

# ACC Value Challenge

## Facing Up to the Challenge- The Case for Change

By Michael Roster

### INTRODUCTION

Recent surveys show that 80% of U.S. law firms and 80% of clients are now using alternative fee arrangements (that is, work is handled other than solely a billable hour basis) at least some of the time. Of those using AFAs, on average both firms and in-house counsel say 15% to 20% of their work is on this basis.

That is a huge change from just four years ago when virtually no one was talking in terms of value and alternative fees.

But something very important is missing from this otherwise beneficial development in the legal profession: What is the purpose for using AFA's? What is the purpose for using project management, Lean Sigma and similar tools? What specifically are the parties trying to accomplish?

To put it another way, **you can't get there if you don't know where you're going** – if you don't have a destination. And much of what is taking place consists of a lot of positive motion, but without a destination.

Based on discussions with general counsel and law firm leaders alike, as well as my own experiences in both roles, delivering value boils down to achieving three basic targets:

### Here's What Others Think

*"Frankly, at large and mid-size law firms, I would have thought the numbers [re AFAs] would have been much higher. Is it possible that some firms are purposely under-reporting their numbers?"*

– Law firm partner

*"A similar quote by Yogi Berra reads, 'You've got to be careful if you don't know where you are going because you might not get there.'"*

– Law firm chair

*"Lawyers like to talk about great victories for themselves. But it is the battles avoided and that lead to no story at all that are often the best outcome. While the story of defeating the Cyclops with no more than a pair of matches, a Swiss Army knife and 18" of fishing line is terrific, having charted a course past the island where the Cyclops lived is better counseling. It also avoids the story of being stomped to death by the Cyclops, which is the usual outcome."*

– Law firm partner

- **Reducing the client’s total legal costs by a significant amount** measured from either a recent base year or a relevant industry benchmark. As discussed below, many of us have found 25% to be a very achievable target, but no matter what percent you use, it needs to produce significant savings and it needs to force a rethinking of conventional wisdom.
- **Providing near-complete predictability in cost and process.**
- **Significantly improving outcomes** such as number of labor disputes, average cost of settlements or the like.

In-house and outside counsel should be committed to providing at least one of the above targets to their clients. Failing to deliver at least one is essentially saying, we lawyers have no control over what we do. We just do what we do and the client will pay for it.

That is hardly a definition of value.

Those of us who have undertaken a reengineering of legal services have found that all three targets are interrelated and quite achievable.

And companies should be willing to reward law firms, and even their own in-house lawyers, who deliver these results. This is how successful companies operate: continually reduce cost, improve quality and reward those who meet and exceed defined objectives.

## Here’s What Others Think

“I can see why corporate executives and GCs would love these goals, but what are they willing to give in return? Some possibilities (i) Except for true emergencies, clients won’t expect that firm attorneys will work every night late into the night, weekends and holidays. (ii) Clients will give realistic timeframes. (iii) With changes in malpractice standards, clients must work in good faith to enable their outside counsel to provide some legal advice without doing complete (or, in some instances, any) research – that is, for some matters, pretty good is good enough. (iv) Clients will rebuild trusted institutional relationships with law firms (e.g., getting rid of the ‘we don’t have relationships with firms, only with particular lawyers’ mindset, so there will be less of the easy lateral mobility that has contributed to the destruction of large law firm cultures).”

– Law firm partner

“How does quality fit into this definition of value? Is it simply inherent in what the firm does and not necessary for inclusion? In some ways, focusing on these three goals alone as defining ‘value’ seems to open the door for sacrificing quality.”

– Law firm partner

“The focus of this article revolves around these three bullet points. For myself, I don’t consider these as “value” but rather as core components of change or as quantifiable critical change agents in transactions between a lawyer (law firm) and a client (business).”

– Law firm senior administrator

“As Peter Drucker put it: ‘Effective leadership is not about making speeches or being liked; leadership is defined by results not attributes.’”

