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The In-House Counsel Movement, Metrics of Change

by Prof. David Wilkins

How to face the future of legal services by Ivan Rasic

Developments in Legal Information Retrieval by Prof. Kees van Noortwijk

The Firm of the Future is in fact the Firm of now by Matthew Burgess

The Five Challenging Paradoxes of Firm Leadership

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What a beautiful market, isn't it?

As we travel the world and speak with all kinds of legal professionals, we hear al lot of professionals and experts talking about *change*. Disruptive or incremental *change*, *change* in practice, *change* through technology, the willingness or competencies to *change* and so on. Some experts predict that the legal market is on the verge of a big disruptive 'Bang' and the comfort bubble of billable hours, partnership structure and large bonuses will burst at any moment from now. Others claim a disruptive effect from the increase in Legal Tech solutions, and that jobs will disappear. They all are -more or less- probably right. But still there is something that amazes me. Looking at the lawyer (and other legal professionals) and his daily work, we see a person who's embracing *change*. Embracing because every day and every hour this professional works with new or *changed* rulings, legislation and jurisprudence. Every day this professional needs to accept these *changes*. He or she is even searching for precedents that will help them to *change* the outcome of a case. So how come there is an adverse reaction against *change* when it concerns the professionals themselves. Is it the fear of losing their comfort zone, or maybe the lack of understanding new business development? One thing is for sure. This once 'steady' market, were competition was defined as 'another Firm or Lawyer' is becoming mature. Market dynamics are based on new entries, technology, new business models, fierce competition from former clients, independence of young professionals etc. But above all, the legal market is *changing*!
"Don't you love it to be part of such a dynamic market!"

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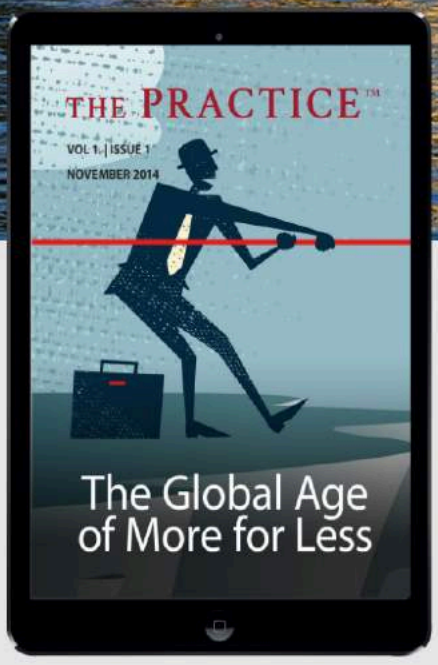

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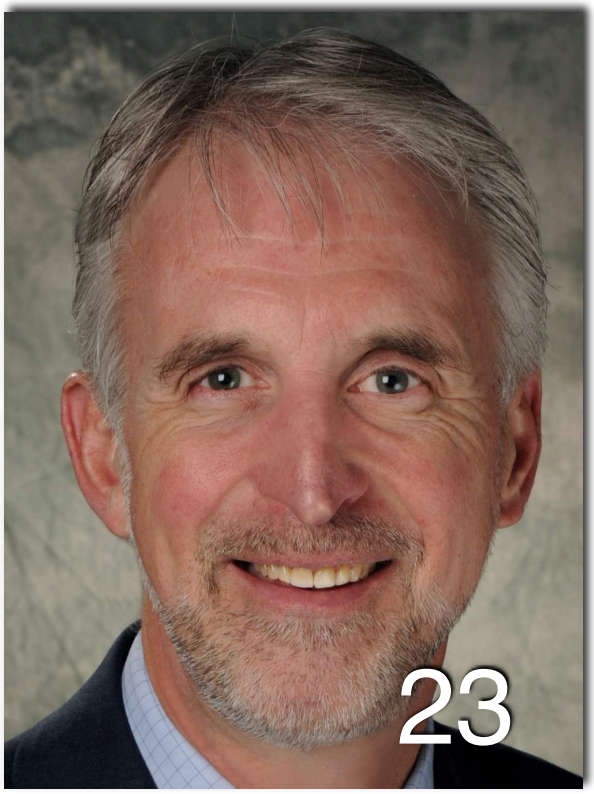

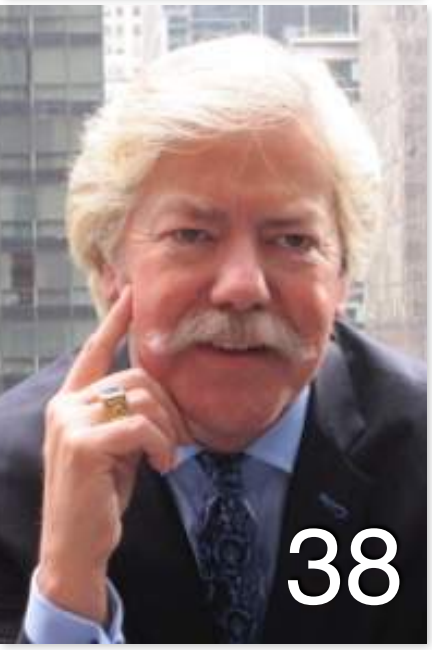

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The In-House Counsel Movement

Metrics of Change

By David Wilkins, Lester Kissel Professor of Law
Director, Center on the Legal Profession. Vice Dean for Global Initiatives on the Legal Profession at Harvard

In 1989 the American legal scholar Robert Eli Rosen published an article on the dramatic growth in the size, prestige, and influence of internal legal counsel in large U.S. corporations. In fewer than 20 years, Rosen argued, in-house lawyers had gone from a position of marginality and subservience—think "house counsel" as in "house pet"—to being "general counsel," a pivotal role in both defining and serving the legal needs of their powerful corporate clients
In the 25 years since Rosen's article, the power and prestige of in-house lawyers in the United States has only continued to grow. Internal legal departments routinely employ dozens of lawyers

and many large companies have general counsel (GC) offices that rival the size of large outside law firms. Lawyers in these departments now regularly perform legal work that traditionally was done by outside counsel, acting both as "diagnosticians" of their company's legal needs and as the primary "purchasing agents" for legal services that need to be procured. In-house legal departments also rival large law firms as a destination of choice for talented lawyers.

'Internal legal departments employ dozens of lawyers and many rival the size of large outside law firms.'

GCs have also strengthened their presence in policy debates, both within the bar and in broader discussions about law and legal institutions. This heightened public profile has helped to cement the GC's standing as a member of the company's senior leadership team. Indeed, many top in-house lawyers have traded in the legal-sounding title of general counsel for the more corporate sobriquet of chief legal officer (CLO) to signal that they are part of the company's C-suite. Indeed, several CLOs have ascended to the CEO seat in recent years.

We turn our attention to the rise, development, and future of the in-house counsel movement, in the United States and around the world. We begin where the revolution was born: the United States. Drawing on the Center on the Legal Profession's Corporate Purchasing Project (CPP) survey (see "Breakout Box" below) and using the United States as the archetype of the movement's penetration into the legal services industry, we offer a narrative and set of analytical tools for assessing the growth and development of in-house legal departments in both developed and developing legal markets. In doing so, we also assess whether the movement yields homogeneity, such that all reformed legal departments look alike, or allows for diversity under its broad tenets. A subsequent article, "Going Global: Comparing In-House Legal Departments in Emerging Markets," applies this framework to examine the spread of the inside counsel revolution to Indian and Brazilian legal departments, comparing and contrasting the growth, development, and maturation of GC offices in these jurisdictions to each other and to the U.S. model. We also hear from GCs currently in the field (see "General Counsel in Practice: Perspectives from the Field"), examine how law schools around the world are offering classes specifically geared toward training in-house lawyers (see "From the Classroom"), and learn about the future of the in-house movement-cum-revolution from its dean, Ben Heineman Jr. (see "Speaker's Corner").

The Takeaway

Supporters of the in-house counsel movement typically advance three types of arguments to justify a greater role for internal lawyers: an **economic** argument, which holds that strengthening in-house legal departments will lower legal costs; a **substantive** argument, which holds that internal lawyers will give better legal advice than outside lawyers because of their more intimate knowledge of the company's business and culture; and a **professional** argument, which holds that inside lawyers are better positioned to be the guardians of the company's corporate citizenship and long-term interests and values

. In this article, we offer six interrelated metrics by which to assess these claims:

1. The **size** of in-house departments
2. The **credentials and demographics** of the lawyers working inside these departments
3. The GC's relationship to, and degree of **control** over, outside counsel
4. The **internal standing**, jurisdiction, and authority of in-house lawyers
5. The **professional standing** of internal counsel in the profession as a whole
6. The participation and influence of GCs in **public policy debates**

Together, these metrics of change provide an important tool for evaluating and benchmarking in-house legal departments vis-à-vis their parent companies, their outside service providers (e.g., law firms), and the legal profession as a whole. In the United States, there is strong evidence that legal departments have changed on all six of these dimensions in line with the tenets of the in-house counsel movement. It remains to be seen, however, whether the growing integration of "law" into broader "business" solutions through cross functional teams and the greater use of technology have threatened the gains made by internal counsel in the years since the global financial crisis (GFC).

To investigate these challenges, the Center on the Legal Profession will begin collecting data this year on a new project to understand the structure and functioning of internal legal departments in large U.S. and European companies, a study that will parallel the pioneering Corporate Purchasing Project of the U.S. S&P 500 in 2006. Together with the empirical work we are doing on the changing role of GCs in emerging economies, this new data will give us an unprecedented look at the status of in-house lawyers around the world, and how this status has changed since 2008.

The rise of the in-house counsel movement

Starting in the 1980s, GCs in large companies began to make three distinct claims about the market for corporate legal services that justified increasing the power, authority, and standing of their position.

1. *Economic*

As legal fees paid to outside firms skyrocketed, GCs argued that they were in the best position to help companies control legal costs, both by taking work inside and by reining in unnecessary and abusive practices (e.g., duplicative work) that many business leaders believed were endemic to most law firms. As a result, companies like General Electric, whose GC, Ben Heineman Jr., would become the face of the in-house counsel movement (see Speaker's Corner), built up internal legal departments that were as large as many of the law firms that continued to serve them. At the same time, these increasingly sophisticated internal lawyers sought to break up the long-standing relationships between companies and law firms by requiring firms to compete for every new piece of significant business and choosing the winner based on the price and perceived expertise of the particular lawyers involved.

"We hire the lawyer, not the law firm" became the rallying cry of the day, and advocates of the revolution claimed that the long-standing

the revolution claimed that the long-standing relationships with outside firms had been relegated to the graveyard of history.

2. *Substantive*
As the movement gathered steam, GCs began to supplement the economic argument with a substantive justification for taking work away from outside counsel—and, more importantly, for giving internal lawyers more authority inside the company.

"We hire the lawyer, not the law firm" became the rallying cry of the day

Proponents of the inside counsel movement argued their advice was not only more economical but also better. Traditionally, companies looked to outside counsel to play the role of "trusted advisor" who could guide them through the web of complex problems at the intersection of law and business. But precisely because the long-standing relationship between companies and firms was being systematically dismantled, inside counsel could credibly claim that even senior partners in law firms could no longer provide this kind of advice.
Instead, GCs asserted that inside lawyers within the corporate hierarchy were in the best position to understand the company's business and to engage in the kind of risk assessment and preventive counseling that managers need to survive in an increasingly complex and turbulent legal environment. As a result, GCs argued that they should be entrusted with the role of being both a "partner" to the business and the "guardian" of the company's long-term reputation and values.

3. Professionalism
This substantive claim furthered a third argument for increasing the standing and prestige of internal counsel. As the pejorative sobriquet "house counsel" underscored, internal counsel traditionally labored under the assumption that their employed status made them less independent—and therefore less professional—than their external law firm counterparts. Reversing this second-class status was a major goal of the in-house counsel movement.
To accomplish this, the new breed of GCs claimed that their status as corporate insiders gave them a unique perspective from which to give advice that was every bit as independent as the "wise counselors" whom the bar had always assumed populated prestigious outside law firms.
Indeed, in an age in which many believe that law firm partners have abandoned the ideal of law as an independent and public profession for a slavish devotion to power and profit, some commentators have gone so far as to suggest that internal lawyers are best positioned to fulfill the gatekeeping role of ensuring that companies comply with both the letter and the spirit of the law.
By the end of the 20th century these three central tenets of the in-house counsel movement had taken on the aura of accepted orthodoxy in the United States

Metrics of change
Notwithstanding this general acceptance, however, there was little systematic, empirical research on in-house legal departments. In 2006–2007, the Center on the Legal Profession conducted the Corporate Purchasing Project (CPP) to remedy this situation, interviewing more than 50 GCs from a broad range of industries and administering an in-depth

survey of the organization and legal purchasing decisions of in-house legal departments in S&P 500 companies (see The Corporate Purchasing Project 1). We used this data to develop six metrics with which to evaluate whether the structures and practices of legal departments in large U.S. companies conformed to the central claims made by the proponents of the in-house counsel movement:

- Size of the in-house department
- Credentials and demographics of the lawyers working inside the department
- Relationship to, and degree of control over, outside counsel
- Internal standing, jurisdiction, and authority of in-house lawyers within their organizations
- Professional standing of internal counsel in the profession as a whole
- Participation and influence of GC in public policy debates

Although the CPP data upon which these metrics are based was collected before the 2008 GFC, subsequent conversations with hundreds of GCs around the world—including more than 250 CLOs who attended Harvard Law School's course, Leadership in Corporate Counsel—have confirmed that these six factors still capture the most important indicators of whether an in-house legal department has absorbed the philosophy and practices of the in-house counsel movement.

We have therefore used them as a guide for our ongoing research on whether the in-house counsel movement is spreading to the legal departments of companies headquartered or doing business in emerging economies such as India, China, and Brazil (see Going Global: Comparing In-House Legal Departments in Emerging Markets). We will also employ them as we launch the next phase of our Corporate Purchasing Project (CPP2) to investigate how the practices and purchasing decisions of large U.S. and European companies have changed since 2008 (see Corporate Purchasing Project 2, page 22).

In the following sections, we summarize what the Center has learned about the practices of corporate counsel offices along each of these dimensions from the CPP and other sources, and highlight the implications for the central tenets of the in-house counsel movement.

The Corporate Purchasing Project 1

The Corporate Purchasing Project, conducted by the Center on the Legal Profession in 2006–2007, provides empirical data on the internal profiles and purchasing habits of major U.S. in-house legal departments. The project included surveys and interviews of 166 CLOs of S&P 500 companies—nearly one-third of the total.

The data set comprised both written survey data from 139 companies and in-depth interview responses from 43 companies spread across a diverse range of manufacturing and service sectors. In particular, the study sought to answer questions about how companies evaluate the quality of legal service providers when making hiring and legal management decisions, and under what circumstances these companies discipline or terminate their relationships with law firms.

