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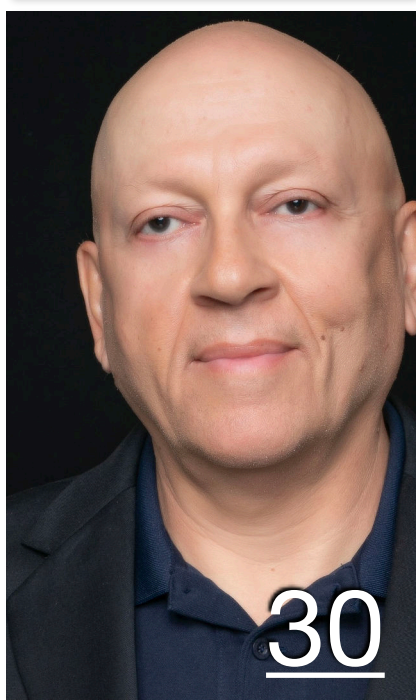
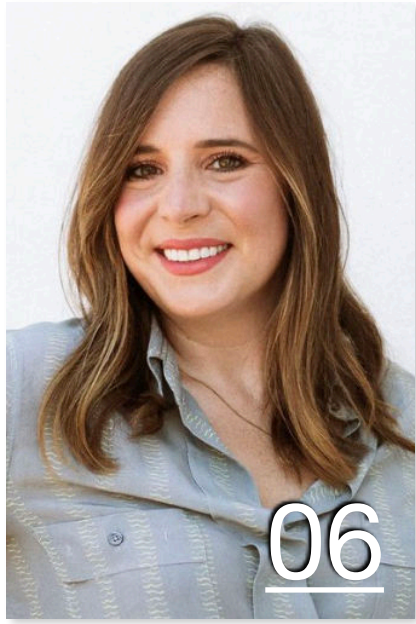


The Heart of Legal Innovation: Why Culture and Leadership Matter Most

By Charlotte Smith

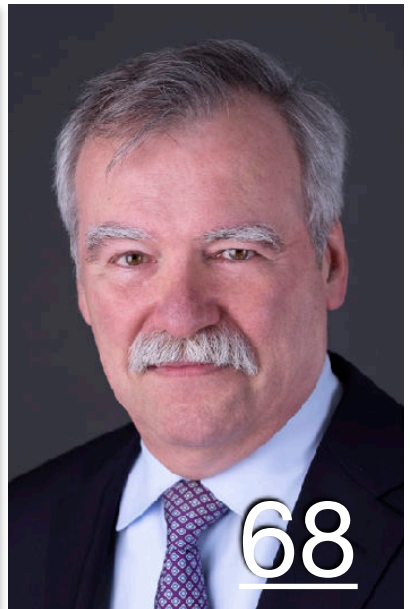
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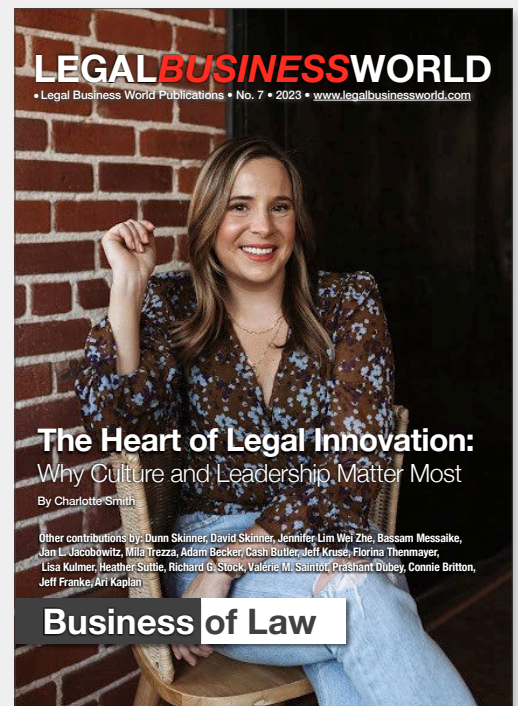
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THE HEART OF LEGAL INNOVATION: WHY CULTURE AND LEADERSHIP MATTER MOST

By Charlotte Smith, Founder Legal7 Legal



We know the legal industry is experiencing rapid transformation. Visionaries like Richard Susskind have long hinted at the future we're now stepping into. As teams harness technology and refine their operations, the face of law is changing dramatically. This transformation isn't without its challenges. Traditional norms, from in-house teams to private practices, are being tested.

Implementations can bring team dynamics to the surface, ranging from frustration to burnout and fear. Without proper preventative measures, these dynamics can lead to failed adoption of tools, conflict over scoping of roles, and a breakdown in group communications.



As we weave technology and AI into our workflows, there's no doubt we are reshaping the very foundation of the legal world. The future promises a horizon where law firms and in-house teams operate with data-driven precision, and streamlined efficiency. It is the middle of conference season, the hype topic, AI. Amidst the bustling conferences and tech showcases, where focus is on technology and innovation the Heart of Legal Innovation lies not in new tools or processes, but in the fabric of organizational culture and effective leadership. A thriving culture, growth mindsets and inspiring leadership are foundational in steering this transformation.

From Legal to a Transformation Catalyst

Looking back, I didn't set out to work at the intersection of law, people and technology. I don't neatly fit into the legal tech/ legal ops mold, I am deeply passionate about bringing fresh perspectives to the legal sector. My legal journey began at a boutique firm in the UK. Along the way, my interest in human behavior led to a fascination with how dynamics play out in the legal landscape.

Some patterns emerged:

- Bright ideas often get overshadowed.
- Persistent challenges arose in team management.

- The traditional billable hours model stifling efficiency.
- There was the mindset that the more you billed the more “value” you had.
- And a concerning indifference to well-being and mental health.

Many seasoned legal professionals seemed to trade personal satisfaction for relentless work. More broadly, I saw legal teams hesitant to embrace new approaches, to innovate.

In 2014 Silicon Valley beckoned, I following where my skills and passions intersected. I expanded my skills in Executive Coaching, immersed myself in leadership and performance coaching, and got my ICF and IPEC certifications.

In my leap away from legal practice, I followed what I love: energy management, human performance, and legal tech innovation. I decided to dip my toes into entrepreneurship, started a business to change legal culture from the inside out. Drawing from my background as an employment lawyer and working with HR teams on the subject of optimizing performance, I channel my energies to support legal professionals, in finding balance, fulfillment, and cultivating the right mindsets for an innovative approach.

If you're familiar with the CLOC Core 12, I fall within Organizational Optimization and Training & Development. As we look to the future of law, I know the standout Firms/ Teams/ Organizations will be those that embody resilience, agility, and creativity.



Change Management: The Heartbeat of Innovation

Here's a reality check - We often place technology on a pedestal.

Sure, technology takes us to the future. Tech products can be portrayed as magic bullets, encouraging organizations to purchase, yet, can result in a "band aid" approach.

Despite possessing state-of-the-art tools, an alarming 75%* lawyers have observed failures in technology adoption. In a 2022 Legal Tech Survey conducted by ContractWorks, 90% of participants (lawyers and legal staff) expressed frustration with implementation of legal technology. Long implementations and complicated interfaces have a large impact. The survey uncovered that technology failures can have a severe impact on morale - causing division, impeding self-confidence, and encouraging turnover.

Legal Operations professionals noticed a trend emerge during legal tech implementations. While the success of operations is largely dependent on tools, strategy, and leadership, it has become clear that change management failures are caused in large part by team dynamic dysfunction; including mindsets and energy dynamics that existed before implementation. And when financial quarters tighten, and budgeting becomes stringent, investing organizational culture — despite being the bedrock of success — can simply be seen as discretionary spending. For technology to truly embed itself in Legal functions, we need to be energized, forward-thinking, and hungry for change.

Mindsets

Tech failures dent morale, leading to division, dwindling confidence, and elevated attrition rates.

The overarching question then is:

- How do we foster the attitudes and aptitudes, the right mindsets in our teams?
- How do we instill resilience, especially when balancing the tightrope of change against the weight of demanding work schedules?

It's not a simple feat. Authentic change, especially in the face of resistance, can feel like a herculean task. It's rigorous, time-consuming, and hardly instantaneous.

In an ever-shifting professional environment, fostering a robust culture is the ultimate competitive advantage an organization can secure. Unfortunately, this can be overlooked by leaders.

The Invisible Energy Centre and Heart Culture

A robust culture is the #1 competitive advantage an organization can have.

What is Culture?

Organizational Culture is the collective manifestation of values, beliefs, customs, practices, behaviors, and underlying assumptions shared by members of an organization.

- It shapes how individuals perceive, think, and react to their environment.
- Successful change initiatives often hinge on the alignment of anabolic team energy's or thriving culture, working collaboratively, towards the desired change.
- When team energy is in alignment with team strategy, it acts as a catalyst, accelerating change, and facilitating an environment of continuous growth, and forward movement.
- When there's a disconnect, team culture serves as a barrier, with team members resisting even the most thought-out change strategies.

In these situations, it's easy to understand how Legal can be perceived as the department of NO.

The Heart of Innovation: Team Culture

Anabolic Culture

Anabolic culture and team energy promotes: Communication, open dialogue, requires and values diverse feedback, it responsibly encourages risk-taking, and readily adapts.

Notable Innovative US & UK legal service innovation - From boutique firms to international:

- Boutique: Zent Law, Novus Law, Melius Law
- International: Fuse/ A&O, Konexo/ Ever-sheds, Nextlaw Labs/ Dentons, Reinvent/ Baker McKenzie.

Catabolic Culture

Conversely, where culture is catabolic, team members may be fearful of committing errors, there's a blame culture, team members are burning out, these dynamics inadvertently suppress innovative endeavors. In these firms, billable hours remain the dominant metric, technology adoption is viewed with skepticism, and a risk-averse mentality stifles experimentation. Such a culture can often hinder the integration of tech solutions, leaving them lagging behind more agile competitors.

Change Management Breakdowns

Mindset/ Statement: *"I don't understand why I have to do this."*

- **Implication:** Indicates a lack of communication or understanding of the bigger picture.
- **Example:** Attorneys suddenly tasked with transitioning to a new software may resist the change if they don't grasp its long-term benefits, like improved organization or collaboration.

Mindset/ Statement: *"I don't have time."*

- **Implication:** Suggests a culture of over-work or inadequate time management, stifling adoption of beneficial practices.

- **Example:** Overwhelmed legal professionals might avoid learning a new, efficient knowledge management system, missing its long-term benefits due to their perceived immediate time constraints.

Mindset/ Statement: *"This is the way it has always been done."*

- **Implication:** Represents resistance to change and can hinder modernization.
- **Example:** Long-standing law firms may resist digitizing their extensive paper documentation, becoming slower and less competitive in a progressively digital landscape.

Mindset/ Statement: *"I'll just do it myself; it's faster."*

- **Implication:** Indicates potential trust issues or ineffective delegation.
- **Example:** A senior attorney might handle tasks typically designated to juniors, believing it's quicker. Over time, this deprives juniors of growth opportunities and adds unnecessary burdens to the senior staff, affecting the team's overall progression and efficiency.

Leadership: The Guiding Force

Guiding the culture, at the heart you find its leaders. The best legal leaders see the bigger picture. They foster a team culture of trust and accountability. With the right leadership, we can create a better work environment for all. Legal team wants to be strategic and responsive, rather than reactive. It's all too common to hear legal professionals describe their experience as "drinking from a firehose." Both in-house teams and law firms aspire to be dependable centers of information and counsel

for expanding businesses. Legal shouldn't be seen as an obstacle but as an enabler.

Innovation is the melding of the right Mindsets, Culture & Leadership.

How can we develop our legal leaders.

Emotional Intelligence (EI)

Legal professionals are trained to think analytically and critically, but emotional intelligence – the ability to perceive, use, understand, and manage emotions – is equally critical in leadership roles.

Offer training and workshops focused on enhancing emotional intelligence.

Foster a Growth Mindset

Organizational psychologists such as Carol Dweck emphasize the importance of a growth mindset – the belief that abilities and intelligence can be developed through dedication and hard work.

Celebrate wins, have a no blame culture, mindsets of continuous learning and improvement.

- Prioritize Effective Communication
- Promote Change Resilience
- Vision and Purpose

The Pillars of Progress:

Culture, Leadership, and Mindset
Continuous learning.

Scalable systems, and talking work off, so that people have headspace. Harnessing this energy, fostering a culture of growth, and nurturing effective leadership are crucial.

With a growth mindset, legal teams can be forward-thinking, adaptable, and more open to both technological and process-oriented changes. I'm a staunch believer in the transformative power of coaching. Through its tailored guidance, coaching has the ability to reshape viewpoints, streamline problem-solving, and offer effective troubleshooting strategies. It can be done at an individual and group level, which is why it is such a powerful tool. Remember the need for patience and persistence, innovation isn't instantaneous, change management is a process.

Leaders, and more recently teams work with coaches to be more strategic, see their blindspots, work through any heavy energy support legal leaders to optimize their human potential. I believe in the power of coaching, and how coaching can transform your perspective, help you to problem solve and troubleshoot.

Innovation is not an overnight endeavor. It demands time, patience, and consistent effort. Firms must allow their teams the grace to experiment, learn, and iterate. Rushing innovation or imposing unrealistic expectations can lead to subpar results and demotivation.

At the heart of legal innovation lie three core components: culture, leadership, and mindset. As the legal sector ventures into uncharted territories, investing in these aspects is as pivotal, if not more, as embracing new technologies. Firms and departments should adopt a holistic approach to innovation, ensuring a prosperous and enlightened future for law.

About the Author

Charlotte Smith embarked on her legal career at Baker McKenzie in Jakarta and the BBC in London, eventually specializing in the Travel and Aviation sector at a top-tier boutique firm. Charlotte developed an innovative employment law subscription product. With HR advice lines and training, this product reshaped approaches to HR legalities, granting Charlotte notable recognition in the TTG 30 Under 30.

2014 marked a pivotal shift in Charlotte's journey as she transitioned from the UK to California. Amidst the bustling innovation of Silicon Valley, she expanded her skill set, training as an Executive Coach. This fusion of legal acumen and coaching expertise placed Charlotte at a unique intersection in the industry.

In the current era, where AI is driving unprecedented transformations in the legal landscape,

Charlotte spearheads Level7 Legal with a clear vision. Level7 Legal isn't just about equipping lawyers with tools for the future; it's about addressing the profound cultural shifts and human performance aspects in legal settings. As AI and other technologies challenge traditional legal norms, Charlotte, through Level7, assists legal professionals and legal teams in navigating these waters, focusing on the often overlooked human elements.

She is dedicated to helping teams transform, ensuring they remain agile, cohesive, and human-centered amidst rapid technological evolution.

Outside of her transformative work, Charlotte loves painting, recharges through yoga, and treasures the moments spent with young children.



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8 WAYS TO STOP LOSING TIME & MONEY IN YOUR LAW PRACTICE: AN INTRODUCTION TO LEAN IN THE PRACTICE OF LAW

First article (Introduction) in a new series by Karen Dunn Skinner (r) and David Skinner (l), co-founders of Gimbal Consulting





Do routine tasks take too long or seem too complicated in your practice?

Do you need to accomplish more work in a day, without spending as long at the office?

Are you convinced there must be a better way to run a law practice than “the way we’ve always done it”?

If you find yourself asking how you can produce the same result for your clients in fewer steps, in less time, or at a lower cost, you’re actually thinking about process improvement. Most importantly, you’re thinking about efficiency.

In this and the next three articles in our series, ***8 Ways to Stop Losing Time & Money in Your Law Practice***, you are going to learn how to use one of the most important tools for increasing the efficiency of your law practice: The Eight Wastes.

What’s efficiency?

Efficiency is having:

- the right people
- doing the right work
- at the right time and the right cost
- using the right tools and technologies.

We use a combination of strategies to help lawyers increase their efficiency but the

foundation of our methodology is Lean. Lean is an approach to process excellence based on the Toyota Production System, Toyota's extraordinarily successful approach to innovation and continuous improvement. A researcher working for James Womack coined the term "Lean" in the late 1980s. The primary book on it, [Lean Thinking: Banish Waste and Create Wealth in Your Corporation](#), came out in 1996.

According to Womack and Jones, Lean sets five business goals:

1. Determine what adds value from the client's perspective
2. Identify all the steps you take to deliver that value (the value stream)
3. Create flow across the value-adding steps
4. Deliver to clients just in time, on their timetable (pull)
5. Continuously improve by eliminating waste in the process

Lean's focus on increasing the speed and quality of your service (adding value), while reducing or eliminating the steps that waste time and effort (reducing waste), makes it a powerful methodology for improving efficiency in legal service delivery. We've spent more than a decade adapting Lean concepts to the practice of law. We speak on it regularly and write about it often in the [Tips of the Week](#) on our Lean Law Firm blog and our many other publications. If some parts of this article sound familiar to you, you've probably seen our writing before!

In the legal context, the five goals of Lean can be applied to make legal work more efficient and effective, from both the client's and the

firm's perspective. The overriding objective is to add value and eliminate waste.

What's Value?

In Lean, clients determine value. You must look at your work from your client's perspective.

Your work is only valuable if it meets three criteria:

1. It moves the matter forward
2. Your client wants it and is willing to pay for it, and
3. You do it right the first time.

Any task, activity, or service that fails to meet **all three** of these criteria is waste. It does not add value to your clients and should be minimized, if not entirely eliminated.

The first criterion is relatively easy to satisfy. Work on a legal task almost always moves the matter forward. If it doesn't, you shouldn't be doing it!

The second criterion requires a little introspection. Do your clients actually want all the work you're doing on a file? If they knew what you were doing, would they be happy to pay you for it? Be honest. Do they need the answers to every possible contingency, or only the most likely ones?

