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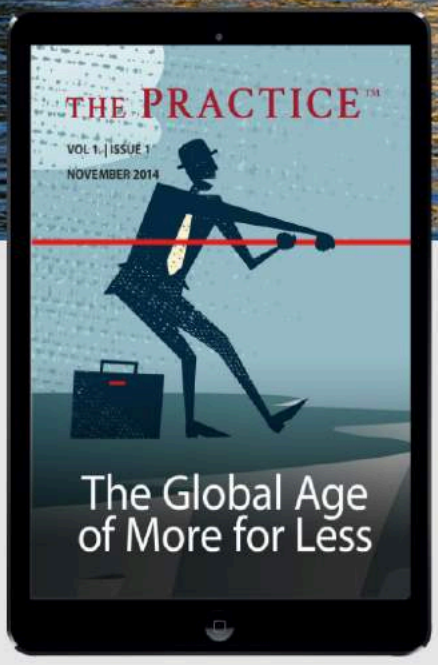

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Latin American Legal Market

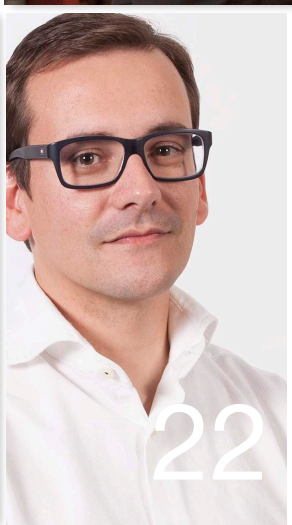
Whitepaper

Adam Smith, Esq. 2017

Adam Smith, Esq.

...an inquiry into the economics of law firms

... and read the article of Antonio Leal Holguín, Director at Adam Smith, Esq. on page 45



COVER STORY

ARTICLES

Cover photo: Richard Burcher

‘We worked with over 300 law firm in 18 countries’

Interview with Thought Leader and expert on pricing Richard Burcher, Managing Director of Validatum

Richard, can you tell us a little bit more about your background and how you became a specialist on pricing?
I am a Kiwi born and bred. I spent the whole of my 30-year legal career in private practice in law firms in New Zealand including seven years as a managing partner. I was appointed a cost assessor by the New Zealand Law Society in the mid-1980s after expressing an interest in the topic. That was the start of my journey into the world of pricing. When I look back, to appoint someone with only four years PQE as a cost assessor was crazy but I took it seriously and tried to learn quickly and ended up chairing the national committee.

I was also fascinated by a paradox that there appeared to be no correlation between technical ability as a lawyer and pricing ability. It was also obvious that there was a complete lack of transparency and engagement with clients over pricing and I had a hunch that this would eventually come back to bite us.
I spent the rest of my career and a period of university level post graduate study trying to figure out ways to reconcile two apparently diametrically opposed objectives; how to maximise law firm profitability through intelligent pricing but do so in a way that ensures that clients feel that they have had fair value and been treated appropriately.

I left legal practice in 2008 to set up Validatum which operated solely in the Australasian market. We relocated the business to London in 2012 which has provided a terrific platform to internationalise the business. As a result, we have now worked with over 300 law firms in 18 countries and are regarded by most legal commentators as the leading niche law firm pricing consultancy in the world. We put this down to our intentionally myopic focus. We only do pricing and we only work with law firms.

Looking at the legal market, are lawyers and law firms still insecure concerning AFA's and the revitalization of their business models, and what is the underlying 'fear'?

Law firm pricing sophistication sits on an extremely long continuum. At one end, there are firms doing some incredibly innovative and interesting stuff around pricing, not just in terms of pricing execution and pricing models but the whole relationship with clients around pricing, arrangements that are underpinned by historically unprecedented levels of mutual courtesy, empathy and trust as well as much greater maturity and engagement around legal project management and process improvement. At the other end of the continuum are what remain unfortunately the majority of firms that have done little if anything. Of those, only a small proportion could be characterised as still having their heads firmly stuck in the sand. Most that have done nothing know that they need to but are confounded as to where to start and how to go about it.
To be fair, their misgivings are well-founded. It isn't easy. As many of the firms that we have worked with have found, they start the project with the idea that all they need to do is to get a little bit better at price negotiation. But they quickly realise that better pricing inevitably ends up lifting the lid on some quite difficult internal issues around the firm's culture, individual performance and accountability.
The process also inevitably asks some hard questions about who and what the firm thinks it is and what it wants to be. Against that background, it is not difficult to see that the principal impediments to firms making progress in the pricing space are the usual suspects; fear of the unknown, reluctance to change, avoidance of difficult questions and internal discussions, fear of timely and frank pricing discussions with clients and in some cases still, the lack of a burning platform – for now! It's hard to tell a room full of partners making over £1 million a year that they are on the wrong track.

How far, in your opinion, is the partnership structure blocking actual change in pricing?

There is a lot of very insightful commentary in circulation now about law firms' ownership

structures. One of the many criticisms of the traditional partnership is the focus on short-term decision-making and as with many other aspects of the running of a law firm, this 'short-termism' can find its way into pricing attitudes and behaviours. However, a much larger problem in my view is firm's meritocracy structures. On even a cursory examination, it should be self-evident that the way that most firms remunerate their people, report on them, appraise them, promote them and generally hold them accountable often drives sub-optimal pricing behaviour.

For example, every law firm partner knows as a management truism that to optimise profitability, they should amongst other things, ensure that the work is delegated to the lowest level at which it can be undertaken competently, effectively and efficiently. This sits uncomfortably with the senior fee earner who has billable hours' targets to meet but is relatively light on work. They will often hang onto stuff that they should get rid of to someone more junior and in so doing, destroy the profit margin on the job.

Another example of this sort of aberrant behaviour is the direct conflict between billable hours' targets and fixed fees. If you give the client a fixed fee, what you really want is for the work done to a good standard but for the accrued time to amount to less than the agreed fixed fee. However, what are associates meant to do when they receive two conflicting messages; fill your timesheets but don't put down too much on this file because we are stuck with a fixed fee! It is very difficult to get people to behave the way you want them to when you incentivise them to do something else. Clients also see it as a profound misalignment of interest. Little wonder that for the first time recently, we saw an RFP which specifically stated that firms must indicate in their response whether fee earners had billable hours' targets. The inference was that if they did, the firm wouldn't even make the first cut as they saw it as something that works against the clients' best interests.

Looking at other markets, pricing is actively used as an instrument to increase growth in turnover and EBITA. How far is pricing as an instrument also an enabler for the Legal sector?

Globally, the legal profession has for decades operated on a cost-plus model. Pricing sophistication was both unnecessary and antithetical. Just work out what it costs to keep the lights on and add a margin. That just doesn't work anymore and consequently, the legal profession has suddenly found itself having to acquire a whole new skill set that is foreign.

The bad news is that when compared with virtually every other sector of the economy such as retail, manufacturing, pharmaceutical, FMCG, hospitality, aviation and entertainment, the legal profession and in fact the professional services sector generally has been very unsophisticated. The good news is that because we are so comparatively unsophisticated, there is only one way to go and that is up. Even minor improvements can have a significantly beneficial effect on the bottom line.

I don't want to sound completely negative and it's worth reiterating that there are some firms that are doing some very cool stuff. Equally, I think it would be fair to say that there are also quite a few firms who think they have made considerable progress and have the pricing side of things under control but that confidence might be a little misplaced.

If partners can't personally demonstrate an understanding of the basics such as yield management, price segmentation, waterfall pricing, price elasticity, deal effect, price anchoring and the like then perhaps it's worth investing the time and effort to get to grips with these. Pricing has been the single most neglected skill and resource within law firms but happily that is beginning to change.

We hear people speak about two doctrines; pricing (price perception) and value (value perception). Is value a problem in the transparency, acceptance and use of new or renewed pricing models and AFA's?

One of my frustrations is that 'value' and 'value pricing' as concepts are so misused and abused. It is also a concept that tends to be over-engineered and overcomplicated when the key elements are quite simple.

Value is subjective, not objective
Value and in particular good value, are determined by the client and the client alone
The client will pay no more than what they consider to be good value or at the very least fair value Value pricing is therefore nothing more complicated than an exercise in delivering work profitably against the backdrop of these three points.

Many lawyers mistakenly believe that pricing is purely a quantum issue but nothing could be further from the truth. We know from research conducted by the likes of Altman Weil that price as a pure quantum issue it is only relevant in about 10% of purchasing decisions.

For 90%, the purchasing decision is dominated by a desire for price transparency, pricing certainty and fair value. In fact, I would go one step further and argue that the price is very rarely too high. Rather, it is the perceived value that is too low relative to the price and the alternatives. There is a very important distinction between the two.

Research into buyer behaviour shows that clients will consider price options within a 'zone of tolerance'. This zone has a maximum price which clients are willing to pay, and a minimum below which they won't go without risking quality. A firm's positioning within the client's zone of tolerance depends on the level of demonstrated value. A client will appoint a more expensive firm if and only if that firm differentiates itself on their key areas of value.

If you were responsible for a law firm, what would you do to create more transparency between value and pricing? Do you have some tips?

This is primarily a communication issue. Lawyers dislike intensely talking about fees with their clients. We will do anything we can to avoid it and for many years, until regulation intervened, we could get away without much of a pricing conversation at the outset or at worst, a very vague and abstruse one that kept all our options open. Some would argue that this remains the case.

There are a great many things that I would do differently around pricing if involved with starting a law firm from scratch but top of the list would be giving all fee earners the confidence, tools, training, encouragement and accountability to ensure that high-quality, honest, frank and constructive pricing conversations took place throughout the life of the job. The reason? To better understand what value looks like to that client on that matter. To price a job, whether before, during or after the work without that insight is tantamount to flying a plane in cloud without instruments.

In a recent blog post I posed the rhetorical question, 'why we are so bad at this?'. We can wrap it up in all manner of packaging and justification but I am sorry to have to report that it is by and large nothing more than unmitigated cowardice. If we are brutally honest with ourselves and we ask why we are not having the conversation when we know we need to, the answer is simple and primal. Fear.

Fear of not getting the job, fear of upsetting the client, fear of losing the client, fear that the client will say uncomplimentary things about us, fear that the client will no longer like and respect us, fear of how things will look internally, fear borne of our own lack of confidence and self-belief, fear borne of our suspicion that we may just not handle the conversation particularly well.

And how about the client side; e.g. the General and Corporate Counsel. It looks like there is a 'demand' for a new pricing approach. But are they themselves not part of the problem, or maybe better, responsible for the slow turn around of pricing in the legal market?
Ah, now you have hit a bit of a raw nerve with that. The key to new, successful, sustainable and mutually beneficial pricing relationships is much better collaboration and communication between the law firm and the client. Neither should underestimate the investment of time and effort required to make that work.

We certainly appreciate that in-house legal teams are under time pressure and juggling priorities but if they are not prepared to invest a reciprocal amount of time and effort as the law firm, then they should stop wasting everyone's time by asking for innovative pricing proposals. It is infuriating for a law firm to devote considerable time and effort to come up with something interesting and innovative only to be greeted with *"I haven't got time to look at all of that, can you just knock another 10% off your headline rates?"* Or the equally anodyne propensity for some procurement people to cut and paste something at the end of the RFP's pricing section along the lines of, *"and AFAs or anything else you think we might be interested in"*. If they don't have the training or intellectual skill-set or the time and inclination to seriously consider such proposals, they should also stop wasting everyone's time.

We have been involved in crafting some fantastic arrangements that are highly customised and bespoke to the parties but what they all have in common is trust, great communication, flexibility, a shared desire to do something different, an articulated commitment not to 'screw' the other side if the opportunity presents itself and a recognition that for the arrangement to stand the test of time, compromise, reciprocity and taking the long view is critical.

Budgets are under pressure. The primary counter action to solve budget issues is to discuss a lower price. Price reduction is not always the best solution as it results in a short-term growth thru the increase in quantity. If we look at both sides client and lawyer, how can they both benefit in a more sustainable way?
This issue about budget pressures and reduction in legal spend is not as clear cut as many make out. In the 2016 Altman Weil US Chief Legal Officer survey, participants were asked

what they expected their external legal spend to do over the following 12 months. The results were a mixed bag with the following results (figures rounded); Don't know – 5%, Decrease – 35%, Stay the Same – 38%, and Increase – 22%.

