

# 606 Strengthening the Corporate Perception of the Law Department

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*Senior Counsel*  
Coperion Corporation

**Jeffrey W. Carr**  
*Vice President, General Counsel & Secretary*  
FMC Technologies, Inc.

**Rhonda J. Schwartz**  
*Former Senior Vice President & General Counsel*  
Fortis Financial Group

## Faculty Biographies

### Mary H. Barnes

Mary Monaghan Barnes is senior counsel with Coperion Corporation in Ramsey, New Jersey. Coperion was formed this year through the merger of Werner & Pfleiderer in New Jersey with Buss and Waechle in Illinois. Ms. Barnes had represented Werner & Pfleiderer for more than five years prior to the merger. She serves as team leader for post merger integration of all legal functions. Her primary responsibilities are corporate and commercial law and she represents entities which produce approximately 70 percent of Coperion's sales. She has prime responsibility for identifying, collecting, and analyzing key metrics in Coperion's legal cost structure.

Prior to working with Coperion Corporation, Ms. Barnes worked for a sole practitioner in New York and was involved mainly in real estate, corporate, and estate planning matters.

She received her bachelors degree from Bucknell University and her law degree and MBA from Fordham University.

### Jeffrey W. Carr

Jeffrey W. Carr is vice president, general counsel and secretary of FMC Technologies, Inc. in Houston.

Prior to this appointment, Mr. Carr was the associate general counsel for FMC Corporation and was responsible for the legal affairs of FMC's \$1.5 billion Energy and Airport Systems business groups. In addition, he is the corporate attorney responsible for the design and implementation of the FMC-ACES law firm engagement model, FMC's in-house International Corporate Compliance Programs, and FMC's intranet legal support program. He joined FMC Corporation as international counsel.

Prior to joining FMC, Mr. Carr practiced international trade law in Washington, DC with Willkie Farr & Gallagher and Wald Harkrader & Ross and was a judicial law clerk to the Hon. Murray M. Schwartz (USDC-Del). He also founded and managed International Advisory Services Group, Ltd., an international trade policy, investment banking, and commercial consulting firm with offices in Washington, Prague, and Manila. Mr. Carr has extensive experience as a corporate attorney involved in commercial counseling, litigation and arbitration matters, negotiations involving international joint ventures, acquisitions, divestitures, privatizations, international trade law, customs, and export control.

Mr. Carr is a received a BA with honors from the University of Virginia. He received a law degree with honors from the Georgetown University Law Center where he was an articles editor for *Georgetown Law Journal*. In addition, while at Georgetown, he completed more than 30 hours of post-graduate study in the areas of international economics and foreign policy.


**Rhonda J. Schwartz**


Rhonda J. Schwartz recently stepped down as senior vice president, general counsel of Fortis Financial Group after the company was acquired by Hartford Life. She was a member of the company's six person executive management team and managed a legal and compliance department of 29 employees, including 10 attorneys. In addition to her legal responsibilities, Ms. Schwartz served as interim head of marketing for nine months and led various strategic business initiatives for the company, including a major business process improvement project, acquisition screening, and ebusiness strategy development and implementation effort.


Prior to joining FFG, Ms. Schwartz was vice president, general counsel for Fortis, Inc. Ms. Schwartz spent 11 years in private practice prior to going in-house with Fortis, first with Mayer, Brown & Platt in Washington, DC, and then with Norris, McLaughlin & Marcus in Central New Jersey.


Ms. Schwartz is currently president of Merrick, Inc., a nonprofit organization that provides supported employment opportunities and other services to developmentally disadvantaged adults. She was a board member for the Minnesota Economic Development Authority, which assists the development of minority owned businesses and the past president of the Woodbury Economic Development Authority.


Ms. Schwartz received both her undergraduate and law degrees from Georgetown University.

	<h2>Strengthening the Corporate Perception of the Law Department</h2>
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	<h2>Panelists</h2> <ul style="list-style-type: none"><li>u Rhonda Schwartz, formerly Senior Vice President, General Counsel, Fortis Financial Group</li><li>u Mary Barnes, Senior Counsel, Coperion Corporation</li><li>u Jeffrey Carr, Vice President, General Counsel, FMC Technologies, Inc.</li></ul>
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	<h2 data-bbox="467 346 836 399">Session Format</h2> <ul data-bbox="467 451 1226 850" style="list-style-type: none"><li>u Introduction and Panel Member Presentations</li><li>u Moderated Discussion Among Panelists</li><li>u Questions and Answers</li><li>u Facilitated Roundtable Discussion Among Participants</li><li>u Wrap-Up</li></ul>
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	<h2 data-bbox="467 1171 1193 1228">Keys to Success—the Six "P's"</h2> <ul data-bbox="467 1281 706 1627" style="list-style-type: none"><li>u Positioning</li><li>u Partnering</li><li>u Perception</li><li>u Planning</li><li>u Prioritizing</li><li>u People</li></ul>
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## Sample Operating Model

**LEGAL RESOURCES STRATEGY**


Results	Meaningful Business Partner	Operational Excellence	Support Strategic Plan Implementation	Employee/Team Development
S T R A T E G I E S	• Early Intervention	• Assessment	• Understand strategic plan and annual priorities	• Performance & Development plans
	• Work at "partnership" relationships	• Alignment	• Align department to strategy and priorities	• Feedback/ coaching
	• Exercise leadership and influence	• Improvement	• Align individuals to strategy and priorities	• Communication
	• Manage and exceed expectations	• Measurement		• Inclusion- celebration and socialization




## Sample Operating Model

**LEGAL RESOURCES STRATEGY  
1999 ACTION PLAN**

Results	Meaningful Business Partner	Operational Excellence	Support Strategic Plan Implementation	Employee/Team Development
A C T I O N  P L A N  I T E M S	• Business Partner Renewal (ongoing)	• Continue ABM/ Balanced Scorecard Initiatives	• FIGS	• Performance & Development Planning
	• Survey Key Partners	• Plain Language/ Prospectus Improvement	• CSG Activity	• Communication
		• Expense Management	• New Retail Compensation Plan, etc.	• Career Path
		• LRD's "Building Capacity" Initiatives	• Wildcard	• FFG Initiatives
			• Subgroup Alignment/ Annual Business Plans	

	<h2 data-bbox="467 348 1013 401">Roundtable Discussion</h2> <ul data-bbox="467 453 1247 873" style="list-style-type: none"><li data-bbox="467 453 1247 531">u What barriers to a positive perception of the legal department have you experienced?</li><li data-bbox="467 541 1073 579">u How do you overcome these barriers?</li><li data-bbox="467 590 1187 705">u Are you viewed as an integral partner in your company? If so, what are the keys to your success?</li><li data-bbox="467 716 1182 873">u What are the benefits to management and the company when the legal and compliance departments become integral partners in the business?</li></ul>
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**FMC Technologies**

Creating New Delivery  
Systems for Legal Services

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Building the New FMC  
Technologies Legal Team

August 27, 2001



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**Today's Presentation**

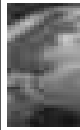
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- | The Context
- | The Models
- | The Creation
- | The Internal Team
- | The External Team

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**FMC Technologies**





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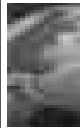
## FMC Technologies, Inc.

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- | \$2B Company focused on oilfield equipment and systems, food processing and airline equipment and services
- | Demonstrated growth
- | Strong market positions
- | Growth opportunities

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## First, Let's Do the Numbers

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- | \$500 – Average hourly rate for US partner at a "big" firm
- | \$1.5M – "Rack Rate" to bring a patent case
- | \$150K – "Newbie" lawyer comp package at a law firm
- | 80% -- Portion of budget devoted to external costs
- | 50% -- Reduction target for FMC Technologies Legal costs
- | 10% -- Annual expected total cost reductions

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## Today's Presentation

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- | The Context
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- | The External Team

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## The Changing Face of In House Counsel

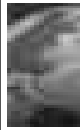
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- | Relentless pressure to reduce costs and increase performance
- | Constant search for efficiencies
- | Our job is to help the business make money by pushing the envelope
- | Our responsibility is to define the edge of envelope

Lawyers that "get it" will earn a seat at the table --  
Those that don't run the risk of extinction

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## Today's In-House Counsel Uses . . .

### The Competent Core

- Outsource non-key functions
- Commoditize whatever you can/validate costs and value
- Focus internal resources on highest and best use

### The HMO Concept

- Gatekeeper to use expensive specialists prudently & properly
- Wellness care to avoid disasters
- Triage for emergency/damage control

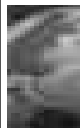
### The Lean Machine

- Staff for the valleys and manage the peaks through temps and secondments

### The Hollywood model

- Flexible teams pulled from in-house assets and different firms
- Match the need with the assets at hand or available

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## Teaming for Success

### Multifunctional internal teams

- Generalists for the business unit
- Specialty for the corporation
- Staffing moves to fill the needs

### Multidisciplinary functional teams

- Break down the silos
- Bring the right forces to bear
- Make all the players a stakeholder in the outcome

### Multiparty flexible teams

- Outside counsel provides the headcount and specialties we don't have

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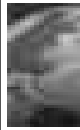
## Our Vision

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- | We are not here just to practice law. We're here to make money for FMC Technologies, to help the company succeed in its business plans, and, when obstacles come in the way of that success, to find ways to remove them
- | We will partner with the business and never forget that we are here to serve them, not the other way around
- | We will help the business push the envelope, by defining where that envelope's edge is
- | We will find ways to deliver legal services better, faster, and more cost effectively – or we will get out of the way

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## FTI Legal in the Corporate Structure

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- | Alignment with businesses
- | Avoidance of silos and layers
- | Focus on what is required, necessary and then juxtaposed against what is affordable
- | Reliance on central guidelines (core values) with local implementation and responsibility

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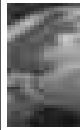
## The Big Questions

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- | What are our greatest challenges?
- | What should we focus on?
- | How will we select and manage outside counsel?
- | How will we manage discontinued operation litigation?
- | How will we handle specialized needs?
- | What focus team do you want to lead?
- | What focus team do you want to be on?
- | How so we leverage our collective knowledge?
- | How do we change/preserve what we do best while identifying areas for growth and improvement?

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## Solutions and Decisions

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- | Every decision has three aspects:
  - What should we do?
  - What can we do?
  - What will we do?
- | These may be different depending upon
  - Limited resources (time, money, space)
  - Policies & procedures
  - Upper management decisions/attitudes

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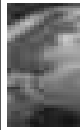
## Questions/Considerations

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- | How/where can we improve?
- | Why do we have to do it that way?
- | Who's got a better idea?
- | How is this being done elsewhere?
- | Where aren't we working up to our full potential?
- | Why can't we do better than this?
- | What's holding us back?
- | Are we honestly challenging ourselves?
- | Have we look at this from every possible angle?

