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How LEGO Blocks Lay the Foundations for Innovative Pricing

By Pieter van der Hoeven

Other contributors: Patrick J. McKenna, Soledad Atienza & Fernando Pelaez, Lilian Mateu, Nicolas Leroux & Ari Kaplan, Susan Freeman, Heidi Turner, Alex Kelly, Michelle Truong, Mari Cruz Taboada & Katie Dignan, LBW editorial team

Business of Law

BOOK RELEASE

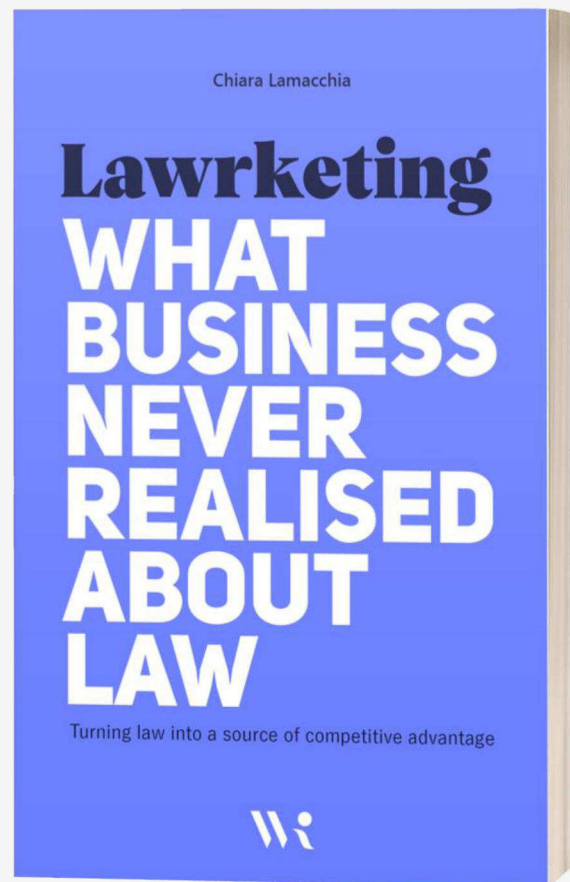
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Lawrketing aims at proactively acting on legal trends in a cross-competences environment, where legal is no more an obscure field, limiting the business, but a whole set of possibilities to enable innovation.



> The Author

Chiara Lamacchia is a consultant in legal and marketing, serving global companies, across different sectors, promoting the adoption of innovative ways of using the law for competitive advantage.



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NEWSWIRE Q&A

Since the introduction of the LBW Newswire we received several questions. In the next issue, we will publish an article that explains the benefits of using the unique partnership between LBW and Law.com's Newswire, how it works, the effectiveness of newswire exposure, and more. The two most asked questions:

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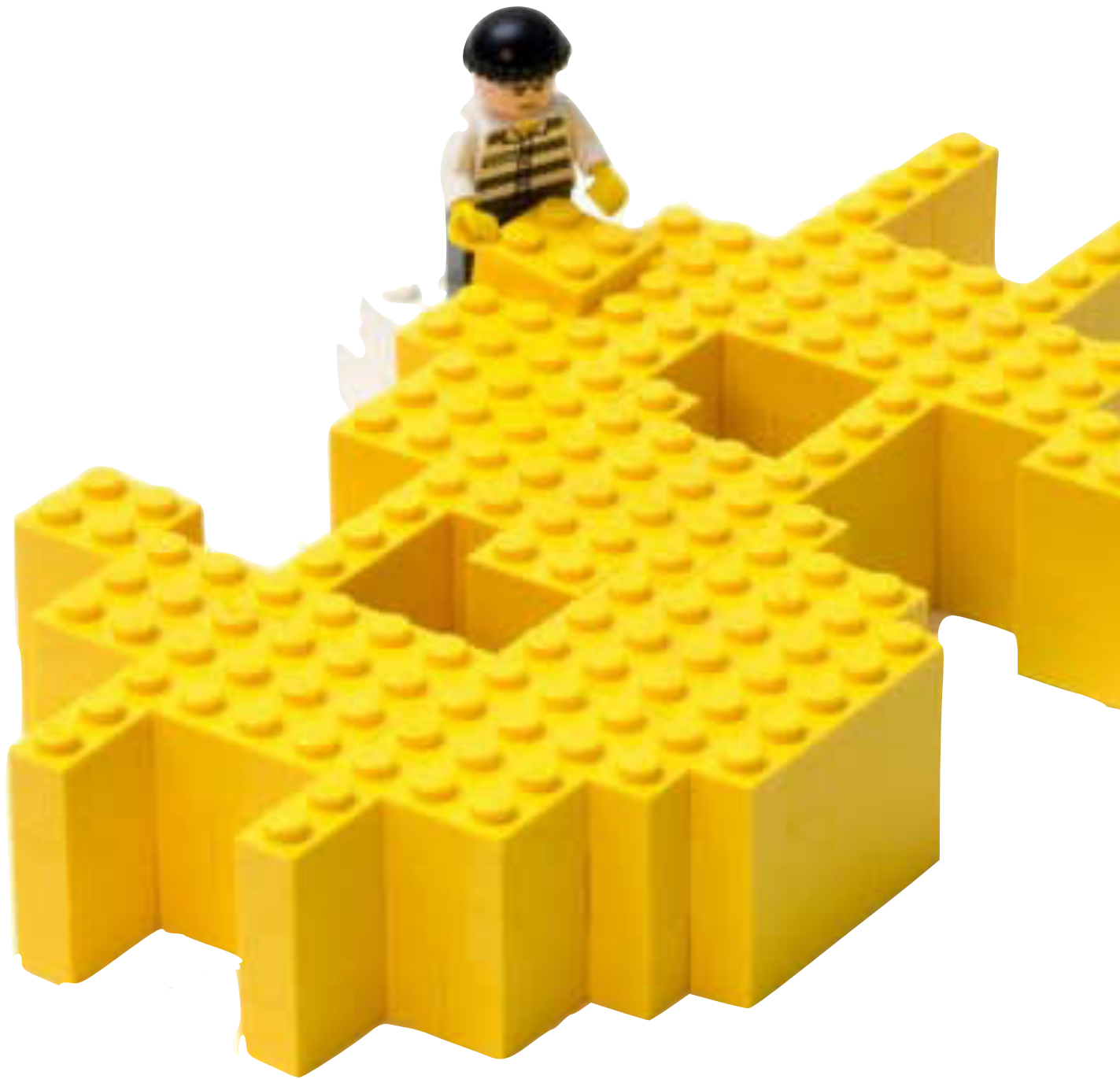
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How LEGO Blocks Lay the Foundations for Innovative Pricing

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

Pricing a matter, at its heart, is about predicting the future. Will litigation teams be required? Is due diligence likely to throw anything unexpected our way? What activities will this new type of work likely include? Sadly, even the most sophisticated business intelligence tools do not have a crystal ball feature (yet!). However, even unfamiliar work can be broken down into familiar activities. By building quotes up from these recognisable building blocks, firms can offer data-driven fee quotes. In doing so, they can pitch for new or complex work without the stress of fee-based guesswork.

Introduction

Thus far, this series of articles has covered [how and why firms should be automatically classifying timecards](#), and then [how to use that data to form pricing 'building blocks'](#). This third edition sees us examine the next step in the chain. Namely, how firms can use these building blocks to form sophisticated pricing strategies.

Whether or not the billable hour is dead, the competitiveness between firms around pricing and the relative transparency they offer clients is alive and kicking. As Thomson Reuters' 2021 edition of '[State of the Legal Market](#)' shows, tactics like rate rises (which supported firms post 2012 crisis) have not been possible. Instead, law firms are needing to provide certainty and risk sharing to a more cautious market. But how to provide pricing which is both reliable and competitive when matters are anything but? The answer is in how you break them down to their component building blocks.

Thinking innovatively about pricing

Pricing for new, or unfamiliar work can be daunting. After all, pitching and winning work with an inaccurate fee quote is likely to end one of two ways. Either the law firm must write off the excess costs, and damage overall profitability, or worse; the firm's reputation. Or the firm must pass on unexpected costs to the client, who is likely to think twice before working together on

similar matters in the future. Recently, Clocktimizer spoke to one of our customers, Levi Remley, Pricing Director of [Barnes and Thorburg](#), who shared [how they have tackled the problem](#).

“We had the opportunity to pitch for some wage and hour class action work, which is complex, expensive work. Our data set for this sort of work was somewhat limited over the past decade and we had very little time to build a quote. The client was looking for fixed fees and capped fees by phases, so we were able to identify tasks and classify them into phase categories and constructed a quote from that. Because of how detailed our quote was, we pitched an AFA and won the work.”

BT Law’s approach indicates that this ‘building block’ pricing strategy has two key knock-on effects. Firstly, firms can introduce more certainty into pricing by identifying familiar activities, and combining them to form sophisticated fee quotes. Secondly, this granular pricing detail offers the transparency that clients are increasingly demanding.

Building blocks in practice

But what do pricing building blocks mean, in practice? For many law firms, the first step must be to define and identify the cost of specific activities. As explored in the last two articles, the more detailed your analysis of your activities, the more accurate your fee quotes. At Clocktimizer we rely on natural language processing to automatically [categorise time card narratives](#). Automatic categorisation is more detailed than existing phase and task codes and does not require users to manually select from multiple options. It is advisable

that even where a law firm relies on codes for classification, that this data stream is enriched with natural language processing insights. Finally, it is worth remembering that the cost of services changes constantly, so whatever method is used to assess your activity costs must generate real time insights.

Having identified the cost of the activity, firms looking to use these activities to pitch for new work should be able to cross reference these activities against secondary values like practice groups, matter types, or even seniority levels.

Whether or not you have a tool like Clocktimizer to automate this for you, cross referencing your activity data is essential for accuracy. After all, the cost of due diligence for an acquisition is likely to be larger than for the purchase of a new property.

Finally, these building blocks should be critically assessed by your pricing teams. Recently, Clocktimizer [hosted a webinar](#) with [Stephen Allen of Elevate](#) and [Royale Price of Greenberg Traurig](#). During a discussion about resource management, Royale noted the critical role pricing teams have in assessing activity costs. If an activity cost is formed by using 8 juniors for review, why not consider what staffing one supported by Luminance or Ravn would save the firm and the client? A critical assessment of **why** an activity has a specific cost can guide firms towards more sophisticated use of staffing, resourcing and technology in the long run.

Get creative with clients

For any firm which has gone through the

process of identifying, refining and questioning their building blocks, it is time to get creative. The last year has been tumultuous, challenging and stressful. For clients, priorities have been upended. Some may be seeking a swift resolution to a matter. Some need to cut costs and want financial certainty. Yet more prioritise flexibility in approach. For the law firm with building blocks, anything is possible.

Let's take the example of the client who needs a resolution to a matter quickly. For the firm with building blocks, they can cross reference the relevant activities by duration and form a fee quote only from those which were completed quickly. They could even choose to offer a client the choice between fast, automated due diligence (which may not be as detailed), with entirely human due diligence which is heavily staffed for speed. Clients can determine whether to prioritise speed at all costs, or keep a wary eye on the price tag. Either way, this detailed transparency and choice is likely to be favourably viewed by a client.

Which drives home the final point about building blocks. Not only do they improve the financial certainty of fee quotes for a law firm, but they inspire creative cooperation with clients. Clients increasingly value collaboration with their law firms. Many in-house teams work closely with external counsel, sharing platforms, ideas and strategy. Any law firm which can offer bespoke pricing to a client, in turn shows that they are able to tailor their way of working to a client's needs. And in a market where [7 in 10 clients](#) have moved work in-house, that kind of pricing sophistication can set them apart from the competition.

Unpredictability breeds creative solutions

Far too many firms see the unpredictability of matters, at least from a pricing perspective, as a challenge. Not only can most matters be broken down into component parts, but the act of breaking them down often invites evaluation about their costs. Further, in an increasingly competitive market, firms can use sophisticated building block pricing to play to their strengths.

If you leverage technology well, you can reflect this in the pricing choices you offer clients. If your firm specialises in economies of scale, capitalise on that instead. If you offer bespoke services for complex matters, create bespoke pricing to match. As we all learned in childhood, the joy of LEGO blocks is that you can use them to make absolutely anything.

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 [Clocktimizer](#).



Clocktizer is an award-winning legal technology 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 man-

agement, 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

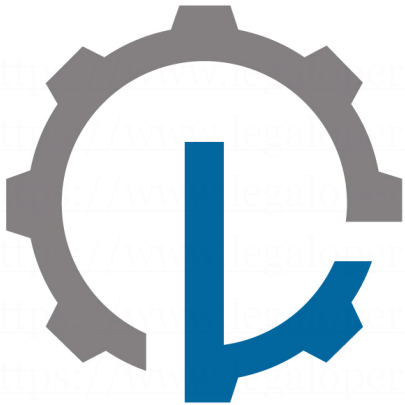
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WOULD YOU AS FIRM LEADER BENEFIT FROM HAVING AN ADVISORY BOARD


- BY THOUGHT LEADER PATRICK J. MCKENNA -

There is an old saying that goes, *it can be lonely at the top* — especially if you are a busy law firm leader trying to maintain a modicum of a personal practice while also charting a course for your firm's future growth.

However, you don't always have to go it alone or rely on the intuition of only your fellow colleagues — some of whom may have their own personal agendas to advance or not have the kind of business experience that you need. A

good number of other professional service firms, from accounting to consulting, have found success through having an external advisory board to counsel the firm's leadership on various aspects of the business — everything from operations to planning for growth or enhancing client service.

Think about the last time you met with a group of business people and had an open discussion, sharing ideas and concerns.



