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The Operational GC: Don't Forget the Shoe Test

Law Department Management



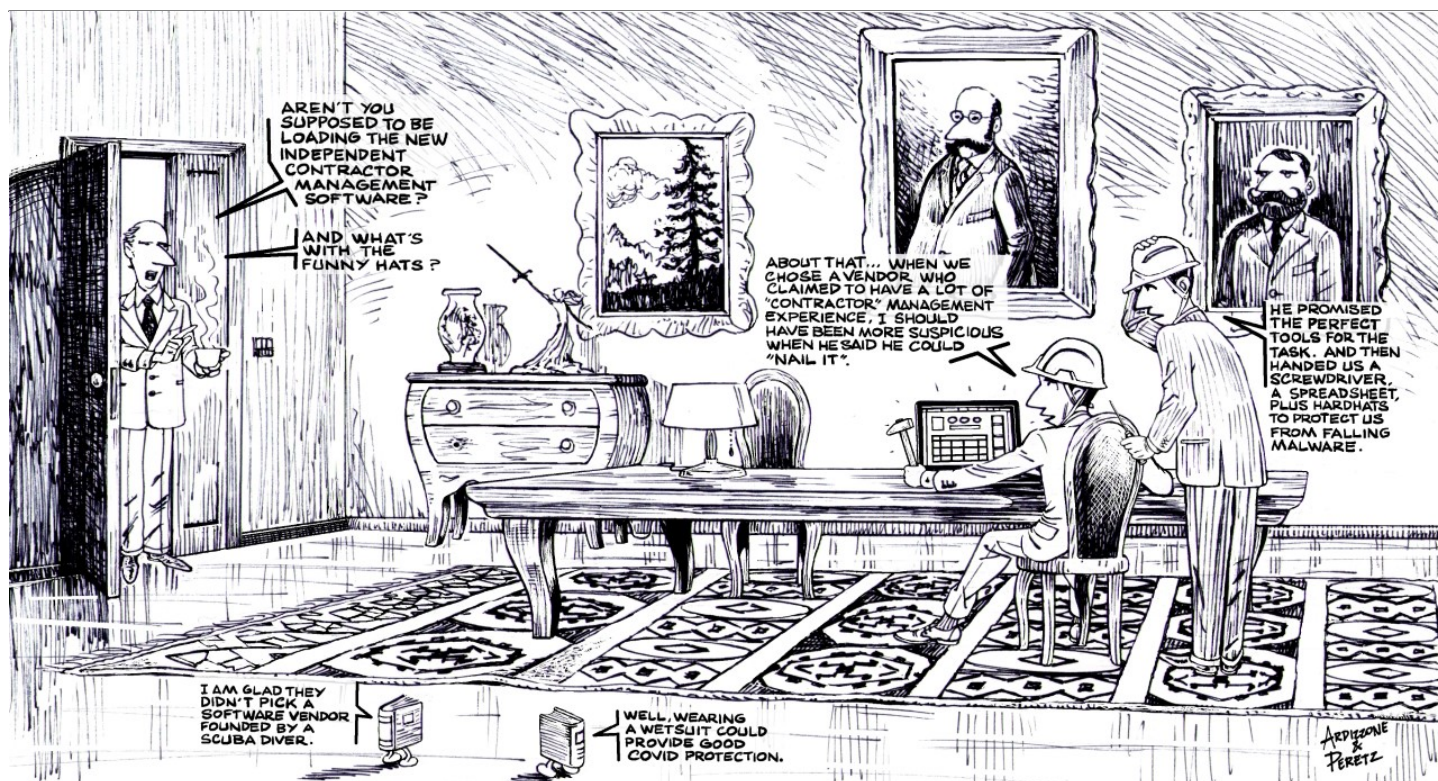
After more than 15 years in a variety of roles in Silicon Valley, through boom and bust, one trend always remains: the outsized influence of the founder on companies. If you are buying technology, odds are high that some of it will be from a Silicon Valley company where the founder's influence still pervades. The business press loves to write about founders as iconoclasts, rebels, or artisans of a modern technological Renaissance.

Founders matter to an operational GC as well because they can greatly influence the scope and quality of the software you purchase. When considering a new software system or service, learn about the founder of the company, but from a different perspective than a glossy photo op praising their innovation.

Vendors “take their founders as they find them”

If there is one key phrase that we remember from torts class, it is that the defendant “must take their victims as they find them.” The same applies to technology vendors and their founders. You cannot change the founder of a vendor so you had best take the founder's background into consideration when making your decisions about products and services.

The founder will likely have a substantial influence on where the company has invested its energy and focused its technological development. What you're getting as a customer is directly driven by that founder's own experience and vision.



