

InfoPAK<sup>SM</sup>

## ACC Value Challenge Practices for the Small Law Department

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# ACC Value Challenge Practices for the Small Law Department

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This InfoPAK takes a unique, practitioner-focused approach to exploring the *ACC Value Challenge initiative ("AVC")* of reconnecting cost and value within the context of small law departments. Using case-studies proffered by in-house counsel from various small law departments, this InfoPAK examines the ways in which these small law department practitioners have implemented the concepts and principles espoused in the AVC into every day practice. Starting with the general principles of the AVC, it then provides details on each in-house counsel's unique experiences in implementing the value-based concepts, followed by a summary of the practices utilized and the key takeaways for readers. Finally, the InfoPAK provides additional practical guidance, including an extensive list of additional resources on the topic from both the ACC Value Challenge library, general resource collections, various topic-specific checklists, and other highly relevant articles at the end of the document.

The information in this InfoPAK should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of Meritas or of ACC or any of its lawyers, unless so stated. This InfoPAK is not intended as a definitive statement on the subject but rather to serve as a resource providing practical information for the reader.

This InfoPAK was prepared by **Meritas**, the 2012 Sponsor of the *ACC Small Law Department Committee*, in conjunction with the SLD Committee. For more information on Meritas, go to [www.meritas.com](http://www.meritas.com) or see the "About the Author" section of this document.

ACC would like to extend a special thanks to Al Peters for the time and dedication he put into the development of this InfoPAK.

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# I. Introduction

In 2008, the Small Law Department Committee ("SLD Committee") of the Association of Corporate Counsel ("ACC") requested that Meritas, the SLD Committee's sponsor, develop a resource for small law departments ("SLDs") to realize greater value from their companies' investments in law-related resources and to manage more effectively the legal service that the SLDs manage on behalf of their companies.<sup>1</sup> This request grew from the ACC Value Challenge, an initiative the ACC launched in that year "to reconnect the value and the cost of legal services."<sup>2</sup> This initiative reflected a widespread view among in-house lawyers that the cost of legal service, in many cases, had come to bear little if any relationship to the benefit realized by the client. Even when the cost was equal to or greater than the benefit, it was often a result of happenstance, since the fee and costs were arrived at without a conscious determination or consideration of value.

What do we mean by the terms "value," "cost" and "benefit" in this context? "Value" can be understood as the degree to which the legal service assists or enables the client to achieve that client's business goal with an associated cost that is not disproportionate to that goal.<sup>3</sup> A company will attribute value to legal service to the extent that the service serves a demonstrable business purpose identified by that organization. The goal might be to effect the closing of a transaction, to resolve a dispute, or to manage the law-related risks associated with a reduction in workforce. The service completed by the lawyers – either by in-house or by outside counsel on the organization's behalf – must assist the organization to achieve its goal or that service might as well not have been performed.

Nevertheless, simply achieving the business goal at *any* cost would be inappropriate in virtually all circumstances. Consequently, the measure of effective legal service must include an analysis of the cost of that service and a determination that the cost bears a reasonable relationship to the benefit that the client realized from that legal service. A more detailed discussion of the possible costs and benefits of legal service appears in Section V of this InfoPAK.

The "value" of the legal service, then, is the relationship of the costs and benefits of that service. If the costs actually incurred (not just anticipated) are too high in relation to the benefits realized, the value will be low. If the benefits are too low (perhaps lower than anticipated) or the costs too high, then the value will be too low. Thus, to realize sufficient value, one must attend to both sides of the equation: keeping costs as low as reasonably possible while maximizing the benefit that will flow to the client, all the while ensuring that the quality of the service does not suffer.

While stating the problem as a disconnect between cost and benefit is a start, it does not solve the problem. Without tools and guidance as to how to increase value or decrease cost of legal service without adversely affecting the quality of that service, in-house attorneys find themselves lost in a morass of inconsistent – and perhaps even contradictory – pressures. The limited resources available to SLDs mandates that they focus on value in order to ensure that they direct those resources to the projects of the law departments to which corporate management assigns the highest priority.

This challenge looms much larger for lawyers who work in small law departments (i.e., in-house corporate law departments with no more than approximately ten lawyers). SLDs, by definition, face resource constraints that do not affect their larger counterparts to the same degree. First, because SLDs have fewer lawyers, they are less able to ask those lawyers to devote significant time to issues that do not have an immediate, recognizable impact on the departments' work. Second,

they typically have fewer staff members beyond the lawyers, as well as smaller budgets, giving them little ability to spend money on long-term, proactive measures to achieve greater value. Third, small companies (assuming that the size of a company correlates to the size of its law department, so an SLD is likelier to exist in a small company than in a larger company) "spend a much higher percentage of their revenues on outside legal counsel ( a median of .94%) than median companies (a median of .30%) and large companies (a median of .21%), suggesting that a certain amount of cost of outside legal service represents a 'fixed' cost."<sup>4</sup> A small law department that manages an outside counsel spend of less than \$1 million may not be able to glean as much savings from that spend as a large law department that oversees over \$100 million in outside counsel billings. Finally, due to their size, SLDs often face the challenge of justifying their existence to their companies' upper management (see Case Study 8) more than their larger, often more-established, counterparts do.

Consequently, SLDs have historically found themselves at a disadvantage (when compared to larger law departments) in leveraging relationships with outside counsel to realize greater value, though SLDs may be those who could benefit most. A new approach to determining and measuring the value of legal services might assist SLDs in meeting the specific, and somewhat unique, challenges that they face in this context.

The dilemma in which many SLDs find themselves manifested itself in the preparation of this InfoPAK. In fact, the very reason that this publication is needed stood as a hindrance to its completion. In order to render the InfoPAK most useful to members of the SLD Committee, the authors determined to use case studies drawn from the experiences of Committee members as the core of the InfoPAK. In the course of identifying appropriate interviewees for those case studies, they discovered that, possibly for the reasons cited above, case studies based on SLDs' experience were limited in number. This confirmed that achieving the goals of the ACC Value Challenge has represented a very ambitious goal for SLDs.

In-house lawyers in SLDs generally have little time to devote to long-range, strategic issues. Again and again, the authors heard from in-house interviewees of the need to respond to day-to-day issues and emergencies, spending most of their time putting out fires rather than planning to build the next fire station. Opportunities to focus on long-term goals and devise approaches that might yield great benefits down the road come along too rarely. Nevertheless, many SLDs have, in fact, implemented practices and achieved goals of the ACC Value Challenge, perhaps without realizing the extent of their reach, as revealed in the interviews for the case studies in this InfoPAK.

Nonetheless, the authors identified a number of examples of SLDs realizing greater value. Those case studies, supplemented by examples drawn from the experiences of law firms that are members of Meritas who work with SLDs, have enabled the authors to draw some important - and they believe valid - conclusions as to how in-house lawyers in SLDs can realize greater value from the legal service without sacrificing quality.

This InfoPAK contains the following sections:

1. A discussion of "value," divorced from specific matters or assignments in an effort to generalize the discussion. The intent is to provide an approach to the topic that is useful in applying the techniques and lessons contained in this InfoPAK. It also will create a more consistent lexicon among the in-house community and outside firms.

2. A series of case studies, drawn from experiences of SLD Committee members and Meritas member law firms, on the following aspects of value within the context of legal service:
  - Different departments' approaches to the definition of value.
  - A discussion of "value" with respect to in-house counsel and law departments, which provides an approach with which to answer the oft-asked question, "Why should the company have a law department and how will that benefit it?"
  - How can outside legal service providers deliver greater value to a corporate client, and how are they doing so now?
3. A summary of the key lessons drawn from the case studies in this InfoPAK and a discussion of how members of the SLD Committee might apply these lessons beneficially.
4. A discussion of various ways clients realize value from legal service, not all of which arise solely in relation to the cost of that service.
5. An approach to creating a definition of value for each organization.
6. Final summary.

## II. What Does "Value" Mean in the Context of Legal Service?

When ACC launched the ACC Value Challenge, it opted to allow law departments to develop value definitions specific to their needs rather than provide a definition that might - and might not - fit their circumstances. ACC did exhort its members to discuss the issue with their outside legal service providers, empowering members by providing materials with which to initiate that dialogue. In the context of legal service, of course, the term "value" has no clear-cut or easily measurable scope.

While a single, universally applicable definition of "value" likely proves elusive, we can identify some traits of valuable legal service that help to develop a working definition. These traits (let's call them "value-related qualities," or VRQs) may not comprise a definition in the pure sense of that word. They may, however, help an in-house lawyer construct a roadmap to assist the company's in-house and outside lawyers in providing legal service that more closely mirrors its value-related needs and expectations. We identify some VRQs in a later section of this InfoPAK. (See Section VIII, "How Do Clients Realize Value From Legal Service?").

Value will vary with a company's culture and industry, so how can we successfully approach the challenge of defining and delivering high-value legal service? We can start with the basics, recognizing that value does not exist in a vacuum and is not an immutable constant like the speed of light. Rather, it represents a relationship between the "cost" of the legal service and the

“benefit” that the client realizes on account of that legal service. The “cost” may include more than out-of-pocket expense and the “benefit” may be expressed in other than monetary terms.

By focusing on these more-discrete factors that, in one or more combinations and to one degree or another, equate to or affect value (or, at least, affect clients’ perception of value), in-house or outside practitioners can begin to determine how they can increase value – or prevent its decrease – to the benefit of the client. They can start to devise practical steps that can be implemented and measured.

The VRQs and other factors and considerations that specific companies might identify have relevance to the discussion and measurement of value of the legal service and of the attorneys who create, deliver and manage that service. In the following sections (via the Case Studies), we describe specific means by which some law departments in the SLD community have increased the value that their companies realize on account of their legal-service providers (both internal and external). Following those case studies, we discuss how to apply the lessons of those case studies, in light of the factors described above, to increase the value that the legal service managed by law department yields to your company.

Some interviewees did address the question of how best to define legal service. While their responses differed to a degree, the authors believe that some consistent themes (identified in Section VII below) emerged from those conversations. To the extent that those interviewees worked in SLDs and applied those techniques successfully, their views illuminate some points and practices that can be applied within the context of other SLDs’ operations.

First, we will review examples of how SLDs and law firms in the Meritas network have provided higher-value legal service in a variety of contexts. A primary goal of this InfoPAK is to provide SLDs with the “push” and the “path” and the “tools” to achieve similar gains on behalf of their companies. We present these examples to assist SLDs to develop value-focused approaches specific to their situations.

### III. What Is “Value”?

Several interviewees discussed “value” in an abstract sense. Their comments illuminate several aspects of the qualities of “value.”

#### A. Case Study I - Law Department Organization to Realize Greater Value Through Specialization

After five years in private practice, Joe Bauer spent 25 years as an in-house lawyer with Lubrizol Corporation, 20 of those as General Counsel. He now advises on the role of law departments in the procurement and management of commercial insurance and value.

During his in-house tenure and, particularly, as the chief legal officer of Lubrizol, Mr. Bauer developed the “law firm model” of law department management. He created



practice teams within the Lubrizol department, each focusing on a particular segment of the company's legal work: regulatory matters, litigation, complex commercial transactions (including mergers and acquisitions), patent, and supply chain management. Once the law department had completed its transition to this "practice group" approach, it did as much work with internal resources as possible. The in-house lawyers even handled much litigation themselves, rather than simply retaining law firms to handle all such matters. In this way, Mr. Bauer explained, the company achieved the maximum benefit from its investment in internal resources while minimizing its outside legal expense.

During Mr. Bauer's tenure as general counsel, Lubrizol enjoyed low outside legal expenses compared to peer companies of similar size. Accordingly, Mr. Bauer was less focused on cutting outside counsel costs than he was on securing the "right" talent for the work that the company assigned to outside counsel. Some of the techniques that the law department followed when working with outside counsel included:

- Avoiding billing abuse, which includes the assignment of young, inexperienced lawyers to the company's work, with inadequate supervision and oversight
- Looking for law firms that do not rely on highly leveraged associates, whose billings support a much smaller number of partners, a pyramidal model that encourages (or at least does not discourage) delay and overbilling
- When possible, using for complex work law firms that are specialists in the precise area of law, especially since specialists often will entertain alternative fee arrangements (AFAs) that reward specialization and quick resolution of matters
- Encouraging initiative and creativity among the outside lawyers

When he began to introduce the law firm model of law department structure at Lubrizol, Mr. Bauer encountered some skepticism and even resistance. The Lubrizol law department underwent some personnel changes as it set about securing the best-qualified in-house lawyers, able to handle even complex matters without the support of outside counsel. To make the case for such changes, Mr. Bauer utilized benchmarking studies. The final results were well appreciated by corporate management when it saw the bottom-line results (e.g., lower cost, better quality).

According to Mr. Bauer, a small law department with fewer resources than the Lubrizol department can realize greater value from the legal service by applying the following ideas:

- Understand the workload intimately. For example, routine leases for storefronts in strip shopping centers might be handled very differently, and by different lawyers, than complex leases of retail centers in regional malls.
- When the workload can be segregated into distinct buckets, bundle it for purposes of negotiating AFAs.
- Negotiate specific retention arrangements with truly capable resources.
- Find the most competent specialists for complex work.

- Ensure that any AFAs that are negotiated result in law firm and law department satisfaction.

The Lubrizol law department recognized the value of an expertise-focused structure for the law department that enabled it to claim a strategically vital role within the company. The department followed this approach for both its internal resources and its external resources. By aligning the in-house personnel along the lines of practice teams, the law department maximized the impact and value of the in-house resources and effort. With respect to complex work by outside counsel, the department identified and retained firms of specialists in particular areas of law. While such efforts take time, their benefits last.<sup>5</sup> Mr. Bauer organized both internal and external lawyers under the practice-group paradigm.

The approach taken by the Lubrizol law department is based upon the concept of “strategic strengths.”<sup>6</sup> By creating practice-focused teams, Mr. Bauer created institutional strategic strengths within the department. The in-house lawyers’ specializations enabled the department to perform high-quality, high-value legal work internally. The lower cost of work performed in-house rather than paying more to have law firms complete the work represented considerable gain.

#### **Points to remember:**

1. When feasible in light of the staffing and other restrictions that often bear upon corporate law departments (and SLDs in particular), a practice-based organizational structure can yield greater value. This structure allows the department to develop and apply its substantive expertise so as to identify efficiencies.
2. Assigning work based upon the expertise necessary, rather than on the basis of its perceived complexity, can lead to higher value as the work is performed by those with particular adeptness for that work.
3. Reorganizing the in-house and outside professional resources in tandem enables the law department to achieve even greater efficiencies by aligning the expertise of each more closely.

## B. Case Study 2 - Preventive Law and Internal Collaboration Increase Value

Al Peters is General Litigation and Contracts Counsel for the Pennsylvania Turnpike Commission, where he has worked for over two decades. The Commission has five lawyers on staff (chief counsel, assistant chief counsel and three lawyers, like Mr. Peters, who have titles descriptive of their responsibilities). Mr. Peters manages litigation for the Commission, most of which relates to accidents on the highways operated by the Commission, construction claims, and discrimination cases. Mr. Peters has been active within the Association of Corporate Counsel for years. He served as chair of the Small Law Department Committee as well as Central Pennsylvania chapter president, and he currently serves on ACC's Board of Directors.

Though the legal department has not developed a formal definition of the value that the legal team delivers to the Commission, Mr. Peters describes the culture of the Commission as one in which the in-house lawyers provide advice to their colleagues regarding legal issues related to ongoing projects and oversee the work that underlies that counsel. The Commission expects the in-house lawyers to apply a strategic perspective vis-a-vis the legal affairs.

The legal department does, however, recognize that different perceptions of value determine the goals in handling various types of cases, and litigation matters are part of this approach. Claims posing a risk for the Commission's core business are examples of matters where the Commission does not settle for the sake of settling and disposing of claims; instead it aggressively defends them. On the other hand, the Commission has a different strategy when it comes to claims involving likely liability or claims with limited exposure that are unlikely to recur. In these cases, the Commission asks outside counsel for targeted discovery and negotiation to reach a reasonable settlement (without expending a lot of time or fees).

Prior to engaging outside counsel for a litigated matter, Mr. Peters conducts a limited internal investigation so he can provide outside counsel with sufficient data regarding the matter. This allows outside counsel to quickly "get up to speed" on the merits of the Commission's legal position. That investigation continues even after outside counsel has been retained, in case new or different information comes to the fore. Early analysis (after data collection) and a focus on strategy serve the Commission well by enabling the in-house lawyers to acquire the broad vision that the Commission expects of them.

The litigated matters vary sufficiently that Mr. Peters has not had the opportunity to explore alternative fee arrangements, by which the Commission could take a "portfolio" perspective to negotiate favorable fee terms based on volume of similar cases. The law department has begun a search for a matter-management system that will provide it greater granularity in the data available to the in-house lawyers regarding the matters they manage. This might allow them to revisit the possibility of AFAs.

Mr. Peters also organizes information about litigated matters for purposes of possible discovery early. Doing so avoids a last-minute rush to find relevant information and to prepare it in the context of short deadlines.

Mr. Peters believes that one of the highest types of value in-house lawyers can provide arises from compliance and preventive measures, such as looking at significant data to develop a preventive process or response (whether done primarily by the lawyers or by their colleagues does not matter as much as that it does occur). By preventing or helping prevent disputes or accidents, in-house lawyers can ensure that their organizations continue to move forward, rather than become mired in disputes about past events. This requires an alertness to trends and patterns of occurrences. The Commission's engineers identified such a pattern in the early 1990s when they noticed an increase in the number of accidents attributable to drivers on the Turnpike drifting onto the road's shoulders. The data that the engineers routinely collected demonstrated clusters of such accidents. Consequently, the engineers developed "rumble cuts" for the Turnpike, which would alert a driver that the vehicle's wheels had crossed the line separating the roadway from the shoulder. Such incidents now occur much less frequently than they did prior to development and installation of the devices. A law department that is in a position to identify trends in disputes or claims involving its company will be far more able to devise means of preventing or resolving such disputes in a less costly fashion than one that is not able to see such patterns.

The Turnpike Commission's law department identified a role that heightened its strategic value to the organization. It recognized that value, as a measure or attribute of legal service, can only be viewed in the context of the specific type of work in question. Run-of-the-mill or commodity matters command a lower value to the organization than those that create or threaten core strategic interests. Accordingly, the law department's treatment of commodity matters takes into account the lower risk profile and allows the Commission's lawyers to take a very different role. On the other hand, the efforts of the Commission's lawyers to understand the Commission's mission and work closely with the Commission's other internal experts are the foundation for their ability to identify issues such as the "drifting" accidents.

