New Ops Perspectives Transform Law Business

October 2018

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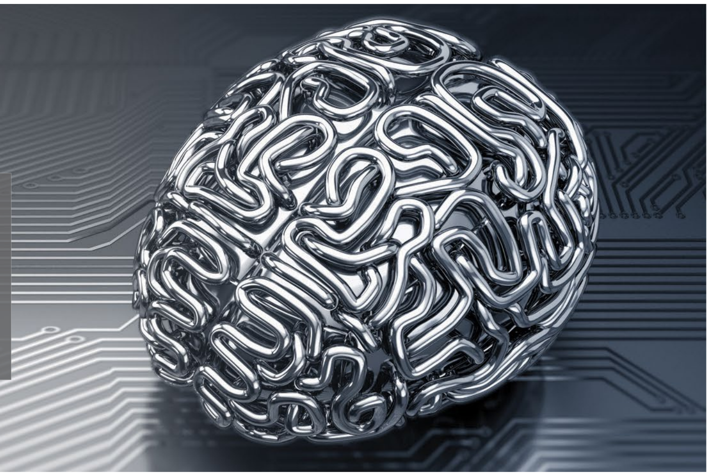
Contents

INSIGHTS

Where Does Technology Fit in the Practice of Law?



The legal industry is entering a period of **profound technological change**, which will transform traditional jobs and organizational structures, and allow for new roles and skills to be introduced into the legal organization.

How will your organization incorporate technology into the practice of law?

MOORE'S LAW

It's only a matter of time before computing power exceeds human brain power.

AI is already being used for document reviews and contract assembly and analysis, which until recently could only be achieved by teams of lawyers or contract attorneys.

THE FUTURE OF LAWYERS

Automation could mean lawyers find career progression delayed whereas experienced specialists see their skills augmented and more valuable.

As computing sophistication increases, it's likely that computers will be able to undertake more of the repetitive legal tasks leaving value-added legal work to the lawyers. Perhaps this will free up time for the pursuit of areas still untapped, such as the legal and ethical implications of AI.

ETHICAL DILEMMAS

Societies will need to deal with new ethical dilemmas.

An example of this is, who is at fault in the event of an autonomous vehicle crash.

Emerging Technologies

Stats Play Bigger Role in Law Firm Hiring

By Michael Greene

“Technology is just starting to bloom in law.”

It may not quite be “Moneyball,” but some corporate legal departments are borrowing a page from the Michael Lewis best-seller in adopting a statistics-based approach to help choose their outside counsel.

“Moneyball,” which was adapted into a film starring Brad Pitt, tracks the Oakland Athletics’ use of nontraditional statistical models to help field a competitive baseball team at lower cost.

Advancements in artificial intelligence, predictive analytics, and data visualization tools could give corporate legal departments a similar opportunity to upset the status quo.

In-house counsel’s subjective views have traditionally steered legal hiring decisions, but attorneys now have resources that incorporate statistical models to aid in employment and retention actions.

“Corporate legal departments are becoming more data-driven when it comes to hiring and evaluating law firms,” Daniel W. Linna Jr., a visiting professor at Northwestern University’s Pritzker School of Law, told Bloomberg Law. Linna’s research focuses on innovation and technology.

“Forward-thinking law firms are making the most of these evaluations,” he said. The firms that understand what a client values and how it is being measured will be “well-positioned to demonstrate that it outperforms competitors.”

The use of technology for data-driven legal hiring decisions is a relatively new development. In the business of law, the adoption of big data technology to measure—and forecast—a law firm’s value is not yet widespread, but some believe it’s only matter of time. And more corporate legal departments may soon start doing so.

“I predict that in the next five years, AI will quickly spread in our industry to meaningfully evaluate firm performance, as providers will offer new solutions,” Silvia Hodges Silverstein, executive director of Buying Legal Council, told Bloomberg Law. The council describes itself as an international trade organization for legal procurement professionals.