But spend levels per se are in a sense meaningless. What is more important for most clients is to have firms that demonstrate 'cost consciousness'. The characteristics of a cost-conscious firm include accurate and rigorous scoping, a collaborative approach to pricing methodology, a willingness to share the upside and the downside of price risk, communication about cost increases before they occur and what one survey response described as *"they [the law firm] treat my money as if it were their own"*. If we don't do deliver on these, then we encourage clients to seek out alternatives which is exactly what is happening.

The other challenge for law firms is to shift their focus from revenue to profit. This forces a reimagining of revenue as a zero-sum game ie. a reduction in client spend is a bad thing. Not necessarily. We were involved in a large law firm/large corporate relationship where the firm was proactive in showing the client how to reduce (yes that's right, 'reduce') their total legal spend but the quid pro quo was that the firm always secured solid rate increases against the trend.

The result was that the clients' total legal spend reduced but for the firm, what they did charge was very profitable and in fact profitability in terms of margins went up as the overall spend reduced. The additional capacity created on the firm side by the reduction in work volume was redeployed finding and engaging with more like-minded clients. Counter-intuitive but smart, very smart!

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The other way that clients are seeking to control legal spend is through greater use of procurement people and processes. Most firms have greeted this development with consternation, particularly as the procurement function becomes more professional and organized. For example, you now have the Buying Legal Council headquartered in New York representing the interests of legal procurement professionals. It is also why we recruited Steph Hogg 18 months ago. Steph is the former head of legal procurement at a FTSE 100 company and one of the most qualified and experienced legal procurement professionals around. Her insights have been extraordinarily valuable in our work with firms to help them deal more effectively and fruitfully with procurement.

Looking at billable hours as pricing model, do you think there a possibility to renew this model and make it more accepted by clients? There is a school of thought that advocates the total abolition of both time recording and hourly billing. Credit where credit is due, there are examples of firms that have made that transition and I commend that. They do tend to be smaller firms though and I don't see that becoming mainstream any time soon. So, the question is, can the current approach be improved? The answer is a definite 'yes' and there are at least two things that firms can and should do.

First, they should move to a menu approach to pricing. We teach partners close to 20 different pricing strategies, methodologies and tactics. Once they have a working confidence around at least 5 of them, they can then present pricing choice to clients through the contemporaneous offering of multiple pricing options, each of which holds differing levels of attraction to clients depending on their priorities. We enjoy and expect choice in just about every aspect of our personal consumption. Why would we not extend that to pricing our legal work and why would be arbitrarily remove hourly billing from the menu when that is one option that clients still want and expect?

Second, firms should introduce a system whereby all fee earners have two or even three rates and a decision is made near the outset of the matter as to which one will apply. Which rate is applied will depend on a variety of factors such as the amount of money or value of property involved, the complexity and novelty of the matter, the skill and experience of the lawyer and any urgency required. Most western legal jurisdictions provide guidance that is helpful to achieve this such as the American Bar Association Model Rule 1.5, the UK Solicitors (Non-Contentious Business) Remuneration Order 2009 and the best example we are aware of, the New Zealand Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (regulation 9.1). Tragically, most lawyers are not even aware of their existence. The objective is to achieve greater proportionality for both the client and the firm.

Pricing is a dynamic instrument that is influenced by the state of the economy, the business cycle, interest rates, inflation etc. Should law firms and legal departments be more aware of these dynamics and what would you suggest they do to become more flexible and able to react at an earlier stage? Forbes magazine recently ran an article entitled, '10 Jobs That Didn't Exist 10 Years Ago'. The article cited as examples; app developer, market research data miner, educational

admissions consultant, millennial generational expert, chief listening officer (I kid you not!), cloud computing consultant, elder care consultant, sustainability expert, user experience designer and social media manager.what they what they For the legal profession, a new breed has been slowly emerging over the last 10 years, the last 5 in particular – the Pricing Manager/Pricing Director/Chief Value Officer. As pricing analysis, policy and strategy become increasingly important for firms' competitiveness and profitability, they are looking for increased expertise in the area.

This is proving to be a huge challenge because the skill-set for the role is a rather unique one, falling as it does in a sort of no-man's land between finance, business analytics, business development, marketing, sales and delivery/ performance of the legal service. There is no shortage of financial and analytical skills in well-resourced firms but what is often missing is the 'bridge' between this analytical approach and the subtleties of the client relationship and the mechanics of delivering of the work.

Whilst a pricing manager can be a very valuable resource available to partners, they can never be a substitute for partners having a sound working knowledge of pricing disciplines. At the end of the day, they are the ones who need to be able to have those critical conversations with the client.
Top pricing managers have a unique and very valuable skillset. Demonstrably, the right combination will without any doubt at all, generate more profit for the firm than most of the firms' partners. This is a role that will grow in stature and importance within firms over the next few years. Expect therefore to have to pay commensurately.

Blockchain, AI and other LegalTech solutions are entering the legal ecosystem at the speed of sound. Everybody talks about it. What do you think about these tech solutions if you look at pricing?
As with most such developments, there is an upside and a downside.

It will necessitate systemic change to the way that some services are currently provided. Clients do not mind paying and even paying solidly for the cerebral, tactical, strategic and experience-driven advice capable of being provided by experienced and seasoned partners. We coined the phrase 'the stuff you can't Google'. They are considerably less willing to pay for things that they regard as procedural and generally 'low-rent'.

Without very careful thought around pricing strategy, firms that rush headlong into new technologies run the risk of a double whammy - the cost associated with investing in the technology and some fee earners finding that their bread-and-butter work (rudimentary document review and the like) being done in a fraction of the time that they would normally devote to cranking out billable hours. It will play havoc with the traditional leverage model.

There is an important distinction between doing the same thing more efficiently versus using the technology to do new stuff. The technology will have to be reimagined so that old work is done faster and new tech driven revenue streams are opened.

On the upside, we also see real opportunity to take a more tech-driven approach to pricing, particularly when combined with vastly improved analytics capability.

You're also the managing director of Validatum, experts in legal pricing. What do you and the other specialists do to stay up to date and be able to innovate in your field of expertise?
That's a good question and one we are constantly asking ourselves. Given our position in the international market, it is not sufficient for us to simply curate and regurgitate existing received wisdom although there is plenty of it which we distill and share.
It is an awful cliché but thought and practice leadership around pricing is vitally important to us. I made the observation that the legal profession is very unsophisticated compared to other sectors of the economy. Many pricing strategies and tactics that we would regard as radical and innovative are just business-as-usual in other sectors. Amongst other things, we spend a lot of time studying pricing strategies in other sectors and then working out how to re-purpose than for the legal sector.
We are constantly investing in new materials and publications as well as attending cross sector pricing conferences and professional/ academic development opportunities.

Thank you for this interesting interview. Is there something we forgot or is there something else that you would share with our readers?
Getting better at pricing and figuring out how to deliver legal work profitably is critical to the survival of firms. Revenue/price and cost are like the jaws of a vice. Many find that the top line is under pressure and the costs are rising – the jaws are getting closer and margin is being squeezed.

Firms need a two-pronged strategy which simultaneously looks to strip cost out of the delivery model through process improvement and project management whilst at the same time figuring out to optimize the revenue side through smarter pricing.

It isn't easy and it doesn't happen quickly but the rewards are tangible and significant. Equally the consequences of doing little or nothing are very unattractive.

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5 steps

to become a digital law firm

By Dr. Micha-Manuel Bues, Managing Director at Leverton and member of the Executive Faculty of the Bucerius Center on the Legal Profession.

The term „Legal Tech“ was widely unknown in Europe two years ago. This has changed significantly due to wave of Legal Tech related articles, conferences, blog and communities. By now, most lawyers and law firms will probably have heard of Legal Tech, and have started to realize that the legal industry is most likely not immune to digitalization and significant other changes in the next five to ten years. Indeed, there is little doubt that digital tools and technologies will profoundly affect and change the way business is being conducted in the legal industry.

This realization normally leads to next questions: *How can we deploy Legal Tech? Which tools should we implement? What are the best tools on the market?*

I would, however, suggest that these questions are too short-sighted. Digitalization is not primarily about the question which tools to use, but a strategic framework on how to generate new business models and products through the use of data and technology.

In this article, I will point out what it means to become „Legal Tech ready" and which steps lawyers and law firms should follow to rethink their businesses in the era of digitalization.

This article will take a look at what digital business transformation or digitalization means and outline the journey that organizations must undertake to avoid digital disruption, to realize the benefits of digitalization, and to maximize value by using digital technologies and new business models. In short, this article aims to hash out a conceptual framework on how to become „Legal Tech ready".

Obviously, this article cannot cover all aspects of this change or transformation process; not even 10% of it. There is no easy manual, no one fits it all solution. To move a (legal) business from manual to digital is certainly not an easy task. It is not an endeavour achieved overnight. To the contrary, a digital transformation is a long, challenging process that requires, first of all, the willingness to change and then, secondly, to experiment and take action.

First step: It's not about tools, it's about (change) process

According to Gartner's IT Glossar digitalization can be defined as *„the use of digital technologies to change a business model and provide new revenue and value-producing opportunities; it is the process of moving to a digital business.*" Digitalization is fundamentally about change, namely organizational change. Digitalization is not primarily about the use of software, but rather the organizational change related to people, processes, strategies, structures, and competitive dynamics.

The study on „Digital Business Transformation" gives a striking example: *„The importance of organizational change is well illustrated by Kodak's fall from its position of market dominance, and its ultimate demise. It cannot be claimed that Kodak was not innovative. The world's first digital camera was develop by the company in 1975 and it made major investments in digital capabilities throughout the 1980s and 1990s. Kodak failed primarily because it was not able to make the necessary adjustments to adapt to new markets and changing customer requirements. The company was encumbered by legacy infrastructure, people, and knowledge that became increasingly obsolete, and was not willing to make tough choices early enough to adapt to changing market demands. In other words, it failed to enact sufficient organizational change.*"

This example clearly shows that a clear change process is necessary to win the digitalization game. Therefore we need to understand **what** must be transformed and **how** to make the required *changes*.

We need to have a strategic view on things, a roadmap, before jumping to conclusion, i.e. implementing a random assortment of software and digital tools. This strategic change process needs to start with the end in mind: *How could and should a current business model be changed or adapted that is build on a foundation of digital technology?*

Second step: Create a vision - why is there a need to transform the current business (model)

There needs to be a clear understanding of ***why*** change is necessary. As Simon Sinek puts it: „*Start with why*„. Digitalization can be motivated by a number of factors. The impetus for change can stem from consumers who require better, faster and cheaper products and services. The impetus can also come from new competitors in- and outside the legal industry. The motivation for change may also originate from certain technologies or tools that are deployed by (existing and new) customers. However, this source of motivation normally only depicts a lack of strategic vision. *The digital transformation process should be guided by intrinsic motivational factors and not by mere external ones.*

To engage in a digital transformation process there needs to be a clear vision of why a stakeholder in the legal industry wants to be digitally transformed. Curiosity about new things is certainly helpful, but not sufficient to guide the transformation process.These questions will help you sharpen your vision

- What is our vision of our services in 5, 10, 20 years?
- What added value to we create for our clients?
- How do we want to win pitches in the future?
- How can we differentiate ourselves from competitors?
- What impact does the digitalization in our industries have on the legal industry?

Third step: Understand what could and should be digitalized

Once the motivation for transformation has been clarified and underpinned with a solid vision, the next step is to understand „what" exactly should be digitalized. This entails breaking down the vision into manageable projects and tasks. A vision itself is not executable. A „digitalization project" is therefore the concretized subset of the overall vision. Digitalization projects may take many forms. According to Global Center for Digital Business Transformation at least seven categories can be distinguished which could be transformed digitally. The following list comprises of the most important elements of an organizational value chain as it relates to digital transformation and establishes a clear framework for digitalization project within a law firm:

- the business model (how a company makes money)
- the structure (how a company is organized)
- the people (who works for a company)
- the processes (how a company does things)
- the IT capability (how information is managed)
- the offerings (what products and services a company offers)
- the engagement model (how a company engages with its customers and other stakeholders)

Lasting change can be accomplished by transforming multiple categories and multiple technologies simultaneously.

