DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

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Perspectives

FORUM: PARTNERING AS A COST CONTROL TECHNIQUE

Midatlantic editor Charles R. Hann interviews William D. Cotter, Vice President, General Counsel and Secretary, American Optical Corporation; Steven C. Kaney, Senior Assistant General Counsel, Pfizer, Inc.; Thomas M. Moriarty, Assistant Counsel, Merial; Lynne J. Tomeny, Deputy General Counsel, General Signal Corporation; Andrea E. Utecht, Senior Vice President, Secretary and General Counsel, Elf Atochem North America, and Thomas E. Woo, General Manager of ARCO's shared services legal organization, and Outside Counsel Coordinator of the company's control program. Here's what they're doing to get the most out of their litigation budgets.

Hann: What new approaches has your law department developed which make it possible for you to partner more effectively with outside counsel in the handling or management of litigation?

Cotter: In litigation, partnering to me means a team approach in which there is a division of work between inside and outside counsel, and pursuit of common goals. Occasionally we link the law firms' billings to the result achieved so that they also have a financial stake in the outcome. Good communications and trust are key.

In commercial litigation, we often coordinate requests for document production using inhouse counsel and staff. Rather than having one or more associates and/or paralegals visit the

company and review files, inhouse personnel under the direction of the general counsel, review the files and extract documents which are responsive to the requests. All decisions regarding privilege are decided by the general counsel in consultation with the outside firm.

In toxic tort litigation involving suits in multiple jurisdictions, the general counsel may perform tasks that would otherwise be handled by national coordinating counsel. For example, the law department would maintain a master set of responses to interrogatories for use by various local counsel in order to assure consistency, and a document repository for future document production.

Occasionally, we have used alternate fee arrangements so that outside counsel has a stake in the outcome of the litigation. We have used modified contingency fee arrangements in which the law firm bills time to a specified maximum (or at a discounted rate) in return for a percentage of the recovery. It works particularly well when deciding whether to bring a patent infringement or trade secret case since we can budget accurately the amount we are willing to invest in the matter.

Kaney: Pfizer has taken a skeptical view of the concept of "partnering" as a marketing gimmick of law firms who seek a tighter bond to a client. We prefer to view the concept instead as one in which law firms come to have a better understanding of our overall economic interests and of our dissatisfaction with the unequal distribution of risk in the traditional attorney-corporate client relationship based on billable hours.

Hence, in instances in which hourly billing is used (and no risk is shared and consequently no incentives to conclude a matter quickly exist), we strive to assure at the least that the law firms adhere to our billing and staffing guidelines; case planning and budgeting, and reviews of performance against budget, time lines, and task goals. More importantly (even if less frequently), we seek to establish compensation mechanisms in which, like a partnership, risks are properly assessed and fairly shared. Because we do most transactional matters inhouse, the partnering issue rarely arises. As a large corporate litigant, we are much more often a defendant than a plaintiff; but wherever possible, we seek to create incentives for firms to operate as efficiently as they might if working for a contingent fee.

Alternatives employed have included flat annual fees for a body of work; variations on contingency fees; a lesser hourly rate, or even a flat fee (based on a discounted hourly rate estimate), with a bonus for early conclusion; a declining annual flat fee with a declining annual bonus for early conclusion; or a flat fee (based on a discounted hourly rate) for a block of attorney time. All of these approaches penalize inefficiency, overstaffing, or business as usual in areas such as document discovery, but provide profit if not a windfall for efficient or novel handling.

The quid pro quo offered by Pfizer is continued business, profitable to the firm if done efficiently and less so if not; while the firm offers services of maximum value to Pfizer and of value to the firm only if performed efficiently. A well-founded partnering relationship between a corporation and a law firm flows from the mutual recognition that a sharing of risk leads to a sharing of interest.

Moriarty: Merial, a Merck and Rhone-Poulenc joint venture in the animal health business, is a $1.6 billion-dollar company that transacts business in 150 countries across the globe. As a result, our practice is extremely varied and includes food and drug law, antitrust and competition law, patent and intellectual property matters, general corporate and transactional matters -- all with a significant international law component. Some approaches that we have adopted to ensure that we are achieving the maximum return on our investment in retaining outside counsel are the following:

. Hire the attorney and not the law firm. Put another way, counsel is retained for a specific need in a particular practice area based on that attorney's expertise. We make clear to the attorney hired that we view ourselves as that attorney's client, not necessarily the firm's clients, and as a result we use several different law firms.

. Align the outside counsel's interests with the company's. Because the pressures to maximize billable hours at firms may be inconsistent with the goals of inhouse counsel to deliver an effective, efficient result for the company, we expect the attorney retained to manage those pressures appropriately and for the benefit of Merial, not his or her partner. Lawyers who make this adjustment get more Merial work than lawyers who do not.

. Establish upfront that the responsible inhouse attorney will manage the matter for the company and be a key member of the legal team. It is essential that both the inhouse and outside counsel work more closely at the outset to educate the outside counsel quickly about the company's business so that the matter is handled consistent with the company's business goals.

. Develop a case plan, including staffing levels and projected costs. By defining and agreeing at the outset to the appropriate strategy and staffing level and identifying any potential variable costs that may be incurred, the inhouse attorney has a clearer appreciation of the legal issues involved in the matter and what the firm's representation is likely to costs. This important initial discussion establishes a natural forum to ensure that the matter will be managed efficiently -- and with fewer surprises -- by both inhouse and outside counsel toward an effective result.

. Limit the number of hands that touch the file. Many firms, because of the need to respond at any given moment to demands from several different clients, seek to assign a number of associates "part-time" to a matter, when it may be more cost-efficient to have a partner handle the matter directly or with the assistance of one associate. By limiting at the outset which attorneys will assist in the matter, the inevitable inefficiencies of too many hands touching the file can be avoided.

. Centralize all communication through inhouse counsel. By requiring outside counsel to first contact the inhouse attorney with an inquiry, both parties gain the efficiencies of utilizing the inhouse attorney's knowledge of the company and where the information can be obtained. Centralizing communication also helps meet the important client needs of ensuring (a) that all affected managers are being appropriately briefed by inhouse counsel on the matter's status and progress, and (b) that sensitive or proprietary business information is not inadvertently disclosed.

. Reward effective and efficient representation. If the matter is handled efficiently and effectively, the attorney is rewarded with repeat business. In this manner, inhouse and outside counsel have a mutually consistent goal of ensuring effective, efficient representation that achieves the company's goals.

Tomeny: For General Signal, a major challenge has been to develop effective partnering relationships in the management of asbestos and other toxic tort litigation. We consider our partners to be not only our law firms, but our insurers. The insurer/insured relationship is a delicate one in toxic tort litigation, since there is the overlay of the insurers' reservation of rights regarding coverage. The specter of future coverage litigation may become a reality if a good working relationship based on trust and teamwork is not developed among the insured, the insurers, and outside counsel.

The first step is a crucial one: identifying savvy, experienced outside counsel who can effectively walk the toxic tort tightrope of demonstrating undivided loyalty to his or her client (the insured) while at the same time satisfying the requirements of insurers whose coverage positions may be adverse to the insured's interests. The situation may be further complicated if there are multiple primary insurers with differing claims, management philosophies and coverage theories plus the involvement of excess carriers whose sole interest is avoiding impact to their layer of coverage. We never merely waft the case to our insurers, but are actively involved in the selection of outside counsel.