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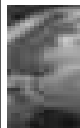
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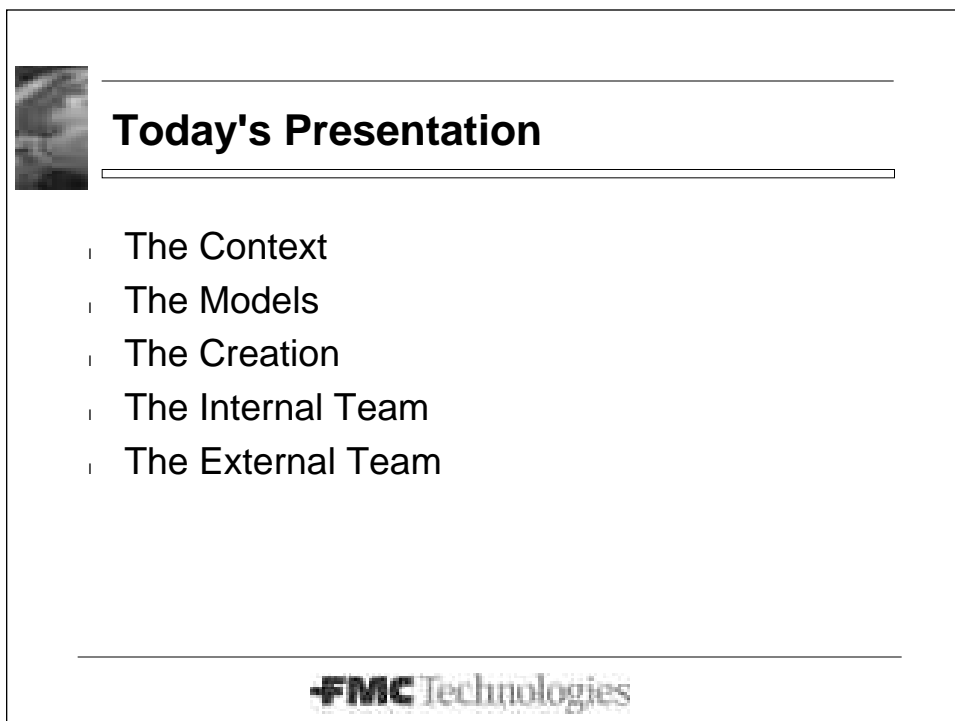
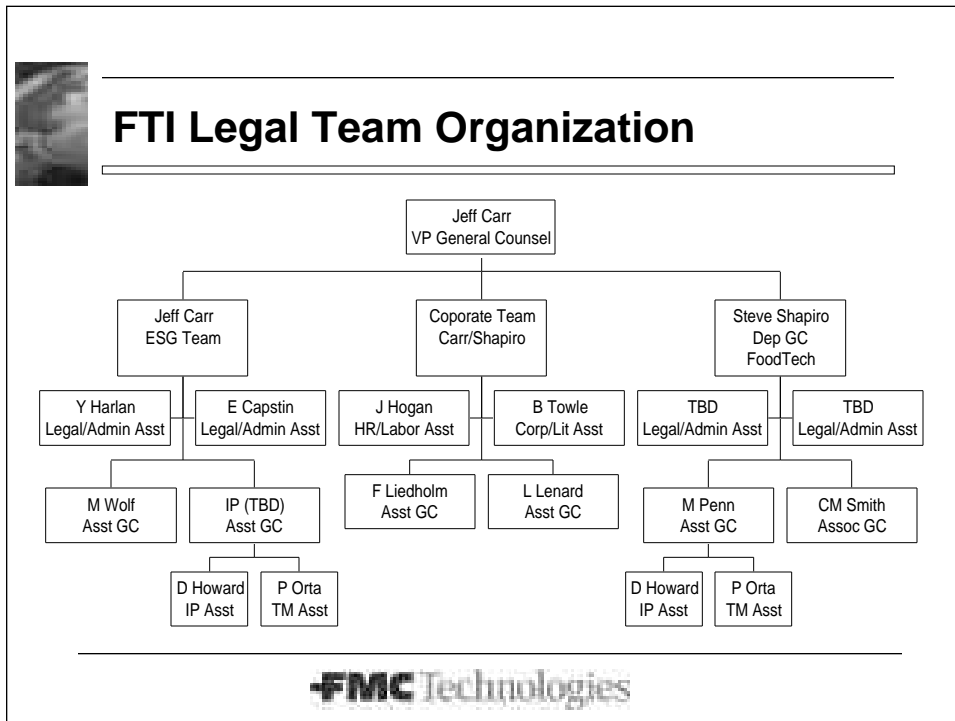
## Legal Team Structure

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- | Driving principle will be lawyers focused on specific business units each with a specialty available to entire group -- "staff" lawyers avoided
- | Organization into 2 teams, ESG and FoodTech, comprised of 2 business lawyers and 1 IP lawyer, both supported by 2 corporate lawyers
- | Anticipate 7-8 attorneys, 3 paralegals, 4-5 admin/legal assistants -- Net headcount reduction for FMC Technologies
- | 4 lawyers currently working in non-legal capacities as contract managers will be more closely aligned with legal function
- | Delivery of European legal services under review

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## Death of the Old Paradigm


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- | Clients are sophisticated consumers
- | Complacency is a curse
- | Corporate gravy train has been derailed
- | The cost-plus world does not exist
- | It's not about age but attitude
- | There is a market, and competition rules

**The firms that deliver solutions, geared to the objectives of the client, will prevail & prosper**

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## A Dysfunctional Relationship

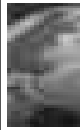
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<b>Law firms</b>	<b>In-house Lawyers</b>
Escalating costs	Make or Buy
Pass-through billing	Cost containment
Profit maximization	Value realization
Proliferation of firms	Convergence/leverage
One-stop shopping	Right tooling
Control/Autonomy	Teaming/staffing
Relationship marketing	Counsel selection tools

**In a world where in-coming associates can make significantly more than the battle-hardened in-house counsel, the delivery systems for legal services must adapt to new realities**

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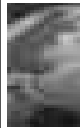


## Who Wants to be an Alliance Partner?

- | Firms offer to be your "alliance partner", and clients profess interest in an "alliance" with the firm
- | Don't be fooled by the jargon of alliances
  - From the supplier's point of view, the "alliance" objective is to get more business from a given client and increase profits
  - From the buyer's point of view, "alliance" generally means reducing your price and increasing your performance means I may, or may not, buy from you
  - In either case, it's a zero sum game

**A true alliance is mutually beneficial – there are risks and rewards for both**

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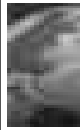


## The Challenge for Inside & Outside

- | *Convergence* of inside and outside objectives occurs at one point – to successfully obtain the corporate objective
- | *Divergence* of interests in the rest of the relationship
  - Corporations don't want to buy what a firm considers it's inventory (hours), absent some overriding strategic goal/interest, corporations need lowest total disposition costs in the shortest possible time
  - Corporations don't care what the law firm "cost plus" structure is – they want all suppliers to be cost effective
- | *Solution*
  - What law firms sell, and the way they sell it, must change

**Re-structure the engagement of counsel to make the firm a stakeholder in success, to focus on the point of convergence, and to ensure alignment of goals and objectives**

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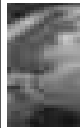
## Enlightened Relationships

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- | **Pay a higher effective hourly rate for fewer hours**
  - | **Pay for success – a substantial portion of the firm's profit should be at risk**
  - | **Eliminate cost plus bills – include internal costs in rates**
  - | **Leverage 3<sup>rd</sup> party vendors**
  - | **Structure to ensure firm makes decisions aimed at prevailing efficiently**
- | **FMC-ACES**
    - "Alliance Counsel Engagement System"
    - Proprietary – Business Process patent application
    - Aligns objectives
    - Provides for flexibility in achieving success
    - Covenant with the firm to adjust targets for unforeseen developments

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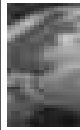
## Today's Presentation

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- | The Context
- | The Models
- | The Creation
- | The Internal Team
- | The External Team
- | Conclusion and Recommendations

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## Conclusion

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- | Business people want answers, not options
- | It IS your money -- give advice with this in mind
- | Look for "HOW" instead of "NO" -- blockers are avoided
- | Counsel who provide solutions to clients will prevail
- | Firms that align their goals with the goals of the clients will prosper
- | Firms refusing to consider new engagement and delivery systems will eventually perish

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## Recommendations

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- | *Read "Oh, the Places You'll Go"*
- | *Laugh at "Dilbert" everyday*
- | *Watch "Jerry McGuire"*
- | *Listen to "Changes in Latitudes, Changes in Attitudes"*
- | *Memorize "Who Moved my Cheese?"*
- | *Implement "Reebok Rules"*
- | *Learn jargon of the day*
- | *Walk the shop floor*

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## I. JOINT ISSUE PRIORITIZATION

- Specific issues or topics can be identified and prioritized
- Creation of legal topics

- **CORE** Areas of law in which difficulties could affect the enterprise's ability to conduct business in the manner management determines is best

Expected that business and legal leadership would agree that a major resource commitment would be devoted to preventive law

i.e. a securities firm violating an SEC regulation

- **KEY** Does not have potential to affect fundamental conduct of business but can still have serious financial impact on company

i.e. - harassment/sexual discrimination claims  
- tax

- **OTHER** Miscellaneous areas

## II. OPTIMIZATION THROUGH INTEGRATION

- Attorneys and the legal function must be as fully integrated as possible into the business.

How to accomplish this???

Attorneys should:

- Attend every meeting on core issues and be invited to all meetings on key issues
- View themselves and be viewed by their clients as business people who specialize in the law
- Attend industry conferences/trade shows
- Engage in informal socializing (i.e. sports teams, travelling with "business" people)
- Conduct regular meetings and presentations
- Participate in strategic plan review and development
- Engage in informal discussions with CEO
- Attend annual meeting with all management people to evaluate/debate budgeting and corporate goals
- Tie legal department's "5 year goals" to company's "5 year goals"

## **Advantages**

- Increases legal department's credibility
- Makes business people understand the true costs of bad products and failure to take care of customers
- Allows for early issue spotting
- Helps determine profitability overall
- Allows senior management to realize how legal operations support company's objective
- Helps CEO feel informed

## **Disadvantages**

- Increased difficulty of measuring avoided costs
- Can be slow process
- Time spent is not always productive

### III. OPTIMIZATION THROUGH METRICS

- An essential means of integrating legal functions into business and of establishing foundation for synchronization is to speak same language

#### **i.e. Quantitative Language**

- Legal function should set goals and measure performance using statistical methodology in a meaningful way.
- To use Metrics in synchronization process, it must pass two-part test:
  - (1) measures something that contributes to effective delivery of legal services; and  
example: fully loaded internal hourly rate v. retained counsel rates.
  - (2) must be expressed in terms which are meaningful to business people  
example: average number of attorneys per billion dollars of sales in the client's industry

- \* **Extremely important for business and legal leadership to agree at beginning of synchronization process on relevance of specific metrics.**

#### **Advantages**

- same language as business area
- justifies in-house hires
- more confidence in fees
- forces pre-planning of activity
- fits the culture

#### **Disadvantages**

- lack of certain data
- problematic if budget exceeded
- resistance by ownership (i.e. can appear as self-serving methodology)



## **IV. IMPORTANT BENCHMARKS**

### **Lawyers per \$1 Billion of Revenue**

- Study published in 2000 surveyed 1912 lawyers and 211 companies – average of 3.5 lawyers per \$1 Billion of Revenue

### **Fully loaded cost per lawyer hour**

- Study published in 2000 which surveyed 70 companies, 3551 attorneys, concluded that weighted average of internal cost per hour was \$167
- Average law department had 32 lawyers and assumed 1850 hrs./hr. chargeable time
- Median spending on outside counsel per inside lawyer was \$350,000

### **Ratio of Inside Legal Spending to Outside Counsel Spending**

- Typical law department spends 40-60% of its total budget on inside costs
- Study of approximately 75 law departments, average ratio of outside costs to inside was 1.5 to 1 or 60.40

### **Total Legal Spending as a Percentage of Revenue**

- Average cost for inside and outside legal expenses was .31% of revenue.

