Session A: Hot Topics in Post-Corona In-House Practice

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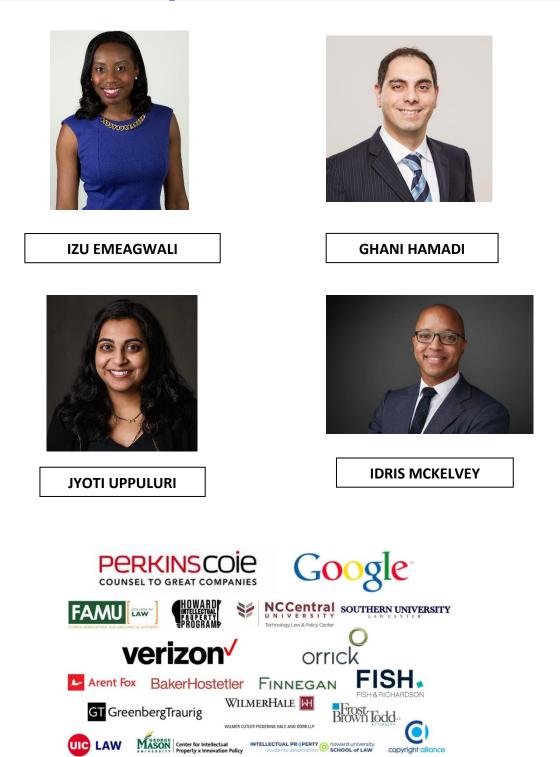# TABLE OF CONTENTS

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Izu Emeagwali

Izu Emeagwali is an Executive Director and Assistant General Counsel at J.P. Morgan where she focuses on the intersection of technology and law. Izu leads the Innovation, Data, Analytics and Artificial Intelligence Legal team for the Corporate and Investment Bank (CIB). There Izu counsels the various global businesses and data scientists of the CIB on their digital, analytics, artificial intelligence and data use initiatives. Primarily, Izu advises on projects and negotiates agreements involving the sharing and use of J.P. Morgan's proprietary information. She opines on and helps to implement the legal strategies and processes for sound data governance, including data management and data sharing practices. In addition, Izu advises business partners on the development or enhance of new products and services that leverage emerging technology.

Prior to joining J.P. Morgan, Izu was a Senior Associate at Cleary Gottlieb Steen and Hamilton LLP. There she focused on intellectual property, commercial and antitrust litigation. Izu also advised on intellectual property rights in technology focused M&A deals and drafted agreements to help clients protect their intellectual property. She led pro bono teams in advocating for issues impacting women in Africa. Izu also advised pro bono clients on intellectual property matters.

Izu graduated magna cum laude from Howard University School of Law and the University of Pennsylvania School of Engineering with a degree in Electrical Engineering. While at Howard University, Izu was a Research Assistant to Professor Lateef Mtima. She assisted Professor Mtima on his research on Copyright law and social justice.

Ghani Hamadi

Ghani Hamadi is an experienced intellectual property attorney serving as Senior Counsel in the Patent Group at FedEx Corporation. In this role, Ghani supports the company's global patent strategy, portfolio management, licensing, educational, and litigation efforts. Ghani works closely with business unit leadership and legal departments in providing legal support to the FedEx operating companies.

Prior to FedEx, Ghani was an attorney at Finnegan, Henderson, Farabow, Garrett & Dunner, LLP in Washington, DC. His practice involved all aspects of patent law, with a focus on patent prosecution, patent portfolio management, and complex patent and trade secret litigation. During this time, Ghani assisted in teaching patent law and intellectual property public policy courses as an Adjunct Professor at Howard University School of Law.

Ghani graduated from the University of Virginia with a B.S. in Electrical Engineering. He earned his J.D. from the University of New Hampshire School of Law (formerly Franklin Pierce Law Center) before completing his LL.M. at the George Washington University Law School. Ghani is originally from Iraq and moved to the U.S. to attend University. Outside of work, Ghani is passionate about providing refugees and persecuted minorities opportunities by representing asylum seekers in a pro-bono basis. He currently resides in Memphis, TN with his wife and three children.

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Jyoti Uppuluri is Head of Patent Portfolio Strategy for Reality Labs at Meta, the division at the heart of the company's development for the Metaverse. She leads a team of attorneys who are front line IP counselors and patent portfolio managers for Meta's AR/VR devices, platforms, and technologies. Prior to joining Meta, she prosecuted and litigated patents as an associate at Baker Botts, LLP in Palo Alto. She attended Harvard Law School and holds her BS and MS in electrical engineering from Rice University.