An Advisory Board is a formal version of this process. Unlike a one-time event, you might think of an Advisory Board as your own special leadership think tank. Participants can serve as your personal sounding board, a source of insights and expertise — and give you honest and candid advice. If properly constituted, your advisory board will be comprised of people with no axe to grind, and who want to listen and impart their knowledge.

In fact from my experience, there are 4 primary ways that an Advisory Board can add value and help you be a more effective firm leader:

1. Avoid Potential Problems

It is easy to miss the forest for the trees. The day-to-day demands on firm leaders sometimes make it very easy to miss the problem that lies just ahead. The members of your Advisory Board can have the kind of business experience to provide the objectivity that will

serve to help you anticipate and avoid potential problems before they happen.

2. Solve Existing Problems

Although it may seem like a new problem to you, 95% of the time someone else has experienced a similar problem in the past and overcome it. There is no point re-inventing the wheel if someone else can provide you the answer. Your Advisory Board can tap into the diverse experience and expertise of those who have the battle scars to prove they've been down this road and can help you solve tough problems and identify potentially lucrative new opportunities.

3. Fine Tune Your Strategy

Many firm leaders find themselves on the busyness treadmill, trying to sort through the urgent from the important and unable to make the time necessary to pause, be proactive and plan strategically. Your Advisory Board can serve as your personal conscience by providing the 30,000-foot view to ensure you are heading in the right direction and delivering on both short and long-term objectives.

4. Increase Credibility

The best strategy in the world is only as good as the person or team behind it. Credibility is critical for securing partner commitment to implementation. An Advisory Board can help secure buy-in. Simply having this structure in place expands your reach to areas you alone could not penetrate and builds your credibility.

Why else might you want an advisory board? How about to help stimulate some new and innovative ideas?

Martin Ruef, a professor of entrepreneurship,

surveyed Stanford Business School alumni who had started new businesses to find out what lights their fire. He based his study on data from 766 entrepreneurs from a target group of 1,786, including some foreign business starters. The metrics for innovation included the introduction of new products or services; trademark or patenting activity; exploitation of a new market niche; new methods of production, distribution, or marketing; and industry restructuring. Ruef concluded that entrepreneurs who spent more time with a diverse network of business advisors and complete strangers — were *three times* more likely to innovate.

Meanwhile, if you are like many firm leaders I know, you likely belong to one or more professional organizations where you can network with fellow leaders just like yourself, usually in some form of periodic roundtable discussion groups. However, what I've learned is that most firm leaders may not feel comfortable sharing their most pressing management challenges or discussing competitive issues or opportunities among those same peers. And they may not even trust some of the cheerleading they hear from their peers as to what they are really accomplishing in their respective firms.

Running a successful firm is always a challenge, even more so in these fast-paced, ever-changing, highly competitive and economically uncertain times. Too often we look inward for the answers we need. So what might be good advice for enhancing your profitability? Cut the umbilical cord to the folks internal to your firm that you normally communicate with.

Mix it up! Seek out ideas from people you don't ordinarily talk to, do anything to get out and mingle more with folks, even with people from other professions. Broaden your horizons, and you just might come up with the next idea that sparks a boost in your firm's growth.

Preconditions To Setting-Up Your Advisory Board

Let's be realistic. Having external business advisors makes good sense for some, but these boards may not be for everyone. So when might it make sense to consider an advisory board?

Anyone who's led a law firm knows there comes a time when it feels like something is missing. Whether it's renewed status, recognition, or satisfaction, it doesn't matter. Filling the void does. *Wanting more* is the first precondition because it signifies your deep passion to create, renew and/or grow your firm. Those firm leaders who internalize this passion invariably work harder to exceed the status quo. They push for more and consequently require more expertise, knowledge, and wisdom from others. Without the fundamental drive for more, we are talking about lifestyle satisfaction or what strategists call harvesters who are content with what they have attained. There's nothing wrong with being satisfied and content with your current position; but, the need for an advisory board is less compelling in those circumstances.

A compelling *growth opportunity* is the second pre-condition. The urge for growth and having an advisory board go together for a couple of specific reasons. For one, growth

opportunities are not easy to define. Even experienced leaders are prone to unintentional bias regarding new ideas, which are tricky to sort through under the best circumstances. Growth also often means venturing into new areas. You need to have a clear picture of your firm's potential; and know, either intuitively or logically, where it is you want to go. The uncertainty may be in either how or the best way to get there.

A *mature ego* is the third precondition, because with an advisory board in place you can run but you can't hide — from objectivity or truth. Nor should you want to, because effective boards can help you think more deeply about your big ideas or actions. The input is precisely what's needed when investment dollars are on the table. However, without a mature ego to tolerate the scrutiny or different strategic perspectives, there's neither a compelling or worthwhile reason.

Soliciting feedback and advice about your firm, its operations, prowess, image, etc., can be a scary thing. Truly listening to what others have to say about your firm takes fearlessness and courage. You must be willing to take criticism without becoming defensive. You have to be open to evaluating what you hear, making changes when the advice makes sense, and trying out new ideas. You don't need to put every suggestion into effect, but you do need to show the members of your advisory board that you're taking what they say seriously.

If you are not certain that you're willing to do all of that, don't assemble an advisory board. People who agree to invest their time and energy to participate will have high expectations

that you'll take action on at least some of their ideas. If you don't, or at least not for good reason, you'll only disappoint the members of your board and possibly sour established relationships.

Your Advisory Board Benefits

- Shore up any shortcomings by using experts with complementary skills — key is complementary, not a mirror image of your partners (e.g., a client-focus, from a client perspective, not a firm perspective);
- Receive objective outside advice and fresh insights from experienced business people and independent advisers;
- Use these experts as a sounding board for your ideas; and let them use you as a sounding board for their ideas about your firm;
- Obtain access to specialized knowledge and resources;
- Spice up your strategic plan with "trusted advisors" who impress your partners, yet who aren't afraid to "tell it like it is," irrespective of whoever might not like it; and
- Improve your planning, organization, communication skills, and your contacts; but don't do it just to tap into wider networks to hand out more business cards — which is hardly innovative.

An Advisory Board's advice is always discretionary. Board members offer advice, not governance. Depending on your requirements, your Advisory Board members will bring divergent experiences and information to bear on addressing your challenges and identifying opportunities for your firm. They can offer experience and perspective on everything from how to deal with a sensitive interpersonal problem or restructure a problematic practice group, to how to target a industry niche market or make introductions to an important industry thought-leader.

Choosing Your Advisory Board Members

I fully recognize that many firm leaders might not know how to begin, let alone how to keep an advisory board on track to achieve the anticipated benefits. Below are some suggestions and 10 different desirable practices intended merely as an overview of the process to be followed. If taken one step at a time with a determined commitment, the process will unfold in a methodical way and come together effectively.

The most important consideration in setting up your board is developing the specific objectives that you want to accomplish by having an advisory board. Approach it from an educational standpoint rather than as a business-development tool. You should not put people on your board (like some General Counsel or CEO) to market to them. Setting the objectives at the start then guides you in determining candidates who would be good contributors. Communicate your objectives and a profile of the ideal advisory board candidate to your partners and consider asking

for their recommendations of candidates.

Where, you might wonder, would you find the best candidates to be on your advisory board? Just look around you. Consider choosing: non-competing professionals and those recognized for their track-records in the fields of accounting, finance, technology, marketing, and leadership. There are many recently retired executives and managers who may be good choices. Your advisory board members may also include academic professionals; people who hold other directorships or advisory board roles; professionals who are knowledgeable in issues affecting the profession; and presidents, entrepreneurs and business owners.

Avoid choosing people because you might get along well with them. Compatibility is great, but objective debaters who can explore and discuss issues and ideas without alienating their fellow advisory board members are best. Also, it is critical that you assemble an Advisory Board that complements, rather than duplicates, your particular knowledge and skills.

How to Hold Advisory Board Meetings

At the kick-off meeting of your new advisory board, prepare the ground for what's to come. Because you will be baring your firm's financial and business soul get everyone to agree that whatever is heard in the room stays in the room. At this initial meeting, it's essential that you negotiate a confidentiality agreement (NDA) for the group. That's the only way you'll feel comfortable speaking openly about your firm, and the only way group members will be honest about their own experiences.

Also, schedule meetings far in advance at a convenient time and location. Meetings should generally last no longer than two to three-hours and should start and end on time. Schmoozing is great — but limit it to before and after the formal session.

Meeting topics should be developed to help attain those objectives you began with. Every meeting could have a different focus — one on marketing, one on profitability, and so forth. The meetings should be well planned. You don't just invite a few outsiders to your firm for a meeting. Your board members should receive substantive materials to help them get to know your firm.

Provide an agenda, outline, and any required reading distributed at least three days before you all get together and you can hold your meetings virtually by videoconference. Also, gather relevant materials beforehand; don't ask an assistant to start searching for some documents you want to review with the group, right before your meeting begins.

What Leaders Actually Talk About While the discussions vary, I find that firm leaders ultimately wind up addressing a number of familiar topics like:

1. Personal Isolation — Many firm leaders feel alone at the top, so they share their feelings in meetings and find they're not the only ones experiencing a sense of isolation. Discussions will often cover different approaches for how the leader can be even more effective in their role, whether that role is full time or has billable obligations attached.

2. Finance — Participants often want to compare notes on setting financial controls, managing cash flow, understanding technology expenses, getting partner performance goals met and dealing with underperformers.

3. Business Development — The members of your Advisory Board can offer objective feedback and a productive exchange of ideas on how to develop, expand the firm's position in the marketplace and help you focus on getting better business, not just more business.

4. Professional Morale — All firms must devise systems to recruit, train and motivate their professionals. In Advisory Board meetings, firm leaders often share their challenges, acknowledge mistakes and seek counsel.

5. Operations — Almost every firm leader wants to boost productivity. While specific steps may differ, members of your Advisory Board can share their experiences testing new ways to improve efficiency, cut costs and especially – explore innovation.

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 Success*

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

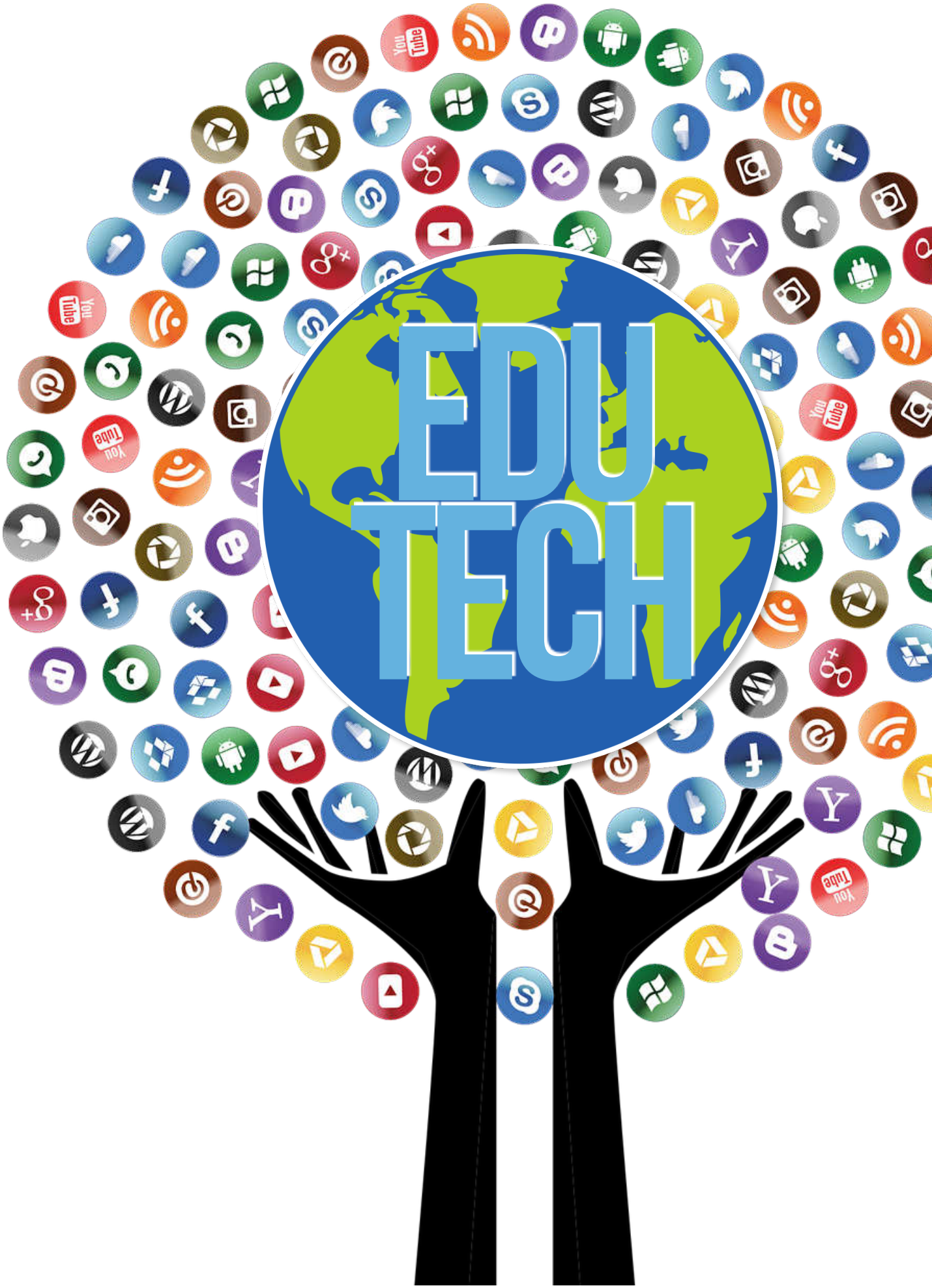


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Globalization and technology as key drivers in legal education

By Soledad Atienza, dean IE Law School from IE University & Fernando Pelaez, Senior Consultant FPelaez Consulting

The International Bar Association (IBA), as the organization that represents the global voice of the legal profession, and the Law Schools Global League (LSGL), that brings together law schools that share a commitment to the globalization of law and to integrating global law in their teaching and research, have joined forces to create the report “[blueprint on global legal education](#)”. The report shows the key trends, challenges and opportunities legal educators face and includes as drivers of legal education globalization, technology, and changes to regulatory frameworks.

