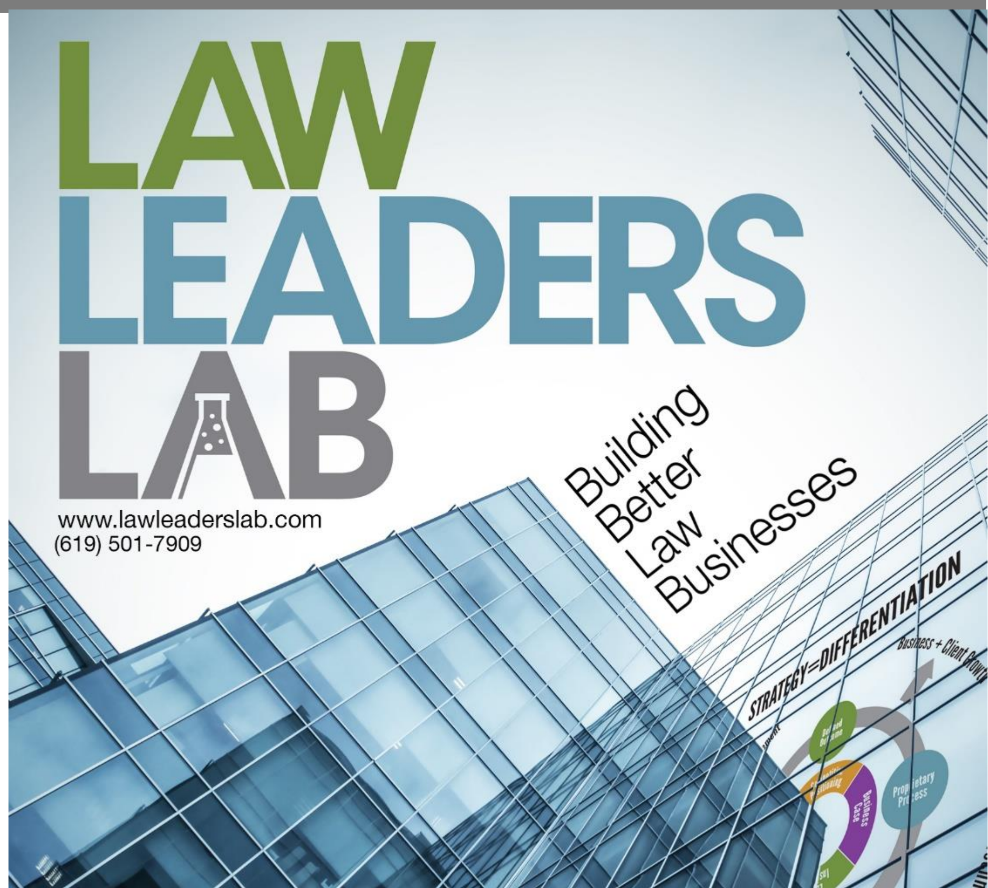
2014

The Evolution of Value in Legal Services

A framework for defining value and improving the delivery of legal services



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The Evolution of Value in Legal Services

A framework for defining value and improving the delivery of legal services

In 1964, U.S. Supreme Court Justice Potter Stewart said he couldn't define pornography but "I know it when I see it." Something similar can be said today about the concept of value in legal services.

Ask lawyers how they define the value of what they do and most will struggle with a tangible definition. Concepts like results, responsiveness or just plain "good lawyering" may come up, but few can specifically define these terms or describe what those terms mean to clients.

We believe that lawyers, given the dynamic and increasingly competitive nature of legal services, must rethink the way they create, deliver and communicate value to clients if they want to maintain sustainable and profitable law businesses. We also think that by addressing head-on weaknesses in the way lawyers currently practice, they will find their work to be more personally and professionally rewarding. It's a win-win for the legal profession and for users of legal services.

> Law Leaders Lab and Carol McAvoy Consulting interviewed middle market companies with legal budgets of $250,000 - $2 million to identify what they value most when it comes to managing their legal issues.

