



**Annual Meeting 2011**  
DENVER OCT 23-26  
Where In-house Counsel Connect



# Lessons Learned Across the Legal Process Outsourcing (LPO) Life Cycle

Session 104  
Tuesday, October 25, 2011  
9:00-10:30 AM

Danny Ertel, *Partner, Vantage Partners*

Ken Cutshaw, *CLO & EVP, Cajun OpCo d/b/a Church's Chicken*

David Bono, *VP of Law & GC, US Ops, Brookfield Renewable Power*

Amy Schuh, *Chief of Staff, VP & DGC, Operations & Alliances, HP*



## Meet our Facilitators



**Ken Cutshaw**

CLO & EVP,  
*Cajun OpCo d/b/a  
Church's Chicken*



**David Bono**

VP of Law & GC, US Ops,  
*Brookfield Renewable  
Power*



**Amy Schuh**

Chief of Staff,  
VP & DGC,  
*Operations & Alliances, HP*



## About Vantage Partners



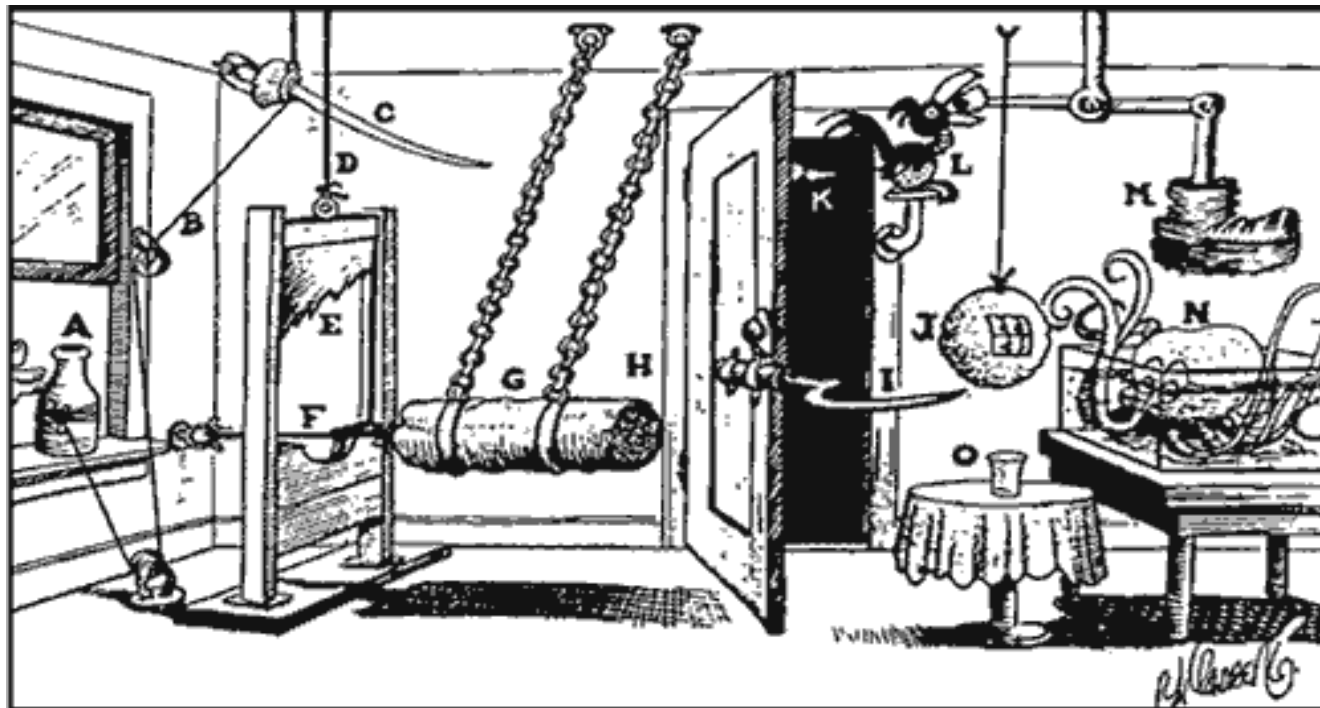
- Spin-off of the Harvard Negotiation Project
- Leaders in international dispute resolution through non-profit CMG (now part of Mercy Corps)
- Experts in building corporate negotiation and relationship management capability
- Recent examples of our work with law firms and law departments include:
  - **Work on models and techniques for negotiating alternative fee arrangements.**
  - **Analysis of activities that could be productively unbundled and outsourced**
  - **Selection of appropriate providers and negotiation of outsourcing arrangements**
  - **Development and implementation of change management and communication plans to support an outsourcing strategy**