Do they want to pay for 37 rounds of drafting on a contract (true story)? Do they want to pay for your associates to start every motion from scratch on a legal pad, rather than from a good template or precedent (another true story)?

As for the third criterion, lawyers are perfectionists. It's almost by exception that our work is done right the very first time. We edit mercilessly. Some of this undoubtedly adds value: we want to make sure our clients are completely protected and our arguments succeed in court. However, a huge amount is waste. Even the way we train students and juniors can be wasteful. We know we're going to revise their work at least once. Training them may add value to the firm eventually, but should we be asking clients to pay for it?

To add value, your work has to meet all three criteria. Anything that fails **EVEN ONE** of them is a waste, but don't despair. Every waste that you identify is an opportunity for improvement.

What's Waste?

Everything that doesn't add value is waste. That seems straightforward, but for many lawyers, waste is surprisingly hard to see. Why? Because we are so used to doing things in our own particular way, it can be hard to see the inefficiencies—the waste—in our own work. It's just "our normal."

One of the most useful tools in the Lean toolkit is **DOWNTIME**, an easy-to-use mnemonic for identifying the waste in work.

Each letter stands for a different category of waste:

1. Defects
2. Over-production
3. Waiting
4. Non-utilized talent
5. Transportation
6. Inventory

7. Motion

8. Extra Processing

We use **DOWNTIME** in every process improvement project we do. You can use it yourself to identify waste in everything you do, all of the time. It's easy. You don't need a software platform or any special training. All you need is a critical eye. As we tell our clients, [once you've learned to spot waste](#), you will never look at your own work the same way again.

In our next article, we're going to do a deep dive into the first four wastes (**DOWN**). In our third article, we'll look at the last four (**TIME**). Then, in the final article in this series, we'll provide you with step-by-step instructions for leading a waste-finding exercise in your practice, and additional case studies to inspire you to improve your efficiency by getting the right people doing the right work in your practice.

But first, we want to prime you to start identifying the waste in your own work. Here's a very quick description of each of the **DOWNTIME** categories of waste.

Defects include any work that requires correction or rework because it wasn't done properly the first time, whether by error or omission. It could be anything from a simple typo to missing a filing deadline to making a serious error in the law.

Over-production refers to doing more of something or doing it earlier or faster than required. It includes obvious examples like printing more hard copies than you need or copying too many people on an email, and less

obvious things like doing your own work ahead of time when you could be helping someone else on an urgent matter.

Waiting is any wasted time when people, equipment, documentation, or information is idle or delayed. It includes interruptions, time spent getting up to speed when switching between files or tasks, and all the time you spend every day waiting for things to happen or people to get back to you.

Non-utilized talent is the misallocation of human capital. It's having the wrong person doing a task—whether they're over-qualified or under-qualified—and failing to take advantage of the full potential of everyone on your team.

Transportation refers to the unnecessary movement of documents, information, or materials. It often manifests as unnecessary circulation of hard copies or movement of information for approvals.

Inventory looks a little different in law than it might in industry. Rather than excess widgets, think of unbilled work in progress, files stacked on your desk awaiting your attention, documents needing signatures, unanswered emails in your inbox, and more mundane things like oversupplies of stationery.

Motion refers to any unnecessary physical displacement of people. It includes extra steps to access supplies, information, or printers (yet another true story!), unnecessary in-person meetings, and little things like too many keystrokes to find a file or accomplish a task on your computer.

Extra processing is giving your client Ferrari-level service when she only needs a Ford. It includes researching every possible “just-in-case” scenario, when your client only wanted the most likely, or answering questions you haven't actually been asked.

In upcoming articles, we'll give you real examples of wastes we've identified in our clients' practices, as well as tips for how to identify them in your own practice. We'll also share how other firms and law departments have used DOWNTIME to increase their efficiency by reducing or eliminating waste.

Pro Tip: You can use DOWNTIME to improve your legal processes, but when you're starting out, we recommend you start with the business and administrative processes that support your practice. Because these are common across your organization, the efficiency gains you make with them will benefit everyone touched by those business and administrative processes.

That's the beauty of Legal Process Improvement. It gives you a set of tools you can use to look deeper into how you deliver your legal services from start to finish, including your business, administrative, and legal processes.

So the next time you say to yourself, “there MUST be a better way to do this,” use DOWNTIME. See if you can identify the waste that's getting in your way.

Come back next time for an in-depth look at the first four wastes: Defects, Overproduction, Waiting, and Non-utilized talent. Spoiler alert: one of them is the biggest source of inefficiency in the legal profession.

About the Authors

Karen Dunn Skinner and David Skinner help lawyers earn more from their practices without working as hard. They believe every lawyer deserves a successful practice and the freedom to enjoy that success.

Together, they founded Gimbal Lean Practice Management Advisors after practicing law for more than 20 years in Canada and Europe. They're the exclusive Global Advisors on Legal Process Improvement to the International Institute of Legal Project Management, and Karen sits on the IILPM's Global Advisory Council.

Karen and David are global leaders in the application of Lean to the legal profession. They write and speak regularly, facilitate legal process improvement projects, and have taught Gimbal's proven LeanLegal® approach to thousands of legal professionals around the world.

They combine their deep understanding of the legal industry with their training in Lean Six Sigma to provide practical solutions to the competitive and budgetary pressures on practitioners and clients alike.

Karen and David live in Montreal



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Navigating AI Governance across Jurisdictions

By Jennifer Lim Wei Zhen, Tech & Fintech Lawyer & Co-Founder, LawTech.Asia



Introduction

The rapid advancement of Artificial Intelligence (AI) has brought about a host of intelligent products, ranging from automated systems performing tasks autonomously, to decision-making tools, predictive models, and generative systems. They have revolutionised the world with sophisticated capabilities once confined to human intelligence. However, these applications are not without risks and implications that necessitate regulatory intervention.

Navigating AI governance necessitates delving into the intricate technologies behind AI, including algorithms, machine



learning models trained on datasets, and natural language processing (NLP) techniques.

- **Algorithms: Accountability for Outcomes** - The bedrock of AI decision-making, algorithms interpret and process data to generate outcomes. This raises questions about the attribution of liability and responsibility, particularly when decisions are wrong or biased, discriminatory or disadvantageous towards certain groups based on race or other characteristics.
- **Machine Learning Models: Ethical Boundaries** - At the core of AI, machine

learning enables AI systems to adapt and learn without further explicit programming. In fields like healthcare, learning models identify patterns in medical images for disease diagnosis, continuously evolving through iterative adaptation to new data. Regulation is required to align these evolving models with ethical standards. Imagine an autonomous vehicle having to make split-second decisions in a sudden collision, without direct human control. In such situations, ethical parameters that govern AI's learning models must reflect societal values, prioritising the safety and wellbeing of all stakeholders over other considerations like its self-preservation and liability.

- **Training Dataset: Privacy and Biases** - AI relies on extensive datasets for training to recognise patterns, make predictions, or perform specific tasks. This data may include texts, images, audio, or any other relevant inputs, some of which could be linked to personal data. Unauthorised use of such personal data raises privacy concerns, necessitating safeguards and regulations to prevent misuse and unauthorized access. Additionally, biases inherent in historical data or introduced during data collection present a significant regulatory challenge. If the data is limited or skewed to those that reflect societal prejudices, the AI system may inadvertently perpetuate these biases in its outcomes. Enhancing AI performance necessitates a larger and more diverse training dataset. Striking a balance between expansive datasets and averting discriminatory elements is a key aspect of AI dataset-related regulations.

- **Natural Language Processing (NLP): Content Manipulation, Authenticity and Deepfakes** - NLP empowers AI systems to process extensive linguistic data, grasp the subtleties of human language, and respond like humans. AI-powered text generation, with ability to mimic humans, poses challenges in discerning between genuine and manipulated content, notably in the form of deepfakes that appear strikingly genuine. The implications are significant as the technology can be exploited for various malicious purposes, including spreading misinformation, impersonation and manipulation of public opinion. To address these

risks, governance frameworks are needed to regulate the creation, authentication, and distribution of digital content.

Establishing a regulatory framework is imperative to unlock the full potential of AI while safeguarding rights and societal well-being. Existing regulations, while offering some safeguards, are nuanced and entwined with broader policies, particularly those addressing privacy concerns. Notably, there are discernible regulatory and supervisory gaps, especially in domains where existing laws fall short of handling the intricacies of AI technological capabilities. Governments worldwide recognise these gaps, as evidenced by initiatives like the EU's AI Act and AI Liability Directive, as well as China's regulations on Recommendation Algorithms, Deep Synthesis and Generative AI. This paper explores the dynamic tapestry of policies and diverse approaches embraced by Australia, China, the European Union, and the United States in navigating the intricate landscape of AI and responding to these issues.

Regulating Biases and Accountability in AI-generated Outcomes

In the realm of AI-generated outcomes, regulatory challenges arise where "biased" outcomes discriminate and disadvantage certain groups based on race or other characteristics. This can be especially problematic in areas such as hiring, lending, and criminal justice where AI-based systems are increasingly deployed.

Biases in AI may arise from biased algorithms or skewed machine learning models or inadequately representative training datasets.

The issue of accountability for AI-generated outcomes is complex due to AI's lack of consciousness, prompting questions about who should be responsible for its biased or unethical outputs. This dynamic disrupts conventional frameworks for attributing liability, requiring innovative approaches to ensure fairness and ethical use of AI technology. Balancing between innovation and accountability calls for regulatory adaptation.

Regulators are generally aligned in their efforts to address biases by mandating transparency and requiring AI developers to provide insights into AI decision-making processes to prevent inadvertent or intentional biases. Proposed legislative initiatives like the EU's AI Act and the US Algorithmic Accountability Act and China's Regulation on Recommendation Algorithms aim to enforce transparency in AI decision-making processes.

The European Union (EU) is one of the first jurisdictions to come up with a comprehensive solution. Central to the EU's solution are the proposed AI Act and AI Liability Directive, which are inherently intertwined and potentially trigger a "Brussels effect" in AI regulation, akin to GDPR's global adoption as the standard for data regulation. Acting as a gatekeeper, the AI Act adopts a risk-based approach, categorising AI systems into risk levels that determine AI providers' obligations and whether they can even release their AI system into the market: Unacceptable Risk, High Risk, Limited Risk, and Minimal Risk. Unacceptable-risk AI such as social scoring tools or biometric identification systems are prohibited, while high-risk AI faces a rigorous conformity

assessment, registration process, and pre-market approval along with ongoing obligations for mandatory human oversight and continuous scrutiny even after being permitted for market release. The draft AI Act, which was first unveiled in April 2021, also introduces other key provisions including hefty fines for non-compliance, exemptions for research and open-source AI, and regulatory sandboxes for real-life AI testing.

Released in September 2022, the EU AI Liability Directive adapts civil liability rules for damage caused by AI systems. Working in tandem with the revised Directive on Liability for Defective Products, it addresses fault-based liability, emphasizing transparency and accountability for post-market product alterations. Evidence disclosure rules empower victims to request courts to order disclosure of information and evidence relating to high-risk AI systems, while the "presumption of causality" helps victims establish a causal link between the damage and non-compliance of AI systems, allowing claimants to show that providers of high-risk AI systems should be liable for such failure to comply with obligations under the AI Act.

In the United States (US), the proposed draft of the Algorithmic Accountability Act, unveiled in April 2022, calls for increased transparency and accountability in the use of AI, particularly in critical decision-making processes that directly impact individuals' lives. While this legislation awaits formal enactment, the executive branch can apply existing law to AI-related matters. The judiciary plays a pivotal role in determining this use, as illustrated in significant Supreme Court cases such as *Twitter v*

Taanmeh and *Gonzalez v. Google*. Notably, in the latter case, the Supreme Court upheld the application of Section 230 of the Communications Decency Act, providing legal protection to tech companies from liability for ISIS-related videos uploaded by users even if their AI algorithms may have recommended those ISIS-related videos on YouTube based on user browsing history.

China too has taken a significant step forward by rolling out some of the world's most detailed regulations to address biases in AI-generated outcomes. The AI Governance Principles, introduced in September 2019, offer a framework to harmonize sustainable AI development with safety, security, and reliability. China also introduced the Regulation on Recommendation Algorithms (March 2022) which grants individuals the right to disable algorithmic recommendations and receive explanations for algorithms that substantially impact their interests. The Deep Synthesis Regulation (January 2023) regulates algorithms that generate or alter online content in various formats. It mandates filing with the algorithm registry, labelling synthetically generated content, enforcing information controls and preventing misuse, including user's registration with real names and consent for editing personal information. China was also the first country to come up with Rules on Generative AI (August 2023) requiring registration of generative AI products and security assessment before public release.

Addressing Authenticity Concerns in AI-generated Works and Deepfakes

AI's advanced capabilities to mimic human-generated content blur the lines between human and machine authorship, making the effort to verify authorship and the true origin of a piece of content a complex endeavour. This raises concerns about accurately attributing authorship and ownership of works, impacting intellectual rights and liability for unauthorised use of copyrighted materials. The potential for misinformation and misattribution intensifies these challenges, prompting questions about preserving the integrity of creative and scholarly works in the era of generative AI.

Moreover, AI's ability to mimic human identity has led to the rise of deepfakes – images, video clips and audio recordings generated by AI that are fake but appear to be genuine. This poses challenges in discerning between genuine and manipulated content, with convincing imitation of real individuals raising concerns regarding potential exploitation for malicious purposes, such as spreading misinformation, damaging reputations and even influencing political events. This poses risks to public figures, institutions, and society as a whole, emphasising a pressing need for regulatory frameworks to govern the creation, authentication, and distribution of digital content.

Pioneering regulatory measures have been introduced by EU and China, the first jurisdictions proposing comprehensive rules for generative AI. Transparency is a key requirement, with both mandating disclosure of AI-generated content. Companies in the EU are also required to share summaries of copyrighted data

used for training, ensuring that AI models are designed to prevent illegal content generation. In August 2023, China unveiled the Rules on Generative AI, which necessitate companies to register generative AI products targeting Chinese residents. They are also mandated to label synthetically generated content and bear responsibility for its authenticity. Furthermore, specific contents are prohibited, such as material that undermines state power or advocates for the overthrow of the socialist system. Measures to forestall misuse include user registration with verifiable identities and user's consent for any alterations to personal information.

Recognizing the urgency of addressing the concerns over deepfakes, China took proactive steps in 2019 by enacting laws that compel disclosure of the use of deepfake technology in videos and other media. These regulations also stipulate that deepfakes must be clearly labelled as artificially generated content before distribution. This comprehensive approach positions China as the first country to have established such extensive deep fake laws, providing an opportunity for other nations to draw insights when enacting their own measures.

Evolving Privacy Regulations in the AI Age

AI development depends on the ingestion of large sets of data (input) that are used to train algorithms to produce models (output) that assist with smart decision-making.

To the extent that the input involves personal data, or any output is used to make decisions

that affect the rights or interests of individuals, data regulations have become instrumental in mitigating inherent privacy concerns in AI-driven decisions. To this end, several countries are amending data regulations, with a specific focus on AI development. The following presents a snapshot of the dynamic tapestry of policies and diverse approaches embraced by Australia, China, the European Union, and the United States in navigating the intricate privacy regulations of AI

- **Australia:** The Privacy Act 1988, Australia's primary legislation for personal information, is undergoing a review to align with the expansive data landscape underpinning AI and other digital ecosystems. The Privacy Act Review Report, released in February 2023, recommends substantial changes, such as regulating individual "targeting", empowering regulators and courts with more enforcement options, and creating new avenues for individuals to seek redress.
- **China:** China's data regulatory landscape has undergone significant changes in the past years with the enactment of key laws. Comprising the 2017 Cybersecurity Law (CSL), 2021 Data Security Law (DSL), and 2021 Personal Information Protection Law (PIPL), the data protection framework exerts significant influence on AI development. In particular, the DSL regulates data processing within AI applications. The PIPL, specifically designed to safeguard personal information, delves into the realm of automated decision-making in big data-related practices and introduced more

stringent rules for Sensitive Personal Information. These regulatory advancements signify China's deliberate effort to enhance governance in response to evolving data privacy concerns posed by AI. The global impact of these regulations is underscored by DSL's extraterritorial application and PIPL's expansive territorial scope beyond China.

- **European Union:** In tandem with AI-specific regulations, the EU is actively shaping a broader data regulation framework, exemplified by the Data Act and Data Governance Act. Together with the General Data Protection Regulation (GDPR), they collectively address privacy concerns, including those arising from AI applications. The GDPR, established in 2018, directly regulates the processing of personal data (including automated processing of data), ensuring individual control and emphasizing principles like transparency, fairness, and data minimisation, which are crucial for AI's handling of data. Designed to facilitate data sharing, the Data Governance Act, which was passed in November 2021, clarifies regulations around data sharing - who can create value from data and under which conditions. Complementing the Data Governance Act, the Data Act (which was passed in June 2023) gives individuals more control over their non-personal data generated through smart objects and machines. The synergy between these regulations demonstrates EU's proactive approach in adapting to the evolving AI landscape, emphasizing both facilitation and control of AI development.

- **United States:** Data regulatory landscape in the US comprises a mix of federal and state laws addressing various dimensions of data privacy. In the absence of comprehensive federal law, the California Consumer Privacy Act (CCPA) plays a pioneering role due to its stringent data protection regulations. Enacted in 2018, the CCPA was amended in 2020 to define "profiling" and establish rules governing "automated decision-making" while also mandating privacy assessments for activities like profiling. Beyond California, other states, including Virginia, Colorado, and Connecticut, have enacted similar rules in 2023, indicating a broader trend towards adapting data regulations to the challenges posed by AI. In addition to state-specific actions, industry-specific laws, such as the Health Insurance Portability and Accountability Act (HIPAA), impose strict requirements for authorization, particularly in the context of AI-enabled AdTech and marketing. At the federal level, the American Data Privacy and Protection Act (ADPPA), approved by the House Energy and Commerce Committee in July 2022, represents a significant milestone. The ADPPA proposes national standards for personal information protection, addressing algorithmic accountability and bias, reflecting recognition of the unique privacy concerns posed by AI.