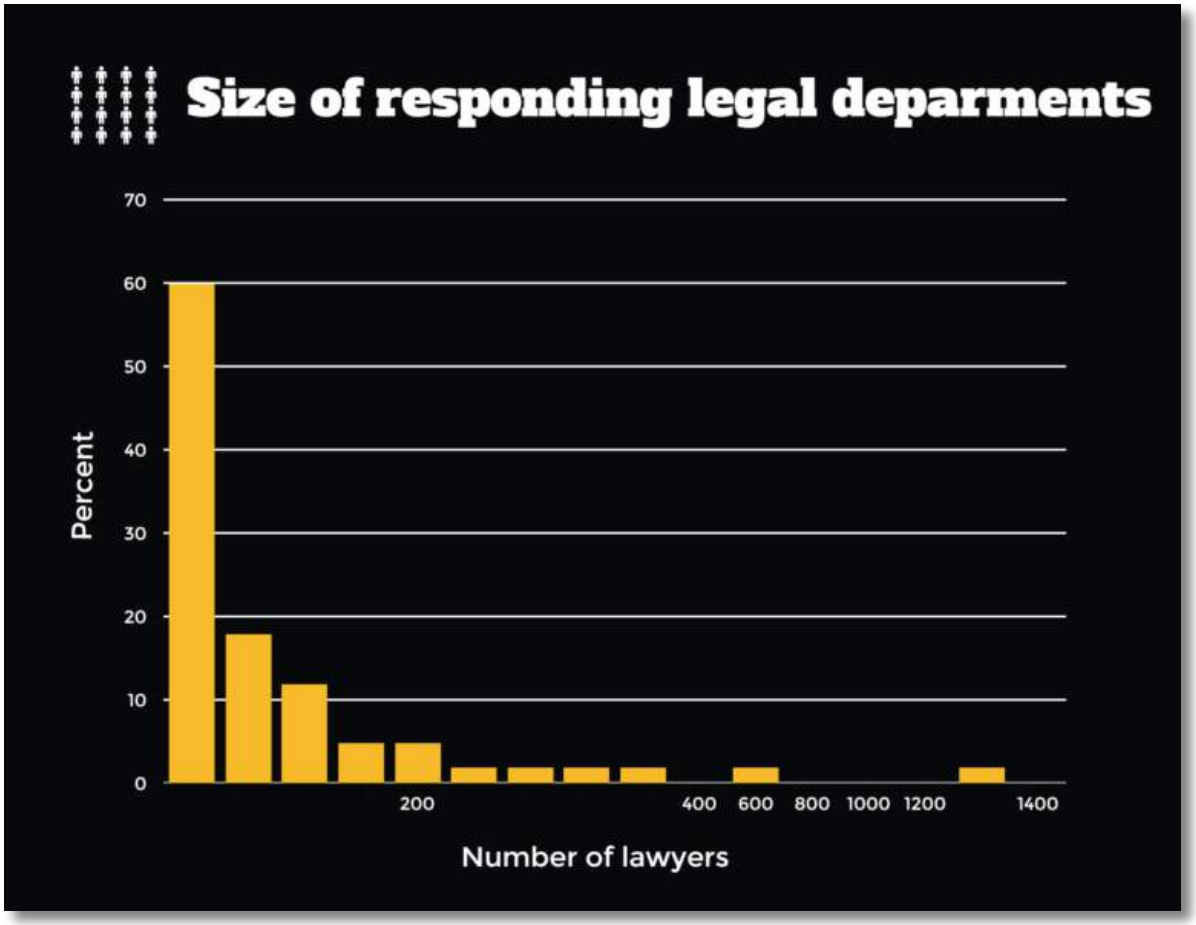
In the process of conducting this study, researchers also collected data about the overall characteristics of internal legal departments—traits that yield important information about

the extent to which the in-house counsel movement's rhetoric matched reality. Part of this data is presented below. Going forward, the data offers a pre-GFC snapshot and baseline for determining how much has—or hasn't—changed in the structures and operations of in-house legal departments in the intervening years.

Size matters—but in complex ways

One clear way to measure the importance attached to internal counsel is to look at the size of the legal department. As indicated above, in the United States, this size has increased significantly since the 1980s, making internal counsel one of the fastest-growing segments of the U.S. legal profession.

While this rapid growth has been widely viewed as an important signal of the rising power of U.S. internal counsel, we have also learned that size remains an imperfect measure of a legal department's power and importance. Specifically, the CPP revealed that the size of the legal departments of the largest U.S. companies was surprisingly varied in 2006–2007. Thus, while the median legal department employed 35 lawyers, the range in size was quite significant, with some companies having almost completely outsourced their legal function and others maintaining legal departments of more than 1,000 lawyers. Although we do not have systematic data on this variable since 2008, anecdotal evidence suggests that, if anything, the financial crisis has exacerbated these differences, with some companies responding by increasing the number of in-house lawyers, while others significantly contracted the size of their in-house legal departments to cut fixed costs.



This difference in size affects the legal department's functioning, although less than one might expect. Even with respect to the displacement of outside law firms, the size of a company's GC office is an important—but not determinative—indication of the split between the amount of money spent on outside lawyers and the percentage of the legal budget that is spent on in-house counsel. To be sure, according to CPP data, those with a very small legal budget send almost all of their work to outside firms. But above a certain size there is much less correlation between size and outside spending. Indeed, the five largest legal departments in our sample spent a higher percentage of their legal budget on outside law firms than the average company we surveyed. Nor is size a perfect proxy for the importance of the work that is done by internal counsel, or their importance within the corporate hierarchy. Financial services firms tend to have some of the largest in-house departments, yet much of these lawyers' work relates to the routine processing of transactions and other compliance-related matters. Tellingly, in the CPP the GCs of these organizations were less likely to report directly to the CEO than those of other companies, implying a less important position in the corporate hierarchy. It will be interesting to see whether this has changed since 2008, given the prominent role that banks and other financial firms played in the crisis.

Credentials and identities of the lawyers

There has also been a significant increase in the educational credentials and prior work experience of the lawyers who work in in-house legal departments in the United States. In the past, in-house departments were viewed as less prestigious destinations for young lawyers, and competition for entry was less tough than at law firms. Today, the relevant status between in-house legal positions and law firms has been significantly reversed, particularly at more senior levels. Although most GC offices still do not recruit directly from law school, they now have their pick of talented midlevel associates and junior partners from the best law firms, with senior in-house lawyers frequently recruited from the top ranks of the partnerships of outside firms.

Today women make up a significant percentage of the lawyers working in-house, including 25 percent of the GCs of Fortune 500 companies

Moreover, this change in status has been accompanied by an interesting increase in the number of women working in-house, including in the most senior positions. Prior to the revolution in the 1980s, the overwhelming majority of lawyers working in in-house legal departments—like the overwhelming majority of lawyers everywhere—were white and male. But as in-house departments began to grow in size and status, they also began attracting a significant number of female lawyers. Today, women make up a significant percentage of the lawyers working in-house, including 25 percent of the GCs of *Fortune* 500 companies, according to a 2015 report from the Minority Corporate Counsel Association. This percentage is far higher than the average number of female *partners* in large U.S. law firms, let alone female managing partners or other senior leaders, who remain a tiny percentage of those who hold these positions

This pattern is the opposite of what one tends to see in other professions when women become a significant percentage of the workforce, particularly in senior positions. As sociologists have long documented, when an occupation becomes "feminized"—by which they simply mean that the majority of workers are female—the job tends to decline in status and in other corresponding rewards such as pay. Elementary school teachers and nurses—and many would now claim even doctors—are relatively recent examples. But as in-house legal departments have become increasingly feminized, they have *gained* in status both within the company and in the legal profession as a whole, and the financial rewards have increased as well.

In the United States, from the perspective of gender equality, three factors appear to have contributed to this happy state of affairs. First, in the 1980s and 1990s in-house legal departments developed a reputation as being a better environment for women lawyers to succeed—particularly compared to large law firms, which many female lawyers viewed during this period as inhospitable places to work. As a result, when GCs looked to fill in-house positions, they found that they had many more qualified female candidates then males. Second, as these women moved up the ranks, they became advocates for other women, both within their own department and in the law firms they used for their company's outside work, thereby encouraging even more women to view the in-house route as an attractive one. Finally, this all coincided with a growing emphasis in many companies on achieving diversity among its professional and managerial staff, something many companies found easier to do in the legal department, where, as indicated above, there were more talented female applicants than in other parts of the business. Although all this could have resulted in a diminution of the status of internal counsel, the fact that companies had independent reasons for raising the status and importance of the position—reasons identified and promoted by a group of influential male GCs such as Ben Heineman Jr. at GE—helped to propel a virtuous circle in which the women joining corporate legal departments were the beneficiaries of both escalating status and gender equality. Whether this virtuous cycle will continue in the United States in the face of tightening legal budgets and the growing number of men interested in in-house positions, and whether we find anything similar in emerging economies such as India and Brazil, are among the most important issues we hope to explore in future research.

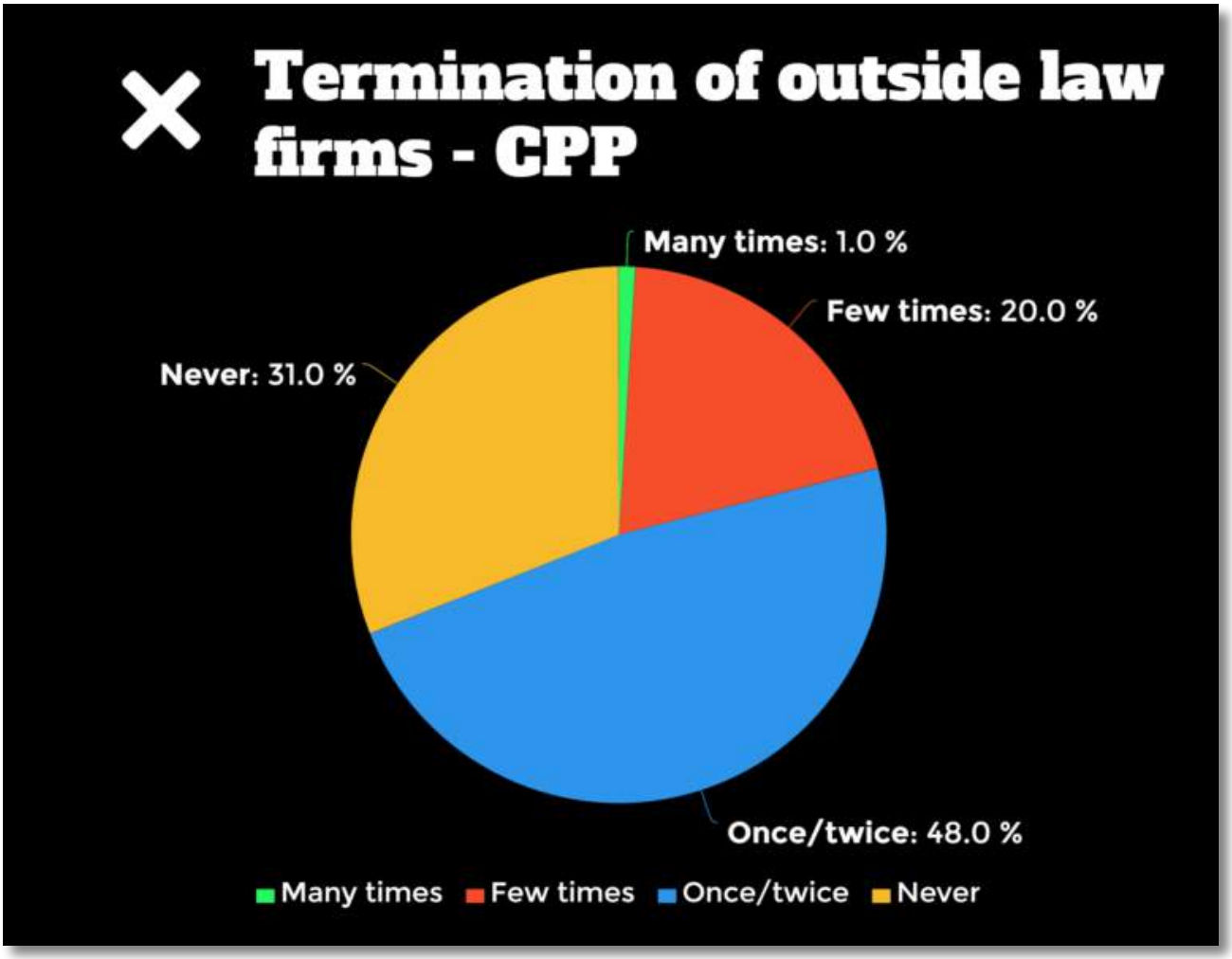
Control over the legal function: who's the boss?

Arguably the key feature of the in-house counsel movement in the United States has been the effort to wrest control over the core legal functions of the corporation away from outside counsel. However, the success of this effort has been mixed. Notwithstanding a significant investment in building up in-house capacities, many companies discovered that outside spending on law firms continued to escalate throughout the 1990s and into the first decade of the 21st century. Similarly, the extensive monitoring and controlling of law firm

In the words of one GC, terminating an important law firm relationship is a bit "like turning the Titanic"

did not result in increased levels of client satisfaction. The result has been that GCs continue to have less control over outside counsel than the movement's rhetoric might lead one to believe. According to the CPP study, for example, only about 20 percent of GCs from S&P 500 companies reported terminating an important law firm relationship frequently within the last three years; more than 30 percent had never done so; and almost 50 percent had done so only once or twice. In the words of one GC, terminating an important law firm relationship is a bit "like turning the *Titanic*"—something that takes an enormous amount of time and energy to accomplish and runs the risk of creating an even bigger disaster in the process. Interestingly, companies with very large legal departments were no more likely to attempt this tricky manoeuvre than companies with relatively small departments, underscoring once again that department size does not always equal increased power. Medium-size departments of 26 to 100 lawyers showed the greatest willingness to exercise this ultimate method of control.

As a result, we concluded at the end of the CPP study that while there had been an important shift in the degree of control that internal counsel exercised over both the amount of



work that is given to particular firms, as well as the manner in which that work is assigned, evaluated, and compensated, it was an exaggeration to view GCs as employing a strict "spot contracting" model for the purchase of legal services. Relationships at the firm level still mattered. Ironically, from my extensive experience with GCs since 2008, it seems that the financial crisis has not significantly altered this fundamental truth—at least not yet. Although companies have attempted to exert even greater control over outside counsel fees since the GFC, this has not caused them to terminate law firm relationships more frequently than they did before the crisis.

If anything, companies are insisting even more on a "partnering" model with their primary external providers in which these increasingly sophisticated and price-sensitive consumers concentrate the bulk of their legal spend in a relatively small number of "preferred providers" in return for discounts and other forms of investment by the law firm—discounts and investments that firms are even more willing to give than before 2008 in order to keep the work. Once again, whether the growing number of consultants and other potential "disrupters" attempting to convince companies that they can reduce their legal spend even further by sending work to non-law-firm providers will change these patterns is a central question we will explore in the CPP2.

Relationship with the boss

One of the most visible markings of the in-house counsel movement in the United States has been the growing power of internal lawyers within the hierarchies of corporate decision making. Thus, in the CPP we found the overwhelming majority—almost 90 percent—of the GCs in our sample reported directly to the CEO. Many also oversaw other related corporate functions, such as public relations, government affairs, human resources, and compliance. And virtually all were working to convince corporate leaders that their companies should move beyond a culture of "legal compliance" to one in which the goal is to create a "legally astute organization" where legal and business considerations are integrated at every level of the organization.

Once again, what evidence we have seen since 2008 reinforces the basic trend of the GC being a central figure of the top management team in most companies; although, as a result of the crisis in some organizations, compliance no longer reports to the GC. Nevertheless, the fact that we continue to see CLOs make the transition to CEO is a testament to the importance corporate boards now place on the skills and dispositions that internal counsel bring to corporate management.