# A familiar problem: The “discount dance” destroys relationships



- Destroys trust
- Rewards stubbornness
- Focuses on the wrong thing
- Creates poor precedents

To get away from haggling over discounts, start by understanding the delivery model

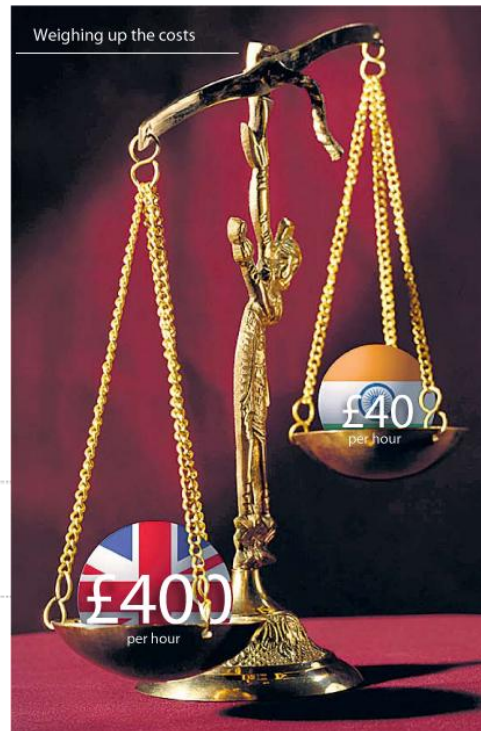


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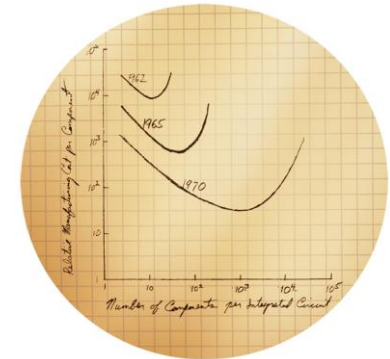


# A perfect storm is creating conditions for making changes in the how legal services are delivered

## Globalization of Talent Pool



## Technology – aggravating the problem and offering solutions



In 1965, Gordon Moore sketched out his prediction of the pace of silicon technology. Decades later, Moore's Law remains true, driven largely by Intel's unparalleled silicon expertise.

**THE WALL STREET JOURNAL**

WSJ.com

AUGUST 24, 2009

## 'Billable Hour' Under Attack

*In Recession, Companies Push Law Firms for Flat-Fee Contracts*



## What's going on in Legal Process Outsourcing?

- Clients are leading the way, but those using LPO are still a minority
  - LPO replacing some external spend, allowing internal resources to move to higher value tasks, and allowing law departments to offer “new services” to internal clients
  - For litigation, third party feels very “normal”; other services lagging
  - Financial services leading the way; others will follow
- LPO activity originating from top law firms is still limited
- LPO providers are innovating models and offerings
  - Integrating technology and services
  - Charging by the FTE, by the project, or even by the page
  - Reaching into new domains: M&A due diligence, corporate secretarial, regulatory compliance



## Lessons learned from early adopters

- You need to understand what you are outsourcing and for what purpose
  - Do more or spend less?
  - Reduce headcount or reprioritize efforts?
  - Deal with peaks in demand or improve process and quality overall?
- You need to exercise due care in selecting the right provider
  - “Must have” requirements vs. differentiators
  - Selection criteria connected to key objectives
- You need to pay attention to how the client, law firm, and LPO provider work together





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# Deciding whether/what to outsource



## Outsourcing the right things for the right reasons – some different value propositions

- Save money by:
  - Reducing internal headcount
  - Reducing external spend
- Improve law department productivity (and morale) by:
  - Shifting internal resources to more valuable work
- Add more value to the business by:
  - Free up time to get closer to the business
  - Providing new, heretofore unaffordable services to the business