The relationship between those efforts and compliance, as noted by Mr. Peters, reinforces a view held by many in-house counsel, namely that the highest and best use of in-house lawyers consists of preventive measures designed in light of specific experience with the organization's operations. A business can save considerable costs by precluding disputes, investigations, and "false starts" due to failure to recognize legal issues early enough in the planning process. Some of these costs may be monetary, but many count as non-financial benefits.

### **Points to Remember:**

1. Efforts to identify "root causes" of problems that lead to disputes or litigation represent high-value initiatives because they allow in-house attorneys to eliminate future causes of work and distraction for the organization.

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2. Collaboration with experts within the organization but outside the law department can lead to great gains in value by harnessing their respective expertise in a joint effort to improve operational performance.

## C. Case Study 3 - Focusing on the Specific Expertise of Outside Professionals Leads to Greater Value

Paul Marcela is General Counsel of two privately held companies that manufacture mass-transportation vehicles. He is the sole in-house counsel for the companies; contract management is handled by one outsourced professional who reports to him. That individual drafts contract templates and engages in first-line negotiation of new contracts.

Much of the legal work that Mr. Marcela handles or manages is litigation related to the operation of vehicles manufactured by the companies, in which other parties assert product-liability and other claims regarding product performance.

When Mr. Marcela took his current position almost two years ago, the companies used a primary law firm for most of their legal work, a relationship that had continued for many years. Due to the variety of work, Mr. Marcela determined to diversify the assignments by type. Drawing on his knowledge of the Meritas network, he identified several firms to handle the various matters. This step reflects his belief that a company realizes the most value when it calibrates the assignment of work to the specific capabilities needed to handle that work effectively. Retaining one law firm to handle all types of matters no longer represented an effective strategy.

For litigation, Mr. Marcela requires that the law firms prepare budgets. Despite some early resistance or skepticism by the firms, they now comply with this rule.

Mr. Marcela worked with the selected firms to identify, in several categories of work, standard processes that the firms would follow on his two companies' behalf. In litigated cases related to specific types of occurrences, for example, they collaboratively developed a standardized or generic approach to the claims, incorporating the accumulated knowledge the company had developed regarding those matters into a litigation posture. This approach resulted in several benefits. First, it reduced the likelihood that in any specific case the lawyers would overlook an issue related to the company's position. Second, it greatly decreased the amount of time needed to prepare the company's papers in each case, with lower resultant cost. Third, it yielded greater consistency in the company's position across the category of cases.

Mr. Marcela also pursued a strategy of establishing the companies' outside firms as extensions of the law department. By doing so, he builds a seamless legal team that includes the in-house and outside legal personnel. By establishing such a relationship and integrating business goals into the legal team's mission, he is able to serve the companies more effectively and efficiently.

Mr. Marcela has not yet reduced significantly the companies' reliance on the hourly rate for calculating its legal fees, though that goal remains within his sights. While some of the law firms with which he works have suggested alternative fee arrangements, he has not detected true commitment from them. He has begun exploring an AFA for one category of

cases, now that he has consolidated those matters with one firm that has developed an expertise in that type of case.

Mr. Marcela began to implement these steps soon after he joined the companies in August 2009, but the effort is ongoing. Nonetheless, using as his benchmarks aggregate monthly legal expense and client satisfaction, he reports progress. He also has seen positive results in that the companies have settled some cases for amounts less than earlier estimates of potential liability.

Mr. Marcela uses the following value-related steps to managing legal service on behalf of a business:

- Delegate or assign the person or organization best capable of performing a task to that task.
- Create systems, procedures, and similar uniform approaches to tasks and responsibilities as much as possible.
- Avoid revisiting issues and matters repeatedly.
- Create a team with complementary strengths to handle an entire matter.
- With respect to disputes and litigation, remain alert for settlement opportunities.
- Consider alternative providers of service, assessing relationships both outside the company (e.g., can a vendor provide part of the total service at a cost lower than what a law firm would charge?) and within the company (e.g., can someone outside the law department perform some of responsibilities more efficiently than an in-house lawyer?)

Like Joe Bauer and Al Peters, Paul Marcela adopted a perspective that focuses on a very particularized analysis of need and talent. First, he analyzed the attributes of the legal work needed in light of the companies' business matters. Then, he determined what legal expertise would be most effective in supporting the companies' achievement of their goals in those matters. Finally, he matched the latter to the former, which required some realignment of the then-existing external resources and the identification of appropriate additional resources. In other words, he maximized the impact of the legal service by applying the precise expertise to the specific need. These steps comprise some of the basic steps one takes in developing a strategic plan.

Identifying the particular strengths of each outside counsel (individual or firm) enabled Mr. Marcela to increase the effectiveness of the companies' legal team (i.e., both in-house and outside counsel). This effort yields ongoing benefit in the form of a balanced team that has combined expertise closely matched to the needs of the business, with less likelihood of underperformers in the group.

### **Points to remember:**

1. Matching the particular need to specific expertise increases the likelihood that work will be performed more efficiently and effectively, resulting in greater "bang for the buck."

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2. Realignment of resources so as to render that match more precise leads to enhanced value.



## D. Case Study 4 - Identifying More Efficient Ways of Reaching the Company's Goals

Ken Grady, the General Counsel and Secretary of Wolverine World Wide, Inc., heads a legal team of four lawyers and four legal assistants. Wolverine World Wide, which is 128 years old, manufactures, markets and retails footwear and apparel, which is distributed in approximately 190 countries. Its revenues were approximately \$1.3 billion last year and it has offices and operations in several countries in addition to the United States.

Mr. Grady describes the law department at Wolverine as a “traditional, full-service” department, handling or managing the global legal work and using outside service providers on a select basis, especially internationally, to augment the internal capabilities. For litigation, the company relies on outside counsel more than for most other types of work, because much of the litigation arises outside the U.S.

The department has not developed a single definition of value for the legal service for all matters. Rather, it uses a set of guidelines for how the work is to be handled for each matter, focusing on a number of factors. The guidelines determine how to staff each matter and whether and how to structure a fee arrangement, if the hourly rate will not adequately optimize value. The department has, in fact, shifted away from the billable hour for most of its work. Mr. Grady began using alternative fee arrangements at another company in approximately 1999 and started converting Wolverine to them when he joined in 2006.

This approach might result in disparate assignments for what seem, at first blush, to be similar matters. For example, a lease for retail space in a mall generally would be viewed as a commodity assignment with limited strategic value to the company. A lease for space in Midtown Manhattan for a flagship store, on the other hand, would represent a much higher-profile assignment. Despite the fact that it also constitutes a retail lease, it is complicated by its central position in the company’s business plan due to its prominence and the magnitude of that real estate market. Accordingly, those two leases might be handled through different staffing and fee arrangements.

Mr. Grady finds that disaggregating the work is of great benefit and yields greater value. Also called “unbundling,” disaggregation involves examining the discrete portions of an assignment or matter and determining whether each portion should be assigned to or handled by a different person or organization. Each portion is assigned to the party with the specific skills or expertise necessary to perform it most effectively and expertly. In essence, all tasks are viewed as not necessarily being the “strategic strengths” of particular lawyers and law firms. Just as not all lawyers are fungible, not all law-related work is equally central to a lawyer’s highest and best use.

Some factors that Mr. Grady and the other lawyers at Wolverine examine are these: the skill set needed to perform the task; the time available for its completion; the value to the company of that task, compared to other demands for time and effort (this is particularly applicable to the efforts of the in-house staff); the subject-matter expertise required and

where that expertise resides; and the value to the company of developing that expertise among its in-house team in light of possible future need. In essence, Mr. Grady and his associates seek to determine which resource (in-house or outside, lawyer or non-lawyer) is best suited to handle each discrete task for the benefit of the company.

Mr. Grady previously worked for a company embracing the “Toyota Production System,” where he acquired training in “lean” process improvement techniques. He applies those techniques to the law department’s work at Wolverine. Additionally, the department applies project management techniques to select, deploy, and manage the entire legal team for the company. When it began to apply project management tools and techniques, the department encountered some skepticism (although no disbelief in the rationale behind the effort). To secure buy-in, the in-house team identified some opportunities for early wins. It then leveraged those early wins by recognizing the successes and their authors. It devoted much effort to frequent communication among the in-house and outside legal professionals to ensure that everyone was working in concert to achieve the company’s goals.

In some cases, the law department has identified opportunities to reduce the number of outside providers to yield higher value. For example, the company now works with one law firm, instead of two, for securities work. One of the two firms that the company had used was a regional firm that did not have a core competency in securities matters. By assigning all of that type of work to one national firm, the company experienced less duplication of effort and more value for the same cost.

Ken Grady applies the lean techniques he learned in a prior position to render the legal function at Wolverine more efficient. His disaggregating or unbundling of the work represents an approach closely related to those of some of the other interviewees. In essence, the in-house lawyer recognizes that the most efficient and effective strategy entails assigning the work in more granular or discrete pieces to those most efficient or expert at handling each piece. This represents a realization that the “all-in” service historically provided by law firms may not be in the best interests of the client in all instances. Those parts of that “all-in” service that do not represent lawyers’ core competency or strategic strength ought to be assigned to another party with greater expertise in handling that aspect of the service, unless to do so will unreasonably and adversely impact the final work product. By unbundling the service, a law department can secure the experts best matched to each aspect of the work. This maximizes the odds that the work will be done well and at the lowest cost.

To the extent that a law department identifies some tasks that can be – and, for cost-efficiency reasons, should be – performed by someone other than a lawyer, that service can be applied across the range of external resources. For example, electronic discovery might be handled by a single e-discovery vendor retained or contracted directly by the law department. That vendor might then work with all of the company’s outside counsel in all cases on the company’s behalf, rather than each law firm retaining or working with a different vendor for such services. In addition to possible cost savings, such an arrangement can yield improved consistency in the treatment of the company’s electronic information and more comprehensive reporting of e-discovery activities to the law department. Such results would represent significant increases in value in an area other

than cost.

**Points to remember:**

1. Legal service entails performing many subsidiary tasks not all of which are purely legal in nature. Accordingly, their performance by lawyers or law firms may not represent the highest or best use of that professional resource. Breaking the legal service down into more discrete elements – i.e., disaggregating the work – allows the law department to assign work more specifically to the individuals or organizations that have the most expertise for that particular effort and to do so most efficiently and inexpensively without sacrificing quality.
2. The application of "lean" and Six Sigma techniques can yield greater efficiencies by eliminating unnecessary steps or by realigning work so that it is accomplished more efficiently and less expensively.

## E. Case Study 5 - Clients Want Fast, Responsive Service and Information

Ken Pugh is Senior Vice President for Credit Management at Zions Bank in Salt Lake City, Utah. The credit management group handles loans that have become delinquent and represent problematic credit situations. The bank is a subsidiary of a holding company. Its national real estate group is active in all 50 states, particularly in small business lending.

The bank's law department consists of approximately 15 lawyers and 14 legal assistants. The department is involved in the bank's compliance efforts (particularly with respect to the Gramm-Leach-Bliley Act), reviews loan documents, monitors regulatory matters, deals with consumer loan issues, and oversees matters involving bankruptcy of the bank's customers and the bank's home equity-based lending. Because the credit management group must "pay" for the time of in-house counsel (much as they do for outside counsel, though not on an out-of-pocket basis), it does not regularly call on in-house lawyers in workout situations.

The credit management group that Mr. Pugh leads includes 16 direct reports who handle "broken" loans throughout the country. It handles many routine or "vanilla" loans with minimal involvement by lawyers, negotiating workouts with borrowers or otherwise seeking business-oriented solutions to the bank's position vis-a-vis the borrowers.

For more complex, troubled loans, Mr. Pugh and his group retain outside counsel directly. When selecting outside counsel, Mr. Pugh values out-of-the-box thinking. He wants counsel to identify various ways that the situation involving a distressed loan might be resolved and he highly values counsel's willingness to make recommendations. Due to the nature of the work, which regularly involves negotiation with a borrower with respect to the delinquency of the loan and the difficulties faced by both borrower and lender in that situation, Mr. Pugh expects counsel to provide him with the perspectives of both borrower and lender in light of the legal positions they occupy. This information helps him and his group negotiate intelligently with the other parties involved.

Among the qualities of outside counsel that Mr. Pugh values highly are: speed, responsiveness, and aggressiveness. He seeks a trusted advisor who will provide the information he needs to make an informed decision regarding the bank's position with respect to the borrower and the collateral for the loan.

To realize greater value from the efforts of the lawyers with whom he works, Mr. Pugh has taken steps to enhance the training available to his team. That training is intended to prepare them better for situations that require quick thinking and action vis-a-vis borrowers. Workout officers for the bank must trust the outside lawyer with whom they work, in what are often high-pressure situations. Those workout officers require familiarity with foreclosure laws and practices in many jurisdictions. Accordingly, Mr. Pugh has arranged for lawyers to provide training on those issues for the staff. The staff enjoys and benefits from that training. He also relies on treatises, surveys, and compilations of the relevant laws of the 50 states as resources for his staff.

When seeking outside counsel, Mr. Pugh has had success utilizing firms that belong to the Meritas network. He finds that using members of that network saves time by accelerating his group's ability to find adequate representation, due to the common standards among firms that the group has developed and enforced. It has simultaneously reduced the chances of staff frustration that might result from *ad hoc* selection processes.

To accelerate the selection process further, Mr. Pugh and his group have developed a form they use when engaging outside counsel. It summarizes the pertinent information and data a firm needs to conduct the necessary conflicts check and to gauge the complexity of the assignment. Though his group generally retains a firm through a partner-level contact, Mr. Pugh appreciates being able to utilize less-senior lawyers for simpler matters.

Mr. Pugh plans to develop metrics regarding the use of outside counsel and his group's success in realizing greater value in that regard. The recession overwhelmed those intentions, though, by creating more-constant demand for attention to workouts. Nonetheless, Mr. Pugh believes his group has realized approximately a 20 percent savings on the costs of legal service, which has equaled \$1 million per year or so.

Mr. Pugh's use of both in-house and outside counsel is instructive in several respects. First, as the consumer of both types of legal service, his expectations reflect the "real world" of clients with which the profession (both in-house and outside) must deal. Second, the impact of chargebacks and costs on the credit management group's operations significantly affects the ways that group interacts with the lawyers within and outside the bank. In other words, as client, his view of value is particularly instructive.

His recognition of the need for well-designed and implemented standard procedures parallels that of some of the other interviewees in this InfoPAK. His desire for training for his group also synchronizes with that of other interviewees. They also recognize the benefit for their companies and law departments of improved training on law-related issues for non-lawyer employees, especially when delivered or managed by the in-house lawyers.

Unlike many clients of law departments or law firms, Mr. Pugh obviously takes a very hands-on role with respect to the legal service. As an informed and knowledgeable consumer of corporate legal service, he calls on the lawyers when he believes they add value to the bank's situation and to his group's performance; he prefers not to use them when, in his view, they do not. That clearly leads to different roles for the in-house and outside lawyers. Even when his group retains outside counsel, he wants to ensure that counsel's role is clearly delineated and as limited as feasible in view of the pressures and considerations he faces. All in all, Mr. Pugh is a challenging client in some respects but, to paraphrase a retailer, "an educated consumer is [the] best [client]."

### **Points to remember:**

1. Business professionals wish more control over the costs of legal service. By working with and training them, a law department can enable those business professionals to perform some aspects of the work otherwise handled by lawyers (work that does not require a license to practice law, of course). This can free the lawyers to focus on higher-

value work that requires their counseling expertise or their problem-identifying capabilities.

2. In addition, training of the business professionals, provided or overseen by a law department, can empower those professionals to collaborate and work with a company's lawyers more effectively.

Having looked at the issue of “value” on its own, we now focus on the respective value propositions of in-house and outside lawyers. The case study of Zions Bank serves as a good transition into that discussion.

## IV. What Value Does a Company Derive From Having In-house Lawyers?

As we stated above, in-house counsel possess several strategic strengths on account of their status within a company and their representation of their companies on a continuing basis. Can we identify more specific ways in which such lawyers add value?

### A. Case Study 6 - Company Culture Affects the Management of Law-related Matters

This case study is based on an interview of the General Counsel and Secretary of a mall-based retailer that markets apparel, accessories, and gifts to young adults at more than 700 stores in the U.S., Puerto Rico, and Canada. The company's law department includes two legal assistants as well as the general counsel. In addition to managing the legal function, the general counsel is responsible for managing the company's insurance and safety programs, stock plan administration, loss prevention, and other operational functions.

The legal work of the department breaks down approximately equally into the following five categories: public securities and governance-related issues, intellectual property (licensing and related issues), consumer product safety issues, contracts, and litigation.

The department believes the value it brings is its ability to ensure that legal services are delivered in a manner that takes into account the company's unique corporate culture. The department is also expected to provide balance between the need for legal/compliance certainty and the practical day-to-day needs of the company. Lastly, the department's value includes its ability to be a repository of information useful to the operations of the company, including the department's database of company agreements.

Outside counsel's value increases in direct relationship with its ability to align with the values of the legal department (that is, the ability to understand the company and its culture and deliver legal advice that takes into account the practical considerations of the retail business). The company has a modest outside counsel spend, targeted primarily on securities, litigation, intellectual property rights, and retail-specific issues. Service providers need to understand the company's culture, which is very important as it markets its products to consumers who are very trend-conscious. Outside counsel that invests the time and energy to learn about the company's business and its operations becomes more valuable as a result. The department also values outside counsel's efforts to inform the department of retail industry trends and introduce its staff to retail industry peers.

The company has begun to move away from the hourly rate for its outside legal service providers and explore alternative fee arrangements. For example, the law department recently issued an RFP for its outside intellectual property work, seeking a flat fee for

portions of that work. Other tools used by the company to manage fees include the use of billing guidelines and more detailed bill reviews.

The department recently implemented a matter-management system from Serengeti, which is expected to help it gauge the positive impact of its value-related efforts. The department anticipates creating some measurements for how well the department meets its performance objectives, using the data collected by that system. Two areas the department anticipates using to gauge its impact are turnaround time and response time.

The familiarity of the retailer's in-house counsel with the company's culture results from day-to-day interactions between the interviewee and corporate management and other company employees. That familiarity enables counsel to better assess law-related risk in light of the business's operations and its tolerance for such risk. Without the opportunity to learn the firm's appetite for risk in its business dealings and the legal aspects of those dealings, in-house counsel would be handicapped in counseling the company on achieving its business goals most effectively.