## V. COPERION'S EXPERIENCE

- BACKGROUND
  - New European CEO unaware of American law, costs, etc.
  - Joint issue prioritization and metrics were excellent vehicles to increase understanding

### Steps Taken:

- (1) Outside counsel expenses were identified as a key metric to:
  - evaluate actual costs
  - means of identifying scope of issues to be addressed
- (2) Industry averages were determined based on
  - company revenue
  - department size

**VI. RESULT...ACTUAL COSTS WELL BELOW INDUSTRY AVERAGES**

**Key Factors:** Use of part-time attorneys who received ongoing specific training in core and key areas

- had e-mail/voice mail
- included in corporate functions
- practiced preventive law
- lower costs because of lack of overhead

**Overall:**

- overall decline in legal expenses
- steady increase in amount allocated to core and key areas (please refer to overhead pie charts)

**Shows joint prioritization can work.**

# Getting Closer to the Business: How to Foster Innovation and Value Through Culture and Philosophy

January 2001 ACCA Docket

*By Jeffrey W. Carr and James Lovett*

*Both Jeffrey W. Carr and James Lovett are associate general counsel of FMC Corporation. Mr. Carr oversees the legal affairs for FMC's Energy Systems and Airport Systems business groups. Mr. Lovett specializes in antitrust and litigation matters for the corporation as a whole.*

DISTANT, DIFFIDENT, DETACHED, AND DARNED EXPENSIVE are the four Ds formula for legal department disaster. As budget pressures increase, personnel costs mushroom, and the complexity of legal issues multiplies, legal departments fall within the cross-hairs of overhead reduction. To respond, in-house lawyers must develop a consistent philosophy and culture, imbued in the organization, to deliver legal services that efficiently provide business solutions. We must recognize that our role is to support the corporate business, not to support bureaucracies (especially a legal bureaucracy) within the business.

This article uses the experience of one law department, that of FMC Corporation, to show how integration with the business teams--an active philosophy of being closer to the business--can replace the dreaded corporate staff moniker with status as an integral part of the operating business. With a cultural change based on a consistent philosophy, in-house lawyers can convert the dreaded Ds into the coveted Ps: proactive, progressive, and professional.

The importance of commitment to a consistent philosophy and culture is widely recognized in business literature, such as in *Built to Last* by James C. Collins and Jerry I. Porras.<sup>1</sup> Because a law department forms part of a corporation's business, this commitment is also important for law department management, especially because legal teams consist entirely of people. People work more effectively and with more enthusiasm when they understand the reasons why they are working, when they have the freedom to innovate, and when they can see tangible benefits from those efforts. It is like the difference between the professional athlete who thirsts to win and one who simply wants to collect his or her paycheck.

This emphasis on a consistent philosophy and culture is not at odds with the use of metrics and other numbers and processes: other articles in this issue of ACCA Docket show how measurable metrics and processes provide important tools to help corporate counsel succeed. Metrics and processes in a vacuum, however, simply fall within Disraeli's third level of confusion (there are lies, there are damned lies, and then there are statistics). Corporate counsel must choose and use metrics as part of an overall philosophy and culture that are aligned with the counsel's business.

## **EXAMPLE OF THE LAW DEPARTMENT AT FMC CORPORATION**

FMC Corporation is a diverse global chemical and machinery company based in the United States, with corporate headquarters in Chicago and sales and operations in more than 100 countries.<sup>2</sup> A diverse in-house legal team serves this diverse international business. In 1993, this legal team included nearly 50 lawyers clustered in Chicago and Philadelphia. Today, even

though FMC's sales have increased nearly 25 percent, FMC has fewer than 25 in-house lawyers dispersed among the corporate and business unit headquarters.

To be more effective with fewer resources, the FMC law department has transformed itself in recent years around the culture of being ever closer to the business.

This transformation has led to both significant cost savings and higher satisfaction with legal services by business managers according to survey results. As Robert N. Burt, FMC's chair and CEO, recently stated in a letter to FMC lawyers:

The restructured department has allowed for closer partnership with our businesses and more customer-focused service. In addition, you've cut legal spending in half over the last five years, contributing positively to FMC earnings and return on investment. I hope your work is even more rewarding--and more fun--as a result of your accomplishments. And I hope you are as proud of your successes as I am proud to be associated with you.

These results were not achieved simply by announcing that all lawyers henceforth will be closer to the business. These results stemmed from three main types of actions. First, a complete reorganization of the law department thrust legal team members into the business. Second, these business attorneys became directly accountable to the businesses for expenditures, strategies, and results. Third, once the business attorneys were aligned with the business and motivated directly to meet business needs, a spurt of innovations among these attorneys generated both improved service and lower cost at the same time. These actions have increased the visibility of the legal team through more intimate involvement in the business, and the combination of increased visibility and improved service has led to a higher regard among business leaders for a legal team. The increased involvement of and regard for legal team members in turn led to a higher level of professional satisfaction among the corporate legal team.

### **REORGANIZATION BASED ON A CULT-LIKE CULTURE OF BEING CLOSE TO THE BUSINESS**

Successful implementation of legal management techniques depends on a structural organization of the legal team that reinforces those techniques. In the case of FMC, this imperative meant reorganizing the legal team to be more integrated into the business, as opposed to being a separate department. The purpose of the new organizational structure is to encourage lawyers (1) to develop a thorough understanding of and even to participate in developing the goals and plans of the business, (2) to think through with the business managers the legal implications of those goals and plans, and (3) to work with the business managers to provide the legal support to achieve those goals. In this way, the lawyer becomes an integral part of the business team in the same way that a financial manager, a production manager, a sales manager, a research and development manager, and so forth would be an integral part of the business team.

The FMC legal team has taken the following organizational steps to get close to the business:

- \* The law department has been reorganized from functional lines, such as patent lawyers, commercial lawyers, international lawyers, and so forth, to legal teams allied with business groups. Today, the only exception to this reorganization is a

- few specialists working across the company in support of the teams to achieve economies of scale.
- \* Two thirds of the lawyers physically have moved their offices to be with the other managers of the business teams they are supporting, across the country in some cases.
  - \* Lawyers participate in strategic planning of the business and the planning on tactical operations to achieve strategic goals. Lawyer involvement with this process helps to identify what legal services are necessary to help the business and to decide how to deliver those services most effectively and efficiently. This proactive involvement also encourages cost-effective counseling at the front end, as opposed to damage control later on.
  - \* Lawyers participate in regular meetings of the management of most business groups. All FMC business units have annual operational reviews with corporate management and most have monthly business reviews with group level management. The lead business lawyers generally have an active role in those meetings, providing information on pending legal issues and ongoing advice and input.
  - \* Lawyers participate in acquisition planning and negotiations from the earliest stages. Generally, the in-house attorney responsible for the particular business unit is the legal lead on all acquisitions and is responsible for marshalling and managing the legal assets required. Often that same lawyer is actively involved as an important member of the transaction negotiating team.
  - \* Lawyers allocate internal and external legal costs incurred for each business division to that division.
  - \* Most lawyers have dotted-line reporting to a business manager, although they continue to report through the legal team ultimately to the senior vice president and general counsel.
  - \* Lawyers are encouraged to be generalists with a specialty, enabling them to be general legal counsel for an operating business unit and also to specialize in a subject matter of special concern to that business unit. This arrangement creates a network of specialists that can consult throughout the company.
  - \* Lawyers have reorganized the corporate compliance program so that they work with business managers in each operating division to tailor implementation of the overall corporate responsibility standards to the specific needs and challenges of that division, including conducting training and audits on an ongoing, as needed basis.

## **GETTING CLOSE TO THE BUSINESS MEANS GETTING YOUR HANDS DIRTY**

The goal of getting close to the business also drove FMC's law department's decisions on external versus internal staffing by crystallizing recognition that the comparative advantage of in-house lawyers was knowledge of the business. As a result, the law department decided that in-house lawyers personally should do work in which the added value relied heavily on knowledge of the business, knowledge of the managers of that business, and a deep understanding of business objectives.

For that reason, FMC lawyers do most acquisitions and joint ventures entirely with in-house counsel. At FMC, acquisitions and joint ventures often are an important part of the business

strategy, and in-house counsel understand the business and the business objectives. Indeed, given that many acquisition targets are competitors or suppliers, in-house counsel often have knowledge of the target, as well. This model works for FMC for two reasons: (1) FMC is large enough to support in-house specialists in antitrust, employment law, and employee benefits to support general acquisition lawyers, and (2) FMC's strategic focus is on doing smaller acquisitions for ease of assimilation. Even for larger acquisitions for which outside counsel may be necessary for their numbers or more specialized resources, FMC in-house lawyers lead the legal team in a highly hands-on manner.

FMC has also pursued intellectual property ("IP") portfolio management as a concept involving not simply technical personnel, but also marketing, sales, and management, along with outside counsel. Again, in-house counsel lead this effort because of their knowledge of the business, including its overall IP portfolio, and business objectives. We use outside counsel to provide the IP headcount that we cannot afford in executing the strategy of the in-house IP manager.

### **Promote Accountability**

Full implementation of a culture of getting close to the business involves organizational decisions that may create discomfort for some lawyers by exposing the legal team to criticism from the business. For example, FMC had traditionally not allocated internal legal costs to individual businesses. The FMC legal team suggested and implemented revised internal accounting practices that would allocate both internal and external costs to the internal business clients. The legal team took the initiative in this regard rather than reacting to a mandate from corporate headquarters or the business, the more traditional drivers for such internal responsibility allocation initiatives. Although this step exposed lawyers to potential criticism for more direct accountability for the actual costs of legal services, it was an essential step to a dialogue with operating business managers about the value and cost of those services. Of course, from the business's perspective, what matters is the total cost of legal services, and the in-house/outside counsel distinction is only a means to the end of efficiency. By allocating both internal and external costs, the FMC lawyers have been able to drive efficiency by making costs as visible as possible. This visibility has created opportunities for costs savings to become more evident to the business.

### **Lead from the Front**

Another example of exposure to criticism has involved having in-house lawyers, rather than outside specialists, lead the matters that are most important to the business. Even when also using outside specialists, in-house lawyers lead the team and take responsibility for the most important judgment calls. The upsides of this approach are that in-house lawyers get credit for legal victories and that business managers grow to rely upon their in-house lawyers' judgment. The downsides are that this approach precludes the defense of "but we hired [insert your favorite firm]" when legal matters go poorly and that lawyers perceived as not exercising good judgment may not last long. Overall, however, the experience of the FMC legal team has been that business managers appreciate and value the willingness of their legal team to step up to the plate and that, with good communication, they come to understand the risk inherent in certain legal matters just like the risks inherent in other aspects of the business.

## **Be Close to Your Business**

FMC's particular decisions regarding reorganization of the law department stemmed from the particular business of FMC. Other companies having different business dynamics and objectives might find a different approach more suitable. For example, an insurance company with a large volume of repetitive litigation might find it more economical and easier to achieve business objectives in litigation by using an in-house litigation model, such as a captive law firm. The point is not that a particular technique is ideal for all situations, but rather that a company could best tailor corporate legal management techniques to a particular business by having the lawyers closely integrated into the business.

## **HOW BEING CLOSE TO THE BUSINESS LEADS TO INNOVATION AND EFFICIENCY**

Once closely integrated into the business, not only does the corporate legal team become aligned with business objectives, but also it confronts those objectives and their obstacles daily. The necessity of achieving those objectives then naturally leads to developing innovative solutions to achieve these objectives in a cost-effective manner. Legal team management, however, must foster a willingness to break away from the past to try new things, even radical new things.

The corollary to innovation is the willingness to jettison or change those experiments that fail and to build upon those that work. Many experiments can begin as an incremental change or a change in only some areas of the company. The company can abandon these incremental changes if the results are not promising, or it can extend the changes to the rest of the company if they are successful. Constant experimentation is key: what looks in hindsight like a brilliant strategy may be only the "result of opportunistic experimentation."<sup>3</sup> The remainder of this article discusses some of the experiments at FMC and their results. While others may benefit from FMC's experience, the main goal is to illustrate the process of experimentation, using examples drawn from the management of litigation, intellectual property, the compliance program, and the use of nonlawyer legal staff.

