

# LEGAL **BUSINESS** WORLD

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## The eValueators: Thoughts on the Evolving Nature of “Value” in the Business of Legal Services

By Cash Butler and Jeff Kruse

Contributors: Stephanie Corey, Pim Betist, Pieter van der Hoeven, Cynthia Fernández Hawa, Patrick J. McKenna, Richard G. Stock, Ari Kaplan, Amy Hinzmann, Marla Crawford, Tobias Heining, Sebastian Hartmann, Marcus M. Schmitt, Lorna Campbell, Karla Schlaepfer, Baltasar Cevc

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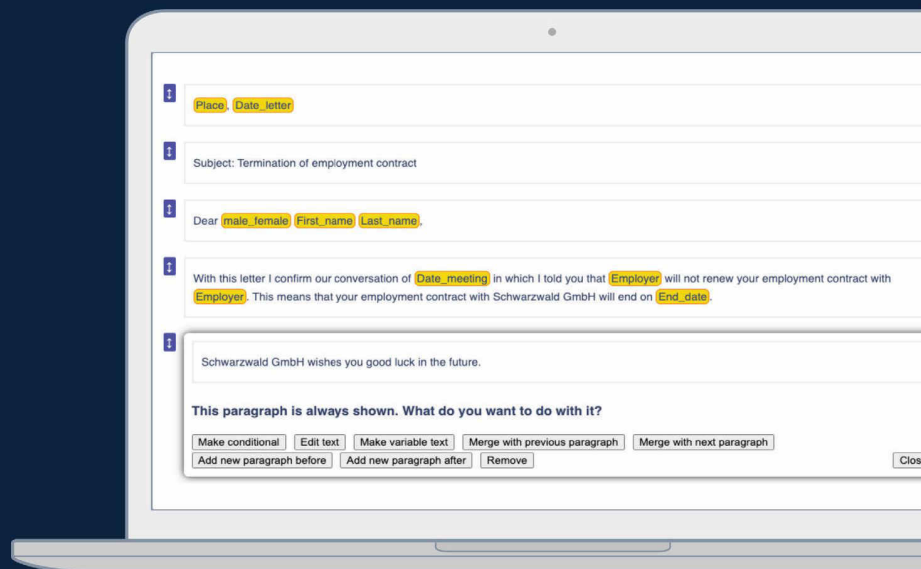


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We are honored with our growing readership and sharing an increasing amount of outstanding contributions to the business of law. To accommodate our readers, we have divided this eMagazine into two issues. This makes it easier to scroll thru the vast amount of great articles, especially for those using tablets and other mobile devices.

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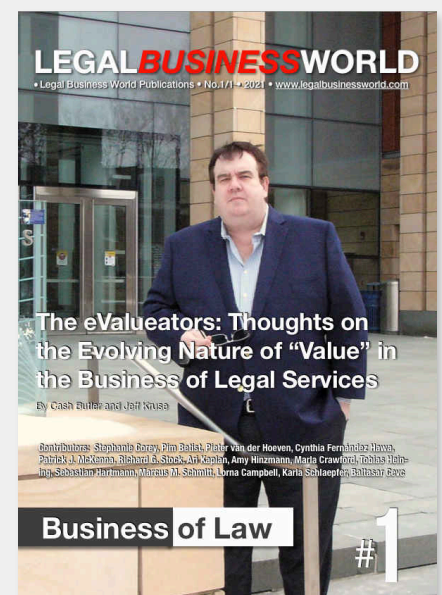
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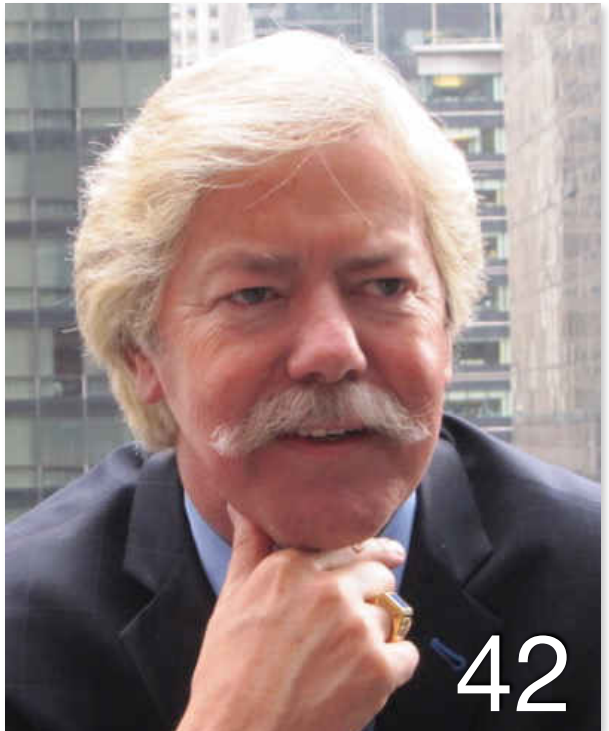
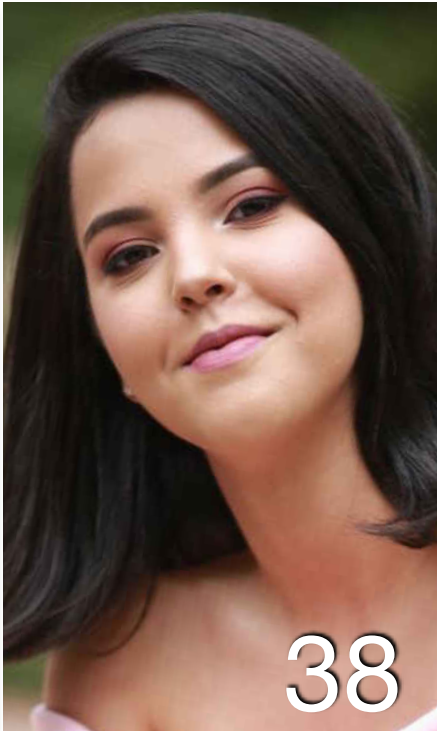
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# The



# eValuators





The Value Series

## **The eValueators:**

# Thoughts on the Evolving Nature of “Value” in the Business of Legal Services

By Cash Butler, founder of both ClariLegal and R3Ex, and Jeff Kruse, President of Kruse Consulting and Dispute Resolution LLC

Value is an evasive concept. In economics, value is a measure of the benefit provided by goods or services measured to units of currency. Dictionaries broadly define value as the monetary worth of goods or services, the fair return in exchange for goods or services, or the worth of goods or services in exchange for currency.

But none of those basic definitions are helpful for a legal service provider who wants to provide maximum value for its clients. Plus, none of these generic definitions fail to address the evolving nature of value in the third decade of the 21<sup>st</sup> century.

Law is a business. Law firms are businesses. To succeed, firms must deliver value for their clients. Legal departments are integral parts of their businesses and are more and more considered businesses themselves. Legal departments must deliver value for their clients.

Jeff Carr, the former long-time General Counsel of FMC Technologies who had a shorter stint as GC of Univar Solutions,

created an equation for value. His equation states that “delivered value” is “effectiveness (objective obtained) + Efficiency (actual/budget, right people, right tools, leverage to reduce costs & produce quality) + Experience (customer’s experience with provider).”

Cash Butler has proposed a formula for measuring value. The first measure in the value formula is “the importance of the good or service being acquired.” The second measure is “the category of risk the customer is seeking to mitigate or eliminate.” The third measure is “the customer’s prioritization of the value that the vendor or service provides,” including costs, promptness, responsiveness, and expertise. The fourth measure “is the customer’s desired outcome.”

Even the value equation and the value formula are not enough to provide concrete advice and examples for legal providers seeking best practices. Fortunately, the interviews in the ClariLegal Value Series provide additional insight from leading experts about what currently constitutes business value in the delivery of services in the legal industry. However, rather than interview one leading expert for this issue, we decided to ask a number of the key thought leaders to offer their thoughts on value from the past year and ask them to make a prediction about value for 2021.

These experts constitute the inaugural class of the “eValueators Initiative.” R3Ex, a new organization focused on legal operations excellence providing assessment, consulting, and technology, developed the eValueators Initiative to bring together value experts who, through their breadth and depth of education

and experience, are uniquely qualified to address the integral role legal services will play in delivering value to clients in the 21<sup>st</sup> Century.

The eValueators have proven that they are true practitioners of value in the business of providing legal services and understand how value is evolving in the 21<sup>st</sup> Century. They have worked for law firms, corporations, consultancies, and vendors. They have been providers of legal services, and they have been customers and clients. These experts have provided value from many different perspectives.

These experts have delivered business value to and within their organizations. They have also been gracious by sharing their insights on business value in the ClariLegal Value Series interviews in previous issues of Legal Business World. They have personally helped shape the growth and development of the legal operations over the last couple of decades and have expanded the understanding of the evolving nature of value in the legal business space.

We asked each expert to offer independent views without the opportunity to review what any of the other individuals wrote. The individual views expressed in this article are those of the experts and do not necessarily reflect the views of their employers. As with any collective observational and predictive endeavor, some of the experts may disagree with one another based on their perspectives while others will supplement each other. In alphabetical order by first name, here are the observations about value in 2020 and 2021 from this initial class of R3Ex’s eValueators.



**Aaron D. Crews, Chief Data Analytics Officer at Littler**



One observation about business value from 2020

When times are good and the economy is roaring, there is a lot of room for excess. Events like the COVID-19 pandemic bring the importance of value into sharp relief. Corporate legal departments tend to be cost centers, and events like a global pandemic compress legal budgets.

The last 12 months really underscore how important it is for lawyers to provide high value/high impact legal advice, and to deliver this in ways that meet the client where they are and at the speed of the business. Law firms that can build this into their DNA are likely to flourish in the years to come.

One prediction about business value for 2021  
2021 is probably going to look a lot like 2020. The continued disruption from COVID-19 and other macro forces are likely to further en-

trench the emphasis on value going forward. In a lot of ways, we are likely navigating a watershed moment in the practice of law. I think many of the pandemic generated innovations that firms and companies have launched in the last 12 months are here to stay. Doubling down on what works is likely to lead to outsized results.

**Alison Orlans, President and CEO for Orlans PC and Revlegal Services**



One observation about business value from 2020

The challenges of 2020 forced innovation, resiliency and adaptability – and the companies that rose to these challenges will be better positioned for 2021. There was a shift in the prioritization of what people valued in 2020, with focus on family, home, and health permeating all aspects of our lives.

Hopefully some of the pandemic pivots continue-like broad acceptance of working from

home, the efficiency of virtual court appearances, and enhanced use of technology. The ingenuity of 2020 was inspiring and showed us how monumental things can be accomplished when the goal is clear, and everyone is rowing the boat in same direction. We all learned something last year that will make us better leaders going forward.

One prediction about business value for 2021

In 2021 companies in the legal space will be challenged to provide more value, more efficiently, with more predictable costs. Working remotely during a pandemic is different than proactively evaluating and streamlining processes for the next generation of work. Expect more companies in the legal space to utilize technology and lean process to streamline routine and allow attorneys to focus on the highest value tasks. This will help lawyers focus on their areas of expertise and service providers to demonstrate cost effective results, ultimately delivering more value to clients. At Revlegal we call this *law accelerated*.

**Audrey Rubin, Senior Advisor for BakerGilmore LLC**



One Observation on business value from 2020

The need for Diversity, Inclusion and Justice in our businesses need better systems and lasting power became perfectly clear. Law departments have the best intentions, but without implementing new processes and understanding and tracking the data, we continue to only take baby steps.

One prediction about business value for 2021

General Counsel and others will hopefully bring in experts to advise on how to make DE&I in their departments and the company long-lasting and measurably improved.

**Debbie Hoffman, CEO & Founder of Symmetry Blockchain Advisors, Inc.**



One observation about business value from 2020

Around the world, technology is being implemented at a rapid pace as social distancing requires innovative solutions that are both remote and digital. Businesses are embracing

kitchen tables. The acceptance of new technology, along with the need for a change in established processes, opens the door for technology to grow in contexts well beyond traditional contexts.

One prediction about business value for 2021

Change is now a necessity, rather than a nicety. The legal services industry will embrace the digitization of files and implementation of technology efficiencies as a matter of course. Paper files are becoming a thing of the past and e-filings will be the norm. Attorneys will incorporate technology advancements in all facets of their jobs, and law schools will train the next generation of lawyers with respect to utilization of new methodologies.

**Dennis Kennedy, Interim Director, Center for Law, Technology & Innovation**



One observation about value from 2020

The value you bring to the table must be clearly and succinctly defined and stated AND it

must align with the value your client wants and needs. There is now a premium placed on both reaching an understanding of value and communicating it. If you don't understand and align to what your client values, you lose. If you can't communicate that value, you lose

One prediction about business value for 2021

We have learned that everything works in an evolving interplay of complex systems. Value must now be considered in terms of how you improve both your client's role in its ecosystem and how you bring value to the ecosystem itself. This shift will require both a new mindset and a new skillset. Understanding client ecosystems and the goals within the ecosystem are vital, whether their goal is digital transformation or survival. This movement has already begun and, if you keep your eyes open, you will see signs of it everywhere.

**Jeff Kruse, President of Kruse Consulting and Dispute Resolution LLC**



### One observation about business value from 2020

The pandemic accelerated the trend of legal consumers searching for maximum value from their legal service providers. At the beginning of the pandemic, a number of providers rushed content and services to the market without asking their clients about what the clients truly needed. As a result, many providers produced webinars, whitepapers, newsletters, and offered services that their clients did not really need. As the year progressed, successful providers asked their clients about their true needs and provided value by responding to the actual needs of the clients. The outward-focused providers proved to be more successful than the inward-focused providers.

### One prediction about business value for 2021

Clients and consumers of legal services are growing more focused on assessing value in terms of results and are less interested in paying for the process of getting the desired results. Results-oriented valuing is prevalent in other professions outside of legal services like coaching and consulting. The same people and companies who are clients for coaches and consultants are also consumers of legal services and are beginning to see the value in paying for results rather than paying for time or paying for volume. That trend will intensify in 2021 and beyond. Because consumers of legal services will be more focused on results in evaluating value, the role of requests for proposal and how providers respond to those requests will be more prominent in 2021.

**Mark Smolik, General Counsel & Compliance Officer, DHL Supply Chains Americas**



### One observation about business value from 2020

In 2020 those law departments that proactively adopted metrics to measure their own performance along with the performance of the firms they hire deepened the value they deliver to their organizations.

### One prediction about business value for 2021

In 2021, I anticipate there will be significant focus among the legal industry on cyber security. Increasingly, data is considered to be "digital gold." Data needs to be protected from unauthorized access. Law departments will increasingly seek insight into how their law firms are protecting client data.

There will also be a deeper focus on diversity and inclusion. Law departments will embrace the reality that you can't manage effectively what you don't measure. Metrics among law department leaders will become the new buzz words. Law departments will see significant

cost savings and value driven opportunities in holding their law firms accountable to performance standards and fees paid will be tied to performance.

**Martin Tully, Partner & Founder of Actuate Law LLC**



One observation about business value from 2020

“Involuntary acceleration” and “forced innovation” were two terms prominent in 2020. Organizations of all types, legal in particular, were compelled to quickly pivot and adopt or advance technological measures that facilitated remote work and increased collaboration among distant teams. Over time, altered habits and better familiarity and comfort with these tools have fostered more efficient workflows and B2B and B2C interactions that will enhance value in the delivery of legal services

for many years to come. Almost overnight, technological curiosities have become engrained best practices.