## Ken Cutshaw: Case Study

Worldwide trademark portfolio management & maintenance

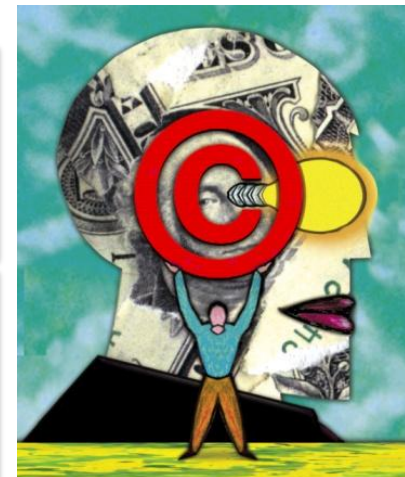
### Church's Chicken Trademarks

USA quick-service chain of fast food restaurants that owns the “Church’s Chicken” trademark and many related Trademarks. Company has 1,800 restaurants globally.

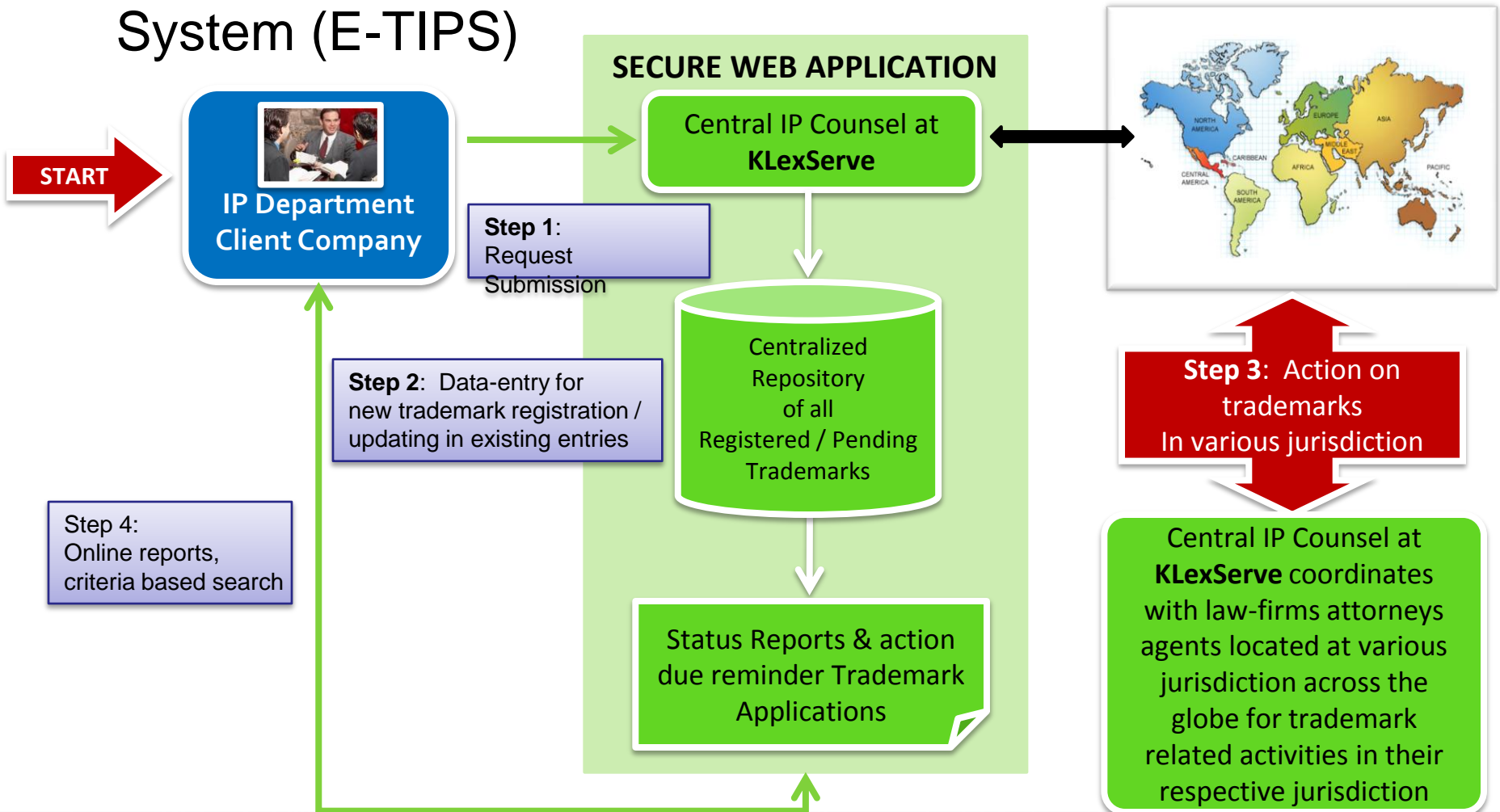
#### PROBLEM

Company required an innovative cost effective solution to efficiently manage and maintain its worldwide portfolio of trademarks and domain names.

Company had retained outside Law Firms & global trademark agents/counsel to monitor its critical IP portfolio. Company concluded that the coordination costs with outside counsel expensive and process to be time consuming.



# Electronic Trademark & IP Portfolio Management System (E-TIPS)





# Worldwide trademark portfolio management & maintenance

## SMART SOLUTION = E-TIPS

Proprietary online web-enabled Electronic Trademark and IP Portfolio Management System (E-TIPS) for managing, maintaining and administering client's portfolio of trademarks globally

Allows instant access to updated trademark information

