treasurer (1998–2000). He is a member of the advisory board for the Institute for International and Comparative Law and the Interamerican Bar Association. Mr Peláez-Pier has been awarded the Miranda State Bar Association Gran Orden del Colegio de Abogados del Estado Miranda (2003) and the Professional Merit Award by Caracas Bar Association "Miguel José Sanz" (2003).

[2] THE INTERNATIONAL BAR ASSOCIATION, ABOUT THE IBA, http://www.ibanet.org/About_the_IBA/About_the_IBA.aspx.

[3] THE INTERNATIONAL BAR ASSOCIATION, KEY MILESTONES, http://www.ibanet.org/About_the_IBA/Key_milestones.aspx.

[4] *Id.*

Human Rights Institute (HRI).[5]

The organization's principal goals and objectives are:

. To promote an exchange of information between legal associations worldwide.
. To support the independence of the judiciary and the right of lawyers to practice their profession without interference.
. Support of human rights for lawyers worldwide through its Human Rights Institute.[6]

The IBA works toward these goals by means of:

1. Services for individual lawyer members through its divisions, committees and constituents.
2. Support the activities of bar associations and, in particular, developing bars.
3. Support human rights for lawyers worldwide.[7]

Why has the IBA become the leading association of individual lawyers and bar associations, and why is it known as the global voice of the legal profession?

IBA individual members are practicing lawyers covering all the different areas of practice and professional interests. At present, there are more than 55,000 individual members. IBA member organizations comprise more than 205 bar associations and law societies. IBA members come from all regions of the world, representing more than 126 countries.

IBA provides members with access to leading experts and up-to-date information. Through the committees of the divisions (more than 40 specialized committees), the IBA enables the exchange of information and views among its members as to laws and professional responsibilities relating to the practice of law around the globe.

Within the IBA, we found the behaviors that James Scouller called "the four dimensions of leadership": "(i) a shared, motivating group purpose; (ii) action, progress and results; (iii) collective unity or team spirit; and (iv) individual selection and motivation."[8]

The IBA has group leadership. Its management board, councils, and officers provide direction and guidance to the association and its divisions, sections, committees, and interest groups as a whole. At the same time, the sections, committees, and interest groups (through their officers) provide direction and guidance to their members.

We can identify specific characteristics within the IBA such as awareness of unity and interpersonal relationships; its members have the opportunity to contribute, learn, and work with others and to act together toward a common goal.

Within the IBA, we find "leaders who demonstrate persistence, tenacity, determination, and synergistic communication skills will bring out the same qualities in their groups. Good leaders use their own inner mentors to energize their team and organizations and lead a team to achieve success."[9]

The IBA's leaders are individual practicing lawyers holding positions at all different levels

[5] *Supra* note 2.
[6] *Id.*
[7] *Id.*
[8] JAMES SCOULLER, THE THREE LEVELS OF LEADERSHIP (2011).
[9] BART BARTHELEMY, THE SKY IS NOT THE LIMIT – BREAKTHROUGH LEADERSHIP (1997).

of the association, from sub-committee officers up to the president. The need for leaders at all levels is a requirement for an association to build and maintain its leadership, and there is no doubt that this has been the cornerstone upon which to build the success of the IBA.

[Ken] Ogbonnia (2007) defines an effective leader "as an individual with the capacity to consistently succeed in a given condition and be viewed as meeting the expectations of an organization or society." Leaders are recognized by their capacity for caring for others, clear communication, and a commitment to persist.[10]

Among other characteristics, a leader must also be intelligent, assertive, energetic, and flexible, with initiative, good judgment, and strong personality.

Different components of the IBA have contributed to the development of law, either assisting post-conflict countries to create their regulatory framework or drafting laws, regulations, and codes on different areas of law and practice. Its different publications are well recognized, and its data bank is a source of knowledge for both law students and practicing lawyers. The annual conference and the specialized conferences (more than 50) that the IBA organizes every year represent a unique opportunity to analyze and discuss the latest developments in all the different areas of business and commercial law, as well as public interest topics, while also serving as an excellent networking platform for all members from around the globe.

Here are just a few examples of the IBA's work that are recognized internationally:

- the Arbitration Committee guidelines on Conflicts of Interest on International Arbitration[11];
- the Rules on the Taking of Evidence in International Arbitration[12];
- the Anti-Corruption Guidance for Bar Associations and the Handbook on General Agreement on Trade in Services (GATS) published by the Bar Issues Commission[13];
- the Anti-Corruption Strategy undertaken by the IBA, the Organization for Economic Cooperation and Development (OECD), and the UN Office on Drugs and Crime (UNODC)[14]; and
- the reports of Task Forces on Climate Change, Justice, and Human Rights[15]; on the Financial Crisis[16]; on International Terrorism[17]; and on Extraterritorial Jurisdiction.[18]

Moreover, the work of the IBA on human rights through its Human Rights Institute must be praised for the work done around the world supporting the rule of law and its fundamentals.

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[10] JAMES SMITH, LEADING FROM THE MIDDLE: WHAT YOU NEED TO KNOW 8 (2012).
[11] *See* THE ARBITRATION COMMITTEE GUIDELINES ON CONFLICTS OF INTEREST ON INTERNATIONAL ARBITRATION, http://www.ibanet.org/ENews_Archive/IBA_July_2008_ENews_ArbitrationMultipleLang.aspx.
[12] *See* IBA GUIDES, RULES AND OTHER FREE MATERIALS, http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx.
[13] *Id.*
[14] *See* IBA OECD UNODC ANTI-CORRUPTION STRATEGY FOR THE LEGAL PROFESSION: AN UPDATE, http://www.ibanet.org/ENews_Archive/IBA_24September_2010_AntiCorruption_Strategy_update.aspx.
[15] *See* PRESIDENTIAL TASK FORCE ON CLIMATE CHANGE, JUSTICE, AND HUMAN RIGHTS, http://www.ibanet.org/PresidentialTaskForceCCJHR2014.aspx.
[16] *See* PRESIDENTIAL TASK FORCE ON THE FINANCIAL CRISIS, http://www.ibanet.org/PresidentialTaskForceFinancialCrisis2013.aspx.
[17] TERRORISM AND INTERNATIONAL LAW: ACCOUNTABILITY, REMEDIES AND REFORM, http://www.ibanet.org/Article/Detail.aspx?ArticleUid=51568C67- 85A1-4465-944B-A05E4A17021B.
[18] INTERNATIONAL BAR ASSOCIATION, REPORT OF THE TASK FORCE ON EXTRATERRITORIAL JURISDICTION (2009).

The IBA's work through conferences, special projects, task forces, working groups, publications, and permanent research on the development of law and the challenges faced by the legal profession can be considered as the best or one of the best continuing legal education programs. As a former IBA president used to say, "the IBA offers to its members one of the best master of laws."

Being a member of the IBA for almost 30 years and one of its former leaders, I have witnessed firsthand the ongoing development of the association and its different components, which has been possible because of the commitment and hard work of its leaders and staff, and the support of its members. This understanding is supported by my experience as officer of the IBA (from secretary general to president); my service on the former Section on Business Law (from secretary-treasurer to chair) and the Latin American Regional Forum (founder and chair); and my participation as chair and co-chair of different initiatives, such as the Task Force on International Multijurisdictional Commercial Practice, the Task Force on the restructuring of the IBA regional activities, and the last Committee Review to modify the structure of the association. This experience allowed me to gain in-depth knowledge of the inner workings of the IBA and the leadership shown by its members and officers, which translates into an influential force in the legal profession. Their drive and work are definitely the paramount factor of the success of the organization and the advancement of legality.

Analyzing the structure, the leadership, the work, and the different initiatives undertaken by the different components of the IBA, it is evident why it is the global voice of the legal profession.

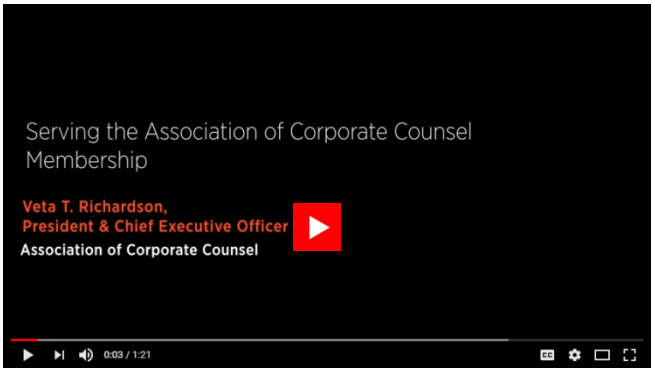
Leveraging Legal Leadership: The General Counsel as a Corporate Culture Influencer


Veta T. Richardson & Mary Blatch[1]
President Association of Corporate Counsel ; Data Privacy and Regulatory Counsel at CFA Institute

> The only thing we have is one another. The only competitive advantage we have is the culture and values of the company. Anyone can open up a coffee store. We have no technology, we have no patent. All we have is the relationship around the values of the company and what we bring to the customer every day. And we all have to own it.
>
> – Howard Schultz, founding CEO, Starbucks

Introduction

Corporate culture is widely acknowledged as adding value to companies, both in terms of improving financial performance and in creating an atmosphere that encourages ethical behavior. Evaluating and setting corporate culture is an important responsibility for boards and executive management, and because the board chooses the chief executive, ultimately culture emanates from the boardroom.[2] Corporate culture is not a topic typically linked to a company's general counsel and legal department, but the failure to draw that link may prove shortsighted on the part of the



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Mary Blatch is Data Privacy and Regulatory Counsel at CFA Institute and the Association of Corporate Counsel's senior director of advocacy. She directs ACC's regulatory, legislative, and judicial advocacy efforts on attorney-client privilege, attorney ethics and mobility, corporate compliance, and other issues of importance to in-house counsel.

Prior to joining ACC, Mary was a senior manager at Deloitte, working on regulatory advocacy and compliance issues for the tax practice. Before joining Deloitte, she was a litigation associate at McKee Nelson LLP and Hogan & Hartson LLP (now Hogan Lovells LLP). She also served as a federal judicial clerk in the Eastern District of Virginia.

Mary holds a J.D. from the Columbus School of Law at The Catholic University of America and a B.A. from Spelman College.

[2] IAN MUIR, TONE FROM THE TOP: HOW BEHAVIOR TRUMPS STRATEGY (Gower Publishing, 2015).

board. Given the importance of the general counsel in matters of ethics, compliance, corporate governance, and risk and reputation management, the general counsel should be a key ally and partner in establishing a corporate culture that supports corporate performance without compromising ethical behavior, and legal and regulatory compliance. This thought leadership paper explores how the general counsel (a/k/a chief legal officer) can be leveraged as a corporate culture influencer, and how her standing and stature vis-à-vis the CEO and other C-suite executives should be a topic of board inquiry.

When the general counsel has a seat at the chief executive's leadership table, it sends a signal to the company's stakeholders (internal and external) that ethics, compliance, and other legal risk considerations are a top priority of the company. A direct reporting line between the chief legal officer and chief executive officer is important to corporate culture as a reflection of the "tone at the top," and through which the CEO sends a powerful message that business decisions are made with appropriate consideration of the ethical, legal, and reputational impacts.

> There are many ways in which the board can send signals. The most powerful signals come from behaviour, language, and actions of executive directors, particularly the CEO. If the CEO is sending signals that business is a game where fouling is OK if the referee does not see you (think football), or that cutting corners is acceptable to deliver results, no amount of 'good tone' from the rest of the board will have much impact.[3]

As the board meets its fiduciary duty to keep a critical eye on the company's culture, part of that examination must include how the general counsel functions within the company. Through talking with well-respected general counsel and our own research on the expectations of corporate directors and chief executives regarding the chief legal officer, the Association of Corporate Counsel (ACC) has developed five indicators that all directors, particularly non-executive directors, should look to in order to assess whether a company's general counsel is well positioned to have a positive influence on corporate culture.

Regulatory and Business Demands Expand the Need for General Counsel Influence

In 1991, the U.S. government issued the United States Sentencing Guidelines for Organizations, which incentivized the creation of corporate compliance programs meant to prevent and detect violations of the law. This began a more systematic approach by companies to address regulatory compliance as well as ethics within their organizations. Ultimate responsibility for a company's regulatory compliance usually rests with its general counsel, and as regulatory scrutiny has increased, so has companies' need for regulatory compliance advice.

Although some companies have compliance functions that are separate from the legal department, many of the activities mandated by a compliance program require legal analysis, and any effective compliance program requires coordination with the general counsel.

The emphasis on the general counsel's role in ethics and compliance has made the position grow in professional stature and influence. Regulators recognize that in-house counsel have an essential role in promoting compliance and ethics in their companies. They have even included in-house counsel in regulatory regimes meant to deter corporate wrongdoing, like the Sarbanes-Oxley Act of 2002. Both directors and general counsel are acutely aware of the importance of the general

[3] *Id*. at 34.

counsel role in promoting ethics and compliance within the company. In ACC's *Skills for the 21st Century General Counsel* survey, 54 percent of directors ranked "ensuring a company's compliance with relevant regulations" as one of the top three ways general counsel provide value to the company. ACC's *2017 Chief Legal Officers Survey* found that 74 percent of general counsel rated ethics and compliance as "extremely" or "very" important over the next 12 months — the highest ranked concern in the survey. This emphasis on the general counsel's role in ethics and compliance created the need for general counsel to exert greater influence within their companies in order to fulfill the compliance mandate from regulators and the board.

Even outside of compliance concerns, legal and regulatory issues are increasingly central to the implementation of sophisticated business strategies. For example, protecting innovation requires understanding intellectual property law; overseas expansion requires knowing the employment laws of other countries; and advances in data analytics require knowledge of data privacy laws. Where outside counsel used to be the primary legal advisers to the CEO, general counsel have come to fill that role in every corporation, particularly the large multinational and/or publicly held company. As legal departments have evolved and attracted top-level talent below the general counsel, the general counsel has carved out more time to consider strategic business issues and contribute to setting strategies. This development is a positive contribution to corporate culture.

> Tone from the top is not a motivational crusade. Most changes happen where there are doubts about whether the tone is the right one. Ultimately chairmen should change the CEO if the values and ethics aren't present to the right extent.[4]

When a general counsel is part of the executive leadership that makes strategic business and operational decisions, those decisions are informed by not only a legal perspective, but also by broad ethical and public policy considerations. The general counsel is a diverse and unique voice at the executive table. ACC's *Skills for the 21st Century General Counsel* report suggests that boards are just beginning to perceive the value of the general counsel as a strategic advisor. Twenty-seven percent of the directors surveyed ranked the general counsel's "input into strategic business decisions" as a top-three value driver currently, with 37 percent anticipating it would be a top-three value driver in the future.

A Strong General Counsel Supports a Strong Corporate Culture

> Courage is the most important attribute of a lawyer. It is more important than competence or vision. It can never be an elective in any law school. It can never be de-limited, dated or outworn . . . .
>
> – Robert F. Kennedy, Speech at University of San Francisco Law School, San Francisco, Sept. 29, 1962

It is curious that there has not been greater discussion of the general counsel's role in influencing or supporting strong corporate cultures, especially with ethics and compliance being the primary drivers of corporate culture efforts. Of the 12 companies that have made Ethisphere's

[4] *Id.* at 23.

list of the "World's Most Ethical Companies" each year it has been published,[5] ACC found that the majority of them have general counsel who are well-positioned to influence corporate culture. For example, in 91 percent of those companies, general counsel report to the CEO. In 83 percent, general counsel serve as the corporate secretary, indicating direct access to the board, and in 83 percent of those companies, general counsel are also responsible for compliance.

The preventative role of the general counsel and corporate legal department is key to their contribution to regulatory compliance and corporate culture. When the general counsel is included in discussions of business strategies before they are implemented, she can help the company assess and avoid legal and business risks.

As preventing violations of laws and regulations is preferable to mere detection of violations when they occur, the general counsel has become instrumental in improving a company's overall compliance, as well as protecting its reputation.

Much of the general counsel's value when it comes to supporting a strong corporate culture stems from the fact that the legal department's metric for success is not the company's quarterly performance. The general counsel promotes ethical behavior and integrity in corporate decisions by taking the view that short-term gain is not worth compromising long-term sustainability. This perspective can be important to informing what a company considers ethical. Experts consider corporate culture to be the intangible framework meant to guide individual and organizational behavior when there are gray areas.

With her legal background, "gray area" is a space that the general counsel regularly occupies as most laws, cases, or regulations fail to offer a "bright line" rule.

> [I]t is increasingly important that the general counsel have the skills to navigate beyond just the legal issues — to have many more of the softer skills necessary to negotiate matters where the rules are not always clear, where the outcomes are not always neat, and where the impact on the overall organization is widespread and profound.
>
> – A general counsel who also serves as a board member,
> from the *Skills for the 21st Century General Counsel* report

A company that leverages its general counsel and legal department to fill in those gray areas (including outside the legal context) in a manner that promotes ethical practices and compliance with the law helps solidify an overall corporate culture that emphasizes those characteristics and values. On the other hand, when the general counsel is not empowered in such a manner, business units may fill in those gray areas in a way that maximizes short-term returns over the longer-term interests of the company, and compromises the ethical culture the company wishes to build.

A strong general counsel can establish the practices that reinforce a corporate culture that values ethics and integrity. But this value can only occur if the general counsel is properly situated within the company, and the legal department has effective interactions with the company's business units. A management team that marginalizes the general counsel and the legal department not only loses out on this risk-management perspective, but also sends a company-wide message that legal risk, ethics, and compliance are not taken seriously.

[5] There is a total of 13 companies that have made the Ethisphere list every year, but information on governance and reporting structures was unavailable for one of the companies.

Send lawyers, guns and money, the shit has hit the fan.