Frequent "one-on-one" discussions with outside counsel and insurers are also essential. Differences in claims management philosophies, litigation strategies, and billing issues are more readily resolved if dealt with at an early stage, rather than in the context of crisis management at a critical juncture of a litigation. I help hold the team together (thus decreasing the risk of a coverage war) by serving as a de facto ombudsman for resolving both disagreements among insurers and problems outside counsel may have with the insurers or operating unit

personnel. Trust is established when insurers and counsel learn from experience that I have kept our conversations confidential while finding a way to address their concerns.

General Signal has also encouraged frequent communications among all insurers and General Signal on coverage and claims handling issues. We have facilitated discussions among primary insurers regarding allocations issues for interim cost sharing agreements and with an excess carrier regarding the issue of dropdown obligations for an exhausted primary policy year.

To assure that General Signal and its carriers receive timely and comprehensive claims information and that local counsel receive key information required in the defense of the case, we convinced the carriers to create both regional and national coordinating counsel. A two-day seminar for all outside counsel was held to provide a full briefing on important litigation issues.

This strategy of partnering with outside counsel and our insurers has been quite successful for General Signal. A disparate group has been molded into a very effective team of talented professionals who work collegially in an atmosphere of trust. Adversarial coverage issues have been defused, allowing all parties to focus on the primary task: providing a successful defense in a cost-effective manner while minimizing the burden to our operating units.

Utecht: As in the case with many other corporate legal departments, Elf Atochem is looking for ways to reduce its outside legal costs and, at the same time, increase the effectiveness of its relationships with its outside counsel. One program we have instituted to help us achieve that goal is basically a flat-fee arrangement with a specific firm for all "routine" litigation which occurs in the geographic area serviced by that firm. Prior to approaching any firms with this proposal, we did an analysis of costs attributable to our litigation over approximately a five-year period. We then averaged the costs (excluding cases that were clearly out of the ordinary such that they would have distorted the figures) and presented the data to about five firms in the geographic area we were concerned with. Based on their responses to our Request for Proposal and interviews with the attorneys who would be assigned to our matters, we selected one firm for an 18-month term. (It should be noted that all the firms accepted the fixed-fee concept and the economics basically as we presented them.) We are now on our second term of the arrangement. Since many of the cases that are covered by the program are still pending, it is difficult to say for sure what kind of savings will accrue from it. However, the program has resulted in a more rigorous evaluation of cases for settlement at an earlier point in time, and this is where I believe the most significant savings will accrue.

We have also instituted a number of contingent fee arrangements in cases where Elf Atochem is the plaintiff (primarily cost recovery actions). These have been both straight contingencies and modified contingencies (the latter being an arrangement whereby a fraction of the hourly rate is charged in return for a percentage of the recovery in excess of a certain amount). These contingency arrangements have proven to be very successful in that both we and our outside counsel are working to maximize recovery, while keeping costs in line.

Generally, both the measures described above have provided greater incentive for outside counsel to work more closely with us and to efficiently use work done in other cases. This has helped to make the relationship between us much more of a partnership, in which both parties benefit.

Woo: In the past few years, most companies have intensified their efforts to control their outside legal costs. ARCO developed a formal cost control program in 1992 which was implemented the following year. I was a member of the company task force that designed the program, and I was also given the responsibility for ongoing administration.

ARCO's program, in my view, has four specific objectives, with the ultimate goal to ensure that ARCO attorneys are informed, cost-sensitive consumers of outside legal services. The four objectives are: (1) to capitalize on the company's opportunities for reduced fees in the legal services market, (2) to provide means for more effective budgeting and reporting of ARCO legal matters, (3) to optimize the use of ARCO's in-house capabilities and resources in the handling of legal matters, and (4) to facilitate the management and efficiency of ARCO legal work.

I would like to share with you some of my observations and experiences as the program administrator.

Over the years I have met with many prospective law firms whose presentations sounded as if they were from the same script. They all claimed superiority over their competitors in terms of quality of lawyers, staffing, efficiency and the like, and it often became difficult to distinguish one firm from another. A few firms were able to achieve this distinction, however, by departing from the script and addressing their capabilities to represent the company on its particular types of matters, possible alternative fee arrangements, and new or different ways of handling legal work. Another notable exception were the firms that expressed their willingness to overcome any learning curve with respect to the company and its legal matters by conducting, at no charge, legal research, document reviews, client meetings and on-site visits.

A frequent inquiry from law firms when I broach the subject of alternative fee arrangements pertains to the volume of future work that can be expected in return for a discounted fee. While I think this is a legitimate concern, my usual response, which I believe to be appropriate in today's competitive environment, is that no promise of future work can be made (unless the discount is based on guaranteed volume); however, if the firm performs well in its current assignment, then it will be considered for future assignments.

In negotiating an alternative fee arrangement with a law firm, I feel it often boils down to the amount of financial risk each side is willing to assume, which is largely dependent on the degree of trust in the relationship. In other words, while it is important for inhouse counsel to believe that outside counsel is offering a good deal, it is equally important that outside counsel feels that the client would be willing to provide some kind of relief if the deal turns out to be seriously miscalculated. Another aspect of assessing risks is whether outside counsel has sufficient data on other work done that is comparable to the work under consideration, which can be used to estimate manpower, time requirements and other factors. Outside counsel may not possess such data; however, it is quite possible that inhouse counsel would have access to suitable information in the company's databases.

A couple of other issues raised by outside counsel during fee negotiations can be problematic. One is the fear of resentment if other clients learned of a better deal offered to ARCO. The second involves complications arising from a firm having a "most favored nation" agreement with one or more other clients. In my experience, these potential problems are not insurmountable, since a law firm is usually able to maintain its various fee arrangements in confidence, and most fee arrangements and the matters to which they apply are distinguishable enough to avoid violating any special agreements.

Hopefully, my commentary will contribute to a better understanding between inhouse and outside counsel. We should all bear in mind that the current trends of corporate downsizing and increasing competition between law firms have put added pressure on lawyers to become more astute businessmen. Also, company policies and procedures governing the activities of outside counsel may actually foster a closer working relationship with inhouse counsel rather than hinder it, because there will likely be less of those frustrating, sometimes detrimental, disagreements over items on the billing statements that usually surface after outside counsel has already performed the work or incurred the expense.

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Issues & Overview

THE PROMISES AND PITFALLS OF COMPUTERIZED LITIGATION SUPPORT SYSTEMS [FNa1]

Ralph I. Miller

Weil, Gotshal & Manges LLP

Michael J. Rider

Associate General Counsel

Callaway Golf Company

Creative and aggressive use of technology can promote success at the settlement table and victory in the courtroom, but uninformed use of computers can waste money, time, and precious legal talent. Like all practitioners of skilled crafts, lawyers must comprehend the strengths and weaknesses of the tools of their trade, and the well-rounded trial team faced with the prospect of complex litigation on a fast track should be able to evaluate and employ all information-management options.

When they achieve their full potential, computers can revolutionize the handling of litigation. Information is the fabric from which trials are fashioned, and computer systems are the most powerful instruments yet devised for manipulating data. A well-implemented system can improve the effectiveness of outside counsel and reduce client costs in each phase of a complex case. On the other hand, choosing a poorly designed or untested computer litigation support system ("CLS") can introduce additional work--and risk--into an already stressful situation. Therefore, prior analysis and planning with respect to design of a CLS is as important as it is with other major business projects.

