

# LEGAL **BUSINESS** WORLD

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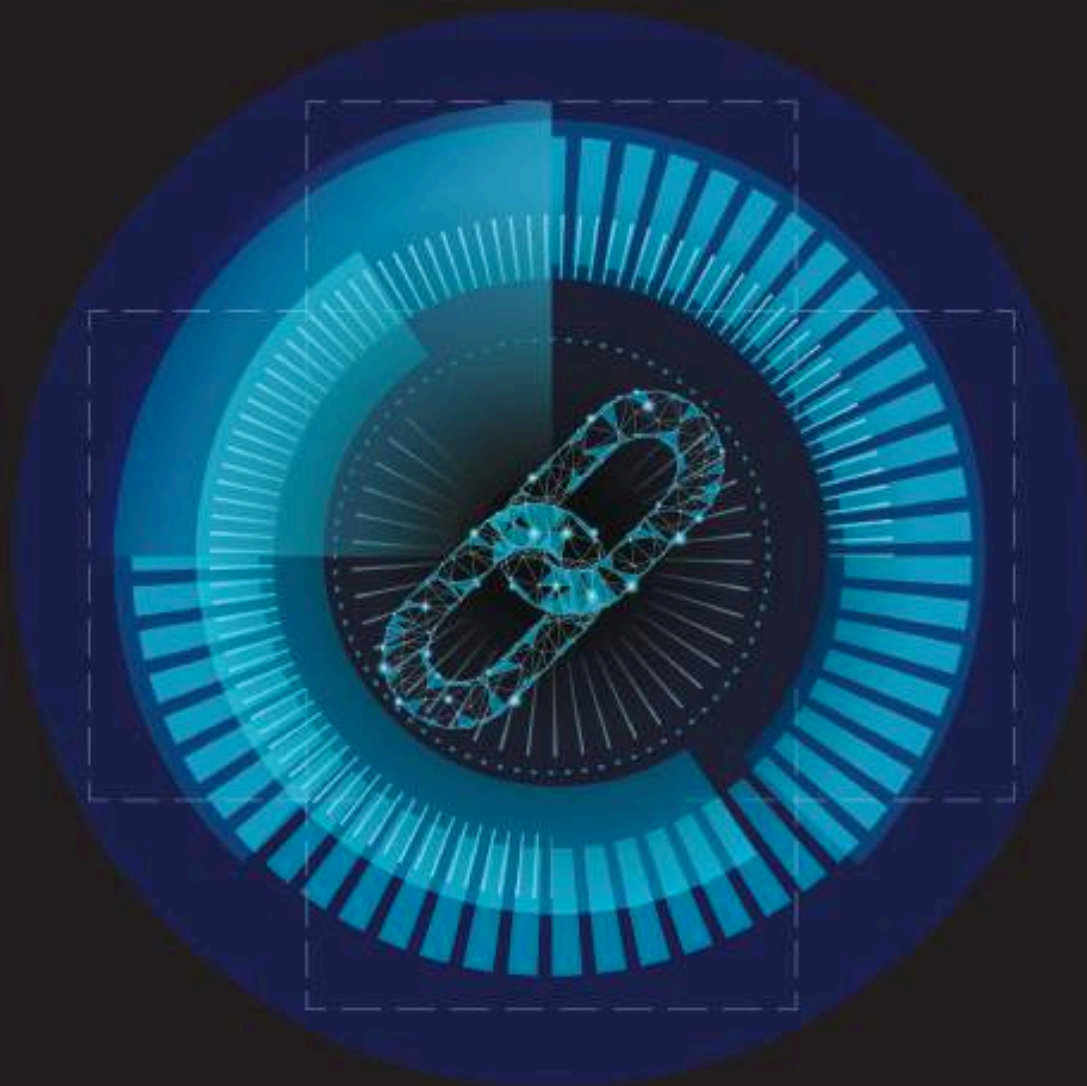
## The Value Series

“Defining Value in Delivery of Legal Services”

By Cash Butler

And contributions from International Thought Leaders, Experts and Legal Connoisseurs: Elizabeth Ortega, Nathan Hepple, Brett Ablong and Mitch Kowalski, Richard G. Stock, Eva Bruch, Cloudesley Hobbs, Jeffrey Fowler, Jeffrey Greene, Aaron Lewis, Lon Troyer, Claire E Bibby, Baltasar Cevc, Michael Reiss von Filski, Jacquie Champagne, Spencer X. Smith, Mo Zain Ajaz

**Business of Law**



## **Blockchain**

Legal implications, questions,  
opportunities and risks

March 2018 [Download the paper here](#)



## Still G(r)o(w)ing Strong

As promised, another update on growth and usage of LegalBusinessWorld. To get a good overview of usage and content appreciation we use three different products to gather metrics. Google Analytics, StatCounter and our own counters on our pages. Below you'll find the website\* results over the period January 2018 till May 2018, in terms of average usage/reading. Using predictive modeling on these numbers, 2018, in succession of 2017, again will be a year of double-digit growth. Needless to say; thanks to the great contribution of thought leaders and experts who are willing share their knowledge and information with legal professionals all over the world. We're honored to publish their contributions and accomplishing one of our goals: 'Sharing high-value knowledge and information on the business of law in an open and free to use platform!'

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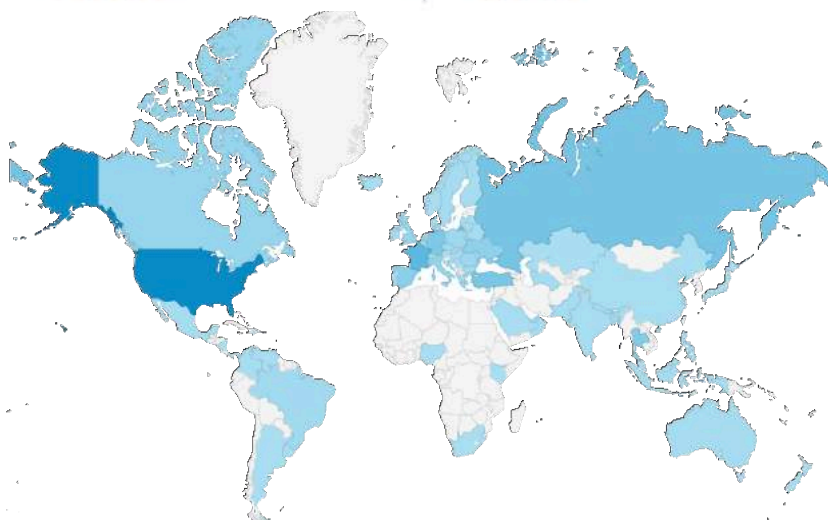
**6.9K**

Average Daily First Time Visits

**2.8K**

Average Daily Returning Visits

**4.1K**



Thank you, and we hope you'll be inspired by this months contributions! Kind regards,

*Joek Peters, CEO LegalBusinessWorld*

A handwritten signature in blue ink, appearing to be 'JP', located below the text of Joek Peters.

*\*Used metrics: Statcounter Reporting, website excl. eMag readers.*

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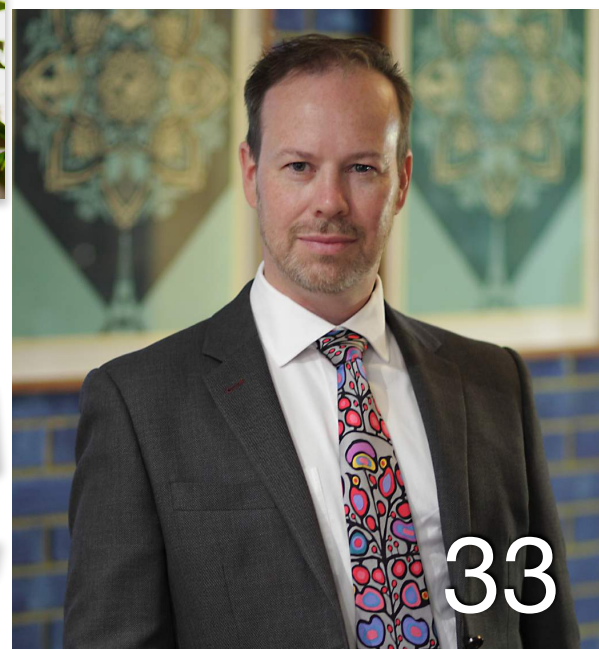
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Using a Triangle to Win at Full-Circle Branding in the Legal Business, *Elizabeth Ortega*

7

The Value Series: "Defining Value in Delivery of Legal Services", *Cash Butler*

12

'The Great Legal Reformation' A discussion between *Nathan Hepple, Brett Ablong and Mitch Kowalski*

18

Series by Richard G. Stock: Four Questions in Legal Sourcing

23

The digital transformation of law firms, *Eva Bruch*

27

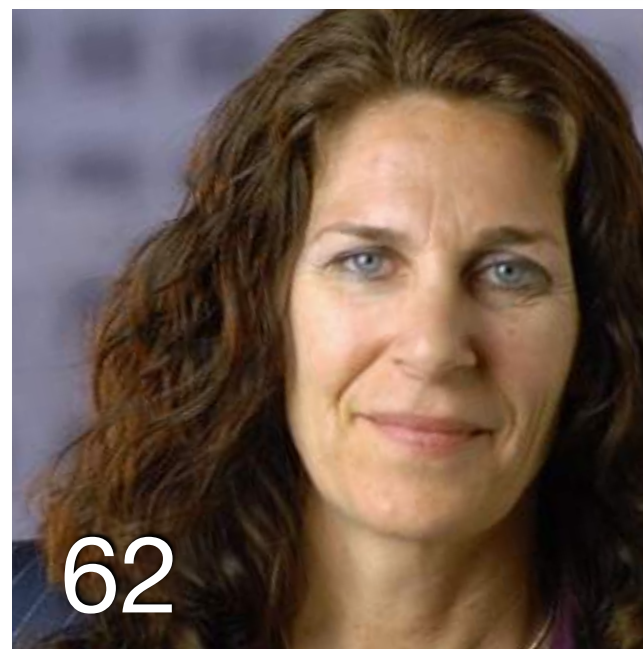
What is a Bitcoin legally?, *Cloudeley Hobbs*

33

For the Best eDiscovery Results, Pair Human Expertise and Sophisticated Technology, *Jeffrey Fowler, Jeffrey Greene, Aaron Lewis, Lon Troyer*

40





Legal Leadership the Good, the Bad and the Ugly, *Claire E Bibby*

49

Law & the revolution, *Baltasar Cevc*

53

GDPR or “Cheaty” PR?, *Michael Reiss von Filski*

59

The Present and Future of Legal Talent, *Jacquie Champagne*

62

Search engine optimization Marketing, *Spencer X. Smith*

67

LEX OPEN SOURCED: *Ask Mo Zain Ajaz*

72

Blockchain explained by Deloitte Legal

2

New eBook (see also: article page 18)

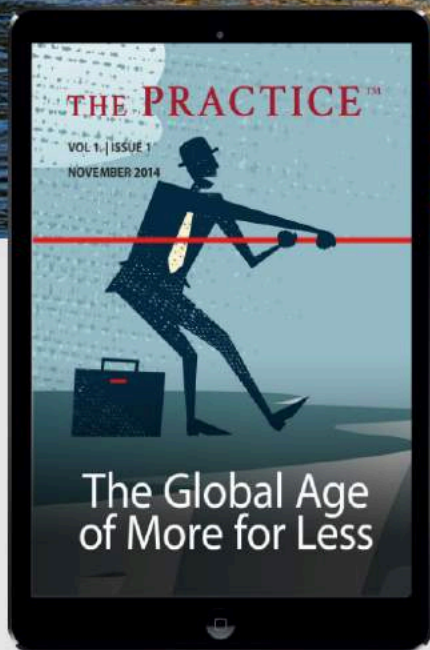
11

Zylab eDiscovery Insights (Blog)

71



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# Using a Triangle to Win at Full-Circle Branding in the Legal Business

By Elizabeth Ortega, Principal of ECO Strategic Communications

*“How do I become more visible to attract clients and grow my book of business?”* is the most common question I get asked.

My response is a variation on this theme: Look to yourself, to your firm, and to the networking platforms you use, or could use, to amplify your message. In order to define value in today’s market, you must engage with multiple collaborative partners.

### **A Three-Pronged Approach to Branding**

Think of a triangle whose three sides represent your individual brand, your firm’s brand and your professional networks’ brands. Each of these brands reinforces and strengthens the others. Remove any one of them and the model collapses.

#### *The Individual Brand*

Regarding your individual brand, take a look inward and assess where your strengths lie.

What skills and knowledge do you possess that make you uniquely qualified to best represent a potential client? Think of your case history and which ones created a sense of accomplishment for you personally. You’ll likely find your answers in your professional biography or LinkedIn profile (or you should, if they’re up to date). Reflect on what cases you regularly use as topics of conversation at professional and social gatherings among colleagues. The skills and knowledge that earned you those cases are part of your individual brand.

A clear example of a strong individual brand is Floyd Abrams. For decades, Abrams, now 81, was the go-to pundit on media law in Ameri-

ca, almost reflexively tapped by print reporters, TV commentators and conference organizers. That reputation stems from his work on the seminal First Amendment cases of his generation, from the Pentagon Papers to *Branzburg v. Hayes*, and most recently, for his defense of Al Franken against FOX News over Franken’s use of the phrase “Fair and Balanced” in a book title. Abrams’ individual brand has been fortified by his case history.

Other contributors to your individual brand are your beliefs and values. If you value innovation and comprehensive investigative practices, you’re likely to gravitate toward cases that challenge you to devise bespoke strategies. As your book of business builds on these types of cases, your individual brand evolves and reinforces your beliefs and values. Know what propels you and be ready to turn away from that which does not. You won’t be sacrificing anything in the long run.

Finally, your individual brand reflects your personality traits and your level of emotional intelligence. These “soft skills,” if possessed and skillfully demonstrated, have the ability to position your individual brand in a light that’s attractive to clients, law firms and professional networks.

#### *The Law Firm Brand*

As part of the triangle that will grow your business, your law firm’s brand could be the attraction that makes a potential client seek you out.

How does your law firm fare in the industry compared with other firms? From “big law” firms to boutiques that specialize in one



practice area, clients look to brand recognition and reputations to determine where to start in their search for legal representation. Comparing a firm that regularly touts its strong case history, complex cases and good business advice, against a firm that has a similar case history and solid results, but keeps quiet about them, clients are more likely to go with the publicly outspoken firm. They do not appreciate reticence when they're searching for an advocate. They need not look too long or hard to find a notable reference to a firm that's not afraid to celebrate its accomplishments.

Similarly, firms that find their niche – whether a location, a practice area, a client type or case parameters – take the guesswork out of what these firms can offer clients. Also, by extension, what special expertise their lawyers can offer clients.

U.S.-based litigation firm Kobre & Kim, for example, has carved out a niche for itself by featuring a global platform of U.S.-licensed lawyers and U.K.-qualified barristers and solicitors with offices in the U.S., Asia, Europe and in offshore jurisdictions like the British Virgin Islands and the Cayman Islands. If you're a Kobre & Kim lawyer, your firm's reputation has been built, in part, on its expertise with a wide geographic reach. A potential client looking for representation in one of these locations likely will turn to Kobre & Kim, offering you a potential piece of the pie.

Also, accessibility reigns supreme. Much like the “soft skills” that you must possess individually to gain favor with potential clients, firms that are overprotective of their attorneys' in-

formation or that lack a welcoming service environment may be a liability to your business. When your clients complain of unhelpful staff, or, you're discouraged from putting professional contact information on biographies or social media accounts used for business only, your firm's brand may be negatively impacting your individual brand.

Clients know how careful firms are when they hire lawyers. If you weren't up to snuff, they reason, you wouldn't be affiliated with that firm. Law firm branding, therefore, helps define you as someone a potential client will want to seek out.

### *Your Professional Network Brand*

The third indispensable part of a strong brand is that of the networks or organizations that count you as a member. Clients and colleagues, alike, see membership in any reputable professional group as a nod to your expertise. These memberships can enhance your knowledge base and your image as an expert, and can expand your reach by offering endless networking opportunities. But it's not enough to join up and pay your fees. You don't necessarily need to be the president of the American Bar Association, but there are many committee officers and important ancillary roles for you to plug into. You must work at fostering and cementing professional alliances by being a connector.

To develop professional relationships and build fulfilling and sustainable networks, you must introduce, praise and share the work of others. It is vital to be present in the room – not just standing there tinkering with your

phone but mingling to make the right connections for yourself and others. People remember gestures of goodwill and are incredibly receptive to reciprocating.

