



402 Chair's Choice Best of ACCA '00 & '01 Adding Value to Your Corporations

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Senior Vice President & General Counsel
Deere & Company

Anastasia D. Kelly
Senior Vice President & General Counsel
Sears, Roebuck and Co.

William B. Lytton
Executive Vice President & General Counsel
Tyco International

John H. Ogden
General Counsel
Coperion Corporation

Faculty Biographies

James R. Jenkins

James R. Jenkins, senior vice president and general counsel, is chief legal officer for Deere & Company with worldwide executive management responsibility for the law, patent, corporate compliance, and government affairs departments. Deere & Company creates smart and innovative solutions, in the form of advanced machines, services and concepts, for customers on the farmsite, worksite, and homesite worldwide.

Before joining Deere & Company, Mr. Jenkins was vice president, secretary and general counsel at Dow Corning Corporation in Midland, MI. He joined Dow Corning as a staff attorney, and served as General Counsel for 18 years.

Mr. Jenkins is a member of the American Law Institute, the Executive Leadership Council, the Association of General Counsel, the American Arbitration Association, and is a past chair of the Alma College Board of Trustees. He also currently serves on the boards of directors of ACCA, the Corporate ProBono Advisory Board, Putnam Museum (Davenport, IA), Genesis Medical Center, and the Illowa Council of Boy Scouts of America. Mr. Jenkins received a BA from the University of Michigan. During 1967-1970, he served in the US Army, including a year as an interrogation officer at the Combined Military Interrogation Center, Saigon, Vietnam and was awarded a Bronze Star for meritorious service.

He received a JD from the University of Michigan Law School and also completed the Program for Management Development at the Harvard Business School.

Anastasia D. Kelly

Anastasia D. Kelly is senior vice president and general counsel for Sears, Roebuck and Co. She has responsibility for the law department and the office of the corporate secretary.

Previously, Ms. Kelly was senior vice president, general counsel, and corporate secretary for Fannie Mae in Washington, DC. Prior to joining Fannie Mae, she was a partner at Wilmer, Cutler & Pickering in Washington, where she practiced in the area of corporate and securities law. She also practiced with the law firm of Carrington, Coleman, Sloman & Blumenthal in Dallas. Ms. Kelly is on the board of directors of ACCA, Owens-Illinois, Equal Justice Works, and Lawyers for Children America.

She is a member of the Woodrow Wilson International Center for Scholars.

Ms. Kelly graduated cum laude from Trinity College and received her law degree magna cum laude from George Washington University National Law Center.

William B. Lytton

William B. Lytton is executive vice president and general counsel of Tyco International in New York.

Formerly, Mr. Lytton was senior vice president and general counsel of International Paper Company in Stamford, CT. Mr. Lytton came to International Paper from Lockheed Martin Corp., where he was vice president and associate general counsel for the electronics sector. Before the combination of Lockheed and Martin Marietta, he served as vice president and associate general counsel for business operations and international at Martin Marietta. Before Martin Marietta acquired General Electric Aerospace, Mr. Lytton had served as vice president and general counsel of GE Aerospace.

Mr. Lytton served on the staff of U.S. Senator Charles H. Percy. He was an assistant U.S. attorney in the Northern District of Illinois and was an Assistant U.S. Attorney in the Eastern District of Pennsylvania, serving as chief of the criminal division and later as first assistant U.S. attorney. He then joined the Philadelphia law firm of Kohn, Savett, Klein and Graf where he was a trial lawyer handling a variety of criminal and civil matters. While at the law firm, he served as staff director and chief counsel for the Philadelphia Special Investigation (MOVE) Commission.

In 1987, he left his law firm for a six-month assignment as deputy special counselor to President Ronald Reagan. In that position, he coordinated the White House response to the congressional inquiries and independent counsel's investigation of the Iran-Contra matter. Upon his return to his law firm, he continued as a consultant to the President throughout the Reagan Administration. He also served as special counsel to President George H. W. Bush on issues relating to the Iran-Contra matter.

Mr. Lytton is chair of ACCA's board of directors. In 1998, he received ACCA's "Excellence in Corporate Practice award."

Mr. Lytton is a graduate of Georgetown University and the American University School of Law.

John H. Ogden

John H. Ogden is general counsel and corporate secretary at Coperion Corporation in Ramsey, NJ, formed by the merger in 2001 of Werner & Pfleiderer Corporation, for which he previously served as general counsel and corporate secretary, with Buss and Waeschle, two other industry leaders in process technology.

Mr. Ogden was the founding chair of ACCA's Leadership Development Institute and a past officer and director of ACCA. Among his ACCA activities, he has served as president of the New Jersey Chapter, founder and chair of the Small Law Department Committee, chair of the Council of National Committees, and chair of the education and several other ACCA Board committees. In large part due to this ACCA leadership experience, he was designated the project leader for Coperion's post merger integration, responsible for ensuring all elements of the enterprise were properly aligned to achieve the goals of the merger.

Mr. Ogden has also authored articles for the *ACCA Docket* was honored in 1991 with ACCA's Robert I. Townsend Jr. award recognizing the outstanding member of the year. In 1998, the New

Jersey Commission on Professionalism in the Law recognized him as a Professional Lawyer of the Year. That same year he was appointed to the New Jersey State Bar Foundation Board of Trustees, where he chairs the committee on youth conflict resolution and peer mediation programs. In 2000 he received the ACCA/West Excellence in Corporate Practice Award. Mr. Ogden is an active member of the New Jersey and the European-American General Counsels groups.

He received an AB from Villanova University and JD from Fordham University School of Law.

Adding Value to Your Corporations

ACCA Annual Meeting

Washington, D.C.

October 22, 2002

William B. Lytton

What Do These Men Have in Common?

- Mahatma Gandhi
- Sir Thomas More
- Abraham Lincoln

The Answer

- All Three Were Lawyers
- All Three would be eligible for ACCA/GCCA membership
- All Three *Added Value* to
 - Their Clients
 - Their Colleagues
 - Their Communities

How Are They Relevant Today?

- Lawyers' Reputations Have Slipped
- In the 1967 edition of Ambrose Bierce's, *The Enlarged Devil's Dictionary*, the noun "**dice**" is defined as follows:
 - **"Small polka-dotted cubes of ivory, constructed like a lawyer to lie on any side, but commonly on the wrong one."**

A Better Vision

- John W. Davis in an address at the Association of the Bar of the City of New York in 1946:
 - “True, we build no bridges. We raise no towers. We construct no pictures.... There is little of all that we do which the eye of man can see.
 - But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men’s burdens and by our efforts we make possible the peaceful life of men in a peaceful state.”
- ⌘ A way to **define the term “Adding Value.”**

Evolving Role of Corporate Counsel

- | | |
|---|---|
| <ul style="list-style-type: none"> ■ <u>20th Century</u> <ul style="list-style-type: none"> – Interesting and/or Difficult work given to outside counsel – Outside firms considered premier professional opportunities – Technicians – Lawyers expected to be Reactive | <ul style="list-style-type: none"> ■ <u>21st Century</u> <ul style="list-style-type: none"> – Interesting and/or Difficult work handled internally – Corporate Law Departments attracting “Trophy Lawyers.” – Governance & Ethics – Lawyers need to be Proactive |
|---|---|

How to Measure Counsel's Value in The New Millennium?

- Amount spent on Legal Fees?
- Number of Contracts Written?
- Number of lawsuits Won?
- Amount of Hours Worked?
- Articles Published?
- Telephone Calls Returned?
- Letters Written?

Value Added The New Paradigm

- *Value Added* is not a new Concept to the world of commerce.
- *Value Added* Tax is a familiar concept
- ***Value is Added when something becomes better or more valuable as a result of someone's efforts***
- Do Lawyers *Add Value* as they process an issue for their ultimate client?

What is *Value Added*?

- **In Law**, it focuses on our clients' priorities
 - financial
 - social, environmental, communities
 - operational
 - contractual
 - markets and customers
 - employees
 - dispute avoidance and resolution

An American Colloquial Way to
Think About Value Added

Answer the Mail

The “statutory” things we have to do.

Add Value

Beyond the “Statutory” activities

Get Out of the Way!

If it is **not** “statutory”
and **not** adding value,
don't waste time doing it

Impact on Lawyers

- Lawyers' activities are like a gas - they will fill any space
- Lawyers always busy, have competing demands
- How does the lawyer prioritize the work?
- *Value Added* becomes a *Triage* method, a way of thinking about what we do.