Outside counsel also must understand the company's culture and the business environment within which it operates. The retail industry – particularly the segment occupied by this company – has an impact on how its members operate and interact. The more counsel understands that, the more ably they can represent the company.

**Points to remember:**

1. Look for counsel who understand more than the legal issues, but also appreciate the corporate culture and how that culture might affect how legal issues are perceived by corporate management.
2. The values of the company should be well understood by the in-house and outside attorneys and those values should be reflected in the management of the legal issues that the company encounters.



## B. Case Study 7 - Understanding How the Client Works and Thinks Can Increase the Value of In-house Counsel

The interviewee for this case study is General Counsel for the Americas division of a manufacturer of industrial equipment. The department for the entire, worldwide company comprises six lawyers and several other staff members, several of whom are located overseas. The professional staff for the Americas division is comprised of two lawyers and one paralegal.

The work of the law department globally encompasses a range of issues and types of matter. The lawyers in the Americas division focus on the company's core business operations in North and South America, with a heavy dose of contract-related work, distribution, and legal counseling, and some employment-related matters seasoning the mix. Tax-related legal work and product-liability representation are handled on a global basis from another office.

At least partially due to the small size of the department and the size of its workload, the lawyers have not focused on the development of a formal definition of the "value" of the legal services they provide. The company qualifies as an ISO9000 organization, though, which requires a focus on efficiency and consistency of operation, including great attention to accurate and accountable process measurements, the preparation of quarterly reports, adherence to budget, and reduction of turnaround time for all projects. Consequently, the law department places those considerations high on its list of client-service standards. These considerations therefore comprise, to some degree at least, components of the department's conceptualization of its value to the company.

With respect to its internal law-related resources, the law department developed a very user-friendly intranet site for its clients, which contains much information to assist those clients in performing their jobs more successfully. For example, the department develops templates for law-related aspects of the business operation that incorporate the lawyers' risk assessments of the company's business dealings, which the internal clients can access and apply. Training materials related to legal issues and compliance also appear on that intranet site, which is well used. The business professionals in the field appreciate the templates and other information that the law department has made available to them on the intranet site. Providing tools and information that clients can utilize directly permits efficient and timely legal assistance and support, even with the challenges of having a small staff of lawyers.

With respect to outside legal service, the in-house lawyers have centralized the use of outside service providers in order to manage the use of those external resources more effectively. This step led to a reduction of approximately 60% in the outside legal spend of the division (not including unanticipated litigation).

By identifying standardized information relevant to legal issues and making that information available to its internal clients via the intranet site, the law department has increased its value to the company considerably by simplifying the jobs of those clients.

For example, the in-house lawyers develop a series of frequently asked questions (FAQs), derived from inquiries it has often received, which the department posted on its intranet site. It augments the list as new inquiries come in and the lawyers identify other areas in which more information could enable the clients to work more effectively, both with less direct law department involvement and without greater risk.

As part of its elemental in-house practice, the law department ensures that its lawyers understand the company's business. The law department monitors successful outcomes of business initiatives in order to be able to recognize those factors that help effect a successful resolution. By staying on top of developments within its industry, the lawyers are able to identify risk factors in the business operation and counsel the clients more effectively with respect to those risk areas.

To measure the positive effect of its activities on behalf of the company, the law department monitors its success in adhering to budgets for its matters and its turnaround time for projects. Responsiveness to the needs of the business units represents a high-value aspect of legal service for the department and its clients.

The value of the law department for this manufacturing company, like that of the retailer discussed in Case Study 6 above, hinges to a large degree on the in-house lawyers' familiarity with the company – in this case an ISO9000-qualified organization. That status signifies the firm's familiarity and comfort with standardized procedures and efficiency. The law department has incorporated that approach into its method of practice, utilizing efficiency-focused techniques not only to enhance its own efficiency, but also to demonstrate to its clients that it speaks their language. This effort enhances the clients' identification of the law department as a valuable resource for the operation and one that understands their needs very well.

The law department's use of such techniques enters into its relationships with outside counsel. Centralizing the selection and management of external resources enables the in-house lawyers to extend the reach of their practices on the company's behalf. Outside counsel who can understand and appreciate this client's dedication to such techniques will be far better able to represent the company in the manner it prefers.

**Points to remember:**

1. Communicate in the same language and using the same tools and techniques as the internal clients.
2. Integrate those techniques into the working relationship with outside counsel.

## C. Case Study 8 - Working to Ensure that the Client Identifies Value in the Law Department's Function

The interviewee for this case study is the second lawyer in the law department of a company that markets services to consumers. In addition to two lawyers, the law department includes two contract professionals (one an administrative position) and one paralegal who handles many tasks related to litigation. The work of the department includes litigation and disputes involving current and former employees, intellectual property litigation related to its franchise arrangements, copyright and trademark matters, and a volume of “legacy” litigation related to a consumer service that the company no longer offers.

The interviewee supports the company’s human relations department and handles all employment-related matters before they enter litigation. The interviewee also handles technology contracts and agreements with vendors and merchants.

The company is owned by a private equity firm. After the general counsel began an effort to set forth more crisply the “value proposition” of the law department, the general counsel’s reporting relationship changed, resulting in different executives overseeing the department. With the new structure, the effort to set out the value-proposition case assumed a greater significance, compounded by the fact that the entire company is undergoing considerable change as it adjusts to and incorporates digital marketing in its business operations. This change accentuates the need for a nimble and responsive law department and the importance of the executives understanding the ways in which the law department contributes to achieving the company’s business goals.

The law department identified a need to educate more completely all personnel about its role in the company. By establishing a firm base of understanding and, thereby, support among its internal clients, the department expects to secure greater stature with the company’s owners.

The law department had acquired a reputation as the “department of no” and it is working to change that reputation. Due to the perceived need for greater speed of business (at least in part because of the greater prominence of digital marketing), the department must stress responsiveness in its operations. Internal clients would prefer to get answers from the law department without having to interact at any length with the lawyers.

In order to overcome this resistance to utilizing the law department’s service, the in-house personnel have undertaken to educate the business personnel about the significance of the legal issues and the benefit of securing advice and counsel earlier in their business dealings. This is especially important in light of the changes underway in the business itself. The in-house lawyers work to get the company’s decision makers to understand the legal risks inherent in their business activities and to take responsibility for the law-related effects of their decisions once the in-house lawyers have informed them of the legal aspects. By leveraging positive experiences that the business professionals have in dealing

with the in-house lawyers and other personnel in the law department, the department works to establish firm support for its role.

Accordingly, the department's development of its value proposition is a work in progress. Using surveys of its internal clients, the department is working to identify useful measures of the positive impact of its efforts.

This small law department realized that its support within the company is directly related to how well the other personnel relate to the in-house lawyers and how much those other employees believe that they profit from the activities of those lawyers and from the relationship between the law department and the business operations. Accordingly, the law department increased its outreach to the other employees through education about the legal issues attendant to the business. Unless the company's employees believe that the existence of the law department improves their ability to fulfill their job-related responsibilities more capably, the law department will be perceived as distant from the business operation and, therefore, less valuable. If the perceived value declines very much, the support for the law department could also recede to levels too low to support its continued existence in the organization. Establishing the value in the eyes of its internal clients is critical to this department and to any law department.

The interviewee believes that connecting the clients' desire for responsiveness and the education of those clients on the nature of the company's legal issues should lead to a better mutual understanding between lawyers and clients. The clients should then appreciate the need for some deliberation by the lawyers regarding business issues and understand the risks that can ensue from taking too many shortcuts in that regard. This, in turn, should solidify the department's role in the business operations.

**Points to remember:**

1. Support for the law department increases to the extent internal clients identify with and relate to the in-house attorneys and to the degree that those clients believe they benefit from the work of the attorneys.
2. Outreach to clients through education and similar means improves client-counsel relationships and support.

## D. Case Study 9 - Making the Law Department Instrumental in Achieving Business Goals

Sheri Fanaroff serves as General Counsel of Columbia Association, a nonprofit that operates programs, events, and recreational and community facilities for the planned community of Columbia, Maryland. The community is home to 100,000 residents and serves the employees of thousands of businesses. The association funds its operations through fees and assessments on residential and commercial properties.

With one legal assistant, Ms. Fanaroff provides legal counsel to the association and to its board, officers, and other employees. Legal issues arise in the context of a wide range of subject areas, including employment law, nonprofit law, litigation and dispute management, and contracts.

With a relatively small budget for outside legal services, the organization has limited leverage with which to secure lower rates or better terms. Instead, Ms. Fanaroff, in addition to seeking reductions to reflect the association's nonprofit nature, has taken several steps internally to better manage the purchase of legal services. She centralized the retention of outside service providers under her authority. Previously, non-lawyer employees of the association often initiated the retention of outside counsel, but now Ms. Fanaroff can impose consistent standards regarding quality, reporting, and other issues, as well as consider possible alternative fee arrangements.

Ms. Fanaroff has become involved in new work teams and task forces set up within the association to address specific issues. As a member, she has input and can identify legal issues or concerns early enough that they can be addressed as the project proceeds. While she often becomes a less-active member of such groups between projects, she retains the opportunity to get involved if issues of concern arise.

One area in which Ms. Fanaroff has taken a much more proactive role relates to the association's contract-initiation and contract-management processes. Prior to her involvement in those areas, the association on occasion discovered that its files contained expired agreements with third parties, which adversely affected its ability to enforce terms that it had negotiated in those agreements (such as rent), which were necessary to operate its facilities satisfactorily. When she had identified such issues, Ms. Fanaroff presented her proposed remedy – greater prospective involvement by her and her staff – to senior management of the association during a regular weekly meeting. She explained the issues that had come to the fore, the purpose of centralized contract management, and the benefits that the association would enjoy. She also sought input and ideas from the managers. Having established the need for and the benefits of her proposal, Ms. Fanaroff received the authority needed to put it in motion.

The process includes the submission of proposed contracts to her for review and a tickler system to ensure that deadlines and other requirements within negotiated agreements are satisfied on a timely basis. In the year or so since her proposal was adopted, the association has enjoyed improved enforceability of its agreements with other parties,

representing a significant improvement and benefit to the organization. By discussing the proposal with senior management at an early stage, Ms. Fanaroff was able to address some skepticism that she encountered in implementing the proposal.

Though she has only begun to explore possible AFAs for the association, Ms. Fanaroff has negotiated some project-based fees for limited engagements. The association has also negotiated a quasi-contingency fee for several matters involving easements.

Ms. Fanaroff has used requests for proposals for legal services in the association's selection-and-retention efforts. The technique enables her to set forth clearly and consistently the association's and her expectations for outside counsel and negotiate arrangements reflective of those expectations.

Ms. Fanaroff, like all members of the SLD Committee, recognized the need to apply her abilities and those of her staff as effectively as possible to the greatest effect. In order to maximize her department's impact, she identified one area in particular in which its efforts would result in demonstrable, concrete benefits for the Columbia Association. Having identified instances in which the association's contracts were deficient and therefore unenforceable (at least, in their original format and consistent with the deals that the association had thought it had entered into), she determined to improve the contracting process and the contracts themselves. The association benefited from an increased revenue stream from transactions.

Ms. Fanaroff identified the area of focus after she became more involved in the decision-making process of the organization. The greater familiarity that she gained enabled her to determine how the law department could have the most positive impact and establish a firmer foundation of support within the organization.

**Points to remember:**

1. Identify ways in which the law department's impact will be seen in demonstrable, concrete ways.
2. Listen for opportunities to provide direct, meaningful benefit to internal clients in their business-development efforts.
3. By establishing firm priorities among its responsibilities, projects and assignments, a law department can better maintain progress on those subjects that represent the highest-value strategic initiatives of the company.

## V. What “Value” Does a Client Realize From the Efforts of External Service Providers?

As stated above, outside lawyers and other service providers offer a different value proposition than in-house lawyers do. That value proposition derives to a large extent from the strategic strengths of those external resources. Taking full advantage of that value proposition, of course, lies at the heart of managing those resources to highest value.

This requires understanding several things well. First, the in-house lawyers must understand the work necessary to achieve the company’s business goals. That understanding must be as complete and detailed as reasonably possible. Second, the in-house lawyers must be familiar with the capabilities and strengths of the outside service providers that the company has used and will consider using. Matching the capabilities to the need in a particularized fashion yields the highest return on the company’s “investment” in those external resources.<sup>7</sup>

### A. Case Study 10 - Strategy Development is an Important Component of Successful Management of Matters

At the time of this interview, Steve Jackman was the Vice President and Corporate Counsel of Sanmina-SCI Corporation in San Jose, California. The law department of that company includes seven lawyers. The legal work is varied and all of the lawyers engage outside counsel, though Mr. Jackman’s work alone accounts for the bulk of outside counsel’s billings.

The department has begun to implement alternative fee arrangements for various matters. Though it has not yet agreed to a flat fee for an entire matter, it has negotiated fixed fees for phases of matters. For example, the company paid a fixed fee for the preparation of a complaint and necessary attachments. In one matter, the company agreed to pay a reduced hourly rate, with a bonus due for a recovery above an agreed-upon amount, in a case in which it was plaintiff. In another immaterial matter that the company wanted to contest but did not want to spend a significant amount of money to do so, the company presented the law firm with a budget, and asked the law firm how it would run the case to stay within the budget. Mr. Jackman and the firm agreed to take fewer depositions and limit discovery, and to rely on other ways to present evidence. He’s presently considering a flat fee for an international mergers-and-acquisitions deal.

The department developed billing guidelines for the company’s outside lawyers. In addition, and perhaps more effectively, it insists on budgets for larger, significant matters. The in-house lawyers use the agreed-upon budgets to monitor progress in the associated matters. The budgeting virtually eliminates surprises in the firms’ invoices because it enables the in-house lawyers to keep on top of developments in the matters. It also helps the department understand what efforts are being expended on the company’s behalf, on a more current basis than would be possible with only after-the-fact invoices available.

Mr. Jackman acts in a “triage” capacity much of the time, reviewing new matters and determining how each should be managed and handled. Which require routine treatment? Which represent minor risks? Which are likely to go to full-blown litigation? He takes steps to actively understand the level of complexity or significance (and risk to the company) of the issues in each matter. He can then assign it properly and devote the appropriate level of oversight to it. He spends time gathering facts and conducting research prior to engaging counsel, and presents the retained lawyers with his overview of a case based on that investigation and research.

Mr. Jackman heavily manages significant customer-related matters. Particularly in those matters, he seeks institutional expertise in a law firm. He trains the company’s law firms to use their internal networks to collect and apply on the company’s behalf their institutional knowledge.

He defines value as what the client (i.e., Sanmina-SCI Corporation in his case) is trying to achieve. For example, a dispute related to a human-resources issue may represent a small risk in terms of potential claim, but the issue may transcend the individual’s claim. In such a situation, Steve addresses the issues that matter to the company and runs the case using a budget as a management tool.

When engaging an outside firm to handle a new matter of any significance, Mr. Jackman expects a game plan and strategy from the outside lawyers. He will gladly pay for time spent effectively developing the strategy for the case, but doesn’t like paying for time that does not add value to the company’s legal position. In his view, the company does not always need, and usually does not want, memoranda that explain an issue in great detail when a short discussion and action will deliver far greater value by progressing the matter significantly.

Prior to four or five years ago, the department focused more on hourly rate discounts and invoice markdowns as a means of increasing value. Since that time, by applying the above precepts, the department has realized reductions of approximately 30 percent in the company’s outside counsel spend. The department has not yet developed other, more directed metrics to demonstrate the increased value it has realized through these approaches.

Mr. Jackman focuses on strategy when dealing with outside counsel. Time spent developing strategy for a case or a transaction likely reduces the amount of time later spent on implementing that strategy. Moreover, a well-developed strategy will conform more fully with the client’s needs and expectations. Discussions with outside counsel about strategy certainly lead to greater agreement between Mr. Jackman and outside counsel about the company’s needs, expectations and goals, and about how the legal service can support and help achieve those goals.

The greater familiarity that Mr. Jackman possesses on account of his in-house position enables him to allocate resources most effectively for the benefit of the company. His demand for outside counsel to think strategically places a premium on those outside lawyers’ ability to acutely understand the company. This theme has emerged from several of the case studies.



**Points to remember:**

1. Developing a strategy for handling a matter can reap dividends in the form of cost savings and improved management of that matter.
2. Understanding the business imperatives of the client's needs is important for developing an effective strategy and represents a critical characteristic of value-adding counsel.

## B. Case Study II - Cost Sharing Can Yield Benefits for Both Parties in a Client/Outside Counsel Relationship

William Gilbride is a partner at Abbott Nicholson PC, a full-service, Detroit-based law firm with more than twenty attorneys. Much of its business practice relates to the automotive industry, especially automobile dealerships. Mr. Gilbride's practice centers around dispute resolution. Many of the firm's clients have no in-house legal staff, so the firm has taken a businesslike approach to its representation in order to deliver as effective and value-focused service as possible. The firm often serves as "outside general counsel" for clients that have no internal staff to handle legal matters.

Realizing that its clients need a results-oriented approach, the firm's lawyers have worked to develop an approach to the fee structure that does not reward additional time alone. The firm endeavors to avoid the types of institutional pressures and practices that can undermine easily the desire to serve a client efficiently, such as billable-hour requirements for its lawyers. The challenges of designing an appropriate arrangement even when uncertain about significant aspects of a client's business and the inertia among clients against embracing new approaches have slowed progress in that regard, despite the firm's interest in entering into more such fee arrangements. The firm has handled transactions on a fixed-fee basis and even worked on litigation on a fee-per-phase approach with fixed and not-to-exceed fees for particular phases of those litigated matters.

The firm did work with one client that has a small law department five or six years ago to address that client's legal-service needs in a manner that delivered greater value to the client and, in so doing, improved its own service to that and other clients. That client needed to comply with the International Traffic in Arms Regulations issued by the United States Department of State (ITAR) in order to conduct its business legally and without compliance-related concerns. (Those regulations control the export and import of defense-related arms and services that appear on the United States Munitions List.) Neither the firm nor the client had significant expertise on its staff in respect of that area of law, so the firm proposed to the client that they jointly underwrite additional specialized training in that area for one of the firm's associates by splitting evenly between them the out-of-pocket costs of that training. The client, which had considered hiring an attorney on staff to focus specifically on that practice, agreed to the firm's proposal and avoided that "capital expense." After the lawyer attended ITAR-related training, the firm also handled an ITAR-related project for that client for a fixed fee in light of their collaborative solution to the client's need. That project entailed reviewing and amending many contracts to ensure compliance with ITAR.

