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Make Way For The 'Unicorns'

By **Lucy Endel Bassli** (November 1, 2017, 9:53 AM EDT)

By "unicorn" I don't mean the next great tech startup with a valuation of \$1 billion. I'm talking about that mystical creature that lurks in law firms all over the country and globe, in corporate legal departments at some of the world's best companies. I'm talking about that lawyer who likes process and seeks out data. That lawyer who is frustrated by the inefficiencies of the legal practice and is emotionally torn between perfecting the craft of law and breaking it down completely into an objective set of processes and metrics. There is a new breed of lawyers that are standing up and speaking out, louder than ever before. These lawyers are realizing that there are better ways to get their day jobs done. They are curious about technology and process improvements, and they have a natural thirst for data about their own practice. I used to think that I must have a mutated gene of some sort that makes me "different" from other lawyers. Now I realize that many lawyers have that dormant gene, and if allowed to develop, it can become a powerful influence on how legal service is delivered. Then the unicorn is born!



Lucy Endel Bassli

Recently there has been a significant amount of focus on legal operations. Sometimes the role of legal ops is clear. Other times it is a function that is less defined, but certainly fits within the description. Legal ops across law departments includes a myriad of capabilities and skillsets: from project management to technology implementations, from data analytics to process re-engineering, and from vendor management to creative law firm pricing negotiations. However legal ops is defined in the legal department, it is becoming more obvious to many lawyers that these various skillsets are critical to the future success of legal services. Most times these functions are performed by business professionals who have not practiced law, or those "recovering" lawyers who realized they really did not enjoy the practice of law and preferred the process of delivering the legal services.

But what about those of us who still love the practice of law but are eager to innovate the way in which we practice? I see this as a beautiful opportunity to combine skill sets into a new operationalized legal practice. I am purposely using the term "legal practice" and not legal service or delivery model, or any of the other recently popular concepts, because I am focusing on operationalizing the practice of law and moving legal ops into the front office. There has been great success in back office legal operations: e-billing, time tracking, conflict checking, matter management, etc. The real challenge for the legal industry is operationalizing the actual practice of law. In order to significantly impact the way lawyers practice their craft, there needs to be a movement by lawyers, for lawyers. I've been called a unicorn (which I took as a compliment) and I've been told "you don't talk like other lawyers." But while I've come to learn that I'm not alone in this respect, there are not yet enough of us to make a significant impact, like the impact being made by legal ops professionals in other parts of the corporate law department (or law firms, for that matter).

Why is it so important that lawyers drive this change? The number one reason is that, when it comes to changing the way lawyers do their jobs, we listen to other lawyers first. Ask any legal ops professional who has tried to influence change in the front office and they'll be the first ones to tell you how hard it is to break through to the legal practitioners. The lawyers who have practiced law in a certain way for many years, in a profession that has gone mostly unchanged for well over 100 years, are hard to convince to adapt. There must be a compelling reason to change and it must pose minimal risk to the business client. Let's examine the sort of lawyer whom we might define as a

"unicorn" — or more precisely, the new "operationally inclined lawyer." (Still working on the taxonomy.) Lawyers with the following traits or skills are likely to qualify.

Business-Minded

The best lawyers have often described themselves as business-minded. Meaning, these lawyers are focused on delivering the legal services and advice needed for their business clients to get their business done. We all need to remember that commercial (transactional or litigation) lawyers exist only for that purpose — to help the business clients get work done. Without businesses, there would be no need for commercial attorneys. So, why do lawyers need to describe themselves as "business-minded"? Well, there are those lawyers who get so focused on delivering the most perfectly researched legal advice or the most risk-mitigated document that in fact they forget the ultimate business purpose; they are the types that businesses label as blockers. To break away from the perception that "legal blocks the business," lawyers have had to demonstrate that we are keenly focused on the business objectives while we practice our craft and deliver our service.

Now we need a new type of business-minded lawyer — the type who is focused on the business of practicing law. Those lawyers who can treat their practice like a business will be the ones who can bring legal practice into the new millennium. In every business, there is talk of timelines, cost, efficiencies, data, targets, goals, and a litany of other concepts that are usually absent from the discussions of legal practice. In-house lawyers are more likely to bring these concepts into their practice as they spend more time closely aligned with their "clients" (aka the business) and realizing that the legal practice is directly linked to the business goals. These lawyers are in effect an extension of the business and often end up absorbing these business concepts into their legal work. As the legal work moves further from the business, i.e., to law firms, these concepts become more distant as well.