Law Leaders Lab in partnership with Carol McAvoy Consulting embarked on a research project to put substance behind the definition of value through a series of face-to-face interviews with Chief Executive Officers, General Counsel and Chief Financial Officers whose responsibilities included hiring of outside counsel for organizations across a breadth of industry groups, including financial services, life sciences/pharmaceuticals, education, non-profit, and business services. We chose this segment because, while significant research exists about hiring decisions inside large organizations, less information is available about decision-making inside smaller organizations.

Relationships, Outcomes, Impact: ROI Redefined

Our research focused on mid-sized companies with an annual legal spend ranging from $250,000 to $1 million. These organizations are large enough to have ongoing legal needs but small enough that they outsource a large percentage of their legal services.

These closely-held, family-owned or regionally-operated companies often are the best clients of law firms of all sizes. They represent 99% of all business enterprises, collectively have tens of millions of employees, and many are global enterprises.[1]

In the post-recession era, these organizations have more buying power than ever and are becoming more sophisticated in the way they evaluate their lawyers and in how they consider alternatives to addressing their legal needs.

Among the findings:

- While relationships remain vital, how relationships are developed and maintained is changing.
- Buyers are focused on defined business outcomes – Clients appreciate the time and effort lawyers put in to solving legal problems, but don't equate time with value.
- A direct correlation exists between the business impact a legal issue has on an organization and the perceived value of the legal services provided.
- The competitive landscape for attorneys is changing as decision-makers working in this market look across all law firm tiers for the right attorney to fit their specific needs.
- With the line between business and law increasingly blurred, these same decision-makers realize they have options beyond lawyers alone when it comes to finding cost-effective ways to address their needs.

Combined, these factors provide a working framework around which we can deepen discussions about the value of legal services:

The Law Leaders Lab Value Framework:

$$\frac{\text{Relationship} + \text{Outcome} + \text{Impact}}{\text{Comparative Value}}$$

[1] Sylvia Hodges, Winning Legal Business From Medium Sized Companies, (Ark Group, 2011).

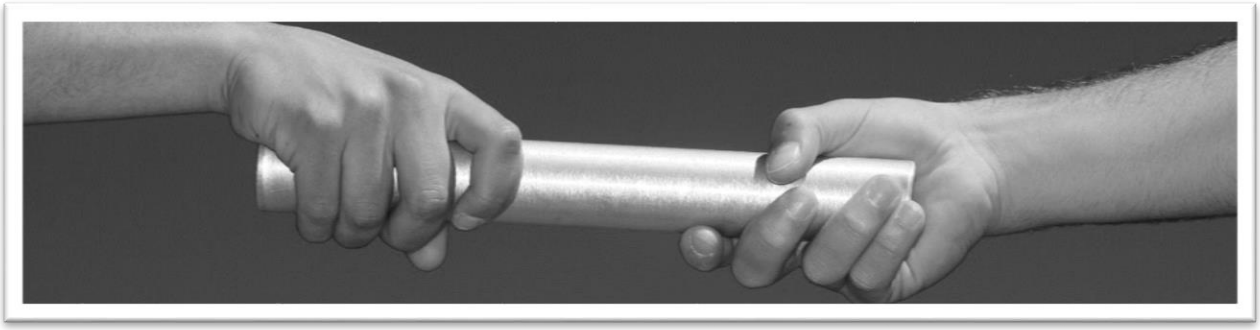
Although we are not at the point of offering statistically meaningful data, through this initial research we hope to further the dialogue around the topic of value creation. This report details the findings of our face-to-face interviews and outlines how the trends we identify can be used to help law firms rethink the way they create and deliver value to clients.

Relationships

Relationships are the cornerstone of any professional services business. But the traditional ways lawyers build relationships are changing. Excellent legal service, responsiveness and knowledge of a client's business – once considered "value adds" to building strong relationships – are now considered a requirement for earning and keeping business. Meanwhile, "Trusted Advisor" relationships – a term that combines the intangibles of loyalty, likability and multi-disciplinary problem solver – are harder to come by.