– Law firm chair

## THE NUMBERS SPEAK FOR THEMSELVES

If general counsel, CFO's, CEO's, directors and others feel that legal costs have been out of control, the following numbers should help confirm their worst fears:

- Cost of services to U.S. companies increased 20% in the past 10 years, **except the cost of legal services increased 75% during the same period.**  
[based on increases in the consumer price index and published billing rates of NLJ 250 law firms;  
source: Bill Henderson, Law Firm Working Group, article in California Lawyer referencing Corporate Executive Board interviews, and panel presentations  
by Hildebrandt and Citibank advisors]
- Legal expenditures constituted .4% of U.S. GDP in 1978; they **more than quadrupled to 1.8% of U.S. GDP** by 2003. And that's of an expanding pie!  
[source: Bill Henderson chart; footnote 30 in Bill Henderson's article in 70 Maryland Law Review 101 (20--) citing Marc Galanter, *Planet of the APs: Reflections on the Scale of Law*]

When attending meetings of general counsel and other senior officers, one often hears them asking what kinds of improvement in the quality of legal services or outcomes would justify these kinds of cost increases.

As we have recently witnessed in many other sectors of the economy, this kind of explosive growth in cost is symptomatic of a bubble. When bubbles inevitably burst, there is considerable disruption. What is especially remarkable is we have witnessed the escalation in legal costs even as the number of highly capable lawyers and firms in the U.S. and worldwide has increased substantially during the same time periods.

One general counsel, who himself has also been a partner at a major law firm and a CEO, made an interesting observation at an event in Ohio several years ago attended by both in-house and outside counsel. Twenty to 30 years ago, he noted, there were maybe 10 or 20 firms in the U.S. you went to if you had a significant corporate or litigation matter. Today, there are 100 or even 300 firms that are highly capable of handling these matters. So all that's happening is that companies are moving down the cost curve, and in the process getting equal if not better work for a lesser price. With respect to the law firms, this

### Here's What Others Think

*"The 75% increase is staggering. When I read it I immediately began to ask 'why?'... What happened in the 90s that led to this increase in the past decade? For example, more statutes, indecisive management teams, fear and aversion to risk, stronger shareholder constituencies, etc.? Most businesses did fairly well in the past decade so they must have made enough money to pay for these services."*

– Law firm senior administrator

*"Okay, but how much have the incomes of CEOs increased during the past 10 or 20 years? I suspect that the number is much greater than 20%, and certainly more than what other employees have received. While the increase in outside counsel incomes is outrageous, the increase in what CEOs have gotten is nothing short of obscene."*

– Law firm partner

*"Armies and strategies are almost always developed to fight the last war experienced. Technology in the intervening period has a dramatic effect, and it frequently is a game changer. It defined the conflict of the Second World War, and again in the Gulf War(s). This has been a huge factor in the past twenty years for the legal industry, as the recruitment/ training/ structure of firms continued to be built on the experience of the pre WW II to early post WW II model, while the service delivery changed radically from the efficiencies and power of technology. We were able to do more and better with less. But clients did not get savings from that. By the '70s the firm model both organizationally and operationally was completely outmoded. But it did not change until starting in the '90s, and even then slowly (two-tier partnerships). It began to change radically in the 2000s, and crumbling in 2008."*

– Law firm partner

general counsel noted that as a given firm loses clients to a lesser-cost but equal if not higher-value firm, the first firm will market itself to new prospects that are currently using more costly competitors.

In medicine, we've seen a similar process take place. Complex surgeries once were done mostly if not exclusively at premier teaching hospitals. Those hospitals produced far more outstanding practitioners than they themselves could retain, so extremely competent doctors are now at competing hospitals with lower overhead, outstanding physical facilities and often superior support systems that are highly focused on patient service. The outcomes at these competing hospitals, even for highly complex procedures, are now often equal to or even better than at the so-called premier hospitals, but at less cost.

In summary, there has been a huge escalation in legal costs during the past ten to 25 years that now must be addressed. The blame, if there is to be blame, falls not only on the law firms but also on the companies that went along with the cost increases and didn't at least expect improvements in outcomes and service, let alone push back on price. Which no doubt is why the focus on value has resonated as widely as it has.

