

The ACC
VALUE
Challenge

ACC Association of
Corporate Counsel

“Changing the Game”

The ACC Value Challenge
Reconnecting Cost with Value

ACC’s Corporate Counsel University
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**Fundamentals of Inside / Outside
Counsel Management**

- **Make or buy:** serving the client / assuring legal health
 - what do you need to do as in-house counsel?
 - what do you wish to do vs. what you’ ll outsource?
 - what is the work worth and how should it be done?
 - cost, headcount, process, budgets, predictability
 - skills / experience needed to secure the right outcome?
- what do you hire outside counsel to do?
 - what kind of team is needed?

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**Fundamentals of Inside / Outside
Counsel Management**

- What is your experience with outside counsel?
 - Were you outside counsel in a previous life?
 - Do you select outside counsel?
 - Do you negotiate and contract terms of retention?
 - Do you manage outside counsel, matters, or bills?
 - Do you manage **in-house mgmt** of outside counsel?
 - Do you collaborate or team with outside counsel?
 - Are your incentives and OC’ s incentives aligned?

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Inside / Outside Counsel Mngmt.

- Who manages whom? Whom manages what?
- Outside counsel incentives and business models are often not “client-aligned” but profitability- and convenience-driven.
- In-house counsel work in entities driven by good business practices, and thus are often at odds with their management when it comes to outsourcing practices.
- In-house counsel enable firms with great lawyers but bad business practices: cost is not connected to value, practices are not connected to efficiency and results.

The ACC Value Challenge

- The AVC was created in 2007 and launched in 2008 to address the fundamental disconnects between firms and departments. Our goal: improved collaboration.
- The AVC began before the economic downturn hit (not in response to it), and we'll be working on this issue long after the markets have revived.
- This Challenge is all about improving alignment as the legal service paradigm shifts: how firms and clients will drive value (sustainable profits for firms and better results/controlled costs for clients).

Everything hinges on the client: are we ready to lead or just in love with the theory?

- Decades of escalating legal costs w/o improved efficiency.
- Changing pressures on both sides: the Tipping Point.
- Many clients revert to a short-term focus on discounts; many firms assume value is all about lower rates: but really, both have to re-address their business models.
- What long-term, institutional changes create stronger client - firm alignment / value-propositions?
- Not a matter of blame; both sides need to find sustainable relationships going forward.

What does value-based service entail? Better firm-client alignment

- A total focus on partnering / collaboration
- Rigorous cost-control (more than simply lowering cost)
- A commitment to risk-sharing and reward-sharing
- Longer-term relationships – continuity, predictability
- A focus on new skills, staffing, and lawyer development
- Lean, efficient, process-oriented management
- Continuous Improvement/Accountability
- Transparency through Data

Moving from theory to process: What are the keys to better client relationships?

- A sampling of possibilities are available, along with profiles of firm and client success practices, at www.acc.com/valuechallenge.
- There is no one silver bullet “value” practice, and no “one size fits all.” Value is in the eye of the beholder and must be shaped by each client/matter. Timelines for implementation will vary from client to client/firm to firm.
- Bite what you can chew / Walk before you run: make change manageable and sustainable.

Is re-focus necessary?
Is change here to stay?

The Changing Paradigm of Legal Service Provision

Changing Paradigm

In-house Counsel Tell Us:

- Law firms not responding to pressures on their business model (71%)
- Requested rate cuts (46%); Requested discounts (79%)
- 69% Moved work in-house; 68% Shifted work to regional/boutique firms
- 55% Reduced projected 2010 outside counsel spend (avg 5% reduction)

Statistics from ACC 2009 CLO Survey, 2010 ACC/Serengeil Inside/Outside Counsel Relationships Survey, 2010 ACC/AmLaw "Change" survey, and Lexis-News "State of the Legal Industry" Report

Changing Paradigm

In-house Counsel Tell Us:

- Going forward, billable hour no longer "default" (57%)
- Depending on the survey, clients report that 7-27% of all work billed in 2009 was on an alternative-to-hourly basis
- In 2009 (reported 2010): 41% used fixed fees; 20% used contingencies; 19% used other forms of value billing.
- For 2010, 61% project increased fixed fee use; 55% project increased value billing arrangements; 45% plan to increase use of contingencies; 36% will use portfolio pricing.

Statistics from 2010 ACC/Serengeil Inside/Outside Counsel Relationships Survey, 2010 ACC/AmLaw "Change" survey, 2011 CIB Private Bank Law Firm and HBR Peer Monitor Report

Changing Paradigm

In-house Counsel – results from 2010 surveys:

- 26% **Increased** legal spend in 2009 (significantly lower than previous years: 49% in 2008; 61% in 2007; 62% in 2006; 85% in 2005)
- 37% **No change** in allocated budget (even though workload increased)
- 37% **Decreased** legal spend (even though workload increased)

Little or no resistance to establishing alternative fees over the last 10 years:

- Corporate: + 16% in 10 years
- Firms: + 69% in 10 year

Statistics from ACC/Serengeil 2010 Inside/Outside Counsel Relationships Survey; ACC/AmLaw 2010 "Change" survey