– Warren Zevon,
"Lawyers, Guns and Money" (song) (1978)

The distinction is best explained as companies with a less solid corporate ethical culture that would generally view the general counsel and members of the legal department as the group to call to "clean up" after a legal, regulatory, or compliance mess, or when a transaction goes awry. Whereas, companies with a stronger "tone at the top" corporate ethical culture look to the chief legal officer and her team as allies whom, if proactive and involved at the onset, can help prevent a mess from happening.

Five Indicators of General Counsel Influence on Corporate Culture

Accepting the proposition that a strong general counsel will have a positive effect on corporate culture, we suggest five indicators a board might consider when evaluating whether the general counsel has sufficient influence on corporate culture, and whether corporate culture itself is indeed healthy.

#1 – The general counsel reports directly to the chief executive officer and is considered part of the executive management team

Before the rise of the general counsel and the corporate legal department, general counsel were not considered C-level executives. They often reported to the chief financial officer (CFO), chief administrative officer (CAO), or another senior executive. As regulatory and business demands spurred the changes in the legal department detailed above, the role and relative authority of the general counsel increased. Per the ACC *Chief Legal Officers 2017 Survey*, 72 percent of respondents report directly to the CEO.

Figure 1 – Reporting Structure, ACC Chief Legal Officers 2017 Survey

While this number has increased – only 64 percent of general counsel reported to the CEO in ACC's *2004 Chief Legal Officers Survey* — the movement of less than 10 percentage points is a concern given how much more global and complex the challenges businesses face have become.

The reporting structure of the general counsel position is an important indicator of the influence that the legal department has in the company. The ACC *Chief Legal Officers 2017 Survey* showed that general counsel who report to the CEO were much more likely to say that the executive team "almost always" seeks their input on business decisions.

General counsel who report to the CEO were also significantly more likely to report they "almost always" contribute to strategic planning efforts compared with those who don't. When the general counsel is consulted about business decisions and strategic planning efforts, there is a greater likelihood that those decisions and plans will take into account legal and regulatory risks. Pre-decision consultation helps the legal department fulfill its preventative role within the company.

In addition to providing the legal department with requisite influence, having the general counsel report to the CEO is an important part of setting the "tone at the top." When legal has a seat at the table, it sends a message to the rest of the company that compliance with laws and regulations is a company priority. It also says something about the CEO: that input from legal is valued, and that the CEO's vision for the company prioritizes ethics and integrity.

#2 – The general counsel has regular contact with the board of directors

A board of directors that does not have a consistent relationship with the company's general counsel should be a cultural red flag and prompt further board inquiry. While the relationship between the general counsel and the board can take various forms, it is important that the relationship at least be consistent. After all, the board is the company's fiduciary representative, and the company is the general counsel's client (not members of the executive management team). A relationship between the general counsel and the board of directors enables the board to set the right tone for the company's legal, ethical, and compliance culture, and also helps maintain the independence of the legal function.

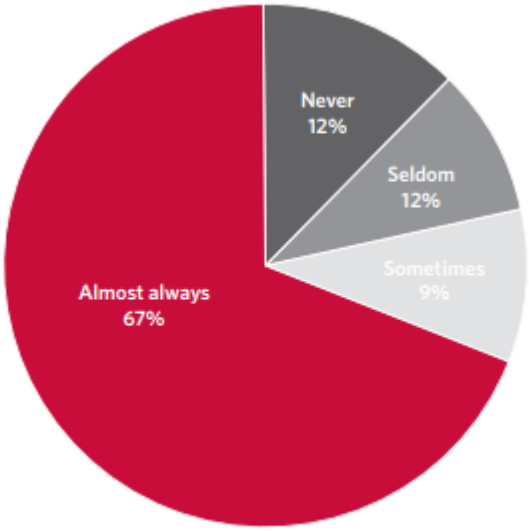

Figure 2 – General counsel attendance at board meetings

Our data indicate that there is room for improvement in the relationship between boards and general counsel. In the ACC *Chief Legal Officers 2017 Survey*, 18 percent of respondents reported having a "direct" reporting relationship with the board of directors, and 67 percent reported that they "almost always" attend board meetings. However, a full 21 percent report that they seldom or never attend board meetings. While not every company requires a direct reporting structure between the general counsel and the board, at a minimum, the general counsel must have a mechanism to bring controversial issues to the board — without prior CEO consent.

In addition to raising issues directly with the board, an influential general counsel can be an ally in the board's efforts to set the tone for the company's compliance culture. The ACC survey shows that similar to the effect of direct CEO reporting by the general counsel, a board relationship imbues the general counsel with more influence over business decisions. General counsel who had a reporting relationship to the board were significantly more likely to be asked for input on business

decisions; they were also significantly more likely to contribute to the company's strategic planning.

A relationship with the board also helps preserve the independence of the legal department. Much has been made of the independence, or lack thereof, of in-house counsel, because they depend on management for employment and compensation decisions. The board can serve as an important check on the potential conflict the general counsel might feel between her service to executive management, and her duty to the company as a client. Moreover, if a general counsel needs to report concerns to the board, finding a way to do so without formal access or a prior relationship with the board creates an obstacle to fulfilling her ethical duties. Ultimately, this leaves the board of directors unaware, and potentially exposed, to legal or compliance risks that require their attention.

#3 - The general counsel is viewed as independent from the management team

The first two indicators state that general counsel should have a seat at the management table and a relationship with the board. If the general counsel fails to maintain her independence, neither of those relationships will benefit the company the way they should. The value the general counsel brings to the table is compromised if she is seen as lacking the courage to challenge management decisions when necessary. While general counsel are a part of the executive team, they must maintain a delicate balance between that position and their duties to the company as their client. Further, the board needs to satisfy itself that the general counsel is achieving that balance in order to have a healthy corporate culture.

> As a board member, it's important to me that the GC understands that their obligation is to the company and not really to the CEO [who] hires them.
>
> – From the *Skills for the 21st Century General Counsel* report

As mentioned above, the company is the general counsel's client, and if the general counsel is overly beholden to management, the result may be advice and counsel that does not prioritize what's best for the company.

Additionally, if such a perception is widely held throughout the company, it can erode the confidence that lower level employees place in the legal department. The general counsel should be seen as the senior executive most capable of pushing back on management decisions that put the company at legal or reputational risk. There must be a willingness by the general counsel to raise issues with the board, even if doing so may threaten her own standing with the CEO and other executives.

#4 – The general counsel is expected to advise on issues that extend beyond the traditional legal realm, including ethics, reputation management, and public policy

> As a director, my experience is that boards look to the general counsel to give them perspective on not just the problems that present themselves … but also for guidance on things the board should be thinking about, and how particular issues fit into the overall context of the business.
>
> – From the *Skills for the 21st Century General Counsel* report

If the general counsel is to manage risk and support an ethical corporate culture, she must be empowered to advise on issues beyond traditional legal matters. In addition to rapid changes in the legal and regulatory landscape, companies are navigating issues involving public policy, politics, the media, and social pressure from consumers. The increasing importance of these "business in society" issues means they can pose formidable risks to companies. Someone needs to have official responsibility for these matters and the general counsel is well suited for this task. Effective lawyering has always left room for evaluation of non-legal considerations. With the intense scrutiny that companies face in today's world, it is important to consider how conduct that is technically legal can still be damaging to the company's reputation, community goodwill, or its relationships with stakeholders. Corporate decisions in these areas need to be evaluated against a company's risk appetite, integrity, and values.

Indeed, there is a trend toward consolidating control of some of the corporate functions that address these legal-adjacent issues within the legal department. For example, the ACC *Law Department Management 2016 Report* showed that the legal department often oversees the government affairs function (44 percent); security (23 percent); public policy (21 percent); and communications (19 percent).

Even if the general counsel is not directly responsible for these matters, management should proactively seek the advice of the chief legal officer on these issues. The legal department cannot be left out of the decision-making on such matters if an ethical culture is to thrive.

#5 – Business units regularly include the legal department in decision-making

If the CEO's and board's relationships with the general counsel set the cultural tone at the top, then the interaction between business units and the rest of the legal department create the mood in the middle. Companies must develop a culture where in-house counsel are regularly consulted in decision-making at levels below the general counsel. This ensures that legal and risk considerations are taken into account as new products, services, or business practices are developed.

Inclusion of the legal department in the decision-making process is especially essential as businesses expand into areas where the law is uncertain. It is those gray areas where legal counsel can be most helpful in guiding the company in a manner that follows its corporate ethical compass. Having counsel involved on the frontend of decisions is the difference between having a legal department that is engaged, involved, and actively preventative from a compliance standpoint, and one that just plays clean up after something goes wrong. Greater interaction between the business and legal teams also reinforces the idea that risk management is everyone's responsibility. In today's hyper-regulatory business environment, ignorance of the law will not shield an executive from indictment. The interaction between a business and its attorneys will look different across companies, but from the board's perspective, if such interaction is not occurring, that might be a sign that corporate culture is underemphasizing legal and compliance risk.

The need for communication and collaboration with other functions is not limited to outward-facing business units — the internal-facing business units should also have established relationships with the legal department. Data security, for example, involves the law department and IT; the human resources department should provide information to support legal conclusions on employment matters; lawyers should be involved with the government affairs team to help define regulatory and legislative goals. In fact, because the legal department is so integral to the operations of a company, its reach can be a good proxy by which to measure communication and

effective risk management across functions. If the board cannot find evidence of such collaboration, it could indicate a "siloed" corporate culture that exposes the company to unnecessary risks.

One important caveat to the above: However a company determines to facilitate the legal department's involvement in decisions, it should not be done in a way that negates individual lawyers' accountability to the general counsel. Several of the notable corporate scandals have been blamed, in part, on a lack of accountability between the general counsel and the line attorneys who had often seen signs of questionable corporate conduct. In other words, the attorneys who reported directly to business leaders were less effective in elevating issues of concern to the appropriate levels within the company. There should be general counsel oversight — perhaps a dotted-line reporting structure — over lawyers assigned to the business units to ensure proper reporting of issues of concern.

Conclusion

The five indicators below offer a checklist of current best practices of companies with strong general counsel and reputations for high integrity and ethics. These indicators can also be used as litmus tests of corporate culture. Given the incredible transformation of the corporate legal department over the last few decades, ACC believes we are just beginning to see the positive effects that a well-positioned general counsel and strong legal department can have on corporate culture.

- ❑ #1 – The general counsel reports directly to the chief executive officer and is considered part of the executive management team
- ❑ #2 – The general counsel has regular contact with the board of directors
- ❑ #3 – The general counsel is viewed as independent from the management team
- ❑ #4 – The general counsel is expected to advise on issues that extend beyond the traditional legal realm, including ethics, reputation management, and public policy
- ❑ #5 – Business units regularly include the legal department in decision-making

Administrative and Marketing Associations

Oliver Yandle[1]
Former Executive Director,
Association of Legal Administrators
LinkedIn

Legal Administrative Associations

Professional associations serving the legal profession have been around for more than 100 years, helping to shape the development of the law and those who practice it. Professional associations for administrative management in the legal industry, however, are a more recent development. In 1957, the president of the American Bar Association, Charles S. Rhyne, identified the need for an increased focus on the economics of law practice and created a special committee to develop practical suggestions on how to manage the business of law. By the early 1970s, the needs and complexities of law firm management had grown significantly, spurring the creation of a number of organizations specifically focused on the business of law.

Today, the management of law firms and law departments requires highly specialized skills and advanced training. Many legal business professionals have obtained advanced degrees in business management, marketing, information management and technology, finance, and human resources. Often, they have secured professional certifications and designations in their particular field of practice, such as the Certified Legal Manager or Professional in Human Resources, to advance their professional skills. In addition to formal educational opportunities, legal business professionals rely on associations to keep them up to date on the issues, trends, and skills necessary to succeed in this rapidly changing environment.

These associations provide information, education, and networking opportunities to help

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Oliver's law association experience includes holding the executive director position at the International Association of Defense Counsel, in Chicago, Illinois, and he served as an adjunct instructor of legal analysis and writing at the Washington College of Law at American University. In addition to his legal experience, Oliver has had a long-standing career in association work, most recently having held the position of executive vice president for Commercial Law League of America. He has held senior director positions at SmithBucklin in Chicago, Illinois, at the International Bridge, Tunnel and Turnpike Association in Washington, D.C., and at the Intelligent Transportation Society of America in Washington D.C.

He is active in both the American Society of Association Executives (ASAE), where he holds the Certified Association Executive designation and the Association Forum of Chicagoland.

Oliver is a native of Louisiana and holds a B.A. in journalism from Loyola University of the South in New Orleans, and a J.D. from Washington College of Law at The American University in Washington, D.C.

their members meet the challenges inherent in managing successful law firms. They offer support with practical skills as well as leadership training, and advocate for their members to become strategic partners with attorneys in providing client service that is both effective and profitable. Many offer certification programs that provide advanced skill training and professional recognition for excellence in legal management.

With law firms and law departments experiencing some of the most dramatic shifts in how legal services are delivered, the need for professional legal management leadership has never been greater. These professionals bring critical business strategy and insights to improve financial performance, firm growth, and client service. There are a number of professional organizations available to support them.

The Association of Legal Administrators[2] was founded in 1971 to provide legal managers with an international forum in which to develop their skills, share ideas, and advance their careers in this emerging profession. Today, the association represents nearly 9,000 legal business professionals from more than 30 countries. Members include law firm chief executive officers, principal administrators, functional specialists, and managing partners responsible for developing business strategies and leading legal business operations. The Association has developed a Certified Legal Manager certification program designed to acknowledge those professionals who have mastered the knowledge, skills, and abilities necessary to operate at a high level of expertise in the field of legal management.

In addition to annual conferences and meetings, the association provides an array of resources to support its members, including an annual compensation and benefits survey, customized research services, career development services, peer consulting, and shared interest groups. It offers frequent webinars and other online learning resources. The association's award-winning publication, *Legal Management*, offers in-depth articles covering topics including financial management, operations, technology, marketing and business development, leadership, and strategy. ALA's network of 92 chapters throughout the United States and Canada provide members with opportunities to connect with local colleagues for education and networking events.

The American Bar Association Law Practice Division[3] evolved from the ABA's special committee on the economics of law practice and was established in 1974 to offer finance. The mission of this Division is "to investigate, evaluate, develop, and disseminate information and techniques which will make the legal services delivery team more effective, competent, ethical, and responsive to the needs of clients and the public."[4] The group is a network of 20,000 members and primarily focused on the needs of lawyer-managers, but also offers lawyers and legal professionals information and information relevant to administrative managers as well.

The Division publishes *Law Practice* magazine, *Law Practice Today* (a monthly digital publication), and other books and newsletters. In addition to meetings and other resources, the Division is host to the Women Rainmakers Committee, which serves "(1) to educate professional women about marketing and business development; (2) to provide mentoring opportunities for members; and (3) to provide networking opportunities to build personal and professional relationships."[5]

The College of Law Practice Management[6] honors and recognizes notable law practice management professionals; sets standards of achievement; and funds and supports projects that

[2] THE ASSOCIATION OF LEGAL ADMINISTRATORS, http://www.alanet.org.
[3] AMERICAN BAR ASSOCIATION, ABA LAW PRACTICE DIVISION, http://www.americanbar.org/groups/law_practice/about_us.html.
[4] *Id.*
[5] ABA WOMEN RAINMAKERS COMMITTEE, http://www.americanbar.org/groups/law_practice/committees/wr-committee.html.
[6] THE COLLEGE OF LAW PRACTICE MANAGEMENT, http://collegeoflpm.org.

improve law practice management. Founded in 1994, the group conducts an annual Futures Conference, which explores the future of law practice management and the profession. It also hosts the InnovAction awards, honoring innovation and achievement in the legal profession. Membership in the organization is by invitation only, and nominations are made by existing members (who are called "fellows").

The American Association of Law Libraries[7] was founded in 1906 to illustrate the importance of law libraries, to bolster law librarianship, and to offer leadership in the field of legal information. Law firm librarians have emerged as strategic assets as they continually right-size collections, budgets, and staffs, and align library strategies to those of their organizations.

In addition to supporting the professional growth of its members, AALL also engages in advocacy efforts impacting the field of legal information and information policy, specifically on issues related to access to government information, copyright protections, privacy protections, and access to justice. With a membership of nearly 5,000, the Association represents law librarians and related professionals who are affiliated with everything from law firms, law schools, and corporate legal departments to courts and government agencies.

In addition to meetings and educational resources, the group publishes a quarterly scholarly journal, *Law Library Journal*, which includes peer-reviewed articles on law, legal materials, and librarianship. It also has a network of chapter organizations across the United States.

For more than three decades, the International Legal Technology Association[8] has provided a forum for sharing knowledge and experience for those managing technology challenges in their firms and legal departments.

Information technology professionals in law firms have risen to strategically important positions that affect client-facing services.

It is a professional association comprising almost 1,300 law firms and legal departments from around the globe. The association's purpose is to provide information to members to maximize the value of technology in support of the legal profession. Through delivery of educational content and peer-networking opportunities, ILTA provides members information resources in order to make technology work for the legal profession.

Among its publications are *Peer to Peer* (published quarterly), and several white papers and surveys; it also hosts online product briefings for emerging technologies as well as a number of in-person meetings and symposia.

Established in 1984, the International Practice Management Association[9] has also evolved to meet the changing needs of the legal profession. It began as the Legal Assistant Management Association and was renamed the International Paralegal Management Association on January 1, 2005. "As a reflection of its updated and expanded mission to serve managers of not only paralegals but also other practice support professionals, the Association changed its name in April 2014 to the International Practice Management Association."[10]

IPMA is a leading resource for information regarding the management of paralegals and other practice support professionals in law firms. IPMA has more than 500 members who are directors or managers of paralegal services in law firms or governmental agencies in North America, Europe, Asia, and the Caribbean.