Impact on Clients

- It is a concept they are used to, comfortable with and understand
- It focuses the client's attention on the things lawyers can do to help the client succeed
- It promotes good communication and alignment of client and counsel goals

Business Focus

- | | |
|---|--|
| <ul style="list-style-type: none">■ Be Effective Business Partners<ul style="list-style-type: none">– Understand the business environment– Know our customers, products and assets– Focus on making us better | <ul style="list-style-type: none">■ Improve Operational & Financial Performance<ul style="list-style-type: none">– Reduce cost– Increase revenues– Focus on making us better |
|---|--|

What We Have Done:

- **Aligned with Businesses**
- **Customers**
 - Customer Counsel Council
 - Best Practice Handbook
 - Extranet
- **Technology** = “Force Multiplier”
 - Knowledge Sharing
 - Admin Intranet
 - Contract Form Database
 - Collaborative Systems
- **Training**
- **Value Added Reporting**
 - Annually
- **Business management of Law Department**
 - E - invoicing
- **Task Teams**
- **New Initiatives (CFD)**
- **People Development**
- **Communications Among Offices & Practice Groups**
- **Increased Emphasis on Preventive Lawyering**
- **“Over the Horizon” Issues**

Status Report

- Lowering of cost through settlement of EEO charges prior to litigation
- Reduction in litigation cost through mediation EMA/EDR
- Quicker turnaround of contracts thru CFD
- Process – Work Flow Analysis
- Savings through settlements lower than settlement authority
- Disaggregation of Legal Costs
- Focus on high value contracts
- Budgeting & Trend Analysis

Communicate

- Tendency not to think about how we have added value - "It's what I do"
- We focus on it relentlessly
 - Annual Value Added Report, "The Return on the Investment"
 - Part of Goal Setting & Performance Reviews
 - I Need to set an example - How can I add value?
 - If I can't, I do something else.

A New Way of...

- **Thinking**
 - about what we are doing
 - about what we should be doing
- **Prioritizing**
 - focusing on highest impact activities
 - aligning with clients' goals
- **Communicating**
 - Using the Language of Business
 - Capturing the **Value** we **Add** every day

By using *Value Added*
as a lens through which we view ourselves
and what we do,
we will sharpen our focus
and concentrate on those things that truly
Add Value
to our clients,
our colleagues and
our communities.

Applying the Organizations' Performance Management System to the Law Department

Introduction

- *Understanding* the vision, values, goals, and priorities of the enterprise, *and aligning* them with the advice, counsel and representation activities of the Law Department is *essential for achieving* overall department success *and adding value* to the enterprise objectives.

Introduction (cont'd)

- *Meaningful guidance and feedback to lawyers consistent with these principles will enhance performance and perception of the Law Department's contributions.*

Potential Applications

- A generic Performance Management System
- A new supervising attorney
- a quality improvement initiative
- Other circumstances requiring clarification of expectations...

A Framework for Discussion of Competencies and Performance Criteria:

- A supervising attorney should freely share his/her perspectives both verbally and in writing about the vision, values, priorities and objectives of the enterprise, as well as the expectations for Law Department professionals.
- He/she should request both verbal and written feedback.

A Framework for Discussion of Competencies and Performance Criteria: (Cont'd)

- Feedback comments, proposed changes and suggestions should be incorporated.
- Discussions should take place one-on-one and in small groups.
- Additional modifications should be made incorporating new ideas, refined thoughts and clarifications.

A Framework for Discussion of Competencies and Performance Criteria: (Cont'd)

- Law Department specifics and unique qualities should be carefully linked to the generic HR performance management system.
- The final work product should become the basis for performance feedback and evaluations.

Obtaining Performance Feedback from Clients:

- It is important to establish a credible relationship with clients based on mutual trust.
- Enhanced performance and world-class services must be the mutual goal.

**Obtaining Performance Feedback
from Clients: (Cont'd)**

- Both written and verbal comments must be solicited from clients.
- The timing of the feedback should be as contemporaneous as possible with the performance being evaluated, in order to have the most impact.

Determining Client Satisfaction

- Frequent requests for feedback.
- Periodic surveys, no less than annually.
- Shared perceptions should be followed up with face to face discussions.

Client Survey

Law & Patent Departments - Client Survey - Microsoft Internet Explorer

Address: <http://www.90.deere.com/law/applinks/survey2002.htm>

Directory Services | Newsstand | Us | Them | Your Biz | Site Search | Feedback

Deere & Company **JDO** **ONLINE**
Law Department

ONLINE CLIENT SURVEY

It is the goal of the Law and Patent Departments to be the law service providers of choice at Deere & Company. In order to reach that goal, we need your candid opinions about the services we provide and how we can better serve you in the future.

We estimate that this survey should require no more than 10 minutes to complete. Your feedback is critical to our evaluation of the services we provide, and we hope you will participate.

If you were given the name of a specific attorney to evaluate, please insert that attorney's name on the first line of this survey. If you did not receive the name of a specific attorney, please insert the name of the attorney you wish to evaluate. Please feel free to evaluate all the attorneys you have worked with by submitting a separate survey for each attorney.

We hope you will take the time to help us provide world-class legal services. Thank you for your assistance, and if you have any questions, please contact Jim Eecht at 309-755-5574 or at Eecht.James@JohnDeere.com.

Name of lawyer: Department:

1. Approximately how often do you consult with or refer legal-related matters or projects to Law or Patent Department attorneys?

2. Please rate the overall working relationship between you and your lawyer, by selecting the appropriate word below:

3. What is the one best thing about the working relationship between you and your lawyer?

Assessing Relative Performance and Providing Meaningful Feedback to Lawyers:

- Discuss and agree on expectations.
- Describe performance criteria in writing as well as verbally.
- Refer to written expectations, operating principles and guidelines in rendering feedback and performance evaluations.

**In Summary--
To maximize opportunities for success...**

- It's important to understand the enterprise, its vision, values, directions, and priorities.
- Work to continuously align individual and department goals and objectives with the enterprise.

**In Summary—
To maximize opportunities for success: (Cont'd)**

- Share and agree upon expectations, operating principles, and guidelines through writing and discussion.
- Continuously seek credible and meaningful feedback from clients based on an established relationship and trust.
- Provide timely, periodic and comprehensive annual performance evaluations.

Part I Core Competencies for Attorneys

**PART I
CORE COMPETENCIES FOR ATTORNEYS**

In the context of distinguishing between the relative performances of lawyers in the Corporate Law and Patent Departments, this framework is intended to provide meaningful talking points for discussion. It is expected that individual lawyers will find their own balance from a professional career perspective as well as in their personal lives.

Consistent with Performance Management System and Law Division guidelines, these Core Competencies will be used along with feedback from businesses, functions, and corporate clients, as well as outside counsel, to periodically assess performance and contributions and to provide feedback to attorneys providing law services. Law and Patent Department professionals should strive to be the law service providers of choice, a goal which can only be achieved if such services are aligned with corporate and business objectives.

PROFESSIONALISM - This category most directly describes Deere Leadership Framework Competency Assessment Critical Competencies (DLFCACC) numbers 1, 4, 9 and 10. Elements of other DLFCACC may also be apparent, but are not primary.

The first and foremost priority of lawyers in the Legal and Patent Departments is professionalism, which is the provision of world class law services which are expected and required in order to achieve business and corporate goals and objectives. Law services must be provided in complete accordance with Deere values, the Code of Business Conduct, as well as with the lawyers' ethical responsibilities as attorneys. Professionalism must be evidenced and assessed on the basis of impact on and contribution to the success of the businesses of Deere & Company, as a corporate and public citizen.

Lawyers should have and aspire for a high level of specialized knowledge and expertise consistent with their experience and training, in the areas of their practice as well as an ability to convey that knowledge and expertise. They must also have a willingness and ability to learn and master additional areas. At the same time, lawyers should recognize the limits of their own expertise and be willing to bring other resources to bear on Company matters when necessary. They should have a predominant client focus; an understanding of the business, its products and its customers; a sense of urgency in anticipating client needs and meeting expectations; and be a positive contributor in achieving client goals.

Professional service consists of components including the following, which are not intended to be in priority order.