### **Litigation**

The FMC legal team has experimented repeatedly with litigation in recent years to achieve business objectives more effectively and at lower cost. With continuous experimentation over the past five years, FMC has been able to cut litigation costs by half. After many years of using discounted fees for service, FMC switched several years ago to a two-part program. The FMC legal team chose a single outside counsel to handle all litigation for a specific region of the country. The FMC legal team took certain types of repeat litigation with similar issues, such as asbestos cases or product liability cases for a particular product line, out of the regional "pots" of litigation and concentrated them with an individual lead lawyer to maximize consistency and efficiency.

Under this program, FMC paid counsel discounted fees for services up to a maximum cap for all cases assigned to the counsel. The idea was that FMC would get discounts for concentrating litigation in a small number of firms and that total fee caps for all cases would prevent aggregate budget overruns. On the other hand, firms benefited in the partnership by increasing their amount of work and the predictability of their work and gained the opportunity to spread the risk of the



fee cap by offsetting cases with unexpected expenses with cases that went unexpectedly well. The program helped promote early resolution of cases because the caps were set at levels that could only be met if many cases were resolved, while the discipline of in-house counsel management helped ensure that only favorable resolutions were accepted. Over several years, FMC had substantial success in reducing litigation costs with the fee structure. The success of this program over time in reducing the number of cases undermined its effectiveness, however, because each firm no longer had enough cases to spread the risk of the fee cap.

FMC has responded with further experiments to further reduce its litigation costs by better aligning the interests of outside litigation attorneys with the company.

- \* FMC has begun to negotiate discounted hourly rates with outside lawyers that include disbursements. This approach creates an incentive for outside lawyers to minimize such costs because they cannot simply pass the costs through to the client. A few costs, such as out-of-state travel and court reporter fees, are exempt from this rule and are instead subject to typical guidelines.
- \* FMC compensates the outside firm for each litigation matter based on agreed upon budgets and structures. The outside firm retains local counsel as necessary within its own budget for the matter, without separate billing to FMC.
- \* The outside firm and in-house counsel use decision tree risk analysis to develop analyses of the probable value and the key decision points of a lawsuit. These analyses help lawyers communicate with the business leaders using MBA-like tools with which business leaders are comfortable.

FMC also has begun two major, concurrent experiments with litigation management models in which the outside firms have a risk/reward cost structure designed to align the corporate objective of achieving success at the lowest possible overall cost to the corporation with the law firm's objective of its maximizing profits. In defense situations, this amount means at the lowest possible total disposition cost, including legal fees, resolution costs, and the risk of future litigation. When FMC is the plaintiff, this amount means the highest net recovery, less fees and costs or obtaining other less tangible, yet still defined goals. A key goal of each experiment is to provide incentives for early attractive settlements.<sup>4</sup> FMC's in-house counsel encourage and control alternative dispute resolution initiative and creative settlement discussions because they are in the best position to balance the business objectives, the inherent dispute resolution risks, and the cost of conflict resolution.

### **Litigation Experiment No. 1**

The first experiment with risk/reward structures is being conducted by the legal team responsible for FMC's \$1.5 billion energy and airline systems businesses ("ESG/APSD"). As opposed to FMC having internal litigators devote significant time, the outside firm effectively staffs this function, and the ESG/ASPD in-house lawyers become the quarterbacks of the litigation team to set the strategy with the business management and to implement the tactics with the firm. The outside firm is on a retainer to ensure attention, to support reporting requirements, and to smooth out wild variations in outside litigation expenses. In addition, the outside firm is encouraged to use service providers with whom FMC may have preferential supply arrangements, such as couriers, photocopying companies, and so forth.

A key element of this approach is the FMC proprietary system known as FMC Alliance Counsel Engagement System ("FMC-ACES"), a system designed to create a true risk/reward sharing alliance. FMC-ACES requires a clear statement of the objectives, a flexible and continuous budgeting/target cost development/management process, and the ability of the firm to earn a bonus for success while having some of the compensation at risk. Unlike a fixed cap approach, which can create disincentives to follow through, FMC-ACES seeks to capitalize on the area in which FMC and firms converge, success, while recognizing that our interests diverge in that what firms are traditionally organized to sell, hours, is not really what FMC is interested in buying.

FMC-ACES also encourages the firm to focus on activities that will result in success, not activities that will necessarily maximize hours, and frees the firm and FMC lawyers from the mechanistic tyranny of detailed billing and billing codes. The key to the system is a mutual trust and a shared sense of the objective. Under this system, both the outside firm and the FMC lawyer are forced to convert from the traditional supplier-buyer concept of budgets to a true alliance model in which targets may be adjusted to reflect unanticipated events, success is rewarded, and risk reapportionment drives efficiency.

FMC's ESG/APSD legal team firmly believes that it is far better to pay a firm a higher effective hourly rate for a fewer number of hours than a capped, fixed, or discounted fee structure in which the hours are uncapped. What many outside firms fail to realize is that, in almost every situation, FMC as the client is not in the business of managing dispute resolution. Rather, FMC's primary objective is dispute avoidance with the secondary objective of damage limitation through efficient dispute resolution processes when we have failed to achieve that primary objective.

## **Litigation Experiment No. 2**

The second experiment with risk/reward structures is being conducted with the remainder of FMC's litigation portfolio, which contains a much larger number of cases. In this experiment, nearly all litigation is concentrated with five law firms and under an individual lawyer at each firm. For each firm, the following alternative fee structure is used:

- \* In the first 90 days after a lawsuit is filed, a fixed fee covers evaluation of the case, efforts at early settlement, and initial responses through pleading and/or discovery. FMC pays a bonus if the case is successfully resolved within the first 90 days.
- \* If the case is not successfully resolved within 90 days, the knowledge of the case at that point is used to develop an agreed upon budget with outside counsel. If a successful resolution is achieved within a set time period at less than 90 percent of the budget, then outside counsel receives half of the savings as a bonus. If costs exceed 110 percent of the budget, then outside counsel receives only half of the overrun.

The goal of this two-step program is to provide incentives for successful early resolution, while avoiding any perverse incentives to stop needed work. The program is managed by two internal legal professionals, who combine practical litigation experience with knowledge of the business and relationships with business counsel managers. The fixed fee with potential bonus during the

first 90 days creates an incentive for quick resolution and allows both in-house and outside counsel to learn the case before deciding on an appropriate budget if early resolution is not possible. The carrot-and-stick budget approach in the second phase keeps the incentives pointed toward efficiency throughout the remainder of the litigation process. Using this program with only a small number of outside firms not only generates buyer power, it fosters a partnership approach that generates the trust necessary to develop fair budgets and appropriate definitions of success.

A key element of these two experiments is to learn from the successes and failings of each one and to apply the results to the entire company. This philosophy of experimentation, jettisoning failures, and building on successes is being applied in other areas as well.

### **Intellectual Property Administration**

The machinery and chemical businesses are using very different IP administration methods, each modified to meet the needs of the particular businesses. For example, FMC's agricultural chemical business handles the preparation and prosecution of patent applications internally, and certain other chemical business units have outsourced the entire IP process, including the three Patent Ps: preparation, prosecution, and portfolio management. FMC's machinery businesses, on the other hand, use a hybrid system that outsources preparation and prosecution to firms while using internal assets to accomplish portfolio management. The same closer to the business philosophy used throughout the legal team also drives the hybrid system. FMC's chemical businesses tend to be larger and more centrally located where the in-house IP attorneys can be physically and mentally integrated with the business, while FMC's machinery businesses tend to be organized in smaller, decentralized locations where outside counsel may be better situated to interact with the inventors and engineers on a more personal basis, with the in-house FMC counsel riding circuit and acting as the overall organizer of a legal team consisting of internal and external assets.

### **Compliance Program**

The FMC compliance program has emerged as an in-house counsel business partner responsibility system in which the lawyers assist the business managers in meeting their compliance obligations through education and involvement, as opposed to a more traditional adversarial investigation/audit system. Key elements of this program involve intranet training modules and flexible personal training on a focused, as needed basis, coupled with a more formal annual compliance certification process in which the individual business unit managers, with in-house counsel assistance, examine and review compliance objectives and challenges on a continuous basis.

### **Expanded Role for Nonlawyer Team Members**

Corporate legal teams are ideally situated to maximize the value from and career opportunities for nonlawyer legal team members. Unfettered by law firm pressure to maximize billable hours at the highest rate, FMC has had substantial success in using on-the-job training to teach nonlawyer professionals, working with lawyers, to manage litigation, to oversee cost management and billing systems, and to conduct key aspects of acquisition due diligence or the corporate secretary function.

## **Continuous Experimentation**

The key to continuous service and cost improvement is not so much any particular innovation as it is the commitment to continuous experimentation itself. Indeed, alignment with the business helps foster innovation not only by creating a daily confrontation with the issues that need to be addressed, but also by providing an opportunity to learn by analogy from how business managers address their challenges. For example, by the time this article goes to press, FMC will have conducted its first experiments with reverse internet auctions for certain outsourced IP-related legal services. Similarly, both of the current litigation programs will be in the process of refinement for the next calendar year. FMC uses such continuous experimentation to continue to improve the quality and cost-effectiveness of the legal team.

## **DIALOGUE WITH BUSINESS MANAGEMENT ON LEGAL TEAM PROGRESS**

Being close to the business, as defined above, makes natural the process of selling business management on the value of the legal team. Because lawyers are involved with the business every day, business managers naturally see their effectiveness or the lack of it. Similarly, if legal costs are clearly visible to managers because those costs are allocated to their business unit and not just amalgamated at the top level, it becomes natural to engage in a dialogue about whether the business is receiving value for the legal costs incurred. If managers of business units believe they are receiving value for the cost of legal services, that opinion filters up through the business management of the corporation, and the CEO does not wonder why legal costs are \$X million.

Success in reducing costs and improving service makes it easy to trumpet that success to business management. If the legal team has reduced costs five years in a row, then the legal team can point to objective facts in support of their cost effectiveness. Conversely, it is literally impossible to reduce costs each and every year once the legal team has rendered the fat from the system and managers have felt the effects of lawyer salary costs. Nonetheless, after managers better understand and appreciate the value of in-house counsel through day-to-day involvement, when costs do increase, they generally manifest as period variables from the dance of lawsuits and transactions, which is again a variation that our business people can and do understand.

To assist in the dialogue with business managers, the FMC legal team uses two main types of quantifiable tools to measure its progress and shares the results of these measurements with business managers. First, the FMC legal team seeks to measure its performance against external benchmarks, such as the results of various corporate legal spending surveys. Second, the FMC legal team compares itself to past versions of itself. With respect to costs, this comparison should be easy because companies often compare costs from year to year. In reality, however, the process is complicated by FMC's ever-changing business portfolio and restructuring of operations. FMC also is working toward an improved legal management information system to help it evaluate more specific costs over time, such as trends in the cost of obtaining patent protection in specific countries. With respect to quality of service, FMC seeks to benchmark its performance over time with an annual survey of business managers and with quantified metrics on litigation results, such as tracking the average cost of resolution of products liability litigation, broken into cost of the legal process and substantive result.

## **BEING CLOSE TO THE BUSINESS AND PROFESSIONALISM**

The unifying philosophy of getting closer to the business reinforces a strong culture within the legal team that both is consistent with and exercises a positive influence on the overall business culture. As opposed to the "Kingdom of No" perspective many managers have of their corporate legal departments, connecting legal teams more directly with the business encourages the in-house counsel to search for helpful and creative solutions to difficult issues. When one has a personal stake and a personal connection with the business itself and the people involved, the natural human tendency to help overcomes the inbred negativism and skepticism our legal training instills.