It hosts an annual conference and expo, as well as a managerial skills seminar. Its quarterly electronic magazine, *Paralegal Management* magazine, features articles on current trends and

[7] THE AMERICAN ASSOCIATION OF LAW LIBRARIES, http://www.aallnet.org.
[8] THE INTERNATIONAL LEGAL TECHNOLOGY ASSOCIATION, http://www.iltanet.org.
[9] THE INTERNATIONAL PRACTICE MANAGEMENT ASSOCIATION, http://www.theipma.org.
[10] THE INTERNATIONAL PRACTICE MANAGEMENT ASSOCIATION, HISTORY, http://www.theipma.org/about-the-ipma/history.

issues that relate to management and the paralegal profession.

The Legal Marketing Association,[11] founded in 1985, "serves the needs and maintains the professional standards of the men and women involved in marketing, business development, client service and communications within the legal profession. LMA also is a resource for practicing attorneys and law firm leaders who want to develop their practices and gain competitive advantage."[12] The organization has more than 4,000 members (48 U.S. states, Canada, and 15 other countries) and 37 chapters (in the U.S. and Canada).

LMA provides on-demand education through its CORE (Continuing Online Resource for Legal Marketing Education) competencies program and a Quickstart Online Course designed for newcomers to the legal marketing and business development field. These courses cover all 10 core competencies of legal marketing.

NALP,[13] the National Association for Law Placement, began in 1971 during a tumultuous period in both the legal profession and legal education; their creation was a response to a perceived need for a forum in which legal professionals could discuss issues around placement and recruitment.[14] This organization, which consists of more than 2,500 legal career professionals who advise law students, lawyers, law offices, and law schools both domestically and abroad, facilitates legal career counseling and planning.[15]

In addition to a monthly bulletin, the group publishes a number of research and statistical studies on a variety of topics, including diversity and inclusion; lawyer and law student professional development; recruitment and hiring; and compensation and benefits. Formed in 1975, the National Association of Legal Assistants[16] is the leading paralegal association in the United States. Its mission "is to provide continuing education and professional development programs to all paralegals."[17] Representing more than 18,000 paralegals, NALA provides continuing education materials and seminars, networking opportunities, professional certification programs, occupational survey findings, and manuals to help paralegals excel in the workplace. NALA offers a robust bimonthly magazine called *Facts & Findings* that provides up-to-date educational articles focused on various practice areas of law and breaking news. They produce a special "Career Chronicle" issue each January.

NALS, the Association for Legal Professionals,[18] is the oldest association formed for legal support professionals. Established in 1929, the group was incorporated as the National Association of Legal Secretaries in 1949 and renamed in 1999 to reflect the various positions held by its membership.

NALS offers basic and advanced legal training courses created for legal professionals looking to expand their current skills. It also provides an online basic legal training course through Stetson University.

As the challenges and complexities of the legal profession have grown, so, too, have the roles and importance of the legal professionals who are responsible for the business needs of law firms and law departments.

Working together, the array of associations serving these leaders and support professionals provide business intelligence, education, and networking critical to advancing both the individual

[11] LEGAL MARKETING ASSOCIATION, ABOUT, http://www.legalmarketing.org/about_lma.
[12] NALP, www.nalp.org.
[13] NALP, WHAT IS NALP? www.nalp.org/whatisnalp.
[14] *Id.*
[15] *Id.*
[16] NALA, http://www.nala.org.
[17] NALA, http://www.nala.org/Aboutnala.aspx.
[18] NALS, http://www.nals.org.

and the legal industry. Now, more than ever, the success of law firms and law departments depends on effective strategy, shrewd business acumen, and high-performing teams. These organizations provide essential resources for developing the professionals charged with delivering that success.

The Strategic Legal Marketer

Jill Weber[1]
Past President, Legal Marketing Association
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Today, legal marketing professionals are playing an increasingly strategic role for law firms. These professionals bring to the table both the business acumen and skillset necessary to add unique substantive value in helping to drive the business of the firm. This underscores a very important value-add to the firm: providing support to attorneys in the critical area of business growth at a time when budget and resources are stretched thin.

According to a 2016 joint survey[2] from the Legal Marketing Association (LMA) and Bloomberg Law®, more than 80 percent of law firm attorneys cite a lack of time as their primary challenge in developing new business for their firms. An additional 30 percent cite lack of staff as a factor, while another 21 percent point to budget constraints. This comes at a time when law firm focus and emphasis on business development and marketing continues to increase because of internal and competitive pressures. The survey states

[1] **Jill Weber** is the 2017 president of the Legal Marketing Association and chief marketing and business development officer for Stinson Leonard Street, where she is responsible for creating and executing marketing and business development strategies, including Fast Forward®, a nationally recognized integrated business development initiative. Jill was named to the *National Law Journal*'s inaugural list of "50 Business of Law Trailblazers & Pioneers"; is a Fellow in the College of Law Practice Management; was recognized as an "Unsung Legal Hero" by *Minnesota Lawyer*; was the recipient of the EXCEL Minnesota Award, sponsored by the Minnesota Chapter of the International Association of Business Communicators; and has received three national and 19 local Legal Marketing Association (LMA) "Your Honor" awards. She is the 2017 LMA president and was co-chair of the 2012 LMA Annual Conference. She has attended Harvard Law School's "Leadership in Law Firms" executive education program. Jill offers more than 20 years of experience creating marketing and business development strategies for professional service firms, including law firms, accounting firms, and financial institutions. Jill successfully led the marketing communications strategy for the Stinson Leonard Street merger in 2014 and is actively involved in ongoing integration and client growth strategies.

LMA is The Authority for Legal Marketing. A not-for-profit professional organization founded in 1985, LMA serves the needs and maintains the professional standards of the men and women involved in marketing, business development, client service, and communications within the legal profession. LMA also is a resource for practicing attorneys and law firm leaders who want to develop their practices and gain competitive advantage.

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[2] Legal Marketing Association & Bloomberg Law, *2016 Joint LMA-Bloomberg Law Survey Report*, https://www.legalmarketing.org/bloomberg-lma-survey.

that 67 percent of attorneys agree their law firms are increasing their emphasis/focus on business development and marketing efforts.

For legal marketing, this move into the role of strategic business partner marks the next evolution of the profession. For more than four decades, legal marketers have played an important role for law firms in such areas as communications, market research, ad campaigns, and event management. Through the years, that role has continually refined with the emergence of such vital tools as mobile and social technologies, and the growing role of Big Data, all making information more readily available and accessible.

As attorneys face the pressure of generating new business, that role evolves even more, with marketing professionals undertaking an increasingly diverse set of roles and responsibilities. These roles touch practice and process improvement, business planning, attorney coaching, and client service and relationship management.

A 2017 joint study[1] by LMA and Bloomberg Law furthers this point, demonstrating a mindset shift from the practice of law to the business of law, with marketing and business development activities being largely aligned with driving revenue for the firm. In fact, the data shows more than 82 percent of leading marketing/business development professionals direct initiatives related to revenue growth.

Today, the strategic legal marketer is one that is considered to be an advocate for the voice of the client, a collaborative partner with all law firm business functions to deliver client value, and extremely engaged with business planning and client service/relationship management initiatives in these fundamental ways.

Invested in the Client

Law firms increasingly place primary emphasis on developing broader and deeper relationships with current clients and growing organically in the practice areas and geographies where they are already strong. Legal marketers are committed to influencing and leading change to better serve clients.

When it comes to differentiation, professionals surveyed by LMA and Bloomberg Law[2] point to investment in client experience and development of greater knowledge of, and expertise in, their clients' businesses as the most effective tactics. These two items reflect a shift to a client-first mindset and mirror the growing customer experience trend at the forefront of many consumer products and B2B businesses.

Also reflective of a growing client-first perspective, marketing/business development professionals are clearly focusing business intelligence activities on better understanding their clients by tracking news (87 percent), tracking company information (76 percent), and tracking industry data/trends (71 percent) to prepare for client meetings and deliver news/current awareness updates to attorneys.

[1] Legal Marketing Association & Bloomberg Law, *2016 Joint LMA-Bloomberg Law Survey Report*, https://www.legalmarketing.org/p/cm/ld/fid=2674.
[2] *Id.*

Refining Core Skills

As legal marketing professionals look to further position themselves at the center of the firm's evolution, the need to consistently refine their set of skills is vital. These skills must be founded in both the business and practice of law.

The Legal Marketing Association (LMA) — the "authority for legal marketing" with 4,000 members — defined the core set of skills for legal marketers in a foundational resource called the Body of Knowledge (BoK). The BoK clearly defines the essential and accepted domains, competencies, and associated skill sets within the legal marketing profession at every level.

This resource helps legal marketers hone their skills, assists legal marketing managers to develop themselves and their teams, and provides a universal benchmark against which legal marketers can be assessed. We invited leaders in each of the six BoK core competencies to share their insights on key trends and developments in each area.

The Business of Law

Those marketing and business development professionals who are appropriately proficient in the business of law understand the legal profession and are able to evaluate firm financial and operational performance, build strategies to leverage market opportunities, and implement practices that maximize performance.

When you look at the specific competencies that define these abilities, you start to see important areas of expertise that should be familiar to anyone who aspires to lead within a law firm.

Many competing opportunities exist, which means that legal marketers must play a role in being able to choose those with the highest return and then collaborate to put them into action. The work of realizing opportunities must integrate the efforts of multiple departments. For example, a new practice area will require new promotional materials, but it will also likely involve recruiting new attorneys to fill in missing capabilities; other functions will also have an important role to play.

The "business of law" is changing rapidly because of two factors. The first is technology, which requires efforts across multiple fronts (Technology Management is one of the BoK core competencies); the second involves the evolving nature of client expectations. Leaders understand how these two forces will change a firm, and can be prepared to address and exploit them. Leaders must show the way and not respond after events have already swept by.

Increasingly, an important feature that will differentiate successful and unsuccessful firms is the capacity to bring all talents to bear, irrespective of their position in the firm and legal training. Firms must draw on the talents, perspectives, and energies of all attorneys and professional staff; the perspectives of all roles and responsibilities should inform strategies and tactics.

Client Services

In order to build revenue, firms need to not only focus on securing new business, but also on retaining current clients. According to Harvard Business School and BTI,[1] profits will increase by 25 percent or more when client retention rates are elevated by 5 percent.

[1] Frederick F. Reichheld & Phil Schefter, *E-Loyalty: Your Secret Weapon on the Web*, HARVARD BUS. REV. (July-Aug. 2000), *excerpt available at* https://hbswk.hbs.edu/archive/the-economics-of-e-loyalty.

When focusing on client retention, one way for firms to differentiate is through client service. Legal marketers continue to play an important role in this function by implementing client service initiatives using the following techniques:

1. *Establish Client Service Standards Immediately* – Instituting a process for client intake, therefore ensuring a smooth onboarding with the firm, can really set a positive tone for a client relationship.

2. *Understand the Clients' Business* – In addition to helping attorneys study and grasp client objectives, industry trends, news, and policies; legal marketers also recommend attorneys take time to visit the client and really ingrain themselves in the working of the company.

3. *Keep Clients Informed* – Attorneys should be the source of information pertinent to a client's business. Rather than relying on general firm emails as a means of informing clients of legal developments or upcoming events/webinars, legal marketers counsel attorneys to email content directly and/or pick up the phone to discuss. They also recommend that attorneys establish benchmarks for delivering regular status updates on legal work. Feeling uninformed can result in client frustration. Clients should never have to ask for an update.

4. *Request Feedback* **–** Legal marketers work with attorneys to conduct post-matter reviews so they can hear directly from the client what the firm did well and what could be improved upon. Legal marketers make note of the feedback, develop a tailored action plan for the next matter, and leverage that information across firm clients. Conducting annual client assessments are another avenue for securing feedback on the firm's overall performance, responsiveness, quality, and consistency. These in-person meetings typically yield valuable, actionable client intelligence, and are often more open and productive with legal marketers in attendance to help facilitate the conversation and provide an objective assessment.

Communications

Effective communication includes knowing the audience; communicating in a clear, concise, and timely fashion; maintaining a good demeanor; ensuring accuracy (and moving quickly to correct any inaccuracies); and maintaining a resourceful mindset.

Consider this: A marketing liaison on a high-profile project that involves a firm's IT department and senior partners is instantly faced with three different audiences, each with its own communications style. Some issues that need to be considered are how to effectively communicate the project timelines to these audiences; how often to provide updates; and how to receive information from one audience and distill it for another so that all understand the status of the project at any given time.

The adage is true: Your knowledge is useless unless you can effectively communicate it to an intended audience. This is why having a resourceful mindset is so important. In the scenario above, the strategic legal marketer understands basic IT lingo and then how to translate that into

an update for the senior partners and a relevant selling point to convert new clients. Looking at the reverse, it's likely that the marketer will receive very limited information from the senior partners and have to create a list of actionable next steps for the IT team and/or marketing team.

Strategic legal marketers are effective communicators who are able to receive and distribute complex information in a way that keeps stakeholders satisfied.

Technology Management

Twenty years ago, a marketer's skills included good writing and having a mastery of design, PowerPoint, print, direct mail marketing, public relations, and event marketing. Today, a marketer additionally must have mastery of the large number of technologies available to effectively market his or her organization.

Marketing has become so technological that many organizations now have a "marketing technologist" — who is considered a bridge between IT and marketing — a technologically savvy professional with a deep understanding of data, analytics, and legal operations coupled with the creative mindset to transition raw data into actionable insights to drive marketing results. But, all marketers must have a mastery of different technologies in order to apply them appropriately.

Marketers must be good technologists for a few simple reasons:

1. The people that we reach are online;
2. The ability to engage online is so effective; and
3. Technologies can amplify marketing efforts effectively.

Technologies used to market

The role of marketing departments in law firms usually spans traditional marketing — the action or business of promoting and selling products or services, including market research and advertising — and sales pipeline management — the action of turning qualified prospects into paying customers.

Consumers can now engage with a company at an event; online through web pages, videos or mobile app; through printed materials; or via social media. Marketers understand the strengths and weaknesses of each of these media and channels — including their costs and potential returns on investment (ROI) — and understand which ones to use for a particular marketing goal. Marketers are proficient at providing a seamless experience, regardless of channel or device.

Business Development

Much like law firms themselves, legal marketing professionals are challenged constantly to prove their worth by adding value for their "internal clients." Marketers today bring to the table well-honed business development skills and the ability to provide guidance and support to attorneys as they work to expand their books of business. Marketers leverage sharp business development skills and enable lawyers to put their best foot forward in pursuing work.

Many law firm marketers are called upon to provide "coaching" for the lawyers they support. To adopt a sports analogy in which lawyers are the players, business development, when well executed, can and should encompass not just the role of the game-day coach on the sidelines,

but that of the team's entire coaching and front office staff. In winning legal work, as in sports, securing a victory takes more than just fielding the most talented team. Rather, it requires critical behind-the-scenes planning and preparation that all falls under the rubric of business development. This includes assessing the landscape and the opponent, selecting the most effective combination of players, and educating them on the particulars of the challenge ahead. This helps them to develop a unified approach that utilizes each team member's strengths, ensuring that they practice and condition themselves to identify and seize upon opportunities that may arise, developing contingency plans for how to respond when things don't go as planned, and being nimble enough to react when momentum shifts. Although execution and implementation may ultimately fall on the shoulders of the players, there is no doubt that the most respected coaches are those who, time and time again, put their teams in the best possible position to win.

By taking on an active role in business development and collaborating with lawyers to map out game plans and training regimens that ultimately yield success, legal marketers are helping to advance the goals of the organization.

Marketing Management and Leadership

A highly functioning marketing organization transforms what would otherwise be random acts of marketing into systematic efforts that help achieve a firm's strategic objectives, thereby amplifying the value of the function.

Understandably, managing and leading a function is an advanced skillset that requires both "IQ" and "EQ." Intelligence Quotient, or IQ, refers to a person's intellectual abilities. Emotional Quotient, or EQ, measures a person's ability to identify and manage emotions, both their own and those of others, which helps them create the relationships that enable collaboration and leadership.

The intellectual challenges for a marketing leader start with creating a vision for the function that articulates the difference it can make for a specific law firm. Then, the choice of organizational structure must support the vision, and reflect the culture and strategy of the firm. The next task is designing the work processes that will operationalize the structure, including identifying the marketing technologies and tools that will best support those processes. Finally, a seasoned marketing leader will be able to develop a resource plan, including a budget, to execute the vision.

Of course, people are required to bring the organization to life, making personnel management a central component of successfully leading a marketing function. Attracting, developing, and retaining high-quality talent requires emotional intelligence and leadership ability. These skills can be cultivated and strengthened over time, and the dividends of doing so are high. Instilling teamwork and building a collaborative culture within the function leads to higher productivity and seamless service to the firm. It encourages everyone to contribute and creates joint accountability for the function's performance. Investing in training and coaching programs further elevates skillsets and helps retain valuable talent, all of which has a positive impact on morale.

An effective marketing leader is also able to adroitly manage vendors and consultants to maximize the value received. These external resources bring several key benefits to the table, including: insight into best practices; the ability to outsource subject matter expertise; competitive intelligence; pressure release on strained internal resources; and professional development and skill enhancement opportunities for the internal staff who work with them. The strategic legal

marketer has a keen sense of when and where to use external vendors and consultants in order to provide much needed flexibility.

A Role Refined

Today, the role of marketing and business development professionals within law firms looks much different than it did just a few years ago. That role will likely evolve even further in the years ahead.

As new demands continue to place additional pressures on business development and client service, law firms can increasingly look to marketing and business development professionals to play a more strategic role in growing the business. For law firms looking to best position themselves for future success, marketing and business development professionals can and should play a valuable role, particularly when firms are mindful of providing the necessary tools, resources, and support.

