

# CONTROL OF OUTSIDE COUNSEL COSTS

Rees W. Morrison

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# OUTSIDE COUNSEL

## **Productivity | Outside counsel costs | Talent**

These are three of the most important challenges for those who manage in-house counsel and staff and are the topics of this three-part series.

The first quarterly report covered productivity, while the third one will assemble a number of articles on how to get the most from the talent in your law department. It will delve into succession planning, evaluations, engagement and other talent management topics.

Each of these reports, which we plan to send out quarterly in the order shown above, reprints five-to-seven recent articles by Rees Morrison, a lawyer and well-known consultant to law departments on management issues. Accompanying some of the articles is a relevant post or two from Morrison's blog, [LawDepartmentManagement.typepad.com](http://LawDepartmentManagement.typepad.com).

This second collection – on outside counsel costs – gathers several ideas for how law departments can better oversee what they spend on law firms. One article discusses variations from hourly billing retentions; another delves into different ways to structure a competitive bid auction. Another article questions some of the advantages often given when a law department dramatically reduces the number of law firms it hires – a process often called “convergence.” How to glean more from the information in invoices from outside law firms is covered in an article, and an overview piece discusses different models for cost control.

We hope you find these reports useful and thought provoking. If you have any questions or comments about them, please call Rees Morrison at 732-369-8076 or e-mail him at [rwmorrison@hildebrandt.com](mailto:rwmorrison@hildebrandt.com).

# CONTROL OF OUTSIDE COUNSEL COSTS

General counsel are not able to stop all legal issues from arising, but when they do and lawyers from outside are needed to help handle them, general counsel are expected to manage those law firm costs as effectively as possible.

An enormous amount has been written and spoken about the economic arrangements between law departments and law

firms, so this collection of articles and commentary can only spotlight some of the techniques and considerations.

On what basis should a law department pay its law firms? How should it select law firms to retain? What analytical data is available from the invoices of those law firms? These are the questions addressed by the articles that follow.

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Best practices	Alternative billing	Career growth
Contract management	Auctions	Creativity
Management blogs	Convergence	Professional development
Online resources	Invoice review	Succession planning
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## Put Eggs in One Basket?

*Many law departments believe it makes sense to consolidate their outside firms to save money. But that might be a poor strategy in the long run.*

BY REES W. MORRISON

**F**or law departments in the past decade, convergence—that is, consolidating the number of outside firms used in order to save money—has been all the rage. Many departments have dramatically reduced the number of law firms they retain. The convergers expect a number of benefits from a smaller panel of key firms. Those firms, they believe, will know the company better, impose less of a management burden in keeping track of transaction costs, offer better billing terms, and contribute special services.

But I think convergence may be coming apart. Let's take a look at some of the cherished beliefs behind convergence.

Let's first expose the claim that convergence builds institutional knowledge in the key law firms. The idea of institutional knowledge

depends on a certain stability. Turnover in large firms is so high, however, that many of the associates who work on a

law department's matters will depart within a few years.

In addition, no law department wants to pay outside counsel to "learn about the company's business." Whatever learning is picked up—the essence of institutional knowledge—therefore, becomes sporadic, idiosyncratic, and isolated. Add in ear-popping obligations for billable hours and there's the obvious question: How much time is left to learn much about a client's business? Consider also that lawyers in different practice areas have little training or incentive to share among themselves insights about a common client. Finally, the velocity of changes in the business world erodes the value of the bits and pieces of accumulated understanding.

The second claimed benefit, administrative ease, involves what

economists refer to as transaction costs. Whenever an in-house lawyer has to select a law firm, get to know its lawyers, and track a new billing format, there is some inefficiency. That's a transactional cost. Even if the transactional burden of working with hundreds of law firms was palpable, today there are many tools to minimize the stress.

As more law firms bill electronically, for example, transaction costs will decline because there will be less need to review invoices. Besides, even if one firm were handling all of a department's work, the best practice is to obtain a monthly invoice for each matter and review it. Other tools include extranets, which allow firms and departments to communicate more efficiently; early case assessments, which should reduce the length of time that lawsuits linger; and fixed-fee arrangements, which reduce the need for oversight because the law firm now has an incentive to manage efficiently. Each of these, in different ways, attacks the putative scourge of management and administrative hassle.

Furthermore, it's plausible that a boutique needs less managing on the matters that it specializes in than a large firm that assigns significant work to a fourth-year associate.



More fundamentally, it is likely that each in-house lawyer has her own small group of favorite firms. Multiply that typical number by all the lawyers who manage outside counsel and it appears that the law department uses too many law firms. But in reality, no one lawyer has a heavy transaction burden. And loyalty to incumbent firms, which dominates even in an era known for cut-throat hiring, lets each lawyer reduce transaction costs to an insignificant level.

Next there is the myth that coalescing work with a few firms leads to cost savings. Convergence efforts often mean using large firms. After all, if a large volume of work goes to one firm, especially if that work crosses specialty lines, bigger firms have an edge. But the big-firm billing rates undo whatever savings the firms might offer. Think of the economics this way: How grateful should a law department be to negotiate a 10 percent discount from a blended lawyer rate of \$400 an hour if an accomplished, veteran partner at a smaller firm bills \$300?

Furthermore, discounts are rampant nowadays. If many firms give them, how much more blood can come from the stone? If a firm has agreed to a 15 percent discount, can it go much higher for twice as much work?