Despite the benefits of information management, many lawyers have little understanding of the promises or pitfalls that are inherent in state-of-the-art CLS systems. Unfortunately, bad experiences from the 1980s have caused many companies to write off the prospects for CLS. Also, the study of law has never required technical inclinations, and many attorneys dislike and distrust electronic gadgets.

General counsel and trial lawyers must overcome these barriers and force their litigation clients to take a fresh look at the CLS cost-benefit equation. Each year, technology that was too expensive for general implementation drops to an affordable level. Imaging and indexing technology in the late-1990s permits vast quantities of information to be stored, retrieved, organized, and used in ways that were never before possible at manageable cost.

Fast computers are no substitute for good lawyering, but any professional can do better work with better tools. Like lumber jacks who replaced their axes with chain saws, advocates who tap into the power of computers cannot imagine turning back the clock to the era of index cards and carbon paper. As lawyers, our fiduciary duty requires that we give our clients both zealous representation and cost control. If new technologies can help us meet these obligations better, we owe it to our clients to add those weapons to our arsenal and wield them with skill and enthusiasm.

FNa1. Brief excerpt adapted from a similarly titled chapter (Chapter 10) of Litigating Complex Cases from the Inside Out, edited by Richard A. Rothman (Glasser LegalWorks 1997). Chapter 10 surveys the benefits that can be achieved in litigation with technology, discusses some common problems, and outlines a planning process to achieve the benefits. As the title suggests, each chapter in the book was co-authored by both one inside and one outside counsel, providing dual perspectives. Readers interested in obtaining further information about the book should call Glasser LegalWorks (800) 308-1700. Ralph Miller writes and speaks regularly on legal technology issues and is also the author of an article titled "Portable Technology for Lawyers," which appears on page 12 of this issue. Questions or comments about litigation technology may be sent to Mr. Miller via e-mail at ralph.miller@weil.com or by calling (214) 746 7756.

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Best Practices: General

HIRING OUTSIDE COUNSEL: THE BASICS

Sanford K. Mozes [FNa]

Pressures caused by specialization in the practice of law increasingly make the consideration of hiring "outside counsel" more appealing to corporate counsel. However, in order to properly choose outside counsel, important factors, such as the effect on the legal budget, time management and communication, need to be assessed.

The most obvious reason for hiring outside counsel is to augment the in-house staff on a temporary basis for a specific need. In most cases, inside counsel usually handle routine matters and take on significant responsibility in areas which are frequently encountered in the ordinary course of the company's business. However, when in-house counsel does not possess the necessary expertise in specialized fields, such as environmental law, labor law, ERISA matters or intellectual property, just to name a few, outside counsel should be considered.

In many instances, it is financially responsible to hire outside counsel who is expert in a particular area of law. Experienced outside counsel should be able to estimate projected fees and costs, and may be amenable to project caps or volume discounts. It will not be cost effective to bring, in-house, a specialist for legal projects that arise infrequently. Similarly, the time required to educate in-house counsel in a new area of the law may not be a sensible use of time or resources. In contrast, many law firms have the capacity to assemble large working teams, on short notice and after normal business hours, to staff complex or unusual projects. Using good management skills, corporate counsel and senior management must decide whether inside counsel is sufficient, or whether the alternative of retaining separate attorneys in an appropriate situation is advisable. The decision should be made by measuring the time available, the competence, the skill and expertise of inside and outside counsel against one another as well as considering the potential risk in the matter. The magnitude and importance of a case is an important ingredient that should be considered in making a decision whether to retain outside counsel.

Although private practitioners or law firms may be specialists and more knowledgeable in particular legal fields, typically outside counsel knows less about the business than the company attorneys. It is advisable to communicate regularly and often with outside counsel to discuss the business, the expectations and the special needs of the company and its management. Once outside counsel is retained, clear lines of communication between all of the attorneys and senior management are essential to establish trust and confidence in the relationship. Ideally, by communicating effectively, inside and outside counsel will each bring their opinions, strengths, knowledge and expertise to the relationship, which should optimize the decision-making process and the course of representation.

Some practical steps should be followed: obtain references, check the reputation of the individual attorneys, as well as the law firm; hire lawyers that will make your matter their highest priority and, or course, use an attorney and a firm that you respect. One way to evaluate outside counsel is to request that they present a seminar on a topic in which your company is interested. This is just one tool that can be used in the search process.

It is the responsibility of senior management and in-house counsel to find outside counsel with skills, expertise, available time and resources to achieve the company's goals. The search process may take time away from the business at hand, but the long term benefits of a successful relationship are immeasurable.

FNa. Sanford K. Mozes is Chairman of the Corporate Department of Fox, Rothschild, O'Brien & Frankel LLP in Philadelphia.

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DUPONT'S VIRTUAL LAW FIRM

TECHNOLOGY DRIVES BEST PRACTICES AND COST-EFFECTIVE RESULTS

James K. Leader [FNa]

DuPont, its thirty-four outside law firms, and its four service providers are changing the fundamental way law firms represent clients by developing and utilizing technology to yield better, faster and more cost-effective results. As corporate legal issues take on national and global importance, successful legal representation requires the use of communications technology to exchange information rapidly, widely, and in a format that can be utilized without adding greater cost than value.

In a move as innovative as Eleuthere Irenee du Pont's first gunpowder plant in 1802, DuPont's lawyers are launching a wide-area network ("WAN") that will electronically link DuPont and its national team of law firms and service provide to share information and expertise, creating for DuPont a virtual law firm dedicated to DuPont's interest. DuPont's Primary Law Firms are viewed by the Company as a resource rather than a cost item. At the same time,the thirty- eight members of the network, who have collaborated for two or three years, have developed a sincere trust in each other's skills and a genuine friendship that promotes the common interests of all the firms.

I have practiced law in New York for twenty-five years and my chosen profession has changed more in the last five years than in the first twenty. When I began taking and defending depositions, the first thing a lawyer did when he entered the conference room was locate an ashtray. Today, that same group of lawyers looks first for outlets and surge protectors to plug in their laptops.

My firm, Leader & Berkon, has been faced with the challenge and the opportunity to participate in DuPont's creative experiment which has changed how we practice law. As a result, our firm works better and faster. We assess cases immediately and develop a strategy for resolution, analyze legal problems differently, take an active (rather than re-active) role in litigation, and consider the most cost-effective way to achieve the client's goal.

Until recently, corporate legal departments and their outside counsel were immune to the waves of budget-cutting and downsizing that affected corporate America. No longer. "Cut legal costs and get better results with fewer resources" was the demand of DuPont's General Counsel Howard Rudge to a team of DuPont's lawyers consisting of Dan Mahoney, Tom Sager and John Dickey.

No longer is the standard instruction to "win at any cost." In addition to achieving the client's goal, the vocabulary of "success" now includes such terms as cost, efficiency, shared risk, productivity, economy, value added, and alternative billing. Only a few years ago, most lawyers would have considered it demeaning to apply business principles to the practice of law. But that is precisely what DuPont did and what it has demanded that its law firms do.

DuPont concluded that technology was the answer to eliminating gross duplication among its outside law firms, which it reduced from nearly 400 firms a few years ago to the 34 firms today. Of all the lawyers that DuPont could have chosen in New York, I believe Leader & Berkon was selected because we were willing to take risks, because we thought about practicing law in non- traditional ways, and because we shared DuPont's commitment to technology.

