State of Legal Technology

Urged on by Clients, Proactive Law Firms See Investment in Legal Technology Offering a Competitive Edge
If the series of recent research reports conducted by Thomson Reuters, in partnership with other institutions, were taken as a whole, its content could be distilled down to several major pronouncements. The most critical among these being, in short: Proactive corporate clients want value; and they’re increasingly selecting those outside law firms that not only provide value, but can demonstrate it.

An important corollary to this would certainly be: Those law firms that themselves are proactive, are investing more in legal technology in order to provide and demonstrate the value they bring to clients.

These reports — the 2018 Report on the State of the Legal Market, jointly released with the Center for the Study of the Legal Profession at Georgetown University Law Center (colloquially known as the annual “Georgetown Report”); the 2018 State of Corporate Law Departments report, conducted with Acritas; and last year’s Dynamic Law Firms Study — all, in their way, point to two inescapable and intertwined takeaways: i) corporate law departments are increasingly looking at value as a determining factor in hiring outside counsel; and ii) proactive law firms are realizing that increased investment in the right legal technology solutions is far and away the most successful path to providing that value.

As the Georgetown Report stated so succinctly: “Over the last few years, there has been mounting evidence that law firms that proactively address the needs of their clients — e.g., by implementing alternative staffing strategies, pursuing flexible pricing models, adopting work process changes, making better use of innovative technologies, and the like — can achieve significant success.”

**WHAT DO PROACTIVE CORPORATE CLIENTS WANT?**

This year, the inaugural State of Corporate Law Departments report documents the changes in corporate law departments that are driving the transformation of the industry, drawing on information from more than 1,000 corporate law departments that represent $73 billion in legal spend.

That report shows that corporate law departments are sending clear signals about their priorities and especially about what they expect from their outside counsel. Among the top priorities that general counsel see as most crucial: allocating work to law firms that are proactive in showing their value.

“Modern legal departments are showing value in additional ways including being predictive in their workflows by understanding the legal department data through active management of matters with collaborative involvement from attorneys, outside counsel and legal operations,” the report states. Simply put, corporate law departments are engaging in the kind of data-driven, measurable management of their legal matters — and using the necessary legal technology to do so — that they want to see their outside legal departments engage in. Or, to look at it from the prism of the bottom line: Corporate law departments are under pressure from their clients (the company’s business units) to cut costs, increase efficiency, and demonstrate the value they’re bringing to clients, so they want to work with law firms that do the same.

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The report noted that 66% of corporate law departments consider it a high or medium priority to allocate more work to firms that proactively show their value. On the other side of the coin, it’s important for law firms to remember that 53% of corporations reduced the number of outside firms from their panels, according to the report. “Feedback from external lawyers suggests that a more business-partnering approach with a smaller number of ‘preferred provider’ firms will result in more effective and efficient service,” the report states.

The keyword for law firms looking to demonstrate their value to corporate clients is collaboration. General counsel want outside law firms to work with them, not for them, approaching them like a partner, not a vendor. “As more of our legal work is provided by an increasingly diverse array of outside providers, a ‘partnering’ approach will achieve better results than a ‘vendor’ approach,” said Matt Fawcett, General Counsel at NetApp. “By working collaboratively, we achieve solutions that not only drive down cost but provide superior risk management too.”

**HOW CAN PROACTIVE LAW FIRMS MEET THE VALUE PROPOSITION?**

If you ask the clients, it may come as little surprise that the top method they’ve identified by which law firms could deliver more value is by charging less, with 74% of surveyed GCs favoring that method.

Law firms could comply, of course, but it would be a futile and damaging exercise, if reduced rates were not accompanied by mechanisms and investment that would allow for more efficiency and cost savings within the law firms themselves.

The Georgetown Report identifies “sunk cost fallacy” and “loss aversion” as two prime reasons law firms stick with prior strategies that have failed them, instead of seeking out something new that might work better. It’s a behavioral trait that many people exhibit, in ways large and small; but for law firms, it becomes a strong trend in how they often fail to pursue the best legal technology solutions to improve their performance for clients.