### THE TROPHY CLIENT

If your revenue accounts for a significant portion of a law firm's billings, or even the largest chunk of a major partner's billings, you will be treated with respect and deference and given extra effort. The huge firm—think of the 17 firms in the nation with more than 1,000 lawyers—that handles your law department's \$2.5 million per year will treat you differently than the 50-lawyer firm for which your fees and work make you a trophy client.

A law department probably obtains better service when it is a major client of a moderate-size firm, than when it is a line item for a megafirm. For example, Richard Lavers, general counsel of Coachmen Industries, told one magazine: "Our philosophy is we want to be one of the most important clients for the firm. A company our size isn't that important to the megafirms."

Concentration of spending makes more sense than convergence of spending. If a law department lavishes 80 percent of its outside-counsel budget on 10 percent of its law firms, that is a high degree of concentration, even if the department pays 300 other firms the remaining 10 percent.

A law department that chooses 20 law firms to handle all its work will necessarily spend more on those 20 firms than when the department used 50 or 100 or however many firms. But if that department spreads its spending evenly among the 20, it will not gain the benefits of concentration.

Let's also puncture the balloon that converged firms will throw in additional benefits. Sure, it's nice if a law firm can provide an extranet or offer some CLE training or throw in some freebie, quick answers. But those extras can't replace excellent legal service delivered cost-effectively, or make up for its absence.

The putative benefits of convergence aren't enough to make a difference. In fact, there are additional drawbacks to convergence.

So-called partnering arrangements, the cousin of convergence, can deteriorate. A law department that selects a few

primary firms presumably wants long-term relations—a partnering relationship. But with that marriage, destructive forces can build. Short-term benefits work at cross purposes to long-term strength. For example, discounted fees by the firm repel the best associates from working on that client's matters. In addition, strong, trusting relationships spawn corner-cutting. In other words, the go-to firm starts cutting quality or over-billing the credulous law department. As everyone becomes comfortable, complacency on both sides can dull the sharpness of an arrangement.

Convergence flies in the face of our common-sense notion that no firm can be good in all (or even many) practice areas. The law department with few firms to choose from will have to either train the firm in some areas of law or accept mediocre service. One-stop shopping generally forsakes quality for convenience.

One also hears that larger firms have more capital and, therefore, can take larger risks and, perhaps, try out innovative billing arrangements. This is probably true to some extent, but large firms also have bureaucratic and cultural inhibitors. Executive committees must agree; new-matter committees have to weigh in; political agendas have to be accommodated; guarantees to other clients that they are getting the best pricing (the most-favored-nation guarantee) must be resolved.

What also happens is that in-house counsel (and often clients) resent being torn from their favored and trusted firms and forced to use unknown lawyers in a newly selected firm. Convergence is always imposed top down; it doesn't bubble up as the choice of the lawyers who work side by side with the law firms.

Unbundling also cuts away at the big firms' advantages. If you have a vendor handling discovery, a small firm doing first-pass document reviews, contract paralegals and an offshore provider doing legal research, and an in-house-counsel discovery group gathering most of the documents, the department is diverging. The management approach is different: Converge and obtain all the services you need with a few law firms, or diverge and find the best answers from a combination of vendors. As law departments become more savvy, especially as the spotlight of cost savings shines hotly on them, they will look more favorably on unbundled services.

To prune a company's roster of law firms is prudent, especially if the cuts are made based on thoughtful evaluations of the firms' relative performance. Over the past decade, however, crowds of law departments have carried high on their shoulders the blind champion of convergence: Reduce the total number of law firms paid.

Now, though, the convergence sheen may be tarnished by high costs, modest knowledge buildup, trivial extra services, and a plethora of other problems. With new management tools at their disposal and a rigorous scrutiny of convergence, progressive law departments may want to resist the urge to converge.

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## Do the Math on Your Law Firms

Take one \$600-per-hour lawyer, multiply by a messy case, and figure out what it really costs.

BY REES W. MORRISON

All law departments review their law firm invoices. Few law departments, though, extract management insights from those invoices. In-house counsel mostly view invoices as paperwork to be initialed and processed for payment by someone in accounting.

Yet invoices contain many useful insights, and the effort it takes to reap them is modest. Let's consider what a department can glean from the invoices of a single law firm and what it can learn from the metrics of company invoices taken from multiple law firms. My point is not so much about questionable billing practices, such as those Amtrak may have allowed, as it is about what law departments can learn from invoices.

Start with the invoices from your primary law firm over the past six months on a reasonably sized matter, say, a matter with billings of \$10,000 or more a month. How many total timekeepers (lawyers and paralegals) show up on that matter during the period? Of those timekeepers, what percentage of them accounted for 80 percent or more of the time on the matter?

### DRIVE-BY BILLERS

This figure gives you some idea of whether the firm has dedicated certain timekeepers to your matters. That is, does the firm have a core team supporting you consistently, a team that develops familiarity and experience? You usually want the fewest number of people working on your matters and the largest percentage of their time. For example, if a \$600-per-

hour partner has put in 0.2 hours each month, you might suspect that partner of sprinkling time among his matters. You might even take a tough stand on drive-by billers: "I won't pay for more than two people whose time is less than two hours in a month!"

Next, for those core team members who account for 80 percent or more of the total time, what percentage of a typical level of billing did they work on your matter? If you take 2,000 chargeable hours per year as a rule of thumb, and an associate billed 1,500 hours to you, those hours would be 75 percent of that associate's time committed to your work. A good allocation is between 50 and 75 percent of a lawyer's time, because if the percentage climbs above that, it is likely the associate has no other client projects and perhaps is padding the bills to fill his time sheet. As the saying goes, if you want something done efficiently, ask a busy person.