In my view, law firms and lawyers should particularly look into the categories business model, processes and offerings, with an emphasis on processes. Legal services mostly consist of certain processes which are bundled into a certain product. For instance, due diligence includes, simply put, several processes from gathering data to structuring and then analyzing it.

Each process can be assessed in order to improve it - with or without technology (legal project management will become an increasingly important part in every law firm). If a law firm wants to truly transform into a digital law firm this should start with a proper assessment of the processes and its potential for digitalization. This process will be most likely burdensome as it requires to think and work in new ways and to leave well-trodden paths. This all requires a clear vision **and** leadership to stick to the game plan.

Through the assessment of the various (legal) processes that could be optimized through digital means it becomes clear that digital business transformation cannot be achieved by making a „big bang" change or by employing single technology that will address all efficiencies and deficiencies. Digitalization requires a holistic approach considering the digital transformation categories above without loosing focus on the concrete project (the low hanging fruit) to transform a vision into practice.

Forth step: Create an innovative culture

The forth step to reshape a law firm is to establish an „innovation culture". It need to be actively lived, supported by management and encouraged to permeate every level if the soil for digital transformation is to be prepared.

As Louis V. Gerstner Jr. puts it in „Who Says Elephants Can't Dance?": "*I came to see, in my time at IBM, that culture isn't just one aspect of the game—it is the game. In the end, an organization is nothing more than the collective capacity of its people to create value.*"

Innovation culture is not about putting in a foosball table or sprinkling some „startup flavor" over a law firm. Innovation culture is about setting the right beliefs, expectations, and sense of purpose. Make no mistake. It is not easy to create an innovation culture in the day-to-day business. And there's no singular method to creating a culture of innovation. When you are cultivating innovation, you are cultivating a unique system, which means you have to be thoughtful about your approach. Whatever you do, it should align with the values of the law firm and with the firm's goals. Establishing a culture of innovation and making it stick also depends on understanding the „climate" within a law firm: *How will the firm react during periods of experimentation? Which structures, behaviours, goals, and people must be in place to unlock innovation and which structures, behaviours, goals, and people, if positioned improperly, would create discord?*

Some tools, tactics and „building blocks" are identified to develop an innovation culture:

- **Stay open:** Ideas do not always come from „experts“ or the higher management. Sometimes the greatest innovations come from novices and backroom thinkers. Stay open to listen to them.

- **Celebrate Ideas:** Innovation requires that risk-taking and creativity are not punished but rewarded. You need to establish an environment that rewards innovation. Rewards may come in many forms, and often the monetary ones are the least important. Innovative thinking should (besides handing out bonus checks) be celebrated with praise (both public and private), career opportunities, and other perks.

- **Embrace failure:** In most companies, people are afraid of making mistakes. As a result, employees simply follow the rules and keep their heads down. This is the nail in the coffin for innovation. In fact, nearly every breakthrough innovation in history came after countless setbacks, mistakes, and so-called „failures.“ For instance, James Dyson, the inventor of the Dyson Vacuum cleaner, „failed“ at more than 5,100 prototypes before getting it just right. Embracing failure means taking risks and increasing the rate of experimentation. Some bets will pay off, some will fail.

- **Carve out time:** Innovation needs time to develop. People tend to be so consumed with putting out fires and chasing short-term targets that most cannot even think about innovative products or business model. This can especially be true in a law firm. 3M and Google give their employees about 10% „free time“ to experiment with new ideas. The software company Atlassian encourages employees to take „FedEx Days“—paid days off to work on any problem they want. But there's a catch: Just like FedEx, they must deliver something of value 24 hours later.

- **Empower innovation champions:** Employees often get an early “no” from their direct supervisors and end up putting innovation out of their minds again. Therefore, it can be a very fruitful tool to install „innovation champions“ in a law firm which provide friendly spaces to test new ideas, while also providing a level of protection against managers/partners who are charged with focusing on the common business.

- **Give the tools to make their case:** Even the best ideas are not going to get any traction if the value they bring to the organization is not made clear. This requires to give employees the tools, time and frameworks to show why those ideas are worthwhile. This could, for instance, mean to provide to employees training and resources, which they need to create business pitches that highlight the value of their ideas and which allows them to test them.

Fifth step: Take action

All this won't help if you do not act. Actually, you want to move quickly when innovating. Moving too slowly can be the death knell of new ideas. However, it is not *pure* speed that matters. It is the speed that comes from being decisive and having vision, a framework and innovation culture in place. Everything is linked. But it all starts with action.

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For many years Micha-Manuel Bues has been engaged in the theoretical and practical interfaces between law and technology. He has studied the changes which Legal Tech present to the legal market, including the opportunities, challenges and risks that arise for law firms, law departments and lawyers. He runs a blog on the subjects of Legal Tech, Legal Innovation and Legal Start-ups (www.legal-tech-blog.de) in German-speaking countries, and maintains therefore, close contact with the Start-up scenes in Europe and the USA.

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From the internet of information to the internet of value

By Helder Santos, Senior Business Technology Manager at CMS

The first generation of the digital revolution brought us the Internet of information. The second generation is powered by blockchain to create the Internet of value. Faced with a swift-changing world, law firms are finally embracing modernization and preparing the next generation of lawyers for this digital age.
If internet-based technologies confused lawyers twenty years ago (and continue to confuse), blockchain promises to be a mind-blower.

"Blockchain is a vast, global distributed ledger or database running on millions of devices and is open to anyone, where not just information but anything of value money, but also titles, deeds, identities, even votes can be moved, stored and managed securely and privately. Trust is established through mass collaboration and clever code rather than by powerful intermediaries like governments and banks."
Dan Tapscott, author of Blockchain Revolution: How the Technology Behind Bitcoin Is Changing Money, Business, and the World.

People usually learn about blockchain in the context of digital currency. Blockchain is the technology upon which bitcoin transactions are built. Basically, blockchain is a distributed ledger (or register) consisting of encrypted records in the form of blocks, which when connected using a distributed network of computers storing the blocks creates the blockchain.

Being dispersed across a network of computers, the ledger is not under any single control and thus operates by agreement. This is quite different from a traditional transaction ledger — one that is typically maintained by one entity (e.g. a bank) and audited by another entity (e.g. a trusted intermediary). In a blockchain, all parties have a copy of the ledger and can confirm in real time the status of the transaction. With blockchain, edited data is being stored in block records. Each block is linked to the earlier block forming a chain record that can be traced back to the first block, the so-called Genesis Block. Only new blocks can be added, existing blocks cannot be changed or deleted.

Significant transformation can be achieved when blockchain technology's unique skill to create secured distributed ledgers among multiple entities is combined with features such as confidentiality, data privacy, reliability, and scalability.

It is important to know that blockchain is the underlying technology. There have been reports of some of the systems built on top of blockchain (such as cryptocurrency exchanges) being hacked, but the blockchain itself has not. Understanding what makes blockchain resistant to hacking is important from a legal perspective.
Remember that blockchain is a distributed ledger, meaning that the blocks of data comprising the ledger are spread across a network that could be located anywhere in the world. Each computer (referred to as a node) holds all or part of the entire blockchain and applies the particular blockchain's computational algorithm to verify a block and permit it to be added to the chain.

This is happening simultaneously across the network, making it (theoretically, at least) impossible for hackers to attack the chain, since each instance of the data is being held in many places all at one time, and a block may be verified and added to the chain by any number of nodes. The blockchain is also hack-resistant due to how the data in the chain is stored and transferred. Data added to the chain is cryptographically "hashed," meaning that a short digest of the data is created. It is this hash of data that is stored in a block and transferred in encrypted form via the blockchain — not the actual, underlying data itself.

As a digest, the hashed data can't be decrypted to reproduce the full underlying document or transaction data. However, within the chain, the hash can verify a copy of the underlying document or transaction existing outside of the blockchain.

What does all this mean, for real-world purposes? Primarily, if a hack to a block in the chain is attempted, it doesn't expose the underlying data within the document or transaction because the hashed data is simply a digest and not a complete record of the data.

Additionally, because the transaction ledger is stored across a distributed network of computers, redundancy is created.
These characteristics help ensure both the privacy and authenticity of the underlying data within the blockchain, two properties that are highly relevant to legal transactions.
And it's not just data that can be transferred via blockchain.

Cryptocurrencies use blockchain to transfer economic value. How about transferring energy? Music? Real estate titles? It's either happening now or about to (see IBM example). That's why lawyers should care about blockchain. It's disrupting or has the potential to disrupt several industries that rely heavily on lawyers' counsel and advice. Being so promising, blockchain presents an incredible opportunity for lawyers to position themselves as trusted strategic advisors to clients navigating the numerous legal, regulatory and logistical grids surrounding the technology and its applications.

This will create prospects for lawyers to help, as industries wrangle with how disruption impacts everything from operations to regulatory and legal structures. These disruptions will create niche practice areas for those lawyers who choose to understand blockchain.

So, knowing this, what can lawyers do now to equally better serve clients and protect business? Imagine a lawyer serving the Media industry (Finance, Music, Real Estate are just some examples) who makes herself an invaluable part of a client's core team because he understands blockchain, how it affects her client, and how her client can capitalize on the technology.

Why? Because the lawyer, as a trusted counsellor, is situated differently than others most likely to have blockchain savvy (e.g. IT advisors).
Yes, IT knows the technology. But only the lawyer can extrapolate from a technological understanding to what this really means for a client operating in a legal and regulation-bound environment. And blockchain is already entering the legal market, directly and indirectly. And smart contracts? Smart contracts are computer programs which facilitate, verify, execute, and enforce a contract. Basically, these contracts are snippets of code which can change the ledger or a legal contract that is implemented on the blockchain. They can remove friction and provide transparency.

Several benefits and challenges to this innovation in smart contracts:

- Smart contracts are coded, so there is less ambiguity than prose;
- Verification can be achieved even within a trust-less environment; Smart contracts may reduce the need for litigators, but they become an additional tool for the transactional lawyer to master.
- Self-executing; so once released, it is difficult to impede execution; and
- Integrates well with IoT, artificial intelligence (AI) and machine learning.
- Challenges:
  - Organization and Infrastructure needs to be updated;
  - Lack of experience with blockchain technology in IT departments;
  - Lack of education and understanding of the technology in other departments, including compliance (privacy concerns);
  - Development of uniform standards and protocols;

- Need to overcome custom and tradition. So, a real-world example of how a smart contract was implemented can be seen in how Barclays did it with an interest rate swap prototype. Essentially, the investment bank set up an incubator of coders who worked with their legal department to understand how these swaps (trades) worked legally. They distilled three lines in the process that could be coded — (x) the amount of cash; (y) the interest rate; and (z) the currency. Once this information was garnered, the transaction could be solidified and then stored on a blockchain.

Law firms are also starting to make an incursion into this. Firms are beginning to have multi-disciplinarian practices to help manage the blockchain for clients and some law firms are part of the Blockchain Alliance, a coalition of 25 blockchain companies and 25 regulatory and law enforcement agencies — including Interpol, Europol, the Securities and Exchange Commission (SEC) and the FBI — to educate enforcement agencies about digital currencies and blockchain technology.

Traditional legal services could also be equipped with blockchain technology. These services could include:

- Payment of current transactions by communication means (email, text message, instant messengers, etc.): in this case, blockchain ensures secure transactions by making the transfer of values conditional upon a validation key generated by the blockchain.
- Creation of obligations within a company: in this case, the use of an email could help trigger the allocation of delegated powers. Effect on existing and new practice areas is barely scratching the surface, and corporate lawyers should be learning about blockchain-based decentralized autonomous organizations (DAOs), and how these may replace traditional business structures. Those with a criminal law practice should be thinking about how "evidence" located in a blockchain impacts a case — for example, what does this mean for application of the third-party doctrine?

However, blockchain remains a highly experimental technology. Although it already ensures money transfers, two major pitfalls directly impact the production of legal services. The first is related to the sustainability of the technology used. In fact, blockchain is based primarily on the use of massive servers largely located in China, which raises the issue of security guarantees in the long term. Moreover, blockchain is currently a technology that is less than 10 years old. The use of computer code raises the question of the safeguarding of knowledge associated with these lines of computer code. How can we ensure that IT developments will survive in the long term when it comes to transmission of knowledge or data storage?