This global research aims to help legal education institutions navigate the ongoing paradigm change and to offer a legal education model that responds to the current needs of the legal profession.

The blueprint identifies the main key trends, challenges, and opportunities emerging in legal education in the current times and brings up best practices and recommendations. The findings of this report are particularly relevant in the context of COVID-19, which has highlighted the importance of technological adoption in the sector. The blueprint outlines a range of key challenges, ranked by importance and categorized by region, which law schools face, together with existing responses that selected schools are already taking or could adopt.

Through the analysis of relevant literature, law schools’ websites, a global online survey and interviews with key stakeholders, the report gathers the trends that are shaping the future of legal education, with a particular focus on the impacts of globalization and technological disruption.



Soledad Atienza

The identified key trends include **Internationalization, technology and the development of new skills in legal education**, while one of the main challenges posed for law schools are **regulation of legal education and the profession**, an aspect that hinders internationalization and innovation.

Globalization

The report explores how academic institutions around the world are working in becoming more international, the number one trend in legal education. Although many law schools are introducing elements of internationalization, only few have achieved full internationalization of legal education.

Technology

The report also sheds light on the use of technology in legal practice, the impact of technology in Legal Education and its outcomes in the legal market. There is complete new situation under COVID 19, where technology as a teaching tool has become a priority.

A barrier for innovation, as in other sectors and activities, is regulation. The report explores why regulation is usually considered a limitation to internationalization and to increasing the use of technology, a factor that is currently under development due to COVID 19.

Regulation: The biggest challenge to innovation in legal education

Regulatory frameworks that govern access to the legal profession hinder internationalization and innovation, but the good news is

that institutions are taking this challenge seriously.

In England and Wales, Scotland, and Ireland, the new Solicitors Qualifying Examination (SQE) coming into place in 2021 will pose fewer restrictions in England and Wales. In the United States, regulatory frameworks to access the legal profession are a controversial issue, as the federal and local bars, along with the government education departments, establish regulation.

Other challenges law schools face include diversity of their community (students, faculty and staff members) in terms of gender, origin, cultural diversity ...

The lack of economic resources and growing competition has also shown to be a challenge for many law schools that have participated in the research.

After the COVID-19 pandemic, law schools have also observed a relevant gap in the affordability and access to legal education among the students. Access to laptops, computers, or smart phones for e-learning is a challenge that law schools currently face. Socio-economic and gender inequalities are also a current problem in legal education nowadays.

About Research Methodology

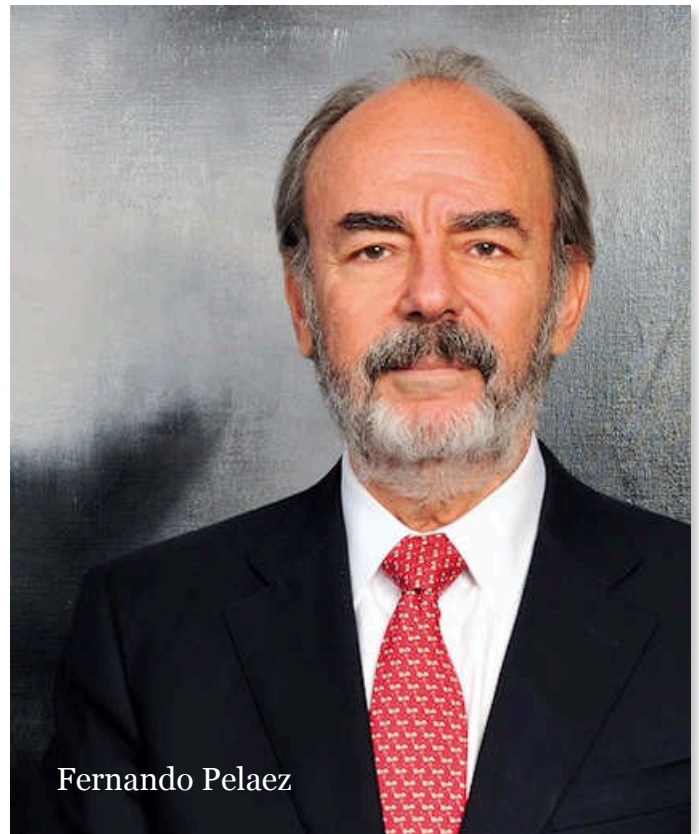
The Blueprint for Legal Education, which I have co-chaired together with Fernando Pelaez Pier, former president of the IBA, has involved the work of eight researchers and four supporters from seven regions around the world. Academics from UK, Canada, EU, South East Asia &

Australia & Hong Kong, Latin America, Asia and Africa, have analyzed relevant literature (over 200 articles), and schools websites (420 web sites), conducted online surveys (more than 300 responses worldwide) and interviewed more than 60 law schools and bar associations around the world.

This initiative forms part of the ongoing research by the IBA's Commission on the Future of Legal Services into the trends that are shaping the legal profession. The full report can be downloaded [here](#) or click the report below to read it online.

Authors

Dr. Soledad Atienza is the Dean of IE Law School and Fernando Pelaez, Senior Consultant FPelaez Consulting







How Lawyers Can Achieve Efficiency, Client-Focused Services And Profitable Businesses With The Kanban Method: A Journey To Agility

By Lilian Mateu, Legal Management expert, Accredited Kanban Coach and trainer of the Kanban Method for Lawyers

The legal services industry is going through an accelerated and highly complex transformation from which there is no going back. The globalisation of all industries, the appearance of disruptive technologies and the digitalisation of knowledge services are but a few of the challenges that we in the legal sector are facing.

The liberation of legal services has led to new players taking action, that is, from all kinds of legaltech solutions to alternative legal service providers, which have provoked an explosion of new business models that are creating a much more competitive market.

The COVID-19 pandemic has taken everyone from the comfort of the office, bringing to light the real work we each do and bring to our teams and organisations. The role of offices and work spaces and the way we relate and collaborate with one another has changed for ever.

Legal services clients are mature and more demanding in all senses. They require a greater understanding of their businesses and that we align our services with their business objectives. They need legal services of a higher value, flexible and in tune with their present needs. What is more, they expect, of course, to get these with the highest quality and speed and for a lower price.

Despite the velocity of the social, economic, technological and regulatory changes over the last decades, lawyers and professionals in the ***legal sector are still anchored to the more traditional work styles.***



The new generations of law students see this and are demotivated when faced with such an out-of-date sector. Legal services consumers are not seeing the same kind of evolution as in other services. For lawyers finding a working style that creates a work-life balance is a utopia. Team managers dedicate themselves to coordinating work through a culture of control and being as efficient as possible. Partners of law firms try to re-invent their business models with the aim of maintaining profit. The legal sector is overwhelmed with this new scenario.

Organisational and business agility is the solution

It is easy to predict that, as in all markets, only those lawyers and organisations in the sector that are quick to adapt to the new scenario, offering better solutions and services, in response to the new needs, will evolve and survive.

Only those that are resilient and reinvent themselves by, finding a new balance for all stakeholders, finding a new way to create value and generate different outcomes, will have a position in the market in the medium term.

The change must be quick. It requires new values and organisational structures to be able to offer more modern, sustainable, efficient, client-orientated, competitive and profitable services.

The greatest challenge those of us in the legal sector face in coming years is being able to create agile organisations and robust and resilient businesses that are capable of reinventing themselves.

Incorporating organisational and business agility in the legal sector means changing the way we do things. Starting with a critical review of the values that make up our culture, changing the habits we adopt, adjusting our patterns of interaction and cooperation, modernising the processes that we follow and reviewing all of the behaviour that determines the way we work.

Agility incorporates the values and principles of the so-called “Agile Methodologies”, that started around 20 years ago in the software development industry, as an alternative to the traditional project management procedures.

While the Kanban Method is not one of these original “Agile” methodologies, it is a contemporary and emerged as a response to the difficulty some organisations had with adoption of an Agile approach. Above all, Kanban integrates the culture of acceptance of change and taking advantage of this change, by adapting and evolving, aiming for continued improvement in the face of rigid work plans. Moreover, it also puts the focus on people and encourages collaboration.

It is said that ***the Kanban Method is an alternative path for professional services to business agility***, understood as the ability of organisations to adapt to new contexts and respond quickly to constant change.

Kanban is rooted in two simple premises

1. Rather than managing and controlling workers and blocks of time, we should ***manage and control quantities of work-in-progress, and let workers organise themselves around it.***
2. Rather than changing our business context to fit a defined and prescribed mode of working, we should start with how we work now, and ***adapt and evolve, incrementally, until we fully satisfy client expectations while operating a profitable and sustainable business.***

Kanban requires us to think differently, and to adapt the culture of our organisations.

How do we deal with a cultural mindset shift?

All cultural change must be evolutionary and take place at different levels. It is not about us obsessing over implementing a disruptive and dramatic restructuring of organisations and services, or frantically adopting technology for its own sake.

Drastic social and organisational changes only serve to slow businesses down. We must be aware that to successfully manage this huge transformation, the greatest obstacle we face is always resistance to change. Moreover, what is probably the greatest difficulty for the legal sector is the lack of interest, given all that this implies, in changing the traditional business model.

Whatever the case, it is about us really beginning to understand our purposes and what our values are, what we are searching for and

what we achieve, understanding how we work and why.

It is about analysing what we do to improve ourselves, our teams, and the organisation. It is about reflecting on what we do to understand and respond to the needs of consumers.

way to manage and improve professional service businesses, making them more profitable. He was inspired by concepts developed at Toyota, in their Toyota Production System (TPS), and adapted the concepts for use in professional services organizations.



It is about implementing a culture of collaborative continuous improvement through organisational learning with the aim of changing the outcomes.

What is the Kanban Method?

The Kanban Method was first written about by its ideator, David J. Anderson, in the book "Kanban: Successful Evolutionary Change for Your Technology Business" (2010), in which he described the management method that he had been using with his teams at Microsoft and Corbis, a stock photography & intellectual property rights licensing business.

Although the Kanban Method was created and developed in the software development services industry, David's main motivation to **create the method was mainly to find a**

In turn, the objective was to **create a humane approach to change that was compatible with the human condition:** to recognise that humans don't so much resist change, as they resist being changed. David's objective was to create the evolutionary DNA inside firms such that they were capable of adapting and being resilient in the face of changes in the markets.

The key to the method is to ensure that it is the work that is being managed and not the people. It starts from **understanding that the delivery of professional services is a process**, which goes from a request by the client to the delivery of an outcome. Therefore, we must ensure that we have the appropriate capacity to carry out the demand and that we

manage and deliver it in the manner and time agreed to. We have to ensure that the work we carry out and the value we offer is, at all times, what is required and needed by the client.

ing at the same time (usually too much), establishing prioritisation rules or policies.

From there, we can start creating the so-called



Given that work knowledge is intangible by nature, in order to manage and improve this work knowledge agilely we have to start by visualising it, ensuring that all members of the team and the organisation literally have the “same image”. To do so, we implement the visual management of work processes, through so-called “kanban boards”. The work, represented by post-its or digital cards, has to flow through different phases of the process.

When we can see and understand how work is progressing, or not, what is causing delays or dependencies, etc. ... we are able to manage it better and over time create the so-called “kanban systems”, which are work flow systems.

Through the use of visual signals (“kanban”), we progressively limit the amount of Work In Progress (WIP), which is the work we are do-

Pull systems in which work is “pulled” (from within) only when there is available capacity to do it, instead of “pushing” (from outside) the work even when there is an overload.

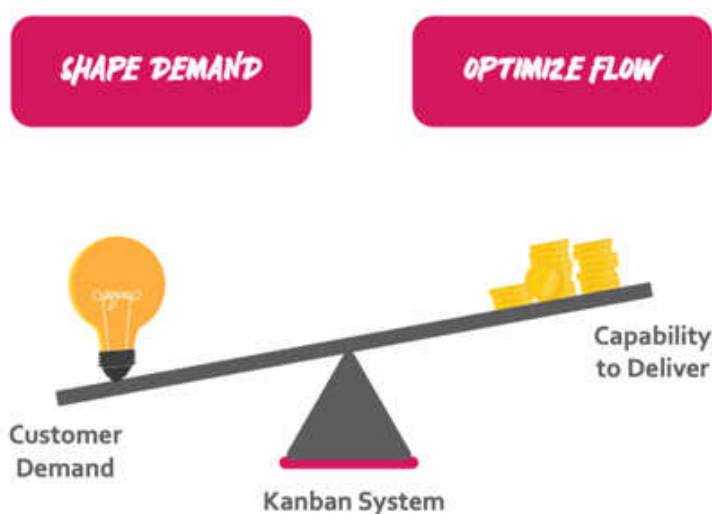
The goal is always to complete the job as agilely and predictably as possible.

The benefits of applying the Kanban Method to legal services

The practical implementation of the Kanban Method in all its dimensions, not only improves legal services delivery but also manages change towards business Agility.

The application of the Kanban Method in the legal sector **relieves overburdening**, both for individuals and teams, reducing multi-tasking, improving efficiency and ultimately, a progressive improvement in quality and prompt delivery of customer service.

