

TREVOR FAURE

SMARTER LAW

TRANSFORMING BUSY LAWYERS
INTO BUSINESS LEADERS



From **emotional intelligence** to **artificial intelligence**
the definitive performance improvement solution



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As a dynamic solution, Smarter Law is applied using professional partners, real-time tools such as benchmarking metrics, updates and workshops.

For the practical extensions of this publication please go to

www.smarterlawsolutions.com.

INTRODUCTION

Introduction. *Smarter Law: From Emotional to Artificial Intelligence, Transforming Busy Lawyers into Business Leaders*

Let me explain.

“Smarter”? Really?

“Your title implies that everyone else is dumb”, observed an esteemed senior lawyer on reading *The Smarter Legal Model: more for less*. Given that this luminary actually thought his fellow lawyers were dumb I wasn’t entirely sure whether this was criticism or corroboration.

I developed the performance improvement methods in the original Model during my career as senior counsel, legal director or general counsel at Apple pre-and-post the Steve Jobs’ comeback, at Dell during its rocket ride from No.7 to No.1 worldwide, at Tyco during the post-Kozlowski scandal turnaround and EY during the Lehman collapse litigation. Clearly, necessity was the mother of invention during such high-profile, existential endeavours. Legal “futurists”, “visionaries” and “disruptors” have aspirations above my pay grade; Smarter just focuses on what we can begin to improve on Monday morning because those are the tasks I’ve been privileged to undertake.

The Smarter Legal Model: more for less was published in 2010 and, since that time, I have been asked to advise on hundreds of career, legal function and law firm transformations around the World since. As a result, Smarter Law now comprises real-life case studies, data and outcomes from hundreds of successful transformations and spans individual personal performance, legal departments, law firms, service providers and the relationships between them all. The pioneering convergence of law firm panels and disaggregation of legal work into different tiers of risk and volume in The Smarter Legal Model are now ubiquitous.

Only results make one approach smarter than another. One client reduced its legal department spend to such an extent that it worriedly called me back to investigate why it was now spending so *little* for its improved service and possibly short-changing its law firms. A Magic Circle firm reported that project management had reduced lost fees totalling 15% of revenue. In this book you’ll see why a client paid its law firm \$4.75M for work that only amounted to \$350,000 of billable time and saved itself \$78M. You’ll find the business development techniques that grew professional services firms to over \$30Bn in revenue that effectively cost nothing to implement. There are technology solutions with a return on investment of 507%. You’ll find tender processes in which the client was able to pay law firm bidders *more* than their proposals and still reduce its spend by 44%. On a personal performance level, around 9 out of 10 individuals involved in the direct implementation of

a Smarter transformation have received a promotion, bonus, award or some other sought-after advancement.

By contrast, my failures were consigned to a much larger book entitled: “The Dumber Legal Model” which the publishers tell me is unprintable due to the persistent profanity. As Thomas Edison said: “I have not failed. I’ve just found 10,000 ways that won’t work.” The use of the “working smarter” mantra was intended to encourage a creative element by asking how we might improve upon the status quo by adapting precedents from non-legal areas of expertise. “S.M.A.R.T.E.R.” was also the acronym devised to describe an optimal legal department structure, namely Segment and Subject Matter Managers (i.e. Products, IP, Litigation), Regional Teams (local law generalists) and External Resources (law firms, LPOs and other legal service providers). This structure mirrors a typical company matrix and ensures maximum lawyer-client alignment and functional leadership in an increasingly cross-jurisdictional business environment.

Smarter Law represents a 1000 ways that will work.

From Emotional to Artificial Intelligence—the range of approaches

A Smarter approach uses the broadest possible range of proven techniques to improve personal, professional and business performance. This range inevitably spans “left brain” thinking (logic, analysis, maths & words) and “right brain” thinking (creativity, emotion, diagrams & pictures). This is modern behavioural economics applied to law, its successes comprise intricate behavioural insights and detailed econometric processes. Soft skills and hard data.

This polarised range wasn’t designed to grasp at broad appeal, far from it: my “left brain” words-and-data reader may already be deterred at the prospect of visualising behavioural patterns and my “right brain” reader may have already flicked past this text in search of the diagrams that will explain things more clearly to them. But fundamentally, a full range of approaches is essential to the success of any endeavour requiring technical excellence from human beings. Millions of subjective, subconscious reasons influence how we behave and yet we strive to measure, manage and manufacture objective value through our work product. Exercising one’s full mental range is mandatory for success: people don’t care how much you know until they know how much you care.¹

Thus, regardless of how you think, this book is guaranteed to be at least “half full” for you. As a work of behavioural economics, be prepared for a lot of “behaviour” and a lot of “economics”. In this book, there are real-life performance improvements involving the practical, demystified use of Design Thinking, Agile, asymptotic curves and Pareto optimality: the sort of economic techniques one might expect. But there is equal reliance on the behaviours in Stoic philosophy, Rorschach

¹Variouly credited to Theodore Roosevelt & John C. Maxwell.

inkblots, marital infidelity and Batman. Statistical data and ancient myths, rationale and stories, words and pictures, linear narrative and abstract shapes, logical processes and lovely colours. Fun for all the family . . . and for both sides of your brain.