Chapter 7 –The Future of Legal Business

Legal Business Publishing	**Tony Harriss** – Non Executive Director, Law Business Research
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Law Firm Networks	**Stephen J. McGarry** – Founder, AILFN, HG.org, Lex Mundi, World Services Group
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Legal Business Publishing

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The Evolution of Legal Publishing: Who Will Survive?

What does the future hold for the legal market and the legal publishing sector?

Will a Korean client 3D-print a chip holding all U.S. case law to plug directly into her neural pathway in a William Gibson-esque 2030?

Will a technology giant such as Google have applied artificial intelligence to merger control regulations worldwide, enabling companies to bypass both law firms and legal publishers?

Perhaps cohorts of micro-bloggers will replace the legal publishing behemoths by delivering niche content to defined audiences funded as law firm marketing exercises, or by micro-revenue streams from Taboola and Google ads?

The sharing economy may take hold, establishing one or many legal wikis that leave publishers disintermediated.

Will lawyers be automated out of existence? Or will it all still just be about getting the right content to the right people at the right time?

Technology — Friend or Foe?

With the application of technology, the publishing industry as a whole is undergoing its biggest revolution since Gutenberg. At the same time, technology, process engineering, and commercial pressures are changing the legal services market beyond recognition. Sitting at the nexus of these two industries, legal publishing has changed dramatically in the last decade and the pace of that change is only set to increase.

Legal publishing is just one trade vertical. Lessons learned in other sectors, such as medical or tax, will be transferred. Major technological developments in another area, when applied to law, may be more powerful than anything yet developed in the legal space.

Legal publishers used to sell textbooks or standard forms in loose-leaf volumes; now users complete online forms about transactions that generate a full suite of documents instantly, while algorithms compare documents in order to look for unusual language. Like many of their

[1] **Tony Harriss** is the Non Executive Director for both Law Business Research and Globe Business Media Group. Established in 1996, Globe is a business-to-business content and connections company, specializing in the legal and intellectual property markets worldwide. It produces market-leading information, data, networking, software, and marketing services for lawyers, C-suite executives, and HR professionals, and their organizations, globally.

The author would like to thank Alex Morrall, a long-time peer in the legal media industry, and Carolyn Boyle, Globe's editorial services director, for their invaluable input.

mainstream counterparts, legal publishers are reinventing themselves as media technology businesses.

A number of start-ups are challenging the existing models of both law firms and publishers. One of their key philosophies is that knowledge is a commodity, and that it is the management of knowledge — and in particular, the application of technology to it — that creates powerful digital products. As the big data explosion continues at an incredible pace, data scientists look set to be in huge demand at publishers as they present improved ways to analyze, visualize, and curate this endless stream of information.

The bountiful supply of (free) basic legal information and know-how is changing not only how lawyers consume information, but also what they consume.

Perhaps the biggest threat to some publishers comes from technologies that can process vast quantities of information and apply advanced technology to analyze and curate it. CodeX, the Stanford Center for Legal Informatics, is a good example of the kind of initiative that will drive change in the legal technology marketplace. As they put it: "What happens when you combine legal code and computer code?"[2] One business to have emerged from the stable is Ravel Law,[3] which illustrates how tech-powered disruptors can challenge the publishing incumbents. Seeing that cases themselves are just a commodity, Ravel applies analytics and visualizations to the connections between cases, facilitating a more intelligent approach to legal research.

User Experience

Customers experience powerful and evolving user interfaces every day. They shop online, read the news on a tablet, watch TED Talks, connect with others on LinkedIn, and use countless apps to solve small problems. All of these services combine a customizable experience with some degree of automatic tailoring. Customers are also experiencing the benefits of collaboration through wikis, forums, and listservs; Wikipedia seemed to replace the Encyclopedia Britannica as the default general knowledge bank almost overnight. Publishers will seek to leverage the potential of crowdsourcing opinions and information.

Users bring expectations from those experiences with them to legal publishing. Legal publishers will thus need to provide interactive, granular, and tailored experiences.

The effects of diversified distribution and content are also making themselves felt in the legal sector. Law firms large and small have seized on digital content marketing as the best way to promote themselves to clients and prospects. Blogging platforms, along with content discovery and enrichment tools, are enabling them to publish quickly and effectively on niche topics. Thus far, reliance on word of mouth and social media to grow audiences is limiting their reach, and they are still turning to publishers to tap their intended audience.

The larger publishers with more content and datasets of primary sources will respond with further attempts to become the place to do legal research, slicing and dicing, repurposing, and tailoring their content to meet the needs of as many niche audiences as possible.

But technology is a double-edged sword for publishing companies, representing as much threat as opportunity. The combination of more focused search and abundant free resources online means that, for many lawyers, Google is their starting point for research.

One of the best examples of a publishing model being blindsided by changes in the digital

[2] CODEX, http://codex.stanford.edu.
[3] RAVEL, https://www.ravellaw.com.

world is Martindale-Hubbell.

Factors Driving Change

- Rapid change in the legal market.
- Continuing globalization of business and regulation.
- Big data explosion.
- Artificial intelligence and machine learning.
- Customer expectations driven by digital experiences.
- Increased and potential competition from outside the sector.

Changes in the Legal Market

As discussed elsewhere in this book, the role of the lawyer is inexorably moving toward that of a business advisor, and further away from document processing and painstaking legal research. Likewise, the type of information and training that lawyers require will change. Law firms are under pressure to charge fees that reflect the value added and avoid reinventing the wheel. As the disaggregation or unbundling of legal processes, long predicted by Professor Richard Susskind, becomes a reality, publishers are seeing clear opportunities to become integrated in that workflow and provide content at the point of need. Exactly how high up the value chain they sit will depend in large part on how successful they are in applying technology to their content.

One of the best examples of a publisher succeeding by playing a specific role at a key stage of the legal process workflow is Practical Law.[4] It identified major inefficiencies around the production and maintenance of what is essentially generic content, ranging from current awareness to standard contract templates.

By the turn of the millennium, U.K. business law firms had streamlined their processes by employing non-fee earning lawyers to work on their own knowledge management as professional support lawyers (PSLs). This was one of the early examples of firms breaking down their processes and identifying areas that could be handled more efficiently. Librarians and PSLs were charged with providing front-line lawyers with databanks of content that they could use in their practice. Fee earners were given basic resources to which they could apply their skill and experience to add value — for example, in negotiating an agreement rather than drafting it from scratch.

What Practical Law saw then was that there was little difference in much of the output of PSLs among firms. By hiring, replicating, and in some ways improving what these PSLs did, it was able to produce digital products that became integrated in clients' workflow in a way that made them nearly indispensable.

Without the confluence of process reengineering and technological advances, this would not have been possible.

Publishers like Practical Law, which bring real efficiencies to the table, sit squarely with the growing band of disruptors that are helping to drive change in the legal market (e.g., new model law firms such as Axiom Law,[5] legal process outsourcers (LPOs), and the plethora of e-discovery providers).

As the legal market evolves and the players find their places on the value chain, there will inevitably be competitive tensions between publishers and their largest clients: law firms. Publishers providing powerful but easy-to-use research platforms or automated suites of contracts

[4] PRACTICAL LAW, http://us.practicallaw.com.
[5] AXIOM LAW, http://www.axiomlaw.com.

will rub up against law firms that have not yet embraced change and are focused on what they can do beyond the commoditized and vanilla. The relationships between publishers and LPOs will be interesting to watch as well. LPOs, while offering efficiencies in many areas over law firms or in-house legal teams, currently offer services to clients in some areas where a publisher would instinctively want to offer a product to a much larger set of clients at a lower rate.

Globalization

The continued globalization of international markets and business is another powerful force that is having a major impact on the legal market. In-house counsel at multinational firms must stay on top of an ever-multiplying set of laws and regulations in a growing number of countries. This increasingly complex and interconnected global regulatory environment has seen law firms forge alliances or open offices across the globe. Often deterred by the multitude of languages that prevent economies of scale, publishers have been slow to follow, covering developments in smaller jurisdictions at a relatively high level. This is something that technology will surely address in the foreseeable future.

Revenue Models

With the exception of those focused on news and opinion journalism, legal publishers have not been beset by the challenges facing the wider newspaper and magazine industry as it grapples with declining advertising revenues and customers' reluctance to go behind the paywall in a world where so much information online is free. Newspapers are focusing on high-quality, often long-form journalism to build loyalty with readers and convince them to use their credit cards. This is exactly the kind of content on which legal publishers have focused.

Those with a co-publishing, financed content model generally ensure that their projects are financially underwritten in advance. They may be free to air, require registration, or require a subscription fee from one or more classes of user, but branded content has long flourished in the legal sector and looks set to continue, especially given the importance of content marketing to law firms.

As publishing has moved online, expectations around advertising have changed greatly. No longer can publishers simply quote readership numbers based on a multiple applied print runs. Advertisers are seeking highly targeted opportunities and real-time analytics on usage. Those that fail to deliver will be left behind.

There is increased competition from outside the sector from the likes of LinkedIn and Google, which can target users in the way that previously only a trade publisher could.

Legal directories of one sort or another have long been a mainstay for many publishers. They continue to provide valuable intelligence to readers, and serve as both a marketing tool and a competitive benchmarking tool for firms. They are still driven by advertising; as of yet, no one has moved to fees based on the number or value of the introductions made.

Much of the innovation in this space will come from new market entrants, many of which bring with them "freemium" models. Just as with so many services outside the space, they work toward proof of concept and build user bases by offering a free service before introducing premium features.

Tailored Knowledge

In our lifetimes publishing will always be associated with books, but modern legal publishing is as much about data mining and digital analysis as it is about the printed page. Law libraries may still be filled with rows of weighty reference tomes, but lawyers now practice in the digital space.

The future of legal publishing is about streamlining the workflows of lawyers and law firms, giving them access to the latest legal data and market analyses on an individual basis. This will be delivered through the power of artificial intelligence to collate, curate, and learn, and from using the most authoritative sources. In addition, they will have the ability to create documentation on the fly — the contracts that underpin transactions or agreements needed to react to legal or market changes in real time, and the knowledge and training to do what it is they do. It is about the most efficient delivery of bespoke know-how for every lawyer.

Editors are now digital curators, knowledge professionals, leading teams of coders, and technologists, producing products more complex and more efficient than lawyers can create or supply. This is the value-add that the successful legal publishing industry must create. Merely cataloguing information is now the domain of the search engines; however, books will always be useful things against which to lean your tablet.

Onward or Downward?

Those publishers with a blend of revenue streams from subscriptions and advertising — as well as, increasingly, software licensing — will have a more secure future. The holy grail of a high annual renewal rate, providing predictable revenues, will give publishers the best opportunities to invest in developing products that capitalize on the changes taking place and the technology available to them. While there is a risk that new technology from outside the legal sector may eat their lunch, the legal publishers of the future that successfully embed themselves in customers' workflow through the intelligent application of technology to information will play a more valuable role in the legal services market.

One thing is certain in today's technology-driven, more-with-less era of seemingly limitless free information: Those delivering legal content must demonstrate real, improved outcomes for customers or face extinction.

Consulting and Advisory Services

Gerry Riskin[1]
Principal, Edge International
LinkedIn

"Oh, so you're a consultant."

"We phoned you because we need help," they'll say. Those on the other end of this call are typically intelligent, caring lawyers involved in the leadership of their firm. They call with the optimism that maybe you can help. The caution they feel obliged to frequently offer is that the firm had a consultant before, and everyone hated her/him, so it is not clear that it would be safe to bring back another one. Often, I will get a pass because I am a former practicing lawyer and managing partner of an international firm. Maybe I will be safe, after all... It's far from certain, but possibly worth exploring.

Planning

Many law firms don't have a plan. Some think they have a plan, but if you ask them what it is, they don't know. Jargon puts most firms off. If you mention "strategic planning," many will tell you they tried that six years ago, and it was a complete failure. If we can get the jargon out of the discussion, we find that a firm typically has things it hopes to accomplish. If they believe that you can help them, they are willing to explore possibilities.

Planning is a process. Once the leadership has signed off on the process with the optimism that it will attain its objectives, people tend to cooperate to a significant degree because it seems useful enough, and we avoided calling it "strategic planning."

[1] **Gerry Riskin** is a Canadian lawyer and business school graduate with a global reputation as an author, management consultant, and pioneer in the field of professional firm economics and marketing. After winning two Queen Elizabeth Scholarships, he began practicing law in 1973. In 1979, he became a partner with Emery Jamieson and then in 1984 the managing partner of Snyder & Company.

In 1983, Gerry co-founded The Edge Group, which in January 2001 evolved into Edge International. Over the company's history it has topped the list in a survey depicting the most popular marketing consultants by major U.S. firms and has been named one of the top three legal consultancies by U.S. managing partners.

Gerry has served on the Conference Board of Canada, is a visiting fellow of The College of Law in London, a visiting professor at the University of Pretoria in South Africa, and is a fellow of the College of Law Practice Management.

Executing the Plan

Everything about a law firm rests upon it being able to achieve its objectives. Individual lawyers are focused on serving their clients; even quality non-billable initiatives take second or third place. Executing the plan is like going to the gym. “I bought the membership... Isn’t that good enough? ... What do you mean, I have to go there? Well, I was going to go, but a client called.”

The good news is that if you have clarity as to the plan and leave the lights on (an expression I like to use with my clients, meaning that they remain aware of where they stand relative to what they want to achieve), you will find that they are very capable of executing the plan, much to the delight of everyone involved.

Accomplishments must be tracked. If you ask even the leadership team what they have achieved over the last year, there is an uncomfortable restlessness as they try to recall specifics. Teams that keep a running inventory of achievements have much more self-respect and better internal communications. They also have objective improvements to report, like increased profitability.

Leadership and Management Training

“I'll come to your weekend course if you can teach me to golf like Tiger Woods.” Leadership and management are about taking a group of people for whom you are responsible and making them better than they would have been without you. Yes, managing ferociously independent, critical, and analytical lawyers is worse than herding cats. (Patrick McKenna and I wrote the book “Herding Cats” a long time ago, and I’d be happy to send you a complimentary copy.) Notwithstanding the challenges, leaders who spend some time getting involved with those whom they lead can have a very positive impact on the outcome. In fact, I am aware of a global study that indicates that success is more dependent on the group leader than any other factor.

Training a leader over a weekend is inadequate; the process has to be ongoing for a period of time of a year to 18 months, and has to involve individual feedback based on ongoing performance as a leader.

Performance Enhancement

The managing partners’ lament, “You don’t tell them anything different from what I’ve been telling them for years, but for some reason they listen to you.” (This is where it really helps that I was a managing partner and can completely empathize.)

Performance enhancement fails in most firms because of the “knowing versus doing gap.” As lawyers, we are so cerebral that we think we can solve any problem with the powers of our minds. A delicious discussion is better than a medieval feast.

In order to dramatically enhance the performance of an individual, the individual needs to *want* to improve. I ask for firm leaders who are offering performance enhancement training to require an email application. It is a short email, and the elements are simple. “Tell me why you want assistance, what you hope to achieve from it, and what the firm will achieve from it. Please touch on your objectives as you answer these questions.”

Firm leaders make the frequent error of saying, “Sally or George really needs this kind of help... I am going to strongly encourage them.” Sally or George will succumb to the pressure and

then sabotage the process so subtly that they don't even know they are doing so themselves. Those who show some internal motivation tend to perform magnificently. I can tell you anecdotally that not all, but many of the people who are helped in this way increase their performance to a degree that pleasantly surprises their firms. They also love the process, which is the polar opposite of sabotaging it.

The elements involved in helping an individual enhance performance include:

1) Reducing quantifiable objectives to writing;
2) Exploring whether they need to enhance their substantive expertise;
3) Determining by whom they wish to be better known and then enhance their reputation to those constituencies;
4) Broadening relationships with clients, especially business ones, with whom they have only one connection; and
5) Helping them present more effectively in all contexts including speaking, writing, responding to RFPs, using social media, and more effectively networking at social functions.

Mergers and Competitive Intelligence

"Should we remain local or regional, or should we merge internationally?" It kind of depends. Many firms need help in assessing their position in their respective marketplaces. Most do not have the tools of competitive intelligence or an understanding of the various contexts in which they are practicing and the options that may be available to them. Some of our most satisfying work is finding information relevant to competition, but also addressing appropriate candidates for lateral hire or merger. This is far too complex a subject to go into in any depth here. Suffice to say that some of my proudest moments are those where I have helped prevent a merger that would have been a disaster or prevented a lateral hire that was a poor choice.

Back to the Future

Working with the Florida State Bar and its task forces into the future has immersed me in the disruptive technologies and impact of social media on the legal profession. We have long had important traditions, but external changes are coming at us like bombs in a video game. I seek permission and often am allowed to offer some catalytic information about these changes in order to open the minds of those with whom I am working to get them thinking about how they might strategically prepare for a changing future.

The greatest challenge in advising law firm clients about the future and social media is that the changes are happening so fast. I keep finding myself saying, "Well, that was true two years ago..." For example, does each lawyer need to have a profile on LinkedIn? Five years ago, "no." Two years ago, "maybe." Now, "yes."

We recently sent some information to some senior litigator clients on an Excel worksheet. We were politely reminded that Excel would be a little difficult for most of them, and we should use Word instead. In essence, we were reminded that many lawyers even in the most sophisticated firms are technologically illiterate. I am not making this up. The challenge, therefore, is to help lawyers in a gentle and empathetic way to see ahead of the bow of their ship so that they can contemplate their future transcending what most lawyers have on their minds today.

The Law Firms that Motivate Consultants

The most exciting law firms to work with have some or many of the following attributes: 1) they have leaders who are willing to lead and are not simply trying to avoid criticism from those who elected them; 2) they are imaginative, and delight in thinking of new practice areas and industry configurations aligned to the changing needs of their marketplaces; and 3) they try. It is impossible to help an athlete who remains slumped in a chair... The athlete has to try and try again and again. This affords a good consultant the opportunity to fine-tune the performance and help the athlete attain great results. Lawyers are athletes, too...

