



Monday, October 20
11:00 am-12:30 pm

101 ACC's Value Challenge: Reconnecting Costs to Value in Outside Legal Services (Part I: Introduction)

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Vice President, General Counsel, and Secretary
FMC Technologies, Inc.

Janine M. Dascenzo
Associate General Counsel
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Michael A. Dillon
*Executive Vice President, General Counsel,
and Corporate Secretary*
Sun Microsystems, Inc.

Miguel R. Rivera Sr.
Associate General Counsel
Wal-Mart Stores, Inc.

Michael Roster
Former Chief Legal Officer
Stanford and Golden West Financial

Stephen P. Sigurdson
Managing Partner
Osler, Hoskin & Harcourt LLP

Laura Stein
Senior Vice President and General Counsel
The Clorox Company

Faculty Biographies

Jeffrey W. Carr

Jeffrey W. Carr is FMC Technologies, Inc.'s vice president, general counsel, and secretary. Mr. Carr has extensive experience in commercial and corporate counseling, corporate governance and compliance, dispute resolution including mediation, arbitration and litigation, negotiations involving international joint ventures, acquisitions, divestitures, privatizations, international trade law, customs, export control. In addition, he designed and implemented the ACES® risk/reward law firm engagement model and the FMC Technologies Corporate Compliance Program.

Prior to his current position, Mr. Carr was the associate general counsel for FMC Corporation. He joined FMC Corporation as international counsel, moved to Houston as associate general counsel for the Energy Systems Group, and later assumed his current position with FMC Technologies. Prior to joining FMC, Mr. Carr practiced international trade law in Washington, DC with Willkie Farr & Gallagher and Wald Harkrader & Ross.

Mr. Carr is a frequent contributor to legal publications and speaker at continuing education programs and is an active participant in the leadership of ACC, CPR, MAPI, and the TxGCF. Mr. Carr is the recipient of a Lexis-Nexis Distinguished Legal Services Award, was included in the Texas Lawyer "In-House 50" and the Inside Counsel "Power Broker 50". In addition, the FMC Technologies Legal Team was recognized by the ACC and the General Counsel Roundtable for innovative legal delivery services ideas.

Mr. Carr is a graduate of the University of Virginia, with a BA with honors. He received a law degree with honors from the Georgetown University Law Center.

Janine M. Dascenzo

Janine M. Dascenzo is managing counsel for General Electric's legal organization in Fairfield, Connecticut.

Ms. Dascenzo was in private practice prior to joining GE, most recently with Squire Sanders & Dempsey in Columbus, Ohio. Ms. Dascenzo joined the GE Aircraft Engines litigation group where she represented GE in a variety of matters including products liability suits, commercial disputes, regulatory matters, and employment litigation. She was then promoted to general counsel of GE Fanuc Automation and served in that role until she was again promoted.

Ms. Dascenzo graduated from the University of Cincinnati with a BA before receiving her JD, magna cum laude, from the University of Toledo College of Law.

Michael A. Dillon

Michael A. Dillon serves as Sun Microsystem's general counsel, senior vice president, and corporate secretary. In this role, Mr. Dillon leads a worldwide organization consisting of three functions: legal, international trade services, and business conduct.

Mr. Dillon has worked at Sun Microsystems twice during his career. Previously, he served in a variety of roles in Sun's legal department including in support of Sun Microelectronics, Sun Soft, Inc., and I-Planet. Mr. Dillon rejoined Sun as vice president of the products law group. In that role, he was responsible for legal support for all of Sun's product development efforts. He was then appointed to his current role as Sun's general counsel. Mr. Dillon brings significant experience to Sun. Prior to rejoining Sun, Mr. Dillon was general counsel and corporate secretary of ONI Systems Corporation, a publicly traded manufacturer of optical networking equipment. Earlier in his career he was an associate and partner at several Bay Area law firms.

Mr. Dillon completed his BA at the University of California, San Diego. He received his JD from the University of Santa Clara.

Miguel R. Rivera Sr.

Miguel R. Rivera Sr. is associate general counsel in the class action division of the Wal-Mart legal department where he defends Wal-Mart in complex class action cases around the country. Prior to joining the class action division, Mr. Rivera served as associate general counsel for outside counsel management in the administration and external relations division of the Wal-Mart legal department.

Prior to joining Wal-Mart, Mr. Rivera was appointed Commissioner of Labor for the state of Indiana, and served as a member of the Governor's cabinet. As Commissioner of Labor, Mr. Rivera was responsible for managing the Indiana Department of Labor, which includes the Indiana Occupational Safety and Health Administration (IOSHA), the state Wage & Hour and Child Labor divisions, and underground mine safety and mine rescue. Mr. Rivera also advised the Governor on issues of public policy, law, labor, and underground coal mine safety and rescue.

Mr. Rivera is a well-recognized expert in the area of outside counsel management and regularly speaks around the country on this and issues related to diversity. Mr. Rivera is also very involved in the ACC and is a member of the Bentonville Board of Education.

Mr. Rivera earned a BA from the University of Illinois, and is a graduate of the College of Law at the University of Illinois.

Michael Roster

Michael Roster was, until recently, executive vice president and general counsel of Golden West Financial Corporation/World Savings, a \$130 billion financial services company that recently merged with Wachovia Corporation.

He previously was managing partner of Morrison & Foerster's Los Angeles office, co-chair of the firm's financial services practice group worldwide. Prior to that, Mr. Roster was general counsel of Stanford University, Stanford Medical Center, and Stanford Management Company.

Mr. Roster has been a director and chair of ACC, an outside director and vice chair of Silicon Valley Bank, chair of the Stanford Alumni Association, and chair of two start-up companies: Insert Therapeutics (a Caltech life sciences company that is providing for the intracellular delivery of chemical and genetic material) and Encirq (initially an Internet company whose micro-processing functions are now being applied to automobile, cellular phone and other industrial uses). He also is a former director of the California Bankers Association, the Federal Home Loan Bank of San Francisco, Skolar (a web-based medical information start-up company), and Pasadena Heritage.

Stephen P. Sigurdson

Stephen P. Sigurdson is a managing partner with Osler, Hoskin & Harcourt LLP in Toronto, Ontario. He specializes in mergers and acquisitions, corporate reorganizations, and financings with an emphasis on matters involving a US component.

Mr. Sigurdson has advised Canadian and multinational legal and business executives on cross-border transactions for close to two decades. Previously, he was managing partner of Osler, Hoskin & Harcourt's New York office.

Mr. Sigurdson is affiliated with the Canadian Bar Association, the ABA, and the Law Society of Upper Canada.

Mr. Sigurdson received his LLB from Queen's University and BS from University of Manitoba.

Laura Stein

Laura Stein is the chief legal officer for The Clorox Company. At Clorox, Ms. Stein has responsibility for the company's worldwide legal, ethics and compliance, corporate secretary, corporate communications, crisis management, risk management, and internal audit matters. She also works closely with the Clorox board of directors on corporate governance. Ms. Stein chairs the Clorox women's employee resource group, and the Clorox crisis management team, co-sponsors the company's enterprise risk-management and social responsibility programs, co-chairs the Clorox disclosure committee, is a member of Clorox's employee benefits committee, and is Clorox's chief security officer.

Formerly, Ms. Stein was senior vice president, general counsel of the H.J. Heinz Company. Prior to joining Heinz, Ms. Stein served eight years with Clorox. Prior to joining Clorox, Ms. Stein was with Morrison & Foerster.

Ms. Stein is a director of Franklin Resources, Inc., and was previously a director of Nash Finch Company. She is the chair and serves on the executive committee of the board of directors of ACC. She chairs the ABA Asia Law Initiative Council, and co-chairs the corporate pro bono advisory board and the general counsel committee of the ABA business law section.

Ms. Stein received her JD from Harvard Law School and is a graduate of Dartmouth College where she earned undergraduate and master's degrees.

*The System Is Broken
The Time For Change Is Now*

The ACC VALUE Challenge

Re-Connecting Legal
Costs to Their Value

ACC: The in-house bar association, committed to providing the corporate counsel community with a voice on issues that matter.

VALUE: Returning a desired outcome in a matter which corresponds to its appropriate cost and worth.

CHALLENGE: Create a constructive dialog and practical resources that help lawyers better align legal costs with client objectives and the value of the services provided.

A Dialog Is Needed Alignment Is Imperative
 THE ACC VALUE CHALLENGE IS HERE

The ACC Value Challenge

We believe that many traditional law firm business models and approaches to lawyer training and cost management do not deliver what clients want and need: high-quality legal services that deliver solutions at a reasonable cost. Law firms must find a bridge over the chasm that now exists between optimizing profits per partner and delivering legal services at a cost that reflects their value to the client.