One prediction about business value for 2021

As collaboration and the leveraging of innovative technologies become more widespread at an accelerated pace, metrics for value in the delivery of legal services will focus more on measurable results than the component parts that made them possible. The lines between traditional and nontraditional legal service providers will continue to blur, and in doing so, they will increasingly adopt components of one another in combinations most appropriate to maximize efficient and cost-effective outcomes. In addition, time being the commodity of highest value, more legal services will be delivered virtually and online, significantly reducing the amount of time spent in and getting to and from both the workplace and courtroom. Examples of things here to stay range from virtual court appearances, to online collaborative project meetings, to remote collection and review. Of course, pre-pandemic conceptions of data security and privacy will have to adapt to accommodate this new normal, as well as a U.S. privacy regulatory environment that looks increasingly European in nature.

**Mike Bryant, Partner at Knox Capital Holdings**

One observation about business value from 2020

The tidal wave of investments in key categories such as CLM has given corporate counsel a myriad of credible technology companies to choose from when it comes to driving efficiency

and savings across their contract ecosystem.



One prediction about business value for 2021

I will buck conventional wisdom and predict that at least one of the Am Law 200 firms that had previously invested to diversify into an ancillary business, such as consulting, eDiscovery, staffing, etc. will break rank and sell or dissolve the unit thereby returning to their core business of practicing law.

**Sheila Murphy, President & CEO, Focus Forward Consulting LLC**

One observation about business value from 2020

2020 was such an unprecedented year in which both companies, law firms, and service providers needed to pivot quickly. In the pivot, what became apparent was the tremendous difference between legal service providers who tried to make customers fit into their services and those that honed the services to meet the customers' needs and make them more effective and efficient. Without all of the conferences and lunches and in that uncertain eco-

nomie environment, I believe customers appreciated that difference even more in 2020. The more client-focused firms enter 2021, outpacing the inward-facing organizations.



One prediction about business value for 2021

I don't think it is a prediction but a fact that we will no longer operate or work the way we did in February 2020. That model is gone, and I believe some of the learnings will focus on how technology can make us more efficient and effective. Like all change, this change will bring opportunity. The firms that will leverage this opportunity best will not be those that "guess" what the new needs and impacts are--but those that research and speak to their clients to learn about their needs and where they see themselves heading. As more organizations will be working and thinking differently, they are looking for partners to help them succeed.

**Toby Brown, Chief Practice Management Officer for Perkins Coie LLP**

One observation about value from 2020

The value of many lawyers went up in 2020. When the pandemic hit clients needed immediate advice and counsel on an ongoing basis as new needs emerged, laws were passed, and regulations continually changed. Clients relied heavily on their outside counsel to help them through this urgent time. And law firms stepped up with COVID updates, 50 state surveys and other pressing content and advice. This allowed clients to better navigate their way through very challenging times.



One observation about business value from 2020

Value is being available, aware, and actively in touch with your clients and your teams. Value is what comes out of remaining focused building a clear understanding on what to do and when to do it, giving direction to your teams building on what works, stopping what doesn't. Planning and delivering on what matters most when its needed, while helping and supporting one another still pushing to stretch boundaries on how to grow and innovate - avoiding the pitfalls of going into preservation mode.

One prediction about business value for 2021

To quote Kobe Bryant – “Never get bored with the basics.” 2021 is the year to focus on the basics, adapting to the change that will be an outcome of 2020 decisions. Program hygiene and relationship management will be critical in 2021. Getting the basics right to focus on setting up a better roadmap for 2022. 2021 will be the year to focus on mapping out how 2021 will setup what we hope to be a



One prediction about business value for 2021

Law firm leadership and management were able to embrace more business-like actions (e.g., forecasting) to help them make better, more informed decisions as their businesses navigated through unknown waters. These new skills will play very well in 2021 and going forward. Firm leadership has seen the value of leveraging business tools and will continue to do so and expand their use.

**Vincent Cordo, Jr., Chief Client Development and Relationship Officer at Holland & Knight LLP**

more normalized year in 2022, being active with customers understanding their change and how our teams can best position themselves to build relationships and how best to support them.

## Conclusion

The pandemic forced sudden and massive changes in the delivery of legal-related services in 2020. The outlook for 2021 looks similar. The legal industry will continue to evolve as will clients' perception of "value" in the business of delivering legal-related services. The ClariLegal Value Series Interviews and R3Ex's new eValueators Initiative will continue to grow and advance the understanding of business value in the delivery of legal services in the 21<sup>st</sup> Century.

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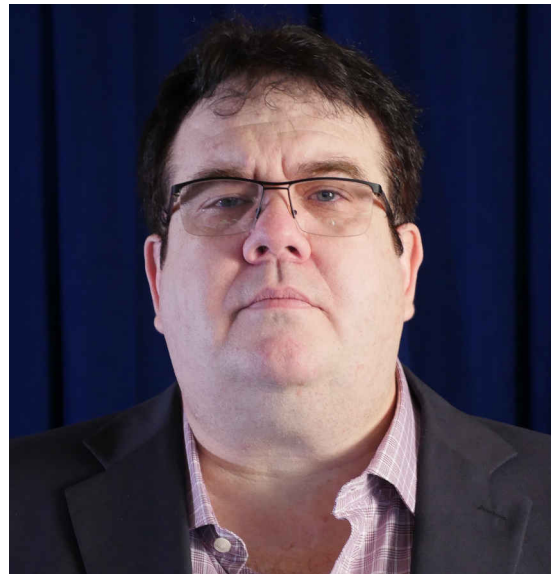
## About the Authors

[Jeff Kruse](#) is President of Kruse Consulting and Dispute Resolution LLC where he helps law firms and legal departments operate more efficiently so they can be more profitable. Jeff is a legal operations expert specializing in opera-



tional efficiency, outside counsel and vendor management, technology selection and implementation, and litigation management, [www.k-cadr.com](http://www.k-cadr.com)

[Cash Butler](#) is the founder of R3Ex and ClariLegal and a seasoned legal technology innovator. Cash has over 20 years of experience in the



legal vertical market, primarily working in legal operations, vendor management, litigation and compliance. Cash is a legal operations expert who has provided consulting on operational processes and the identification and implementation of technology at numerous corporations, law firms, and other service providers that bring significant value to stakeholders.

[ClariLegal](#) is a preferred vendor management platform for legal services that improves business outcomes. Made for legal by legal experts. We match corporations and law firms with preferred vendors to manage the work through a fast and complete RFP and bidding process. ClariLegal's platform allows all internal client segments to improve business outcomes across the board – predictability, time and money. [Learn more](#)





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# Negotiation:

## Finding Cost-Savings and Common Ground

By Stephanie Corey, Co-Founder & General Partner UpLevel Ops LLC, Co-Founder, CLOC



Navigating the complex world of legal negotiation can be daunting, but there are strategic ways to approach the process that reduce costs, alleviate budget pressure, satisfy stakeholders, and produce long-term, measurable results.

There is no single way to negotiate within the legal procurement and services arena. For strategic, complex relationships beyond the RFP-centric world of simple transaction-based contracts, there are many factors to consider in addition to pricing.

It is vital to understand and establish priorities, as a legal team, and as professional buyers of goods and services. Without that as a first order of business, it is difficult to proceed. Then, do your homework:

- Define the collective good
- Define what success will look like, both now and future. For instance, are you trying to reduce the number of firms and/or vendors? Reduce costs? Create better partnerships with firms?

Answering these questions will help guide the process and lead to success.

Find common ground that helps all team members be successful in their areas. The General Counsel plays a critical role at this point in defining and communicating end-goals. Legal ops and Sourcing then must work together to make it so. But team members (i.e., the other in-house counsel) need to be on board for the success of the program.

Many believe the goal of a successful negotiation is to identify and mitigate as much risk as possible up front, while enabling a partnership between companies to develop. This sounds good, but is easier said than done, especially for those new to the negotiation process. If one side has engaged in old-school tactics, such as wielding a hammer, focusing on risk avoidance or risk-shifting to the detriment of the other party, then the relationship is in jeopardy. Forget a long-term partnership in that case.

One thing is certain among all the uncertainties, negotiation strategies will have to adjust to new realities.

This article addresses how negotiation plays a role in the legal industry in the following areas:

- Pricing
- Payment Terms
- Other Terms and Conditions
- MSAs and SLAs (master service agreements and service level agreements)

Two basic negotiation guidelines to embrace are: communication and collaboration. Those imperatives, which feed on each other, are important pieces of a flexible governance structure that the parties craft together.

### **Pricing**

There are at least two schools of thought on pricing: Procurement is obsessed with finding the lowest costs, while Legal is mainly concerned with quality, regardless of price. Getting the right balance of costs, quality, and efficiency is a trick that can foil even the most well-intentioned.

According to a Deloitte 2018 survey [1], 78% of respondents said cost reduction is the main business strategy for procurement leaders, followed by new products/market development (58%) and managing risks (54%). The report noted, “A clear shift in procurement focus towards innovation and value requires an acceleration in the pace of change especially in leadership, talent and innovation. Procurement has continued to successfully deliver short-term savings and manage risk to support growth during a period of uncertainty.”

Legal procurement can - and should - help drive the process by identifying market conditions and pressures on price and budget.

### *The Time/Value/Money Paradigm*

The old adage goes that “you get what you pay for,” and in the realm of buying legal services, it could not be truer.

Quality service provided quickly is by definition not cheap, whereas cheap service involves sacrifices in value or time. The message? Do the due diligence and collect and assess the data transparently for all of the stakeholders in order to set priorities and negotiate the pricing accordingly.

### *Legal Services*

The legal services category is highly complex; saving money while improving quality and service levels is a challenge that has to be taken on. In addition, it doesn't require hostility or a purely transactional approach - maintaining a good relationship with law firms and service providers is still an important, necessary factor.

Many legal departments are exploring alternative compensation models, rather than the traditional billable hour. For example, in order to maximize value and reduce the total cost to serve the business. It is critical that sourcing teams understand what each model offers when negotiating pricing.

### *The Pros & Cons of Alternative Pricing Models*

There are three basic alternative pricing models, and there are pros and cons to each option.

1. Volume-based percentage discounts
2. Blended Rates
3. Alternative Fee Arrangements (AFAs) and Value Based Pricing (VBP)

Pricing discussions can be highly complex and

challenging. They must be based on solid historical data and projections, given current and anticipated conditions, and a high degree of trust goodwill and collaboration will make the discussion go smoother.

### *Legal Software and Systems*

In order to negotiate the maximum value at the “right price” for minimum risk, it is critically important when sourcing legal software and systems to understand the Total Cost of Ownership (TCO). TCO is the foundation for any best value decisions that need to be made. A TCO analysis includes determining the direct and indirect costs of an acquisition and operational costs. The purpose of determining the TCO is to help make clear decisions when it comes to pricing. It shifts the focus of the money/value paradigm by prioritizing value and managing cost.

TCO calculations can include many factors but generally they should include one-time and ongoing costs. [2]

We are emerging from take it or leave it pricing strategies of the past to a more cooperative and realistic approach based on market condition and quality relationships.

### **Payment Terms**

In this article, we focus on working with suppliers that agree to terms anywhere between net 30 to 90 days of an approved invoice. The question then is: Why do payment terms matter, and how can firms effectively negotiate them up front to avoid a cash flow problem later?

Long-time procurement leaders are frequently

asked to re-engage with all of their suppliers to request an immediate change in payment terms, for instance, from net 60 days to net 90 days. Obviously, these are never easy conversations to have with a supplier, and to be frank, the sourcing personnel making the request are truly at the whim of the supplier and their desire to continue in the spirit of partnership.

Understanding why payment terms are a critical aspect of an agreement in the first place, can help avoid those conversations after negotiating a contract for goods and services.

Accordingly, the two items sourcing teams need to consider when negotiating payment terms for legal goods and services are 1) how much should be paid to the supplier and 2) when should those amounts be paid?

### *Incremental Payment Schemes*

Under incremental payment plans, the options, particularly for projects, can include 30/70 or 50/50. Negotiating a split payment system benefits the supplier by offering cash up front to begin investment in the customer's requirements; it benefits the customer by allowing it to maintain a higher level of working capital and manage risk during the life of the project.

The mechanics of a split payment model should be discussed in conjunction with pricing because an offer of a larger payment up front can often generate some leverage to reduce the price.

The final thing to consider when negotiating payment terms is to ensure that the mechanics

of invoicing approval and any early payment discount, whether offered as an account credit or potentially as a quarterly check, are explicitly outlined and understood between all the parties.

The importance of correctly collecting and analyzing historical data on pricing and payment terms cannot be overstated. This also applies to other negotiated terms and conditions. A comprehensive approach also will help in analyzing risk going forward if all stakeholders are engaged in dealing with and forecasting economic, political, and societal conditions.

### **Other Terms and Conditions**

Know your targets and your least acceptable alternatives for each term. But also note that what may be "least acceptable" to one might be highly acceptable to others, so a degree of flexibility and unbiased thinking is needed in any strategic negotiation. That's how simple relationships become strategic partnerships built for the long-term.

Here are some points to consider:

- Ensure there are relationships between the legal and sourcing teams so that sourcing understands what the preferred terms are for your company
- It's likely that preferred terms are predefined by in-house counsel, but it is critical that sourcing teams understand the meaning and function of these terms in order to successfully negotiate and employ them in a commercial context

### *The Ripple Effect*

First, understand the precedents, if any, that the terms set, and how the terms and

conditions impact agreements with other suppliers or previous/follow-on agreements with the existing supplier. Next, decide whether a broad or narrow clause will best serve the interests of your company. This may be beneficial to ensure that all disputes “arising out of or relating to” the contract are submitted for arbitration. Such a broad clause offers the buyer the opportunity to avoid formal litigation in court, which can be lengthy and expensive for all parties.

On the other hand, an opposing side may desire to exclude certain disputes, those that are collateral or peripheral to the agreement itself, from arbitration.

Next, choose the *seat* (or *situs*) of arbitration wisely and with diligence. Often, general counsels will not budge on this term and for good reason, because the seat of arbitration, particularly in the international context, is of singular importance. The seat will determine the procedural law for the arbitration and the role of local courts within relation to the proceedings. When negotiating the seat of arbitration, consider the ease of access for both parties, the availability of arbitrators, and judicial experience levels.

Finally, make sure the sourcing team is up to speed on the various arbitration bodies available, their rules, and how arbitral proceedings occur, generally. Sourcing teams should be cognizant of the different venues for arbitration and the rules that used to administer an arbitral proceeding. Sourcing teams will likely be involved if a dispute involving the contract and/or the negotiations process should arise so the more they know, the better.

### **Master Services Agreements (MSAs)**

Master Services Agreements (MSAs) (also often called Master Retention Agreements (MRAs)) generally are tools that larger companies or firms can use when they contract with a large number of preferred suppliers and/or service providers.

It is considered a best practice for corporate legal departments to have an MSA in place with each of their firms, because it is an important part of the overall outside counsel management program. Having all of the firms operate off of one agreement simplifies administration for the in-house legal team.

Often, they highlight important department initiatives, such as diversity and inclusion, and how they expect their firms to participate. And they feature “billing guidelines” [3] as an addendum that details what the corporation will and will not pay for.

It’s a good idea to work on an MSA with one or two of your top firms to understand what is reasonable with them, and then use that as a template for other firms. This can make the process easier by identifying, and fixing, possible controversial or contentious parts of the contract early-on before it goes out to all the firms. Make sure Legal, Procurement, Finance, and Accounting are aligned.

Keep the MSA form simple and as short as possible, no more than two to three pages (without the addendums).

If there is not the support or bandwidth to implement a company-wide MSA process, we recommend focusing on the top 10 firms, or

whatever number makes sense for your department size. If you don't have the bandwidth to do that, focus on ensuring that the billing guidelines are sent to each of the firms—and make sure they understand these are non-negotiable items. By the way, invoicing you means they've accepted the billing guidelines.