Professional status

Whether or not one believes that these efforts explain all of professionalism, there can be little doubt that such a "professionalism project" has been at the heart of the in-house counsel movement in the United States. At the core of this project is the claim that in-house counsel are just as capable—indeed, arguably more capable—of exercising independent professional judgment than lawyers working in outside law firms. As with other aspiring professional groups—including the bar itself, whose professionalism project included the founding of the American Bar Association in 1871—one of the first things that GCs in the United States did to raise their status and visibility was to found

the American Corporate Counsel Association (ACCA), an organization that has been very successful in raising the status of in-house counsel. (As we indicate in the following story, Going Global: Comparing In-House Legal Departments in Emerging Markets, this organization has now been renamed the Association of Corporate Counsel to emphasize that the in-house counsel revolution is not just a U.S. phenomenon.)

That said, the claim that in-house counsel are capable of exercising the kind of independent professional judgment required to detect and deter corporate misconduct is not without detractors. In the wake of Enron and the GFC, some academic commentators have begun to challenge whether internal counsel are too dependent on their corporate employers to act as gatekeepers and ensure compliance with the securities laws and other public-regarding legal rules, especially when compliance might conflict with corporate profits (see From the Classroom).
Indeed, some have gone so far as to argue that GCs should be removed from the control of corporate managers and report only to an independent committee of the company's board to ensure true independence.

Moreover, as GCs have attempted to spread the movement's gospel to jurisdictions where the status of in-house lawyers has traditionally been even more tenuous than in the United States, resistance to the professionalism claims of internal counsel has been even stronger. Despite years of lobbying, in-house lawyers have still not been able to convince the European Court of Justice and other regulatory authorities that they are entitled to the attorney-client privilege with respect to discussions with their corporate employers.
At the core of this decision is a fundamental doubt about whether employed lawyers can ever truly be independent.

Influence over public policy
Finally, in addition to projecting influence in the profession, the in-house counsel movement in the United States has aimed to empower GCs to participate in the wider world of public policy and law. To see this ambition, one has to look no further than the ACC website. Under the heading "advocacy," the site proudly proclaims that the ACC "is the voice of the in-house bar, fighting for both our members' professional rights and their clients' representational needs before courts, media, government agencies, legislatures, and bar groups."

In recent years, the ACC has exercised its voice with increasing vigor, weighing in on a number of policy issues ranging from the permissibility of multidisciplinary and multijurisdictional practice by lawyers in the United States to the whistle-blowing provisions of the Dodd-Frank financial regulatory reform.

Moreover, in addition to intervening in specific controversies, GCs—particularly those in large multinational companies—often decide on key public policy issues themselves. For many important policy issues facing global companies—for example, the question of child labor standards for third-party suppliers in countries such as India and China—relevant legal standards are likely to be ill-defined, under- or overinclusive, or contradictory. In such cases, it is often up to the GC to craft a policy within these broad constraints that is consistent with both the company's economic interests and its values.

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Thus, how the GC crafts this kind of private ordering—and what kinds of enforcement mechanisms he or she institutes—will have a stronger effect on the realities of child labor than many other kinds of formal legislation. The fact that the United Nations and other global regulatory bodies are increasingly attempting to enlist GCs in creating corporate commitments to human-rights norms underscores just how important in-house counsel have become in the overall public regulatory system.

Six metrics of the movement

As described above, the six metrics provide a concrete starting point for understanding the transformation of in-house counsel, and whether the goals of the "revolution" are being achieved in the United States and other mature legal markets. Furthermore, by isolating these six important dimensions, this framework allows for a global comparison of in-house counsel to understand the extent to which the model has crossed borders.

This question of expansion is particularly salient for the legal industry in emerging economies, such as India and Brazil. In the following story, "Going Global: Comparing In-House Legal Departments in Emerging Markets," we examine the extent to which the in-house movement has spread around the world and how that expansion should be understood.

Is it a story of dispersion, with societies merely mimicking the process as it developed in the United States? Or is it a process of adoption and adaptation, with local factors playing a significant role in determining the contours of the in-house movement in emerging economies?

The manner in which the U.S. model of internal lawyering has spread to the United Kingdom and Western Europe provides some important clues to these questions (see "European expansion" next page). Although many of the six variables described above can be found in the internal legal departments of large U.K. and European corporations, there remain essential differences that are arguably based on important economic, political, and cultural differences between Europe and the United States.

As our preliminary data on India and Brazil presented in the next article, "Going Global: Comparing In-House Legal Departments in Emerging Markets," underscores, there are good reasons to believe that these differences will be even more significant with respect to the movement's spread into the rising powers in Asia, Latin America, and Africa.

Metrics of assessment

Variables	United States in-house movement
Size	Grown dramatically since the 1980s; large corporations have GC offices that rival the size of large outside law firms.
Credentials and identities	Almost all are lawyers and members of the bar. A large number of people working in-house are women.
Control over the legal function	Largely select outside counsel manage the relationship.
Internal reporting relationships	Commonly report to the CEO
The profession	Important players in the profession with increasing influence throughout
Public policy	Active role in public policy with regular interactions with government

European expansion

Since the turn of the 21st century, the in-house counsel movement has spread to the United Kingdom and Europe. This trend is easiest to see in the United Kingdom, where GCs of large British companies have begun a conscious campaign to assert their authority both within their organizations and in the wider public policy arena. But even in Europe, where the formal status of in-house lawyers remains largely unchanged, there is evidence of the growing power and influence of GCs, particularly in large companies.

Given the European Union's complex legal landscape of centralized directives—which are implemented by decentralized laws enacted by member states—many European companies have begun to develop increasingly large and sophisticated internal legal departments to help them understand and navigate these differing standards.

This trend toward larger in-house counsel has been reinforced by corporate scandals such as Enron, WorldCom, and Parmalat, and the new regulatory requirements that have followed in their wake. These events have further convinced many European companies of the value of a robust in-house legal department that can anticipate and avoid these regulatory pitfalls.

However, a 2010 decision by the European Court of Justice (ECJ) affirming that internal lawyers are not entitled to the attorney-client privilege underscores that the professionalism project of in-house lawyers in Western Europe is far from complete. (In recent years, a number of EU member states have challenged the ECJ's ruling, with some national courts, such as Belgium's, outright rejecting it.)
Given the overall direction of the global market for legal services, it is not surprising that the in-house counsel movement has increasingly migrated east to the United Kingdom and Europe. During the preceding two decades, many aspects of the U.S. model of law firm organization and practice—dubbed "Cravathism" for its emphasis on large, full-service law firms filled with entrepreneurial lawyers closely tied to business interests—crossed the Atlantic as well. To be sure, one can debate whether there are still significant difference between U.S., or more generally Anglo-American, corporate practices and a distinctly "European mode of production of law," representing a hybrid blend of Cravathism and norms and practices traditionally found in many European countries.

Nevertheless, it is clear that U.S.-style, large law firms now hold a dominant position in much of Europe. It is therefore understandable that lawyers and clients, increasingly steeped in the American model of lawyering in the law firm context, would be open to incorporating the American model of in-house lawyering as well.

In-house controversy?

Our continuing work on the U.S. legal profession, however, suggests that while the in-house counsel movement has made important progress on all six of the metrics identified above, the dynamic changes that continue to roil the corporate legal services market since the GFC may very well alter the structure and practices of in-house legal departments in the coming years.

The dynamic changes that continue to roil the corporate legal services market since the GFC may very well alter the structure and practices of in-house legal departments in the coming years

Always prescient, Rosen, the legal scholar who named the in-house counsel movement, has already indicated that important parts of the gains made by GCs may already be in decline, particularly in the area of professionalism. In an article published in 2002, Rosen revisited many of the legal departments he had studied for his initial article on the in-house counsel movement and found that several of "those that had been transformed in the 1980s and whose inside counsel were management's trusted advisors have been reengineered" in a manner that significantly altered their work—and, more importantly, their self-image. Instead of seeing themselves as "independent professionals," Rosen argued that the growing integration of in-house lawyers into cross functional project teams designed to work more closely with business leaders threatened to turn the in-house lawyer into just another "consultant" who values the "appearance of 'independence'" as opposed to any real commitment to public purposes or detachment from client aims. At the same time, the late Larry Ribstein argued in 2012 that in a world in which "smart" technology will increasingly allow companies to develop process-based solutions to many standard legal problems, "in-house lawyers ultimately may find their own power eroded by products and services that replace customized legal advice with standardized technology."

Needless to say, these are large and difficult questions, and prior reports of the demise of lawyers as independent professionals have proven to be significantly exaggerated for both in-house and outside counsel.

Nevertheless, from the tumult of the GFC to the introduction of new disruptive innovations to the concerns about professionalism hinted at by Rosen, there is good reason to suspect that even in the United States, the contours of the in-house counsel movement remain flexible, and the roles and structures of corporate legal departments will continue to evolve, sometimes in surprising ways.

The six metrics offer a powerful tool to accurately understand how these changes impact in-house lawyers and in-house legal departments.

The six metrics described in this article offer a powerful tool to accurately understand how these changes impact in-house lawyers and in-house legal departments. And that is exactly why continuing empirical research on the changing role of internal counsel in the United States and around the world is so critical.

Corporate Purchasing Project 2

To further our understanding of U.S. in-house legal departments and expand our research to Europe, the Center on the Legal Profession is planning an update to its 2006–2007 Corporate Purchasing Project. By resurveying the legal departments of major S&P 500 companies, the Center will be able to compare and contrast the profiles and operations of these departments pre- and post-GFC. We will also expand the project to the European sphere. In addition to revisiting the core questions we investigated in the CPP, this research will also probe the extent to which in-house legal departments are leading the charge for change within the profession, whether concerning the use of new disruptive technologies within in-house departments, innovative diversity and inclusion programs, and/or the use of pioneering new ways of sourcing, segmenting, and unbundling legal work.
To learn more or to get engaged, visit the Center's website at clp.law.harvard.edu.

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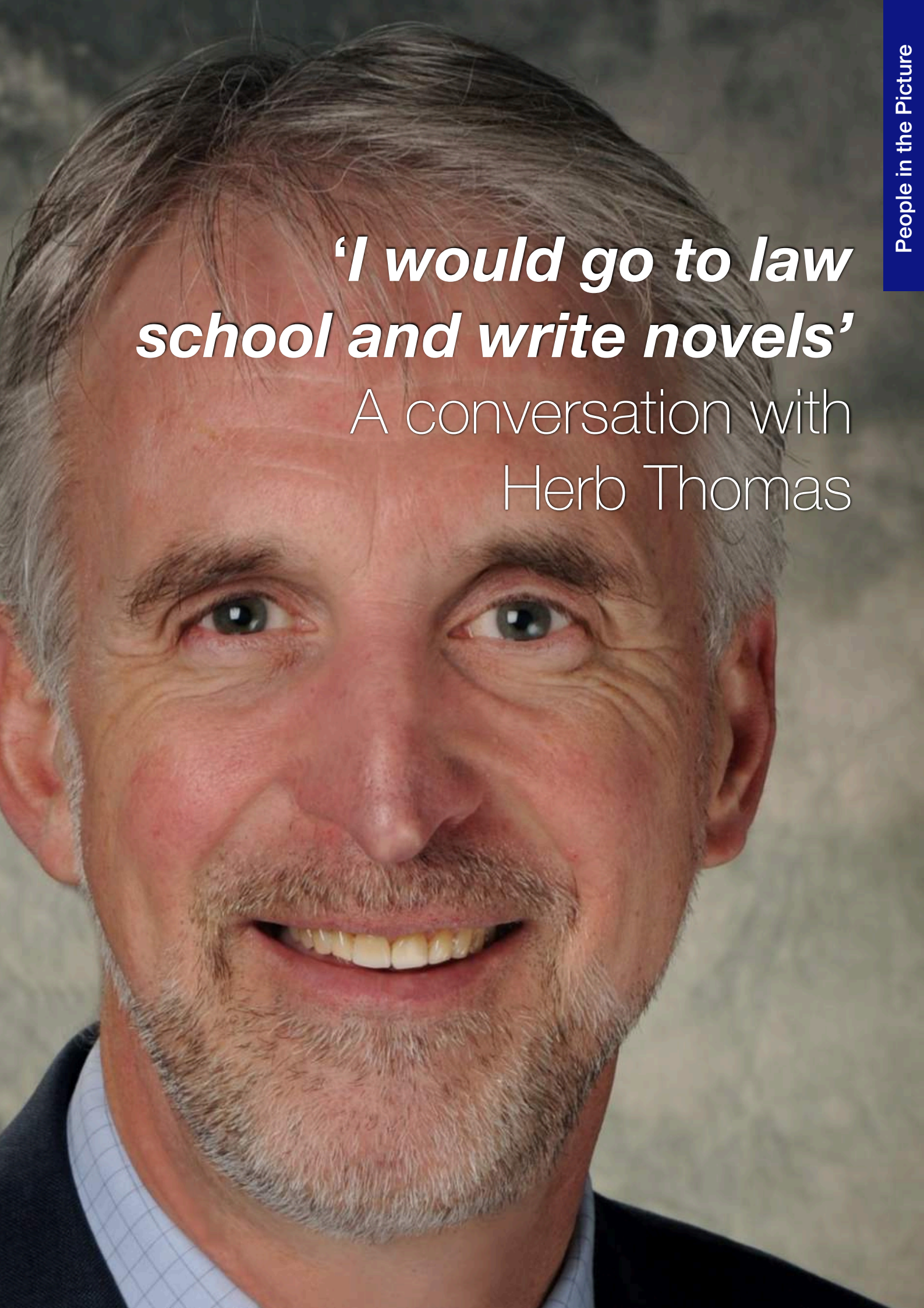

'I would go to law school and write novels'

A conversation with Herb Thomas

Can you tell us a bit about your career path into law firm management?
I've been a lawyer for 25 years, practicing law for 10 years and then in various management roles. But it hasn't been a very straight line. My early experience includes everything from being a deckhand on a Greek freighter to a salesman in New York's Garment District. I was at the University of Virginia working on a doctorate in English Literature when I had a kind of damascene moment: *I would go to law school and write novels*. Not so intuitive, but I moved across campus to the law school, spent 10 years at Debevoise as a securities litigator, and saw my first novel published as a fifth-year associate.
I left the law to be Executive Director of a nonprofit running inner city schools in Baltimore, and then came back as Chief Administrative Officer of LeBoeuf Lamb. I was active in the merger integration with Dewey Ballantine and then Chief Business Development & Marketing Officer of the combined firm. Today I am CMO of Whiteford, Taylor & Preston.

What is the biggest change you've seen in law firms?
Clearly there have been a lot of changes, but the biggest may be in the pressure firms are feeling to re-think their business models.

Everyone seems to agree that changes in legal services are fast-moving and not over by a long shot. There may be less of a consensus on where it's all going. For a law firm trying to get its bearings in 2016, what does a SWOT analysis look like?
It depends on the firm, of course, but I can try to answer for law firms generally. The great strength is in a highly trained, global talent pool. But the profession still struggles with significant weaknesses in the business model. For firms where compensation, hourly rates, billable targets and partner retention are inextricably wound together, growth almost surely depends on an ability to evolve away from a legacy business model.

