Biases and the technology selection process

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1 Biases and the technology selection process

Selecting the most appropriate technologies to address business objectives is one of the most challenging and impactful decisions a law firm CIO must undertake. With the recent hype associated with Generative AI, we are seeing an even more competitive and faster-moving technology landscape than ever before – making clear and unbiased decisions has perhaps never been so important. In this article, we explore some of the kinds of biases that affect decision making. Eliminating bias is not possible, but managing it is, and that will lead to improved product selections.

Evaluating solutions is an exercise in understanding capabilities vs. requirements, investment vs. return, roadmap vs. reputation. All of these factors can be quantified and evaluated in a structured process, by a group of diverse stakeholders. Each of the participants will, however, have their own focus, their own perspective, and their own biases.

Humans are fallible creatures and while we'd like to think we are driven by cold logic when making decisions, in fact we are subject to a whole host of in-built biases. This is particularly evident in legal IT during an important product selection. This might be an informal process, conducted by the firm itself, or it might be a more formal process run by the firm or a third-party consultancy. Typically, the more formal approach is constructed to assist the firm in defining the requirements used to evaluate the different vendor solutions and return a dispassionate and logical choice. Unfortunately, both approaches are nonetheless subject to biases. Without an understanding of the types of thinking that can influence people, the selection process may not result in the most appropriate solution for the firm, whether done internally or via a controlled third party review. In addition, the vendors themselves, consciously or unconsciously, exploit internal biases and introduce their own logical fallacies to further their own case.

Realising that one can display biases is a hugely important first step in eliminating them from any process. Similarly, a recognition of the techniques employed by vendors to exploit personal biases allows them to be dismissed by the selection team in favour of real data.

Here are some of the more common types of bias to watch out for. See if you can recognise any of these in yourself, or from vendors that you have pitched their solution to you. For ease, they are divided into Firm biases, and Vendor biases:

1.1 Firm Biases

There are several biases that benefit an incumbent supplier in a situation where the question is "remain with the current vendor or adopt a new solution".

- The Sunk Cost Fallacy. This is a well-known phenomenon where there is an inherent reluctance to abandon a strategy or solution because of the previous investment made in it. This bias happens even when it might be clear that an alternative solution may be more beneficial in the long-term.

- The Status Quo Bias. This is the tendency to avoid change. When presented with different solutions the existing solution will be chosen even when there is a very compelling argument in favour of the alternative.

Naturally, no one comes to a situation completely without an initial viewpoint. For the most part, people approach decisions with a set of preconceptions and there are biases that work to preserve these presumptions, regardless of new information received.

- The Anchoring Bias – this refers to people relying too heavily on one trait or single piece of information - usually the first piece of information acquired and allowing this to influence their decision making. This is linked to:
    - The Conservatism Bias. A general reluctance to revise your current opinion in light of new information received. This is exemplified by the rejection or de-emphasis of points in favour of the 'new' solution.

People, and law firms as an industry, pay particular attention to what their peers are doing. It is well known that one of the first questions vendors are asked is "What other firms are using this?" The more firms that are using it, the more weight this carries regardless of the actual match to the specific requirements of the firm. This can result in:

- The Bandwagon Effect. Individuals being influenced by the popularity of a particular solution. If lots of firms use this, it must be the best for us as well.

With the previous biases in place, there are two other biases that reinforce the position that excludes new information:

- The Confirmation Bias. This is when someone specifically looks for, and gives more weight to, information or evidence that reinforces an existing belief or bias. When confirmation bias comes into play it tends to be largely unnoticed and unintentional, but it allows someone to ignore inconsistent information that might otherwise add up to a different outcome.

- The Desirability Bias. This type of bias is common when evaluating suppliers, one of which has a less mature offering in the marketplace, but because of the types of bias described above, it becomes the 'default' solution, despite being inferior. The desirability bias allows the belief that, in the face of missing features, the supplier will eventually deliver on their promises to deliver those features. This results in the sense that there is no risk in selecting their solution despite such functionality already being available in the alternative offering.