Conclusion

The widespread adoption of AI in various facets of society presents both promising opportunities and potential risks, necessitating regulatory frameworks to amplify the former and mitigate the latter. Notable progress

has been made in crucial areas such as ethical considerations, data privacy, transparency, and liability. However, there remains an ongoing and challenging journey towards clarifying intellectual property rights of AI-generated works, particularly in determining ownership and attributing copyright to works which fall short of a clear human creator.

Navigating AI regulation is particularly challenging from a regulatory design perspective due to its rapid development, diverse applications, and its capacities to transcend national boundaries. There is a lack of clear-cut answers on the optimal approach. Jurisdictions exhibit diverse perspectives on whether specific AI elements should be regulated, and which activities warrant regulatory oversight. The EU opts for a horizontal regulatory framework, casting a wide net with a comprehensive umbrella of laws that cover all AI applications. In contrast, China's vertical regulations zoom into specific AI capabilities, such as the regulation on recommendation algorithms targeting biases in social media feeds. An emerging trend in regions like Australia and the US is the adoption of business-friendly AI regulatory approaches and voluntary self-regulation. In contrast, the EU and China favour stringent regulations with registration and labelling requirements and hefty penalties for non-compliance.

These regulatory variations underscore the challenge of striking a delicate balance between insufficient and excessive regulations. Despite these differences, there are common trends: core principles of transparency and explainability; risk-based approaches; sector-

specific rules alongside sector-agnostic regulation; integration of AI-related rulemaking with broader digital policy priorities like data privacy; and the use of regulatory sandboxes for collaborative rule development. Notably, a common overarching theme persists: a shared objective of mitigating potential AI harms while leveraging its benefits for societal and economic well-being.

Given the global nature of AI deployment, harmonising legal frameworks across jurisdictions becomes imperative. This harmonisation is crucial for ethical and responsible AI development given that international cooperation and standardization play pivotal roles in preventing regulatory arbitrage, wherein companies strategically exploit regulatory variations to the potential detriment of societal well-being. Harmonization therefore becomes a cornerstone for ensuing ethical AI development for the collective well-being of societies worldwide.

Disclaimer:

This report is based on information available as of September 2023, and the legal landscape may have undergone changes since then. For advice or the most up-to-date information, it is recommended that specific consultation and legal advice be sought.

About the Author

Ranked 2nd and 10th in the Asia Law Portal's [2022 women legal innovators in Asia](#) and [2023 APAC legal innovators](#) respectively, Jennifer is

a tech and fintech lawyer. She has advised a diverse clientele across Asia and Europe, ranging from financial institutions to fintech companies and global tech giants, on a range of regulatory matters and contractual arrangements pertaining to their business activities. These include fintech product innovation, data commercialisation, privacy and data protection, online safety, technology risk management, tech procurement, outsourcing, collaborative arrangements, business reorganisation and M&A deals. Bilingual in English and Business Chinese, Jennifer regularly reviews contracts written in Chinese.

A former litigator, Jennifer has experience with technology-related disputes, including patent infringements and revocations, an arbitration pertaining to alleged misrepresentations by a blockchain insurance platform. She also represented a cybersecurity firm in Singapore's first commercial [dispute](#) relating to

whether Covid-19 government measures had frustrated a contract.

Beyond legal practice, Jennifer is actively engaged in the tech and innovation ecosystem. She co-founded [LawTech.Asia](#) and eTPL.Asia, which won Facebook's grant for researching on "[Operationalising Information Fiduciaries for AI Governance](#)" She is also part of the founding Steering Committee for the [Asia-Pacific Legal Innovation and Technology Association](#).

An alumna of the National University of Singapore (NUS), Jennifer contributes to academia by teaching at NUS Law and the [Legal Innovation & Technology Institute](#) on an adjunct basis. She is also a visiting researcher at the NUS [Centre for Technology, Robotics, Artificial Intelligence and the Law](#); and is regularly invited to speak on issues relating to justice, legal innovation, technology, fintech, AI, Web3, DAOs, and NFTs.

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GENERAL COUNSEL SUSTAINABILITY LEADERS INSIGHTS

Bits and Bites on Trending ESG Topics

By Bassam Messaïke, Legal Director with dentsu.



I walked into Asheville Museum of Art, in North Carolina, on a recent visit and stumbled on an exhibit entitled “**Altruistic Genius**” showcasing the inventions and ideas of **R. Buckminster Fuller**. Before my visit, I had only seen his Geodesic design, through pictures of the Montreal Biosphere, a museum dedicated to the environment.

More with less

The essence of Fuller’s philosophy was to solve the world’s problems by finding solutions that do more with less. Fuller translated this core philosophy into ideas, designs, and inventions in trying to solve problems around housing, energy, transportation, among other global problems.



ESG

Doing more with less still resonates to this day and I find myself referring to it and quoting it during sustainability and social impact discussions, as well as other matters, not necessarily related to the environment, such as just finding and implementing efficient processes.

I do, however, believe that doing more with less to be at the core of almost all the solutions, especially regenerative ones, that we are trying to put in place to make our planet more sustainable. But the real reason that I brought the work and philosophy of Fuller here is for inspiration and to highlight what he believed in. That is one person's work, no matter what budget or circumstances they are working under, can make a difference for

the betterment of all people and the planet.

In a recent conversation with [Adam Woodhall](#), the award winning CEO and founder of [General Counsel Sustainability Leaders](#), which until recently was called Lawyers for Net Zero, the dentsu Legal & Compliance team's Social Impact Working Group discussed a few topics that we thought are worth highlighting in this article.

How to advise on ESG issues

What we wanted to tackle in our discussion was how the legal function, in global companies, advise their boards or clients on ESG issues, sustainability in particular, in the current global landscape of push and pull on ESG that we are seeing in different regions.

As we all know, the [EU's Corporate Sustainability Reporting Directive \(CSRD\)](#) that requires companies to file mandatory annual sustainability reports will become effective January 2024. Thousands of non-EU companies, that operate in the EU, will be required to produce such reports. On the other hand, in the U.S., the proposed [SEC Rules](#) on mandatory reporting on climate risks that were to become final last year, are still being reviewed, and judging by the latest legislative actions in Congress, they are probably going to remain voluntary. California's legislature, on the other hand, just passed two bills that impose reporting obligations on certain public and private companies that operate in that state. California's governor signed both bills into law on October 7, 2023.

Global companies regularly deal with cross-jurisdictional compliance requirements and the eventual conflict between the EU and U.S. on climate disclosures is nothing new. An example would be EU General Data Protection Regulation (GDPR). While regulations similar to GDPR did not exist in the U.S. at the time GDPR became effective, U.S. and non-EU companies operating in the EU scrambled to put a compliance framework in place to avoid being fined, and eventually did, one way or another.

Companies, however, may need to pay close attention to their messaging on ESG-related goals and initiatives in the markets where the compliance regimes are in conflict, to avoid litigation and reporting risks. The conflict in reporting requirements in areas around sustainability could be delicate due to geopolitical

environments and differences that may indeed influence a company's messaging on its ESG goals and initiatives.

ESG helping in the long run

The advice may be for such companies to keep focusing on how its ESG goals and initiatives are helping the company in the long run, instead of taking sides, or scrapping their initiatives all together due to geopolitical pressures.

A company or a brand may lose credibility and standing with its consumers when they change their message between regions or abandon their goals and initiatives due to pressure, from either side of the spectrum.

Additionally, reporting will most likely become part of companies' financial disclosures, whether mandatory or voluntary. Putting a compliance framework in place and starting to collect relevant data may serve companies well.

Practical advice on complex issues

Adam saw that legal can get on the front foot to demonstrate that its function was not just a reactive adviser and had some fantastic practical guidance for legal to use in advising on such complex issues.

Adam stressed that legal should (i) develop pertinent internal communications on the subject aiming to bridge silos, (ii) engage in regular meetings with their teams and with the business for alignment, (iii) make a business case for the legal team to have the necessary resources, if needed, (iv) find internal 'sustainability' buddies and engage with them

regularly, (v) block out time to focus on actions and produce thought leadership, and most importantly (vi) engage with industry bodies, government and regulators proactively to keep current with developments, new laws and regulations and take action.

We then discussed how global companies remain focused on their long-term ESG goals and initiatives, while navigating new regulatory laws and regulations across jurisdictions, especially where in some of these jurisdictions, the economy is in a downturn. Specifically, what role does legal play, aside from advising on legal risks, especially around shifting, refining, or repurposing their companies' ESG goals and initiatives to be specific for such period.

Remaining focused

Legal & compliance play a crucial role during difficult periods, especially when a new compliance framework is needed. Companies may well be advised to remain focused on its long terms ESG goals and initiatives by promoting the progress of such programs on a global level, stressing their long-term economic benefits.

The legal & compliance team, on the other hand, should closely collaborate and align with their business to ensure that any messaging on progress during such periods, doesn't carry risks especially for the markets where mandatory reporting will be needed. It is advisable that any messaging, especially if it relates to a company's net zero claims and aspirations, be reviewed by legal to ensure that such claims can be substantiated and verified.

During such difficult periods, Adam thought that legal could be the calm and wise voice of the companies and while advising on legal risks was essential, legal should also focus on incentives for adopting ESG policies and goals during such periods.

Do's and Don'ts

Adam offered three don'ts and five do's. Don't sweat the small stuff, don't let perfection get in the way of good, and don't try to please all the people all the time. The "do's" were, do understand how change happens, work out who are the key audiences with most influence, plan and build iteratively for growth with great strategic thinking, humility, and self-awareness, and lean in and grow resilience. For inspiration, Adam referred us to [Sapiens: A Brief History of Humankind](#) by Yuval Noah Harari, stressing the power of storytelling.

Navigating greenwashing

Greenwashing is an area that has been receiving enhanced attention by regulators and their enforcement bodies. Companies and their legal & compliance functions have been busy putting in place the necessary policies and procedures to reduce the risks of greenwashing claims and litigations. A guidance to mitigating such risks has been brilliantly illustrated in a recent article entitled: "[Navigating the Risk of Greenwashing](#)" by Harvard Law School Forum on Corporate Governance, posted by Peter Pears, Tim Baines, and Oliver Williams, Mayer Brown LLP, on July 24, 2023.

According to the authors, "mitigating greenwashing risk lies in existing principles of good practice with respect to governance, disclosure

and due diligence, in combination with an understanding of the sustainability profile of the product, activity or transaction at hand.”

The authors went on to give some “good practice steps” to follow around governance, disclosure and due diligence that legal & compliance functions, no doubt, are most familiar with in other areas. For example, a company must have policies and procedures to reduce the risks of litigations related to their products and services, and greenwashing risks can be addressed similarly, but with some adjustments to fit sustainability matters.

A recent [decision](#) from the U.S. National Advertising Review Board is important to note here, as it will probably shape the new [Green Claims Guides](#) that the FTC is anticipated to publish soon. It is anticipated that the FTC will codify this [opinion](#) in a rule saying that an advertiser would be providing misleading messaging if it says it is committed to be net zero by a certain date without already being in the process of implementing a documented plan that has been evaluated and found to have reasonable expectation of achieving net zero emissions by that date.

This is essentially a guidance on how a company should message on net zero claims and aspirations, in advertising. Similar guidance already exists in the U.K. [Green Claims Code](#), for example, as well as, in the proposed [EU Green Claims Directive](#).

Summary

Economic pressures, geopolitical differences, and conflicts between jurisdictional regulato-

ry regimes around the world will always present challenges for global companies. Regardless, such companies, in close collaboration with their legal & compliance functions, are advised to have clear strategies, policies and procedures, and training in place to effectively comply with the new climate reporting requirements, mandatory or otherwise. Similarly, putting in place a robust compliance framework to navigate and avoid greenwashing risks, including those that relate to a company’s net zero claims and aspirations, is essential.

About the Author

Bassam Messaike is a legal director with dentsu, a global marketing and advertising services company.

He has been with dentsu in various positions for almost eight years, including General Counsel in the MENA region, a dedicated corporate counsel to iProspect, and currently co-leading and supervising legal support for dentsu media service line in the Americas on all matters related to media advertising & marketing services.

Bassam co-leads dentsu Legal and Compliance Social Impact Working Group and a member of dentsu global pro bono Working Group.

His post-qualification professional experience includes media advertising & marketing, commercial & construction contracting, real property, immigration, general business and

He is a 2023 Leadership Council on Legal Diversity (LCLD) Fellow; 2023 Graduate - Cambridge University Sustainable Marketing, Media & Creative Course, and 2022 McKinsey Asian Executive Leadership Program Alumni.

General Counsel Sustainability Leaders Insights Series Summary:

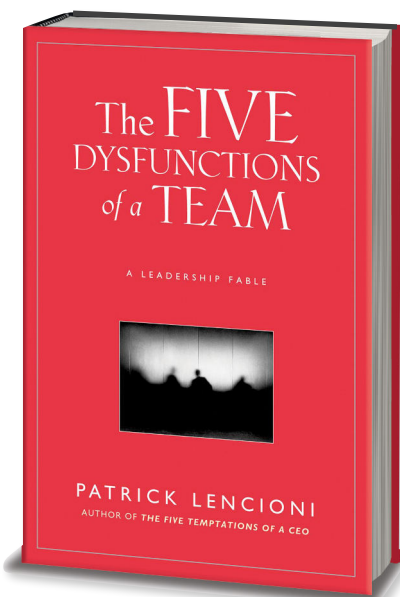
This series will feature GCs, CLOs and other influential in-house leaders who are leaning into climate, wider environmental sustainability and ESG issues. They will share how they have grown their capabilities and through that driven business value and increased their impact as corporate leaders.

This will include practical insights on how these leaders responded effectively to the challenges all businesses are facing, how they've reduced risk, increased resilience and spotted and captured opportunities. The curators of this Insight series are [General Counsel Sustainability Leaders](#), who are best known for their highly rated "Leaders Programme", and are led by their award winning founder and CEO, [Adam Woodhall](#).



Book Tip: The Five Dysfunctions of a Team

Kathryn Petersen, Decision Tech's CEO, faces the ultimate leadership crisis: Uniting a team in such disarray that it threatens to bring down the entire company. Will she succeed? Will she be fired? Will the company fail? Lencioni's utterly gripping tale serves as a timeless reminder that leadership requires as much courage as it does insight.



Throughout the story, Lencioni reveals the five dysfunctions which go to the very heart of why teams even the best ones-often struggle. He outlines a powerful model and actionable steps that can be used to overcome these common hurdles and build a cohesive, effective team. Just as with his other books, Lencioni has written a compelling fable with a powerful yet deceptively simple message for all those who strive to be exceptional team leaders.



Legal Ethics, Artificial Intelligence, and Mindfulness, Oh My!

By Jan L. Jacobowitz, Founder & Owner, Legal Ethics Advisor



Any sufficiently advanced technology is indistinguishable from magic. -- Arthur C. Clarke

I can't come back; I don't know how it works!
Good-bye, folks! — The Wizard of Oz

No, it's not lions, and tigers, and bears, but it is a journey down the proverbial yellow brick road to understand the impact of society's latest "wizard"—Generative Artificial Intelligence. ("AI") No doubt, for lawyers, the AI journey presents the additional challenge of conforming to the legal ethics rules. Presumably designed to serve the public good rather than as obstructive, evil flying monkeys; violations of the rules can nonetheless prove deadly to a lawyer's career.



A new exploration requires research about the destination. Questions abound. What is artificial intelligence (“AI”)? Why does it suddenly seem to be such a hot topic in the media, on continuing education programs, and well, just about everywhere? Generative Artificial Intelligence and our ready access to it may provide a partial answer. More explanation required?

Background & Context

Before traveling forward, travel to the past provides enlightenment. Specifically, a trip to 1956 reveals that a Dartmouth mathematics professor, James McCarthy, coined the term artificial intelligence in his funding proposal for a summer symposium. [1] Professor Mc-

Carthy explained his study of artificial intelligence:

The study is to proceed on the basis of the conjecture that every aspect of learning or any other feature of intelligence can in principle be so precisely described that a machine can be made to simulate it. An attempt will be made to find how to make machines use language, form abstractions and concepts, solve kinds of problems now reserved for humans, and improve themselves. [2]

Thus, Professor McCarthy defined AI as machine learning beyond the ability to understand simple logical reasoning. In other words, he proposed that a machine may be programmed

to extract patterns in data, and trained to “learn” from ongoing experience.

Fast forward to today--- most thought leaders agree that AI refers to machine learning. Nevertheless, disagreement exists among scientists, philosophers, futurists, and others about specific definitions and distinctions between intelligence and consciousness; AI technology’s potential developmental speed; and whether AI will ultimately result in machines that may usurp human control of the planet. [3]

In fact, Max Tegmark deems artificial intelligence to be “the most important conversation of our lifetime.” [4] He asserts that “[t]he questions raised by the success of AI aren’t merely intellectually fascinating; they are morally crucial, because our choices can potentially affect the entire future of life.” [5]

No doubt, Tegmark’s 2017 observations remain compelling, but our current journey necessitates a narrower discussion; that is, AI’s impact on the legal profession and the implications for the legal ethics rules. For today’s journey we need a contemporary working definition of AI.