So is that the opportunity? To find a new business model?
For many firms, yes. Maybe most. I would frame it differently, though. Changes to a business model aren't plucked out of thin air. They really have to follow a differentiation analysis. The starting point will be an understanding of what differentiates a firm, any firm, in a crowded market.

Does that mean there's room for more than one business model?
Sure. I assume there will be multiple business models, running the gamut from boutique to elite and including an array of alternative providers. But more interesting will be how many firms the market has room for in each category. We could be heading into a very big sort.

Going back to the SWOT analysis, is there one threat that stands out?
I've alluded to a couple already, but one that stands out starkly is the sheer pace of change. Law firms don't have a lot of experience adapting quickly to changing business environments.
We're seeing firms reach more and more into the business world for the necessary experience to help manage the changes. That includes recruiting from accounting and consulting firms that are big and complex enough to have succeeded in change cultures.

Are law firms evolving in the direction of big accounting firms?

If you're asking whether law firms will become more recognizably corporate, then, yes, if only because that's what clients need them to be. Big accounting firms are interesting because they evolved into substantial corporate entities, and, like law firms, their business happens to be professional services. The more interesting question is the extent to which big accounting firms will displace traditional law firm providers. The UK's Legal Services Act opened the door to delivery of legal services by accounting firms. If the market outside the US shifts significantly away from traditional law firms, the US legal profession may have no choice but to adapt.

You once pointed to Axiom as evidence of true innovation. Do you see other examples?

The way people are talking about innovation is changing. For a time it almost seemed as though what mattered was innovation for innovation's sake, but the stakes have been rising steadily. The conversation now is as much about leadership in managing risk as it is about innovation.

The Axiom story still feels brand new in many ways, but it's important to recognize that it's as much a story about entrepreneurial leadership as it is about innovation in legal services. Put it this way – any firm looking at possible changes to its business model is weighing substantial risks.

The kind of leadership called for may be entrepreneurial in ways that are nothing short of transformative. That kind of leadership can come from an Axiom, and it can come just as powerfully from a law firm.

Whiteford,Taylor & Preston is a midsize firm. What are the big differences you see when you compare it to very large firms?

We are a Mid-Atlantic firm of about 160 lawyers. In some ways Whiteford has the feel of a larger firm, and some of our clients are Fortune 100 companies. In other ways, the business dynamic can feel very different. A majority of our work is in the middle market, where a client may have legal needs every bit as complex as those of much larger companies. And yet you often see an expectation for a single point of contact and a close business advisory relationship. Relationships matter greatly. I know – they matter everywhere. But it is a noticeable and distinctive feature of the firm. I'd add, too, it's simply a given that pricing and billing will be attractive and transparent. At least here, it all combines to give the business of what we do a more entrepreneurial feel.

Developments in Legal Information Retrieval

Added value from content integration and knowledge based systems

By Kees van Noortwijk, Professor of Law and Technology at Erasmus School of Law, Rotterdam

Digital legal sources

In recent years, ever more legal information has become available digitally. With that, the importance of these sources that can be consulted online has increased tremendously. For practicing lawyers as well as for law school students, 'legal databanks' often have become the primary source of information. The information concerned is no longer limited to just legislation and case law, as the major part of legal literature and practically all legal journals can now be consulted in digital format as well.

In fact, many professional resources are solely available digitally these days, with no printed version being published (at least not officially), and this number will probably increase in the future as well. An example of that, indispensable for practically every British lawyer, is the extensive collection of case reports and legislation available from the British and Irish Legal Information Institute (BAILII), which currently contains more than 400.000 documents while around 16.000 case reports are added to that every year. Furthermore, there is a huge and still increasing number of web sites that publish 'legal news' online, such as Lexology and International

'A huge amount of documents and case reports online'

Law Office. Digital-only magazines are for instance the European Journal for Law and Technology (EJLT) that has already been published by UK law schools for over two decades, and several Law Reviews compiled and published by universities. Finally, apart from these 'external sources', many law firms these days have extensive collections of 'internal' documents, for instance containing know how, that can be consulted via the firm's internal network (intranet).

As an internet connection these days is available on practically every legal work spot, documentation in digital format can be consulted right at the lawyer's desk, while the paper equivalent could only be obtained from the library. Another advantage is that searching in digital collections can be faster and more efficient. A case report or an article from a journal can be retrieved, even if the exact location is not known, by querying the database using (combinations of) relevant terms.

A major disadvantage of the multitude of available digital sources is that these sources cannot be used and searched in a uniform way. The publishers of publicly available informa-

'A major disadvantage is that sources cannot be used and searched in a uniform way'

tion as well as commercial databases each apply their own search mechanism, with a proprietary user interface. The same goes for collections of documents in an organization's know how system. Because of that, queries to retrieve information often have to be formulated and executed multiple times, in all these separate databases. Results from each separate query have to be gathered and combined, in order to obtain a list of all relevant sources eventually. That is one of the main reasons why 'content integration', which enables professionals to consult all relevant sources at the same time, currently receives a lot of attention, in legal practice and other sectors.
When the issue is not only to find and consult the correct sources, but also to transfer the contents of that in an efficient way to clients or colleagues, so-called 'knowledge based systems' can be a useful addition as well. The term (Legal) Knowledge Based System refers to computer software capable of making very specific pieces of knowledge available to users, tailored to their needs – for instance, a case they are dealing with – and adjusted to what they already know. Such knowledge based systems usually operated within a previously determined domain (an area of law, or even a single problem within that domain). For that reason, their application needs to be carefully considered, but under the right conditions can bring unique advantages.

Content integration and content aggregation

Content integration (CI) systems are capable of retrieving data from multiple (digital) sources, external as well as internal ones and publicly available as well as commercial ones. This technology in itself is not new. Several publishers already apply certain forms of content integration to bundle their own databases and to make it possible to query these in one go. Examples of this are 'Westlaw UK / Next' and the combined sources offered in LexisNexis. Although such 'information portals' definitely are useful and have contributed considerably to the simplification of searching the included databases, also for inexperienced users, they are seldom complete in the sense that they contain all legal sources a user needs. Being a publisher's product themselves, they usually do not offer access to sources of other (competing) publishers. They do contain publicly available materials (for instance legislation), but often only a limited selection of these. Therefore, the searching in all required resources by means of a single query, resulting in a single list of results with each 'hit' ranked optimally in that list is not possible. The same of course goes for the simultaneous searching in external sources as well as internal 'know how' documents.

The fact that combining sources from different publishers in one retrieval system was not possible, was considered an important drawback by many Dutch lawyers. As no ready-made products to solve this issue where available initially – say, at the beginning of the new millennium – several major law firms developed (partial) solutions themselves. They obtained licenses to store publisher's content themselves, and to run their own retrieval systems on the integrated set. Some of these systems have been in use for more than a decade, although most have now been replaced with 'outsourced' (usually commercial) solutions. Since then, several alternatives have become available. Companies have systems on offer that make it possible to retrieve data from different origins (be it commercial, publicly available or internally owned) by means of one single query, resulting in one single, ordered list of results. In the Netherlands, two companies are active on this market, named 'Legal Intelligence' and 'Rechtsorde'. The solutions these companies offer have many similarities. They enable a law firm to retrieve documents and other data from all licensed resources in one go, through a specific legal information

'Enable a Law Firm to retrieve documents through a customized legal information portal'

'portal' customized for their needs. This portal offers the possibility to search in the usual ways, for instance by means of keywords, and to refine search results where needed. Search and 'drill down' options have been specifically tuned to the legal content involved. Searching can for instance take place based on articles from legislation, court names, verdict dates, case numbers or identifiers of parliamentary documents. An important, added advantage of these content integration systems, apart from the integration of sources, is that they have been equipped with improved possibilities for searching and selecting documents.
These improvements are in fact a real necessity in this case, given the huge amount of documents – often at least 4 or 5 million – that are available from the joined databases

Furthermore, options have been added to store search results in a structured way, for later reuse, and to notify users of newly added documents on particular subjects. With all that, these systems can have considerable added value compared to the searching in separate databases. This will be illustrated in the next section using one of the available content integration products, namely that of Rechtsorde.

'Content Integration versus Content Aggregation'

Before that, however, I would like to explain that Content Integration (CI), as described here, has to be distinguished from Content Aggregation (CA). The latter term is used for services that do not actually integrate document collections, but are capable of 'commanding' separate searches in multiple existing document collections, from one central interface. Different from CI systems, CA usually implies that the actual searching is performed by the original database search engines and results are combined afterwards. For browsing purposes, aggregator sites often download brief descriptions (for instance: titles and abstracts) from the separate document collections. When a user then selects one of these, or clicks on a 'hit' presented by the search function, the corresponding document is retrieved from the database where it resides, and is shown from there. Aggregation systems are relatively easy to implement, as the majority of professional databases not only provide user interfaces that give us the possibility to search and browse their contents, but also so-called web services that can be consulted by automatic processes (such as the search algorithm of a content aggregator's retrieval system). That means that no special software needs to be developed to perform these 'distributed search operations'. The results of CI are often better than those of CA, however, as only a CI system can truly integrate sources, for instance by creating new crosslinks (from one source to another) based on the document content.

Rechtsorde.nl

The CI system Rechtsorde.nl is produced by a company with the same name, today a 100% subsidiary of Sdu Publishers in The Netherlands, and with that of the French ELS publishing corporation. Rechtsorde exists since 2005 and initially focused on integrating internet sources that are publicly accessible, such as legislation and official publications of the Dutch government as well as EU legislation and case law from for instance the Eur-lex web site.

An obvious next step was the extension of the information on offer with important commercial sources from legal publishers, such as annotated case law collections, professional journals and law reviews and reference works. This of course was only possible in close cooperation with the respective publishers. At the same time, the system was adapted for the addition of a law firms own 'internal sources', such as know how collections. Rechtsorde is currently used by almost 30.000 lawyers and law students, from hundreds of law firms, companies, universities, libraries and governmental organizations. The system can retrieve information from around 1800 different publications (web sites, journals, reference books, literature, etc.) where each publication can consist of hundreds or even thousands of different issues or parts. The total number of available legal documents

that can be consulted through Rechtsorde is currently higher than 8 million.

Internal information

Practicing lawyers do not only use external (public and/or commercial) sources. Every law firm accumulates considerable knowledge and expertise, a lot of which is stored in the form of documents. These documents are practically always stored digitally these days. Some larger firm use special Document Management Systems (DMS) for this, which make it possible to store each document that is created, from simple one-line e-mail messages to 200 page agreements, in a central database automatically. Often, these document collections also contain subsets, such as 'knowledge documents', 'model agreements', 'model letters', etc. Given this, it makes sense to include such more or less structured internal document collections – which are, by the way, increasingly stored 'cloud based' – in a CI system. A lawyer then can access all digital legal information the firm has at its disposal from one single interface and by means of one single query.

'No Content Integration without proper security'

Although many users are enthusiastic about the perspectives of all this, there are certainly a few areas of concern. The most important of these is the security of the data involved. Law firms are usually very cautious about their internal data, which can include data about clients and accumulated knowledge from many employees, collected over a long period of time. This means that integration and use of internal information without proper security precautions is unthinkable. For this problem, several solutions have been developed over time. A common element is these is that the documents involved are not allowed to leave the firm's safe environment where they are stored. In order to make them available for retrieval in a CI system, sometimes a local indexing service is applied, which forwards indexes of the internal documents – properly encrypted, if necessary – to the central server where they are integrated in the complete collection. Another possibility, which is sometimes preferred, is to install a local CI server within the organization, which indexes and enables searching of internal documents, but also passes on each query to the external server where the rest of the content resides. The results of the internal and the external query are then combined before they are shown to the user. Rechtsorde so far in most cases has used the latter method, also known as 'federated search'.

'CI on the local server enables internal document search'

As will probably be clear by now, the use of internal content with a CI solution can put some demands on the IT infrastructure of a law firm. Furthermore, it really helps if the internal document collection is properly structured, for instance by document type and/or area of law. Also, it should be ascertained that for instance obsoleted or personal data are not included with the materials that are made accessible to every firm employee. But if such demands are met – larger firms often have already taken care of that – the integration of all this content can result in a very powerful, fast and at the same time user friendly instrument for consulting and processing legal information.

A new way to search information

As shown in the previous paragraphs, content integration causes large amounts of information to be joined together, originating from different sources. In general, one would expect that a user would find more useful materials from such a larger collection. But that is not always the case. The area to be searched is more extended, therefore the requirements for a method to distinguish relevant from irrelevant information are also higher. Just as is the case for a search engine aimed at world wide web pages, such as Google, which usually also generates thousands or even millions of hits, it is important that the list of results is 'filtered' as much as possible and that the most relevant hits are positioned at the top of the list.

This means that for a legal content integration system, a powerful search function adapted to the requirements of its users is absolutely necessary. It should enable users to select exactly the correct information. Otherwise, chances are that the user will content himself with only a limited selection from the available materials, even if this selection is a relatively random one (for instance, based on the presence of a single keyword). Such a selection would probably already contain a few dozens of documents, of which several might be useful. The fact that, in the meantime, more than 90% of all available information might be missing from this initial set – because these document do not contain the keyword that was searched – is something most users are unaware of.

Searching by means of keywords is, meanwhile, still considered to be a practical and reasonably effective method by most users. It is, for that reason, still the basis for the majority of all search queries in most retrieval systems. The quality of results of these queries, however, can often be improved considerably by the addition of selection mechanisms that can be applied *before* or *after* the query is executed. An example of the first would be an option to select particular subsets of data in which the searching will take place. An example of the second would be a mechanism to refine search results afterwards, for instance by filtering those using criteria from 'metadata' or using additional keywords. For that reason, legal content integration systems usually contain mechanisms to preselect sources in which the searching takes place and to refine ('drill down') search results based on for instance the type or the publication date of documents. When for instance particular case reports are searched, the case number(s) can be used as additional search criteria, while the name of the author or the volume number can be used when searching journal content.

To summarize; content integration is not only a matter of combining as many sources as possible. Precisely as a result of that process of combining, the use of a reinforced search mechanism becomes necessary, to ensure that the user, notwithstanding the huge amount of available information, remains capable of selecting all relevant information as quickly and efficiently as possible.

Ranking search results

Apart from methods to *select* documents efficiently, retrieval systems have another essential function. To make sure that the most relevant documents can be found quickly, given the method of selection applied by the user, the list of 'hits' (showing the user's selection) should be *sorted* in the best possible way with respect to the (expected) *relevancy* of the documents.

To achieve that, the ranking of documents could for instance be based on the amount in which they correspond to the search query (documents with the largest number of important query terms on top), or on the source they belong to (documents from the most authoritative source on top), or on the topicality (recent documents first). Such ranking criteria could be used separately, or (more commonly) in combination, to achieve an overall ranking with the most relevant documents at the top of the list. Apart from that, users can often also switch to alternative ranking methods, such as a purely chronological ranking, if that is more appropriate for them.

Storing search results and notification

When performing research using sources, correct storage and processing of search results requires specific attention. Common commercial en public databases usually do not provide much more for this than a function to print (parts of) documents that were retrieved. Content integration systems, on the other hand, usually contain a much more extensive 'dossier' function. Users can save documents or parts of documents and can arrange these in digital filing systems. Usually, these filing systems also provide the possibility to add personal notes, hyperlinks and sometimes even extra files, which can be uploaded and put into the dossier.