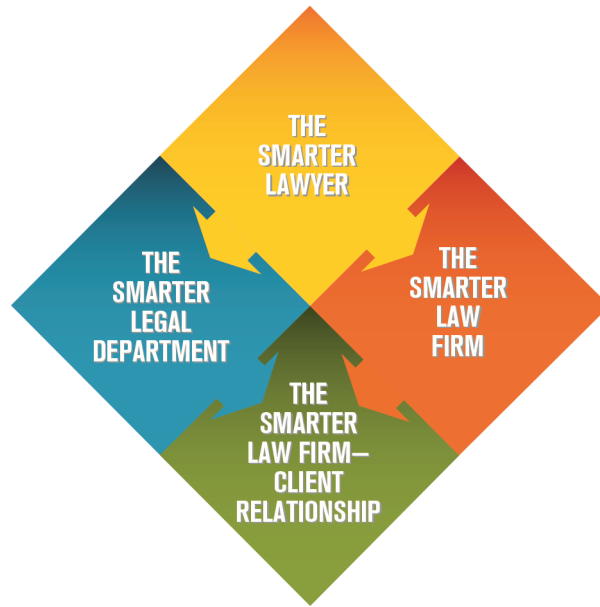
Transforming busy lawyers into business leaders—the journey and goal

Any transformation is a journey and a challenge, however modest. If meaningful change was not hampered by unwillingness or perceived inability, it would have already taken place. Even being “too busy” is a product of unwillingness or a perceived inability. The unwillingness comes from some subconscious deprioritisation of the challenge and perceived inability may come from one’s practical inefficiency at getting the task done. All of these challenges are explored and addressed in this book.

There is a range of ways in which a lawyer may become a business leader, of course. First, the lawyer can excel *at leading their own business*, namely their practise, department and personal legal approach by using world-class performance improvement methods. As a result, the ideal is to then become an indispensable business partner and trusted adviser to others, namely one’s clients. Eventually, certain lawyers may seek to graduate to leadership of all business disciplines having started as a lawyer, as did Kenneth Frazier, CEO Merck and Mark Weinberger, Chairman, EY. It doesn’t matter how far along the scale we may wish to travel; only the direction towards greater capability, productivity and personal satisfaction is important.