The "DuPont Legal Model," as it has come to be called, relies on technology, much of which DuPont and its consultants have had to invent, in order to create a network among its law firms, to foster early case assessment to evaluate litigation and set strategy, to communicate by video conferencing and e-mail, to formulate strategic budgets, and to assess our own efficiency and work habits through task-based billing and the application of metrics. DuPont has made a substantial financial commitment to its convergence program and to the technology needed to make it work. The Company has begun to see rewards. In the first three years of the program, DuPont has saved $13 million on its legal work and expects to save $20 million over the next two years.

As DuPont's primary law firm in New York, Leader & Berkon's participation in the technological advances and in the cost-efficient approach to litigation has further sharpened our skills in handling matters for all our clients. As a result, like the other firms who are DuPont's Primary Law Firms, we are at a distinct competitive advantage in the representation we offer clients.

Wide Area Network ("WAN")

In order to drive down the costs of litigation without jeopardizing results, DuPont concluded that merely reducing the number of outside firms was not nearly enough. Creation of the WAN was a next, critical step. The development and refinement of the necessary technology has taken four years and a great deal of money.

The WAN is an automated, information-sharing technology that allows DuPont's lawyers to access a knowledge base that contains information on the Company's litigation. Imaging technology has made the WAN possible and effective. The system is an electronic file cabinet of DuPont's litigation and work product generated by the Company's counsel.

The WAN's state-of-the-art technology permits automated imaging and indexing of key documents, assuring the accuracy and consistency of document production and eliminating costly duplication of effort and inconsistencies from case to case. Firms no longer have to maintain their own databases. The elimination of multiple databases permits faster and more reliable access to information and case precedents.

By sharing documents on the WAN, time and money are saved by decreasing duplicative discovery, research, and document production. Leader & Berkon can call upon fact and law research for our matters in New York to the extent they are similar or related to cases elsewhere in the country. For example, we can search the WAN's database to discover experts in certain types of cases and read their testimony, or to locate helpful memorandums of law in support of motions that are to be made in a New York case. The WAN makes it possible to have faster, more effcient access to information and provides for quality assurance. The bottom line: improved quality at lower cost.

Early Case Assessment

Technology permits computer analysis of vast amounts of information. Without changes in lawyers' attitudes and approaches, however, litigation will proceed on the basis of "business as usual," despite the new technology.

DuPont and its law firms agree that one critical change is the need consistently and systematically to evaluate every new lawsuit as early as possible in order to establish a strategic plan for a satisfactory and cost- effective resolution. "Early Case Assessment" is a method of managing cases designed to proactively reduce the size and cycle time of litigation by applying the business principles of a cost/benefit analysis. Armed with adequate information, the Company and its counsel can make cost-effective business decisions. Technology enables us to gather the right kind of information quickly and to compare similar or related cases in order to conduct a realistic evaluation of a case and to create a useful litigation plan. The result is an ability to prioritize the initial tasks and create a course of specific objectives.

Metrical analyses through the use of technology permit assessment of likely exposure, cost of litigation, length of time from inception to disposition, and suitability for alternative fee arrangements. Intelligent risk-taking and risk- sharing requires knowledge of the relevant facts. Technology allows us to gather and analyze those facts.

Communications

For nearly two years, Leader & Berkon has been linked to each of DuPont's attorneys through an e-mail system that has successfully reduced time lost in playing "telephone tag." I have found that e-mail promotes short and to-the- point messages that allow sharing of creativity and inspiration whenever (and wherever) they occur. The cost of e-mail is far less than overnight mail, taxes and telephone tolls.

Video conferencing has also proven to be a cost-efficient and an effective way for attorneys from different cities to get together. Schwabe, Williamson & Wyat, DuPont's firm for Oregon, Washington and Alaska, has used video conferencing for over a year to link its three offices in Oregon and Washington to each other and to clients. Jerry Banks of the Schwabe firm reports significant savings on the time and expenses of travel as well as increased productivity through the benefits of video meetings rather than the traditional telephone conference calls.

Wyatt, Tarrant & Combs represents DuPont in Kentucky and Tennessee. It recently started to use video conferencing to link its eight offices in three states. Mike Brown confirms that video conferencing has added a new dimension to his firm's network by taking Wyatt, Tarrant's commitment to service to a new level. Communications with clients arc enhanced, productivity has increased, and costs to clients are reduced.

Task-Based Billing And Performance Metrics

DuPont's Primary Law Firms use technology not only to achieve high quality results, but also to measure our own performance in a continuing effort to improve both the quality and cost-effectiveness of the service we provide. By assigning a computer code to each activity (e.g., fact gathering, legal research, written discovery, strategy, budgeting, motions, trial, etc.) and

recording the time spent on each task, we can analyze how we spend our time. We will be able to measure our performance against concepts and predetermined standards and also against the performance of other law firms.

There are many benefits from recording our time by coded tasks. Not only can we analyze our performance, but we can also build a database to assist in understanding the utilization of law firm time and personnel. By gathering and evaluating that information, we can improve our performance and create alternative billing strategies to share a client's risks and to reap rewards from successful results. This same technique of recording our time in coded tasks allows us to submit our fee bills electronically, saving considerable administrative time and expense.

Technology And Relationships

DuPont has led the development and use of technology to achieve better results while expending fewer resources. Technology facilitates and increases collaborative efforts among the Company's internal and outside lawyers, reduces time-consuming and labor-intensive tasks such as legal research and document production, and enables more work to be done by fewer people.

DuPont and its law firms are keenly aware, however, that real cost reductions do not come from technology alone but are the result of better processes and the relationships among DuPont's lawyers, its Primary Law Firms and the Company's service providers

Rather than compete among ourselves for DuPont's business, the 34 law firms share information and benefit from each other's knowledge and expertise. This represents a significant shift in attitude and approach about how law firms work together and how companies and their law firms interact.

Although technology permits DuPont's individual law firms to collaborate on their representation of DuPont, to share best practices, and to communicate efficiently, each firm remains a separate entity responsible for its own work product on behalf of DuPont and its other clients.

FNa. James K. Leader, a Principal in the firm of Leader & Berkon, along with Frederick D. Berkon founded Leader & Berkon in 1988. They have represented DuPont for almost twenty years, and, in 1994, their firm was selected as DuPont's Primary Law Firm for New York.

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Focus On Technology In Litigation

RANDALL BOE: HOW AOL WINS CASES

Our guest editor is Anthony T. Pierce, Partner, Akin, Gump, Strauss, Hauer & Feld, L.L.P. In this interview, Randall Boe, Vice President and Associate General Counsel for America Online, Inc., discusses how technology has changed the traditional views of bringing a case to trial.

Pierce: Your company is an industry leader in the high-tech field. How has technology changed your approach to managing all of AOL's litigation matters?

Boe: Technology is rapidly changing the way we live and work and has enabled more efficient, immediate and cost-effective methods of communication, organization and presentation. We try to make sure that the lawyers who represent us have all of the advantages provided by the advances in technology. It's no secret that succeeding in litigation requires effective communications skills and strategies. We think that the deployment of technology greatly aids the process all the way from effectively processing all of the details of discovery, communicating with team members including outside counsel and making compelling presentations to courts and juries.

Pierce: Has this influenced the method by which a company like AOL looks for an outside counsel?

Boe: Absolutely. AOL uses document management and presentation systems internally in its everyday operations and expects the same from its outside partners. I really don't think that you can be an effective advocate for AOL without understanding the business and the technology and that means using e- mail, instant messages and the Internet. Firms like Akin Gump have demonstrated an ability to effectively utilize technology, without letting the technology overwhelm the subject matter of the case. I don't think that AOL is the only company that has this view. I think that other technology companies are also demanding that their outside counsel demonstrate some proficiency with the technology as a prerequisite.