Ability to upload all related documentation pertaining to a trademark application (TM Certificates, TM Security Agreements, POA, License Agreements etc.)





# Worldwide trademark portfolio management & maintenance

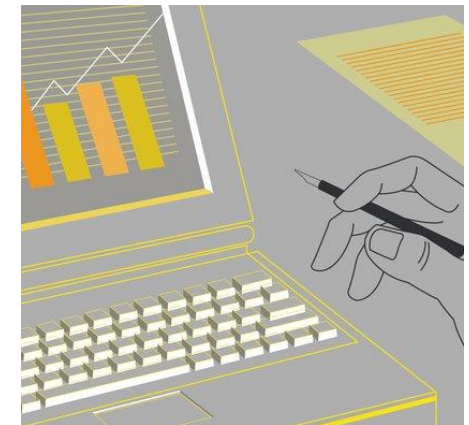
## SMART SOLUTION

Ability to conduct extensive searches based on class, logos, mark name, status, registered renewals, country-wide, regional organizations, etc.

Automated updates/email reminders on trademarks due for renewals

Dashboard view of the worldwide trademark portfolio

Ability to generate intelligent, criteria-driven MIS reports in different formats





# Worldwide trademark portfolio management & maintenance





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## KLexServe Electronic Trademark & Intellectual Property System (E-TIPS)

Welcome Mr. Administrator Admin Today's date : 22-Sep-2010

Home | Logout

Admin Module

- Activity Log
- Role
- Language
- Class
- Country
- Mark
- Status
- Indicator
- Owner
- Trademark
- Trademark Protection
- Attorney
- Law Firm
- User

- ▶ Law
- ▶ Trade Mark Entry
- ▶ Upload
- ▶ Reports
- ▶ Invoices
- ▶ Opposition
- ▶ Settlement
- ▶ Dixy

Copy Right    Domain Name    **Trade Mark**    Trade Secret    Patent    Franchisee    Menu Labeling