“Technology is just starting to bloom in law,” she said. “Many outsider firms are looking with hunger and resources at the opportunities to apply AI and other technologies to speed work process, reduce cost, minimize hours to do a task. It is both opportunity and threat to law firms. The evaluation of firms is in a state of rapid evolution.”

The use of big data to evaluate firm performance could be spurred by the growing number of legal departments that are dissatisfied with the value their outside counsel are providing.

Between 22 and 30 percent of legal decision-makers said they are cutting, or about to cut, their law firm rosters, according to a BTI Consulting Group survey discussed in a Sept. 19 blog post.

Similarly, the Association of Corporate Counsel's 2018 Chief Legal Officer survey found 33 percent of CLOs had terminated an outside counsel for failing to meet expectations in 2017, and 10 percent of those brought the work permanently in-house. Forty-three percent of CLOs said they are considering dropping a firm or legal services provider in 2018.

Technology is giving legal departments more insight about law firms and their attorneys. Currently available tools provide information about a firm's areas of expertise, its success rate in specific types of litigation, and even patterns in how it files legal motions.

Relationships used to dominate legal hiring decisions, Toby Unwin, chief innovation officer at Premonition, told Bloomberg Law. But data analytics are making it hard to ignore statistical indicators of a law firm's performance, he said.

Data analytics can augment a general counsel's decision-making, and companies often find that in addition to getting better results, their billing goes down as well.

Some companies comb through their own data to see which firms provide the best value. Corporate legal departments are realizing their electronic billing and matter management systems contain "a gold mine of data," Christopher Ende, a Boston-based chief value officer at Goulston & Storrs, told Bloomberg Law.

The question is how a legal department puts its data to good use, he said. One way is to use applications that allow in-house attorneys to visualize billing data in meaningful ways.

With some applications, for example, a legal department can assess the percentage of hours a law firm bills to partners versus associates.

"Some organizations have started to develop their own benchmarking and evaluation tools—a mix of data from legal department management and billing systems as well as post-matter satisfaction surveys," Silverstein said.

"Others will use the analytics tools that are offered with billing software. Today you can know and compare firms on many dimensions. You can extract reports on comparative rates, and get early measures of efficiency and effectiveness."

Michael Greene is a senior legal editor at Bloomberg Law.

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Managing Legal Operations

Potential Pitfalls and Key Solutions

By Mary Ellen Egan

Running the business side of a law firm or a company's operations can be a complicated, fast-paced endeavor. Legal ops teams are tasked with managing operational strategy, financial reporting, alternative fee arrangements, knowledge and legal technology, training, and process implementation and improvement. And as the business of law evolves, so too must the processes and technologies used to manage it.

Whether a legal services department is in-house or within a law firm, certain elements are necessary to set up and maintain a successful operation.

The first step is choosing the right person to lead a legal ops team. "You need to choose someone who can think strategically, is comfortable with technology, is comfortable with change management, understands numbers, and can collaborate internally and externally," said Connie Brenton, chief of staff of legal operations at NetApp.

Choosing the right person to lead legal ops is critical.

The leader of a legal services department needs a mix of soft skills like relationship management, and hard skills like understanding finance and budgets, and that can be a tough bill to fit. To make sure a candidate checks all of the boxes, firms and companies should spend more time with the person than the usual interview process requires before extending an offer, said Melissa Prince, chief client value officer, Ballard Spahr. "You need to get to know them first, and then see if they're a good fit."

Brenton said, "When they don't get it right the first time, firms can go through two or three candidates in a short time." Most legal operations leaders have an MBA or a JD, she said, and have HR, technology, and project management experience.

There are other attributes needed to be a successful legal operations head, 65 percent of whom are women. "You have to be good at multitasking, dealing with egos, and be extremely collaborative," Brenton said.

Another key element to developing and maintaining a well-functioning legal ops department is securing executive and law leadership buy-in. "If you don't have executive support, it will fail," said Jeff Franke, chief of staff and assistant general counsel at Yahoo. At companies, the general counsel needs to be on board and feel comfortable with the legal ops leader, Franke said.