Admittedly, you can't have it both ways—as few timekeepers as possible, but none of them who are hitting their billing quota just on your matter. Learn from the invoices and then strike a balance.

Another way to analyze six months of bills is to break out the timekeepers by level. What percentage of the time was accounted for by partners? What percentage by associates? By paralegals? Stated very broadly, on typical matters, a plausible pattern would be 30 percent partner time, 50 percent associate time, and 20 percent paralegal or other time.

A variation on this method is to cluster the percentage of the total billings accounted into rate tiers: 30 percent by those who bill between \$300 and \$350 or more an hour, etc. If you look at the distribution of time by billing rate, you can tell a lot about the differences between law firms. It's not titles that you care about, although they correlate with billing rates, but it's cost per hour, leverage, and distribution of time. Hence, a plausible pattern for a large firm's bills might be 20 percent of the time accounted for by those who charge \$500 an hour or more, 30 percent of the time for those at \$400-\$500 an hour, 30 percent for the \$300-\$400-an-hour timekeepers, and the remainder for those lawyers billing less than \$300 an hour.

Management  
**Matters**

Or you can take a look at the ratio of disbursements—covering anything other than what falls under billable hours—to fees. A typical ratio for everything other than lawyers' and paralegals' fees (excluding expert witnesses) is about 10 percent of the total bill, or approximately \$9 of fees for every \$1 of disbursement expenses. This analysis might suggest how you could substitute your preferred vendors, such as trial consultants or photocopiers, instead of using the firm's vendors, and save money.

A different perspective looks at timeliness. How many days elapsed from the last time entry on a bill until you received the bill? A well-run law firm should get you the bill within 30 days of the period's close.

Another analysis involves creating a table. The table shows the name of each timekeeper on your set of bills down the left side while the columns show each month. Fill in the hours for the timekeepers during the months and you should start seeing patterns of consistency over time. It's a visual way to understand how the law firm has staffed your matter.

### Now, Compare the Firms

After you apply these analytics to a single firm's invoices, turn to the invoices of several other primary firms and make the analysis comparative.

With the wider set of data, you can calculate each law firm's effective billing rate. Total the amount of all the bills and divide by the number of lawyer hours on them. That gives you the effective lawyer-billing rate, which includes the time of paralegals and the cost of disbursements. That number can be compared to the cost per internal-lawyer-hour.

Second, calculate the difference between your internal per-hour cost and your firms' rates. Generally, the gap between the in-house lawyer cost and the law firm rate is between 40 and 60 percent.

For a third insight, look at the invoices from your group of law firms to test whether the effective billing rate matches the complexity of the matter. It makes sense that more sophisticated matters take more partner time and thus show higher rates.

A fourth insight comes from correlating the size of the law firm—measured by the number of lawyers at the firm at the end of the most recent year—to the firm's effective rate. Research has shown that the larger the firm, the higher the effective billing rate. You may come to realize that you need to more closely match firms to types of matters.

Finally, introduce yet another element into the invoice review. Match the invoice data to the inside lawyer who is chiefly responsible for the performance of the outside firm whose bills you are studying. Whatever patterns you learn from the bills may be partially a result of the oversight by that inside lawyer. It may be that the in-house lawyer has done a poor job of directing the law firm. That lawyer may not know or care about such notions as delegation, staff focus, and timeliness of billing.

All of this benchmarking is only useful if you speak with your law firms and push them toward more cost-effective practices. Present the comparative data to each firm and point out where they have less delegation, more associates who come and go, a high expense ratio, slower billing, or other indicators of inefficiency. Assess your progress with a similar analysis done six months later. For each measure of law firm effectiveness, you can show by an arrow and its length how much the law firm improved its lagging behavior or maintained its superior behavior. If you couple the message to outside counsel with a corresponding instruction to inside counsel, you will pack a one-two punch.

A sophisticated matter-management system can help you capture and calculate some of these metrics, especially if you use electronic billing to gather detailed data from bills, such as the level of the timekeeper. Otherwise, it does not take much time to extract the relevant data from your set of bills.

Keep in mind that this article is not about the kinds of billing abuses that third-party bill auditors should ferret out—block billing, differences in amounts billed for the same event, days of more than 10 hours billed, and long, suspicious patterns of hours. Trained and motivated in-house lawyers can spot and stamp out these poor billing practices. Nor does this analysis rely on outside guidelines and their restrictions. It is simply about looking at the data available from each invoice in a new light.

Bill review should not be just a drudgery to be gotten through. In fact, bills can tell you much more about the performance of your law firms and your own staff than most law departments realize.

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#### Use the Five Percent Trimmed Mean to give a more representative description of data (May 28, 2007)

The Five Percent Trimmed Mean, a descriptive statistic, can help law departments describe such data as their spending patterns, amounts of invoices, cycle times, and internal hours worked. The technique came to my attention in an article by Stephen J. Lubben, "Choosing Corporate Bankruptcy Counsel," *ABI Law Rev.*, Vol. 14, 391 at 397.

When a law department has a large set of numbers, but some are very high or very low, the analyst may choose to drop the top and bottom five percent of the numbers and then average the remaining numbers. That trimming leaves the remaining numbers as more representative, less skewed by the omitted extremes. Hence, when you use the Five Percent Trimmed Mean you concentrate on the 90 percent of the data that is in the most normal range.

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From [LawDepartmentManagement.typepad.com](http://LawDepartmentManagement.typepad.com)

**Prompt payment discounts with two twists – full review and end-of-year larger discount** (June 11, 2007)

In the fall of 2006, the 16-lawyer department of Circuit City Stores decided to speed up payment of law firm invoices in return for a discount on fees. According to Corp. Counsel, Vol. 14, June 2007, at 17, the trade-off was payment within 20 days of receipt of an invoice in return for a 3 percent discount.