Pierce: What types of tools have you seen firms implement?

Boe: First, I think that e-mail and instant messaging are absolutely critical. They make it so much easier to organize and coordinate a litigation team and allow you to make decisions very

rapidly. We are also big proponents of document management systems and imaging. We have an inhouse document management system and an inhouse imaging system. This allows us to share documents, track revisions, and manage discovery and document productions much more efficiently. It also allows us to share documents with the entire team without having to make multiple sets of copies -- which can represent a surprisingly substantial savings. These tools also allow for more collaboration between the inside and outside lawyers. We've also used products like LiveNote to manage deposition transcripts. This product allows for a real-time feed from the court reporter to a laptop at counsel's table in a deposition or trial. On-the-fly changes in examination strategies, particularly during impeachment of a witness, are possible as all of the prior transcripts for the case are available for searching while receiving the current live-feed. These tools make the job of being an inhouse lawyer easier and it makes for better results in litigation.

We are also seeing technology play a larger role in connection with in- court presentation. Jurors expect information to be packaged in the courtroom in many of the same ways it's presented outside the courtroom -- and that means sophisticated graphics and computer-aided presentation tools. The use of document imaging systems and presentation systems that display deposition videotapes, courtroom exhibits and other documents has become pretty widespread. Some courtrooms are already wired to facilitate the use of these systems and have monitors in front of the jury as well as on the witness stand, counsel tables and in front of the judge. Even in the absence of a "wired courtroom," basic presentation software, an LCD projector and a big screen can allow a lawyer to tell a more persuasive and compelling story in opening and closing statements. The lawyer who understands this technology and is able to use it at trial has a significant advantage -- there's nothing like impeaching a witness with their own deposition testimony, shown to the jury while the witness is on the stand with all of the critical documents highlighted and magnified.

Pierce: What has been the reaction from juries?

Boe: So far, it has been positive. In one of our recent trials, a former employee brought a contract claim against AOL demanding stock options. We set up a variety of databases to manage the documents produced in discovery and all of the important documents were imaged. As we geared up for trial, these tools helped eliminate a lot of the scrambling for documents that normally occurs. We used LiveNote in the courtroom to receive a real-time feed of the transcript. This allowed our lawyers to prepare at night with that day's transcript and any electronic notes that were taken while the witnesses testified. Our key arguments were outlined in an electronic slide show during the opening statement. We were able to publish exhibits to the jury with a push of a button and were able to select from the thousands of documents using a wireless barcode reader. During the closing arguments, we used another slide show to re-emphasize our key arguments and to point out how we had proved the contentions we made in the opening. A lot of planning went into the presentation, but at the same time, it was extremely flexible so that it could be changed depending on the flow of the evidence at trial.

As is usually the case, we won the trial based on the facts and the strength of our legal position, but there is no doubt in my mind that our presentation of those facts, as well as our legal position, was enhanced by the use of the trial presentation software and document database.

Pierce: We have discussed this before, but what would you say to the corporate litigator who says that these new technologies may backfire by making a company's trial lawyer look too slick, particularly in single plaintiff cases or situations when the opponent seems to lack the resources to use similar technologies?

Boe: I've heard people say that, but I'm not sure there's much to it. People from all walks of life are adopting new technology. The Internet and services like AOL have become a part of everyday life for a lot of people -- and they use e-mail, instant messaging and other applications on a daily basis. People expect a company like AOL to make use of these tools and I think they wonder when lawyers don't use the tools or aren't conversant with the technology.

Pierce: What has been the response from the court?

Boe: The response from the court has also been favorable. I think that judges appreciate anything lawyers can do to organize their presentations and make the content more engaging to juries. We've had one judge tell us that after seeing our presentation techniques, he was going to make a point of mentioning it in a law school trial advocacy course he taught.

Pierce: Is this becoming a common view among judges handling your cases?

Boe: Many judges embrace the technology that comes into the courtroom; however, this is not always the case. In the conservative environment of law, it may take education to get some judges on board with the boom of technology. The fact is, trial presentation software is no different than any other traditional demonstratives that are created, as long as they do not become argumentative. Displaying exhibits on a screen is also no different than coming into court with posterboards, except that the use of images allows you to have a posterboard for each and every page that may be admitted into evidence.

Pierce: What recommendations would you make to other companies and law firms about the use of technology?

Boe: Embrace the technology in a way that works for you. If you aren't technically adept, don't try to use the latest and the greatest; you might put yourself in an embarrassing situation when you encounter a glitch that you don't understand and can't fix. That being said, I don't think lawyers can afford not to use some of the new tools. I'm always surprised when I see lawyers representing high tech clients who seem to make their ignorance of technology a badge of honor. I worry that these lawyers are inadvertently sending negative messages about themselves and their clients to courts and juries. The use of these technologies can also make for significant cost savings for clients -- so if you don't adopt them, you may find your clients going to a firm that does. Law firms are known for being slow to adopt new technology, but the firms we use, like Akin Gump, are using new technology and it makes them better advocates for us.

Pierce: How has this entire process affected "partnering" with outside counsel?

Boe: These tools make it much easier to manage a team of inside and outside lawyers. It also facilitates the organization of cross-firm teams -- that is, we select lawyers from several firms and, through the use of technology, turn them into a "virtual firm." We expect our outside lawyers to make efficient and intelligent use of the technology available and I know we are not alone among companies in that view.

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Networking Interview -- Litigation

SHAPING THE FUTURE: ASSEMBLING AN EFFECTIVE LAW FIRM NETWORK LINDA K. DISANTIS,

UNITED PARCEL SERVICES

Another installment in our interview series designed to allow corporate counsel to network with colleagues who play key roles in their departments. In these interviews, we learn about the tools used by them to achieve success.

The Editor interviews Linda K. DiSantis, Vice President and Managing Attorney for United Parcel Service (UPS), about the development of the company's law firm network.

Editor: What is your position within the UPS legal department?

DiSantis: The corporate legal department at UPS is small for a company of this size, consisting of only 19 lawyers. The department manager, Allen Hill, reports directly to the general counsel. There are three managing attorneys, including me. My focus for the last year has been largely on developing our law firm network. Other attorneys within the department specialize in various areas. We believe that a lean staff with the right management tools can do the job by leveraging our own expertise through the use of carefully selected outside counsel.

Editor: How did you become involved in the project to select outside counsel?

DiSantis: I have been with UPS since the company moved to Atlanta in 1992. I was hired as an environmental lawyer, which was my background with the Atlanta firm of Alston & Bird. I practiced environmental law there and handled some commercial litigation. At UPS, I also worked on environmental litigation. I was promoted in early 1996, to a management role in the department and, in the beginning of 1999, was given primary responsibility to consolidate our law firm network.

Editor: Describe your role in the convergence project?

DiSantis: Because of the small size of the internal legal department, it has become very important to select the right law firms and to focus our work in a way that will encourage those law firms to do the best possible work for us. I managed this process of selecting law firms and reducing their number, and am also responsible for developing a system to better coordinate the work of these firms for all law practice areas.

Editor: How did UPS go about reducing the number of outside firms?