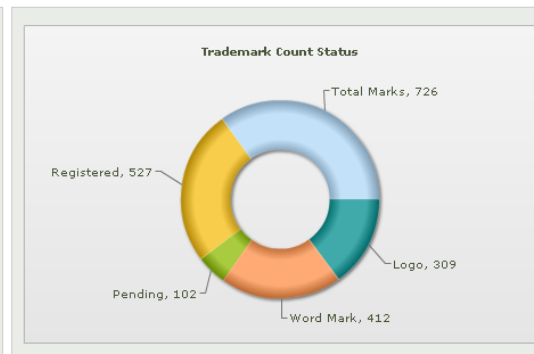
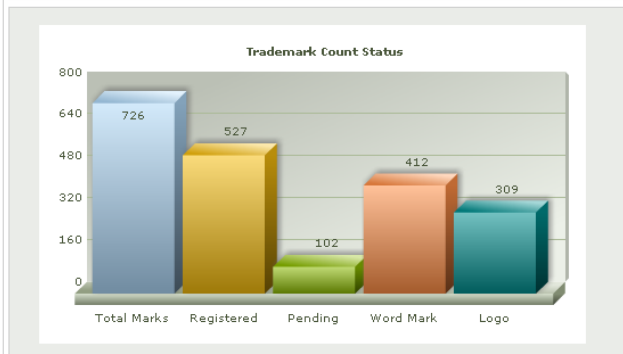
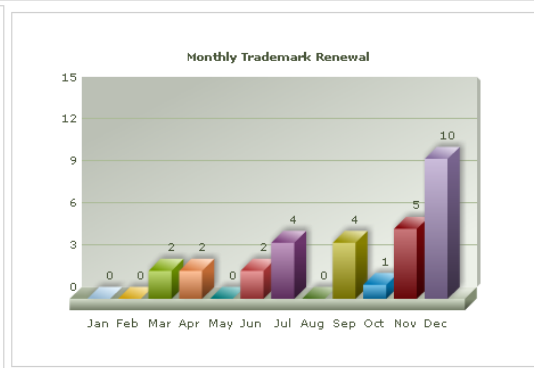
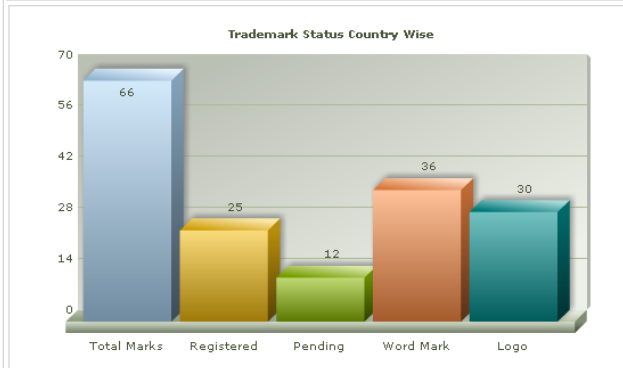
**Attention :**

Trademark ready for renewal in the month of October 2010 = **1**

[Click here to Send Reminder](#) for the month October Year 2010

Domain Name ready for renewal in the month October 2010 = **0**

Select Country







## At your tables: Begin the assessment of potential outsourcing opportunities by looking at today

<b>What do you wish you and your staff had <b>more</b> time to do?</b>	<b>What do you wish you and your staff could <b>stop</b> doing?</b>	<b>What takes up too much time, relative to the value it provides?</b>
<p><i>What valuable things are you not getting to? E.g., could you help the business manage risk better? Make better decisions?</i></p>	<p><i>What's unavoidable, but not very interesting or valuable? What would you stop doing if you had some way to improve self-service by non-lawyers?</i></p>	<p><i>Could you break up the tasks and shift part of the work to less expensive resources?</i></p>



## Key steps in developing an outsourcing plan

Deciding whether/what  
to outsource

Selecting  
providers

Managing relationship with  
outside counsel and LPO  
provider

- Align internally around desired objectives — what will be different if we are successful?
- Map means and scope to main objectives — what do we unbundle, automate, stop doing, outsource?
- Develop internal business case — how will we know this is working?
- Document current state processes and baselines, and describe desired future state — what, specifically, do we want from a provider?