The close to the business model sometimes faces criticism for increasing the risk that corporate counsel will go native and thus lose independent legal judgment and perspective. This risk is always present for corporate counsel and even outside counsel eager to increase their business, and FMC guards against it in three main ways. First, and most important, FMC recruits and retains strong individuals with integrity. Second, FMC confirms the independence of these individuals by having them report through the legal team to the general counsel at the corporate level, as opposed to a hard line to the business manager. Third, lawyers close to the business develop relationships with business managers so that the business managers develop confidence in the judgment of their lawyers, trusting from experience that the lawyers are skilled and not too conservative. The result is that lawyers over time have less pressure on them to go native because managers respect their judgment.

The close to the business model also minimizes the twin opposite risks to the compliance of corporate operations: (1) that the lawyers' lack of involvement in the business prevents them from knowing what actually is happening or where the risks lie; and (2) that business managers ignore the lawyer's advice because the business managers have little experience with and lack confidence in the lawyer's judgment. Ultimately, lawyers can best influence their businesses with their professional judgment by getting closely involved.

### **Lawyer Autonomy and Initiative**

The organizational changes that FMC's legal team made to get closer to the business had the additional benefit of increasing opportunities for lawyers to exercise independent judgment and autonomy in working with particular business teams. Especially in a downsizing environment, the legal department must supplant the lack of upward career development with more rewarding work, and one way to do so is to make the lawyers more connected with the businesses they serve and to involve the lawyers more directly in helping those businesses grow and prosper. Seeing the fruits of one's labors helps to create an esprit de corps and a sense of fun, which, in turn, helps legal team members work harder even as they have more job satisfaction.

### **Collegiality through Teaming**

Similarly, this business focus does not detract from and indeed may add to the emphasis on collegiality and connectedness among the members of FMC's internal legal community. Rather than creating independent islands of counsel generalists, the internal FMC lawyers must constantly group and regroup into flexible work teams to bring the appropriate legal assets to bear on evolving legal issues. This fluidity helps leverage the internal expertise of FMC's in-

house talent pool as we evolve from a group of individual legal specialists working across the corporation in silos lacking business unit accountability into a group of legal generalists with individual specialties that are accountable to their business units for both the cost and the effectiveness of the legal service delivery systems they manage. Because we are accountable and resource constrained, we must bring the appropriate internal and external legal assets to bear on the situation. This necessity by definition encourages the internal lawyer to find and use the best and the brightest.

## CONCLUSION

In-house legal departments exist to serve the corporate interest, to protect the corporate assets, and to promote the underlying legitimate business objectives. When those departments become distant and disconnected or focused on their own structures or preservation, they become targets for derision and ultimately for destruction. By becoming an integral part of the businesses they serve, by understanding, recognizing, and helping to develop the business unit's specific goals, internal lawyers can and will find the progressive solutions to the specific business challenges.

Although particular solutions or innovations can be important, it ultimately is the process of business-driven innovation that enables a corporate legal team to generate continual improvements over time. Being close to the business strengthens this process in two main ways. First, all legal team initiatives share the unifying themes of increasing lawyers' integration with the business and driving business value as viewed by the business. Second, the close-to-the-business philosophy promotes the paradoxical objectives of both coalescing everyone in the law department around a single, clear vision and, at the same time, giving individuals autonomy to act on their own initiative to further this common vision.

This process never ends in a comfortable steady state. Rather, the need for continual year-over-year improvement created by internal benchmarking over time and regular external comparisons institutionalizes "powerful mechanisms to create discomfort--to obliterate complacency--and thereby stimulate change and improvement before the external world demands it."<sup>5</sup> For the right kind of lawyer, however, this continual challenge creates a more fun and rewarding way to practice our profession.

## NOTES

1. James C. Collins and Jerry I. Portas, *Built to Last* (1997 New York).
2. FMC's businesses are organized into several broad and diverse operational groups: industrial chemicals, such as hydrogen peroxide and soda ash; agricultural chemicals, such as pesticides; specialty chemicals, such as pharmaceutical and food ingredients and lithium; food processing machinery, such as freezers, cookers, and citrus equipment; energy systems, such as surface and subsea completion, flow control, measurement, and custody transfer; and material handling and transportation systems, such as airline equipment and material handling equipment.
3. *Built to Last*, at 141.
4. Paradoxically, early settlement programs work well only when opposing counsel understand that the company is able and willing to litigate all the way through trial and not just to the courthouse steps. Otherwise, opposing counsel will hold out for settlements that are not attractive to the company.
5. *Built to Last*, at 187.

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# Synchronizing Business and Legal Priorities—

## A Powerful Tool

BY JOHN H. OGDEN



WITH THE PACE OF BUSINESS TODAY AND THE INCREASING need for efficiency and cost effectiveness in all corporate endeavors, it is not enough that the legal function merely coordinate its activities with the business. To productively provide the level of service a corporation or business unit requires, the legal function must be totally synchronized with business goals and activities. Only a legal function that is synchronized with the business can fully practice preventive law and respond most effectively when, despite preventive measures, a problem occurs.

What exactly is meant by the term “synchronized” in this context? Among the definitions in *Webster’s* for *synchronous* is to be “in the same phase.” An example from the new economy might be a brick-and-mortar company with a .com element synchronizing its catalog, web, and retail sales/service channels so its customers see a seamless entity.<sup>1</sup> The harmonious sound achieved by a symphony orchestra is the result of a number of professionals, all with different roles, working toward the same goal—literally playing from the same sheet of music. To achieve optimum performance, a corporation’s legal function must similarly match its performance with the needs and goals of the enterprise—to get on the same page as the client.

This process is not merely low-key ad hoc coordination but express, highly active (indeed, interactive and proactive) synchronization. Express agreement is reached with whatever level of management is appropriate (for example, corporate, division, general management, functional management, and so on) about the legal elements of significant business activities and

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John H. Ogden, “Synchronizing Business and Legal Priorities—A Powerful Tool,” *ACCA Docket* 18, no. 9 (2000): 18-34.



## IN ADDITION TO SECURING THE COOPERATION AND SUPPORT OF BUSINESS COLLEAGUES AT VARIOUS LEVELS, THIS PROCESS ALSO HELPS IN MANAGING THE LEGAL FUNCTION.

their relative importance. In addition to securing the cooperation and support of business colleagues at various levels, this process also helps in managing the legal function. This is particularly true in setting priorities for resources (time, money, staffing, technology, and so on). Both business and legal leaders should recognize that this process is the same as what our business colleagues do to develop and execute plans for running the business.

Generally, it is a good idea to reduce those understandings to writing. It can begin either with freeform brainstorming between lawyer and businessperson or with a memorandum from the lawyer suggesting what legal issues are central to the business and why. It can be bilateral—the legal function with one business unit—or multilateral—with several (or all) business units represented, along with other key staff functions such as finance, HR, and so on. It can take place periodically (annually or perhaps more frequently) or the full process might take place once, with adjustments occurring as necessitated by changing business conditions or significant changes in the law. Many approaches can yield success in various corporate cultures.<sup>2</sup> The author will describe what, after several years of fine-tuning, has worked in his corporation.

Before addressing the means and methods of synchronization, it is important to identify the goals. The intermediate goal should be understanding between lawyer and client about the legal elements of important business activities. That understanding should include agreement about identification and prioritization of those issues. The next goal at the beginning of the process should be to optimize corporate performance vis-à-vis legal issues. The ultimate goal, perhaps unachievable since this is a continuous improvement process, is to maximize corporate legal performance.

The synchronization process consists of two elements. The central element is *joint issue prioritization*, in which business and legal leaders agree upon the relative importance to the enterprise of certain areas of the law. The other element is *optimization of the legal function*, which consists of two related components: integrating the legal function into the enterprise and developing a common metric lexicon with the business. One element cannot be accomplished without the other. These elements are interrelated and occur in repetitive and/or continuous iterations that can be both parallel and serial. Since joint issue prioritization is the central element of synchronization, it will be addressed first.

### JOINT ISSUE PRIORITIZATION

The most critical part of the synchronization process is joint issue prioritization. A prerequisite is a common understanding between business and legal leaders about the legal aspects of an enterprise's activities. Once this has been achieved, specific issues or topics can be identified and prioritized. In some instances, this may be straightforward. For example, a company doing business within a regulated industry, such as securities or communications, would set regulatory compliance as a high priority. Indeed, these issues may be so ingrained in the business that the synchronizing process may be fairly quick. The situation with companies in less regulated industries,<sup>3</sup> however, may be more nuanced.

During joint issue prioritization, legal topics are categorized as *core*, *key*, or *other*. Although in some instances it may make sense to rank issues within categories (in other words, designate a particular core topic as more important than another) or develop subcategories, for the purposes of this article, the author will only address the three primary categories.

*Core* issues are defined as areas of the law in which difficulties could affect the enterprise's ability to conduct business in the manner management determines is best. In a core area, it would be expected that agreement between business and legal leadership could be reached such that a major resource commitment would be devoted to preventive law. Certainly the same would be true if and when problems arose. Even if the approach were not "no hold barred" or "cost is no object," certainly the cost side of the cost/benefit equation would have relatively less priority. An example is a securities firm violating important securities laws or regulations.

*Key* issues are those that do not necessarily have the potential to affect the fundamental conduct of the business but can nonetheless have a serious financial impact on the company. In managing preventive and remedial legal activities associated with key issues, pressure to reduce costs will be greater than in core issues, but the cost would not be emphasized as much as in the "other" category, discussed below. An example of a key issue would be harassment or discrimination. It is highly unlikely that management of any substantial company would adapt a conscious policy of harassment or discrimination, so legal difficulties would not affect the enterprise's ability to conduct business as management determines is best. Signifi-

cant legal claims in these areas can be very expensive, however, including the cost of defense and judgments or settlements, as well as bad publicity and loss of goodwill among various stakeholders, such as the community, employees, and prospective employees.

The boundary between "core" and "key" can change based on the seriousness of a matter. For example, a consumer goods company with many products geared to an upscale female market might be adversely affected by a sexual harassment or discrimination suit. A multitude of suits or a class action suit would have the potential of even greater harm.

The category of *other* is just that: matters that are not "core" or "key." An example of an "other" issue would be non-pattern product liability claims arising from a discontinued product line. As long as sufficient reserves are available for deductibles or self-insurance costs, the cases can be handled as they arise without a need for major emphasis. Identifying and reaching agreement about these areas in advance is useful for dealing with problems and for targeting areas for cut-backs if needed.

Take, for an example, a company or unit of a company that decides its central business strategy will be to develop and license chemical processes to third parties worldwide.<sup>4</sup> To the extent regulatory approval is needed to operate the pilot plant where the processes are developed, the attorney and lead business executive would most likely have little difficulty deciding that a core area would be securing necessary permits and ensuring compliance. The same would be true for suitable intellectual property protection: patents, trademarks, trade secrets, and so on. What might be less obvious, absent the specific focused discussion that takes place during joint issue prioritization, are the areas of customs law and TSCA (Toxic Substance Control Act) as they apply to overseas customers sending raw materials to the U.S. pilot plant. If there are U.S. and non-U.S. based rival technologies, the legal function would play an important role by assembling the necessary team, chemists, customs specialists, and so on, to address foreign customer needs as quickly or more quickly than the licensors of the rival technology.