"The chief of staff becomes a right-hand person to the GC, and they have to be able to disclose anything to them and know that it will only be used for the benefit of the organization."

Buy-in is equally critical at law firms, Prince said. "You have to be in a position to build relationships with the attorneys based on trust. If they don't trust you, you'll never be able to talk to their clients." Productive client interaction is critical for legal ops teams as they work together on matters such as fee arrangements and billing.

To facilitate trust and inclusiveness, Prince recommends firms create or expand existing boards to add legal ops, key administrative personnel, and managing partners. The board should meet monthly to discuss strategic decisions, new developments, and other firm matters. Prince said that her firm recently expanded their board and she is now a member. "All of the office chairs and managing partners are there, and I can talk about the successes [my team] has had," she said. "I have a voice now."

Strong relationships between clients and the ops team is another key component.

Strong relationships between clients and the ops team is another key component of a successful legal services department. "The biggest concern right now is the disconnect that happens between law firms and clients," Prince said. "Clients have a much bigger voice, but we rarely talk to each other."

Part of the issue, she said, is that in-house counsel are challenged in terms of internal resources, and don't have the time for prolonged, in-depth discussions. "Firms have been focused on legal operations for a much longer time, so we could really help them."

Greg Lambert, chief knowledge services officer at Jackson Walker, said he'd advise anyone building out a legal services operation to consult with the attorneys before adding a process or a technology. "There are times when we think we have good ideas, and if we build it they will come. And that's not always the case," he said.

While legal services teams should be forward-thinking, Lambert said, they need to perform due diligence and ensure they are serving an actual need, rather than trying to anticipate a problem that may never appear. "You need to make sure that you're answering the lawyers' problems," he said. "The biggest mistake people make is by not taking the time to ask the right questions of the right people."

E-billing is the biggest pain point for firms.

Before adding technology solutions, a legal services departments should have processes in place so those additions can be effective. "Getting lawyer buy-in isn't as hard as it used to be," Lambert said. "I think the ones paying attention understand there's more demand for implementing technology."

Though training lawyers on a new system takes time, Lambert said legal ops professionals should think less about the amount of time a lawyer will spend on the technology versus how it applies to their work processes.

"My job is to educate the attorneys on the potential of these types of products, and then let them think about how to apply it to their work processes," he said. Once the lawyers have assessed the tools, the legal ops leader can decide which products are best based on their feedback.

Lambert and Prince said their biggest pain point—and the one most ripe for improvement—is e-billing technology and processes. "Law firms don't have great billing software, and our system doesn't talk to our client's systems," Prince said. Dealing with the disparities between the systems eats up time and creates headaches for staff on both sides.

Prince suggested law firms talk to their outside counsel before implementing an e-billing system. “A lot of problems could be averted,” she said.

Both in-house and firm professionals say legal service professionals need to be adept at selecting and managing legal outsourcing companies. “You have to be able to match the right function with the right service,” Brenton said. “The support model is changing.”

As more clients look to engage outside processing companies, Prince said law firms should actively partner with clients to help them identify and engage with the appropriate vendors. “A lot of clients are focused on reducing costs,” she said, “and it looks good for firms to be helping their clients find the right solutions.”

Mary Ellen Egan is a legal writer and editor, and co-producer of the daily Big Law Business newsletter.

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Legal Process Outsourcing

Globalizing the Legal Profession

By Ellen Sheng

Recently, Ocwen Financial Corporation, a mortgage servicing company, had a chance to make millions in up-front fees by transferring existing mortgage servicing rights to another company. There was just one big obstacle. Ocwen would need to review 15,000 documents and analyze 300 data points in more than 2,000 mortgage servicing deals in two months.

There aren't many firms with that kind of manpower, but there are ways to handle such a challenge. Ocwen turned to a legal process outsourcing firm based in India to do the job, and looped in two outside law firms, creating an innovative due diligence delivery model that leveraged new technology. In all, some 200 professionals worked on the project, which was completed on time and for a much lower cost than if a more traditional approach had been used.