An Acknowledgment to the Sophisticated

Many of the largest firms in the world, including those founded in the United Kingdom, have extraordinary internal management resources and deploy them brilliantly. In fact, my own view is that it is because of them that the legal profession has to raise its game and become far more sophisticated in a great hurry. I have the privilege of serving some of these amazing firms, and I'm very grateful to them for allowing me to help, but also for what I learn from them in the process.

Law Firm and Multidisciplinary Networks

Stephen J. McGarry[1]
Founder, AILFN, Lex Mundi, WSG, & HG.org
LinkedIn

Introduction

All businesses comprise a pool of financial and human capital that creates a product or performs a service. This capital can be configured in an unlimited number of ways to achieve specific objectives for the service provider or manufacturer. With professional services, objectives are achieved via a controlled entity, such as an accounting or law firm, and membership in an association of independent service providers. These associations are commonly referred to as *professional services networks* or *associations.*

Law firm organizations are defined by elements of purpose, structure, and process.[2] The purpose of a network is different from that of a company or professional firm in that it is limited to specific activities that will benefit its members and enhance its performance. Within the network, they can operate to pursue their interests. These interests can include referrals, joint venturing, access to expertise, developing regional expertise, publishing articles for clients, branding, technical information exchange, market positioning, pro bono services, and more.

Beyond the objective of a law firm network is the need to create a framework with the potential to allow the members to expand their services. The network's structure reflects the activities it seeks to promote and the underlying cultures of the members. The scope of these interests is defined not by the members, but by the network. Therefore, each network must be different.

One of the major factors influencing the need for networks is the globalization of the economy. Supply and demand are no longer local. The price of commodities is affected by a

[1] **Stephen McGarry,** B.A., M.A., J.D., and LL.M. (Taxation), founded World Services Group (WSG), a multidisciplinary network, in 2002. As president, he grew it to 150 firms that have 21,000 professionals in 600 offices in more than 100 countries. In 1989 McGarry founded Lex Mundi, the world's largest law firm network. As president, he grew it to 160 law firms that today have 21,000 attorneys in 600 offices in 100-plus countries. These two networks represent 2 percent of all the lawyers on earth. In 1995, he founded HG.org, one of the first legal websites. Today, it is among the world's largest sites with more than five million pages and 900,000 users each month who download almost two million pages. McGarry is admitted by exam to the bars of Minnesota, Texas, and Louisiana. In 2002, American Lawyer Media (ALM) published McGarry's treatise on Multidisciplinary Practices. McGarry has authored numerous articles on associations and international business transactions.
Jennifer Kain Kilgore is the VP of Editorial for AILFN and an associate attorney with MALIS | LAW. She previously worked as an associate attorney with the Boston-area law firm of Brown & Knight, LLC and concentrated her practice in the areas of estate planning, probate, business planning, and real estate. She is also the principal of Writmore, LLC, providing editorial, research, and writing services. She was the managing editor of the *New England Journal of International & Comparative Law* and was published in Volume 18.1. Ms. Kilgore has worked with the Massachusetts Reporter of Decisions of the Supreme Judicial Court of Massachusetts, the Medical-Legal Partnership | Boston, and the Boston Municipal Court. She served as attorney editor for the popular financial news website *Benzinga.com* and was also the editorial assistant for two award-winning regional magazines, *Berkshire Living* and *Berkshire Business Quarterly.* She is a member of the Massachusetts Bar. Ms. Kilgore graduated from Ohio University (B.S., Journalism, cum laude, 2005) and the New England School of Law (J.D., 2012).

[2] *See* Marshall Van Alstyne, *The State of Network Organizations: A Survey of Three Frameworks*, 7 J. OF ORG. COMPUTING AND ELECTRIC COMMERCE 83 (1997); *see also* Mark Granovetter, *Problems in Explanation of Economic Sociology*, 25 HARVARD BUS. SCHOOL PRESS 56 (1993).

number of uncontrollable factors such as the weather halfway across the world or by demand in developing countries. In a market where production takes place wherever utilization of assets and human resources occur most effectively, professional services providers need to represent their clients globally. Networks are the only practical method to accomplish these objectives.

A network is more than a support organization or collaborative framework in which the members can meet clients' needs. It is an entity entrusted with a common corporate identity. Though the network and not the members own the logo and brand, the network name can establish and represent a standard required of all its members. Consequently, membership in the network creates a global corporate identity. The goal of this identity is network participation that will ultimately translate into business for the individual independent members.

From a theoretical point of view, networks are an effective model and a powerful system of enhancing services. The members and the networks are different parts of the resource equation for providing members seamless and high-quality local and global services. There is no real limit to what can be accomplished through a network when the network and its membership work together. This collaboration is at the heart of the network.

Why Do Firms Join?

When asked why they joined, members usually state tangible reasons: to receive referrals from other members; to have reliable firms to which they can refer; to maintain independence; to meet clients' needs; to retain existing clients by being able to provide services in other states or countries; and to use the membership to obtain new clients in their market.

They also join for intangible reasons. In today's world, change is both constant and accelerating. Therefore, having access to other members can be important. A network helps to reduce the degree of uncertainty by bringing together a greater number of specialized resources to work on a problem. In addition to facilitating the exchange of knowledge that can reduce risks in firm operations, network memberships also reduce possible loss through burden sharing. Membership is a proactive way to profit from change and, at the same time, conserve resources. Membership can enhance the prestige of the member by being associated with prestigious firms that the client already uses.

Networks achieve these objectives in a way that is very different from corporate structures in which executives have command and control. Networks emphasize reputations, commitments, and trust of each member.[1] In networks, there is collaboration between members and the network's staff. Personal motivations move the network development forward.[2] However, personal motivations can also impede forward momentum.

Law Firm Networks – History

There were two distinct and different reasons for networks developing in the legal profession. The first was internationalization, which became globalization.[3] Law firms simply

[1] *Building the Virtual Law Firm Through Collaborative Work Teams*, DUPONT LEGAL MODEL, http://www.dupontlegalmodel.com/building-the-virtual-law- firm-through-collaborative-work-teams/.

[2] *See* ADAM SMITH, THE WEALTH OF NATIONS (1776) ("Man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favor, and show them that it is for their own advantage to do for him what he requires of them ... It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest.").

[3] James R. Faulconbridge, et. al., *Global Law Firms: Globalization and Organizational Spaces of Cross-Border Legal Work*, 28 NW. J. INT'L L. & BUS. 455 (2008).

needed international connections. The second was the expansion of a number of large United States firms who pushed to become "national." Smaller firms or firms with a niche practice required this same expertise in other states.

Internationalization of the legal profession began much later than in accounting firms.[1] There was no real need because, unlike the accounting firms that conducted worldwide audits, law firms in each country were equipped to deal with client matters. This changed in 1949 when Baker McKenzie began to expand to non-United States markets to assist U.S. clients trying to expand overseas following WWII.[2] The first step was establishing correspondent relationships with firms outside of the United States. This was necessary in that many countries would not permit a law firm to operate without a local name.[3]

The Need for Global Networks[4]

Internationalization was slow to start because the legal profession was much more restrictive than accounting in allowing foreign firms to enter and practice in their countries. There were rules requiring that the names of the partners be present in the name of the firm. As a firm expanded, it began to use its name when possible in as many countries as commercially feasible. The purpose was the same as in accounting: establish a brand and attract clients to it. The downsides were that the legal profession looked down at the Baker McKenzie model and its own competition pejoratively characterized Baker McKenzie as a franchise.[5] The forces of the international community converged in the late 1980s. American and English firms began establishing branches in the primary commercial centers. This niche competition in local markets had the immediate effect of forcing local firms to evaluate alternative ways of providing services to their international clients.

Law firms, like the accounting firms, were looking for niche markets. The difference was that U.S. law firms focused internationally on a niche market. In the 1970s, niche markets focused on serving financial services and then branched out to clients in manufacturing.[6] The result today is that more than 100 United States law firms have offices outside of the country.[7] However, the reality is that internationalization is very limited among U.S. law firms — among the largest 100, the average has five overseas offices.[8]

The New York and London firms that opened offices at first generally did not practice local law, so the regional firms were protected and received referrals on local matters. This also changed as the number of branches increased and the firms indigenized. With the advent of legal

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[1] Richard L. Abel, *Transnational Law Practice*, 44 CASE W. RES. L. REV. 737 (1994).
[2] HISTORY OF BAKER & MCKENZIE, http://www.bakermckenzie.com/firmfacts/firmhistory/; *see also* JOHN R. BAUMAN, PIONEERING A GLOBAL VISION: THE STORY OF BAKER & MCKENZIE (1999).
[3] This rule still applies in a number of countries like Brazil, where the Baker McKenzie members uses their own name and association with the firm. *See Keep Out – Brazilian Lawyers Do Not Want Pesky Foreigners Poaching Their Clients*, THE ECONOMIST (June 23, 2011), *available at* http://www.economist.com/node/18867851?story_id=18867851&fsrc=rss. The same applies to India. *See* Margaret Taylor, *Ashurst Seals Best-Friends Deal with India Law Partners*, THE LAWYER (July 15, 2011), *available at* http://www.thelawyer.com/1008640.article.
[4] JAGDISH SHETH, STRATEGIC PERSPECTIVE ON THE MARKETING OF INFORMATION TECHNOLOGIES, Volume 4, 3-16 (Emerald Group Publishing, Ltd. 1994); *see also* B.M. GILROY, NETWORKING IN MULTINATIONAL ENTERPRISES: THE IMPORTANCE OF STRATEGIC ALLIANCES (University of South Carolina Press 1993); *see also* R. Gulati, et al., *Strategic Networks*, 21 STRATEGIC MGMT. J. 203-215 (2000).
[5] A review of major legal publications shows virtually no articles or discussion of networks or developments in networks. Unlike in accounting, there is no reporting of new members of networks, loss of members, marketing activities, etc. When a large firm loses a single partner, this is reported.
[6] Carol Silver, *Globalization and the U.S. Legal Market in Legal Services – Shifting Identities*, 31 L. & POL'Y INT'L BUS. 1127, 1129 (2000).
[7] *The Am Law 100 2011*, AM. L. MAG. (May 1, 2011), http://www.americanlawyer.com/id=1202550268433/The-Am-Law-100-2011?slreturn=20150403145553.
[8] HARVARD PROGRAM ON THE LEGAL PROFESSION, http://www.law.harvard.edu/programs/plp/pages/statistics.php#sotflf.

advertising, U.S. firms gained the opportunity to market their services in the U.S. and, as a result, indirectly began to market themselves in each of the countries where they had offices. Local bars to which attorneys received their licenses had severe restriction on their own firms that were not lifted until very much later.[1] For example, local partners and associates were required to be citizens and to be admitted to the bar where they practiced. Naturally, when foreign firms began to meet these criteria, local firms became concerned. The result was a need for local firms to band together, and networks became tools to compete against the much larger intruders to address this expansion. In fact, the first network of local firms came about primarily as a result of the invasion by London and New York firms.

Networks can be evaluated at different by the level of organization and activities pursued by the network. There are four levels. In the legal profession, there are no Level 4 networks unless you count the large international firms now organized as Swiss vereins as networks. A case can be made for this development.

Level 1 international networks, called *clubs*, generally consist of 10 firms in different countries.[2] The typical format consists of holding several meetings a year among managing partners to discuss management and market-related issues. Secrecy shrouded the networks because the members feared losing business from other firms if they knew of these networks.[3] On the other hand, many did not hesitate to advertise to their clients that they had foreign connections and correspondents. Today the clubs are commonly known as "best friend's networks." Examples include Leading Counsel Network[4] and Slaughter and May.[5]

Level 2 networks began in the 1980s when the Level 1 clubs evolved into networks. By that time, networks were not as secretive and even published directories, materials, and brochures.[6] The members met annually, and some networks focused on specific practices, such as litigation,[7] while others were more generic. Because networks were not thought of as franchises or strategic models, the membership selection process was not particularly rigorous.[8] Many of the networks that were innovators in the 1980s reached Level 2 and had no intent to develop beyond this level. This is evidenced by the fact that their membership over several decades has not increased, their websites contain no information, their governance depends on the same individuals, and their operations are limited.

Level 3 networks began in 1989 when Lex Mundi was formed.[9] It was the first network that required each member to be one of the largest and most established firms in a state or country. Unlike a Level 2 network where all activities are internal, 50 percent of its activities were

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[1] Bates v. Arizona, 433 U.S. 350 (1977).

[2] Chris Blackhurst, *The Secret World of Clubs*, 4 INT'L FIN. L. REV. 20 (1985). The first known club was the Club de Abogados, which had members in Latin America and Spain. There was also a sister club called the Club de Abogados Europeo.

[3] There were no directories. Periodically, an article might appear on the networks.

[4] James Swift, *Nine-Strong CIS Legal Network Gets Off Ground*, ARMENIAN DIASPORA, *available at* http://www.armeniandiaspora.com/showthread.php?197623-Nine-Strong-CIS-Legal-Network-Gets-Off-Ground.

[5] SLAUGHTER AND MAY, http://www.slaughterandmay.com/where-we-work.aspx.

[6] *See* INTERLAW, http://www.interlaw.org.

[7] ALFA was one of the first networks in the legal profession. Finding information about ALFA and members was very difficult. Today, this is not the case. *See* ALFA, http://www.alfainternational.com.

[8] This selection process is reflected today in the networks that have firms with a wide range of sizes, e.g., small firms in locations where there are firms that are three and four times the size. *See* TERRALEX, http://www.terralex.org.

[9] Stephen McGarry, *Practicing Law in the 21st Century Will Require Affiliations*, LEG. MGMT. 34 (May/June 1994); *see also* Stratton, *Captive Law firms vs. Global Legal Networks: The MDP Inquiry Continues*, 82 TAX NOTES 26-40 (Jan. 4, 1999); *see also* Nick Jarrett-Kerr, *International Alliances: How They Work, What They Deliver and Whether to Join*, JARRETT-KERR.COM (Dec. 5, 2012), http://www.jarrett-kerr.com/blog/International-alliances; *see also* Lis Wiehl, *How Small Firms Compete Amid the Giants*, THE N.Y. TIMES (Nov. 10, 1989), http://www.nytimes.com/1989/11/10/us/law-how- small-firms-compete-amid-merging-giants.html.

[10] Lex Mundi is the network that has spent the most to become "the Leading Association of Independent Law Firms."

The list of internal and external activities reflected approximately 30 different items. Another difference existed in Lex Mundi's operations: It was a network organized around a home office with staff, rather than a staff being assembled after the network was established. Finally, Lex Mundi set itself apart by using collaborative efforts among its personnel, board, councils, and members to achieve the objectives. In essence, Lex Mundi operated as a business that provided members with many alternatives to expand their resources. While different from the accounting network, the concept was that of an entity which provided services to members and should also have an established brand.

Other networks like TerraLex[1] and Meritas[2] soon followed with a similar business-based model. Their stated objective was to create a branded alternative to the large United States and English law firms that had expanded into their countries. These networks were not secret, and all of them have many of the features of Level 3 networks.

U.S. national networks also joined the revolution. The first was the American Law Firm Association, a network that focused primarily on insurance litigation.[3] The second was the State Capital Law Group, which began as a national network of firms dedicated to government affairs.[4] To qualify for membership, a former governor needed to work at the firm. Both of these networks became international and changed their names to ALFA and State Capital Global Legal Network, respectively.

The same national expansion occurred in other regions. For example, there are 80 European-centric networks. Some cover most of Europe, while others focus on a specific region like the Nordic or the CIS. In Canada, national firms have gradually opened offices in most provinces. However, there is a clear demarcation between the two approaches. Canadian firms that did not agree with this strategy joined the better-known networks.

Law firm networks are not all organized by law firms. Some, like the DuPont Legal Network for example, have been organized by corporations.[5] DuPont first established its network in 1992 to consolidate its outside counsel, then generated internal efficiencies by creating a network to which all of the outside counsels were also members.[6] Additionally, networks organized by corporations can exist for other purposes such as offering pro bono services**.** Thomson Reuters[7] has organized such a foundation that selects law firms that add prestige to its network for membership. It matches experienced firms to work together on projects. Participating firms find unique and priceless motivation through the opportunity to establish new contacts, who will in turn become paying clients, at no financial cost — simply by working on pro bono cases.

With more than 170 already in existence, law firm networks are here to stay. However, networks in the legal profession do not garner the same level of respect found in the field of accounting. One reason could be that the networks were simply a reaction to the initial globalization of large New York and London firms. Additionally, the large law firms have much

[1] TERRALEX, http://www.terralex.org.
[2] MERITAS, http://www.meritas.org.
[3] *Supra* note 20.
[4] STATE CAPITAL LAW REVIEW GROUP, http://www.statecapitallaw.org.
[5] DUPONT LEGAL MODEL, http://www.dupontlegalmodel.com; *see also Competitive Advantage through a Legal Network: An External Lawyer Review One Year On*, MANAGING PARTNER 23 (May 13, 2011).
[6] DUPONT LEGAL MODEL, BUILDING THE VIRTUAL LAW FIRM. http://www.dupontlegalmodel.com/building-the-virtual-law-firm-through-collaborative- work-teams/ ("Why did DuPont Legal create a virtual law firm? What is the payoff? We believe that significant competitive advantages flow to a company that can build a team consisting of inside counsel and members of outside law firms and various service providers, such as accountants, jury consultants, and document management specialists, who have the skill sets required by a legal matter and who are capable of working smoothly and effectively together. Such a team would be dedicated to the company's interests and knowledgeable about the company's business and case- handling processes. Through shared technology, members of such a team could easily communicate.")
[7] TRUSTLAW, http://www.trustlaw.org.

bigger marketing budgets than networks. Perhaps legal networks remain tarnished because they originated as clubs or even franchises. However, in the light of day, it is now possible to argue that many of the elite law firms are themselves no more than networks.