The second is linked to the security of computer code which is still not guaranteed today. It is hard to foresee what the flaws are in new code or a new programming language, as there has not been a history of specialists examining it for flaws. *As a technology platform, it's positioned to become as ubiquitous as the internet, something we don't see or even think about, but that affects many, many processes lawyers and their clients deal with on a daily basis. It is quite evident that the future of blockchain is now.*

Helder Santos is currently Senior Business Technology Manager at CMS, one of the top international legal firms. With more than 15 years of experience working in law firms, he moved to Frankfurt am Main from Lisbon in 2014. Since then, Helder has helped to improve CMS' products and services working in a dynamic and multicultural team where technology and use of innovation is a focus for change and evolution.

Helder received his university degree in Multimedia Engineering at Instituto Superior de Tecnologias Avancadas de Lisboa and an MBA in Information Systems and Entrepreneurship in Lusófona Information Systems School.

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Entity-Driven Legal Services: The Great Legal Reformation's Ultimate Legacy

By Mitchell Kowalski, Gowling WLG Visiting Professor in Legal Innovation, Principal Consultant Cross Pollen Advisory, Member of the Board of Directors.

2017 is a special year for many Europeans as it marks the 500th anniversary of what is generally accepted as the start of The Reformation. According to legend, on October 31, 1517, a former law-student-turned-obscure-monk by the name of Martin Luther, strode confidently up Wittenberg's Schlossstrasse and nailed his now famous 95 Theses to the door of the Castle Church. His ideas quickly spread across Europe and the world was never again the same.

Five hundred years on, we see the beginning of a new reformation; a reformation that once again seeks to change the seemingly unchangeable; a reformation that seeks to create a profound and lasting change within a venerable, ancient profession; a reformation that is beginning to reverberate around the globe via a new set of social networks and media.

The Great Legal Reformation.
We now live in a time when many are questioning the time-honoured method of delivering legal services; a time when the legal profession is increasingly being forced to justify its methods - and perhaps even its existence; a time when dissent against the old order is becoming normalized and circulated globally; a time when newcomers are re-writing the script and challenging the old ways.
As a result, the road ahead for traditional law firms is no longer straight, smooth or predictable. A growing body of evidence suggests that demand for legal services from traditional law firms is flattening. The "more for less" challenge that corporate clients face is often resolved by building internal legal teams to avoid sending work to law firms, or by disaggregating legal work among different, non-law firm players in the marketplace. Legal technology continues to show promise at eliminating some of the work that lawyers have traditionally done. And technology combined with growing consumer confidence in internet resources, is creating a generation of legal do-it-yourselfers among every day people. And so it goes.

Yet, despite it all, the law firm delivery model has seen little change. It remains lawyer-centric and heavily-laden with expensive talent that is not terribly loyal. Advancement among lawyers in this model is based upon a ridiculous duel to the death, aptly named, the "tournament"; an expensive process where firms continuously hire, train and then terminate associate lawyers. On the other hand, advancement opportunities for other employees of many law firms are virtually non-existent. This is an operational model whose success rests almost entirely upon three pillars: a perpetually high desire for legal services to be provided in the traditional manner; a marketplace wary of non-traditional providers; and clients that aren't cost-sensitive. The Great Legal Reformation is eroding all three of those pillars and increasing stress on the existing law firm model. We can already see that stress in a variety of metrics; partners are no longer permanent, associates have little chance of becoming partners, contract lawyers and paralegals continue to replace full-time lawyer hires, and there is a higher than average rate of depression and addiction among lawyers. Factor in growing client unhappiness, not with quality, but with service delivery and complete model breakdown is no longer a question of if, but when.

Forward-thinking law firm leadership will see the stress fractures and will embark upon a course of long-term transformation from the old lawyer-centric model to an enterprise or entity approach to providing legal services - Law as a Team Sport. These leaders will seek to deliver service through a proprietary mix of people, process and technology, seasoned by a culture of continuous improvement, all of which will create competitive advantage through unique experiences that clients will be unable to find elsewhere.

First let's deal with the issue of growth. A law firm that takes an entity approach will scale, not by hiring more lawyers, but by increasing the number of opportunities for team members who have no interest in taking bar exams. These firms will see lawyers as just one piece of the puzzle, instead of the entire puzzle. Just as economists spoke of the "jobless recovery" from the Great Financial Crisis, forward-thinking law firm leadership will embrace

"lawyerless growth"; the ability to grow revenue and serve more clients with the same number of lawyers.

This scale will be achieved in part by understanding the value of continuous process improvement; a disciplined approach to critically and continually assess what is being done and why, to reduce timelines, improve quality and provide more cost-effective legal service. This is not a cost-cutting measure, but rather a smarter and better use of talent.
A philosophy of continuous improvement also supports growth in another way. It inevitably leads team members to improve workflows and training so that select team members can perform higher value work - work that used to be done by lawyers - at reduced cost to the firm and with greater personal benefit to the team member – which also frees up lawyers to do other more valuable work.
But continuous improvement goes deeper than that. In Daniel Pink's excellent book, *Drive*, he outlines how, beyond having a satisfactory salary and a congenial workplace, team members crave competence and autonomy. An important part of continuous improvement philosophy is the freedom to question, challenge and experiment without crushing criticism; allowing every team member to suggest changes to how her work is being done. Never has this philosophy been more important for law firms than now, when they are awash in Millennials; the generation most vocal about their desires for autonomy, learning and empowerment.

Another inevitable result of continuous improvement will be the question that is often raised by Millennials, "Isn't there an app for this?" A question bolstered by a growing legal tech industry that has normalized the idea that technology has a very important role to play in legal services, whether through expert systems, Artificial Intelligence, or simply better use of existing software. There is already a growing appetite and clamour from Millennials for technology solutions or technological assistance for their daily tasks. And so, lawyerless growth will also be achieved through smarter and better use of technology, particularly in combination with workflow and continuous improvement philosophies. How can it not? We have already seen significant productivity gains with the current crop of legal technology – much of which remains grossly under-exploited.

A focus on lawyerless growth and on the creation of unique client experiences will force a change in the role of IT personnel in law firms; they will morph from being someone who simply keeps the system secure and running, to being explorers working hand-in-glove with all team members to create a better client experience. And while there will be some lawyers whose inclination for technology will move them to seek a greater technology skill set than others, in-depth technological skills will remain in the realm of technology subject matter experts who understand what law firms and their clients require. All of this leads to a question that will be distressing to many lawyers. If some legal work can be solely performed by technology, and other portions can be performed by team members supported by technology, process and workflow, how many lawyers does a law firm really need? And who should really be managing and leading such a firm? In an entity-driven model the unique client experience does not revolve around a specific person; everyone on the team is

important, but no one is *that* important. And so entity-driven models have no place for lawyer-dominated hierarchies and will refer to everyone as a "team member"; law firm marketers for entity-driven firms will make statements like, "we have 500 team members across the country to assist you."

But, let's turn our attention to some less tangible, intrinsic benefits of an entity-driven approach. The previously discussed aspects of an entity-driven model will create a multitude of opportunities for a diverse range of skill-sets, which in turn will attract and retain talent, as well as increase diversity of thought and experience at all levels of the organization; something that management gurus continue to say is the key to success in every industry. Furthermore, as unique client experiences are created, so too is a strong and loyal relationship created between the client and the firm, rather than between a client and an individual lawyer; making clients and lawyers, more sticky.

An entity-driven approach will also cause firms to view their personnel very differently. The tournament has no place in an entity-driven approach as it doesn't make economic sense to view personnel as unlimited resources to be hired, trained, then cast aside for a fresher face. Success in an entity-driven approach will be found by investing heavily at the initial hiring stage with an eye to keeping all new hires for a long career.
The current law firm operational model is beyond its "best before" date, and demonstrating its inability withstand the stresses brought about by The Great Legal Reformation. Therefore by necessity, legal services will transform from a lawyer-dominated service to an entity-driven service dominated by people, process and technology; a service that is merely augmented by lawyers. It's the dawning of a new era of legal services as a team sport.

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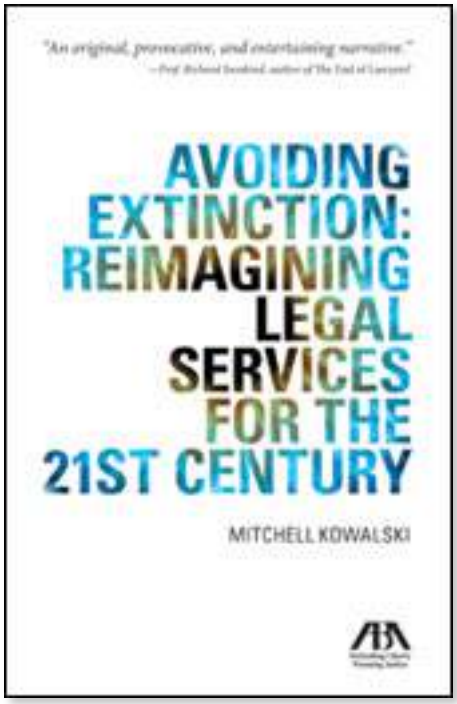

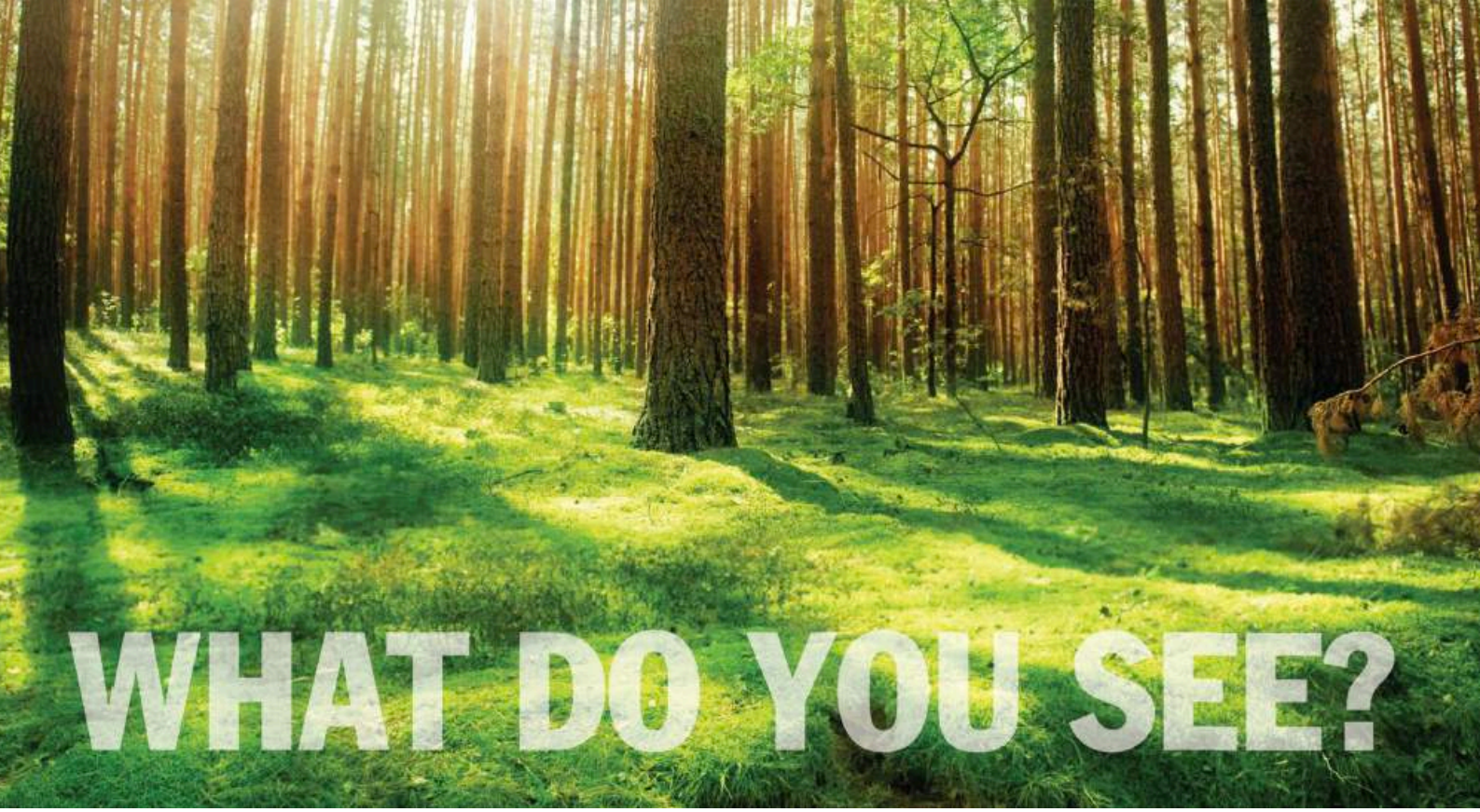

Major law firms today operate in an increasingly complex, competitive and uncertain global environment. Building 'winning positions' in lucrative markets, now more than ever requires clear and sustained focus that is appropriately and realistically resourced. We understand that making these high risk decisions about direction, focus and priorities within the required time-frames can be challenging.