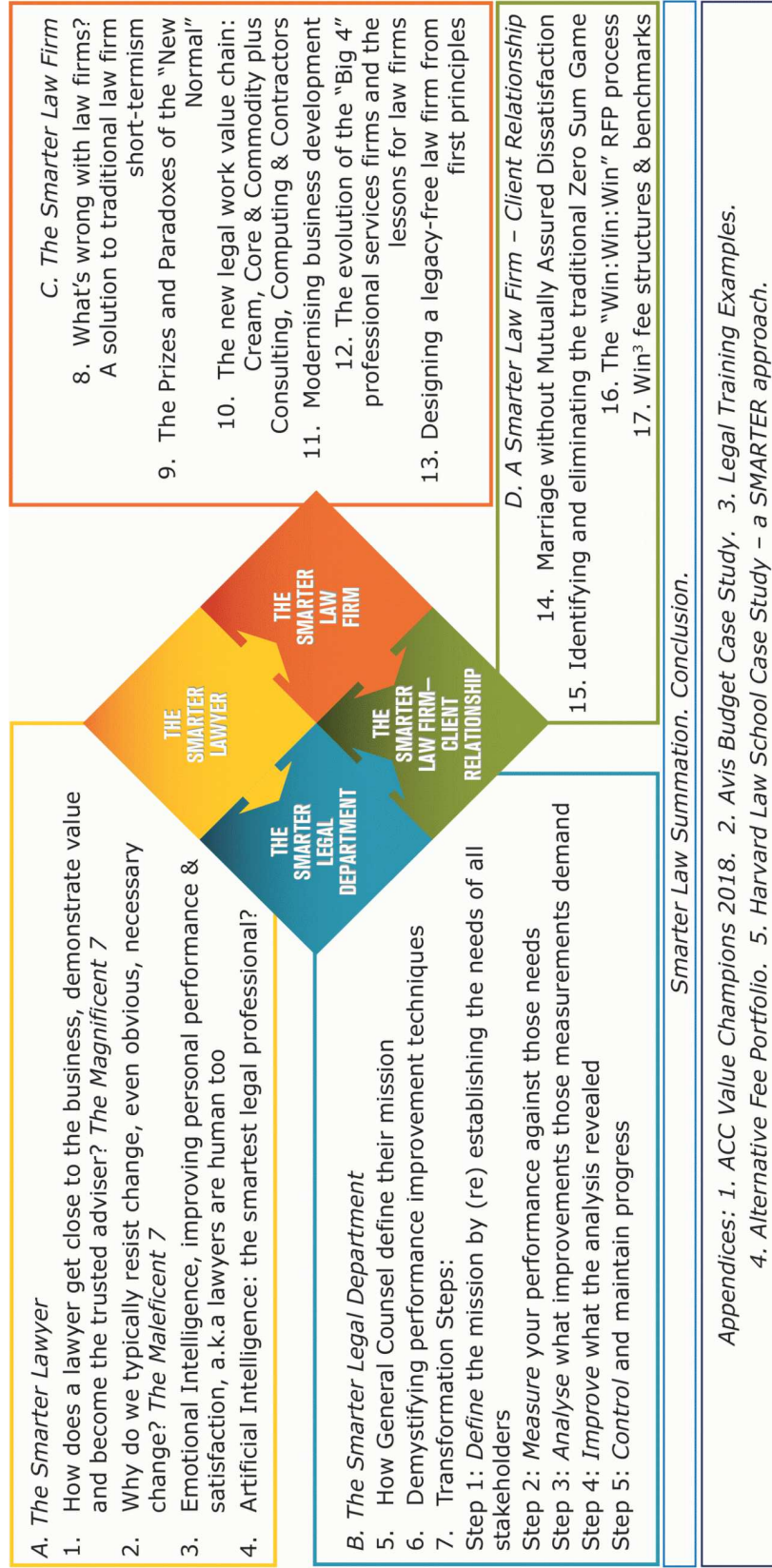
Smarter Law structure

Smarter Law is expressed in four interlocking sections, cascading in logical order to reflect natural consequences: smarter lawyers make for smarter legal departments and legal service providers, which in turn form smarter relationships:



The term “lawyer” may include almost any legal professional, qualified to practise or otherwise; “legal service provider” may include law firms and any other operation enabling legal service delivery.

Smarter Law contents and navigation



The contents represent a flexible process rather than a series of fixed prescriptions. Every transformative journey requires a map but no two routes will be identical as respective starting points and intended destinations will vary considerably. Smarter Law is a neutral process that empowers you or your organisation to assess the current status, set ultimate goals, plot your route and execute your journey goal. In book form, the structure and contents are a map and in action it can be used as turn-by-turn satellite navigation. Alternatively, you could just read it cover to cover, like, you know, a book.

Advancing from the Smarter Legal Model to Smarter Law

Unlike a movie sequel, you do not have to have read the Smarter Legal Model to appreciate Smarter Law: the greater here includes the lesser before.¹ Smarter Law comprises a radically larger dataset of reported results, compiled from those who applied the Smarter Legal Model. New processes have been designed for law firm transformations as much as for their clients previously. Smarter Law incorporates the collaboration of world-class expertise at the Harvard Law School Center on the Legal Profession, the Association of Corporate Counsel, the IBM Watson platform and countless more, duly credited.

And there are new ideas! That worked!

Smarter methodology has broadened from cost efficiency and intensified its focus on excellence in coverage, compliance, talent and client satisfaction. It is no longer just “more for less” but now demonstrably “better quality for less”.

Who is Smarter Law for?

- Individual lawyers from general counsel and managing partners to junior in-house counsel, associates and trainees
- Compliance professionals
- Academics and law students
- Expertise providers such as technologists, analysts & consultants
- Anyone who wants to be any of the above
- Anyone who has been any of the above
- Friends and family of any of the above (rates of stress, depression and substance abuse amongst lawyers are huge, under-reported issues)
- Legal departments
- Law firms

¹As per Chief Justice Rehnquist, Justices White and Holmes, et al. “Justice Byron White and the Argument that the Greater Includes the Lesser”. Michael Herz, Professor of Law, BYU Law Review, Vol. 1994, Issue 2.

- Clients of lawyers, who are interested in better service
- Legal operations professionals
- Process outsourcers
- Related services such procurement and finance, recruitment, human resources and business development
- Professionals in general: the publishers that reported doctors, accountants and estate agents were purchasing the first book and
- Those who have attended legal conferences, collected continuing education points, taken semi-earnest notes, exchanged business cards and war stories (a.k.a. “best practice”), kvetched about the same issues and then not really done anything different to address them.