Idris McKelvey

Idris McKelvey leads the Estée Lauder Companies' Patent Group, where he is responsible for designing and executing the company's global patent strategy, supporting more than 30 luxury cosmetics brands.

Idris joined the Estée Lauder Companies in 2010, providing patent support for Estée Lauder's Aveda® brand. This role was expanded in 2014 to include responsibility for the brand's corporate governance and general business matters. During that period, Idris led legal support for the company's sustainable sourcing program and related corporate citizenship programs. Idris was promoted to Vice President, and Lead Patent Counsel, in July of 2018.

Idris has a particular focus on IP operations, embracing technology to modernize IP management, data analytics, and operational effectiveness. Leveraging new workflows, his team has introduced new insights-based metrics for assessing patent portfolio value. They've also employed a data-driven approach to process design improvements, matter management, and improved cross-functional alignment.

Prior to Estée Lauder, Idris served as patent counsel for Procter and Gamble, managing global patent portfolios for brands including Pantene®, Head and Shoulders®, Herbal Essences®, Cascade®, and Dawn®. Idris earned his J.D. from Howard University School of Law in 2005, and his B.S. in chemistry from Howard University in 2002 (cum laude). Away from work, Idris volunteers with the Long Island chapter of Girls Inc. Idris resides in Huntington, NY with his wife, Monique, and two daughters, Nadia and Zara.

Lawyers, and Legal Departments, in a Post-Covid-19 World

By Idris N. McKelvey (February 2021)

Against the backdrop of the Covid-19 pandemic, legal departments are designing operational plans for 2021, and beyond. Planning for the future is a mix of learning from what has worked, speculating on what might work, and taking stock of factors that remain outside of all of our control.

In the midst of this reset, it's important to recognize that operational planning doesn't exist in a vacuum. We know that Covid-19 has accelerated digital transformation initiatives as teams adjusted to working from home. And while many legal departments have been encouraged by what their teams have been able to achieve, many unsettled questions remain. For example, employee burnout is a concern, challenging whether productivity levels will be sustainable over the long term.[i] There are also signs that working from home has exacerbated economic and gender inequality, with more than 3 million women falling out of the workforce due to caregiving and other obligations.[ii] These complex social-societal issues flow through the topics discussed in this article. And while this discussion does not deeply analyze these important issues, it must be acknowledged that operational capability requires a holistic approach. Otherwise, any positive outcomes that might be realized through process and technology advances will be undermined by these broader systemic problems. Legal departments, and the organizations they support, should remain vigilant and take proactive steps to account for these challenges as they adapt to a new reality.

There is no doubt that the pandemic has been devastating to our sense of security and normalcy. Covid-19 caused many legal departments to shift from offices to remote-work, nearly overnight. While disorienting, this rapid shift has shown that traditional barriers to improving how work gets done have faded. Convincing people to adopt new ways of working has always been burdened by a natural bias towards doing things the way they've always been done. But as organizations have worked to preserve livelihoods and business continuity, resistance to change has significantly diminished; the old way of working is no longer an option. Post-Covid-19, teams are primed to accelerate transformation initiatives.

The move to working remotely has underscored the fact that certain legacy processes simply no longer work. Any process that involved paper has moved online. Notably, the Australian government legalized e-signatures in the wake of the pandemic.[iii] For legal departments who were still early in their digital maturation, finding ways to support the business without clear processes and minimal technology integration has created an urgent need to standardize workflows.

Legal departments have favored experience and legal acumen over process and project management skills. But Post-Covid-19, experience and legal acumen offer limited value without systems

to scale their how legal support is delivered. With dispersed teams, it is incredibly challenging for in-house lawyers to embed themselves into activities that are happening in digital spaces. Pre-Covid-19, lawyers could primarily support stakeholders with face-to-face interactions and email communications. But now, lawyers' primary interface with their stakeholders is in a digital-first environment. So legal departments must reexamine tools and methods to ensure that legal knowledge is effectively applied to digital workflows.

This paradigm shift pushes legal departments to reorient their roles relative to stakeholders. In particular, lawyers must confront the notion that clients may not directly value legal advice. Rather, legal advice is an asset to be leveraged for improving the likelihood of making better business decisions, which in turn should result in better business outcomes. Richard Susskind calls this idea, "outcome-thinking".[iv] This mindset shifts the lawyer's "trusted advisor" role towards a focus on scaling legal support in service of outcome-improvement. This shift has already happened in other white-collar domains. Online tax-preparation software, for example, has proven that taxpayers are less interested in tax advice than in efficiently managing tax liability. In the post-Covid-19 world, legal work (and large swaths of "knowledge work") will move further towards this outcome-oriented approach.

