

Book Review (Part 2) by Patrick Dransfield

Whither private practice?

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Smarter Law: Transforming Busy Lawyers into Business Leaders by Trevor Faure

Forgive me for starting on a negative note but the chances are that many of you are unlikely to get beyond the third paragraph of this article, less likely still to pull out a credit card and purchase Faure’s book, and therefore most unlikely to study the contents of the book with a focus that will transform your business life. That would be a great shame.

It is not that Faure’s book isn’t interesting reading – actually, I would say essential reading – and highly pertinent both to the very survival if you find yourself in an international law firm and also if you are part of an in-house legal team tasked with rolling out greater efficiencies in your department. No. The simple fact is that the majority of us have an inbuilt barrier towards new learning, as I will explore. And as Faure’s book grapples with ‘transforming busy lawyers into business leaders’, having an inbuilt barrier to learning stops you at the very first gate.

I am going to make an informed guess, based on more than intuition, that those of you who have been in-house lawyers for some time are actually more likely to pull your wallet out and purchase ‘Smarter Law: Transforming Busy Lawyers into Business Leaders’. To establish this requires me to share with you ‘The Tale of Two Workshops’.



In 2017, the In-House Community organised two workshops on a single day. The morning workshop was dedicated to training for managing partners and senior partners at private practice law firms; the afternoon workshop was dedicated to general counsel from around Asia. The one factor in common with all of the invitees is that if we go back 20 years or so – they were all studying law at university.



It seems *infra dig* for an event organiser such as myself to admit that not all our workshops have been filled to the brim with eager delegates. That said, the In-House Community has in its 21-year history done relatively few events for private practice lawyers. The morning workshop was to be hosted by none other than the author Trevor Faure and we marketed it aggressively to not only our list of commended external private practice lawyers attending the In-House Counsel Awards later that evening (this was included in their package) but also managing partners and senior partners in Hong Kong. Faure's seminar was titled 'The Smarter Client-Advisor Relationship' and promised to share the secret sauce on: "What clients want and how to still make a buck without having to spend more than a dime". Pretty compelling you'd have thought? Not so apparently as remarkably few managing partners from Hong Kong-based offices signed up and more than half of our expected commended external counsel skived off – preferring to go shopping with their wives or husbands, apparently, than learn from a 20-plus year general counsel veteran.

In complete contrast, our afternoon workshop, conducted by knowledge management specialist Bill Proudfit, was simply marketed to general counsels as a 'Bohm Dialogue', with no agenda at all. The only clue to what the interactive workshop was going to be about was the enigmatic questions:

"What is the most achievable change I can make in the next 12 months?"
"What resources can help me achieve this change?"

More than eighty percent of the signed up general counsel showed, they all participated enthusiastically despite or because of the fact that Proudfit put them out of their comfort zone. All of them learned from each other and shared with us that they had enjoyed the experience. What conclusions can we draw? That general counsel are less attracted to shopping? No. That managing partners in private practice law firms are less open to learning. And that general counsel are open, flexible and humble enough to learn.

I consider myself extremely fortunate to have been exposed to various mentors who have appeared at crucial junctures in my career and generously provided me a rare insight into what I was supposed to be doing. Chief among them is Whit Pidot, former global managing partner at Shearman & Sterling who became my boss during my time at the firm. Luckily for me, Pidot had not only studied law at Columbia College, but had also studied business there, as well as being a graduate of Harvard College where he had studied business, also. He asked me whether I expected certain of the senior partners in Asia to pause from talking long enough to listen to a word that I had to say. "Difficult", I conceded.

"Do not fear, a doctor is at hand." Pidot said as he passed me a much-cherished copy of an essay by the late Chris Argyris entitled: 'Teaching smart people how to learn': "Once an illness is identified then you are well on the way to the cure."