Assume the typical client takes 75 days to process an invoice. Assume that one of those clients lops 55 days off that payment. On a \$100,000 bill for legal services, if the law firm reduces it \$3,000 it can invest the \$97,000 at money market rates of 6 percent or so, 0.5% a month. The \$3,000 discount shrinks by about \$300.

The general counsel of Circuit City, Reginald Hedgebeth, said that every firm except one agreed to knock the 3 percent off its bills. The lone holdout preferred to be paid fully, later.

In a new twist, Circuit City will make an accelerated payment to meet a firm's fiscal year deadline, but that special treatment merits a 5 percent reduction in legal fees. Another difference with Circuit City is that it builds in full review of the bills, by a paralegal and an attorney, before it makes payment. Some law departments agree to pay bills very quickly, but reserve the right to review the bill thereafter (See my posts of May 4, 2005; Aug. 24, 2005; Aug. 27, 2005; and Oct. 14, 2005, on prompt payment schemes.).

**Timekeepers other than partners, associates and paralegals** (June 27, 2007)

Any law department with electronic billing can break down its invoices by timekeeper level. The proliferation of timekeeping levels is remarkable.

The bare minimums of levels are in law firms that have partners, associates, and paralegals (or legal assistants) (See my post of June 7, 2006, on the difference between paralegal and legal assistant.). More elaborate gradations of timekeeper levels include senior associates, nonequity partners, and litigation support personnel.

Even beyond those additional timekeeper distinctions are summer associates, docketing clerks, senior partners, and several other mutations such as project managers (See my post of Aug. 22, 2006, for more on this role.).

Should this spread of timekeeper categories matter to law departments? Absolutely, if a person moves to a higher level and for that reason alone their billing rate jumps more than some annual adjustment amount, then law departments care if there are many rungs on the ladder. Rungs costs them more.

Law departments also care because the finer gradations tell them how the law firm views the importance of matters. Look at the level of professionals they assign to the department's matters. Fine distinctions between levels tell more about staffing than if only the original three categories are used (See my post of Sept. 5, 2005, about nonequity partners.).

**Pareto's law as applied to timekeepers on a matter or for a client** (June 27, 2007)

A commonplace holds that, roughly speaking, 25 percent or fewer of a law department's law firms account for 75 percent or more of all its billings. Likewise, 25 percent or fewer of a department's matters account for 75 percent or more of its spending on external counsel during a year.

A third manifestation of Pareto's venerable generalization (See my post of Sept. 4, 2005.) is that it may well be that 25 percent or fewer of the timekeepers on the matters of a particular client are responsible for 75 percent or more of the billable hours or the dollar value billed or both. This should hold true because to some degree the same lawyers are assigned to service the same client (See my post of Dec. 8, 2006, about core teams in law firms.).

To refine the ratio a bit more, I suspect that each of the above ratios is more like 20 percent to 80 percent, but the point is the same.

## Cost Control Patrol

*Corporations have tried many ways to contain and measure spending on outside counsel. It's time for a new approach: Enlist the in-house lawyers.*

BY REES W. MORRISON

**M**odels of cost control have long guided law departments in their dealings with outside counsel. From metrics models like Six Sigma to trends of the day like electronic billing to the embrace of procurement as a panacea, an observer can spot, name, and describe each model's essential attributes.

Over the years, five distinct approaches to cost control have evolved. A sixth model, which puts lawyers front and center in the effort to contain costs and measure value, is likely to arise in the future, combining some of the best features of past strategies.

As with all models, one might never find a law department that exactly fits a model and only one model. Rather, most departments have mixed and matched. The lesson, even so, is that understanding the core definition of each model lets you more knowingly craft the hybrid that best serves your resources and cost-control goals.

### 1. We're legal professionals, leave us alone.

For years preceding the late 1980s, no one paid significant attention to the spending by law departments on outside counsel. Lawyers were lawyers, and what the high priests did within their sacred law departments was incomprehensible to mere lay people. Law departments liked this model because it left them alone.

Bills submitted from firms "For services rendered" came to embody this model, as did announcements by law departments that "We exceeded our budget."

The model was one of the magisterial professional—unquestioned, little understood, trusted implicitly. Business managers acceded to this model because they did not have to attend to the arcane intricacies of legal cost control. Comfortable and complacent, they surrendered themselves to doing nothing about this unique area of knowledge possessed by lawyers.

The demise of this model came about because of its evident weaknesses: costs became a pressing concern in all companies, law departments adopted management precepts, and business managers increased their general sensitivity to the law.

### 2. You can only manage what you measure.

The defining attribute of this second model of outside counsel cost control, was (and remains) metrics.

General counsel installed matter management systems to capture and report on spending metrics. Uniform task-based billing methods (UTBMS) allowed law departments to amass more data. Total Quality Management, or TQM, projects developed histograms and other statistics. Balanced scorecards came on the law department scene with a wider array of metrics, and benchmarks became omnipresent.

Consultants and vendors collected numbers against which law departments could measure their performance. Was your outside counsel spending less than 0.25 percent of your company's revenue? Six Sigma is the latest manifestation of the metrics model.

Speaking the language of metrics allowed managers of law departments to communicate with their business colleagues. Metrics also gave a semblance of certainty to managing in an otherwise qualitative world. If you have four lawyers for every paralegal, at least you can defend yourself as typical.