In addition to all of the above, buyers of legal services say their needs are much more practical. Their observations included the following:

1. Decision-makers cited adaptability as a far more important factor than who they like best. In some cases, adaptability is tied to individual working style and personality. In others it goes beyond interpersonal skills alone.
2. Not all attorney-client relationships are trusted-advisor relationships. In many cases, clients want a quick answer to a minor legal need. Lawyers hungry to develop stronger relationships need to start small, doing a great job on a specific matter without trying to continually force an elevated relationship prematurely.
3. Earning trust with one decision maker does not automatically extend across the organization as a whole. Attorneys need to build relationships across the entire organization, one person at a time.



The ability of a lawyer to connect the dots between the legal work and the functioning of a business is a key driver of value.

One CFO explained that developing strong relationships is important because it helps attorneys she works with regularly understand the way her organization does business. The attorneys who take the time to get to know the way she and her team work are more successful in adapting their working style to meet her company's specific needs, which are atypical of other companies in her space – something some attorneys don't recognize at first glance.

Likability is important, she said, but at the end of the day this concept of adaptability will drive who she selects as counsel. She cited one attorney who she thought would be a great fit for her company. He is a great lawyer, responsive, and she genuinely likes him as a person. Unfortunately, he just couldn't adapt his style of negotiating to meet the unique role her company plays in the deals they do. She ended up having to hire someone else.

When it comes to relationships, adaptability trumps likability and economics can trump both. Lawyers need to be more self-aware about how clients perceive the value of their role.

And, in an increasingly competitive legal market, the pressure on attorneys to find new business is so palpable that in some cases attorney efforts to expand the scope of work they handle works against them. Among the cited examples of bad behavior was one attorney who repeatedly called his client asking for more work and another who side stepped the General Counsel's office in effort to find new assignments. Both efforts were perceived as acts of desperation and only served to alienate them from their clients.

This is particularly true as legal budgets get more scrutiny from the business side of organizations. GCs and other executives recognize they need to demonstrate their own value with the stakeholders inside the company. The last thing they want is to feel as if they are competing with outside counsel who attempt to work around them in the name of building organizational "trust."

The takeaway? While relationships remain important, our research revealed a shift in the way clients define the value of those relationships. Adaptability trumps likability and economics can trump both. Lawyers need to be more self-aware about how clients perceive the value of the role they play.

Outcome Clarity

In talking with executives it is clear they are far more interested in the outcomes their lawyers deliver than the time and effort lawyers put in to producing the work. In other words, while lawyers tend to work in the world of inputs – How much time?, How much complexity?, How much work product? – clients think in terms of results: What is the answer?, What decisions do I need to make?, What information do I need to make the right decisions?

Clearly charging by the hour is a symptom of this disconnect, but the underlying problem goes beyond time-based billing alone. Those we interviewed said the price of the service, regardless of the billable rate, must be tied to the outcome delivered.

The decision makers with whom we spoke were not looking for their attorneys to guarantee results, but they do want them to recognize the business issues underlying the legal ones and to deliver services that are tied to defined business needs.

Buyers of legal services increasingly are less concerned about hourly rates than they are about defined outcomes.

One General Counsel noted that her perspective on delivering value to clients completely changed after coming in-house where she learned first-hand the connection between the work she did as a lawyer and how it was used by business team. The ability to connect the dots between the legal work and the functioning of the business is a key driver of value.

To be sure there are legal matters in which defined outcomes are not possible, but for the vast majority of legal tasks there is significant room for lawyers to deliver services and communicate in more outcome-focused ways.

One Chief Financial Officer explained that what he wants from outside counsel is pretty straightforward – answers to questions that let her do her job quickly, accurately and with the least amount of risk exposure. Value is associated with the attorney who makes life easier, not one who creates more work.

Using the example of a typical contract review, this CFO said his goal is to find out what, if any, red flags exist that need to be addressed. What he received instead from one attorney was a line-by-line review with notations about potential issues next to each section, resulting in a document that was longer than the contract itself. The outcome (the work the lawyer did) may have been legally sound but it required the client to invest additional time and energy in reviewing what the attorney provided so he could figure out whether and what types of decisions she still needed to make.