By creating a work management system based on the limitation of the activities that we carry out at the same time, we are able to work in a sustainable way. The balance between the demand for work by clients (external or internal) and the capacity of lawyers and teams becomes a reality. We are able to achieve an acceptable and sustainable rhythm of work, improving the motivation and satisfaction of the lawyers with the work carried out.



Secondly, we achieve a significant **reduction in the variability** in the work process, despite the standardisation of legal service being much more complicated and less accepted than in product production industries. By collecting data on the completion times of activities, it is possible to obtain patterns to improve predictability in how long a piece of work will take. In this way, we can make more reliable decisions and we can generate more confidence, by being able to commit ourselves and give an agile, fast and adapted response to different demands.

The **elimination of work which adds no value**, is a higher-level objective related to the

economic profitability of the business. Given that in the daily provision of legal service there are endless activities that could be considered and labelled as having no real value, mostly developed by managers, they are not very easy to eradicate.

With the Kanban Method we manage to adopt a deep-rooted **culture of continuous improvement**. We promote and achieve the empowerment of lawyers and other professionals.

By defining objectives, continuously making small changes, making mistakes and accepting failure using the empirical data that we collect and evaluating the results, we manage to stabilise and standardise processes and achieve an evolutionary and incremental change in organisational and business maturity.

Ultimately we achieve the development of **work systems based on cooperation at all levels**.

In summary, the benefits that the applicability of the method offers us are:

1. *Sustainability of work*
2. *Provision of customer-oriented services*
3. *Business survival*
4. *Continued improvement*
5. *Business Strategy*

Applicability of the Kanban Method to the legal sector

The Kanban Method has become exponentially popular thanks to its wide community of users in the software development services

industry. Thanks to the simplicity with which it is understood, the flexibility in its application and, above all, its success in rapidly improving results, it has spread to many service provision industries, for example, architecture, civil engineering, television & media production, advertising, market research and analysis, human resources and recruitment, financial reporting and, of course, legal services.

As it is **a method or way of improving management**, it is applicable to any organisation or team, irrespective of size, or the previously adopted or existing methodologies,



frameworks or way of working. It does not prescribe specific development processes, nor pre-defined workflows, nor does it include new roles or responsibilities for the members of the work teams. There is never a question of using Kanban Method versus a given methodology or framework.

The values promoted by the method

The Kanban Method takes as its starting point the fact that each organisation is a network of individuals, connected psychologically and sociologically to resist change. The Kanban Method recognises these human aspects.

At its heart the Kanban Method is concerned with the management of change avoiding resistance to it, starts with the **Change principle of "start where you are"**, through which change is catalysed in an evolutionary way, respecting existing roles, responsibilities and positions.

A "big bang" transformation from a current state to a future state is not pursued, but rather the implementation of the method is based on the agreement to pursue improvement through evolutionary change encouraging leadership at all levels.

Change management should be based on fostering leadership at all levels of the organisation, that is, from the individual contributions of each person to the most senior positions.

We should not only think of leadership from the traditional roles such as those embodied in partner-directors or managers, but rather leadership based on contributions from all lawyers and other members of the organisation, who through their knowledge, experience and observations, whether this be through mere suggestions for improvement or low-level decision-making, are capable of making meaningful contributions.

The Kanban Method is guided by the principle of promoting certain values. It is motivated by the belief that it is necessary to respect all individuals who contribute collaboratively in an organisation, not only for the company's success, but so that the transformation is worth it for everyone.

The **values** that guide the Kanban Method are the following:

1. **Transparency**, is based on the fact that openly sharing information improves the flow of business value. Having the same "vision" and using the same language, simple, clear and direct, is part of the value.
2. **Balance**, in reference to understanding the different aspects, points of view and capacities, which must be balanced to be effective.
3. **Collaboration** to improve the way people work together.
4. **Client-focused**, internally or externally, as clients are the natural focus of the Method. In each kanban system, work flows until it reaches a point of realisable value: when customers receive their requested item or service. Customers and the value they receive is the natural focus in the Kanban Method.
5. **The flow** of work is the execution of that work, the flow of value, whether it is continuous or one off piece of work. When using Kanban the flow is seen as an essential starting point when using Kanban.
6. **Leadership**, understood as the ability to inspire others to action through example, words and reflection.
7. **Understanding** mainly means knowing yourself (both as an individual or as part of a team) to move forward. Kanban is a method of improvement, as such knowing the starting point is the foundation of everything.
8. **Agreement**, as a commitment to move forward together towards the objectives, respecting (and where possible, accommodating) differences of opinion or approach-

es. This is not management by consensus but a dynamic joint commitment to improve.

9. **Respect**, as a summary of the other values, means valuing, understanding and showing consideration for people.

The correct implementation is the key to success

The implementation of the Kanban Method must be done on the basis of understanding that organisations and teams, regardless of their size, are interconnected ecosystems of interdependent services.

Moreover that, in the process of providing the service, the most important thing is to understand the needs and expectations of your customers and focus on them.

The first thing is to understand is that we manage the work, and not the people or resources. We must agree on working rules and impose and demand their compliance, as such these must be explicit and followed by everyone, in order to standardize processes and achieve better results for the client.

From this point on, micro-management should be avoided. We have to let the lawyers organise themselves around the tasks, respect their autonomy and demand responsibility for the results.

The results depend on how we do things, how we work. Thus, the most practical part of the implementation of the Kanban Method consists in the implementation of certain fundamental activities, called **General Practices**, which must be carried out for the creation and

management of Kanban systems and which will vary depending on the extent of the application of the Method (for instance, whether we are dealing with one team, several teams, departments and so on).

The application of the above becomes more sophisticated depending on the level of maturity that organisations reach and, over time, an adaptive capacity is developed to respond better and faster to changes in the markets and customer expectations, thereby becoming an efficient organisational and business development and transformation tool.

The **visualisation** of the work and its flow allows us to absorb and process a great deal of information in a short time and improve transparency. It is the key to effective collaboration and the identification of risks and opportunities that allows us to make decisions.

On the other hand, when resources are used pushed to the limits, the result is low quality and speed is reduced. The most effective systems are those in which the focus is on work flow, not people. By **limiting the work in progress**, it is possible to balance the demand on the system, ensuring that the work "flows" adequately in accordance with the capacity of the people and teams, maintaining the operation in a sustainable way. Monitoring work flow and measuring results provides us with key information on how to manage customer expectations, predict risks and improve.

We make endless decisions every day about how to organise work, whether, alone, with the members of our teams, between teams or at an organisational level. All work policies must be agreed together between all parties involved, including clients. **Policies** must be explicit, simple, well defined and reviewed periodically.

TEAM MEMBER	BACKLOG	NEXT	IN-PROGRESS	DONE
	∞	3 per person	3 per person	∞
JOE		D, C		A
PETER		F	E	
STEVEN	H	G		
JOAN				

On the other hand, we must establish **feedback mechanisms** to coordinate and improve the way we work and deliver service. Strengthening collective learning capacities through boards, metrics, and regular meetings and appropriate reviews, known as "**cadences**" are the key to evolutionary change.

The Kanban Method is a method of **collaborative improvement**. Through the design and common implementation of small changes, called "**experiments**", based on the verification of the fulfilment of hypotheses, then incorporating them or going back easily, we reach an experimental evolution.

The Kanban Method for lawyers, a journey to agility

The Method is simple to understand but not so easy to apply. Obtaining its full benefits depends on the way it is implemented, which will depend on the organisation's level of maturity and according to the Kanban Maturity Model, along with the appropriate training and knowledge.

It must be said that it is often implemented at a very superficial level, limited to visual management system, whether physically or digitally.

Kanban University was set up in 2011, in order to establish a quality standard in the way the Kanban Method is taught and practiced. All the elements of the Kanban method, principles, values and practices, while abstract and applicable across industries, are pragmatic and actionable; applicable to any service, organisation, project, or team.

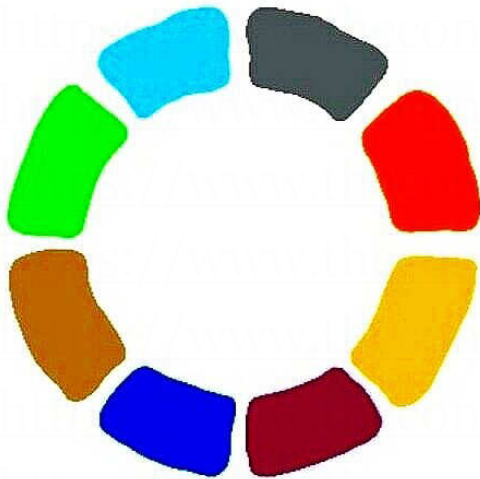
Coming soon, lawyers and professionals in the

sector will be able to access to a certified training on the basics of Kanban Method, adapted to the legal sector, that will be trained by Lilian Mateu, in collaboration with Kanban University. For more information about courses you can visit [Selectius](#) or send a mail to lilianmateu@selectius.com.

About the Author

[Lilian Mateu](#) is a Legal Management expert certified as Kanban Management Professional, Accredited Kanban Coach and trainer of the Kanban Method for lawyers and professionals in the legal sector. She is the founder of [Selectius Projects](#), a firm providing training programs, coaching and consultancy on Agile Management with the Kanban Method for legal services. Following her studies in Law and Business, at Barcelona University, she completed a Master in Business Law at UPF Barcelona School of Management. Lilian worked as an associate lawyer in the tax department for Cuatrecasas in Barcelona and Lisbon, from 1995 to 2003. After that, she co-founded her own law firm, Leymar abogados, legal boutique specializing in the real estate sector, being Managing Partner for 7 years.

From 2008, she specialized on restructuring and insolvency proceedings. In 2011 she founded an auctions and sales portal for the liquidation of business assets. Since 2015, she has been focusing on web development, digital marketing and agile management methodologies, frameworks and methods, working and collaborating for a variety of companies in both the legal and digital sectors as a consultant, coach and project manager.



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Aligning ALSPs & Legal Technology

By Ari Kaplan, Principal, Ari Kaplan Advisors



Nicolas Leroux

Ari Kaplan speaks for the series Reinventing Professionals with Nicolas Leroux, the founder and CEO of Kalexius, an alternative legal services provider.

Ari Kaplan

Tell us about your background and the genesis of Kalexius.



Nicolas Leroux

I am a lawyer from Geneva, Switzerland and used to practice in the field of international arbitration and public international law. Over time, the way that law firms were addressing their clients' requirements started to make little sense to me. I was thinking about the billable hour and how to give the most value to clients, so nine years ago, I decided to start Kalexius, which is an ALSP.

Ari Kaplan

How do you define an ALSP?

Nicolas Leroux

ALSP stands for alternative legal services provider, which is distinct from a traditional law firm. Some focus on staffing or e-discovery. We concentrate on identifying and delivering value in relation to contracts and corporate work because when you have sufficient volume, you can truly leverage and realize benefits from process review and technology.

Ari Kaplan

What is the difference between an ALSP and a legal technology company?

Nicolas Leroux

An ALSP is not a legal tech company because an ALSP is effectively an outsourcing company. We use legal tech in the delivery of services and it helps us to be more efficient, but our core business is really services that drive legal transformation. That process is about how to make a legal department leaner, more productive, and increasingly enjoyable for the lawyers that work there by freeing them from the more routine parts of the job. One of the prob-

lems that we find in the market today is that the terms transformation and technology are often conflated by lawyers. Tech is only one piece of the puzzle and it is called a tool for a reason. If I wake up tomorrow and decide to lose weight, I must exercise more. The first task would be to buy a nice pair of trainers or a bike, but then I need to start running or get on that bike. Buying tech is relatively easy, trendy, and exciting. The CEO wants to see tech everywhere and it is easy to get a budget. Transforming the way your department works and the way people interact with each other is much harder.

That's where an ALSP and outsourcing are usually part of the solution because it's just too difficult to do it alone. An ALSP can deliver more savings than just technology and we did a study recently about contract review in which we found that using contract review software delivered about 21% of savings. 21% is not nearly as much as you can save when you use an ALSP, when you use outsourcing, or when you use ALSP, outsourcing, and technology together.

Ari Kaplan

How can in-house legal teams incorporate an ALSP into their portfolio of service providers?

Nicolas Leroux

When we work with clients, the first step is always a consulting process. We ask people to tell us what they do. Legal departments often don't know what they do and have very little data on the activities of their team members. When you draw it out, you realize that a lot of relatively simple work is being done by very senior people, so we focus our initial efforts on right-sourcing. Our goal is to find the appropriate resource for a given type of work. It can be someone who's more junior than the person who's doing the work currently, it can be a paralegal, it can be someone in a local center in the US, or it can be someone offshore. In fact, it is usually a combination. Everyone wins because the senior lawyers, who were initially reluctant when we started the review because they were scared for their job or because they were just uncomfortable with change, realize the benefits of the transformation on which we are focused. It can be a learning process for in-house teams to leverage an ALSP and understand that change, including

that outsourcing is an opportunity for everyone.

Ari Kaplan

Where does further change need to occur?

Nicolas Leroux

It's a mindset. The legal profession is built on the idea that services are bespoke and artisan, which is how law firms justify their fees. For the most part, it's true. I used to practice international investment arbitration. It took me 10 years and a PhD just to start understanding what it was about. But, if you look at traditional M&A advice, litigation, and regulatory matters, they are often the same. It's very bespoke and does require hand-picked senior people that have loads of experience in their legal field or industry, but because the majority of the work is like this, lawyers tend to assume that everything they do is bespoke, strategic, and super high value, yet it is not. The classic example is NDAs, but it can also be terms and conditions in retail agreements, vendor contracts, and routine corporate work for companies that have entities to manage around the world. All of that work can be "playbooked," streamlined, and outsourced at a lower cost. Lawyers need to realize that not everything is bespoke or strategic. Some tasks need to be approached in a more standardized way.