Metrics spawned comparisons, trends, and endless PowerPoint graphs. What many people did not want to admit, however, was that metrics fall far short of illuminating the core functions of in-house lawyers: making judgment calls, negotiating fair positions, selecting knowledgeable firms, effectively managing the work of those firms, and disseminating the knowledge they created. Then too, possession of a results number—like 40 lawsuits resolved annually per litigator—told very little, if anything, about what a department should do to improve.

### 3. Technique of the day.

A third model consists of a plethora of techniques. Techniques are individual initiatives, programs, or processes that can stand alone against a tide of law firm costs.

At various times during the past decade or so, law departments seized upon reducing the number of outside counsel in

initiatives widely known as convergence, instituted programs to encourage alternative dispute resolution (ADR), and set up early case-assessment processes. Others beat the drums for budgets from their law firms. The technique of electronic billing has been the latest shiny bauble. Management conferences and legal journalists seize upon new techniques and immediately proclaim many of them "trends."

Techniques, by which I mean targeted activities aimed at a specific control point for outside counsel spending, definitely have their place in law department management. If a department does not try outside counsel guidelines, for example, it is missing a lever to shift spending patterns. If it does not have a list of approved counsel, costs can escalate. But a grab bag of techniques fails to grasp systemic causes of outside counsel spending.

Moreover, for a general counsel, techniques seem always to be activities that someone else should do, that pass the unpleasant work elsewhere. Who really wants to enforce a new process of bill review? Further, strategies can change from one moment to the next according to the latest technique du jour. Today, let's experiment with alternative billing; tomorrow, we'll favor small law firms; in a few days, perhaps we'll hire a bill auditor.

A techniques-based model raises the risk that no one will step back and try to coordinate the techniques or recognize contradictory initiatives. How can you shrink your stable of law firms yet tout that you "hire the lawyer, not the firm"? The continual changing of the techniques guard also made it difficult for law firms to comply.

#### **4. Let your administrator do it.**

In the past decade, a fourth model has walked the law department runway, one where the administrative staff of law departments plays a definitive role. For example, at one pharmaceutical company, a lawyer with a business degree oversees cost-control efforts. At a mortgage company, a business manager marshals metrics and rides techniques in hot pursuit of outside counsel foxes. Many administrators oversee budgets of outside counsel spending, analyses of matter management systems, and the enforcement of outside counsel guidelines.

This administrator model represents the evolution of the prior three. The first model, and perhaps the oldest of the group, was hands-off; the second looked to numbers; while the third embraced isolated techniques. This fourth model introduces people, but at the level of support staff. (As we will see, the future model brings lawyers to the front line.) The advantages of the model follow from the presence of people—they can think, adapt, and create. The disadvantage, however, is that administrative staff have little clout. They cannot develop policy or change course. They implement rather than create.

#### **5. Procurement to the rescue!**

Given continuing soaring legal costs, it was inevitable that law departments (or their companies) would move toward a fifth model, the procurement model. Procurement professionals bring their viewpoint to the process of selecting, managing, paying, and evaluating outside counsel.

Procurement likes lowering unit costs. It likes standardizing all aspects of the process and conducting internal audits on

compliance. Procurement likes online auctions and market discipline, not "partnering." Procurement moves the model of administrative support one step further, because procurement has more clout.

Working against the success of the procurement model is its ignorance of the law firm/law department relationship and the world of professional service providers. Purchasing pencils differs enormously from retaining a partner who intimately knows the Sherman Act.

It would be facile to observe that all law departments should borrow from the best of each of these models. One can and should apply key attributes of each of these models. Only professionals can knowledgeable manage other professionals. If you don't have numbers, you can't begin to manage a process. If you don't have steps to take, techniques to put into play, you can't bring down those expense numbers. If you don't have support staff who can help implement, you may be misusing your lawyer time or relying too much on consultants. If you don't think in procurement terms, you can be undisciplined, nonprocedural, and amateurish.

Still, having acknowledged the strengths of these five lenses for viewing outside counsel cost control, it's possible to see what has been underplayed. I foresee that a sixth model will arise.

#### **6. Enlist the lawyers.**

For law departments trying to manage external costs, perhaps the most crucial piece of the puzzle is found in the myriad, day-to-day interactions between in-house lawyers and those from the outside.

Inside lawyers must be enlisted in the struggle. They must feel they have a stake in the game, in the confrontation over value obtained for dollars spent. Currently, bonus decisions rarely consider cost control. Rarely are the lawyers at the coal face, who should be actively scraping away at costs, trained in the many techniques and tools of cost discipline. Almost never do evaluations set fiscal constraint objectives.

To the contrary, it serves the personal interests of in-house lawyers to have excellent relationships with outside counsel, and a key part of maintaining that bond is paying firms whatever they charge. The inside lawyers, who wield the most influence, have been left out of the picture.

This sixth model of cost control will incorporate the best of the previous five models. The professionals who interact with outside counsel will make use of metrics and techniques and administrative staff to help them. They will draw on some of the capabilities of procurement, but ultimately need to apply the lens of a lawyer to the dollar cost-cutting. They will have personal and professional reasons for curtailing costs, and the sixth model will take center stage.

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## Going, Going, Sold

*When law departments auction off legal business, companies can save money. Here's a guide to choosing the best type of auction and avoiding the traps.*

BY REES W. MORRISON

In their bid to reduce legal fees, many law departments auction off their legal business. In a law department auction, law firms compete to be selected to handle a company's legal work. First, the law department describes the work likely to be needed. The firms then propose how they will handle the work and for what fees. This system has worked well for companies such as Pfizer, Tyco, Ingersoll-Rand, Disney, and Schering-Plough.