(Excerpt from page 1 of 11 pages)

Part II Operating Principles

**Part II
Operating Principles**

How we work together as Law and Patent Department managers and professionals is important to our individual and collaborative contributions and success. Deere & Company expects and requires that the Law and Patent Departments provide world class law services which are aligned, organized and coordinated so as to facilitate their integration with the enterprise and business strategies, plans, goals and actions.

- A) Always strive to add value.
- B) No surprises.
- C) Bad news early.
- D) Be loyal (to the organization and its leadership, Deere & Company, its subsidiaries, officers and directors, including the general counsel).
- E) Support each other.
- F) Respect each other.
- G) Disagree without being disagreeable.
- H) Compete by being cooperative.
- I) Be honest, credible, and forthright.
- J) Provide context for verbal and written interactions with colleagues.
- K) Practice appreciative listening.
- L) Seek peer review.
- M) Participate in active, engaging, and challenging analysis while being creative and problem solving.
- N) Provide constructive criticism and feedback when requested or needed.
- O) Work with passion and empathy.
- P) Care about what you're doing, your colleagues and the organization.

(Excerpt from page 8 of 11 pages)

**Part III
Criteria for Periodic Feedback and Year-End
Performance Management System Evaluations**

**PART III
CRITERIA FOR PERIODIC FEEDBACK AND YEAR-END
PERFORMANCE MANAGEMENT SYSTEM EVALUATIONS**

This framework is for guidance and discussion of the criteria for periodic feedback and year-end performance evaluation, and is intended to supplement the general HR guidelines. In evaluating performance, full consideration must be given to the Deere Leadership Framework Competency Assessment Critical Competencies and how they are employed in carrying out one's roles and responsibilities and other contributions to the success of Deere & Company.

The five principal components which play important roles in the year-end performance review consist of: I) the results achieved in carrying out one's assignments and job responsibilities; II) client satisfaction; III) performance with respect to goals; IV) special considerations; and V) relative performance and management evaluation.

I. Results achieved

In evaluating performance as it relates to work assignments and responsibilities, the focus will be not only on the results and contributions achieved, but on how they were achieved. Other important questions are whether assignments and responsibilities were completed on time, and whether cooperative and supportive attitudes and behaviors were maintained in carrying out those responsibilities. In the final analysis, results achieved must be evaluated on the basis of impact and contribution to the success of the business, objectives, and interests of Deere & Company. These are all important factors which will be considered in evaluating results achieved.

II. Client Satisfaction

Feedback from clients concerning performance of lawyers and their expressions of delight, satisfaction, or disappointment will be a factor in year-end performance evaluations. Perceptions expressed by clients as to the value of the contributions, results, how the results were achieved, creativity, and potential of lawyers will also be considered. Specific client expressions concerning satisfaction or dissatisfaction will be interpreted as may be appropriate to the circumstances, including for example, a lawyer properly taking an important but unpopular position in the best interests of the Company.

III. Goals

In evaluating goals, the first factor will be whether the goals were in fact stretch goals which involved a major project or a substantial work process, development or improvement. The second factor will be whether substantial and understandable progress related to the milestones and goals was achieved. The third factor will be whether the goal setting process was completed in a timely manner with interactive communication with supervision, and whether appropriate adjustments in the terms and conditions of the goals were made, commensurate with job demands, in alignment with business objectives, and consistent with corporate interests.

(Excerpt from page 9 of 11 pages)

Questions...

Good luck!

Communicating the Strategic Value of Your Law Department

“What have you done for me lately?” This is a common question from the CEO when reviewing the legal department’s budget. The Strategic Value Analysis approach is a three-step process where the CLO engages clients in a shared dialogue and shared vision, a joint approach to setting priorities and in using metrics to monitor performance.

BY STEPHEN E. NOWLAN

CLOs can gain greater support from executive officers for law department budgets by tracking and regularly reporting what the law department is doing that enables the company to achieve profit and growth targets. Many CEOs and executive officers have told me that traditional spending metrics serve only to provide assurance that their law departments aren’t “out of line” with other departments in the company. But they fail to show how their law departments’ strategies and performance generate legal and financial outcomes that add value to the bottom line.

Before reading further, ponder how your CEO and board of directors would answer these three questions:

- Do we know what proportion of the legal department’s resources is focused on legal projects that support the company’s growth products and businesses?
- Do we know the progress the law department has made in achieving risk-management goals that will lead to reduced future liability exposure?
- Does the law department use



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metrics to measure all goals? Executive officers expect the law department to provide tracking metrics that reveal what is being *achieved*, not just what is being *spent*.

As one CEO told me succinctly, “I want data that show whether the resources spent by the law department are focused on the right priorities and generate value we can measure. Until I

get better data, my best option is to keep pushing for lower costs.”

High-Priority Performance Categories

Executive officers most often identify the following high-priority performance categories as those in which they want more effective metrics and tracking data from the law department:

- Allocating resources to high-risk legal matters and managing them effectively
- Achieving preventive law objectives
- Supporting company growth products and businesses
- Completing high priority projects as designated by executive officers
- Managing litigation outcomes

Not surprisingly, these five performance areas are closely linked to every company’s profitability and growth objectives. As a group, they comprise a specific framework that can be used to help describe the “strategic value” of the law department in terms that are more revealing than traditional spending metrics. Specific tracking metrics developed in each area will enable the

CLO to explain the law department's achievements and satisfy the expectations of executive officers who want better data before they'll agree to support law department budget proposals.

Regularly reporting the law department's results to executive officers using this performance framework can help to shift the C-suite view of the law department from being just a "necessary cost" to the more desirable view as a "strategic investment" that produces tangible benefits for the company.

Growth products and businesses are key to the company's future, and they are tracked closely by the CEO. But it is unlikely that C-suite executives comprehend the proportion of the law department's resources that are focused on legal projects that support these objectives. There are many benefits to be gained from quantifying and regularly reporting on the law department resources being spent to support these activities, now and in the future.

Similarly, because executive officers want to reduce future litigation expenses, they have a high interest in metrics that dimensionalize the preventive law actions being implemented by the law department with clients. Some executives will know about some of the preventive law steps taken, but most are unlikely to be familiar with the overall progress of the law department in achieving risk-management goals that will lead to reduced future liability exposure.

Demonstrate Alignment With Corporate Initiatives

By presenting performance information in an organized quarterly or annual report that includes many such metrics, you



DOONNA TEREK

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will be able to vividly communicate to executives and the board of directors that the law department's activities are aligned with and contribute to corporate objectives. Moreover, you will be able to demonstrate that a planning process is in place to ensure that this alignment and contribution will be adjusted and increased through careful strategy choices as business circumstances require.

Create a Strategic Value Analysis

The process of creating a Strategic Value Analysis starts with three steps.

• **Engage Clients in Dialogue to Adopt a Shared Vision.** Once the law-management team has discussed the performance areas and identified some initial objectives and possible metrics, it is essential to expand the dialogue to include executive officers. The goal of the discussions is to develop a shared attorney-client vision of how law department activities should align with corporate and business-unit objectives. The unique needs and expectations of various lines of business should be identified and taken into account in the way the performance areas are defined and the metrics that are subsequently developed.

• **Jointly Develop a Tiered Approach to Setting Priorities.** Law department practice groups can create a list of their various activities and organize them into categories. Then, practice groups can work with clients to identify the level of priority that should be given to each type of activity in the allocation of law department resources. The benefit of having a common language for discussing priorities is that there will be fewer disagreements and misunderstandings about the

effort and urgency the law department is expected to apply to various types of legal work.

• **Develop and Use Metrics to Monitor Performance.** With greater clarity about how the law department's activities are expected to align with corporate and business-unit objectives and the priority generally assigned to the various types of legal services, the next step is to develop metrics that both the law department and clients agree are useful, practical and appropriate to track the law department performance. The goal is to ensure that lawyers and clients have common terminology for discussing law department performance and strategic value beyond rudimentary spending comparisons.

The following discussion provides some perspectives and ideas in each of the five performance areas for implementing these steps with your management team and clients.

Allocate Resources to High-Risk Legal Matters

A critical role of the law department is to manage high-risk legal matters, and yet, executive officers usually are not familiar with specifically how much of the law department's resources are directly applied to such potential or current high-risk matters. Chances are, the percentage of your overall resources dedicated to all types of high-risk legal matters—not just litigation—will surprise them.

