



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

ABA Section of Business Law
Business Law Today
July/August 1998

Law firms and legal departments: Can't we all get along?

From the outside, looking in

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At a time when many lawyers are making more money than ever before, a very high percentage of them are unhappy. It's easy to say that lawyers are in the same boat with everybody else, and – these days – everybody is unhappy. Doctors are unhappy. Congressmen are unhappy. But it's too easy to dismiss lawyer dissatisfaction merely as symptomatic of a more global gloom. Rather, I believe that much lawyer unhappiness arises from the profound changes that have occurred in the delivery of legal services over the past two decades. Many lawyers agree and lay the blame on their clients.

And, indeed, while the money may be better than it's ever been, relationships between law firm lawyers and their clients aren't so terrific. At the extreme, lawyers are confronted with armies of auditors poring over their files and time sheets. And at least one major corporation requires its outside lawyers to submit a work order before undertaking any task, whether it's answering a complaint or attending a deposition. How the mighty have fallen

Business clients still need trusted legal counselors, but relationships of trust between clients and lawyers tend to be moving in-house, while outside lawyers are more often used on a piecemeal basis. It's not as much fun being a junkyard dog as it was being a trusted counselor. And the difference between the two kinds of relationships goes well beyond the inclination of clients to keep a close watch on billing. If the trend toward using outside lawyers as junkyard dogs is to be slowed or reversed, law firms must redefine legal services and reengineer how they are delivered.

Before the new era, in-house lawyers typically were law firm rejects. They were often perceived by clients and law firm lawyers as dim, lazy and limited. For a long time, this was a self-fulfilling prophecy. Good lawyers quested after law firm partnerships for the status and the pay. Mediocre lawyers who couldn't make the grade in law firms were banished to clients of the firms that fired them to practice only in areas unthreatening to their former employers. Typically, CEOs or other very senior corporate managers made outside lawyer hiring decisions. They, of course, rubbed shoulders only with senior partners in law firms who belonged to the same clubs and were trustees and directors of the same community organizations and corporations.

Of course, senior partners were happy. They not only made good money, they were the trusted counselors of the captains of industry, banking and government. Junior partners and associates who could make the grade could practice deferred gratification until they, too, achieved these positions of power and esteem and earned the big bucks. In-house positions weren't an option for the ambitious because the relatively low salaries of in-house lawyers, including general counsel, reflected their low esteem in their companies as well as in the legal profession. In those days, when it came to delivering legal services and how much to charge for them, outside lawyers were upstream of their clients.

When you examine the good old days more closely, it's clear that the legal profession was a medieval guild. Medieval guilds were not all bad. Members of the guild were carefully selected and trained. They worked collegially to provide high quality products and services. They were justifiably proud of their work and unwilling to compromise standards merely because those purchasing their goods or services wanted something different. And, their prices were high. Because nobody but guild members could compete, they had the independence to dictate what they would deliver and how much they would charge.

If you examine the changes that have taken place in the past decade, it's clear that the legal profession has finally seen the collapse of the medieval guild. Today, reflecting their new status, in-house lawyers are held in high esteem by their clients and well paid and general counsels are often compensated as well as any senior corporate officers. Not only do outside law firms face competition from in-house lawyers, but also from accounting firms, banks and other service enterprises. Soon, accounting firms will compete head-to-head with American law firms. as they already do in Europe.

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Not to say, however, that the disintegration of the medieval guild has been entirely a progressive movement, yielding nothing but benefits for the client. I trace the beginning of the guild's decline to the era in which corporate chieftains began to persuade their law firm golfing partners to cross over and become corporate general counsel. These men, senior members of the guild, omnipotent, highly paid law firm senior partners, quickly declared that they could accomplish almost everything in-house, for one third to one half as much money as they formerly billed their clients, now suddenly become their full-time employers.

They paid no attention to whether the volume of sophisticated legal work they required justified the hiring of sophisticated practitioners. They understood only one model for the delivery of legal services: the law firm model, established in the best tradition of the medieval guild. They brought all their bad management practices with them from the law firm into the legal department.

Thus the extreme pendulum swing toward in-house legal departments was no more likely to serve real client interests than the opposite. For example, surveys demonstrated that there might be a short-term cost savings by bringing third-year associates in-house to do third-year associate legal work. However, the cost savings declined and ultimately disappeared as those third-year associates became long-term employees with correspondingly higher salaries and benefits, while their legal work failed to increase in challenge and complexity. This was the era when at least one corporate CEO complained to his general counsel, "Every year I give you an unlimited budget and every year you exceed it!"

But the heady days when general counsel and their in-house legal departments could do no wrong was also the era when the practice of law in law firms began to be less fun. All of a sudden, the client was upstream. The client told outside counsel what to do, when to do it and how much they could charge. Competent associates on partnership track sometimes opted to go in-house. No longer were they banished from the law firm; they chose to leave.

Today, clients understand that the well-managed legal function requires constant evaluation of the "make or buy" option. When a legal department doesn't have enough work in-house to keep lawyers busy at their highest performance level, it will get the best value by purchasing legal services at reasonable prices from outside firms. But that leaves unanswered the important question we asked at the beginning: Can the satisfaction quotient of practicing law in law firms be returned to where it used to be? Can the delivery of legal services be reconfigured to restore the relationships between outside lawyers and clients that made it all worthwhile?

Where do we look for new models for the delivery of legal services? Not, alas, in the legal marketplace. I prefer to study what's happening elsewhere in the business world. Michael Dell, whose name graces the machine on which I am writing this article and sells \$12 billion worth of them annually, has tagged his approach to customer relations "virtual integration," in a fascinating interview in the March-April, 1998 Harvard Business Review. He teaches his sales-account managers to talk with Dell's business customers about their future PC needs.