Indeed, Argyris had skillfully identified the problem that because becoming a lawyer or a knowledge worker requires a degree and a certain amount of academic ability, that we all tend to think that we are good learners. This is very often not the case. Argyris says that: "People often profess to be open to new learning, but their actions suggest a very different set of governing values:

- the desire to remain in unilateral control;
- the goal of maximising "winning" while minimising "losing";
- the belief that negative feelings should be suppressed;
- the desire to appear as rational as possible.

Taken together, these values betray a profoundly defensive posture: a need to avoid embarrassment, threat, or feelings of vulnerability and incompetence.”

This closed-loop reasoning explains why so many of our external lawyers failed to even show up: either they thought they knew it all already (they were mistaken) – or were embarrassed to admit that another external advisor could teach them anything new. Further, from an anthropological perspective, the very culture of a private practice law firm cultivates a hierarchy that is not conducive to learning. A managing partner’s status is tied to her / his perceived fathomless knowledge and so to admit to not always being the cleverest in the room is neigh on impossible. Faure neatly explores this phenomenon as one of the ‘Maleficent Seven’ - number 6: ‘Having to say the three little words that are the hardest in a professional role: “I Don’t Know.”’

Contrarily-wise, lawyers who have spent a significant amount of their careers inside corporations or banks are left in no doubt that they are not the most important person in the room, that board management is interested solely in conclusions and not analysis (“Can we do this or not?”) and have no time for legal niceties and clever arguments. In short, having been beaten up by life, general counsel have found themselves molded into being effective learners. Faure identifies some of these learned traits as ‘The Magnificent 7’. These include: wise and trusted advisor, sales person, politician, psychologist, coach, conscience, best friend and executioner.

In his chapter, ‘The prizes and paradoxes of the ‘New Normal’’, Faure casts himself as the new Cassandra, who in Greek mythology was blessed with the power of prophecy but cursed by the fact that nobody believed her. As early as 2009, he had been warning about the challenge of globalisation. Richard Susskind has for over 30 years been a Cassandra voice warning the legal industry to wake up and adapt to how technology is changing the way that clients are able to implement legal services. The global financial crisis of 2007-8 put legal spend under the spotlight for the majority of listed companies in North America, thus initiating some of the efficiencies and processes that Faure has helped implement and are provided as case studies in the appendix of ‘Smarter Legal’ (see especially the Avis example). But the evidence presented in the book indicates that the legal profession committed the crime of letting a good crisis go to waste: “Law firms could have changed the paradigm since the crisis. They failed,” according to Catrin Griffiths, editor of The Lawyer.

The below is one of the many fascinating charts provided by Faure and provides an insight into the present economics of the international private practice legal industry, and backs up Griffiths’ view.



“...the lines on the right-hand side of the Chart...are farther apart than the lines on the left-hand side. This reflects increasing client pushback to rate increases and suggests that realisation rates must be declining.” (Faure, p375)

This tallies with anecdotal evidence of various more junior partners of law firms sharing with me that senior management’s ‘solution’ to declining profitability is to demand an increase of billed hours from say 8,500 hours annually to 10,500. It rather suggests that the private practice legal industry is ducking real innovation and client service and adopting the padding of billed hours instead.

It also seems to me that the private practice legal industry as a whole is suffering from the very human weakness of confusing the future projection of a market on present and past performance. This is a charge that has been leveled by several financial commentators regarding GE. According to one commentator writing in the Financial Times, GE over-expanded in their most profitable business of the time, coal-fired turbines. As a result GE missed the rise of alternative energy, such as fracking, wind and solar energy. The old mistake of believing that the past is a reliable indicator of the present and future means that GE is no longer the darling of the stock market that it once was.

This is ironic in regard to the fact that GE employed the greatest of all business consultant gurus, the late-great Peter Drucker who while coaching the then in-coming chairman Jack Welsh, urged him to think of GE as a green-field project and asked him: “If you were to think from scratch, would you create this as a company in the way it is presently configured – and if not, why not?” This is a great question for senior partners of law firms, especially when Richard Susskind has given the date of 2020 as the tipping point for when AI is really going to bite as far as law services is concerned, both in terms of the appetite by alternative legal providers and by buyers of legal services.