A key area, which might not be immediately obvious without the joint issue prioritization process, could be tax. Once the most likely license markets have been identified, issues such as how foreign technology is taxed and various depreciation issues could lead to a combined team of legal, tax, and technical personnel to

design technology and license terms addressing such issues generally and/or for specific jurisdictions. The best (and possibly only) means to address such issues is in advance, while they can be influenced. It cannot be done by lawyers alone and must have approval at the necessary level of management to ensure optimum interaction among the functions, hence the need for joint issue prioritization.

Once there is agreement as to what is core and what is key, resource allocation decisions follow. If a problem arises in a core area, it is very useful to be able to decide on short notice to seek a temporary restraining order against a competitor. Since there has been pre-agreement on the matter's importance, critical assistance can be assured from business and/or technical personnel who have to be taken off normal assignments to assemble the necessary factual foundation. Similarly, a rapid decision may need to be made to alter a certain business practice due to a potential problem in a core area. This is accomplished most readily if the appropriate legal and business personnel have addressed the subject matter in advance in a noncrisis mode.

It must be stressed that the foregoing categories should not be applied rigidly. Changing operations and/or legal developments may modify the relative importance of issues. Additionally, a particular matter may arise that transcends previously agreed upon categories. For example, a criminal complaint or action by a competitor could bring increased antitrust scrutiny, giving rise to a significant expenditure of resources to interview employees, analyze markets, and so on to confirm that your company was not involved.

## OPTIMIZATION THROUGH INTEGRATION

Attorneys and the legal function must be as fully integrated as possible into the business. In the synchronization process optimizing through integration is both a cause and effect of joint issue prioritization. Business and legal leaders can be much more effective in jointly prioritizing legal issues if the legal function has been well incorporated into the business processes. Additionally, one of the results of joint issue prioritization is that both business and legal management can agree on the subjects that are appropriate for intensive integration. For example, an attorney should be at virtually every meeting on core issues and invited to all meetings on key issues, with decisions on attendance at



particular meetings made jointly by business and legal personnel. For other issues, however, the legal function may need only to be copied on meeting minutes.

There are obviously aspects of practicing law in-house (for example, attorney-client privilege) that differentiate attorneys and their activities from business colleagues and their activities. It is the responsibility of individual attorneys and the legal function in general to ensure the business receives the full benefit of having an in-house legal staff. Naturally, one part of doing this is to rigorously conduct matters in a way that preserves the attorney-client and work product privileges. For purposes of this article such conduct is presumed and will not be addressed further.<sup>5</sup>

It is just as crucial to take conscious steps toward developing and expanding the commonality between the legal function and the business functions. Simply put, in-house attorneys should view themselves and be viewed by their clients as businesspeople who specialize in the law just as others specialize in marketing, HR, and other matters. In a well-integrated legal function attorneys understand and can describe corporate goals and activities as well as those of the specific units they represent to the same extent as business colleagues at a similar level in the organization. The need for continuing legal education is well accepted. An in-house attorney should undergo similar continuing education about the business he or she represents. Ideally this is accomplished on both formal and informal levels.

On the formal level, individual attorneys, with support from legal management if and when required, should be invited to general meetings, not only those at which specific legal issues are expected to arise. Attorneys should regularly study company (and competitor) brochures and websites as they apply to their client departments. This should be more than a legal review. The goal should be a comprehensive understanding of the business. If possible, trade show or industry conferences should have attorney attendees. If travel is not possible, ask to sit in on the briefing and debriefing sessions. Additionally, long- and short-term multidiscipline teams are common ways of addressing business issues today. Attorneys should be on such teams whenever appropriate, using a very liberal definition of *appropriate*.

In addition to formal steps to integrate the legal function and its practices with the corporate mainstream, informal steps are also important. The legal profession is not particularly well liked or respected in America. Corporate America may, on average, be somewhat more accepting (although some companies may be more or less accepting based on how they perceive the legal system has treated them), but it is still important that key individuals with whom corporate attorneys interact come to understand them beyond stereotypes. The more corporate attorneys can be seen as businesspeople who specialize in the law rather than some significantly different kind of person, the better attorneys and corporate clients can productively interact. Informal socializing (for example, joining company sports teams, engaging in casual discussions while traveling, attending after-hours gatherings, and so on) with business colleagues can engender this type of understanding.

The reader may be saying "I'm already too busy, I don't have time for those distractions." It is suggested, however, that such activities would enhance the effectiveness of your practice. A legal function that is well integrated into the business provides the opportunity to practice preventive law, thus decreasing the number of problem issues and allowing for a more orderly practice than constantly putting out fires. A short comment during a staff meeting or team brainstorming session can effectuate a relatively minor and well-accepted change early in the life of an initiative. If the attorney were not there to make the comment, he or she would instead be scrambling to modify a much more fully developed issue, with buy-in from many quarters, at the eleventh hour. Even worse would be dealing with the repercussions if a program with a legal flaw has been rolled out to the company's customers, and thus its competitors, regulators, stockholders, neighbors, and various other stakeholders.

#### **OPTIMIZATION THROUGH A COMMON LEXICON: METRICS**

An essential means of integrating the legal function into the enterprise and of establishing a foundation for synchronization is to speak the same language as the businesspeople. Typically, this language is quantitative.

The legal function should set goals and measure performance to the fullest extent possible, using statistical methodology that is transparent and therefore readily understood inside and outside of the legal department. This should not be limited to merely going through the same capital and expense budgeting process as the other business units. It means aggressively seeking methods of measuring the operation of the legal function in a meaningful way.

The search for such methods must be well considered because many aspects of the law admittedly do not lend themselves to meaningful measurement. The keyword is *meaningful*. Virtually anything can be mea-

ured. Since it is well accepted that there is a strong tendency to perform in accordance with what is being measured, measuring the wrong elements can do more harm than good. A simple example would be hourly rates of retained counsel. If the only measure is the hourly rate, among the negative outcomes could be ineffective representation because the wrong attorney is on the matter and/or no cost savings because more hours would be spent at the lower rate.

Many metrics may be used in a legal department,<sup>6</sup> but to be used in the synchronization process, a metric must pass a two-part test. First, the metric must measure something that contributes to the effective delivery of legal services. An example would be a fully loaded internal hourly rate compared with retained counsel rates. Second, the metric must be expressed in terms that are meaningful to businesspeople. An example would be the average number of attorneys per billion dollars of sales in the client's industry. It is extremely important for business and

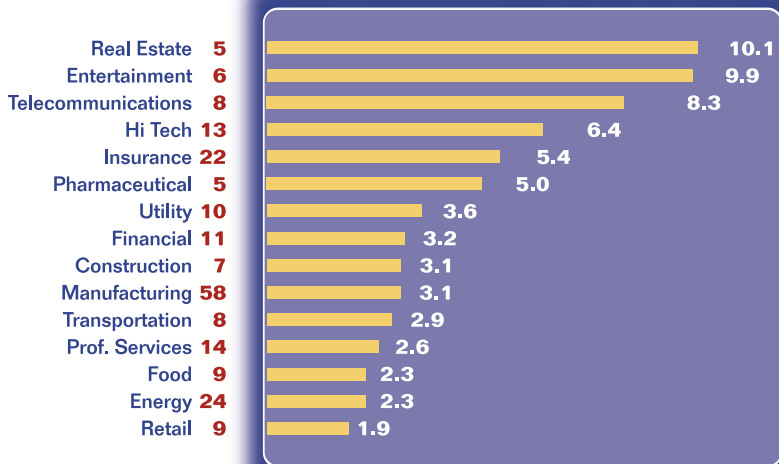
This table lists the most common benchmarks as well as the benchmarks that are most closely related to them. The third column suggests a normal range for law departments, keeping in mind that individual differences can be significant. The right column goes beyond the typical cause of variance (noted in the label) to suggest other factors that influence the benchmarks. —Rees W. Morrison

Benchmark	Related Benchmarks	Normal Range	Factors Affecting the Ratio Other Than Size of Company, Maturity of Company, General Counsel's Style, Industry
Lawyers per Billion Dollars of Revenue	Support Staff per Lawyer; Fully Loaded Cost per Lawyer Hour	3 to 6	Amount outside counsel are used; use of technology, expectations of clients; view of support staff
Legal Staff per Billion Dollars of Revenue	Lawyers per Billion Dollars of Revenue; Support Staff per Lawyer	5 to 13	Amount outside counsel are used; use of technology
Support Staff per Lawyer	Legal Staff per Billion Dollars of Revenue	1	Use of technology
Inside Spending per Lawyer	Outside Counsel Spending per Lawyer	\$200,000-300,000	Compensation policies of the company; tenure of the lawyers in the department; availability of stock options
Fully Loaded Cost per Lawyer Hour	Lawyers per Billion Dollars of Revenue	\$100-\$160	Chargeable hours per year; whether facilities are included; investment in technology
Outside Counsel Spending per Lawyer	Inside Spending per Lawyer	\$250,000-400,000	Quality and number of in-house counsel; support staff per lawyer
Inside Legal Spending to Outside Counsel Spending	Inside Spending per Lawyer; Outside Counsel Spending per Lawyer	60/40 either way	Traditional ties to certain law firms; desire for flexibility; headcount constraints
Total Legal Spending as a Percentage of Revenue	All	0.25 to 0.45	All of the above; settlement policy in litigation

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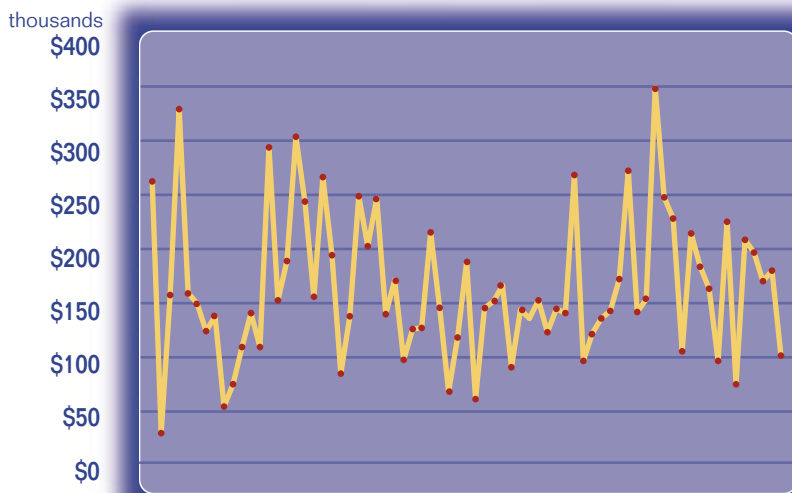
**FIGURE 1**  
**LAWYERS PER**  
**\$1 BILLION OF REVENUE**



Source: Morrison, Rees W., "Directory of Corporate Counsel-Special Supplement" 24 (Aspen Law & Business 2000)

■ Lawyers per \$1 Billion Revenue (weighted)  
■ # of Companies within Industry Surveyed

**FIGURE 2**  
**FULLY LOADED HOURLY**  
**COST PER LAWYER (1998)**



Source: Morrison, Rees W., "Law Department Benchmarks: Myths, Metrics and Management" (Glasser LegalWorks 2nd Ed., to be published fall of 2000)

70 companies surveyed

legal leadership to agree at the beginning of the synchronization process on the relevance of specific metrics and to jointly decide where the company should be in relation to external norms.<sup>7</sup>

Many possible measurement methods are available and can be used, customized, or combined to meet the needs of the legal function and its clients. Following are several of the most important benchmarks.<sup>8</sup>

**Lawyers per \$1 Billion of Revenue**

A much-touted metric in law department management compares the number of lawyers a company has per \$1 billion of the company's revenue to the same figure for companies of the same size, industry, or location. This benchmark calculation normalizes the data per billion dollars of revenue so that companies of all sizes can compare themselves. For example, a \$2 billion company with eight lawyers has four lawyers per billion or \$250 million in revenue per lawyer.