Through this platform, you increase your brand's bandwidth and visibility. As you network and present and share ideas with other members of these associations, your value to them increases exponentially and you're seen as an authority or thought leader in your area of expertise. What's more, as your firm, colleagues and clients see you in the same space as other authoritative figures in the legal industry, your value to them increases as well.

So what can you do to bolster your overall brand using these three mechanisms?

### **Assess and Execute**

Begin by taking an inventory of your brand. Determine where your individual strengths lie and what is your position in the market. Map out what your firm's reputation rests upon. Look at your professional networks and figure out where you may play a more prominent role or whether to join different organizations that may be more closely aligned with your expertise and interests.

Taking this type of inventory will help you better develop a brand-building strategy that will catapult you into the next level of your career.

Once you've assessed your current brand strengths and weaknesses, figure out which of the following tactics will help you achieve your desired result of a stronger individual brand:

- Look for leadership positions at your firm and within your professional networks.
- Contribute substantive works via articles, blog posts and social media platforms.
- Speak at events that exhibit your talents and interests and that promise to match you up with your intended audience.
- Cultivate new and existing relationships to create new opportunities for you, your firm and your professional networks.
- Share and compliment others' work and build reciprocity.

### **Full-Circle Branding**

Focusing your energy on strengthening your individual brand through your affiliation with your firm and through your association with likeminded and well-known contacts is the key to becoming more visible and ultimately building your book of business. Keep that triangle approach at the forefront of your strategy, and your individual brand will, in turn, benefit your firm's brand and strengthen the renown of your professional networks.

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### **About the Author:**

[Elizabeth C. Ortega](#) is principal of [ECO Strategic Communications](#), a Miami-based marketing agency that focuses on helping lawyers and law firms achieve their leadership goals in competitive markets around the world. With more than 20 years of experience, she is a marketing strategist and leadership coach who provides effective and impactful counsel to lawyers who are international thought leaders.



*hba legal.*

# 12 Secrets to Improving Legal Service

HBA Legal in discussion with  
NewLaw thought leader  
Mitch Kowalski

**READ THE ARTICLE ON PAGE 18**

DOWNLOAD THE [eBOOK HERE](#) | READ THE [eBOOK HERE](#)



Cash Butler

## The Value Series

### “Defining Value in Delivery of Legal Services”

By Cash Butler, Founder and CEO ClariLegal

What is value when it comes to the delivery of legal services? Whether you, as a corporation, a law firm, or a vendor of legal services, are a buyer or seller of legal services like litigation or M&A, you may have never asked yourself that question. More importantly, you may have never asked yourself what value means to you as a customer, or what value means to your customers. This article is the first and an introduction to a series that will explore the question of “What is value?”. We will explore the ways to define value, the ways to measure value, how to communicate your value, how to discover your customer’s value, and how vendors and customers in the legal industry perceive and measure value.

#### ***Ways to Define Value***

Value as sought by customers, in the legal vertical market or in any industry, falls into three categories, none of which are mutually exclusive with one another. In each category of value, the customer will have what we call “table stakes”. “Table stakes” is the minimum value that the customer is looking for; a vendor that comes in



below the table stakes isn't likely to be considered by the customer. "Table stakes" also include an acceptable level of qualification and expertise in the vendor – not only knowledge and experience but also a track record of success in the customer's matter.

The first way to define, which is relatively self-explanatory, is price. – of course, price as a value does not mean money, but instead is a measurement of the exchange of value. A customer who values price is generally seeking the lowest price, and is generally willing to compromise on other factors to obtain that low price. Think of a person who generally flies on so-called "no frills" airlines such as Spirit, Frontier, Ryanair – customers of those airlines are typically willing to compromise on things like customer service, amenities such as checked or carry-on luggage and in-flight food and beverage service, and even the overall comfort of the flying experience, simply to fly to their destination for the lowest possible price. For price, "table stakes" is usually the customer's budget and/or price expectation – a customer isn't going to consider a vendor above the customer's budget or what the customer considers the market price.

The second way to define value is specialized or unique goods or service capability. To be clear, when we talk about specialized or unique capabilities, we aren't talking about "table stakes" competency – we're talking about competency, experience, and/or knowledge that is far beyond the general level of competency required in the field. As an illustration of what we're talking about, imagine you need brain surgery. Normally, many brain surgeons with a track record of success could perform your surgery. But perhaps your condi-

tion is especially dire, or you need a complicated or experimental procedure – in that case, you may want to seek out a surgeon who has the specialized knowledge, training, experience, and skill to successfully perform the particular procedure you need and give you the greatest chance of successful recovery. Thus, while a board-certified brain surgeon might be the "table stakes", a particularly dire health condition may cause you to value having a world-leading surgeon.

Finally, the third way to define value is customer service, particularly the extremely attentive variety. When we talk about extremely attentive customer service, we're not talking about a server at a restaurant who recommends a great bottle of wine, makes sure your water glass is always filled, and perfectly times the clearing of plates and serving of the next dish from course to course. Instead, we're talking about customer service that goes far above that, that is not only there whenever (and I mean whenever!) you need them and able to do whatever it takes to accomplish what you need, but can even predict what you need before you even realize it and have it ready for you when you do realize you need it! That kind of customer service is probably best exemplified by the English-trained butler, who is on-call at a moment's notice but is also able to predict in advance when you will and what you will need them for. Again, "table stakes" customer service is timely and responsive; a customer who values service that goes above and beyond is looking for something far more attentive and predictive of the customer's needs and wants.

Again, it should be noted that all three types of value are not mutually exclusive, particularly

when it comes to specialized/unique goods/service offerings and exemplary customer service versus price.

Although one can expect to pay more for a specialized or unique good or service offering or for extremely attentive customer service, a customer might be willing to compromise to a certain extent on those two types of value to stay within a budget, or might be willing to bid out to the limited universe of vendors who can provide those two types of value to obtain the best price possible.

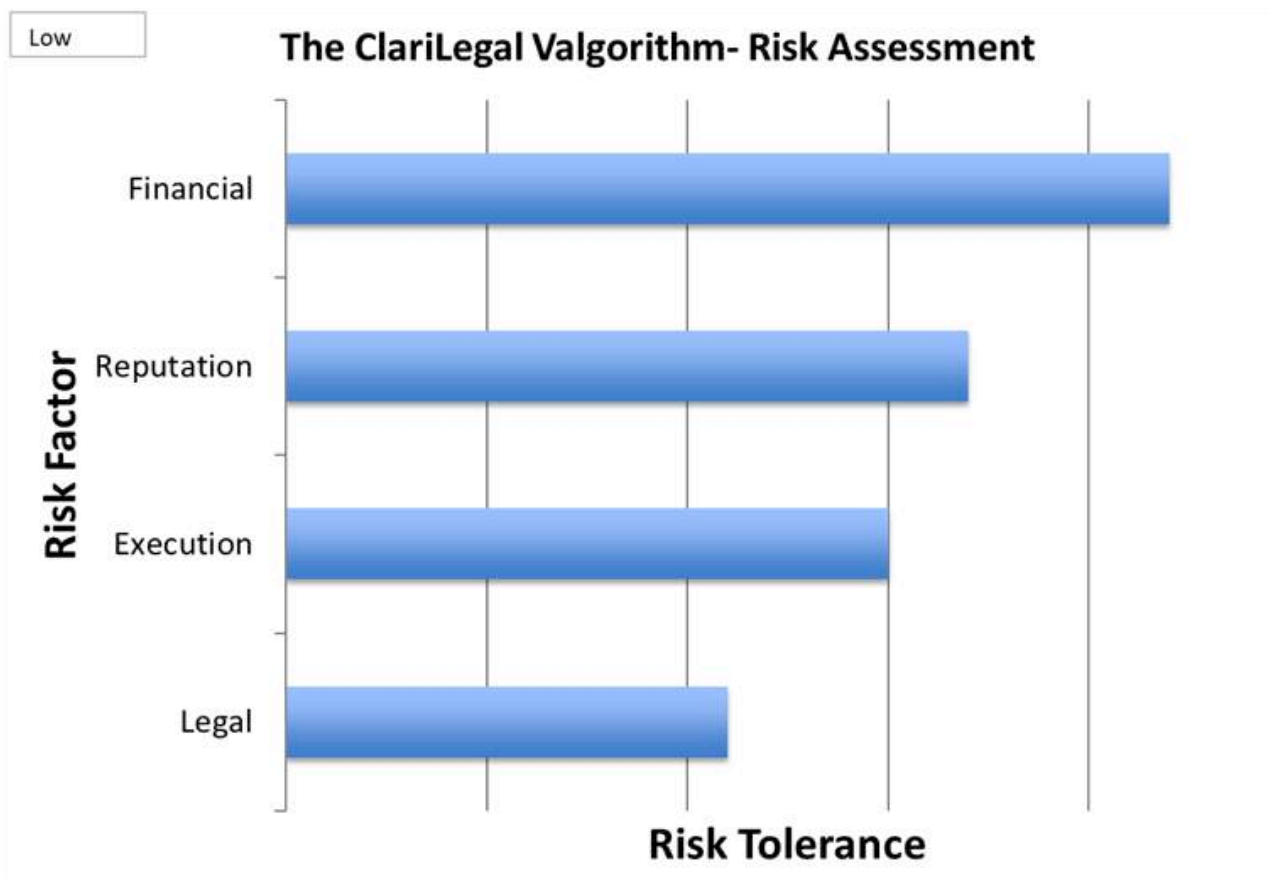
### ***How Can We Measure Value?***

Customers and vendors alike in the legal industry can best measure value in several ways. The first measurement is the importance of the good or service being acquired – is this a bet-the-company matter for the customer

(high importance), or is it significant but not world-ending (important); is this a one-off yet mundane (not so important), or is it routine and repetitive (maintenance)?

The second measurement is the categories of risk the customer is seeking to mitigate or eliminate. These categories can include financial (how much is this going to impact the bottom line?), reputational (what will others think of us?), executional (will this project be successful?), and legal (can we stay within and/or not break the law?).

The third measurement is the customer's prioritization of the value that the vendor provides. These values can include cost (we're the cheapest price!), promptness (we address your requests in an hour/24 hours/etcetera),





responsiveness (we can turn around your project in a day/a week/a month), and expertise in the customer's industry or vertical market and understanding of the customer's business – think of those brokerage/financial planning firm advertisements that tout how the firm makes it a point to learn about you and your family.

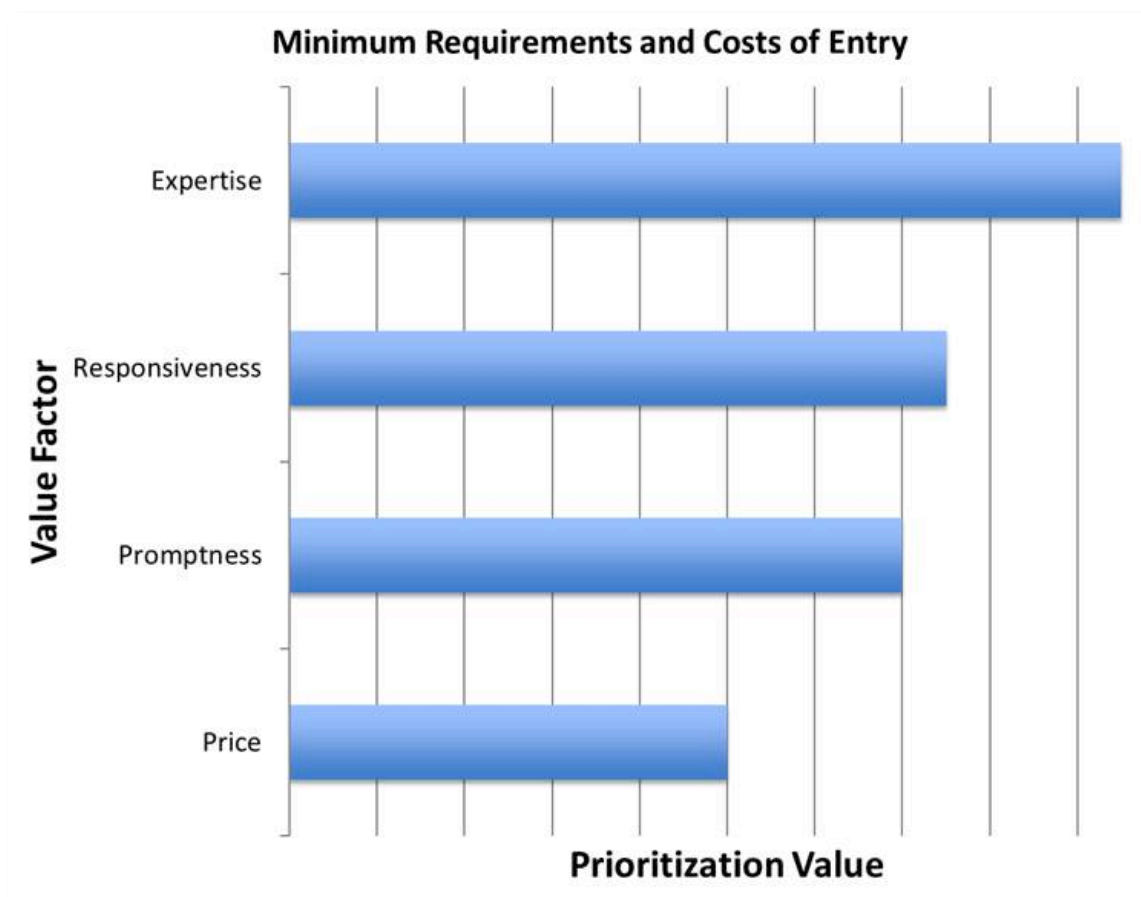
The final measurement is the customer's desired outcome. Is the customer looking to win at all costs or adopt a scorched earth policy, or are they willing to give to resolve their issues quickly? How much are they willing to give to achieve a resolution? And which risks are they particularly interested in minimizing?

All these measurements sit on sliding scales, rather than being a series of checkboxes. Think of the settings on your car's climate con-

trol – there are sliders to control temperature, fan speed, vent openings, which vents receive air current, and on some luxury cars even the ability to filter the outside air or add fragrances!

All of these sliders allow you to set your car's climate just the way you want it. Similarly, the axes of measuring value allow a customer to pinpoint the specific value they seek from the three definitions of value.

Each of these measurements, and where along the scale the customer measures, can illuminate the type or types of value that a customer seeks. A client who has a bet-the-company litigation or is looking to win a legal dispute at all costs may – like a patient needing a complicated or experimental life-saving medical procedure – prize the value of specialized or unique goods or service offerings. Or a



customer with a routine, repetitive legal matter may value price above all else to keep costs down, or may value exemplary customer service so that the recurring matter will be taken care of without the customer needing to spend any time or thought on it – think of a business that must regularly file legal applications in the ordinary course of business.

In later articles in this series, we'll do a deeper dive into the methods for quantifying and measuring value. It should also be noted that there are plenty of tools for customers in the legal vertical market to help them measure and communicate their sought value to current and prospective vendors.

### **Communicating the Customer's Sought Value**

"But," you might be asking now, "as a customer, even if they know the value I or my company or firm seeks, how do I communicate it to my service providers, and how do I make sure they understand?" You or your firm have probably had to move on from a vendor whose prices no longer matched their service offerings, or who displayed an inability to handle your work, or who simply started treating you like just another disposable customer.

The request-for-proposal, or RFP, process is an initial way to communicate to prospective vendors the kinds of value your firm seeks. Not only should your RFP indicate to vendors the axes by which your firm measures and perceives value, but it should also include questions to measure the vendor's values and whether they can meet your firm's values. Will the vendor charge you the best market-competitive price? Does the vendor even know the

market prices? If you the customer need a specialized or unique good or service, does the vendor have the resources and experience to provide that good or service? Or if you need exemplary customer service, does the vendor have the manpower necessary to provide that level of customer service? There are RFP and vendor procurement platforms for the legal industry that allow customers to utilize a transparent, repeatable RFP process to define and clearly communicate the customer's preferred values to prospective vendors. These tools bring real clarity to all parties.

After your firm selects a vendor, vendor management tools can help keep the lines of communication open and clear. Not only does this facilitate the working relationship, but it also allows the customer to repeatedly emphasize its sought value or values to the vendor – for example, if price is the primary value, a well-functioning vendor management process can help keep work on-schedule and on budget. The customer can also communicate to the vendor changes in sought value. Maybe a significant matter becomes a bet-the-company issue, or maybe financial issues force price to become the driver of value. The vendor management process provides a channel for customers to consistently communicate their sought value to vendors.