Legal departments must better manage their inside and outside legal spend—with a focus on results and value. And they need to reward firms that live up to their challenges with profitable, long-term relationships.

The Association of Corporate Counsel (ACC), supported by general counsel and managing partners from leading corporations and law firms, understands the imperative to find a solution and the need for us all to join together and be more responsible for better serving our clients.

The ACC Value Challenge will reconnect value and costs for legal services by:

- Promoting a dialog in the legal profession (corporate counsel, law firms, law schools and others) to drive alignment and focus on value;
- Developing practices and metrics that corporate counsel can use to assess the strengths and weaknesses of law firm vendors;
- Creating tools that in-house counsel and firms can share to drive change in the performance of value-based legal services; and
- Enhancing awareness and sharing success stories.

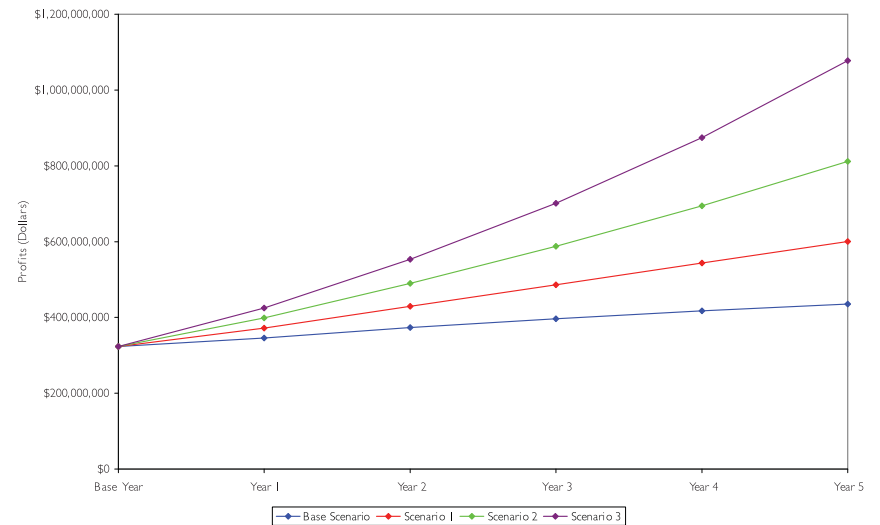
Desired Outputs and Outcomes

By working together, in-house counsel and law firm attorneys can create change clients want, attain better results, build the sustainable relationships law firms need to profit, and ensure the management improvements corporate counsel are responsible for implementing. The ACC Value Challenge will create:

- Aligned interests of the corporate client and the outside firms, which can lead to a professional culture and market that is focused on delivering high value.
- Recognition by senior management that GCs and in-house counsel are taking the lead and exercising strong business skills.
- A client community that supports law firm efforts to implement change which includes a willingness to reward those efforts.
- Law firms that are better focused in choosing, training and retaining top talent, as well as rewarding the skills and matter management that are most valued by clients.
- A meaningful dialog supported by practical tools that allows interested leaders to sit down, assess the options that work, and commit to align costs with value.

ACC hired a top economist to create a law firm economic model that firms and clients can use as a platform for discussion about needed reform.

Note what happens to profitability in a large market leveraged firm when the firm hires fewer entry-level lawyers and focuses on training and retaining a more limited pool of talent: Profitability rises dramatically.



¹The number of first year associates drops by 13% in each year, from 180 in the base year to 90 in year 5. Source: ACC's calibrated law firm profitability growth model online at www.acc.com/valuechallenge.

What Can You Do? Join the ACC Value Challenge Community

We know that many have tried to create a platform for change and nothing has happened. We are dedicated to doing better. We will create a project that helps corporate counsel and law firms re-connect legal costs to their value. We will create an environment that helps every department and firm better align their services to the client's desired outcomes.

We know there is no silver bullet and one size fits one. This is a long-term initiative where the answers will be different for each law firm and corporate legal department. We will help to connect you to people and ideas that can work for you and support you in creating best practices that you can implement in your daily work. All this requires your involvement, however. Your input, feedback and contributions will be invaluable to our mutual success. Your commitment to implement change is crucial.

Would you like to join the ACC Value Challenge community? Visit the ACC Value Challenge online portal at www.acc.com/valuechallenge for access to the resources, tools and networks available, including:

- **Tool Kits:** Resources, checklists, ideas, success stories, metrics, frameworks, best practices, and more to help you implement what works for you and your client.
- **A Law Firm Economic Model to Challenge Traditional Assumptions:** By providing a simple discussion platform to examine the economic presumptions of the leveraged law firm business model, this downloadable model will provide a tool to help you assess how your firms can re-align their resources and profit-drivers with your priorities. (See adjoining chart for illustrated example).
- **An Online Networking Platform:** In 2009, ACC will offer a place for members and outside firms to converse, post, search and retrieve information about what others are doing, and for groups to develop policies and techniques that create savings and increased value.
- **Local Events and Face-to-Face Dialog.** ACC will host events in the United States, Canada and Europe, so that you can join with others in your community to lead the change. Find upcoming events on the ACC Value Challenge Online Portal or contact us to indicate your interest in hosting or attending a local event.

The Dialog Has Begun

Top executives from leading law firms and corporate legal departments gathered at regional focus group discussions to contribute ideas that helped us shape the ACC Value Challenge. The complete list of participants and contributors can be viewed online at www.acc.com/valuechallenge.

A dialog ensued ... and the need for alignment was further illuminated ...

"As a manager of my client's legal spend, I can no longer authorize work from \$350/hour associates who are stunningly inexperienced and unsupervised, and who are looking to meet their firm's unrealistic billing targets by rotating in and out of our work. If you gave me an associate who'd stay with my work, become expert in my matters, and develop into a leading lawyer for us, I'd gladly authorize that; but I'm not paying a legion of associates whose primary contributions are to other clients' work and the firm's outrageous profits per partner ratings."

"How do law departments expect us to recruit and train the associates they want to retain to do their work if they won't allow junior lawyers to bill on their projects? Heck, every time we assign someone to their work longer term, they hire them out of the firm to work in the department, usually just at the point when they begin to actually contribute to the firm's overall profitability."

"I'm interested in finding firms that want to help us succeed and grow our business: they need to learn what we do, what drives us, what makes our CEO crazy, what's going on in our industry, what our staffing and processes are, and so on. Why don't firms get that and invest in an institutional understanding of who we are and what we want? They either think that they know best, or that the 'solutions' they've worked up for some other client in a completely different setting will satisfy us or address our needs."

"I can actually remember the days when our firm could rely on our larger clients to be more than satisfied with us when we returned the result they requested. And they rewarded our success with a stream of new matters. We all had great personal relationships with each other, we trusted each other, and we knew how the client wanted things done. Most in-house counsel today work very hard to keep us separated from direct contact with the company and the client, and they re-bid the work they have on virtually every matter, even when they agree we did what they asked us to and did a good job."

"I can't find firms that are willing to take risks, build a collaborative team, consider alternative fees and staffing of my matters, and actively manage the budgets I have to live within. They just want to sell their inventory of hours and won't be bothered to consider new ways to work."

"In-house counsel talk a big game about wanting alternative fees and arrangements when they bid out work, but whenever we propose an innovative or new way to work they either select the legacy firm that proposed the same old hourly billing structure anyway, or they come back to us and say they like the idea, but how about we just give them a 10 percent discount. They aren't managing to innovation or looking at what we proposed—they're simply looking for a better rate than the other guy."

"Firms tell us what they want to sell and who they'd like to staff on our matters, and they don't ask us what or whose services we want to buy or what would be valuable to us. They can't seem to think of any way to serve us except the way they've always done it. There's no focus on a desired result, just on securing a stream of billable hours."

"Clients don't tell us what they want, how they want their work done or what result they are seeking. Or they don't tell us until after we're way down the road (and they don't like the way the case is progressing) or after they've gotten the bill and they're 'surprised' by what it cost and how we handled the matter. Where were they when they retained us? How do they expect us to know what they want when they themselves aren't equipped or interested in figuring that out and conveying it to the firm they hire to handle the case?"

A (r)evolution in corporate legal service provision

Helping to Start the (R)evolution—Your ACC Value Challenge Steering Committee:

Mike Roster, Steering Committee Chair, 2001 Chair, ACC Board; retired General Counsel, Golden West Financial and Stanford University; former Managing Partner of Morrison & Foerster

Jeff Carr, Vice President, General Counsel & Secretary, FMC Technologies, Inc.