Lawyers often handle matters the businesspeople do not realize are high risk because the lawyers and businesspeople do not share a common risk language. Many mid-level managers probably think that some routine or moderate risk matters are "high legal risk" just because they could or

STRATEGIC VALUE ANALYSIS

There are three steps to creating a Strategic Value Analysis for your law department.

STEP	GOAL
Engage Clients in Dialogue to Adopt a Shared Vision	The goal of the discussions is to develop a shared attorney-client vision of how law department activities should align with corporate and business-unit objectives.
Jointly Develop a Tiered Approach to Setting Priorities	The goal is to create a list of activities and organize them into categories. Then, identify the priority of each activity.
Develop and Use Metrics to Monitor Performance	The goal is to ensure that lawyers and clients have common terminology for discussing law department performance and strategic value beyond rudimentary spending comparisons.

do involve lawsuits. Through informal discussions, most law department practice groups have likely defined what matters are “high risk” in the context of their companies’ businesses, and some practice groups may have developed written definitions.

A working definition might be, “High-risk issues include matters where regulatory examinations are underway or there is the potential for regulatory fines or penalties exceeding industry averages; actual or potential class-action lawsuits or lawsuits that could end in significant awards, settlements or operational constraints; or, matters where the cumulative risks would materially impact on shareholder value, customer relations or public reputation.”

Your goal is to identify and quantify the actual scope of the law department resources allocated to managing the high legal risks of the company, by line of business or division. Tracking and presenting this data helps build C-suite confidence that the law department is diligent in both systematically identifying and managing risk. By delineating the actual resources required to manage these risks appropriately, the CLO focuses attention on the portion of total legal cost associated with managing high legal risks that cannot be outsourced or ignored.

The CEO says,
 “I want data that show whether the resources spent by the law department are focused on the right priorities and generate value we can measure. Until I get better data, my best option is to keep pushing for lower costs.”

A report or graph depicting the level of law department resources applied to high-risk legal matters in each line of business or division can be especially revealing. It might reveal to the C-suite that some parts of the company are generating disproportionately higher levels of risk than other parts. Drilling down even further might help identify whether these high risks are engendered by the nature of the business or by management in those units being less focused on appropriate risk management.

Achieve Preventive Law Objectives

The CEO and business-unit heads want to know what the law department is doing to prevent future liability exposures.

One approach is for each practice group to track how fully its risk-tolerance standards are complied with by the company activities each practice group supports. For example, the employment-law unit and its human resources client may have set a standard that there must be written employment agreements in place for all managers and executives at a certain level. This requirement may include standard non-compete and non-disclosure clauses.

With the established tracking guidelines and help from HR, the employment-law unit could

identify the number of executives in the company with whom such agreements *should* exist and identify the number or percentage for which they *do* exist. The number of agreements that were signed without the required non-compete or non-disclosure clauses could also be identified. (Presumably, these would arise from situations in which the recruiting executives waived the requirement over law department objections.)

The tracking report might show, for example, that there are 57 executives employed at levels where a written agreement is required, and appropriate agreements exist in 55 cases. Of the 55 agreements in place, the recruiting executives waived the non-compete clauses in two cases over the law department’s advice. Metrics such as these provide clarity about the attainment of preventive law goals.

Each practice group could identify and apply a set of risk standards tailored to the nature of its work. Through a formal process or just informal discussion, the practice group could identify the preventive law elements it believes should be reflected in its work product, whether these are contracts, leases, purchase agreements, joint-venture agreements, private placements or sales agreements. The next step would be to track

projects to identify to what degree these standards were met at the completion of each project.

Another tracking metric can address client legal and compliance education. If the law department provides seminars, the number of attendees can be tracked by subject, business unit and other demographics. If the law department sponsors online or intranet-based programs, it can track—again with demographic breakouts—the number of registered participants, the subjects for which they register and the number of courses they complete.

A law department that does not track its performance using such metrics has a less compelling story to tell management. In the case of contracts, it can report only that it negotiated a certain number of agreements but won't be able to identify whether the contracts met the preventive law standards. This does not yield insights as to whether the contracts could have been negotiated just as successfully by businesspeople operating on their own.

Support Company Growth Products and Businesses

Executive officers want to know what the law department is doing to provide priority support for the company's growth products and businesses.

With client input, the law department can relegate legal matters into three categories. "Legacy activities" might be defined as legal work arising from old problems, such as liability lawsuits from products sold in the early 1990s. "Continuing need" activities could be related to servicing legal needs of ongoing business activities, such as facility lease agreements or terminations,



CEOs give their greatest support to executives who creatively leverage company resources to achieve company objectives.

purchase or service agreements, or regulatory permits. "Growth initiatives" could refer specifically to new product development, joint ventures, acquisitions or divestitures, distribution chain agreements and other activities, which have revenue and profit targets in the long-range business plan. Using this classification system, the law department can track and quantify the resources it allocates to each category of matter.

In one company, the CEO asked the law department to report specifically how much of its resources were allocated to growing the company. The law department created a report for each line of business showing the hours and spending allocated to matters in each of the three categories. After review, the CEO concluded that an inadequate number of lawyers were supporting growth initiatives in two key divisions on which he was banking to meet the company's long-range objective for new revenue. The CEO approved an increase in lawyer headcount to support new product development. But the CEO also expressed concern that the law department had not been more effective in providing this type of performance analysis at an earlier stage.

Complete High-Priority Projects

In quarterly meetings with divisional CEOs, lawyers can review legal projects and ask the CEOs to identify high-priority or urgent projects. The law department can then quantify and report the level of resources being spent to support these projects, broken out by line of business and law department practice group. Here again, the law department becomes specific about the scope of the resources

it is using to support the projects that senior clients have identified as most important to them.

There is usually a close match between those legal projects designated as high risk and those designated by the business-unit CEO as high priority or urgent. However, there are legal projects where the legal risk is low but the business need is urgent. Examples include situations where a regulatory approval is needed quickly or a large but routine technology purchase needs to be completed promptly.

A side benefit of having the division CEO identify priorities for projects is that some projects which mid-level clients insist are "extremely important to the business-unit CEO" are revealed to be of a much lower priority when the CEO's opinion is actually sought.

Manage Litigation Outcomes

Executive officers are always concerned about the costs of litigation. Most law departments regularly report litigation expenses using various performance metrics.

In the reporting, many law departments don't differentiate between the costs of offensive and defensive litigation. Tracking and reporting the costs of offensive and defensive litigation separately provides an opportunity for the law department to demonstrate that it is creating value by recovering costs or protecting assets (such as patents and business processes) or challenging regulatory barriers. These offensive lawsuits represent purposeful efforts to protect the company's future income and business rights.

A focus for defensive litigation metrics would be to track the results of Best Practice litigation strategies such as early case

warning systems, early case settlement programs and mediation efforts. The resulting performance metrics from such initiatives can show executive officers how the law department's strategic approach to litigation management generates greater value through decreasing case costs.



There is greater value created by maintaining customer respect and avoiding litigation than there is in managing litigation, even if the litigation is managed extremely well.

Report Strategic Value Performance

After your team has worked with clients to create the Strategic Value Analysis process, the next step is to develop a format for an overall report that will best communicate the results. An important criterion for success is having data capture, compilation and analysis processes that are sustainable over time. The leadership and support of practice group heads and others on the management team are crucial. The goal is to find the right balance between generating useful new insights and generating too much work. You may want to report on some measures quarterly and others annually.

You also may want to experiment with various formats to test which one has the most clarity and value for executive officers. One good approach is to start with a relatively short list of performance categories and metrics you can present on one page and that will be of high interest to your executives. Then, you can add more detail for lines of business, as well as historical data and trend indicators as your executives become comfortable with the analysis and ask for more detail.

To get the most value from the analysis for law department management purposes, you may want to consider a more detailed internal version that breaks out results by practice group. This report can serve as the basis of

management and practice group review meetings. Also consider how best to train your senior team members in their role as communicators with clients. Certainly there is a need for everyone presenting the report to clients to understand the definitions, methodologies and meaning of the measures and resulting data.

Better Performance Metrics, Better Strategy Decisions

Reliable periodic performance metrics will enable you and your management team to make better strategy choices by focusing attention on how resources are used.