Wendy Yu Chang provides a clear definition in the context of legal ethics. Her definition resembles McCarthy’s 1956 description, but states AI’s ability as a fact rather than a theory to be proven. She writes: “Broadly, AI is the ability of a machine to perform what normally can be done by the human mind. AI seeks to use an automated computer-based means to process and analyze large amounts of data and reach rational conclusions—

the same way the human mind does.” [6]

More specifically, AI’s capabilities include machine learning, natural language processing, vision, and speech. [7] AI already appears in our daily lives; navigation apps for directions and ride sharing, facial recognition for log ins, and voice assistants like Siri all employ AI. These examples, and others, have played a role in society for several years.

In fact, when Tegmark and Chang contributed to the AI discussion in 2017, evidence of the legal profession’s growing interest in AI appeared in legal ethics literature and symposiums. Suggestions for programming to assist lawyers with office management, legal research, and predictive analysis entered the conversation. [8]

What had not yet appeared on the scene was generative AI—a combination of machine learning and natural language processing that leverages massive data sources in response to a user’s prompt. The user receives an “answer” that may appear as summarized information, completion of a creative task, or new, unique content. [9] Moreover, some generative AI programs like ChatGBT provide cost free, open access to the public.

AI and Legal Ethics

Before focusing on open access, “user friendly” programs like ChatGBT, it is worth noting that lawyers are already outsourcing legal services to third party vendors who may use AI—think e-discovery, document review, legal research, and drafting of documents or pleadings. In fact, from 2006-2012, new legal ethics opinions emerged to provide advice on

the ethical use of outsourcing for legal research, document review, and drafting of pleadings.

[10] In 2012, the American Bar Association (“ABA”) acknowledged the implications of outsourcing issues on the legal ethics rules when it amended the competence and supervision rules’ comments to include outsourcing. [11]

Of course, initial outsourcing primarily transferred legal tasks from one human being to another—nonetheless the fundamental legal ethics concerns remain even when the outsourcing occurs between human and a machine. Primary considerations include an attorney’s duties of competence, diligence, communication, and confidentiality. [12]

Confidentiality remains an utmost priority and may involve an attorney delving into an AI vendor’s terms of service, and specific process for handling of client information. [13] The confidentiality review dovetails with an attorney’s duty of supervision over nonlawyer assistants as an AI vendor constitutes a nonlawyer assistant.

Additionally, communication generally requires that clients understand and consent to outsourcing. A task that may be more difficult when dealing with AI, but nonetheless required. [14]

Billing may also create attorney-client issues. Typically, an attorney may only bill the net cost for outsourcing plus any reasonable fees for supervision and review unless there is disclosure and client agreement to another reasonable billing method. [15]

If an AI program drafts a demand letter, in a

contingency case, is that an additional cost or should it be included in the attorney’s fees?

Does the engagement agreement discuss AI?

An additional AI billing query: when does the failure to employ AI result in unreasonable attorney fees? An AI program may be able to complete a task (eg. an accurate patent application) much faster and less expensively than an attorney. Does an attorney who fails to offer a client the AI option, and bills the client considerably more in fees, violate the reasonable fee requirement in the legal ethics rule? [16]

Depending upon specific circumstances and use of AI, other legal ethics concerns may involve conducting a conflict check, ensuring that the attorney maintains independent professional judgment, and avoiding assisting in the unauthorized practice of law (by a machine...?). [17]

Given all of the existing opinions and rules, do additional legal ethics concerns with ChatGBT and similar programs exist? Recent events provide the answer: a resounding yes!

ChatGBT & Legal Ethics

For simplicity, this article will use ChatGBT to refer to the generative AI programs that have become available—some at no cost and available to download as apps on an individual’s phone. A lawyer using this type of ChatGBT recently appeared in international headlines when he employed it for research that he included in a court filing.

Unfortunately, ChatGBT “decided” to “create” cases that do not exist. Both the court and opposing counsel conducted the research that

the attorney failed to do and ChatGBT's fictional cases were soon revealed. [18] Even more unfortunately, the event became another episode in the proverbial "the cover up is worse than the crime," --the lawyers involved were initially less than candid further angering an already displeased judge. [19]

Ultimately, the lawyers involved admitted their conduct; the judge sanctioned them \$5000.00 and required them to inform their client and write apologies to each judge who ChatGBT included in its fictional cases. [20] Obviously, these attorneys failed in their duty of competence, but also managed to violate legal ethics rules beyond those discussed above.

Candor to the tribunal and fairness to opposing counsel both come to mind.[21] And of course, the violation of any of the rules invokes the general misconduct rule that includes the duty of honesty and support for the fair administration of justice. [22]

Despite these lawyers becoming the poster kids for how *not* to use ChatGBT or other generative AI programs, AI use has also generated positive developments.

For example, generative AI has been recognized as a terrific tool for initial drafting from a reliable data base, editing, and translating. [23]

Additionally, there are both law firms and academic centers conducting research and development of generative AI programs designed with the legal ethics rules in mind.

The international law firm Dentons, recently

revealed some of the features of its inhouse "fleetAI" program that appear geared to both competence and confidentiality. Joe Cohen, Denton's head of innovation for the U.K, Ireland, and the Middle East explains:

The firm will train staff on the risks inherent in the technology, including inaccurate and biased responses. Even though client matter documents can be uploaded to the platform, Dentons has worked with Microsoft, which is one of OpenAI's owners, to ensure that data uploaded into fleetAI is not used to train the tech, no one outside Dentons can access it, and it is erased after 30 days, according to the news release.

To insulate the firm against some of the risks, Cohen says the chatbot's homepage warns users to independently verify and validate content the platform produces.

"This is a research tool, and that's how we're trying to get people to see it," Cohen says. "This is something to ask to get some inspiration about a particular topic and help you get something down on paper for you to change." [24]

Thus, Dentons incorporates legal ethics concerns in the rollout of its AI program designed to provide a tremendous assist to its lawyers, without permitting them to rely on AI for the final product. Other firms and vendors are proceeding in like manner. [25]

The University of Texas at Austin, School of Information and The University of Connecticut, School of Law are conducting research with the goal of determining the best methodology for

developing generative AI tools for the legal profession that adhere to the legal ethics rules. [26] And the legal ethics professionals are not only collaborating with the UT study, but also are participating in numerous continuing legal education seminars designed to enhance awareness of both the benefits and risks of generative AI. [27]

Ultimately, the responsibility for ethically employing generative AI falls to the individual attorney in the moment that an AI option is chosen. So, what's an attorney to do? Alas, that's why mindfulness found its way into the title.

Mindfulness, Legal Ethics, and AI

Mindfulness has gained widespread popularity not only among the general public, but also in the legal profession. [28] While often thought about as a means for meditation and relaxation, it also serves a valuable purpose for lawyers; that is, heightened self-awareness in the moment that allows for thoughtful decision making rather than conduct born out of emotional reactivity or the stress of the situation. [29]

Mindfulness practices increase an individual's awareness of their thoughts, emotions, and bodily sensations often providing insight into the intentions underlying a chosen course of conduct. Professor Leonard Riskin observes that "mindfulness allows us to insert a 'wedge of awareness' before we act. [30] He explains that when we create a psychological distance to observe our thoughts, feelings, and bodily sensations "their strength or power or influence tends to diminish and we have a chance to consider their merit." [31] We may then act

from a place of thoughtful response rather than emotional reactivity.

Benefits of enhanced decision making may range from calming a parent prior to dealing with a misbehaving child, to managing a rush hour response to a discourteous driver, to strategic decisions on a response to a stressful work occurrence. Certainly, the New York lawyers should have educated themselves on the benefits and risks of ChatGBT, but their decisions as to how to conduct themselves in court following their initial filing sealed their fate.

Perhaps if the lawyers in New York court case, had paused and reflected on what thoughts, feelings, and bodily sensations were contributing to their dishonest responses to the court, they might have paused and reconsidered their strategy for proceeding. (Hypothetically: "I am in huge trouble, and experiencing fear, anxiety, upset stomach, and elevated pulse. I need to pause, take stock, and thoughtfully consider my options.").

Impossible to predict the outcome for those specific lawyers, but easy to offer as a general suggestion. Why? Because there has been a tremendous amount of research that supports both the positive impact of mindfulness and the enhanced decision-making made possible by inserting a pause in the decision-making process. [32]

A full exploration of mindfulness is beyond the scope of this article. However, a brief introduction seems warranted because as technology continues to evolve and the 24/7 pace of the world continues to increase, it becomes all the

more important for lawyers to pause and consider their ethical duties before rushing into the world of generative AI.

Conclusion

Lawyers should absolutely embrace change--both technological and otherwise--but proceed with caution and gain understanding of any brave new world that they decide to enter. U.S. District Court Judge P. Kevin Castel's opinion sanctioning the New York lawyers, thoughtfully explains some of the repercussions of failing to pause and consider the application of AI to the practice of law.

In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings...[Respondents] abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.

Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other endeavors. The client may be deprived of arguments based on authentic judicial prece-

dents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity. [33]

Judge Castel's analysis both embraces AI and warns of the risks associated with its use in court. No doubt, AI may also assist lawyers in other legal practice contexts; lawyers should pause to assess the benefit and risk of using an AI tool in any practice area. Ultimately, the benefits, carefully understood and ethically employed, may prove to be an incredible boost for both lawyers and their clients. So, let's welcome the opportunity to create positive change and maintain an optimistic eye towards the future.

The secret of change is to focus all of your energy, not on fighting the old, but building on the new. --Socrates (470-399 BC), Philosopher.

Notes:

[1] Jan L. Jacobowitz Ms. & Justin Ortiz, Happy Birthday Siri! Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers, 4 Tex. A&M J. Prop. L. 407 (2018). (Internal citations omitted)

Available at: <https://scholarship.law.tamu.edu/journal-of-property-law/vol4/iss5/1>

[2] See JERRY KAPLAN, ARTIFICIAL INTELLIGENCE: WHAT EVERYONE NEEDS TO KNOW 13 (2016).

[3] MAX TEGMARK, LIFE 3.0: BEING HUMAN IN THE AGE OF ARTIFICIAL INTELLIGENCE 44, 49–50, 282–83 (2017); *see also* KAPLAN, *supra* note 2, at 67–86.

[4] *Id.* at 37

[5] *Id.* at 36

[6] Wendy Wen Yu Chang, *Competence: What Are the Ethical Implications of Artificial Intelligence Use in Legal Practice?* 33 LAW. MAN. PROF. CONDUCT 284 (May 17, 2017); Julie Sobowale, *How Artificial Intelligence is Transforming the Legal Profession*, ABA J. (Apr. 2016), http://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession

[7] *See supra*, note 1 that provides Andrew Aruda’s clear definitions:

- **Machine learning** describes a system that can take data points, process them to improve performance at completing a task, and then loop that process to continue doing the task while continuously improving.
- **Natural language** processing is when a computer can understand human language. The computer can interpret what a human actually means—deciphering intent and therefore providing more accurate and relevant answers and search results.
- **Vision** is the computer having the ability to interpret images, identify them and describe them, which is a task humans perform automatically.
- **Speech** is a system like Siri that can speak and interpret oral language, so you can have a back-and-forth interaction.

[8] *See* Colin S. Levy, editor, HANDBOOK OF LEGAL TECH, Chapter 12, *Technology and the Legal Profession-What’s Legal Ethics Got to Do With IT?*, Globe Law and Business Publications, (July 2023)

See also Jan L. Jacobowitz Ms. & Justin Ortiz, Happy Birthday Siri! Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers, 4 Tex. A&M J. Prop. L. 407 (2018). Available at: <https://scholarship.law.tamu.edu/journal-of-property-law/vol4/iss5/1>; William Davis, *How AI’s Opportunities Will Augment Rather than Replace Lawyers*, Legaltech News (Oct. 5, 2017), <https://www.law.com/legaltechnews/almID/1202799657613/> [<https://perma.cc/4GQJ-5WYM>].

[9] Glenn Gordon, *The Use of Artificial Intelligence in the Legal Profession*, Lexis Nexis Practical Guidance Journal, (April 27, 2023) <https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/the-use-of-artificial-intelligence-in-the-legal-profession>

[10] *See* ABA Comm. on Ethics & Prof’l Resp., Formal Op. 08-451 (2008); State Bar of Cal. Comm. on Prof’l Resp. & Conduct, Formal Op. 2004-165 (2004); Colo. Bar Ass’n, Formal Op. 121 (2009); Fla. State Bar Prof’l Ethics Comm., Ethics Op. 07- 2 (2008); N.C. State Bar, Formal Op. 2007-12 (2008); N.Y. State Bar Ass’n Comm. on Prof’l Ethics, Ethics Op. 762 (2003); N.Y.C. Bar Ass’n Comm. on Prof’l & Jud. Ethics, Formal Op. 2006-3 (2006); Ohio Supreme Court Bd. Of Comm’rs on Grievances & Discipline, Advisory Op. 2009-06 (2009); San Diego Cty. Bar Ass’n, Ethics Op. 2007-1 (2007); L.A. Cty. Bar Ass’n Prof’l Resp. & Ethics Comm., Op. No. 518 (2006); D.C. Bar, Ethics Op. 362 (2012); *see also* N.Y.C. Bar Ass’n Comm. on Prof’l Resp., *The Outsourcing of Legal Services Overseas*, NYC BAR (2007), <http://www.nycbar.org/pdf/report/uploads/20071813-ReportontheOutsourcingofLegal-ServicesOverseas.pdf>

- [11] MODEL RULES OF PROF'L CONDUCT r. 1.1 cmt. 6 (AM. BAR ASS'N 2020); MODEL RULES OF PROF'L CONDUCT r. 5.3 cmt. 3–4 (AM. BAR ASS'N 2020)
- [12] JAN L. JACOBOWITZ & JOHN G. BROWNING, LEGAL ETHICS AND SOCIAL MEDIA: A PRACTITIONER'S HANDBOOK 6 (2022)
- [13] *Supra* at note 9; MODEL RULES OF PROF'L CONDUCT r. 1.6 (AM. BAR ASS'N 2020)
- [14] MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N 2020)
- [15] *See supra* note 9; MODEL RULES OF PROF'L CONDUCT r. 1.5 (AM. BAR ASS'N 2020)
- [16] David Hricik, Machine Aided Patent Drafting: A Second Look, PATENTLYO (Aug. 25, 2017), <https://patentlyo.com/hricik/2017/08/machine-patent-drafting.html>; *See* Jan L. Jacobowitz Ms. & Justin Ortiz, Happy Birthday Siri! Dialing in Legal Ethics for Artificial Intelligence, Smartphones, and Real Time Lawyers, 4 Tex. A&M J. Prop. L. 407 (2018). Available at: <https://scholarship.law.tamu.edu/journal-of-property-law/vol4/iss5/1>
- [17] *See supra* note 9; MODEL RULES OF PROF'L CONDUCT r. 1.7, 5.4, 5.5 (AM. BAR ASS'N 2022)
- [18] Larry Neumeister, *Lawyers Blame Chatgpt For Tricking Them Into Citing Bogus Case Law*, Published 11:25 PM EDT, June 8, 2023 <https://apnews.com/article/artificial-intelligence-chatgpt-courts-e15023d7e6fd-f4f099aa122437dbb59b>
- [19] Elura, Nanos, Judge Fines Lawyers \$5,000 For Submitting 'Gibberish' Cases Generated By Chatgpt, Then Lying About It, Law & Crime, A Dan Abrams Publication, June 22, 2023, 7:08pm <https://lawandcrime.com/awkward/judge-fines-lawyers-5000-for-submitting-gibberish-cases-generated-by-chatgpt-then-lying-about-it/>
- [20] The judge's order can be read here: <https://www.documentcloud.org/documents/23856993-sanctions-mata-v-avianca?responsive=1&title=1>
- [21] MODEL RULES OF PROF'L CONDUCT r. 3.3; 3.4 (AM. BAR ASS'N 2020)
- [22] MODEL RULES OF PROF'L CONDUCT r. 8.4 (AM. BAR ASS'N 2020)
- [23] *Supra* at note 9
- [24] Matt Reynolds, 'The Real Game-Changer': Dentons Is Latest Major Firm To Launch GPT-Powered Chatbot, ABA Journal, August 14, 2023, 1:54 PM CDT https://www.abajournal.com/web/article/dentons-law-firm-to-launch-gpt-powered-chatbot?utm_source=sfmc&utm_medium=email&utm_campaign=weekly_email&utm_term=&utm_id=709240&sfmc_id=45015867
- [25] *Id.*
- [26] Based on the author's interview with the UT Department. The title of the study is: "Professional Ethics Standards as a Guide for AI design: A Case Study of Expert Opinions on Legal AI". The published study can be found here (placeholder): <https://minlee.net/>
- [27] *Id.*; *See for example*, *Generative AI & Legal Ethics: The Intersection of Efficiency and Ethical Discord* <https://learning.bloomberglaw.com/catalog/product.xhtml?eid=49468>
- [28] *See* Jan L. Jacobowitz & Scott Rogers, *Mindful Ethics-A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 St. Mary's J. on Legal Malpractice & Ethics 198,220 (2014).; Scott L.

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[29] *Id.*

[30] Leonard L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior*, 50 S. TEX. L. REV. 493, 499 (2009).

[31] *Id.*

[32] *Supra* at note 27 pp 220-227

[33] The secret of change is to focus all of your energy, not on fighting the old, but building on the new. Socrates (470-399 BC), Philosopher

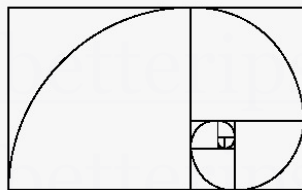
and owner of Legal Ethics Advisor. Jan provides legal ethics consulting, expert testimony, opinion letters, and CLE training to law firms and legal organizations. Recently, she has been involved in cases involving issues such as attorney fees, conflicts of interest, the unauthorized practice of law, and consulting on innovative collaborations to provide legal services.

Jan is the co-author of the book, [Legal Ethics and Social Media, A Practitioner's Handbook](#), the second edition of which was published in October 2022. She is among the first law school faculty throughout the country to teach Social Media and the Law.