Legal process outsourcing has seen huge growth.

Ocwen is one of the growing number of companies and law firms are turning to alternative legal service providers. In the past 15 years, legal process outsourcing has seen huge growth and, according to Market Research Hub, became a $4.36 billion market in 2017. That's expected to reach $33.2 billion by 2025.

The growth of LPOs in the past decade or so has dovetailed with an increase in corporate legal departments bringing work in-house rather than engaging large law firms. Though these have been separate trends, the core driver has been the same.

"Many law departments are under pressure to provide legal services better, faster, cheaper," said Catherine Moynihan, associate vice president of legal management services at the Association of Corporate Counsel.

Legal departments at companies have been under pressure to transfer in-house to reduce costs, which has created a cycle. As these departments become more sophisticated, the largest are outsourcing to LPOs, taking advantage of lower labor cost to do work seen as lower in risk or value to the company's strategy. LPOs are based in less expensive markets such as India, Poland or West Virginia. Globalization, whose primary impact has been in industries like manufacturing, has now come to the legal profession.

"LPOs are doing work that law firms had the lion's share of."

But for smaller companies that often lack the resources to manage the outsourcing process, the impact of LPOs has been different.

"Legal service providers are doing work that law firms had the lion's share of," Moynihan said. "Firms that are doing the most complex litigation are not suffering so much, but second-tier law firms are seeing the bottom eaten out, if you will."

Outsourcing lets attorneys focus on more sophisticated legal work.

According to the latest ACC Chief Legal Officers survey, the majority of respondents, or 58 percent, said they expect the amount outsourced to a legal process outsourcing company or legal service provider to stay the same. Twenty-one percent said they expect to outsource more work while 6 percent said they expect to outsource less work. The larger the department, the more likely it is to outsource.

Among legal departments with 50 or more employees, 37 percent said they expect to increase the amount of work sent to LPOs or LSPs, while only 12 percent of smaller departments said the same. The survey found the most common areas for LPO outsourcing are in e-discovery, patent services, records management, and document review.

So what does this shift mean for the future of law firms and lawyers? Chas Rampenthal, general counsel at LegalZoom, an online legal services provider, said the growth of legal process outsourcing creates additional career paths for lawyers.

"It's a new and different business model that allows people who have spent a lot of time and money on their education to use it in a way that maybe they weren't going to be able to," Rampenthal said. "The people just getting out of business school, not all of them are going to be the CEO of a Fortune 500 company."

For attorneys at large firms, outsourcing lets them focus on more sophisticated legal work. Law firms have traditionally given the more repetitive—some may say tedious—work to associates. But with outsourcing and automation through artificial intelligence, that work is increasingly going to LPOs.

That's not a bad thing, Rampenthal said, as time in the trenches doing more tedious work may hone skills needed to become a skilled lawyer, but has almost nothing to do with becoming a partner, which is more about motivating and attracting associates and clients.

Big firms, LPOs, and general counsel are all "here to stay," Rampenthal said. "The big question is, how are we all going to get along?"

Ellen Sheng is a writer and editor with a focus on business finance, fintech, and U.S.-Asia investments.

Law Practice Watch

Firms Prioritize 'Micro Niche' Specialties in Tight Market

By Lisa Singh

Earlier this year, a mid-size, full-service law firm headquartered in Roseland, N.J., established a practice group focused on emerging technologies. The move—the first of its kind in the practice's 88-year history—speaks to a gradual industry shift.

In this changing environment, many mid-size law firms are maneuvering for ways to stay relevant. While the industry is seeing its strongest revenue performance since the recession—up 5.5 percent in the first half of 2018—a closer look at the data, from Citi Private Bank's law firm group, reveals a tilt.

Mid-size law firms are maneuvering for ways to stay relevant.

Much of the growth is concentrated in the AmLaw 50 at the top and smaller, niche-focused boutique firms at the bottom. This past year, both saw the same 1.7 percent growth in billable hours, compared to the overall industry growth of 0.7 percent, suggesting firms either benefit from name recognition or, in the case of niche practices, a focus on highly specialized areas.