How many responsible law partners spend significant time "off the clock," in counterpart conversations with clients? Such conversations would give clients the perception that you want to be more than a junkyard dog and you would also equip your own firm to forecast demand in various practice areas, cross-market and otherwise enlarge lawyering opportunities with such clients.

Dell supports its customers by helping them keep track of their information technology assets. For example, they offer to put their customers' asset tags on the machines before they leave Dell's assembly line. A small service, but one much appreciated by Dell's corporate customers. Dell also puts Dell people on-site with customers. As Mr. Dell himself puts it, "We have 30 people that live at Boeing and if you look at the things we're doing for them or for other customers, we don't look like a supplier, we look more like Boeing's PC department. . . . They're right there living it and breathing it, as opposed to the typical vendor who says, 'Here are your computers. See you later.'"

Even though Dell saves its customers money with such services, they don't try to maximize profits on those ancillary services. "We could say, 'Well, it costs you \$300 to do it, so we'll charge you \$250.' But instead we charge \$15 or \$20 and we make our product and our service much more valuable. It also means we're not going to be just your PC vendor anymore. We're going to be your IT department for PCs." For all the lip service being paid to partnering in the legal profession, I know of few examples that approach Dell's involvement with its customers.

What if law firms on their own initiative began keeping track of how much various matters and cases cost the client and how much time they took? Instead of waiting inertly until confronted with RFPs from clients, what if law firms took the initiative in proposing alternative ways of getting the job done faster and better? What if they offered services ancillary to the practice of law but valuable to their clients?

Beyond sales and support, Dell has established forums "to ensure the free flow of information with the customer on a constant basis." Dell's top technologists and engineers as well as senior executives take part in these forums, offering useful insights about, for example, the relative merits of leasing and buying. They also help their customers understand trends in technology and what they mean. Incidentally, Dell himself attends these meetings. He solicits from customers how Dell is doing and what they want and need. He learned, for example, that – contrary to what his engineers thought – corporate customers weren't as interested in high-speed computer performance as they were in stability.

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One important aspect of these forums is that the company reports back to customers on how it has responded to their concerns. Dell now builds products with intergenerational consistency over many years, and attempts to build greater stability into their computers headed for corporate customers. Other highly profitable innovations have resulted from Dell's customer forums, including producing notebooks with longer-life batteries and loading customers' software for them while their PCs are still on Dell's assembly lines.

Dell reports that he spends 40 percent of his time with customers. Although increasing numbers of law firms undertake client assessments, we still find many firms in denial about the importance of seeking comments from clients. And even among those firms that may occasionally ask clients how they're doing, few try to get clients together to discuss how the firm's legal services delivery can be improved. I have often encouraged my law firm clients to establish client advisory councils. To my knowledge, only a handful of enlightened firms have done so.

We have worked with many in-house legal departments to realign their lawyers with the company's strategic business units. (Often this is an uphill struggle because general counsel have lingering nostalgia for the medieval guild concept, where all lawyers are kept together unsullied by day-to-day involvement with business people.) As a result of the successful integration of lawyers with their clients, in-house lawyers generally have the upper hand these days when it comes to activities that parallel Mr. Dell's notion of virtual integration. They can align their practices to be with clients not only when there are problems, but also when there are positive results to be achieved and more efficient, less costly ways of delivering legal services. The best lawyers, in-house and outside, are those from whom the client seeks counsel because they can add value to the business, whether it involves problem-solving or strategic planning, defending cases or enhancing profitability.

Is the battle, therefore, lost and will the satisfying lawyer-client relationships continue to trend in-house? Not necessarily. Business persons currently keep a keen eye on their functional operations. Many believe that companies should "make" only what is strategic to their goals and "buy," or outsource, the rest. Most believe that there should be transparency between their own operations and those of their principal vendors. Sony, for example, no longer ships PC monitors to Dell's warehouses. Dell has so much confidence in Sony's reliability that they have a shipping company coordinate delivery of the Dell computer and Sony monitor to the customer, who need never know that the Sony monitor, with Dell's logo on it, was never touched by a Dell employee. Not only does this make the entire process more efficient, Dell doesn't pay a cent for warehousing monitors.

Typically, the most frequent communication that law firms have with their clients is the monthly bill. And also, typically, law firms continue to charge on a time-based basis. While many clients continue to shy away from billing arrangements other than time-based, most are reassured when outside law firms at least propose alternatives. Time-based billing raises the conflict between the client's interest in limiting the legal function (along with all other functions) to what is needed to fulfill its needs and the law firm's interest in piling on.

Clients constantly complain to me that outside lawyers continue to supply Rolls Royces when Volkswagens would do. Clients are beginning to understand the correlation between time-based billing and law firm compensation systems based on individual productivity measured by hours billed. In a recent survey, more than one-third of outside counsel admitted that the prospect of billing additional hours at least sometimes influences their decisions to undertake work that they wouldn't otherwise have performed, according to William Ross in *The Honest Hour: The Ethics of Time-Based Billing by Attorneys* (1996). And, Ross reports, half the outside counsel and two-thirds of inside counsel estimate that a minimum of 10 percent of the work that is done by lawyers is motivated more by a desire to inflate hours than by a desire to serve the real needs of the client.

I have spoken with general counsel livid at billing partners who have resisted alternative billing arrangements because their own compensation would be adversely affected. Clients would be much more likely to restore relations of trust with law firms that compensated lawyers based on good practice management and client perceptions of quality service delivery.

So I reject the complaint of many lawyers that clients are responsible for the practice of law not being fun anymore. "This could once again be a profession rather than a business, if clients would just let us practice law," they say. Wrong. Dead wrong.

The answer, dear lawyers, lies not in our clients, but in ourselves, as I hope this discussion demonstrates.

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