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Blockchain, a Disruptive Force Now Impacting the Legal Industry

By Joseph Raczynski, Legal Technologist/ Futurist

Part 1

Basics of Blockchain

We are at the precipice of transformative change in nearly every industry. Blockchain or Distributed Ledger Technology (DLT) is the cornerstone of this rapidly evolving new era of efficiency and disruption impacting the legal industry. Blockchain is generally defined as a distributed database or ledger. This differs from the traditional record, in that a database is usually centralized, generally in one location or system. With DLT, it evolves from a central database (a single store of information), to a database that is spread among multiple computers (sometimes thousands) saving a copy of the information. Ultimately each computer will have a duplicate of the data. It is encrypted, immutable (cannot be changed), driven by consensus (all computers have to agree), and is not owned by any single entity.

A natural question that arises. Why would anyone want a database to be distributed? The financial crisis of 2008 taught us many valuable lessons, one of which was that massive organizations who wielded all of the power (think a single database) can be a weak link for the broader system. If that one entity should fail, the entire system likely will follow. From these financial reverberations, Bitcoin was born, which has as its underlining technology, the original Blockchain. The intent, distribute data over a massive network, for verification, authentication, and transparency without one person or organization having dominate control over the system or data. At its heart these are ideological motives that clearly have antiestablishment roots. However the technology it is starting to flourish at an exponential rate.

Real World Blockchain Examples

As you may gather there is certainly much hype around what can be done with this technology. Below you will find several examples that I discussed recently with industry experts at Consensus 2017, a massive Blockchain conference in New York City. Here I met with and examined several smaller startups and their quest to build out solutions with DLT which will impact the legal industry.

Government - Blockchain Powered Land Registry: Thomson Reuters Tax and Accounting states that 70% of the world's land is unregistered. Ownership of land leads to significant empowerment and growth of wealth for individuals. An organization called BenBen is endeavoring to help lock in property rights for citizens of Ghana, Africa using the Blockchain.

Problem: In this use case, land records are stored in a centralized database with no other benefits besides a paper registry. BenBen states, "It is virtually impossible to collateralize property rights in Ghana because other paper registry system is unenforceable in court.

Because of unenforceability, banks will not accept land as collateral. This situation leaves millions without the possibility of leveraging their property to rely on the rule of law for protection – continuing the ongoing cycle of poverty for much of the population".

Solution: BenBen is working with BigchainDB, a new Blockchain organization to create a "top-of-stack" land registry verification platform. Essentially it is a new infrastructure built on a Blockchain and integrated with financial institutions to update current registries. Essentially BigChainDB are "enabling smart contracts and distributing private keys for clients to allow an automated and trusted property transaction between all parties." So people would be able to verify that they own something in order to more easily obtain loans and build wealth.

Intellectual Property - Music Ownership and Distribution: Currently there are dozens of entities that get paid out on a single song that you may download from iTunes. The labels, marketers, distributors, and finally the artists all get a cut of the proceeds. The current payout model looks like a bowl of spaghetti with a myriad of entangled strings connected, spaghetti with a myriad of entangled strings connected, each piece of the business seeking their $auce.

Problem: The control of the music in the traditional model is in the hands of the corporations and labels. A fraction of the funds are eventually paid back to the artist.
Solution: Resonate, another Blockchain startup, is working on a solution to use this technology to bypass the corporations and labels. As you listen to music, you can make micropayments to artists – directly to them. Micropayments are cents or fractions of cents that are possible through the newer cryptocurrencies, which may be divisible by tiny fractions of a penny USD. All of these transactions are stored on the distributed ledger, essentially cutting out all of the middlemen. Baked into this are smart contracts which are encoded into the chain and automatically perform actions that normally humans would be oversee, i.e. the payouts.

Identity – Verified Identity Credentials: When a job is posted, how do you know that the person applying for the role graduated from the school they listed? One area being explored is how to leverage the Blockchain to verify who someone is and what they are stating is true.

Problem: In the traditional Resume or CV people sometimes forge, alter, or falsify documents in order to buoy their chances.
Solution: Recruit Technologies has built a prototype resume authentication database for people looking for jobs and employers. BigchainDB is working to leverage DLT to store applications and their documents. Through the natural immutability, the files offer greater trust and auditability. Built on this platform, a company could be better positioned and hold less liability.

With hundreds if not thousands of use cases forming that leverage Blockchain technology, the legal industry is perfectly positioned to adapt and assist in this space. The three aforementioned use cases are directly connected to people and business; therefore have a direct play within legal. While Blockchain may impact certain parts of how a law firm works, government agency interacts with people or a corporation works, there is little doubt that the early adopters will have a major head start compared to their counterparts by engaging in Blockchain.

Joseph is an innovator and early adopter of all things computer related. His primary bent is around the future of law and legal technology. He also focuses on several fields including Blockchain, Artificial Intelligence, Cybersecurity, Cryptocurrency, and Robotics (drone technology). He founded wapUcom, LLP, consulting with companies in web and wireless development. As a side project DC WiFi was created to help create a web of open wireless WiFi access points across cities and educate people about wireless security. Currently he is with Thomson Reuters Legal managing a team of Technical Client Managers for both the Large Law and Government divisions. Joseph serves the top law firms in the world consulting on legal trends and customizing Thomson Reuters legal technology solutions for enhanced workflows. He graduated from Providence College with a BA in Economics and Sociology and holds a Masters in eCommerce and MBA from the University of Maryland, University College. You can connect with Joseph at JoeTechnologist.com or JosephRaczynski.com or @joerazz

AI, ME2 & Blockchain SmartContracts

by Paul Lippe, member of the Advisory Board of Elevate Services, founder of Legal OnRamp and pioneer in the reinvention of law

Starting in 2014 with the introduction of Watson from IBM, AI has become a significant topic for lawyers. A recent ABA Journal article quoted one lawyer as saying "Once we have fully artificial intelligence enhanced programs like LegalZoom, there will be no need for lawyers, aside from the highly specialized and expensive large law firm variety.

Given lawyers' natural skepticism and frequent resistance to new technologies, is this just #PeakHype?

The leading legal technologist and futurist, UK-based Richard Susskind, first worked on AI systems in the late 1980's and has been writing about AI for the last 30 years. Dan Katz, of Chicago-Kent Law School in Illinois, has recently emerged as the leading legal technologist in the US, and has differentiated between "rules-based AI" and "data-driven AI."

So while the attention to AI may be new, the development has been a long time coming.

So what will AI mean for lawyers when all is said and done?

First, AI will be a feature. Or as we say at Elevate, *ME2*, which stands for *Machines and Expertise in Everything*. Our *ME2* ("me too") initiative is focused on weaving AI into legal work – not to replace human lawyers, but to augment them, as other kinds of software have done for decades.

Just as Scott McNealy from Sun predicted that computing would become a *utility* two decades ago, and now we have sophisticated web services from companies like Amazon or IBM, AI functionality will become a feature or utility for most aspects of legal work.

For some lawyers or legal service providers, AI will be a feature that enhances their competitive position and professional satisfaction; for other lawyers or legal service providers, AI will be a feature that diminishes their competitive position and professional satisfaction.

Second, AI will impact the way clients work together.

In particular AI, and the parallel developments around Blockchain and SmartContracts, will require an improved legal infrastructure to facilate high speed, digital commerce.

To understand why, let's explore 4 questions:

- What is AI and how does it relate to lawyers' work?
- How do new technologies like AI typically get introduced in established fields?
- How are Blockchain and SmartContract likely to work?
- What is a prudent approach for lawyers in thinking about how to adopt AI?

What is AI and how does it relate to lawyers' work?

The term Artificial Intelligence was popularized at MIT in the 1950's and 1960's to describe how a computer might mimic the functions of the human brain; but as both understanding of human cognition and development of AI have advanced, the definition has changed regularly. As Kurt Keutzer, a former colleague and now Professor of Computer Science at UC Berkeley once said, "it's only AI when you don't know how it works; once you know how it works, it's just software."

Today, when people refer to AI, they most typically mean Machine Learning ("ML"), or the ability of a computer to look at large amounts of data and see patterns in it, like whether someone with a particular credit profile is more likely to default on credit card debts. The most powerful AI applications are those embedded in large-scale consumer offerings, like Waze for advising on traffic options, Siri and Alexa for voice-recognition, or Amazon for making book recommendations. Per Dan Katz, none of these are based primarily on "rules" that are codified into a form of computer intelligence, but rather are data-driven, by discerning the patterns of previous decisions to predict or advise on future decisions.

The most compelling example is self-driving car technology, which is not based on getting driving experts in a room and codifying all the rules of driving (e.g., "if on a three-lane interstate going faster than 72 miles per hour, it is OK to pass in the right lane if the middle lane has six or more visible cars in front of you, providing that there is (i) no merge, (ii) no car in the shoulder or (iii) no large exit less than 2

miles ahead"), but rather based on accumulating hundreds of millions of hours of film of actual driving circumstances and decisions and predicting or advising driving decisions based on those patterns. The machine enables Human X to do what Humans A, B, and C have collectively already done.

For our purposes, we should probably think of AI for lawyers as:

- Aggregation of large amounts of data of lawyer decision-making or that leads into lawyer decision-making,
- Where a machine discerns previous patterns of decision-making, and
- Either makes a decision, recommendation or prediction based on those patterns.

Since discerning patterns is something lawyers have always done, the advent of AI can both strengthen and supplant different kinds of lawyer work. To think about how lawyers are likely to apply AI, it is useful to distinguish between subjective and objective legal work. Historically law schools suggested, based on the Langdellian method, that all legal reasoning was *objective*, but that notion has long since been discarded. So, in truth, most legal reasoning is *subjective*, i.e., one person may think Roe v Wade was correctly decided, and another may think it was wrongly decided. Both can marshal internally consistent legal arguments or cite lots of precedents, but in the end, both views are subjective.

So AI can help you construct arguments for or against Roe, or make predictions on whether a particular judge will be more persuaded by one argument or another, but cannot tell you which choice is "correct." Conversely, if a due diligence exercise requires me to review 1,200 contracts and determine whether there is a change of control provision that operates in this particular deal, that is an *objective* exercise, even though some of the language may be ambiguous or arguable, and as I classify different language to mean 'yea' or 'nay' to the change of control question, the machine can get smarter each time it sees different variants of that language.

How do new technologies like AI typically get introduced in established fields?

Until recently, AI-style technologies were often introduced as a substitute for expert reasoners, such as expert-system diagnostic systems in medicine. But Expert Substitute applications have rarely succeeded, because they rarely out-perform established experts initially, and tend to be resisted by experts and misused by non-experts. Expert Substitution is particularly problematic in law because:

- The role of a lawyer is protected by regulation, including attorney-client privilege;
- Most legal judgments are subjective, so there is no way to "test" whether the machine judgment was correct; and
- Clients typically don't just want an answer, they want the ability to "rely" on the expert judgment in varying respects.