### **Here's What Others Think**

*"In law it is more dramatic because the amounts of capital required are far less. The human talent, which is the core of quality legal advice/experience, requires relatively little in the way of expense for technology now, and even less in bricks and mortar investment. Think of the castles in Europe... massively expensive and essential at one time, they are completely useless anachronisms, historical curiosities at best because technology rendered them redundant and wasteful. Battleships in the world navies for WW II were a more modern parallel. There were no decisive battleship confrontations in the entire war. There were lots of them, but overall their performance other than pounding the shores of enemy landing beaches was less than disappointing and a terrible financial waste. Same thing in law. It has been the maintenance of those 'castles' or 'battleships' that has brought such waste to the fore in law."*

*– Law firm partner*

## THE TARGETS ARE ACHIEVABLE

The three targets listed at the outset of this paper are achievable. I know this from my own experience, and other law departments and law firms continually achieve the same results: a 25% reduction in legal costs, near-certain predictability and significant improvements in outcomes.

My own experience as general counsel at Stanford between 1993 and 2000 is that, within a year of restructuring legal services, we achieved a 25% reduction in legal costs. Five years later, we also found that we had about half the litigation we had had the prior decade.

Companies like Ford, DuPont, Tyco, Levis, Pfizer, Target, Shell Oil, several worldwide banks and others are reportedly achieving similar results, working with firms such as Eversheds, Seyfarth Shaw, the DuPont network of firms and others. There are some very significant projects underway or in the advanced planning stages which, once they become public, are likely to report similar results.

To make the breakthroughs, one has to re-think everything:

- How in-house counsel interact with outside counsel.
- How to harness expertise, not hours.
- How to determine price for services and, for firms, how to determine compensation.
- Which issues require legal intervention and which issues are better resolved using other skills.
- How to empower lawyers (whether at firms, in-house or both) to make rational decisions and not spend huge and unnecessary legal resources for CYA purposes.
- What it means to be properly calibrated (the client wants a Chevy and the firm delivers a Rolls Royce), and how to give the firm comfort that it won't be sued for malpractice for making appropriate cost-benefit decisions.

### Here's What Others Think

*"It is the client (customer) who ultimately drives the process. The lawyer sits idle whether using a demand based billing system (billable hours) or an AFA arrangement until the client exclaims... 'I have a problem!' In marketing terms, this is akin to nothing happens until someone sells something. Only then are there choices to make... one of which is billing methodology."*

– Law firm senior administrator

*"I assume you are referring to partner compensation. I have never seen a firm really reward partners who are efficient, know how to manage teams and projects, and know something about process improvement."*

– Law firm chair

*"I, too, have never seen a firm reward a partner who is efficient and, therefore, helpful to the firm's clients. To the contrary, the firm's management or compensation committee will assume that the partner is not recording all of his/her time, and the partner will be strongly admonished to do so. (This can be filed under the category of 'no good deed goes unpunished.')*

– Law firm partner

*"This [the Chevy versus Rolls syndrome] requires a change to the Rules of Professional Conduct to recognize that sophisticated clients are very capable of waiving malpractice rights."*

– Law firm chair

*"The biggest factor in outside legal cost is how smart the inside lawyers are in using outside counsel. Inside lawyers who think issues through before calling, focus on the issues that are truly important and correctly decide what aspects of the project are best handled by outside counsel will achieve a better product for between 30-50% less than current cost. I've seen this repeatedly with different clients."*

– Law firm partner

## GETTING STARTED

Many lawyers will say that legal costs are unpredictable and there's no way to commit to improved outcomes by nature of what lawyers do. They will argue that the plaintiffs are unpredictable, courts and government agencies are unpredictable, the client's decision-making is unpredictable, the other side in a negotiation is unpredictable, and on and on.

I used to think that, too. And so did all of my colleagues who eventually restructured their companies' legal operations. We general counsel come to a tipping point, however (see discussion of "Equilibrium versus Moments of Truth" below), through various pathways. Our CEO may demand change, our competitors might demonstrate better numbers, we have to make better use of shrinking budgets, one or more of our law firms seem out of control, or whatever. Once we start examining what we have been doing, we inevitably find that our legal costs year after year are surprisingly predictable. Individual cases in litigation (such as wrongful termination lawsuits, or whatever) might have slightly different legal costs and slightly different settlements or verdicts matter-by-matter. Collectively they keep falling within a fairly finite range. Same for just about every other function we handle in the general counsel's office. Once we see the patterns, we also see ways to significantly reduce cost even as we improve outcomes.

Law firms are coming to the same realization, as Seyfarth Shaw, Eversheds and others now demonstrate on their web sites and in their marketing materials.