DiSantis: We rely heavily on outside counsel. We needed a better system of communicating with and managing our relationships with law firms. In January and February of 1999, we looked at the list of law firms that we used. There were then about 150 firms on the list that had done a substantial amount of work for us. We evaluated each of them in an effort to reduce that number. We came up with a model to implement a regional counsel approach which contemplated that labor, employment, and litigation would be managed on a regional basis by carefully selected law firms. Also, we wanted to focus on other important areas of our work like transactions, acquisitions, corporate and IP that we wanted to cover with fewer firms.

We set up interviews with 64 law firms beginning in April. Our RFP letters to these firms requested that they come for an interview and talk to us about their expertise in particular geographic and substantive areas. We sent letters to some of the firms currently representing us and some new firms. The purpose was to evaluate their experience in the type of network situation that we were trying to set up. One very important aspect was their technology expertise, because we intend to rely heavily on technology to enhance our communications with the firms. Therefore, we asked each of the firms to bring their technology manager to the interview. We interviewed from April to June.

Editor: What is the guiding philosophy for the law firm network?

DiSantis: Our goal is to have a group of outside law firms that not only connect well with the legal department and the business client in that critical three-way communication but also connect with each other. Therefore, we receive the benefit of all the firms knowing more about the company and being able to provide better, more consistent legal advice that makes sense across the company.

Editor: What types of questions did you ask the firms in the course of the selection process?

DiSantis: The questions related to their experience with this kind of network; we wanted a network of firms that was not only responsive to the legal department in terms of keeping us informed and following our direction on policy issues, but also worked well with our business people. We wanted firms that understood the importance of the three-way communication between the department, the firm, and the business client. Much of the day-to-day counseling work occurs directly between the law firms and the business people. Therefore, it is critical that these firms recognize the importance of the legal department's overall management role. This is particularly true in the employment area where there is a need for consistent application of policies. This need for consistency is reflected in an example we used in the interviews about advice given under the Americans with Disabilities Act. A law firm in one part of the country might give perfectly appropriate advice, but without proper coordination, it might be inconsistent with advice given elsewhere. The role of the legal department is to make sure those things do not happen.

Editor: How do you keep track of the advice that is given?

DiSantis: In the past we have had a difficult time with that, and to be frank we did not manage it as well as we needed to. As a very large employer, we are the target of many employment law suits and unfortunately some class actions. The more we talk to the firms and know what they are doing, the better we can manage these cases. We have improved our ability to communicate with the firms by reducing their number from 150 to 25, a much more manageable group. We plan to implement an Extranet connection with the firms which will improve

communications. This will further enhance our ability to manage efficiently. We expect, hope, and demand that the communication problems be reduced.

Editor: Would you contemplate having a knowledge bank of some kind that would be accessible to both the legal department and the network of law firms?

DiSantis: Our secure Extranet site will serve that purpose and we intend to have that running by early 2000. The firms would have access to information about corporate procedures and policies that we get asked about all the time. They will also be able to inform themselves about any changes in these policies and procedures. Since so many employment lawsuits are about similar issues, we intend to post briefs and other documents related to our cases so the firms can see how particular types of cases were handled in the past.

Editor: Is diversity in the law firms an issue in your search for law firms? What about pro bono and other forms of community service?

DiSantis: UPS is committed to diversity. It was an important part of our law firm selection process. We had a section in our RFP letter that asks law firms to comment on how they address diversity within the firm. They all came and discussed their hiring practices and objectives, which we intend to carefully track as part of our ongoing relationship with them. Part of our philosophy in the selection of law firms is that the firms should be representative of the values of the company. We believe that the firms should reflect UPS's deep commitment to diversity and community service.

Editor: How is responsibility allocated among the law firms?

DiSantis: Each firm has some geographic representation. In some cases the area is as big as an entire UPS region which will involve three or four states. In addition, some of the firms handle our corporate work.

Editor: Do all the firms cover the whole range of issues or do you use specialized firms?

DiSantis: One firm will not handle everything. Only five firms handle corporate work such as IP, mergers and acquisitions and transactions. We have asked each firm to set up a client service team. The key person in the team from the standpoint of my role in managing the overall relationship is the relationship partner. The other members of the client service team include the heads of the practice groups within the firm that handle our work.

Editor: Tell us more about the role of the firm's relationship partner?

DiSantis: We do not just call them when something is wrong, but they manage the relationship and ensure that we get the service that we need from the entire client service team. The relationship partner is also the billing partner, but they do more than police the billing process. We look to that person for the overall communication within the firm. One of the breakdowns in the process with law firms occurs when we send a message out to the relationship partner and that message does not get communicated down to the team.

For example, we have several technology issues that we are trying to implement by the end of the year. However, there are questions and glitches to be worked out. We send information to the relationship partner with the expectation that he or she will give it to all the people within the client service team, so it is not necessary for us to communicate to multiple people within the firm.

Editor: What about the practice group leaders within the firm?

DiSantis: We have a practice group leader for each area, whether it is a geographical area or legal specialty. If we have a new matter to be handled by a firm, we send it to the practice group leader for that practice area. He or she would be our initial contact and would see that the work was done by the appropriate lawyers within the firm.

Editor: Do you have periodic meetings with your firms?

DiSantis: We had a two-day meeting at the beginning of August after we formed the network in July. We invited the relationship partner and all the practice group leaders from the firms. The first day was spent on general topics related to our law firm network and information about the company. The second day we had practice group meetings. It was a very successful meeting and we intend to do something similar on a yearly basis.

The legal department spent July and August visiting UPS districts around the country facilitating introductions between the new law firms and the business people. We have now basically completed the transition from our old system to our new network of firms.

Editor: Do you expect that your program will reduce legal expense?

DiSantis: Yes. We do want better rates as a result of giving a smaller number of firms more work. However, we feel that the majority of our savings will come from improvements which will flow naturally from our convergence efforts -- greater efficiency, more consistency and better communication.

Editor: Do you still use the traditional hourly billing rates?

DiSantis: Yes, for the most part, but we have some alternative fee arrangements. We do have discounts with major firms, and we intend to implement that more broadly in 2000. Also, in the same year, we intend to implement some fixed fee arrangements.

The first priority was to form the network, to get the client services teams in place, and to have them understand our needs in terms of communication and service to the client. Then we will move to the billing issue.

Editor: You have mentioned the importance of cooperation between the firms. Have you considered using firms jointly on any matters?

DiSantis: Not yet but there will be some opportunities to do that as the company moves forward and we need to implement some larger projects. The advantage of the network will be that such a team could be easily convened.

Editor: What are your technology initiatives?

DiSantis: There are a couple of specific initiatives. There will be a UPS Legal Services Extranet. As I mentioned, the Extranet will also be critical in the communications network we have with the law firms. Over the last couple of years, the department has developed the critical underpinning for this process with our sophisticated matter management system. Using CompInfo and LawPac, we have customized this software to our needs in terms of management and case tracking. We are working toward a system where the firms will transmit their invoices electronically.

We are going to an initiative that we think will be terrific for UPS and its customers. It is a UPS product called Document Exchange. If you want to send an encrypted message over the Internet, you can go to UPS's web site and use this program to send a secure message and the recipient does not need any particular software. We are combining Document Exchange with a product from a company named Occam's Razor that is able to transmit invoices from a service provider or other seller directly into a buyer's system electronically. By using both these products together, we and our customers can transmit invoices securely. We intend to have all the law firms in our network transmitting invoices via Document exchange by the end of 1999.

We also intend to use Document Exchange to communicate with our relationship partners when sending out a broadcast message. Besides the security it provides, this product allows you to track the message and check receipt.