The world is coming full circle.[1]

[1] Chris Johnson, *Vereins: The New Structure for Global Firms*, AM. LAWYER (March 7, 2013); *see also* Ed Shanahan, *The Am Law 100: Grand Illusion*, THE AM LAW DAILY (May 2, 2011), *available at* http://amlawdaily.typepad.com/amlawdaily/2011/05/grandillusion.html.

International Law Firms


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The Future of Legal Business — International Law Firms

What keeps John Doe, managing partner of a typical international law firm headquartered in London, awake at night? Alternative legal service providers, Amazon law firms, legal tech, cyber-attacks, and management mumbo jumbo about agile working and service innovation, and all that without worrying about the daily business of running a law firm. His partners have asked him to come up with a three-year plan to strengthen the firm's position in its home market and internationally. How should he start? Should he read any of these clever books or articles dealing with development of the legal market?

Just few years ago, his bookshelf was all doom and gloom: Richard Susskind's "The End of Lawyers?", Larry Ribstein's "The Death of Big Law," Bruce MacEwen's "Growth is Dead," and Mitch Kowalski's "Avoiding Extinction," to name but a few[2] … All of these academics with their catchy book titles were not exactly encouraging. Now it seems they are engaging in crystal ball gazing: "Tomorrow's Lawyers" (Richard Susskind), "Tomorrowland" (Bruce MacEwen), and "The Future of the

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He is chair of the Committee on Professional Regulation of the German Bar Association (DAV). He is also a regular lecturer and conference-speaker on leadership, management topics, and professional ethics, and he has written numerous articles and book chapters on these topics. He is a co-editor and author of "Wegerich/Hartung: Der Rechtsmarkt in Deutschland" ("The Legal Market in Germany"), which was published in early 2014 and has developed into a standard reference for the German legal market. He is also a co-author of "How Legal Technology Will Change the Business of Law," a joint study of The Boston Consulting Group and the Bucerius Law School (available here: http://www.bucerius-education.de/english/lawport/projekte/studien-analysen-und-veroeffentlichungen/).

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[2] The numerous other books on his shelf may well have included Steven Harper's "The Lawyer Bubble," Stephen Mayson's "Law Firm Partnership — The Grand Delusion," or Laura Empson's "Partnerships — Will They Survive?"

Professions" (Richard and Daniel Susskind). But what is this one: "Robots in Law: How Artificial Intelligence is Transforming Legal Services"?[3] So, what does the future hold?

The crystal ball contains a startling premonition as legal market intelligence such as *The Lawyer* and *Legal Week* ask: "*When* will artificial intelligence replace lawyers?" Not "if," but "when" and "to what extent" will artificial intelligence replace lawyers? The crystal ball also contains a murky picture of a shifting legal market, with new businesses emerging and potentially stealing work from traditional, brick-and-mortar law firms. Who are these "alternative" service providers? They don't appear in the U.K. or AmLaw Top 100, so nothing for John Doe to worry about. Or is there? As Richard Susskind says, "the competition that kills you, doesn't look like you."

So, how will John Doe find out? Who has the answer to today's questions? To know the right questions would be a good start. There are many John Does out there who valiantly navigate their firm through heavy weather and turbulence. We at the Bucerius Center on the Legal Profession, a think tank at Bucerius Law School in Hamburg, have spoken to many of them. Our Center does research and analyzes legal markets in order to provide market participants with knowhow and knowledge regarding the best practices of law firms and in-house legal departments. Here is what we talk about when we spend time with the John Does:

Law firms should focus on three core areas when it comes to setting up a plan for the next three-plus years. Such an approach may be timeless, but it must constantly be updated as the changing market environment leads to different conclusions. Law firms have to:

1. Deal with their strategic positioning;
2. Focus on client service (the *what* and *how* of legal service delivery); and
3. Make sure that their partnership structure is well aligned with the strategic goals of the firm.

Focusing on these three core areas is sufficient, but what about legal technology? Innovation? Profit sharing? Governance? Mergers? Each of these is important, but first things have to be put in perspective. Just grabbing a buzzword — e.g., "innovation" or "profit sharing" or buying some clever technology — has nothing to do with strategic goals and leads to aimless activism without any success.

Before discussing the core items, one has to understand that all three topics are applicable for each type of law firm, be it a global player, a boutique, an international firm, or a category killer. The questions are always the same, but the answers are not. The most important topic is strategic positioning; hence, we will spend more time on this subject.

Strategic Position

Strategic positioning has a lot to do with knowing oneself and understanding the dynamics of markets in general, not just legal markets. Law firms tend to look at themselves as something special and unique; actually, they aren't so special. The legal industry can learn a lot from other industries. A useful way to understand how the legal market has changed shape since the financial crisis — and what it could look like in 2025 — is to analyze market data from 2007 until today. However, rather than overly focusing on each firm's turnover and profitability on a year-to-year basis through endless listings, we prefer to compare movements of certain groups of firms. This is

[3] JOANNA GOODMAN, ROBOTS IN LAW: HOW ARTIFICIAL INTELLIGENCE IS TRANSFORMING LEGAL SERVICES (ARK Group, 2016).

not a new method of looking at legal markets.[4] While John Doe may feel comfortable observing his national market, the global market is part of the industry analysis that John Doe must carry out to determine his strategic position.

In 2007, following an analysis carried out by McKinsey, one could identify five different groups of law firms:

(i) The global elite (e.g., Wachtell, Slaughter and May);
(ii) The challengers (a group of firms spanning the spectrum of Sullivan and Simpson Thacher to Ashurst and Herbert Smith);
(iii) The middle field (e.g., Orrick, White & Case, Mayer Brown);
(iv) The Magic Circle (including U.S. firms such as Latham & Watkins or Skadden); and
(v) The global law factories (e.g., Baker McKenzie, DLA Piper).

By 2013, the legal market had changed significantly, with the market for international law firms seemingly split up in two major segments: the elite segment and the global law factory segment. In 2014, we predicted that the challengers would drift farther apart, with the top performers joining the global elite and bottom performers joining the middle field. This would leave the existing middle-field firms "stuck in the middle." We repeated this strategic mapping in 2017 for the same groups of law firms. Looking at each group in turn, let's see what has changed…

The global elite continue to be the strongest-performing group, with the highest-earning firm, namely Wachtell Lipton Rosen & Katz, recording a staggering $6.6m PEP.[5] It may, however, be a case of the richer getting richer and the poorer getting poorer, as the difference between the highest and lowest performers now stretches to some $3m.

As predicted, the challengers are drifting farther apart,[6] with the top performers (firms such as Paul Weiss Rifkind Wharton & Garrison, Sullivan & Cromwell, or Simpson Thacher & Bartlett) joining and even outperforming some of the global elite, while the worst performers (Ashurst, Herbert Smith Freehills) are dropping below some of the middle-field firms.[7]

The middle field (firms such as O'Melveny & Myers and Orrick Herrington & Sutcliffe) has remained stable in terms of average PEP and average partner numbers. Although not as extreme as the global elite or the challengers, the gap between the highest- and lowest-performing middle-field firms is widening rapidly.[8]

The Magic Circle (including the likes of Latham & Watkins and Skadden Arps) has also remained stable,[9] with the gap between the highest- and lowest-performing firms spreading more slowly over time.[10] Finally, while growth in the global law factory group (namely Baker &

[4] Markus Hartung & Arne Gaertner, *Game Over?*, MANAGING PARTNER MAG. (Feb. 2014) (a discussion in which the reader will find some tables and more data relating to the dynamics of the global legal market), *available at* http://www.worldservicesgroup.com/presentations/927/927_4_2.pdf.
[5] Average PEP increased some 21% from $3.8m to $4.6m between 2013 and 2017, while the average number of partners remained almost constant. *Global 100: By Partner Profits*, THE AMERICAN LAWYER & LEGAL WEEK (Sept. 2016), *available at* http://www.almcms.com/contrib/content/uploads/sites/378/2016/09/Global-100-by-profits.pdf.
[6] The difference between the highest- and lowest-performing challenger firms has increased dramatically from $1.2m (2007) to $2m (2013), with the difference between Paul Weiss and Ashurst standing at $3m in 2017. *Id.*
[7] This performance change may also be related to recent mergers.
[8] While in 2007 there was just a $0.6m difference between the group members, in 2017 the gap between the highest-earning firm (Gibson Dunn & Crutcher) and the lowest-earning firm (Mayer Brown) has increased to $1.6m. *Supra* note 5.
[9] Average PEP rose slightly (by $0.3m) while average partner numbers remained constant.
[10] The gap between the highest and lowest performers has increased year on year from $0.67m in 2007 to the current difference of $1.3m between Skadden Arps and Allen & Overy. *Supra* note 5.

McKenzie, DLA Piper, and Jones Day) has been slower[11] than for the global elite, and the PEP gap between the highest- and lowest-performing global law factories has remained stable, the number of partners has changed significantly. Some global law factory firms have significantly reduced the number of partners, making them more akin to the Magic Circle group, while others have continued to grow, resulting in a staggering difference of more than 500 partners between the biggest and smallest global law factories.

The overall result is that the global elite (plus a few challengers) are pulling away from the pack, while the global law factories (less a member or two) continue to expand. Left in the middle is a mixture of lower-performing challengers and middle-field firms. Only the Magic Circle can continue to be distinguished as a separate group of firms in this segment of the market. While these findings may help John Doe understand the changing global legal market, one crucial part of the strategic jigsaw is missing.

Reliance on the usual market data (law firm rankings such as AmLaw 100 and the U.K. Top 50) ignores an interesting movement in the legal market. A new group of players, "alternative legal service providers," has squeezed into the picture, but who are they? As they are not brick-and-mortar "law firms," they don't appear in the law firm rankings and little information about them is available. A recent study[12] on the market for alternative legal service providers estimates the size of the new market segment to be $8.4 billion annually. Although not quite matching the value of the U.S. legal market at $275 billion, it is not an insubstantial figure for an emerging market. These players are made up of a diverse group of providers, from outsourced legal work (such as document review) to insourced legal work (for example, temporary lawyers) or entire managed legal services (traditional in-house legal functions). Outsourced legal work by the likes of QuisLex, Consilio, and Thomson Reuters accounts for some 70 percent of this emerging market. This is a group of players that John Doe needs to know more about. Especially as, according the study, the use of these alternative legal service providers by corporations and law firms is strong — and is expected to grow.

The "middle of the road" firms have come under extreme pressure, and the jury is out on their future. Will they eventually cease to play a role? This depends on a number of factors. John Doe has to make a decision because there will no longer be an international "middle of the road" law firm segment. Remember the words of political activist Jim Hightower that ring true today and apply to John's situation: "There's nothing in the middle of the road but yellow stripes and dead armadillos." The middle is clearly a dangerous place to be.

So, what are John's strategic options? Move toward the global elite? Tricky — the sterling brand and sparkling client book of the Wachtells of the legal world cannot be achieved overnight. Merger? According to our crystal ball (this time in the form of *The Lawyer Global 200*), international expansion is not a watertight growth strategy. In fact, revenue increases in the Global 200 were mostly enjoyed by the richer firms, while merging firms tended to record drops in revenue. Furthermore, the John Does of this world are often already too large to be an attractive merger partner. Finally, maybe he should look at law firm networks: groups of firms who are balancing their independence with the ability to expand their referral network, and are able to quickly scale up in cases where size matters.

Having said that, to avoid being "stuck in the middle," John Doe could dig up some classical strategy and follow Porter's advice of pursuing either a cost leadership strategy or a

[11] Average PEP rose only 14% to $1.2m with average partner numbers dropping. *Id.*
[12] Georgetown Law & Thomson Reuters, *Alternative Legal Service Providers: Understanding the Growth and Benefits of these New Legal Providers* (2017).

differentiation strategy (but not both). Cost leadership without sacrificing quality in the legal services market for a middle-field firm could well be a tall order; after all, how many Ryan Air-style law firms are in the top 100? He is left with no choice but to differentiate his firm's service offering. Although one could say that the changes to the legal market coupled with advances in technology have forced the John Does of this world into a corner, it may actually be a blessing in disguise. The emergence of alternative legal service providers is forcing law firms to view their strategic position along buy (not sell) lines. Thus critical to John Doe's decision on how to differentiate his service offering from the rest of the field, is the answer to the question, "which legal services are being purchased, and how?"

Client Focus

Every law firm makes a promise to clients: "We are the best thing that could ever happen to you."

Clients tend to smirk when they hear this; from their perspective, their relationship with law firms is difficult, to say the least. Why is this the case? It seems that too many law firms do not stick to a really simple rule: *Know your client, and know yourself*. In other words, know who your clients are and why they chose you.

Does that seem too simple? Right, it *is* that simple. Knowing one's clients means far more than sending Christmas cards, or inviting general counsel to lunch or even dinner. It means knowing clients inside-out, knowing why their CEO can't sleep at night, knowing what their appetite for risk is, why their numbers are down (or up), what is happening in their relevant market, and exactly how they want to receive your advice. And yes, clients are becoming more demanding. They want quality of service at an acceptable price. Like Amazon shoppers, they want to compare prices. Traditionally, when clients had a legal problem, they searched for a named law firm. Today, when they have a legal problem, they search online (yes, including "Google"). Clients are far more sophisticated when it comes to legal procurement, with clear requirements and excellent knowledge about the market. In fact, the historical asymmetry in information and expertise between the client and the lawyer is finding its equilibrium. The number of highly qualified lawyers moving in-house is increasing,[13] and information is becoming more readily available. Not just legal information, but information about how the transaction is progressing, how the matter is being staffed, and how much it is costing — and all in real time. This means that John Doe will have to find a new value proposition for his clients.[14]

The second bit is: What do we have to offer, and why did they choose us? Not knowing the answer should make managing partners extremely nervous. This is the current cutting edge of competition in the legal market. Legal technology offers John Doe the differentiation toolbox that he needs to design his new service offering. He doesn't have to replace his associates with robots. Legal technology offers solutions for everything from predictive analytics to simply providing a more efficient platform for clients to interact with their lawyers. Firms who are able to differentiate themselves from their competitors by offering the client *additional* services, such as legal project management and legal data analytics, are able to survive — at least until a competitor decides to replicate those services.

[13] *See, e.g.*, The Law Society of England and Wales, *Annual Statistics Report* (2016).
[14] *See* Emma Ziercke & Markus Hartung, *Why the Developments to the Competence Divide (and not the Digital Divide) Will Make or Break the Law Firm Business Model* in NEW DIRECTIONS IN LEGAL SERVICES (ARK Group, 2017).

Part of this exercise is innovation, by means of product innovation (which is what we know as creativity) and service innovation. We all love to receive better service, day by day. Clients do, too. The client's increasing expertise, coupled with the new service offerings of the alternative legal service providers, means that John Doe's focus on client service must target the *what* and *how* of service delivery: *which* services (legal and non-legal) does the client want to buy, and *how* does the client want to receive them.

Regarding product and service innovation, many articles and books have been written on these issues. There are so many ideas out there to better your client service in order to put yourself ahead of your competitors. Just go out and start doing it.[15] The only stumbling block for John Doe is persuading his partners to invest in this new buzzword…

Alignment of Partners

It is odd, but whatever type of firm we talk to, they all claim to have and maintain a partnership structure.

Even those firms that have up to 1,000 partners (who don't know one another and who need name tags at their partner meetings in order to differentiate themselves from the service personnel) hold themselves out as partnerships. We are afraid this is an endless source of misunderstandings and causes strategic, structural, and cultural mishmashes.

What do we mean by "the partnership model"? It is something very simple: two or more people joining forces to pursue common goals with a view to achieving profit. That's it. Very successful structure, very profitable, no hierarchy, easy to handle. This system has two core attributes: peer group transparency and peer group pressure. Without this, a partnership is not a partnership; it will then be more of a barrister's chambers (by means of the U.K. system of independent barristers sharing offices and infrastructures) rather than a partnership.

Obviously, the partnership model has lost its supporters. In 2012, Stephen Mayson[16] predicted the extinction of this model — quite rightly, from his point of view: As long as partners do not share a common vision and common strategic goals, they remain in a status of a rather unorganized group of sole practitioners, with no long-term future. Jonathan Molot's paper, "What's Wrong with Law Firms,"[17] is the last nail in the coffin for the partnership model: The "short-term" nature of the partnership model stifles much needed long-term investment and will eventually lead to its demise.

But these conclusions must be nuanced: The partnership model is useful but not always applicable, and the weaknesses of this model are more often connected to the improper handling of the model rather than to the model itself. Laura Empson's recent and extensive research into leadership in professional service firms[18] confirms that despite being "smart" people, professionals often don't lead in the way we expect them to. The senior partner of one of the world's leading law firms is reported as saying that "leadership just sort of happens" — not quite what one would expect from a successful partner.

Despite its drawbacks, the partnership model remains, according to Empson, the optimal legal form of governance for reconciling competing interests. We would hesitantly agree with her,

[15] *See, e.g.*, Markus Hartung & Arne Gaertner, *From Idea to Action*, MANAGING PARTNER MAG. (Sep. 2013).
[16] Stephen Mayson, *Law Firm Partnership: The Grand Delusion*, AN INDEPENDENT MIND (Oct. 9, 2012), https://stephenmayson.com/2012/10/09/law-firm-partnership-the-grand-delusion/.
[17] Jonathan Molot, *What's Wrong with Law Firms? A Corporate Finance Solution to Law Firm Short-Termism*, 88 S. CAL. L. REV. 1 (2014).
[18] *See* Laura Empson's extensive research into leadership in professional organizations: LEADING PROFESSIONALS: POWER, POLITICS AND PRIMA DONNAS (Oxford University Press, 2017).

but only for certain law firms. It does work in practice; look at the premium segment of the legal market. For these law firms with, say, up to 100 partners, the traditional partnership model is the only conceivable structure.