Each industry also has a fairly reliable benchmark that measures total legal costs as a percent of revenue or some similar number. In private universities and medical centers, for example, I found that legal costs on average are approximately .58% of revenue. When I called my colleagues at other major universities, they replied they weren't aware of such a benchmark but upon reflection confirmed their all-in legal costs were pretty much at that number.

This process can apply to the entire legal budget (inside and outside combined) or to specific portfolios (for example, HR, environmental, etc.), geographic regions, etc. when determining the relevant numbers. A corporate client should pick a recent year, discount any truly aberrant once-every-ten-years extraordinary matters and then develop a plan to provide legal services for 25% less. An alternative, especially for general counsel who have already made major improvements, is to

### Here's What Others Think

*"And yet others are able to build a 60-story office building in Manhattan on a fixed price contract.*

*– Law firm chair*

*Everyone should read Malcolm Gladwell's book The Tipping Point, a principle that affects so many aspects of our lives."*

*– Law firm partner*

*"Reducing cost in a billable hours system would suggest the need to minimize participation, for example by reducing the number of meetings or the number of attendees at meetings, as you say. But improving quality in the medium-to-long term might suggest actually opening new lines of communication, so that people are learning and more seamlessly handing matters back and forth to one another. It is difficult to acquire such communication skills in the first place, and possibly even more difficult to learn to do it as a manager. So more group participation may be required early in a client relationship, with more one-on-one participation later? Minimizing attorney turnover and relying more on so-called servicing partners probably would help here."*

*– Mid-level in-house attorney*

see if they are 25% below their relevant industry benchmark, and if not, consider what additional steps they can take to get there:

- Stop sending two lawyers to the same meeting (including the unnecessary doubling up of inside with outside counsel); rather, manage matters so that the most appropriate person attends the meeting and efficiently communicates with others.
- Stop micromanaging. That alone will free up considerable in-house resources.
- Watch for repetitive actions and figure out ways to streamline or even eliminate them.
- Identify areas that are continually generating problems (the 80-20 rule) and then develop approaches so that the problems no longer occur or, if they do, are identified and resolved early on.
- Put a premium on delivering expertise and not hours.

Again, all of this is absolutely do-able.

## INCREMENTALISM DOESN'T WORK

Most general counsel and law firm leaders typically look for incremental changes. These include discounts (which in reality are like getting 5% off a full coach airfare or the price posted on the back of a hotel room door), blended rates (an inflationary average) or the like. Incremental approaches, however, do not deliver meaningful or long-lasting improvements.

It's only when you set a major goal for change that you are forced to re-think the entire process. And that's when you make the truly significant and long-lasting breakthroughs.

## THERE'S A PREMIUM FOR PREDICTABILITY

Some very thoughtful general counsel say that their primary focus is on predictability. I recently heard a general counsel for a major, worldwide company explain that she's not worried about cost since she has moved her work to firms that are properly priced and she has taken other steps to assure the company's costs are at or below various targets. What she is most focused on is predictability, and she and her internal clients are often willing to pay a premium for that predictability.

It is far better, she explained, to be able to tell a division head what the legal costs are going to be for a given matter (wrongful termination lawsuit, negotiating and handling a long-term contract for purchase of materials, etc.). With a fixed price, her division heads can finally include a number for legal costs in the budget, and that certainty has value in itself.

This general counsel reports that 95% of her company's legal work is on a fixed price. The remaining 5% is largely M&A, where it isn't predictable from year to year whether the company will be buying other entities or selling portions of its own operations. Even here, the general counsel has several law firms on standby for M&A work. Once a transaction emerges, the firms and the client can quickly agree upon a fixed price for doing the transaction based on metrics they have learned are highly predictive of the cost (the magnitude of the due diligence, the purchase price and similar factors).

### Here's What Others Think

*"The firms typically agree to a 10% discount on rates, then work 10% more in billable hours. Obviously, the total cost is what should be the target."*

*– Law firm chair*

*"Unfortunately, the enlightened perspective of this general counsel remains an exception to the norm. Many clients view AFAs as simply an alternative path to deeper discounts. While predictability is clearly valued in and of itself, most clients remain hesitant to cede incremental dollars in exchange for this benefit."*

*– Law firm senior administrator*



## TRANSITIONS AREN'T EASY

Other industries have been through similar upheavals. Just think about what has happened or is happening in airlines, automobile manufacturing, media and elsewhere.

