



I. New Resources for a New Age

A. Abstract

Dramatic changes in the marketplace for legal services, especially for large corporate clients, demand fresh thinking and careful analysis by clients and the outside lawyers who serve them. Clients should expect outside counsel to staff lower-risk, lower-impact work in more efficient ways, taking advantage of the potential for more automated methods and tools.

Brad Blickstein and David Cambria led a discussion group in which they introduced their methods of analysis and conducted an exercise among participants to assign risk and impact to different kinds of legal work. This design exercise can serve as a model for lawyers (both outside counsel and in-house) and clients to assess the staffing and resources used for the range of legal work performed.

Lawyers may consider their work to have a more significant impact on their clients than their clients' assessment. The effort to be explicit about these issues and for lawyer and client to collaborate on their assessment can address and bridge this disconnection.

B. Highlights

A scan of headlines from 1992 seems remarkably familiar and less distant than one might imagine from the passage of time.

- GC Plan Few Hires – But Still Say More Work Coming In-House
- How to Control Litigation Costs
- Pressure Rising for Early Settlement; Bad Times Are Good Times for ADR
- Controlling the Cost of Environmental Regulation
- Alternative Billing Making a Comeback
- Law Departments Look for Improved Management Reporting
- High Fees and High Pressure Spawn an Alternative
- Foreign Firms Offer Quality Work at Bargain Rates

C. Key Insights

Legal services delivery has broken out of the duopoly of being performed either in-house or by “standard” law firm outside counsel. Competing providers are performing significant work. We can get a feel for this from the report of the 10th Annual Law Department Operations Survey by the Blickstein Group:

We use alternative legal service/non-law firm vendors for:

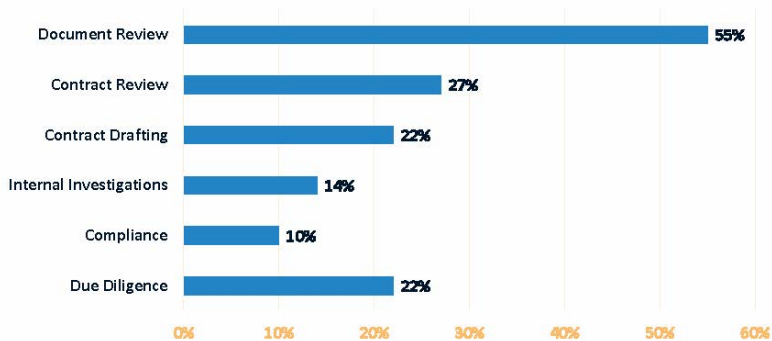


Figure 1.

David Cambria of Archer Daniels Midland presented their method for analysis of legal services for the range of legal work performed for the company. By aligning the risk and impact of different kinds of services with the level of expertise required to perform the work, they sought to identify areas where greater effectiveness and efficiency could be measured through “leveraging down” work.

They concluded that the key beneficial opportunities exist where they can be:

- Leveraging more lower-value/lower-effort work downward, freeing up the leadership team and senior-level resources to spend more time on strategic work.
- Streamlining processes, using enabling technology and alternative service providers for certain matter subtypes and tasks.

Figure 2 below shows the framework for assigning types of work to the categories/quadrants arising from this analysis. The upper-right quadrant – high-risk/high-impact work – is the least susceptible to change. With its small frequency, special circumstances and potentially “bet the company” level of risk, the assignment of the most senior and experienced resources of the general counsel’s office and outside counsel remains the best justified.

The upper-left quadrant should include other issues and situations that have a high potential legal risk, but where the impact for that client’s business leaves assignment of the highest level (and cost) of resources unjustified compared to the upper-right quadrant.

The lower-right quadrant – high-impact situations with lower risk – also deserves good, but not necessarily the most specialized, highest-cost legal services.

The low-impact/low-risk (lower-left) quadrant has many of the highest opportunities for leveraged down services.

Honest and collaborative assignments of types of legal work to each of these four quadrants will help direct efforts to better manage the cost and application of inside and outside counsel to a client’s legal work.

A Framework for Focusing Legal Service Delivery – It’s About Resources, Not Importance

The framework below helps the department identify what work to keep in house, outsource to experts, or automate based on the work’s impact on competitive advantage and the level of risk involved.

