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A Buyer’s Market

Technology, Privacy, and eCommerce

The law firms we hire are sometimes inefficient. We know this. So we slash their invoices after they themselves have taken the first cut. Law firm realizations have plummeted to a record-low 83 percent. This is not a victory.

Our law firms need to be more efficient, tech savvy, innovative, process-oriented, cost-effective, pro-active… and other vague adjectives. What do those things actually look like? Would we know it if we saw it? Would we reward it if we found it?

How do we “know” our outside counsel are inefficient? For most inside counsel, the answer is some combination of personal experience at law firms, general market sentiment and review of information-poor invoices. All of these sources are valid. But they lead to an entrenched perspective that an individual law firm has a hard time challenging — i.e., how can they differentiate themselves from the market in a way that is meaningful to their clients? Law firms that respond to declining realization by investing in technology not only need to figure out how to use that technology to provide superior legal service, but also how to get clients to notice and care. I am doubtful that, in our current environment, becoming more efficient, tech savvy and innovative has the correlation it should with higher realizations or business development.

I remain a staunch proponent of integrating technology into the legal workflow. But doing so requires getting the incentives right. It is a buyer’s market. As buyers, inside counsel set the incentives for outside counsel. As long as law departments beat up law firms only about price, then law firms are going to respond through the mechanism of price. Rates go up, discounts get steeper. Hours go up, realizations go down. Around and around we go.

The Big Three automakers tried a similar tactic last decade. When the competition from the Japanese intensified, they studied the Japanese cost structure. They found that the Japanese supply base was a major source of cost advantage. They tried to close the gap by leaning on their suppliers for cost reduction. The Big Three achieved cost reduction — perhaps just not enough. They also had to deal with inferior quality parts and decimated, antagonized suppliers, many of whom went bankrupt.

The Japanese automakers responded to the competitive pressure by setting cost reduction targets of their own. At the same time, quality improved, and the Japanese automakers deepened their relationship with an engaged, profitable supply base. Their suppliers, including American companies, were able to fulfill the twin mandates of cost reduction and quality improvement because the Japanese automakers helped them get lean.

The systematic method for the elimination of waste now known as lean originated with Henry Ford. But it was Toyota that turned lean into the comprehensive management philosophy that spread to corporations around the world. Much of Toyota's success resulted from their willingness to fund lean consulting teams that worked directly with their suppliers to map and improve their entire value stream.

I am not suggesting that law departments teach law firms how to better use technology. Rather, I am suggesting that we stop throwing things over the wall. We should break down the wall and begin an ongoing, structured dialogue about how legal services are delivered across the entire value stream.

Law departments should want to know the areas where their key law firms are weak in service delivery, not so they can secure immediate price concessions, but so they can set a cooperative course for continuous improvement. The law departments and law firms should prioritize discrete projects with clear expectations of concrete deliverables and measurable results within a prescribed timeline. Firms should be rewarded for meeting expectations with higher realizations or more work. The goal should be co-prosperity with quality improvement and cost reduction for the law department, and higher realizations and better profitability for the law firms.

Sometimes you need new lawyers. And there are instances where you have to revisit price. But, for the most part, our key firms and pricing are stable over extended periods. When the people and pricing are in place, it is process that offers the levers to drive continuous improvement. Pushing those levers requires active (not antagonistic) engagement between law firms and law departments. Neither side is satisfied with the status quo. We should work together to change it.

NOTE

1 Liker, Jeffrey, and Thomas Y. Choi. "Building Deep Supplier Relationships." Harvard Business Review (2004): 2-10. HBR.org. *Harvard Business Review*, 01 Dec. 2004. Web. 02 July 2015. https://hbr.org/2004/12/building-deep-supplier-relationships.

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