The interesting pattern that emerges in every one of these industry transformations is that those companies that once dominated an industry (Eastern Airlines, Pan Am, TWA, Pontiac, Oldsmobile, Yahoo, BlackBerry, Kodak, major newspapers and magazines, etc.) suddenly find they aren't keeping up with new competitors. When they finally realize the threat (some would say, the tipping point) and try to make the necessary changes, they often don't just lose market share, they often fail.

There are some common reasons for these failures, all of which should be warnings to law firm leaders and general counsel alike:

- **Existing methodologies** – The legacy airlines had a fixed way of pricing tickets, scheduling and maintaining equipment, boarding passengers, providing in-flight services, etc. Any suggestions for change were strongly resisted, even as new entrants to the airline industry were making radical changes. Law firms and in-house counsel have similar biases about how they do things and typically insist there's no way on earth they are going to change their methodologies. That attitude will eventually have those lawyers and firms looking a lot like the companies listed above that have significantly lost market share or no longer exist.
- **Legacy support systems** – The legacy U.S. automobile companies all had long-established ways new car designs were conceived and executed. Similar inflexibility existed in their engineering, marketing and finance departments. Each of these internal departments functioned in near total autonomy and without a unified focus on: what will our target customers pay for a first-rate product, how much profit do we need, and with what's left over how do we create, manufacture and sell a car that will dominate the market? The Japanese companies figured all of that out including with a unified process, and now our U.S. car companies (hopefully) have, too. In law firms, production (that is, the real legal practice) is often removed from the financial, marketing and other parts of the firm. More important, the entire law firm management reporting system is based on billable hours in the pipeline, realization rates and a few related metrics. These legacy systems may not be the best ones for managing a modern law firm and for achieving the highest and most sustainable profitability, but the legacy systems aren't able to handle alternative approaches, other than converting everything to a billable hour equivalent. The result is that the legacy systems often work against more profitable ways to do business. And those who try to run a firm partly on billable hours and partly on targeted profitability and outcomes find life becomes truly schizophrenic if not impossible.
- **Income expectations** – In legacy airlines, pilots, cabin crews, ground crews and others had contracts that provided for fairly high incomes, especially with seniority. Non-legacy airlines began with a clean slate. In law firms, the income expectations usually aren't by contract (with major exceptions in recent years for lateral hires) but rather what partners and associates have become accustomed to, even if those expectations arose in a bubble industry operating in a bubble economy. Most of these lawyers have yet to accept the harsh reality that for shareholders and senior managers at companies, incomes shift dramatically from year to year (base, bonus, value of options, etc.). For those companies, what goes up one year can decline dramatically the next. Very few law firm partners, however, seem to be ready to accept this kind of volatility in income even though they still expect all the other attributes of shareholder owners.

- **Culture** – This factor is the toughest of all. There are very noticeable differences in how GM operates versus Mercedes Benz versus Hyundai. Changing a culture at any of those companies is difficult. With law firms and individual lawyers, change borders on the impossible. We lawyers thrive on precedent, we excelled in law school and passed the bar exam by being great at issue-spotting and we can tell you everything that might possibly go wrong with any proposed action. It's thus very difficult to totally blow up long-held approaches even in the face of evidence that the new approaches are going to be far better for our customers/clients, will produce better outcomes and will actually be more profitable for our firms. Our predisposition is to argue about it and then just say no.

So it is no wonder we've witnessed the failure of a number of long-established and highly respected law firms (Brobeck, Coudert Brothers, Dewey, Heller, Howrey, Thelen, Wolf Block, etc.) and with many more failures likely to come. Because just as happened in other industries, even when leadership sees where the company (or here, law firm) should reposition itself, the task of getting from here to there may trigger elements that result in the firm not being able to hold itself together.