Janine Dascenzo, ACC Board Member; Associate General Counsel, General Electric Company

Mike Dillon, ACC Board Member; Executive Vice President, General Counsel & Corporate Secretary, Sun Microsystems, Inc.

Ivan Fong, ACC Board Member; Chief Legal Officer & Secretary, Cardinal Health, Inc.

Kerry Galvin, ACC Board Member; former General Counsel, Lyondell Chemical Company

Al Gonzalez, ACC Board Member, and former General Counsel for Tyson Food

Miguel Rivera, Associate General Counsel-Class Action Division, Wal-Mart Stores, Inc.

Laura Stein, ACC's 2008 Chair of the Board; Senior Vice President & General Counsel, The Clorox Company

ACC thanks these leaders for their vision and guidance.



ACC's 2008 Annual Meeting

“ACC'S VALUE CHALLENGE:

OUTLINE OF SUBJECTS AND RESOURCE LISTING”

Taking Charge of Escalating Law Firm Costs: Re-connecting Cost and Value

The following outline is intended to provide a short overview of some of the issues at the heart of this topic. There may be other issues we've not identified or perspectives on the identified issues that are not adequately represented in the outline: *this outline is merely intended as a starting point to help you start your own Value Challenge conversation.*

- A. ORGANIZATIONAL RESPONSIBILITY FOR SELECTING & MANAGING OUTSIDE COUNSEL**
- 1. Selecting & Retaining Outside Counsel for the Company-Role of Law Department; CLO:** Is the law department on point for selecting and retaining outside counsel? Who, within the law department, is on point for developing strategies for engaging and managing outside counsel (e.g., CLO, Chief Operations Counsel, Outside Counsel Management Committee, other)? If the role is shared by many, how is it coordinated?
 - 2. Outside Counsel Management Committee:** Does your law department have an outside counsel selection/management committee? Who sits on the committee? What are the primary roles of the committee? Why did you create the committee? What are the pros and cons of having the committee?
 - 3. Client's Role in Engaging Outside Counsel:** What role (if any) do clients play in the outside counsel selection/management process? Can client groups call outside counsel directly to ask for services on a new matter or do your law department's practices require that clients first contact an in-house lawyer? Are there different practices and processes in place for clients regarding contacting outside counsel on a preferred provider list (or with an existing engagement agreement) vs retaining a first-time firm? If clients may directly contact outside counsel without first working through the law department, how and at what point do you include in-house lawyers in the process?
 - 4. Selecting and Retaining Outside Counsel for the Board/Company Executives:** Does your law department play a role in suggesting and retaining outside counsel for Board Committees and/or executives? What is the nature of the law department's role? Do you have a list of 'independent counsel' at the ready who may be called for certain types of situations? What are the key considerations in managing or coordinating these engagements? Are there best practices you've implemented or heard of in these contexts?
 - 5. Corporate Procurement Function:** Does your company's procurement function play a role in outside counsel engagement standards? Is this a relatively new role? What is the nature and scope of the role that procurement professionals play? Are there designated individuals on point within the procurement department that handle outside counsel engagements? Are there designated individuals within the law department to coordinate with procurement on this role? Did the law

department develop engagement protocols/documents/ guidelines to assist with procurement's role? How/what are the key process points for coordinating with the law department? What are some of the key challenges? What types of practices have you implemented in connection with this process? Do you or your firms like or benefit from procurement's involvement?

6. **Budget for Outside Counsel:** Who pays for outside counsel? Do outside counsel costs get charged directly to the law department's budget? Do outside counsel costs get charged directly to the business units for whom the service is being performed? Does the budget that gets impacted depend upon the type of matter (e.g., litigation matters get charged directly to client business units, regulatory counselling matters get charged to law department, etc.)? Does the client's role in selecting and retaining outside counsel vary depending upon whether the client's budget will be directly charged? If units are charged for outside counsel services (or in-house counsel services), how do you track charges and inform unit leaders of these costs? Do you send a statement each quarter or engage in real-time cost tracking/reporting? Do clients help develop their own budgets for legal services?
7. **Law Firm Organizational Responsibility for Engagements:** When you negotiate preferred provider arrangements, which persons within the law firms do you most often negotiate with? Who are the ultimate decision-makers within the firms? Does this vary firm to firm? Is your business relationship primarily with a relationship partner supervising the matter OR with a managing partner or other specialized professional within the law firm? What are the key hot button items (e.g., most important to them, most contentious, etc.) for law firms in negotiating these arrangements?

B. PREFERRED PROVIDER PROGRAMS; APPROVED LISTS; TYPES OF FIRMS; VALUE

1. **Preferred Legal Service Providers:** Do you have a list of preferred legal service providers or relationship/partner firms? How many firms are on your list? How do you choose preferred providers? How long did it take to arrive at your current list? Do your preferred providers know who the other firms are? Do they interact with each other in a structured way to share best practices in performing work for your company? What are the key benefits of having preferred legal service providers? What are your greatest challenges in working with these providers? Do your arrangements set a 'floor' for business? Are lawyers required to use preferred legal service providers whenever possible? Do preferred provider arrangements include identifying key personnel to work on your company's matters?
2. **Key Features of Preferred Provider Firms:** What are the key selection criteria for your law department's preferred provider firms? How much of the law department's business do these firms (combined) receive (e.g., more than 50%, more than 75%, almost all)? Do these firms all have certain common attributes? What are they? Do you have preferred providers set by geography, substantive practice area, other?
3. **Approved List of Additional Firms:** Do you have a list of additional firms that are not 'preferred providers' but that are 'approved' for use by the law department? Are lawyers required to use law firms on this list whenever possible? How many law firms are on the list? What are

the key selection criteria for including law firms on this list? Is there a required approval process for going 'off list'? What is it?

4. **Types of Firms:** Does your law department categorize firms by type (e.g., national firms, regional firms, specialized boutique firms, 'elite' specialty firms, etc.)? Do you assess the various strengths of different types of firms? How (if at all) does the type of firm correlate to the likelihood of engagement? Do you set different engagement expectations for different types of firms? Do you have guidelines you generally follow by type?
5. **Identifying 'New' Firms:** How do you 'find' firms that you haven't used before? What sources do you look to for information? What are some of the major criteria that would attract you to a 'new' firm? If nobody ever got fired for hiring 'BigLaw,' how do you get comfortable finding and hiring firms/lawyers who aren't on that list (yet)? What attracts you to a firm; is it the same things that make it likely you'll develop a long-term relationship, or are you shopping by price and re-bidding work with each new retention.
6. **Key Selection Criteria:** What are the key factors you consider in selecting preferred provider firms and/or firms to include on a larger 'approved firm' list? Do you evaluate things like: (1) profit per partner, (2) firm compensation & bonus structure, (3) associate salaries, (4) retention and attrition/lateral vs. home-grown talent, (5) diversity- in recruiting, retaining and promoting, (6) firm management structure, (7) commitment to alternative billing practices, (8) the firm's culture, including professionalism, pro bono commitment, etc.. (9) other? Are there criteria you would like to evaluate that there isn't comparison data currently readily available for? Is willingness to engage in alternative billing a factor that you consider? How important is it? Does it vary depending upon the nature of the work?
7. **Value:** How do you define 'value' received from outside law firms? Is it cost savings, results, other? To assess value, is there some sort of comparative process (e.g., cost or results versus expectations, comparisons with data from other outside law firms, satisfaction with quality, etc.)? How do you measure value (e.g., metrics, benchmarking, quality/satisfaction surveys, etc.)? What inputs do you receive to help make the value determination? What inputs come from the law department? What inputs come from outside law firms? Who is involved in providing inputs on value? Who is involved in assessing value? How do you communicate value—internally within the law department and the company AND externally to the law firm that is being assessed and to others? Is there data/are there tools that ACC could help develop that would help enhance the value evaluation process?
8. **Performance/Results Goals & Drivers:** Has your law department set performance/results goals for outside law firms (preferred partners, approved list firms and others)? What types of behaviours/results are you interested in shaping (e.g., increased retention of associates who work on company matters so no need to retrain, diversity metrics, pro bono, paralegal staffing on company matters, no billing of associates at certain levels, secondment experiences, partnered outsourcing, swaps, etc...)? How do you set these expectations? How do you communicate them? Is there resistance at law firms? What is the nature of the resistance? Where do you see the hot buttons? Where are the opportunities? If you've successfully achieved helping to shape results, what are some of the key factors that helped make your law department's efforts so successful?