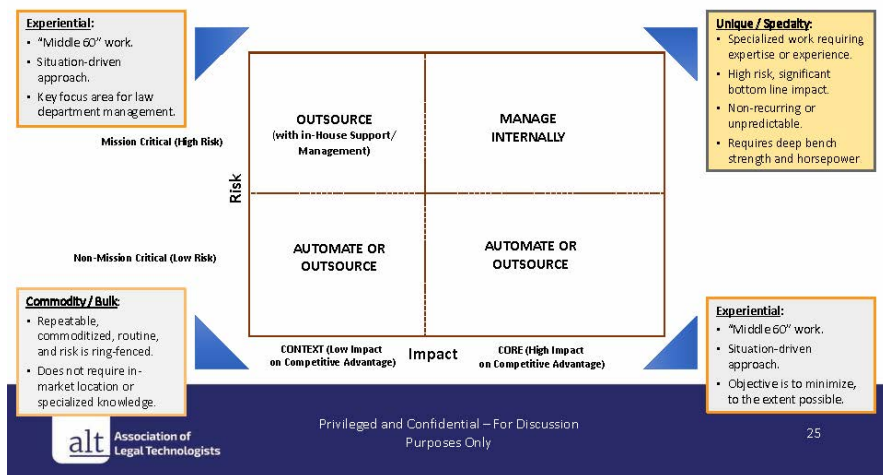


Figure 2.

D. Teamwork

The working session sought to engage those present in their own application of the method used by ADM. When asked to assign different types of legal practice to the four quadrants, most assignments were to the upper-right high-risk/high-impact quadrant. This conversation displayed a gap between a law firm perspective – that sophisticated legal work relating to potentially high-risk issues necessarily corresponded to a high impact for clients – and client perspective – that for a particular business, the impact of some issues, even with a high potential risk, could have a low impact if the probability of that risk is low enough.

In a subsequent interview, Cambria and Blickstein expressed surprise at how difficult it can be for staff and lawyers practicing in firms to comprehend fully their clients’ business perspective. Cambria described a disconnect between what corporate clients and in-house counsel are trying to buy and what outside counsel are trying to sell.

The session notes recorded several detailed examples of lower-impact, lower-risk legal work and the tools and methods that could manage these services to make them more efficient.

“Other Compliance” – Off-the-shelf compliance tools and legal process outsourcing

Government Relations: outsource

Membership in industry/trade organization that lobbies on your behalf

Artificial intelligence tool: Fiscal note for monitoring

Nondisclosure Agreements: Document automation, auto approvals, e-signature

Professional Service Agreements/Master Service Agreements

Document automation, chatbots

Law contract review tools for third-party paper (e.g., LawGeex, KM Solutions)

Invoice Approval

AI tools, e.g., Owl

Brightleaf

and/or reassign outside legal?

Continuing Legal Education & Training:

Outsource

Examples: TR, Practicing Law Institute

Tie to learning management system and billing system to surface recommended trainings

E. Using Legal Design Thinking

The effort during the session to apply the principles of legal design thinking had some, but limited success. A primary lesson of legal design thinking is to look for and listen to the needs and priorities of the ultimate customer – in the case of private law practices that means the client. During the conversation, it was reported that lawyers participating from private law firms took issue with the presentation and analysis from ADM. The latter presented a client’s perspective, but the lawyers resisted the implications that work that they considered sophisticated and valuable might not receive the same evaluation from the client. Specifically, the lawyers described compliance with the European Union’s General Data Protection Regulation (GDPR) as a high-risk representation, which they also evaluated as having a high impact. The ADM participants said that while GDPR compliance could have high-risk implications, they evaluated its impact on ADM’s business as fairly low and would not expect to commit the degree of legal resources that outside counsel might consider valuable.

Using the observations, conversations and analysis drawn from legal design thinking can help law practices direct and allocate resources to existing and new practice initiatives, especially to help align to client expectations in this “new age.” Given the strongly held beliefs and firmly entrenched expectations of law practice leaders, that work may be as difficult as it is necessary.

F. Actions and Opportunities

The analysis using the risk/impact matrix introduced by David Cambria and Brad Blickstein offers a new perspective for law practices, engagement of lawyer resources and acquisition and deployment of technology. They and the participants in the session strongly encourage law practices and clients to perform a similar collaborative analysis of their work and relationships.

Build the four-box matrix and evaluate the work presently performed for a client by risk and impact to the client to determine where it fits in the matrix. To match client needs and expectations, if the work is low value, with a low impact, “Don’t give me a rock star.” Find a way to deliver that work in the most cost-effective way. If the client tells the law firm that the work fits in the upper-right high-value/high-impact quadrant, then there is a clear understanding that the client is prepared to pay for the firm’s “star” resources.

Each law practice/business combination will reach its own conclusions about the choices to be made. Each should find opportunities to move portions of the lawyering practice from the highest-cost, most sophisticated resources to ones that are a more cost-effective match between risk and impact.

This disciplined exercise can provide a framework for discussion and evaluation of regular and alternative fee structures so choices are better informed than most of the discussion of those issues today.

Authored by Robert Blacksberg, Blacksberg Associates, LLC

February 2018