### Here's What Others Think

*"Yes, law firms do fail. And, despite the precautions you discuss, we should expect more large law firm failures even if the economy improves. If I were a major bank, I would not want to be lending money to a large law firm!"*

*– Law firm partner  
(written nine months before  
the failure of Dewey & LeBoeuf)*

*"The comparison to the auto industry suggests another potential innovation: changing the supply chain. Auto producers have outsourced parts creation and adopted just-in-time manufacturing techniques to reduce overhead and inventory costs. Will firms be driven to outsource various functions, including overseas or through technological innovations, so that they can reduce overhead and maintain flexibility?" – Mid-level in-house attorney*

*"I go through this when meeting with my law firm counterparts each year—how does one change the culture of a law firm? Then I give them my answer: Start over!"*

*– Law firm chair*

*"Actually most lawyers just nod their heads and then apply a passive-aggressive resistance and everything stalls out on the initiative. Nobody has the fortitude to say 'no', and the modern firm structure is so punitive that healthy debate and work to improve is forbidden. Diktat is the rule now."*

*– Law firm partner*

*"These failures may be more complicated than that." – Law firm chair*

## EQUILIBRIUM VS. MOMENT OF TRUTH

There are some consultants, columnists and others who question from time to time whether the shift away from billable hours is making all that much progress. Anyone watching what is taking place both at the law firms and at clients, however, knows that there in fact is a steady movement toward value-based relationships. The error of most of those who say there has been little if any progress is that they are looking at averages. Of course the shift from billable hours when measured “on average” is slow. That’s the nature of any change, at least until a tipping point is reached.

But more to the point, there’s the distinction between what I call “equilibrium” versus “the moment of truth.” If you’re the chair of a law firm or the general counsel of a company, there is no reason for you to blow up something that currently is in equilibrium – that is, that is working reasonably satisfactorily – especially when the alternatives may be untested (for you, at least). You also anticipate (rightly) what will be involved in the transition will be difficult and disruptive. Both the law firm chair and the GC face immense pressures each day just to keep things running. To make wholesale change takes time, resources and a compelling reason to do so.

In most instances a moment of truth will inevitably arrive. For the firm it often will be when a key client wants something quite different or the client says it will take its work elsewhere. Even worse is when a key client accepts an offer from a competing law firm that the client couldn’t refuse and only tells the original firm when it calls to say it is pulling its work.

For the GC, the tipping point often comes with a realization of how much inefficiency is involved, both internally and with the firms. Or worse, it’s when the GC is told by the CEO that every other unit in the company has held its costs steady or even reduced them, particularly as a percent of revenue, whereas legal costs keep going up. Either the GC will achieve the same targets as all the other support groups, says the CEO, or someone else will be brought in to do it.

Every year I get five to ten calls from GC’s and deputy GC’s who have had these moments of truth. In every conversation, the callers then say that they looked at their numbers and current methodologies, and why in the world hadn’t they seen these shortcomings and solutions sooner?

### Here’s What Others Think

*“There is consolidation within the industry. Large firms are becoming larger to capture more work, other firms are focusing on niche practice areas to deliver those services they do best, and the rest are still being squeezed out in a race to the bottom by focusing on rate reduction as a reactionary measure.”*

– Law firm partner

*“In many ways, the legal services industry looks like it is heading in the direction of the health care industry after the HMO explosion. There used to be doctors and nurses; now there are LPN’s, CRNA’s, hospitalists, physician’s assistants, etc. There used to be lawyers and secretaries. Now there are paralegals, contract attorneys, non-equity partners, and Washington State just approved licensure for “Legal Technicians” to help lower income individuals navigate the civil justice system.”*

– Law firm partner

*“Are any of these cases documented? Would be great to see a citation to a case study or two.”*

– Mid-level in-house attorney

## MAKE A DIFFICULT PROMISE

In other related papers, I discuss an alternative way to measure law firm profitability so that it works equally well for traditional billable hours matters and alternative fee/ value-based matters. The approach also helps better align the objectives of both the firms and their clients.

A second related paper talks about what is involved in the transition from a billable hours system to a system focused on value-based relationships.

Jeff Bezos, the founder and CEO of Amazon, was once asked how Amazon has continually moved into new businesses yet ultimately becomes a market leader with strong profitability. Bezos' response was: "Make a difficult promise . . . and then keep it."

The way to manage your way through the necessary changes in legal operations is similarly to start by making a difficult promise:

- Reduce the client's total legal costs by 25%
- Provide near-certain predictability
- Significantly improve outcomes

Having made the promise, start rethinking everything you do. You'll soon realize, as Bezos does, that not only will you keep the promise, but along the way you will force yourself to handle legal services more effectively, whether in-house or at a law firm.

In summary, you will finally have a destination and it will be one worth going to.