But that doesn't mean that AI has no place in law, it just means we should look primarily to *Expert Augmentation*, especially in those areas where lawyers are grappling with large amounts of data, which itself might have been created by or is best understood by machines. Some examples where we see AI getting traction today include:

- The aforementioned contract analysis

or due diligence;
- Analyzing legal bills; and
- Various aspects of e-discovery.

So typically the best way to use AI initially will be to supplement or augment an initial large project or repetitive style of work. To go back to our general examples around the introduction of AI, new AI technologies are successful most often when then are embedded in an overall services offering (like Waze, etc.), not when they seek to supplant or displace an expert. In other words, *ME2*.

How are BlockChain and SmartContracts Likely to Work

In the last year I have read perhaps 200 articles about Blockchain, and even co-hosted a conference at MIT about it. And I am more confused than I was a year ago.

Blockchain refers to the idea that more than one organization can have a "shared ledger" that is distributed and protected through encryption, so that fewer intermediaries (think exchanges) are needed to track both sides of transactions. Don Tapscott refers to this as the "Internet of Value." http://dontapscott.com/speaking/blockchain-revolution/ Every bank, financial insitutiton and industrial player has some kind of blockchain experiment(s) going on. If you're a blockchain lawyer, you already know who you are. If you're the rest of us, it would be wise to start thinking about what might happen to your clients if we move to a blockchain world. By way of (uncertain) analogy, ask yourself these questions:

- If I were the lawyer for The New York Times in 2000, and I understood what Google might do to information on the Internet, what would I worry about?
- If I were the lawyer for NBC in 2005, and I understood what Facebook might do to how people consume media on the Internet, what would I worry about?
- If I am a lawyer in 2017 for a bank or insurance company, how might blockchain impact my clients?

Related to, by slightly separate from, the world of blockchain is the idea of "Smart Contracts," or contracts that operate like computer code. Today, we think of contracts as a guide to dispute resolution for courts. In truth, contracts at like a form of "code" today, instructing companies what to do in relation to other companies (and internally). With greater and greater complexity, and with companies interacting with each other more digitally through the network or the "cloud," contracts will have to work more like code and be self-executing and much more precise. CommonAccords is a very promising early example of smart contracts. http://www.commonaccord.org/ Whether this means contracts will actually be written in code, or existing contracts can be re-expressed in more precise fashion, remaisn to be seen. But for sure we're moving from a world where you could write a contract like a Jane Austen or Norman Mailer novel, to a world where everything has to be precise, understood and executeable.

What should lawyers do about AI and related technologies over the next year or two?

As noted above, lawyers tend to skeptical about the introduction of new forms of technology. One important consequence of this skepticism is that lawyers can miss out on the opportunity to *learn from*, not just to *learn about,* how to use a new technology. What do

we mean by this? Anytime a new tool or method is introduced into a field, it forces practitioners to evaluate how they do work and how they assess work. Pilots don't fly a jet plane the same way they flew propeller plans, and air-to-air combat strategies don't stay constant either. So when introducing AI into their work, lawyers have a valuable opportunity to ask some important, fundamental questions:

- How is the way we're doing work aligned with what really matters to the client and other stakeholders?
- If we use AI, what aspects of the work can the AI improve, and what does it risk making worse? How do we measure that?
- How can we learn from every stage of our use of a new tool to continue to improve our work?

Once we conclude that AI is a *learning opportunity* and not a *practice risk*, then the logical next step is to look for projects where we can introduce AI to augment the work of existing experts and accelerate the learning of non-experts:

- What types of projects are other people using AI on?
- What types of projects or matters are most important to our firm or legal department that we should be sure to improve on by using AI?
- How can we track the progress/evolution of AI to make sure we are learning and improving?
- What does of projects or matters can we cumulate expertise and competitive advantage by using AI?
- As AI becomes more generally available (e.g., "smart-searching"), what areas of practice that we have traditionally viewed as requiring more sophisticated lawyers can actually be done by less sophisticated lawyers?

For law firms, their primary impediment to embarking on AI projects may be (i) their segmentation of client data, (ii) difficulty in funding activities that may cost money in the current year but not yield benefits till future years, as well as (iii) having the specialized personnel to run such projects. For legal departments, their primary impediment may be lack of specialized expertise or internal technology support. In both cases, Elevate can *augment* the resources of the law firm or client and help ensure a successful project, especially in projects to combine the efforts of both firms and clients.

Conclusion

Surely we've all come to accept that we're in a world of dynamic, technology-driven change, and lawyers are not standing outside that world. For now, I'll just encourage you look for examples of *ME2 – Machines and Expertise in Everything* – like Siri, Amazon, Waze and others, and start thinking about where ME2 could help the profession. And don't worry about AI replacing lawyers – just think about how you can make sure that you're one of the lawyers for whom AI enhances your competitive position and professional satisfaction.

Paul Lippe is a member of the Advisory Board of Elevate Services, which recently acquired OnRamp Systems, where he was CEO. Legal OnRamp was first developed at a legal department productivity and collaboration platform for Cisco Systems and is recognized as a pioneer in the reinvention of law.

2017 Legal Procurement Survey

What We Found

By Dr. Silvia Hodges Silverstein, Executive Director of the Buying Legal Council, adjunct professor at Columbia Law School and Fordham Law School

Procurement continues to gain traction in companies with considerable legal spend. Many large companies today have a department dedicated to sourcing legal services. Legal procurement professionals trained in data analysis and sourcing technology help with spend management. They carefully reduce the number of firms the company instructs and ensure billing guidelines are established and followed.

In the last decade, legal fees have been under intense scrutiny. Publicity about billing practices, big ticket spending, increased transparency, and profit pressure have changed the situation and shifted responsibilities from the legal department to finance and procurement. Top management – typically the CFO – brings in procurement to help legal better manage its spend rather than legal departments pro-actively asking procurement for help.

Legal Procurement is still a new discipline. Only three years ago, in 2014, the international legal procurement trade organization *Buying Legal Council* (www.buyinglegal.-com) was formed to support and educate Legal Procurement professionals and other buyers of legal services. It provides education and networking to its members and counts many Fortune 500 companies, multinationals, and government agencies among its members.

Early this year, the Buying Legal Council together with Bloomberg Law published the 2017 Legal Procurement Survey to give insights into current legal procurement practices and trends:

Insight 1 | Legal & Procurement are warming up to each other

Legal and procurement appear to slowly getting more comfortable with each other. More than half of respondents in the 2017 Legal Procurement Survey believe they have a good relationship with legal.

Until recently, in-house lawyers did not want to have anything to do with procurement. Legal procurement's involvement was seen as unwanted interference despite possibly leaving significant savings on the table. In his foreword in the *Legal Procurement Handbook*, former DuPont General Counsel Tom Sager said:

"'Procurement' may still be a four-letter word in the legal industry, but the legal landscape is clearly changing. And with it the recognition that it is incumbent upon the general counsel and her outside counsel to apply greater sourcing discipline to our profession to create competitive advantage for her respective corporate clients."

In the 2017 survey 17 percent of respondents assessed legal and procurement as "partners" and 38 percent said to have a "collegial" relationship with the legal department. This makes for a combined 55 percent with a positive relationship.

On the other hand, 37 percent experience a "reluctant" relationship with legal, and 8 percent described their situation as "what relationship?" These 45 percent still have to build the necessary trust for a good working relationship. This will take time and effort.

Insight 2 | Legal Procurement helps reduce spend by an average of 11%

Legal Procurement definitely does its job: On average, legal procurement departments were able to save their employers 11 percent of the overall legal spend. The "most successful" legal procurement departments were able to achieve an astonishing average savings of 23 percent. What's more, the highest overall savings according to the 2017 Legal Procurement Survey was 35 percent of spend. Even legal procurement professionals who did not see themselves as particularly successful were able to achieve 9 percent of savings.

For 2017, legal procurement professionals expect average savings of about 12 percent, only one percent more than what they just reached. Interestingly, those seeing themselves as "most successful" in legal procurement expect savings of 17 percent this year, below what they just reached in the previous year.
"It is unrealistic to expect high savings every year, year after year," explained a seasoned legal procurement professional.

Once legal procurement professionals have established their framework, introduced different cost-savings methods and better approaches for sourcing legal services and managing legal services supplier relationships, it is hard to continue to deliver significant savings on top of recent savings. "Eventually you run out of quick wins or things to do that are able to improve your savings in high percentages," the expert said. The next step then for legal

procurement is to turn its attention to other aspects, such as matter management, outcomes, tracking, standards of best practices, and fixed prices for simple matters. So watch this space – further savings will be achieved, even after all the low hanging fruit has been picked.

Insight 3 | Top priority: Reduce number of Law Firm Providers

For 2017, legal procurement's top priority is to significantly reduce the number of law firms, to work with an increasingly (smaller) select number of strategic suppliers. Given that companies work with a still rather large number of law firms—an average of 362 traditional law firms, this is perhaps little surprising. This number ranged from as few as 15 firms to as many as 1,500 firms. The median number of firms in the 2017 Legal Procurement Survey was 200 firms (which is still a very large number of legal services providers!)

These high numbers explain why legal procurement departments still consolidate firms and continue to cut firms by forming panels of preferred providers. A very different picture emerges when we looked at the numbers of eDiscovery vendors, alternatives to traditional law firms and legal process outsourcing companies (LPOs). Hiring of these types of alternative providers appears to be much more disciplined and more tightly managed. This may be perhaps due to legal procurement's involvement in managing this type of services and/or because these providers are "newer phenomena" for companies.

On average, companies worked with four eDiscovery companies. This number ranged from zero to twenty eDiscovery companies. Companies worked with four "alternatives to traditional law firms" on average, ranging from zero to fifty firms, with a (low) median of two alternative firms. Finally, companies typically work with one LPO. The highest number of LPOs a company worked with was three.

What do these insights mean for law firms and other providers of legal services?

The competition remains intense. Procurement wants to see improvements to the delivery of legal services, gains in efficiency, appropriate, thoughtful staffing, careful budgeting, and the right use of technology. Most clients today issue requests for proposals (RFPs) and establish panels of preferred legal providers. It is essential to be on the panel to be able to win work.

Firms may need to hire additional resources trained in legal project management, knowledge management, process improvement. Or they may need help with pricing of legal services and bidding for work. John de Forte's new book "*Winning Proposals*" will be an essential guide for firms to win business.

Legal procurement's involvement is both a threat and an opportunity for the legal community. Winners have already started to respond and deliver better results at lower costs. Winner move fast, prepare, and pounce now to avoid watching your competitors win panel positions with clients you took for granted for too long.

For further insights: download the 2017 Buying Legal Council Legal Procurement Survey: Click on the Survey

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She is the executive director of the Buying Legal Council, the international trade organization for legal procurement and she is also adjunct professor at Columbia Law School and Fordham Law School.

Dr. Hodges Silverstein co-authored the Harvard Business School case studies Glaxo-SmithKline: Sourcing Complex Professional Services on the company's legal procurement initiative and Riverview Law: Applying Business Sense to the Legal Market on the new model law firm.

She authored many articles on law firm management including The Georgetown Journal of Legal Ethics' "I didn't go to law school to become a salesperson," the South Caroline Law Review's "What we know and need to know about Legal procurement".

She is also the author/editor of several books, including the Legal Procurement Handbook and Buying Legal: Procurement Insights and Practice.

What do Latin American clients want?

By Antonio Leal Holguín, Director at Adam Smith, Esq.

You may know about the natural beauty and cultural richness of Latin American countries. You may know the region for the crystalline colors of its Caribbean Sea, the remains of buildings of ancient civilizations in the jungles of Central America or high up in the mighty Andes. You may even know the region for the Rio Carnival, Colombian coffee, Argentine tango or Chilean wine. But did you know that it also has a vibrant legal market?

A lot is going in the legal industry in Latin America. International firms have put troops on the ground. Regional economies, such as Colombia and Peru, have grown and matured and have become increasingly attractive destinations for foreign capital.

Local companies, too, have become larger and more sophisticated. *Multilatinas*, companies whose operations are based in a Latin American country but are now regional or global players, are on the rise and are driving intra-regional investment. The arrival of global players has forced local firms to respond to new market realities. While many firms remain proudly independent, mergers of local firms, even across country lines, have become more common.