Figures the CFO won't ignore

	2008	2009	Change
Law dept. spending as a % of company revenues	.17%	.23%	+ 35%
Outside spending as a % of company revenues	.29%	.33%	+ 14%
Ratio of outside spending to inside spending.	2.2	1.5	- 32%

Statistics from ACC/Serengeti 2010
Inside/Outside Counsel Relationships Survey

The "New Normal" Retention Template

New Required Retention Terms for Outside Counsel:

- Full project budgets: 65%**
- Client consent for staffing changes: 63%**
- Early case assessments: 60%**
- Client ownership of work product: 47%**
- Specified technology requirements: 25%**

Statistics from ACC/Serengeti 2010
Inside/Outside Counsel Relationships Survey

Changing Paradigm

Outside Firm Trends in 2009

- 41% Offered AFAs (even if they weren't accepted)
- 33% Implemented a hiring freeze
- 29% Deferred start dates
- 26% Reduced assistant/associate salaries

From the 2009 "State of the Legal Industry" Report, Lexis-Nexis

Changing Paradigm Outside Firm Trends in 2010

Demand declined in 2009 / didn't fully bounce back in 2010 – AmLaw 1-50
– the most profitable – hardest hit. (see next slide for more detail)

Historic Low: Equity partner rate increases fell to avrg: 2.5 - 2.8 %

Heavy discounting pressure hits realization rates (-10%)

Law firms increasing their focus on dramatic decreases in expenses

Equity headcount going down; reduced leverage in ranks

Hours billed/year fell dramatically in 2008, 2009, and 2010

Stats from to Dan DiPietro, Citi Private Bank Law Watch and
2011 Citi Private Bank Law Firm and HBR Peer Monitor Report

Firm trends – demand/growth

During 2009, the overall demand for legal services declined by over 4% from the
prior year and, in 2010 (through the third quarter) that downward trend
continued, though at a somewhat slower rate of less than 1%.

In 2009:

AmLaw 50 firms demand "grew" at a rate of -5.5% (an 8.1% drop from 2008);

AmLaw 51-100 firms experienced a -3.2% growth rate (down 6% from 2008); and

AmLaw 101-200 firms had -1% growth rate (down 6.2% from 2008).

In 2010, the demand/growth rates were almost flat, except for AmLaw 51-100 firms
with negative growth at the -2.3% level.

From: 2011 Citi Private Bank Law Firm and HBR Peer Monitor Report

Dan DePietro suggests the following metaphors:

"Well, in our country," said Alice, still panting a little, "you'd generally get to
somewhere else if you run very fast for a long time, as we've been doing."

"A slow sort of country!" said the Queen. "Now, here, you see, it takes all
the running you can do, to keep in the same place. If you want to get
somewhere else, you must run at least twice as fast as that."

Lewis Carroll, Through the Looking Glass and What Alice Found There

"[Ladies and] Gentlemen, we have run out of money. It's time to start
thinking."

Attributed to Sir Ernest Rutherford, Nobel Laureate in Physics (1908)

Where to start: Data Drives Demonstrable Value

- What data do you collect? What do you share?
Does your data mean anything to stakeholders?
- Do you know what it costs to provide service?
- What data do your firms have? Do you know what they know, do they know what you know?
- How does your data relate to your metrics?

Profitability from Efficiency – Re-tooling Lawyer Skill Sets

The movement to build executive / financial / business skill capacities to drive better business practices and efficiency:

- Financial and valuation skills
- Process management
- Project management
- Change/behavioral management
- Continuous Improvement (evaluation)

Profitability from Efficiency – Process / project management

The movement to look at how the work is done and by whom and how it could be done better - is process management:

- process assessment requires you to disaggregate / unbundle the stages and work / put it back together better.

The movement to map the work, budget each stage, discuss expectations/responsibilities - is project management:

- “alternative fees and staffing” is really nothing more that sticky budgets for well-scoped matters.

Critical Evaluation is Critical

- You can't drive value without knowing what your clients want and investing in improvements that build your capacity to provide that. If you don't get feedback from clients and your own team, you can't improve.
- How do you evaluate yourselves? How do your clients evaluate you? Are your firms evaluating, too? Are your evaluations objective? What do you do with the results?
- Do you reward performance to change goals or do you reward something else?

Knowledge Management

Law firms are in the knowledge business. You apply expertise and legal analysis to problems; your firm organizes teams and support to help you do that. So how do you capture, share, and re-use knowledge? Clients want you to, you'll make more money if you do, and you'll improve results. Successful value lawyers do not focus what is the *same* in every matter, but on what is *different* in each matter. The firm's mastery of process enables you to focus on what's different.

So what do we do about rates?

- If clients want predictable costs (all-in), do law firm rates even matter anymore?
- Does the current connection of rates and hours to firm comp help or hurt?
- If rates and hours only matter internally at firms or in the AmLaw rankings, shouldn't we change the model to a better business model for clients (and in the long run, firms)?

**Final Thought:
Remember the in-house mantra...**

**“What my boss finds interesting,
I find fascinating!”**

**What's fascinating your in-house clients and interesting
your clients' management these days?
How can you benefit from that knowledge?**

**In the end,
it's all about value.**

www.acc.com/valuechallenge

**Thanks for sharing your
meeting with me!**

**Susan Hackett
Association of Corporate Counsel**