What about the law factories? Law firms with offices all over the world are more like a corporation and should structure themselves accordingly. While traditional partnerships do not need anything like genuine management, law factories can't do without it. That also applies to Swiss Vereins — this structure was sold as something that could do without global management, but in reality no Swiss Verein has a long-term future without a management structure. This has consequences for those who are called "partners": no veto rights and no right to deviate from the firm's strategy. It is not a majority versus a minority of partners; it requires partners to put the firm's interests over and above their own personal interests. You don't like it? Go and choose another firm.

Finally, the business of law firms, be it a traditional partnership or a law factory, has nothing to do with partnership models. The firm's IT, HR, marketing, and other service departments have to be organized and managed like a corporation, even in traditional partnerships.

And this is it for John Doe. Three simple topics to focus upon: market position, client focus, and structure. This should be the starting point for the firm's plan to make sure it is still there in three years.

The Role of Bar Associations in the Emerging Legal Services Marketplace


Andrew Perlman & Janet L. Jackson[1]
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The legal services marketplace is rapidly evolving, and bar associations must embrace those changes or risk irrelevance. By developing new educational programs and initiatives, facilitating the profession's use of cost-saving tools, accelerating solutions that address the access to justice crisis, and welcoming other professionals who can improve how legal services are delivered and accessed, the bar can play an essential leadership role during a time of significant change.

Educational Programs and Initiatives

The public increasingly expects and demands services to be delivered in new ways. We shop, bank, do our taxes, and find information differently today because of technology and innovation. Similar developments are affecting legal services, and lawyers need to learn how to adjust. Many law schools are expanding their curricula to include knowledge and skills about law practice technology and innovation,[2] but most of today's lawyers do not know how to adapt. Bar associations can help.

Continuing Legal Education

Continuing legal education (CLE) programs offer a conventional opportunity to educate members about important changes to the legal marketplace. Florida has gone even farther.[3] In September 2016, the Florida Supreme Court took the unprecedented step of unanimously approving a rule requiring Florida lawyers to take technology-related continuing legal education

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Janet L. Jackson is the managing director of the ABA Center for Innovation.
[2] Howard Wasserman, *Legal Education in the 21st Century*, PRAWFSBLAWG (Feb. 21, 2017), http://prawfsblawg.blogs.com/prawfsblawg/2017/02/legal-education-in-the-21st-century.html.
[3] Victor Li, *Florida Supreme Court Approves Mandatory Tech CLEs for Lawyers*, ABA J. (Sept. 30, 2016), www.abajournal.com/news/article/florida_supreme_court_approves_mandatory_tech_cles_for_lawyers.

courses. The rule requires lawyers to take a minimum of three hours of technology-related CLE courses every three years. The rule went into effect on January 1, 2017.

Innovation Clearinghouses

Bar associations can publicize information about impactful and replicable innovations. The ABA's new Center for Innovation, established in September 2016,[4] is about to launch an Innovation Clearinghouse that will spotlight new approaches to the delivery of legal services in a wide range of areas, such as court innovations, legal technology, in-house legal departments, and legal aid.[5] These kinds of efforts can shed an important light on valuable projects and demonstrate the role of bar associations in disseminating knowledge about critical legal services innovations.

Special Events

Bars can develop special events and programs to help spread the word about innovative tools and policy changes. The ABA Center for Innovation recently teamed with the National Conference of Bar Presidents on a program that helped lawyers, judges, and the public learn more about the significant problems associated with court-imposed fines and fees as well as the innovative solutions that have been developed to address those problems.[6] The Center also organized an Innovation Spotlight event, consisting of 10 speakers from different parts of the legal industry who delivered short presentations on their impactful solutions to pressing legal services needs. Numerous similar programs are hosted or sponsored by bar associations every year, and those events can help members and the public learn about critical problems and innovative solutions.

Fellows Programs

The ABA Center for Innovation has developed two types of fellows programs to help the profession and individual members respond to new realities. NextGen Fellows are relatively recent law school graduates who spend a year at the Center, receive a salary, learn about innovative approaches to legal services delivery, and advance a project designed to address a critical legal services delivery problem.

Innovation Fellows are seasoned professionals who spend more limited time at the Center to work on a discrete project. These professionals often lack the time and resources needed to innovate, and a two- to three-month fellowship provides them with what they need to bring their ideas to full potential. For instance, the North Carolina State Bar, North Carolina Supreme Court, and North Carolina Administrative Office of the Courts joined together to sponsor an Innovation Fellow to come to the Center for training and to assist with efforts to establish a Center for Innovation in North Carolina.

In each case, the Center matches fellows with available resources within and outside the ABA to help the fellows appropriately plan and develop impactful projects.[7] Moreover, each fellow participates in a boot camp that involves training in the people, process, and technology

[4] ABA CENTER FOR INNOVATION, www.abacenterforinnovation.org.
[5] *Innovators*, ABA CENTER FOR INNOVATION, http://abacenterforinnovation.org/resources/innovators.
[6] *Fines and Fees, Annual Meeting 2017*, ABA CENTER FOR INNOVATION, https://www.americanbar.org/news/abanews/aba-news-archives/2017/08/video_highlightscr.html.
[7] *Meet Our Fellows*, ABA CENTER FOR INNOVATION, http://abacenterforinnovation.org/fellowships/meet-our-fellows.

skills that are needed to transform the delivery of legal services. The Center expects to make the boot camp more widely available in the coming months.

In the meantime, fellows are taking on a wide range of projects, such as developing an app to help pro se litigants navigate local civil procedure, assisting low- and moderate-income renters in knowing their rights, and exploring how blockchain technology can be used in the fines and fees arena to benefit the public.

The Center for Innovation seeks to expand the fellows program in various ways, such as by hosting more fellows from state and local bar associations. The bottom line is that bar associations can provide these kinds of opportunities to help the industry adapt to the 21st century legal marketplace and facilitate work on cutting-edge projects.

Futures Commissions

Bar associations have an important role to play in educating their members and the public about systemic legal service delivery issues and large-scale solutions. Many bars are establishing futures commissions or have recently undertaken such efforts.[8] In 2016, the ABA Commission on the Future of Legal Services completed a two-year review of the legal services industry and developed a major report that identifies existing problems and recommends a wide range of solutions.[9]

Facilitating the Profession's Use of Cost-Saving Tools

Bar associations can build websites and other resources to help members find appropriate tools for their practices. During her ABA President-Elect year, Linda Klein met with lawyers in various small and mid-size communities across the country. One message she heard was that lawyers, particularly solo and small firm practitioners, are pressed for time and do not know where to find the basic technology that would make their practices more efficient. To help them, the ABA developed ABA Blueprint.[10]

Through an expert system, ABA Blueprint helps lawyers identify the technological tools that an individual lawyer needs. It also provides access to consultants to answer questions about recommended products. The ABA will roll out Blueprint 2.0 in the fall of 2018, which will provide even more tools for solo and small firms.

Accelerating Solutions that Help to Close the Access to Justice Gap

Bar associations can demonstrate their relevance to the public by building tools that address the ever-growing access to justice gap. In 2016, floods ravaged the areas in and around Baton Rouge, Louisiana, yet flood victims often lacked the documentation of home ownership that is required to establish eligibility for FEMA and state recovery disaster assistance. A multifaceted campaign called "FloodProof" emerged last year to address these needs, and the Center stepped up to play an important role.

Working with Stanford Law School, Southeast Louisiana Legal Services (SLLS), Louisiana State University Law School, and Louisiana Appleseed, the Center created a mobile app

[8] *Resource Pages*, AMERICAN BAR ASSOCIATION, www.americanbar.org/groups/bar_services/resources/resourcepages/future.html.
[9] *Report on the Future of Legal Services in the United States*, ABA COMMISSION ON THE FUTURE OF LEGAL SERVICES (2017), http://abafuturesreport.com.
[10] ABA BLUEPRINT, www.abablueprint.com.

to help Louisiana flood victims gather information and documents needed to establish home ownership and complete disaster relief applications. The Center developed a web-based version of FloodProof and explored efforts, in cooperation with the ABA Standing Committee on Disaster Response and Preparedness[11] and Louisiana Appleseed, to drive greater awareness and use of these new technology resources. Through a collaborative effort with SLLS, LSU Law School, Southern University Law School, Baton Rouge Bar Association, Louisiana Appleseed, and local and state government, flood victims are being introduced to both the mobile app and web platform to assist in recovery. The Center is now replicating the effort in other states.

The Center is collaborating on similar projects in many different areas, such as the creation of a web-based tool to direct victims of hate crimes or bias incidents to available resources, an app for law enforcement that would help translate *Miranda* warnings into other languages, and the pairing of legal tech companies with legal aid offices so that cutting-edge tools can enable frontline legal services lawyers to reach more clients. In short, bar associations can marry their networks and substantive expertise with innovative thinking to have a positive impact on how the public accesses essential legal services.

Embracing Other Professionals

Embracing change means welcoming a wide range of professionals who can contribute in various ways. The Center's volunteer leaders include people who have innovated outside of the legal industry; in fact, one of the Center's Innovation Fellows was a court administrator who was not a lawyer.

Recognizing the role of other kinds of professionals also means an openness to rethinking the regulation of legal services. In 2016, the ABA adopted Model Regulatory Objectives for the Provision of Legal Services,[12] and one of the explicit rationales for doing so was a recognition that various kinds of professionals are playing an important role in the delivery of legal services. The Model Regulatory Objectives set out some basic principles to help regulators and bar associations think through their regulatory stances in light of these developments.

Conclusion

At an inflection point for the legal industry, bar associations must be at the vanguard of change rather than a bulwark against it. If bars embrace their role as change agents, they will ultimately serve both their members and the public more effectively.

[11] ABA COMMITTEE ON DISASTER RESPONSE AND PREPAREDNESS, https://www.americanbar.org/groups/committees/disaster.html.
[12] MODEL REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES (2016), https://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_105.docx.

Legal Managed Services are Improving the Practice of Law


Joseph Borstein & Edward Sohn[1]
Co-Founder and CEO of LexFusion; SVP, Head of Solutions at Factor LinkedIn
LinkedIn

Biglaw is boring. In mid-2014, we pitched a regular column on legal entrepreneurship and alternative legal services providers to a leading legal blog, *Above the Law* ("ATL"). In our pitch, "our holy purpose" was to prove to the broader community of lawyers that traditional players (Biglaw firms, in-house departments, government entities) are no longer the only show in the legal-town, and certainly not the greatest show on earth.[2] We wanted to show that there are awesome alternative legal businesses employing some of the nation's best legal talent, changing the legal system for the better, and bringing home the proverbial bacon. ATL agreed that we had unearthed a story that wasn't being properly covered and graciously gave us a bi-monthly column, which we dubbed "alt.legal."

Since the launch of the alt.legal column, we have published a number of stories on legal startups and entrepreneurs. We have traveled the country interviewing legal innovators, writing about everything from legal hackers to legal machine-learning to robot law enforcement to Biglaw refugees reinventing litigation management. And we didn't have to search far — our inboxes have been inundated with new stories of legal entrepreneurs, alternative legal service providers, and legal technologists working hard to change the game for the better.

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[1] **Joseph Borstein Co-Founder and CEO of LexFusion and was** a managing director with EY. He is a former global director of legal managed services at Thomson Reuters, formerly Pangea3, and previously served as director of Litigation Solutions. In this role, Borstein lends his expertise to existing and prospective clients by providing them with the latest information regarding the law, ethics, and best practices in the rapidly evolving world of electronic discovery. Clients will likewise benefit from his extensive experience in data collection and preservation.

Prior to joining Pangea3, Borstein practiced law at the New York office of Kasowitz, Benson, Torres & Friedman LLP, where he litigated complex civil cases in federal, state, and administrative courts. He has extensive experience in law suits related to securities fraud and market manipulation; civil racketeering ("RICO"); intra-corporate disputes; contract disputes; disputes from derivatives and other sophisticated financial products; as well as S.E.C. enforcement actions. He also has personally managed and conducted complex document reviews or productions in litigations involving regulated financial institutions, insurance companies, real estate investment trusts, hedge funds, private equity consortiums, and pharmaceutical companies. Borstein received his B.A. in psychology and his J.D. at the University of Pennsylvania. He is located in Pangea3's New York City headquarters.

[1] **Edward Sohn** SVP, Head of Solutions at Factor and was a managing director with EY. Previously, he worked at Thomson Reuters. He contributed his extensive experience in managing all aspects of the eDiscovery process including preservation, collection, review, production, and fact investigation, ensuring that Thomson Reuters LMS clients received superior quality through cost-effective and efficient processes. His role involved developing the strategy for new client engagements, managing client-dedicated project teams and mentoring project managers.

Prior to Thomson Reuters, Ed was a senior attorney in business litigation at King & Spalding, LLP in Atlanta, Georgia. At King & Spalding, he represented financial institutions and Fortune 500 companies in matters related to civil and regulatory financial claims, class action and securities litigation, government investigations, healthcare litigation, and commercial disputes.

[2] Ed Sohn & Joe Borstein, *Alt.Legal: Stop What You're Doing!*, ABOVE THE LAW (Aug. 13, 2014, 3:15 PM), http://www.abovethelaw.com/2014/08/alt-legal-stop-what-youre-doing/.

The market has taken notice: measured in investment, venture capital is flowing into legal startups at an accelerating pace ($458 million in 2013, up from $66 million in 2012).[3]

Bottom line, the "practice of law" is being deconstructed, redefined, and opened to new players. Specifically, the forces creating this transformation are: (1) market pressure from upstart entrepreneurs and alternative service providers; (2) value and expertise imported from models of process and business efficiency; and (3) structural changes challenging the traditional boundaries of legal practice. How big are these changes? Here are some examples.

- Our company (a formerly wholly-owned subsidiary of Thomson Reuters and now a part of EY (2019), employs approximately 1,500 full-time attorneys (largely in India), conducting large scale legal support projects for many of the Fortune 100 and AmLaw 100 firms. We believe we are the largest private employer of attorneys in a country of 1.2 billion people.
- According to *Legal Business* magazine, a U.K.-based trade publication, one of the top 10 "overall advisors" in the U.K. market is Axiom, a legal services company that is *not a law firm*.[4] kCura, the developers of e-discovery software Relativity, received $125 million from San Francisco-based ICONIQ Capital to invest in people and technology.[5]

While we are fascinated by the disruptive changes brought by technology and globalization, we have focused the remainder of the article on legal managed services ("LMS") companies. These companies are corporations (not partnerships or law firms) conducting large-scale legal-support services, traditionally performed by law firms or corporate counsel. LMS companies are *not* staffing agencies that add temporary body count to law firms or corporate legal departments. They are stand-alone businesses whose *clients* are law firms and corporate legal departments. Over the past decade they have proven their ability to be better, faster, and cheaper than the traditional legal players in a wide variety of legal-support tasks (contract lifecycle management, litigation document review, M&A diligence). They have achieved this by implementing: best-in-class business processes; high-end, permanent talent in lower-cost jurisdictions; permanent task specialization and training; and dedicated technologists and cutting-edge technology.

Over the following chapter, we will discuss: the rise of legal managed services companies; the workflows, processes, and technology they employ; and the future of the legal business structure. Finally, we will touch on the *benefits* (yes, benefits) to law firms (even boring Biglaw firms) and what this radical change all means.

The Rise of Legal Managed Services

Axiom is based in the U.K. and works closely for clients in commercial transactions, M&A, litigation, and other areas. Axiom's lawyers are highly trained and carry top credentials. But Axiom is *not* a law firm. It is a corporation that places its attorneys through insourced and

[3] Susanna Ray, *These Venture Capitalists Skip Law Firms for Legal Services Startups*, ABA J. (May 1, 2014, 10:30 AM), http://www.abajournal.com/magazine/article/these_venture_capitalists_skip_law_firms_for_legal_services_startups.
[4] Joe Borstein, *Alt.Legal: Apparently 'Legal Provider' is Not How the British Say 'Law Firm,'* ABOVE THE LAW (Oct. 24, 2014, 2:34 PM), http://abovethelaw.com/2014/10/alt-legal-apparently-legal-provider-is-not-how-the-british-say-law-firm/.
[5] Amina Elahi, *kCura Gets $125 Million Investment from Iconiq Capital*, CHICAGO TRIBUNE (Feb. 3, 2015, 1:00 PM), http://www.chicagotribune.com/bluesky/originals/chi-kcura-iconiq-capital-funding-bsi-20150203-story.html.

outsourced solutions. Like many good companies, Axiom prides itself on operational efficiencies that are rarely found in the traditional law firm structure, like low-cost overhead, a culture of agility and flexibility, and a centralized command structure. And perhaps the great distinction is that Axiom can — and does — receive outside investment, operating formally in a way that blurs the line between business and law.

As mentioned earlier, *Legal Business* magazine proudly proclaimed that Axiom had breached the top 10 "legal services providers" in the U.K. Outside of Axiom, the *Legal Business* list of prestigious "firms" included all the usual suspects (Allen & Overy, Clifford Chance, Freshfields, Linklaters, Slaughter and May, and DLA Piper). This was the first time a non-law firm has appeared in these ranks, but it will not be the last. *Legal Business* noted that this breach of the coveted top 10 was "significant" and "demonstrate[ed] how non-law firm providers are winning over some bluechip clients."[6] In our view, this breach demonstrated something else: alternative legal services providers are not just "winning" the business of "bluechip" clients but are gaining their respect and trust. Axiom has won that ephemeral prize every attorney desires: prestige.