Finally, effective communication of sought value should enable customers to compare expected results with actual outcomes. Was the vendor under budget? Did they mitigate our risk concerns? Did they possess the knowledge and resources required to complete our project? Were they responsive to our requests? Measuring your sought value doesn't have

much use if you cannot use it to evaluate whether your vendors are providing that value.

Hopefully this introduction has inspired you to think deeper about how your company or firm defines, measures, and communicate value. Through the rest of this series, we will drill down further into the ways to define value and the ways to measure value. We will also discuss how those definitions and methods of measurement interplay with one another. And we will explore how corporations, law firms, and legal services vendors each perceive value in their unique way.

We will explore the intricacies of communicating value between customers and vendors. What information should each side be providing the other, and when in the sales process should certain pieces of information be shared? In the legal industry in particular, the obligations for confidentiality and the risks for conflicts of interest make these questions especially important!

Lastly, we'll also present the viewpoints of customers and vendors in the legal industry regarding value – how do they define, perceive, measure, and communicate value? What is the value their firms offer or look for? Do they think value as a concept is broken, and if so,

why and how can it be fixed? We hope you look forward to the rest of this series.

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### About the Author:

[Cash Butler](#) is a seasoned legal technology innovator. He has over 18 years of experience in the legal vertical market, primarily working in eDiscovery, litigation & compliance. Cash is an expert at legal vendor and project management and is the founder and CEO of [ClariLegal](#), a preferred Litigation/Legal vendor management platform that matches corporations and law firms with the right vendors who have the right service offering at the right price. The ClariLegal solution saves time and money. ClariLegal also improves, quality and project transparency which helps corporation and law firm customers gain more in control of the litigation.

Cash practices and believes in continuous business process improvement through the smart application of technology to provide better, faster, less expensive, more secure legal service delivery that improves outcomes.

Cash is also an avid hockey, baseball and football fan with a strong affinity for Boston College and the University of Michigan.

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## Coming Soon | New June releases

- **Patrick J. McKenna, (eBook) Leadership, Lessons From The Trenches**
- **eMagazine, Global Legal Hackathon Winners Edition**









# 'The Great Legal Reformation'

## A discussion

By Nathan Hepple, Brett Ablong and Mitch Kowalski

*HBA Legal directors Nathan Hepple and Brett Ablong invited global NewLaw thought leader and author Mitch Kowalski to join them in Australia for a couple of weeks. Their goal was to further explore the unstoppable change in the global legal industry, and how law firms must evolve to meet shifting client needs and the more-for-less challenge. In short, they questioned, how must we change to thrive, in what Mitch calls 'The Great Legal Reformation'.*

*Nathan:*

So how is Australia tracking in 'The Great Legal Reformation'?

*Mitch:*

I hadn't been to Australia in about four years so it was really neat to see the transition. I think there's a lot more emphasis on innova-

tion in legal services. I think there's a more strategic imperative that we are seeing with firms where the market is shifting and being more cognisant of having to be different and create a unique client experience. And I think technologically, the innovation I'm seeing has grown significantly in the last four years. So it's an exciting place to be.

*Brett:*

So Mitch, what's driving this change in the legal industry?

*Mitch:*

Without a doubt, two factors. Number one: clients. I think clients in Australia are much more aggressive than I've seen in other countries around the world and they are really battling this more-for-less challenge. They are putting a lot of pressure on Australian law

firms, more so than I see in Canada and the United States. And two, technology is also changing the way that law can be done so we are seeing ways for law firms to compete much better.

Then you layer on top of that the millennial generation which is changing the dynamic here also, because millennials just don't want to practice law in the same old way. They are checking out, they want to have the opportunity to do something better, faster and cheaper not just for the client but also for themselves, for their own personal lifestyle.

*Nathan:*

Do you have some thoughts in terms of the Australian experience around questions such as AI and the rush of firms to be announcing that they've bought the latest toy, so to speak?

*Mitch:*

Yes, the 'AI frenzy'. I think obviously there's a fair amount of hype in that, and everybody and their pet dog wants to say they're employing AI because it's the cool buzz word of the day, but there's also a fair amount of technological solutions to problems that we don't quite have. So people are rushing to build things without listening to the marketplace and are using technology for a PR bump. You have to understand what the processes are and what you're trying to achieve for your client, and then build around that. Then maybe there's an IT solution to that, maybe there is not. But seeing IT as this magical panacea for every single problem in the legal industry is a really big mistake to make.

The easiest way to do that is to have your own

IT who are embedded [in the firm] and understand what you're trying to achieve - and can work quickly.

HBA has really understood that legal solutions are not just about the lawyers and what the lawyers bring to the table, that there is a holistic approach to the solutions that your clients need. So why wouldn't you build a 'cradle to grave' kind of solution for what they really want, and help them out in a way that may not involve the lawyers? It may involve only one part of your business and that's okay, because that's what the client asked for. And so for you to build a holistic approach I think is unique, something I haven't seen at all globally and I think it's going to give you a real competitive edge.

## **Design Thinking for the legal industry**

*Mitch:*

Lawyers are one piece of the puzzle they are not the entire puzzle, just like a musician is one piece in the orchestra, not the entire orchestra. And people want that experience that the orchestra brings. You come to hear the music and how everybody works together and interlocks together to give that experience, so too the law firm.

Design thinking brings the orchestra together to solve problems. It's really simple. It's a disciplined approach to problem solving to create customer value, and to create some market opportunity. It's an innovative approach where you empathise with the client.

*Nathan:*

This is nothing new, this is only new to lawyers because they are not alive to these challenges.



*Mitch:*

We've heard that from clients, "Yes our business units do this all the time, why do you think our company is still alive?"

It's not about operational efficiency, it's about how do we get through to the next level?

What's the next thing that we should be thinking about because someone's breathing down our necks? And certainly you know in traditional law firms, there are a whole host of people breathing down your neck. So the choice is yours.

*Brett:*

The problem that a lot of traditional businesses have is that they're always inward looking, but by going out to the world and reaching out to you, we were able to see that this is a continual evolution - that law firms are morphing into more consulting businesses, rather than just law firms.

*Mitch:*

Well I think this is about bringing the fun back into law. Because people have a preconceived notion of law, that it will be always exciting and all that sort of thing, and of course that's not true, it's not 'Suits' all the time!

But I think if you're forced to look at how we can do things differently and have that constant engagement with the client... That's what gets me really excited. It's "Okay wow, how can we make this fun?" And certainly the millennial generation really likes this. "Oh wow ... I have the freedom to do that really?"

## **Legal Services: Where and how?**

*Brett:*

The clients' perspective is really one where

their world is changing a lot. Clients, especially after the GFC, had to do much more with much less and are constantly going through situations where the in-house legal department is subject to a budget and they're not allowed to exceed that budget. They've got to do more-for-less. Clients are looking for law firms that are going to respond to that I think. The more-for-less challenge. And if law firms don't respond to that, then they're going to move on to alternative providers I would have thought, Mitch. What's your view about that?

*Mitch:*

Yes, absolutely. There's so many opportunities now for clients to move in different directions that the law firms have to respond to that. It's very clear that the more-for-less challenge as you mentioned is a huge driver and it is absolutely mind boggling that we've created an industry where the client can do it cheaper themselves. You would never build a car yourself but that's essentially what we've done with legal - we've allowed the client to build the car themselves cheaper, better, faster - and that's just not a recipe for long term success. So whether you like it or not, whether you believe it or not, that's what's happening in the industry and that's where we have to go.

*Brett:*

And of course in my years, I've seen a lot of companies take the legal team in-house. Is that really a solution to the problem over a long term?

*Mitch:*

I think long term, all that happens is the client brings the problems that we have in a law firm internally. So it's a short term solution that

may get some traction for another 10 years or so until in-house clients start saying “Ah, we’ve just internalised the problems that we used to externalise and now we’re a bit bloated on that, we’re not as efficient, so now how do we fix that?”.

*Nathan:*

A more-for-less challenge exists whether between a law firm or in-house. Because if you have an in-house team doing the work, there is a cap on the amount of money you can spend on salaries. You can’t just keep throwing lawyers at the problem. That’s not the solution because that’s what the law firms have done in the past and in-house teams are going to face the same more-for-less challenge. It’ll look different and it will feel a bit different, but ultimately the same question is going to be asked by the finance team as to how much the legal team is then spending on say, wages, or spending on the small amount of outsourcing that they’re doing.

*Mitch:*

I think if you look at this strategically if you’re an in-house counsel, you’re a GC, is you really need to put your work into certain buckets. So there is the work that is high risk and core of your business, and stuff that is high risk and not core of your business, and so on and so forth. So you get to the point where your in-house team is only doing the things that is high risk and core to your business right? This is the essence of our being and this is what we do and everything else we find another solution to it.

The technology bit allows people who didn’t go to law school to skill up and do higher value

work, staying in the guard rails. You can even carve off some of that stuff to your business units and do it directly. So you never see certain contracts anymore because you built a system (or someone has sold you a system) that will allow the business team to just do that automatically so they never have to deal with legal again.

So you’re right, it’s an exciting time for in-house counsel to really start thinking about these issues in a much more strategic way, rather than in a knee-jerk way which is “just build my team”.

*Nathan:*

And law firms can either choose to be seriously left behind or leap frog and move into the future world - which is what Brett is talking about by being a business that isn’t just about a traditional bricks and mortar law firm, but rather being an overall business that offers many legal solutions.

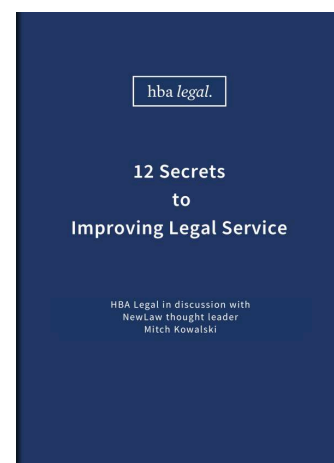
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This is an excerpt from “12 Secrets to Improving Legal Service: HBA Legal in Discussion with Mitch Kowalski” [Read or download the eBook](#)

[Mitch Kowalski](#)

is the author of

[Avoiding Extinction: Reimagining Legal Services for the 21st Century](#), and [The Great Legal Reformation: Notes from the Field](#).



# Four Questions in Legal Sourcing

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

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

The trade organization for legal procurement, Buying Legal Council (see [www.buyinglegal.com](http://www.buyinglegal.com)), recently released the results of its 2018 survey. The themes covered by the study were



- the impact of and the value realized by procurement professionals;
- partnering with law departments to deliver results;
- evidence of metrics, commitments to improvement, and of continuing education increasingly defining the market for legal services.

Some 153 legal procurement specialists completed the survey earlier year. Many of those involved on a full-time basis with sourcing legal services come from financial institutions, the insurance industry, pharmaceutical companies and global manufacturing. There are others still who specialize in the procurement of professional services such as IT, human resources or management consulting and who support the legal function. As a management consultant involved with RFPs for legal services on behalf of 75 companies since 1998, usually at the request of the



Chief Legal Officer, I have seen the contribution that procurement professionals bring to the table.

One chapter of the survey report addresses key benchmarks, particularly those which concern savings. The question posed was “How much, as a percent of total spending with legal service providers, do you believe your efforts have helped save the organization in the last year?” The responses averaged 14.6 %. When asked about target savings for 2018, the answer was 16.9 %. This is encouraging.

Yet, at least four questions remain for both procurement professionals and their law department clients. The first is “How does one measure savings”? There is good legal spend (transactions) and necessary legal spend (litigation). Are savings determined by the size of the discount, the number of hours worked, total legal expenses or some combination of each? Do we expect a company’s total legal spend in 2018 to be 16.9 % lower than its total legal spend in 2017 – effectively a comparison of absolute expenditures? The next survey should set out a single methodology for participants to use when calculating savings.

The second question relates to the use of alternative fee arrangements (AFAs) and pre-matter scoping, also known as legal project management and budgeting. The Buying Legal Council survey found that the three most effective techniques to deliver value in legal services procurement were “pre-matter scoping” of work, the negotiation of AFAs, and the creation of panels or lists of preferred firms. I would agree in every respect. However, it is not really possible to use AFAs, except on the most routine matters, without also relying on

detailed matter budgeting by the law department and their law firms as a pre-requisite. Procurement and legal professionals should be scoping entire portfolios of legal work with variables that include legal specialization, the number and types of matters together with their complexity levels, and the overall hours anticipated per year for each jurisdiction of interest to the company.

This scope of work should then make its way into RFPs, whether these be invitational or competitive. It then becomes possible to align the financial incentives for the law firm with those of the law department and to do so at a predictable price for all types of work. Failure to do so relegates AFAs and matter scoping to routine work. Serious savings invariably stall for a company after 10 years of RFPs when anchored in some variation of hourly-based fees. The next survey should ask about the extent to which the entire portfolio of legal work is scoped and then sourced on a non-hourly basis.

Our third question arises from the report finding that the top three goals for procurement professionals in 2018 were ranked as

- better capture and analysis of spending data
- reduced legal spending
- improved management of legal work

These are worthy goals. It makes perfect sense that better data capture and analytics be ranked first. Many companies that have had commercial systems in place for years to receive, analyse and process legal invoices are still missing half of the data. For the most part, they rely on matter management systems that are very precise at spotting unauthorized

tasks, hours, rates or fee-earners on bills. They are not used to sort matters by complexity within a specialization. And they are not used to examine and compare law firm staffing profiles and practice patterns against each other and against a standard. Yet, they could be adapted to do so. The next survey should inquire about these capabilities and the extent to which this type of analysis takes place as a way to determine appropriate (non-hourly) fee arrangements.

The survey report is eloquent about the evolution of collaboration between legal procurement and legal operations. This makes sense from the point of view of data capture, data analysis and the management of legal sourcing processes. In my experience, the selection of firms for critical and sensitive transactions, significant litigation and regulatory work tends to be relationship and professionally-based. It is rarely the object of a procurement process. Either these firms are always on the preferred list or they are selected regardless of the roster. The next survey would do well to

inquire about the extent to which this type of work is incorporated into the formal sourcing process and whether it is priced on other than an hourly basis. Many hard-won savings in legal procurement are eclipsed by exceptional, expensive “bet-the-company” work.

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### About the Author

Richard G. Stock, M.A., FCIS, CMC is a partner with Catalyst Consulting and is based in Canada. The firm has advised corporate and government law departments in 20 countries since 1996. Clients include: Shell, Heineken USA, The Judge Advocate General, Pearson Education, Toyota, SNC Lavalin, Bombardier, National Bank of Canada, TD Bank, Estée Lauder, Intact Financial Services, Ontario Power Generation, DocuSign, Charter Communications, United Steel Workers Benefit Funds, Air Canada, John Deere, Alberta Health Services, Disney, Fairmont, Wal-Mart, USAA, TransLink, Williams, IATA, the Department of Justice, Interac, the Government of Nunavut, and Turkish Airlines.

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The image displays three promotional banners stacked vertically. The top banner is for the 'WORLD Legal AI summit' held on 7-8 June in Barcelona, Spain, with the website [www.luxatiaiinternational.com](http://www.luxatiaiinternational.com). It features a scale of justice icon. The middle banner is for 'THE LEGAL AI FORUM' held on 18th-19th September 2018 in London, with the text 'JOIN THE LEADING EVENT FOR ARTIFICIAL INTELLIGENCE IMPLEMENTATION IN THE LEGAL SECTOR' and a 'FIND OUT MORE' link. The bottom banner is for 'BIPIG' with the tagline 'We Build Intelligence Infrastructure for Legal Organizations.' and a graphic of a keyboard and a network diagram.



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Eva Bruch

# The digital transformation of law firms

By Eva Bruch PHD, Founder of AlterWork

At a time when almost all we ever hear about is digital transformation, law firms are also starting to wonder what it means and whether they should start to go digital. So what does being digitally transformed involve?

Digital transformation means the use of technology and advanced technology in the firm's everyday work, orientated towards its strategy and looking to the future and to new technological developments.

Digital transformation becomes necessary in industries or sectors with a high level of commoditization. The legal sector, until just a few years ago considered to be highly artisanal, is showing firm signs of rapid development towards packaged, automated and commoditized services within the reach of all kinds of clients and budgets (Legal Zoom, Rocket Lawyer, Robot Lawyer Lisa, Partner Vine, Axiom Law, Lawyers On Demand, etc.). When companies like these,

that started from nothing and have expanded very fast, force the main players to adapt or die, the whole industry has to move, alarms start ringing everywhere and the process of digital transformation must begin.