While Mr. Gilbride encountered some skepticism within the firm to that proposed arrangement with the client due to the not-inconsiderable out-of-pocket expense that the firm would incur with no assurance of increased revenue to offset it, he was able to convince the firm to undertake the arrangement. Not only did the proposal offer considerable potential additional business (in Mr. Gilbride's opinion), but it also represented a considerable investment in the relationship with that client, which he considered an important signal to the client. The firm cemented its relationship with that

client considerably by assuming that responsibility, which has led to increased business with that client as the client's revenues have increased several fold due to its improved performance under ITAR (among other factors).

The critical factor to the success of that arrangement and the other alternative, value-based fees into which the firm has entered, in Mr. Gilbride's view, is the existence of close, trusting relationship with the client. That relationship enables both the firm and the client to take a long-term view of their arrangement with the expectation that they will be able to overcome any short-term challenges cooperatively and collaboratively. In addition, though the firm's arrangement with that client represented a "one off" situation for that client, the expertise that the firm developed, in collaboration with that client, in respect of ITAR-related issues has become a considerable strength. As the automotive industry went through contraction, many of its suppliers focused more and more on areas beyond the automotive sector in which they could apply their engineering and manufacturing talents, such as the defense industry. In doing so, however,, they encountered ITAR-related compliance concerns with which they were not familiar. As a result, some of those companies began to avail themselves of Abbott Nicholson's expertise in that area and the firm has secured several additional clients.

The client's dilemma presented an opportunity for both the client and Mr. Gilbride's firm. The client's need for expertise not then possessed by any of the firm's lawyers represented an opportunity to augment the firm's capability while addressing the client's concerns. Only by virtue of the trust that already existed between the firm and the client could they take the steps necessary to address that need collaboratively. By sharing with the firm the costs of the additional training for one of the firm's lawyers, the client gained considerable value. The firm's willingness to complete the ITAR-related compliance project for a fixed fee was dependent on that relationship to justify the expense that the firm shouldered.

**Points to remember:**

1. Successful collaboration may require both client and counsel to bear some cost or risk in order to realize its benefits.
2. Investment in a successful, working relationship can pay dividends, for either party, beyond the scope of that relationship alone.
3. Cost-sharing for mutual reward may depend upon the existence of a trusting relationship, as each party must rely on the other parties' good faith to ensure that neither party is disadvantaged.

## C. Case Study 12 - Outside Professionals Must View the Work Through the Client's Eyes

As a sole in-house lawyer, who serves as the general counsel of a well-recognized organization, this interviewee looks for outside counsel that operate in a cost-effective and efficient manner. In particular, this in-house lawyer evaluates the speed with which the outside counsel resolve matters, to determine if they do so quickly and at a reasonable cost. When working with outside lawyers, this general counsel believes you must “push, push, push.”

The company had used one full-service firm and a few others for years. It had paid too much, in its view, for that legal service, particularly with respect to lower-risk matters, so the general counsel determined to pursue a different approach. After some investigation, the company retained a greater number of firms, but firms that were more specialized than those that had represented the company. The roster now includes some very small firms (even a few sole practitioners), each of which handles specific types of work. Even with more firms handling the work, the management burden on the general counsel is not appreciably greater, since the company had previously dealt with and managed multiple lawyers at one firm. Thus, the management burden in dealing with different lawyers in more, but smaller, firms is about the same as it had been before.

In any substantial matter, the general counsel asks for a budget and associated plan. The lawyers get involved earlier in disputes than had been the case previously. In one instance, a lawsuit was filed against the company months after the incident in question. Because the outside lawyers had already conducted their investigation and reviewed the issues, the company was well prepared and able to present a strong argument with a good chance of success.

This company has been using alternative fee arrangements for several years. In the general counsel's view, the billable hour promotes and rewards inefficiency, which is the opposite of what the company needs its counsel to do. One law firm that has represented the company for approximately seven years handles all worker compensation matters for a flat aggregate fee paid at the beginning of the year; at the end of the year, the firm and the general counsel review the files handled during the year and implement a “true up” to ensure that the firm is fairly compensated and that the company is fairly billed for the work completed on its behalf. The lengthy relationship between the company and the law firm allows them to trust each other during the year as well as in the “true up” to treat each other fairly. That arrangement has persisted for approximately five years.

Most of the legal work for the company is relatively routine. Rather than micro-manage that work, the general counsel reduced the number of law firms to which the routine work was assigned. With more work for each of them, the firms are able to become familiar with the company's work, its preferred posture relative to the legal issues pertinent to that work, and the general counsel's style of representation. They need less oversight on a day-to-day basis. In addition, with fewer firms to work with, the general counsel need not

continuously or repetitively re-educate firms about those issues, thus freeing the general counsel's time for more strategic pursuits on behalf of the company.

To introduce the style of management described above, the general counsel found firms that were interested in playing a part, rather than devoting energy and time to bringing reluctant firms around to this approach. The full-service firm that the company had used for some work was based elsewhere; it recognized the company's need for a local contact, so its participation dwindled and then disappeared. Overall, the company's expenditures for outside legal service have dropped noticeably. This reduction serves as the general counsel's best measure of the effectiveness of the approach.

This general counsel decided to select outside legal service providers for specific specialties, rather than rely on full-service firms to provide one-stop shops. Matching expertise more carefully with precise need yields a more effective team of lawyers representing the company.

For routine work, the general counsel decided to retain several firms (though fewer than previously) in order to provide each firm with more work than it would have had under the prior arrangement. With that larger volume, each of those firms had sufficient incentive to become much more familiar with the company's work and thereby handle it more capably. This closely resembles techniques employed by several of the interviewees in this InfoPAK, such as Paul Marcela (see Case Study 3).

In addition, the alternative fee arrangement negotiated by this general counsel with a single firm for the company's worker compensation matters works as well as it does because of the relationship between the general counsel and the firm. The trust that has developed enables them to rely on the annual "true up" to ensure that neither of them suffers unduly from the arrangement due to unexpected and unpredictable circumstances.

The approach adopted by this general counsel resembles the role of a quarterback of a football team. Knowing the respective strengths of the other members of the team (*i.e.*, the different outside counsel that the company has engaged), the general counsel determines which outside lawyer to use on each play.<sup>8</sup>

### Points to remember:

1. Assemble the legal team carefully so the strengths of the different members of the team are complementary.
2. Match the expertise and strengths of the team members to the work that each can perform most effectively for the company.
3. Securing the appropriate external legal resources may require approaches that take into account and provide incentives for those external lawyers that represent greater value for them.<sup>9</sup>

## D. Case Study 13 - Proactive Review of Records Management Policies Can Lead to Cost Savings Later

Joseph Carlisle, a former records manager, archivist, and historian and an associate with Johnston Barton Proctor & Rose, LLP in Birmingham, Alabama, represents clients in litigation and records-management issues. The firm offers a full-service practice for the business community, with particular focus on business law, banking, regulation, health care, medical malpractice, personal injury, product liability, securities, fraud, and white-collar defense.

The firm continually strives to improve the quality of its service for clients. Though the firm's normal fee arrangements are based on its standard hourly rates, it also offers clients a variety of alternative fee arrangements, including flat or fixed fees, contingencies, a hybrid of a contingency and an hourly-rate-based fee, and others. In addition, it attempts to devise service models that yield greater value for its clients. Mr. Carlisle estimates that 5 to 10 percent of the firm's billings are in the form of various AFAs. While the firm responds to requests from clients to consider AFAs, it sometimes suggests them proactively.

The area of records management represents one example of an approach to service and an area, Mr. Carlisle notes, in which a company might realize greater potential value by applying a more deliberate and thoughtful methodology to its situation. In his experience, many mid-sized companies have sophisticated networks and data-storage systems, but their procedures and policies for creating and managing the data have not been very well designed or implemented, often due to resource constraints.

Without charge, Mr. Carlisle can review a client's data-management systems, policies, and procedures, if that client is receptive. Working with the client's personnel, he can then advise about appropriate revisions to those policies or procedures, including those dealing with litigation holds. Undertaking this review when things are quiet allows for more considered and thorough attention to the issues. This will enable the client to respond much more effectively and confidently if and when issues arise, in litigation or otherwise, that relate to its records or data. Such preparation will save money for the company when it needs to respond to discovery demands or a government inquiry, or otherwise locate information on its system or in its records. Though real, the precise savings are hard to quantify. One client for which Mr. Carlisle performed the preparatory work, though, saved two or three times the amount that it might have paid for the six hours Mr. Carlisle spent reviewing its policies and procedures and assisting its personnel to effect some improvements in both.

Many clients have expressed a desire for greater budget or financial certainty in their legal bills. To meet that desire, the firm offers clients an arrangement whereby they pay a flat retainer to the firm each month for all work that meets specific, agreed-upon parameters. Such an arrangement reduces the client's concern regarding cost when it contemplates a need for advice within the scope of the retainer arrangement. This arrangement entitles the client to a set amount of the time of the firm's lawyers. If in a particular month the

client uses less time, that unused time will be available in future months within the term of the fee arrangement.

Such an arrangement strengthens the relationship between the firm and a client. The client realizes greater certainty and predictability of its legal fees and a more even payment, while the firm enjoys a higher client-retention rate. When some clients have expressed concern that they might pay too much over the term of such an arrangement, the firm allows them to try it for a short time, such as six months, to see if the experience meets their expectations or achieves their goals.

Mr. Carlisle, realizing that proactive measures can yield significant, ongoing benefits, works with clients to improve their records-management policies and procedures at times when demands for records production may be minimal or nonexistent. The improvements they develop collaboratively result in less turmoil and lower costs when discovery demands arrive (as they always do in litigation). The improvements in records management also provide company employees with easier access to the records retained by the company outside the litigation context, thus improving their ability to perform their tasks on a day-to-day basis. Mr. Carlisle's willingness to immerse himself in a client's records-management policies and procedures represents the kind of familiarity with a client that several of the in-house interviewees have cited as important to realizing greater value.

The alternative fee arrangement that Mr. Carlisle describes benefits clients by giving them a greater ability to budget legal expenses. Eliminating the anxiety-producing need for the firm to prepare, and the client to review, time-based invoices also enables the parties to focus on the work and their relationship more fully, benefiting both.

**Points to remember:**

1. Records-management policies and procedures can affect - positively or negatively - many aspects of a company's day-to-day affairs, including litigation. Proactive attention to such matters can represent a very cost-effective use of resources.
2. Collaboration between the client and its external experts in that area will establish a basis for proper handling of information. It can also reduce the volume and cost of document production in later disputes.

## E. Case Study 14 - Counsel Needs a Strategic Perspective on a Company's Operations to Deliver Value

Steve Gennett is a partner in the Charlotte, North Carolina, firm of Johnston, Allison & Hord. The firm, which has approximately 45 lawyers, will soon celebrate its 100th anniversary, having grown organically rather than accepting multiple invitations to become the local office of a national or regional law firm.

Mr. Gennett attributes the firm's and his success to knowing the clients well and recognizing the firm's attraction. The latter is exemplified by the firm's decision to forgo public securities work as outside its core competencies. The firm has worked for many years with local, privately owned companies and developed a deep understanding of those clients' businesses, needs, and approaches to many issues, and even their "blind spots." Client service occupies a central position in the firm's role on its clients' behalf.

The highest value, in terms of legal service, comes from a lawyer (whether in-house or outside) who understands the company's business. For both in-house and outside lawyers, a healthy working relationship with the business professionals is essential to achieving the best result at an acceptable cost and thereby to yield the highest value. A collegial, cooperative, and collaborative approach between counsel and client is necessary so that each supports the other in pursuit of the client's goals. Any dysfunction in the client relationship will lead to higher cost and possibly negative consequences in other ways.

Outside counsel must understand the client's business and industry well enough to have in mind the big, strategic picture of how the legal work relates to the business goals. Mr. Gennett tries to ensure that the in-house and outside lawyers understand their own and the other's responsibilities vis-a-vis various elements of the work necessary to achieve the goals. The objective is to avoid unnecessary duplication of effort and ensure that someone is accountable for everything that must be done to complete the assignment.

Part of a good relationship consists of constant communication. At the commencement of an assignment, client and counsel should discuss the client's goals for the matter, how it can achieve those goals most expeditiously, the responsibilities of each member of the legal team, and each member's authority over various issues, among other things. Mr. Gennett believes that counsel must listen carefully to the client's description of the goals, actively respond to the client's statements and probe for the client's views on various possible approaches. He tries to make certain that he has asked all the right questions of the client and that he identifies solutions that are not only legal, but practical. So long as the client's preferred approach represents a legal path and the client has been informed of the risks of that path, if any, the decision remains with the client. During the assignment, communication continues so the client understands the progress toward its goals and can participate in strategic discussions about any circumstances that arise over the course of the matter.



The firm has worked for clients on the basis of alternative fee arrangements. On occasion, the firm has begun an assignment on an hourly-rate arrangement and, after a period of time, proposed an alternative fee arrangement based on experiential data developed in that early portion of the matter. The firm has also worked under an ongoing retainer arrangement after developing well-defined parameters for the work, with extraordinary work outside that scope budgeted on a matter-by-matter basis. In addition, the firm has worked on project-based or fixed fees for multiple matters for its clients. For real estate developers, the firm has worked to systematize acquisition-related work for commercial and residential tracts so that the work can be completed more expeditiously and consistently.

Steve finds that the communication with the client – at the commencement of the assignment and during its life – enables the firm and the client to understand each other well and avoid unnecessary surprises that could adversely affect the cost. Clients want counsel who are willing to be accountable for their work, even on cost. This requires that counsel fully appreciate the client's needs and desires.

Mr. Gennett and his firm recognize that understanding a client's business is critical to delivering high-value legal service. Accordingly, they focus on clients' goals and familiarize themselves with the clients' businesses and industries sufficiently so that they can anticipate issues and perspectives even without specific direction from those clients. This strategic understanding is what several in-house interviewees identified as valuable traits of outside counsel. See, for example, Mr. Jackman's interview (Case Study 10), in which he expressed willingness to pay more (on a time basis) for good strategic thinking than for routine tactical legal work.

Communication between client and counsel represents a critical component of any system that will deliver more value to the client. Recognizing this need for communication, ACC developed as an early resource for the ACC Value Challenge the "Meet. Talk. Act" Paradigm, which now serves as the central first step in implementing the ACC Value Challenge.<sup>10</sup> Whether in the context of an alternative fee arrangement as described by Mr. Gennett or as the central element of a longstanding, mutually beneficial relationship, communication enables the client and its counsel to stay on the same page throughout the engagement, to discuss issues such as value, and to identify and remedy any problems that arise.<sup>11</sup>

### **Points to remember:**

1. Outside counsel who understands the client's business and its industry and who takes a strategic view of the client's needs is the most effective partner.
2. A collegial, cooperative and collaborative relationship between in-house and outside counsel requires considerable, and continuing, communication between them.
3. The lawyers' effort must be practical as well as legal.

## F. Case Study 15 - Look at Risk on an Enterprise-wide Basis and Measure Legal Costs on the Same Basis

Luc Marcoux is the General Counsel of Day & Ross Inc., a trucking company based in New Brunswick, Canada. He is the sole in-house lawyer for that company and enjoys the assistance of two legal assistants. The changing nature of the trucking industry requires that Day & Ross constantly reinvent itself to be more efficient and more responsive to the needs and expectations of its shipper clients. This, in turn, pressures the law department to constantly identify means of serving the company's legal needs more effectively and efficiently.

The legal work of the department falls into three general categories: litigation (accidents involving the company's vehicles, employment-related disputes, and collections); corporate/commercial work (contracts, leasing, and acquisitions); and miscellaneous (terminations, competition law policies, code of conduct-related issues, and intellectual property matters). Due to the pressure to minimize cost, the department utilizes outside legal resources most for litigation, though Mr. Marcoux handles some of that himself.

Mr. Marcoux has not yet implemented alternative fee arrangements or moved away from the hourly rate in a significant way. However, working with the law department of Day & Ross's parent company, McCain Foods Limited, he has accumulated historical data on spending that he expects will enable him to consider AFAs more fully. So far, he has tried to be more creative by designing a fixed fee for an acquisition of a project; he also has sought a freeze on fees or discounts from law firms and asked for a rebate at year-end based on the company's annual fees to a firm.

The law department of the parent company has developed a global legal risk report, the scope of which includes Day & Ross, that covers all disputes and litigation worldwide. Mr. Marcoux expects to have all outside firms report on the matters they handle for the company in a format consistent with that in the report. Eventually, Mr. Marcoux anticipates that outside firms will be able to enter information directly in the report, but for the immediate future they likely will have to provide data to the law department, which will then input that information. The comprehensive report will provide Mr. Marcoux and the lawyers in the parent company's department better insights into causes of legal issues and, consequently, cost.

The biggest challenge for Mr. Marcoux as a sole in-house practitioner is to secure commonsense legal advice from outside counsel. Among the most effective cost-control techniques Mr. Marcoux has found is to instruct his outside counsel that long opinions or memoranda rarely serve his needs well compared to the value he realizes from succinct, direct advice. He typically finds such assistance from mid-size firms, rather than national or global firms. At the same time, Mr. Marcoux finds it challenging to ensure that firms do not try to go beyond their own limitations.

The best measure of value he has found lies in the total cost of legal service for the company, especially when combined with the cost to the parent company. A

comprehensive fee survey for the companies provides a baseline from which they will be able to measure their progress. Those data also will enable the departments to consider the possible benefit of adding internal resources to provide more effective and cost-efficient legal advice and counseling.

Mr. Marcoux, like many of his compatriots, looks for outside counsel who understand that in-house counsel, while requiring quality legal service, must also satisfy business's demand for speed and practicality. This goal is represented by Mr. Marcoux's expressed need for "commonsense legal advice." While his search for outside counsel who understand those requirements is still a work in progress, he has made some gains. Further, by working in tandem with the law department of Day & Ross's parent company, he anticipates making further strides toward his goal. His comment about "firms that do not try to go beyond their own limitations" resonates strongly and consistently with those of others in the field, like Joe Bauer, Al Peters, and Paul Marcela, who have recognized that all lawyers and law firms are not created equal.

These in-house lawyers and their outside firms have varying expertise and capabilities, and the work may require pulling together individuals or firms that complement each other. None may possess all the qualities and capabilities required by the work. That fact substantiates the view that proactive in-house counsel should apply the team-building elements of project management to create the highest-value legal team they can.