As an alternative, try to get a Matter Specific Engagement Letter in place for each matter opened with the firm. This could be a very short form describing:

- The name/description of the matter
- A conflict of interest clause
- Whatever obligations the firm is agreeing to by managing this matter
- The Billing Guidelines if the firm has not yet received them

### *Measuring Success*

Once these steps are taken, especially as regards pricing, billing and MSAs, it's important to put protocols into place for measuring success. This includes regular reporting such as *Internal Reports* (to show cost savings in terms of overall hourly rate discounts, volume discounts, proper billing practices); and *Law Firm Scorecards* (to measure accessibility, ease of doing business, substantive experience, results and budget performance and allow evaluation of the quality of the firms you're using).

Not only should scorecards be shared with the internal team, they should also be shared with the law firms! A best practice is to meet at least annually with your firms to discuss how to improve the partnership. Use this time to provide them with feedback and ask

for their comments in return. The firms should be coming to you with data and ideas on how to improve the relationship and the work being done.

### **Conclusion**

The buying and management of legal services means understanding existing processes and developing more efficient and transparent ways of operating. Two basic negotiation guidelines to embrace are: communication and collaboration. Those imperatives, which feed on each other, are important pieces of a flexible governance structure that the parties craft together.

There may be information that must be kept confidential, but those guardrails should be stated early-on in the negotiation. Assess each round of the negotiation and document the discussion and progress made. Adjust tactics as needed. But remember that the final stages should not be marked by conflict and power plays.

If all of the above works, that will mean collaboration is occurring, and the ability to maintain flexibility amid uncertainties is real. With the additional ability to make adjustments as necessary, the end result will be a win-win procurement process.

### **Notes**

1. "The Global Chief Procurement Officer Survey 2018," Deloitte, 2018. <https://www2.deloitte.com/uk/en/pages/operations/articles/cpo-survey.html>
2. "What is Total Cost of Ownership?" Purchase Control: <https://www.purchasecontrol.com/blog/total-cost-of-ownership>



3. Lauren Lee, "The Basics of Billing Guidelines," SimpleLegal, May 17, 2018

lar positions at VMWare and Flex International.

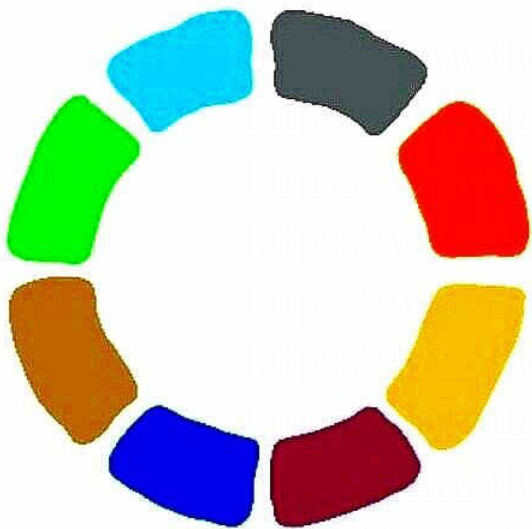
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### About the Author

A veteran in the Legal Operations field, Stephanie Corey began her career at Hewlett Packard Company as Chief of Staff and Head of Legal Operations. Stephanie has held simi-

She is the co-founder of the Corporate Legal Operations Consortium (CLOC), a leading Legal Operations association, and co-founder and General Partner of UpLevel Ops, LLC, a legal strategy and operations consulting firm. Stephanie holds a BA in Economics and an MBA from Lehigh University, and is a serial

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# PRISONERS DILEMMA

# Why law firms don't use document automation...

## And why this is about to change

By Pim Betist, CEO docbldr

**Technology has changed the way we listen to music, consume entertainment, rent cars, travel and hold meetings. Algorithms and artificial intelligence are taking boring, repetitive work off our hands. Although the world around us is making this shift, the legal field still hasn't embraced the automation of legal documents. Yet the technology to automate documents has been around since 1967. Why, then, is the legal industry still lagging behind?**

Imagine, for a minute, that you are a taxi driver, and most of your trips are shuttling passengers between the city center and the airport. A tunnel is built between these two destinations, halving the distance. Would you be inclined to use the tunnel?



Assuming the amount of trips stays roughly the same and that you charge per mile, using the tunnel would cut a significant chunk out of your income. Not a great prospect.

To avoid this, you and other taxi drivers could work together and boycott the tunnel. If all taxi drivers cooperate, you could all keep your revenues more or less unchanged.

You might be tempted, though, to say one thing to your fellow drivers but do another, because if you start secretly using the tunnel, your number of clients will increase enough to make up for the shorter rides. However, other taxi drivers could start secretly using the tunnel as well; the ones who don't will soon find themselves with very few fares. In this case, all the taxi drivers would end up using the tunnel to stay competitive.

### **Prisoner's dilemma**

As you may have recognized, the dilemma illustrated here is the prisoner's dilemma, a case analysis that shows why two completely rational individuals might not cooperate even if it appears that it is in their best interests to do so. Collectively boycotting the tunnel is in your best interest. But chances are that you will not, because if only one taxi driver breaks the deal and uses the tunnel, the rest will suffer disproportionately, assuming most clients will choose the faster and cheaper option.

Although this thought experiment might sound somewhat fictitious to you, we see a similar dilemma unfold when it comes to document automation in the legal sector. Document automation, like the tunnel in our taxi example, shortens the time needed to serve a

client. The technology for document automation has been around for decades and yet it is still not widely used in the legal sector. Are law firms behaving like the boycotting taxi drivers?

When we asked law firms why they don't use document automation, most of the answers fell in one or more of the following categories:

- The software is too expensive.
- The software is not user friendly.
- It can only be used for a limited set of standard legal documents.

Price and user-friendliness are obviously valid concerns, but as more competitors are entering the field, the price, time and effort needed to turn a template into an automated document are all dropping. In theory, this should trigger major growth in take up, but this has not been the case.

This leaves only the argument that merely a handful of standard documents can be automated. If this is the case, why didn't law firms move on and automate this limited set? And, as for the more complex documents, isn't 80% of the text in more complex documents still standard? Lawyers could simply generate the first draft of a document automatically and do the remaining complex part by hand. 'First movers' are already doing this, and according to Thomson Reuters, it is saving them up to 82% of their time per document. What's holding all the other law firms back?

The real issue at hand is that lawyers have been trained to focus on billable hours. Drafting a legal document for a specific situation and getting paid for it by the hour is one

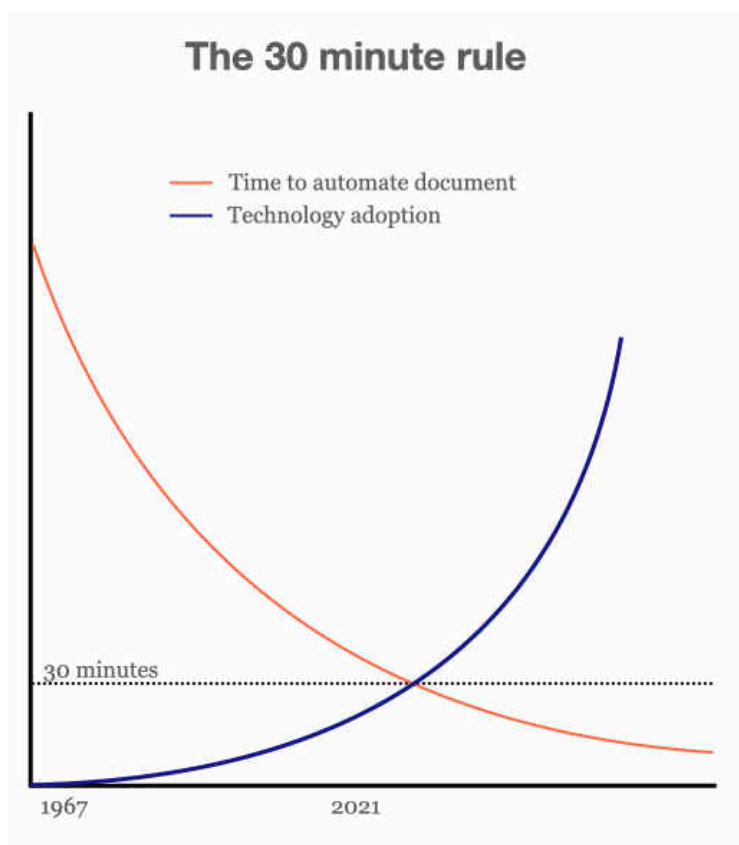
thing, but drafting one that covers all situations requires a significant time investment, and this time is non-billable: every lawyer's biggest enemy.

So how is this going to play out? Will law firms eventually dare to make the time investment and embrace the technology? Of course they will. Nobody likes copying and pasting from existing templates. To revisit our taxi analogy, more and more law firms are starting to "use the forbidden tunnel". They are charging fixed fees for documents they produce in minutes, and they are making healthy margins doing so. Some are taking it even further and selling documents through online portals, sometimes combined with a subscription fee for added services. New players are entering the market with platforms that generate leads for legal services by selling the documents for very low prices or even giving them away for free. The first movers pool is not big enough for the hold-out law firms to really feel it in their wallets, but they eventually will if they don't start taking that tunnel soon themselves.

### The 30 minute rule

As we've seen in so many industries, technology adoption always starts out slow. But at a certain point, it picks up and grows exponentially. We believe that the tipping point for document automation will occur once the average time to automate a document drops to under 30 minutes. Here's why: Most documents take between two to four hours to produce by copying and pasting from templates. If lawyers need to invest double that time to automate a document, the majority of them will simply not find the time to do it. If, however, it drops to 30 minutes, they will feel comfortable

enough to invest the non-billable time. It used to take roughly one day to automate a document. It is now down to about two hours. It won't be that long before technology makes it possible to chip away that last hour and a half. And when that happens, law firms better be ready to change.



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### About the Author

After a short corporate career with Heineken and Royal Dutch Shell Pim Betist (42) started his life as an entrepreneur in 2006 with SellaBand; the world's first crowdfunding platform with a reward based model. SellaBand raised over 2.5 mio dollars from over 50.000 music

fans to enable unsigned artists to record albums. He went on to set up a similar platform in Africa under the label Africa Unsigned, featuring the best artistes from the continent.

His interest in developing start-ups and coaching young entrepreneurs led him to co-found startup agency Ripplestarters, Ready2Scale; a network of high potential

growth companies and crowdlending platform for Scale-Ups Voordegroei.

Since 2015 he dedicates all of his time and energy to improving the way legal documents are created and distributed with [docbldr](#). Pim Betist was listed as one of the top 25 most creative entrepreneurs in The Netherlands by Management Team. He lives with his wife and stepson in Amsterdam.

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# Manually assigning task codes is hurting you, and here's why

If your firm is serious about pricing and legal project management, this new series will help you scale up your initiatives

By Pieter van der Hoeven, Co-founder and CEO of Clocktimizer

*Since the advent of UTBMS codes, the legal industry has sought to streamline and clarify billing data. Unfortunately, task codes throw up many of the same problems as the systems they were designed to replace. Their shortcomings lead law firms to make choices based on inaccurate data. Worse still, they waste hours of legal professionals' valuable time. Rather than pivot (again!) to a brand new system, we should be looking to implement analytics which work with existing data streams: timecard narratives.*

## Introduction

Phase and task codes are ubiquitous in the legal world. Their arrival in the 1990s came in answer to a [growing billing crisis](#). The 'black box' invoice approach of the preceding years became untenable as clients demanded to know what they were being billed for. Accordingly accusations of improper billing, became a motivating factor for the creation of transparent invoicing systems. It was hoped that by codifying work into neat 'baskets', it would be easy to identify what activities had been completed. Unfortunately, this theory has failed to live up to reality.



Phase and task codes have expanded far beyond their humble beginnings. In addition to the [UTBMS system](#), many firms and clients have developed their own in-house frameworks. Different practice groups now often use different sets of codes. Combine that with our inherent desire to just write our time as quickly as possible (who among us hasn't used L100 because it was the first option of the dropdown?) and we begin to see the problem that arises. The solution? To exploit something we already do as lawyers on a daily basis: write good timecard narratives.

### **You are not a robot, so don't do a robot's job**

Human beings make errors when [performing repetitive tasks](#). We are also highly susceptible to boredom. For repetitive tasks like time tracking (which few perceive as having innate value) this leads to cutting corners. When faced with the variety of options, most lawyers will apply a more general code rather than take time to find a very specific one. If indeed an appropriately specific one applies. This leads to problems for firms further downstream.

Anecdotally, some lawyers guess as much as [80% of codes](#) are inaccurately applied. It is safe to say that code-based data is not to be relied upon. Unfortunately, it happens to form the basis of most fee arrangements and LPM efforts. It should go without saying that a fee arrangement based on incorrect data, is a fee arrangement that will cause trouble later on. It is estimated that law firms lose upwards of [25BN USD](#) each year to write-offs.

This inaccuracy may put firms off fixed fees, which in turn can make winning new clients

difficult. As the industry pushes towards increasing transparency, failing to risk share with clients can lead you to lose business. Altman Weil's 2020 report indicated that [7 in 10](#) firms have seen clients move work in house. In short: poor data entry, leads to poor data quality, leads to poor decisions, leads to losing clients.

### **You are less productive when you switch tasks**

There is a second, hidden cost to task code based time recording. Research shows that when we switch between different types of tasks, it takes considerably longer for our brains to [manage that change](#). Lawyers (and most human beings) are generally pretty used to describing our activities in words. However, we are less accustomed to codifying our activities against lists. It's why it's generally best to have a small group of options on a drop down list. Switching between writing and box ticking takes longer than switching between two writing tasks.

For this very reason, codes are designed in a way which we find harder to process. It's a minor difference over a single time card. However, taken as an industry, it has huge implications. How much time (and accuracy) are law firms losing to the application of time codes? How can we design a system which goes hand in hand with how humans are optimised to perform tasks?

### **We already have the solution**

During my time as a lawyer, I was painfully aware of the difficulties posed by phase and task codes. The use of codes was doubly frustrating given the need to write a narrative describing your activities alongside the code.

It created double the work for no gain, as narratives weren't a recognised data stream. However, writing a narrative was generally a more accurate description of how I had used my time. It is an activity we are familiar with, rather than translating actions into a series of symbols and letters with vague descriptions.

This observation is true of most of the legal industry. It is far quicker and easier to write 'drafting SPA', than to find that code (if it exists), or to think which code would be most applicable; especially when you're busy. However, until the advent of natural language processing (NLP), this data was unusable. NLP is able to read and analyse our more accurate narratives, in order to identify activities. The increasing sophistication of NLP means that multiple activities can be identified in one piece of text, with relative weighting based on word associations. Narratives then, not codes, are the best way to understand who is doing what, when, where, and at what cost in your firm.

### **A tried and tested solution**

*"Eugenia [Director of Pricing and Practice Management, Perkins Coie] realized that assigning phase and task codes is often an inaccurate way of categorizing activities on a matter. In many cases, they are not applied at all. With Clocktimizer's unique natural language processing technology to read narratives, Eugenia and her team have been able to create more accurate fee quotes. By letting the platform automatically read and categorize data, the pricing team has been able to save time and gain a clearer oversight of the data needed to make good pricing decisions throughout the matter lifecycle." [Perkins Coie customer success story, Clocktimizer](#)*

The solution, clearly, is one recognised by our own customers at Clocktimizer. For this very reason, Clocktimizer chooses to identify activities based on narratives, not codes. Their increased accuracy, and reduced complexity, make them the best possible data stream for building fee quotes, managing budgets and streamlining processes.

Importantly, relying on narratives reduces the administrative burden currently placed on lawyers. Narratives are already part and parcel of time recording. They require no extra input, no additional system, and result in less time spent switching between task 'types'. This leaves more time for lawyers to focus on their core role, and in doing so offers LPM and pricing teams a more stable foundation for their analytics.

### **Out with the old, in with the old**

Task codes are usually implemented with a noble purpose. To increase transparency in a low impact way. Unfortunately, they are often designed without sufficient appreciation of how humans work. The codes themselves can be too vague, or too specific to be truly helpful.