In our experience, most firms have already taken steps of one kind or another in their digital transformation processes, however timid they may be. But the digital transformation process for the firm involves all its areas: from the production of the service and the way it is offered to clients to its marketing and sale. It covers all kinds of clients in the broadest sense: external clients, but also internal clients who are particularly important in the legal sector in relation to capturing and retaining talent.

### **Convergence between digital transformation, new technologies and innovation.**

Years ago, we used to apply technologies as the big commercial companies suggested them to us. They were basic technologies with functions which, although we now take them for granted, were revolutionary in their day. We are talking about word processing, e-mail and the first internet search engines.

Later, websites, file management programs and document managers were introduced, with a degree of document automation using templates and clause libraries, the computerization of judicial decisions and legal databases and so on. These important advances have already been implemented by most firms. Now, barely leaving us time to assimilate this, advanced artificial intelligence technologies are appearing, together with Big Data, advanced analytics and the internet of things, although

the practical application of these for law firms is not yet easy to see.

There is a substantial difference because it is no longer a question of buying or paying for a license to use these technologies, we first have to understand them, think how they can help us and decide whether the investment and functions are in line with the firm's strategy. And it is precisely here, in the firm's strategy, that digital transformation converges with innovation.

There is a first level of computerization firms must achieve to continue to be competitive in the market: implementing technology to reduce costs; improve response times to clients and provide a better, more satisfactory client experience; reduce production costs and store information; make lawyers' work easier and so on.

Once this first level has been reached, firms will have to turn to innovation to find creative ways of using the new technologies to allow them, for example, to computerize the client experience; stand out from the competition; automate processes to completely redesign the firm's services based, for example, on artificial intelligence algorithms if necessary, and so on.

### **The role of technology and strategy**

The technologies accompanying the computerization process range from the Cloud, Big Data and advanced analytics to artificial intelligence, mobile technologies and those associated with mobility, and the IoT. But it is not necessary to use or implement all of them. Nor must business models be changed to imitate successful initiatives filling particular market niches and meeting specific needs that might

be very different from our clients' requirements. For this reason, the digital transformation process must begin by analyzing both business strategy and the competitive environment around us.

If we take a look at our surroundings we will see how the sector, led by the big firms, even the Big Four, is moving forwards with two clear, common strategic thrusts:

- 1) improving processes
- 2) more flexible working environments

These two areas are the essential minimum that will be required of any firm to continue being competitive in the market.

Process improvement affects services and has a direct impact on the client (speed, efficiency) and on commercial profits (eliminating duplicated work and bottlenecks, improving the delegation chain, automating work, higher productivity, etc.). Flexible working environments, for which Cloud technology will be decisive, have a direct impact on lawyers (less need to come to the office, better quality of life, work-life balance, etc.). Both aspects are crucial not only in the relationship with the client but also in finding and retaining talent.

With this lowest common denominator implemented, each firm will have to move forward and develop a far-reaching differentiation strategy in the market that puts it one step ahead of the competition. Here, strategy, technology and innovation meet.

The firm's strategy sets the objectives to be achieved. It is essential that the technological tools it decides to use help achieve these objectives. The type of client and case, the working processes and the way clients are secured at a

firm will be decisive for choosing the specific technologies to be used.

### **The error of artificial intelligence**

Artificial intelligence is perhaps the technology we all have in mind when we talk about digital transformation. But we must not insist on using artificial intelligence simply because everyone is talking about it now, or because it seems that if we do not use it we are missing out on something wonderful, or because we will simply be left behind in the process of digital transformation.

Artificial intelligence is useful – tremendously useful – but it is not for everyone, nor is it within reach of all budgets. For example, law firms produce large quantities of texts, or they analyze them on behalf of clients. This is an activity that takes up a lot of time and requires large teams of professionals. When the number of documents to be analyzed is high, data extraction and analysis are very useful. However, these technologies require tens of thousands of documents and an intense period of training to achieve satisfactory results.

Artificial intelligence must be used to solve specific problems; under no circumstances must it guide the firm's strategy.

### **Conclusion**

Firms must concern themselves with their digital transformation processes now to continue to be competitive in the market and attractive for their clients. The first steps to be taken in these processes must be orientated towards achieving the first level of computerization.

Many firms will be satisfied with this necessary and basic stage of digital transformation.

Others will want to move on to the second level, or they will be pushed there by their competitors.

When this happens, it is important not to make the mistake of wanting to implement all the technology that is being talked about. It will be essential to align the firm's strategy with certain well-chosen technologies meeting the real needs of its clients and professionals. It will therefore be fundamental to talk to both groups.

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#### About the Author

Eva has a Degree in Law, a PhD in Communication from the UAB (Autonomous University of Barcelona) and an MBA from EADA Business School. As a lawyer, she worked with Morison ACPM and Bufete Pi Costa and at a technology based Legal Process Outsourcing firm.

Eva is Founder of [AlterWork](#), a legal management consulting company with a focus on technology and innovation.

She is a teacher at the UPF (Pompeu Fabra University-Barcelona) and ESIC Business School. Professor of Marketing for the Master for Access to the Legal Profession at the Central University of Barcelona.

Eva is the author of: "Tendencias, Marketing e Innovación en el sector jurídico" (Ed. La Ley) and co-author of "Reflexiones sobre la importancia de la gestión en los despachos de abogados" (Ed. Thomson Reuters) and New Law New Rules: a conversation about the future of the legal industry (Beaton Capital).

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## Facing the Challenges of the Global Legal Industry

Mark Cohen and Eva Bruch talk about what's broken within the legal industry around the world.





A grayscale background image of a man, Mo Zain Ajaz, wearing a suit and tie, looking directly at the camera. The image is faded and serves as a backdrop for the text.

# Lex360s' Mo Zain Ajaz and LegalBusinessWorld launch new service 'Ask Mo!'

Get answers on the business of law from various thought leaders. Please send in any questions you have around the business of law and legal operations. In cooperation with LegalBusinessWorld, Mo Zain Ajaz, GC and Global Head of Legal Operations at National Gris and Founder of LEx360 will answer your question together with thought leaders in the legal business.

Get the best answer to your question!  
*(Read the article on page 72)*

**Deloitte.**



**A changing world requires a  
new approach to law**

By Deloitte Legal

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Cloudesley Hobbs

# What is a Bitcoin legally?

By Cloudesley Hobbs, Lawyer and Chief Legal Officer of Dominion Bitcoin Mining Company LTD

## What is a Bitcoin?

Imagine being able to send money around the world and being able to verify the transfer of those funds with complete certainty in 10 minutes. You could send remittance payments back home to Jamaica, Timbuktu, or the Philippines without middlemen like Western Union charging you any fees. You could hold your wealth in a “currency” that is safer than a traditional bank, capable of surviving local regime changes, war, natural disasters, and even the deflation of the value of your nations’ own currency. Well that all exists - it’s called Bitcoin and you can access it with a smartphone from virtually anywhere on the planet. It is this unquestionable utility of Bitcoin that has driven its value up from mere pennies to over \$12,000 CAD and driven its market cap in excess of \$130 billion USD.

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*“Bitcoin is the most sound money in the entire world... It’s by definition the perfect deflationary asset. It has a fixed supply and a permanent increasing demand and a decrease in its inflation characteristics.” Johnny Dille, Blockstream*

This may be the first you've heard of Bitcoin, but the estimated four billion unbanked people of the world are beginning to take notice of Bitcoin too. The adoption rate of Bitcoin makes it among the fastest growing currencies on the planet. No longer will the unbanked masses have to carry their wealth on their person in the dangerous streets of Somalia or in the other more dangerous war-torn regions of the world. They can store it on the "cloud" or more precisely on the Bitcoin blockchain and access it when they need it to do peer-to-peer transactions on the spot with their cellphones acting as virtual ATMs.

In Canada and other developed nations, people are jumping on the Bitcoin bandwagon too and point-of-sale Bitcoin machines and ATMs are beginning to appear here and there. Average joes are not the only ones embracing Bitcoin either. Since 2014, institutional investors have taken note and now the likes of Goldman Sachs, JP Morgan Chase, and other investment bankers are buying up Bitcoin as an investment. It has an investment performance rate of over 780% average annual growth for the past four years, making it simply too good an investment for them to ignore. The Bank of Canada has even drafted a working paper that contemplates the world shifting to a Bitcoin Standard, similar to the Gold Standard that existed in much of the Western world before World War One.

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*"Of the approximately 700 cryptocurrencies in existence today, Bitcoin is by far the most well-known, and its use as a medium of exchange has been growing worldwide."*

Bank of Canada Staff Working Paper 2016-14, March 2016, A Bitcoin Standard: Lessons

*from the Gold Standard, by Warren E. Weber*

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You probably first heard of Bitcoin because it was something criminals were using. Well that's true too. It provided them a means to do secure, irreversible, peer-to-peer transactions around the globe, while avoiding banks and other authorities, but the Bitcoin blockchain also recorded every transaction on a publicly available distributed ledger (the blockchain), which U.S. FBI agents have called an "evidence building machine", because it created a digital trail of breadcrumbs of every Bitcoin transaction those criminals used. In fact, the Bitcoin blockchain assisted the FBI and other law enforcement agencies in 2014 in the unraveling and arrests of multiple criminal organizations' money laundering schemes and has scared many savvy criminals away from the coin.

That sordid past is only a small part of Bitcoin's future, which has the potential to become the global reserve currency, perhaps one day knocking the American greenback off that throne. Today, Bitcoin has risen high above the other 700+ non-fiat virtual coins that compete with it and has become the *de facto* digital reserve currency of its ilk. As Bitcoin adoption grows, so will its utility and value. At the beginning of 2018, less than a tiny fraction of 1% of the population had ever owned a Bitcoin. The Senate of Canada Committee on Banking, Commerce, and Trade in 2015 pegged the adoption rate of Bitcoin in Canada at a mere 1/100<sup>th</sup> of 1% of Canadians, but for Bitcoin believers, it is only a matter of time before this disruptive technology overtakes the world and becomes just as ubiquitous as the Internet it rides on.



*“The Shift Card is a Visa debit card that currently allows Coinbase users in 24 states to spend Bitcoin both online and at physical points of sale at more than 38 million merchants worldwide.”* Giulio Prisco, “Coinbase and Shift Payments Introduce a Visa-branded Bitcoin Debit Card That Works Everywhere Visa is Accepted,” Bitcoin Magazine, 24 November 2015.

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### **What about the Blockchain?**

The revolutionary technology of the blockchain is what Bitcoin is built on. The blockchain allows for a permanent non-fungible distributed ledger to act as the bank for Bitcoin by tracing and tracking every transaction of Bitcoins from their genesis to where they are now. The Bitcoin blockchain was designed to prevent double spending of bitcoins and act as both a payment system and a bank account. It essentially acts like a giant Excel spreadsheet or accounting book, but unlike its predecessors, it can only ever be added to and never erased, revised, or backdated. Further, every entry is verified by a consensus of blockchain miners before it is posted to the blockchain. This disruptive technology of the blockchain has a plethora of other uses too, just like any spreadsheet does.

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*“Today, blockchain—the technology behind the digital currency bitcoin—might seem like a trinket for computer geeks. But once widely adopted, it will transform the world”* says Ginni Rometty, CEO of IBM.

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Blockchain technology has the potential to be adapted for use wherever permanent and

verifiable records are needed, from land titles to health records, even to NASDAQ. Soon it will carry vital statistics and health records for millions, if not billions of people. In the U.S. for health record providers to comply with the *21<sup>st</sup> Century Cures Act*, there is simply no other feasible technology available.

Additional uses for the blockchain include self-executing ‘smart contracts’, Initial Coin Offerings (ICOs) a digital alternative to IPOs, and even things like email service verification and spam blocking. The growth of potential alternative applications is creating a technological and investment boom that is rivalling and surpassing the Internet boom of the 1990s. This is the technology that is the next generation of the Internet as it transforms from an Internet of Information to an Internet of Value in the words of *Blockchain Revolution* authors Don and Alex Tapscott.

The Bitcoin blockchain is the first true blockchain. It was invented by Satoshi Nakamoto to solve the Byzantine Generals Problem of assuring the veracity of an order reaching the troops without relying on trust or potentially duplicitous generals. It does this by relying on consensus mechanisms of multiple parties to assure the veracity of a command. The greater the number of parties involved in making that consensus, the better and more reliable the blockchain becomes. Today, there are millions of miners working to validate and secure the Bitcoin blockchain.

For Bitcoin to function as a fully autonomous currency and payment system, the consensus mechanisms built into the blockchain have to be not just reliable, and solve the double spending problem. It also had have an extremely robust encryption system.

The double spending problem arises from using digital information as an asset, like Bitcoin. A Bitcoin, being digital data, can theoretically be infinitely copied without loss, with every digital copy being completely identical to every other copy. This makes it seemingly impossible to prevent counterfeiting and double spending.

This is where the underlying blockchain technology behind Bitcoin fits in: it links every bitcoin to a serial number and tracks every movement of that Bitcoin from wallet to wallet. The movement doesn't happen until it's verified. When a transaction happens, it is first verified by tracing the Bitcoin to assure it was indeed in the spender's user wallet and that there is a verifiable tracing trail from the origin of that coin to that particular user's wallet. Then it records its exit from that wallet into the recipient's wallet. It timestamps every transaction and only the first transaction is valid and verified. It stores these transactions and verification trails in blocks that are verified by computers called "miners".

"Miner" is the term used to describe dedicated computer-processing power to trace transactions and update the blockchain. The reason it is called "mining" is because there is a finite amount of bitcoins, just like non-renewable natural resources. There will only ever be 21 million bitcoins and that's by design. The Bitcoin algorithm not only sets the amount of bitcoins, but it also determines the rate at which those bitcoins are released until the limit of 21 million bitcoins is reached. That point is estimated to be in 2140, when the reward paid to miners drops to a fraction of a satoshi (i.e. 0.00000001 or one hundred-millionth of a

bitcoin). Bitcoins are first released by the blockchain to miners as payment for verifying transactions that build the blocks in the blockchain. When the Bitcoin was first up and running between 2008 and 2012, a miner(s) could get a reward of 50 bitcoins for their work securing the network, but those rewards halve approximately every four years. From 2012-2016, the reward was 25 bitcoins. Currently, the reward is 12.5 bitcoins, and in 2020, it will be 6.25 bitcoins...then 3.125...and so on and so on. Following Zeno's paradoxes, a finite thing can be halved an infinite number of times, so the end goal of 21 million will never actually be reached, but the rewards will become infinitely smaller over time. By 2040, about 99.9999999% of those 21 million bitcoins will be released. As of December 2017, 16.78 million bitcoins have been mined and approximately 22% remaining to be released.

Miners are also rewarded for their service by transaction fees in addition to the reward provided directly from the Bitcoin blockchain. It should be noted that Bitcoin transactions fees are voluntary. A person attempting to make a transaction can, if they desire, include any fee or none at all in the transaction itself. Adding a transaction fee can get your particular transaction processed faster as miners usually include transactions with the highest fee per byte rate first in their processing cues. In December 2017, a Bitcoin transaction fee of 200 *satoshis* per byte was enough for a typical transaction to go through in about 1-4 blocks (10 to 40 minutes). While transactions can be verified in approximately 10 minutes, some transactions can miss their opportunity to ride on a block for hours if miners ignore it. All globally occurring transactions when they are

processed (or “hashed” as the miners call it) are recorded on the blockchain ledger by various miners using their own software and hardware that is designed to be compliant with the Bitcoin blockchain and its proof-of-work and proof-of-stake protocols and platform.

*A satoshi is currently the smallest unit of a Bitcoin recorded on the blockchain. It is a one hundred millionth of a single bitcoin (the hexadecimal place .00000001) 100 Satoshi equals roughly 1 cent CAD.*

Satoshi Nakamoto gave his invention of the Bitcoin blockchain to the world for free as an open source code and it is the global open-source community that has improved it into what it is today. Many individuals, companies, and even governments have Bitcoin ‘mining’ operations and these can range from the hobbyist to giant linked networks of super-computing facilities called mining pools. For a miner to get their reward, they have to be the first to verify all the transactions in a block or be part of the mining pool that is first. A certain amount of randomness has been built into the system to assure no one miner or collective mining pool can truly dominate the system and reap all the rewards. You can view who or what miners have won the reward by viewing it live on a blockchain explorer like <http://blockchain.info>

### **The Legal Issues: Legally defining Bitcoin and why that matters**

With millions and billions of dollars pouring into bitcoins and other competitive non-fiat blockchain-backed virtual currencies, there is

also a surge of criminals and Internet commenters chasing those dollars. Disreputable elements including terrorists, criminals, politicians, investment bankers, and fabled Nigerian princes all have their hands deep in the blockchain’s pot of coins. Legislators, law enforcement, and securities regulators have also come late to the game and are all trying to catch up, as they do with every other emerging technology. The problem is some of the most basic aspects of these new digital assets have yet to be legally defined. The lack of clear legal definitions has led to contradictory guidance statements and legislation.