Ari Kaplan

How can leaders in law departments persuade reluctant stakeholders to adapt to their approach?

Nicolas Leroux

What we've seen in terms of the legal stakeholders is that there is an initial reluctance

because there's a concern that they're going to cut or offshore jobs. That's usually not the case. What happens is that the ALSP comes in as a welcomed addition to the existing team to bring flexibility, a new approach, and capabilities that the in-house lawyers do not have.

Ari Kaplan

You mentioned that some of your team used to sit on site and as a result of the pandemic no longer do so. Do you expect that to shift back?

Nicolas Leroux

Whoever was sitting in the office before will come back to the office to the extent that the client's personnel goes back to the office. It is really driven by the clients and not us. The wider question is: To what extent will the trend towards working from home make it easier for companies to use ALSPs? The answer is that it will be easier and it should drive growth. Now that everyone will be working remotely at least part of the time moving forward, it makes it easier for us to offer an outsourced solution, which will further strengthen the growth of the ALSP sector.

Ari Kaplan

Where do you see legal services headed?

Nicolas Leroux

We are going to see a division of labor between those providers that focus on high-value work, such as international litigation or M&A, or very strategic work, which requires highly-trained specialists. On the other hand, providers like Kalexius and other ALSPs that focus more on the commoditized, lower-value work will address it through a combination of people and technology. The market is still very

focused on tech because it has woken up to the possibilities of tech. The next step will be realizing tech alone does not work and that what really works is technology with a provider that knows how to leverage it.

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 Nicolas Leroux here:

<https://www.reinventingprofessionals.com/aligning-alsps-and-legal-technology/>





Why DEI is Only Part of the Pie

By Susan Freeman, Founder of Conscious Inclusion Company



With some companies and firms announcing their commitment to diversity, equity, and inclusion (DEI), regulatory organizations are now mandating DEI obligations and requiring proof the companies they oversee are following through. That's a good start, but it isn't the whole solution.

After all, companies can hire based on DEI, but if the company's culture isn't inclusive, diverse employees might not be considered for promotions or raises. They won't be engaged in



meaningful projects or given responsibilities. Their contributions will be devalued, and they won't feel as though they belong. Their hiring becomes performative, not meaningful.

Having diverse employees is a start, but there are other necessary measures that must be considered when examining a company's overall commitment to DEI.

These include the company culture, employee collaboration, engagement, retention, experience, and well-being. Failure to analyze these critical variables leaves DEI as nothing more than a check-the-box issue for many organizations.

Until DEI is taken more seriously through data-driven analysis of all employee

engagement, interaction, and inclusion, meaningful change cannot occur. Diverse employees will be hired but will still face challenges, feeling left out and undervalued as nothing more than a parameter that must be met, a box that must be checked. Moreover, these organizations fail to capitalize on the full potential employees have to offer when their creativity and intellect are hindered.

Regulatory Agencies and Companies: Steps Taken

Nasdaq

In December 2020, Nasdaq filed a proposal with the US Securities and Exchange Commission (SEC) to adopt new rules that would require companies listed on Nasdaq's US exchange to disclose diversity statistics regarding their board of directors. Most companies listed on Nasdaq would have to either have at least two diverse directors—one who self-identifies as female and one who self-identifies as an underrepresented minority or LGBTQ+—or explain why they don't have two such board members.

There is flexibility for foreign companies and smaller companies. Additionally, although reporting is due within one year of the SEC's approval of the proposal, companies have varied timelines to fill the diverse directors' roles. [1]

SEC

Meanwhile, the SEC announced new requirements for public companies to disclose

- the number of employees and a description of human capital resources, if material to the business or a segment of the business, and

- any human capital measures or objectives, if material.

In a report on early filers, PWC noted that 46% disclosed DEI information (including gender, sexual orientation, ethnicity, veteran status, culture, strategy, age, and religion), though many did not include any measures or objectives related to the management level. [2]

The SEC did not include a definition of "human capital" in its rules, nor did it include a list of required measures to disclose, reasoning that the disclosures would be specific to each company's business or industry and that the disclosures would evolve based on changes to the company.

The steps taken by NASDAQ and the SEC are important, says Dan Udoutch, CEO, President, and co-founder of Rsquared AI, and could lead to bigger changes.

"The SEC and NASDAQ should be applauded for these steps," Udoutch says. "I'm hopeful for continuing to require deeper and more meaningful metrics and standards."



Dan Udoutch

Companies also issuing DEI rules

It's not just Nasdaq and the SEC that are issuing guidelines for DEI. In January 2021, the Coca-Cola Company announced its diversity standards. Under those standards, at least 30% of the lawyers working on its cases must be diverse and, of those, at least half must be Black. Additionally, any law firm working with the company must provide quarterly reports regarding the diversity of teams working on Coca-Cola matters and explain how those lawyers receive origination credit. [3]

Likewise, Goldman Sachs announced in 2019 that it was advancing diversity and inclusion, working toward increased representation of diverse employees. It has since announced that it aims to achieve greater representation in its vice president population by 2025. [4]

Mansfield Rule

At least some law firms are also taking a look at their diversity, equity, and inclusivity. More than 100 major law firms have signed on to participate in the Mansfield Rule, a way of grounding law firm leadership diversity in behavioral science research. The Mansfield Rule measures whether law firms have considered at least 30 percent women, lawyers of color, LGBTQ+, and people with disabilities for leadership roles, promotions, pitch opportunities, and senior lateral positions. [5]

In other words, the Mansfield Rule is concerned about broadening the candidate pool for leadership positions in law firms.

Law firms that signed onto the Mansfield Rule reported a wide variety of outcomes:

- 94% reported increased diversity in their pitch team candidate pool;
- 79% reported increased diversity in their lateral partner hiring pool; and
- 76% reported increased diversity in their equity partner positions.

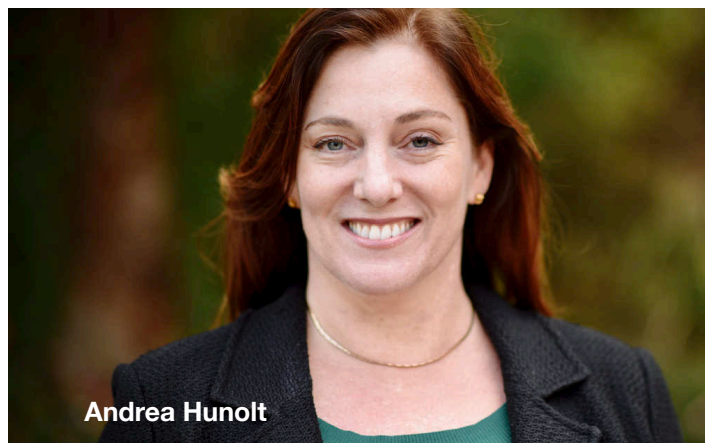
Role of human capital

Although it would be ideal if companies hired diverse employees because it's the right thing to do, many companies still won't make a change unless there's a financial reason to do so.

McKinsey's 2020 report, "Diversity wins: How inclusion matters" found that companies in the top quartile for gender diversity on executive teams were 25% more likely to have above average profitability than companies in the fourth quartile. The percentage of outperforming companies grew with more than 30 women executives.

Meanwhile, companies in the top quartile for ethnic and cultural diversity outperformed those in the fourth quartile in profitability by 36%. [6]

"We know DEI matters from a moral and ethical standpoint," Andrea Hunolt, Chief Marketing Officer for Conscious Inclusion Company,



says. "It's become increasingly clear that DEI makes sense from a business standpoint as well.

Research shows that companies that embrace diversity are more likely to have financial returns above their national industry medians. Companies that don't are statistically less likely to achieve above-average returns. Diversity, Equity & Inclusion serve as a competitive differentiator that shifts market share toward more diverse companies. In turn, these companies bring a competitive advantage, attracting and retaining such diverse talent and allowing them to thrive."

Employee engagement

While hiring based on diversity is a first step and is a way to ensure diverse employees have access to jobs, it isn't the end of the story. It's vital that companies measure how employees are treated once they're hired. Are they given opportunities to work on highly valued projects? Are they given a chance to share their ideas or opinions in the same way as other employees? Do they have the same opportunities for mentorship and growth?

Likewise, investors should have insight and transparency into an organization's "people health" when they make investing decisions.

When DEI is simply a compliance issue—where employees are hired so companies can say they have met regulatory requirements—it can easily lead to disengaged employees and a toxic work environment, both of which put a business at risk of poor outcomes.

As McKinsey notes, "Hiring diverse talent isn't

enough—it's the workplace experience that shapes whether people remain and thrive." [7]

How can we measure engagement?

Too often, measurements of diversity and inclusivity in the workplace are superficial. For example, a company can simply state that 30% of its workforce is diverse based on people self-identifying in certain marginalized groups. But that doesn't give a complete picture.

It doesn't tell what positions these employees have—are they mainly entry-level, for example. It doesn't show how engaged people are in their role or how colleagues treat them. It doesn't show how inclusive a company is—only that it's willing to hire diverse workers. Diverse and inclusive are not the same things.

To measure inclusivity, in-depth data must be collected and analyzed. Not just self-reported information as is often found in employee surveys or workshops, but hard data collected from company reports, interactions, messages, and emails.

By examining interactions, analysts can explore sentiment, responsiveness, and collaboration to get a complete picture of a company's culture and its true perspective on diversity. From there, the company can make data-informed decisions about its workforce and its culture.

Among the questions that can be asked about individuals:

- With whom do people communicate?
- To whom do they speak the most?
- To whom do they speak the least?

- What is the risk of attrition?
- What is the level of employee engagement?
- What is their tone when they communicate?
- Does that tone change based on the person with whom they communicate?
- With whom do they collaborate?

Additionally, analysts can find hidden high performers—those workers who contribute at a high level but whose efforts often go unnoticed by management.

Data analytics make the process more transparent, which increases the likelihood of equity and fairness—whether a company's promotions, pay, or hiring criteria are being evaluated. Companies can work towards taking bias out of those processes when they have hard data that shows bias is occurring and how it occurs, even when it is unconscious.

Compare measures over time

Simply taking a measurement once gives you information about your organization's situation at that specific time. Setting goals, collecting data consistently and examining the change over time tells you what direction your company is moving, whether your initiatives are working, and offers information to revise your strategies.

In addition to looking at your company over time, compare it to other organizations. What is your company's representation of women in supervisory positions compared to similar companies? Are you closer to your goals or further away than you were a year ago?

The information you gather should be shared with key stakeholders—internal and external—to foster accountability.

What does it take to measure DEI?

Artificial intelligence (AI) and natural language processing (NLP) can be used to gain a clearer picture of a company's equity and inclusivity.

Using AI and NLP, a company can quantify its culture, providing data-driven information about how individuals in a company work and communicate and where a company's strengths and challenges lie.

“The critical issues of culture and specifically DEI lack rigorous treatment given other segments of the enterprise operations,” Udoutch says. “AI and NLP can bridge this gap and bring science to what were formerly anecdotes and opinions.”

A robust AI/NLP analysis can examine a million emails, looking at hundreds of factors in each to provide the data that allows companies to identify issues and providing greater transparency into their culture.

The information obtained can then be used to take definitive steps towards fostering equity and inclusivity. This can include everything from rewriting job descriptions and policies to promoting inclusivity to working with minority-owned vendors and revising marketing communications.

“It has been difficult to measure and tie DEI investment to better business outcomes”, Udoutch says. “Scoring inclusion, sentiment,

collaboration, and other elements gives us a baseline to correlate behaviors and outcomes.”

Why DEI isn't just about compliance
Measuring other factors such as engagement, collaboration, retention/attrition, experience and welfare will go further to ensuring diverse employees are not only hired for the job, but they feel valued and are treated equitably and inclusively. In other words, they aren't just hired for a job so the employer can say the company is diverse.

When DEI is about compliance, companies hire diverse employees but aren't as concerned with ensuring engagement, retention or welfare. Those employees might get hired, but likely won't make it to the leadership levels at a meaningful rate. When companies consider DEI vital to their organization's success, they'll explore not only how to hire and promote, but also how the organization treats diverse employees. They'll look for ways to encourage collaboration and engagement. They'll find the people who reject diversity and remove them from the payroll.

“Many organizations have good intentions regarding DEI programs,” Hunolt says. “However, the extremely difficult task of measuring and addressing inclusive behaviors has been a significant barrier. Only by applying AI/NLP can the qualitative content of communications be truly understood. Diving more deeply can answer such questions as, ‘Which managers are the most inclusive?’ or ‘Where are toxic communications impacting productivity and driving away disillusioned employees?’ Measuring these elements provides unbiased data

insights to drive DEI initiatives. With proper analysis and comparison with demographics, the data collected through AI/NLP can be used to measure inclusivity and document incremental progress in achieving behavioral change. This has never before been done.”

The bottom line is that all employees need to be engaged and collaborated with and need to feel they belong. Although it would be great if companies engaged in meaningful DEI because it's the right thing to do, the truth is that doing so also often leads to better business results.

Notes

[1] Source: <https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01>

[2] Source: <https://www.pwc.com/us/en/cfodirect/publications/in-the-loop/sec-new-human-capital-disclosure-rules.html?ts=1614364869452>

[3] Source: <https://www.law.com/corpcounsel/2021/02/09/the-coca-cola-effect-new-diversity-guidelines-intrigue-in-house-leaders/?slreturn=20210216192827>

[4] <https://www.goldmansachs.com/media-relations/press-releases/archived/2019/announcement-18-march-2019.html> and <https://www.goldmansachs.com/media-relations/press-releases/current/update-on-inclusion-and-diversity.html>

[5] Source: <https://www.diversitylab.com/mansfield-rule-4-0/>

[6] Source: <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

[7] Source: <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>

If your organization seeks evidence-based initiatives that increase Diversity, Equity & Inclusion in the workplace, contact Susan Freeman, CEO & Founder of Conscious Inclusion Company at Susan@ConsciousInclusionCompany.com.