Just in Colombia, in the past five years or so, around ten international firms have entered the country. Some have set up offices, other have merged or entered alliances with local firms. A few Colombian firms have merged and one entered a combination with Chilean and Peruvian firms, in alliance with a well-known Spanish law firm.

But as fun as dwelling in Law Land is, what about clients? What do they make of all this? At Adam Smith, Esq., we decided to find out. There is very little information on how Latin American clients make hiring decisions and on how they're viewing the regional legal market's transformation. As part of a larger study of the Latin American legal market, we interviewed in-house counsel at large companies in Mexico, Colombia, Peru, Chile and Argentina. The companies included banks, airlines, industrial conglomerates and tech and energy companies. In most cases, we interviewed the GC and sometimes we interviewed other members of the legal team. All respondents had substantial responsibility and experience hiring and working with law firms.
Before we go into what it is that Latin American clients look for in their lawyers and what they think of the wave of law firm mergers and alliances, let's take a look at how companies in the region find and select their law firms.

People I know
When it comes to finding law firms, Latin American clients rely on personal relationships or word of mouth recommendations from colleagues in the industry, business executives at their company or even other outside counsel. Clients like to work with people they know. Most companies work with law firms with whom they've worked in the past because they value the law firm's institutional knowledge of their company.
This shows that law firms should take care of their current clients; they enjoy a big advantage over competitors who pursue them. And many studies have shown that current clients are more profitable than new ones. As some firms in Latin America are beginning to realize, excellent client service and client relationship management (including obtaining and acting on client feedback) is essential to their success in an increasingly competitive market.

I'm not part of supply-chain
Selection of outside counsel in Latin America is a mostly informal, subjective process. Most companies have no formal policies for hiring law firms. In fact, even though most of them have procurement manuals, the purchase of legal services is expressly excluded. Corporate counsel view the hiring of law firms as a long-term decision and one that is mostly based on trust. Competitive selection processes are the exception. With the help of procurement departments, some companies have made their law firm selection processes more structured. Their main goal in doing this seems to be cost reductions because, like their peers in other countries, corporate counsel in Latin America are facing greater pressure to do more work with less resources. These companies generally use competitive processes for routine matters, but have begun using them for strategic, complex matters, too.

I make the decisions around here

Our study also sought to find out who makes the decision to hire outside counsel at Latin American companies. We found that GCs are the key decision-makers. Sporadically, when dealing with high-stakes matters, they'll consult the decision with the executives to whom they report. The few companies that have formal, competitive selection processes usually have a selection committee, of which the GC is a member.

As mentioned above, Latin American companies tend to work with law firms with whom they've worked in the past. One reason for this is that long-time GCs have developed close relationships with firms and, because they are the decision-makers, they tend to pick firms they know and have worked with. In some instances, client-law firm relationships pre-date current GCs. They're institutional relationships that the current GC sticks to when making hiring decisions.

I pick you because...

Now, Dear Reader, let's turn to what it is that Latin American clients look for in their lawyers. A proven track-record is of paramount importance to them. Clients look for deep knowledge and relevant experience in the subject matter in which they need help. And, to further strengthen the advantage of existing relationships, clients highly value a proven-track record with them. As once respondent told us, "I try to reward good work with more work." Clients also look for firms with solid reputations. Respondents believe that "big brand" law firms have the track-record to deliver on their brand promise.

This finding highlights the importance of specialization and focus. Clients seek depth. So, as we at Adam Smith, Esq. have been saying for a long time, it's better to have a few excellent practice areas that you're known for rather than a bunch of mediocre ones (i.e., being the go-to-firm for nothing in particular.) This presents a significant challenge for Latin American firms. Lawyers in the region have traditionally been *factotum* lawyers. A reason for this is that, except for few specialty areas (e.g., tax,) work volumes in the market have not traditionally allowed lawyers to specialize. But the market is changing. Both law firms and lawyers should make strategic decisions on which areas they're better positioned to compete in.

Latin American clients also expect great law firms to have great teams. They want to know who the lawyers on their team are and that they have the right credentials. Academic credentials (that the lawyer went to such or such school or has a master's degree from a foreign university) are particularly important, alongside her subject-matter expertise and experience. Team size and its members' ability to collaborate are also relevant for clients. They don't want to work with teams that are too large or that work poorly together.

As in other places around the globe, clients in Latin America are becoming more reluctant to pay for the training of junior associates. They resent delegation in young and inexperienced associates and want a team with partners and senior lawyers that work well together.

But subject-matter expertise and experience is not enough. Clients also expect excellent service. Clients expect timely and complete responses. They expect lawyers to match their companies' timeframes. As one GC explained, "This is a complex industry . . . it gives us no time. We can't just wait to see if our advisors

will respond." Clients are permanently, even if informally, measuring client service. They carefully watch their interactions with outside counsel to assess the service they're receiving. As I pointed out above, respondents see the hiring of outside counsel as a decision that is based primarily on trust. We found that trust is built on two twin pillars: subject-matter expertise and experience and responsiveness. Corporate counsel trust a knowledgeable and experienced lawyer. But this is not enough. Responsiveness is critical because a lawyer's timely and complete response sends a message of competence and commitment. It tells the client that the lawyer is part of its team. Law firms that invest in improving client service will reap the benefits. Those that fail to improve responsiveness will likely see a steady deterioration of their client base (our study also found that lack of responsiveness is the main reason why clients fire law firms).

Please, no dissertations!

Take a look at law firm websites and you'll invariably find phrases on how committed the firm is to the "highest quality standards" and to "delivering value" to its clients. But what do "quality" and "value" mean for clients?

In doing their work, lawyers are usually focused on what they put in (i.e., billable hours.) But for the client, it's all about what he gets out. Following Peter Drucker, we defined quality as that which clients in Latin America want to get out of their engagements with lawyers and are willing to pay for. The answer: they want complete, practical and timely work product. Let's look at these three elements in more detail:

- Complete work product: the law firm's work must adequately respond to the client's request and make evident the subject-matter expertise and experience of the firm's lawyers (more on this below.)
- Practical work product: the law firm's work product must be actionable (i.e., make business sense,) concise (i.e., the client isn't interested in reading a dissertation) and understandable (i.e., in plain Spanish/English, no jargon.)
- Timely work product: the law firm's response must be on time, which usually means that it is quick and that it matches the client's internal timeframe.

If this is "quality," what is "value" for Latin American clients? In most cases, value is related to clients' ideas about complete work product. Think of it this way: the client is hiring a law firm because of its subject-matter expertise and experience. Therefore, the client expects that the law firm will actually use it when dealing with her case or transaction. The client doesn't want to see that it could've done the work herself. So, clients want to see, for example, that the law firm they hired proposes a solution or raises flags about risks they hadn't thought of. In sum, as we pointed out in our research report, timely, useful, real-world, business savvy advice given in a 10-minute call may have more quality for the client and provide more value to her than a 50-page memo with multiple citations of Supreme Court cases. For any firm looking to improve client service this provides a place to start: work on delivering complete and practical work product and delivering it on time. Forget about dissertations; make your points briefly and in plain language.

Price sensitive, me?

It's become common for law firm leaders to say that all clients care about is price. That

quality is a must, a given, and, therefore, clients pick lawyers exclusively based on price. We sought to evaluate this claim. We found that price is, indeed, very important for Latin American clients. But its importance varies depending on whether the matter is strategic or not and whether there are several providers with a similar track-record and reputation who could provide the service (i.e., supply and demand.)

Without doubt, the Latin American legal market is a buyers' market. Clients expect price to be negotiable and they expect law firms to be flexible with fees. Moreover, some companies (particularly those that have implemented competitive selection processes) expect their lawyers to use their accumulated knowledge to help them reduce costs.

Price pressures present a big challenge for Latin American firms. In many countries in the region, law firms have engaged in a dangerous raise to the bottom in fees. This will only take them so far. They may soon run out of room for discounts. And then what? Instead of discounts, law firms should be figuring out how to work differently: exploring different staffing mechanisms, adopting common-sense practices widespread in the rest of the economy (e.g., project management,) and adopting technologies that help them work more efficiently.

I look only for the best

Latin American clients, like their peers in other latitudes, see law firms in tiers. They source work to different tiers of firms based on the strategic importance and complexity of the work. While clients adjust their expectations about fees, depending on the law firm tier they're sourcing their work to, they don't compromise on quality and always look for the best. Even for lower-tier firms, clients expect excellent quality. The fact that the work is not as sophisticated as that performed by firms higher up in the food chain doesn't mean that it can be done poorly.

No Italian at a sushi place

One GC told us that clients don't want to eat sushi at an Italian restaurant. Again, clients look for subject-matter expertise and experience. So, if they go to your three-Michelin-star Italian restaurant, they won't eat sushi there, no matter how much you offer it to them. They'll go to a sushi place for that instead. Clients either look for law firms that are very good at everything they need or hire different specialized providers. This shows that, for cross-serving purposes, it's no good that your law firm has a tax practice if it's a mediocre one.

Mergers, alliances? What's in it for me?

A key objective of our study was finding out clients' attitudes towards the market's increasing consolidation and internationalization. What did we find out? Well, Dear Reader, Latin American clients have ambivalent opinions on law firm mergers and alliances. Their views range from seeing little value in them to considering them essential:

- Clients who see little value in them are concerned about patchy quality. They want to hire the best lawyers, not their local firm's ally.
- Some clients see only limited value in law firm mergers and alliances. They think it benefits American and European multinationals, but not them. A firm with offices in several countries in the region may also be useful for occasional, large, multi-country transactions.

- Other clients see it as a nice-to-have; they have operations in several countries beyond their home country and having an integrated law firm may be useful.
- Lastly, some clients see mergers and alliances as a must. To be their lawyer, law firms must have a presence in the countries where they do business.

The views of respondents on this topic didn't depend on the type of company they worked for. One would assume that respondents who work at mostly local companies would find little value in law firm mergers and alliances and respondents at multinationals would find them valuable. But this wasn't the case. Even respondents from large *Multilatinas* were skeptic about law firms merging or entering alliances.

Because there is so much noise about the market's consolidation and internationalization, some law firm leaders and market observers seem to assume that mergers and alliances are good *per se*. "Everyone is doing it," they think, so it must be what clients want. Our findings show that it's not so simple. Firms should beware of easy narratives. Not "everyone" is doing it; most law firms in the region remain independent. Rather, law firms should invest their energies in better understanding their clients and what adds value to them. As our findings show, a merger or alliance with a firm in another Latin American country may be the last thing they care about.

The answers we got from respondents also send a clear message to firms that have chosen the path of mergers and alliances: they must show that they offer standardized quality (that they operate as one firm) and that they have top notch practitioners in the practice areas in which they compete. International firms entering the region have the challenge of showing that they have the best teams to service clients.

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Peter Drucker famously asked his students: what is the one thing that a company needs? Staff? Computers? Software? Offices? None of these is the answer. The one thing that a company needs is *clients*. This truth led us to explore what Latin American clients were thinking about the legal market and how they hired law firms. Listening to clients, we believe, is the first step towards greater competitiveness and improved performance for law firms in the region.

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Incubation in the legal vertical seen from a practical and European perspective

By Julien Henri Lasala, Nextlaw Labs Dentons

Incubation plays a major role in the legal ecosystem

The market is pushing legal services to be better, faster and cheaper. Recent advances in new technologies are enabling these expectations to be met, but there are certainly other elements to consider for this revolution to be successful.

Corporate venture, incubation and acceleration techniques can meet the legal industry specifics. They are powerful tools that foster the creation of 'creativity spaces,' which are essential for the innovation and the adoption of ideas. These safe zones enable law firms to mitigate the risks while leveraging the effect that innovation has on the business model and on the bottom line.

Nextlaw Labs is the embodiment of these incubation and acceleration techniques. A subsidiary of Dentons, launched in May 2015, it was specifically designed to bridge the innovation gap in the legal sector. With an exclusive focus on the legal vertical, Nextlaw Labs swiftly navigates the deep waters of its parent Dentons, and accelerates its portfolio companies as well as offers a virtual incubation space for Dentons' internal ideas.