If there are too many of them, how is a human brain going to pick the correct one? If there are too few, you are likely to fail to generate enough granularity for good data insights. As a result, firms are left with bad data, which impacts their long term profitability and client retention.

Rather than invest another five or ten years in developing a new solution, the legal industry should embrace the one they already have. Timecard narratives. As I have seen first hand

at Clocktizer, narrative led analytics are the single easiest way to improve decision making at all levels in a firm. Not only that, but they are optimised for the ways humans best record and process data.

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### About the Author

[Pieter van der Hoeven](#), a former M&A lawyer with 15 years of experience in the legal industry, is the co-founder and CEO of [Clocktizer](#). Clocktizer is an award-winning legal tech-

nology company that helps law firms to understand who is doing what, when, where, and at what cost. Global 100, Am Law 100, and Am Law 200 law firms use Clocktizer to make data-driven decisions around matter management, budgeting, and pricing.

Before starting Clocktizer in 2014, Pieter was an M&A lawyer at DLA Piper and earned his MBA from Rotterdam School of Management and IE Business School. Pieter can be contacted at [pieter@clocktizer.com](mailto:pieter@clocktizer.com)

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## When it comes to clients the key is not to hear, but to listen

By Cynthia Fernández Hawa, Dominican lawyer

When we first meet up with a client or a potential one, we generally tend to ask them what legal service they are looking for. This is a practice that's commonly done and responds to a logical thought: if they came to us is because they're in need of a lawyer and or a legal service. However, by only taking this into account without analyzing other factors, we're missing two important details that I will explain in the following.

### **Not every situation should have a legal solution**

As attorneys, we're used to listen to our client's issues and simultaneously think about the legal solution we will advise them as soon as they stop talking, and we see that as a sign of preparation, knowledge and experience.

For us, if we immediately give a quick and technical response to the client he or she will have a better image of us as professionals. We forget that clients come to us looking for a solution to what they see as an issue affecting their lives somehow, and that getaway, for our benefit, usually tends to be legal but is not necessarily.

Sometimes, we gain more by recommending the client a treatment that escapes the legal scenario, that's easier, faster and more economic for them. In words of Mary Redzic, "by relying on methods used outside the legal profession to solve problems, you can build a more client-centric law practice" [1]. By doing this, we create a relationship of confidence and proximity with the client, who will not only see us from now on as their legal counsel, but also as a person who's willing to give them a transparent and efficient treatment to a simple problem instead of complicating things just to earn a profit from it. Of course, this by no means implies to leave behind the necessary *due diligence* or not assuring minimally the rights and interests of our client even if we give them the non-legal solution.

### **Don't confuse the ends with the means**

Think of the following scenario: a client comes to your office telling you that his intention is to create a limited liability company to organize in advance his father's inheritance. That way, he keeps telling you, he can create a bulletproof heritage with articles of organization that will protect it from creditors and will as-

sure him stability and control. And, of course, the cherry on top: he knows this because it worked for his business partner who once had a similar situation.

We may feel tempted to nod and give the client the solution he thinks he needs but, as legal counselors, we need to learn to identify the difference between means and ends, and learn to interpret the intention that relies behind the client's request, and from there on, investigate what legal strategy suits better his needs.

In this particular case, for example, the client's ends are estate planning, but the means can go from constituting a trust to a simple transfer of property. In terms of the Dominican Republic's legal system, both options have different repercussions that the client doesn't know but's the responsibility of the attorney to assure. To give an example, a trust could be recommended on the following cases: (i) If there's a lot of heirs with different intentions, it's an extensive estate with different types of assets that at the same time represents a large amount of value and the beneficiaries are willing to pay the trustee's fees or (ii) If it's a family company and the founder wants to assure the rules of administration even after his death. On the contrary, I would recommend a simple transfer of property if: (i) if it's the father's intention to give the sole property of a good to one of his sons and the others know this; (ii) if the beneficiary is willing to pay for the price of the sale or will assume the donation's tax due to the Internal Revenue Service. As we can see, there's a lot of legal and even financial

aspects in both options that the client overlooks.

Finally, when the job's done, ask for feedback. As an industry that provides services, law firms, whether they are small or big, need to appropriate the practice of asking to clients how would they qualify the service and what would they change if given the occasion. This is important because by seeing our work from the client's POV we manage to underline or cross out some practices that we wouldn't do otherwise simply because we wouldn't have noticed from our technical perspective.

For example, we could be doing all the hard work back office to win the case but if we didn't reply to a client's concern or we didn't email them with a follow-up report, we could be seen as careless or too busy and that can affect the image that the client has about us. And, as Mark Cohen said in his article Missing Headline: Law Firms Tackle Client Disaffection, in today's market "with lots of competition -among law firms and from other provider sources- client satisfaction is again the priority" [2]. That being said, and we repeat, the key to a lawyer's proficiency can be found in a simple strategy: pay attention to what your clients say and even more, what they intend to say.

### Notes

[1] <https://www.attorneyatwork.com/smart-lawyers-solve-problems/>

[2] <https://www.legalbusinessworld.com/post/2016/07/24/missing-headline-law-firms-tackle-client-disaffection>

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### About the Author

Cynthia Fernández Hawa is a Dominican lawyer, graduated from the Pontificia Universidad Católica Madre y Maestra (PUCMM) and currently studying in the Universidad Abierta Para Adultos (UAPA) to be a surveyor. She has successfully completed certified programs in the areas of Real Estate litigation, Civil Liability, Commercial Defense Mechanisms and Intellectual Property.

She has participated in the Debate Championship of the Pontificia Universidad Católica Madre y Maestra, the Dominican Competition of International Law about the Procedure in the International Court of Justice and the United Nations Model of the school Juan XXI-II.

Cynthia has worked since 2019 as a Junior Associate in the Real Estate Department of a local firm, managing the negotiation of contracts in general, legal enquiries regarding inheritance law, condominium, corporate issues, trust and others, as well as filling and defending lawsuits about property rights and civil matters. She has also provided since 2019 services of legal translations in the languages Spanish, French and English.

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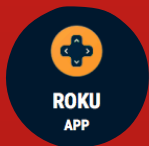
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# Learning Faster Than Your Competition Can Be Your Strategic Advantage

By Patrick J. McKenna, Thought Leader, bestselling Author and renowned Speaker

In most firms, my observation is that we seriously over-invest in the efficiency (“let’s provide a discount” or “do more for less”) arena and under-invest in having partners working to build their skills – in order to deliver greater recognized value.

As a general rule, firm leadership needs to help partners understand that they are in competition with millions of other professionals all over the world, capable



of doing the same work that they can do, and the sad news is that: *“nobody owes you a career. To continue to be successful you must continually dedicate yourself to retraining your individual competitive advantage.”*

In his 1982 book, *Critical Path*, futurist and inventor R. Buckminster Fuller estimated that up until 1900 human knowledge doubled approximately every century, but by 1945 it was doubling every 25 years, and by 1982 it was doubling every 12-13 months. Today, in 2021, IBM

estimates that human knowledge is doubling . . . every 12 hours! How precise is IBM's estimate? Hard to tell. But I suspect that you would agree that this trend is incontrovertible. Data and knowledge are increasing at an exponential rate.

This accelerating growth of knowledge is not all we have to contend with. Compounding the challenge is how long that knowledge remains useful – or, how long does it take for your knowledge to become outdated, inaccurate or irrelevant. One measure of this is known as the “half-life” of knowledge, the amount of time it takes for our knowledge to lose half its value. For those in almost any profession from medical and engineering to law and consulting, the half-life of our knowledge is shrinking such that what may have been valuable to know a few years ago, may have very limited value today.

What this obviously means is that the systematic development of legal knowledge and skills, over time, depreciates in value – especially as your competitors acquire and offer similar or equivalent expertise. And with each passing year, the fees that clients willingly pay for that expertise diminishes, such that even your most loyal clients will not value as highly, what you or I do for them the second or third time as they did the first.

Therefore, I strongly believe that firm and group leaders need to pose a few very serious questions to each of their colleagues in one-on-one (virtual) coaching discussions:

1. *“Do you believe you are adding real value*

*or simply passing along legal information to our clients? In other words, my beloved partner, what is it that you can specifically do for clients today, that you could NOT do for them at this same time last year?”*

2. *“What do you need to do, in the time that you have available right now, to build your skills and reinforce your opportunities for when we come out of this pandemic so that you can have an even more successful practice?”*
3. *“As you see this pandemic continuing to unfold, are you plugged into what is happening around you and inside your client's industry, such that you can interpret whatever is transpiring and be the source of proactive counsel – before the client has to ask?”*
4. *“Are you trying out any new ideas, new techniques, new technologies and I mean personally trying them, not just reading about them? Or, are you waiting for others to figure out how to innovate and re-engineer your practice – (and re-engineer you . . . right out of that practice)?”*

I would suggest that a negative answer to any of these four questions is indicative of a condition some astute observers label as “Human Capital Obsolescence” – a poorly understood phenomenon which has crept into many firms trending toward the LOSER end of the spectrum. Human capital obsolescence can be interpreted to mean that there may be some partners who are not performing in accordance with what clients would accept as high

value. In other words they are merely a commodity provider; and these individual's economic contribution to your firm is no longer in keeping with what one might expect from an equity partner. While being labelled an "under performer" may be a symptom of the issue, I would submit that simply having more "junk" work to occupy their billable time does not solve this problem.

I believe that going forward, **the most successful firms** will be those who rethink the concept of where they encourage and perhaps incentivize partners to invest some portion of their non-billable time. To succeed in today's environment of rapid change requires continually building your knowledge base, your skills, and learning how to do entirely new things. If our attorneys don't dedicate the time to building their skills, we end up solving yesterday's (commoditized) client problems (usually at a hugely discounted fee) instead of tackling tomorrow's burning issues, before someone else does.

In the long run, superior competitiveness derives from having an ability to build skills faster than competitors, and with the kind of knowledge and skills that germinate entirely new and lucrative practice niches. Knowledge and skills are the engine of new business development.

As an example, if one looks to those firms who landed the top spots for venture capital deals last year, one firm stood out as the clear market leader having executed 20% of all of the deals done by the top 10 law firms. And according to Gunderson Dettmer's Managing

Partner, the firm's success came "*from its laser focus on serving the legal needs of venture-backed technology and life sciences companies.*"

Perhaps an even more powerful example of a firm building their skills and specializing in high-value work is Silicon Legal Strategy, a 23-lawyer firm which focuses on advising start-up clients and managed to successfully execute more venture capital deals in 2019 than either Dentons or Latham.

What these two examples should serve to illustrate is that law firm leaders are not managing one homogenous firm but rather a portfolio of very different businesses. Let me be clear, we have got to stop thinking that law firms compete with one another. Dentons and Latham do NOT compete . . . as firms, but rather they may have some selective practices (strategic business units) that do compete. Or, looked at slightly differently, your practice and industry groups are in a race to build the kind of knowledge and skills that determines whether they are able to secure dominance in some targeted and lucrative micro-niche markets.

Unlike the battle for global brand recognition, which is visible in the print media and aims to identify global share of mind, the battle to build competitive dominance in targeted niches is invisible to those who may not be deliberately looking for it. Firm leadership may use Chambers and other ranking metrics to track who comes out as a first-tier player in the most recognized practice areas. BUT, tell me please, who is the leading U.S. law firm in serving Digital Transformation or Augmented

Manufacturing clients – both billion-dollar micro niche markets? How many firm executive committees discuss the critical distinction between developing competitive strategy at the (micro) level of the practice or industry, rather than simply thinking that they are being effective by developing some (macro) strategy for their entire firm?

In early 2020, my old friend Dr. George Beaton shared some data from his firm’s research of the Australia and New Zealand markets wherein some 82% of clients will **select a more expensive** law firm given certain conditions. And what conditions might those be?

Of ten possible selection influencers, the most important to clients was “demonstrated expertise in their area of need”; second, “understanding of their industry” and third, “known for their leading expertise” (thought leadership) – because all of these things are perceived by the client to convey significant value. And interestingly, what Beaton Research found is that these criteria hold true across the professions (management consulting, accounting, IP, engineering) and that his firm has *“made the same findings every year for more than 10 years!”*

And my research confirms that the same holds true in our North American marketplace.

For me, that raises a couple of strategic questions:

1. What amount of non-billable time and resources are being invested within your firm to improve your efficiency and try to prof-

fer highly competitive (usually highly discounted) rates to do routine, commoditized legal work? and

2. What amount of non-billable time and resources are being invested within your firm to build the knowledge and skills of your partners so that they can develop a level of acknowledged expertise, sufficient to win the higher value legal work where clients are willing to pay for leading expertise?

Taking this all one step further, most law firms, if one were to observe their behaviors, do not think about competitiveness in terms of building skills. Firms seem only to judge competitiveness, their own and their competitors, primarily in terms of fee discounts and being lower priced. And I would strongly argue that those same firms are courting the erosion of their partner’s skills. The knowledge and skills necessary to exploit a lucrative micro-niche opportunity requires firm encouragement and support to ensure that partners invest the time to build them.

### **Are You Fostering a Skill Building Culture?**

It is trivial to observe that most new learning happens while professionals are engaged in their various client matters. What is not trivial to point out is that far too many firms (and their groups) fail to capture and disseminate much of that knowledge, such that it never gets leveraged and used to the benefit of outperforming competitors. One advantage that should accrue to any well managed group, is the value that each professional can bring to clients as a result of the accumulated

knowledge, wisdom, systems, methodologies, and experiences of the colleagues on their teams.

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*You should be identifying how your combination of personal assets (skills, strengths, competencies) and aspirations (dreams, values, interests) can create a unique and valued offering.*

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As a leader, you need to instill a passion and curiosity within each partner to identify a specific skill or special interest, identify what they do not know, and what is new out there that addresses some particular pain-point that more client may soon need to solve. Then, at least once every month, have each partner pull out the list of client work and assignments that they have been working on and examine each. Allow time for each member to make a brief presentation. Because everyone knows this is coming, each is subtly forced to reflect on his or her experiences and is more likely to convert the knowledge gained from those experiences into a shared resource. Invite discussion, ask questions, provide critical feedback and examine how and whether the activities described benefit others in the group.

Start by asking of each partner, in turn, to please identify and explain to the group any particular client matter that:

- ***exposed you to an entirely new type of client / industry / geography / transaction?***

(e.g. involves work undertaken on behalf of an “unusual” client as defined by the nature of

this client’s business, geography or matter size.)

- ***allowed you to successfully deal with a relatively unique client problem?***

(the particular client matter that you were handling was completely novel and involved you having to take an unprecedented approach to resolving the client’s issue)

- ***allowed you to develop new knowledge or refine a skill that you can now market to other clients?***

(e.g. your team was asked to close a transaction in a compressed period of time, and with that deal you developed a methodology to dramatically speed up the due diligence process.)

- ***provoked you to document some new checklist, tool, template or process?***

(e.g. where some client work was becoming somewhat repetitive, you developed a diagnostic checklist to streamline the process and make it more cost efficient.)

- ***introduced you to an important new market niche?***

(e.g. you did some work with one of your manufacturing clients that exposed you to the cutting-edge designs that they were doing in 3D printing and some challenges that they were facing.)

- ***allowed you to work at a more senior C-level within the client’s organization?***

(e.g. your work with the client culminated in their asking you to do a formal presentation for their entire executive committee on what was learned from this particular litigation matter and how it could be avoided in the future.)

• ***exposed you to previously unexplored areas within the client’s organization?***

(e.g. your work with your in-house legal contact introduced you to the executives within the company’s Risk Assessment Department and some of the new issues that the entire industry was having to address.)

• ***exposed you to technology being used that could be emulated within your firm?***

(e.g. your legal department client had AI-driven internal knowledge-sharing programs and a virtual-reality system to promote collaborative internal experiences.)