"There are some aspects of this market that do favor larger firms—increased consolidation, for instance—but our view is that [growth] is more a commentary on the importance of brand in this market versus growth for growth's sake," said David Altuna, one of the Citi study authors, citing demand across sectors such as technology, life sciences, energy, real estate, and pharmaceuticals.

"Many smaller, niche firms are built around strong brands in certain practices, industries, or possibly regions. We believe this focus has helped them achieve a certain level of success."

Firms in the middle are slowly taking note.

In the case of the New Jersey firm, Mandelbaum Salsburg, its technology group has already catalogued a diverse list of clients—among them, a company that uses cannabis to treat diabetes, and another that's developed software to increase automobile sales and after-market purchases. The firm assigns a client advocate to guide accompanying legal needs spanning the entire business life cycle, from IP protection to regulatory compliance.

Factors whittling away at market share are well-documented.

"Year after year, if you assess supply and demand, paying for legal services continues to increasingly lean toward a buyer's market," said Peter Levy, an attorney who chairs the firm's 11-member technology group. "It is not that lawyers will be providing 'new services'—rather, lawyers will be providing more specialized services in a team approach."

By now, factors whittling away at market share are well-documented—namely, since the 2008 financial collapse, the rise in technology-based alternative legal service providers, the continued shift of legal work in-house, and, for firms with an international presence, growing competition from the Big Four accounting firms.

Technology is driving much of this need for specialization.

The phrase "micro niches" has commensurately migrated into the legal field from marketing, said Michael Scharf, dean of Case Western Reserve University's school of law. The term encompasses one aim.

"It's so focused, valuable, and responsive, the firm effectively de-commoditizes itself," said Kevin Burke, chairman of the national law firm Hinshaw & Culbertson.

Technology is driving much of this need for specialization, particularly in addressing privacy issues that accompany advances in areas like machine learning, artificial intelligence, and robotics, Burke said. "Just as cybersecurity began as a niche, so will data ethics, usage, and breach, as the data revolution and analysis stores massive amounts of information."

Meanwhile, finding a specialty area requires a disciplined strategy, said Kent Zimmermann, a law firm management consultant based in Chicago.

"For most firms, the way to develop preeminence in a given area is usually not to do a frontal assault on the highest-performing firms such as Kirkland & Ellis and others," Zimmermann said. "Instead, most firms would be wise to double down on their existing areas of strength in less rate-challenged areas of focus and then use those strengths to bridge into adjacent practices—or industries or extend their existing strengths into new geographies—to build additional preeminence in them."

Yet focusing on a niche doesn't guarantee revenue.

"I think there will be premium niches in virtually every practice area," said Eric Goldman, a professor at Santa Clara University School of Law who co-directs the school's High Tech Law Institute. "The key question is, how much inventory of work is available for those niches? Is it enough to support a full-time practice?"

Firms may benefit from thinking regionally. "You need to find a unique practice area that does not exist elsewhere," said James Goodnow, president and managing partner of Fennemore Craig, a 300-plus person law firm headquartered in Phoenix that's developed niches specific to local environmental issues, such as water, mining, endangered species, and public lands regulation.

The firm also runs a venture accelerator program that helps secure funding and grow emerging businesses in areas like blockchain and cryptocurrency. Much of that work occurs out of the firm's office in Reno, home to many Silicon Valley transplants.

Subspecialties may guard against the next economic downturn. At least that's what firms entering niche markets are betting on, particularly those at risk of being squeezed in the middle.

"The mistake a lot of firms are making is they are conducting business as usual," Goodnow said. "When a market declines, you're going to see a dramatic downtick in general activity for general corporate work and litigation. It may be the niches that will sustain a firm through any downturn we may see."

Lisa Singh is a writer specializing in business and technology matters.

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Spending Trends

Legal Industry Still Tentative About AFAs

By Tam Harbert

Corporate law departments are spending more internally.

