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The Legal Profession's 'Last Mile Problem'

Since the early 1990s, the telecom industry has struggled to solve the "last mile problem." In its initial stages, the problem centered around an information superhighway (later known as the internet) that connected together government, universities and large corporations in urban areas. The benefit of adding more users was obvious.

Unfortunately, the infrastructure of copper phone lines couldn't handle all the data, at least with existing technology. Thus, the "last mile" of connectivity—from the bundle of wires in a box on the street to the individual end user—was the most difficult and expensive to complete. Eventually, technical feats improved quality, which connected more users and spurred more infrastructure investment. If you have affordable, high-quality broadband in your home, please toast the engineers who solved the last mile problem in your locale.

The legal profession has its own last mile problem. Clients are clamoring for legal solutions that are better, faster and less expensive. And in many corners of the profession, we already have the personnel, technology and know-how to make this happen. Missing, however, are business models that will reliably reward lawyers and their organizations for quantum leaps in legal productivity.

I have sat in rooms with buyers and suppliers of legal services and witnessed the last mile problem firsthand, and it is very painful to watch. The following hypothetical illustrates the nature of the problem and why it is so difficult to solve.

A Legal Productivity Breakthrough

Smith & Jones is a large corporate law firm with 350 lawyers. It is in the broad middle of the Am Law 200 and NLJ 350 rankings. A small cadre of S&J lawyers have developed a working prototype of a "20-in-10 Box." Through an ingenious combination of data, process and technology, the 20-in-10 Box is able to double lawyers' productivity within their practice group. What used to be done in 20 hours can now be done in 10. The lawyers want Smith & Jones to build a larger version to market and sell to the firm's clients. This is good news, right?

Let's assume that the 20-in-10 Box will cost $5 million to build and take 12 months to scale the innovation so it can be used throughout the firm. On one level, this is a no-brainer. It's exactly what clients are clamoring for. Yet, when the partners vote to approve the investment, presumably they are expecting to increase firm profits. That outcome, however, depends upon an effective pricing model that clients will accept. Here are three possible options.

Option 1. Clients continue to pay by the hour at the same hourly rate. Clients get the full benefit of the productivity gain while Smith & Jones's revenues are cut in half. Clearly this won't work.

Option 2. Smith & Jones explains the innovation to clients and doubles its hourly rates. Although total cost and quality remain unchanged, clients feel insulted and refuse to go along.

Option 3. Smith & Jones shares the productivity gain with the clients 50/50, increasing rates by only 50 percent; alternatively, hourly rates are kept the same but the clients give Smith & Jones a much larger volume of work.

Clearly the solution lies somewhere in Option 3. Yet, what law partnership would approve the construction of the 20-in-10 Box without locking down the specifics? After all, it's investing $5 million, and the result may idle a significant portion of the firm.

Likewise, what client would guarantee a financial benefit to an outside service provider without overwhelming evidence that the benefit to the client is real and sustainable? The most likely answer will be, "Build it first and let us try it. Then we'll decide."

Welcome to the world of complex technical sales, which is destined to be a big part of the legal industry's future.