C. CREATIVE ENGAGEMENT RELATIONSHIPS THAT MOVE BEYOND THE BILLABLE HOUR MODEL

1. **Alternative Service/Billing Models:** What types of alternative service/billing models have you successfully negotiated with outside counsel? Are certain types of work more amenable to certain models? What types are most amenable to which models? What are the most creative arrangements you've implemented or heard of? Do you require outside counsel to propose/use alternative billing arrangements? Have you walked away from firms that refuse to engage in alternative billing practices? Do you believe that alternative billing strategies help to re-shape law firm practices and motivations, or do they simply allow a different cost model for specified work?
2. **Managing Alternative Service and Billing Arrangements:** What types of processes have you implemented to track the success of alternative service/billing arrangements? Where have your best ideas come from and how did they arise? For arrangements other than discounts of billable hours, do you employ 'shadow bills' or other department-driven tracking technologies? Have you integrated alternative billing features into your e-billing system? What are some of the key steps in selecting an alternative service/billing approach (both internal to the law department and on the law firm side)? Are alternative arrangements generally proposed by the law department OR do you require outside law firms to generate alternative service/billing ideas? Do firms generally succeed in offering meaningful alternative structures? Do your lawyers like to manage alternative fee arrangements, or do things generally slip back to hourly assumptions as soon as no one's looking?
3. **Process for Seeking Alternative Service/Billing Arrangements:** What is the process within the law department for ideas and approvals of alternative service/billing arrangements? Do you require all firms to propose an alternative service/fee arrangement for all types of matters (or only some firms for some types of matters)? What is the process within law firms for ideas and approvals of alternative service/billing arrangements? Who are the key decision makers within the law department and within the law firm for approving alternative service and billing arrangements? Are you requiring/seeing more or less of these? Do you communicate to other law firms the successful alternative service/billing models you've used with others? How do you communicate these successes? Do you communicate these successes with other law departments & how?
4. **Impediments & Solutions:** What do you see as the key impediments to alternative service and billing arrangements? Which impediments are within the law department? Which impediments are within the law firms? What do you see as the key sticking points? Do you see alternative billing as something done on the fringe of your work, but not affecting the mass of your legal spend? Is that changing? Do you have ideas on solutions to help overcome impediments to future alternative model successes? Are there tools, communications, data, surveys that would be helpful?

D. OUTSOURCING/OFF-SHORING

1. **Outsourcing/Types of Services:** What types of services or legal practice areas does your law department outsource, if any? Why or why not? Have you outsourced entire substantive

practice responsibilities to law firms (such as Intellectual Property, Litigation, Employment, etc..) or work for certain business groups or in certain geographic locations? What was the internal process for determining which services to outsource? What were the primary factors driving the decision to outsource these services? Have you hired firms in less expensive jurisdictions that may be unrelated geographically to the legal matter you're working on (see "off-shoring," below)? Have you outsourced legal services to non-law firms (research companies or document discovery consultants/document review companies, for instance), and required your law firms to work with these providers? If so, with what results?

2. **Process for Procuring Services:** Do you use an RFP and/or auction process? Who within your law department is on point for managing the service definition and procurement process? What are the key terms of the RFP? What were the pros and cons of using this type of approach? How long did it take? Did you go to the firm's offices and evaluate their systems and processes prior to selecting them? Did you seek other kinds of recommendations or experiences of other companies before hiring them? Ideas on best practices?
3. **Service Models & Relationship Management:** What type of service models do you use? Who is on point within the law department to manage the relationship? What role do you play as the law department executive in managing this relationship?
 >>**Communications:** If your model suggests that entire segments of the law department's work will be housed in an outsourced provider, what processes do you implement to help ensure that service providers are keeping the law department and clients 'in the loop'? Do they provide periodic reports (electronic, verbal, other) on matters handled? Can business clients pick up the phone and call the outsourced service provider directly or do they first notify the law department?
 >>**Integration with law department; business clients:** Do outside service providers for outsourced areas participate in regular business client staff meetings? Do they perform their work on site or from another location? For purposes of reporting and internal controls, how do you help ensure that key issues are brought to the attention of contacts within the law department?
 >>**Staffing & performance:** How is staffing for your company's matters handled (e.g., are there certain key personnel)? How do you track the services provided? How do you evaluate the services?
 >>**Misc.:** What are the pros and cons of entirely outsourcing an area of practice or service line? Where have you seen the greatest efficiencies?

4. **Billing Models:** Who pays the bills for outsourced services? Do client groups pay directly or is the law department on point for procuring and paying these services to the provider? What types of billing models do you use? Do you estimate a budget or set a payment floor to ensure a certain level of staffing and service is available or are you billed on a per project or hourly basis? How did you estimate the budget for these outsourced legal services? Do your outside service providers use your law department's electronic billing systems? How do you ensure that you are being billed for services performed?
5. **Off-shoring:** Does your law department off-shore any legal services? Is the off-shore service provider an affiliate of your company or an external provider? What process did you use to procure these services? Did you perform an on-site assessment of the capabilities of the off-shore service provider? What types of technology and security measures do you require? What

type of service delivery model do you implement? What are the key terms of the off-shoring relationship? How do you evaluate these services and stay 'in the loop'? Who is on point to manage the service relationship? What are the pros, cons and best practices? What are the greatest challenges?

E. PROCURING OUTSIDE COUNSEL/ OUTSIDE COUNSEL GUIDELINES

1. **Process for Procuring/Retaining Outside Counsel:** What process(es) does the law department use to retain outside counsel? Do you primarily use one-off negotiations, RFPs, auctions, other? Do you generally set service model/billing parameters when soliciting outside counsel services OR do you leave the service delivery model and billing parameters open for outside counsel to propose? Who, within the law department, manages the retention process? Do you have a centralized mechanism for tracking all outside firms? Do you track firms who respond to RFPs but who don't 'win' the work?
2. **Outside Counsel Engagement Letters & Guidelines- Law Department Criteria:** Do you require that engagement letters be on 'your company's paper'? What do you view as the key terms or provisions in your engagement letters and guidelines? What terms are the most controversial and most often negotiated? Do your outside counsel sign these letters or guidelines to acknowledge review of the terms and certify that they will comply with them? Do these documents identify key law firm personnel to staff law department matters? Do they identify in-house counsel on point for the various outside counsel relationships? Do the guidelines address matters such as reporting ethical or other material or significant issues or matters to you or the CLO? Do they require that outside lawyers contact you or an in-house lawyer if they're contacted directly by a business client to perform legal work?
3. **Outside Counsel Engagement Letters & Guidelines- Law Firm Issues:** What are some of the 'hot button' issues you hear from law firms in engagement letters and outside counsel guidelines? What do you think is driving these concerns from the firms' perspectives? What types of practices have you implemented to help address these concerns?
4. **Policies Apply to Outside Counsel:** What types of law department policies do you require outside counsel to comply with? If applicable, do you require outside law firms to comply with your Sarbox 307 policy? Do you have pro bono or diversity policies that extend to outside counsel? What types of law firm policies do you review? Do you review their Sarbox 307 policies, knowledge management practices, diversity or staffing policies or conflicts programs? What do you consider to be best or leading practices in this area?
5. **Ethical Issues in the Engagement Process:** What types of ethical issues arise most often in the engagement process (e.g., conflicts, privilege, ownership of IP, ownership of files, etc.)? Which are the thorniest? Do you present persistent challenges? What types of practices have you implemented to address these issues and challenges?

F. METRICS; TRANSPARENCY & COMMUNICATIONS

1. **Evaluating and Comparing Outside Counsel:** What types of metrics do you use to track outside counsel costs and value? Do you implement different processes/track different metrics for preferred providers? How often do you evaluate outside counsel performance and what is the process? Do you track number of firms used (and/or convergence progress)? Do you compare performance on matters/spend across law firms? Do outside law firms track how they staff

matters (e.g., use of paralegals, use of partners vs associates, diversity metrics, etc..) and report that to you? How do you use metrics information relating to outside counsel? What do you consider to be best practices in this area? What are your greatest challenges?

2. **Quality of Work; Client Satisfaction:** Do you track quality of work/client satisfaction? Do in-house lawyers rate the performance of outside lawyers? Do clients? Is it part of the evaluation of inside counsel legal services or a separate set of questions/criteria? What tools do you use to track performance in this area? Do you use periodic written/electronic surveys? Are these submitted on an anonymous basis? Do you have discussions with clients on their satisfaction? Do outside counsel rate the performance of in-house lawyers? How often do you collect this data? How do you use this information?
3. **Getting the Metrics Data:** Do you require that outside counsel track and provide data to your law department? Are these requirements written into outside counsel engagement agreements? Do you primarily use e-billing, matter management, other? Ideas on best practices? Is there someone within the law department designated as the point person for receipt and analysis of this data?