In one law department, eight business-unit lawyers spent a great deal of time responding to client questions. Their responsiveness created high client satisfaction scores. However, when the questions and advice were analyzed, it was learned that about 3,000 hours of attorney time was spent annually answering low-risk questions related to low-priority projects. The lawyer team decided to develop an online frequently-asked-questions system for common client questions so the legal team could focus more time supporting high-priority client growth initiatives.

In another example, the CLO of a financial services company recognized that economic downturns historically lead to more litigation from customers who question the investment practices of the money managers. One strategy option was to expand the litigation staff in anticipation of the increase in lawsuits. A very different strategy, which was adopted, was to hire more compliance people earlier in the economic cycle to ensure that compliance activities were

fully adequate to minimize the need for future settlements resulting from bad practices.

Such a decision—hiring more compliance people as opposed to more litigators—is a good illustration of how strategy choices directly affect spending patterns. There is greater value created by maintaining customer respect and avoiding litigation than there is in managing litigation, even if the litigation is managed extremely well.

Basic strategy choices arise every day, but sometimes these are lost in the daily triage of legal work unless the management team has systems in place to evaluate the results being achieved. The old adage “what gets measured gets managed” has great relevance.

CLO Credibility with Executive Officers

Efficiently managing legal costs and meeting spending targets are important dimensions of leadership. However, CEOs give their greatest support to executives who creatively leverage company resources to achieve company objectives. Developing and applying strategic value metrics will enable you to more effectively demonstrate to executive officers specifically how the law department's strategies and performance contributes to the attainment of company objectives. The increased credibility gained through this results-oriented approach will generate greater support from executive officers for adequate funding for the law department to fulfill its potential as a vital company resource. ●

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Synchronizing Business and Legal Priorities-A Powerful Tool

by John H. Ogden
ACCA Docket, October 2000

This article will describe a powerful and dynamic process for dramatically improving the delivery of legal services to a corporation.

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.¹ 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 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.² 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,³ 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. Significant 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 cutbacks 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.⁴ 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 preagreement 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.⁵

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 measured. 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,⁶ 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 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.⁷

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.⁸

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," 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).



Figure 1
Lawyers per \$1 Billion of Revenue by Industry (1998)
Source: Morrison, Rees W., "Directory of Corporate Counsel-Special Supplement" 24

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

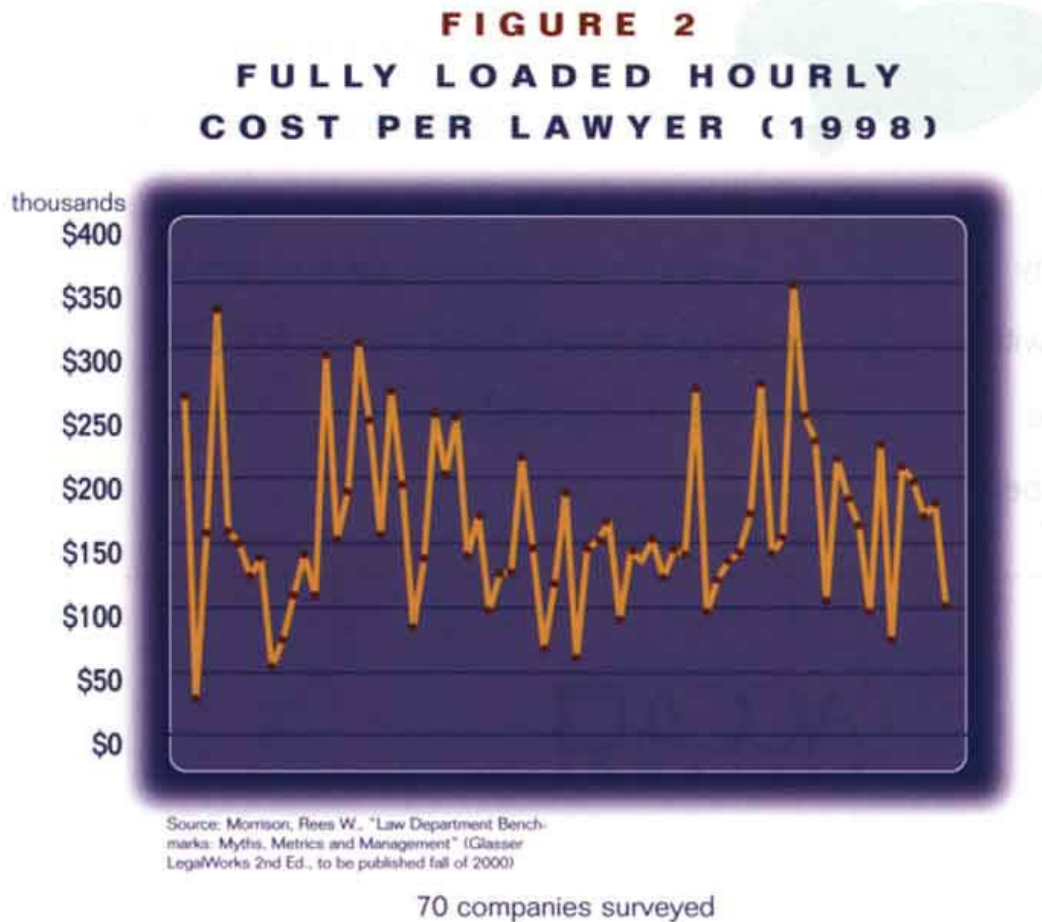


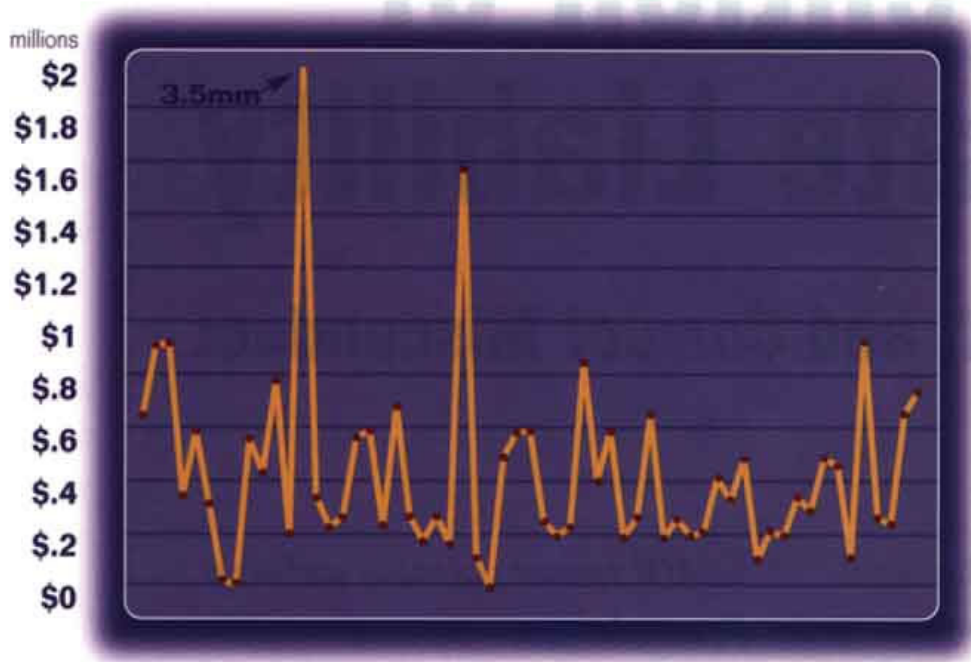
Figure 2
Fully Loaded Cost per Lawyer Hour (1998)
Source: Op. cit., Chart 16.4.

For the entire group of 3551 lawyers in 70 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 departments. The calculation assumed 1850 hours per year of chargeable time.

Outside Counsel Spending Per In-house Lawyer

Approximately half of all spending by a typical law department goes to outside counsel. One benchmark, therefore, normalizes outside counsel spending per lawyer. Figure 3, "Lawyers and Outside Counsel Spending per In-house Lawyer," presents some data on this topic.