About the author

Susan Freeman is the founder of Conscious Inclusion Company, which is dedicated to helping organizations and corporations foster a diverse and inclusive environment. She co-authored the book “The Ultimate Women Associates’ Law Firm Marketing Checklist” and has been published by numerous professional journals on the topics of communication, sales, and business development.



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How to write an engaging website that attracts new clients



By Heidi Turner, legal writer and editor

There are many well-written law firm websites that proclaim the advantages of a particular attorney or practice, but that fail to deliver a steady stream of clients. That’s because such websites often aren’t focused on the clients’ needs. Instead, the sites focus inwardly on showcasing attorney profiles and descriptions of the law firm, with little thought to the people they serve.

Such websites frequently boast about



- educational accomplishments
- legal publications
- awards
- speaking engagements
- how many dollars the law firm has won over a set period

and other material that is often irrelevant to potential clients. Yes, this information can confirm a reputation, but it doesn't tell a

client how the attorney or law firm in question can help them.

What potential clients want is evidence that you can meet their specific needs. It's all well and good if you've won \$10 million in the past five years, but was that in cases similar to theirs?

People buy from those they like, know and

trust. If you're focused on building relationships, your website should illustrate how you serve your clients. A client-focused website will show readers that you care, that you want to help them, that you're capable of helping them, and that you will work well with them.

How do you write a client-centric law firm website?

The first step is to know your audience. You can't communicate with your target clients if you don't know who they are, what information they need and how they relate to your site. Talk to your existing clients and find out what they felt they needed to know before they hired you, and what ultimately made them hire you.

Often, lawyers share the information they think is important—where they got their law degree from, where they articulated, when they passed the bar—when clients tend to want facts that relate to them. Be honest, how many of your clients said they hired you because of the school you graduated from?

If you're advertising your services as a lawyer, clients can assume you've passed the bar, so they don't need you to confirm it. What they want to know is:

- Whether you've helped people in similar situations to theirs
- How you've helped those people
- How your help changed their circumstances
- If it's worth it for them to hire an attorney
- Why you're the best attorney for them to work with

These are the issues your website needs to address.

Pay attention to the questions clients ask you. Do new clients tend to ask the same questions

over and over? Address those on your website. Do they tend to have similar needs and fears? Do they often have pain points in common? This is information you can use in writing your website. Reflect those pain points, needs and fears in your website content.

Remember, when people go looking for a lawyer they're thinking about the problems they face. They aren't really thinking about you, except in terms of how you can help them solve their problems. Your website should show them exactly that.

When they know that you understand them they'll trust you more, meaning they're more likely to want to work with you.

How do you help clients, really?

Many people have no idea how an attorney can help them beyond believing their lawyer will win lawsuits for them. But most attorneys provide services that go well beyond filing lawsuits.

Clients may think that business attorneys draft contracts, which is true, but many business attorneys provide much more in-depth service, including risk mitigation, business protection strategies, and succession planning.

Communicating your full scope of services is vital to attracting new clients. It shows that you care about more than making money for yourself, you're committed to providing value for them.

Is your website accessible to your potential clients?

This is an area that is largely overlooked. Not all websites are equally accessible, but it's important to make accessibility a priority when

you create a client-focused website.

In 2018, [Web Content Accessibility Guidelines 2.1](#) was released by the World Wide Web Consortium (W3C) with information on making content on the Internet more accessible for people with a range of disabilities. These include "accommodations for blindness and low vision, deafness and hearing loss, limited movement, speech disabilities, photosensitivity, and combinations of these, and some accommodation for learning disabilities and cognitive limitations."

Accessibility means writing in clear language that your clients will understand. It also means:

- including alternative text for images, charts, videos, audio and anything else that is not text;
- making sure viewers have enough time to read the website, including any text that flashes;
- ensuring viewers can get the important information even if they cannot see it or if they cannot hear it;
- making sure written content is distinguishable from the background; and
- spacing content appropriately so viewers can process it.

Should I change the language I use?

When you're writing for your clients you should typically use less formal language than what you use to write for a judge or your professors, but that's not always easy to do—especially if you've been trained and rewarded for writing a certain way.

Your language should be used to engage your

potential clients and show them that you identify with them. Write your website using first person (I, me, we) instead of third person (she, he, they, the firm). Write to your clients using second person (you) to draw them in.

Use the name your clients call you in person when you refer to yourself, rather than your formal name. If your clients will call you Beth when they see you, use that in your profile.

Give specific examples of how you've helped clients. Don't be abstract. Instead of writing "We've won a lot of cases," which most law firms can say, write "Prevented a breach of contract lawsuit against our client—a construction company—from going to trial by proving the claims against it had no merit." Give a list of similar such examples to show the range of scenarios you can help in.

Eliminate any phrasing or language you learned in law school from your website. If you had to go to law school to learn it, chances are your potential clients won't understand what it means—and they won't be impressed just because you used it.

Above all, be authentic. Use your website to show potential clients who they'll be working with when they work with you. Establish a relationship with them by being genuine, writing about yourself in your natural tone and voice, and talking to them as their trusted advisor. Imagine you're having a conversation over coffee to explain what you do and use similar language in your website.

How do I distinguish myself?

Most lawyers who offer similar services can make the same general claims:

- They fight hard for their clients
- They're committed to their clients' success
- They win cases
- They are experts in their field
- They go the extra mile

Distinguish yourself by telling stories. Instead of writing that you fight hard for your clients, share a story (personal details omitted) about a case where you fought hard and won. Highlight a time you helped a client be successful or went the extra mile.

Reading case stories allows clients to put themselves in the shoes of the people you've helped, which assists them in deciding to work with you. Where possible, build a story around the end result. Include important facts, the challenges you and the client faced, what you did to solve the client's problems, and the results.

This shows clients how you can help them, and provides them with evidence of your commitment to them. The stories don't have to be long—a paragraph can be plenty. It's even better if you can get your clients to write or record testimonials talking about how you helped them or showed you cared.

How do I write my bio?

Most attorney profiles focus on their education, the bars they've been admitted to, their publications and their awards. They might also include a note about their family situation or a pastime they love.

This doesn't give potential clients a lot to make decisions from. It's rare that clients care that much about where you had an article pub-

lished—and chances are a lot of other attorneys have the same school and awards listed, so they don't differentiate you.

Instead of focusing on those irrelevant elements, consider including these tidbits in your profile:

1. What inspired you to go into law? (Did you have a specific experience? Read a book? Have parents who inspired you? Was there a moment when you realized it's what you wanted to do?)
2. What motivates you about the law? (Do you love fighting for justice? Representing vulnerable populations? Providing people with peace of mind? Holding big companies accountable for their actions?)
3. What is a memorable case you worked on or client you worked with? What made it memorable?
4. Who do you help and why do you want to help them?
5. What accomplishments are you proud of and why? Rather than listing awards with no context, share an award you've won, what it represents and why it's meaningful for you.

When your potential clients feel they know and understand you better, they're more likely to work with you.

Elements of a client-centered website

- Uses first person voice (I, me, we) and addresses readers directly (you) at least part of the time
- Is accessible to people with a range of disabilities
- Contains messages and images that focus

on the client

- Shares accurate and up-to-date informationIs easy to navigate

Writing a client-focused website might seem difficult, and it can take some planning, but it's worth it. Your clients want to feel you understand them—when they know, like and trust you they'll be more likely to reach out to you and ultimately hire you. Having a website that focuses on clients plays an important role in attracting them to your law firm.

About the Author

[Heidi Turner](#) is an award-winning legal writer

and editor. Since 2006, she has helped her clients in the legal industry—including lawyers and law firms, legal technology companies, and legal SaaS organizations—connect with their target audience and establish their authority.

She helps her clients find authentic ways to engage their audience and build a reputation, with a focus on client-centric communications.

In addition to her writing and editing work, Heidi is an instructor in Simon Fraser University's editing program.

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How a growing non-lawyer staff will supercharge your legal department

By Alex Kelly, COO at Brightflag

The growing field of legal operations is built upon a simple premise — the corporate legal department can and should function similarly to its counterparts across the business. An emphasis on expanding legal operations is often one of the most impactful decisions a corporate legal department can make in its journey toward enhanced growth. The resulting gains in accountability and efficiency can then strengthen relationships and change perceptions all the way up to the C-suite.

value and the value exchange.

Three factors combine to shape the success of any legal operations strategy: people, process and technology. And while changes involving the latter two elements are to be expected amid any period of modernization and transformation, the more surprising shifts may have more to do with the people in the room.

A years-long trend of increasing workloads and flat budgets has forced legal departments to take stock of their in-house talents and time commitments. However, advancing key improvement and innovation efforts will likely require a different set of skills or perspectives than those used to law school and law firm life. Not only should the general counsel keep their lawyers

focused on core legal services, but law school and tenure at BigLaw firms hasn't actually equipped lawyers with every skill needed for [legal ops](#) skills.

To make the legal department function in concert with the rest of an enterprise business, look outside the legal profession altogether.

The need for efficiency

While a declining legal budget has been an impediment for general counsels for years, the pandemic has only exacerbated concerns. According to [a survey by Harvard Law and EY Law](#), general counsels expect 25% greater workloads in the next three years while 88% of them plan for board-enforced budget cuts.

Corporate legal teams already have had to re-examine their day-to-day processes to adapt to remote work, investing more heavily in technology to facilitate that change. The proportion of legal budgets spent on technology is set to grow dramatically by 2025, according to a 2020 [Gartner](#) survey of legal leaders.

With in-house lawyers taking on a greater number of complex matters, most lack the time to focus on innovation projects. Even if trained lawyers had the room on their plates to take on these long-term initiatives, a law degree isn't necessary to lead internal operations changes.

Every aspect of the business needs streamlining, and the best way to cope with increasing demands and decreasing resources is to assign business-minded change agents to the task and allow the lawyers to focus on legal

work. Taking on the status quo and finding innovative new business practices requires creative thinking and change management skills.

The rise of legal ops

As recently as five years ago, legal operations job titles were regularly found only on the rosters of the largest technology or financial services firms. But thanks in large part to the work of organizations such as [CLOC](#) (Corporate Legal Operations Consortium) and [ACC](#) (Association of Corporate Counsels), that narrative is quickly changing. In a recent Gartner report, 58% of [surveyed legal departments](#) across all industries employed at least one legal ops pro in 2020, up from 34% in 2018.

Still, the bigger the organization, the more prevalent the legal ops role can be. Within legal departments spending eight figures annually on outside counsel, a legal ops team has much to do — managing vendors, monitoring budgets, and fulfilling staffing needs.

In organizations of all sizes, legal ops should provide data to the general counsel and others to make informed decisions while balancing the various groups, including in-house lawyers, in-house non-lawyers, law firms or non-law-firm service providers. Since data can influence every other task, this responsibility is now potentially legal ops' most impactful role. If the organization has decided to hand a new matter to outside counsel, they're probably wondering what to set as timekeeper expectations. How should time be split between partners, associates, and paralegals for a project of this type? What's a

feasible budget for each phase? Legal ops can help make these critical decisions much easier.

To do any of the previously described functions well, chances are the team will need to modernize its tech. And that selection, implementation, and training is another place where legal ops will have to play champion. If they can piggyback on a companywide digital transformation plan, great. But more likely they'll have to be a lone change agent.

Finding the right legal operations leaders

So what's the right recruitment strategy for this multifaceted role that's barely five years old? First and foremost, a legal ops pro should have [experience in change management](#). They will be encouraged to take on entrenched attitudes and practices within the legal department, and an open mind and resilient demeanor will serve them well in that regard.

Although some heads of legal operations were once practicing lawyers themselves, a legal background is not required. In fact, hiring an outsider may play to the legal department's benefit. Data scientists and those with adept analytical skills will perform well in the role. So too will management consultants who have worked within other complex and compliance-driven departments like finance. The key is to identify talented, curious candidates who can identify inefficiencies, outline opportunities,

and design effective responses. As a return to the office looms, budget constraints are pushing general counsels to be more resourceful. Doing more with less is never easy, but the way to supercharge the legal team is to redesign it from the ground up.

In 2021, a successful legal department is not composed of just lawyers and a skeleton administrative staff reporting to the general counsel. A more effective model might have the general counsel overseeing a team of lawyers along with a head of legal operations and a dedicated change manager.

The non-lawyer staff of the legal department may well define its direction over the next decade. Between the pace of technological transformation and further changes in the practice of law, legal ops professionals are increasingly necessary to manage innovation in the legal department. A robust non-lawyer staff frees lawyers to do the work they actually want to be doing, and can eventually elevate the entire department in the eyes of the rest of the organization.

About the Author

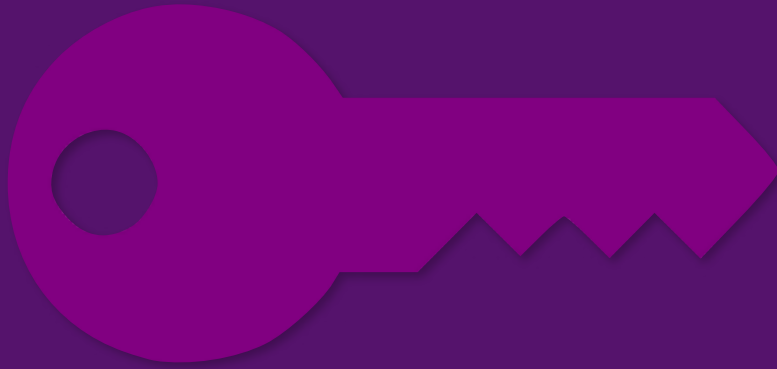
Alex Kelly is the COO and co-founder of [Brightflag](#), an AI-powered enterprise legal management platform. Prior to founding the company, Kelly advised financial institutions and multinational enterprises as a corporate lawyer within a large international law firm.