The business-minded lawyer thinks about turn-around times for their legal work and wants to set expectations with the client about when they can expect to see the results. This lawyer balances the legal risks with business goals to give the business a response that will enable the outcome rather than provide the perfect legal advice. Legal advice will be provided with an understanding of the business processes within which the advice will be taken and connected to the goals that the business has set. Engagements with law firms will look different: Deadlines will be set, expected outcomes and deliverables will be discussed, and risk tolerance will command extensive conversations. Decisions will be made to prioritize work and accept more risks in order to increase efficiencies and effectiveness of the legal work delivered. Feedback about timeliness and quality will become an ordinary part of the engagement, backed up by data and examples.

Data-Influenced

Data will be the best friend of the new "operationally inclined lawyer." Data will be used to support smart risk-taking and advice about which types of deals or cases may be worth the expense of legal advice. When lawyers start saying "no" to certain lower value work and push back certain parts of their work to the client/business, they will support these recommendations with data about how much time such pieces of work take lawyers and how much that work costs. With historical data providing a better lens on reality, the business will be more receptive to accept this work for the benefit of speed.

An obvious example of data-influenced decisions is found in tracking turn-around times. Gone should be the days that lawyers say "it depends" when asked how long a piece of work should take. The "operationally inclined lawyer" should be able to analyze the mountains of data related to past work experience and give a good estimate of when the work will be completed. As in other types of services, there can be caveats for unexpected scenarios or complications, but there must be an expectation set with the clients. Lawyers can easily figure out how many and how long. How many [fill in the blank] have they done in the past certain amount of time? Data around the number of contracts, pleadings, memos, or other deliverables can be easily counted. Similarly, lawyers can figure out how long those deliverables usually have taken. For law firms this is much easier when they are, for better or worse, still tracking time. In-house lawyers may have a tougher time accessing hard data about turn-around time historically, but after enough experience, it can be done. The macro point is that data will help, among other things, determine what work should be handled by lawyers, what work should stay in-house or go to firms, and how long things should take.

Process-Focused

Process is really what it comes down to. Operationally inclined lawyers appreciate that what lawyers do is actually a process. Our key functions can be broken down into a series of steps, some of which are simple and some of which require great judgment and thought. The operationally inclined lawyer will naturally seek ways to make the various steps of the process more efficient and spend their time on only those steps that require their attention and unique judgement. This is another way of thinking about what is commonly known as the de-bundling or disaggregation of legal services. There are steps in the legal process that can be handled by the business, by para-professionals in the legal team, by automation and by external legal providers (whether lawyers at a firm, or related legal professionals at other types of companies).

For example, when the business can handle its own contracts, like nondisclosure agreements, by reviewing some self-help guidance and using a template that the legal department provides, ideally web-based, the business is self-reliant and can move at its own pace. There is no need to wait on legal to be part of that contracting process. Even when negotiations are needed, if the legal team can provide negotiation guidelines, the business can handle things on its own and move at its own speed. Yes, this requires some risk to be assumed that the business may not follow the guidelines, so legal must accept that risk. This is also a great example of where data becomes critical. How many disputes have there been over NDAs? If very few, then this is where smart-risks should be taken and data will create courage for the other lawyers to accept that they don't need to be involved. If the lawyers are still concerned, then at a minimum they can consider outsourcing the negotiation process to lower cost legal professionals in order to save time and money.

Conclusion

The new breed of lawyers will have a combination of all these skills and other traits. They will have new skills beyond what is taught in most law schools today. They will push their lawyer counterparts to think differently about how they practice law, and they will delight their business clients with their focus on data and process. Over time, these unicorns will become more common and visible in most firms and legal departments. There will likely be a greater percentage of these unicorns in the millennial generation than in prior generations, and they will befriend robots and automation. Just like there is no reason to fear robots, there is no reason to fear unicorns. In fact, they should be embraced. These new, operationally inclined, unicorn lawyers will easily bridge gaps with technologists, serving as great translators for those who are not comfortable with technology or change. So, make room for the unicorns ... in fact, you may be one!

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