As an example, in 2001, Viacom chose one law firm from among 20 competing ones to handle its patent prosecution work and to be one of its top IP litigation firms. On a larger scale and with a different objective, General Electric conducted an online auction in which about 142 law firms competed against one another to provide GE with their lowest rates in seven practice areas.

Most commonly, a law department auction covers a portfolio of matters to be handled over a period of 12 to 36 months. Bidding out a single transactional matter or lawsuit presents more challenges, to both the law department and the bidding firms, than bidding a group. Even so, TXU's law department has adopted a policy that requires outside counsel to bid on any litigation costing \$75,000 or more.

Although auctions are generally a great idea for law departments, it's a good idea to have a clear understanding of the different types of auctions and how to choose the right one. This article describes four kinds of auctions and how law departments should choose among them. Here, also, is advice about putting an end to several problematic aspects of auctions: one-shot bidding, unstated assumptions, the focus on costs, and the winner's curse.

### ENGLISH AUCTIONS

The best-known kind of auction is the so-called English auction. Bidders offer increasingly higher amounts until no one goes higher.

The last person to bid purchases what was for sale for the last amount he bid.

In the context of a law department, an English auction could mean that a department sets a budget and firms bid to handle more and more work for that amount. For instance, a law department might say it will spend \$2 million on real estate matters in the United States. The more states in which a law firm agrees to handle all those leases, subleases, and related transactions, the better the bid.

### DUTCH AUCTIONS

So-called Dutch auctions (or reverse auctions) characteristically have successive bidders lowering the cost for which they will do something. Among a group of law firms hoping to be hired to handle a company's environmental matters, one says that \$1.5 million a year will be good enough, while another will take the work on for \$1.4 million, but the law department selects a bid of \$1.3 million.

Granted, in auctions for legal work, law firms typically bid lower and lower amounts that they will accept to handle the same bundle of work. From the law department's side, that means the gap between the anticipated cost of having outside counsel handle the matters and the winning bid grows larger and larger.

### VICKREY AUCTIONS

The third kind of auction that general counsel should understand is called a Vickrey auction, named after William Vickrey, the British economist who first wrote about this kind of auction.

The law firm proposing to be paid the lowest amount gets the work—assuming all other things are equal—but will be paid the next best amount bid. The idea is that the price the winning bidder pays is determined by the competitors' bids. Of course, other things are NEVER equal. All the law departments that I have consulted to on competitive bids look at many factors in addition to, and more important than, price. They look mostly for experience in the area of law, for example. So if work handling all trademark clearances and registrations for a company ends up with firm Festo, Tertiary & Design

bidding \$2.4 million in a reverse auction, but the next bid was \$2.5 million, Festo wins at the amount of the second-best bid, \$2.5 million.

Both research and theory have shown that a Vickrey auction leads to the best outcome for law departments. A Vickrey auction also diminishes the winner's curse, described below.

### CONTINGENT AUCTIONS

Law department auctions can also use contingent bids. Let's say a retailer wants to hire one firm to handle all its product liability cases. The law firm of Palsgraf, Proximate & Cause can say, "If another firm bids \$2 million to handle it all, we will bid \$1.9 million."

Of these four kinds, Vickrey has the strongest backing from academics who have studied the best way to conduct an auction. Contingent auctions add complexity, but they may have a place in the final stages of an auction, where the remaining few law firms can toss a contingent hat in the ring. Dutch and English auctions are most familiar to everyone. I believe it's usually too complicated to explain to law firms the law department's projected cost and have the firms bid larger gaps, as in English auctions. I favor Vickrey-Dutch auctions with a contingency or two available at the end.

### PERNICIOUS TRAPS

Regardless of the type of auction a law department conducts, the department needs to avoid five pernicious traps.

**Unanticipated major changes in workload.** A good practice for a law department if it insists on a fixed fee for handling certain work is to protect both sides with what's called a "collar." A typical collar might be that if the actual fees of the law firm are more than 15 percent above the fixed-fee payment, the law department will absorb 50 percent of the excess. On the other side, if the actual fees come in 15 percent or more below the fixed fee, the law firm will rebate 50 percent.

With a collar, or one of its infinite permutations, both sides feel more comfortable that if the actual workload varies significantly from the projected workload, they will avoid rank injustice.

**Single-shot bidding.** For many reasons, if your law department lets firms submit only one proposal, no one fares as well. Far better to cull the first round of proposals, eliminate the weaker ones, and then tell the second-round bidders what was bid, although without disclosing which firm bid which amount.

Not that you say, "Firm A bid \$4 million." Rather, you say, "The five bids of the second-round firms were X, Y, Z, A, and B." With that information each firm—knowing its own bid—can recalibrate based on how it interprets the bids of the other firms. What is likely is that the extreme bidders—at both ends—will sharpen their pencils and ponder why their bids were so far out of line. The end result will be better for both sides.

**Inflated bids on unexpressed assumptions.** One of the crucial causes of wide discrepancies between firms in their bids and a dodgy final arrangement are the assumptions law firms make. For instance, if a company wants one firm to handle all its ERISA and benefits issues, the law department will get quite different quotes if one firm assumes that human resources has a complete database of all compensation plans, while a second firm assumes it will have to create one; or if one firm assumes that the inside benefits lawyer will retire within a year, and the other firm assumes that person will stay on for years and hire a paralegal.

What to do? Ask all the firms to state the assumptions they've made about the company and external events. Then circulate to all contenders the assumptions and how the law department addresses the reasonableness of each of them. It's best to circulate all assumptions to all proposers, so that the information level remains equally high all around. On these hypotheticals the company could describe the existing database and could stipulate that the current in-house legal staff will remain for at least two years.