>>**Survey Tools:** If you create and use surveys to help gather data (e.g., client satisfaction, climate within the law department, etc..), what types of practices have you implemented? Have you found best practices in survey questions/tools? How often do you survey? Do you use an outside company to facilitate information-gathering? What do you consider to be a robust response rate?

>>**Benchmarking:** What types of benchmarking has been most helpful? How can ACC help in this regard?

>>**Law firm data/other:** What types of law firm data do you include in metrics considerations? How do you get this data? Who is on point to coordinate with other corporate groups to collect this data? Other practices regarding input data for metrics?
4. **Communicating Data:** Do you communicate the results of outside counsel metrics data within the law department? What information do you withhold and why? Do you communicate the results to other law firms to show how they compare? How often do you communicate the results? How do you communicate the results to outside law firms (e.g., letter to all, letter to each firm, 'town hall meeting' of preferred firms, in-person sessions with key firms, etc..)? How do you communicate the results within the law department? Have you seen best or leading practices in this area?

G. CHANGING THE CURRENT PARADIGM TO BETTER CONNECT VALUE AND COSTS OF CORPORATE LEGAL SERVICES

1. **What Needs to Happen on the Law Department Side:** What are the key impediments to change from the in-house counsel perspective? What are the current comfort zones that in-house counsel would have to step outside of in order to drive change and to successfully manage the firms they are asking to change? If no one ever got fired for hiring 'BigLaw,' how do we convey that soon no one will ever get hired for hiring 'BigLaw' either? How can ACC or other groups help promote change?

>>**Tools; training:** What tools would be helpful to support in-house counsel who wish to lead change? Do most outside counsel supervisors have the management and business skills to creatively change and maintain new relationships? Would it be helpful to be able to view a 'registry' of what firms are engaging in creative service delivery models so that firms that are stepping beyond the regular model can be recognized? What types of tools/training/information are required to help break out of the current law firm service delivery model and encourage in-house lawyers to implement creative service delivery models that provide value?

>> **Data points:** Would additional data points (other than profit per partner and associate salary) on law firms be helpful to assess their business drivers (e.g., associate attrition, associate satisfaction, bonus structure, billing practices, lateral histories, etc.)? Would you like additional information/comparative data on law firms that isn't currently available?

2. **What Needs to Happen on the Law Firm Side:** What do you think are the key impediments to change from the outside counsel perspective? What types of tools/training/communications do you think would be most helpful and effective to help affect change? How can the message go out that profit is expected, but so is efficient and effective service related to the value of the matter addressed? How can ACC or other groups help?

REFERENCES

Following is a sampling of a variety of resources relating to this topic. For additional ACC resources, search ACC's Value Challenge homepages and tool kits at www.acc.com/valuechallenge.

DISCONNECT BETWEEN COST & VALUE

Article: "Cisco GC Leads Charge for Fixed Rates, Patent Reform" (From Fulton County Daily Report 1/18/08)

<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1200594603458>

Article: "Wal-Mart Memo Slams Associate Pay Hikes" (from Legal Week, 11/8/07)

<http://www.law.com/jsp/article.jsp?id=1194516238647&rss=newswire>

Blog Piece: "Context is Everything" (from The Legal Thing- Notes from a General Counsel, 8/26/07; Mike Dillon's blog)

<http://blogs.sun.com/dillon/date/200708>

Article: "Failure in Need of a Theory" (from The Washington Post.com, 2/8/08)

<http://www.washingtonpost.com/wp-dyn/content/article/2008/02/07/AR2008020703902.html>

Article: Viva La Revolution? (ACC Docket 2007)

<http://www.acc.com/resource/index.php?key=8330>

Article: "Commentary: GCs Should Assert Purchasing Power" (from Legal Week, 10/24/07)

<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1193130217879>

Article: "UBS GC Speaks Out on Law Firm Fees" (from Legal Week, 10/22/07)

<http://www.law.com/jsp/ihc/PubArticleFriendlyIHC.jsp?id=1192784611560>

Blog Piece: "The Way of the Mastodon" (from The Legal Thing- Notes from a General Counsel, 8/22/07; Mike Dillon's blog)

http://blogs.sun.com/dillon/entry/the_way_of_the_mastodon

"Legal Careers Lose their Allure, Drop to Dentistry Status" (from ABA Journal, 1/7/08)

http://www.abajournal.com/news/legal_careers_lose_their_allure_drop_to_dentistry_status/print/

Article: "The Falling Down Professions" (from The New York Times, 1/6/08)

http://www.nytimes.com/2008/01/06/fashion/06professions.html?ex=1215406800&en=95d14468fd97b411&ei=5087&excamp=NYT-E-I-NYT-E-AT-0108-L1&WT.mc_ev=click&WT.mc_id=%20NYT-E-I-NYT-E-AT-0108-L1

Blog Piece: "Cisco General Counsel on The State of Technology and the Law" (from The Platform- The Official Cisco Blog, 1/25/07)

http://blogs.cisco.com/news/2007/01/cisco_general_counsel_on_state.html

MANAGING OUTSIDE COUNSEL; ALTERNATIVE BILLING

Article: Meet an In-House Cost-Cutter Who Believes in Fixed Fees (from GC California Magazine, 8/29/07)

<http://www.law.com/jsp/ihc/PubArticleIHC.jsp?id=1188291741577>

Article: HSBC Launches Legal Team in Malaysia for Bulk Work (Legal Week, 2/8/08)

<http://www.law.com/jsp/article.jsp?id=1202385713103>

White Paper: ACC Management Report from session on “Strategic Management of Outside Counsel & Other External Legal Service Providers”

<http://www.acc.com/resource/v8710>

Article: Reflecting on the Qualities of Successful Outside Law Firms (ACC *Docket* 2007)

<http://www.acc.com/resource/getfile.php?id=8944>

Article: Tips & Insights: Managing the Outside Counsel Relationships with James Buckley, Lockheed Martin (ACC *Docket* 2007)

<http://www.acc.com/resource/getfile.php?id=8957>

Article: Benchmarking the Performance of Outside Counsel (ACC *Docket* 2006)

<http://acc.com/resource/v7174>

Article: Top Ten Methods to Managing Outside Counsel (2006)

<http://acc.com/resource/v7740>

Article: Electronic Billing Enters the Mainstream (ACC *Docket* 2006)

<http://acc.com/resource/v7173>

Article on Reviewing Outside Counsel Bills (ACC *Docket* 2006)

<http://acc.com/resource/v6649>

White Paper: Report of the Review of the Regulatory Framework for Legal Services in England and Wales (Legal Services Review, December 2004)

<http://www.legal-services-review.org.uk/content/report/index.htm>

White Paper: Strategic Outsourcing And Alternative Service Models (ACC *Leading Practice Profile* 2004)

<http://acc.com/resource/v5903>

White Paper: Leading Practices in Using Non-Lawyer Personnel to Help Perform Legal Functions (ACC *Leading Practice Profile*)

<http://acc.com/resource/v5904>

Article: When Should You Outsource Investigations

<http://acc.com/resource/v7530>

OUTSIDE COUNSEL METRICS

ACC Management Report from session on “Developing & Implementing Law Department Metrics that Work”

<http://www.acc.com/protected/docs/mgmtreportmetrics0907.pdf>

Law Department Metrics (ACC *Leading Practices Profile* 2005)

<http://www.acc.com/resource/v5899>

Article: Hands On: Benchmarking the Performance of Outside Counsel (ACC *Docket* 2006)

<http://www.acc.com/resource/v7174>

Article: Five Ways In-house Counsel Can Talk to Law Firms (ACC *Docket* 2005)

<http://www.acc.com/resource/v6474>

The Quest For Seamless Service: Ensuring Consistency With Multi-office Law Firms (ACC *Docket* 2005)

<http://www.acc.com/resource/v4985>



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The ACC Value Challenge

Re-connecting legal costs to value

REVIEW OF REGIONAL PRE-LAUNCH SESSIONS

Highlights, Messages & Insights

(September 26, 2008)

I. BACKGROUND

ACC's Value Challenge initiative launched on September 26, 2008 – information about the initiative is online at acc.com/valuechallenge. In anticipation of the initiative's launch, ACC hosted four regional sessions to focus group some of the emerging issues we hoped the initiative would address, and to begin the dialog among in-house legal leaders and outside law firm leaders on reconnecting costs to value.