Contrast that against the attorney he uses today. When this attorney reviews a contract, he responds in an email with bullet points summarizing what he needs to know, allowing him to make a decision quickly and move on.

The attorney most likely conducted a similar analysis as the first attorney, but he delivered the outcome he was looking for – specific points he needed to address so she could make a decision in the best interest of her organization.

Some legal issues are just not as valuable as others… Lawyers need to find better ways to provide these services.

In another example, a GC explained that regardless of how many hours a task takes or how experienced the timekeeper, some legal issues are just not as valuable as others. This issue often gets discussed in the context of “bet-the-company” work vs. commodity work, but it has implications across work of all complexity.

This GC was asked, for example, to develop a BYOD (Bring Your Own Device) policy for her organization. The cost for the work delivered was far higher than what the GC expected. In isolation, she did not necessarily disagree with the number of hours worked or that the hourly rate for the attorneys experience level was out of market. But the overall price for the outcome delivered did not add up. Although the GC acknowledged she should have clarified the cost up front, the bigger issue was that the business need was not great enough to justify the price tag.

The takeaway? Clients increasingly are tying value to clearly defined outcomes as opposed to focusing solely on hourly rates charged. Lawyers should shift their thinking away from the effort they put into their work product and focus on demonstrating the benefits of what they produce. Proper expectation setting and delivering work product in a way that makes a client's own job easier goes a long way toward demonstrating value.

Business Impact

It is well established that the higher the risk or reward of the legal need, the less price sensitivity there is. The more routine a matter, the greater the expectation for discounts, flat fees or a clear value proposition around efficiency and results.

Taking this link between perceived business impact and price a step further leads to a tangible measurement tool: The corporate budget. Although most interviewed base legal budgets on historical spend, at least one General Counsel identified a direct relationship between how the company budgets and how it perceives the value of legal services.

Outside counsel should look at legal matters from the perspective of business impact to gain greater insight into the mindset of the client.

This GC typically uses outside counsel for one of two things: issues associated with doing deals and those associated with day-to-day operational issues.

Each of the company's deals has its own budget and associated legal costs are billed against the budget for each specific deal. In contrast, day-to-day legal costs are part of a separate legal department budget. While both are necessary, one cost is tied to the overall business strategy while the other is a cost of doing business.

This isn't to say fee sensitivity doesn't exist in both categories. Excessive costs due to an acquisition lower the overall profit margin, while fees tied to day-to-day matters reflect on her department and ultimately her ability to manage costs. But the value to the company is clearly different. One provides the company an opportunity to generate revenue while the other is overhead. Hence the former is perceived as more valuable.

As companies become more sophisticated in how they plan for legal costs, we believe this correlation between value and bottom-line impact will become more tangible. As a starting point, we've identified three buckets of impact-based value:

1) Investments: Legal matters connected to business strategies that will result in revenue generation or growth of market share. On the transactional side, this might include mergers and acquisitions or licensing deals. On the litigation side,

this could be planned litigation by companies as a business strategy to protect important interests such as intellectual property.

2) Risk Mitigation: These are expense items where the goal is to avoid or minimize exposure. Risk mitigation can be proactive, such as compliance programs, or reactive, such as unforeseen litigation.

3) Cost of Doing Business: Legal activities and guidance associated with running the day-to-day operations of a business, such as employment matters, contracts, leasing, or "nuisance" litigation.

The takeaway? Looking at legal matters from the perspective of business impact provides insight into the mindset of the client. Day-to-day matters will invariably be more price sensitive *and* come with a greater expectation of certain business efficiencies than, say, a subject matter expert who can make an unwanted piece of litigation go away quickly. Lawyers should pay attention to the impact the legal matter has on the bottom line of the business when considering how to frame conversations about price.

Do you help clients create revenue, mitigate risk, or are your services just a cost of doing business?

Comparative Value: Law Firm vs. Law Firm

Value is not measured in isolation. Buyers of legal services have many choices when it comes to addressing their legal needs, so value will always be a comparative measure.

Lawyers often think they compete against other attorneys who come from firms that are similar to their own. In today's legal market, that theorem does not always hold true.