**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

**Figure 3
Outside Counsel Spending per In-house Lawyer (1998)
Source: op. cit., Chart 16.4.**

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

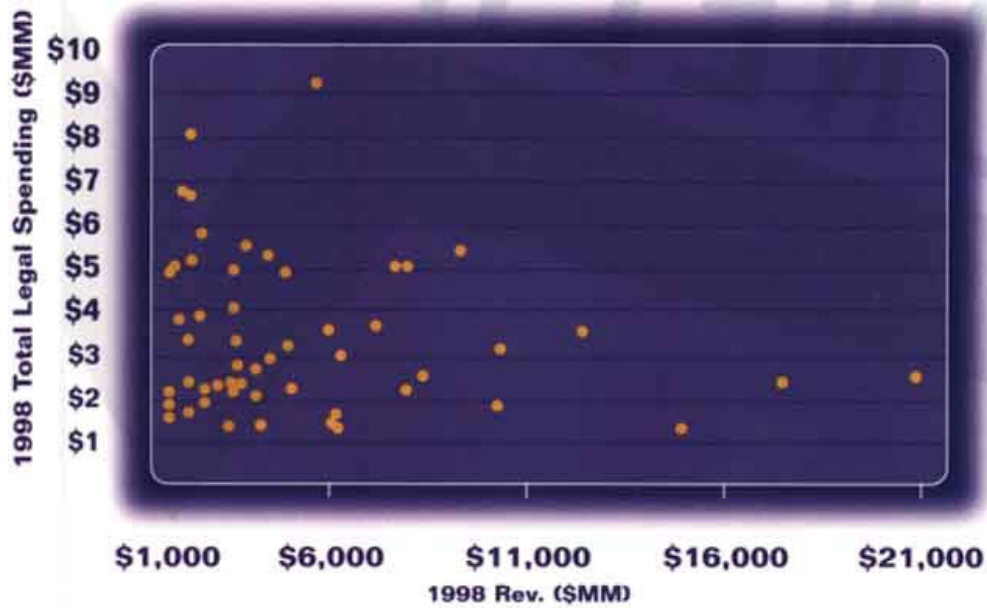
The typical law department spends between 40 and 60 percent of its total budget on its inside costs, with the remainder on outside costs. From a group of approximately 75 law departments, the average ratio of outside counsel spending to inside budget was 1.5 to 1, which amounts to a 60/40 ratio.

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).⁹

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 4
Total Legal Spending per Lawyer-Over \$2 Billion Revenue (1998)
Source: Morrison, Rees W., "Directory of Corporate Counsel-Special Supplement" 32
(Aspen Law & Business 2000).

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 of part-time attorneys.¹⁰ 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.

FIGURE 5

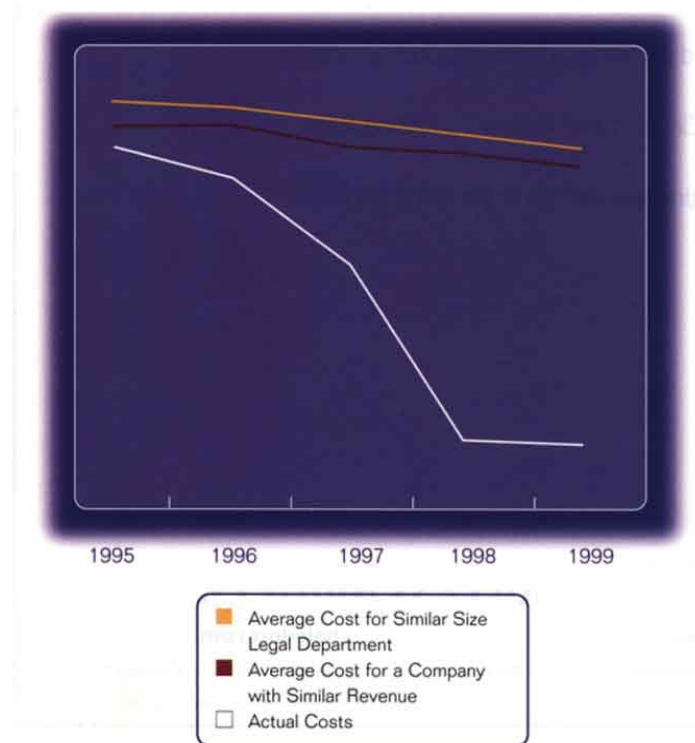


Figure 5

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.

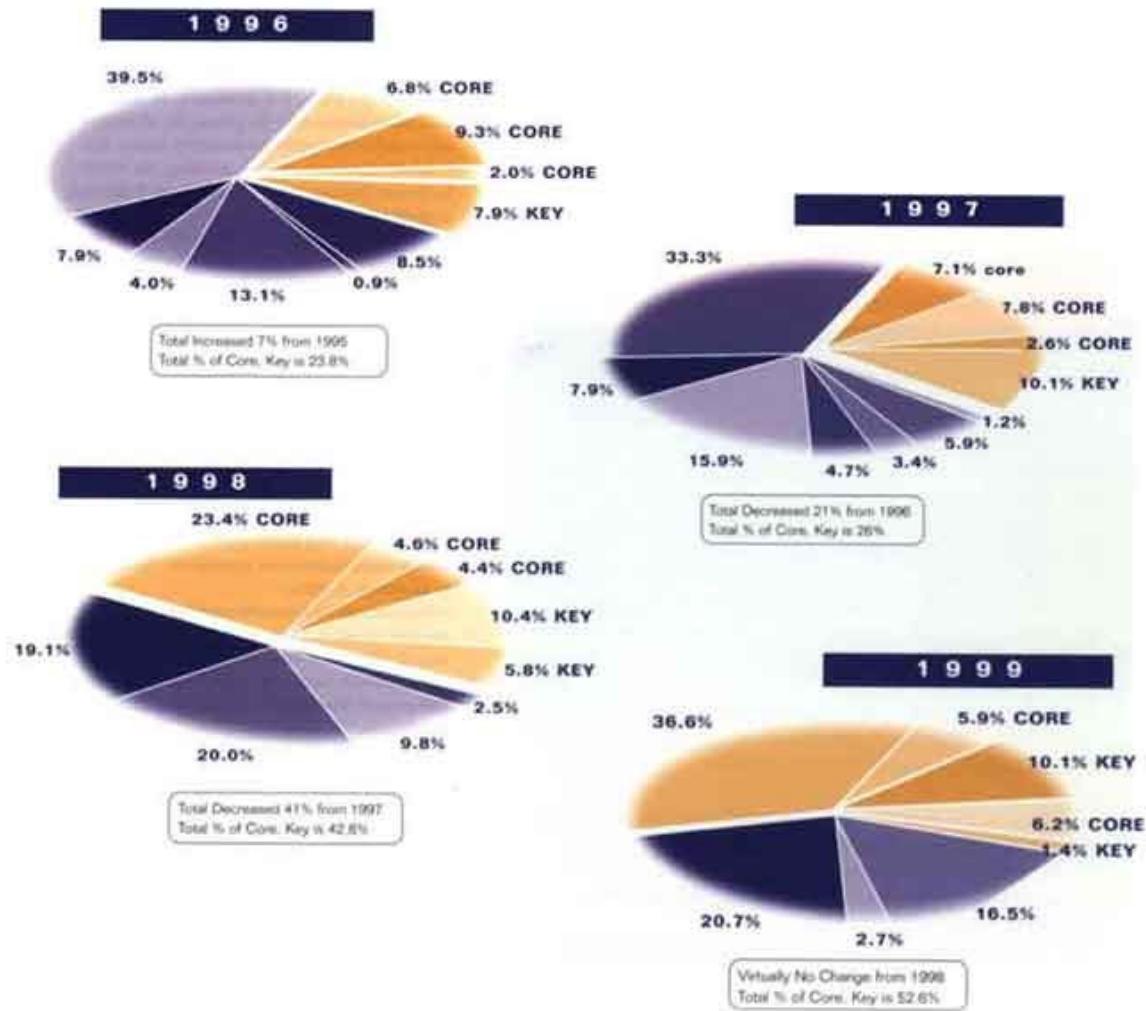


Figure 6

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 organization functions well, 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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Resource Multipliers: Creating a Virtual Legal Department

by John Ogden

Why a Virtual Legal Department?

ACCA Docket, May/June 1997

I often find myself apologizing when conversations take a turn toward the subject of technology. To readers who sighted virtual and hoped for a good read on high tech legal departments, I must apologize - again. The value of this general counsel's virtual department lies not in cyber networks but in the linked competencies of human and professional relationships whose quality and flexibility sustain excellence.