Figure 1, "Lawyers per \$1 Billion of Revenue" arrays 15 industries according to their weighted average of lawyers per \$1 billion of revenue. The number following the industry name indicates how many companies were in that industry. The length of each bar represents the number of lawyers per \$1 billion of revenue in the industry. Overall, the 1912 lawyers and 211 companies represented in this chart amount to 3.5 lawyers per \$1 billion of revenue (\$54 billion of total revenue).

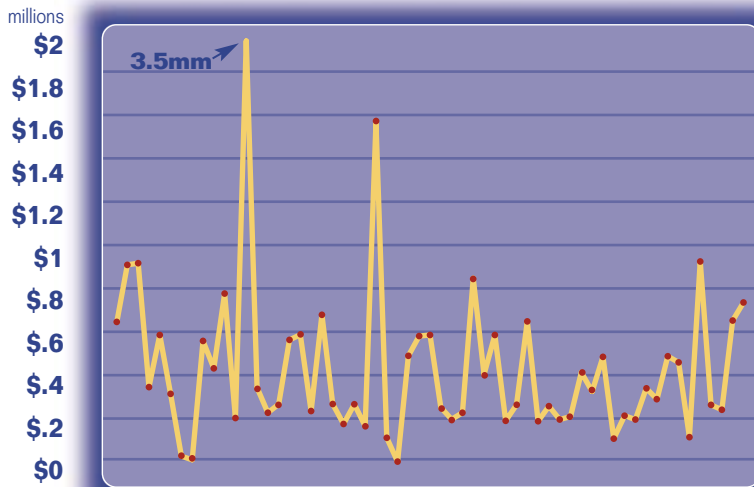
**Inside Spending Per Lawyer**

By contrast, consider in this benchmark the perspective of inside spending per lawyer. Inside spending includes compensation of all forms (except stock options and awards), facilities, equipment, depreciation, and vendor costs (excluding outside counsel costs and patent fees). For example, the median inside spending per lawyer in 1998 for 50 manufacturers was \$274,000.

**Fully Loaded Cost per Lawyer Hour**

Many law departments compare their own cost, as if their lawyers were to charge their clients an hourly rate sufficient to cover all inside costs, with a comparable figure for outside counsel, a blended rate of all the company's outside lawyers that includes the full amount billed to the company. The inside cost per hour should include similar costs to what law firms must pay, notably rent. Figure 2, "Fully Loaded

**FIGURE 3**  
**OUTSIDE COUNSEL**  
**SPENDING PER IN-HOUSE**  
**LAWYER (1998)**



Source: Morrison, Rees W., "Law Department Benchmarks: Myths, Metrics and Management" (Glasser Legal-Works 2nd Ed., to be published fall of 2000)

60 companies surveyed

Hourly Cost per Lawyer," suggests the range of this internal cost.

For the entire group of 3551 lawyers in 71 corporate law departments, a group that excluded government law departments, the weighted average internal cost per lawyer came to \$167 an hour. The median size law department in the group counted 32 lawyers, so these were large law departments. The calculation assumed 1850 hours per year of chargeable time. In this group, of the 60 law departments that employed at least 10 lawyers, the average spending on outside counsel per inside lawyer was \$471,760. Because two departments stated very high figures, the median figure is much lower: \$350,000.

#### **Ratio of Inside Legal Spending to Outside Counsel Spending**

The typical law department spends between 40 and 60 percent of its total budget on its inside costs, with the remainder on outside costs. From a group of approximately 75 law departments, the average ratio of outside counsel spending to inside budget was 1.5 to 1, which amounts to a 60/40 ratio.

#### **Total Legal Spending as a Percentage of Revenue**

Total legal spending consists of a law department's spending for its own costs and its spending on outside counsel. For government and nonprofit law departments, the nearest equivalent to revenue seems to be the budget of the organization.

Figure 4, "Total Legal Spending," divided companies in the data set by revenue, representing the companies that had revenue of more than \$2 billion in 1998. The revenue axis is at the bottom, and the left axis stands for total legal spending in 1998—inside budget and outside counsel spending—per \$1 billion of revenue. The median figure for all the companies was .31 percent of revenue. The weighted figure was .27 percent (\$572 billion of 1998 revenue compared to \$1.56 billion of total legal spending).<sup>9</sup>

#### **THEORY IN ACTION/MEASURED RESULTS**

The title of this article identifies synchronization as a powerful tool. The theory has been explained. Following is an actual example of how powerful and dynamic it is in practice.

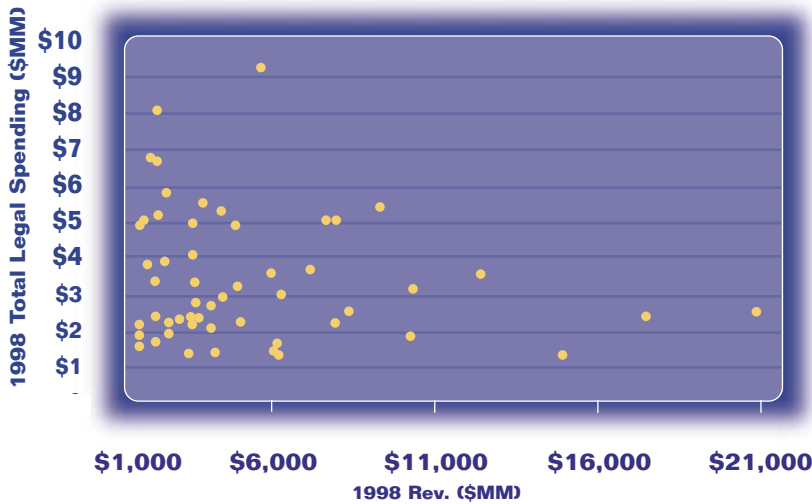
The author created this method and has used it successfully with two different CEOs. It was developed when a CEO joined the company from Europe. It was his first full-time U.S. posting. Naturally, many elements of U.S. law were perplexing to an executive with experience operating in the more certain environment of Civil Code jurisdictions. Joint issue prioritization and metrics were excellent vehicles to engender understanding.

The next CEO was an American with whom the author had worked closely for more than 15 years. Synchronization also worked extremely well when joint issue prioritization discussions expanded from important but relatively narrow commercial and intellectual property issues to the full range of legal issues facing the company.

With both CEOs, outside counsel expenses were identified as a key metric, both in terms of the actual costs and as a method of identifying the scope of issues being addressed. Using composites of several studies, industry averages were agreed upon based on company revenue and department size. Intensive and rigorous efforts succeeded in keeping actual expenditures well below those industry averages.

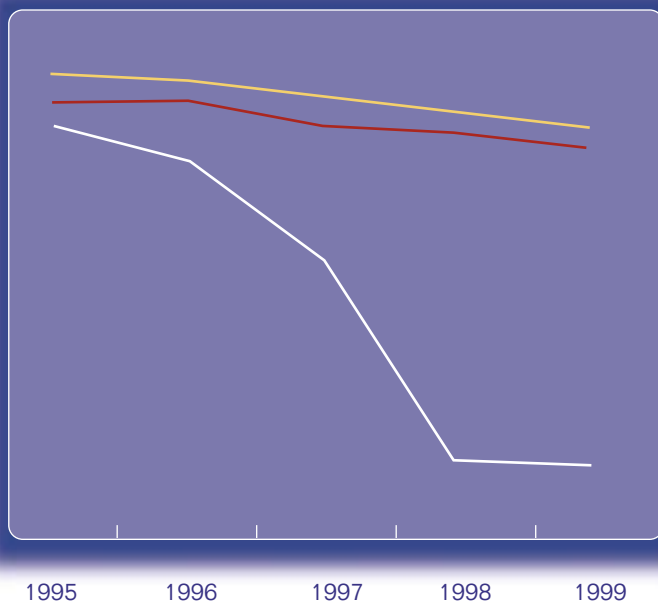
Among the steps taken to reduce costs was the use

**FIGURE 4**  
**TOTAL LEGAL SPENDING**  
**(COMPANIES WITH OVER**  
**\$2 BILLION REVENUE — 1998)**



Source: Morrison, Rees W., "Directory of Corporate Counsel—Special Supplement" 32 (Aspen Law & Business 2000).

**FIGURE 5**



■ Average Cost for Similar Size Legal Department  
■ Average Cost for a Company with Similar Revenue  
■ Actual Costs

of part-time attorneys.<sup>10</sup> These attorneys received ongoing specific training in core and key issues as they pertained to the company. The formal and informal integration process was undertaken for and by them. They had company voice mail and email addresses just as staff attorneys would. They were invited to company social functions. They practiced proactive preventive law. Yet, because they were retained and not actually on staff, their costs (substantially lower than traditional outside counsel because of decreased overhead, assurance of billings, and other factors) were included in outside counsel costs.

In Figure 5, average outside legal costs based on department size and company revenue are measured and compared with actual costs. Dramatic actual cost reductions are shown between 1995 and 1998, with a subsequent leveling off to an appropriate percentage of industry averages.

Additionally, several significant trends are depicted in Figure 6 (portions redacted and modified due to the confidential nature of the subject matter). First, overall legal expenses declined significantly from 1998 to 1999. From the point of view of synchronization, an even more significant trend is the steady increase from 24 percent to 52 percent of the amount of expenditures allocated to core and key subjects. To a large extent, Figure 6 shows what synchronization is all about, allocating resources based on the relative impact of legal issues.

In Figure 6, the core and key portions of the chart literally jump out at the reader. It is an extremely powerful means of demonstrating to the attorneys and to the business executives that the company's legal expenditures address to a greater and greater extent those matters that have been jointly agreed as being most important. That, combined, of course, with excellent results achieved through those expenditures, makes for a smooth and effective working relationship in which the right issues can be addressed rather than reacting haphazardly to issues.