Faure’s chapter on ‘The New Legal Work Value Chain’ proves an invaluable insight into the new spectrum of legal services through the prism of the value associated with different levels of client service. In this regard, he has extended the pioneering work of legal consultants Hildebrandt by defining legal services into Cream, Core and Commodity and then actually leading the project management of re-aligning the various cohorts of services available in the most cost-efficient manner for the client as a whole. And on a global scale. For the many of us bewildered by the choices available to the legal services consumer, the section of ‘Smarter Law’ that introduces some of the new players in the industry (‘Enabling Legal Services’) into the helpful categories of 1) Strategy, Performance Improvement & Project Management; 2) Quantitative legal analytics; 3) Insourcing & Secondments; 4) Virtual / Self service platforms; and 5) Legal Process Outsourcing.

In my opinion, what marks out Faure from the various consultants in this space is the fact that he is not just a keen observer of the legal scene, but an active catalyst and protagonist, pushing the envelope of the most efficient project management of legal services on a global scale.

The process of automation and the application of greater efficiencies in the legal industry are if anything going to accelerate in the next two decades. This will present the leaders of the industry with challenges – both as individual practitioners and the leaders of teams. Technologist Michael Osborne estimates that 47% of American jobs are currently at high risk of Automation. This is one of the factors responsible for what economists Anne Case and Angus Deaton have called “deaths of despair” – suicides, alcohol abuse and opioid overdoses – that mean the average life expectations of middle-

aged middle-income white men in the US is actually declining for the first time in modern history. Senior lawyers have a duty of care not only for themselves but also for the new generation of lawyers – as a recent report from the OECD concluded, “one cannot expect a generation of master-chefs to emerge from short-order cooks assigned to re-heat burgers”. Leading by example and providing a model of an engaged, curious and open practitioner is an important first step.

In his chapter ‘Why do we typically resist change?’ Faure looks at personal development and identifies the factors that make us resistant to personal change and illustrates effectively how careers can hit the doldrums through ‘The Plateau Effect’. This was first explored by Bob Sullivan and Hugh Thompson, authors of ‘The Plateau Effect: Getting from stuck to success’.

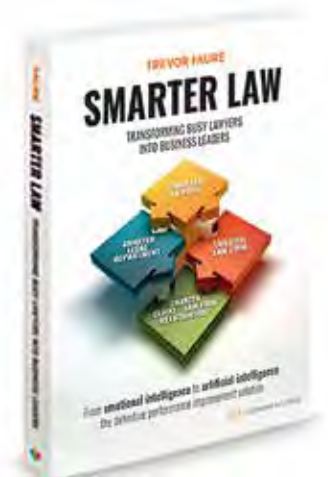
According to Sullivan and Thompson, we naturally try the same solutions, even when the problem has changed. “People, relationships, businesses and even physical processes become immune to the same techniques, the same approaches, the same solutions. What worked so well yesterday just won’t work today.” Sullivan and Thompson suggest various approaches as to how to get ‘unstuck’: “If you aren’t getting where you want to go, maybe it is time to change your approach.”

Many law firms are experiencing a plateau – a discontinuation of growth. What we instinctively do when we reach a plateau – as individuals or as institutions – is redoubtable our efforts, working harder than ever doing the same thing (increase our hourly billing) that brought us success in the first place. A more intelligent and focused approach is definitely required. Reaching a point of realisation requires us first of all to recognise that we have indeed reached a plateau – and then realise that we need to change something, or maybe even approach the problem in an entirely new way. As Drucker urged us, everyone in the knowledge industry needs to become their own CEO and ‘Smarter Law’ provides us with the working manual to transform ourselves into business leaders. On a personal level, Faure suggests that it may require us to stop spending all our time on the things that we like and the things that have got us so far in our careers, and dedicate some of our time to learning new things. For example, going on a sales skills course; or think through the value relationship from the shoes of our clients.