Regional sessions were held in Chicago (7/25/08), Houston (7/29/08), San Francisco Bay Area (8/4/08) and New York City (8/11/08). About 25-40 people, evenly split between managing partners and CLOs, attended each session.

Session Format: Each session had two parts.

- *Part I was a series of concurrent roundtable discussions.* Participants were assigned to a table, and each table was assigned a particular question to address: Table 1 explored the definition of Value (participants included in-house and outside counsel); Table 2 explored how those at the table would create a model law department, and how relationships and engagements with outside counsel would look (participants were exclusively outside counsel); and Table 3 explored how those at the table would create the model law firm, and how it would be structured, staffed, and provide service (participants were exclusively in-house counsel). In other words, the last two groups were asked to design the function that they do not lead, but rely upon – general counsel were asked to create/manage a law firm, and managing partners were asked to build a better client and manage services that would meet the clients' needs. Following 60 minutes of discussion of the issues, each table reported back "their results" – offered below – to the assembled group. Sometimes reports included multiple and even conflicting findings and opinions: we've not tried to reconcile views, just report them.
- *Part II:* Following a brief overview of the ACC Value Challenge Law Firm Business Model "Tool" (which is a electronic system that ACC created as a discussion platform for assessing law firm profitability, staffing, efficiency, and business model options) those assembled participated in an open discussion of the issues that the model tees up, as well as other issues and ideas that should be addressed by the ACC Value Challenge project.

Executive Summary

The following themes emerged in every session as predominant/shared concerns or focus points. Please note that we are relaying the perspectives of participants and that some perspectives conflict with others; none are "endorsed" as right or wrong by ACC – this report is intended to capture thoughts expressed, not articulate any particular position:

- Trust, trust, trust, trust, trust. (it's missing and needs to be recovered)
- Relationship-building: what does value mean to firms, departments, clients? And does it matter what value means to firms at all, once clients have decided what they value?
- Relationships are best built and value can best be delivered via portfolios of business, not one-offs.
- The huge disconnect no one wants to own up to: while we all hear the other side's concerns all the time and pay lip service to understanding them, we all think we're right or aren't really listening – departments and firms don't understand why the other doesn't "get it" from their perspective.
- Long-term interests and sustainability versus short term returns – "which drives what when" and do we have it right?
- Metrics: better ones are needed in-house (many departments really have no meaningful metrics to evaluate why they choose the firms they do and how they assess their end-value, even as they actively employ metrics in most other areas of their work), and the "wrong" metrics often drive firm business models (such as profit per partner, higher leveraged partner associate ratios, etc.)
- Risk-sharing: lawyers are risk-averse and neither firms or departments are generally expert in mining their data and experience to better understand what truly is risky vs. what is just unknown.
- Many outside lawyers avoid being business-focused and savvy in their practices, and sometimes eschew those who are as "unprofessional"; and yet these lawyers engage in the very well-established business of providing a professional service at a very high price to sophisticated corporate clients.
- Firms need a crash course in Six Sigma practices (focus on process that produces desired outcomes, and not repeated activities of questionable value).
- Getting away from "managing the bill." Rediscover a focus on setting objectives and communicating expectations fully before the matter begins.
- Many CLOs and in-house managers are "drinking from the fire hydrant" and their firms seem to think that the only matter they are thinking about is the matter they've retained the firm to handle ... for many matters, in-house counsel retain a firm to make a matter "go away," and firms don't understand why the in-house lawyer is so upset when forced to micro-manage the case.
- Mutual buy-in from firms, departments, and executive management (CEOs, CFOs, even Boards) is crucial to executing change. No one likes the current situation, but few wish

to risk focusing management on their current inefficiencies in order to get clearance to try something radically different.

- “New York is different/London is different.” Does that matter and will that change? Are there a few firms and/or markets (within national markets and international markets) which are so powerful that they don’t have to care about any of these issues? Will that hamper the ability of others to make progress? Will these lawyers/firms go, as Mike Dillon says, “The Way of the Mastadon?”
- Innovators get it, but the bulk of firms and departments aren’t innovators. They say they want to try alternative practices, but rarely do. Mouths are talking; feet ain’t walking.
- Corporations buy all kinds of sophisticated services from other providers who come in with evidence of their efficiencies and how they offer more value than their competitors; law firms come in and tell in-house lawyers they provide quality, and don’t seem to understand that that’s the floor, not the ceiling.
- Law schools are a huge area of concern: they continue to churn out graduates who can’t practice and firms have made it worse by creating false expectations of practice – entry level associates are often useless for years and want to be paid/treated as top execs. Clients don’t want to pay for them since they provide no value. The viscous circle kicks in – who’s responsible to train and retain them?
- Firms worry: if we build it, will they come? Can anyone assure greater returns to innovators at firms or in departments? – what if the only folks who continue to profit and advance are those who don’t innovate but who employ the old “no one ever go fired for hiring biglaw” mentality?
- The AmLaw ratings drive performance and behaviors at larger firms – no one likes them but everybody lives or dies by them (on the firm side); in-house departments would like different ratings to measure firms’ value to them. It would be interesting if more general counsel looked at those ratings as indications of the firms’ (in)efficiencies rather than a ranking system of who must be best.
- *[ACC note: notably absent from almost all conversations and issues discussed was the deployment of technologies, staffing, and vendors providing services that didn’t include lawyers (research companies, document management firms, non-law firm or temp outsourcing, use of non-lawyers such as paralegals or other company employees, matter management and billing technologies, communication platforms, etc. Is that a result of the focus of the conversation on the folks in the room, or a statement of what’s not important to those present and considering how to make this process work better?]*

II. SPECIFIC DISCUSSION HIGHLIGHTS & MESSAGES

A. Roundtable Discussions on: Value, the Ideal Law Firm and the Ideal Law Department

1. **Defining the Value of Lawyers and Legal Services:** How should we define value, apart from cost or billable hours? (Note: this question was assigned to a mixed table of in-house and outside counsel in the sessions.)

- Definition written by one table: “Value = Achieving desired outcomes in a manner commensurate with the value and cost of the business.”
- The definition of value can differ dramatically depending upon the client and the types of matters or cases. If value is different for every client and even every matter, then outside lawyers and in-house counsel need to sit down at the beginning of each relationship or matter to share expectations and determine what value means in that matter. This is rarely done.
- In-house lawyers need to communicate what they hope to achieve – they often assume the outside counsel knows and they don’t. Sometimes the in-house lawyers don’t think about what the client’s objectives are either – they just manage the workload.
- An important tool in setting expectations and communicating objectives is a “scope” document for projects: it sets expectations and ground rules and allows a focus on shared outcome at agreed upon prices.
- While it was relatively quick and easy for inside counsel at the table to define what is value for them (and to recognize that value may mean different things for different clients or even for the same clients within different kinds of matters), there was not a good sense of what “value” means for law firms: repeat business, respect, sharing rewards, building and maintaining a good relationship, were all identified but not easily articulated. There was a sense from both inside and outside leaders at the sessions that law firms often have two sets of definitions: what’s value for their client and what’s value for the firm (particularly the top-level partners and on topics of PPP – profit per partner). They are likely to publicly articulate value definitions in terms of the former, but actually reward value performance based on the latter.
- One participant noted that a definition of value for his company depends upon the type of case: for those top 10% of matters that are the most significant for the company, value means outcome; for those bottom 20% of matters, value means cost. And no one could define how to value the bulk in the middle which is medium-high important and non-recurring and more difficult to predict or plan to manage.
- Value is rarely realized on a per matter basis. Longer term relationships create value; in-house counsel need to come back to looking at what outside counsel does for the company (overall and longer term) rather than one-off accomplishments in a case or by forcing them into competitive bidding per matter on rolling RFPs.
- Offering firms a portfolio of work suggests that over time, costs can be flat or decrease while profits can be rewarding and sustainable – beauty contests erode value overall

because portfolios and long term relationships aren't created or valued – the message is: we'll shop every piece of work and you'll be in line with others who've made no previous commitment to the client, and have to go through the investment of time and resource to constantly re-win the business. Therefore, there will be no agreement to share risks because there's no commitment to share rewards.