While legal departments may appreciate the need to evolve how they work, skills gaps are likely to hinder early progress. According to the 2020 ACC Legal Operations Maturity Benchmarking Report,[v] nearly half of legal departments are at the Early Stages of maturity with respect to process and project management maturity. And nearly three-quarters of legal departments are no further along than the Early-Intermediate Stage.[vi] Legal departments will have to develop greater process and project management skills to be successful. And technological skills will be necessary to create scalable solutions. But lawyers are not trained as project managers or as technologists. So how are legal professionals meant to develop the skills necessary to succeed in a post-Covid-19 environment?

Process design and management skills should be developed before creating a technology strategy. After all, the quality of an underlying process will be the limiting factor on overall effectiveness of technology implementations; great technology can't compensate for a bad process.[vii]

To be successful, small steps towards process improvement should be taken, and small gains should be celebrated. Evaluating processes, and identifying opportunities to improve, is an iterative learning exercise. Experiments will inevitably fail, and setbacks risk damaging morale. Setting achievable but meaningful goals will help teams to build confidence to drive change sustainably. Metrics should be focused on numbers of experiments and reapplied learning throughout each experiment cycle.

An important initial step towards process improvement is to align with teams on the status quo. Process mapping exercises will surface ambiguities and differing interpretations of

what current processes look like. There may be resistance, as lawyers often perceive their work as being inherently unstructured and driven by experience and tacit legal knowledge. But even complex workflows that require subjective analysis can be reduced to steps in a chain where information is gathered, processed, decisions are made, and outcomes are delivered. It may be surprising how differently members of the same team perceive the processes driving their daily work. These exercises are critical for aligning on a starting point before mapping the path to improvement.

As process improvement efforts take shape, it will become evident that legal processes are frequently cross-functional processes, and the legal department is a contributor to a broader workflow. This is an opportunity for legal departments to deliver additional value to their stakeholders. Business processes disproportionately flow through legal departments, making them a hub for enterprise workflows. So, it is natural for legal departments to take a leading role in enterprise-wide process improvements. Creating process solutions will pull the legal department into even closer partnerships with their stakeholders, and lines will increasingly blur between "legal processes" and "enterprise processes". It will serve lawyers well to embrace these partnerships to deliver holistic business solutions, informed by legal expertise and process design skills.

As processes mature, technology tools can be deployed to drive scalability. This is yet another opportunity for legal departments to develop new skills. According to the 2020 ACC Benchmarking Survey, legal departments are not yet well-equipped to fully leverage technology to enhance legal service delivery. About 70% of legal departments responded that they are at the Early-Intermediate Stage of maturity, or less, with about 60% of that cohort reporting that they are in the Early Stage of maturity.[viii]

According to the ACC model, Early Stage departments heavily rely on the corporate IT function to make decisions on technology implementations.[ix] Intermediate Stage legal departments may leverage basic matter management and e-billing systems, coordinating with IT to facilitate adoption and support.[x] About 70% of surveyed departments fall into the Early or Intermediate Stage, indicating that legal departments have a significant opportunity to create value through better use of technology.

Legal departments in Early and Intermediate Stages are not created with less technological capability than more advanced legal departments. They just have a more traditional set of expectations. It seems logical for IT to manage technology-related issues and for Legal to manage legal issues. But this framing fails to recognize that advances in technology have rendered this approach obsolete. In order to effectively support enterprises, Legal and IT functions must operate more closely than ever.

IT has traditionally assisted lawyers to implement technology, built in-house, or by 3rd parties. These provisioned platforms typically allow for certain customization during implementation. These so-called Software-as-a-Service (SaaS) relationships have been premised

on legal professionals being designated as Subject Matter Experts (SMEs), who provide context and certain problem statements to the service providers, enabling software improvements according to a development schedule. If specific customizations are necessary during the support period, the SME submits a "ticket" or change order, and the SaaS provider or IT partner executes a project to satisfy the SME's need. This approach is too slow for today's business pace. Technology is no longer just a support tool; it is becoming an integrated component of legal solutions. Legal departments need to be empowered to create, modify, and fix technology solutions in real time. Stakeholders will become increasingly frustrated if technology-enabled legal solutions fail to keep up with dynamic business needs. And both IT functions and legal departments will be accountable to the business for performance, or the lack thereof.

As process design and technology-enabled tools become increasingly important pillars for legal departments, so too will the ability to harvest data from these processes to drive improved business outcomes. Legal departments will be expected to harness data to provide proactive insights, reduce costs, identify and mitigate risks, and to identify new business opportunities. Data-driven technologies will become a routine source of legal support for businesses. And legal departments will be responsible for using these resources to drive new value streams into enterprises.