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BETTER
I P S U M



Confident Leadership Series

Feedback: Making a Difference

By Mila Trezza, Executive Coach and Former General Counsel Global 500



Meaningful feedback is essential for everyone's growth: the giver, the receiver, and the organisation as a whole.

Yet, only 5% of employees believe that their managers provide the guidance and direction they need. **Workplace surveys** show that people don't just want to hear more about how they are doing—they crave feedback.

Many managers find it challenging to make the time to provide feedback on top of completing their already considerable workload. Others feel uncomfortable providing 'tough feedback' and managing people's emotional or defensive reactions to said feedback.



However, most of the time, **the feeling of uneasiness on the parts of both the giver and receiver** can be mitigated by re-framing how we deliver our feedback.

Feedback is a gift. It allows our teams to learn and grow. Every time we water down or avoid giving feedback, we miss an opportunity to help people develop.

So, let's look at how we can offer meaningful feedback.

1. Your Team Wants to Know—Often.

Honest and constructive feedback creates a **safe and supportive environment where people can grow and thrive**.

Feedback boosts relationships with explicit

links and a sense of purpose between the present moment (the snapshot of behaviour we capture with our feedback) and the future (the improved performance we are leading our teams towards).

Constructive feedback prompts improvements and new behaviours. It is especially effective when it is built on trust. Infrequent feedback, on the other hand, deprives our teams of a consistent and clear sense of direction, which contributes to diminished trust.

Infrequent feedback happens, for example, when feedback is tied, or limited, to formal appraisal processes or HR-led reviews. We tend to underestimate the many opportunities we have for offering *daily* feedback.

For instance, when something is moving along positively or when different contributors have established effective collaboration, we have opportunities to provide feedback and engage with our team on what is working well, what can be improved, and what changes they would like to make.

Real-time feedback can not only be provided daily, but can be offered in all directions. We can offer feedback to our own managers, team members, colleagues, and business partners. In each case, our feedback offers opportunities to build greater trust and encourage improvement.

Meaningful ongoing feedback builds solid walls of safety and columns of trust that each of us needs. When these foundations are in place, negative feedback is often better received.

2. Be Authentic. What You Truly Think is What They Will Hear.

If you care, it shows.

When your intent is to genuinely develop performance and impact, [your choice of words, body language, energy, and even your silence](#) will communicate that intention.

When your mindset is instead focused on fixing, telling someone off, or attacking *the person* rather than addressing *the problem*, your choice of words, body language, energy, missed pauses, and silence will also communicate your intentions.

We all have big antennae. Even when the feedback is positive, if it's fake, we won't believe it. Instead, we will feel manipulated.

Start by acknowledging the positive. Genuine appreciation may help you head to a constructive exchange. For example, 'the whole analysis is well structured, however...' or 'building on what you have already considered, an additional way forward could be...'

If we anticipate that our feedback will be hard to hear, let's ask ourselves: What do we truly wish to achieve in this conversation? Consider a role reversal for a moment. What *would you* hear if you were on the receiving end of this feedback? Would you find it helpful?

When we dress up criticism by saying 'I just want to give you my honest feedback', what often happens is that the conversation turns into being about *us* rather than the person whose performance we are trying to improve.

And if it turns out to be about us and our ego, it will not be meaningful, let alone effective, feedback.

3. Stick to the Golden Rule of Feedback: Keep It Specific.

Meaningful feedback requires clearly presenting the alternative behaviour we wish to reward.

With that said, the alternative we present must be realistic, actionable, and attractive for the receiver to act on our feedback.

For example, if we want to encourage better collaboration among our team members, we need to spell out exactly how that collaboration will look, for instance, when contributing to the drafting of new documents or when covering each other during the Christmas holiday.

For positive feedback to be meaningful, it also

needs to resonate effortlessly with the receiver. For example, if we use generic language like ‘that was a good meeting’, we are being unclear and missing out on an opportunity to highlight the specific behaviour we want to reward. Vague feedback is subject to interpretation.

An alternative could be: ‘I’d like to [offer you my feedback on our meeting](#). I appreciated how you aligned your expectations by regularly checking in with everyone, and how you wrapped up at the end by including everyone’s contribution. That was really useful.’

Specific feedback is more likely to resonate with the actions and intentions of the person we are giving feedback to and, therefore, will support continuing the positive behaviours we wish to reward.

Whereas, if our feedback is too generic, it will not be meaningful or useful. If the receiver of that feedback cannot understand exactly what it is about, they will not be able to act on it.

4. Time is of the Essence. We Engage With Feedback Better if It is Provided in the Moment.

Both positive and negative feedback follow the same rule: time is of the essence.

Positive recognition that is disconnected from the moment in which it is relevant lead to a sort of emotional dissonance. The receiver will likely wonder: ‘Why are you telling me this now?’

On the flipside, negative feedback that is disconnected from the moment in which it is relevant impacts the receiver’s ability to act

on it in a timely and effective manner.

In order to be meaningful, feedback must be given soon after the event or behaviour you wish to address or encourage. For example, think about those times when you want to prompt further action: ‘I know you have been working on this document for some time. How are you progressing?’

The longer you wait, the less likely it is that your feedback will lead to change.

5. Did You Ask for Feedback on Your Feedback?

Meaningful feedback aims to enable dialogue and build relationships. Communication is a two-way street.

What we want to unlock is, ultimately, insight. Thus, with every feedback conversation comes a moment to ask the other person: ‘How does this sound to you?’

The feedback we receive on our feedback often stretches our conversation and allows us to hear how the other person has experienced the same situation. Often, their perception will be different from our own.

For example, let’s say you are offering feedback to a team member who is reluctant to contribute to meetings. Maybe you would like to suggest that they be more proactive. That team member may reply by saying: ‘I wanted to raise my points, but I didn’t feel ready to articulate them and, by the time I did, the meeting had moved on.’

That feedback will allow us to expand our initial suggestion so we can, for example, [explore wider confidence issues](#), talk about improving

our preparation for meetings, or identify a ‘quick win’ that may support greater participation.

6. Cultivate a Healthy Feedback Culture. Start With Yourself.

Meaningful feedback allows us to build a positive culture around mistakes and to disconnect the act of *making mistakes* from the notion of *having failed*.

When these two concepts are disconnected, and frequent constructive feedback is offered, people are allowed (and, when needed, empowered) to become effective ‘mistake makers’.

For example, we can ask for and provide feedback on ‘ideas for introducing a new system’, reinforcing a shared belief that progress and change are often built on a foundation of errors. We can openly prompt a conversation about how to respond to our mistakes because no one can be creative if they are not allowed to play with new ideas.

A healthy culture of frequent feedback allows us to continue improving, making changes and adjustments, and following up with more questioning and more feedback.

Finally, the art of giving feedback includes owning our past mistakes by using ‘I’ statements, such as: ‘When I looked into this a few months ago, I missed seeing an alternative.’

Our past mistakes are an extraordinary way to engage with people at different levels. They build credibility and nurture trust because no one always gets everything right. In the long

run, [this approach boosts \(not diminishes\) our authority as leaders](#).

This Confident Leadership Series focuses on the skills needed to manage high-performing legal teams and enhance your leadership confidence.

About the Author

Mila Trezza is a former General Counsel of a Fortune Global 500 energy company and an award-winning executive and leadership coach. Her company was named one of the [Top 5 Executive Coaching Companies in the UK](#) for 2023.

After more than 20 years of international experience, having served as Director of over 30 companies, and lived in six countries, Mila developed her approach to coaching with the sensibilities of a lawyer in mind.

Her mission is to develop a coaching culture for the legal industry that is bespoke to, and has an inside-out understanding of, the challenges that lawyers and legal teams face on a daily basis. Through her coaching, Mila helps lawyers go from lacking confidence and feeling overwhelmed to having a clear path forward, feeling resourceful, and enjoying their roles. Her work on legal leadership was recognised by Women Influence & Power in Law UK, and she was the winner of the [2023 Award for Lifetime Achievement, In-House](#).

In addition to running her own business “[Coaching Lawyers by Mila Trezza](#)”, Mila acts as an expert advisor and consultant for leading global companies.



COACHING LAWYERS

by Mila Trezza

The Value Series

INTERVIEW WITH ADAM BECKER: PROVING THE VALUE OF LEGAL OPERATIONS

A ClariLegal interview with Adam Becker by Cash Butler and Jeff Kruse



Adam Becker wants everyone to understand the tremendous value legal operations professionals can provide to their organizations. He is on the Board of the Corporate Legal Operations Consortium (CLOC) and a frequent speaker on the value of legal operations.

Adam believes that over the last decade, the legal operations community has demonstrated the value of legal operations to General Counsel and Chief Legal Officers. But he believes that the legal operations community “could do a better job of educating Deputy General Counsel and others in the legal departments.” While the legal operations community continues to expand its messaging to the broader legal departments, Adam has already done a fantastic



job of proving the value of legal operations to the companies where he has worked.

A Winding Path to Legal Operations Leadership

Adam did not start out as an advocate for legal operations. Like many legal operations professionals, Adam started as a practicing attorney. After a handful of years of practicing, Adam moved into legal recruiting, office administration, and attorney development at top 20 law firms.

While working at one of those large law firms, a friend suggested that he would be perfect for a new legal operations position that had become available on the West Coast. At the time, Adam was in New York and reluctant to move back to the West

Coast for a position he previously did not know existed.

But the concept of legal operations stuck in his head. Adam did not take the first legal operations job mentioned to him. But after considering the power of legal operations, he found a position as Vice President of Legal Operations position at MetLife, a Fortune 100 company. His journey into the legal operations operation had begun.

Early Experience in Legal Operations

After landing a leadership position in legal operations at a large enterprise, Adam quickly recognized the value legal operations could provide to the organization. As a legal operations leader, Adam focused on a goal of “helping others do things faster

and making processes more efficient.”

Adam also noted that as legal operations professionals, “we have to align our work with the values of the company.” A consistent theme in talking to Adam is that he always evaluates how the legal department’s work “impacts customer life.” His goal is to simplify and streamline to improve customer experiences.

However, large organizations frequently have what Adam calls “legacy processes” that can make change more difficult. According to Adam, one of his former General Counsel described “legacy processes” as “processes that were put into place that made a lot of sense at the time to solve a problem, but as time went on, nobody ever looked at the process again to see if it still made sense.”

Despite the challenge of “legacy procedures,” Adam found ways to improve efficiency, speed processes, and provide greater value. For example, he focused on “getting the right work done at the right level.”

To right-size certain work, Adam orchestrated a program within the legal department by transferring some work traditionally done at the company by attorneys to paralegals and then shifting other work to different legal professionals in the department.

By shifting work, Adam was able to deliver substantial value to the company by freeing the attorneys to do what they do best and by allowing the other legal professionals to take on greater responsibilities and achieve professional growth. As a result, the department was “able to get more done and provide more value.”

Embracing New Opportunities

After a few impactful years as a legal operations leader at MetLife, Adam spent two years at a large entertainment company.

He then embraced a new challenge by becoming the first legal operations leader at Cockroach Labs, a database startup company headquartered in New York City.

At Cockroach Labs, Adam says he is “fortunate to have a general counsel who is 100% in favor of legal operations.” Plus, because Cockroach Labs is only eight years old, “it is more streamlined and people are not wedded to older procedures.” Additionally, as a technology company, “the population inherently embraces new things.”

Although he works for a fast-growing technology company, Adam deliberately took time before making certain changes in the legal function. He explained, “I waited almost a year before I proposed any new technology here, because I really needed to see what our problems and pain points were.”

Focusing Directly on Client Needs

To that end, Adam focused on what the end-users needed and how proposed changes would benefit those end users. To help with change management and adoption, Adam took a different approach to selecting a legal technology vendor. While many legal operations practitioners interview their clients to discover their needs and wants, Adam took the process a step further.

During the vendor selection process, Adam invited one of the main internal clients to

participate in evaluating the vendors. He then had that client identify who in that person's organization could work with the legal team to help design the product for their specific needs.

By involving the internal clients in the selection and adaptation procedures, Adam ultimately saved time in the adoption and change management process. By doing so, he delivered tremendous value to the company by making it "the least amount of change management" he had ever had to do for a major project." He also noted that it was the "quickest adoption [he] had ever seen."

Legal Technology is not Just for Legal Any More

Adam has an interesting take on legal technology. He thinks "legal tech is advancing to the point where it's speeding up some regular tech." He acknowledges that "not everybody agrees with [him] on that," but his personal experience demonstrates that legal technology can be used outside of the legal department.

As Adam put it, "Because legal tech has worked so hard for some of the issues that lawyers face and how they work, there are a lot of applications to other departments now." For instance, some legal technology solutions are quite good at creating templates. Adam recognized that "other departments do template letters all the time" and that the legal technology solution could help create those templates. As a result, the people in those departments "don't need to be doing cutting and pasting anymore."

As he put it, Adam helped "enable other

departments to do it on their own." Now, the people in those departments "are saving time and legal is not taking on work that is not really legal work in the first place."

By thinking more expansively, Adam was able to not only "make legal more efficient, but we also helped other departments with some of their really routine sorts of things in ways that they had not heard of." Plus, Adam helped the other departments save on their budgets through the expansive use of the technology.

He delivered value through time and financial savings. He "provided visible value both to the department and the company." Adam described the outcome as a "win-win because we provided people with something we were using, and now they can use it on their own."

But Wait, There's More Value

The template example is not Adam's only success in socializing solutions beyond the legal team. He also implemented a triage intake system. The new triage system is "one of the value things that we've added so we can get a better sense of who's working on what, where our requests are coming from, and how we can allocate resources." Interestingly, for the first time in his career, Adam had "people outside of legal asked if they could use a system" that the legal team implemented.

Adam's team also created "an intake portal with a knowledge management platform." The portal allows company employees to "search commonly asked questions" to get immediate answers without waiting for a response from someone in the legal department.

Adam notes that the legal department is “really quick to respond,” and that they “don’t want to hold you up unnecessarily.” But he notes that questions routinely come into legal at the end of the day, “especially at 4:00 p.m. on Fridays.” Through the portal, the legal department is “enabling the business to keep going” by reducing delays.

Consistently Delivering Value

Adam doesn’t just talk about providing value through legal operations. His goal is to deliver value by “helping others do things faster” and by “keeping the business going.” He has consistently delivered value through right-sizing work, empowering other departments to use legal technology, and by implementing an innovative intake portal.

Adam has two pieces of advice for other leaders in legal operations. First, he encourages legal operations leaders to remain curious and avoid getting stuck in “legacy mindsets.” Second, he implores leaders “to cherish and celebrate others’ successes.” According to Adam, “celebrating wins publicly and praising those who help” has been instrumental in developing positive cultures where he has worked.

Externally, Adam is a strong believer in celebrating other people’s successes and achievements. He enjoys seeing the developments in the legal operations landscape and the innovations other people are delivering for their organizations.

As we neared the end of the interview, Adam explained: “I love hearing success stories from peers at other organizations and watch-

ing them shine in their roles. I’m so excited when I see friends take on new and bigger roles and cheer them on as they continue to drive the way forward for legal operations – and for themselves.”

About the Authors

[Jeff Kruse](#) is the Founder of Key Legal Operations Consulting LLC, where he consults with



legal departments and law firms to help them operate more efficiently through process improvements, technology implementation, and outsourced legal operations management

to help them improve their bottom lines.

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[Cash Butler](#) is the CEO of R3 - Legal Operations Consulting and the founder of [ClariLegal](#). Cash has over 20 years of experience in



the financial services and legal vertical markets. He is a seasoned legal technology innovator and digital transformation champion.

He focuses on helping organizations by improving legal operations, eDiscovery, litigation & compliance. Cash is an expert in operations, legal vendor, pricing, and project management.



Digital Forensics and eDiscovery

A Guide to End-to-End Digital Investigations

This guide by Jelle Oorbeek is published at Legal Operators. We thank Legal Operators for sharing it with Legal Business World Subscribers.

WHISTLEBLOWERS IN THE WORKPLACE: HOW THE EU DIRECTIVE IS INFLUENCING CORPORATE TRANSPARENCY AND ACCOUNTABILITY

Once seen as an overreach, Directive (EU) 2019/1937 may soon become the new global standard of worker protections.

By Florina Thenmayer (l) and Lisa Kulmer (r), both Principal Associates at DORDA and World Services Group Employment and Labor & Employment Group Members





WHISTLE BLOWING

At the end of 2021, a significant transformation swept through the European Union (EU) corporate landscape with the emergence of the Directive (EU) 2019/1937 or the “Whistleblowing Directive.” The groundbreaking legislation was a clarion call for change by ensuring minimum standards of protection for whistleblowers across the EU. In its initial 2019 roll-out, the Directive was more lenient towards private sector entities with fewer than 250 employees, granting them an additional two-year grace period to embrace the Directive’s requirements which included an internal reporting channel for whistleblowing. While some EU member states still were struggling to implement all aspects of the Directive in

2023, it is safe to say that by 2024, the Directive (EU) 2019/1937 will be in effect across the EU member states, shaping a more transparent, accountable, and ethically sound future for businesses across the continent.

In fact, because of the significant position of the EU as a global player and the scope of the Directive, many members of the World Services Group (WSG) Employment and Labor Industry Group have predicted that the EU Whistleblowing Protection guidance will soon become the global standard for all international business. With all that said, if you do not think these new EU regulations will impact you and your clients, we encourage you to read on.

The Directive applies to private and public employers and every class of worker.