**CONCLUSION**

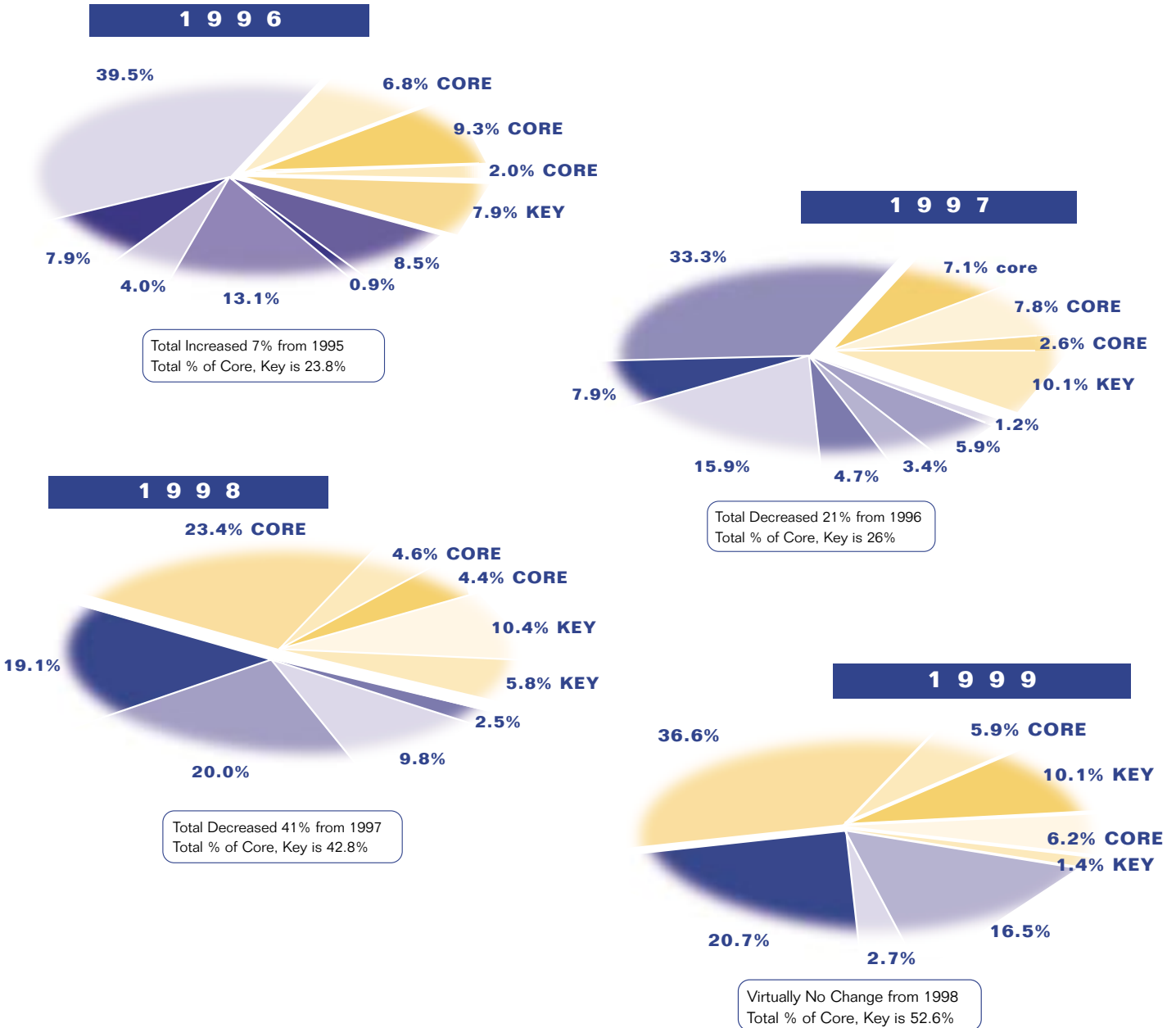
Legal problems will arise no matter how much effort has been devoted to preventing them. A legal function that is well integrated into the enterprise is in a strong position to deal with those problems quickly, efficiently, and as proactively as possible. Building an

effective partnership between business and legal functions calls for the legal department to match its efforts to business priorities. This effort should move beyond ad hoc coordination to an actual synchronized effort. Once the issues have been prioritized, activities and resource allocation can be managed accordingly, with attention being devoted to issues based on relative importance to the enterprise. Crucial to the effort is the development of meaningful metrics to understand

the extent to which legal and business priorities are, in fact, synchronized.

To return to our beginning example of the symphony orchestra, just as the percussion section may be substantially different in function from the woodwinds, the two groups of professionals must operate in accord to produce music rather than cacophony. These musicians and others are working toward the same goal, delineated by the sheet of music. When this organiza-

**FIGURE 6**





tion functions wells, the result is complex, rich, and rewarding. When the legal department operates from the same sheet of music as its clients, the result is also rewarding. ■

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#### NOTES

1. See NEW YORK TIMES, p. C9, *E-Commerce Report*, July 24, 2000. In a statement that could also apply to consumers of corporate legal services an analyst is quoted as follows: "So companies are kidding themselves if they think the consumer won't demand a synchronized experience."
2. The author and Rees W. Morrison, of Altman Weil, facilitated a discussion on this subject at ACCA's 1999 Annual Meeting. Participants identified the following synchronization activities: regular meetings and presentations; strategic plan review and development; develop "scorecard" for the law division to mesh into corporate "scorecard"; interface and conversation with superiors; dual/multiple roles; information discussion with CEO; include legal time in "ABC" costing models; alignment of legal department; objectives to senior management by structural flow down matrix (lists) of goals and means to measure them; participate in weekly department heads' meeting with CEO; customer satisfaction survey results are part of annual objectives; tie legal departments' five-year goals to company's five-year goals; draft and obtain buy-in on department mission statement; attach budget to goals; legal group discussions with business groups (one-on-one and larger groups). Participant input in its entirety is online: [www.acca.com/education99/cm99/synch.html](http://www.acca.com/education99/cm99/synch.html).
3. Of course, in-house counsel need to make sure all appropriate company personnel understand there are no unregulated companies.
4. This is a *pro forma* example of how the foregoing process might work. It is intended to be sufficiently detailed to demonstrate the process for all readers but not to definitively address substantive issues. For detailed information on such licensing, see PATENT LICENSING TRANSACTIONS, Einhorn, Lexis Publishing, copyright © 2000.
5. Readers looking for information in this regard are encouraged to visit ACCA Online<sup>SM</sup> for the Attorney-Client Privilege InfoPAK<sup>SM</sup> ([www.acca.com/infopaks/attclient.html](http://www.acca.com/infopaks/attclient.html)) and other resources on the topic in the Virtual Library<sup>SM</sup> ([www.acca.com/vl/index.html](http://www.acca.com/vl/index.html)). See also ATTORNEY-CORPORATE CLIENT PRIVILEGE, Gergacz, Garland Law Publishing copyright © 1987, updates by West Group copyright © 2000.
6. Participants in a discussion on this subject at ACCA's 1999 Annual Meeting noted their use of metrics to manage the following activities: litigation; budget presentation/defense; patents/research and development costs; internal cost per lawyer; number of staff and compensation compared with peers; apply to bonus to focus activities; in-house/outside cost comparison. Participant input in its entirety is online: [www.acca.com/education99/cm99/synch.html](http://www.acca.com/education99/cm99/synch.html).
7. See also Steven A. Lauer, *Measuring the Value of Metrics*, 16 CORPORATE COUNSEL QUARTERLY 3, p. 50.
8. Excerpted with permission from Rees W. Morrison, LAW DEPARTMENT BENCHMARKS (second edition), Glasser LegalWorks.
9. According to the Hackett Group (Hudson, Ohio) "the finance function costs the average company 1.4 percent of revenues, but in the top quartile of companies participating in the survey [reported in May 1998], that cost drops to less than 1 percent." *CFO Alert*, 19 J. of BUS. STRATEGY 4 (May/June 1998).
10. See John H. Ogden, *Resource Multipliers: Creating a Virtual Legal Department*, 15 ACCA DOCKET 3, pp. 30-44.

#### From this point on...

#### Explore information related to this topic.

- ACCA's 2000 Annual Meeting offers several CLE programs that complement the issues discussed in this article. Program 018, "Strategies for Measuring the Value Added" takes place on Monday, October 2 from 4:30 p.m.–6:00 p.m. The author of this article, John Ogden, will moderate a panel discussion among top level general counsel regarding this topic. Additionally, program 409, which takes place Tuesday, October 3 from 4:00 p.m.–5:30 p.m., discusses "Marketing the Small In-house Department." For details about the AM2K agenda and to register, see ACCA Online<sup>SM</sup> ([www.acca.com/education2000/am](http://www.acca.com/education2000/am)). If you are unable to make it to AM2K, consider contacting ACCA's Education Department: 202/293-4103, ext. 310 after the meeting for information about purchasing the course materials.
- ACCA's 1999 Annual Meeting featured the author in a program on this topic. Materials from the program are online: [www.acca.com/education99/cm99/synch.html](http://www.acca.com/education99/cm99/synch.html).
- *Law Department Benchmarks*, by Rees W. Morrison, to be published by Glasser LegalWorks
- *Resource Multipliers: Creating a Virtual Legal Department*, by John H. Ogden  
[www.acca.com/protected/pubs/docket/mj97/virtualdept.html](http://www.acca.com/protected/pubs/docket/mj97/virtualdept.html)

**The following is the result of roundtable discussions that took place during Sessions 510/606 Strengthening the Corporate Perception of the Law Department.**

**What Barriers to a positive perception of the legal department have you experienced?**

- Legal Department as the police
- Don't want to hear what we have to say.
- Preconceived views of attorneys
- Absence of management
- Training – MBA's
- Consensus on Goals, organization centralized or decentralized
- Unaligned Divisions within the corporation
- Senior management not functioning as a team
- Reporting to founder that believes he/she has legal skill and is unpopular
- Lawyers add deal breakers
- Mortal combat with power & control freak
- Senior Management, breaking in, acceptance, seeing value of our services
- Corporate philosophy existing, "legacy state"
- Complacency
- Predecessor
- Communication mistakes – not setting expectations, not returning calls, bottlenecks
- Workload balancing
- Misaligned resources/goals
- Cynicism within legal department
- Business reps. Attitudes, no accountability, have the lawyer do their job, lack of role definition
- Lack of resources
- Perception of not being a business partner – no-sayers
- Business people who think they are lawyers
- Insufficient training
- Perception that legal doesn't know the business and is not practical
- We are "Lawyers"
- Don't know the business
- Law imposes restrictions
- Lawyers are risk averse
- Pass problem to legal
- Executive arrogance – "We'll do it all until we have to bring in legal"
- Perceived as a cost, how to measure benefit of preventing problems, cost allocations don't reflect reality
- Aversion to details
- Resentment of legal compensation
- Having to say no or posing less acceptable solutions

## How do you overcome these barriers?

- Use methods of communication that business understands, i.e. flowcharts, visual, audio, powerpoint
- Provide more simple answers – respond in language appropriate to audience
- Benchmarking against other law departments
- Focus on ethics of company
- Always pose alternative solutions
- Training seminars to educate executives
- Show benefit of legal by developing data from history and measuring the things legal tries to prevent
- GC on senior executive team
- Other attorneys on other management teams
- Have input and participation at all levels-manage up
- Understand different roles of attorney as doer and manager and align resources and priorities.
- Understand goals and align to support them
- Time heals?
- Change Employment
- Operate within parameters, develop support within the organization
- Develop “value added” campaign, communicate, educate, develop relationships
- Leave or win battle, or wait for attrition.
- Utilize interpersonal skills
- CEO support
- Use outside counsel as “bad guys” in negotiations
- Partnering with the business people is KEY!
- Find champions
- Establish relationships
- Prove yourself to senior management and worker bees
- Establish metrics, i.e. timesheets, matter tracking, cycle time
- Professional development
- Training bilateral, expectations are theirs, capabilities are the legal department’s
- More communication within the company
- Better prioritize/collaborate
- Legal services plan with business reps that is annually renewed
- More efficient resources by: a) technology process improvements; b) evaluate current functions and prioritize according to skill sets
- Lead the business people to the solution that addresses both business needs and legal concerns
- Train the business people on what legal can do for them – listen to the business people (save their ass quietly)
- Establish expectations and provide feedback. Implement a training program
- Shadow the client, walk the floor
- Early involvement
- Communication
- Education
- Use outside counsel as bad guy

**Are you viewed as an integral partner in your company? If so, what are the keys to your success?**

- Yes, integrate lawyers within business units and place lawyers physically in the unit.
- Yes, be proactive, how many client contacts have you made?
- Yes, follow up with business on outcome
- Yes, integrity, tenacity
- Yes, develop process: meet expectations, focus on objectives, hire good staff, offer intranet info

**What are the benefits to management and the company when the legal and compliance departments become integral partners in the business?**

- Improve process – speed, costs, effectiveness
- Legal empowered – accountability, ownership
- Streamline process – less mistakes, better integration
- Reduced Business Risk: a) litigation; b) financial; c) public relations
- Happier legal team – happier people work harder
- More efficient operation
- Avoid fines/penalties
- Alignment gives momentum
- Increased efficiency (cost saving)
- ISO registered (marketing advantage)
- Avoid liabilities & Risk
- Access to answers for associates