From my experience of having consulted on seven competitive bids, I cannot stress too much the crucial step of smoking out assumptions. The proposing law firms and the law department should both state as many assumptions as they can and how they are relying on them. For example, "Our bid assumes no more than four investigations in any 12-month period." Only by doing that can both sides narrow the range of uncertainty. Thus, if the law department responds with, "No, assume no more than two investigations," the law firms can more accurately bid on the work.

**Whether to disclose hours.** If you tell the bidding firms the amount you spent on the type of matters over the past few years, the firms will think in terms of some reduction from that figure. As a consequence, firms will all tend to think in terms of a reduction from that amount. "If MegaCorp has spent \$8 million on average for its M&A work, we'll bid 15 percent less." But if hours frame the analysis, firms with lower billing rates will bid more aggressively.

In other words, if you convert the amounts you have spent into lawyer hours worked, firms will diverge more in their bid amounts, since they have different billing rates. You can convert amounts spent to lawyer hours by figuring out a representative figure for the blended billing rates of the firms that did the most work and dividing that amount into the total spent on the firm.

It's far better to say, "We have averaged 6,500 lawyer hours per year on our patent prosecution work," than it is to say, "We have averaged \$1.625 million."

**The winner's curse.** The winner's curse has become the memorable term for the likelihood that the highest bidder (in an English auction) or the lowest bidder (in a reverse, Dutch auction) has often bid too aggressively and made a mistake. If six firms propose to handle all of a company's public-debt law needs, and assuming they are all competent and have a solid understanding of the company's likely needs, then the one that prevails has probably overshot the mark. The winner is cursed by having bid too aggressively.

Neither the law department nor the firm is served by a gross error in pricing. The remedy comes partly through a Vickrey auction and partly through multi-round bidding, collars, exposure of assumptions, and describing the work in terms of activities and hours rather than in dollars.

Auctions make sense for law departments that foresee a sizable expenditure, such as more than \$1 million, in the coming one to three years. Knowing the strengths and weaknesses of four kinds of auctions, and some of the common pitfalls, both the law departments and the law firms that they select will do better.

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Thursday, May 17, 2007

## Law Department Management

# The Money Flow

*Analyzing spending data on outside counsel.*

BY REES W. MORRISON

**A**NALYTIC reports on outside counsel spending help law departments determine how efficiently their money is being spent. The common practice is to prepare yearly reports that contain three areas of information: the amount of money spent on law firms in aggregate, the amount spent on the law firms hired most frequently and the absolute number of law firms paid, a measure referred to as convergence. But that trio of reports is a bare minimum.

To truly gain insight into how the money has been spent, other methodologies are available. These methodologies serve a law department in numerous ways. For example, one method allows a law department to understand how consistently it has used certain firms; other methods determine how much



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money is spent on litigation versus non-litigation activity. Other perspectives on expenditures, included in this article, arise when examining activity by practice area, by size of billing firm, by in-house counsel who approves bills, by fees compared to disbursements, and by consistency of law-firm use over time.

More sophisticated breakdowns and presentations of data about what has been paid to outside counsel spending will pay off. The following 10 methodologies are dependable techniques to learn more from your data. For each technique I also offer suggestions on what can be done based on the analysis and the resulting insights.

**1. Firms Paid the Most Over Three Years.** A general counsel should look at how consistently the law department has used its primary firms during the past three years. When a law department understands how consistently it has used certain firms, or conversely how it has scattered its spending, it is in a better position to negotiate favorable rates or concentrate its spending. A law-firm usage map, which can be done with Excel, helps organize the information.

Identify the 15 firms on which your department spent the most for each of the past three years. List all the firms, one per row, and the amounts paid them during the year. Then make the same list for the next year in the two columns to the right, and for the



final year in the final two columns. Sort the firms alphabetically by the names on each year's list. In Excel color each year in which each firm was in the top 10. One or two might have made the top 10 all three years. Another handful will have been in two of the three years, and so forth.

This map of consistent usage shows vividly how consistently the department has turned to its primary law firms. The total spending on those firms may account for half or more of the department's external spending during those years.

**2. Spending by Practice Area.** A thoughtful law department should know how much it spends by type of matter. The crudest breakdown differentiates litigation and non-litigation spending. Typically litigation accounts for something over half of all payments to outside counsel.

With a more granular breakdown by practice areas—such as HR, real estate, corporate securities—a law department can look for trends over time and perhaps fine-tune its internal staffing. If enough is spent in an area of law each year—on the order of \$400,000 or more—it may be cost-effective to hire a lawyer to handle that area of law and replace the more expensive outside counsel with the less expensive inside lawyer. A general counsel can also see whether the department spends enough in a certain practice area over a two-

or three-year period to consider a competitive bid. Unless the total comes to \$500,000 or more, a full-scale competitive bid process does not make sense. Finally, with this detail of breakout, a law department will know how many different firms it uses in each practice area.

**3. Cost Structure of Law Firms by Size.** Another analysis focuses on the correlation between the number of lawyers in the law firms that a department retains and the amount of money the department spends on the firms. In that regard, a large manufacturing company recently gathered data of the company's law firms and found a clear correlation between hourly rates and firm size. The analysis revealed that the average rates for law firm partners grew as the number of lawyers in a firm grew. Larger firms charged higher average partner rates. Based on the company's data, each additional 100 lawyers raised the average partner rate \$13. Thus, on this large set of data, if rates of a 500-lawyer firm averaged \$400 for its partners, rates at a 600-lawyer firm would average \$413 an hour per partner.