### Here's What Others Think

*"I believe value is a marketing word or concept inherently evolving from the concept of "anchoring." Anchoring is where the organization sets expectations as to value (expertise, experience, cost or premium price) and then provides a way to obtain the service or product at a perceived reduced outlay. Here is my example. I like Ben Hogan polo shirts. I find them at Nordstrom's for roughly \$67. If I look around at specialty stores (Stein Mart) I might find them at \$47. But if I look at Nordstrom's Rack, I might find them at \$34. I believe Nordstrom's and the other providers are making money at all of these price points. Me, I like \$34 because I relate it to the \$67 amount. I am anchored at \$67 and believe (perceive) I got a value at \$34. Whether I did or not is less important than my thinking I did."*

– Law firm senior administrator

*"In doing this [going back to value], the firm simply returns to the nature of the relationship as it used to be described before the Big Law transformation began in the '70s. I repeat, the defects of the model for firm operations and profit distributions is another piece of this problem that cannot be ignored, for the perpetuation of the bad model is a critical barrier to the solution. It has to be replaced. Put another way, wiping it away will deliver more than 30% reductions in client costs without any downgrades at all in partner income"*

– Law firm partner

*"Firms can either recognize that tectonic change has already occurred, and will continue to occur, and take the challenge as an opportunity. Firms that took heed four years ago, and now, will fare far better than those who are just getting around to it. Like the incredible starting salary increases in the late 90's and mid-2000's, those changes took place in California and New York, eventually trickling down to other markets. Similarly, the massive blows of 2008 were first dealt in California and New York, and are continuing to trickle down to other markets."*

– Law firm partner

*"Unfortunately, many do not have the intestinal fortitude, resource-wise or culturally, to make the necessary changes, and are dying a slow death. I look outside my window into the city center, and I can name 5-10 firms that used to be prestigious, go-to firms. They are still using dictation tapes and fax machines, asking "Why do we need to upgrade?"*

– Law firm partner

## ACKNOWLEDGEMENTS AND DISCLAIMER

The opinions expressed in this article are my own, and the sidebar commentaries are likewise solely those of the commentators. I have benefited greatly from the wisdom and ideas of steering committee members and senior staff involved in the ACC Value Challenge as well as other law firm and in-house counsel with whom I have worked through the years. Anything with which readers agree no doubt derives largely from these other professionals; I'll take the blame for anything that is in error or with which readers disagree.

## ABOUT THE AUTHOR

Michael Roster has served the past four years as the voluntary steering committee chair and co-chair for the Association of Corporate Counsel's Value Challenge. Until 1993, Mike was Managing Partner of Morrison & Foerster's Los Angeles office as well as co-chair of the firm's Financial Services Practice Group worldwide, resident in both Los Angeles and Washington, D.C. and a member of the firm's policy committee. He subsequently served as General Counsel of Stanford University and Stanford Medical Center and then of Golden West Financial Corporation. Mike also has been a chair and outside director for a number of publicly-traded, startup and non-profit companies and thus has had the joy and frustration of also being a client

## ABOUT THE COMMENTATORS

- **General counsel** includes attorneys who are or were a general counsel or chief legal officer or performed similar functions for one or more companies within the U.S. or elsewhere. Virtually all also were previously partners and associates at law firms but are identified here solely as GC's.
- **In-house attorney** includes any attorney who is or was at a company within the U.S. or elsewhere but not as a general counsel.
- **Law firm chair** includes current and former law firm partners who headed a law firm and/or were part of the top leadership group for the entire firm.
- **Law firm partner** includes current and former partners at various law firms, some located in a single city and some that are regional, nationwide or worldwide. Many of these partners also are or were practice group heads, office managing partners, etc.
- **Mid-level attorney** includes people who graduated from law school within the past 15 years and may currently be law firm associates, working at companies or government agencies, solo practitioners, business people, etc.
- **Senior administrator** includes a variety of non-attorneys who currently are or previously were senior administrators and other non-attorney managers at either law firms or in-house corporate law departments.
- **Consultant** includes attorneys and non-attorneys who primarily advise or previously advised law firms or corporate law departments. Areas covered typically include finance, marketing, technology, training and similar functions. This category also includes people who are or were law school professors, are or were senior employees at legal trade associations and/or write about the legal industry.