Firms with strong brand recognition continue to carry weight in high-stakes litigation and other high-risk matters. But as often as not brand reputation is tied to an individual attorney. With the increase in lateral partner movement and lawyers with portable books of business leaving well-known firms to start their own, the true strength of many firm's brands is questionable.

In most cases, those we interviewed consider and work with attorneys from firms of many shapes and sizes on more than one occasion – and with good results.

The takeaway? Every size firm has its strengths and weaknesses. When competing for business, lawyers must take in to account how they compare both against firms that look like them and against those that look different. That will allow them to build a compelling business case to demonstrate why they are the best choice for delivering the results their clients want, regardless of firm size.

Comparative Value: Lawyers v. Other Alternatives

In addition to comparing the value of one lawyer to another, buyers of legal services are also looking outside the traditional law firm to find ways to address legal challenges in cost-effective ways.

Alternatives to law firms include:

- Legal technology service providers
- Non-law firm business consultants
- Hiring in-house counsel

Legal technologies are impacting the way companies of all sizes manage legal services. These technologies provide one of two benefits. They streamline legal business processes to create efficiencies. Or, they replace the need for legal counsel altogether.

Many companies frustrated with the inefficient way in which lawyers deliver their services bring the technology in-house and hire outsourced service

TREND WATCH: Competition Across Law Firm Tiers

One Chief Financial Officer of a venture capital firm works with attorneys from three very different firms.

The company's go-to attorney is from a small firm. This attorney is a friend of the founder, and he has built a long and successful relationship with stakeholders throughout the organization. He knows how they work, provides high-quality results and is a true "trusted advisor." The firm loves to give him deals, but they cannot give him everything because he does not have the bandwidth. If he is busy, they need to bring other attorneys in to work on their deals.

A second firm the company uses is at the other end of the spectrum in terms of size. It is an international firm with thousands of lawyers dispersed in major economic markets around the world. This firm provides a strategic benefit when it comes to atypical deals. Naturally the firm is more expensive, but there is almost always a resource available who can provide insight about trends and market standards that might otherwise be difficult to obtain.

The third firm – a mid-sized regional firm – offers the bandwidth of the larger firm at a more competitive rate. This firm provides the outcomes they want, can handle a higher volume of transactions than the small firm and works at a lower price than the mega firm.

providers directly so they can reduce costs and duplication of efforts. For example, review platforms brought in-house can improve the speed and results of electronic document review. This is a widespread practice among large business enterprises that litigation-intensive, mid-sized companies are starting to replicate.

In other cases, technology is increasing the prevalence of "do-it-yourself" legal services. Many legal technology companies that originally built their products to sell to law firms are now going direct to the buyers. Others – like LegalZoom and Rocket Lawyer – are using technology-based services on the front end and are selling low-cost lawyers on the back end.

Although many of these services originally focused on the consumer markets, similar products now focus on businesses. These technology companies compete head-to-head against lawyers by touting their products as a way to reduce outside counsel spend.

For example, the General Counsel of a national healthcare network with operations throughout the 50 states says she used to hire counsel from a national firm to analyze the impact of certain laws or developments on her operations in different states. Now, she says, she accomplishes this same thing using a subscription legal database that can generate the same report for a fraction of the time and cost.

With the lines between business and the law increasingly blurred, law firms also face competition from other professional services advisors like accountants, business advisors, HR consultants and even real estate brokers. Although they don't necessarily

Sizing Up the Competition
Developing compelling value propositions for your clients includes demonstrating what you offer that technology and other service providers cannot.

compete head-to-head, they often provide lower cost alternatives to preventive law solutions or ancillary services that cut into the amount of work lawyers might otherwise be able to bill. These factors have contributed to changes in UK and Canadian laws involving partnerships between lawyers and non-lawyers.

Another impact on the competitive landscape is the in-house attorney. With the high-cost of legal services, lawyers are one of the few outsourced providers that cost more than bringing a person on full-time. Once a General Counsel is in place, the opportunities for outside counsel drop.

With the lines between business and the law increasingly blurred, law firms also face competition from other professional services advisors like CPAs, business advisors, HR consultants and even real estate brokers.