**Points to remember:**

1. The law department should collect information and data that provide it as complete and broad a picture of the company's legal affairs as possible.
2. Commonsense legal advice and service should be as direct as possible with minimal extraneous material.
3. By looking at risk (including that represented by potential and actual disputes and litigation) across the enterprise (including, if applicable, parent, subsidiary and sibling organizations), the law department will achieve the most-complete picture possible of where it should apply its efforts to be the most productive for maximum value.<sup>12</sup>

## G. Case Study 16 - When Properly Implemented, Technology Can Enable Lawyers to Increase Value

Leon Steinberg was in private practice for many years. In the early 1990s, he founded Meritas. He left private practice and has since run several successful companies, including one of the first and largest legal process outsourcing companies, Intellevate. In his current and prior roles, Leon has focused on enhancing the value of legal service. In his view, value includes several components: quality, cost, speed, and information.

Approximately eight years ago, Leon cofounded and served as CEO of Intellevate. Intellevate was purchased by CPA Global and is one of the largest legal-process outsourcing entities in the world with approximately 1,000 employees. Intellevate's original mission was to commercialize some of the advanced processes used by the Schwegman Lundberg Woessner (SLW) patent law firm. He took the techniques SLW developed, combined them with inexpensive offshore labor, and used the combination to enable in-house legal departments and law firms to complete some of the less strategic aspects of legal service (i.e., not the counseling) at lower cost and more quickly with greater consistency of service. Intellevate marketed its service to both law department and law firms, proposing flat fees for each item of work. The firm enjoyed greater success with law departments, particularly those that were part of large companies that had greater familiarity with outsourcing in their operations outside the legal sphere.

The measurement of the positive impact of the types of approaches exemplified by Intellevate should include metrics such as:

- turnaround time
- the number of mistakes and corrections necessary
- risk mitigation
- the cost per activity
- success rates (e.g., contested matters)

Intellevate primarily supported patent law, which has areas that are highly repetitive (e.g., docketing, office action responses, and patent proofreading), so it found that the indicia of value (identified above) can be consistently measured within the patent law context.

After the sale of Intellevate, Mr. Steinberg has continued to work in this area. In collaboration again with SLW, he has been actively developing the next generation of automation tools to reduce the human time component in patent prosecution. The results are impressive. The software they are developing reduces the need to utilize labor in India and other foreign locales where labor costs are rising.

Software can reduce the human time needed for much of the repetitive work while achieving greater consistency. Much of what his new company does fits in the category of "preparation automation." By accelerating such processes, with greater consistency, the

organization can allow lawyers more time to provide actual legal judgment and strategic assistance to their clients.

Steinberg cited the following two recent examples of added value:

- **Paralegal team.** His new company is replacing a competitor's outsourced team of 15 (made up of 13 India-based staff and two United States-based quality-control paralegals), with six United States-located staff who rely heavily on process automation. Automation tools allow them to work with a smaller team in the United States. This translates into lower cost, easier communication, and higher quality.
- **Freedom to operate.** His new company recently enabled a law firm to deliver a freedom-to-operate opinion in a crowded patent arena for \$15,000, when it would have cost the customer's client over \$30,000 using conventional practices. Steinberg's company does not do freedom-to-operate reports, but it has an e-bot and staff to gather and structure the relevant information to allow law firms to prepare the reports in a fraction of the time it would otherwise take.
- Mr. Steinberg's company also captures data and information it shares with its customers to provide them with greater insight into their decision-making process. He calls this "analytics." Customers gain value in a variety of contexts including the ability to make better decisions.

Mr. Steinberg has recognized that "value" comprises distinct components, which matter to different clients and in different contexts to disparate degrees. Moreover, he has incorporated into his business's paradigm the concept of specialization. By doing so, he built into his model the "unbundling" concept that underlies the approaches we have seen in several of the case studies.

Mr. Steinberg also applies technology to improve process and lower costs. The software that assembles data for law firms to prepare freedom-to-operate opinions eliminates from lawyers' desks the more tedious aspects of the process. Those tedious aspects require very little time in the automated process. This frees the lawyers to concentrate on the analysis that utilizes their training and expertise. Recognizing the speed- and communication-enhancing capabilities of software can represent the first step in designing a lower-cost, higher-value process.

### Points to remember:

1. Technology can eliminate or render less burdensome the more-mundane tasks in the management and delivery of legal service.
2. Determining methodically where and how to apply technology within a law department's areas of responsibility can improve that department's performance and increase the value that it provides the company.

## H. Case Study 17 - Project Management Techniques Apply Successfully to Legal Matters

Dennis Stryker is General Counsel of Rick Engineering Company. With one legal assistant and a one-person support staff, he provides legal support for this international engineering firm, which operates in countries along the North and South American Pacific Rim and in the far west and southwest of the United States. The company's engineering services relate to roads, sewers, parks, and residential developments.

The legal issues arise in the context of employment-related matters, contracts, financing, and litigation. Mr. Stryker's time is occupied by counseling the company's principals and negotiating with other parties in all of those areas.

Mr. Stryker joined the company over two decades ago after litigation in which the firm was involved led to the decision to create an in-house law department. That litigation related to disputes about construction defects in projects on which the firm had consulted. The relative value of having such a department, rather than relying entirely on outside counsel, appealed to the company's leadership.

Throughout his tenure with the company, Mr. Stryker has worked to control the company's law-related expense. Though the amount of such work has increased during that time, the expense has remained relatively static. Mr. Stryker attributes this to a variety of factors. First, he applies a project-management approach to the work of the department. Due to the nature of its work, Rick Engineering has long applied project-management techniques in its business, so applying them within the context of the law department's activities was entirely consonant with the firm's general approach. Mr. Stryker began applying those techniques in the mid-1990s.

In litigated matters, Mr. Stryker has counsel develop a budget within the first 90 days and review the budget every six months or so for possible updating or revision. He also develops milestones for each litigated matter, another technique he imported from project management.

The hourly rate still predominates as the billing method for the company in litigation. Most of the outside counsel retained in litigation are selected with approval of the firm's insurer (most matters come within the scope of the company's policies for professional-liability coverage). In non-litigated work, Mr. Stryker hopes to move away from the hourly rate.

He encountered some skepticism when he began to apply the techniques outlined above. To overcome such skepticism, he advises finding some individuals who are naturally inclined to respond positively and enlisting them to assist in the "sales" process. A law school classmate practiced in one of the law firms that Rick Engineering used, so Mr. Stryker secured the buy-in of that lawyer, and together they spread the word among the outside lawyers.

Mr. Stryker also developed checklists and standard processes for the law department's work on the company's contracting process. By systematizing that work, he was able to reduce the time needed for each matter and reduce the possibility of overlooking issues that might prove problematic.

Mr. Stryker is continuing to develop the metrics by which to monitor the department's success. As stated above, legal expense has remained relatively flat despite a greater volume. He anticipates looking at things such as the number of open files or matters, where they arise, and how much effort each takes. He also continues to look for opportunities to create checklists to organize efforts more fully.

Mr. Stryker's development of checklists and standard processes parallels steps taken by several other interviewees. As he indicated, his approach reduces the time – and expense – needed to complete each subsequent project in which those checklists and processes apply. Such an approach allows the law department to delegate tasks to appropriate individuals and thus free up the time of the in-house lawyers. Some work might even be completed by business professionals in the company with appropriate direction or guidance from the law department. That approach also reduces the likelihood of inconsistency and error.

It's worth noting that his application of project management techniques comports with the engineering company's use of those techniques in its business as a matter of course. Using an approach within the law department similar to that used by the firm in its business leads to greater coordination between that department and its internal clients. Doing so also leads to greater identification with them as a unified team. This, in turn, increases their appreciation for the law department's efforts on their behalf, as has been noted in several other case studies. This parallels the success reported in Case Study 7.

While Mr. Stryker and some of the other interviewees who have followed similar project management paths work for engineering firms or companies with a strong engineering or mechanical element, the strategy is widely applicable even outside of an engineering context. Most, if not all, law departments could design standard processes that could eliminate duplicative effort, reduce errors, and lower costs, all of which enhance value.

### **Points to remember:**

1. Project management includes, among other exercises, careful planning and staffing of projects, which techniques apply to legal matters, including litigation, very well.
2. The collection of appropriate data and its use to develop appropriate metrics with which to measure success and failure occupy central roles in project management and deserve careful implementation in law department management.
3. Develop standard processes and checklists, which can promote and expedite delegation, thus freeing time of the in-house lawyers. They can then devote that time to higher-value, strategic tasks and projects.

## I. Case Study 18 - Only by Understanding Clients' Views Can Outside Professionals Maximize Their Value

José Alejandro Torres is a partner in Posse, Herrera & Ruiz Abogados in Bogotá, Colombia, which has 72 lawyers, making it one of the top three firms in that country. The firm offers a full range of legal service, including natural resources, mergers and acquisitions, trademark, litigation, tax, finance, and corporate law.

Mr. Torres explained how the firm has sponsored programs for in-house counsel at various International Bar Association meetings to explore how to increase the efficiency and value of legal service for corporate clients. Those meetings and client surveys that the firm has conducted on a consistent basis have enabled it to deliver its service with an eye to how much value it provides. Among the steps it has taken is to ensure that corporate clients have “key account partners,” who have the responsibility of staying in constant communication with the client. The key account partners administer the relationship to better serve the client’s goals, receiving and responding to client concerns and complaints, and, generally, looking at the service provided from the client’s perspective. Any activity that does not add value for the client is not invoiced or is provided at a healthy discount to reflect that fact. The key account partner can discuss anything that concerns the client, in order to cultivate and nurture the relationship by making it one of value.

The key account partners are expected to understand the clients whose relationships they monitor and to become familiar with the concerns of the key individuals at those clients. This allows them to anticipate issues that otherwise might be overlooked or become evident only when they reach a critical point. As a result, the firm tends to have long-term relationships with its clients due to its greater understanding of their needs and desires and the rapport they develop.

While the firm utilizes hourly rates for billing, it also offers alternative fee arrangements to its clients frequently. The hourly rate remains a reference point or benchmark, but the firm tries to assist its clients to control all legal expenses and offers AFAs as a mechanism to do so.

When introducing the key account partner and other value-related approaches, the primary challenge has been the partners’ shortage of time. Lawyers also express reluctance to encounter client-service issues or problems, and the focus on proactively seeking clients’ concerns tested the firm’s resolve. The firm has now institutionalized its client surveys to seek such information more regularly and in a more useful fashion. Those surveys have provided the firm with data that enable it to improve its service to its clients. Those data have sharpened the firm’s appreciation of how its service is regarded and received by its clients. As a result, the firm tries to manage the work of its lawyers to assure that less-critical work is assigned to and performed by less-expensive lawyers. The client survey results allow the key account partners to manage the relationships with clients more effectively and to the greater satisfaction of those clients. Those data also enable the firm to understand the clients better and their needs more fully.



Mr. Torres' firm has recognized the need to follow the client's lead in defining and measuring value. By relying on well-conducted surveys of clients as to how well its service meets their expectations, the firm increases the odds that its service measures up to their standards. The firm's related institutionalization of key account partners and its expectation that those key account partners will become intimately familiar with the respective clients' concerns mirrors the views of those in-house lawyers cited in other case studies that the most value comes from firms that really understand the clients' businesses and business goals.

Surveying clients for its own purposes, though, would represent only half of the battle. By ensuring that the results of those surveys are fed back into the key account partners' dealings with the clients, the firm can then learn from its mistakes and its successes. Only in that way can surveys such as those really invigorate the client-counsel relationship and enable both to profit from its continuation. This feedback provides specific data points for discussion and leads to greater commonality of views between client and counsel about the value of the legal service.

**Points to remember:**

1. To maximize the value that outside professionals deliver to corporate clients, those professionals must understand their clients' levels of satisfaction regarding the service.
2. Client surveys can enable outside professionals (or in-house professionals, for that matter) to measure the level of client satisfaction or dissatisfaction about the service in order to improve.
3. Using survey data to improve the quality and value of the service "closes the loop" in that regard and represents an effective use of those data.

## J. Case Study 19 - Coordination Among Outside Counsel and Between In-house and Outside Counsel Can Lead to Savings and Greater Value

TI Automotive has four lawyers in its law department, two in the United States and two in the United Kingdom. Raimi Blackerby, one of the two in the United States, is Corporate Counsel and Global Director of Intellectual Property for the company. Her practice focuses on intellectual property issues, though she also handles a variety of other matters.

Ms. Blackerby's view of the value that the legal team provides to the company has evolved along with the intellectual property practice. While cost is a factor in selecting outside counsel, for example, the company must have lawyers who provide high-quality advice and counsel.

With operations in 126 locations in 27 countries, TI Automotive has a great need to coordinate its intellectual property protection efforts. In addition, Ms. Blackerby wanted to identify those law firms that would provide the greatest value to the company in the intellectual property arena.

Accordingly, the company has consolidated the work with one law firm that Ms. Blackerby refers to as the "go to" firm for such matters. Of course, even with one outside firm in such a role, due to the global nature of its business and the need to protect its intellectual property in many jurisdictions, TI Automotive still relies on many patent counsel and related professionals around the world. Ms. Blackerby has developed a network of such firms and local patent-preparation contractors and worked to instill in that group a commitment to utilize TI Automotive's network, rather than the local contractors with whom they might have relationships. This approach has enabled Ms. Blackerby to improve the coordination within TI's network and the firms' willingness and ability to share information about TI Automotive's patents and other intellectual property. Before she created the network of firms, TI Automotive on occasion found its own applications cited as prior art when it filed patent applications, due to lack of communication among its representatives. The number of such instances has declined demonstrably since the network became operational. Firms preparing patent applications on the company's behalf now have readier access to its filing history and they are able to leverage previous filings more completely when considering new applications, thus reducing repetitive work, expense, delay, and confusion.

To manage the company's global network of agents in an era of tight budgets, Ms. Blackerby utilizes online meetings. These enable her to ensure that everyone receives the same message and has access to documents and other information necessary for them to do their jobs in as coordinated a fashion as possible. The firms and patent preparers can share knowledge about TI Automotive's intellectual property portfolio, relevant developments within the industry, and changes in law or regulation.

Consolidating the company's outside counseling work related to its intellectual property has resulted in a partnership with a law firm that understands TI Automotive's business and the context for the company's intellectual property. For example, due to the nature of

the automotive industry, TI Automotive is loathe to sue its customers over IP issues or other matters. Ongoing business relationships hold such value and uncontrolled litigation can destroy that value very easily. The firm understands that alternatives to litigation are far preferred and it therefore pursues litigation-oriented strategies less often and only after careful consideration. The close relationship between TI Automotive and the primary law firm for IP work has enabled the firm to become a strategic partner of the law department, one that shares the company's business goals.

Ms. Blackerby has identified two measures of improvement in the company's legal work. First, as noted above, less often does it encounter claims that its own, previously filed patent applications constitute prior art for purposes of evaluating its current patent applications. Second, the increased institutional knowledge that the outside lawyers possess about TI Automotive's legal work has led to lower expenses. The benefits of the global network that the law department now uses have not manifested themselves as clearly yet, since that network is only about one year old and it remains a work in progress. Early signs, however, suggest that the benefits will include cost savings and better coordination.

TI Automotive's experience demonstrates that careful attention to coordination among the company's lawyers – both between the in-house lawyers and the various outside counsel and among the outside firms who represent the company in similar or related matters – yields considerable benefits and greater value. While establishing such coordination and collaboration may take effort, it's certainly not beyond the reach of any in-house department, small or large. Such coordination and collaboration can lead to greater teamwork, knowledge sharing, and other benefits that represent considerable gains of value by the client company.

Creating a network of outside professionals who share the law department's commitment to cost-effective, quality legal service does not require a large budget. Communication, sometimes in person, and the development of shared views can lead to significant savings and service improvement, both of which represent added value.<sup>13</sup>

#### **Points to remember:**

1. Companies often face similar or related matters in disparate locales.
2. Presenting consistent and coordinated positions in such situations can lead to cost savings (from less need to create position papers, briefs, etc. presenting the company's position from start) and more value (resulting from less opportunity for inconsistent positions to lead to problematic conflicts among matters).
3. A law department is in a particularly good position to identify the opportunities for such coordination and to implement measures to achieve it.

## K. Case Study 20 - Litigation Planning Yields Greater Value

Jeff Grossman is a partner at Stradley Ronon Stevens & Young, LLP, a firm of approximately 200 lawyers in the mid-Atlantic region. It offers a full-service portfolio of practice areas, including litigation, in which Mr. Grossman practices, handling a wide range of commercial litigation and disputes.

Mr. Grossman reports that, though the firm has no formal definition or concept of “value” for its service, it has long inculcated in the firm’s members a client focus that prioritizes efficiency and appropriate cost of service to its clients. This approach historically has resonated with its client base. The subject of value has arisen in discussions with clients organically rather than through a deliberate effort by either the firm or its clients.

In his litigation practice, Mr. Grossman routinely develops a litigation plan collaboratively with the client, beginning early in the engagement. In his view, the more counsel and client communicate regarding how to resolve the dispute that lies at the heart of the court case (including the costs of the effort), the more effectively they can shape and manage the representation.

This is true on both the micro (within the context of a specific case) and the macro (when the representation covers multiple matters or engagements) levels. The firm has undertaken discussions with clients about multiple representations during their periodic relationship reviews. Without such discussions, the representations and the cost of those efforts can easily exceed either party’s expectations, since they have not calibrated their respective views.

One of the keys to cost control lies in the staffing of a matter. The firm has always strived to rely less on leverage than many other firms with which it competes. Mr. Grossman discusses with his litigation clients the staffing of the team for the matter so that the client will not pay for inappropriate individual lawyers’ learning curves or their lack of experience for the tasks assigned them.

This goal has even led the firm to utilize on-demand professionals for projects (including litigation), when appropriate, to avoid creating an ongoing cost structure within the firm unsupportable by its cost-conscious practice. The firm has also hired staff lawyers to handle work that requires lower levels of expertise or less time in practice. In short, the firm takes a “lean” approach to staffing matters, always after careful consideration and with the client’s involvement in shaping the service and process.

Though such a course appears, at first blush, to run counter to the firm’s financial interests by reducing its lawyers’ billings, Mr. Grossman reports that broad support exists within the firm because the lawyers recognize that the firm’s long-term interests must parallel those of its clients in terms of staffing.

The firm has not moved away from the hourly rate in a wholesale fashion, though Mr. Grossman reports increasing interest in AFAs among clients and notes that the firm is amenable to discussing possible alternatives that reduce the reliance on time as a basis for

its billings. Thus, though the firm has not consciously abandoned the hourly rate as a billing paradigm, its prevalence has declined somewhat.