- Create metrics for the return on investment that legal services can provide – if we can do this, it would be powerful. Cost/expense control and predictability is good; however, if you can say that you know not only what the costs are, but also what the return on investment is, that is better.
 - Currently, there isn't enough dialog between law firms, CLOs, and senior management of corporations to define value. Sitting down with each to discuss and define value and expectations makes sense and is necessary.
 - In-house counsel define valuable outside lawyers as someone you can reach and talk to for 20 minutes for an answer (not a team of lawyers who climb the learning curve for two weeks and then issue a memo offering everything they found); efficient, cost-effective, results-oriented, and business-minded (as in knowing the client's industry, history, and culture); attuned to the case matter which gives rise to the relationship and its importance/priority to the client; firms that understand “horses for courses” – the right talent on the right matter, including non-lawyers or contract staff, and not overstaffing or assuming that “quality work” always requires the “A” team and “A” costs.
 - Neither in-house lawyers nor outside counsel pay sufficient attention to identifying lessons learned, what their past experience on matters can do to inform present and future cases and budgets, and how their relationship overall can be improved; particularly helpful – mining information and experience that can make value delivery (and cost predictability and risk sharing) more likely on both sides of the relationship. Both firms and departments have info to mine that often goes un-captured or un-explored.
 - The need for evaluation based on “value” concepts and directions set: both inside counsel (by the CLO) and outside counsel (by the managing lawyer) need to create comfort zones in which those who try new ways of working will be rewarded or at least will not fear reprisal or recrimination for not following the legacy model.
 - Create processes/checklists that identify what the company thinks would be effective to get a result (this may not always be about winning).
2. **Build a Law Department:** If you were the General Counsel of a major new company that had no existing relationships or processes, and you could start from scratch in building an in-house legal function and for choosing your outside firms, what would you do? What would the law department look like? Who would it hire (inside and out)? (Note: this question assigned to a table of exclusively outside counsel.)
- The chosen model must align interests between in-house counsel and outside counsel – this relates to establishing trust between the firm, the client and corporate management.

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- As a first step, the CLO would need to get his or her hands around the different levels and kinds of matters (e.g., matters that are routine versus those that are more significant, things that the industry suggests will be repeat and common concerns) and then structure services that meet those unique needs. They'd need to also think about the bulk of the work that falls somewhere in between the routine and the bet-the-company stuff.
- Develop relationships between all lawyers working on the matter and the clients whose work they're doing; don't set up a department that creates a wall between outside counsel and clients in the effort to have in-house counsel act as the middleman. If you want outside lawyers to understand the business, the department has to let them into the matters more.
- Invest in law firms longer term; constant shopping for firms and RFPs are not healthy ways to build relationships and trust, or encourage shared values and risks.
- For regional or mid-sized companies: develop a convergence model that allows for special relationships to flower by consolidating more of the business and establishing some better relationships.
- Tie fees and fee-structures to matter types: “A” work versus lower priority work; work that requires inventing a wheel versus work that can draw upon existing materials. Train lawyers to understand these concepts and perform accordingly.
- Implement systems to measure performance and reward it both inside and outside; for both, create a “compensation” scheme that aligns incentives (pay 80% of fee if good results; 100% if excellent results; 120% if expectations were exceeded).
- Align interests of the client to the value of the work: 20% will be ‘bet-the-company’ or significant cases where cost “doesn't matter”; 60% is in the middle and is what keeps both inside and outside counsel awake looking for solutions; and 20% is routine and can be easily farmed for a “commodity” cost.
- Evaluate staffing and internal functions that need to be regularly served at the company – and then staff accordingly.
- The most important qualities for the CLO to have and promote are integrity and judgment. Outside firms respond to these qualities more than any other.
- Evaluate more than whether you made budget; evaluate results and performance (consider how well the business personnel think you've done).
- Create measurable criteria to evaluate the in-house staff's management of issues.
- Try to avoid wasting the firm's time – everything is not urgent and should not be left to assign until the day before it's due – avoid nitpicking bills to find small problems just to prove to senior in-house budget managers that the counsel is carefully reviewing the bills – don't manage outside counsel with fear as opposed to positive objectives.
- Develop metrics and evaluation systems for outside firms – and then actually employ them. Post mortem and engage in “lessons learned” processes with every matter of sufficient size.

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- One group decided to create a law department that consists of a smaller group of experienced, in-house legal specialists; staff in-house counsel only for the day-to-day work.
- Another concept discussed by another group was to outsource everything: look at the historical outside spend and go to a mixture of firms (don't want to be held captive to one firm) and engage in a dialog about what they'd charge to handle a designated amount of everything (e.g., looking for a blended rate or fixed fee to take the whole chunk and have the firms manage the budgets and outcomes – the CLO supervises and coordinates).
- Another concept discussed was the need for corporate counsel to award firms that do the day to day work on a fixed or value fee, the first opportunity to do larger, bigger ticket matters when they arise, rather than assuming it goes to bid and not rewarding those who've invested in the department/company.

3. **Build a Law Firm:** If you could start from scratch and build a law firm that delivered value, what would you do? What would it look like? How would you hire lawyers (and others) and staff the client's work? (Note: this question was assigned to a table of exclusively in-house counsel.)

- Stop playing at the margins; re-think everything.
- Build the firm around the 5- to 8-year associates, servicing partners and similar talent.
- Move the firm to the suburbs and sell the artwork / cut the non-law-related overhead.
- Reduce attrition of mid-level and senior associates and servicing partners, especially because the investment in them is so great and they are capable of delivering real value.
- Hire far fewer first year associates and actually train them and pay for their learning curves, as opposed to staffing them randomly in and out of client work, and seeing which sink and which swim, which is a very expensive and wasteful management technique.
- Balance mentoring/training against hiring experienced lawyers – plan in advance who you want to train and bring up in the ranks, versus who you want to go out and “buy” who's ready to hit the ground running.
- Look at tiers because most firms are too flat: contract lawyers, flex plans, remote workers, paralegals, non-legal staff, etc. Not just associates who have to become partners and partners who have bill with very high returns (or else they have no home at the firm and are considered off track/out the door).
- Create a service culture. Don't just value legal skills if they are divorced from business savvy or personal skills or communication skills, etc.
- Stop competing solely for the top graduates from top law schools – broaden the search and look for matches specific to the firm's (and clients'!) needs.
- Provide clients with “boots-on-the-ground lawyers.”

- Develop different groups of lawyers by skill set (rather than just by practice expertise), such as some who are like contractors and can do research, contract writers, discovery experts, investigations leaders, etc.
- Make money on volume and length of relationship.
- Offer alternative means of compensation for firm lawyers when appropriate to the client's objectives and pricing concerns.
- Accept that second or third tier firms are less valuable in some cases and more valuable in others and then build on that rather than trying to act like a first tier when you're not – think about the value of being a second tier firm and distinguish yourself from the old school firms.
- Develop metrics to measure firm performance and apply what's learned to improve.
- Smaller law firms can often be more effective.
- Consider embedding outside counsel within the law department as part of their training and to build the relationship with larger clients, learning the client's business and walking in their shoes as managers of firm services.
- Create a firm that hires laterals with experience practicing law, maybe including experience as in-house counsel.
- Give firms that you like a lot of work to help reinforce the value that they bring.
- Create a mid-size firm of generalists with in-house experience and market it in an appropriate way.

CONCLUSION OF PART ONE TABLE DISCUSSIONS: Folks agreed after reporting their table findings that while the general counsel loved the sound of the law firm they built, they didn't currently retain any firms that look like this and probably wouldn't if one asked to be retained. They'd created a something that looked great in theory, but that they had no capacity to work with or experience to manage – they were uncomfortable with the idea of retaining it, except for very carefully defined segments of work. Likewise, outside counsel building a department agreed that many of the practices and structures they put into place in their model are the ones they purport hate as firm leaders: all focused on cost, micro-management of matters, RFP controlled, and so on; further, they found that the firms they wished to select to serve their new department did not match the description of the firms they worked in (with a few exceptions from some of the participants present from “value” firms). Everyone agreed that value could be defined at a macro level, but that the day-to-day decisions that assure value were very hard to quantify and rarely were implemented with any focus – folks too often just look at the instant concerns and not at the larger value propositions – they revert to what's been done rather than innovating to drive value, which takes a lot of extra work and even risk.