• ***allowed you to conduct some research or identify some new industry trends?***

(e.g. your work with the client involved you in conducting some research with other industry players / regulatory authorities, etc. and identify findings that proffer new trends impacting the industry.)

• ***provided some insight that can allow you to build your professional thought leadership?***

(e.g. your work with a client exposed you to fresh knowledge that could be leveraged into an important article and/or seminar presentation on a subject that was both valuable and innovative.)

• ***enabled you to collaborate with some other multi-discipline specialist to provide a total business solution?***

(e.g. your work with a client had you working hand-in-hand with a specialist in predictive analytics such that you learned how the combination of your two disciplines delivered enhanced value for the client.)

Simply sharing the knowledge and experiences acquired while working with clients can be a powerful influence on our learning. It often forces us to relive and re-examine the entire situation and better understand what actually transpired as we were engaged in helping our client deal with their issue. We build confidence in what we accomplished, how we did it, which furthers our perception of what we learned from the experience. And our colleagues may often raise insightful questions than can then shift how we might approach these same client situations in the future.

*“Before you are a leader, success is all about growing yourself.*

*When you become a leader, success is all about growing others.”*

Jack Welch, former CEO of General Electric  
1981-2001.

Skill development comes in little bits and we need to capture those little bits, especially where some experience might portend an entirely new area of possibility, lucrative micro-niche or emerging practice opportunity. If it might help, encourage one member of your group who has the appropriate interest to serve as your team’s curator of knowledge (I heard first-hand about how this worked well at Skadden). Consider assigning some duties to a support staff person who could help coordinate and assist your team in capturing and disseminating the experiences reported at the meetings.

Being a non-billable activity, skill building can become infinitely postponed, such that any time devoted to capturing and sharing



knowledge becomes a “backburner” priority. Therefore, it is important to remember that, in these increasingly competitive times, the issue of continually building marketable skills requires a longer-term focus. Small bites are better than no bites at all.

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### About the Author

Patrick is an internationally recognized author, lecturer, strategist and seasoned advisor to the leaders of premier law firms; having had the honor of working with at least one of the largest firms in over a dozen different countries. He is the author/co-author of 11 books most notably his international business best seller, *First Among Equals* (co-authored with David Maister), currently in its sixth printing and translated into nine languages. His two newest e-books, *The Art of Leadership Succession* and *Strategy Innovation: Getting to The Future First* (Legal Business World Publishing) were released in 2019. He proudly serves as a non-executive director (NED) or advisory board member with a variety of professional service firms and incorporated companies. His aim is to instigate innovation, provide independent strategic insight drawn from his years of experience, and support effective governance. His three decades of experience led to his being the subject of a Harvard Law School Case Study entitled: "Innovations in Legal Consulting" and he is the recipient of an honorary fellowship from Leaders Excellence of Harvard Square.

Read more [articles](#) from Patrick McKenna, or read [online/download](#) his latest eBooks



REINVENTING  
PROFESSIONALS

## Creating Career Opportunities in 2021

Ari Kaplan spoke with Doug Lusk, the founder of the National Society for Legal Technology, a training and certifying organization focused on empowering students and professionals with advanced technical skills. He discussed the skills that legal professionals need to thrive in today's economy, how the NSLT curriculum helps participants draw connections between e-discovery, cybersecurity, and related fields to gain a competitive advantage, and the NSLT's alliance with ACEDS.

Click on the player below to listen to the podcast





A portrait of Richard G. Stock, a middle-aged man with grey hair and a mustache, wearing a dark suit, light blue shirt, and patterned tie. He is looking directly at the camera with a slight smile. The background is dark with some blurred horizontal lines on the left side.

# Priorities and Backlogs

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

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

Inside counsel always have more than enough work to do. In contrast to how law firms arrange the distribution of work to associates and paralegals, corporate counsel usually do more than 90 % of the work on a given matter, regardless of its complexity and regardless of the experience level of the lawyer doing the work. There are rarely any “juniors” to whom matters and tasks can be assigned. In addition, law departments underuse their legal assistants and do not have enough experienced paralegals.

One can characterize this type of law department as a collection of “solo practitioners”. There is invariably a poor alignment of lawyer knowledge and skill levels with the relative complexity of the legal work. Otherwise put, lawyers with 10 years of experience will too often find themselves more than half of the time doing work that could be done by a third-year lawyer or a paralegal. There is no one to delegate to, a problem made worse in recent years as the average experience level of the law department increases.

While the cost of doing legal work by a law department is less than 45 % of what it would be if referred to a law firm, this is still no justification for a law department practice profile that would never be viable in a law firm. Moreover, once the novelty of diverse work wears off – think five years - boredom sets in and inside counsel never reach their full potential. All of this happens while clients say that their work is “stuck in legal”. What can and should be done?

Most law departments do not keep time. So, trying to find out how many individual clients

there are, what type and how many matters are worked on in a year, and how many hours are required for each type of work requires a two-step approach. It is essential to develop an accurate picture of how and where legal resources are deployed by the law department. Some basic data needs to be assembled. Without it, changing work intake and allocation practices, dealing with backlogs, and improving the cost-effectiveness of the legal department in a measurable fashion is no better than “moving the deck chairs around”.

The first step is to uncover how the legal department’s legal resources are really deployed. Each lawyer and paralegal is asked to complete a spreadsheet showing each major client group on the horizontal axis and the areas of law or type of legal work on the vertical axis. The allocation of time for the last 12 months is expressed as a percentage rather than in hours so that the total, including administration and practice management time, adds up to 100 %. By compiling all the responses, the General Counsel can see, for example, how much commercial work is required by the sales department.

The second step is to determine the number and relative complexity of matters handled by the department. Again, department members are asked to look back over 12 months and allocate their client time in two ways. First, they estimate the number of matters that they worked on, based on a common definition of “legal matter” - similar to what is used in a law firm

A large project lasting for months may be only one matter, while a series of one-off inquiries

from clients may reflect a just-in-time advisory practice. Examining e-mail traffic for a one-month period helps to paint the picture.

The next part of this step is to classify matters according to the amount of time spent on them. Three choices are typically offered: '0 – 5 hours' per matter, '6 – 25 hours', and 'over 25 hours'. Once that is done, the total time worked in each category is calculated for the 12-month reference period. One result for a lawyer might show that 65 % of the year is spent on 100 matters in the 6 – 25-hour category. With 1 900 hours available for legal work in a year, matters in this range would require an average of 12.3 hours to complete.

Some surveys have shown a 5-member department spending 30 % of its time on 2 000 matters per year averaging less than 1.5 hours each. This type of practice profile, while useful as a form of operational support for clients, is not a cost-effective use of experienced counsel.

The third step in data-gathering is to understand the amount of interaction with client representatives in the company. Lawyers and paralegals are asked to provide the number of occasional and regular clients according to the amount of legal support needed: 0 – 25 hours per year, 26 – 50 hours, 51 – 150 hours, 151 – 500 hours and more than 500 hours. Keeping in mind that a client using 3 hours per week is using 150 hours per year or 6 % of a lawyer's available time, one understands why many legal departments will have 75 – 100 clients using 20 % of the resources, an average of 1 to 1.5 hours per client per month, while the remaining 80 % of practice time is spent with a handful of clients. Occasional users of the law

department are the majority. They are not really experienced on how to properly use a limited resource. Inside counsel are reluctant to limit access, saying it is the cost of doing business. Again, this is not a cost-effective allocation of legal resources. Open-door policies disguised as a risk management practices are gradually being replaced by explicit protocols for work intake and allocation.

With data in hand, General Counsel can shift resources away from one client department to another, limit the number and types of routine matters worked on by each lawyer and paralegal, and eliminate access for most occasional users of the law department. Priorities become much clearer at the individual lawyer and department levels while backlogs are held to an acceptable service standard.

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### **About the Author**

Richard G. Stock, M.A., FCIS, CMC is the senior partner with **Catalyst Consulting**. The firm has been advising corporate and government law departments across North America, Europe, the Middle East and Australia since 1996. For law department management advice that works, Richard can be contacted at (416) 367-4447 or at [rstock@catalystlegal.com](mailto:rstock@catalystlegal.com).

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Read more about how corporate and government law departments can improve their performance and add measurable value to their organizations. [24 Inspiring articles by Richard G. Stock at Legal Business World.](#)



*Amy Hinzmann*



*Marla Crawford*



# Leading Beyond Discovery

By Ari Kaplan, Principal, Ari Kaplan Advisors

Ari Kaplan speaks with [Amy Hinzmann](#), the president, and [Marla Crawford](#), the general counsel, respectively, for Compliance, an integrated e-discovery services and managed review provider.

## **Ari Kaplan**

Amy, tell us about your background and your mission as the new president of Compliance.

## **Amy Hinzmann**

I am a lawyer by training and practiced for a short while in Dallas before going in-house at Merrill Lynch. I was there for about four years, including some time in London, focusing on securities litigation from the broker-dealer perspective. In 2008, I moved to DiscoverReady and essentially wore every hat, from sales to review to analytics, until Consilio, where I was most recently the chief experience officer. As president of Compliance, my focus is now on growth and scale. I am responsible for leading our sales organization, as well as our operational organization to continue the client-centric culture that Compliance has established as we continue to grow our offerings, scale existing offerings, and look at relevant adjacencies that we want to start to delve into based on the needs of our clients.

**Ari Kaplan**

Marla, you spent over a decade as in-house counsel and more than two decades practicing at a large law firm. How will that experience shape your role as the company's first general counsel?

**Marla Crawford**

My professional career has been really a series of building blocks. I spent 22 years at Jones Day, where I worked on a range of cases, including those in products liability, intellectual property, and securities litigation. I spent 15 or more years there on the discovery phase of litigation and was one of the first e-discovery lawyers, having worked on the Enron case. During the 10 years I spent at Goldman Sachs as in-house counsel, I saw the inner workings of how corporate America handles its legal matters. Those two experiences together really have prepared me to become the first general counsel of Compliance and it is really a very exciting opportunity.

**Ari Kaplan**

Amy, how has Compliance evolved since it was founded over 20 years ago?

**Amy Hinzmann**

Compliance earned its reputation as a powerhouse in the staffing world and established itself as an organization with a client-centric culture, focusing on providing talent. More recently, the company has been concentrating on its technology offering and discovery-as-a-service, DaaS. What attracted me to the company is its dynamic approach. Our clients come to us with a vast assortment of projects, needs, and demands. As a result, Compliance offers the flexibility to scale and meet the

needs for the largest, fast-paced projects that require the most support, as well as those small projects they want to evaluate themselves. That flexibility is representative of the Compliance journey.

**Ari Kaplan**

Marla, what e-discovery issues are in-house counsel most concerned about today?

**Marla Crawford**

There is a great focus on efficiency both in terms of cost and time spent. Everybody is looking for solutions to do things in a better way and that's what excited me about coming to Compliance because I will be able to convert the feedback from my peers in the industry into reality. I will be helping Compliance address pain points for industry practitioners. For example, the Compliance discovery-as-a-service, DaaS offering is new, unique, and super cool. It is essentially an app that gives users an opportunity to do as much as they want to themselves.

**Ari Kaplan**

Amy, are your clients expecting a different approach to e-discovery in the pandemic?

**Amy Hinzmann**

Clients are more willing to take a different approach and the most obvious example is the willingness to engage in remote review projects, which was something that we thought had a lot of potential in the past, but just never really gained widespread adoption. Once judges began enforcing discovery deadlines and litigants had to perform remote document review, it opened a lot of minds. I am not sure if it has opened all the doors, but



more people are talking about what is possible. Also, the vendor-client relationship has become even stronger because we have been able to answer questions for clients who are concerned about remote review or other vulnerabilities that may exist. We have been able to champion one another in a way that may not have been as necessary before.

**Ari Kaplan:**

Marla, how are in-house teams now managing discovery remotely?

**Marla Crawford:**

Many companies had already set up remote collection processes and were allowing employees to work from home. It was also common for them to have distributed sales teams across the country, but the pandemic has moved everything forward. We are really seeing preparations put into practice and those who were wary of remote review now relying upon it. Many have performed due diligence to certify the safety of these practices and have expanded on the idea that we don't all have to be sitting in the same place at the same time to perform excellent work. This idea of remote review, collections, and work generally has been proven so why not give people this flexibility.

**Ari Kaplan:**

Amy, where do you see e-discovery headed?

**Amy Hinzmans:**

E-discovery is headed is beyond discovery. We have such an amazing set of skills in the e-discovery industry that are transferable to so many adjacencies. Marla and I both come from large financial services companies with

problems that require a broad set of skills to solve, create efficiencies, and reduce costs for enterprise clients.

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**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 perspective, highlight transformative change, and introduce new technology at <http://www.ReinventingProfessionals.com>.

Listen to his conversation with Amy Hinzmans and Marla Crawford here:

<https://www.reinventingprofessionals.com/leading-beyond-discovery>



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Tip: Listen to the podcast with Doug Lusk, the founder of the National Society for Legal Technology on Creating Career Opportunities in 2021 ([see page 49](#))



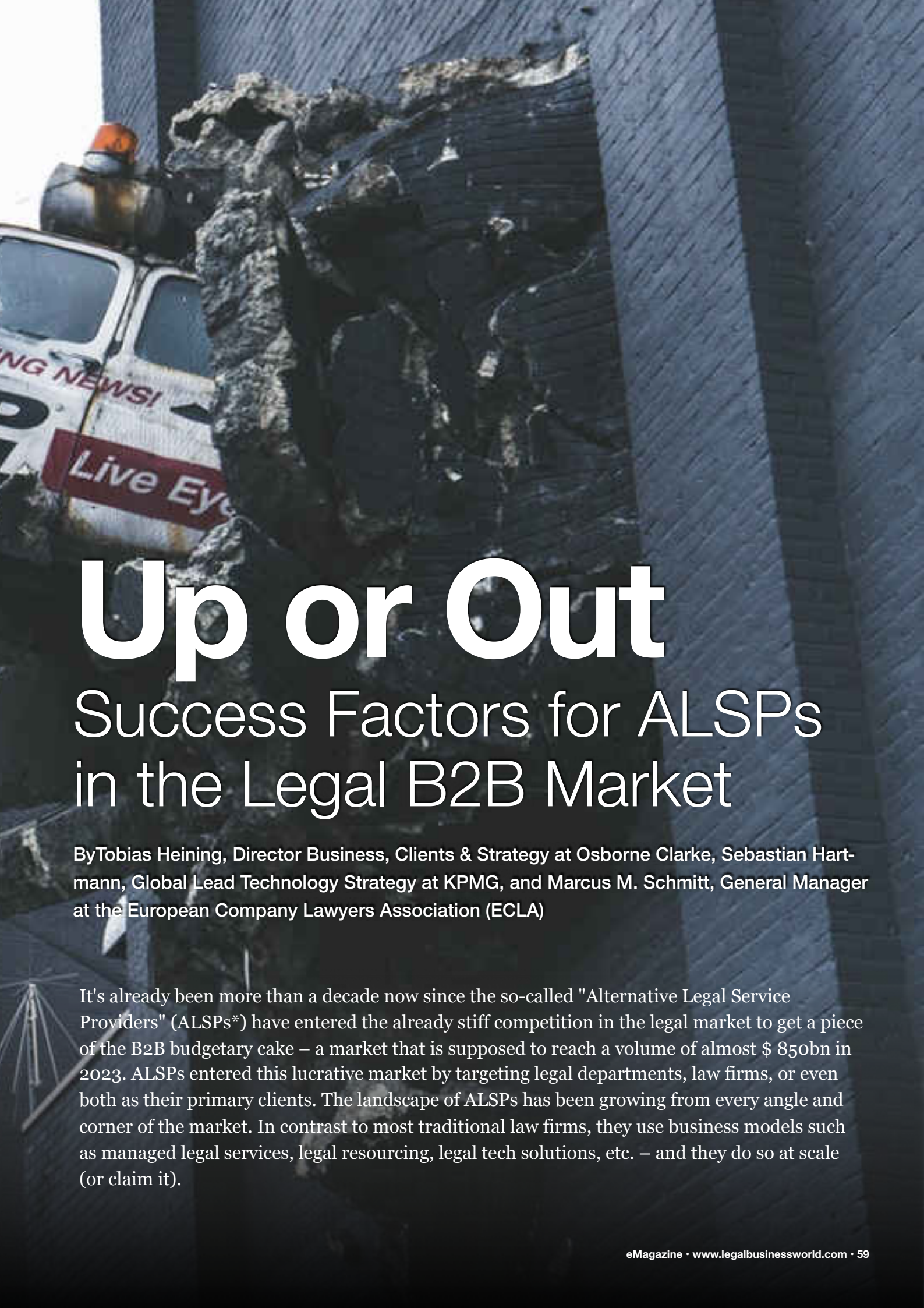
Tobias Heining



Sebastian Hartmann



Marcus M. Schmitt



# Up or Out

## Success Factors for ALSPs in the Legal B2B Market

By Tobias Heining, Director Business, Clients & Strategy at Osborne Clarke, Sebastian Hartmann, Global Lead Technology Strategy at KPMG, and Marcus M. Schmitt, General Manager at the European Company Lawyers Association (ECLA)

It's already been more than a decade now since the so-called "Alternative Legal Service Providers" (ALSPs\*) have entered the already stiff competition in the legal market to get a piece of the B2B budgetary cake – a market that is supposed to reach a volume of almost \$ 850bn in 2023. ALSPs entered this lucrative market by targeting legal departments, law firms, or even both as their primary clients. The landscape of ALSPs has been growing from every angle and corner of the market. In contrast to most traditional law firms, they use business models such as managed legal services, legal resourcing, legal tech solutions, etc. – and they do so at scale (or claim it).