Many of us will recognise and sympathise with Faure in his role as Cassandra – indeed I have always thought of good lawyers as being the bearers of uncomfortable truths and hence Cassandra as being the Patron Saint of the legal industry. For senior private practice lawyers, the warning implied in Faure’s ‘Smarter Law’ is that we are at a moment of the Changing of the Guard, where for some law firms at least, the Patron Saint will morph into St Jude, the Patron Saint of Lost Causes. To prevent that happening to you – and thank you for still being with me - buy, read and then implement some of the transformative suggestions provided by Faure in this book!

For more information on SMARTER Law,
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***The Value of Everything: Making and Taking in the Global Economy*,
Mariana Mazzucato, Allen Lane.*



<https://www.amazon.com/Smarter-Law-Transforming-Lawyers-Business/dp/0314843914>

<https://store.legal.thomsonreuters.com/law-products/Practice-Materials/Smarter-Law-Transforming-Busy-Lawyers-into-Business-Leaders/p/105832166>

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“SMARTER Law: Transforming busy lawyers into business leaders” — by Trevor Faure

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Trevor Faure (left) outside Middle Temple, mentoring Liam Dransfield who is undertaking an LLM Law Conversion course at BPP University, London. Picture by @patrickdransfield

“I cannot say this too strongly: Do not compare yourself to others. Be true to who you are, and continue to learn with all your might.”

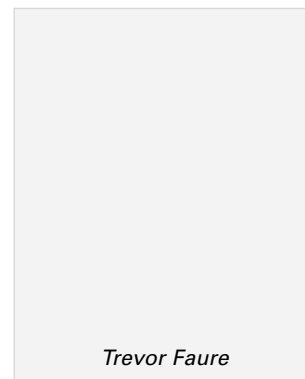
Daisaku Ikeda, Buddhist Philosopher,
as quoted by Trevor Faure

Trevor Faure, self-defined as ‘part-translator-part-interlocutor’ between the legal and performance improvement professionals, has in the form of the recently published ‘SMARTER Law’ also created a manual of self-improvement and professional revelation for the legal business development (BD) and marketing community. Pacific Business Press has known Faure for over six years and in light of the fact that Faure sincerely practices what he preaches regarding personal change, adaption and self- management, was presented the In-House Community Achievement Award in 2018.

The relevance of this book - and Faure’s consultancy work in general - to the legal BD community cannot be over-stated. By way of example, in his Appendix section I have not seen the complaints of the legal BD community so cogently defined: “Many BD professionals who have asked me for advice have said that their biggest challenge within law firms is gaining credibility for BD amongst their lawyer partner colleagues. They often profess that either the practice of BD or themselves as individuals are not taken seriously enough or simply viewed as seminar-organisers, bulletin-circulators, or PR people. For them, the merits of modernizing business development are secondary to a more rudimentary challenge: ‘How do we get partners to listen to us?’”

An aside - I will put this more bluntly than Faure: if you want partners to listen to you, have something useful to say. Especially if it is something new and something useful for the firm’s clients. Now here comes a Mea Culpa: I will admit that it was an In-House Community plenary session discussion in Singapore in 2015 which comes under Faure’s withering eye (page 401 - Chapter 11, Modernising Business Development) and at which he was invited to be our Key Note Speaker. The discussion under scrutiny looked at the relationship between law firms and in-house counsel - a topic which as Faure notes proved largely irrelevant to the assembled two hundred in-house counsel. I listened at the time to him and from that point on we actively gathered from the in-house community the challenges that they shared and from this re-formulated our plenary sessions to engage and attempt to solve some of those challenges directly; an engagement that continues to this day. As an organization and as individuals, we learned from Faure’s advice and just as importantly, from his example. We also learned that what was top of mind for the managing partners of law firms was not what pre-occupied in-House counsel; we learned what was actually top of mind for in-house counsel and shared it among both the in-house and private practice communities (and the BD folk that take an active interest). We learned and we changed. I think that is the point. For those BD professionals that did not take the opportunity to put into practice what Faure shared in 2013 at an American Lawyer Retreat he refers to on page 401 - 405, then here is your chance of a refresher as everything (well, almost everything) is within the covers of Faure’s new book.