Canada has been one of the first movers in this sphere, but they are not alone. Regulators and legislators in Japan, Russia, the U.S., Germany and even Iceland are all trying to understand this emerging technology to amend and draft new rules and legislation. While Canada has already given royal assent to the *Proceeds Of Crime And Anti-Money Laundering (Amendment) Act* in 2017, it has done so without first solving the legal riddle that is at the heart of the issue – What is the legal definition of a Bitcoin? --Is it money? --A commodity? --A security? --A service? --a good? --or something entirely new?

If it is defined as “money” or “currency”, then it is a matter for federal jurisdiction. If it is a security, property, commodity, or an entirely new asset class, then it is matter for provincial jurisdiction. In my opinion, Bitcoin was designed to be a currency to be used for payments and transactions. There is a legal definition of currency, but in my opinion, Bitcoin does not fit that bill, at least not yet. Federal regulators have used the term “digital

currency” and “virtual currency” to describe bitcoin, but conversely, the Canada Revenue Agency (CRA) has called it both a good and a commodity.

The current case law coming out of the U.S. has grappled with this question and also has come to contradictory findings. Although, recently the tide has been shifting towards calling bitcoin a commodity, it remains an unresolved issue.

The issue is even more complex when legislators tried to use blanket terms, like “virtual currency”, to cover all sorts of blockchain-supported digital tokens. Ethereum, one of Bitcoin’s main competitors is built on a different and separate blockchain that was designed to specifically manipulate metadata and process smart contracts powered by its native coin, ether. Ether represents a unit of processing time on the Ethereum blockchain and is sometimes referred to as the “gas” for fuelling Ethereum based programs, called “smart contracts” or DAPPs (decentralized applications). In this case, Ethereum coins are not a currency or a commodity, but rather a service agreement or a security.

You can see how this lack of a legal definition is a big deal and will affect everything from tax filings to crowdfunding. In other jurisdictions, the lack of clear definition has led to the dismissal of criminal and anti-money laundering cases and charges dropped despite evidence to support a conviction.

In Canada, the legal definition of Bitcoin also determines who has the jurisdiction to deal with it. If it is currency or money, then it the

jurisdiction of the federal government; but if it is property or a commodity, then it becomes the jurisdiction of the provincial governments. The division of powers is set out in *The Constitution Act, 1867*.

The failure of Canadian legislators and the judiciary to definitively answer the question of defining what a bitcoin is has not only left potential crimes unpunished in Canada, but it has also potentially left our regulators and civil servants exposed to constitutional challenges and personal liability in *ultra vires* actions for damages. Before any Crown actor can legislate or deal with a thing, they must first have the jurisdiction to do so.

Unfortunately, rather than tackling this question head-on as step one, our legislators have instead come at this backwards by imposing tax obligations and anti-money laundering laws to something that may not be “money”. Provincial securities regulators have also walked into the fray, claiming some virtual currencies are securities. Revenue Canada has called them property, goods, and commodities. They can’t all be right.

The second misstep is that regulators and legislators having been scrambling to stretch the interpretation of their existing and unrevised statutes to capture “virtual currency” or “digital currency” dealings. However, just like highway speed limits lack the reach to force planes flying overhead of a highway to travel at their posted speeds, so may unrevised existing banking, securities, and tax regulations fail to cover Bitcoin dealings. Further in Canada, per the *Currency Act*, the only real “virtual” or



“digital” currency is the Canadian penny, so the loose use of vague blanket terminology may also result in further dismissals at court.

As Bitcoin adoption grows it is becoming more and more imperative for our government to react. It’s my opinion their first step is to craft an appropriate legal definition of Bitcoin and only then can they decide the issue of jurisdiction and legislate appropriately.

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Cloudesley practices law in Saskatchewan where he has worked in both private practice

and with the Saskatchewan’s Ministry of Justice’s Civil Law Division, dealing primarily in litigation. Cloudesley has represented bitcoin clients before tribunals, the Court of Queen’s Bench, and the Court of Appeal.

He is the first lawyer in Canada to successfully represent a bitcoin company against the Securities Commission of Saskatchewan.

In addition to his legal practice, he is also an artist, was the Resident Artist for University of Regina’s Faculty of Media Art and Performance in 2016, and is a courtroom artist. Cloudesley has been working with the blockchain industry for approximately 4 years

[Recent courtroom sketches of R. v. Gerald Stanley.](#)



# For the Best eDiscovery Results, Pair Human Expertise and Sophisticated Technology

A Roundtable Discussion with Jeffrey Fowler, O'Melveny & Myers LLP, Jeffrey Greene, Greenberg Traurig LLP, Aaron Lewis, Covington & Burling LLP, Lon Troyer, H5

*Jeffrey Fowler **JF**, Jeffrey Greene **JG**, Aaron Lewis **AL**, Lon Troyer **LT**.*

## **Roundtable set-up:**

As data types and sources proliferate, the eDiscovery process in litigation and investigations becomes ever more challenging. It now requires a unique combination of human expertise and sophisticated technology to wrest the necessary facts from massive data piles to support the narrative or to find the key evidence that can make or break a case. In this roundtable, experts who face these challenges daily discuss the need to leverage both human and technological intelligence to get the best results.

1. *In litigation or investigations, finding evidence—especially in large matters—is becoming ever more challenging as the*

*sources, volume and complexity of potentially relevant data has exploded. Use of technology to address this has pretty much become an imperative. How has this reality affected your role or the role of counsel in general?*

**JG:** It has transformed the skills necessary to be a successful lawyer. In order to advise clients, lawyers must know how to efficiently locate the evidence they need across numerous, ever-changing data sources. This requires that lawyers be more proactive than ever to identify and preserve relevant data. It also means they must work in conjunction with vendor partners who are experts on the data sources at issue in their cases. Notably, however, we've not yet identified a technology solution that can replace the subjective judgment that makes for a successful lawyer.

**JF:** The standard of care has evolved. Lawyers are no longer able to defend their efforts by shrugging their shoulders and saying they did the best they could. Document discovery now requires specialists to help craft reasonably diligent and efficient information retrieval strategies that we can defend. The role for those of us who practice eDiscovery is not only to craft these strategies; we also must be able to stand up and persuade courts, regulators, and adversaries (often by citing to tangible evidence) that our efforts meet the evolving standard of care.

**AL:** The strategic eDiscovery-related decisions that counsel make at the outset of an investigation have become more important because of the effect these decisions have on an investigation's efficiency and accuracy. It is virtually impossible to scrutinize the data volumes we see today without leveraging technology. This technology is a benefit for counsel because it allows us to complete tasks that humans are less efficient at, such as searching for key terms in a large set of documents. As a result, the importance of the partnership and collaboration between lawyers and eDiscovery vendors has grown stronger over time.

**LT:** This is consistent with our experience. Attorneys are increasingly seeking external technological expertise as their challenges become more complex and the solutions increasingly sophisticated. Most third-party software available to them has been designed to conduct manual review in a linear workflow that simply buckles under the weight of today's data volumes. We've grown even more consultative working with counsel to provide a variety of analytics and techniques, in addition to

technology-assisted review that can help them. These solutions are drawn from linguistics, data science, statistics, and artificial intelligence (AI).

2. *Lawyers and their clients are faced with a number of ways to go about data exploration, from manual document review to machine learning algorithms. Do you think there is a wider acceptance now of technology-assisted review (TAR) and other advanced methods of data exploration? What has been your experience with such approaches?*

**JG:** It's definitely more widely accepted than it was even five years ago, in large part due to courts' express approval of such methods of data exploration. But lawyers must be strategic about which method of review is appropriate for their case - there is no one-size-fits-all document review methodology. This means, at the outset of a case, they must gain an understanding of the types and potential volume of data that may require review. My experience is that TAR significantly increases efficiency and reduces costs when employed across an appropriate data set, but lawyers sometimes fall back to linear review in a "belts and suspenders" approach, resulting in a costly and inefficient process.

**AL:** Yes, TAR and data exploration have become more widely accepted as both clients and regulators have become increasingly comfortable with their use in recent years. Both appreciate the ability to quickly identify key documents and gain a deeper understanding of the most relevant facts early in the life of a matter, in order to inform strategic decisions.



**JF:** Agreed. I never understood what all the fuss was about. For decades before TAR made a splash, lawyers used various technologies to aid document reviews. Discovery compliance hinged on imperfect scans of paper documents, patchy deduplication, and buggy concept clustering. None of these advances were the subject of judicial debate. It was not until parties sought affirmative approval of TAR that any of this drew attention. In my view, these efforts to legitimize TAR—and the protracted negotiations that plagued acceptance—stunted its use. Fortunately, now that the TAR debate has settled down, parties are more apt to accept it.

**LT:** We've actually been surprised at how long it has taken the profession to embrace it. We're fortunate to have partnered with law firms that were looking to technology and related expertise to help them drive down costs while improving the quality of responsive reviews, so they could devote their time to developing the narrative and legal strategy. As more vendors have entered the space, it's been exciting to see new technologies and workflows emerge, and the competition encourages us to keep experimenting and innovating to develop new capabilities and technologies.

3. *Technology doesn't live in a vacuum – there has to be some human involvement. But there may not be a shared understanding in the best way to combine the two. How do you think about the intersection of legal and technological expertise when it comes to discovery or fact-finding?*

**JG:** The intersection of law and technology is

a complicated one. There is a greater need for legal professionals with the expertise to properly identify the best technology solution for a particular task and to effectively manage its use, but until we have a technology-savvy cadre of lawyers at our disposal, our vendor partners will likely have to provide the necessary technological expertise and oversight. Law firm legal technology hiring is on the rise (a good thing), but lawyers are notoriously slow to adopt new technology (a bad thing). Ultimately, the ability to explain the abilities and the limitations of new technologies is a key point for success in any eDiscovery narrative.

**JF:** We will always need well-informed (human) lawyers to supply the strategic vision. The question is whether lawyers are the humans best equipped to perform the data mining exercise. At what point does the task require something other than legal expertise? As the world's data continues to expand and morph, data scientists are becoming more crucial to analyzing it. Someday soon, relying on lawyers using kitschy-named software to retrieve key evidence will be like hiring me to photograph your wedding using my smart phone. Sure, I can do it. But it will probably be safer (and even less expensive) to hire a photographer. In my view, the team best equipped to locate responsive documents is not limited to lawyers and litigation support personnel: it includes information retrieval experts who know how to leverage technology to obtain the most accurate, cost-effective results.

**AL:** Exactly right. The legal expertise allows for the effective deployment of the technological expertise. If you don't have a strong grasp

of the law, you don't have as strong an understanding about what facts would be critical for your case, and thus would not be able to consider how technology can help you find those facts quickly and efficiently.

**LT:** In my former life as an academic, I was always drawn to interdisciplinary work that crossed departmental boundaries in order to bring many perspectives to bear on a given subject. What's most exciting about the legal technology space today are the interdisciplinary conversations taking place.

When a lawyer, a linguist, a data scientist, and a statistical expert sit around a table talking about the best ways to interrogate an incoming production, they come up with a better strategy than any single party would on their own. Collaboration like that asks each expert to share insights from their specific domain and provides an opportunity for that expertise to be informed by others' perspectives. It doesn't ask lawyers to become technological experts or linguists to become lawyers, but in the end both develop a familiarity and facility with each other's perspectives that reap major rewards.

4. *One of the hardest things to do today is target specific evidence – think case narrative support and smoking guns – in large data populations. Lawyers know it when they see it, but what part can technology play? What do you think is the best way to leverage both human and technological intelligence for this kind of effort?*

**LT:** Not only do lawyers know it when they see it, they are great at postulating what it

might look like, where it might live, and all of its possible flavors. The best way to leverage human and technological intelligence is to deploy *both* to quickly find documents that fit the profile. Instead of the old error-ridden and inconsistent issue-coding approach that used to prevail, advanced technology in the hands of experts allows them to target with great precision what lawyers are most eager to find. It flips the old model on its head: instead of applying a static set of criteria that will be applied imperfectly to all documents, the task is to prioritize the specific identification of key documents from the very start of the process.

**JF:** The goal of any evidence-targeting project should be to put only the most useful evidence in front of the lawyers. Technology can help, but equally important is a well-designed plan for how to use the technology to achieve the project's goals. Humans who understand the technology and its limitations are best equipped to deliver the documents that the legal team should see.

**AL:** I agree. The best way is for very smart lawyers to help design the plan for deploying technological resources to find the critical evidence. The time and effort spent upfront to do so yields incredible dividends later in the life of a matter.

**JG:** Today, finding the "key" documents is no longer an exercise in finding a needle in a haystack, but rather finding a needle in a stack of needles. But perspective is important. We recently had a client say he had seen a "terrible" document that prominently included the word "pandemonium." Even with a variety of tools and very targeted approach, the lawyers

couldn't find the document. It was eventually found using a more traditional TAR approach, and to the client's dismay, it didn't even include the offending word. The simple lesson: when using technology, avoid seeing the tree for the forest and remember to be flexible in your approach. Technology is not a magic bullet and no technology exists (yet) that can magically uncover all of the smoking guns at the push of the button. In the end, technology needs a legally-trained brain to make it work.

5. *Do you think the increased interest in AI by corporations is having an impact on the expectations your clients have about your use of technology, or the way you interact with technological experts, when it comes to matters of discovery and evidence gathering?*

**LT:** Absolutely. Many corporations have seen how AI technologies are transforming core business processes, and that has made them increasingly interested in how AI can be used to transform litigation. But they have seen firsthand that the successful adoption of such technologies hinges on the services and expertise that are delivered with them. They've seen that information governance or knowledge management tool that cost millions and lies dormant because the software vendor made no provision to provide the expertise necessary to maximize the ROI. Corporations tend to have a well-rounded view not only of the possibilities of technology, but also its limitations.

**AL:** I'm not sure that interest in AI is the driving force, but it is certainly the case that clients expect us to conduct fact development projects as efficiently as possible. Clients rec-

ognize that the volume of potentially relevant information has exploded, but they rightly expect their lawyers to deploy every tool available to manage the cost of learning the facts in order to defend the client's interests.

**JG:** The hype around AI has, to a certain extent, resulted in increased expectations from some clients relating to capabilities of eDiscovery technology solutions. For sure, the technology is great, but understanding what it can and can't do is critical. No matter the technology, significant levels of human interaction (subjective attorney analysis, for example) are still necessary and required, so it is important to set expectations regarding cost and time.

**JF:** There is definitely more of an appetite for leveraging technology to retrieve documents, and I think the emergence of AI—which someday soon will generate a whole new sphere of electronic evidence to be produced in discovery—supports the thesis that document production is no longer a general practitioner's game. It requires a specialized understanding of how technology and information retrieval science interact with our legal obligations.

6. *Do you see differences between American and European firms in their daily operation and how they develop, plan and implement (innovative) tech strategies?*

**JF:** I see innovation everywhere, including in American and European firms. American discovery requirements are traditionally more arduous, and so Americans have had a bit of a head start on e-discovery. But the rest of the world has caught up quickly, offering many

opportunities to apply our expertise to legal problems all around the globe.

**LT:** The scope of discovery or disclosure tends to be more limited in Europe generally, and in some countries discovery as understood in the US, with large-scale disclosure of documents, doesn't take place at all. As a result, there's a common perception that European firms are behind US firms when it comes to innovative tech strategies because the need for and adoption of technology-assisted review came later. What we've seen, however, is that European firms seem to be as, if not more, committed to identifying and adopting new technologies, with some going as far as investing in new start-ups, creating internal tech incubators, and formulating business strategies that place new technologies at the center, which you don't hear much about in the US.

7. *The legal profession is changing and professionals need to be more business and tech savvy. What do you see as the biggest challenge for the legal professional in the next five years?*

**JG:** There is no doubt that technology has become a game-changer for litigation, and attorneys and clients have experienced significant cost and efficiency savings as a result. Attorneys must be knowledgeable about new technologies that can reduce cost and increase efficiency. Their challenge will be how to learn and effectively utilize them.