Editor: Do you also emphasize a quick turn around in billing from your firms?

DiSantis: We want to receive all bills promptly. That is critical for our budgeting process. Once we get the e-invoicing in place, we will eventually be able to wire transfer the money to our law firms which will speed up the process immensely.

Editor: Have you used early case evaluation?

DiSantis: For some time, we have used litigation management plans and required budgets of certain firms in some circumstances. We are fine-tuning this process to put greater emphasis on early case assessment. The employment group now requires a phone conference between the business people, the outside firm, and inside lawyer within the first three weeks of a complaint being filed in order to assess the case. More than half of our legal fees arise in the context of employment and labor. With 330,000 employees worldwide, we have a lot of issues.

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"BETTER, CHEAPER, FASTER -- PICK ANY TWO" -- A PRACTICAL CHECKLIST FOR SIZING

UP A LAW FIRM'S CLIENT SERVICE TECHNOLOGY

J. Michael Cavanaugh [FNa]

Holland & Knight LLP

For some years a motto sign above the door of one of the technology staffers at a major law firm read "Better, Cheaper, Faster -- Pick Any Two". This theme captures the essence of advances in technologies through which law firms deliver their services to clients. Quality-enhancing innovations can increase cost of the work product, although the trade off may be well worthwhile. However, lawyers and clients more often face the opposite side of this coin -- progress producing efficiencies and savings in time and cost are likely to compromise quality in hidden ways.

With the growth of "partnering" arrangements between corporate legal departments and larger law firms, the issue of the law firm's ability to deliver large volumes of work product effectively and efficiently through its technology package is critical. While almost all law firms have fairly comparable systems with powerful technologies, their ability to utilize these tools is really the major point of differentiation. Often the lawyers' policies and procedures for using technology make the difference between successful application of the system and something which may afford little advantage over outmoded methods.

Integrity

For projects involving sensitive information and documents, basic "firewall" technology to prevent access by unauthorized persons is often mandatory. Encryption technology is also necessary for certain electronic transmissions between the client and law firm. Many large law firms offer these technologies, but there are equally important due diligence issues just beneath the surface. Like a smoke alarm with a dead battery, the best technologies will be completely ineffective if the people using them are not using proper procedures or are not effectively trained.

Instances of adverse parties hacking in to a law firm system to obtain confidential information about a client are rare, but there is more immediate danger of a compromise of privilege arising from inadvertent release of such information widely within the firm's own firewall boundaries. What internal procedures or policies does the law firm have regarding the storage and access to protected electronic files? Does the firm's system allow for restricting access to files to just the lawyers and staff who are engaged for the client's project? Are incoming confidential files automatically stored in accordance with this policy, such that passwords or PINs are necessary for access?

Is confidential material restricted to dedicated directories and diskettes for transfer to laptop computers for remote site or in-court tasks? Many people would be surprised to see what is lurking on the hard drives of pooled laptops which some law firms provide to their lawyers. Also remember that just because a file has been deleted from a hard drive or diskette does not mean it cannot be recovered by a relatively simple process.

Are new matter files for billing purposes assigned anonymous names or matter descriptions to prevent unnecessarily widespread disclosure within the firm regarding confidential client projects such as tender offers or litigation strategies in controversial cases?

It is also useful to be sure that confidential material is not potentially leaking in more mundane ways. Does the firm have and use document shredders when it discards sensitive documents? Does it have a specific policy about erasing (not just deleting) confidential files from media to be discarded such as diskettes?

Another important subject is protection against inadvertent disclosure. Of particular concern are email systems and desktop fax features of office suite software. Is it possible for a lawyer or secretary to send sensitive files to the wrong person by making one or two wrong keystrokes? This might be the case if the law firm's general email address list includes outside persons such as clients, other law firms and vendors, rather than segregating those names into a separate directory or at least into a separate portion of the main directory. If all addressees share a common directory and naming scheme, it is all too simple for a lawyer to select the wrong name by making one incorrect keystroke or erroneous move with a mouse. Busy people tend to address emails quickly and activate the "send" function without checking over the address. If they hit the name just above or below the intended addressee's on the list, or invert two characters when tying the name, or if they are not too familiar with the naming regime for the system, emails go to the wrong place. It is also possible for a very "low-tech" law firm to segregate its address list simply by adopting a naming regime in which non-internal addresses must contain one or two "dashes" in the initial position. In this manner, those names will all automatically be grouped together in one region of the address list, reducing possibilities for misaddressed email.

Viruses continue to be a problem in the electronic officeplace. If a client is sharing electrons with a law firm, it is important to know the capability of the firm to protect its system and prevent infection of the client's system. State of the art virus protection software is generally available to law firms. Equally important, however, is the firm's procedure for protecting hard drives on individual desktops and laptops which are likely to become infected in the first instance. Does the firm regularly distribute anti-virus files and require them to be downloaded at individual PCs? Does the firm police users to be sure they follow these procedures?

Reliability

In today's electronic office environment, lawyers and staff become completely dependent upon their computer systems for even the simplest tasks. Even the best-maintained, state-of-the-art system will fail occasionally, or have to be taken down for service. It is useful to know the history of a law firm's system in terms of reliability and down time. What systems does the firm have to cope with inevitable outages? If the system is maintained and operated from a central location in a multi-office law firm, how does the MIS department respond to problems? Are its personnel able to work on-line with the users desktop to walk the user through problems? Are local subsystems, such as lawyers' and secretaries' desktop-to-printer circuits, able to function on a stand-alone basis during major system outages?

A key to the likelihood for major compromises of system reliability may be the response of the law firm to rapid growth or mergers. There is at least some correlation between the level of system problems and whether the firm has addressed significant growth by rethinking its MIS function and undertaking a system-wide reconfiguration and upgrade, as opposed to merely "coping" with growth by adding on marginal capacity.

System architecture is also important. In particular, depending on the firm's offices' geography, it is useful to know whether problems localized in a single office can interrupt performance elsewhere, or whether there is redundancy in wide-area network (WAN) functions.

Flexibility

Often clients measure flexibility of a law firm's system based on a single function. Most often, the basic question is whether the system can generate documents used by the client in a specific format, or whether the firm's invoicing system can produce customized billing formats.

Other features may also be important. For example, can lawyers in one office access and download documents generated by another office from a central directory or via the firm's intranet, or do the documents have to be emailed? Perhaps the most important feature of a system, and its personnel, is the ability to convert documents from one format to another. If the law firm has a different word processing software than the client or an opposing law firm, interactive productivity can slow to almost nothing during critical projects due to inability to convert files rapidly.

Can the lawyers and secretaries do most routine conversions on their own desktops, or do they have to take them to MIS personnel? Can they convert documents after normal work hours or on weekends?

Another key feature which greatly enhances interactive productivity between the client and law firm is software which generates "red-line" or "compare- write" versions of documents showing changes from a prior version following editing. Virtually all law firms and most client systems have this, but how accessible is it to all lawyers and staff? Have lawyers been trained to operate this software on their own desktops or do they have to take files to a central location to prepare "red-line" versions.

Desktop fax is another feature of office suite software which can add tremendous productivity to lawyers. Not all major law firms offer this yet.