However, it is now early 2021, and the revolutionary dreams of so many hopeful new entrants have been cut down to a more or less sobering market reality: No runaway victories but rather concentrated or sometimes even moderate accomplishments – with market shares won over in tough and grueling skirmish fights.

Nonetheless, the ones that earned these tight victories and found a way to tackle the prevailing dominance of a very conservative and change-averse profession have shown that things can be done differently and that even the hardest nut can be cracked with the right solution. These obstinate pioneers who spearheaded their way into the legal market, toughened up by the positional competition, are now being joined by an ever-growing number of converted clients, believers, and supporters.

Still, some ALSPs might wonder why a market so much in need of change is not welcoming their offerings with open arms. When we, the authors of this article, got together after the last in-person ELTA conference in Madrid in late 2019, we began to discuss our observations, analyses, and experiences of this situation. By combining our various perspectives, we quickly realized that we could agree on specific observations and attempted explanations. Together we might help answer that question about the change in the market – and, more importantly, suggest some conclusions on what it takes to finally succeed as a non-traditional player in the legal services market:

### **1. Information Gap**

Whenever participating in any of the mul-

tipl legal tech and legal innovation events, observers could get the impression that the market and its players are fully committed to change and that things are really moving forward now. Often, this turned out to be a too optimistic impression. In reality, those with specialist knowledge and market insight take their information booth as a given. They expect everybody else to be at the same level. However, for most potential buyers of alternative legal services, this is not the case. There is still a vast amount of people in the legal market caught in a state of mind somewhere between innocence, paralysis, and ignorance. And as the real market potential for ALSPs is with the vast majority of “uninformed” buyers rather than with the few “enlightened” ones, this information gap already creates difficulties in communications and selling. Hence, ALSPs should dedicate significant effort to reaching out to the relatively uninformed potential clients and try to close this information gap. Promotion needs to be replaced with education. This might go as far as regularly informing the various roles involved in B2B purchase decisions about market developments and the alternative options and new solutions available – in their own language and unique perspectives.

### **2. Pressure to Act**

Closely linked to the above is the finding that decision-makers in legal departments and law firms usually do not fancy trying something new but rather prefer using “well-trodden” paths and proven solutions. They often only start acting once they feel they are losing ground against the market,

their peers, or their competitors. This means that ALSPs, in their desire to convince potential clients, have to create a certain sense of urgency with their target group. Business acumen and a complete understanding of their buyers' specific situations, industries, and companies are critical to identify both urgent and important issues, which can drive demand and the willingness to buy. Positive word-of-mouth is also a strong force multiplier in this effort, which can often be harvested by establishing some award or at least regular celebrations of successes other clients have achieved with the ALSP's solutions.

### 3. **Transparency**

Many introductory presentations or sales pitches by ALSPs tend to spread somewhat overdrawn – or at least deliberately vague – promises about their services and solutions' capabilities and performance, often leaving potential clients with a lack of understanding and transparency. Still too often presentations are held in a technical support format, rather than a war or success-story appearance. ALSPs need to clarify what specific business problems or challenges they address with their services and solutions and, of course, what differentiates them from their competitors. Also, they need to make sure not to overpromise. A “can-do” mentality is great for a service provider, but only if they are very clear under which circumstances they can deliver what they promise, e.g., by clearly outlining associated costs and time to adjust the services or solutions to specific client needs. The response to the traditional opaqueness of legal services must be sought

in transparency and crystal-clear value propositions.

### 4. **Seamlessness**

Many providers face practical roadblocks when trying to implement their services and solutions with their clients because they are not fully aware of the particularities of legal market requirements or even the challenges of partnership structures in law firms and the position of in-house legal departments in group structures. Therefore, ALSPs have to have sustainable and proven answers to questions on data protection, compliance, (local) legal services regulations, compatibility with existing technical systems, as well as non-technical processes and structures and – last but not least – usability, adoption, and user experience to keep the hurdles to implementation and change management as low as possible. Partnerships with complementary service providers (e.g., management consultants or technology service providers) can help to add the necessary capabilities for seamless solutions and successful implementation work.

### 5. **Value (for Money)**

Providers often are confronted with the challenge that most potential clients are either lacking larger budgets for ALSPs or are generally hesitating to spend larger amounts of money at all. And in this environment, “larger amounts” could already mean a low six-digit sum. When selling B2B software solutions, ALSPs might experience that lawyers usually do not have any idea about the cost associated with implementing (and operating) software. Again, ALSPs will often need to lower the adoption

hurdles and facilitate investment decisions by offering [cloud-enabled and easy to access SaaS](#) (Software-as-a-Service) models, attractive alternative pricing, gain-sharing, or reliable cost-saving examples. It may help to complete the picture by joining forces with other professional services firms, business consultants, or complementary ALSPs for more holistic offerings – and thus better value for money and ease of implementation.

## 6. **Alternative Sales Channels**

The latter opens the door to using a broader range of sales channels other than your own, which might be a fruitful approach, as the market for ALPS is fragmented and potential buyers are hard and costly to target – still mostly achieved through one-on-one presentations with uncertain results. For ALSPs, alternative external sales channels might facilitate broader access to their services and solutions. They can establish co-operations with one or more of the existing legal market platforms and associations and even with non-competitive providers for combined offers or special offers to platform and association members. Even clients may open multiplier effects in their networks of customers and suppliers. Finally, larger technology companies can also make for feasible partners through their app stores and marketplaces.

## 7. **Tangible Experience**

Due to professional deformation and operational blindness, most potential clients lack imagination of how collaborating with ALSPs or implementing their solutions would work and how it would improve their lives, daily work, and business out-

comes. Therefore, [providers need to be well aware of their clients' reality and speak to their challenges](#). This is best achieved by making services and solutions very tangible to potential clients and giving them a positive impression of how it would feel practically working with them and using them every day – thus creating a sense of “desire” to at least give it a try in a particular project or test case. One approach to this could be setting up a lab for dry runs and inviting potential clients for a test run or extensive demo.

## 8. **Strategy and Future Readiness**

Also, professional deformation and operational blindness result in many potential clients lacking vision on where they want to go or what they want to achieve and – last but not least – how they could get there. To avoid lengthy discussions on purely operational details, on potential problems with low probability or unrealistic goals, ALSPs need to take this challenge on and help potential clients work on their strategy, goals, and KPIs. It is the translation of one-off examples and anecdotal evidence into a journey of improvement and business success. Breaking the future down into short-, mid-, and long-term roadmaps is a good starting point – and an opportunity to demonstrate that investing in the ALSP's solution is a safe bet and even opens up other potential use cases and tangible opportunities in the future.

## 9. **Processes and Implementation**

As the emerging next generation of legal services and solutions is still relatively novel and has often ‘not crossed the chasm’ into the mainstream, the future readiness

of many established ways of working, processes, and organizational structure is questionable. So, many law firms and legal departments struggle to analyze and re-design existing structures and processes to make ALSPs' services and solutions unleash their full potential. This is also where the 'human factor' frequently plays a significant role – resistance to change and even fear of being replaced by services or technology need to be considered. Furthermore, motivation of trying any new solution might be constrained by bad experience with implementations in the past. Again, ALSPs need to help them achieve this by offering relevant expertise, approaches, and support – easily added through partners, like business and technology consultants.

## 10. Client Success Management

Finally, providers win if they put their clients' success first. If they can make their clients look good and achieve their goals and drive the relevant KPIs, they will happily be assigned again. This is almost always associated with the roles and personal agendas of the respective decision-makers. ALSPs should therefore emphasize helping the ones who take the budgetary decisions with the internal promotion and implementation of their services and solutions, e.g. by offering state-of-the-art client support (technically and personally), information and communication material and services, as well as facilitating high-level buy-in and change management support. Finally, the increasing role of technology and cloud-based solutions make systematic client success management the cornerstone of successful SaaS models.

These ten points are just a starting point for further discussions. Each of the above findings and suggestions requires closer scrutiny and illumination. The list is probably never final either, given the evolving market of professional services. Nonetheless, we hope to have amplified a few of the essential stepping stones, which might accelerate positive change in the world of law, legal services, and solutions.

Over the coming months, we will elaborate on these various topics in follow-up articles and look forward to complementary contributions and dialogues with other experts, professionals, and observers.

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## About the Authors

[Tobias Heining](#) is Director Business, Clients & Strategy at Osborne Clarke in Germany. He also is founding member, former President, and current board member of the European Legal Tech Association (ELTA). Prior to joining Osborne Clarke, Tobias was Director Business Development & Communications at CMS in Germany, where he also established a unit responsible for developing technology-based legal advisory products. Tobias started his professional career as Consultant at a PR agency advising law firms, worked as Marketing Manager at a US law firm, joined CMS as BD Manager and headed their Business Development team for a couple of years. In these various functions, he has been dealing with product development in law firms and its effects on the legal market as well as business models of the future and the development of digitization strategies for law firms. Tobias studied History,

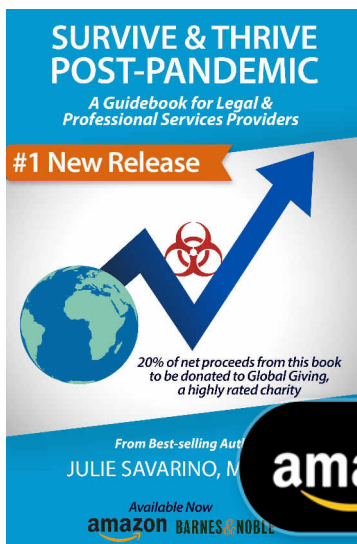
Politics and Communications, as well as Business Economics later on.

Sebastian Hartmann is leading both the global technology strategy and the innovation portfolio and investment steering team for KPMG International. Prior to his current international roles, he established a strategic portfolio management function across all of KPMG's services (audit, tax, advisory) and a sales intelligence team for KPMG Germany. Next to his leadership roles, Sebastian is also advising other services firms (e.g., technology and business services, as well as legal, consulting and other professional services) on strategic management, innovation and operational development challenges. He is a frequent speaker and panelists at international conferences, events and universities – and collaborates with many thought leaders around the globe on topics such as the future of knowledge work, service design and professional services management. Sebastian holds a master's degree in Services Management, System Information Science and International Management from the Catholic

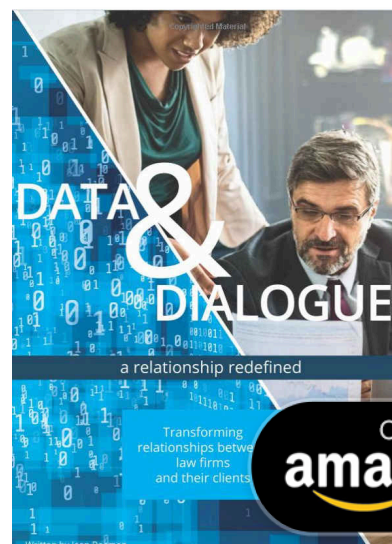
University of Eichstaett-Ingolstadt.

Marcus M. Schmitt has been General Manager at the European Company Lawyers Association (ECLA) based in Brussels since 2017 and represents the professional interests of more than 68,000 corporate lawyers from 22 member states at European level. In addition to legal issues concerning the professional status of in-house counsel, he actively supports European legal departments in the digital transformation and the further development of the professional profile of in-house counsel. He appears throughout Europe as a speaker and panelist on selected topics related to Corporate Legal Departments. Prior to his work in Brussels, he supported the Federal Association of Corporate Lawyers in Germany as Director in the association's office. Since 2012, he has also been advising large and medium-sized legal departments throughout Germany in the context of efficiency improvement and optimization projects. Schmitt studied law at the Free University and Humboldt University in Berlin and completed his legal clerkship in Berlin and Chicago, IL.

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# DOING MORE WITH LESS



## Doing More with Less: Can Document Automation Help... but How?

By Lorna Campbell, Marketing Director of Document Automation consultancy company DocGovern

2020 has been so far, shall we say, interesting. Every aspect of our lives feels like it's been impacted and changed in ways we're only just starting to realise.

Change is not necessarily a bad thing. In fact, evolution has shown that change is normally a catalyst for good. Frequently painful, yes, but

undeniably for the better in the long run. The trick being to still be alive and kicking when the dust settles!

As a Document Automation consultancy company working with law firms, we're acutely aware of the level of change that's going on, and we spend much of our time looking to see how we can help our Clients alleviate their own challenges. These are typically the same fundamental hurdles - do more with less and be more agile than they have ever been before.

It won't come as a surprise when I say that Document Automation can, if used wisely, genuinely help businesses of all sizes with addressing these challenges.

You can make significant improvements with productivity - easily more than an 80% time saving - and the use cases for Document Automation are endless.

As well as helping you scale up your practice, compete in the legal marketplace, streamline work and improve productivity, Document Automation can help you increase workflow efficiency, reduce the risk of errors, and ensure compliance with your industry's standards.

So, if Document Automation really can allow you to do more with less and support a shifting business focus, why isn't everyone using it to its fullest potential?

It's the chicken and egg situation. The same challenges can mean it's difficult to free up the budget to adopt or further leverage Document Automation.

Several of the Document Automation vendors are offering discounts towards software costs, some are even providing deferred invoicing, so you can legitimately see the benefit and return on investment before you pay for the software itself, but is that enough to convince law firms that Document Automation can help you do more with less?

### **So, you think you need Document Automation...**

Just to clarify what Document Automation is not, as it's often confused. Document Automation is about the creation of documents. It's not about what you do with them - that's Document Management. It's also not about who will use the documents - that's Document

Workflow. Finally, it's not about negotiating, that's known as Lifecycle Management.

Questions you may want to ask yourself if you're thinking about Document Automation for your law firm include, 'Is document accuracy 'mission critical' in your firm?', 'Do you have a high volume of repeatable documents?', 'Does your team need to collaborate on your documentation?' and 'Could the contents of your documents cause impact to your organisation if they contained errors?' E.g. Contracts, calculations, clauses, personally identifiable information etc.

In DocGovern's experience, most law firms answer 'yes' to all the above! but how many actually utilise a Document Automation solution effectively and receive ROI from their investment?