**AL:** I think the challenge will always be about how we can serve our clients most efficiently to achieve good outcomes for them and add value to their business.

**LT:** The biggest challenge is also the biggest opportunity: how to chart a rewarding legal career when budgets keep shrinking, data volumes keep growing, and client demands keep increasing. Developing command of the case law, fluency in the lingo, technological acumen, and a rich network of trusted partners and advisors is a good way to start becoming future-proof.

**JF:** I believe our biggest challenge is accepting the non-lawyer experts' role in our profession. Particularly in big-ticket litigation, we will be most effective if we yield non-lawyer tasks to experts, including project managers, budget analysts, experts in information retrieval, data analysis, communications, and theme building. Lawyers are often slow to adapt to new modes of practice. Those who embrace the ever-changing technological landscape—and leverage it to improve their law practice—will emerge victorious. —→

Note:

The views and opinions in this article are those of the authors and not of their respective firms.



## About the Participants

### **Jeffrey Fowler, O'Melveny & Myers LLP**

Jeffrey Fowler, Esq. – O'Melveny & Myers, is Chair of O'Melveny's Electronic Discovery and Document Retention Practice Group. A seasoned general litigator, Jeff's clients engage him to serve as coordinating discovery counsel in complex, multi-front litigations and government investigations. He also is one of the country's few practitioners with deep, hands-on experience litigating evidence spoliation and other e-discovery issues of first impression.



### **Aaron Lewis, Covington & Burling LLP**

Aaron Lewis, Esq. – Covington, is a member of Covington's White Collar Defense and Investigations Practice Group. He represents clients in sensitive, high-stakes internal investigations and government enforcement matters. Mr. Lewis returned to Covington in 2015 after six years of service in the Department of Justice, first as a Counsel to Attorney General Holder, and later as a federal prosecutor in Los Angeles.



**Jeffrey Greene, Greenberg Traurig LLP**

Jeffrey W. Greene, Esq. - Greenberg Traurig, is a shareholder in Greenberg Traurig's Litigation Practice in the firm's Boston office and is Co-Chair of the firm's global eDiscovery & eRetention practice. Jeff is an experienced trial lawyer who focuses his practice on litigation and investigations that involve complex legal, factual and data management issues. Jeff has served as eDiscovery/information governance counsel for more than a dozen Fortune 500 companies, responsible for coordinating the overall strategy for records retention as well as for preservation, collection, review and production of ESI in thousands of state and federal lawsuits as well as government investigations.



**Lon Troyer, H5**

Lon Troyer, Ph.D., H5 is Managing Director of H5's Professional Services Group, which harnesses H5's scientific and information retrieval expertise to help clients with complex litigation and compliance challenges. He leads H5 teams in the identification of key documents and fact patterns that help H5's clients advance their case strategies in high-stakes matters, including antitrust, IP, white collar, FCPA, consumer products, and internal and government investigations.



**COMING SOON**  
From Thought Leader Patrick J. McKenna  
The 2018 Must Read on Leadership

# Leadership

## *What's Next?*

Lessons From The Trenches  
By Patrick J. McKenna

### PART ONE:

- In The Trenches With Colleagues
- Become A Good Coach To Your Colleagues
- People Will Follow Your Example Not Your Advice
- Ask Really Good Questions
- Your Recipe For Adding Value
- Qualities of Leaders You Want On Your Team
- Stretch Their Comfort Zone
- Always Give Feedback
- Get The "But" Out
- Why Annual Performance Appraisals Don't Work
- You Get Exactly What You Expect
- Is Your Leadership Style Emotionally Attractive?
- Five Questions To Gauge Your Leadership Effectiveness
- Effective Leaders Are Not Necessarily Nice
- When Leaders Need To Help Underperformers
- Avoid Tolerating Mediocrity
- Don't Forget Your Star Performers

### PART TWO:

- In The Trenches With Your Team
- Best Practices Aren't Always Best
- The Secret Sauce: Being Distinct Is Better
- Your Team Can Never Be Something The Leader Is Not
- The Myth of Visionary Leadership
- Focus On Innovation, Not Fixing Problems
- Three Little Questions To Stimulate Innovation
- Create Your 'Stop Doing' List
- The Hurdles to Initiating Change
- Eight Undeniable Truths About Change
- The Most Common & Wrong Approach To Change
- Seven Advantages To Having A Sounding Board
- Where Is Your Leadership Attention Being Directed?
- Signal What You Value As A Leader
- Six Great Leadership Nuggets I've Overheard
- Inquiring Leaders Want To Know
- Be An Enthusiastic Change Agent

*This eBook is expected in June. Check out our Library for the online and a downloadable version*

# Legal Leadership

## the Good, the Bad and the Ugly

By Claire E Bibby, Senior In-House Lawyer & Non-Executive Director, Speaker & Mediator



Workplaces are stressful. There's nothing terribly earth-shattering in that comment, I know. But throw into the mix a chisel of lawyers, working on highly pressurized, often decidedly complex issues, within an adversarial environment, regularly accompanied by tight deadlines, and there's the potential for a problem. A big problem. Add to the mix in lawyers' personalities, our propensity to be workaholics, the nature of the people that we work with, the status of our physical and emotional health, our personal relationships and the inevitability of major life changes happening at the drop of a hat. Then layer upon that our clients who rely on us to protect their legal position and carry the burden of their emotionally charged problems, while at the same time facilitating the resolutions they seek. Long hours are expected of us, and by some, are even seen as a mark of our success. Our spouses and families, grow to understand that we work in a tough environment and in many instances, they watch us as we make things even tougher for ourselves. In short, our time is focussed on solving

other people's problems, regrettably often at the expense of ourselves. But there's only so far that you can stretch a rubber band, right?



For a bunch of very Intelligent people, are we sometimes so caught up in our own world that we miss the signs that something's not right within either ourselves or our people? While we often expect perfection of ourselves and our peers, it should ultimately come as no surprise even to the brightest of our bunch, that as a profession, we suffer disproportionately higher levels of psychological distress than almost any other profession. It's a problem that's not lost on our youth - young lawyers are opting out of law at alarming rates.

Stress is an all-encompassing phenomenon, consisting of our physical, mental and emotional responses to life's changes and demands. We all experience stress every day and at various levels, and not all stress is harmful. Some stress can, in fact, be positive, challenging people to act in creative and imaginative ways. But when stress is chronic, it can be damaging and lead to serious health problems, which if nothing else, can turn a good lawyer into a bad one.

Depression affects more than 80,000 Australians each year. During their lifetime, one in five individuals will be affected by the illness. And for those who make up the legal profession in Australia, the statistics are even more harrowing. Lawyers in Australian private practice have said of themselves that they are most likely to use alcohol or other drugs to reduce or manage their symptomatology. I put it to you that Australian lawyers are no different to any other lawyers around the world.

Employee engagement and business performance are intrinsically linked. And while it's not always possible to avoid stress, it is possi-

ble to look at both the causes of stress and how we respond to stress, so that as leaders we can deal with both ends of the burning candle. Your lawyers' well-being, as well as your own, is a continuous process of seeking to thrive positively in all dimensions of one's life, as our occupational, emotional, intellectual, social and physical needs all overlap. It is a rare lawyer who can compartmentalize their life such that they don't take their stresses of work back to their home.

A great legal leader, in my mind, should help his or her lawyers to perform at their best. Armed with the knowledge that we are facing down the barrel of psychological distress in the way that we practice law, I believe that one's leadership style goes a long way to ensuring that your staff are motivated and engaged and want to come to work. The climate within which your organization operates directly impacts your team's performance. Employees are happy when they are mentored, challenged, promoted, involved, appreciated, empowered, valued and trusted. I challenge you for a moment to hold up a mirror to yourself – are you the sort of leader your younger self would have wanted to have worked for when you first entered the profession? If not, I encourage you to think more deeply about how you practice law and how you lead your lawyers. Advancing your client's transaction or goals doesn't have to come at the expense of your counterparty; nor at the expense of your own team's psychological or physical health. Behavior that compromises the psychological health and happiness of lawyers should not be accepted as the norm. As a leader, the climate within which your lawyers operate stems from the behavior of those in authority. Namely,

the behavior of those in authority. Namely, from you.

Common causes of depression amongst lawyers include:

- A culture of competitiveness: fear of failure is commonplace;
- Pessimism: legal work often warding off what will go wrong;
- Learned helplessness: lawyers must follow a client's instructions, even if those instructions contradict one's better judgment;
- Disillusionment: many lawyers feel compromised by ethical dilemmas in their work.

Psychological distress and the risk of depression in law students is higher than Australian community norms and other tertiary student groups – recently, more than 20% of Australian law students were suffering high levels of distress (compared to 10% in the general population). In 2015 Justice Marshall of the Federal Court of Australia, having previously gone public about his own battle with depression, wrote that: "the mental well-being of law students would be greatly assisted by the curriculum including a mental well-being subject within it, preferably in the first year. It would also be of assistance for practitioners, academics, and jurists who have battled depression to share their experiences." He also wrote that: "suc-

cessful people who have battled mental distress include, to name merely a few, Mark Twain, Theodore Roosevelt, Abraham Lincoln, Sir Winston Churchill, Catherine Zeta-Jones, and Madonna. The mindset of knowing that they are not alone, together with the changes to law school curriculum to provide a greater focus on mental well-being, development of soft skills and an integrated attitude to the law, can only assist to improve the overall health of our law students and practitioners."

As a leader, the climate you create ultimately liberates potential and actual business results. But it can also ultimately restrict performance. You can help change the tide of distress washing through our profession by:

- Promoting awareness and education;
- Removing the stigma attached to mental health;
- Encouraging self-help strategies; and
- Providing support and resources.

Some simple coping strategies you can offer your staff include helping them to:



I urge you to be the type of boss you wish you'd had when you first joined our honourable profession. Be the leader who creates a psychologically safe and healthy workplace, both for yourself and your staff. You'll be a better lawyer for it, as will be your team.



#### About the Author:

[Claire E. Bibby](#) is a well-known innovator and influencer in the in-house legal sector. Claire is a non-executive director of Marist180, Australian Property Circles and the University of Technology Sydney Law Advisory Board. She is also the an Executive Member of the Association of Corporate Counsel, an Entrepreneur Ambassador for Opportunity International, and a committee member of Soroptimist International, the NSW Law Society Futures Committee and the Resolution Institute. She is also a Foundation Speaker with the Prominent Society Speakers Agency. Claire has been recognized as one of Australia's best lawyers and female executives, including having been the

"Excellence Award for Women in Law," "General Counsel of the Year," "Female Executive of the Year in Asia, Australia, New Zealand," and most recently, "Mentor of the Year." Part and parcel with her passion for the law, Claire is an active philanthropist and public speaker on issues of innovation, diversity and inclusion, psychological wellness, dispute resolution, developing high performing teams and women's leadership. Claire is also a mentor for Layne Beachley's "Aim for the Stars" Foundation, and was featured in Smart Company's 2018 International Woman's Day Showcase

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A portrait of Baltasar Cevc, a man with short brown hair, glasses, and a beard, smiling. He is wearing a dark suit jacket over a light blue shirt. The background is a blurred indoor setting.

# Law & the revolution

By Baltasar Cevc - LegalTech advisor, IP/IT lawyer and entrepreneur

*A revolution coming? A tech superpower breakthrough? Robo-judge and robo-lawyer taking over?*

No, I don't expect a revolution to happen. Technology does not create value in itself, and exactly for that reason it won't provide for a market revolution on its own. We won't see any robo-judge and robo-lawyer anytime soon. So sorry (to disappoint you at the very beginning of the article).

AI is there, but not as powerful as it may seem: AI may walk formalized decision paths and make predictions but not take any decision driven by its own will.

There is a lot of talk about artificial intelligence (AI) [1], which will most probably be a

major building block of the future law. At the same time, I don't see it as the sole or even predominant driver of change. We often ignore the fact that this is actually an old technology (with strong developments dating back as far as to the 1970s), having gained power with storage and computing capacity. This growth brought AI into public awareness and allowed for new practical applications of AI.

The AI superpower, computers being more intelligent, more creative and especially more problem-solving than us (often referred to as "singularity"), will not be here tomorrow. It may come or it may as well not come. Even if you believe in it (as I do), neither you nor anybody else can reasonably predict when it will be there. And to speak with the famous and recently deceased physicist Stephen



Hawking, it may be “either the best or the worst” thing ever to happen to humanity. We just cannot tell which way it will turn. We can, however, influence the direction. We can note that current AI solutions are so called “weak AI”, meaning they can solve a specific problem very well, but no really new problems. That is, much of the public discussion misses an essential, fundamental point here: as much as we should value and celebrate the huge successes, and as much as they are helpful in the specific fields, they are far from quickly becoming challengers in other fields.

Currently, each field of work needs to be manually explored; only by doing so the field of application can be expanded, adding stone by stone to the overall image of AI’s benefits.

### **A typical lawyer denying change?**

That may sound like me being a sceptic denying the change, but wrongly so. For a very simple reason: a lot of shift will take place: expectations towards our legal system are changing. Clients (aka, as I prefer to say, customers) will demand solutions to their real problems. Many don't see winning the case at court as the main desire, rather getting the case resolved decently, and quickly. Hardly anybody wants extensive litigation just for the sake of it. Often winning is secondary to getting rid of the issue. Many people want to eliminate insecurity in relation to the outcome of court proceedings. Most customers don't need the perfect legal contract, rather the easy one that is clear for both sides and covers the important business risk, and no more. In other words, people do not want legal service or details about law, they want solutions. And this is not new, just more doable.

### **Bye bye, law firm, welcome legal solution provider!**

That is, we need to re-focus. Using methodologies well established in other fields, such as design thinking and lean, we can aim at concrete customer value. That starts with re-focussing. Setting focus on the customer. Focus on their issue (perhaps the kind of issue, generalized). Focus on customers’ needs. Focus on ideals in service and delivery. Evidently not all at once, but all of these are aspects you should, at some point, apply your focus to. Try to step into your client’s shoes during the process. Only after thoroughly understanding their perspective and wishes, approach how you can help, what support is needed, what the ideal solution would be. For that purpose: think of an ideal world, what would happen to solve it? Then think about how you could implement that. Drop hesitations, then grab opportunities. Write down the required output/goal, as it is, what you would propose and possibly “promise” the client. Depending on how good you can judge your workload, you may also suggest a delivery time. In any case, you need to write it down as you can learn from any deviations as well as targets met.

Knowing what is necessary, we can focus on the how. You can now decompose the idea into what is essential to deliver it. For this purpose, you need to “unlearn” how you deliver service (to some extent at least). That is: sustain and emphasize your legal knowledge, but in no means the processual approach. Regularly detach yourself from your experience and think about the process on a meta level. Generate ideas, even better many of them. Put them together into what a comprehensive solution could look like and how you could deliver it.

It may also be a good idea to visualise your ideas and the process flow, leaving out everything that is not absolutely necessary to deliver the outcome needed. For everything that does not directly impact the necessary outcome, think about whether there are other ways to deliver, without that part. When done, evaluate them and test whether the outcome will suit the legal requirements. Only now tweak it to match the expectations of the law. Try not to change much in regard to customer service and outcome. Ideally sketch a kind of “statement of work” (“SoW”) for your approach, so the customer can really understand your proposal[2]. Test whatever you have developed with the customer, if nothing more, ask whether that satisfies the need. Possibly test several options (i.e. sketch several SoWs). Only thereafter start the real delivery.

This approach may sound somewhat too detailed or even unexpected. But rest assured, all the elements are borrowed from methodologies well established in other fields, that are considered best practices even. Understanding the customer and the needs and problem is part of the design thinking empathise phase, for example. Only delivering after the value has been set and the customer clearly expressed the wish to receive the product of work is the lean “pull” principle. By applying these methodologies we can create completely new paths to deliver a legally solid output, potentially quicker and with less effort.