By way of example, Faure provides a check-list for the key elements of modern legal practice which I believe the full implementation of which would, on the private practice side, challenge all but the most market leading of BD departments:



- Convergence of law firm panels
- Legal work disaggregation
- Project management
- Technology-assisted review
- Alternative fee arrangements
- Data driven business development
- Internal client intelligence sharing & cross-selling
- Systematic & independent services quality management
- Client procurement departments
- Six Sigma performance improvement
- Zero Sum Game behavior with clients

Therefore, we can prove from personal experience that “SMARTER Law” proves essential reading for anyone involved in the legal industry: in-house counsel lawyers, private practice lawyers and also BD and marketing professionals. I am looking forward to the new volume that squarely includes New Law, which is curiously absent from Faure’s otherwise comprehensive tome.

Those readers familiar with ‘The Smarter Legal Model: more from less’ which Faure published in 2010 will recognize some old but crucial friends in the new book - including the essential ‘Defining and measuring coverage’. This can be so easily adopted by a law firm marketing and business development department that I urged a Hong Kong-based APSMA (now ICON) group of 50 or so professional services professionals in 2015 (and if you have adopted the process of agreed coverage with your partners please do let me know). After all, the marketing and BD function sits inside the law firm in a similar manner to the traditional In-House legal department and its position within the corporation.

In the new, smarter ‘SMARTER Law’ edition, Faure has added a great deal on the personal transformation aspect of his work - as well as the highly relevant Appendix section which includes not only the Business Development chapter mentioned above but also various Workshop skeletons, including Compliance. The Appendix alone demonstrates his depth of experience in all relevant matters appertaining to the business of law and commercial law itself. It also includes helpful and revealing (but not too revealing) client case studies, including Walmart, Tyco and my personal favourite, Alvis.

The rest of “SMARTER Law” is divided into 4 sections: The Smarter Lawyer; The Smarter Legal Department; The Smarter Law Firm; and A Smarter Law Firm - Client relationship. What does Faure mean by SMARTER? It was intended originally to encourage a creative element by asking how we might improve upon the status quo by adapting precedents from non-legal areas of expertise. SMARTER was also an acronym devised to describe an optimal legal department structure, namely Segment and Subject Matter Managers, Regional Teams, and External Resources.

Given the scope of the book, I have decided to split this Review into 2 parts, and in this part start with the provocatively titled: “What’s wrong with law firms?” which opens Section C: The Smarter Law Firm.

Starting from the premise that few of us can fail to agree with - that both lawyers and clients are unhappy with the contemporary law firm - Faure homes in on the problem of the current partnership model with surgical precision and argues for a new structure along corporate lines that embraces permanent equity as a viable solution.

“..we could address many of the problems facing law practice today by changing the law firm’s structure and permitting law firms to issue permanent equity.”

Thus, the many-headed Hydra of short-termism, eat-what-you-kill compensation, lack of team work, under-investment in training and technology and in cyber-security protection, would be felled with one swoosh of the blade of permanent equity. And yes, as will be demonstrated, there is truth in what Faure argues.

But permanent equity has not proved to be a panacea for the modern corporate, as the financialism of practice as done by the likes of Peter Green of BHS can attest: the manipulation of share holder value and those that hold those shares lies at the heart of our present unequal society, as argued by many, including Mariana Mazzucato*. That said, there does not yet exist a better alternative. The modern Western capitalist system would not have evolved to be so dominant without the Dutch and their invention of the joint stock company in the eighteenth century. The inability of Turkey and other companies in the Middle East to modernize effectively and compete in the late nineteenth century have been leveled at the fact that they lacked a viable capitalist system where equity could be leveraged and hence their governments got saddled with unpayable debt.