Population: Everyone

Particularly for those who:

- Are seeking to increase value, improve legal coverage, compliance and client satisfaction, whilst minimising cost and optimising talent, including your own.
- Are too busy to read this book—you’ll see why you thought this and its implications. Spoiler Alert: you’re not really.
- Have better ideas, processes and results. Congratulations. This book should at least affirm your advanced state.
- Those who simply want a practical process to improve something when the stakes are high but the resources are not.

Who is Smarter Law *not* for, be honest?

- Those who think that any methodology can replace—rather than facilitate—being an outstanding technical practitioner of Black Letter Law with perceptive analysis, sharp reasoning, persuasive negotiating, beautiful drafting and compelling advocacy. You should concentrate on honing those pure legal skills instead.
- Those who are so close to the finishing post of retirement or so rich so as not to care about performance improvement, other than to perhaps hand over a more robust profession to their children. Seriously, if your fundamental concern is how long you can fend off doing anything differently, then stay that course, please pretend that Smarter is the way to go if asked and give this book to your more junior staff or less-advantaged colleagues. I won’t be offended, particularly if you’ve already paid for it.
- Those who want to ruminate on whether the legal profession is heading

towards a dystopian future, levitating lawyers or whatever shiny cyber-object is glistening this week. This is because, as James Baldwin put it: “The future is like heaven, everyone exalts it, but no one wants to go there now.”² Speculation about the future can be a popular displacement activity within the legal profession when it delays making innovative improvements that are entirely possible and necessary today. Too many lawyers enjoy debating near-future, disruptive phenomena, citing the Wayne Gretzky ice-hockey analogy (“Skate to where the puck is going to be, not to where it has been”), rather than risk taking a shot at change now. Such “Blue Sky” procrastinators should remember that Gretzky also said: “You miss 100% of the shots you never take”.

In summary, *Smarter Law* is these things rather than those:

²“The Hard Kind of Courage” reprinted in “Nobody Knows My Name”, Dial Press, 1961.

S m a r t e r L a w i s	focused on improving work output and talent, while minimising risk	r a t h e r t h a n	just solely focused on reducing costs.
	proven in 250+ practical applications worldwide		theoretical concepts or untested innovation.
	demonstrably actionable today		speculative about the future.
	driven by metrics, data & universally applied business-improvement processes, translated into Law		anecdotal experience or subjective opinion, however authoritative.
	created by a global GC of over 25 years' seniority, who also managed law firm services, both on multi-million dollar scales		disruptors, non-lawyer consultants, procurement, academics, or technologists (although they do use it).
	scalable from individual personal performance to entire legal departments & firms		just applicable to large organisations with substantial support infrastructure, IT and budget.
	financially incentivising to good legal service providers (law firms, LPOs) through win:win formulas		punitive to any legal service provider through loss-inducing discounts, irrespective of their performance.
	inclusive of the full Cost of Inadequate/Inefficient legal spend (COI), i.e., liabilities, fines, losses & penalties		just focused on the primary legal spend on internal and external lawyers.
	a neutral process: "Where are you starting from & where do you want to get to? Here's the route to reach your own chosen destination."		a guide towards buying any specific product or service: "We only sell hammers, so we think all of your problems look like nails."
	building on the status quo where it is successful, relevant and robust		innovation and change purely for their own sake.
	a rationalisation of all legal stakeholder interests including clients, customers, legal staff, regulators, finance & compliance		a response to just the loudest voice in the room or this week's crisis alone.
done by and with lawyers	done <i>to</i> lawyers.		

Conclusion

As a dynamic solution, Smarter Law is applied using real-time tools such as benchmarking metrics and workshops; for the practical extensions of this publication please go to www.smarterlawsolutions.com.

With gratitude, I have had the enormous privilege of presenting Smarter Law at Harvard Law School, Oxford University, on Bloomberg TV and in dozens of keynotes from Los Angeles to Shanghai, Moscow to New Zealand. More tangibly I have had general counsel and managing partners of some of the most successful legal operations in the World commend its impact and hundreds of others reporting their successes in its application.

However, despite the various Big Law, Big Data and Big 4 achievements, the most profound and humbling feedback I receive is always the small stuff. An executive at a top 10 M&A firm telling a conference that his firm “applied Smarter religiously”; three lawyers confessing how they’d stolen their book copies from previous employers (larceny is the sincerest form of flattery, right?) and a couple of lawyers who were altogether unconvinced by the methodology but reported instead that it had proven very effective in managing an under-12s soccer team and getting an unwilling 14-year old to learn a foreign language. So perhaps there really is fun for all the family and relevance to someone entering the legal profession in a decade’s time after all. For the rest of us, the future begins on Monday morning.

Apologies then, the title is not intended to make a pejorative comparison with anyone. The only challenging comparison to make in a “Smarter” approach is with yourself last week.

Once we fail to look up we think that we’ve reached the highest point.

Faure