'Notification on all present resources'

Elements from dossiers can be printed, sent via e-mail or exported, the latter for instance in the form of a word processing file.

A very convenient option in content integration systems is also the so-called notification function. This function entails that the system will monitor its sources for new information. When anything is added to, say, a journal (new edition) or a news source (new message), this addition is compared to criteria specified by the user, and if it complies with these, a notification is issued. This could take the form of an e-mail message, or a message in a special area of the system itself. Users can indicate very precisely what they want to be notified of. This could be a new (digital) issue of a magazine being published, but also a document being added to the total content, no matter from what source, which conforms to a certain search query. As the general idea is that all information that might be relevant to a (legal) user is made available in one single system, the notification process can be efficient, with for instance a single e-mail message each day or each week, in which message all notifications are bundled.

Knowledge Based Systems

A knowledge based system is generally defined as a system capable of certain forms of reasoning, applying knowledge in solving problems, offering advice, and undertaking a variety of other tasks. This reasoning – for instance evaluating conditions and drawing conclusions from that – takes place with respect to the 'knowledge' the system has access to. But what exactly does this knowledge entail? In most cases, it consists of coherent sets of data and/or information, for instance concerning a particular legal field, such as labor law: when is it necessary to add a particular clause to an employment contract? Here, the system is completely dependent of the knowledge that has been stored in it by its author (or programmer). By molding this knowledge in particular formats, for instance in that of a series of so-called 'production rules' of the type 'IF [condition]

THEN [conclusion]', the system can reason by evaluation the conditions. If a condition is fulfilled, the corresponding conclusion can be drawn. It might seem as if, while doing this, a computer operates independently and reaches conclusions autonomously. But we must not forget that all possible (combinations of) conditions and conclusions have to be anticipated and programmed in advance by the system builder. When, at any time, a situation would arise in which none of the available conditions can be fulfilled, the system would not be able to draw conclusions and therefore would not be able to reason any further. That would in fact be an error in the program (a 'bug'). Despite the presence of possibly very advanced and complex knowledge, a knowledge based system therefore in itself is not any smarter than other computer software. It is not capable of analyzing the substance of its knowledge, just to reason with it following predefined procedures.

All in all, a knowledge based system is a computer program that comprises knowledge in a specific format (for instance: a series of production rules). With that knowledge, the program can reason, to eventually reach a conclusion. Commonly, during the reasoning process it will become clear that certain data, used in for instance a condition that is evaluated, are missing. Such data can then be requested from the user. By answering questions the system poses, the user in fact enters all relevant data with respect to a certain case. The conclusion that will eventually be reached will then be relevant for that particular case. In the process, knowledge based systems are often capable of putting together certain documents, such as letters, conclusions or even full contracts or sets of general conditions. This could even be their main purpose for a practicing lawyer.

The knowledge in a legal knowledge based system (LKBS) will usually have to be provided by a human expert. Such knowledge will probably have to be processed in certain ways in order to be useable, however.

Let's assume, for instance, the legal expert mentions a series of situations that have specific legal consequences. To enter this into an LKBS, we have to make sure that

- each of these situations is described in the form of one or more rules, in such a way that it can be tested if the situation occurs by checking the conditions of the rules (this is called 'formalization');
- the legal consequences (if applicable) will be administered in the system, to make sure that further reasoning taking that into account is possible;
- even if none of the situations proves to be at hand, the system will still be able to draw a conclusion (for instance that the legal consequences will not be applicable in this case) and will be able to continue reasoning.

Especially the latter possibility, in which none of the situations mentioned by the expert are appropriate, often causes problems. It is of course conceivable that the list of situations (entered by the expert) is not restricted and that there could be more situations with the same legal consequences. For that reason, we have to be careful when drawing negative conclusions. A final check by the same or another expert might be desirable.

Use in legal practice

Although crafting a knowledge based system can be quite labor-intensive, as follows from the previous section, and requires detailed knowledge about the subject at hand, popularity of these systems has increased quite strongly

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in the last few years. One reason for that is that software to develop a moderately complex system, the so-called 'shell' or 'development studio' software, is often quite user friendly these days. For that reason, legal experts without detailed knowledge of computers can make use of them, too. Furthermore, many legal organizations, such as law firms, already possess an IT infrastructure that would enable them to make knowledge based systems, once developed, available to employees and (certain) clients very easily.

The latter application would for instance be possible through so-called 'client portals'. These are in fact web sites law firms use to make selected information available exclusively to (specific) clients. This allows for interesting options, for instance to offer 'automated model documents'. Such model documents enable clients of the firm to put together tailor-made legal documents, such as labor contracts, non-disclosure agreements or uncomplicated service agreements, using the specialized knowledge of their law firm, but without the need for any of the firm's lawyers to be directly involved. The access to such automated model documents could be granted on a 'fixed fee' basis. Provided an agreement to this extent has been properly established by both parties, this can be a possibility that is economically viable for both the firm and the client.

Update notifications

The main reason to include knowledge based systems in this contribution about integrated information retrieval systems is that interesting perspectives arise when these two technologies are combined. One way to achieve that would be when a knowledge based system would be added to a content integration system as an 'intelligent frontend' for entering search queries. The LKBS could be set up to ask a few specific questions to the user, suitable for defining a preselection of sources. After that, the actual searching could take place much more efficiently, which is increasingly important given the speed at which digital sources grow in size and complexity.

The other way around, content integration systems could constitute an important source for the building, use and maintenance of knowledge based systems. To start with the first, it will be obvious that having all relevant sources at hand is a huge advantage for authors of knowledge based systems, as it provides them with the possibility to obtain all information necessary to formulate a correct and complete set of rules and information to accompany these. The second option would occur when a content integration system and knowledge based system would be actively linked in such a way that they can be used together simultaneously. This is useful, as knowledge based systems usually contain large amounts of (background) information, next to the rules used to draw conclusions. This information can be consulted by the user when the system asks for input. For instance, think about a system capable of assembling an employment contract, valid for a restricted period of time. Such a system is likely to contain questions about possible previous employment contracts between the same parties.

Questions like that should be accompanied by information about the number of times temporary employment contracts can be renewed legally, before (as is the case in some European countries) a contract for unlimited time is prescribed. This information, which is based on

current legislation, can be obtained 'live' from a connected content integration system, which if so desired can also deliver relevant legal comments and applicable case law with it.

Even more interesting might be the possibility to facilitate maintenance for knowledge based systems. For this maintenance is definitely a point of concern within the legal domain. Changes in legislation or new case law can make changes in certain rules necessary. The problem is, however, that the number of rules can be huge, causing the author to lose the overview. That might lead to maintenance not being performed timely and properly. Such problems could hamper the deployment of the LKBS and in fact have been the cause of systems being put out of service in the past.An effective solution for this particular problem of maintenance can be the entering of so-called 'metadata' into knowledge based systems. The author of the system can enter data – invisible for the end user – indicating the specific articles from legislation that are decisive for the formulation of a particular rule and also what case law is of importance for it.
When these metadata are saved and output, they can be read by a connected content integration system which can then transform these data to 'notification requests' automatically. If at any time changes occur in the respective pieces of legislation or when new case law on the subject is published, the need to make changes to the corresponding parts of the knowledge based system will be indicated automatically. This facilitates the proper functioning of the knowledge based system, not only at present but also in the future, much more effectively than before. By that, the practical applicability of these systems can be expected to increase further.

Summary and conclusions

The role of digital information for legal practice has become very prominent in the past decade. The huge and still growing number of available sources – external, but often also within legal organizations – leads to an increasing demand for technology to select exactly the right documents from these enormous collections. Integrating sources as much as possible is a vital precondition to perform this retrieval process efficiently. In addition to that, ever more advanced search technology is necessary, which not only supports users optimally, but also connects as closely as possible to the professional information being accessed. At the same time, operating the system should remain a straightforward and uncomplicated process.

'Information retrieval from the workflow'

Content integration systems can fulfill these needs by adapting the information retrieval process to the workflow and needs of practicing lawyers. In doing so, searching and retrieving information becomes more efficient while the number of sources found increases. The added value created from that can be of decisive importance for the quality of service towards clients.

In the past, knowledge based systems were seen as a phenomenon with no connection to primary legal information sources, only to be used within carefully determined domains for very specific information needs. They were notorious for being hard to maintain, which made it difficult to use them in areas of law where changes occur often. Now that these systems

can be linked to content integration systems, providing them with the option to connect to all relevant information sources, new possibilities to apply them occur. It allows information to be made available in an intelligent way, while at the same time offering solutions to common maintenance problems. The latter becomes possible by adding metadata to knowledge based systems and at the same time adding an option to automatically generate alerts for legal changes relevant to these metadata.

Developments with respect to content integration have been very swift in the legal area the last decade. Finally being able to use the huge collections of digital sources effectively and efficiently was an attractive perspective for many lawyers and this will probably be even more so in the future.

The option to also use knowledge based technology, directly connected to the available legal sources, shows what is currently possible with respect to intelligent, integrated information retrieval and application and will probably boost that technology even more in the next couple of years.

Kees van Noortwijk is an associate professor of Law and Technology at Erasmus School of Law, Rotterdam, The Netherlands, and also works as a consultant for the Dutch company Rechtsorde BV.

1. *Anat Hovav and Paul Gray,, 'Future penetration of Academic Electronic Journals: Four Scenarios', in: Information Systems Frontiers, Volume 4 (2002), p. 229-244.*
2. *http://www.bailii.org*
3. *http://www.lexology.com*
4. *http://www.internationallawoffice.com*
5. *http://www.ejlt.org*
6. *Erasmus School of Law, for instance, publishes the digital Erasmus Law Review, available on www.erasmuslawreview.nl.*
7. *http://www.legalintelligence.com*
8. *http://www.rechtsorde.nl*
9. *Metadata are descriptive data often added to content, such as the name of the source the data come from, the date on which they were last updated, their author, etc.*
10. *Richard Susskind, The Future of Law, New York: Oxford University Press 1998, p. 120-121.*

The Five Challenging Paradoxes of Firm Leadership

By Patrick J. McKenna Principal, McKenna & Associates Inc.

The jobs of being a firm leader within a law firm should come labeled with a clear warning: *This job could seriously change you and how you behave within your firm!*

Over the past decade I have had the privilege, through my consulting, research and interviews, to peek behind the veil surrounding the challenge of becoming a new managing partner (or whatever title best signifies your firm's leader). From candid discussions about the stress involved in looking like you know what you are doing and the huge time demands imposed by your partner's requests, to feeling disorientated by the scale and scope of the mandate, many professionals quietly struggle with the various pressures that accompany their term in office. I discovered that the great majority of leaders, in any position of responsibility, are at their most vulnerable early in their tenure. As a new leader you may be surprised to feel confused and indecisive just at the time you want to appear clear-sighted and strong-minded. You may feel overwhelmed and anxious just when you would far rather be seen as composed and dynamic.

In fact what I've discerned is that there are a number of what I'll call "leadership paradoxes" – the more or less ongoing dynamics of the job that incumbents wrestle with, to effectively handle the job of being a leader. Here are the top five:

- Do I shake things up or do I preserve the status quo? (determining appetite for change)
- Do I strengthen my bonds with people or do I maintain a distance? (developing working relationships)
- Do I demonstrate that I know what to do or do I ask for help? (appearing knowledgeable)
- Do I strongly influence the decision I want or do I facilitate a consensus? (making decisions)
- Do I focus on achieving results or do I accept a degree of uncertainty? (setting action priorities)

Each of us, when serving as a leader, has a natural predilection to favor one approach or the other; to gravitate to one extremity over the other. Therefore, our preference, as to whether to 'shake things up" or to 'preserve the status quo' is often 'hard-wired' into us, the result of past experience gained *before* entering into our current leadership position. What seasoned leaders come to learn, is that the only way to navigate these tensions successfully, is to try to manage both ends simultaneously.

Let's take a look at these top five tensions of leadership — with an eye toward what you, as a new leader, can do to navigate them. To give you a sense of what it truly feels like on the front lines, each of the following sections leads off with a quotation from a real-life law firm leader (kept anonymous for reasons that will be obvious).

1. DETERMINING APPETITE FOR CHANGE
(Paradox: Where do I shake things up and where do I preserve the status quo?)

Lawyers are creatures of habit and busy lawyers even more so – the time and effort to "condition" them to new modes of operating should not be underestimated. On a variety of change initiatives, my personal goal is to reduce the time from "that's the dumbest idea I ever heard" to "we always do it that way" from 5 years to 3 years!

Your first area of tension as a leader is to obtain some sense of agreement from your partners on the direction your firm, office or practice group should pursue. That direction has a great deal to do with the performance you as the leader are charged to deliver. It also has a great deal to do with your partner's collective appetite for change. "Our dilemma," explained one managing partner, "is that we hate change and love it at the same time. What my partners want is for things to remain the same but get better."There are many questions that you could probably utilize with partners to get a grip on the direction your partners want to go, but two are pivotal:

- What are the critical things we need to change as a firm and why?
- What are the most important things about our law firm that we should be sure to preserve and why?

Things to keep in mind:
As early as possible as a leader, you must get your partners input into what they see as the group's preferable direction. Conduct one-on-one interview sessions with your partners – asking each one the same questions to get their insights, solicit their advice and see what themes emerge.

Clarify what they want to see you "shake up" and what they want to see you "preserve." It is wise to have your partners see that you are genuinely engaged and willing to listen before you ever speak about where you think the firm needs to go.

Your interview goals:

- Absorb information from your partners;
- Define or confirm the firm's key challenges;
- Establish credibility and win trust;
- Assess your partner's appetite for change; and
- Gather input for developing your strategic agenda for going forward

Doing nothing but listening, for as long as you can stand it, is the most important thing you can do.

Ask yourself: How do I begin to make a difference? What do I want to make a difference about? Regrettably, some leaders accept unachievable missions and targets that are far too ambitious, while other become leaders and are told little about what is expected, other then 'continue to make improvements.' If you believe that the direction you are being asked to undertake is not achievable or able to be accomplished within the timeframe expected, make your feelings known as early as possible in your tenure.

2. DEVELOPING WORKING RELATIONSHIPS

(Paradox: Where do I need to strengthen bonds with people and where do I need to maintain a distance?)

I realized that fundamentally my relations with my partners would never be the same. Everyone has an agenda when they talk to you. As managing partner, you become more isolated and can never again just be one of the guys.

In what circumstances will people follow you as a leader? Usually, for people to follow they need to have a strong relationship with you, they need to feel that they know you as a human being, and they need to feel a connection and sense of empathy for your beliefs, values, and stated priorities. Concurrently, these very same partners need to feel that you have invested the time to really know and understand them, and have a solid grasp on what they value and hold important.

Without a strong sense of relationship between you and your colleagues, great goals are impossible to set, performance cannot be sustained, major difficulties cannot be overcome, and new opportunities rarely get created.

Alternatively there is also the danger that when a leader tends to lose their independence from their colleagues, they can tend to get identified with one cliché or coalition in the firm. At one firm recently we overhead one of the partners commenting that a particular proposition while rather absurd, would likely get positive attention, only because the originator was a FOG.

When we naively asked what a FOG was, the partner responded, "Oh, that is an acronym for Friend Of Greg" . . . the firm's chairman and managing partner. However, the tension comes because if you emphasize keeping your distance from colleagues, you may create a sense of aloofness, potential mistrust, and encounter resistance when you try to get things accomplished. You may soon detect increased feelings of division within the firm.