Faure’s solution of providing senior lawyers with a permanent stake through an equity model would certainly combat one of the most alarming manifestations of the current partnership structure, which is manifested because a partner’s equity draw disappears on their retirement. I have coined the phrase ‘The Mick Jagger Syndrome’, which on reflection is probably too flattering. When told that the emerging acts of the ‘90s such as White Stripe’ were destined to earn less through the changes to the music industry and royalties brought about by Spotify and its ilk, Mick allegedly answered sardonically: “My heart bleeds”. And senior partners - even managing partners - in their cups have sighed and said: “Well, when all is said and done - only a couple of years to go before my retirement and then it becomes somebody else’s problem.” Permanent equity would diffuse this problem.

Permanent equity would also provide other types of workers within law firms - BD professionals included - with an opportunity to be truly vested in the venture. And with a monetary stake, your voice would definitely be heard. (Speaking as a ‘lapsed’ BD professional who has not been invited to join the Alumni groups of either of the two major law firms I worked for, the status of second class citizenship is definitely an issue, in my opinion!)

In addition, an equity-based solution provides an instrument for investment. Other non-partnership legal providers obviously have an equity structure and are able to invest much more of their revenue into technology and marketing to support the expansion of their business. Further, a different type and level of person with different skill sets would be attracted to working for law firms and would be provided with more latitude and trust to market more effectively to clients.

*‘The Value of Everything: Making and Taking in the Global Economy’, Mariana Mazzucato, Allen Lane.

Penultimately, it would help retain legal talent. For younger lawyers, the incentive towards a permanent equity structure is obvious as the longer she remains at the firm the more vested she becomes. Finally, it would also help drive the nail into that great zombie in the room - the billable hour. As Trevor succinctly puts it, hourly billing poses great challenges for the client’s financial projections and also (potentially) rewards inefficiency. Law firms would also have more to say about themselves as good employers than their AmLaw 100 rankings - the demise of which can only be a blessing.

In short, a permanent equity structure would be transformative and provide the law firm with a level playing field to their competition in the non-law services provider camp, as well as providing a platform for law firms to be truly global.

Commentators, including myself, have ruminated at some length on the symptoms which have resulted from the present partnership structure. For example, tinkering about the edges with a more client-aligned compensation structure goes some way. But the legal industry should be thankful to Faure for correctly identifying the cancer at the heart of the international law firm profession - the present partnership structure itself.

The Financial Times journalist Gillian Tett recently used the example of the spike in subprime auto-loans to illustrate that economists missed the subprime mortgage collapse leading to the Global Financial Crisis because their economic models assumed that consumers would behave in the way that the previous generation of home owners had done and protect their housing asset before all else. “Most economists missed the financial crisis since their models assumed that the future (and the present) would behave like the past”. With record results announced recently for magic circle firms regarding partner pay even during Brexit, it would be easy to assume that the future will continue in the same manner as the present and the past. However, Faure identifies that there is a discontent with private practice law firms from both the lawyers’ as well as the clients’ perspective (let alone anyone else who is not a lawyer but works within the law firm - it is perhaps telling that nobody has thought to ask them).

It is in my view very risky indeed to assume the future will look like the past for private practice law firms. Especially so when one considers how new model firms such as Axiom are exponentially growing in terms of revenue and ambition (45% growth year on year and with a revenue per year of US\$340 million). Since risk aversion and the prediction of the future lies at the heart of the private partnership value proposition, I say ‘Physician - heal thy self!’. Faure’s book represents a prescription, but it is up to the profession to take the cure.



<https://www.amazon.com/Smarter-Law-Transforming-Lawyers-Business/dp/0314843914>

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