The scope of the new Directive extends to employers with a workforce of 50 or more, specific sectors (e.g., the financial sector), or municipalities with more than 10,000 inhabitants. The Directive's provisions cast a wide net, encompassing not only employees but also consultants, contractors, suppliers, board members, shareholders, volunteers, unpaid trainees, and even job applicants. Remarkably, this Directive's reach extends beyond the confines of direct employment, enveloping individuals who may not be official employees of the organization. Additionally, the Directive covers work colleagues and family members who may assist a whistleblower, provided that these individuals could also suffer retaliation in a work-related context. The new guidance ensures that whistleblowers who report breaches of EU law will be protected from suspension, demotion, dismissal, and other forms of discrimination and harassment.

The burden of proof is on the employer, not the whistleblower.

Unlike other international whistleblower protection regimes, such as those afforded to whistleblowers in Great Britain and the US, the EU Directive places the burden on employers to prove that retaliation did not occur. Before the Directive, when an employee enforced their whistleblower rights, they often faced a challenging disparity in legal and financial resources. Employers could justify their actions more easily, even when accused of retaliation. Given the lack of specific pro-

tection, it was even more difficult for whistleblowers to access evidence to prove otherwise.

The Directive is a game-changer for whistleblowers because it introduces a reversed burden of proof. That means employees are only required to establish their engagement in protected conduct or speech at the time when the alleged retaliation occurred. The onus then shifts to the employer, demanding that they substantiate the neutrality of their actions, demonstrating an absence of any connection between the protected conduct and the subsequent measures taken against the whistleblower. However, employers are well advised to carefully review the specific implementation of the Directive in the relevant member state.

Retaliation is very broadly defined in the EU Directive.

"Retaliation" as defined in Article 19 includes "loss of business and loss of income" and "failure to renew a temporary employment contract." Member states must prohibit any form of retaliation including damage to reputation, demotion, dismissal, negative appraisal, intimidation, suspension, or transfer.

Whistleblowers can face dire consequences when they report wrongdoing, and that's why the anti-retaliation requirements within the EU Whistleblower Directive are a crucial – and necessary – step for companies. Does your company's whistleblower retaliation strategy meet (and even exceed) the requirements of the EU Whistleblower Protection Directive?

Whistleblowers can report directly to government bodies without going through internal reporting channels first.

One of the first things many employees do when they suspect fraud or misconduct is to report the incident to a company supervisor or compliance team. Many companies also advertise internal hotlines where people can report the incidents. While internal reporting is the preferred way under the EU Directive, an accuser does not necessarily have to raise allegations within the company first, especially if the breach cannot be effectively addressed internally and where the reporting person considers that there is a risk of retaliation.

Under the EU Directive, employees may take their complaints directly to an authority designated by their local government or member state government, pursuant to that government's internal rules, which cannot be less stringent than the EU Directive. This is a significant departure from both UK and US whistleblower regulations. In most cases, whether the report is made to a company or government entity, both have three months to investigate the complaint and respond to the whistleblower. Government entities may have six months to investigate allegations for "duly justified" cases. It is up to individual member states to determine whether they will permit anonymous whistleblower reports.

If you do business in the EU, this Directive applies to your company.

While individual member states retain the flexibility to expand the policy areas covered

by the Directive, its current scope is already quite extensive, albeit limited to EU law and does not cover, for example, violations of labor law provisions, which in practice are quite often subject of whistleblower reports. For private employers, the current rules cover protection of privacy and personal data, animal health and welfare, antitrust, consumer protection, financial markets, services and products, food and product safety, public health, protection of the environment, prevention of money laundering and terrorist financing, nuclear safety, public procurement and transportation safety.

Perhaps most challenging for international companies doing business in the EU, the Whistleblowing Directive also applies to EU data protection regulations (GDPR) and was drafted to work in tandem with the GDPR — an arena that many international companies are already struggling to comply with. Given this broad and comprehensive list, member states are likely to adopt an even broader general definition of whistleblowing for simplicity's sake, while at the same time extending protections beyond the original intent of the Directive.

What's Next? Get prepared.

Whether you are a true believer in instituting an international culture of compliance or lean towards a strategic approach relying on accountability and a robust defense, procrastination is not your ally. It is imperative to establish an internal investigation protocol. Create precise and detailed job descriptions and delineate the responsibilities of key personnel in human resources, audit, compliance, and loss prevention – those who will oversee the

compliance with the EU Whistleblowing Directive. Provide appropriate avenues for employees to report misconduct, such as web-based, phone-based, and in-person systems. Conduct comprehensive executive-level training for corporate officials, managers, and line supervisors.

Any seasoned human resource professional knows the mantra well: document, document, document. However, it is crucial to underscore that all documentation must align with GDPR data protection protocols, a topic we will address. Having appropriate documentation early in the disciplinary process can be a vital safeguard, demonstrating that any subsequent actions taken against the individual are unrelated to whistleblowing activities. As employers work through this new regulatory regime, they may see well-timed and conceivably indisputable whistleblowing reports from employees attempting to insulate themselves from discharge, which is why having on-the-ground legal counsel will be crucial.

The implications of the EU Whistleblowing Directive and its intricate implementation within specific jurisdictions present a tangible concern, particularly given the pivotal shift in the burden of proof. To aid businesses with navigating this complex landscape, the [World Services Group](#) recently published a valuable resource – a comprehensive, free [guide](#) to the EU Whistleblowing Directive. This guide features contact information for legal experts situated in EU jurisdiction, poised to address your legal inquiries and concerns.

You have your internal protocols ready to go, now what? Watch out for GDPR data compliance.

While this article is not intended as a comprehensive guide to GDPR compliance, it is worth mentioning again that this aspect of compliance with the EU Whistleblower Directive may be one of the most challenging. This article only addresses a few issues to keep in mind as you create your own whistleblower internal reporting systems.

Hotlines

Hotlines for reporting incidents must comply with GDPR compliance requirements. Even if your company uses an outside contractor to manage your hotline, you must ensure that the contractor follows GDPR guidelines. Hotlines must have appropriate technical and organizational measures that meet the reporting requirements of GDPR and ensure the protection of data subject's rights.

Reports and Investigations

Companies with 50 or more employees operating in the EU have specific obligations to set up whistleblowing reporting systems. Establish internal procedures and controls to handle whistleblower reports confidently and confidentially. Any data related to whistleblower reports should not be retained any longer than necessary to comply with the EU Directive, other EU requirements such as GDPR, or national law of the member states.

If a whistleblower report is made to or investigated by a person or entity outside the EU, or if the results of the investigation are shared with a person or entity outside the EU, GDPR protocols must be followed. From a practical perspective, non-EU companies may wish to decentralize some of their human resources functions and collect and process all whistleblower

actions at their location(s) within the EU.

Whether or not you choose to take this course of action, there will always be a GDPR tension between the rights of the whistleblower, and the rights of the target over information about the allegation.

To date, the Directive has garnered minimal attention from the media, yet it signifies a pivotal transformation in the way EU enterprises manage their internal operations. It exerts a profound influence on how non-EU companies and international companies with EU subsidiaries or local EU offices do business in the EU.

If your company has not already taken steps to come into compliance with Directive (EU) 2019/1937, do not hesitate to reach out to any of the attorneys who helped create the [World Services Group](#) free [guide](#) to the EU Whistleblower Directive. With a little advice and a lot of patience, we can all look forward to better corporate governance, greater accountability, and a better quality of life for all workers.

About the Authors

[Florina Thenmayer](#) is a Member of World Services Group's (WSG) Employment and Labor Industry Group and was instrumental in the creation of WSG's European Whistleblower Report, which offers country-by-country updates on minimum standards of protection for whistleblowers across the EU. She is a [principal associate](#) with the DORDA law firm located in Vienna, Austria, and specializes in complex international M&A transactions and the cross-border deployment of the workforce.

[Lisa Kulmer](#), also a Member of WSG's Employment and Labor Industry Group, provides essential guidance for implementing whistleblowing systems and offers expert counsel on the necessary procedures and employee protection in the event of a report. As [principal associate](#) at the DORDA law firm in Vienna, Austria, she specializes in advising on works council participation rights as well as providing guidance and enforcing restrictive covenants.



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SERIES: LEGAL MARKET STRATEGY

The Value of Creativity and Imagineering to Legal Business Strategy

By Heather Suttie, Legal market strategy and management consultant



Strategy pertains to influencing things you cannot control. This is why legal business strategy can be challenging to lawyers who tend to be risk averse by temperament and are trained to hone this characteristic. They prefer to be in control of a situation.

Control is a factor in why the practice of law involves the application of yesterday's precedents to today's problems. History is known and usually documented. Therefore, it provides a degree of control. Applying the past to the present is what lawyers do, how they construct arguments, and where they often excel.

However, the business of law is another matter. It requires creativity and imagineering that are future-focused and often without precedents.



Creativity and imagineering in the business of law are not as prized as the learning of law and legal practice. In reality, traditional legal education has little if anything to do with the business of law. Yet, legal service is a business complete with its own industry code: 5411. And the business of law is where strategies pertaining to creativity and imagineering apply most readily.

Living in Your Head

Creativity and imagination are both nouns. Activating them means getting ideas out of your head and executing on them, which makes them real. Otherwise, creativity and imagination dwell in the land of overthinking.

Overthinking tends to be a lawyer trait that goes hand-in-hand with admiring a problem.

But problem admiration and overthinking get you nowhere. Solutions are required as well as actions that get them done.

The trick to harvesting the fruits of creativity and imagination is either having the experience of knowing how to execute on them or finding someone who does. Otherwise, creative strategies and imagined ideas become the stuff of magical thinking and fanciful fairy tales that live in your head until they go poof and disappear.

Getting Out of Your Head

Creativity is an often-neglected factor of legal business strategy. Why? Because lawyers rely on evidence and, better yet, proof to support arguments including those related to running

their business. This is why the evergreen statement, “We’ve always done it this way” and its pushback cousin, “Who else has done it this way and had success with it?” continues to hobble forward motion within traditional law firms and staid legal management.

It is also why those who may be intimidated by the change management processes that come with creativity and imagineering often mount a defense.

A symptom of this is usually a barrage of aggressive questions that rain down upon the head of whomever is daring enough to propose creative change along with a demand to instantly provide data points that prove beyond a shadow of a doubt that whatever is proposed will work effectively and efficiently the first time.

This mulish stance is vexing to people who are working to move the business of legal service forward, and who are propelled by innovative management objectives, strategies, tactics, and most importantly, execution.

These are the same dogged souls who often find themselves in the equivalent position of pushing a pill up a hill with their nose.

I’m one of them. This is my hill. Sometimes I think I’ve been dead up here for years.

Creativity

In 2006, Canada’s *Lexpert* magazine hatched a one-off issue titled “100 Creative Lawyers”. I can’t recall criteria used to measure the creativity of those featured, but do remember that when this publication appeared I was provid-

ing interim management for a national law firm that had a number of lawyers listed in this edition. Unfortunately, two of these lawyers had been misidentified, so a correction and compensation was requested.

Since the issue was about creativity, I wrote to the publisher about the error and my expectations for a make-good arrangement using two stanzas of poetry set in iambic pentameter. The publisher – a non-practising lawyer – responded with an offer also in iambic pentameter. I confirmed our agreement in limerick.

That’s the thing about creativity; it reframes a situation in a unique fashion.

The advantage of creativity is that it enables a mind-wide-open world of possibilities that launch as a result of answering a question asked in first year university Philosophy class. That question is: Why? The answer is not: Because. The answer is: Why not?

Imagineering

While imagineering has been around since the middle of the last century, the first time I heard about it was during my broadcast management years in the mid 1980s. At that time, imagineering was a creative process applied to broadcast engineering and production.

Since 1990, the word “Imagineering” has been registered as a trademark of Disney Enterprises, Inc. that employs imagineering to “make the impossible possible.” Disney describes it as “the creative engine that designs and builds all Disney theme parks, resorts, attractions, and cruise ships worldwide, and oversees the creative aspects of Disney games, merchandise

product development, and publishing businesses.”

Even though the word is trademarked, making the impossible possible is not. Impossibilities are made possible all the time in various industries and fields of endeavour, and miracles happen every day.

Devising and implementing new and imaginative concepts are entirely within our reach. So why not use them to advance business within the legal service industry?

Creativity and Imagineering: Putting Them Together

Creativity and imagineering go together like salt-and-pepper. It’s hard not to think of one without the other.

Individually, creativity and imagineering each has a plethora of applicability to the legal service industry. This applicability runs the gamut from education and training, to onboarding and mentoring talent, business development and client work, pricing, billing and collection, and tailoring infrastructures and management structures that enable profitability while also providing flexibility.

But pairing them results in a powerhouse combination.

Together, creativity and imagineering elevate the business of legal service into another

stratosphere – one that realizes what can happen when old and tired ways of doing things are jettisoned so that what is new and better-applicable to today’s expectations for getting things done can take off and accelerate unimpeded.

I can tell you from experience that the results of strategically applying creativity and imagineering to a legal service business are real, fulfilling, and exhilarating. This is because the outcome every time is a bright-lined business definition, crisp market differentiation, and a clear path forward. And as Disney well knows, there’s nothing Mickey Mouse about a business strategy like that.

About the Author

Heather Suttie is an internationally recognized legal market strategy and management consultant to leaders of premier law firms and legal service providers worldwide.

For 25 years, she has accelerated performance within law firms and legal service businesses – Global to Solo | BigLaw to NewLaw – by providing consultative direction on legal business strategy, market strategy, management strategy, and client strategy. The result is a distinctive one-of-one legal market position and sustained competitive advantage culminating in greater market share, revenue and profits. Reach her at heathersuttie.ca.



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RISK AVERSION IN RETAINING EXTERNAL COUNSEL

By Richard G. Stock, M.A., FCG, CMC, Partner with Catalyst Consulting

This is the forty-sixth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.



Over the last four years, I have had the good fortune to participate in a number of reviews leading to the choice of external counsel. Some have been for governments at the local and provincial levels, some for cross-border resource companies, and others for the insurance, pharma, and telecom sectors. A few of the initiatives began with staff in Strategic Sourcing departments, but all required the involvement of senior members of the law department.

Sophisticated purchasers of legal services use the full range of traditional tools to achieve their objectives when retaining outside counsel. Preferred counsel lists, billing guidelines, requests for proposals, and bill auditing firms were the blunt instruments of choice in the 1990's. The very



RISK AHEAD

best firms still received the lion's share of the work and total legal spend and hourly rates have continued to escalate since before the pandemic. In the face of this, law firm partners have re-doubled their efforts to forge stronger working relationships with General Counsel, members of the law department, business units, and the executive suite.

Surveys of corporate counsel continue to show that law departments have introduced few new approaches to retaining external counsel in the last 15 years. Moreover, they have even less time to fundamentally re-think and re-negotiate arrangements with their law firms. In this respect, they are no different than the other parts of a company or governments trying to do more with less time and resources. Corporations are turning to procurement specialists for

help – a smarter, tougher band of professionals with more invasive mandates from the executive office than one saw 10 years ago. Unfortunately, they are resisted if not resented by the law department, especially when the process support they offer calls for multi-year planning, clear selection criteria, financial negotiating skills, and commitments to contract-like terms well into the future. In my opinion, the flexible, independent, cost-ineffective operating practices of law departments in retaining counsel are much less tenable than they were a few years ago.

The first line of defense put up by corporate counsel is to claim that they will not trade quality for price. When asked to define “quality” in a law firm, the answers cover a broad range of valid points: we hire the lawyer not the firm,

they know our company, I have worked with him/her before and we always get good results, and I have negotiated a volume discount. A second line of defense is required to explain why more systematic practices are not being used and why legal expenditures continue to rise. The issues include the failure to converge to fewer firms spanning provincial jurisdictions, the reluctance to have law firms delegate work to more junior individuals within the firm, the assumption that especially complex or specialized work cannot be moved to “ordinary” firms, and the risk of moving legacy files - particularly litigation.

It is difficult to find corporate counsel who are prepared to “put all their eggs in one basket.” But legal / business conflicts with full-service firms are forcing tough choices. The appropriateness and effectiveness of “Chinese walls” created by law firms has generated no end of headaches for managing partners.

Law firms are left with few choices when corporate and institutional law departments fail to make long-term commitments for legal services. Corporate and commercial practices have an insatiable appetite for “deal flow” and regular commercial support. Law departments regularly make the business case for insourcing ongoing commercial work provided they can find and pay the talent. This leaves law firms scrambling to diversify their offerings and national / international reach, and it makes them more inclined to commit to longer-term arrangements with key clients.

The stage is set, and the conditions are right for corporate law departments to better man-

age - read stabilize and reduce - their total legal spend in the face of escalating demand. Yet few are ready to do so. On the one hand, they are told to live within a budget for legal expenditures, including litigation. And on the other hand, business units and the executive suite interfere, too often suggesting which firms or which lawyers should be used for high-profile matters – effectively neutralizing the credibility of partnering agreements that a General Counsel may have put in place for legal services.

Sometimes the organizational obstacles seem insurmountable. National and multi-national companies and all levels of government are particularly susceptible to not making commitments or failing in their execution. Some years ago, Donald N. Sull and Charles Spinoza described six obstacles to getting things done in their article “Promised-Based Management: The Essence of Execution” (*Harvard Business Review*). These include organizational silos that hinder coordination, employees who are disengaged, lack of clear accountability across the organization, an organization that lacks agility, stakeholders that do not trust executives to honor their commitments, and an organization that is trapped in the status quo. Sull and Spinoza point out the root causes and suggest remedies for each obstacle.

Recent experience demonstrates that law firms, even the biggest ones serving the same reference market, will propose prices (rather than rates) that vary by as much as 30 percent. The availability of internal teams and delegation, the experience with case and matter budgeting for complex, even unique work,

and the willingness to commit to longer-term stable teams and prices vary enormously by firm. The problem with many of these workflow and pricing practices is that they are largely unfamiliar to corporate and government law departments. In addition, they may be more available in a competing law firm – one from which the majority of legal services is not sourced today. Corporate counsel translate this lack of familiarity into legal risk, and then do not commit to doing business differently.