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# Selecting providers



# The LPO provider landscape is still evolving

## The market is very much in flux

- Indian providers are relatively small; market is fragmented
- South Africa, Israel and Australia emerging as centers for higher value LPO
- Onshore options developing in both US and UK

## Even among “qualified” providers, who meet basics ...

- ✓ IT & physical security
- ✓ Culture of confidentiality
- ✓ Good HR practices
- ✓ Good Business Continuity Planning

## ... There are differences in capabilities

- Subject matter
- Language skills
- Knowledge management
- Cost structure and fee arrangements

## There are also case-specific trade-offs ...

- Short-term capacity
- Price
- Quality
- Conflicts to be addressed
- Speed

*... And relationship management  
always makes a difference*



## Typical pitfalls during selection process

- Failing to communicate clearly what potential providers are expected to deliver
- Selecting based primarily on price, rather than provider qualities most critical to success of the initiative
- Confusing “table stakes” and differentiation criteria
- Relying mostly on reputation, rather than real due diligence and good fit with your organization and your objectives



## David Bono: Case Study

- About Brookfield Renewable Power
  - One of the largest independent producers of renewable energy in North and South America, with over \$16bn of assets under management
  - We have more than 100 years of experience as an owner, operator and developer of hydroelectric and wind power facilities
  - Currently: 170 generating facilities, with significant operations in United States, Canada, and Brazil
  - Strategy involves frequent acquisitions of new generation and transmission assets



Objectives: Standardize practices for M&A and reduce cost to facilitate earlier involvement of Legal in due diligence

- Part of broader vision to transform how we conduct our M&A activity
- Disaggregate high-volume due diligence review tasks from other parts of the M&A process
- Define best “Brookfield Practice” for diligence reviews and execute these practices consistently
- Perform reviews at a lower cost without sacrificing quality
- Enable Legal to get an earlier start on due diligence and participate more in shaping the deal



## Our provider selection process

1. We identified over 40 service providers that could potentially be considered for delivering the services.
2. Based on research, we narrowed the list and included six providers in the rest of the evaluation process.
3. After validating the short list, we sent all six providers an RFP.
4. Based on RFP responses, we reduced the list to three.
5. We conducted follow-up conversations and references calls to reduce list to two finalists.
6. After in-person meetings, we selected a provider, aligned on scope, and put a contract in place.







# Illustrative Provider Evaluation Matrix

	Security/ Confidentiality/ Business continuity	Cultural fit (e.g., experience with companies like Brook- field)	Language capability (Spanish, French, Portuguese)	Experience in energy, finance, and real estate industries	Due diligence & contract summary capability	Ideas for value- add ser- vices	Delivery capability	Quality control	Human resources (e.g., quality of talent, quality & stability of leader- ship)	Indicative pricing / savings
<i>Weight:</i>	Pass/Fail	10%	5%	10%	25%	5%	15%	10%	10%	10%
Provider 1	Green	Yellow	Green	Green	Green	Green	Yellow	Green	Yellow	Yellow
Provider 2	Green	Green	Yellow	Yellow	Green	Red	Green	Green	Green	Yellow
Provider 3	Green	Yellow	Green	Red	Yellow	Yellow	Green	Yellow	Yellow	Green
Provider 4	Green	Green	Red	Yellow	Green	Green	Green	Green	Yellow	Green
Provider 5	Green	Red	Yellow	Green	Yellow	Green	Red	Yellow	Red	Red



## Exercise: Matching outsourcing objectives and means to provider selection criteria

1. Reduce external spend – by outsourcing document review in litigation
2. Free up internal resources – by outsourcing the redlining/negotiation of simple standard contracts
3. Support business better – by outsourcing contract data extraction and management
4. Get more useful work products for post-deal management – by outsourcing due diligence summaries



At your tables: Discuss & prioritize criteria most relevant to your assigned outsourcing objective

### Example: Patent searches

Criteria	Points Allocation
1. Quality control	25%
2. Strong process management & tools	25%
3. USPTO experience	30%
4. Industry/domain experience	10%
5. Pricing	10%

### Pass-fail criteria

- IT and physical security
- Business continuity
- Culture of confidentiality
- Revenue / finances?