EXPANDING *Law Firms*



Generally, lawyers are governed by the rules of professional responsibility. Many states have adopted the model rules from the ABA or have used them as a guide to create their own unique set of state rules. One of the rules, ABA Model Rule of Professional Conduct 5.4 prohibits non-lawyers from practicing law and owning or investing in law firms. Reforms to this rule have gone into effect in D.C., Washington, Utah, and Arizona partially as an effort to increase access-



firm

OWNERSHIP

A POTENTIALLY PERMANENT IMPACT ON THE LEGAL INDUSTRY

By Michelle Truong, Law student at Santa Clara University School of Law. Edited by Brenda Hansen, Senior Consultant, UpLevel Ops and Tim Zurich, Consultant, UpLevel Ops

to-justice. While it is unclear whether COVID-19 has accelerated revisions to Rule 5.4, the rule is changing throughout the country. Below is a summary of the changes to Rule 5.4 by state.

Rule 5.4 changes to date:

District of Columbia

Effective since 1991, D.C.'s Rule 5.04 allows for lawyer and non-lawyer partnerships, if

their sole purpose is to provide legal services to clients. [1] This expansion of the rule does not allow corporations or investment banks to acquire parts of law partnerships or practices. Although this rule rejects an absolute prohibition against lawyers and non-lawyers joining together to provide collaborative services, it continues to impose the traditional ethical requirements on those providing legal services.

On January 24, 2020, the D.C. bar committee proposed a rule that would be even less restrictive for non-lawyers to partner with lawyers. The rule allows for “alternative business structures,” which is a legal service business model that may allow for external investment in a law firm, and non-lawyer ownership of a law firm. The rule also allows for “multidisciplinary practice,” which is a type of alternative business structure that provides both legal and non-legal services. The Big Four accounting firms, EY, PwC, Deloitte, and KPMG, are prime examples of multidisciplinary practice, and with the regulatory reform, could offer full services, including legal services, in addition to financial and accounting services, at competitive or market impacting prices.

Since January, the D.C. bar committee has received public comments about the proposed changes and benchmark data on how many and what types of legal service businesses have formed in the city that include non-lawyer partners.

In a March 9 letter, the U.S. Chamber of Commerce’s legal policy arm, the Institute for Legal Reform, opposed the proposed change to the D.C. rules involving third-party litigation. The Institute’s president, Harold Kim, wrote in a 14-page letter co-signed by the American Tort Reform Association and two business trade groups that, “relaxing Rule 5.4 any further to permit fee-sharing with, or ownership of, law firms by TPLF companies would pose deleterious ethical and normative consequences for D.C.’s civil justice system and should be strongly rejected.” The D.C. bar committee has yet to reach a decision on fur-

ther reform. The arguments in opposition of a change to the rule is typical and will be discussed further below.

Washington

Washington did not reform Rule 5.4 in the same way as D.C. but has provided another avenue to increase access to justice. In 2012, the Washington Supreme Court approved a rule change that permitted non-lawyers to practice only family law in the state. [2] Washington was the first state to create a quasi-lawyer category of professionals known as a Limited License Legal Technician, or LLLT. [3] In 2015, the Washington state allowed LLLT to become minority owners of law firms. However, on June 4, 2020, the Washington Supreme Court voted to sunset the LLLT program because of a lack of participation and funding. [4] Currently licensed and new LLLTs may complete the program if they need the admission requirements by the deadline of July 31, 2022. [5]

Utah and Arizona

On August 14, 2020, the Utah Supreme Court approved the regulatory reform allowing for non-lawyer ownership or investment in law firms and permit legal services providers to try new ways of serving clients during a two-year pilot period. [6]

Just two weeks later, on August 28, 2020, Arizona followed suit approving non-lawyer ownership and non-lawyer licensees in access-to-justice reforms. The Arizona Supreme Court also approved a new category of non-lawyer license called “Legal Paraprofessionals,” who will be able to provide limited legal services to the public, including presenting clients in

court. With limited jurisdiction in civil and criminal matters, LPs will be able to practice in administrative law, family law, debt collection, and landlord-tenant disputes.

Illinois and California

Illinois and California are considering reforming this rule. The Chicago Bar Association and Chicago Bar Foundation Task Force on the Sustainable Practice of Law & Innovation released a report and recommendations for reforming regulations on the delivery of legal services. The recommendations include: (1) help lawyers connect to potential clients and offer affordable and accessible solutions; (2) help people recognize they have a legal problem and identify where they can turn for affordable and reliable legal problem and identify where they can turn for affordable and reliable legal help; and (3) spur innovation in the legal profession and the delivery of its services. [7] The task force suggested changing the Rules of Professional Conduct or adopting new regulatory models to help implement the recommendations. The task is in the process of reviewing the comments, after a 30-day public comment period that ended on August 21, 2020. The next step is approval by the Chicago Bar Association and the Chicago Bar Foundation.

The California Task Force on Access Through Innovation of Legal Services submitted a report and seven specific recommendations on March 6, 2020. Any regulatory changes will likely need the approval of the California Supreme Court and the Legislature, including the Consumer Attorneys of California and Public Counsel who currently are opposed to these changes. The state bar's board of

trustees will vote on a series of proposed changes to its bar rules in January 2021, including one proposal to amend its Rule 5.4 to permit law firms to share fees with non-lawyers. [8]

Connecticut and Oregon

Connecticut and Oregon are also considering reforms to rule 5.4. Connecticut created a State of the Legal Profession Task Force, which held a launch meeting for a study of alternative business and law school training in December 2019. [9] They are aiming to produce a report by 2021.

As of fall 2019, the board of the Oregon State Bar voted in favor of liberalizing regulations to allow licensed paraprofessional to provide some legal services without a servicing attorney.

The Impact of Reforming Rule 5.4

These changes to rule 5.4 could permanently transform the legal industry. Clients can turn to alternative service providers. Increasing the number of service providers in the legal market likely will affect the price for legal services. Non-traditional legal service providers may be able to leverage economies of scale to provide legal services in addition to their current service offerings. The Big Four accounting firms are the most obvious example of the type of company who could offer legal services in addition to their current suite of services. An accounting firm would already have a relationship with the client and access to their confidential financial information. Offering legal services would be a natural extension of tax and audit services that these firms already provide.

Initially, ABA Model Rule of Professional Conduct 5.4 was implemented to protect lawyers and clients. According to the rules of professional conduct a lawyer owes a duty of loyalty to his clients. This dictates that the lawyer be free from conflicts of interest. This not only means that the lawyer must avoid conflicts between present and former clients, but also avoid conflicts with the lawyer's own interests.

“The core value of the independence of the profession would be severely challenged by the dual allegiances owed to clients and demanded by investors, shareholders and managers. No man (or) woman can serve two masters.” [10] The fear was if a lawyer and non-lawyer went into business together to open a law firm, the non-lawyer's goals and objectives of maximizing profit could compromise the lawyer's judgment, creating a conflict of interest as he must serve the best interest of his client and not his non-lawyer partner. Additionally, the non-lawyer partner would not be bound by the ethical rules that apply to lawyers which could create tension as lawyers are ethically bound to act in their clients' best interest, and a typical business partner's obligation is to maximize profit for their stakeholders. This is the typical opposition to the expansion of rule 5.4.

In practice, these ethical concerns have not occurred at any higher rate than that of a traditional law firm. D.C. has experienced no rise of related disciplinary violations in the two decades since rule 5.4 was expanded. Critiques of those opposed to rule expansion speculate that these ethical arguments are raised to insulate the legal industry from in-

creased competition rather than out of actual concern for ethical violations.

Should Lawyers be Worried?

Disadvantages of Rule 5.4 Reform

In addition to the ethical concern noted above, opponents of the rule reform worry that increased competition that will hurt smaller firms and commoditizing the legal industry will lead to a loss of control over setting of prices and terms for legal services.

1. Threat to Smaller Firms

Most would believe that reforming Rule 5.4 is a disadvantage to big law firms who would now have to compete against a full-service firm like one of the Big Four. However, big law firms have the resources to continue operations, especially with mature clients and startups who have the cash flow to pay for the legal services. On the other hand, smaller law firms or solo practitioners tend to serve the low-income and middle class market. Most smaller firms do not have the same resources as a large law firm to compete with non-lawyer participants entering the market.

Smaller law firms may be at a disadvantage when competing with other firms who have implemented technology or allowed legal paraprofessionals to handle cases which would reduce pricing for these services. Thus, some attorneys opposing this regulatory reform, argue that allowing non-lawyers to own or invest in law firms detrimentally pulls business away from lawyers who spent years in law school, gaining legal experience, building up clientele, and opening their own law firms.

2. Loss of Control Over Price and Term Setting

This regulatory reform may also open the door for venture capital funded startups to set up AI-powered legal self-help websites. Anyone can access these sites with their legal questions, and a chatbot will respond with answers and corresponding documents. A tax attorney in Los Angeles, Steven Chung, says expansion of rule 5.4 will result in the “creation of ‘Uberlaw’ where the website connects the client with the attorney. But the website will set the price and terms of the attorney-client relationship. And if the client gives the attorney less than five stars, the lawyer can be removed. Meanwhile the lawyer will still be responsible for her overhead and will be responsible if something goes wrong.” [11]

Thus, with the website setting the price, lawyers do not have as much control over their services, making it harder for lawyers to budget and survive. With the website setting the terms, lawyers may also have to compromise their own standards and terms in order to take on this business. After taking on this business and even if the legal service went smoothly, a client may nonetheless give a low rating which severely impacts the attorneys’ future business. For example, if a client did not like price, lost the case, or just plainly did not like the attorney’s personality, the attorneys’ rating could be negatively affected, pushing him/her to the bottom of the Uberlaw site as the algorithm recommends attorneys based on positive customer ratings. With just one bad review which the lawyer has no control over, he/she may see a reduction in business and an ability to attract clients. One attorney claims, “allowing non-lawyer participation and own-

ership will diminish the profession of law to just another commodity.” [12]

While these concerns are valid, others feel reforming rule 5.4 creates certain advantages and benefits the legal industry as a whole.

Advantages of Rule 5.4 Reform

A Stanford white paper discussed possible advantages to reforming Rule 5.4, including the benefits for consumers and lawyers, promoting innovation, and increasing access to justice. [13]

1. Affordable Legal Services

By reforming Rule 5.4, consumers will have greater access to justice at more affordable prices. With non-lawyers owning part of a law firm, lawyers can also focus on quality work and client relationships, rather than dealing with the operational and business development aspects of the firm.

2. Client-Focused Law Firm Structure

Traditionally, attorneys bill their time in six-minute increments. This method of charging clients results in a short-term goal of bringing in revenue or having to finance debt to stay in business. By reforming Rule 5.4 and allowing non-lawyers to contribute equity, lawyers can have research and development budgets and invest in long-term projects that improve legal services. [14]

Additionally, evolving law firms who want to stay competitive can consider alternative options including contingent fee arrangements and value-based pricing to drive

costs down for clients. In the short term, alternative fee arrangement may not maximize profits. However, in the long term, alternative fee arrangements strengthen client loyalty, the firm's reputation, and result in more referrals for new clients.

3. Innovation for Law Firms

Evolving law firms with capital structures are also able to make investments in technology that may decrease profit in the short term but increase profitability and impact in the long term. In today's digitization era, technology is used to make processes more efficient as most tedious tasks are automated. With COVID-19 forcing many businesses to go remote, clients expect more service with less. Attorneys working from home need the appropriate software and technological capabilities to deliver services.

Thus, reforming Rule 5.4 to allow non-lawyers to own and invest in law firms will allow for innovation. Tech companies and entrepreneurs have more incentive to invest in the legal industry if they are able to own a part of the law firm. Lawyers will reap the benefits of training and implementing this new technology, while focusing on building rapport with clients.

4. Access to Justice in a Time of COVID-19

Given all that is happening—the pandemic, natural disaster, and the threat of domestic terrorism—access to justice is especially important now more than ever. The above benefits to clients and lawyers help us get one step closer to solving this issue of access to justice.

The legal profession is evolving and COVID-19

has accelerated inevitable changes. Thus, it is crucial that we become aware of these changes and adapt accordingly. Specifically, law firms should think about implementing ways to remain competitive in a changing legal market. In-house and individual clients, on the other hand, should learn about the various providers and services offered before deciding on a legal services provider. Laws are probably changing for the better, and consumers will definitely benefit the most.

Notes

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About the Author

Michelle Truong is a third-year law student at Santa Clara University School of Law. She is a part of the Tech Edge JD program and serves as Co-President of the Vietnamese American Law Students (VALS), Director of Fellowship and Bay Area APALSA of the Asian Pacific American Law Students Association (APALSA), Managing Editor of the Journal of International Law, Production Editor of the High Tech Law Journal, and Co-Mentorship Chair of Vietnamese American Bar Association of Northern California (VABANC). She was the Legal Operations Extern at UpLevel Ops, where she wrote this article while helping businesses become more efficient and effective through people, process, and technology. She also externed for Judge Beth Labson Freeman at the U.S. District Court, Northern District of California and for the Honorable Justice

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Brenda Hansen, Senior Consultant, UpLevel Ops

Brenda Hansen brings 20 years of experience in the legal industry to the UpLevel Ops team. Most recently Brenda was the Compliance and Legal Operations Lead for Biogen. In this role, she managed the global operations of the function by focusing on administrative support, process and procedure efficiency, and system implementation and management. Brenda is known for her ability to partner with business leaders in identifying gaps and producing solutions that generate new levels of efficiency, employee satisfaction, and productivity.