Things to keep in mind:
• Your partners are not interested in your title. They want to know if you care about them as a person, if you care about helping them solve their problems and enhancing their careers. Consider building and maintaining relationships as a critical part of your leadership role. Remember that leading is always done with others, not to them. Everyone wants a cheerleader, someone to believe in them, to help them have a can-do attitude. What can you do to let every partner know that you believe they can become even more of a success?

• As a leader, you will be under a microscope, being observed (your decisions, how you make them, whom you consult with) very carefully (what you say and the signals you send.) You will be barraged with phone calls and e-mails – with questions, requests, and advice. You may need some time to transform some relationships. Good leaders customize the relationship created to each individual.

3. APPEARING KNOWLEAGABLE
(Paradox: How do I maintain balance between knowing what to do and asking for help?)

Not withstanding all of the qualities I believe I have, I'm feeling like I'm a fish out of water. In yet how do I tell anyone what I'm going through. I need them to go on believing in me and trusting that I know what I'm doing.

When you are new to the function and responsibility of managing and leading the entire firm, you are starting out with an enormous amount to learn. You soon find that the skills that made you a highly successful practitioner, are not necessarily the same skills that will now transform you into a successful leader.

If you come across to your partners as having all the answers, knowing what to do, and showing everyone how to succeed, you risk being seen as imposing your views, being uninterested in the opinions of other partners, and prone to antagonizing and irritating those same partners.

Alternatively, if as a new leader, you are perceived to overdo 'the seek help' side of the spectrum, you may then risk being seen as lightweight and unsubstantial. Partners may soon wonder if you are ever going to get around to adding any value.
So the tension arises as you realize that you should not come across as a 'know it all.' But, at the other end of this spectrum, your people will not be confident in the direction that the firm is taking unless you act as though you know precisely where the firm should be going, what it will encounter along the way, and what the destination will look like once it has been reached.

Things to keep in mind:
• Heed the old adage: He who asks a question is a fool for five minutes, but he who doesn't is a fool for the rest of their life. Most people want the leader to succeed and will be willing to help you learn so that you can add value.

• All learning challenges a person's self-image. As a leader, you need to recognize that learning will mean that you will have to modify some of your viewpoints and certainties.

• You will function more effectively when you have a confidant – someone that you can trust and confer with, who understands the joys and successes, the difficulties and frustrations of leadership.

4. MAKING DECISIONS
(Paradox: When do I strongly influence a decision and when do I just facilitate a consensus?)

In some cases I've learned that I need to be more explicit . . . 'there is where I believe we need to be going and this is what I think we need to do to get there, based on the discussions that I've had.'

Deciding who will make what decisions and how decisions will be reached is a fundamental leadership act.
On the one hand, you know that your partners will likely take more responsibility for implementing decisions that they themselves have played a part in making. This argues for wider distribution and a consensus decision-making style.
On the other hand, you know that you must often reconcile the conflicting interests of appealing to partners who don't want to move too quickly with the market reality that opportunity windows don't stay open forever. This argues for a quicker decision than obtaining full consensus might allow. Whether to influence or facilitate can be a function of firm culture, leader personality, and situational dynamics. It definitely shapes how your firm will operate.

Things to keep in mind:

- Things can get very stuck with this tension. Of all the tensions noted, you may very well tend to identify most strongly with either influencing or facilitating as your preferred style. Research shows that what we are skilled at is what tends to get reinforced. As a firm leader you will confront more complex situations than you may be used to and more complex than your habits are suited for. If you stick rigidly to only one (influence or facilitate) way of handling the situation you may become far less effective as a leader than someone who works at developing their skills in both of these decision-making formats. What is required, as with the other tensions, is an appropriate dosage of both influencing and facilitating.

5. SETTING ACTION PRIORITIES
(Paradox: How do I maintain focus on achieving results and remain accepting of uncertainty?)

You don't want to show any weakness, any self-doubt, any concern about making a difficult decision. Remember, you are the firm leader, which means nothing but confidence and high energy when you walk into a room.

As a leader, you are likely to want to achieve some impressive results during your tenure. You will go to considerable lengths to achieve those results since your sense of self-worth, personal reputation, and ultimately, your leadership legacy depends on producing measurable results.
Your challenge is that you inhabit a world infused with uncertainty. So simply being methodical and persevering will not necessarily guarantee that you get the results you want. As a leader, you need to have the ability to be comfortable with uncertainty, to live with it, and not to be fazed by it.
You don't have to like living with a sense of uncertainty, but you must anticipate new developments, recognize trends, and understand change. As a leader, you must stay on top of information about the trends affecting the profession and your various business opportunities. Your future is directly linked to your ability to respond quickly and with flexibility.

Leadership is about credibility. Credibility requires confidence, certainty and capability. Allowing others to see that you lack certainty can be dangerous in the real world. Once doubts about the leader's certainty begin to form, they can be very difficult to repair. Every leader knows this and every leader fears it.

Things to keep in mind:

• It is very human to stay with doing what is comfortable. Make a conscious effort to turn off the old tapes that are playing in your mind and be willing to let go of the past. The most effective way to minimize the intimidating effect of uncertainty is through planning. The more understanding you have of the likely-to-happen event, the less debilitating the change will be.

• Knowing when to unlock from a declared position and advocate a new one calls for courage. Accept that you will not be 100% right in all of your judgment calls. And beware of the mindset imposed by your professional training and your ego's need to be right. If any of your decisions turns out to be wrong, and they will, don't confuse the business need to change direction with feeling that you are looking indecisive.

• It is very human to get discouraged at times. Sometimes your objectives may be criticized by others. Sometimes your goals may seem harder than you thought. There is always an element of personal sacrifice and a need to remain flexible. When unexpected events occur, the value of a leader with a high-faith factor cannot be underestimated. Expecting success to follow a period of change has a positive affect on the attitude of your partners. It is a powerful motivator.

CHECK THE PARADOXES QUESTIONNAIRE ON PAGE 44-45 →

Patrick J. McKenna is an internationally recognized author, lecturer, strategist and seasoned advisor to the leaders of premier law firms. He is widely credited with being one of the profession's foremost authorities on practice group leadership and the author or co-author of seven books including international business bestseller *First Among Equals: How To Manage A Group of Professionals* with David Maister (Free Press) and most recently, *The Changing of The Guard: Selecting Your Next Firm Leader (Ark Publishing)*. He co-leads *First 100 Days: MasterClass For The New Firm Leader*, an annual program normally held at the University of Chicago. Patrick is the subject of a Harvard Law case study entitled: Innovations in Legal Consulting (2011) and recently became the recipient of an honorary fellowship from Leaders Excellence of Harvard Square. He has worked with at least one of the top ten largest law firms in each of over a dozen different countries.

Paradoxes Questionnaire

If you want to manage the paradoxes of leadership more effectively, you must first get a sense of how you currently operate with the different tensions. This questionnaire will help you determine your preferred style.
From among the following two sets of variables, choose one that represents the style with which you're most comfortable. There are no right or wrong answers. Your choice of A or B represents how naturally disposed you are to act in one way versus the other.
Here is how you might want to think about the results: With all five of these tensions, you cannot decide to operate or behave in one manner or the other, gravitating to one approach over the other. To be effective, you must embrace the paradox of using both approaches at the same time and with varying emphasis, depending on the context.

DETERMINING APPETITE FOR CHANGE
Shake Things Up:
A. I feel a great need for our firm to get on with making things happen.
A. Things stagnate if we don't constantly challenge the way we do things around this firm.

Preserve Status Quo:
B. The traditional 'tried and true' approaches to solving problems are usually the best.
B. I am often the one to suggest that we stand back and take time to think before we commit to action.

DEVELOPING WORKING RELATIONSHIPS
Strengthen Bonds:
A. I get a great deal of satisfaction from helping each of my partners become even more successful than they were.
A. Loyalty, respect and trust between and among partners is a central value of mine.

Maintain Distance:
B. It is important to me that I am valued on the basis of my overall contribution to the firm.
B. I prefer to conduct my relations with partners on a business-like and formal basis.

APPEARING KNOWLEDGABLE
Knowing:
A. I enjoy having the opportunity to teach others by coaching and contributing my knowledge and experience.
A. I feel confident in what I am stating when contributing to discussions and decisions.

Seek Help:
B. It is important to gather information and consult with partners, before introducing new initiatives.
B. I am comfortable in asking for feedback and advice so that I can improve whatever I am working upon.

MAKING DECISIONS:
Influence:
A. It is important to be, and be perceived to be, firm and decisive.
A. I think clarity of direction is more important than consultation.

Facilitate:
B. It is important to obtaining buy-in to be consultative before decisions are reached.
B. If partners are involved in helping make the decision they take more responsibility for the outcomes.

SETTING ACTION PRIORITIES
Focus on Results:
A. I drive very hard toward goals and am not easily distracted.
A. I believe you create your own future by always having clear objectives to work towards.

Accept Uncertainty:
B. I think a clear direction emerges as a result of being attentive to your marketplace and becoming aware of what is needed.
B. 'Going with the flow' is often more effective than 'sticking to your guns.'

Keep Learning as You Go
Transforming into a leader is no small challenge. It is very human to get discouraged at times. Sometimes others will criticize your objectives. Sometimes attaining your goals will seem harder than you thought. Just remember that there is always an element of personal sacrifice and a need to remain flexible when one undertakes a leadership role. When challenges arise or unexpected events occur, the value of a leader with a high-faith factor cannot be underestimated. It is a powerful motivator for every individual you lead.

All successful leaders work through the top tensions over some time during their incumbency. Thinking through these issues at the *start* of your tenure will give you a more informed basis for formulating your objectives and pursuing your goals.

How to face the future
of legal services?

By Ivan Rasic, CEO Legaltrek

Every lawyer, from a partner to an associate, has to keep learning about everything they do. Regardless of your experience, the chance you have the best answer at all times drops by a vast margin. And it does so with each passing second, in this ever-changing world.

The business of law is changing. Many market elements are moving at the same time. Many are (quick to) declare the demise of the legal industry. Many believe the AI will disrupt and replace law firms (and I wrote my thoughts on that one too, commenting on Ron Friedmann 's piece).

Well, what if I told you that, as long as humans exist, the legal industry will involve people? In my view, people will ultimately be in charge of delivering the service, regardless of the tools they use. And there will always be buyers of legal services. Transactions will go on. I am not worried about the industry as a whole. But I do feel the industry itself is in the process of transformation. Hence, in this article you will read some points that you need to consider if you want to be on the winning side.

1. Be flexible and have an open mind
You must be open and receptive to new concepts. Never stop learning: It will make or break you in the long run.

There is no limit to what you can achieve with your law firm business. However, you are limited in terms of the resources and you will have to prioritise. Imagine you have identified an area to improve.

For example, obtaining new clients. If you refer to the blogosphere, you will find advice like "build your website, develop your niche, meet people, pay it forward to your community" etc.

Now, while all that is true, nothing on that list seems revolutionary. I feel you should still step it up a bit further. For example? You could be productizing your legal services, and catching more valuable work as an upsell potential in your funnel. *(Click here for more info and a real example from Lucent Law.)*

2. Choose: legal profession, or the business of law?
Many practicing lawyers consider legal service delivery to be a profession. Those who do, frequently use that to justify their resistance to change. Other, more agile and entrepreneurial lawyers, consider serving clients to be their business.

But what is the difference between those views? As it seems, not much unlike the difference between a tailor and an apparel company:

Tailor (professional)	Apparel Company (business)
Produces suits only on demand;	Produces apparel during the whole year;
May have established processes;	Must have clear processes;
Unlikely to use value-based pricing *(rather, a fee that is relative to work performed, either hours used, or a markup of the value of the material, or a combination of both);*	Sets prices for their niche market and customers decide to buy, based on their inner feeling of need and value *(value-based pricing);*
Asks customers what they want (building features);	Discovers what their customers want (building solutions);
As a result of the above, not so scalable.	As a result of the above, very scalable (subject to market needs).

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PODCAST EDITION

If you want to be a business(wo)man, you cannot act as a mere tailor. Forget about the whole "bespoke" narrative. Accept that you will have to drop the traditional billable hour business model and turn to value-based pricing, even for hourly based legal projects. Learn to discover the problems of your market niche. Then build systems to solve them. Don't wait for clients to tell you what they want. Find out what it is and give it to them before they even ask. At least engage in a collaborative dialog with the client and achieve an open working relationship built on trust, transparency and real time information sharing and decision making. This is the ethical foundation of all attorney/client relationships.

3. Be aware of the fierce competition and act

Who do you compete with? Who is working relentlessly every day to take your market share? Did you ever stop to think about it? While obsessing about competitors is unhealthy, you must understand your competitive landscape.

But the question seems easy, right? To answer, all you need do is analyze your local law firm listing publication, filter by niche area, and compile a list relevant for your locale or region. Well, that is only a start. Law firms that you identified by using the said approach are DIRECT competitors. However, this list does not answer your question fully.

So rather than asking "Which other law firms do what I do?", ask "What alternatives (other than my law firm) can satisfy my client's needs?". Only ten years ago (as of the date of publishing this article) the legal industry was oblivious to alternative service providers. Granted, there were some notable exceptions. However, by and large, almost no one was concerned by non-law-firm players in the legal service market. Forward to 2013, and the trend becomes more solid. So much so that Eric Chin, strategist to professional services firms at Beaton Capital, coined "NewLaw" - the new term that will differentiate those novel legal service providers that use a much different business model than traditional firms. (see next page 38/39)
Read here to learn more about the NewLaw.

4. Reconsider your law firm's business model

In my "Can Law Firms escape their Kodak moment?" for the Legal Business World, included the Kodak's demise case study. Kodak did actually try many things to remain in business and retain their dominant market position. Namely, they invested in RnD, they purchased state-of-art technology, they even leveraged internet photo-sharing start-ups as their lead funnel. The only thing Kodak did not do? They did not change their business model. They decided to stick with printed photographs: they believed people would ALWAYS want to make printouts.

You can RnD all you want, and use expensive tech, if, however you do not pay attention to your clients' needs and desires, ultimately, you will fail.Innovation is not about technology. Technology cannot be a purpose, an end in its own right. Technology is a solution, facilitating your business model.
It empowers you to do more, faster, and better - of what you already do.E.g. if all you do is billing by the hour, well, technology will assist you there. Will that be what your clients ultimately want?