One person we interviewed was the first General Counsel hired by his organization. Prior to bringing a lawyer in-house, the organization relied on a large multi-practice law firm that could provide “one-stop” shopping for legal services. A Relationship Partner at the firm managed the relationship, and, although not necessarily cost-effective, it made finding legal resources easy.

Once the organization made the decision to bring someone in-house, they realized they could address their one-off legal needs in far less expensive ways. In essence, the role of Relationship Partner shifted to the General Counsel whose knowledge of the legal market opened up a wider variety of outside attorneys to choose from. In essence, the new General Counsel all but unseated the organization’s primary outside counsel.

The takeaway? Lawyers must look beyond their peers when it comes to developing a compelling value proposition for why clients should work with them. Among the factors they will need to address is what makes the work they do more valuable than:

- Free and low-cost legal information online.
- Low-cost document creation services.
- Automation technology to streamline routinized legal processes.
- Low cost legal research services.

- Ancillary non-legal services providers such as real estate brokers, human resources consultants, accountants and business advisors.
- Bringing an attorney in-house.

Conclusion

With buyers of legal services moving beyond the Justice Stewart, “I know it when I see it,” definition of value, law firms must prepare to respond. The five indicators identified provide a value framework lawyers can use to create internal conversations around defining and measuring value. This framework applies a new definition to a traditional business acronym, ROI, and provides comparative metrics that can help focus in on tangible opportunities to provide more value.

The Law Leaders Lab Value Framework:

$$\frac{\text{Relationship + Outcome + Impact}}{\text{Comparative Value}}$$

Specifically:

- **Value tied to relationship strength:** Not every attorney-client relationship gives rise to the opportunity for the attorney to be a “Trusted Advisor.” Lawyers need to understand the way their role is perceived and respect that role.
- **Value tied to outcome clarity:** Lawyers need to shift the focus of value away from the work they do and the rates they charge. Instead they need to better define how what they do will help their clients’ business goals.
- **Value tied to impact:** By understanding the way clients budget for legal, lawyers can get insight into the way clients perceive their role. Looking at whether the work is an opportunity to create revenue, a means to minimize risk or simply an operational cost will help assess price sensitivity.
- **Comparative value:** Lawyers v. Lawyers – With the competition for legal services at an all-time high, lawyers must be able to differentiate themselves, not just from firms that look like them but also from firms across every law firm tier, from solos to global powerhouses.

- **Comparative value: Law firms v. Other services providers** – Competition for a share of a company's legal spend is not limited to law firms alone. Lawyers must be able to define their value proposition in ways that limit their risk of losing work to technology providers, non-law firm consultants or lawyers in newly created in-house positions.

Law Leaders Lab is committed to helping lawyers rethink the way they create, deliver and communicate value to clients. We invite you to join the conversation and engage with the law firm leaders of tomorrow at www.lawleaderslab.com.

About Law Leaders Lab

The practice of law and the business of law are distinct disciplines. Many firms excel at the former but struggle when it comes to balancing the complexities of running a profitable business with client interests, attorney needs, and the delivery of legal services.

Unfortunately, being an "excellent lawyer" no longer guarantees a successful legal career. Sustaining a thriving law practice requires a more disciplined approach to business development and client management.

Law Leaders works at the intersection of marketing, business development and practice management to help clients adapt their practices to the increasingly competitive and dynamic legal environment. We have a proven record of identifying new markets, targeting clients and building integrated marketing and business development programs to generate new business and expand client relationships.

About Carol McAvoy Consulting

Most professional service providers know their clients as well as they know their business. Their dedication to serving clients and managing their practice is often exemplary. But that dedication can limit the time and focus they devote to thinking about what's next or sharing their hard-earned knowledge and perspectives.

CMC builds on your firm's foundation of knowledge, reputation and resources with research-based market information and practical plans for translating ideas into action.

Whether working as a member of your team, with a virtual team of experienced colleagues representing a wide spectrum of management and marketing skills, or independently, CMC can help your firm focus its resources to grow and prosper.