While the firm has not developed precise metrics to demonstrate the cost efficiencies gained by its processes, Mr. Grossman reports that the firm's ongoing discussions with clients reveal satisfaction with cost and quality. Those discussions often take place between members of the firm's management and client representatives, to insulate the clients from having to address issues with their day-to-day contacts in the firm that might be uncomfortable for both sides.

The firm's approach to staffing and planning the conduct of litigation on a client's behalf encompasses several of the most important elements of project planning. By engaging clients in discussions about how to proceed on their behalf and on the staffing of their matters, Mr. Grossman ensures they share not only in the goals of the engagement, but also in the implementation plan. That the firm recognizes the singularity of its interests and those of its clients (certainly as measured on a long-term basis) represents a significant degree of enlightenment on the part of the firm.

The results of the firm's surveys of clients, as Mr. Grossman reports, validates that the firm's approach resonates well. Even without precise metrics regarding client satisfaction, the firm benefits from learning how well its clients value its efforts to control matters for their budgetary benefit, as well as to achieve the substantive goals they pursue.

Collaborative development of a litigation plan and an associated budget leads to greater coordination between in-house and outside counsel. It also creates a mechanism with which both can easily monitor developments in the case and compare those developments to their shared expectations as contained in the plan.<sup>14</sup>

**Points to remember:**

1. A litigation plan – the application of a project management technique to litigation – enables counsel to plan more effectively the selection and deployment of personnel and other resources to present the client's position in court.
2. By close collaboration with the client's in-house legal team, an outside firm can represent that client more cost effectively by utilizing resources within the law department and in other organizations as part of the litigation team.

## L. Case Study 21 - Elements of Value Other Than Cost

Lydia Tallent serves as General Counsel of SC Solutions, Inc., a Silicon Valley company that provides specialized software and engineering services for large design and construction projects. Due to the nature of the projects, the company's products and services create high potential liability for the company.

Ms. Tallent is the sole in-house lawyer and has no support staff. Her portfolio encompasses issues in any or all of the following areas: contracts, insurance, employment, office leases, patents and other intellectual property, immigration, quality assurance, and export control. Some of the company's work is for the Department of Defense, which requires compliance with myriad federal regulations and introduces considerable security-related issues. The company is currently not involved in any litigation.

Though Ms. Tallent has had little opportunity to develop a formal definition or concept of the value of the legal service that she provides and manages on behalf of the company, she has identified the following as some of the qualities of her service that corporate management regards highly: cost (the lower, the better), availability, responsiveness, and trustworthiness.

SC Solutions has not moved away from the billable hour to any significant degree, largely due to the small footprint the company has in the legal profession (in terms of billings). Because cost remains the most significant factor in the view of corporate managers regarding outside legal services, she has sought some fixed-fee quotes for employment matters that are somewhat repetitive or similar. She has also begun to explore pricing work on a piece or phase basis.

In order to realize greater value from the company's legal fees, Ms. Tallent has asked the company's law firms to provide training for the company's management employees on subjects such as intellectual property, immigration matters, and employment issues. The company's patent counsel, for example, delivered an in-depth explanation of the processes for securing patent protection for its products. By providing the company's engineers an opportunity to hear from and to ask questions of patent counsel, Ms. Tallent enabled those employees to understand much better how to best prepare information about a product for use in a patent application. Similarly, she organized a discussion between company employees and outside counsel on the issues related to trade secret protections and how the availability of such protection can be enhanced, or diminished, by their day-to-day actions. This training, provided by law firms without charge, has been going for approximately two years.

When Ms. Tallent first introduced the idea of training on legal issues to corporate managers, some expressed skepticism as to the benefit that they would realize. Many of them preferred that she simply give them the answers they need for their jobs. She understood, though, that given the opportunity to speak directly with outside counsel about the more specific and problematic issues the company encounters on a day-to-day basis, they would take advantage and seek much more particular guidance than she would be able to provide on those specific issues. After the first such session, the

management employees “got it” and appreciated the face time that they had with the outside lawyers who would handle the matters directly. The direct relationships between outside counsel and the managers has reaped dividends for the company through improved communication, more pointed and helpful dialogue between them, and more efficient delivery of the legal service in the context of specific matters.

As a result of the patent training in particular, the company is much more confident and cognizant of the patent protections available for its products and services. Employees think ahead and are more proactive in taking steps that will enhance those protections. Training that employees have received on contract issues has made them better issue spotters. They know what the lawyers will need to complete contracts and to prepare better contracts. The employees have become more informed consumers of the lawyers’ services. All of this leads to better protection for the company and, ultimately, lower legal bills.

Ms. Tallent identifies several components of quality that enter into the overall assessment of the legal service: cost, availability, responsiveness, and trustworthiness. Her efforts to provide training to the company’s employees on the legal issues related to their business conforms to the efforts of other interviewees to integrate legal considerations in the business activities more fully through such training. This effort leads to better-informed clients, more intelligent use of the lawyers’ time and efforts and fewer legal issues that might later constitute problems or hurdles to efficient business activities. Higher-value legal service results.

The company’s experience with its patent portfolio bears this out. Thanks to the training provided them by the lawyers, the company’s employees are more aware of legal protections available regarding intellectual property and more able to avail themselves of those protections proactively. TI Automotive (see Case Study 19) also realized considerable value from providing training for its employees on patent-related issues. In respect of contract-related issues, the training that SC Solutions’ employees receive from the company’s lawyers has also led to demonstrable benefits for the company. See Case Study 9, where an SLD delivered demonstrable value by managing more effectively the organization's contracting process.

**Points to remember:**

1. Value appears in various forms that may be less obvious or quantifiable than cost alone. Greater certainty of patent defensibility is an example of a value-related quality achieved.
2. Training business professionals about the legal issues that the company typically encounters can improve or simplify the law department's task of presenting the organization's legal positions to regulators, counterparties and others.

## M. Case Study 22 - Technology Can Enhance the Delivery of Legal Service so as to Increase Value

Geoff Pulford serves as Chief Executive Officer of Harrison Pensa LLP, a law firm headquartered in London, Ontario, Canada. The firm's 55 lawyers are engaged in business law, insolvency work, litigation (personal injury, medical malpractice, insurance defense, and class actions), and family law. It serves a wide range of mid-size businesses. Consequently, the firm often has encountered clients' wishes for cost control and greater value in the legal service they receive. Some of the firm's clients have in-house counsel but many do not. Yet the need for value is a constant.

It seems that clients are prepared to pay well for legal services that can only be provided by qualified lawyers. They are not prepared to pay that same rate for work that can be done at lower levels, including by junior lawyers, clerks, and secretaries. They seem to believe that much of the work done by lawyers is not legal work. Assignment of tasks must take into account both capability and cost in order to meet the expectations of its clients.

Accordingly, Mr. Pulford, who is not a lawyer but a chartered accountant (the equivalent in Canada of a CPA), has led the firm's effort to review its service with a view to assuring that it maximizes the value it delivers to its clients. That effort helped Mr. Pulford conclude that much work included in law firms' service does not constitute true legal work (*i.e.*, the analysis and counseling that represent the "highest and best use" of a lawyer's expertise and experience). Instead, much of what law firms do constitutes legal process work and much of that can be done and delivered without the involvement of lawyers (at all, or at least to the extent that they are now).

That effort led the firm to develop some alternative delivery methods for its clients. In one case, the firm has developed software that allows for the preparation of demand letters on behalf of clients of the firm's insolvency group at extremely low cost. The same software produces Statements of Claim and monitors the legal collection process every step of the way. The software is highly secure and audited regularly by clients. The clients benefit in other important ways also. The process produces much more definitive and detailed reports about the status of demand letters and litigation, which in turn enables the clients' personnel to track their efforts more completely and on a much more real-time basis. The clients greatly appreciate the improved reporting, a significant value in itself. These are often reports that clients had been preparing internally but are now system-generated. That saves time for clients. The downside of collecting some of this data is that it reveals the performance of the law firm, which may not be where the client wants it to be. Mr. Pulford believes, however, that providing such reports, showing the good *and* the bad, develops "trust" – a key factor in law firm-client relationships.

The data collection also benefits the firm. Its involvement in such a large number of matters for its clients and the collection of such detail about those efforts give the firm a window into its clients' business operations that it otherwise could not achieve without considerable expense. It is therefore better able to understand those clients' businesses.



The firm is considering whether and how that process and the software can apply to other clients' work.

The firm has also created a team within the insolvency group for recovery work. Much of that consists of paperwork preparation, for which lawyer involvement is unnecessary most of the time. Accordingly, a team of law clerks can process low-end recovery work on a cost basis that works better for the clients than lawyer involvement, which would be too expensive. All low-end recovery work is done on a fixed-fee basis.

While the firm's experience with alternative fee arrangements is somewhat limited, clients have expressed such levels of interest that the firm is actively exploring the issue. Mr. Pulford reports that fixed and contingent fees force a law firm to remain cognizant of the cost of the service and, accordingly, constantly on the lookout for cost control. This results in higher effective rates for the firm than would billings on its straight hourly rates. In other words, fixed and contingent fees would be more profitable.

While Mr. Pulford encountered some resistance within the firm when the rollout of these initiatives began, the results have won over skeptics. The transition to a more value-focused firm can be a painful one, but in his view it also presents incredible opportunity for the firm and its clients, current and prospective.

Mr. Pulford has developed these guidelines for maximizing value for the firm's clients:

- Look at processes where there is a high volume of relatively repetitive tasks.
- Find the lawyers who perform these tasks and convince them of the better way.
- Map every step of the process in detail, and ask why a lawyer needs to perform each task. What value are the lawyers really adding? Could a computer do what they are doing? Identify the approximate amount of time each step takes.
- Speak with the programmers.
- Speak with clients and make them part of the solution.
- Regularize processes as much as possible, looking for opportunities to create standard steps, forms, guidelines, etc.
- Subcontract all work that the firm cannot perform at the best price.

Harrison Pensa has incorporated the view of its clients into its view of legal work. Not everything that law firms have completed for their clients in the past consisted of work for which only the lawyers are qualified. In light of budget realities, that traditional approach does not necessarily lead to the highest-value service for the clients. By being alert for opportunities to deliver comparable quality to its clients for lower cost (the most basic definition of higher value), the firm enhances its position in the eyes of those clients.

### **Points to remember:**

1. Traditionally, law firms have provided an "all in" service, even though some tasks delivered as parts of that service do not constitute strengths of law firms or lawyers; such subordinate tasks might be candidates for alternative means of accomplishment.
2. Technology can expedite the accomplishment of some aspects of legal work or even enable its completion by others in a more expedited fashion.

## VI. The Relevance of Management Practices

Today's search for value demands the application of one or more management practices often overlooked by corporate law departments. While this InfoPAK is not meant as a treatise on management practices themselves, failure to refer to them and to their relevance to the larger topic of the InfoPAK would constitute a significant oversight.

First, of course, a law department must prioritize the matters entrusted to it by the company. While importance often lies in the eyes of the beholder, in-house lawyers learn early in their in-house careers that their time is limited. One issue that recurs for them is the distinction between "importance" and "urgency." By adopting and applying an effective mechanism by which to distinguish between those types of matters and devoting resources accordingly, an in-house lawyer - and a law department itself - will find its efforts meet greater appreciation because they are likelier to affect those issues and situations that matter more for the company. One example of such a technique lies in the work of Steven R. Covey. See, for example, page 205 of *First Things First* (Simon & Schuster Fireside Edition 1995). David Allen, in his book *Getting Things Done* (Penguin Books 2001), provides another method of prioritizing. Many others, including ACC, have developed and offered approaches with which to organize effort, as well.<sup>15</sup>

Project management appears again and again in the case studies of this InfoPAK. The legal profession has begun to recognize the benefits of applying project management concepts to legal matters. There is a vast amount of resources and training available on this subject, including educational seminars like ACC's specialized seminar for in-house counsel entitled "Project Management for the In-house Law Department."<sup>16</sup> Many other resources, including materials that discuss the application of project management techniques specifically within the context of legal work, have begun to appear. For lists of specific resources, see this endnote, as well as the "Additional Resources" section of this InfoPAK.<sup>17</sup>

Strategic planning also holds promise for law departments in their quest for greater value.<sup>18</sup> Since value lies in the eyes of the client, it behooves a law department to ensure that its view of the value it provides comports with that of its client (the company). "The [strategic] plan that the department develops should address the value issue head on. Since some legal service is viewed as more critical and valuable to the company than other legal service, the plan should provide a means by which the clients and the department agree on that valuation and the implications of that categorization."<sup>19</sup>

Data that detail how well your law department manages the legal affairs of the company are critical to demonstrating the law department's value. Simply collecting any and all data is not feasible, of course, so determining which types of information might be relevant to making that demonstration, as well as how to use the data that the law department determines to collect for that purpose, constitutes the practice of "metrics." Too many law departments overlook or devote insufficient attention to this aspect of management, to their detriment and the detriment of their companies.<sup>20</sup>

By applying any or all of these techniques or approaches, a law department of any size will increase its ability to deliver and manage higher-value legal service greatly. Moreover, it will ensure that its view of the value that it delivers is more consonant with that held by its client, thereby cementing its role in the organization.

## VII. Themes Drawn From the Case Studies

This section identifies the key themes that run throughout the above case studies. Here are some of the key signposts on the road to higher value:

1. Several interviewees, from both the in-house and outside practitioners, identified the need for the lawyers to understand the client's business intimately. (See Case Studies 6, 9, 14, and 18.) While this may seem a self-evident truth insofar as the in-house practice is concerned, the intimacy must be detailed. Only by understanding the business operations thoroughly can a lawyer anticipate legal issues that might arise and provide counseling that will resonate with the business clients because it is true to their activities and realistic in terms of its impact.
2. The law department should take its cues from the organization in respect of the ethos and style of the business. (See Case Studies 6 and 7.) Officers of an engineering-focused company would expect the company's in-house lawyers to take a similar process-driven approach. This might entail a heavy focus on metrics, for example, or the application of project-management systems used by the business clients. "Speaking the same language" enhances communication and collaboration between the law department and its internal clients.
3. Consider "unbundling" or "disaggregating" the service. (See Case Study 4.) Identify activities that occur in multiple matters or types of work that might be better performed by one or more specialists other than lawyers or law firms.
4. The case studies make clear that legal service must be managed proactively to maximize the value realized. (See Case Study 12.) Inasmuch as the in-house lawyers are directly responsible to corporate management for the ultimate outcome of the matters entrusted to them, they should assume the role of "director" or "quarterback" of the team of legal professionals.
5. In that role, the in-house lawyers should adopt and apply project-management techniques and tools so as to assemble the best-functioning and highest-value team possible and manage that team to a positive, cost-effective resolution of the matter. (See Case Studies 17 and 20.) Though many in-house lawyers apply project-management techniques, they often do so informally. Developing a more structured approach, which should not present a daunting task, ensures that the techniques will be followed more rigorously and diligently.

6. When identifying potential team members, in-house lawyers should consider individuals from disparate organizations, at least when the matter's significance merits this level of attention. (See Case Study 12.) It may be preferable to ignore organizational boundaries in appropriate circumstances to meet the client's needs most effectively and to achieve the highest-value legal service.
7. If feasible, prioritize and stage projects so as to maximize greater benefits earlier. (See Case Study 9.)
8. Educate internal clients and outside counsel by communicating frequently experiences (positive and negative) and the company's strategic priorities. (See Case Studies 5, 7, 8, 19, and 21.)
9. If possible, assign more work to firms in exchange for better collaboration and partnering with the law department. (See Case Study 12.)
10. Strategic thinking leads to greater value than routine, tactical legal work. (See Case Studies 10 and 15.)
11. Look for means by which to increase the value that your company represents to its outside service providers other than strictly by means of increased billing alone. (See case studies 11, 13 and 22.)

## VIII. How Do Clients Realize Value From Legal Service?

Clients' needs provide some guidance toward developing a definition of "value." Some aspects of the value of legal service, or value-related qualities (VRQs), that matter to corporate clients to one degree or another (and perhaps in differing combinations) include:

- expertise
- cost
- consistency of effort or treatment
- predictability
- speed of resolution or completion
- reliability
- convenience
- security of data and other information
- certainty of resolution

The legal service's value will also vary with the professionals performing that service. In-house counsel understand that different law firms deliver different value propositions. A law firm that is

capable of defending a “bet the company” case, for example, will be very highly valued by that defendant client upon victory, regardless of the cost of that defense. That same firm might be the absolutely wrong choice to defend that same client against a simple “slip and fall” accident claim, however, because the resulting costs may wholly exceed the relative importance of the matter and the risk thereby presented.

The value of in-house counsel and the value of outside counsel also differ, for a variety of reasons. Those differences relate to various ways in which attorneys in those roles interact with the clients. (In this usage, “clients” refers to the corporate personnel who transact a company’s business and receive legal advice and service from the attorneys.) Those interactions, in turn, reflect the strategic strengths of the respective lawyers. Some of those strengths relate to the attorneys’ organizational positions, while some relate to their personal attributes, skills, and expertise.

Putting aside for our purposes the individual strengths and talents of individual in-house lawyers, the value of in-house counsel arises due to a number of attributes of the role itself. Those attributes include: close and daily interaction with corporate personnel on matters relating to the ongoing business; institutional memory and understanding of corporate history and operations; commonality of perspective with that of operational personnel; and interests and incentives closely aligned with those of internal clients due to compensation plans, hierarchy, and authority-sharing.

Outside counsel bring distinct strengths to the table. For example, a law firm exists because of the lawyers that comprise it and its activities revolve around those lawyers’ activities and perspectives. Accordingly, the attributes of a firm are designed to assist the lawyers to succeed in their representation of clients, and investments by the firm generally are guided by that goal alone. A law department, on the other hand, as a unit within a larger organization – the ultimate goal of which is to do deals – must justify its needs for resources (*e.g.*, personnel, technology, etc.) and compete with other units for allocation. In addition, outside lawyers must maintain their membership in appropriate organizations and their licenses to practice before specific courts and agencies in order to effect their representation of clients. Since a law department often operates from a location far from the places where the company does business, and where its transactions, disputes, negotiations, and litigation occur, in-house lawyers’ memberships and licenses may be inappropriate for at least some of the matters that are entrusted to the department and for which licensure is necessary. Many law firms also provide a broader array of legal specialties through their constituent lawyers than a law department typically does.

In-house counsel possess an advantage over outside counsel that relates directly to the subject of this InfoPAK. As a rule, the direct cost of in-house attorneys is lower than that of outside attorneys. Due to reduced overhead through office-sharing with other corporate departments and lower staffing costs, members of law departments usually cost the company less than their external counterparts when measured on an hourly basis. This calculation takes into account related costs and compares that all-in charge to the rates that law firms typically charge for the time spent by lawyers with comparable expertise.