### **Document Automation's Use & Its Impact on Remote Working**

DocGovern undertook a programme of market research in July 2020 with a number of key individuals within organisations across a variety of industry sectors, 46% of those recipients from the legal sector, with several participants from AMLAW 250 companies.

The purpose of the research was to determine their company's use of Document Automation, including its impact on remote working. Of these companies, some already used a Document Automation platform and others didn't.

A White Paper [1] was put together presenting the results of the research, covering areas such as limitations of Document Automation platforms, the value of Document Automation,

Document Automation & Remote Working, and how Document Automation aligns with Business Transformation priorities.

### **Key Takeaways**

82% of respondents already used a Document Automation solution, with 68% of respondents using their Document Automation solution to interact with external Clients (e.g. via Client interviews, such as contract negotiation or intake forms).

When asked what they thought the value of Document Automation was to them, the top three answers were - improving productivity, reducing errors, and sharing knowledge.

When asked if their organisation currently uses Document Automation to support remote working, 64% stated yes. When it came to Document Automation and how it helps their organisation achieve its business transformation priorities, over 90% of respondents stated operational efficiency as the main reason.

From the research undertaken, it's clear Document Automation plays a big part in businesses achieving Digital Transformation, and the question of whether Document Automation supports remote working is a resounding 'yes', with key functionality such as cloud hosting and shared collaboration being crucial parts of remote working.

More recently, an article in Legal IT Professionals [2] around remote working stated that, *"Legal teams are making much more use of cloud technologies to collaborate on matters because they now lack face-to-face interac-*

*tion, but they are also prioritising legal-specific technologies that enable the legal team to function effectively in a fully remote and digital manner, including electronic signatures for contracts, e-billing and matter management, and knowledge and document management."*

*"Technology brings huge benefits but approaching it in the right way is crucial...it can make significant differences to legal teams who are working remotely and need to 'do more with less'."*

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*"Document Automation can support remote working in terms of client collaboration and revenue generation."*

**Dorna Moini, Founder & CEO,  
Documate**

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*"It's reassuring to know if you have a system in place, that all those elements of risk that come into play in those forced dispersed systems [through remote working], have been mitigated by the Document Automation solution itself."*

**Sarah Sheehan, Legal Consultant**

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### **Unit Pricing and Fixed Fee Arrangements**

When it comes to 'doing more with less', law firms are coming under increasing pressure from clients to address the way they deliver and bill services.

For nearly 70 years, the billable hour has been the fiscal pillar of legal practice and it has been integral to the traditional way of practising law.

This billing structure involves charging on a time basis and measuring performance against financial targets.

Clients pay for legal services which has no relationship to the value they receive, and lawyers are recognised and rewarded on how much time they spend doing the work. Time-based, not value based.

The legal market, however, is experiencing a paradigm shift in the delivery of legal services as new players and new pricing models are emerging in the market. These new players are not committed to traditional ways of working. Instead, these “NewLaw” practitioners understand that aligning their prices to value is critical. That keeping track of time is the lawyer’s measure of cost, not necessarily a measure of the value he or she is providing the clients. According to the American Bar Association [3], alternative fee arrangements (AFAs) can help law firms distinguish themselves in the market, open up client opportunities, and allow them to focus on providing client value rather than on the amount of time you are billing.

The use of technology has certainly impacted this trend. Lawyers have more powerful ways of analysing and leveraging data to price their services, create budgets and map workflow. With detailed information on the historical cost of different kinds of matters, law firms can uncover patterns to determine reasonable ranges of cost for a wide variety of legal services.

Perhaps rather than assuming AFAs are the best option, law firms should take an in-depth

look at their business models to ensure they are meeting both the economic interests of the client and the firm.

### **Document Automation & Fixed Fees**

According to an article in *Artificial Lawyer* in May 2020 [4] a new survey on the use of fixed price legal services suggests that when combined with Document Automation, lawyers can make more money, not less, especially with matters perceived to be ‘complex’.

The survey by Australia-based New Law CLE focused mostly on SME-sector firms, but its central finding is relevant to larger legal businesses. The finding is that complex matters, priced with a fixed fee, and utilising Document Automation, will generate a higher ‘yield’ relative to the amount of work put into the matter.

In other words, if you go down the route of fixed fees, then Document Automation clearly speeds up the work process, and can provide a boost to your profit margin if workflows are managed well.

In addition, clients have their own perception of what is a complex matter and will pay more in terms of fixed fees depending on the type of document; so lawyers can gain an even greater yield on work inputs when using Document Automation for such matters.

Technology has been seen as a threat to the inefficiency-based model of law firm profit generation that is centred on selling time. That, in turn, hurts technology adoption as some firm’s fear impacting their ability to bill for time as efficiency increases.

However, the survey suggests, where clients perceive a document to be 'complex' a combination of fixed prices and Document Automation can drive up profitability.

## Conclusion

Increasing client demands are forcing law firms to be more agile and 'do more with less', perhaps even more so, in this current climate.

The benefits of Document Automation are well known to law firms, and although most companies are working remotely in this current climate, client demands haven't changed, if anything, they have increased.

Unit Pricing and fixed fee arrangements is a topic hotly debated across the legal sector and law firms must be able to show value. Like all parts of the economy, the legal sector must move with the times, and client perceptions of value are always changing.

In which case, is it not perhaps better for law firms to embrace Document Automation, not only to help them be more efficient and productive, but also to enable them to compete in the current and future legal marketplace more effectively.

## Footnotes

[1] DocGovern's 'Document Automation and Its Impact on Remote Working' White Paper

can be read in full here <https://bit.ly/39nxEuA>

[2] Legal IT Professionals - 'Accelerated legal transformation and digitalisation during lockdown' <https://www.legalitprofessionals.com/legal-it-columns/65-guest-columns/12130-accelerated-legal-transformation-and-digitalisation-during-lockdown>

[3] American Bar Association - 'TAPAs: Alternative Fee Arrangements' - [https://www.americanbar.org/groups/gpsolo/publications/gpsolo\\_ereport/2019/sep-tember-2019/tapas-alternative-fee-arrangements/](https://www.americanbar.org/groups/gpsolo/publications/gpsolo_ereport/2019/sep-tember-2019/tapas-alternative-fee-arrangements/)

[4] Artificial Lawyer - 'Doc Automation + Fixed Fees Can Drive Law Firm Profit' - <https://www.artificiallawyer.com/2020/05/04/doc-automation-fixed-fees-can-drive-law-firm-profits/>

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## About the Author

Lorna Campbell is the Marketing Director of Document Automation consultancy company [DocGovern](#). A B2B marketing professional, Lorna has over 20 years' experience in the Marketing industry. With the last ten years spent in the technology sector, including legal tech, she has worked in global organisations, as well as SME's and start-ups, creating and implementing Marketing Strategies and Growth Plans, with a focus on Digital Marketing and Content Marketing.

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# Remote Legal Teams

## Getting Started and Making It Work!

What legal organisations and leaders need to know

By Karla Schlaepfer, founder of Legal Design Change, and Baltasar Cevc, IT expert turned lawyer

The legal world is facing huge complex challenges, and these challenges require action. Let's not pretend digitalisation or virtual working are easy. Successful virtual and remote team working means a paradigm shift for everyone involved. At the same time, working from different physical locations and decentralized working bring a certain kind of freedom and are a strong lever for legal to help their customers address the agile challenges they face. The sudden shift to remote work is compelling many law firms to a "forced" acceptance of cloud-based collaboration tools like video conferencing, e-signature, and matter management tools. Lawyers and firms that had previously considered legal tech as an afterthought, have now had their first real taste, with hopefully lasting effects that will drive greater adoption in the future. This paper is designed for those in the legal field who are open to building on this adoption of new digital tools and collaborative team solutions. It is not meant to be exhaustive but provides an overview and a glimpse of best collaborative practices. It is a starter for all those interested in Remote Legal Teams.

## **Why Remote Legal Work and virtual legal teams are needed now**

Let's not kid ourselves in another regard: working digitally is the new normal for legal work. COVID-19 is only the trigger in a fast-changing complex world pushing the boundaries and driving change. Decentralized work has been developing with the advances in technology for the last decade. However, in order to unlock the potential of technology, we need to change the way we work together. Those who will emerge as winners in the future are the organisations and individuals that have understood that working or "teaming" collectively and dealing with complexity differently are the keys to success. Virtual and remote team working push legal into a new age of how we define and carry out work together. It is a New Working world. And with this, virtual working standards are providing the re-definition of how lawyers and legal enterprises organize their workflows and their employees and how they interface with their partners. The current shift presents a golden opportunity to adopt agile working methods and values such as trust, accountability, and transparency. In a world where change is constant, agile teams can capture value and scale faster and are per definition more responsive and adaptive to future challenges.

Large legal enterprises are expanding geographically, developing innovative business models outside of their borders and forming lucrative partnerships with other industries. This expansion is only possible by streamlining processes and successfully implementing new approaches using Legal Tech software. This requires targeted use of technology for organizing workflow, team collaboration and clear com-

munication. Successful remote legal teams benefit from a shared understanding of values, transparency and from shared knowledge. Lawyers gain freedom to focus on their unique core skills: interaction with clients, making good legal decisions and solving problems.

In this paper, we present five topics and corresponding hypotheses, all of which we believe can make an impact in your remote and virtual working success. We will talk about (1) what makes legal work different from other disciplines, (2) the mindset change that's necessary to adapt, (3) the organization of legal work in a decentralized, virtual environment, (4) how to improve communication in such a setting and (5) the implications of professional rules. At the end of our paper, we lay out how to address risks and find opportunities in these contexts. There is also a link to a literature list and an overview of resources and materials in the annex. As a side note, this is our first project as a virtual team. We plan to dive more into these issues after conducting research with a variety of legal representatives. This paper should start the discussion. Our objective is to explore these questions and test our hypotheses of how to make virtual work and organization with remote legal teams more profitable and motivating. We believe that successful remote legal teams will accelerate the transformation of digital working for the legal profession and that now, we're at the starting blocks!

### **1. How is Legal work different?**

*Remote and digitalised work is shifting work paradigms, including the practice of law.*

"Legal work is bespoke"—often claimed, yet this statement probably does not hold true in

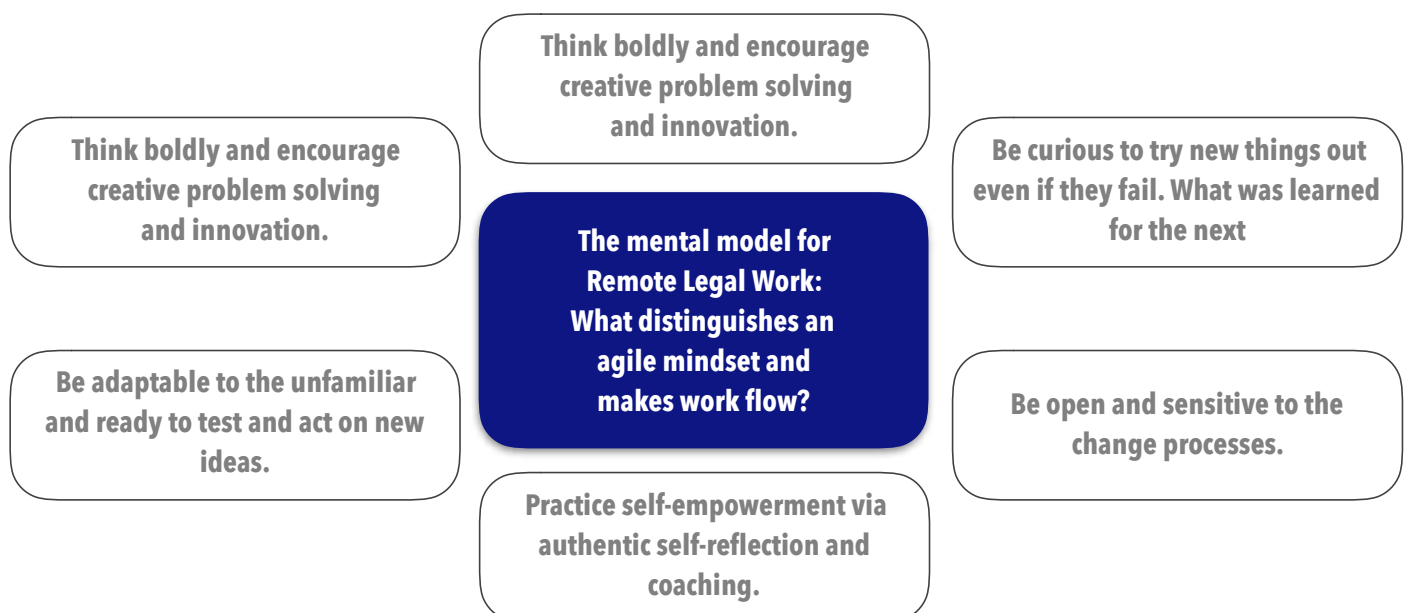
this generality. In our view, it does the law wrong. There's more to lawyer work. And there's more to legal service delivery. There is a true core, though: law is complex, blending challenging mental work and strict formal requirements. Law needs people who are well organised, and it needs great minds to think beyond legal details. These are people who know how to navigate high regulation density while taking mandatory aspects into account.

To bring all requirements together, legal work calls for a solid outer structure on which all contributors can rely, while giving them room to activate their full potential. The setup needs to work for all types of work involved: both the client-facing (e.g. that which judges, attorneys and others do) as well as back-office work.

While professionals in law are great at analysing the facts in question, they often do not find the time to do an in-depth analysis of their own work and identify corresponding requirements. Needs differ depending on the organization: a court needs to safeguard that judges have the required freedom while struc-

turally covering requirements they face as public institutions. They need to cover everything from huge disputes to small claims, from lengthy trials to injunctive relief on very short notice. Public administrations are often subject to political constraints and have law-mandated duties to fulfil. Legal departments are heavily intertwined with the business organization they support and take over part of the business culture. Attorneys work at the interface to and between different types of people and institutions, each of which have a specific working mode. Irrespective of their workplace, lawyers need a clear understanding of the needs and working processes of the respective other people and organizations involved. They also need to make sure requirements such as deadlines are met.

Traditionally, many legal professionals are used to primarily working on their own, with only few interfaces connecting them with their colleagues. Remote work will shift that to some extent and create new, digital interfaces. The collaborators involved will analyse



requirements at interfaces and desired outcome of the process. This will set the frame for the solution. To meet the organization's goals, all contributors will focus on what best enables each other's work and on the synergies that can be harvested.

## **2. Mindset required for effective legal remote work: make it purposeful and productive**

*The shift to remote work comes with a shift in mindset towards empowerment.*

Virtual work and remote collaboration require a mindset shift to employee empowerment. To motivate your remote or virtual team to top performance, it is pivotal that attitude and belief system align. Actions invariably speak louder than words, and these behaviours must ring true.

The team reaches high performance thriving on trust as a core value. This essential factor is fostered by socially-sound, empathetic interactions which are based on respect, discretion, honesty, and reliability. Creating the right human-centred conditions for the team to perform is vital. In the office environment, these conditions lay the groundwork for agility and cultural change. When working remotely, these factors are even more essential. A case in point: to unlock the full power of digital technology, even the best tech will not be enough. High performing teams are happy teams that share, learn to help each other and self-organize—they shoulder responsibility as a whole team. The team members like what they do and learn from regular feedback because they want to improve. They understand their valuable role within the team and the big picture of

what they contribute to their organization.

Ultimately, the goal as the team leader is to ensure a balanced interaction based on shared values and psychological safety so everyone they can contribute. This kind of new virtual collaboration predicates establishing a sense of community based on mutual principles; principles in line with the organization's goals, introduced with the leadership's facilitation and team member contribution. There is still much learning by trial and error, but successful best practices are those that prioritize the development of a value-driven culture.