## Matching selection criteria to outsourcing objectives

Reduce external spend: Document review	Free up internal resources: Simple contract redlining	Better support business: Contract management	Get more useful work products: Due diligence summaries



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  - Develop internal business case — how will we know this is working?
  - Document current state processes and baselines, and describe desired future state — what, specifically, do we want from a provider?
- Identify relevant providers — through research, advisors, issuing RFI
  - Develop selection criteria — that supports objectives and business case
  - Engage with providers — through interviews, issuing RFP
  - Select short list — by evaluating responses
  - Conduct due diligence — through reference checks, site visits, further dialogue
  - Negotiate terms — with one or more finalists



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# Managing relationship with outside counsel and LPO provider



## What LPO means for clients

- Bring spend under control?
- Better value; maybe offer more services to internal clients
- Unbundling services requires rethinking make/buy and provider choices
- Gain more choices, and new risks
- Challenges of managing in a multi-source environment

## What LPO means for law firms

- Leverage models will change
- New skills required (e.g., project management)
- Value proposition/client relationship stressed
- Risky reliance on third party for inputs
- Rethink service portfolios?
- Threat or opportunity?

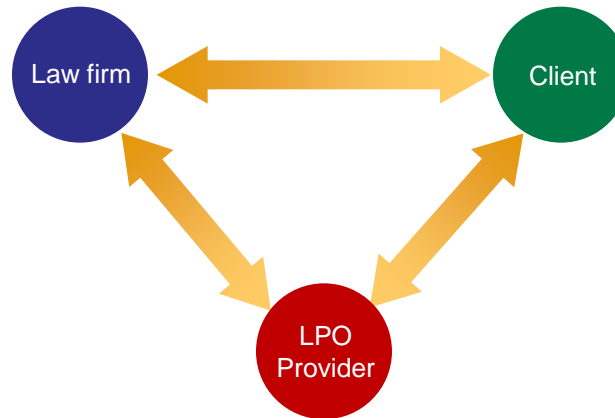
“While some firms call the entry of low-cost service providers a threat to their market share, we have also heard others describe these lower-cost alternatives as an opportunity to reduce their own cost structure by outsourcing some of their work to these providers.”

Citi Mid-Year Law Firm Data Report, September 2010

# The 3-way relationship carries both substantive risks and relationship risks

## Substantive Risks

- Confidentiality of client information
- Ethical considerations
- Maintaining privilege
- Accuracy of outputs
- Timeliness of deliverables
- Dependence on provider flexibility
- Impact on profitability
- Who bears cost of infrastructure?



— Photo courtesy of Adam Niklewicz

## Relationship Risks

- Client perception of hostility towards LPO
- Frustration with rates on other work
- Loss of true accountability
- Impact on “trusted advisor” role
- Impact on other work
- Inconsistent use of LPO providers