What sort of “costs” might a client realize or incur in the context of legal service? (These include some costs that can arise from the purpose for securing legal service, such as litigation, rather than just as a direct result of the legal service alone.) While some of the costs will be “hard” costs (actual out-of-pocket expense), others will be less measurable, but just as real. A few include:

- legal fees

- transaction-associated costs
- expert fees
- reputational harm
- diversion of attention from the business
- regulatory scrutiny
- poisoned business relationships

When assessing the value of the legal service, one should account for as many costs associated with the matter as possible. The ultimate determination of the value of that service should reflect its impact on the client's position. If that position has improved, taking into account both costs and other aspects of value, then the legal service provided value to the client. If that position has deteriorated, the legal service may have subtracted value from the business.

## IX. Developing a Workable Definition of “Value”

When developing a definition for “value” in the context of legal services, we should not lose sight of the fact that, ultimately, the determination of the value of the legal service is the client's to make. The primary determinant of the value should consist of the degree to which the legal work contributes to the client's achievement of its business goals for the assignment. An article that appeared in the *Docket* in 2003 illustrates this well in its discussion of an in-house lawyer who is “task-focused” working for a chief executive officer who is “goal-focused.”<sup>21</sup> Unless one or the other recognizes that they aim toward disparate ends, their relationship will suffer, with the CEO obviously in a position to survive any collision between their approaches. Similarly, if a law department's view of the value it provides to the company – and the value of the legal service it completes or manages for the company – does not closely align with that held by senior corporate management, especially the CEO, one needs no crystal ball to envision the likely outcome.

Given that the client retains counsel in order to achieve its goals and that the counsel should serve the client's interests, the value of that service must be measured in the same context. Ultimately, value lies in the eyes of the client (or, for in-house counsel, the in-house clients with whom they work).<sup>22</sup> This principle is borne out by the case studies throughout this InfoPAK.

By focusing on how counsel (whether in-house or outside) adds value to the client's business operation, in as specific a fashion as possible by using value-related qualities as a guide, a law department should develop a clear statement of its positive contribution to the company's efforts to achieve its business goals. The definition will vary from law department to law department, and potentially across the types of matters within a single law department. Nevertheless, the law department's statement/definition will provide the basis for common ground with the company's management.

## X. Summary: Enhancing Value in Your Department or Firm

This section details how you can make use of the concepts outlined in the InfoPAK within your law department or the law firms that serve your company.

First, you need to understand the various types of legal work that have arisen and that you can reasonably anticipate will arise due to your company's business operations. (Note that this entails a certain amount of forecasting, but by working with internal clients as they develop their business plans, your forecasts will reflect reasonable expectations that the clients share.)

Second, you need to understand what qualities of the legal service matter to the company and in what hierarchy.

- Remember that the hierarchy may well vary from type of matter to type of matter. The importance of budgeting and cost containment, for example, may be of less concern to the company in a case where its continuing existence may be decided than in a low-risk dispute between it and a contracting party.
- In a low-risk series of disputes with consumers, a manufacturer might opt for a strong pro-arbitration approach and tailor a fee arrangement to support it.

Third, inventory the legal resources (both internal and external) available to the department.

- Do the talents and types of expertise of the in-house and outside lawyers match up well enough with the anticipated needs?
- By mapping need to resource, you'll be able to identify any gaps in coverage. That mapping should take into account not only the substantive areas of law required (e.g., real estate, tax, securities), but also complexity, since a lease for a small storefront in a strip shopping center poses far less risk and has a much lower profile than a lease for a flagship store in a center city location.<sup>23</sup>

Finally, using the VRQs listed in this InfoPAK (and others that may be specific to your company or industry), rank the various types of legal service routinely used or needed by the company.

- Do so in collaboration with corporate management and other stakeholders.
- Calibrate the service providers (e.g., law firms, vendors, and others) to the types and quality (i.e., difficulty, uniqueness, challenge, etc.) of service needed.
- Secure the participation of the providers so identified through a process that includes accountability and transparency.
- Manage those professionals with appropriate techniques that reinforce the company's expectations and requirements.



## XI. About the Author

### A. About Meritas

Meritas is an established global alliance of independent, full-service law firms that connects businesses to its carefully selected membership: more than 7,000 lawyers in over 170 law firms worldwide. Business owners, in-house counsel, and others can easily connect with pre-qualified, like-minded, reliable legal expertise worldwide. [www.meritas.org](http://www.meritas.org)

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Steven A. Lauer assists law department clients to maximize the value of their legal service teams and to achieve the greatest possible return on their investments in both internal and external resources. He has written extensively on the delivery and value of legal service to corporate clients, including two books on those issues: *Managing Your Relationship With External Counsel* (2010) and *The Value-Able Law Department* (2011), both published by the Ark Group. He can be reached by e-mail at [slauer@carolina.rr.com](mailto:slauer@carolina.rr.com) or by phone at +1-973 207-3741 (cell) or through his website at <http://thevalue-ablelawyer.com/>.

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Madeline Cahill-Boley serves as the chair of Sullivan Hill's Executive Committee. She has an extensive background in commercial real estate, employment, corporate and business law. Her practice focuses on working with corporate clients to implement sound business policies and practices to reduce the threat of employment and other litigation. Ms. Cahill-Boley has served on the Meritas Board of Directors and on the Executive Committee. She has participated in Meritas efforts assisting the Association of Corporate Counsel Small Law Department on outside counsel issues relating to service standards, cost of legal services and delivering *value* to the small in-house corporate law department. Ms. Cahill-Boley is a frequent speaker on employment law and law firm management issues for organizations and is a well known commentator on such topics in the media. She can be reached by e-mail at [cahill-boley@sullivanhill.com](mailto:cahill-boley@sullivanhill.com) or by phone at +1-619 233-4100.

## XII. Sample Documents and Additional Materials

**in-box**

News, Notes, and Information



a manager outside of the country where they are based makes cross-border work even more challenging.

### Outside Counsel Relations

The preferred method of outsourcing work is to manage local law firms from the department (noted by 44 percent of the delegates), but more than a third also noted that they use a range of local and international firms. The delegates were most likely to retain outside counsel for litigation/dispute resolution (49 percent) and takeovers, mergers, and acquisitions

(22 percent). Delegates also seemed fairly pleased with their outside counsel's performance, with 69 percent noting that their primary law firm providers gave them "good performance," but they qualified that response with a "could use improvement" cautionary note. As a further caution to outside counsel, 55 percent of the delegates rated their outside counsel costs as high or very high in relation to the value.

### Strained Resources

Although costs seem to be a universal concern for in-

house counsel, a surprising number of delegates (29 percent) do not prepare detailed department budgets. Nearly 40 percent charge back their costs to the business functions that they serve. "Doing more with less" is a consistent theme. Delegates cited "[r]esponding to the demand, and managing the sheer volume of legal work with limited time" as the most challenging aspects of their jobs. For 51 percent of the delegates, some relief came in the form of department size increases. But

staffing remains a target of cost pressure; it was the number one response (77 percent) to this question: "Which legal functions and practices are under the most cost pressure?"

For more information about the GCCA-Europe annual conference, including materials from the program sessions, go to [www.acca.com/chapters/program/gcca.html](http://www.acca.com/chapters/program/gcca.html). ☐

\*Approximately 70 delegates used TouchPad technology to provide immediate responses to questions in a session underwritten by Martindale-Hubbell International.

### STOP RAIN DANCING! FIVE MANAGEMENT HABITS FOR IN-HOUSE LAWYERS

*Contributed by Justin Hansen, consultant and director, Lex Australia (Melbourne); Richard Hansen, consultant and business development manager, Lex Australia; and Ronald F. Pol, corporate counsel, Telecom New Zealand Ltd. (Wellington, New Zealand) and president, Corporate Lawyers' Association of New Zealand ("CLANZ"). The complete paper from which the following is excerpted and other papers from CLANZ's annual meeting are available free for ACCA members at [www.clanz.org/conference2002/resources.asp](http://www.clanz.org/conference2002/resources.asp). The password is "clanz02."*

It's never been definitively proven that rain dancing has an influence on the weather. And like rain dancers, sometimes we find

ourselves working on tasks and working in ways that have little or no influence on what matters to our organization. It's more likely to happen when we give too much attention to doing whatever work hits the desk and not enough attention to the following management habits:

#### 1. Report to Management.

- Don't assume that the value of your work speaks for itself.
- Report regularly to senior management on what you've achieved.
- Structure your reports around the organization's top priorities, rather than legalistic headings.
- Describe the systems and documentation that you're putting in place in the legal department.

- Include performance data to illustrate where your work comes from, where your time goes, and where you spend money.

#### 2. Solve Top Priorities.

- Don't assume that everything hitting your desk is worth your attention or that all the important projects in the company are hitting your desk.
- Focus your greatest efforts on unearthing and understanding your organization's top priorities, helping solve them (even if there are no immediate or obvious legal dimensions), and reporting on your contribution.

#### 3. Develop Systems.

- Document the way that you do activities that need doing on a regular basis or

that are very important for the running of your legal department.

- Use systems and documentation to achieve leverage for your efforts (that is, do more with less) and to handle the burden of recurrent tasks.
- #### 4. Gather Performance Data.
- Don't assume that you know where your work comes from, where your time goes, and where you spend money. Gather data about these things, which you can use to improve your work practices and prove your value.
- #### 5. Avoid "Stuff."
- Avoid doing anything that is just low-level "stuff."
  - Structure your day so that you have blocks of uninterrupted time. ☐

**LITIGATION MANAGEMENT CHECKLIST**  
**ACC Annual Meeting 2008**  
**Session 703 – Approaches to In-House Litigation Management**

This checklist was created as a handout for this session. A more detailed version of this checklist is included in your course materials.

**Pre-litigation**

- Learn your business.
- Form relationships with your business people, and understand their relationships.
- Make sure that a manageable document retention and disposal policy is in place and that it is being followed.
- Make friends with your IT Department to prepare for e-discovery.
- Know your company's insurance coverages.
- Have a form litigation hold memo ready.
- Have a handle on the outside counsel you would use in given locations for various types of claims.
- Have a form retention letter ready.
- Understand your company's litigation philosophy.
- Have a crisis team and plan in place.
- Make sure that employees receive training on matters that may give rise to liability.

**Litigation**

- Read the complaint before you break into a cold sweat and pick up the phone to call outside counsel.
- Take a deep breath and a little time to assess the claims based on your knowledge of your client.
- If applicable, remember to provide notice to your insurer.
- Retain outside counsel. Discuss the preparation of a litigation plan and budget, proper staffing, the approach to discovery, motions, early resolution, ADR, etc. Share your view of the case and the desired outcome and make sure that you are both on the same page.
- Actively assist outside counsel in gathering the facts and documents and in interviewing your employees.
- Actively participate with outside counsel to the extent justified by the facts, exposure, principles involved, etc.
  - Review of documents drafted by outside counsel
  - Participation in the discovery process
  - Participation in mediation and settlement
- Communicate regularly with outside counsel to ensure that the case is being handled as you believe appropriate.
- Never let management be surprised.

**Post-Litigation**

- Stop and pat yourself on the back.
- Do a “post-game analysis” to see what lessons may have been learned.
- Evaluate whether you were satisfied with the outside counsel. If so, great! If not, look at other firms in order to be prepared for the next suit.
- Continue to keep informed on your company’s business and to maintain your relationships with your business partners.

Successful management of the handling of a lawsuit is only part of the process of litigation management. The efforts you invest before the lawsuit arrives and after it’s resolved may have just as much, if not more, of a significant impact on your results.

Please feel free to contact any of us if you have questions or need guidance or moral support.

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**Disclaimer:** This sample checklist is provided for informational and discussion purposes only. The views and information provided herein are solely those of the author and are not meant to apply to the facts or circumstances of your particular client matters.

### FIRST 90 DAYS HANDLING LITIGATION CHECKLIST

- ✓ **Understand your client's business!** Manufacturing? Services? Financial Industry? Not for Profit? Each sector has unique litigation exposures. Schedule meetings as needed with business persons in Risk Management, Marketing, Treasury/Finance, Environmental, and Procurement.
- ✓ **Get to Know Your Risk Manager!** Obtain history of claims, insurance coverage types and amounts, potential risks and exposures.
- ✓ **Review All Insurance Policies!** Supplement the D&O coverage as may be needed to fully address the needs of all in-house counsel and your officers. Suggest other changes as needed. Understand your deductibles! Understand your exclusions!
- ✓ **Review All Pending Litigation!** Look for trends, big exposure matters and odd matters. Settle what you can. Always do a de-brief at the end of the case with clients to discuss learnings obtained from the litigation and suggested practice and policy changes.
- ✓ **Determine What Your Company's Litigation Settlement Philosophy Is!**
- ✓ **Develop Billing and Budget Formats and Guidelines for Outside Counsel!**
- ✓ **Review Your Company's Records Retention Policy!** Draw up a plan to develop one if none is in place.
- ✓ **Review and Update Your Litigation Hold Policy and Processes!** Develop them if none in place.
- ✓ **Identify Electronic Discovery Vendor!** Should litigation arise, you will want to already have a vendor in place.
- ✓ **Analyze Your Litigation Spend!** Propose RFP's, flat fees, alternate billing arrangements as needed.
- ✓ **Select Outside Counsel!** Identify sources you will rely upon to make outside counsel selections.
- ✓ **Review Any Comparative Advertising Currently in Use!** Discuss planned future comparative advertising.
- ✓ **Gain Understanding of Any Key Studies that Support Your Comparative Ad Claims!**
- ✓ **Determine Your Environmental Exposures!**
- ✓ **Meet With Personnel To Understand Personnel Practices and Exposure Areas.** Develop policies and training plans to address gaps.
- ✓ **Understand Your Deal/M&A Activities and Potential Exposures!**
- ✓ **Ensure Financial Exposure of Pending Litigation is Known to Appropriate Persons!**

- ✓ **Determine Whether Your Company is SOX Compliant!** Suggest becoming so if not already compliant.
- ✓ **Review SOX!** Become familiar with its provisions, esp. those pertaining to liability and duties.
- ✓ **Determine Whether There Are Crisis Management and Security Programs In Place!** Enhance, help develop as needed.
- ✓ **Prepare List of Training Topics and Sources!** ACC, on-line, in-person, third party vendor, self conducted are all sources. Common topics include: How to conduct workplace investigations for your personnel dept., how to make comparative claims for your advertising group, how to draft termination provisions in contracts for your procurement group, etc.
- ✓ **Additional Items As Needed For Your Environment!**
- ✓ **Have Fun, Stay Calm and Don't Get Overwhelmed!**

Effectively Managing Employment Litigation-A Checklist  
 American Corporate Counsel Association Annual Meeting  
 October 21, 2002

Anne Celentino, Senior Attorney, Cubic Corporation

*I. Pre-Litigation Management and Avoidance*

- a. Maintain regular contact with the company's management and operating personnel, particularly the sales/marketing, contracts/purchasing and human resources departments
- b. Draft and negotiate contracts that avoid/minimize disputes and reduce exposure-add arbitration provisions
- c. Develop written electronic communications guidelines and train on these concepts
- d. Develop a corporate crisis management plan and manage crises to avoid litigation
- e. Implement an ADR policy (see attached arbitration agreement and procedures)
- d. Schedule regular in-house training on employment law issues and preventative law concepts-combine lecture, video, quiz and role playing formats
- e. Handle internal complaints and agency claims (EEOC, OSHA, etc.) in-house
- f. Ensure prompt and effective resolution of employee complaints in-house
- g. Consider training on investigation techniques and procedures for legal and human resources staff
- h. Consider Employment Practices Liability Insurance
- i. Remind separating employees of their obligations regarding confidential and proprietary information

*II. Selecting Outside Counsel*

- a. Common ways to locate outside counsel: company-approved outside counsel list, referral from outside counsel, referral from other in-house counsel, ACCA member to member service, directories, etc.
- b. Some criteria for selecting outside counsel: past relationship, firm reputation, reputation of individual lawyers, rates, alternative fees, demonstrated cost consciousness, firm expertise in

**Excerpted from:** Roundtable: Effectively Managing Employment Litigation 2002 Annual Meeting

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specific area, attorney expertise in specific area, firm's use of technology, size of firm, creativity of legal team, firm's geographic locations, low turn over of attorneys and staff

c. Conflicts checks: past representation of adverse party, positions taken in prior cases that may conflict with current matter, current representation of business competitors, only what is required by local ethics rules

d. Consider formal RFP's if large business transactions, commodity type (routine) legal matters (such as collections work), or large litigation matters

e. Consider alternative fee arrangement options at the outset- hours times rates, fixed fees, fee cap, discounted/blended rates, success fees or bonuses, contingency fees depending on result, value billing, retainer arrangement for certain work in a certain period

f. Alternative fee arrangements tend to make the most sense if high potential of liability, high potential of recovery, large business transactions, smaller matters (litigation or business transactions), routine/repetitive matters

g. Develop and use engagement guidelines/retainer agreements with outside counsel (see attached example).