1.2 Vendor Biases

Of course, it isn't only firm resources who can be influenced by biases. Vendors are, of course, heavily biased – after all they each want the firm to select their own solution. Sometimes knowingly, sometimes unknowingly, vendors make use of their own set of biases, some of which dovetail with those biases listed above.

First, let's look at two biases explicitly used by vendors to reinforce known firm biases.

- The Sunk Cost Fallacy. This works as well from a vendor perspective as from a firm perspective and can be adroitly used to reinforce an incumbent vendor's position. A significant part of the incumbent vendor's pitch will be to emphasise the firm's existing investment in their solution. This approach has had to undergo some modification in recent times as, previously, there would have been a more significant up-front investment in the supporting infrastructure and the initial license cost of the existing solution. As firms move to a more SaaS based model, none of this applies and the 'sunk cost' is more about the skill sets of staff within the firm and their existing experiences.

- The Popularity Appeal. This approach is aimed at reinforcing the Bandwagon effect. The appeal to popularity is used to demonstrate that simply because many other firms use the solution, it must be the most suitable. Too often, vendors will provide a long list of client logos, but upon close examination, the clients are not using the exact product being reviewed.

Vendors have another couple of tricks up their sleeve when it comes to presenting their solution in the optimal light:

- The Appeal To Authority. This is the deliberate alignment of a vendor solution with a recognised authority, with the clear implication that the authority only endorses their particular solution. In the legal market this would typically reference a large global vendor such as Microsoft – the vendor touting its Microsoft integration can really just be table stakes, yet they project it as unique and differentiating.

- The Illusory Truth Effect. The illusory truth effect is one used when one vendor is at a clear disadvantage to another with respect to certain aspects of their solution. This approach makes use of the fact that people have a tendency to believe that a statement is true if it is easier to process, or if it has been stated multiple times, regardless of whether it is actually true. This would be exemplified by a simple statement such as "industry leading security" being used throughout a presentation that prevents attention being drawn to the detail.

1.3 What can be done?

So, given the above, does it have to be that way or can these things be worked around? Remember, the understanding of biases and the way they can be mitigated is the foundation of the scientific method, so it can be done. Of course, any approach has to temper the effect of bias with time and effort, and no one is going to construct a paradigm that will be fully immune from bias. That said, there are things that can easily be done, and which will result in a more accurate and defensible decision-making process.

1. Start with an understanding that you and your team will have biases. Acknowledging this is a huge step in making sure that the biases do not unduly influence the decision. At every step, check yourself and mentally question whether what you are feeling is the result of a bias or a fact.
2. Have an open conversation with the selection team. Make sure that everyone on the selection team has the same understanding of bias as you do and that they commit to checking themselves in the same way. Bear in mind that they will be influencing each other during the selection process.

3. Remember you are starting from a new point in time when you begin a new project. Whether you have an existing system or not, approach selection purely on the merits of the solutions - how well it meets the Firm's requirements- and not on whether, for example, there has been existing investment. Also, while biases that combine to make you like one vendor over another (i.e., a better salesperson) are important, recognizing when that comes into play is critical.
4. Don't be a lemming. Objectively assess why a particular solution is in use in firms and determine if those reasons should actually influence your decision.
5. Be honest with yourself when examining new information and don't reject it because it does not sit well with any preconceptions you have.
6. Ask "and what do you mean by that". Don't take high level, simple, persuasive statements at face value. Dig into the detail and fully understand the differences between each solution you are looking at. This may only be possible for a sub-set of the selection team as, for example, lawyers are not the best place to evaluate deeply technical differences between solutions, yet it is critical to involve them in decisions that affect their work. The onus is on those best able to evaluate elements of the solution to determine the weight that should be placed on such differences and present them back to the whole group in a way that everyone can understand.

Fundamentally, technology selection is hard. You are fighting yourself, your team and the vendors to uncover the best solution for your firm – and that may be a wholly different solution than the one selected by a peer firm. Being aware of the issues you face as a human and taking the above steps to mitigate inherent biases, will result in a more impartial and suitable choice.

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