II. LAW FIRM ECONOMIC MODEL; REACTIONS AND OPEN DIALOG / GENERAL DISCUSSION

- Reactions to the ACC Law Firm Profitability Model and Questions about the Model's Capacities were discussed. Since the model has since been amended to reflect some of the suggestions made, these comments are not reported. View the model online at www.acc.com/valuechallenge.
- First Year Associate Issues: A few firms are considering not hiring them; others agree that while they are necessary, they pose huge challenges - no one likes training them or paying to train them. There was much discussion of the department trend of forbidding first years to bill on client accounts.
- Participants find it ironic that recent law school graduates are largely unprepared to practice their profession, notwithstanding the time and huge cost invested in law school. Law schools properly teach students how to think like a lawyer, but that could be accomplished by the end of the first semester and certainly the first year. Why can't law schools spend the remaining 2 to 2-1/2 years teaching them to be lawyers? Accountants know how to do accounting when they graduate; so do doctors, architects, investment bankers, etc. How is it that the law schools adopted the "we're-above-the-practice-of-law" focus? Even with better law school training, new lawyers may need more practical experience and time, but if so, they shouldn't be billed at \$300/hour and left unsupervised to succeed or fail.
- First-Year Associate Salaries Out of Control: Do firms really need to go solely after the cream of the crop and set all salaries across the board based on the market for the 10 or 25 top hires in the country? Not all work demands top talent. Not all top talent developed had the best grades in school. Not all associates should be paid what the best associate in the country could command.
- What would happen if the salaries for first year associate came down to a range that is more in line with what they actually contribute? This might mean fewer students in law school, but is that a bad thing? There may be short-term pain in modifying the current hire structure, pipelines and current employee base but it is justified by a move toward a less leveraged system with higher retention/ lower attrition and better trained associates.
- Law Schools & Legal Education: Discussion of the Carnegie Mellon study that describes law schools as outliers in professional education; notion that it's rare to find a second-year associate with the requisite skill to handle a case. How do you change the paradigm of law schools and how they teach? Law schools don't train students how to be lawyers and firms don't have the time or clients who are willing to pay them to learn.
- Is there merit to revisiting the old journeyman system that's still used in some jurisdictions outside the US (i.e., we'll pay you something to be here, but until you're ready to practice, you don't get paid like a lawyer)? Will it teach young lawyers about serving the client before they are "spoiled" by focusing on hours?
- Suggestion that law school education should focus on ADR, negotiation, oral advocacy, risk analysis, and client service/client telling (the art of giving clients advice they make not like and must adopt).
- Legal Licensing: Should the professional licensing path be changed? Should law school graduates perform an apprenticeship before they can be licensed?
- Training in government no longer as viable an option: A primary litigation training ground used to be at the U.S. Attorney's and state's attorney general offices, but now those are career jobs and the salary for those jobs that are entry level can't cover student loan debt.
- Best Lawyer for Cheapest Price: Law firms worry they need to manage risks if they put less expensive attorneys and/or not "pull all stops" on matters.
- Associates and Front-line Experience: First and second year associates used to receive front line experience working on cases and matters; in today's world this doesn't happen because larger law firms don't want the more routine-type cases, and law departments are keeping these cases or moving them to smaller or different types of firms. Would larger law firms consider taking these types of cases back to help train their associates? Are there other ways to train associates, such as contracting some non-equity level partners who want alternative track/fewer hours or pressure to train them?
- Highest, Best Use of People's Time: It's not the law department's highest / best use of time to manage the law firms' business. Stop managing us both at the macro level and to the smallest detail (e.g., the 1.5 hour issue on a \$2 million bill). Don't micromanage the firm's staffing either. Tell us what you believe the matter is worth and then let us decide how we staff it: if we want to train, if we want to use only partners, if we want to apply contract lawyers or other cost savers, let us, so long as we return what you want when you want it with the highest quality assured. Give us an incentive to get more efficient by deciding what you believe it's worth and then letting us decide how it's to be done.
- Inconsistency in Messaging: There is a fundamental inconsistency of messaging –in-house personnel say they want change and alternatives but then they continue to hire lawyers and firms that don't change and reject lawyers and firms that are willing to provide alternatives. In-house departments are enablers of the current inefficiencies.
- Set a metric for success that focuses on delivery and results. If you set the metric solely on decreasing cost, then the yardstick will constantly move and you'll never succeed. A focus solely on cost does not allow for a meaningful focus on service or value – cost is an element, not an end.
- Law Firms Need to Understand Who Decides What's Valuable: Who is the real client on a given matter? Whose budget is paying? What are their goals? Is it speed and accuracy, limiting liability, or something else? It's not likely to be lawyer-driven goals. The general counsel is often not the sole decision-maker and the end-client's concerns are often not clear to the outside firm.
- Until companies reward the law department using metrics other than headcount and dollars spent, in-house lawyers will stay focused on cost rather than value. One deliverable for the project might be establishing better ways for companies to measure and evaluate the value provided by the overall legal function.

- Secondment: Consider having law departments and law firms swap/second lawyers to help enrich experience and awareness of issues, goals and processes. This is happening some, but primarily outside the United States. Should be further explored/implemented in US as a training and cost tool.
- ACC Can Help Highlight Firms Adding Value: ACC can help highlight those firms who employ the value proposition and who want the types of work needed to help develop their associates.
- Overhead Costs: Law firms need to stop passing their costs through on a cost plus basis. For example, given the changes in telecommunications, how is it that the cost of telephone service is still billed as a disbursement? Also, look at the capital, revenue-sharing and ownership structures of plaintiff law firms for examples of how losing this kind of reimbursement can work to the firm's advantage, rewarding efficiency.
- Metrics: Profit-per partner is not a valuable metric; it isn't aligned with corporate client interests, and probably not in the interest of a majority of lawyers at a firm. Lawyers also shouldn't value themselves based on who has the highest hourly rate.
- Dialog among In-house Counsel and Law Firms is Important: To help ensure the legal service delivery process is on track, it's important to discuss questions like: (1) what keeps you awake at night; (2) what can outside lawyers do to enhance the law department's / client's position and address issues of importance? (3) what would it take to make you change? All these discussions are sometimes best hosted outside the relationship existing between law firms and departments that are already partnered, since there's too much to lose by discussing what's not working at this level amongst partners who wish to emphasize their great collaboration.
- RFPs are hindering value, not helping: In-house lawyers and outside counsel have moved the dialog further away from value through the RFP process (even though the intent is the opposite). Need to get back to personal interaction to create the trust necessary for significant change and to re-establish sustainable relationships.
- Law Firms Need to Have a Structure to Accommodate Flexibility: Notion that it isn't one size fits all and law firms need to accommodate various client service needs.
- Training: Are there ways to help train the more junior associates to help enhance their satisfaction, productivity and value? Are in-house lawyers willing to help pay for law firms to train their junior associates? One firm uses retired partners to train and supervise junior associates on matters; clients pay lower costs to have matters handled but get junior associates staffed on their matters who are overseen by retired partners with lots of experience. One in-house leader noted that there might be a willingness to 'pay' for training of junior associates for firms that the company has had a long term trusted relationship with, but not for newer firms.
- Alternative Career Paths to Enhance Retention: Are there practices that include alternative career paths to enhance retention? One firm has hired experienced lawyers who want to work 30 hours a week; these are lawyers who have excellent credentials but want work-family balance or a slower pace; lawyers are paid hourly but receive full benefits; has been a success for the firm in attracting talent that adds value. One firm is broadening the categories of non-partner track lawyers.
- Contract Attorneys at Law Firms: Participants discussed practices and ideas that included bringing experienced contract attorneys into law firms to handle matters; these lawyers have experience, can add value from the outset and would still be less expensive than a \$350/hour junior or mid-level associate. They can be "loaned" to clients to work at the offices during surge periods.
- Consider Unrestricted, Unedited Client Reviews on Law Firm Websites: Is this something that would add value? Would law firms want to do this? It's something that many companies do that drives revisions in their product and service decisions.

II. MOVING FORWARD: What can ACC do to make this initiative successful?

- Continue the Dialog: Continue to provide forums for outside counsel and in-house lawyers to come together in a group setting to have this type of dialog. People are hearing that there is a wall; now, they need to go back to their offices and figure out ways to break down or climb the wall. Repeating this process in a few months, after there has been an opportunity to think about things and propose solutions, would be helpful.
- Reach out to More Companies and Firms: Spread the message and expand the dialog – everyone needs to be at the table.
- Empirical and Case Testing: Do some testing of the law firm business model and share the results.
- Develop practical tools for inside and outside leaders who need help, benchmarks, and ideas: it was noted that the new ACC Value Challenge website should house these and be open to all users to retrieve and contribute resources/ideas.
- Facilitate communities of interest that need to work together – perhaps through online networking and project platforms.
- Find and Reward Law Firms Who Adopt Value-Driven Policies and Practices: Share success stories and help get the message out about law firms who are implementing practices that add value.
- Help Provide a Comfort Zone that 'If You Build It, They Will Come': ACC can help create the message that these are best practices that it's wise to adopt.
- Shuttle Diplomacy: To help achieve the changes desired by firms and in-house departments, there may need to be people (maybe from the firms and law departments, or maybe outsiders) who serve as third party neutrals, hear what each side is saying and help translate that discussion into action plans.

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Questions? Comments?
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