Cumulative BigLaw - NewLaw deals and foundation of BigLaw's NewLaw

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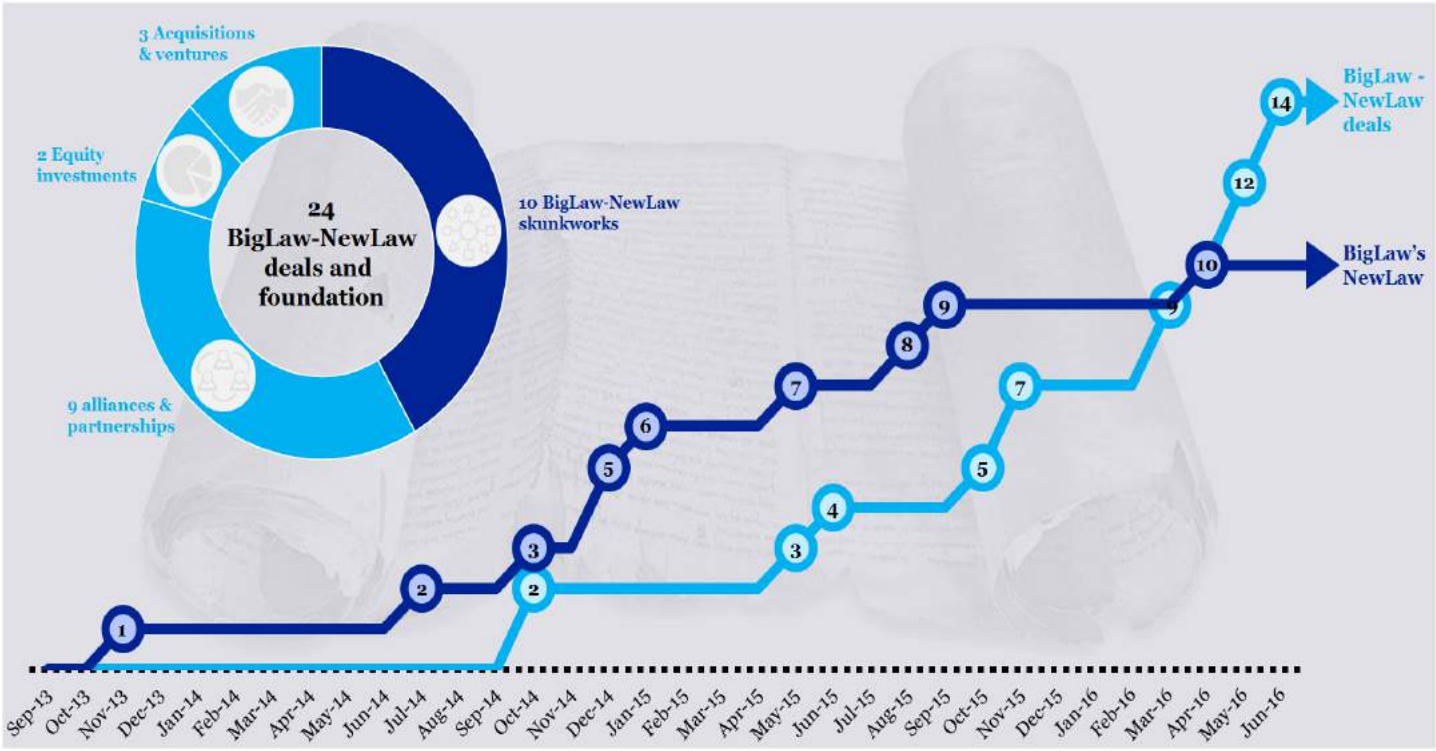

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Nov 2013 — **Allen & Overy established Peerpoint**
- Peerpoint provides a panel of experienced and high calibre lawyers to work flexibly for Allen & Overy on a contract basis.
- Peerpoint will initially be staffed by Allen & Overy's alumni.

Jul 2014 — **Cooley established Cooley GO**
- Cooley GO provides legal and business content for entrepreneurs with businesses at all stages of the growth cycle.
- Cooley GO is aimed at the entrepreneur market.

Oct 2014 — **Simmons & Simmons established Simmons & Simmons Adaptive**
- Simmons & Simmons Adaptive provides flexible legal resource for defined contract assignments.
- Simmons & Simmons Adaptive will target all levels of lawyers.

Dec 2014 — **Corrs Chambers Westgarth established Orbit**
- Orbit provides experienced lawyers to help in-house legal departments fulfil a temporary need.
- Orbit will target lawyers in commercial legal areas.

Dec 2014 — **McInnis Wilson established Lexvoco**
- Lexvoco is aimed at helping in-house legal departments and law firms with short-term lawyer engagements.
- Lexvoco will initially be supported by lawyers from McInnes Wilson.

Jan 2015 — **Allen & Overy established Aosphere**
- Aosphere was crated from Allen & Overy's Derivatives Services team which now provide online compliance and legal risk products.
- Aosphere's suite of product is developed by a group of 25 senior lawyers and support staff.

BigLaw - NewLaw deals

Since September 2013

Oct 2014 — **Morgan Lewis partnership with Exigent Group**
- Morgan Lewis and Exigent Group established global alliance to provide cross-border litigation support and eDiscovery solutions.
- Vertical alliance to access Exigent Group's legal process outsourcing capabilities.

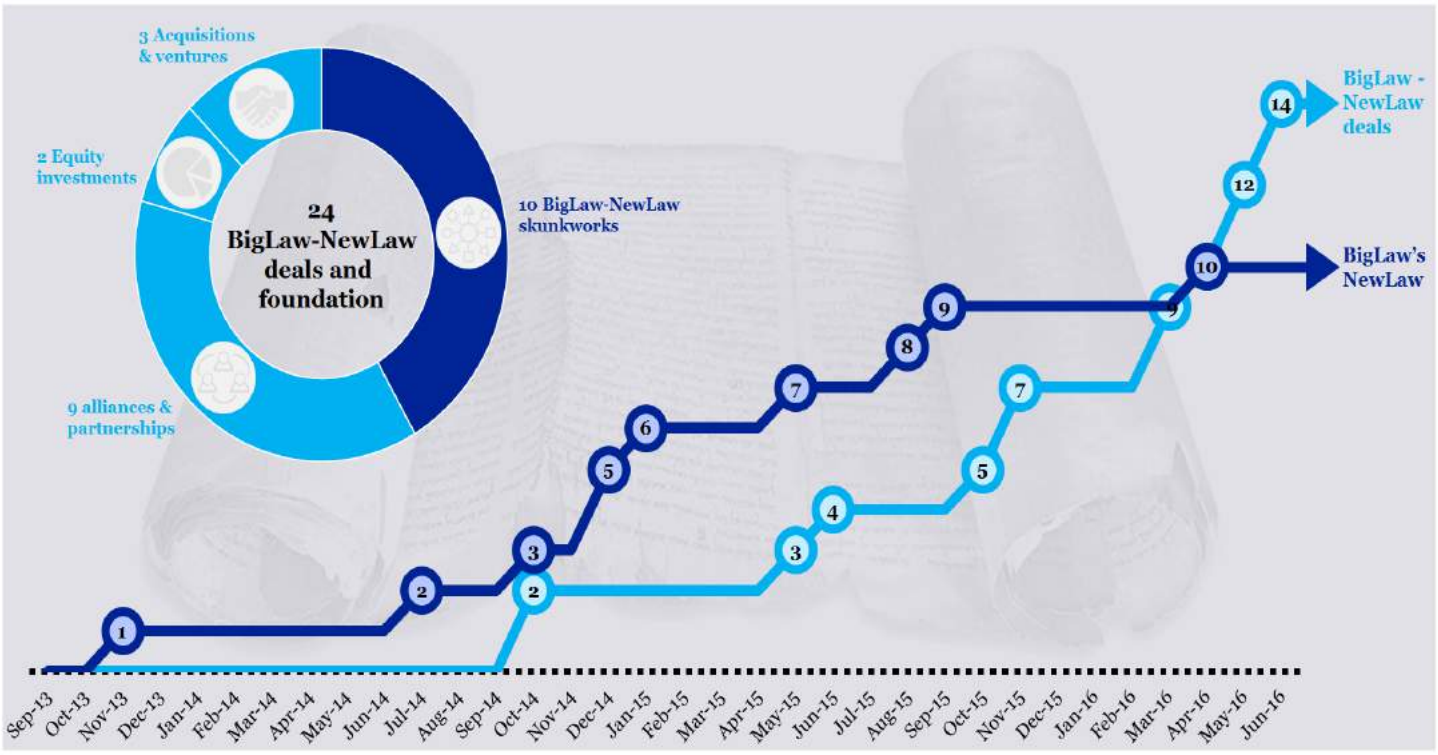
Oct 2014 — **Cooley partnership with Ravel Law**
- Cooley LLP and Ravel Law established partnership to provide client alerts with analysis of recent changes in law.
- Diversified partnership to enable clients access to Ravel Law's legal research technology.

May 2015 — **Littler Mendelson joint venture with Neota Logic**
- Littler Mendelson and Neota Logic launched ComplianceHR, a joint venture that uses technology to deliver employment law compliance.
- Diversified joint venture to enable clients access to Neota Logic's experts system technology.

Jun 2015 — **Pinsent Masons acquired majority stake in Cerico**
- Cerico is a technology-driven solution that automates compliance processes.
- Diversified acquisition to enable application of the technology by Pinsent Masons' clients.

Oct 2015 — **Morgan Lewis alliance with Exigent Group**
- Morgan Lewis and Exigent Group established alliance to provide contract lifecycle management solution through Chameleon™.
- Vertical alliance to provide innovative, effective commercial solution that simplify contract management life cycle for clients.

Nov 2015 — **DLA Piper joint venture with Lawyers on Demand**
- DLA Piper and Lawyers on Demand established a venture to create a contract lawyer service for DLA Piper which will tap into its alumni.
- Diversified joint venture to help DLA Piper establish its on-call lawyer service for clients.



May 2015

Allens established Allens Accelerate

- Allens Accelerate provides legal service and document to startups at affordable price.
- Allens Accelerate is aimed at the startup market.

Aug 2015

Rajan & Tann established R&T Asia Resources

- R&T Asia Resources provides experienced lawyers to companies who need in-house counsel on short term contracts and projects.
- R&T Asia Resources will tap into growing part-time work trend in Singapore.

Sep 2015

Addleshaw Goddard established AG Integrate

- AG Integrate will place self-employed lawyers at the firm's clients' businesses to provide additional resources.
- AG Integrate will put self-employed lawyers on its roster.

Apr 2016

MinterEllison established MinterEllison Flex

- MinterEllison Flex provides specialist contract lawyers to flexibly cover or boost companies' in-house capacity and capability.
- MinterEllison Flex will tap into growing part-time work trend in the Australian market.

Nov 2015

Gilbert + Tobin equity investment in LegalVision

- LegalVision is an online-based legal service provider using technology to deliver legal service at a fixed fee.
- Diversified equity investment to learn innovative legal service delivery and allow clients access to the service.

Mar 2016

Deloitte alliance with Kira Systems

- Kira Systems helps uncover relevant information from unstructured contracts and is based in Toronto.
- Diversified alliance to use machine learning to create models that decipher thousands of complex documents.

Mar 2016

Deloitte Legal acquired Conduit Law

- Conduit Law is a NewLaw firm that provides outsourced lawyers to support in-house legal teams and is based in Toronto.
- Diversified acquisition for the Big Four accounting firm's legal arm to provide an innovative solution to the market.

Apr 2016

Norton Rose Fulbright alliance with LawPath

- Norton Rose Fulbright and LawPath formed a strategic alliance to provide start-ups and SMEs with access to premium legal services.
- Diversified alliance to enable entrepreneurs access to top quality legal advice at an affordable price.

May 2016

BakerHostetler partnership with ROSS Intelligence

- BakerHostetler has partnered with ROSS Intelligence to use its artificial intelligence legal research product.
- Diversified partnership to licence ROSS in its bankruptcy, restructuring and creditors' rights team.

May 2016

Latham & Watkins partnership with ROSS Intelligence

- Latham & Watkins has partnered with ROSS Intelligence to use its artificial intelligence legal research product.
- Diversified partnership to licence ROSS' technology to streamline research.

Jun 2016

Freshfields Bruckhaus Deringer partnership with Leverton

- Leverton develops and applies disruptive deep learning / machine learning technology to manage data from corporate documents.
- Diversified partnership to offer clients a platform to instantly view legal and cost-flow relevant data on transactions.

Jun 2016

DLA Piper partnership with Kira Systems

- Kira Systems helps uncover relevant information from unstructured contracts and is based in Toronto.
- Diversified alliance to implement an artificial intelligence tool for document review during the due diligence process.

Analysis by Eric Chin

5. Legal project management & tech for your agile law firm

Consider also the following - if you are going to be suiting up for the future of law, legal project management is a must-do practice. Additionally, you will need a technology that can support your project management practices. It may sound like a complex subject, but Legal Project Management merely represents a discipline that makes sure your clients get their services on time, in line with the agreed budget. Quality of service is a given, of course. However, sometimes law firms and partners object to legal project management [LPM] simply because their "clients never asked for it". And their argument may be very true, but clients are asking for the results that Legal Project Management delivers, e.g., greater fee predictability, more value for time spent on matters, increased efficiency, more transparency into how matters are handled. While clients literally may not be asking for LPM, that does not make it a valid point in this discussion. In fact, many firms admit that requests for proposals from corporate clients uniformly inquire about the firms' LPM and PI protocols. LPM is essentially about understanding a client's needs and priorities, which includes their appetite for risk. For example, if you have a boutique commercial law firm serving corporate clients, you probably noted your clients are not comfortable with risky and confusing situations. They trust you with their problems, and your responsibility is to provide a solution.However, the outcome is not the only value for your clients. The experience your clients have under your guidance is equally important. In mature markets, such as the business of law, competitors are differentiated by customers' experience of their service. Do your clients need Legal Project Management? Pamela Woldow, Principal of Legal Leadership, has a useful chart to help your thought process:

The firm of the future is in fact the firm of now

By Matthew Burgess, founder of View Legal

For those that do not have access to the ALPMA post feed, a recent article by View is extracted below.

'The evidence has been collected.
The submissions have been heard.
Judgment has been handed down - the incumbent law firm business model is broken.'

The great lawyer bubble

One of the first people to starkly address the fundamental problems at the heart of the legal profession was Stephen Harper and his book 'The Lawyer Bubble'.

The book details why the legal profession, similar to most other professions, will struggle in the short term to reinvent core aspects of their business model, particularly in relation to time billing, in the short term. While a myriad of reasons are provided, perhaps the most compelling is the fact that universities across the western world have become factories for producing professional service firm graduates who specialise

in the areas rewarded by time billing such as:

- long hours;
- rote learning;
- technology adverse; and
- engrained arrogance, particularly in relation to solutions that undermine the traditional personalised bespoke service offering (such as alternative business models, offshoring, outsourcing and automation).
- Catalysts for change

Harper argues that any change to the 'BigLaw' business model from within the profession will require the university system to start rewarding students who are able to demonstrate more innovative attributes than those outlined above.

Just as importantly, the owners of the incumbent firms must themselves create a demand for this style of graduate.

Another leading thinker, Clayton Christensen (in The Innovator's Dilemma), predicts that the prospect of the incumbent firms having the vision to truly cannibalise their existing business model is at best remote.

Maister still matters

While much of Harper's work was groundbreaking at the time, the framework for many of the answers to what law firms should be doing right now to re-engineer their businesses was provided a generation ago by another US consultant, David Maister.

Maister categorised the delivery of all professional services, including the law, into four broad categories, each of which has the prospect of being highly profitable.

The price is right

The price sensitivity goes from least to most through the following four components:

- unique services (or as Maister describes them 'brain surgery');
- experiential services (or as Maister describes them 'physiotherapy');
- brand name services (or as Maister describes them 'nursing');
- commodity services (or as Maister describes them 'chemist').

Arguably, due to the internet, there are two further categories further down the value chain: wholesale; and online, with product produced only on demand.

Ultimately, the internet has increased the rate at which all technology disruption has historically taken place.