The Shoe Test

In 1895, poet Mary T. Lathrap wrote the oft-paraphrased proverb admonishing judgment of others “unless you have worn the moccasins he wears. Or stumbled beneath the same load.” In more modern parlance, we talk about walking a mile in someone’s shoes in order to truly understand their perspective. I call this the Shoe Test. If you are considering purchasing software or a service from vendor, consider whether its founder or founding team has walked a mile in your shoes. Do they have experience as an in-house attorney? If so how much experience?

It is not uncommon in hotbeds of innovation for one to see the invention of a new technology and then a subsequent scurrying around seeking to find a problem to which such technology can be applied. For products like cell phones and consumer electronics, there is a wide range of users out there so the technologist and the founder of a technology company may indeed also be able to put themselves in the shoes of a user of their technology.

By contrast, legal tech and the needs of in-house attorneys are far less understood by the general population. As a result, it’s not surprising to see companies that are very excited about a general technology trend, such as artificial intelligence (AI) or cloud databases, targeting it at the wrong problem or not hitting the quality standards that would make it useful for in-house attorneys.

What about the non-founders?

As companies scale up over time, they will eventually have their own in-house attorney. Don’t assume that the mere presence of in-house counsel at the vendor translates into their attorney influencing the product roadmap.

Unless the in-house attorney is a co-founder of the company or in an official, full-time senior product management role (e.g., vice president of product), they are likely busy with general corporate legal

matters rather than designing the dream solution for in-house counsel.

Quality over quantity

Undoubtedly you have colleagues with a business background, perhaps armed with an MBA. They look at rough statistics, make a decision — perhaps based on a preponderance of the evidence — and move on. If it doesn't work out, perhaps they will be onto their next position or be able to point to someone else as the cause of the failure. For example, they might later declare that they did their job, but marketing didn't deliver for sales.

Attorneys do not have the luxury of simply making educated guesses about important questions and moving on. Moreover, there is no one else implicated in a faulty legal analysis: the buck stops with the attorney. Because attorneys need to have higher standards and cannot pin responsibility for law-related work on anyone else, there is often a mismatch between software developed for the businessperson and software developed for the attorney.

And how are those software standards set? Typically the founding team of a software vendor sets the tone for whether the target is a good-enough improvement over the past — which could be good enough for most businesspeople — or whether the standard is flawless results. Unless the founding team of the vendor includes experienced attorneys, the vendor is more likely to adhere to typical businessperson standards, rather than the higher standards expected by attorneys.

Consider the field of AI, where someone who took a class or two on the topic has now decided they will use machine learning to solve all of your problems, perhaps because every lawyer they know seems to be overworked. They tout to you the benefits of applying AI: It can read documents many times faster than you and, in circumscribed settings, it could be 85 to 90 percent accurate at a predefined task. For the person making the pitch, that accuracy level sounds like an unbeatable value proposition.

But not so for the lawyer if you really think about what those statistics mean: Getting something right even 90 percent of the time means that you are getting it wrong one out of every 10 times and two out of every 20 times. Imagine telling your clients that you're sorry that you misread the renewal date on two out of their last 20 leases. Your clients are unlikely to applaud your 90 percent accuracy on the other leases.

In short, applying a non-lawyer's perspective to the criteria for success for machine learning will certainly lead to a failure in fulfilling your work requirements. Founding teams of experienced lawyers understand which criteria to apply for success.

Attorney supply myths versus reality

Founders and vendors who have not walked in your shoes often do not have an appreciation for all of the details that need to be implemented before an attorney's work is considered complete. Instead, the vendor may offer a "productivity tool" that actually requires more attorneys and support staff in order to train it and implement it.

Contrary to certain media portrayals of the United States as a society teeming with spare attorneys, it's not likely that your workplace is filled with such attorneys and paralegals, all sitting on their hands waiting for another project. A company founded by an attorney who has actually been in your shoes

is more likely to create a system that actually solves your problems, rather than requiring even more attorney work to implement it.

Many successful attorneys went to law school because they did not have a deep desire to learn advanced mathematics or computer programming. Tools and solutions designed by actual practicing attorneys understand this.

By contrast, if you're being presented software spawned from the mind of a technologist, get ready to set aside those law books and start learning new macros and systems. An emphasis on ease of use for in-house counsel is most likely to take root the founding team includes experienced attorneys.

Truth matters

Technologists typically trust computers and their algorithms and are ready to move on after they have provided a quick answer. Attorneys, by contrast, understand that they always need proof and backup to support their decisions and recommendations.