- conflicts check
- scope of firm's responsibility
- fee arrangement
- dispute resolution clauses
- preparation of early case assessment (risks and potential resolution strategies), budget forecast and litigation plan
- periodic written matter updates
- end of matter assessment
- adherence to diversity/pro bono and/or technology requirements
- billing format/details
- no change of rates without approval
- no change of assigned attorneys without approval
- pre-approve research
- restrictions on press releases and public statements
- confidentiality
- client ownership of work product
- required use of specific vendors (e.g., court reporters)
- travel expense rules
- limits on internal charging (copies, faxes, phone, online research, secretary, clerk time, other expenses
- allocating work between inside and outside lawyers
- file retention
- termination
- sign and return

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h. Prepare an early case assessment

i. Develop a budget

j. Common reasons for terminating law firm relationships: lack of responsiveness, poor work quality, poor results, attorney changed firms, provided inaccurate information, delayed or missed deadline, non-practical advice, too high fees/costs, billing issues, personality issues, conflicts-ethics, conflicts-business

### *III. Effective Partnering with Outside Counsel during the Litigation Process*

a. Develop the litigation plan

b. Utilize strategic planning-create reasonable expectations, do risk and cost/benefit analysis, develop alternative litigation approaches

c. Carefully consider case staffing- effective use of outside and inside counsel, consultants, and corporate employees

d. Control nature and frequency of communications between in-house and outside counsel

e. Acquire in-house technology that helps manage legal work with outside counsel: e-mail, case management software, document management software, videoconferencing, in-house software to analyze legal billings, etc.

f. Other methods used to control outside counsel legal spending: in-house fee/bill manager, third party bill auditor, internal reports/databases, discounted/alternative fees, billing guidelines/spending rules, evaluations of outside counsel

g. Consider mock trials prior to trial

*Overall, keys to controlling costs: articulating ground rules at the outset of the matter, establishing a budget and a strategy for the case, setting out billing guidelines, establishing effective staffing policies and ensuring efficient and sensible allocation of work between inside and outside counsel, use of alternative fee arrangements, early case assessment, technology, effective communication with outside counsel*

h. Consider a convergence strategy (reducing number of outside firms with which you work on a regular basis) Why? Less time required to manage outside counsel, outside counsel generally more aware of business needs, more preventative law by outside counsel, more sharing of work product among partner firms, better legal advice/work product, lower fees, more common to have alternative billing arrangements

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- i. Consider dedicated in-house services for litigation support-responding to document discovery requests and interrogatories, preparing corporate staff for depositions, legal research, due diligence requests and document review
- j. Look for insurance policies that give the company control over the selection of outside counsel

#### *IV. Criteria for Assessing Outside Counsel*

- a. Communications: verbal and written communications are clear, concise and understandable
- b. Expertise/Judgment: provides requisite legal competence, makes sound and logical judgments
- c. Risk Appraisal: provides practical assessments on the legal risks for various alternatives
- d. Predictive Accuracy: realistically predicts matter costs and outcomes
- e. Problem Solving/Innovation: offers creative and imaginative ways to solve problems
- f. Business Knowledge: good understanding of your business and objectives
- g. Proactive: provides constructive advice on effective ways to prevent, avoid or minimize future problems
- h. Accuracy: services/products are generally error free
- i. Cost Conscious: demonstrates cost consciousness in the planning and development of legal services
- j. Listening Skills: listens constructively to client concerns or suggestions
- k. Teamwork: works with legal department to understand needs and achieve common goals
- l. Working relationship: easy to work with
- m. Demeanor: demonstrates professional, courteous, respectful, and helpful attitude in dealing with clients and third parties
- n. Responsiveness/timeliness: readily accessible to staff when needed; phone calls and e-mails are promptly returned

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## XIII. Additional Resources

### A. ACC Docket Articles

Richard Rothberg and Kevin Blodgett, "First What, Then Who: Optimizing Workload Allocation and Resource Management," *ACC Docket* 29, no. 8 (Oct. 2011): 40, available at <http://www.acc.com/legalresources/resource.cfm?show=1292370>.

Vicken B. Bayramian, "The General Counsel as a Strategic Thinker," *ACC Docket* 29, no. 2 (Mar. 2011): 22, available at <http://www.acc.com/legalresources/resource.cfm?show=1277470>.

Richard Huford ET AL., "Attitude Adjustment: Eight Leading Practices in Building a Dispute-savvy Organization," *ACC Docket* 23, no. 10 (Nov. 2005): 90-103, available at <http://www.acc.com/legalresources/resource.cfm?show=20824>.

Ronald F. Pol ET AL., "Increase Legal Department Value: Establish a Goal Focus," *ACC Docket* 21, no. 9 (Oct. 2003): 98-114, available at <http://www.acc.com/legalresources/resource.cfm?show=17071>.

Philip A. Pesek, "Breaking Away from the Status Quo: A Survival Guide for Managing Outside Counsel Fees," *ACC Docket* 26, no. 9 (Nov. 2008): 106-116, available at <http://www.acc.com/legalresources/resource.cfm?show=86928>.

Margaret Seif, "Talking Down Your Budget," *ACC Docket* 28, no. 8 (Oct. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=1053950>.

Mark Roelig, "Making Your Legal Organization a Strategic Asset for the Business," *ACC Docket* 28, no. 2 (Mar. 2010):

62-68, available at

<http://www.acc.com/legalresources/resource.cfm?show=805483>.

Todd H. Silberman, "Small Law – Become a Small Law Department Black Belt," *ACC Docket* 29, no. 9 (Nov. 2011): 26, available at <http://www.acc.com/legalresources/resource.cfm?show=1295350>.

Craig S. Long, "Demonstrating Value For Small Law Offices," *ACC Docket* 26, no. 6 (July 2008): 22, available at <http://www.acc.com/legalresources/resource.cfm?show=20783>.

Hayden O. Creque and Irvin Schein, "A Primer on Retaining and Relating to Outside Counsel," *ACC Docket* 28, no. 2 (Mar. 2010): 38-49, available at <http://www.acc.com/legalresources/resource.cfm?show=805423>.

Jeffrey W. Carr ET AL., "Constructing Standard Metrics of Your Law Department's Value," *ACC Docket* 24, no. 10 (Dec. 2006): 74-86, available at <http://www.acc.com/legalresources/resource.cfm?show=14593>.

### B. InfoPAKs

"Law Department Strategy: Balancing Immediate Cost Savings with Sustainable Results," ACC InfoPAK (Sept. 2009), available at <http://www.acc.com/legalresources/resource.cfm?show=700508>.

"Strategic Planning: Why a Plan and Needed and How to Develop One," ACC InfoPAK (Sept. 2009), available at <http://www.acc.com/legalresources/resource.cfm?show=699365>.

“Outside Counsel Management,” ACC InfoPAK (Jan. 2006), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>.

“Technology Primer,” ACC InfoPAK (June 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19671>.

### C. Primers and How Tos

“ACC Value-Based Fee Primer,” ACC Primer (July 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=967965>.

“How to Migrate from Traditional Billing to Alternative Fees,” ACC How To (Dec. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=745109>.

“ACC Primer – Using a Structured Process to Allocate Work,” ACC Primer (Dec. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1217370>.

“ACC Legal Project Manager Primer,” ACC Primer (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1293786>.

“Project Management 101,” ACC Presentation (Jan. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1269731>.

“Project Management Tools and Templates,” ACC Form & Policy (Jan. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1267881>.

“Legal Process Outsourcing: A How-To Guide on Legal Process Outsourcing (LPO),” ACC How To (Sept. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1112956>.

“How to Select and Engage Vendors,” ACC How To (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=745949>.

“Managing Value-Based Relationships with Outside Counsel,” ACC InfoPAK (Aug. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19673>.

“How to Create Sound Legal Service Relationships – Orientation Meetings, Annual Updates & Beyond,” ACC How To (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=743702>.

“How to Effectively Partner with Your Law Firms to Achieve Greater Value,” ACC How To (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=744656>.

“Covenant with Counsel,” ACC Form & Policy (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39676>.

“How to Assess Your Outside Counsel Partnering,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39200>.

“How to Create a Successful Partnering Strategy,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39050>.

“How to Transition From Traditional Model to Proactive Model (Part I),” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39798>.

“How to Conduct an Early and Periodic Case Assessment,” ACC How To (Dec. 2009), *available at*

<http://www.acc.com/legalresources/resource.cfm?show=779199>.

“Sample Early Case Assessment Form,” ACC Form & Policy (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=645579>.

“Sample: Case Budget Template,” ACC Form & Policy (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=743131>.

“How to Prepare a Litigation Plan and Budget,” ACC How To (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=743311>.

“How to Use Seven Levers to Control Litigation Costs,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39442>.

“How to Adopt a More Effective Invoice Review Process,” ACC How To (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=709490>.

“How to Map a Business Process,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39051>.

“How to Create Efficiencies Through Process Improvements,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39927>.

“How to Identify Legal Risks in Business Processes,” ACC How To (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=40045>.

“How to Formally Evaluate Outside Counsel’s Performance to Improve Service,”

For more ACC InfoPAKs, please visit <http://www.acc.com/infopaks>

ACC How To (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=709546>

“How to Communicate Preventive Law Strategy Results,” ACC How To (Oct. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=58711>.

“How to Focus Internal Communications About Legal Risk,” ACC How To (Oct. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39706>.

“How to Manage Billing Data to Improve Value and Enable Alternative Fees...Even if You Don’t Have an E-billing System,” ACC How To (Nov. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=721002>.

“How to Assess Document Management Needs & Priorities,” ACC How To (Oct. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=38984>.

“Sample Document - Document Management Needs and Priorities Survey,” ACC Form & Policy (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39320>.

## D. Program Materials

“Law Departments Adding Value: Structuring and Managing Outside Counsel Relationships and Beyond,” ACC Presentation (Mar. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=211421>.

“Adding Value: Strategic Planning and Demonstrating Success,” ACC Presentation (May 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1288495>.

"50 Ways and Counting to Drive Value into Law Firm Relationships," ACC Presentation (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=736858>.

"Outside Counsel Fee Valuation Toolbox, Part 1," ACC Presentation (Oct. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1236502>.

"Outside Counsel Fee Valuation Toolbox, Part 2," ACC Presentation (Oct. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1237217>.

"Taking Charge of Escalating Law Firm Costs - Connecting Costs with Value," ACC Presentation (Apr. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=19819>.

"The Slow Motion Riot - Revolutionizing Law Department Cost Management," ACC Presentation (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=736253>.

"ACC's Value Challenge: Reconnecting Costs to Value in Outside Legal Services (Part I: Introduction)," ACC Presentation (Oct. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=154405>.

"Outside Counsel Management - Using Value-Based Fee Structures for Corporate/Transactional Work," ACC Presentation (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1300106>.

"Managing Change: Moving Law Firms From Vendors to Value-Based Relationships," ACC Presentation (Jan. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1269869>.

"Develop Your Own Guidelines for Retaining Outside Counsel (from the SLD perspective)," ACC Presentation (Oct. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1240418>.

"Management of Small Legal Departments," ACC Presentation (May 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1287093>.

## E. Quick References

"Starting a Value-based Discussion," ACC Quick Reference (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1300100>.

"Legal Project Management," ACC QuickCounsel (Jan. 2012), *available at* <http://www.acc.com/legalresources/quickcounsel/lpm.cfm>.

"Top Ten Practical Suggestions for Managing Outside Counsel Spend," ACC Top Ten (Mar. 2011), *available at* <http://www.acc.com/legalresources/publications/topen/Outside-Counsel-Spend.cfm>.

"Top Ten Considerations When Evaluating a System for Managing Outside Counsel Work," ACC Top Ten (Mar. 2011), *available at* <http://www.acc.com/legalresources/publications/topen/Managing-Outside-Counsel-Work.cfm>.

## F. Other ACC Resources

"Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model," ACC Leading Practices Profile (Sept. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16804>.

Charles A. Vokert, "Mending Fences: How to Improve Difficult Relationships with Colleagues," ACC Article (Jan. 2012), *available*

at

<http://www.acc.com/legalresources/resource.cfm?show=1300059>.

Patrick Lamb, "Affirmative Fee Arrangement: Wannabes, Pretenders and the Real Deal," ACC Article (Oct. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=783349>.

"2010 ACC/Serengeti Managing Outside Counsel Survey Report," ACC Survey (Oct. 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1249457>.

"10<sup>th</sup> Annual ACC/Serengeti Managing Outside Counsel Survey," ACC Webcast (Oct. 25, 2010), *available at* <http://webcasts.acc.com/detail.php?id=130129&go=1>.

"How to Assess Legal Team Integration With Business Units," ACC Form & Policy (Sept. 2008), *available at* <http://www.acc.com/legalresources/resource.cfm?show=39412>.

## XIV. Endnotes

<sup>1</sup> The case studies in this InfoPAK are drawn from the experiences of Meritas member firms working with their clients. Firms in the Meritas network tend to be independent, mid-sized firms that represent clients with smaller law departments like members of the SLD Committee.

<sup>2</sup> ACC Value Challenge can be accessed at <http://www.acc.com/valuechallenge/about/index.cfm>.

<sup>3</sup> See “Value Based Fee Primer,” ACC Primer (July 2010), at 8-10, available at <http://www.acc.com/advocacy/valuechallenge/toolkit/upload/acc-value-based-fee-primer.pdf>

<sup>4</sup> “2010 ACC/Serengeti Managing Outside Counsel Survey Report,” ACC Survey (Oct. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=1249457>.

<sup>5</sup> Whereas in-house lawyers were viewed many years ago as less capable than outside counsel and performed the more mundane or lower-risk tasks, that view has changed considerably as law departments have become much more sophisticated. See S. Harmon & S. Lauer, “The Development of the Corporate Law Department and Its Consequences,” *Of Counsel: The Legal Practice and Management Report* (Aspen Publishers) (vol. 29, no.12, Dec, 2010), pp. 1, 11-12.

<sup>6</sup> See S. Lauer, *The Value-Able Law Department* (Ark Group 2010), p. 13; see also S. Lauer, “Strategic Strengths: The Basis of an Efficient Design for a Corporate Legal Function,” *Corporate Counsel’s Guide to Law Department Management (2d)*, Chap. 103, p. 103.001 (Aug. 1999 Supp.)

<sup>7</sup> The law department “should not assign a complex, bet-the-company litigation to counsel which has handled only minor insured matters and it should also avoid asking a law firm that typically handles multi-jurisdictional class actions to represent it in a slip-and-fall case. In neither situation would it receive value commensurate with its likely expense.” S. Lauer, *The Value-Able Law Department* (Ark Group 2010), p. 103. See also Case Studies 1, 2 and 3.

<sup>8</sup> See S. Lauer, *Managing Your Relationship with External Counsel* (Ark Group 2009), chap. 3 and S. Lauer, “In-House Counsel, Executive Must Play Strong Role: To Win in Litigation, All Players Must Take the Field,” *U. S. Business Litigation*, vol. 2, no.8 (Mar. 1997), p. 16.

<sup>9</sup> This is one of the hallmarks of what has become known as “convergence,” whereby a company reduces the number of law firms with which it works but assigns to those firms more work per firm than it had to individual firms prior to commencing that process. See S. Lauer, *Managing Your Relationship with External Counsel* (Ark Group 2009), p. 78, and S. Lauer, “Convergence: Is It Just a Numbers Game?,” *The Lawyer’s Brief*, vol. 34, no. 8 (April 30, 2004), p. 2.

<sup>10</sup> See “Meet. Talk. Act,” ACC Value Challenge, available at <http://www.acc.com/valuechallenge/getinvolved/index.cfm>.

<sup>11</sup> The experience of the general counsel cited in Case Study 12, who successfully uses an annual “true up” for the fixed-fee arrangement with an outside firm because they have a longstanding, effective relationship, reinforces this point.

<sup>12</sup> See S. Lauer, *The Value-Able Law Department* (Ark Group 2010), pp. 67-68; see also S. Chema & S. Lauer, “A Holistic Approach to Corporate Compliance and Dispute Management,” *The Lawyer’s Brief*, vol. 34, no.24 (Dec. 31, 2004), p. 2.

<sup>13</sup> See, e.g., S. Lauer, *Managing Your Relationship with External Counsel* (Ark Group 2009), p. 78; see also S. Lauer, “Prudential Begins a Convergence Program,” *The Environmental Corporate Counsel Report*, vol. 2, no. 11 (Feb. 1996), p. 16; S. Lauer, “Convergence: Is It Just a Numbers Game?,” *The Lawyer’s Brief*, vol. 34, no. 8 (April 30, 2004), p. 2.

<sup>14</sup> S. Lauer, *Managing Your Relationship with External Counsel* (Ark Group 2009), chap. 7.

<sup>15</sup> See, e.g., Richard Rothberg and Kevin Blodgett, “First What, Then Who: Optimizing Workload Allocation and Resource Management,” *ACC Docket* 29, no. 8 (Oct. 2011): 40, available at <http://www.acc.com/legalresources/resource.cfm?show=1292370>; “ACC Primer – Using a Structured Process to Allocate Work,” ACC Primer (Dec. 2010), available at <http://www.acc.com/legalresources/resource.cfm?show=1217370>.

<sup>16</sup> ACC and Boston University School of Management have partnered to develop a course to teach in-house counsel more about this topic. For more information about this program, entitled “Project Management for the In-House Law Department,” go to: <http://www.acc.com/education/businessedu/programs/projectmgmt.cfm>.



<sup>17</sup> See, e.g., “ACC Legal Project Management Primer,” ACC Primer (Oct. 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1293786>; “Applying Project Management to Legal Matters,” ACC Webcast (May 13, 2010), *available at* <http://www.acc.com/education/webcasts/projectmanagementtolegalmatters.cfm>; *see also* Thomsett, “The Little Black Book of Project Management” (American Management Association 1990) (discussing general project management principles); Levy, “Legal Project Management: Control Costs, Meet Schedules, Manage Risk, and Maintain Sanity” (DayPack Books 2010) (discussing project management within the legal work context).

<sup>18</sup> ACC has a variety of resources addressing the process of strategic planning. See, “Strategic Planning: Why a Plan and Needed and How to Develop One,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=699365>; “Law Department Strategy: Balancing Immediate Cost Savings with Sustainable Results,” ACC InfoPAK (Sept. 2009), *available at* <http://www.acc.com/legalresources/resource.cfm?show=700508>; Vicken B. Bayramian, “The General Counsel as a Strategic Thinker,” *ACC Docket* 29, no. 2 (Mar. 2011): 22, *available at* <http://www.acc.com/legalresources/resource.cfm?show=1277470>; “Adding Value: Strategic Planning and Demonstrating Success,” ACC Presentation (May 2011), *available at* <http://www.acc.com/legalresources/resource.cfm?show=1288495>.

<sup>19</sup> S. Lauer, *The Value-Able Law Department*, *supra* note 11, at p. 13.

<sup>20</sup> Jeffrey W. Carr ET. AL, “Constructing Standard Metrics of Your Law Department’s Value,” *ACC Docket* 24, no. 10 (Dec. 2006): 74-86, *available at* <http://www.acc.com/legalresources/resource.cfm?show=14593>; *see* Case Study 17.

<sup>21</sup> Ronald F. Pol ET. AL, “Increase Legal Department Value: Establish a Goal Focus,” *ACC Docket* 21, no. 9 (Oct. 2008): 98, 114, *available at* <http://www.acc.com/legalresources/resource.cfm?show=17071>.

<sup>22</sup> S. Lauer, *The Value-Able Law Department* (Ark Group 2010), p. 4.

<sup>23</sup> If this process resembles the development of a strategic plan, that should surprise nobody. See S. Lauer, *The Value-Able Law Department* (Ark 2009), pp. 11-15; *see also* S. Lauer, “Think Strategically - Plan!,” *Corporate Counsel’s Quarterly*, vol. 19, no. 4 (Oct. 2003), p. 56.