The virtual legal department can be defined as corporate resources (inside and out) leveraged for the greatest efficiency, effectiveness, and value. Ours is based on two premises. The first is that a corporation is best served by attorneys well versed in its operations, goals, and culture, allowing for legally sound, proactive, and practical advice and actions. The second premise is that legal departments are not and should not be exempt from corporate America's drive for optimal efficiency. Indeed, given the corporate world's view of the legal department as cost center, some have borne an excessive (and for the corporation, a potentially dangerous) share of the load in "rightsizing" (or other terms du jour under the heading of cost-cutting). Since both premises are likely to impact in-house practice for the foreseeable future, legal departments must be adroit at using a changing mix of resources to sustain high quality work product. Hence the need and responsibility to virtually expand most legal departments by multiplying resource effectiveness.

For more than a decade I have been my company's only attorney and am therefore responsible for the entire range of legal issues affecting it. (Although, to put this in context, the group of companies to which mine belongs has approximately 50 attorneys, all situated and admitted in Europe.) In addition, like 52 percent of general counsel responding to a recent Altman Weil Pensa survey,¹ I have operational responsibility for several business functions² and serve on or lead several crossfunctional teams and committees. I also litigate, serving as lead counsel or second chair when and as appropriate. Making time available for those as well as ACCA activities and maintaining at least a somewhat healthy quality of life requires time management (which I admit to doing badly) along with managing resources in nontraditional ways. This article will only address activities I have implemented successfully (and one idea which has not yet gained momentum): part-time attorneys, legal research firms, networking, and using retained counsel in new ways. Figure 1 illustrates many other methods to consider.

Part-time Attorneys

Two attorneys work part-time for my company. Each is a sole practitioner with other clients (one with corporate clients, the other with individual clients). Each bills hourly at a rate substantially below market. They are comfortable doing so because, to a large extent, they use company

resources on company property, rather than their own. No particular amount of work is guaranteed, but open discussions take place about how much is expected so that they can plan.

One attorney is a colleague from a previous job, who after corporate and law firm experience maintains a practice of working quasi-in-house for (nonconflicting) corporations. The other attorney, an MBA with a JD, previously practiced at law firms and gradually grew into the position with my company after working per diem, for lifestyle and family reasons, with one of our retained counsel. The arrangement with my company meets those lifestyle and family requirements while providing the satisfaction of ongoing representation of a known client base.

To optimize the value of part-time attorneys, it is extremely useful to decide carefully who will handle which issue(s) and thus minimize working reactively to whatever matters arise, so-called "in-box management." For example, my company is ISO-90013 certified. The legal function's role in maintaining this important certification consists of addressing certain types of matters within a prescribed time. Having flexible additional capacity is a crucial element in fulfilling that obligation. In fact, one or the other part-time attorney has primary responsibility for most ISO-mandated matters. I am involved only if questions arise that they cannot address or if they are unavailable.

Our business is such that most transactions begin with secrecy agreements and progress to relatively complex contracts. These are extremely time consuming and the part-time attorneys have the lead in drafting and frequently negotiating.

Litigation is considerably easier for me with part-time attorneys to assist with interrogatories, depositions, draft pleadings, and so on. Recently I had to participate in a multiparty court-ordered mediation in a remote jurisdiction. One of the part-time attorneys had organized the proofs and generally prepared the matter with a view to briefing me before my appearance at the mediation. Just before mediation a complex matter arose that required extensive travel and time commitments. This prevented me from having full command of the facts needed to participate in the mediation. Because of the part-time attorney's thorough familiarity with the issues (albeit without the length of experience with the company to attend the mediation alone), we were able to attend the mediation together and bring it to a satisfactory conclusion.

The other part-time attorney, in addition to handling ISO-mandated issues, specializes in monitoring and supervising insured cases. This attorney also handles various construction matters because of expertise in such matters as a former practicing engineer and as an attorney.

The division of labor is a combination of finding suitable attorneys for specialties and making the best use of their other skills.

Except for billing arrangements, I view the part-time attorneys as staff. Even more importantly, I expect the clients and others with whom they deal to also view them as in-house attorneys. By this I do not mean their status is misrepresented but that I want their knowledge about company goals, objectives, and culture to be viewed on a par with staff attorneys' knowledge of these matters.

To make the most effective use of part-time attorneys, an investment in time (and therefore money) is required. Before any part-time attorneys take on assignments, they are thoroughly briefed on the legal issues facing the company and its position on those issues. Instructions are given as to negotiation fallback positions and when to seek guidance. Introductions are made to appropriate personnel at every level. In short, part-time attorneys are trained in much the same manner as a full-time staff attorney. In fact, as unwise as it would be to add a full-time attorney to staff without formal training and familiarization, it might be less damaging than doing the same with a part-time attorney, who would have fewer opportunities to pick up the requisite knowledge on the job.

There are many options for incorporating the work of part-time attorneys. Setting regular hours for them to be on company premises, however, has met with limited success. Naturally the predictability of this approach helps in managing the situation, but unfortunately issues do not always arise when part-timers are available. It is important to recognize the need for flexibility in this regard. In my situation both attorneys have other clients and family situations that prevent them from being available at a moment's notice. It is therefore important to maintain files in such a manner that staff can cover for one another as required. Excellent administrative assistance is also invaluable in integrating efforts and work product.

Interestingly enough, several technological steps that were expected to aid considerably in integrating the work product appear not to have made a significant difference. One of the part-time attorneys has voice mail and an email address in the company system. Access to company communications technology was expected to improve communication with me and others in the company, since both systems are used extensively. Thus far, though, they have not been much better than using the voice mail and fax systems these attorneys use in their own practices. The only improvement is the ability to transfer lengthy voice mail messages in their entirety without risking losing something in the translation. I am certain different methods will be tried in the future, because I know others in similar situations have increased efficiency through technology.

Legal Research Companies

I don't have much to say about legal research companies other than to recommend trying them. Although I have not even attempted to impart the legal "intangibles," such as corporate culture, goals, and so on, to legal research companies and suspect it would be unrealistic to do so, they are an excellent extension of available resources.

With good research companies particular issues can be framed quite precisely and senior-partner-level work product can be had at associate rates. Work can also be done on a lump-sum basis pursuant to an agreed-upon schedule. This certainly describes a process closer to what one would expect from an employed attorney than from retained counsel. Work can even be completed in stages, just as you would do it yourself or have it done by a staff attorney. By this I mean you can speak with a company representative, typically a very experienced attorney, and ask that a preliminary review be done through a short written or spoken report. You may then decide yourself or in consultation with the research company if and how the research should proceed and the extent required. The result can range from an overview to a detailed memorandum or even a brief ready for submission to the court.

Because the legal research company is not practicing law, but merely assisting you in your practice, costs are lower (you avoid paying for a partner to review the work of an associate plus firm overhead). While completely legitimate, these added costs are also totally unnecessary if all you need is some research that could be done in the department if you or your staff had the time. In addition, since research is the only business of these companies - and in my experience they treat it in a most businesslike fashion - I expect you will find this aspect of your work among the most efficient from the perspectives of time and cost.

Retained Counsel (A Somewhat Unorthodox Approach)

In two key practice areas, employment law and environmental law, I have retained trusted outside counsel who serve as de facto assistant general counsel, who were selected after a formal search of law firms and attorneys.

The training and familiarization process for these retained counsel was similar to what the part-time attorneys received. The designated attorney and an alternate periodically attend company meetings with me to familiarize them with company operations. Equally important is that they know key company employees and the employees know them. I also provide introductions to other professionals retained by the company, such as occupational physicians, industrial hygienists, environmental engineers, and so on. The goal is for a legal team to be in place to respond when I am not available.⁴ Additionally, familiarity with the company's operations allows retained counsel to provide more proactive advice than a less involved, more sporadic engagement.

My company is large enough to have significant problems in these areas but not large enough to have full-time dedicated legal staff. As general counsel, I keep informed about employment and environmental law, but there is no real substitute for true day-in, day-out specialization. The relatively small investment of time necessary to get retained counsel up to speed on company activities and keep them there will effectively ensure first-rate knowledge about these legal areas and the company.

At my company counsel in these areas often deal directly with the client, and I am kept informed just as if an assistant general counsel were dealing with business colleagues. I exercise control over the process, not every individual matter. I do not become directly involved unless counsel or the client deems it necessary. To ensure that this approach yields the optimal level of legal services at a cost commensurate with the seriousness of the matter, I have consciously taught my business colleagues in those areas to be sophisticated legal consumers. With the proper training and management, the part-time or retained counsel can be resource multipliers that allow a general counsel to virtually grow the legal department by adding quasi-assistant general counsel in basic areas to a small department or by adding highly specialized capabilities to a large one.