What the winners do

- Winning firms understand that success ultimately depends on being:
- differentiated or unique;
- of demonstrable value; and
- delivered in a way that is difficult to replicate.

Sustaining innovation is ultimately just as important as any disruptive one; the challenge is that both types require different visions, metrics and practices. The disruptive business model requires funding, resource allocation and working environments that are significantly different from those of the traditional firm. History doesn't repeat; although it does rhyme History shows the vast majority of traditional firms are unable to allocate resources away from the primary revenue source, because of their focus on short-term profitability and the need to avoid any perception that there is a 'cannibalising' of the core business model. The key to a sustainable and successful business model is being self aware enough to know that unless they cannibalise their existing lines of revenue, competitors certainly will. Further, those competitors will have complete disregard for the ongoing profitability of the incumbent firms.

Primarily due to the embedded restraints of being a start up, innovative firms find ways to:

- monetise ideas quickly;
- minimise upfront cash expenses;
- understand that a product in market is always better than a delay to launch in order to ensure the quality is better - in other words, if you are not embarrassed by version 1 of the solution, you have launched too late;
- recycle and reuse what they have immediate access to; and
- understand that everything can look like a failure during the 'middle part'.

What will the changes look like?

To give some insight to what we believe a 'firm of the future now' looks like, 10 examples from our business are listed below – five that we have abandoned and five that we have embraced.

Five things abandoned

- Timesheets – with timesheets, all we ever focused on was what was chargeable – without timesheets, we now focus on what is valuable.
- No leave policies – leave policies are a hangover from the industrial age – it is time to move on.
- No individual budgets – while we certainly have team goals, these are never broken down into individual monetary targets. Our targets are aligned around our performance in the eyes of customers. If we get those right, everything else flows (including money).
- No performance reviews – again, a very poor hangover from the industrial age.
- No diversity goals – seeking to mandate minimum percentages of certain genders, cultures, religious beliefs or sexuality disguise much bigger problems with the underlying business model.

Five features embraced

- Guaranteed fixed pricing – the definition of a competent service provider is someone who can devise a scope of work and provide an upfront fixed price that they are willing to refund in full if the customer is not satisfied with the performance.
- ROWE-Results Only Work Environment
- Solution choreographed teams – we work with whomever and on whatever terms are best to achieve the client's objectives.
- AAR-After Action Review
- Diversity of thought – when two people in business are constantly of the same opinion, one or more is irrelevant. Raise diversity in every sense of the word and arbitrary politically correct percentages become irrelevant.

As mentioned in previous posts, we began the journey to address many of the challenges of redefining the professional services firm business model over 10 years ago. For many, the journey has started more recently and we believe it important to share our learnings

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(This piece was originally published by the Australasian Legal Practice Management Association)

Matthew Burgess founded what is regarded as Australia's first virtual law firm and more recently arguably Australia's most innovative legal solutions platform
(the law firm named View – see - https://viewlegal.com.au/).

Matthew regularly consults to other professional service providers on business model innovation, with his business book 'The Dream Enabler' a key foundation to this offering
(see http://www.thedreamenabler.com.au/)

Litigation Funding in Europe and the Netherlands

The origins and developments of Litigation Funding written by Sara Liesker LL.M, Managing Director at LIESKER Litigation Funding

Recently, the attention for litigation funding has increasingly grown in the Netherlands. As litigation funding is something new and relatively unknown, people often react reserved and have a preconceived opinion about it, as they say in the Netherlands 'onbekend maakt onbemind' (ignorance breeds contempt). Although this is understandable, it is not justified.

What is Litigation funding

Before discussing the history and market trends of litigation funding, I will briefly define litigation funding. Litigation funding is an agreement in which a person or corporation with a claim, agrees to share a certain portion of the revenues with a third party; the Litigation Funder, who agrees in turn to pay all costs for the legal proceedings or arbitration.

There is therefore a reward that depends on the outcome of the legal proceedings or the arbitration (no cure no pay), more specifically a reward consisting of a certain percentage of the revenues of the claim (contingency fee) for that third party.

Common law countries

One will not be surprised to learn that litigation funding originates from and has further developed in the entrepreneurial system of the common law countries. However, it has an element of surprise, since litigation funding had been illegal as of the Middle Ages. From the view that the credibility and the integrity of civil legal proceedings should be preserved, a legal prohibition on "champerty and maintenance" existed. Maintenance refers to the prohibition for a third party to interfere with and encourage a legal proceeding. Champerty is the superlative degree. This refers to maintenance however in addition this third party has pecuniary interests with the legal proceedings. In the last few decades the prohibition on maintenance and champerty has substantially been reduced, and more often the prohibition has totally been set aside. Nowadays, the prohibition is seen as a relic of the past. Although litigation is not automatically seen as a "good" thing, more and more it is not necessarily seen as a "bad" thing. Nowadays maintenance and champerty only limit litigation funding to the extent that the third party, for instance the funder, is not allowed to control the legal proceedings.

As of 1976 litigation funding has been allowed in the United Kingdom, when champerty was removed from the civil code. In the United States and Australia the prohibition on maintenance and champerty has also completely been removed from civil codes or have significantly been reduced by way of judgments. As a result of these developments the global market for litigation funding has risen into a complete industry. Moreover, there are listed litigation funders and parties who at their turn act as an intermediary between the plaintiff and litigation funders. Although some critical remarks towards litigation funding have been voiced, the general tendency in science as well as legal practice in the United Kingdom is positive. The most important paper about litigation funding is the essay written by Lord Justice Jackson in 2010, commissioned by the government, in which he researched costs for litigants in the UK legal system and dedicated one whole chapter to litigation funding. The essay discusses five reasons why litigation funding should be looked upon as favourable. Four of the five reasons are not necessarily related to a jurisdiction and therefore are also applicable to civil law countries. First, the essay states that (i) litigation funding is for some of the plaintiffs the only possible way to start legal proceedings, and thus litigation funding increases access to justice. Second (ii), the essay states that although a plaintiff is required to share a certain percentage of the revenues with the funder. On the other hand without litigation funding such plaintiff would not have had any revenues at all. Third (iii), the essay mentions that litigation funding will not lead to additional costs for the plaintiff. Finally (iv), litigation funding provides a first screening for successful claims. A claim without any chance on success will not be funded. A huge increase of "frivolous claims" is therefore not to be expected. Lord Justice Jackson states in his essay that the market for litigation funding is not fully grown yet and therefore any legislation on this matter would be premature. He expresses himself in favour of self-regulation.

Litigation funding is more subject to discussion in the United States. The chamber of commerce of the United States is extremely negative about litigation funding, especially in class actions. In scientific literature and legal proceedings however the tendency towards litigation funding is generally positive. All in all it is not to be expected that there will be a prohibition on litigation funding. In fact, due to the "punitive damages" phenomenon, the stakes and the costs for litigants are very high in the United States, and therefore it is expected that litigation funding will only grow further.

In Australia litigation funding has a more profound history than in the United Kingdom and the United States. Australia is known for its progressive view on litigation funding. In legal proceedings access to justice is seen as the main benefit of litigation funding. In a more recent (though controversial) verdict the High Court decided to maintain an agreement in which the legal funder initiated the legal proceeding and took the lead. The High Court deemed the agreement not to be in conflict with social decency. With this verdict Australia has left the ancient prohibition on champerty and maintenance far behind.

Civil Law countries

In most of the continental European countries the concepts of "champerty and maintenance" are unknown. However, litigation funding is in certain cases subject to discussion and has even lead to legal proceedings. However, also in these countries law courts and legal literature are mainly positive towards litigation funding.

In Germany Foris AG initiated the market for litigation funding in 1998. Since then many litigation funders followed and have been offering their services, as a result of which a mature market has developed. Nowadays German law even requires from lawyers to inform plaintiffs about the possibility of litigation funding.

Up until 2005 litigation funding was prohibited in the region "Zürich", Switzerland. In 2005, in a case commissioned by an insurance company, a lawyer and his clients, the Swiss *Bundesgericht* deemed the prohibition on litigation funding as an unlawful intervention in the economic freedom and therefore did not maintain the prohibition. As of that date litigation funding has slowly been growing in Switzerland. Especially now with the introduction of the *Schweizerischen Zivilprozessordnung* in 2011, which requires the plaintiff to pay a deposit for the costs for legal proceedings. This rule of law specifically allows a plaintiff to use litigation funding for the purpose of this deposit.

Litigation funding is also known in Austria. Several law courts have decided that litigation funding (by third parties) is permitted.

The Netherlands

Back to The Netherlands. Also in The Netherlands litigation funding has already been available for plaintiffs for five years. In Dutch legal literature there are not much publications available regarding litigation funding. Worth reading is the recent essay of professor Van Boom. Van Boom and his co-author discuss the legal qualification of litigation funding.
They conclude that litigation funding is legal according to Dutch law. Although they recognize some critical remarks towards litigation funding, they conclude that litigation funding

can be of advantage to ensure access to justice. Please note that litigation funding is currently not regulated in Germany, contrary to Van Boom's statement.

There are hardly any verdicts regarding litigation funding. There is a verdict of the Amsterdam Court of Appeal regarding the litigation funding in a class action. In this verdict the Court decided that there was "no misuse of litigation or otherwise unlawful or impermissible behaviour in obtaining damages". There is also a verdict of that same Court of Appeal in which the Court decided that – in short – the agreement containing a no cure no pay clause was in that case acceptable and therefore not in conflict with public order and morality and also could not be nullified by means of deception, abuse of circumstances or delusion.

Conclusion

I complete this essay and will come to the conclusion. Litigation funding is not something new, and has been offered both domestic and abroad for a shorter and longer period of time. In several countries the initial critical remarks have been overcome and it has been proven that litigation funding is a valid instrument to ensure access to justice.

In the Netherlands there has been little discussion on the advantages and disadvantages of litigation funding. A technical discussion regarding litigation funding should be welcomed. Following the developments in surrounding countries one can be sure that litigation funding in The Netherlands "is here to stay !".

Sara Liesker started LIESKER Litigation Funding (*Liesker Procesfinanciering*) in 2011 with several (ex)lawyers, after she worked as a corporate lawyer for many years. LIESKER Litigation Funding is the pioneer and market leader in litigation funding in the Netherlands.

1. See for instance the letter of the Secretary of State on Security and Justice, parliamentary year 2013-2014, file number 31 753, number 65, page 3 and page 4. Also see the letter of the Minister on Security and Justice, parliamentary year 2011-2012, file number 33 126, number 6, page 6 etcetera.
2. Chapter 11 of the Review of Civil Litigation Costs.
3. See my guest blog from 2015 on interference by the CoC in the Netherlands: http://blog.legalfunding.com/a-us-lobby-against-litigation-funding-in-the-netherlands/4/
4. BGE 131/ 223 E. 4
5. See for instance OGH December 11, 1984, 4 Ob 358-365/83, öbl 1985, 71
6. Since 2011 Liesker Litigation Funding offers litigation funding. Other parties who are active on the Dutch litigation funding market are Omni Bridgeway, Bentham, Claims Funding International and more recent Redbreast.
7. W.H. Boom & J.L. Luijten, Procesfinanciering door derden, RM Themis 2015/5, p. 188-199
8. Court of Justice, January 7, 2014, ECLI:NL:GHAMS: 2014:27
9. Court of Justice, December 13, 2011, ECLI:NL:GHAMS:2011:BU8763. Please note that no cure no pay arrangements in general are impermissible under Dutch law for lawyers.

More on Litigation Funding in the upcoming Podcast with Sara Liesker

More information about Sara Liesker, or Liesker Litigation go to:
http://liesker-procesfinanciering.nl/en/

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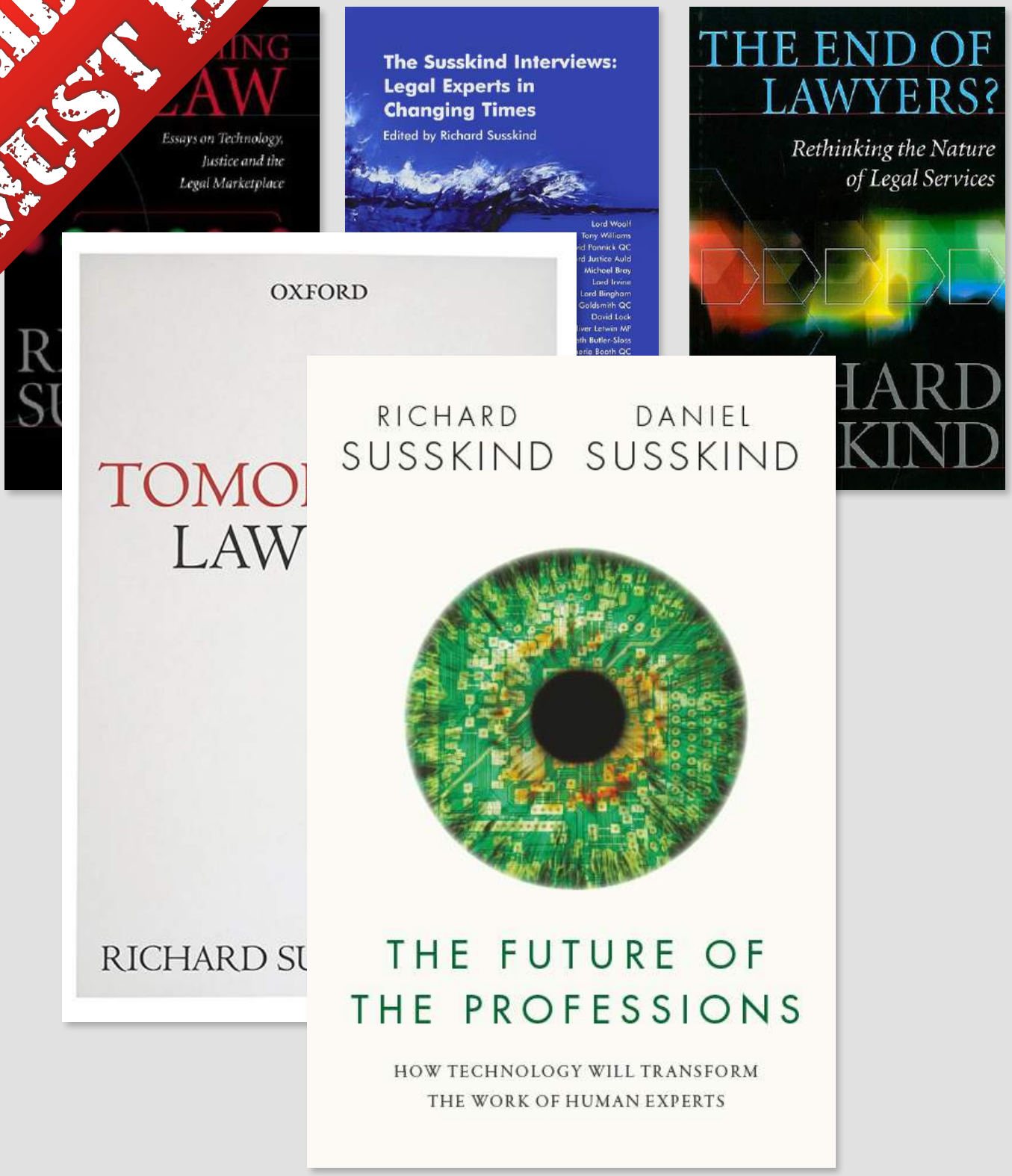

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