#### *Example: a car sale*

*Imagine somebody wants to buy a car. Maybe imagine it's you. You go to a car dealer. If they're good, they will have thought about where you enter the shop and with*

*whom you speak first (customer journey design/service design). A good seller will first talk to you to understand you in regards what your motivation and setting is (empathize phase of design thinking). Then what your actual need is (e.g. car for family, speed racer for the adrenaline kick, high or low car, for transportation, for short or long distance, etc.) (understanding the “problem” is, which is the next step in design thinking). Well, for the car dealer, the possible solutions are somewhat limited (offering cars out of the own brands, directly paid or leased) (hence, ideation is quite limited in scope, but in law we could do that and we actually do creative work in legal proceedings, drafting or other tasks). Provided you order a newly configured car (and only then), the producer will start to produce the car (pull principle of lean), or, if you choose one available on site you will be able to take it home directly (maybe fulfilling a need to have the solution quickly). And while options for the car shop are limited, producers already work on innovative models such as car sharing offers.*

#### **Knowing exactly what to deliver, technology can take over certain tasks.**

The in-depth analysis of customer need and demand as well as the service journey enable to map the delivery process (e.g. using value stream mapping as practiced in lean management) as to understand what and when is necessary to deliver exactly what is necessary within reasonable time. Such analysis provides us the frame to test if certain building blocks (that are now obvious due to the visualisation of the process) can be technically implemented. In many cases at least a part of those building blocks can be implemented, mostly the

standardized ones where legal expertise is least necessary. Legal people can consequently utilize their limited resources where it brings most value: in difficult, complex and strategic questions. All of the people involved will profit: lawyers as their work becomes more interesting, customers because they receive more value for their money and possibly even the contracting party as the delivery process becomes quicker (no need to wait for standard work to be completed).

### **Are legal people trying to hibernate a system dating back to stone age?**

Many jurists seem strongly hesitant when it comes to technology (the younger generation somewhat less so). Being a former IT employee and computer addict, I always felt the system to be somewhat outdated. A fax machine is no modern means of communication. Here in Germany, we still don't have a functioning bidirectional electronic message exchange between lawyers and courts (just a scandal about it, #beAgate). We need to rid ourselves of such issues, many of us not loving fax machines too much any more.

At the same time, it seems perfectly normal for a system like the law to be somewhat reluctant to change. I would even argue it's healthy: the legal system is a balance between reliability and stability on the one hand and the best result (in single cases) on the other. Stability requires a certain inertia and reluctance to change.

Still, we should challenge status quo. The system needs a strong group of early adopters who push it to the limits, challenge it and drive the change into a new, evolved age. With

clear value orientation and methodologies such as lean management, design thinking and service design we may create new strategies to approach the market, possibly even to open totally new markets.

### **Even in the (unlikely) case that most law people would oppose the change, technology and customer demands are driving change.**

If no more, the talk about artificial intelligence will bring bigger clients to question the current modes of legal delivery. Startups bringing small and targeted solutions, maybe even for free such as the Do Not Pay Bot (helping with parking tickets and airline passenger rights).

Both of these will change expectations, at least of those used to internet. With changing expectations, adapted remuneration models for lawyers and firms and more focussed solutions will arise. With many jurisdictions still at the early stage of change, we will see these remuneration models evolve into more and more elaborate, targeted but sometimes also comprehensive offerings. That is, no revolution is to come, but we will see a strong evolution that will be great for the big majority of the people. Legal delivery will strongly change. With communication means changing, rapidly so.

I personally hope that the activities of us all will make that majority even bigger, taking with us even most sceptics. Taken all together, that may increase the value added by law to the society while decreasing the burden in smaller cases, making law more accessible. We will most certainly also see a broadening access to justice. And that's very good news.

### Footnotes:

[1] Another often mentioned technology is blockchain, which is about ten years old. It is basically a technological means of storing and transacting value, with a decentralized mechanism of agreeing on who owns which value and by means of which transaction. This technology will almost certainly impact law (maybe significantly), but I expect its predominant effects rather “under the hood”, and not so much at the customer-facing side. My article focusses on the customer side and the “legal experience”, hence blockchain is out of focus.

[2] For some projects, I am already applying this SoW approach. Up to my knowledge it is still very rare though. The only law firm I know to (have) use(d) this I am aware of is Clearspire, which is currently not actively living; for more information about this really interesting firm have a look at this article by its founder Mark A. Cohen, <https://legalmosaic.com/2017/12/11/the-clearspire-story/>.

### About the author:

[Baltasar Cevc](#) is an IT expert, turned commercial and IT lawyer, turned digitization & strategy consultant. He scouts new possibilities in legal delivery and values application of methodologies which are new to law, albeit often established in other fields (e.g. design thinking, service design and lean management). He is convinced that law can deliver better with outcomes when focussing on delivery process and on accessibility by clients, for example using visualisation and simpler language.

Baltasar has ample experience in in-house legal departments, amongst which OSRAM and Siemens. During his career, he designed and implemented core processes for a legal department of a big publicly listed group of companies. He is co-founder of Riscography Solutions, a startup which targets measuring compliance management systems with meaningful KPIs and visualizing their status.





# THE GREAT LEGAL REFORMATION



Mitchell Kowalski

Author of the critically-acclaimed  
*Avoiding Extinction: Reimagining Legal Services for the 21st Century*

# GDPR or “Cheaty” PR?

By Michael Reiss von Filski – Global CEO of GGI

It is to a certain amount fascinating how the General Data Protection Regulation (GDPR) has created an unreasonable number of self-proclaimed experts and consultants. Some of these are clearly lacking the necessary skills and understanding, which however doesn't prevent them from making good business with companies having no idea about EU Law.

Since the landmark judgement of the Court of Justice of the EU (CJEU) in 1963 in *Van Gend en Loos*, we know that EU law is supreme to national Member State law and confers direct effect to EU persons.

Direct effect means that EU persons can invoke their rights directly in the Courts of their member states and eventually through the CJEU. EU Treaty Articles and Regulations have both vertical and horizontal direct effect, whilst directives have no horizontal direct effect; so far, the basics. Many GDPR

experts are not too familiar with the fact that Regulations are directed to everybody and as such have direct applicability; the rights conferred by GDPR are for individuals and not for corporations.

Several aspects have been forgotten by these experts. The first one is a pretty simple one. Why should a consultant who has never spent a minute in law school be particularly suitable or fit for purpose to advise others on legal matters? GDPR is a creature of EU law, not the easiest discipline in the legal world, and as such I find it doubtful that data-experts, strategy advisors or other gurus will have by nature the required skills and understanding of the principles of EU law. After all, would anybody hire a consultant who is an aesthetician, but not a medical doctor, when it comes to a question about health? Or worse, if you have indigestion, you certainly shouldn't consult with a chef but rather a real physician.



It feels like we are traveling back in time to some eighteen years ago when the “millennium bug” threatened to bring about the collapse of the world – an estimated USD 600 billion were invested on a global scale to fix a problem which was smaller in magnitude than anticipated.

When you ask some of these new experts on GDPR what the rationale of this EU regulation is, many have difficulties in explaining the basic premise. Also, the interesting question of whether GDPR will be applicable and enforceable for instance in the United States is often answered with dubious theories of extraterritoriality. Whilst GDPR is applicable to companies outside the European Union, the question regarding how it might be enforced in the United States remains unanswered. And meanwhile, it is true that Facebook has quietly decided to move some 70% of its users from Ireland to the United States to protect themselves from unnecessary exposure. Whilst GDPR has a cross-Atlantic reach, it would be very difficult to enforce EU law in the US, just as it is nearly impossible to enforce any US law out of Europe. Still, corporations have who have a presence and assets in Europe will have to be careful as implementation of GDPR rules would then be easily applicable.

So, what should firms in Europe do? It makes sense in case of doubt to skip consultants and work with real, genuine and experienced lawyers. Not just any lawyer, but a lawyer with a proven expertise in EU law, this unique legal approach developed over the last decades. The CJEU has ensured harmonisation and supremacy of EU law with brave but justified legal approaches. Some deficiencies, such as the

eternal debate as to why EU directives do not have horizontal direct effect, as opposed to Regulations, were carefully approximated and mitigated with alternative mechanisms widening the notion of an emanation of the State, first through *Foster and Others v British Gas* and recently through *Elaine Farrell v Alan Whitty and Others*. Loyal interpretation, incidental effect, and other mechanisms as well as the introduction of State Liability in *Francoovich* and *Brasserie du Pêcheur* compensate some of the deficiencies of the lack of horizontal direct effect of directives. Still, the total lack of understanding of EU law is certainly a bad starting point for GDPR consultants. Elizabeth Denham, the UK's Information Commissioner in charge of data protection enforcement, confirmed her disappointment in the amount of "scaremongering" around the potential implications of GDPR. Very correctly, she sees GDPR as an evolution and not a revolution. GDPR is a good exercise to see what data is collected and processed and if it is really necessary or if there are less cumbersome means for a company to work professionally while at the same time handling individuals' data diligently. It is not simply an exercise of ticking a few boxes (or a whole expensive book full of useless boxes like some consultants have elaborated in order to justify their unreasonably high fees).

*Actori incumbit onus probatio*, the burden of proof falls to the plaintiff and I think that only time will show if these many, many consultants are worth their money. Still, I strongly believe that in order to comply with a law, it makes an awful lot more sense to seek guidance from a lawyer specialized in the respective discipline. Rather than participating in a

lottery of dodgy prophecies, the most prudent and strategic choice is certainly better than falling for “cheaty” PR.

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#### About the Author:

**Michael Reiss von Filski LLM** is the Global CEO of GGI [www.ggi.com](http://www.ggi.com), the leading multidisciplinary alliance of law firms, accounting firms and consulting firms. He is the chairman of AILFN [www.ailfn.com](http://www.ailfn.com), the global association of law firm networks, and an accredited observer to the EU Parliament.

He has studied law in Switzerland, Germany and the UK, including EU Law at King's College London.

Michael worked in the diplomatic service and became the Chief Executive of the Spanish Chamber of Commerce in Switzerland thereafter. In 2003, he joined GGI and its founding member, a leading Swiss family office. Michael serves as non-executive director in several companies and is a highly regarded advisor to individuals of high net worth. He is a member of the International Advisory Board of LSM (Louvain School of Management) and has re-

ceived different knighthoods and distinctions from all over the world, such as the Presidential Lifetime Achievement Award by the Hon. Barack Obama, former President of the United States of America.



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# The Present and Future of Legal Talent

By Jacquie Champagne, Head of U.S. Recruiting and US Elevated Lawyers

## The Last Decade

We are approaching the ten-year mark of the great recession, and the market for legal talent has changed dramatically over the last decade. Some of those shifts have been structural and permanent, while others have been cyclical fluctuations based upon regulatory change and growing practice areas. The one-dimensional lawyer seems to be a thing of the past, except in highly specialized practice areas which are fewer and fewer. Lawyers must be business people, whether in-house or in law firms, and are expected to have a view of the business of law. Technology has also significantly impacted the legal talent market. Corporate law departments continue to scrutinize more than ever their budgets and outside counsel spend, and thanks to technology they now have the ability to analyze the data to get a view of where their spend is and its impact on overall legal budget. The singular largest development in the realm of talent in law departments has been the advent of the legal operations professional. This function has gained a strong foothold, not only in large law departments and tech companies, but also in more traditional companies, because it frees up General Counsels to focus on the higher-level legal strategy for the company.

## **The Emergence of Data Analytics, Legal Tech and AI**

Advances in software, data analytics and AI have created a tsunami of possibilities for new legal tech products that do actual legal work as well as facilitate the delivery of legal services. Law companies are using technology and partnering with tech companies to create products and better ways to deliver services to their customers. However, law departments are also leveraging some of these capabilities to do more and more of the repeatable legal work that is the bread and butter of law departments. People have been replaced by technology that is faster, more accurate and less costly than full-time employees and all of the resources they take to manage.

While it is true that we are far from machines taking over the world (and lawyer jobs with it), there has been a decrease in professionals needed for certain types of work due to the sophistication of technology. This advancement has impacted lawyers, but rather than eliminating the need for lawyers, there is a mandate to adapt. Not all lawyers are capable of it, and we are learning that it is a certain kind of lawyer who is amenable to change. These individuals often come with a propensity to viewing legal work as a necessary means to assist clients achieve their business goals, rather than the legal work being the goal in and of itself. This is a view of law as a means to an end – assisting and protecting the business – and lawyers who practice in such a way are needed in greater numbers.

## **Law Firms and the Struggle to Survive**

As part of the legal talent landscape, law firms still represent a portion of new jobs, although

the demand for law firm services has been flat for most of the decade. The number of lawyers continues to outstrip law firm hiring needs, especially in Big Law. Young lawyers, even the best and brightest from top law schools, have fewer firms to go to after graduation. There is no end in sight to the law firm merger craze.

These strategies persist despite data showing that law firms post-merger increase costs and decrease revenue growth at a faster rate than their non-merged peers. The immediate effect is to decrease the number of lawyer positions at law firms by eliminating redundancies, underperforming lawyers, or those practice areas not synergistic with the new combination.

Associates are now under intense pressure to develop quickly as lawyers, to be able to interact with clients earlier, and to have the ability to develop business sooner. A real path to partnership is doubtful at best because law firms are struggling to maintain their share of the market and competition is high. Intelligence alone is insufficient, and corporate clients have long been unwilling to pay for a young associate who can write a prolific, long memo that has zero practical advice for the business. Associates also need to think like a businessperson and to be able to communicate clearly and interact on a personal level that shows empathy for their clients' concerns. This arguably remains a great challenge for many partners and, it is difficult to see how associates can learn what is not modelled for them.

On the bright side, the growth of business positions within law firms has accelerated greatly in the last decade in the realm of project

management, technology, strategy, data science and operations. Some of these positions are ideal for lawyers with interests outside of practicing law, and having experience practicing can be valuable when transitioning to other parts of the law firm business. Nevertheless, it is not a given that a lawyer will make a great project manager, legal architect or Chief Innovation Officer (the newest C-suite addition in law firms). Job growth has been mainly in para-professionals and business people, most of whom don't bring the baggage of the lawyer psyche to the job. Many lawyers have traits that make it difficult for them to adapt to change easily, adopt technology and to excel at the business of law. This has proven to be a tremendous hindrance to change efforts in law firms trying to engage in innovation. While the problem seems to be one that is commonly recognized, almost no one is making efforts to engage in robust change management.

### **Law Departments on a Hiring Binge?**

Law department hiring has been up over the last number of years in an attempt to capture savings by bringing more work in-house. General Counsels have long been expected to be more than "just a lawyer," and that expectation has been imparted to their legal teams. The lawyer of "no" (or as I call them, the "lawyer-in-the-box") who is solely focused on practicing law in the usual way is now disfavored in many law departments. General Counsels value lawyers with business acumen, solid soft skills and relationship-building abilities who can manage risk but get deals done quickly and efficiently. Law departments need lawyers who interact comfortably with the business people, gain their trust and show them they have the goals of the business as a

top priority. In addition, lawyers with a view toward creating efficiencies and standardizing repeatable work can provide high value to law departments. While vast differences exist, the most dynamic law departments are concerned with freeing up their lawyers to do the high value work and leveraging technology and para-professionals to contend with the necessary lower value work.

It is true that some law departments can do the work faster, better and cheaper than their outside law firms. However, not all work is best brought in-house, and ensuring that the right work is performed by the right people and is leveraged optimally with technology is easier said than done.

Most recently, some law departments have been rethinking the in-sourcing trend because they have not achieved the savings they thought they would. Right-sizing the law department is a pre-occupation that will continue for the foreseeable future.

One of the largest assets in a law department these days is the legal operations professional, who increasingly plays a significant role in allocating resources. Typical now among large law departments, technology, pharma, or financial services companies, the legal operations function has been a worthwhile investment. The growth of legal operations in the last few years has been exponential, in no small part thanks to CLOC who has pushed its agenda of driving change in the legal industry.

Legal operations is responsible for such things as budgeting, technology adoption, process improvements, outsourcing, legal spend analysis and other administrative and

operational aspects of the law department. They often have the responsibility for managing lawyers as well as other legal professionals within the department, having been empowered by their General Counsels to undertake new initiatives and cost-saving measures that affect much of the legal work in the company. Many in-house lawyers are more than happy to rid themselves of the administrative duties and pressures they rarely excel at anyway. This area holds quite a bit of promise for future job opportunities for those individuals with the interest and the skills.

A recent survey cited almost half of law departments now have someone on staff who provides a legal operations function. Legal operations professionals have varying educational backgrounds and are sometimes JDs, MBAs or CPAs with experience in law, finance, operations or technology. They also possess a multi-varied view of the issues at play in running a law department. Legal operations has emerged as a possible career path for younger lawyers, in particular those with solid technology, finance or operations backgrounds. Demand for these skills is increasing rapidly and opportunities are certain to continue to increase over the next five years.

### **Growth of Law Companies – The Next Big Thing**

What is a law company? Alternative legal service providers (ALSPs), as they are more commonly known, focus on re-designing legal service delivery to function according to customer needs rather than ignoring the cost to the consumer of those legal services. They provide high value, low cost delivery through leveraging people, process and technology for

the benefit of their customers and use design thinking to create new systems to achieve their goals.

