CREATING AND DRIVING VALUE FOR CONSUMERS OF LEGAL SERVICES

The news is full of predictions for change in the business of legal services. Disruptive technologies, new entrants to the market, demand for legal process improvement, and ensuring that data integrity and security are solid are all important issues but detract from the main driver. The lack of perceived value derived for the consumers of legal services is the driving force.

With the rise of the legal operations function within corporate legal departments and the subsequent demand for receiving more value and innovation from their outside counsel, optimizing the delivery of legal services has become the main focus. This is a big shift in the driving force for change within the profession as most all prior drivers have been largely cost based.

Since litigation, investigations, and review work (discovery, contracts, and due diligence) are the largest bucket of legal work performed within most organizations, applying the optimization approach to these areas can produce significant savings in cost and time spent. With market pressures and a decade of procurement measures pushing the cost for discovery services to a low ebb, the need for process improvement is that much more important.

That said, this is more than just adopting new technology to automate certain tasks or solving for lowest cost option. Much of the ethos of legal services and their delivery is changing to a value-based mindset that focuses on easier access and collaboration while providing the needed improvements in process to optimize results.
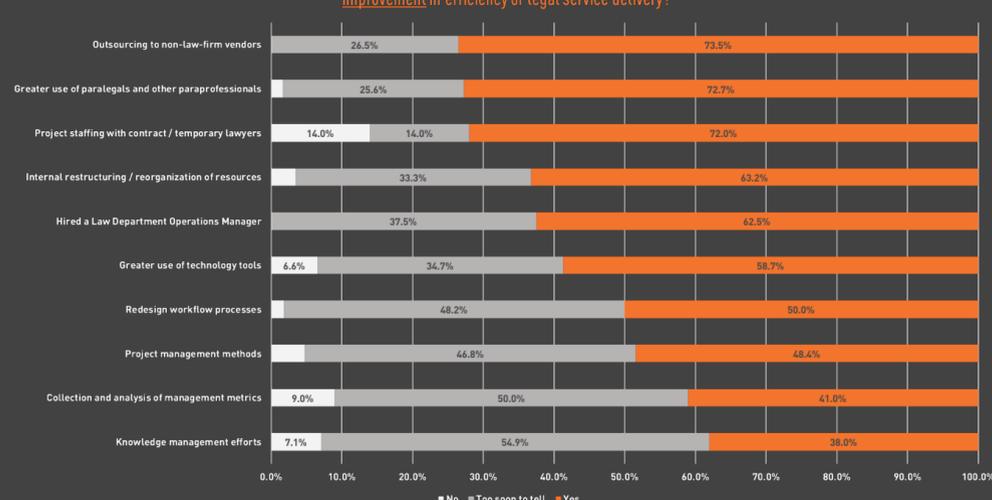
THE MOST EXPENSIVE EYEBALLS

Richard Susskind, OBE FRSE, has long been a proponent of the transformation of the legal profession to increase value and access to justice. In a commentary on this topic for Harvard Law School (https://thepractice.law.harvard.edu/article/speakers-corner-richard-susskind/), he calls for "the 'decomposition' of legal work into component tasks, the more routine and repetitive of which should be undertaken in ways that are much more efficient than the methods of traditional, one-to-one consultative advisers who handcraft and charge by the hour."

This breaking down of legal tasks into a matrix based on risk, cost, and complexity leads us into a world of insourcing, outsourcing, and computerizing the process-based and more administrative work clients are no longer willing to pay to be done by more traditional and higher cost means. Basically, optimizing the legal function to reduce the need for the most expensive eyeballs on all tasks and freeing up their time for the more complex, higher risk matters.

Though many efficiency measures are considered in this approach, the most recent Chief Legal Officer survey by industry experts Altman Weil has shown that outsourcing to non-law firm vendors has produced the biggest impact:

For each of the initiatives you've undertaken to improve efficiency in the last 12 months, has it resulted in a significant improvement in efficiency of legal service delivery?

	No	Too soon to tell	Yes
Outsourcing to non-law-firm vendors	26.0%		73.5%
Greater use of paralegals and other paraprofessionals	29.4%		70.7%
Project staffing with contract / temporary lawyers	14.0%	14.0%	72.0%
Internal restructuring / reorganization of resources		33.3%	63.2%
Hired a Law Department Operations Manager		37.5%	62.5%
Greater use of technology tools	6.6%	34.7%	58.7%
Redesign workflow processes		48.2%	55.0%
Project management methods		44.4%	48.6%
Collection and analysis of management metrics	9.2%	49.0%	41.8%
Knowledge management efforts	7.7%	56.9%	30.0%

The top four items named in the survey are all resource realignment efforts that follow the approach advocated by Susskind. All have produced the results desired with somewhat mixed results from using temporary or contract workers. Note that the knowledge and metrics-based initiatives as well as process improvement have also shown early success, but it is just too soon to tell the full impact.