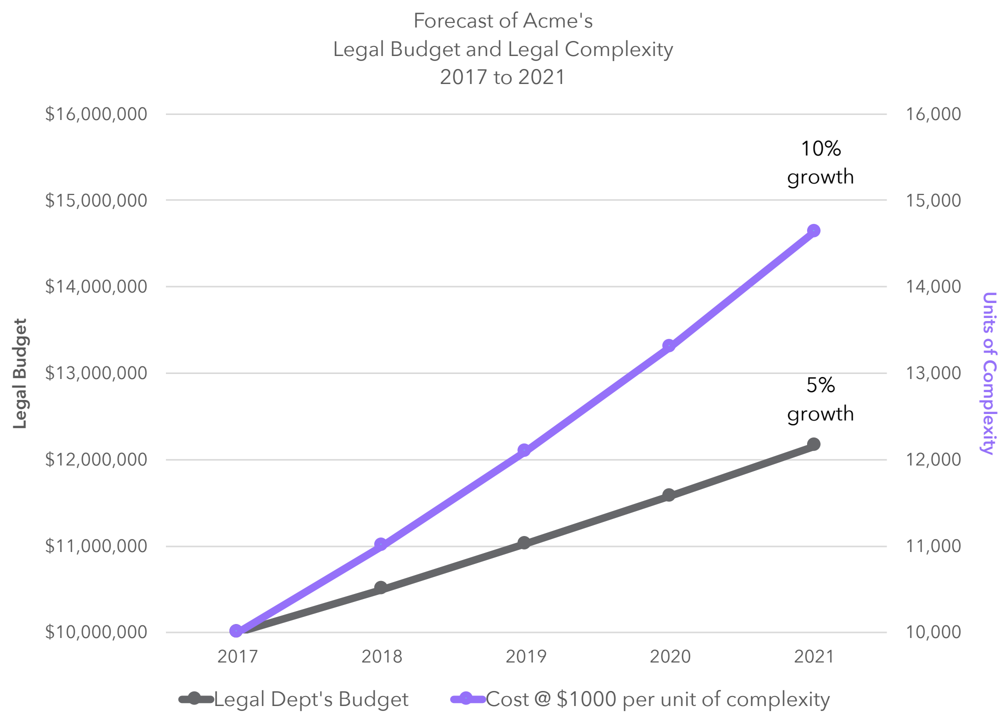
The hypothetical continues.

Acme's Productivity Imperative

One of Smith & Jones's longtime clients is Acme, an established global widget maker with $2 billion in revenue and 5 percent annual growth. Acme spends $10 million per year on legal costs. Acme's CEO and CFO won't tolerate increases in legal costs that exceed the overall growth rate of the company—5 percent.

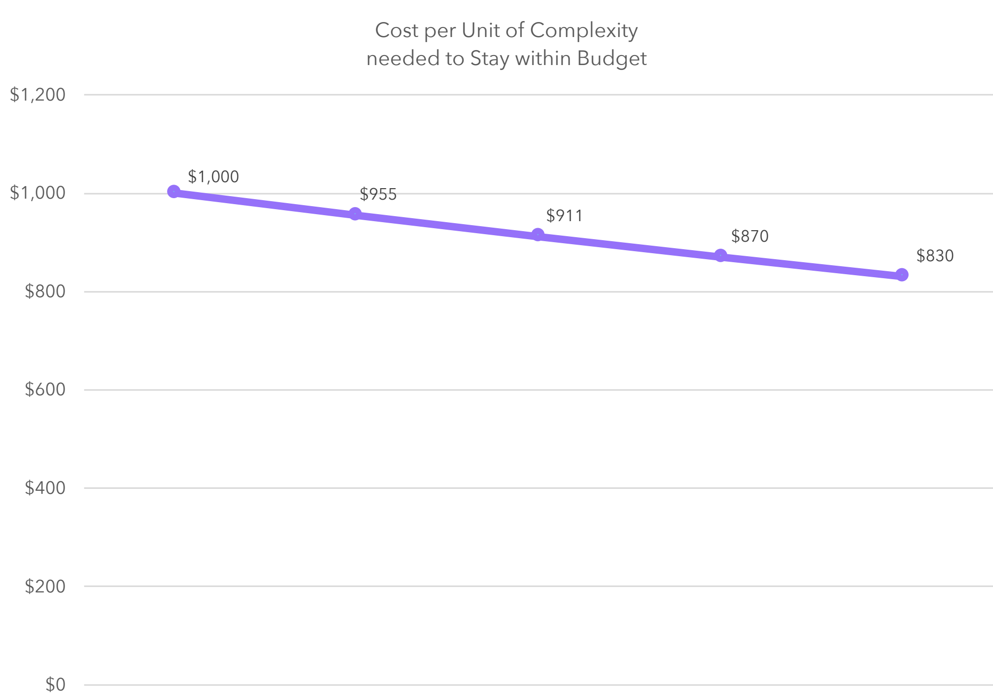
Unfortunately, due to a myriad factors related to globalization, regulation and technology, the complexity of Acme's legal work is increasing at a rate of 10 percent per year. (Think this is an unrealistic assumption? Check out the growth rates of federal regulations, the Tax Code, electronically stored information or the growing importance of U.S. corporate sales abroad.)

Acme currently manages 10,000 units of legal complexity at $1,000 per unit (10,000 x $1,000/unit = $10 million). However, unless Acme's general counsel can figure out a way to increase legal productivity, she will soon be faced with difficult decisions related to cost and risk. The chart below illustrates the conundrum.