Another approach for employment or environmental issues is for me to provide advice that I believe to be very nearly complete or accurate and refer the client to specialist counsel for confirmation of the advice in toto or a specific aspect. Of course, I may also contact specialist counsel myself or may involve him or her directly with the client.

Several other approaches I use with retained counsel also expand the effectiveness of the legal resources available to my company. For intellectual property (primarily patent) matters, I have gone through a selection process which, while not as extensive as those for environmental and employment counsel, has yielded counsel who are experts concerning my company's technology if not its business principles. Patent counsel frequently interact directly with technical personnel, and while the situation has not lent itself to developing a relationship where they might proactively participate in decisions about what to patent, they are in a position to respond quickly and consistently to questions of potential infringement. The relationship seems not unlike many companies whose intellectual property practice is a unique entity within the corporation.

Law Firm Litigation Support

My litigation practice does not warrant keeping a skilled litigation paralegal on staff, but my company is able to be a more effective litigant by using paralegals and law clerks from law firms with whom we have a longstanding relationship to assure quality service. Law students appreciate the exposure, the firms value the contact, and in my experience clerks are reliable and hard workers. I have even used a Referendar (a candidate for admission to the German bar). The many benefits⁵ that arise from having a corporate generalist litigate would not be possible without a skilled and experienced litigator - in-house if possible - who is also a trusted colleague and familiar with overall company goals and issues to review and comment on work product.

The Sounding Board: An Untested Resource

At the beginning of this article I indicated I would be addressing only approaches I had used successfully with one exception: the sounding board - which I have yet to persuade any law firm to try. Law is, to a large extent, a collaborative profession. In a law firm or large legal department, a practitioner can bounce ideas off respected colleagues. This is not the same as involving the colleague directly or indirectly in the matter (even partially), but asking them to be a sounding board, particularly in the formative stages of a matter or when you are stuck and need to discuss alternatives. Normally this does not take too long. I have proposed to colleagues at law firms I use frequently that a lower rate apply for such services, particularly since the discussions would take place only with partners who to some extent do not have the same pressure with billables that associates do. Sounding board services are different from legal advice with its potential liability and need for comprehensive treatment.

My proposal is as follows: if I call and the partner can spare the time, the firm bills me at a lower rate. If the partner is busy, it would be my choice to accept the usual billing rate or wait until the partner is free. I have never persuaded anyone to try this and, with the increased involvement of part-time attorneys, have given up. If anyone has used this method or intends to, I would be interested in hearing from you.

Networks

Except for association executives, who exhibit a comparable level of cooperation, I have never known a group of professionals as cooperative with one another across organizational lines as in-

house attorneys. As an active ACCA member, I have enjoyed this cooperation for many years. For several years I have not retained counsel or agreed to a mediator in a remote jurisdiction without a local in-house counsel's recommendation. As my involvement increased, I found myself able to call someone I knew personally, but I never had a problem with cold calling a Chapter president: they either helped me personally or referred me to someone who could. (As a former Chapter president, I have fielded many such calls myself.)

What this means to my company is that it enjoys some of the benefits of having regional staff counsel in areas where none are employed. My office is in New Jersey but my company's business is far flung. I frequently encounter in-house colleagues who are able to acquaint me with matters in a remote jurisdiction, such as the intricacies of the local bench and bar, as well as corporate clients of the local bar. This is extremely useful and while these virtual regional counsel are, of course, not able to act on behalf of my company, such assistance when issues arise is invaluable.

Similarly to ACCA's Chapter networks, the association's National Committees offer some of the benefits of having specialized staff counsel in various substantive areas. (The benefits of both networking groups can be found in Chapters with active local committees.) The committees provide access to similarly situated colleagues with whom you can benchmark or even just shoot the breeze, which often produces excellent ideas. They also present the current and upcoming state of the law locally and at ACCA's Annual Meeting, contribute ACCA Docket articles, publish Counsel (a periodic newsletter on important developments in the committees' specialized areas of practice), and other resources that can be accessed through ACCA. No matter how large or strong a legal department is, it cannot be the very best in every aspect of its practice. Moreover, the practice of corporate law is so dynamic that staying the best requires constant contact with other practitioners.

Networking even has extraterritorial application. I had to travel to the People's Republic of China to attend crucial negotiations. We were very well represented in New York, Hong Kong, and Beijing by a law firm whose attorneys provided not only excellent legal counsel but also advice on the commercial and even social nuances. What they could not do, however, was provide the "in-house spin" vital to maintaining the good working relationship I had established with our business partners whom I had met several times in the United States. During my trip, I was the only company representative in dealings with our Chinese business partners. This is significant since their view of attorneys is radically different from ours. I remembered a colleague from Wisconsin who was general counsel to a company somewhat similar to my own who had also been heavily involved in China. He returned my call at home on a Sunday evening and described his experiences as an American in-house attorney negotiating in China. Thanks to him, I was able to successfully address the appropriate issues while maintaining a good relationship.

In-house colleagues also assist in navigating the waters of corporate practice. Several years ago I was asked to assume a role in a newly formed affiliate company. The nature of its operations were such that it was not appropriate for me to assume the comprehensive and proactive role I perform in my primary position. Although our group of companies faced those issues worldwide and I was able to talk with in-house colleagues in other countries, the only American attorneys involved were retained counsel who naturally had a different perspective. Thanks to a brief

conversation with a respected former ACCA chair, I modified my approach slightly and the arrangement has run successfully since.

A final note on networking. I firmly believe ACCA offers unparalleled and focused networking opportunities for in-house counsel, irrespective of location or practice expertise, but one should also have supplemental sources. For some it is the ABA, state bar, local bar, or a trade association. For me, the European-American and the New Jersey general counsel groups, both of which are somewhat unofficial, are most useful. No matter which networking group(s) you choose to become involved in, be interactive. The more involved you become, the higher the quality of your work.

Conclusion

Although not cutting edge or highly sophisticated, these approaches to leveraging an existing legal department's capability and expanding its efficiency are most effective. The current business climate, which is expected to last for some time, mandates that companies be versatile and intelligent in their use of resources. Legal departments will face the same challenges. Indeed, cost cutting in other areas may very well increase the need for a proactive, highly effective department. Using these resource multipliers will meet that need.

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Notes

1. *Law Department Functions and Expenditures Report-1997 Survey*, Altman Weil Pensa Publications, Inc.
2. For a discussion of how attorneys can effectively perform several roles, see John H. Ogden, *Legal and Business Functions: Corporate Counsel Juggling Multiple Roles*, *ACCA DOCKET*, Vol. 10, no. 2 (fall 1992), p. 22.
3. This is a certification by the International Standards Organization in Switzerland indicating that an approved quality management system is in place. ISO certification is useful in many markets and essential in others.
4. I wholeheartedly recommend making yourself unreachable while on vacation. Resource multipliers have made it possible for the first time ever to be incommunicado on vacation. Try it! Tell your clients you'll be better able to represent them after a refreshing vacation.
5. For a discussion of the benefits derived from such a practice, see John H. Ogden, *Litigating the Corporate Generalist, a Necessary Skill*, *ACCA DOCKET*, Vol. 12, no. 3 (summer 1994), 54.

Sidebar: Contract Attorneys

by Thomas Y. Allman
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Attorneys placed by agencies directly into the legal department can be particularly useful resources. Agencies employ or contract for the attorneys, popularly known as contract attorneys,

and the legal department has no direct employment relationship with the attorney. In some departments, anywhere from 5-10 percent of the lawyers on staff have that status and are performing work and interacting with clients under the supervision of attorneys employed on a full- or part-time basis.

Contract lawyers can handle specific long-term projects or meet needs deemed not important enough to try to challenge an employee headcount restriction. In some cases keeping a percentage of the workforce in contract status provides a built-in hedge against declining workload. The most effective use of contract lawyers is to give them meaningful work and consider them for full-time openings as they occur.

Some agencies offer a full range of benefits and a 401(k) plan to their employees. At a minimum, the agency must handle the deduction of payroll taxes and provide other controls to assure that there is no employment relationship created with the legal department. Properly done, with a clear understanding of the ethical and legal implications, the contract lawyer can be a highly effective supplemental resource of great effectiveness.