Law companies are doing the most interesting holistic work that provides large savings to law departments who continue to be constrained by their budgets and expected to do more with less despite the healthiest economy in years. Often working with Legal Operations Directors, General Counsels or CLOs, law companies provide everything from consulting to help re-design law departments and legal processes, to managed services and flexible talent solutions that integrate within the law department. Putting a creative spin on delivery of legal services, they ask the who, what, where and how in order to help their customers get the most out of their legal spend.

While they appear to be growing at a clip, law companies currently occupy a small share of the overall market for corporate legal services. Most law departments still see the vast bulk of their budgets going to outside law firms. The lawyer to lawyer buy/sell equation still makes it difficult for law companies to penetrate some markets, and until more law department spend is controlled by procurement or legal operations professionals, they may capture market share at a slower rate. One certainty is that these providers will continue to prove they are better able to empathize with and serve their customers than traditional law firms because they have a high desire to deliver value to customers.

Who are the professionals in law companies? They are lawyers, consultants, technologists, process improvement specialists, data



scientists, or finance professionals, and they are all first and foremost business people. The crossover in many cases is what makes this type of talent so valuable. While some professionals in law companies may have a legal background, whether having worked as a lawyer or as a professional in a legal environment, their skills and experience reflect an amalgamation of other specialties and an attitude of adaptation. They offer high value, high impact talent with multiple skills sets and experience and a viewpoint that reflects creativity and a commitment to driving change in the legal industry.

### **Common Threads in the New Talent Market**

At a recent legal innovation conference, talent was a theme across all discussion panels. Whether in a law firm, law department or law company, the people part of the equation needs to be solved. Finding business, finance and technology professionals is fairly easy, and finding traditional lawyers in the market is not difficult, but legal professionals who view law as a service to be delivered are still fairly rare. Lawyers have a very particular view that is highly valuable in certain, limited contexts but can be an inhibitor to progress in areas of legal service delivery. Lawyers who know how to practice law, but prioritize legal service delivery, are very valuable in today's legal services market. At the moment, most of them are working either in law departments or at law companies.

There is also a mandate for advanced soft skills across all areas in law. The transformation in legal service delivery demands new ways of thinking. Design thinking calls upon

us to consider and solve problems from the customer viewpoint, which necessarily means we possess the capability to empathize with our customers. The need for excellent soft skills to be able to translate ideas and concepts while critically evaluating customer-oriented solutions is vital. Law firms, law departments and law companies should be looking to increase hiring of individuals with these propensities. In the next five years, we will see an increase in the divide between those who can adapt and develop the necessary skills and experience to function in the evolving legal market and those who hold fast to outmoded thinking. The former will have an exciting and bright future in redesigning legal service delivery, while the latter risk becoming irrelevant and will certainly be left behind.

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### **About the Author:**

[Jacquie Champagne](#) has spent over fifteen years in the legal industry, first as a litigator at an Am Law 200 law firm and then as General Counsel of an executive search firm focused on legal. She is Head of [Elevated Lawyers](#) in the U.S, Elevate's flexible lawyer service line which provides experienced lawyers and legal professionals for fixed or open-ended projects. Jacquie uses her legal industry knowledge and expertise in talent acquisition to act as a trusted partner in recruiting the right talent and providing customer-driven solutions. She is passionate about adaptation and change in the legal industry and enjoys pushing the boundaries of innovation in the delivery of legal services.

# Search engine optimization Marketing

By Spencer X. Smith – Founder of [spencerXsmith.com](http://spencerXsmith.com)



Search engine optimization (SEO) is a great way to help drive traffic to your website, but is also a very misunderstood term. "If my firm were ranked first on Google searches, then we'd really start doing well," is not an uncommon statement I'll hear from an attorney. You may have received cold calls from companies guaranteeing the top spot - or at least a place on the first page - of Google search results. What if that company could do what is promised? They usually can't, of course, but it's an interesting proposition. This article will help clarify what SEO really is, and if it will help with your business development activities.

## **What is SEO, really?**

Google and other search engines use algorithms to identify the most effective ways to answer search queries and

these algorithms perform world-wide searches in less than a second. Imagine if a search engine had to scour the whole Internet each time you searched for something. With [YouTube alone adding 300 hours of video every minute of every day](#), the process would take forever. The algorithms automate this process by searching the web and ranking relevance.

*'SEO is structuring your website so a computer program can find a relevant answer to a question'.*

If your clients or prospective clients are searching for, "Do I need a will or a trust?" and your site has the best and most relevant answer to that question, you'll be rewarded through a higher rank. How do you assure you're the best and most relevant? Produce content answering that question better than others. As you become more relevant, you become more relevant. The more visitors coming to your page for whom you can answer the question, you're ranked higher.

### **Vanity SEO vs functional SEO**

Being ranked first on a Google search would be great for bragging rights, wouldn't it? Will it help actually grow your firm, though? However you achieve that ranking, we need to be sure that when a prospective client clicks on your site, he or she finds something relevant. Otherwise, you have a website visitor who generates no revenue for you. Vanity SEO is ranking highly on Google and not converting those prospects to clients.

If your firm's website is like most, it might simply be an electronic brochure. Your firm's history, what you do, who works there, awards, etc. are all good to know, but what does it do for your potential client? Does he or she care about your mission statement or where you graduated from law school? Not yet. This visitor wants to know why he or she should do business with you. If your website is all about you, and not about them, this person has no reason to choose you over a competitor.

How do we create functional SEO? We engage a visitor once he or she visits our website. The visitor gets the answer to the question he or she has, and, more importantly, sees a clear and distinct call to action. If this visitor wants to hire you, is there a clear path of engagement?

### **Congratulations! You're first on Google.**

Wave a magic wand and poof! your business ranks first on Google searches. What searches, you say? Whatever searches your potential clients are typing into Google. "I don't know what my potential clients are searching for," you might say. This topic is not just important, it's a critical distinction. Whom are you trying to attract to your website, exactly? Start with this idea:

1. Think about who is an A+ client of yours
2. What questions did that client have when he or she was just a prospect?
3. Start answering those questions on your website

Spend some time segmenting this set of clients and write down what problems of theirs you've fixed. These will be our most viable prospects, and the topics we discuss on your website will help attract their attention. Once we take the time to answer those questions, we now have permission to ask for their business. Remember, questions have a problem embedded within them. Think about these questions and the problems implied within them:

Question: "What are the best foods to eat for losing weight?"

Problem: I'm looking for a solution to a weight problem for myself or someone else.

Question: "What alternatives are there to a shock collar?"

Problem: I'm looking for a solution to a barking or misbehaving dog.

Question: "What does it cost to set up an LLC?"

Problem: I'm looking for solutions to protect my assets or to mitigate my business liability.

Please note, this strategy is extremely important for both SEO as well as any paid traffic to your website. If you buy ads to drive website traffic from Google, Facebook, Twitter, LinkedIn, or any other search engines or social media platforms, it's extremely important to consider where you're driving your visitors. Are you currently just sending them to your homepage? What would you like them to do once they're there? Instead, send visitors to a page addressing the exact question for which they're searching for an answer. These "landing pages" on your website help the visitor learn from you immediately instead of searching for the answers once they arrive on your firm's site.

### **Direct your visitor what to do next**

After answering their question, direct your visitor how to engage your services by proposing a solution to the underlying problem. If your website is simply an electronic brochure for your firm - and not a teaching tool - this back-and-forth virtual discussion will not happen on your site, and the visitor will be at a dead-end.

Google has one job - to provide answers to questions. You've heard the quote, "If it's not written down it didn't happen?" In this case it's, *"If it's not written on your website,*

*Google doesn't know it exists."* Search engine optimization (SEO), put simply, is showing Google and other search engines how to find you. If your website is all about you and your firm, and not about your clients, Google won't direct those potential clients to your site.

### **State exactly what you know on your website**

The #1 "How-to" Google search query for 2015 (and 2014, 2013, and on and on) was "How to tie a tie." Let's say you have a clothing store and you sell ties. It states very clearly on your website that you sell ties. In fact, you showcase a hundred different kinds of ties on your website. Well, do you know how to tie a tie? "Of course!" you might say. "That's a silly question. We know a half-dozen ways to tie a tie."

Well, if an article (or video) stating exactly what you know is not on your website, you don't even show up on Google's radar for that search. Google consists of a bunch of computers, and inferences and implications don't work. Everyone searching for "How to tie a tie," will never find your site.

### **Tell Google what you know because it can't read your mind**

As another example, let's say your firm assists with estate plans. On the "services" or "specialty practice areas" page on your website, it clearly states your firm prepares wills and does other estate planning. Here are the top Google search queries regarding wills -

"What does a will look like?"

"What does a will do?"

"What does a will cost?"

"What does a will mean?"

"What does a will consist of?"



Since your firm specializes in wills, you know the answers to these questions, right? Does Google know you know the answers, though? *No. Google can't read your mind.* If you're not explicitly answering these questions on your site, Google has no idea you have the answers. Google knows you can prepare wills, but that's it. You need to clearly tell Google exactly what you know.

### **Timeless SEO - answer clients' questions**

Timeless SEO consists of one simply strategy - answer the questions your clients and potential clients are searching for online. Keep your website in its current form, but start adding pages that specifically answer questions. Regardless of what happens the next time Google changes their algorithms, your SEO will only get better.

*Pro tip: use dictation to create great content for your firm's website*

You've now bought-in to the idea of producing content for your website. One of two things might happen, though:

1. The articles don't get written or
2. The articles you write are too complex because you're writing content for your peer group or a legal journal. This is not your fault. Since starting law school, it's been your job to decipher really complex topics, and that's the level on which you operate. As a result, though, *instead of articles that attract clients, the articles are too tough for non-lawyers to understand.*

Here's how to fix both issues - after a client

consult, you usually dictate your notes, right? In these notes, you'll detail the concerns of the client, the proposed solutions, and the outcome. The answers you're providing to the client's questions are exactly the same as what people are searching for online as well. This is most effective after an initial consult, where you've spent time educating the client on very high-level topics. Instead of a digital dictator, software, or dictation machine, you can use [Google Voice for free dictation transcription](#). Simply get a Google Voice number, call and leave yourself a voicemail. Google Voice transcribes surprisingly well, and the price (free) is tough to beat.

Once the dictated notes are transcribed, they will provide the basis for an array of articles. It's best for you, then, to make them friendly for both readers and search engines (SEO) by creating compelling titles. When these articles are prepared and published to your website, guess what happens? No longer do you wonder what to share on social media. *Simply use these articles to educate* the followers you've gathered as well as those you're targeting. Need content for your newsletter? Look no further than these well-crafted articles that were written so non-lawyers (i.e. your clients) can readily understand them.

Would you like to earn the email address of potential clients to grow your mailing list? Use these articles as the means to create digital "assets." These assets can be downloadable PDFs, how-to worksheets, checklists and the like. Request an email address in exchange for these assets, and you'll grow your mailing list through a continuously evolving education process.

SEO - although extremely technical - does not need to be complicated. Simply start distilling what's already in your head as well as what's happened during your encounters with clients each week.

When this information is created in digital form, and when it begins residing on your website, Google will reward your efforts through more and more traffic.

Start sharing what you know today, and your firm's business development will only benefit. far, so good. It's just 'lawyers but cheaper', right?

#### **About the author:**

Spencer Smith is the founder of [spencerX-smith.com](http://spencerX-smith.com), and services law firms throughout the country. He is a faculty member for the State Bar of Wisconsin's Business of Law Conferences, and is also an instructor at the University of Wisconsin at Rutgers University, where he teaches classes on Internet Marketing & Strategy and Teaching-Based Marketing. He has been called a "Social Media Expert" by Forbes, and is the bestselling author of the book ROTOMA: The ROI of Social Media Top of Mind. He can be reached at [spencerX-smith.com](mailto:spencerX-smith.com).

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## LEX OPEN SOURCED: Ask Mo Zain Ajaz

By Mo Zain Ajaz - GC and Global Head of Legal Operations at National Grid and Founder of LEx360, a consultancy driving Legal Optimization

Do you recall the time when you started studying a new subject and feeling, 'where do I start, why does everyone in the class already know so much, am I missing out on something...?' well, many GC's and Heads of Legal feel the same way about the business of law and legal operations.

The deafening sounds 'more for less' 'make instead of buy' 'demand is breaking my team' are not going to be muffled anytime soon. Therefore, Legal Business World and I came up with an idea to pull together a regular feature, where we tackle some of the pain points of the legal function.



Whilst the ecosystem varies from organisation to organisation, costs efficiencies, harnessing the value of the team, demonstrating where we add value, identifying and implementing better ways of doing our work, be it people, process or technology are common.

As an experienced GC and COO for a FTSE 100 company, I have attempted to tackle these issues and have often felt 'this feels right... but is it right?'. I can honestly say that I have wasted a lot of time (which I will not be getting back) chasing down rabbit holes, picked up scars when implementing projects because of poor change management and felt elated when I received positive feedback when implementing a complex new technology. Keeping learning a secret is not my style and that's why I was keen to do this.

### **A problem shared is a problem half-ed**

So, this is a call to action, please send in any questions/observations that you have around the business of law or legal operations, it can be '*what's the best method of benchmarking my legal function*'. Legal Business World and I will attempt to get the best answer to that question from the wider legal community from suppliers, consultants, GC or Heads of Legal Operations. I would expect the answer to cover '*what is benchmarking, why is it important, what are common metrics for benchmarking a legal function, how to get industry/sector specific benchmarks and showcase a couple of suppliers*'.

### **The platform for sharing**

It is my aspiration to tackle a question every month and publish the article on the Legal Business World website. For those that like reading content, then periodically the articles

will be featured in the magazine copy.

### **The ethics bit**

The questions can be anonymous, and whilst we will be seeking opinions from experts we will avoid attempts to sell.

### **Call to action**

Please send any questions to [mo@lex360.co.uk](mailto:mo@lex360.co.uk) or use the dedicated mailbox at LegalBusinessWorld [questionsanswers@legalbusinessworld.com](mailto:questionsanswers@legalbusinessworld.com) (also if you prefer to stay anonymous) and I will seek the answers from the best minds in the game. In the meantime, to get things started, as I mentioned benchmarking as a possible question... that may be a good place to start for our next feature. If you have a question on benchmarking, if you are a GC that has undertaken a benchmarking exercise and want to share your learning, or if you are a supplier that has an interesting report, or you want to share what you do in this space, then please get in touch. #letsmakethebusinessoflawbetter

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### **About the Author**

Mo Zain Ajaz is GC and Global Head of Legal Operations at National Grid. He is founder of Lex360, a consultancy driving Legal Optimisation and in 2017 he is included (Voted for) in the Hot100 Lawyers by the Lawyer Magazine. He is director for a number of National Grid companies and chair of the National Grid's employee inclusion network.

Mo Zain Ajaz holds a MBA from Warwick University and a MSc in Lean Enterprise from the University of Buckingham. for more information about LEX 360 visit [LEX360.co.uk](http://LEX360.co.uk)



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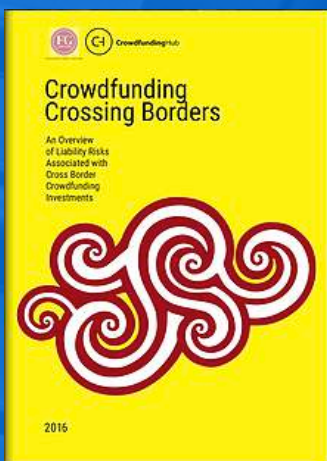
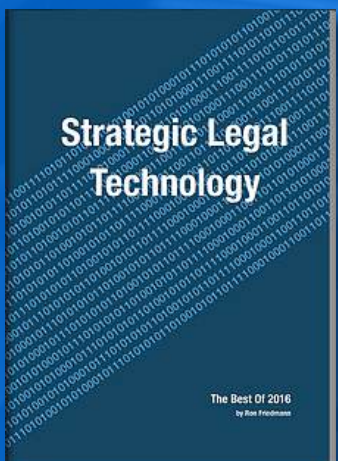
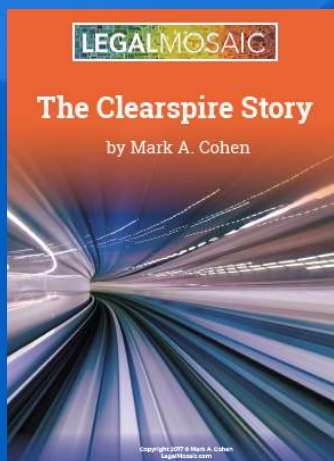
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