Finally, it is useful to know whether the law firm's technology, regardless of the level of sophistication, may have left behind some of its most valuable assets by excluding senior lawyers who are not comfortable users of PCs. Often some of the best intellectual capacity, as well as a wealth of experience and seasoned judgment is resident in the population of the firm least likely to use many of its technology tools. Many firms and lawyers cope effectively with this issue by simple means; secretaries may print out emails for the lawyer, and may perform certain functions for the lawyer which younger lawyers would do on their own. Some efficiency is lost in such situations, but it is usually not significant. The real issue is whether there is an entire class of lawyers within a firm who are effectively -- perhaps by choice -- cut off from its electronic means of productivity, and thus not accessible to the client except by extraordinary channels?

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THE INTERNET AS CYBER-BRIDGE TO THE CORPORATE LAW DEPARTMENT

Peter Malkin [FNa]

The most important marketplace for many law firms and legal service providers is the corporate law department. Those of us who serve this marketplace are hearing one incredibly loud noise -- the roar of the Internet. Unlike any other previous technology, the Web is changing how legal professionals communicate, how they learn, how client-firm relationships are managed and how law is practiced.

Our company, CSC The United States Corporation Company, works with corporate law departments every day in the course of providing Registered Agent services. And it's a rare day that we don't hear, "Law departments are cost centers not profit centers." No matter how a corporation is growing -- by acquisition, through new product development or restructuring to core competencies -- and no matter the size of the law department, most share a common focus on lean staffing and nimble information management. This bottom-line driven approach has corporate law departments bent on eliminating unnecessary and purely clerical tasks. They want fast access to easy-to-use, informative and helpful systems. They want to work with software products that operate using familiar interfaces such as Window 95 (R) and Netscape Navigator (R) or Internet Explorer (R). They expect highly integrated systems that share and leverage information to provide the expert knowledge that helps them get their job done.

More and more, the Internet is part of the solution. Even corporate law departments without a dedicated legal IT specialist have absorbed enough of the Internet to conceive of better ways to work with external law firms and service providers. Our company's General Counsel -- who, just a few months ago, was a partner in a corporate practice and a member of the firm's technology committee -- confirms that Internet technology enabled his firm to transform itself into a much improved corporate client service provider. He believes it brought the firm closer to its clients and provided easier ways for the firm to share information and collaborate on legal decisions. And, it helped the firm to meet its primary technology objective to deliver legal services more efficiently at lower cost.

Law departments are at various stages of developing information and knowledge management systems. Some are still identifying and organizing information resources. Others may be working with knowledge integrators to revamp and improve existing systems. In any case, corporate law departments don't want products. They want answers tailored to their practice needs, their organizational structure, their network configuration and their budget. Today even the most skeptical law department administrator will gladly skip statistical-based productivity analysis in favor of a "show me" demonstration of how a 50-state filing could be done in one hour instead of eight.

Most corporations have, or are in the process of implementing, internal networks called Intranets. These networks are based upon the same time-proven telecommunications architecture used to build the global Internet. Intranets are small private clones of the Internet that typically link remote locations of an organization and, in most cases, include a highly secure on-ramp to the outside world via the Internet. The Internet linked with corporate Intranets is emerging as the de facto standard for both internal and external business telecommunications. Business to business, client to vendor services happening via Internet to Intranet linkup--"Extranets" in today's jargon -- will soon become the preferred way to do business. Legal professionals who serve corporate clients are also riding this wave. Here are some of the issues that are driving this rapid technology evolution:

. Ease of use. Many personal computer users, including attorneys and paralegals working in corporate law departments, know how to use Windows 95 and either Netscape Navigator or Internet Explorer. Systems and software products built to use these standard interfaces, if they provide the expected value, will surely be used. There should be little or no training; and learning a new "tool" should be more a matter of learning what it is capable of doing rather than how one makes it work.

. Quick and incremental implementation. Inter/Intranet development is quick and efficient. Gone is the old-world technology that dictated a long life for proprietary applications. The tools used to develop Web applications are easy to master and are improving at a rapid rate. Unlike distributed PC software products, there is no distribution lead-time for Web-based services. New software components and changes made to existing applications are managed on central servers. Everyone has access to new or revised software the moment the revision is introduced. Improvements can be made quickly and incrementally, allowing applications to keep pace with the needs of the business. For instance, we make frequent changes to IncSpot, our Extranet service. And over time we'll add new Internet-based capabilities and services that aren't economically feasible for each corporation to create for itself and that the state and local governments don't offer.

. Resource integration. Most in-house legal technologists tell us that they'd rather not build and maintain proprietary systems if they don't have to. Where appropriate they want to use second-or third party information sources and off- the-shelf systems solutions that can be easily integrated with their internal technology infrastructure. This approach lets them use the best information obtainable with software that is most suited to their task. The Internet is the bridge that will let them bring these resources together.

A recent example comes to mind: a corporate law department client of ours designated the information that we maintain on their behalf in IncSpot, our Extranet database, as their official information. The information describes their corporate structure in detail and is "mission critical" to their day-to- day activity. Prior to obtaining access to our Extranet, even though the law department had its own records, paralegals would call us to verify information for corporate filings. Now they just go to our Extranet to access their password-protected data.

. Universal access. Not every corporate law department has the benefit of operating in an open Internet-enabled systems environment. Some feel hamstrung by master technology plans that have, by design, excluded access to external resources. And while not every citizen of corporate America has Internet access at his or her desk, awareness of the potential of inter-networking are at an all-time high. One corporate law department recently subscribed to our Extranet service, even though the primary user won't have Internet access at her desk for six months. The designated user is so convinced of the benefit of our Extranet, that she's accessing it from her home computer until she has an Internet connection in the office.

At our company, the questions of access and lessons of open architecture were addressed close to home. The 1990-91 acquisition of four companies led us to create an internal IP network that could accommodate the different technology of each organization. Using this early Intranet approach we were able to bring together diverse information systems resources from across the country, and make it possible for people to work better together. Since then, we've taken to heart the importance of maintaining an infrastructure that lets people get their hands on the information they need, the way they want it.

We've focused on making data available to be used first by one application and then another. That's why the law department of a major corporation is now populating its case management system with password-protected data about pending legal actions that they download at will from our Extranet.

. Meaningful information and expertise. Corporate law departments have no time for irrelevant information. At the same time they don't want to miss anything important. As a service provider, we've taken this as a challenge to tightly integrate our services into our customers' work process.

We look for ways to distill information into meaningful components, and to find the right ways to deliver that information. For example, we use e-mail to send a flash report to a client, giving them advance notice that a legal action has been initiated against them. We offer our clients real-time access to their invoice and payment history via a password-protected accounting database housed on our Extranet. This eliminates most phone calls requesting duplicate invoices and questions about application of payments.

In a sophisticated document assembly process that is available through our Extranet, we insulate our clients from routine detail. We highlight the important questions and issues, while our system works behind the scenes to produce their documents. For a particularly lean corporate law department, Internet-access to our expert application means that the general counsel can now delegate corporate compliance filings to the finance department and then review the filings online at any time.

A New Day In The Corporate Law Department

The newest employees of corporate law departments are closer to technology than their predecessors. They take technology for granted and have far greater expectations. They view the use of technology as thought provoking, and browsing as a learning process. Putting together a report is more than putting thoughts on paper. Today's corporate information consumers use the Internet as a tool to search, explore, learn and execute.

They probably use the Internet at home. They know the relative costs. They have ideas. And next thing you know they'll be resurrecting the notion of the paperless office...and lecturing us that paper is an expensive, non-searchable archive.

Still, there's nothing like walking down the hall with a hard copy of your report in hand. So we'll save the paperless story for another day.

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