It is time for law departments to develop evaluation criteria / practices to better gauge the expertise and service levels of law firms more

objectively and less experientially. Doing that effectively allows a balanced trade-off of lower-priced arrangements while ensuring the quality–risk elements are properly considered.

About the Author

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Renewing the Approach to AI, Innovation, and Law Department Performance

Level Legal and Ari Kaplan Advisors were honored to co-host a dinner for law department leaders at the International Legal Technology Association's 2023 Annual Conference. We discussed the practical application of artificial intelligence, the connection between the economy and innovation in legal, and the role of e-discovery in law department transformation.



Economy-Driven Innovation or Vice Versa?

- ▶ Law departments are identifying tasks to stop doing in today's constrained budget environment with limited staffing.
- ▶ The economy is accelerating innovation, which is no longer a nice-to-have because it saves jobs over the long term.
- ▶ Legal is not simply running like a business, but as one of the most successful and effective departments in the company.

Artificial Intelligence: Now an Outside Job



- ▶ Law departments are developing standards governing how outside lawyers and providers can deploy AI on matters.
- ▶ Creating a unified definition of AI is a challenge for some legal teams.
- ▶ Many in-house teams do not have a choice about whether to develop AI use cases; they are now a business imperative.

“Using AI responsibly can result in a higher quality of work.”



E-Discovery Is a Key Element of Law Department Transformation

- ▶ The current disruption in e-discovery affects priorities in litigation support.
- ▶ Expect a more robust disclosure requirement in the U.S. for the use of generative AI in e-discovery.
- ▶ Don't worry: AI will accelerate the eDiscovery process, enabling law departments to do more with less.


Series: Lex Maze, A Legal Practitioner's View on Knowledge Management, Sustainability, and AI for Lawyers

We do not need legal KM anymore, do we?

By Valérie M. Saintot, Lawyer and Mindfulness Teacher



Long story short, we need knowledge management ('KM') more than ever before. In this post, promptings will be offered to the readers to scout two specific perspectives about legal knowledge management. You will be invited to reflect on the evolution of (legal) KM and how mature your KM practices are. Recent technological mega fast-forward developments with large language models and knowledge graphs promise to transform the way unstructured legal data are meta tagged and mobilised, mechanically, or generatively. Yet so much is possible and much needed at people level before all hopes and fears are placed in generative AI. To attain legally sound and operationally reliable off the shelf solutions, legal professionals can start by humanly embodying mindsets and cultures which can in due course be augmented by AI driven solutions.

An aerial photograph of a large, intricate maze made of tall, green hedges. The maze is composed of many interconnected paths and dead ends, creating a complex pattern of green. The lighting is bright, casting shadows that emphasize the three-dimensional nature of the hedges. The overall scene is vibrant and detailed.

Technology can help deliver wonders and even more so when the human in the loop performs at an advanced level of human mastery. It is even more the case if legal professionals, out of an act of will, embrace a collective intelligence approach in their daily practices. The drive for this blog post is to go back to a few basics to consciously evolve the way we manage our legal knowledge. In turn, appealing legal working environments, caring for being more human centric and inclusive of legal professionals of all generations, young and very senior, could see the light.

Recently, I was in contact with young lawyers preparing their bar exam. These most engaged young professionals were

not impressed by the working cultures they were experiencing in their legal teams where they started to practice. The most reported dissatisfaction was a highly hierarchical culture and a rather regular sense of loneliness in daily production of output with pressure of long and billable hours. They attributed these unfortunate experiences to a limited recourse to collective intelligence to solve problems, being forced to reinvent the wheels, and not profiting from the nudging and mentoring of more senior colleagues. Many said they will complete their studies and pass their bar exams but whether they would project themselves long term to work in law firms was not yet obvious. They actually approached me asking what else can you do after you pass the bar exam.

Legal KM could play a most motivating part in addressing the culture legal professionals could live up to and help tackle a wide range of known challenges in the legal profession, spreading from mental health issues and to lack of sense making or insufficient sense of collaboration around solving wicked legal problems.

To nurture proactive agency in the bigger debate about the impact of generative AI on the legal profession, it appears of highest value to be very potent in the physical world. In turn our projections in the digital world would make sense and add real business value and contribute to preserving democracy, remain prosperous, and keep peace on the planet. Falling short of this ambition will create a deceiving phygital world, hard wiring bad cultures and harmful personality traits which were loose coded until the tsunami of emotions released by generative AI. Activating the full potential of legal KM is not a project for the fainthearted. Like many of the legal work which is supportive of the legal business, it is often perceived as secondary. This is an error which will be fatal for those teams who do not outgrow this limiting view of the world.

This first Lex MAZE Blog post focuses on two basics perspectives in relation to (legal) knowledge management recalling key foundations:

1. An evolutionary overview of (legal) knowledge management
2. A mapping KM dimensions (tacit, explicit, internal, external) for legal

Future posts will offer diversified insights into legal KM practices and could serve as

impulses for your own work and self-reflection.

1. An evolutionary overview of (legal) knowledge management

It is not uncommon to reduce legal knowledge management to information management systems, whatever their names and electronic locations (from Intranets to Enterprise Content Management Systems, to wikis and other generic or specific databases tailored for legal processes, more or less integrated in the overall legal operation platforms possibly in use).

It is also familiar to see legal KM as a quantitative exercise leading to create all sorts of dashboards to monitor and report about production efforts and output rather than as a unique mean to assist legal professionals in delivering hard core legal content faster, better, availing useful and ready to use legal knowledge.

A running hope is to wait for the miraculous days when machines will effortlessly be able to just do it all: produce original knowledge, legally sound output, recycle relevant past output fitting the current needs, be politically astute, with no to limited need for quality control!? Social media clickbait hint at lawyers being replaceable by machines. It is interesting to look back at the evolution of the interaction machine-(legal) KM to realise that until this day comes, there is enough time to first upgrade people biological operating systems.

Figure 1 entitled 'Evolution of (legal) KM' summarises my experience as KM practitioner.

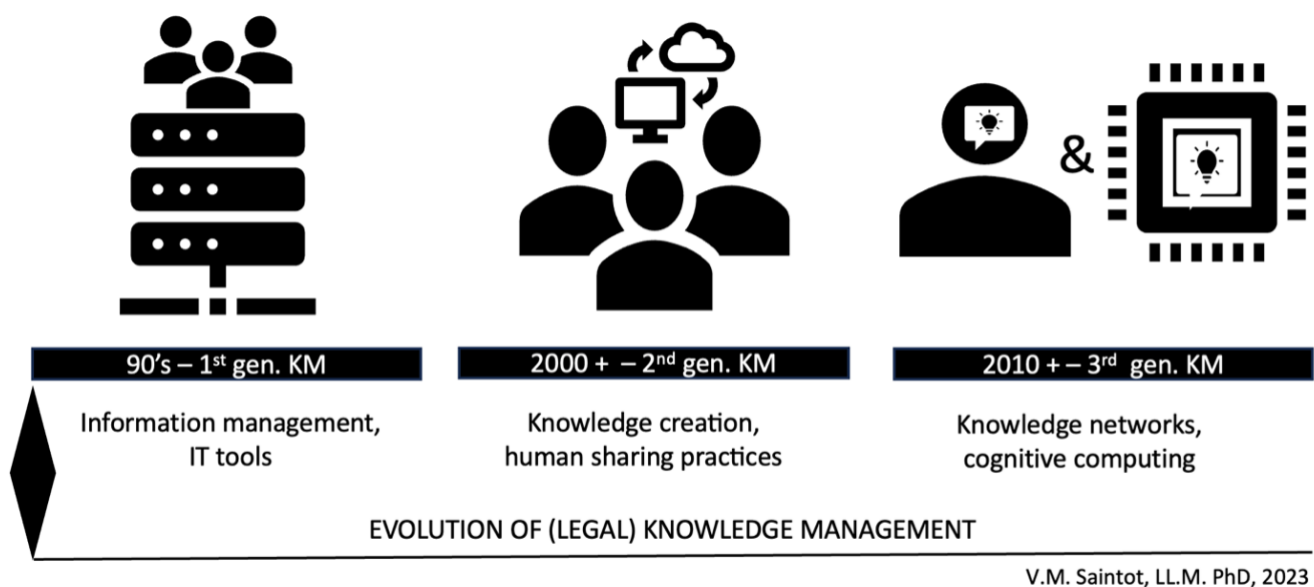


Figure 1.

It shows three generations of KM from the 90's till today. It mirrors what others report. *The first generation* focused on having databases and digital location to stored explicit knowledge contained in documents. The database was more important than the people using them. *The second generation* of KM saw more importance laid on the practices from a more interpersonal perspective in terms of processes and KM possible outputs. *The third generation* covers the second decade of 21st century and is all about exploring the creation of insights when people are meaningfully using technology to augment their ability to mobilise relevant knowledge to help them outperform what alone they would not have managed to deliver as well and as fast.

This evolutionary overview is a generic representation of what appears to have happened. What is interesting is to evaluate for yourself your own (team) practice by asking some questions. The below list is super incomplete

but a decent set to start with:

1. How explicit is your legal KM strategy?
2. How and where are your KM policies and practices discussed, aligned to your needs, agreed, and codified, etc?
3. To which extent technology is adapted to your legal KM needs?
4. How much budget and FTEs can be dedicated to legal KM in your environment?
5. How aligned is your digital KM processes with your other legal operations?
6. Are people dedicated to legal KM in your teams?
7. If so, are their respected for their work and added value and represented in strategic discussions?
8. How are newcomers induced into the art of legal KM in your teams(s)?
9. How often do you take a step back to think if your legal KM practices are fit for purpose?
10. What is your legal KM vision for the next five years, including in relation to generative AI?

Such short set of questions can help with creating a useful inquiry mindset and define the KM needs in the space you are responsible for.

2. A mapping of KM dimensions and cycle

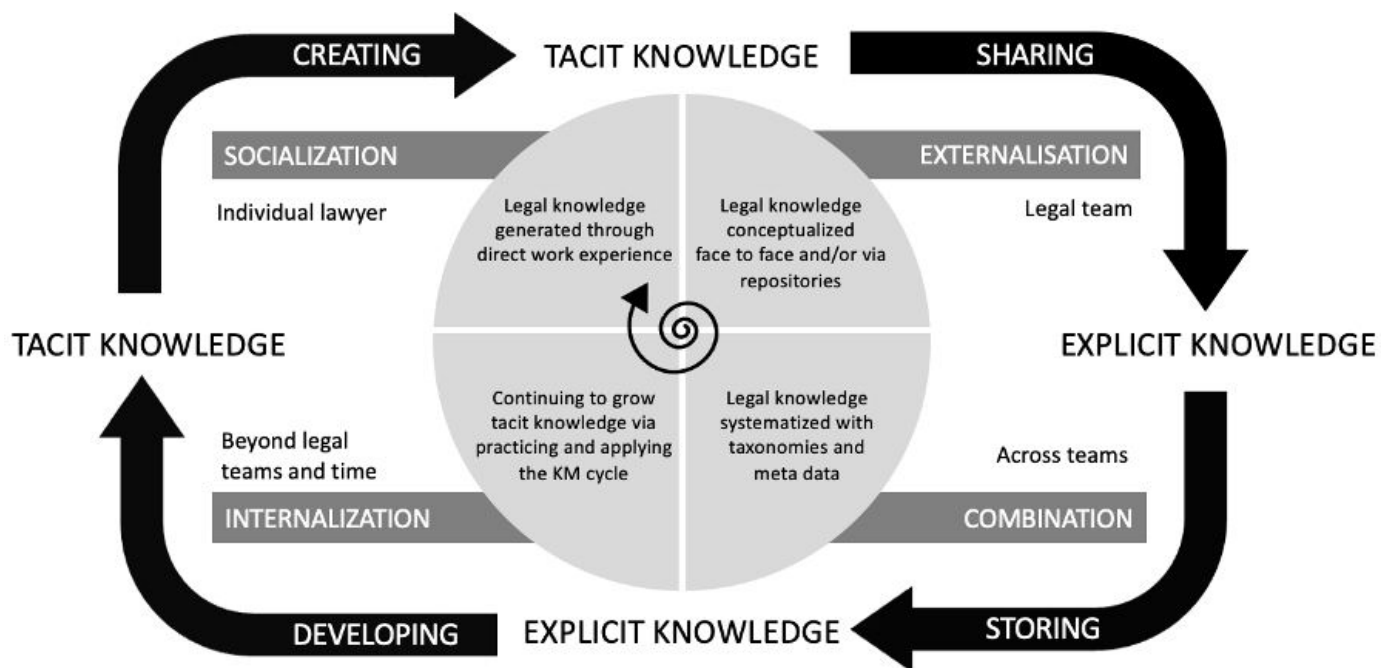
There is nothing like a well-functioning compass to navigate complex or unknown territories. To avoid reducing legal knowledge management to a boring activity that needs done and you delegate to a B-team you cannot use for better work, it is very much worth reflecting whether you are giving due attention to legal KM. Could it be that your disinterest is a correlate of your ignorance or lack of time to understand the ins and outs of legal KM?

A general framework widely acclaimed by practitioners and over time academically confirmed can be found in the work of Nonaka and Takeuchi. The work of these authors is unavoidable go to for usable insights into the why, how, and what of KM in organisations.

Nonaka and Takeuchi have created the ‘SECI model of KM’ (see the ‘To go further’ section below). It is one of the most influential models of knowledge creation and transfer in teams and organisations. It explains how tacit and explicit knowledge is converted into organizational knowledge.

The model is fully applicable to legal teams. By understanding and applying the model, legal professionals can create more knowledgeable and innovative teams.

Figure 2 below replicates an adapted version of the original model. It shows a cycle where tacit knowledge becomes explicit. It also displays how knowledge shifts from individual to collective level. It describes the cyclical dimension of knowledge creation. When understood, this model can become a highly effective (generating relevant knowledge) and efficient (most economical approach) knowledge production iterative process.



SECI model adapted from Nonaka and Takeuchi, 1998 - V.M. Saintot, LL.M. PhD, 2023

Here some few questions to self-reflect about your own practice:

1. When you look at the model, what comes to your mind in terms of maturity of your understanding and practice of legal KM?
2. How much do you let KM sharing happen versus how much do you pro-actively shape legal knowledge exchanges?
3. What are the in-house and external professional fora where you actively foster the conceptualization of your legal practice?
4. How do you ensure that scattered explicit legal knowledge is combined and shared?
5. How well-oiled is the integration over time and space of your practical legal KM knowledge and know-how and how do you keep expanding your practice of the law continuously?

What is possibly not mentioned in the SECI model is the culture and mindset required to fully tap the potential of caring for the four quadrants of the model.

If legal professionals would explicitly invest their attention to work according to this approach, many of their challenges would get tamed with resolve and grace. It would be most rewarding humanly and interpersonally. If the goal of any optimisation, automation, and newest technology is to gain time, save costs, increase value creation, why not go for it AND demand that the savings/gains are invested to generate more respectful and healthy work environments across generations of legal practitioners.

To go Further Books

- Nonaka, Ikujiro, Takeuchi, Hirotaka, (1995). The knowledge-creating company : how japanese companies create the dynamics of innovation. Oxford University Press.
- Hilger, J., & Wahl, Z. (2022). Making Knowledge Management Clickable: Knowledge Management Systems Strategy, Design, and Implementation (pp. 1-311). Springer.

Websites

<https://www.kmworld.com>

<https://aboveandbeyondkm.com>

About the Author

[Dr. Valérie M. Saintot, LL.M.](#), is a lawyer (since 1994), mindfulness teacher (since 2005), visiting lecturer at [Bucerius Law School](#) (since 2021), and adjunct professor with SKEMA Business School (since 2022).

Valérie is promoting life centric AI developments as active member of the Liquid Legal Institute and with Z-inspection.

She is an education ambassador for Green Project Management. Valérie builds on analytical frameworks offered by mindfulness, neuropsychology, and philosophy. She cares to combine law-AI-sustainability-mindfulness as means and goals to promote a resilient and regenerative way of living and working.

FOCUS ON THE 3 PS TO COMPLY WITH THE EU CORPORATE SUSTAINABILITY REPORTING DIRECTIVE

Why the right policies, processes, and procedures are going to be central to ensuring your organization complies with The EU's new Corporate Sustainability Reporting Directive (CSRD)

By Prashant Dubey, Chief Strategy Officer and Research Chair at Agiloft



The EU's Corporate Sustainability Reporting Directive (CSRD) is a major new regulation that will require companies from across the globe to disclose more information about their environmental, social, and governance (ESG) performance. The CSRD represents a significant increase in the scope and complexity of sustainability reporting requirements and companies need to start preparing now to ensure compliance.

What does the CSRD cover and how can companies comply?

The CSRD expands the scope of reporting requirements to include approximately 50,000 companies, which range from large enterprise organizations to listed small and medium-sized enterprises, as well as large operations of businesses established outside the EU.



The new regulations require companies to disclose a granular set of information about their ESG performance, including their impact on social, governance, and environmental factors, as well as the influence of these factors on the company itself. This is known as "double materiality" reporting, which will be a new concept for many companies, but it is essential for understanding the full range of ESG risks and opportunities. Companies will therefore need to implement the necessary changes to their contracts, systems, and operational methodology to ensure compliance with the CSRD.

CSRD is broadly in line with the UN Sustainability Development Goals, to be achieved by 2030. This means that companies can use the CSRD reporting requirements as a framework to advance their sustainability goals. Companies can gain a clear advantage over their competitors by demonstrating their commitment to sustainability through compliance with the CSRD. This is because investors and other stakeholders are increasingly demanding transparency on ESG issues.