At the Innovation Department of Dentons Europe, our mission is complex. On one hand, we consider local specificities to achieve meaningful project delivery, especially for IT integration or development of local functionalities. On the other hand, we must quickly move across the multiple countries, harmonize the approach, and eventually roll out and scale innovative legal technology solutions.
Many aspects, such as language, local processes, regulatory framework, market flexibility, and individual client needs significantly influence the pace, direction and strategy of product development. Incubation programs instill change at the appropriate pace and help integrating the environment's feedback. Incubating helps to mitigate risks of failure, to preserve the core daily business and to avoid frustration from clients, legal and business professionals.

Incubation, a powerful tool to foster innovation

The incubation programs connect dedicated professional teams to the legal talent pool, entrepreneurs, experts, advisors and internal sponsors. To eventually operationalize and commercialize the solutions, we need input from clients, lawyers, startups, IT teams, knowledge managers, marketing, risk teams, peers and so on. Strategic partnerships, generating more open-ended marketplace or community initiatives, are also adding value to the collective wisdom.

Ideally, the whole development timeline of each product is collectively designed up front and readjusted as progress is made; but out in the field we want to avoid over-engineering processes, paralyzing the project or bringing in frustration. Therefore, a core team of lawyers, with input from clients, takes ownership of the concepts, drives and champions them. The incubation team makes sure the road is clean for the core team to operate at a risk-free rate. They streamline the project management process, set milestones and provide the core team with the right expertise and guidance. The different stages of the process allow different experts, legal and business professionals to interact at the relevant moments.

Accelerating and incubating is not limited to startups. Internal and bottom-up approaches are very powerful innovation drivers. They attract lawyers willing and eager to experiment; they create and generate new ideas. This approach produces great projects, and sends positive messages internally and externally.

Incubation beyond the hype

Incubation is only as powerful as it serves a law firm's strategic objectives. Does the firm favour strategic partnerships over in-house solutions? Is the firm more focused on short-term commercial benefits or long-term positioning?
Internal clarity about target market and target technologies allows for the mapping of the

areas where the law firm could fully benefit from an incubation process. By failing to do this, there is a risk that incubation is artificially plugged in within the law firm.

Does the firm want to incubate short-term projects (e.g. add on features) – typically within a year or less? Does it want to focus on cutting edge technologies – one to three years? Or does it want to incubate longer term solutions and invest in a three to five year horizon?

Human, operational, functional, structural implications and adjustments

The team setting up the incubation or acceleration programs should start extensively scoping the possibilities before aligning and executing a plan against its resources. The type of vehicle structuring, the availability and needs of funding, resources, adjustment of corporate policies and incentives, creation of a virtual or a physical space, and so on, are among the questions to be answered.

To start with, the human factor is the center piece. When selecting the team, the lawyers' level of seniorities must be balanced. Experienced lawyers are costly and have less availability although their great experience is a value-add for the team. Partners will sponsor the project and provide guidance. They can advocate the idea internally or externally. On the other hand, engaging with the younger generation is critical to stay sustainable, obtain new perspectives and to keep junior lawyers and business professionals inspired.

Lawyers are not necessarily prepared for these kinds of projects. They must stretch their own comfort zone. Additionally, the high-achievement culture at law firms can instill fear of failure which can work against the incubation. The incubation programs should therefore challenge the professionals and feed their inclination for questioning the way things are done. Working with external consultants to provide specific training and workshops, or organizing networking events to involve clients and younger generations will surely nurture a positive mindset.

Another aspect is the implications towards operations. Internal resources can be scarce, and consulting the risk, knowledge, IT or marketing departments can be costly or slow. We should therefore make sure that the required efforts don't clash with the short and medium-term strategic plans of the firm. The incubator is entwined with the corporate structure. Its independence preserves its swiftness and agility. At the same time, this connection with the parent company opens up channels for acceleration tapping into the corporate talent pool and leveraging the client network.

Technology often comes first to mind when vetting and investing in legal tech but the projects have to be planned and project-managed from a market, financial, product, and human viewpoint. Consulting subject matter experts and relevant stakeholders will help to positively challenge our positions and plans. Ultimately and incrementally, incubation may support a shift in the client value proposition, which will deliver additional and other services than only legal. External strategic partnerships with tech providers will help distribute risks and responsibilities and drive a smooth transition to the next generation of legal services.

Julien is supporting and coordinating numerous projects with and for Nextlaw Labs, a global collaborative innovation platform and accelerator focused on developing, deploying, and investing in new technologies and processes to transform the practice of law around the world.

Closely working with Dentons and Nextlaw Labs, having primary focus on the European market, Julien reviews and meets with startups, assesses investment opportunities and assists in product developments.

Having started to work at Dentons within the Europe Talent department, Julien has integrated Marie Bernard's team to help building a stronger European and Berlin based innovation hub dedicated to legal tech and focusing on bridging the gap between North America and continental Europe. Being junior on the field, he doesn't only bring a fresh perspective on the industry, he also brings his energy to buttress the disruption of the European legal ecosystem.

Julien also strongly engages with the legal tech community and strives to bring innovation to the heart of the legal world. In 2017, he was jury member for the Berlin Legal Tech Hackathon; speaker at the Legal Tech Kyiv, International Conference of Legal Tech Innovations; took part at the panel discussion Accelerators/Incubators in the Legal Market – A European Approach, during ELTA's first international conference; and more recently engaged with startups across continental Europe during the first Legal Geek Road Trip which covered over 3000 km in a VW camper van and stopped at major hubs such as Amsterdam, Brussels, Berlin, Paris and London. Contact Julien: julien.lasala@dentons.com

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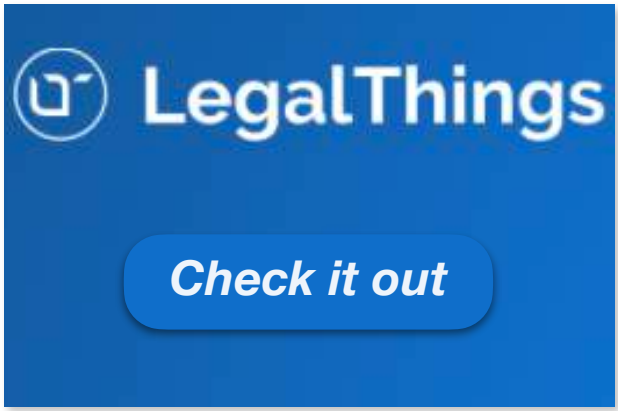

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Is 'Legal Innovation' an oxymoron?

By Daniel Acevedo

For this very first contribution for LegalBusinessWorld I would like to discuss the concept of Legal Innovation, which nowadays is probably a common term within Europe and the USA (less in-'LatAm'), but in my opinion fails to have its concept fully grasped. After all, it is no secret that people tend to use business lingo so frequently that it becomes a buzzword.

Talking about innovation *per se* is not an easy task, and surely it is not a matter that should be taken lightly, since doing so is the easiest way to trivialise its most important issues. By the same token, it is less simple to speak about innovation in a generic fashion, as seen when the expressions "*medical innovation", "technological innovation"* or even *"legal innovation"* are used. Why? Because the concept of innovation entails, as we shall see in a moment, the introduction of a new or "*significantly improved*" component over a particular activity.

This being the case let us imagine for a second the following preposterous phrase: "*I will significantly improve Medicine*". How so? Which part of the Medicine it is intended to improve? Medicine as a profession? Medicine education? The regulation of Medicine as a component of social implications? By using this example, we can establish the following: It is neither accurate nor real, to say something like: "*we are going to be innovative in Law*", given that you are talking about everything and nothing at the same time. If a phrase like that is going to be used, a similar question arises: which area of the Law are you pretending to innovate? The exercise of the profession or Justice? Or perhaps legal education?
Evidently, it is not convenient to talk about innovation in such generic terms, and for this reason we shall approach the main topic of this article on the three fronts that compose the economic development of a country: 1) innovation in the provision of legal services; 2) innovation in law education; and 3) innovation in Justice.
Now, I am certain that each of these fronts can provide not one but several doctoral dissertations. With this in mind, we will talk about Legal Innovation throughout four issues: this first article, where I will introduce the general concept of innovation, and three subsequent issues where I will discuss each of the mentioned fronts.

The General Concept of Innovation

To avoid building upon what has already been built, we shall take the concept suggested by the Organisation for Economic Cooperation and Development (OECD) and which can be found in the Oslo Manual, which is arguably the most important reference document regarding R+D. Concerning the concept of innovation, we can find in the mentioned document the following:

> *"Innovation is the implementation of a new or significantly improved, product (good or service), or process, a new marketing method, or a new organisational method inbusiness practices, workplace organisation of the workplace or external relations… A common feature of an innovation is that it must have been implemented. A new or improved product is implemented when it is introduced on the market. New processes, marketing methods or organisational methods are implemented when they are brought into actual use in the firm's operations."*

In this order of ideas, the Manual mentions that an innovative activity consists of:

> *"…all scientific, technological, organisational, financial and commercial steps which actually, or are intended to, lead to the implementation of innovations. Some innovation activities are themselves innovative, others are not novel activities but are necessary for the implementation of innovations. Innovation activities also include R&D that is not directly related to the development of a specific innovation."*

With these two concepts we can conclude this initial article with a couple of considerations: A. *To innovate* necessarily implies to make something new or take something that already exists and "*significantly improve*" it. Although I am not that comfortable with this last expression given that it leaves a wide space for interpretation, what is clear is that in order to innovate there must be a change from an

initial state to a secondary state, whether it be:

1. a product or service,
2. a communication channel,
3. an organisational method, or
4. an organisational joint area.

If an organisation is doing something in order to change its current operation does not necessarily mean that it is "*innovating*", meaning that it is possible that innovative activities might be carried out without having a clear picture of the innovations that are pretended to be introduced. To be able to claim that a Company is innovative, the results of its innovation projects must have been validated by their clients, and therefore the innovation projects must have generated some value for the organization. In other words, it is not an innovation if it is not implemented.

These conceptual considerations are of the utmost importance since more often than not the innovation efforts, and more so in the legal profession, do not seem to have a clear aim, but rather they seem to be a patchwork of good intentions that in practice have little or no benefit at all for those who really need it: the Society, where more than half of the 113 countries evaluated in the Rule of Law Index scored 6 or less out of 10.

Daniel Santiago is a Colombian attorney specialized in Innovation, Business Architecture, Project Management & Process Improvement applied to the Legal Services Industry.

His articles and conferences about the future of legal services are well known in Latin America. Right now, Daniel is the Head of the Business Transformation Division on Gómez-Pinzón Zuleta Abogados, a Colombian top-tier Law Firm.

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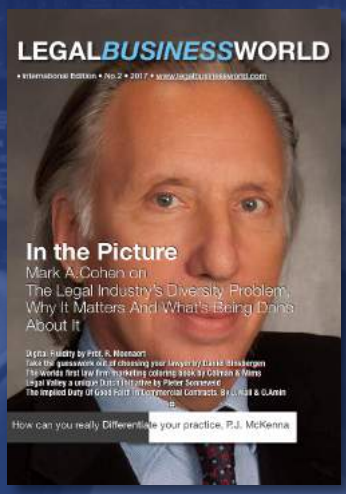

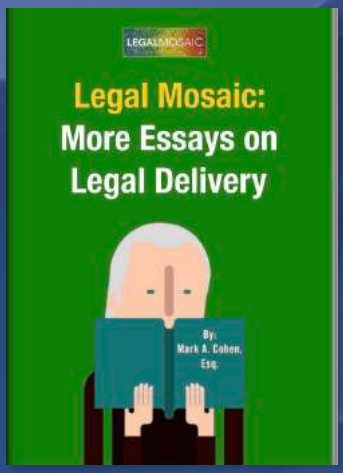

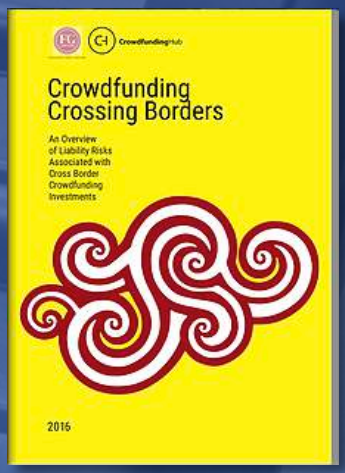

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