Given the legal marketplace and the pressure corporate clients are exerting on law firms, it’s become crucial for them to understand that investment in innovative technologies that promote workflow and efficiency improvements are essential to their success with clients, and thus, the law firm’s growth and sustainability. The Dynamic Law Firms Study, for example, found that those firms made higher investments in legal technology by increasing their allocated investment by 3.2% or more (called “Dynamic firms” in the report) saw better performance in several key areas compared to those firms that allocated a lower amount to tech investment, increasing their investments by 1.2% or less (called “Static firms”).

“In examining relevant key performance indicators [identified in the report as Demand, Productivity, and Rates/Realization, among others], it is readily apparent that the Dynamic firms not only dramatically outpaced their Static counterparts in nearly every category, but they also outpaced the Average firm within the market,” the report noted.

These findings show a stark difference in philosophy toward technology investment, wherein higher performing firms seem to place a stronger focus on increasing their adoption and utilization of technology to improve workflow, internal efficiency, and performance as a way of demonstrating their value to clients.

These investments in legal technology — in such areas, for example, as lawyer productivity tools that improve workflow efficiency or profitability analysis tools that allow firms to better understand their own internal data — further allow law firms to show clients that they have the tech-prowess and business acumen that can outshine competing law firms or any third-party legal service providers (ALSPs). Firms can also demonstrate that they can provide work to the client that is more accurate, timely, and ultimately more cost-effective than that done by another firm, an ALSP, or even the corporate client’s own legal department.

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THE VALUE OF HIGHER TECHNOLOGY INVESTMENT

The case for making strong investments in legal technology has been well articulated by those who understand this imperative in the legal industry. “Those law firms who are early adopters of emerging technology have a leg up in today’s competitive marketplace,” explained Kenneth Jones, Chief Technologist at Tanenbaum Keale, adding that the ability to meet clients’ needs through your firm’s own technical savvy “can literally be a keystone within the domain services of a truly modern law firm in today’s dynamic legal market.”

Of course, the key question becomes, simply how? With so many diverse areas of legal technology to potentially spend your firm’s dollars on, what are the right ones and the necessary combinations that will offer you the best performance outcome?

For a clue, look where corporate law departments themselves are innovating. According to the Corporate Law Department report, areas like contract management, alternative fee pricing, and project management were identified by GCs as among the top areas they are seeking to innovate within their own departments.

If you can position your law firm to be able to collaborate with clients on improving efficiencies and lowering their cost in these areas through your own technology investments in, for example, financial management or matter management programs, that could well be the differentiator between your firm winning the business or not.

As we said earlier, providing value is important, but demonstrating to clients that you are doing so is crucial. To that end, it’s essential that law firms invest in the kind of technology that is going to allow them to understand how they’re doing their job for the client.

Let’s take for example, the area of billing and pricing legal matters — identified often as one of the top areas of concern for GCs and arguably the biggest contributor to the concept of value. (In fact, of those GCs who were critical of their outside counsel, one-in-four said the conflict came around issues of billing.)

Key components of a successful billing and pricing relationship with clients are communication and performance. To achieve these, however, a law firm would have to have a deep understanding of how and why they are billing a client a certain way, what the historical precedents are with this client, and in what areas of pricing there may be some “wiggle room” to return value to the client. None of this information can be snatched out of thin air; rather, it takes an investment in a business management system that will allow such information to be gathered, analyzed, and distilled in such a way that your firm can understand it and pass that understanding on to your client so that the client can appreciate the value they’re getting.

By using such a platform, nuts-and-bolts issues like higher realization rates for the bills your firm is sending out likely mean you’re seeing fewer discounts or write-downs on your fees due to misunderstandings with the client. And that means you had the insider knowledge to engage in proper up-front communication with the client around these issues before they became problems.

Further, a data-driven understanding of your pricing ability will greatly increase your flexibility, allowing you to offer clients the types of alternative fee arrangements they are increasingly saying they favor. And a streamlined billing process also will allow you to collect fees more quickly and efficiently, enhancing your firm’s overall performance.

GETTING THAT LEG UP

As the findings in these three reports strongly indicate, as corporate law departments increasingly look at value as a determining factor in hiring counsel, those law firms that invest in the type of legal technology that improves their ability to offer that value and allows them to demonstrate that fact to clients have positioned themselves well to capture business opportunities from current and new clients.