Policies, processes, and procedures

In an environment of constantly changing regulations, organizations can ensure compliance by focusing on policies, processes, and procedures. This is a tried-and-true approach that has been used successfully in other domains, such as compliance with reporting directives around payment terms.

When it comes to ESG compliance, regulators are initially looking for "limited assur-

ance" that organizations are "demonstrating good faith." This can be demonstrated by having a policy in place that outlines the organization's sustainability goals and a roadmap for achieving them.

Once an organization has a policy in place, it needs to develop processes and procedures for capturing how it is behaving per the policy and reporting on this behaviour. This process should be well-defined and involve all relevant stakeholders.

Contract Lifecycle Management (CLM) systems can be used to automate and streamline many of the policies, processes, and procedures involved in ESG compliance, such as capturing obligations, integrating with other systems, and generating reports. For example, CLM systems can be used to capture obligations under ESG regulations, integrate with other systems such as finance/ERP systems and reporting dashboards, and generate in-depth reports on ESG performance.

Effective contract management also enables in-house legal, sales, and procurement teams to understand who is compliant, who is liable, and who is meant to do what, when, and at what cost. Having that sort of information at your fingertips is invaluable.

A fully flexible, configurable CLM system can make that process even easier by enabling teams to create bespoke workflows

that fit each reporting criteria while providing fully auditable reports. Whether they are dealing with CSRD (ESG), Schrems II (data privacy), or the new Digital Operational Resilience Act (DORA) (financial services), a CLM provides a full audit trail, precise controls, and automatic notifications across all agreements.

Vendor portals can also hold suppliers accountable for compliance and provide red-flag notifications when documents or clauses are not compliant.

Today's leading, flexible CLM systems employ cognitive technologies, such as natural language processing (NLP) and AI machine learning, allowing Legal, Finance, and Operations to automate global governance and regulatory compliance. That means they will spend a fraction of the time, money, and resources they might expect to maintain compliance and stay CSRD audit ready.

As a result, CLM systems will become an essential tool in any compliance, procurement, or le-

gal team's arsenal. A CLM system can help companies track their sustainability obligations across their entire supply chain. This can help companies meet their sustainability goals and avoid compliance risks. A sustainability reporting framework can help companies define sustainability goals, collect data on sustainability performance, and report their sustainability data in a consistent and transparent way.

About the Author

Prashant Dubey is Chief Strategy Officer and Research Chair at [Agiloft](#), the global leader in agile contract lifecycle management (CLM) software.

Prashant has been in the legal technology and services industry for over 20 years, and has authored a number of books such as "Litigation Readiness" (Oxford) and "The Generalist Counsel" (Oxford), Prashant holds an MBA in Strategy & Finance and a BA in Economics from The University of Chicago.

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Colin S. Levy

Lawyer and Legal Technologist



EDITED BY COLIN S. LEVY



Redefining Legal Operations

Ari Kaplan speaks with Connie Brenton and Jeff Franke, the founders of LegalOps.com, a membership community providing legal operations and other professionals with resources and events including an inaugural conference in October.

(This article was published at LegalBusinessWorld.com on October the 14th)





Ari Kaplan

You have served as the VP of Legal for NetApp for over a decade and also founded and served as the first CEO of CLOC. How did your career move from legal in the traditional practice sense to focus on legal operations as a unique discipline?

Connie Brenton

I was very fortunate to have started early on in the evolution of the legal operations role. I had a fantastic general counsel, who saw the bigger picture and looked at legal as a competitive advantage. He truly understood the value of running legal like a business. I stepped into that role with a team of 23 almost 20 years

ago. The role was unique and at that point, it was almost unheard of to have a team of that size. I was also active in the legal process outsourcing space and visited India to find LPO partners. We built a legal operations team that bridged all of the different groups within the company into one optimized team and produced a true general counsel/legal operations partnership to help provide value beyond the strict delivery of legal services.

Ari Kaplan

You are also a co-founder of CLOC and like Connie have practiced in a legal department while leading legal operations. How does LegalOps.com combine those two elements?

Jeff Franke

At its core, legal operations is really about delivering legal services. I spent about 10 years practicing law and received an MBA when I got my JD so I have always focused on the bigger picture. This function is multidisciplinary and there are three components to it: (1) finding the right tools to help deliver services; (2) the delivery of those services; and (3) the core elements of the business, from finance and communication to technology and organizational design. If you were going to design the perfect person for the most senior role in operations, it would be somebody who had a JD, an MBA, and a background in IT.

Ari Kaplan

How do you see LegalOps.com's first conference distinguishing itself from others that focus on this topic?

Connie Brenton

We will have the entire legal ecosystem in a room together. The LegalOps.com conference is being produced in partnership with the Women's General Counsel Network and LawVision, which largely supports law firms. In addition, we curate all of the content so that attendees will leave with additional knowledge that improves their performance and an expanded network to increase the available resources when people have specific questions. In fact, we are dedicating the entire afternoon of the first day of the "Running Legal Like a Business Conference" to personal development.

Jeff Franke

We are also creating a community to both discuss and apply the concepts that help law

departments thrive. We see this as an educational event and also an opportunity to share new ideas to help drive the profession forward. We created the CLOC Core Competencies or CLOC 12, which is still a great paradigm, but we have also created the Personal Effectiveness Skills and Traits Competency Model and will provide training around it, as well as on a third model we will be introducing at the conference. In an ideal world, business and law schools would already have the content and incorporate it into their curricula.

Ari Kaplan

Where do you see legal operations headed?

Connie Brenton

Legal operations will follow the evolution of the general counsel and align the delivery of legal services to the creation of a competitive advantage for the business. Law firms are also now creating their own technology solutions and overhauling the way they are thinking about delivering services. As alternative legal services providers, law firms, and technology companies change so do legal operations professionals.

Jeff Franke

Changes in technology, including ChatGPT and the expanded use of automated workflows, will impact legal operations, as will creative staffing models and ALSPs. Regulators will also influence this shift because the regulatory environment will become more complex and increase the relevance of legal. We are even breaking certain services, such as legal project management, into components and identifying their true value in a process of de-aggregating and re-aggregating. The evolution of the role of the

GC and legal operations, in general, is largely driven by changes in the law.

**Editor's Note: This transcript was originally published by the ABA Journal. To read it go to: <https://www.abajournal.com/columns/article/redefining-legal-operations>.*

About the Author

Ari Kaplan (<http://www.AriKaplanAdvisors.com>) regularly interviews leaders in the legal industry and in the broader professional services community to share perspectives, highlight transformative change, and introduce

new technology at <http://www.ReinventingProfessionals.com>. [Click here to listen to the conversation.](#)

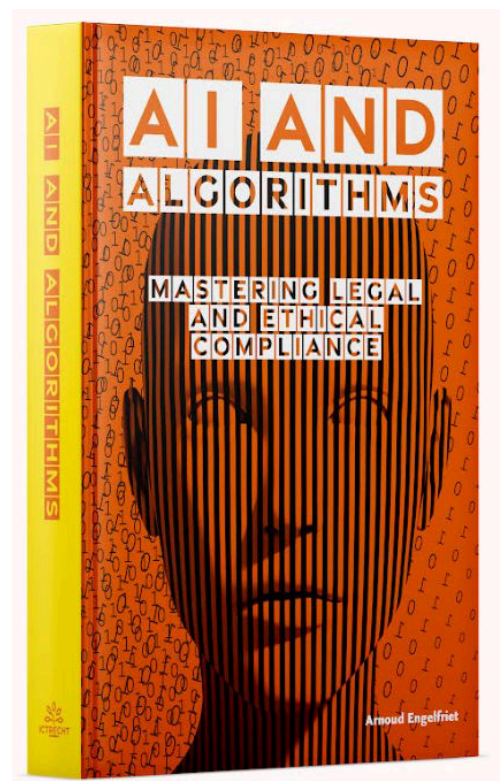


Written for legal professionals, compliance officers and AI product managers, this book provides the keys to understanding the evolving landscape of AI law, presenting clear, actionable insights on how to apply Europe's legal rules and ethical guidelines in AI design, deployment, and oversight.

Delve into detailed discussions on crucial concepts such as human agency and oversight, technical robustness and safety, privacy and data governance, and many more.

Explore the essence of transparency in AI systems and their impact on societal and environmental well-being, while also gaining an understanding of accountability mechanisms.

The book will be available starting from January 2, 2024.



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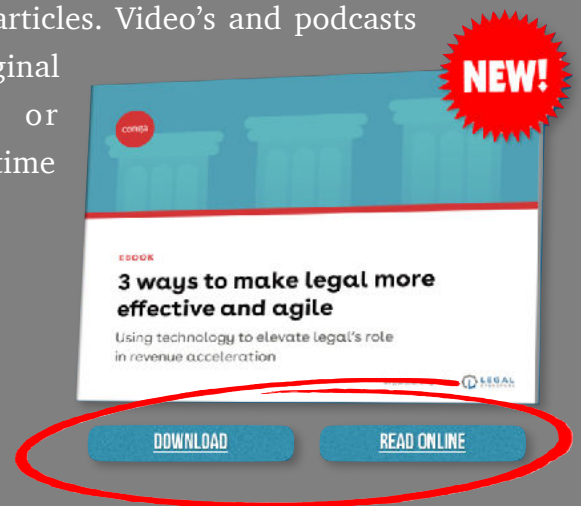
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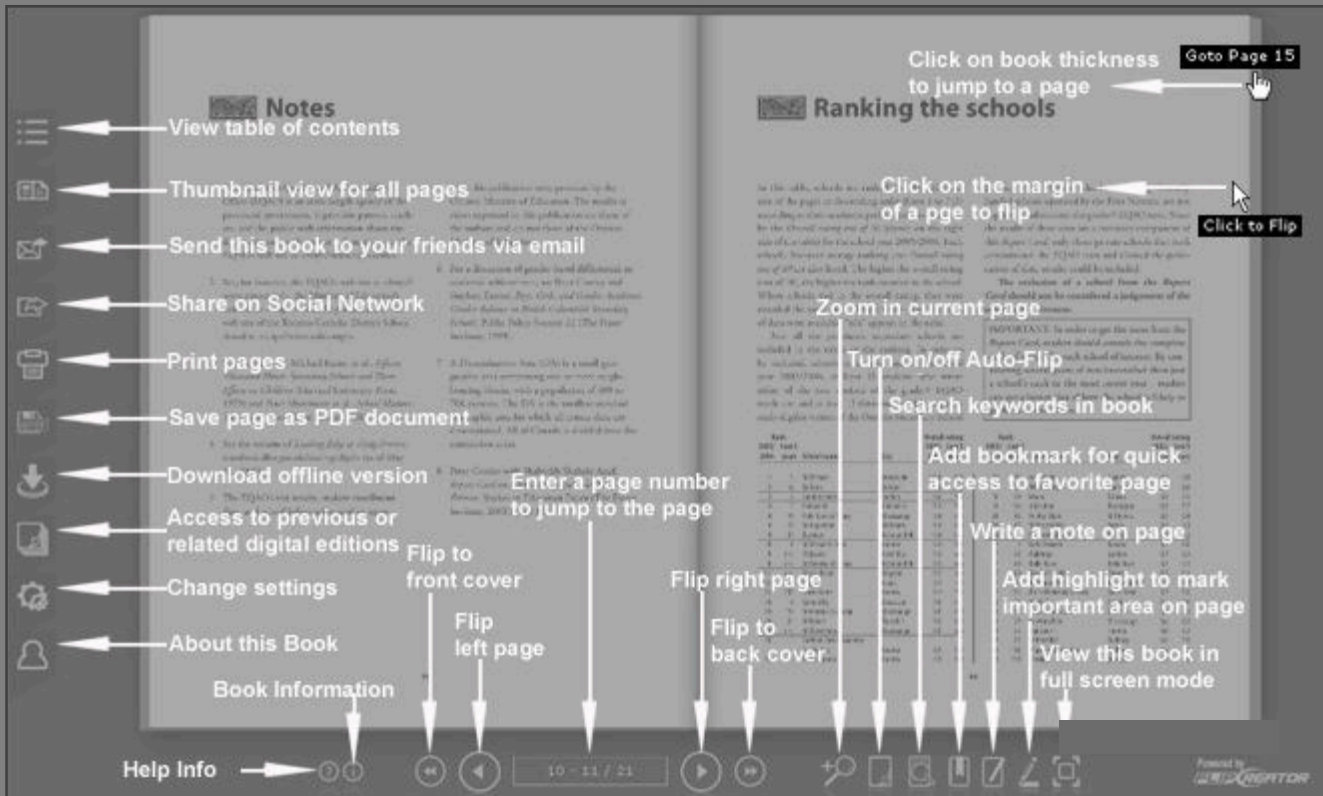
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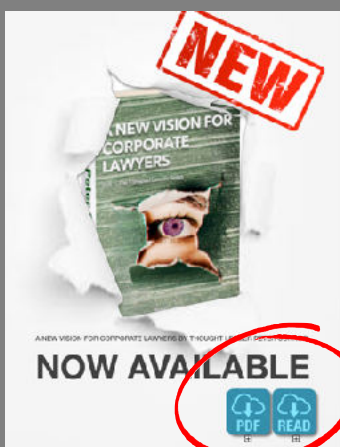


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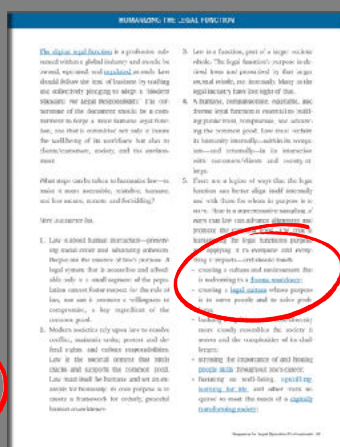
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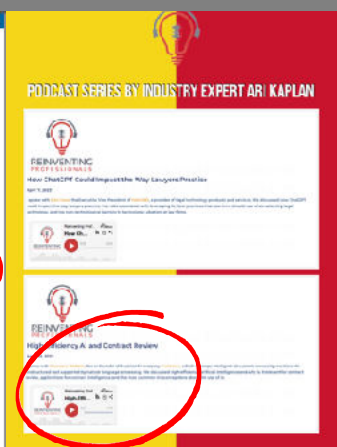
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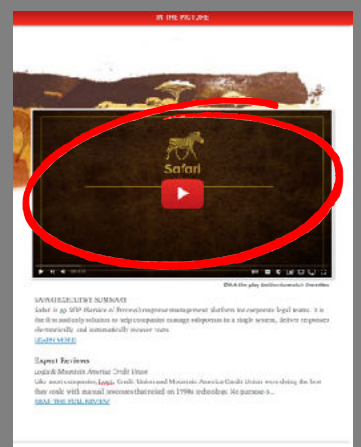
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Median Firm Size

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Leadership Perspectives



“Not only were we keeping the spinning plates in the air before the pandemic, now someone has lit them on fire.”

Executive Director



“We are looking at how we can leverage artificial intelligence for automated document creation.”

Chief Operating Officer



“It is a really fun time to be a law firm leader as there is a great opportunity throughout the community to reshape firms in a post-pandemic era.”

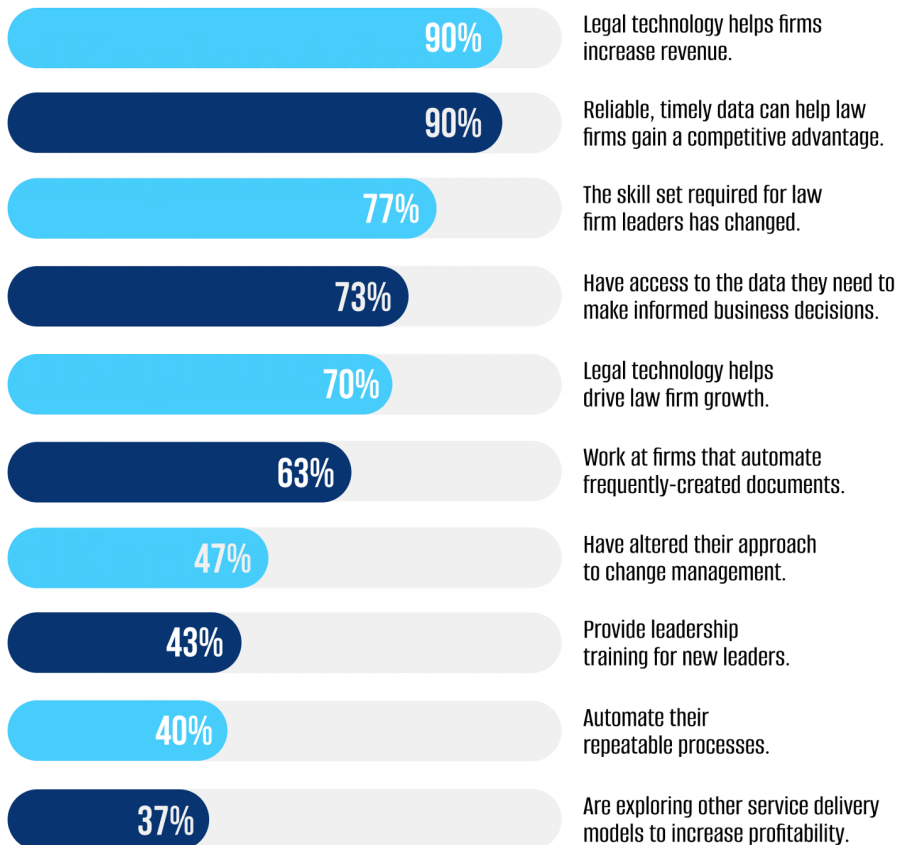
Chief Operating Officer



“What you don't measure, you don't manage.”

Chief Operating Officer

Results



If you have questions, please contact Ari Kaplan at Ari@AriKaplanAdvisors.com.