THE PRICE OF LIGHT

AC Nielsen, founder of the global information measurement company of the same name, said that "the price of light is cheaper than the cost of darkness". Analytics, machine learning, artificial intelligence, and knowledge management are all tools and disciplines now being applied to the legal profession to gain more insight on deriving more value by learning from the past while also making better decisions in the future. The same have also been harnessed to automate routine, predictable, low risk tasks to further the impact.

As corporations look to drive efficiencies across their operations, they are employing these tools to help take more control of their internal legal processes in lieu of deploying more personnel. The 3rd Annual Analytics Survey conducted by the Coalition of Technology Resources for Lawyers (CTRL), partnered with The Information Governance Initiative (IGI), surveyed corporate in-house counsel to determine how they use data analytics in eDiscovery, Information Governance (IG), and other disciplines.

The clear majority of respondents said that data analytics will be "will be very important, will be considered indispensable, and [their] use will be widespread" among the legal profession over the next 10 years.

Due to the large volumes of data involved, analytics in eDiscovery continues to lead the way with "95% of practitioners indicating that their spending in this area will grow or stay level." Additionally, three times as many organizations indicate they will "start using analytics for eDiscovery in the next 12 months." Other use cases for analytics are showing increased usage rates, with massive growth in Outcome Analysis (up 42% over last year), Information Governance (up 78%), and Contract Review (up 146%). A detailed infographic with more detail on the usage and use cases can be found here:
http://ctrlinitiative.com/wp-content/uploads/2018/02/11097-IGI-CTRL-Infographic.png

Not surprisingly, culling irrelevant and non-responsive data is still the top use of analytics for eDiscovery but true early case assessment (ECA) has gained in popularity as has the use of analytics to speed up the privilege review process. Beyond putting the most relevant data in front of reviewers, analytics and machine learning also reduce the volume of people needed while increasing throughput. A two-year study of over 10,000 cases by a leading review platform developer found that the use of analytics allowed reviewers to code nearly 3 times as many documents and the review team size was 36% smaller than those not using analytics.

Defending a legal position, making better "go/no go" decisions, learning more about case facts and key people earlier, and arguing proportionality are all made more impactful by knowing what is inside your data through analytics.

Use of related data insights are now becoming more common, too. For example, many companies and their outside counsel are now performing "information governance screens" on their data to determine the source, age of the data, and volume then comparing this to records retention schedules and legal hold periods to determine how much data should have been disposed of prior to the legal hold being enacted. These insights into upstream information governance help inform where to focus for defensible disposition initiatives. Sensitive data screens can similarly be done to help control leakage.

CONTROL YOUR DATA'S DESTINY

One of the more important movements in legal operations is the push toward centralization of data or, at the very least, getting closer to the sources of data to reduce the messy handoffs in discovery and to gain more insight. Centralization when under control and direction of the company also helps in the data security functions, defensible disposition, and compliance.

Borrowing from the environmental movement, centralization of data also allows us to "reduce, reuse, and recycle" much more readily. A litigation repository, especially one grouped by custodian, provides more insight into your data patterns such as most active custodians, which have the largest data volumes, and more. Single sourcing significantly reduces the need to continuously collect data from the same sources over and over.

Reusing decisions in addition to reusing data furthers the savings in time and cost. Applying decisions from past cases, especially for privilege, reduces the need to look at the same data again. Creating a "privilege bank" with a master database of the data and previous privilege decisions makes that process even easier. Other decisions and data can be recycled to spot trends across cases, yielding additional insights that may help tie to outside counsel selection by matter area, budgeting, and more.

Process improvement is now being applied to discovery in the form of standardized workflows, protocols, playbooks, and level setting with reviewers and outside counsel. This produces more consistent results while also ensuring better quality control and predictability in outcomes.

PUTTING IT ALL TOGETHER

Through a legal process optimization approach and judicious use of outsourcing, insourcing, and technology assistance, we can significantly improve the value delivered from legal services. While doing so, apply these basic ideas in addition to those outlined above:

- Move beyond pricing focus to a process focus
- Don't automate bad processes
- If it doesn't make a difference, why even do it?
- Innovation is a team sport

Sincerely,

The Guru (aka: Doug Kaminski)