One can imagine a digital assistant that can be fed a set of facts or queries, and it will return an AI-driven legal recommendation, based on data including a vast array of court decisions, statutes, regulations, and multilateral agreements… all updated in real time. Such machines are already disrupting the healthcare sector,[xi] matching and surpassing performance of trained physicians' medical diagnoses. Similar advances in the legal sector are inevitable. Experiments have already showcased AI's ability to outperform human lawyers with respect to agreement reviews, for example.[xii] This will significantly disrupt legal department operating models, and adaptation will create substantial opportunities.

Learning how to harness available data is becoming a fundamental competency for lawyers. Lawyers who learn to build systems to harness business-relevant data in order to provide unique solutions will have a distinct advantage over their peers. To alleviate abstraction, consider two workflows relating to in-house patent departments: (1) invention harvesting, and (2) contract management.

Invention Harvesting

Nearly all invention management and patent docketing platforms include an Invention Disclosure Form ("IDF"). In most cases, the IDF is just an online version of a paper questionnaire. They usually offer some customizations and workflow integrations, like inventor notifications, inventor remuneration tracking, docketing integration with related patent families, etc. But inventors tend to view the IDF as a necessary evil, interrupting value-added work in order to report information to the patent department. Inventors do not innovate in the IDF, but they understand that the patent department needs to capture certain information in

order to protect inventions. So, they tolerate the form and go through the motions of transcribing information from one place to another so the patent department can do its work.

Strategic legal departments understand this value gap and are exploring technology-enabled process solutions. Slack®, for example, has dispensed with IDF's altogether. Instead, new ideas can be lagged for patentability evaluations by simply tagging the information with an emoji, directly in a Slack® channel.[xiii] As technology continues to evolve, it may be possible for AI to scan communications, documents, and cross-functional meeting transcripts (which can be generated by AI) to independently identify and propose inventions to patent departments.

Lawyers should also consider how this data might be leveraged for further value across the enterprise. There may be opportunities to socialize or crowdsource inventions based on subject matter expertise curated by a knowledge management platform. Enterprise networks may track, evaluate, and promote cross-functional interactions that seem to generate new IP. A bot could compare new invention submissions with previously filed pending patent applications, flagging opportunities to file new claims via continuation applications or even proposing new claim strategies. There are likely creative opportunities to connect invention harvesting tools to other commercial databases to evaluate monetization opportunities, forecast competitive responses, and gather a host of other business analytics.

Contract Management

Contract management and contract automation have been at the forefront of legal technology advances. But there are still opportunities for tech-enabled lawyers to drive more value from these tools. For example, while technology-supported contract lifecycle management is quite mature, there are opportunities for lawyers to customize systems to deliver actionable insights for their stakeholders.

For example, lawyers are well positioned to lead collaboration partner performance evaluations. Contract management solutions can be used to associate agreements to internal projects, innovation focus areas, new product launches, new patent filings and grants, and other business indicators. Lawyers understand the legal frameworks, business context, and technology capabilities underpinning the agreement workflow, enabling them to deliver greater business insights around these collaborations. A proactive approach enables businesses to make better decisions regarding development partners, raw material suppliers, basic research, or many other scenarios.

Conclusion

As we move into a post-Covid-19 environment, organizations, and the legal departments within them, are being throttled into an exciting and uncertain future. But the past year has proven that rapid adaptation is possible. The new-normal is certain to demand even more. And legal departments that choose to evolve will thrive in the world ahead.

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[vii] Sam Ransbotham, Don't Let Artificial Intelligence Supercharge Bad Processes, MIT Sloan management Review, https://sloanreview.mit.edu/article/dont-let-artificial-intelligence-supercharge-bad-processes/.

[viii] 2020 ACC Legal Operations Maturity Benchmarking Report, At 68, ACC, https://www.acc.com/sites/default/files/202004/ACCLegalOps_Report20_FINAL.pdf?&acc_source=Downloads&acc_campaign=LOMaturityReport (last visited February 16, 2021).

[ix] Id. At 59.

[x] Id. At 64.

[xi] Chiara Longoni and Carey K. Morewedge, AI Can Outperform Doctors. So Why Don't Patients Trust It?, Harvard Business Review (October 30, 2019), https://hbr.org/2019/10/ai-can-outperform-doctors-so-why-dont-patientstrust-it.

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[xiii] Mark Pike, How we take some of the work out of legal work, Slack.com (May 2nd, 2020) https://slack.com/blog/collaboration/how-slack-legal-uses-slack.