If you are evaluating software for your law department, does it tie back to original sources, such as a contract or a statute, or does it simply give you a recommendation without an easy path to understand the basis thereof? Typically only companies founded by experienced, practicing lawyers appreciate this requirement that every piece of analysis needs to be traced back to its documentary proof points.

In-house versus law firm focus

When assessing a vendor's philosophy and roadmap, it's not enough to simply determine whether one of the founders is an experienced attorney. You need to look beyond the law degree to find out if that founder worked as an in-house counsel or not.

Attorneys coming from law firms love to bill more hours because it is the most important criteria for success. By contrast, in-house counsel do not get a bonus or other forms of admiration simply because they took longer than a colleague to complete a task.

It is not uncommon for attorneys working at law firms to be delighted with their pay but unhappy with other aspects of their work. This no doubt leads to inspiration for a few to leave and start a company.

And where do they plan to sell their new company's product or service? Most often to law firms, because that is what they know. Law firms are motivated to bill hours. And they are most interested in buying software that enhances, or at least does not hinder, their hourly billings.

If someone comes to you to promote software that was initially targeted at law firms or developed by law firm refugees, it's time to be wary as an in-house counsel because that software is likely optimized for entities that want to bill a lot of hours, not for corporate attorneys who actually need to save time.

Who is the customer's customer?

When you work at law firm, very often you interface most frequently with a sophisticated in-house counsel at your client. By contrast, in-house counsel interface most often with internal business

clients who have a thousand other topics on their mind and lack extensive legal training.

This means that there can be a mismatch between in-house counsel and software developed by law firm refugees. It's great that the founder and visionary for the product might have been a lawyer, but unless they have also been in your in-house for a while, their tools may be of more limited utility in your work setting because they are not a fit for your internal clients.

By contrast, if you find software where the founding team has extensive in-house experience, it's more likely to create the output that you can share with your internal business stakeholders.

Who pays the bills?

It's not uncommon for law firms to directly pass through the cost of technology and services to their clients on a per usage basis. As a result, law firms may be less price-sensitive because they do not pay for the software bill themselves.

As an in-house counsel, your budget is part of the overall corporate budget and not something that you can simply pass off to a third-party client that might not even notice the expense compared to your substantial hourly bills. As an in-house counsel, you need to assess the actual Return on Investment (ROI) of your technology investments and justify how they will enable your law department to get more done without expanding staff.

The next time a vendor boasts that a large law firm is using a particular piece of technology, explore whether the law firm is passing on that cost to its clients. Software developed by founding teams who come from the in-house world understand this need to justify technology investments in hard dollars and cents.

Driving to a conclusion

The most common outputs of law firms are the memo, the contract, and perhaps the pleading. These are sent over as discrete (and sometimes discreet) documents to clients and the work is deemed to be done. Businesses, on the other hand, cannot consider the job done when the lawyer puts down her drafting pen. Rather, businesses know that drafting legal documents is just the first step in a relationship with many ongoing requirements across multiple stakeholders, perhaps for years.

When choosing a software vendor, does the founding team's background include actual ongoing business implementation of the results of their work? Or are they coming from a law firm background and, thus, more focused on providing a point-in-time solution that assumes the work is done when the legal document is drafted? Software created by teams that include real operational, in-house attorney experience are likely to understand the reality that drafting a document is not an end, but instead a beginning of work.

Law firm-focused software and teams are also less likely to understand the need for legal team systems to be compatible with and interconnected to finance, accounting, sales, operations, procurement, and other business systems. A company founder who has worn your shoes will understand the bigger picture and this need for cross-business connections.

I bet you didn't realize you're that special

In-house counsel truly are unique. They need to bridge the legal world into the business world. They have to adhere to the highest quality norms you find in law while connecting the results of their work to systems and processes run by nonlawyers who have many competing priorities. Look for vendors where the founding team actually has this unique perspective. And if you don't find it, maybe it's time to write your own business plan.

[Neil Peretz](#)



General Counsel

Sawa Credit Inc.

Neil Peretz has served as general counsel of multiple companies, particularly in the financial services and technology industries, as well as a corporate CEO, CFO, and COO.

Outside of the corporate sphere, he co-founded the Office of Enforcement of the Consumer Financial Protection Bureau and practiced law with the US Department of Justice and the Securities and Exchange Commission. Peretz holds a JD from the University of California, Los Angeles (UCLA) School of Law, an LLM (master of laws) from Katholieke Universiteit Leuven (where he was a Fulbright Scholar), bachelor's and master's degrees from Tufts University, and has been ABD at the George Mason University School of Public Policy.

He previously co-founded legal technology company Contract Wrangler, which applied artificial intelligence to read legal agreements. Follow him online at [linkedin.com/in/neilperetz](https://www.linkedin.com/in/neilperetz).