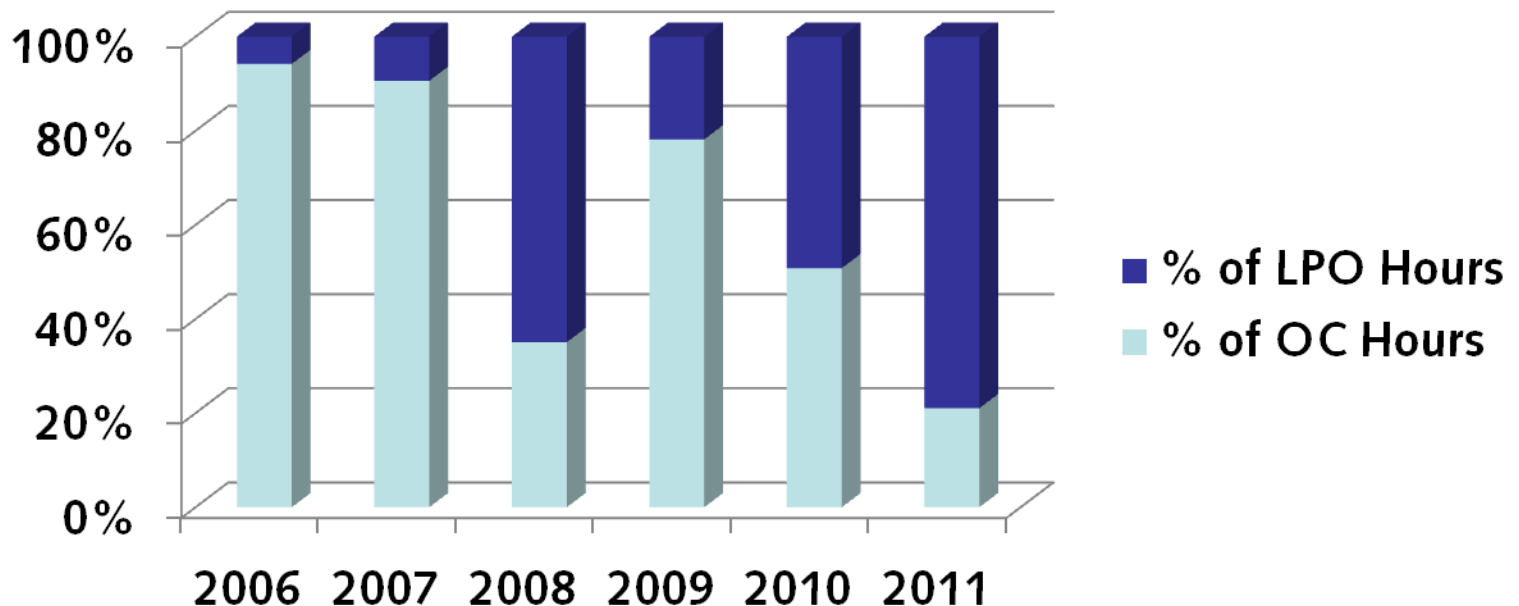




## Amy Schuh: Case Study

Implementation of Document Review Process using LPO's

■ Gradual Process





## Implementation of Document Review Process using LPO's

- Start with outside counsel-approved LPO partner
- Gain acceptance within the company
- Gain acceptance with that outside counsel, and gradually use the LPO with other large outside counsel
- Introduce new LPO's
- Give counsel choice among preferred LPO's



## Roles must be clearly defined

- Outside counsel is expected to:
  - Set review parameters (relevance, etc.)
  - Determine priority of review
  - QC LPO work
- LPO is expected to:
  - Clearly report the status of reviews
  - Communicate clearly regarding any questions that arise during the review
  - Document the process
  - QC their own work prior to outside counsel QC



## Exercise: Capabilities needed to deal with new challenges

1. Discussing decision to outsource with outside counsel
2. Addressing quality issues
3. Ensuring effective integration of inputs and outputs in multi-vendor engagement
4. Monitoring value and ongoing improvement



At your tables: Discuss capabilities required to manage your assigned relationship management/governance challenge

### Example: Gain business unit buy-in

	Capabilities Required
Skills	<ul style="list-style-type: none"><li>• Listening</li><li>• Building alignment</li></ul>
Templates/tools	<ul style="list-style-type: none"><li>• Standard descriptions of process for working with LPO</li><li>• Easy to use feedback instrument</li></ul>
Metrics	<ul style="list-style-type: none"><li>• Turn-around time on requests</li><li>• Quality of outputs</li><li>• Savings achieved</li></ul>
Processes	<ul style="list-style-type: none"><li>• Requirements gathering</li></ul>
Other?	<ul style="list-style-type: none"><li>• Internal “Road show” to introduce process, explain how &amp; why selected LPO providers</li></ul>



## A few lessons from the front lines:

1. Don't ignore project management – if possible, dedicate resource, if not train some available staff
2. Don't ignore change management – it's in your interest to be a “good client” and that requires some changes in behavior
3. Consider centralizing vendor management in Law Dept to standardize metrics, contracts, and reporting
4. Engage IT early



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  - Develop selection criteria — that supports objectives and business case
  - Engage with providers — through interviews, issuing RFP
  - Select short list — by evaluating responses
  - Conduct due diligence — through reference checks, site visits, further dialogue
  - Negotiate terms — with one or more finalists
- Discuss outsourcing with outside counsel — share objectives and reasoning
  - Conduct three-way relationship launch — to align all parties on why and how
  - Implement governance best practices — including communication plans, quality monitoring, tracking to business case



## Thank you!

- Danny Ertel, *Partner, Vantage Partners*
- Ken Cutshaw, *CLO & EVP, Cajun OpCo d/b/a Church's Chicken*
- David Bono, *VP of Law & GC, US Ops, Brookfield Renewable Power*
- Amy Schuh, *Chief of Staff, VP & DGC, Operations & Alliances, HP*

*An LPO Planning Workbook*, incorporating outputs from this session, will be available after the Annual Meeting