For those that have been following the alternative legal space, Axiom is just one of many recently birthed companies fueling this transformation. Like Axiom, many of them find their heritage in entrepreneurship and investment. While Biglaw firms rely heavily on their storied history and prestige, many of the new heavy hitters were birthed after 2000. Companies like Axiom, Pangea3, Quislex, and UnitedLex are relatively new players, but are steadily increasing their headcount, revenues, and market share.

The increase in the legal market share for LMS businesses explains unusual trends in the overall legal services marketplace. The *New York Times* reported on detailed research into the legal market HBR Consulting, a leading provider of legal metrics. This research found that companies worldwide *increased* their total legal spending by 2 percent in 2014. Yet, during that period spending on outside law firms fell 2 percent.[7] Surely some of this is attributed to corporate counsel insourcing functions that were previously given to Biglaw firms. But we believe much of the work is being sent to LMS providers, which have become part of the corporate legal departments' growing arsenal for improving efficiency. At Pangea3, we have seen a double-digit spike in demand over this time period, and we hear that our competitors have too. The legal services pie is getting bigger, but law firms' share is decreasing.

Still not convinced? Read this year's report published by Georgetown Law Center for the Study of the Legal Profession and Thomson Reuters Peer Monitor on the state of the legal market. That report squarely addressed how "the market for legal services has changed in fundamental — probably irreversible — ways."[8] The report then defines "the dominant trends impacting the legal market in 2014 and key issues likely to influence it in 2015 and beyond."[9] The report recommends that law firms need to accept, anticipate, and act on the growth in market share of non-traditional competitors.[10]

The trend is becoming clearly observable, but we are often asked *why* this is happening. Why, seemingly out of the blue, are LMS companies are growing so quickly, and why are they able to tackle this work better, faster, and cheaper than the traditional legal players? Part of the

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[6] Sarah Downey, *The Clients' Verdict: Linklaters Wins Best Firm in Show from Annual In-House Survey*, LEGAL BUSINESS (Oct. 7, 2014, 2:00 PM), http://www.legalbusiness.co.uk/index.php/lb-blog-view/3053-linklaters-wins-best-firm-in-show-from-annual-in-house-survey.
[7] Elizabeth Olson, *Corporations Drive Drop in Law Firms' Use of Starting Lawyers, Study Finds*, THE N. Y. TIMES (Oct. 10, 2014, 12:25 PM), http://dealbook.nytimes.com/2014/10/10/corporations-drive-drop-in-law-firms-use-of-starting-lawyers-study-finds/?_r=0.
[8] Georgetown Law Center for the Study of the Legal Profession & Thomson Reuters Peer Monitor, *2015 Report on the State of the Legal Market* (2015), http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-1-7-15.pdf.
[9] *Id.* at 1.
[10] *Id.*

answer depends on circumstance and the forces creating a crucible of efficiency after the Great Recession in 2008. But a more interesting answer comes from the business world, which has always implemented project management, specialization, and technology optimization to improve quality, efficiency, and low costs. LMS companies represent the long overdue application of these practices to the law.

Legal Managed Services: Project Management, Specialization, and Technology

LMS businesses do not include providers of temporary staff augmentation or part-time contractors.

As the name indicates, managed services employ full-time professional staff, business excellence, principles, and process efficiencies, while leveraging a globalized workforce and adopting technology.

Project Management

This is where the traditional legal industry has simply lagged. For the most part, and with some modern exceptions, law schools simply do not teach project management. As a result, most of the powers-that-be in Biglaw firms simply do not know anything about project management and do not see it as a core skill their new attorneys need to grasp. Some firms are seeing the light (employing project management strategies in the practice of law), but many attorneys resist the change, protesting that bespoke, tailored legal advice should not be jammed into a predetermined workflow. It is fair for Biglaw partners to debate the merits of project management in their practice of law, which is often as much art as science. But there's no debate that for process-driven legal tasks (large-scale contract analysis, derivative documentation, or litigation document reviews), proper workflows, and team management are of paramount concern.

In fact, as the volume and complexity of legal support work has increased (due to the exponential increase in electronic communications), managed services providers gained prominence by proudly implementing the business world's best practices and statistical error reduction methodologies.

Methodologies such as Lean Six Sigma ensure statistically validated work and allow errors to be tracked, corrected retroactively, and eliminated going forward. These project management techniques both reduce the number of errors in large-scale legal support projects, while ensuring attorneys complete tasks in a measurably efficient and productive way. Better, faster, cheaper.

Specialization and Domain Expertise

Biglaw firms often do not hold "non-lawyers" in high regard, but LMS companies believe in that bringing legal, process, and business expertise together creates a better final work product.

For example, while Pangea3 employs well more than 1,000 full-time attorneys, we also employ and empower experts in Six Sigma error reduction (some of whom are certified Black Belts), experienced project managers, experts on financial compliance (some of whom are CPAs), and e-discovery technology experts (many who are CEDS-certified).

These differentiators drastically improve the quality of the work product and ultimately spell the difference between a traditional LPO (legal process outsourcing — think labor arbitrage) provider and a true Legal Managed Services provider (think expertise and specialization). An LMS

provider can tackle more sophisticated work, such as organizing and managing the facts of your case using sophisticated case management tools, freeing up Biglaw lawyers to do what they do best: win their cases and provide legal advice.

Technology Enablement

As discussed, a key force driving the need for high-quality Legal Managed Services companies is the staggering volume of "Big Data," and the burden and complexity of the high-volume legal-work it creates every day. Whether it's a document review in high-stakes litigation or a review of corporate policies for the compliance department of a multinational, the stakes are high, and a critical "hot" document could be anywhere. Technology created Big Data, and it has finally begun to provide solutions to the Big Data problem. However, Biglaw firms and corporate legal departments rarely have fluency with the rapidly changing technology solutions such as machine learning and data analytics. These are rare skill in the traditional legal field, but are standard offerings for LMS companies.

Quality LMS providers possess this expertise and employ capital and human resources to ensure they remain on the cutting edge. They are able to wield advanced technology with efficiency and good judgment, and can typically consult traditional lawyers on the right tool for the job at hand.

This again allows attorneys to maintain their primary focus on the traditional practice of law.

Accordingly, firms are able to decrease the total cost of representation, while maintaining the quality clients expect from their trusted outside counsel. With the same tools, but in the right hands, the individual lawyer is able to maximize time spent on important legal issues.

Future Reforms in Legal Business Structures

Speaking of the practice of law, in the United States, legal practice is highly defended and protected from "non-lawyer" interlopers by the ABA and state-bar associations. Non-lawyers cannot share profits with lawyers and law firms cannot sell equity stakes to business professionals. A non-lawyer engaging in or profiting from legal practice will be punished, and hours of scholarly debate focus on when lawyers are or are not providing "legal advice." Originally intended to protect the objectivity of counsel from conflict, in the modern legal practice, this prohibition may have become more harmful to the consumer of legal services than good.

In the U.K. and some other jurisdictions, things are changing *fast*. By defining and dividing out specific areas of practice, the new U.K. laws encourage more competition from "non-lawyers." Critically, the U.K. now allows for a new structure of law firm called alternative business structures ("ABS"). Critically, ABSs allow non-lawyers to sit in professional, management, and even ownership roles. In the past few years several large consulting and professional services companies have obtained ABS status — including KPMG, BT, and PriceWaterhouseCoopers.

In our view, this simply makes too much sense to ignore. Shouldn't estate planning, for example, involve experts who provide tax and accounting insight alongside legal advice? Shouldn't high-volume discovery matters also include e-discovery technology and IT consulting? Why don't technology consultants include IP attorneys and their wisdom in their offering? Wouldn't clients benefit from HR consulting paired with labor and employment legal practices? ABS entities will begin to create these innovative, integrated legal/business offerings and compete

globally for the business of multinational companies. We struggle to see how they do not end up claiming market share in the States and "arguably open the world to legal services providers."[11]

The American Bar Association ("ABA") has investigated this in the past, but even small steps in this direction were halted. Given the pressures, however, and the enormous potential for innovation and profit, incremental steps forward are anticipated by many. In the meantime, LMS providers will play a big role in bridging this gap and allowing U.S. Biglaw to compete. We foresee future partnerships between Biglaw and LMS providers to be a necessary interim step until our laws are liberalized.

Legal Managed Services: Benefits for Law Firms

If LMS companies are eating into Biglaw's market share, it would stand to reason that they are natural-born competitors. After all, it was not long ago when outside counsel collected virtually all fees related to representation — from legal research, to long-distance telephone calls, to document review, to closing arguments at trial — as revenue to the law firm (even with some of those costs as pass-through).

Today, with technology startups, and LMS companies on the scene, law firms are seeing revenue from traditional legal support tasks departing coming off their books. And the Biglaw firms are perceiving this "threat" from LMS providers: according to a recent survey, 68 percent of respondents from large firms believe that non-law firm providers of legal services are either presently taking their business or pose a threat to do so.[12]

We respectfully disagree. If leveraged correctly and incorporated as part of a larger strategic approach, the deployment and integration with LMS companies can result in new business lines, market advantages, and increased job satisfaction resulting from an increase of the actual practice of law.

Project Management is Not What Lawyers Signed Up For

Today's law firm attorneys are asked to do the impossible: handle *increasing* workloads and *increasing* the quality of work, while somehow simultaneously *lowering* the total cost of representation and *improving* overall profitability and margins. These tasks are not easily achieved in any industry, but they are particularly difficult within the constraints of the traditional law firm operating model. This model (the traditional pyramid) includes costly physical overhead and personnel, a culture of following precedent, and a decentralized command structure.

Ultimately, legal managed services present two major advantages. First, managed services can free up law firm associates to spend their time on the most complex, outcome-determinative work, allowing them to achieve better results for their clients. Second, they allow firms to be agile and create value within a new reality. As a result, firms can become more competitive, winning new clients, and increasing profits on work with existing clients.

[11] Laura Snyder *Does the UK Know Something We Don't About Alternative Business Structures?*, ABA J. (Jan. 1, 2015, 5:51 AM) ("ABS structures can arguably open the world to legal services providers").
[12] Altman Weil, *2015 Law Firms in Transition* (2015), http://www.altmanweil.com/dir_docs/resource/1c789ef2-5cff-463a-863a-2248d23882a7_document.pdf.

Lawyers Actually Practicing Law Again

Working strategically with LMS companies can help top firms improve their ability to recruit, train, and retain the world's top legal talent by sending a clear signal to the marketplace that a career at their law firm will not revolve around years of inefficient document review or other high-volume, repetitive (but important) work. Furthermore, attorneys in such firms will more quickly develop their skills in the traditional practice of law, including oral advocacy, witness preparation, and legal writing. Associate morale can improve by reducing the tremendous cost of a revolving door, and increased retention also improves the ROI on training associates on the firm's practice.

A Competitive Edge

Law firms can also deploy managed services to create a competitive advantage. In an RFP or fixed-fee scenario, the firm presenting the lowest overall price tag on representation will often have the winning edge. If deployed correctly, partnering with an alternative services provider can give law firms a competitive advantage in attracting new clients.

Research shows that the vast majority of firms continue to face price competition, despite the recovery in the overall economy. Moreover, many are adjusting their pricing strategy by integrating fixed rates whereby the risk of cost overruns is born exclusively by the firm. Future-focused firms are getting creative, pairing alternative fee arrangements with outsourcing, and advanced technology. And it's working: They are winning business with a lower cost solution, while still maintaining non-discounted rates.

For smaller firms, the support of managed service providers can be a game-changer that can level the playing field when competing with their larger rivals. Today, small- to mid-size firms with lower headcounts are better able to compete for big, bet-the-company matters, because engaging with high-quality LMS providers allow them to scale up with professional staffing without increasing overhead.

Conclusion

Despite all this action, the focus of the mainstream legal media still remains fixated on the AmLaw 200 and their always-exciting profits per partner ("PPP") numbers. This boring narrative misses the most dynamic and disruptive area of the industry, and we hope you continue to follow this story on Above the Law, as we at alt.legal follow the disruptors working hard to make the legal system work better.

Chapter 8 – Epilogue

Stephen J. McGarry[1]
Founder, AILFN, Lex Mundi, WSG, & HG.org
LinkedIn

> At its core, the argument (against advertising) presumes that attorneys must conceal from themselves and from their clients the real-life fact that lawyers earn their livelihood at the bar. We suspect that few attorneys engage in such self-deception.… Bankers and engineers advertise, and yet these professions are not regarded as undignified.
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> - *Bates v. Arizona*, 433 U.S. 350, 369 (1977)

The business of law has radically changed over the past 40 years. This change was underway before *Bates v. Arizona*, in which the Supreme Court authorized advertising. The case transported the business of law out of the shadows and into the open. It meant that lawyers had the constitutional right to treat the practice and profession of law as a business.

The case was brought against John Bates and Van O'Steen, partners in a two attorney legal clinic they started almost right out of law school. While the case involved only a small printed ad in the local newspaper advertising reasonable priced legal service, the ripple effects from the decision ultimately have produced a tsunami going beyond the United States. It affected the entire world's legal profession. Internationalization and now globalization spread the idea around the world that law is indeed a business with advertising, marketing, pictures, websites, logos, directories, rankings, mergers, bankruptcies, alternative structures, consultants, networks, takeovers, and more.

Ethic rules were not ignored, but they simply could not apply when dozens of firms had more than 15 offices outside of London or New York. Advertising their offices in the United States meant indirectly advertising the offices in other countries. Local firms remained handcuffed by the rules and sought out business alternatives to protect their market. The underlying ethical rules governing the practice and the business of law began to erode.

More competition meant that more services were offered and more products were created to allow firms to openly compete. Products and services were now aimed at getting a competitive

[1] **Stephen McGarry,** B.A., M.A., J.D., and LL.M. (Taxation), founded World Services Group (WSG), a multidisciplinary network, in 2002. As president, he grew it to 150 firms that have 21,000 professionals in 600 offices in more than 100 countries. In 1989 McGarry founded Lex Mundi, the world's largest law firm network. As president, he grew it to 160 law firms that today have 21,000 attorneys in 600 offices in 100-plus countries. These two networks represent 2 percent of all the lawyers on earth. In 1995, he founded HG.org, one of the first legal websites. Today, it is among the world's largest sites with more than five million pages and 1,100,000 users each month who download almost two million pages. McGarry is admitted by exam to the bars of Minnesota, Texas, and Louisiana. In 2002, American Lawyer Media (ALM) published McGarry's treatise on Multidisciplinary Practices. McGarry has authored numerous articles on associations and international business transactions.
Jennifer Kain Kilgore is the VP of Editorial for AILFN and an associate attorney with MALIS | LAW. She previously worked as an associate attorney with the Boston-area law firm of Brown & Knight, LLC and concentrated her practice in the areas of estate planning, probate, business planning, and real estate. She is also the principal of Writmore, LLC, providing editorial, research, and writing services. She was the managing editor of the *New England Journal of International & Comparative Law* and was published in Volume 18.1. Ms. Kilgore has worked with the Massachusetts Reporter of Decisions of the Supreme Judicial Court of Massachusetts, the Medical-Legal Partnership | Boston, and the Boston Municipal Court. She served as attorney editor for the popular financial news website *Benzinga.com* and was also the editorial assistant for two award-winning regional magazines, *Berkshire Living* and *Berkshire Business Quarterly*. She is a member of the Massachusetts Bar. Ms. Kilgore graduated from Ohio University (B.S., Journalism, cum laude, 2005) and the New England School of Law (J.D., 2012).

advantage and increasing profit. Almost anything seemed to be okay for the small advantage of obtaining and keeping a client.

However, the business of law was still largely tethered to the earth until the mid-1990s.

The Internet and communications technology propelled the business of law into a new era. The Internet, while applicable to every business, has asserted a profound effect because law is a business based upon information. In the *practice* of law, it is information on clients and opponents.

In the *business* of law, it is information on business practices.

The authors of this compendium have explored each aspect both on the micro- and macro levels of the business of law. Each of the chapters in this book relates back to the changes that have manifested themselves. Consultants have become specialists; in fact, *everyone* has become a specialist.

So where does the business of law go from here? In my opinion, five primary macro trends will push the business of law into uncharted waters.

Law firms' structures will change. Five of the very largest law firms have opted to become networks using Swiss vereins as a way to accelerate their expansion. They have copied the largest accounting networks, whose brands are recognized worldwide. This will push the largest firms to move even farther toward a new business entity model. This will require restructuring, redeployment of resources, training, and technology to manage the attorneys in culturally diverse offices. The expertise to accomplish this will be found both in-house and with outside consultants who can lead the firms into the unknown.

Branded firms will compete with the largest independent regional or national firms. The branded firms will also increasingly compete with local firms in order to effectively and efficiently utilize their resources. This will require new services and products for both the largest and the smallest firms.

At the same time, outside of the United States, the PwC, Deloitte, KPMG, and E&Y legal networks will rapidly redeploy into the legal market by focusing initially on tax, mergers and acquisitions, labor, immigration, and other commercial areas. This will be a cause for concern for even the largest independent firms, given the resources and organizations of the Big 4.

Social media marketing will come into its own as the Internet generation takes leadership positons in law firms and corporate legal departments. This will allow the smallest firms to compete with the largest. Specialty firms will become even more specialized and be able to market their services using social media.

Technology combined with redefining legal services has resulted in the unbundling of services traditionally provided by law firms. Firms and corporate clients will have an opportunity to take advantage of these services. The leaders and influencers will affect the pace and development of these alternatives. Both law firm and corporate counsel leaders will create alliances with the alterative resource providers.

John Bates and Van O'Steen were leaders who challenged the legal profession. Today's leaders in legal media, consulting, networks, law firms, bar and professional associations, legal process outsourcing, and other services and products will continue this tradition by posing the same challenges.

Law is a profession – Law is a business.
The two are inseparable.