Over the next five years, Acme's legal budget is anticipated to grow to roughly $12.2 million (the gray line). Yet, because legal complexity is increasing at a 10 percent clip, the general counsel believes she needs a budget of $14.6 million to effectively manage risk. This is to handle the steady increase in complexity up to 14,600 units (the purple line). The general counsel may frame this issue as a cost problem. But, in fact, the real issue is productivity.

Below is a chart showing the trend line of legal productivity that Acme needs to achieve if it wants to stay within the 5 percent constraint on its budget.



The cost of managing a unit of complexity has to drop from $1,000 to $830. One very helpful solution to this problem would be the 20-in-10 Box that Smith & Jones decided not to build. Instead, what is likely to happen is that Acme will press Smith & Jones and other outside service providers for a 17 percent discount over the next five years. Both sides are made worse off.

Thus, the last mile problem.

The constraints aren't technical. Rather, they are rooted in the failure of lawyers on the buy side and sell side to properly understand and allocate business risk—that, plus a heavy dose of poor communication.

Real Life 20-in 10-Boxes

I wish I could say that the Smith & Jones /Acme example is just a law school hypothetical. But that would be false.

In my travels as a researcher, I visited an innovative insurance defense firm that was specifically created to implement processes, technologies and staffing systems to drive down both legal costs and speed up cycle time (closing files in an average of 300 days rather than 500). The firm has been able to show that as the time and cost to litigate go down, the amount paid to plaintiffs in settlements and judgments is not going up. This is a big net saving for the insurance companies. Unfortunately, because these matters remain on the hourly billing model—because that is what large insurance companies are used to—the increased efficiency is actually reducing the total revenue on the founding partner's long-standing book of business.

The founding partner's insurance clients think his model shows promise—just not enough to guarantee him significantly more volume today, although he is seeing some early adopters. Ironically, he needs that volume to successfully solve his clients' long-term productivity problem, particularly since he is honoring their preference to stick with price-sensitive hourly billing.

I would like to believe that this innovative founding partner is a visionary rather than a fool. But until buyers and sellers of legal services accurately understand and coordinate their long-term business interests and realize that the lack of innovation has real costs to them both, we'll have yet another last mile problem.

Another example of the problem involves expert systems, which can deliver fast, high-quality answers for a large volume of legal questions through an online kiosk portal. The quality of the legal advice is backed up by partners at Am Law 200 firms that are building them, often with an initial investment of 1,000+ hours of nonbillable expert time.

Yet, how should these expert systems be priced? Can the client accurately gauge the volume of the legal work it no longer has to buy by the hour? And what about the value of getting answers that the client doesn't get today because it never calls the lawyers in order to save money—what's that worth? That's a complex risk-management question with potentially large consequences for the client.

In the Smith & Jones hypothetical, the firm considered a 20-in-10 Box but decided to pass on the investment. But here's another permutation of the last mile problem. Recently, an Am Law 200 partner who has built an expert system in a very hot area of the law said to me, "We have the 20-in-10 Box in our inventory now. It's ready to ship. We just need a pricing model that ensures we can recoup our investment."

And that, it turns out, may be more complex and time-consuming than building the expert system. Complex technical sales are hard, especially when the buyers are skeptical lawyers who are unaware of the last mile problem. In the immortal words of Jerry Maguire, "Help me help you."

How Do We Solve the Last Mile Problem?

Step one is conceptualize the last mile problem as a problem of productivity rather than cost. Without that common understanding, buyers and sellers cannot have an intelligent dialogue on their long-term mutual interests.

Step two is to set aside ample time to engage in the intelligent dialogue. Resist the urge to bloviate at industry events and in the legal press about how the other side just doesn't get it. Instead, do the difficult intellectual and emotional work of listening, empathizing and letting go of old ideas. Start with clients or service providers you like and trust and express a desire for a long-term relationship.

Step three is to openly share successes and failures with peers in the industry. We need these examples to more rapidly converge on new business models. This iterative approach is true thought leadership. It is also consistent with the values of professionalism.

There are other solutions to the legal profession's last mile problem, but none will work as fast or as well as an honest dialogue between buyer and seller.

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