Prior to joining Biogen, Brenda worked for the national law firm of Jackson Lewis LLP.



In 2011, she was promoted to Office Administrator from Litigation Paralegal as a result of her reputation for strong execution and collaboration skills. As the Office Administrator for the Washington DC Office, Brenda oversaw the daily operation and management of administrative, fiscal, and business-related activities.

Currently based in Boston, Massachusetts, Brenda holds a Masters of Business Administration from D'Amore-McKim School of Business at Northeastern University, and a Bachelor of Science Degree in Legal Studies from Bay Path University.

Tim Zunich, Consultant, UpLevel Ops

As a Consultant at UpLevel, Tim works as part of a team on various client projects including operations assessments, intake and ongoing interviews, drafting processes and documents, designing surveys, creating presentations, technology implementation and more. Tim is focused on delivering efficient and creative solutions for the in-house legal departments. Tim is a member of the California Bar and specializes in Business Law and Emerging Enterprises.

Before joining UpLevel in 2019, Tim received his JD from Santa Clara University School of Law and has undergraduate degrees in marketing and entrepreneurship from the University of Dayton. Tim has in-house experience prior to law school as a paralegal and sales desk administrator and spent his summers during law school interning in the legal departments at both Oracle and Maxim Integrated.

When not working Tim can be found on the tennis court or in the kitchen cooking.



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In the post-pandemic era: Are clients leading legal transformation?

By Mari Cruz Taboada and Katie Dignan, Lexington Consultants

The digital transformation of the legal market has been discussed for years. But is it all about technology? Is there another, more powerful, driver for collaboration and flexibility?

Home working during the pandemic forced everyone, including law firms, to embrace technology. It was the only way to collaborate – whether you were talking to your colleagues and teams, or helping clients cope with the huge regulatory change and uncertainty.

The expectation was for this momentum to increase. With law firms moving towards more digital, flexible and collaborative working structures.



Mari Cruz Taboada



Katie Dignan



STOP

TRANSFORMATION AHEAD

However, as law firms finalise their 2020 accounts, it has become evident that the legal sector didn't suffer as much financially as others. And there are signs that firms are simply returning to their old ways.

If law firms continue to be successful, then why should this matter?

Our own recent analysis by Lexington Consultants shows that collaboration pays – good collaboration can help lawyers to improve their turnover up to 20% per client. So firms should be very careful not to lose the new skills they were forced to employ during 2020.

Unfortunately, it appears that technology is racing ahead of firm culture. The new collaborative IT implemented to help with client management, knowledge and information sharing is being used less, now that lawyers in many countries are returning to their offices.

The technology is not proving to be the trampoline to a sharing culture that we hoped. So what is?

We believe the best way to improve your client relationships is to start by reviewing your compensation and reward systems.

Compensation and reward

We work with more than 30 law firms a year in Europe, Latin America, Africa and Asia, on their compensation and reward systems. These are so often the key barrier to cultural transformation and collaboration.

In our experience, the majority of law firms operate as a group of separate businesses. We have developed the Lexington 5S model (below) to better understand this.

In our experience, firms only move from silos to significance by developing a bespoke

Culture may help change or hold you back



5S Model- ©Lexington Consultants

approach to the behaviours they recognise and reward i.e. their very own carrots and sticks.

It's usually easy to create carrots for financial indicators. For example, Lawyer X increases his turnover and profitability, so he takes home more at the end of the year. And Lawyer Y wins a new client, so is also financially rewarded for origination at the end of the year.

They both get carrots, but Lawyer Z does not hit his financial expectations. What does his metaphorical stick involve? And how do you deal with non-financial expectations?

Firms need to think carefully about how they sanction a partner who refuses to cross-sell, or consistently gets negative feedback about his management style, for example.

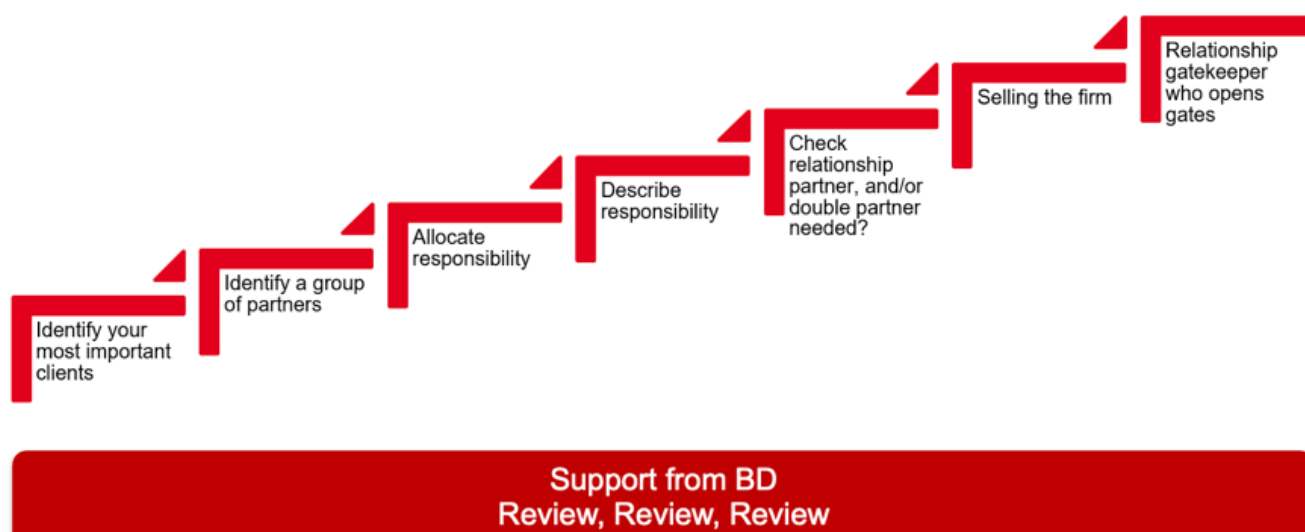
We have found, however, that the truly successful firms see “complying with the common interest” to be equally important as hitting financial targets. A lack of partner alignment doesn't only impact the internal workings of your law firm. It also has a direct link to the effectiveness of your client contact. We help firms improve the quality of their client relationships using a simple pathway.

The silo culture shown in our 5s Model, will be negatively experienced by clients. Partners work in isolation, with a strategy that sells their expertise, but not that of the firm. After a while working in this way, the only thing partners have in common is that they are lawyers working under the same roof.

In our experience, partners at successful firms trust each other. And trust is there because

How do we improve relationships with our Clients

The pathway to better relationships



they have **all** been involved in developing a bespoke reward process. Everyone's views have been heard and are reflected in their system.

Firms like this share client relationship and information via efficient, centralised knowledge systems and view innovation as exciting and essential, rather than scary and unnecessary.

Clients

General Counsel are increasingly expecting their law firms or legal service providers, to mirror their own corporate culture. They want to work with people who collaborate in the same way as they do and who have similar views on teamwork and diversity.

We are seeing increasing numbers of long-term client-adviser relationships end, because of a mismatch in corporate values and principles. For law firms out there needing a "stick", then they don't get much bigger than this!

Ending a relationship with a long-standing law firm is difficult and some GCs are not prepared to go that far...yet! However, there is a less combative, but equally problematic, solution being used. GCs are just being much selective when it comes to choosing their external law firms. In other words, to "get on the list" you now need to not only be a good

lawyer, but also match up to the corporate values of your target clients.

Large legal departments like those at Santander, GE, Indra, IBM, Nokia, Microsoft, Spotify and Amazon are investing in legal transformation and innovation to improve internal efficiency, business collaboration and diversity for their internal and external legal services. So, if you want to work with businesses like these – your firm needs to be doing something similar.

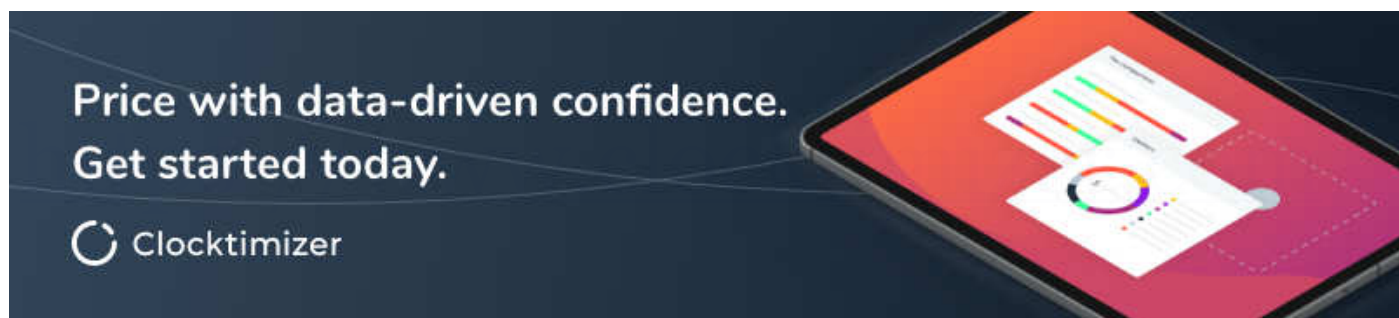
In summary, the solution to transformation is not revolution, but evolution. It is not necessary to compromise financial gain to achieve a more flexible and collaborative environment. But firms do need to challenge their partners to stop behaving as an individual and start acting as part of a team.

As Henry Ford said: "Coming together is a beginning, keeping together is progress, working together is success."


About the Authors

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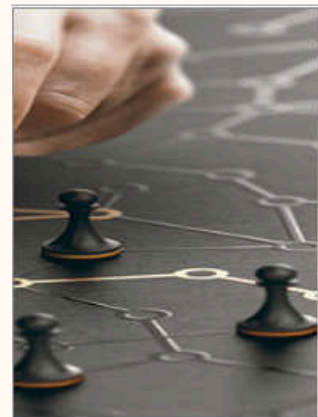
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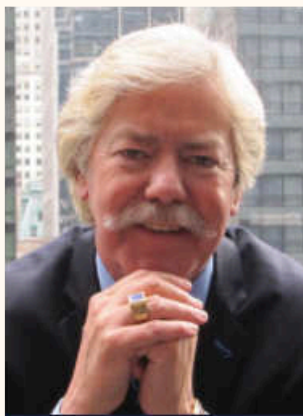
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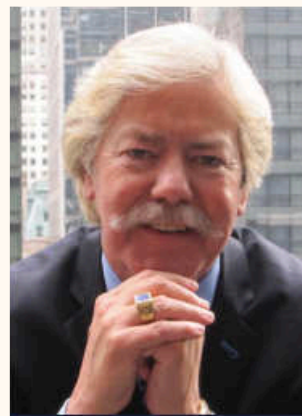
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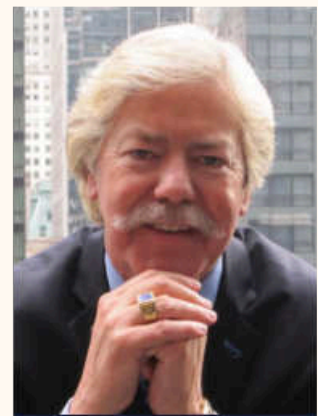
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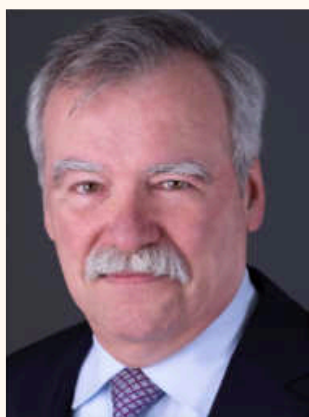
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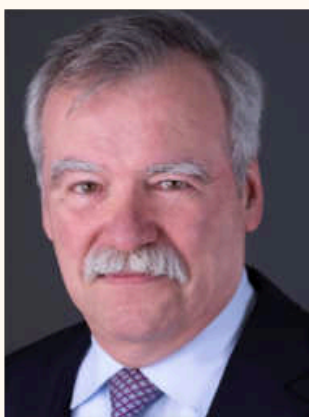
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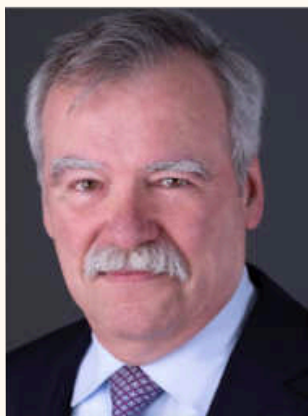
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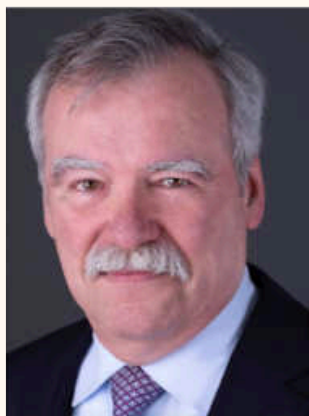
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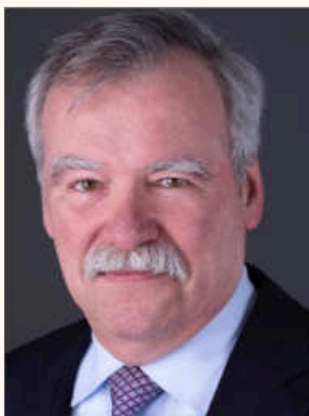
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