"Gradual is still the watchword."

Even as general counsels seek more value for their legal spending, there are still relatively few well-designed alternative fee arrangements.

Corporate law departments are spending more internally—on both staffing and technology—as well as using more third-party (non-law firm) legal service providers. A 2017 HBR Law Department Survey found a 4 percent increase in corporate law departments' total legal spend, while spending for outside counsel has remained flat.

Law firms are feeling the impact. In Altman Weil's 2018 Law Firms in Transition survey, almost 70 percent of respondents reported losing business to corporate departments that brought the work in-house, with another 25 percent considering it a potential threat. Except for losing business to another law firm, it was the major reason firms lost business. Some 25 percent faced lower revenue because clients adopted more technology, with another 54 percent considering that a threat.

Some large corporations have made headlines with their push for alternative fees. Steven Harmon, deputy general counsel at Cisco, has led the company away from the billable hour. Last year, Microsoft said it was planning to shift 90 percent of its legal work to AFAs within two years. And Barclays aims to use what it calls "effective fee arrangements" for most of its outside legal work and hopes to reduce the amount of billable hour work to 20 percent by 2021.

Yet these are the exceptions. "Gradual is still the watchword" when it comes to AFAs, said Toby Brown, chief practice management officer at Perkins Coie, which does work for Microsoft based on AFAs. He estimates the amount of work being done through AFAs at less than 20 percent throughout the industry.

That's in part because clients and firms are still figuring them out, said Susan Hackett, chief executive and founder of Legal Executive Leadership, a practice management consultancy that specializes in helping corporate law departments. Before that, Hackett was general counsel for 23 years at the Association for Corporate Counsel.

The two types of AFAs Hackett sees most frequently are flat-fee and fixed-fee. A flat fee is used when a firm handles a particular matter for a specified amount, say $50,000. The firm will come out further ahead if it resolves the matter for $35,000, or lose money if it ends up being more complicated and costing the firm $150,000. A fixed fee "has more to do with pricing of stages of work, or certain tranches of projects," she said. A firm might handle all of a company's employment-related matters for an agreed amount.

Brown calls Perkins Coie's work for Microsoft a "portfolio fixed annual fee," covering a specified category of work for a particular Microsoft business unit for an annual charge. Working multiple matters of the same type spreads the risk, Brown said. "The idea is that even if the scope of a particular matter expands or contracts, it should average out, so we'll still have a reasonable bottom line and also save the client money."

The arrangement with Microsoft "has actually changed the way we engage to the benefit of both Microsoft and Perkins Coie," Brown said. The firm has developed a workflow tool that helps it focus on what Microsoft wants in a particular matter by leading the client and the firm through a series of questions. That helps ensure the firm is bringing value and lets it better understand what Microsoft wants. "Every company has its own culture and way of doing things," he said. "We're now a part of that."

Even when law firms use technology to help them be more efficient, most are far from being able to "productize" their services, Hackett said, because leadership remains stuck in a billable-hour mindset. Most don't appreciate the difference between cost, which depends on internal efficiency, and price, which ideally reflects the value to the client. "If I give a presentation and ask the audience, 'what's the cost of your work?' they'll tell me $550 an hour. But that's not the cost, that's the price."

General counsels also remain stuck in that mindset. They still approach law firms asking for discounts on their billable hour rate rather than working out how things might be done more efficiently, she said.

Brown agrees. While some clients are embracing AFAs, others are not comfortable with them. "They understand hours and rates. They know how to evaluate those types of bills," he said. "I've had clients tell me they don't trust a fixed fee because they think they might end up paying too much."

That's why AFAs work best when the parties already have a longstanding relationship and understand each other. "It's about trust," Brown said. "If you have a strong relationship with a high level of trust, the chance for success on an AFA for both sides goes up dramatically."

Tam Harbert is an independent journalist specializing in technology, business, and public policy.

Most firms are far from being able to "productize" their services.

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 0218–JO25280