Let's be clear, this does not happen overnight. Common performance standards have to be re-examined and changed to reflect results. The spatial features of a remote legal team.

In this paper, we describe remote legal work in a form that is agnostic to the specific team setup. Some people might be situated at the same place or office where others are working remote or from home office. At the same time, one of our main assumptions that predicates successful remote work is the necessity of good communication and collaborative practices.

That being said, a remote legal team is a team which is set up in a way that it is not reliant on people being at the same office at the same time. The information and communication structure are set up in a way to enable everybody working from virtually any spot anywhere with reliable and strong internet connectivity. ———→

- A virtual or distributed team is a setup in which all team members are generally work without a central base.
- A hybrid team is a team in which a part of the workforce is located on site, whereas another part is distributed.
- A co-located team is the traditional model of a team working together from one office space.

### 3. Remote work structure and information management

*A single source of valid information and a scaling communication structure provide the backbone of each distributed team.*

Remote legal work needs remote-adapted structure to work well. Unfortunately, that means there's work to be done. Fortunately, Legal New Work can strongly leverage the lawyer's mode of thinking and working. The first steps on the path to an all-digital world is to move paper case files to centralized digital files. A requirement analysis and control of that digital information and communication processes is key. This important step enables team members to distribute work equally and efficiently.

All team members need to be able to pull information from a reliable digital single source of truth, similar to the comprehensive paper file law firms created for each client matter thirty years ago. Whether it is hosted in the cloud or all stored on premise, the essence is that all information is in one system. It is an individual choice whether to move your files to

the cloud or keep all servers on-site. The main requirement is that all information is stored in one integrated system.

#### Getting started

As mentioned before; the single most important point is to keep everybody informed and make the information flow transparent. This refers both to the archive (e.g. documents) as well as to the current status.

Tools such as email tend to distract rather than to support. Create a single source of truth (SSOT), a place where all client (and internal) files are kept and where all contributors can see the status. It needs to be central and remotely accessible. It could start as a set of clearly named folders but should probably evolve into a software-supported system. When moving to a software, the process needs to be stable, as each solution will have a certain degree of "lock-in" and makes changes more difficult. While creating some restraints, one of the many good software solutions for case management or similar will create benefit in the long run. Start the screening process early, but only after determining your actual requirements for the software. Acknowledge the fact that no software will ever provide 100 % of what your ideas are. 80 % is enough, provided that you will test your options, adapt and use this information to optimise solutions. There are some topics you should not compromise on, e.g. data security—which is a topic in its own right to be addressed in a later paper.

It is critical to determine clear responsibilities in the team who is responsible for keeping this

source accurate, secure and up to date. Make sure to document the decisions and create clear guidelines on what to store where. If it is really necessary to access information from different places, create a link instead of a copy; in case a copy is strictly required, be sure to designate which copy is primary. But that's not all. Information should always flow and not rest. Information that is just stored instead of being used provides no value. To be useful, information should be easily accessible. Information must be allowed to flow.

#### **4. Getting virtual collaboration working for everybody**

*Remote Legal work requires human-centred virtual exchange.*

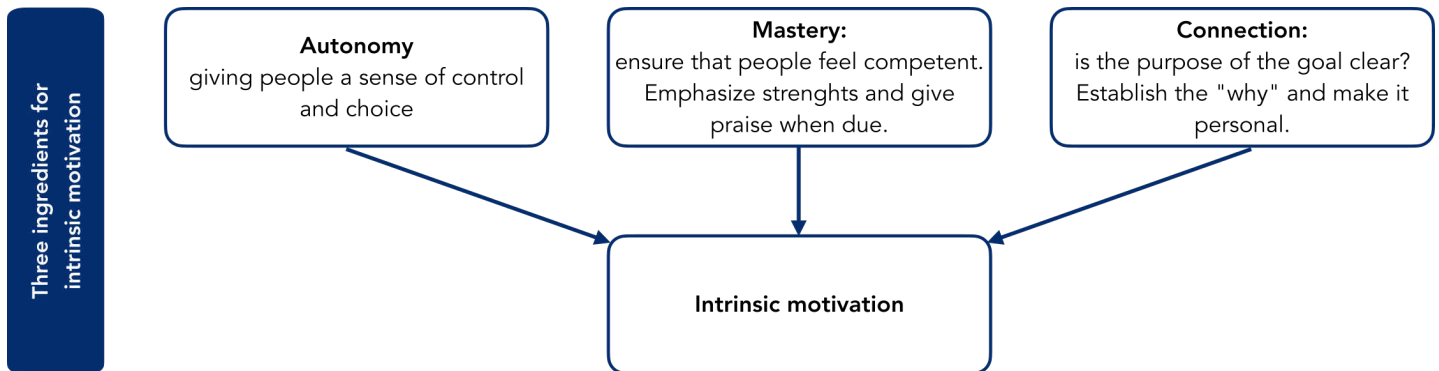
Successful collaboration in a digital remote environment can best be described as alone together. It entails practice with new software, chat and video conferencing tools, and engenders new forms of interaction. Digital applications and software are only a part of a future success story. The real game-changer is how these collaborative tools are applied and if they are leveraged to create people-centred working. This is at the core of the agile mindset.

Social aspects of human interaction that come naturally when people are working in the same space, those so-called informal “water-cooler” moments when people see each other casually and exchange non-work banter, are no longer available.

Without physical, holistic opportunities to communicate, it is all the more critical to learn to pay special attention to the tone, quality

and content of online interactions. That is, legal leaders working remotely, must set the stage and make the time from the outset to develop new habits, social connectivity and exchange. Human-centred factors move to the forefront in virtual work and a clear, trusting relationship plays a vital role in motivating people to collaborate. Communication is key. What does your team need to know to make this type of remote collaboration work? What are their expectations? Perhaps even more importantly, what are your expectations and evaluation criteria as a legal leader? These “game-rules” are critical and involve not only the technical aspects but the actual manner in which the workflow is carried out and deemed done. The rules should be openly negotiated and should include specifics on, for example, the length and frequency of video/chat contact. The team should be able to discuss and agree on expected time responses—working remotely does not mean that everyone is synchronous and that answers are immediate.

Equally important is consensus for regular meeting times, one-off sessions or 1:1s, a forum for team discussions and acceptance for work offline or to manage family commitments. These results should be made transparent in a document, maybe a so-called team charter, that is accessible to all. Expect awkward moments the first time you try out a warmup activity, actively listen to an introvert colleague or pose an open question about your team members past weekend, however, you'll be taking the steps to build a sense of comfort, reduce stress and anxiety which play out in stronger intrinsic motivation, better collaboration and improved outcomes.



### Get the communication setup right

Good remote communication setups depend on both reliable tools and on team agreements. There should be a consensus on a single main communication channel. Remote work implies that people can organize their time and schedule independently. To achieve a balance in virtual collaboration however, the playing field is equal. If some members of the meeting are virtual, then all participants should be virtual. This inclusion is important to give all distributed team members the same advantages and level the playing field. Be considerate of time zones when scheduling meetings and use asynchronism in such a way that people can do deep work or tackle bigger projects. After a certain number of team meetings, schedule time for reflection and inspect how the remote teamwork is developing. Adapt and try out new alignments and tweaks based on the team and individual feedback. Remote working can facilitate fewer, more effective (when time-boxed) meetings when the game-rules are respected, establish trust and transparency.

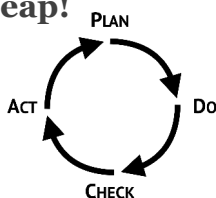
### 5. Professional rules and obstacles

*Legal professional rules pose obstacles but do not hinder the transition to Remote Legal Work.*

Professional rules have grown over the history of the legal professions. Customs intermingle with rules set to protect customers or the rule of law. This organically grown setting can feel like a major impediment to a transformation of legal work. Many jurisdictions regulate which types of entities can be used to deliver legal services, who may appertain to the shareholder group and how these may deliver services. In Germany, where the authors are living, lawyers are required to have a physical presence, for example. Globally speaking, we are not aware of any jurisdictions which would prevent the use remote collaboration approaches. Organizations might need some creativity to be able to leverage these approaches and should not buy into the first solution coming along on the market. Depending on the local requirements, suppliers (i) may need to be local, (ii) technical requirements may be requested and (iii) contractual obligations may need to be imposed.

Confidentiality and legal privilege (IT security, clear communication channels and privacy considerations) are certain to be relevant topics for any legal organization, irrespective of its location. This paper cannot give concrete recommendations for specific legislations. The risk analysis should be derived from three requirement sources: (i) formal laws, (ii) requirements by the respective bar (formal professional rules, if applicable), and (iii) soft rules (e.g. content-wise dangers for your clients' concern such as confidentiality, ethical topics). Where the rules allow, a risk-based approach can be implemented: it provides for flexibility while taking into account mandatory aspects. The organization should understand the risks, look them in the eye and decide which risk can be reasonably taken in both the organisation's interest and for the client. In any case, it is advantageous for the client when their lawyers make use of the best available tools to create significant impact. When legal requirements are rigid and formalistic, an organisation can still leverage what lawyers are really good at: their legal expertise. In the same manner they do when advising clients, they find the loopholes to enable change!

## 6. Look the risk in the eye, evaluate it and take a leap!



Let's be realistic—nothing comes without a risk. Not to change today is also a risk since change is inevitable. Even a traditional law office is subject to certain risks. Lawyers might be avoiding change, hesitating to make their process unreliable or to endangering their abili-

ty to deliver quality outcomes. This is legit, yet one should not stop there. Not in today's **VUCA** (Volatile, Uncertain, Complex and Ambiguous) world. Risk should be evaluated and, when deciding which risk to take, the answer might actually remind you of the standard lawyer answer of "it depends". The question of which approaches to use actually depends on circumstances, compliance rules, technical possibilities and other factors like budget.

However, you need to decide on what to do. To turn uncertainty into a reliable process, you will need to balance risk and opportunity. Unfortunately, there is no 100% security. But there are validated approaches to address and start to deal with future complexity and uncertainties. An increasing number of professions methods such as **Plan-Do-Check-Act** for managing a continuous improvement within a stable process. Here you build a plan, implement it, verify and improve on it. To decide which approach to use, you should weigh opportunity against risk and constraints, e.g. asking yourself:

### Questions to address regarding risk:

- How do the providers of solutions address security?
- Which encryption approach is used? Are users properly authenticated?
- Where does the data reside and who has access to it?
- Do the organizations providing the solution have the power to address growing IT security issues?
- Which hard restrictions and goals do professional regulations provide for us?



Experience shows that often the ones taking a reasonable amount of risk win. So be as open as you can imagine and embrace the change! Risk can be well managed. More and more laws are evolving towards a risk-based approach. It is often the case that those who are practicing an open-minded, risk-managing approach will find and implement the right strategy for delivering new and impactful outcomes.

## 7. Further reading and external resources

A list of articles and books worth reading can be found at:

<https://github.com/Liquid-Legal-Institute/RemoteLegalTeams/blob/master/Resources.md>

## About the essay, its authors and the Liquid Legal Institute

The essay has been written by Baltasar Cevc and Karla Schlaepfer within the Remote Legal Teams project of the Liquid Legal Institute e.V. – amongst the valuable inputs of various members of the Liquid Legal Institute, the authors would like to thank Tamay Schimang for his collaboration in the early phase of the paper and his valuable thoughts and content contributions.

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*Baltasar Cevc* is IT expert turned lawyer, amongst the first members of the Liquid Legal Institute and initiator and co-founder of the law firm alliance fingolex, which is running completely decentralized using digital tools (besides personal meetings from time to time). He is a seasoned lawyer having worked for a Global Fortune 500 company for many years and highly values human centricity and transparency. He advises clients from start-ups to corporates in the fields of IT, privacy and

### How to uncover opportunities:

- How can the approach facilitate communication with the client?
- How can we use it to leverage improved work processes?
- How can we make our work more transparent? How can we establish where we have potential to upskill or to improve our work processes?
- Can we use the findings to establish the value we bring to our clients?

digital health as well as generally regarding digital technologies and process efficiency.

<https://fingolex.eu/baltasar-cevc>

The Liquid Legal Institute is an open and interdisciplinary platform promoting a new way of thinking and working in the legal sector. Being neutral and non-profit, it enables stakeholders to address digitalisation, new business models and technological innovations within the field of law. We are a group more than 150 multi-disciplinary enthusiasts from over 10 countries promoting Liquid Legal and shaping the new realities in law. For this purpose, we leverage insight from other disciplines and address specifics of the law. We focus on tangible action, gathering knowledge, creating methodology kits, setting standards and further activities that use an open mindset to make law practice better for everyone involved.

We believe in the power of collaboration,

co-innovation and simplification. We base or work on actual needs and invite all stakeholders to bring in their perspectives and set the bar for tomorrow's legal!

### **Invitation to join the change**

LLI is called Liquid Legal Institute for a reason. We are working on establishing facts, (in)validating hypotheses and creating a better future legal world. Based on our agile working approach, we intend to research and publish an extended and updated version on how remote legal teams work better together. Are you ready to join us? Do you have questions or comments? We're looking for individuals for short interviews who are willing to help us in our research project.

*We'd love to hear from you! And you're very welcome to join us!*

Visit <https://liquid-legal-institute.com/workinggroups/remote-legal-teams/> for information and contact paths.

### **Guidelines: The most important steps to your remote legal team**

#### **Leadership and mindset**

- Create transparency and alignment on the goals of the organisation and purpose of remote work. This sets the groundwork for collaboration.
- Observe team dynamics, resolve disputes, and continuously correct your course to develop the cohesion in the team that is an essential ingredient for self-organisation.

- Ensure the safety and wellbeing of your staff while balancing the core functions of the business.
- Demonstrate a personal commitment to the emotional welfare of the teams.
- Recognize good work with feedback which is critical to ensuring that Legal professionals stay motivated. Avoid a culture of blame and practice active listening skills.
- Schedule regular breaks, short interactive activities, and show flexibility.
- Allow people to leverage their talents and



- set sensible milestones and checkpoints for self-organisation.
- Consider establishing team charters with values and principles that people can own.

### **Communication**

- Maintain structured connections with colleagues by recreating social contacts and facilitating information and informal exchange. Regular exchanges (e.g. daily stand-ups)
- Agree upon and use one main digital primary channel
- Establish an expected response time for both asynchronous and synchronous communication
- Clear writing is essential when working remotely. Learn to write like you talk, and don't be hesitant to over-communicate. Establish habits for confirming and use visual signs (like icons) to make sure people have heard and understood.
- Use "break-out" room functions to have 1:1 meetings. For longer discussions or for resolving conflicts, use personal video calls, or, if not available, the telephone. It is often easier to establish rapport and clarify.

### **Infrastructure base setup**

Get your infrastructure well set up:

- For team members working off-site in an office: An ergonomic desk, chair and overall setup (mind the light!)
- For team members working off-site and out of an office: Whatever setup suitable to protect your customers' confidentiality during your work.
- Hardware
  - Notebook
  - An additional screen (highly recom-

- mended but not strictly necessary)
- A decent headset with microphone (not necessarily expensive)
- Software setup
  - Stable operating system
  - An office application
  - Any specific applications you use in your setup (see also information access and communication)
- Connectivity
  - Internet connection with at least 10 MBit/s downstream and 2 MBit upstream (roughly)
  - Prefer cabled connection over WiFi
  - Use secure links (VPNs) to communicate and secure your network with state-of-the-art firewalls (both the remote computers as well as the central network)
- Communication tools
  - Microphone (usually a conferencing headset is best)
  - Phone (may be a softphone on the computer)
  - Business messenger

### **Information access**

- Create a centralized storage for matter information and metadata.
- Provide access to legal research databases from any place.
- Your IT setup needs to feature:
  - A centralised storage for data everybody can access remotely;
  - A Single Source of Truth in which status and tasks regarding the matters being worked on; and
  - A communication tool you use as primary means of "talking".

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