A similar analysis of associate rates from the same source found a narrower rate spread. In other words there was less variability in the associate billing rates. With the use of the same methods to correlate size of firm and average partner rate, the data showed that each additional 100 lawyers meant a \$7 increase in average associate rates. There is a price to be paid for the use of large law firms, and until a law department looks at its own spending habits by size of law firm, it may not appreciate that fact.

**4. Expenditures by Inside Managing Attorney.** A fourth analysis breaks down the spending on law firms by the inside lawyer who approved the invoice. Usually one or two lawyers ride herd on the largest portion of bills. Some lawyers are better at managing the costs of outside counsel than others, but it requires an analysis of bills, done over a period of time, to identify them. Those in-house lawyers who are lax may need to be prodded and helped.

When a department focuses on approving lawyers, it has a better handle on the lawyers who make the most difference in spending. Perhaps they need more training, more support, or a lighter load of invoices to review. An analysis by approving lawyers also overlaps with an analysis by spending per area of law because the approving lawyers are usually practicing within an area of law.

**5. Fees Compared to Disbursements.** Some law departments look at their outside counsel bills and analyze the fees paid them as compared to the disbursements paid them. Law firms differ considerably in how much they spend on travel, lodging, photocopying, and other out-of-pocket charges. Disbursements per fees charged may not tell much because

both out-of-pockets and professional charges vary. Calculating disbursements per month gives a different understanding of outside counsel spending and a basis for comparison among firms.

To cite one example, some law firms have recently ended the long-standing practice of charging clients the costs of electronic legal research. Previously, firms resorted to a discounted "pay-as-you-go" method with its electronic research vendors, and then billed clients for the actual (discounted) charges incurred. Once firms selected one of the major electronic research providers as their single-source provider and negotiated fixed-price contracts, some of them took the next step of including the cost of electronic research in their lawyers' billing rates.

The guidance that comes from this perspective may inform the outside counsel guidelines of a law department or the rules that it invokes through its electronic billing software. Law departments should push their firms to manage disbursements

Accounts Payable. This is an indicator of process streamlining; the goal ought to be 100 percent.

**8. Statistical Characteristics of Bills.** A statistically minded law department might look at various characteristics of the invoices, such as average size, number per matter, and dispersion. It can pick out timekeepers per bill and the amounts on the bill by level of timekeeper.

Armed with this knowledge, a department might urge law firms not to bill unless an invoice exceeds \$1,000, simply to reduce the administrative inconvenience and cost. Or, a law department might insist on each bill covering only one matter. Alternatively, a law department might push for blended billing rates or a core team of approved timekeepers.

**9. Rolling Averages.** Another form of analysis calculates the rolling average of outside counsel spending over three- or four-month periods. That view gives a better sense of trends of spending than the annual snapshot does. Most of the reports described here disclose a different view of the department when a general counsel looks at rolling averages. Many outside counsel expenses spike up or down in a single month, so a multi-month figure evens out those perturbations and gives a better sense of a baseline rate that is representative of spending over a period of time.

**10. Spending Per Matter.** A tenth lens looks at spending by individual matters. Here the objective is to identify milestones so that different matters can be compared on common activity points. For example, what is the per month cost for different firms that handle discrimination claims to move for summary judgment? Or, the report can show monthly burn rates (how much the department spends each month) or the number of timekeepers. Ultimately the goal is to identify drivers of costs because those are where the leverage can be applied and savings obtained.

Each of these techniques for extracting more insights from outside counsel bills in the aggregate has usefulness. Clearly, these techniques depend on there being a matter management system that has captured the necessary information. Which ones appeal to a particular law department and its spending patterns depends on many factors. All of them have variations also, but in the end, a composite understanding of bills, from different analyses is greater than the sum of the parts.



A thoughtful law department should know how much it spends by type of matter. . . .

A law department can look for trends over time and perhaps fine-tune its internal staffing.



and try to have firms use preferred vendors and national contracts.

**6. Speed of Billing and Payment.** Some law departments look at how timely their firms produce bills. The furthest extreme of timeliness is when a law department can look at hours billed directly and immediately on the law firm's time and billing system. On the flip side, general counsel ought to heed their own promptness in paying bills. If lawyers sit on bills and the sign-off procedure is slow and clumsy, the department loses valuable management information. The law department wants bills delivered promptly. Despite that, I have not felt that prompt payment discounts are an effective tool, but some law departments have had success with them.

**7. Electronic Bill Ratio.** More and more, law departments keep track of what percentage of their outside counsel invoices they process through an electronic billing system. The more bills that pass through e-billing, the less data entry and trivial review time is required. E-billing also speeds up routing of bills and can enable a deeper level of reporting.

Related to this report is that a law department can track what percentage of its bills and amounts paid flow electronically through to

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Rees W. Morrison

From [LawDepartmentManagement.typepad.com](http://LawDepartmentManagement.typepad.com)

**Picking at metrics on bill-review time saved with a fixed-fee arrangement** (July 3, 2007)

A small item in a recent Corp. Exec. Board document opines that “Fixed fees save about 100 hours of scarce lawyer time a year because in-house counsel no longer need to review invoices. The annual renegotiation process takes around 6-8 hours of general counsel time.” By my quick calculation, since internal lawyer time costs around \$200 an hour (See my post of April 3, 2005, with its estimate of \$150 an hour.), the net saving would be approximately \$16,000. But the basis for the purported savings of hours is murky.

Whence the 100-hour figure? The page refers to Coachmen Industries, which might be the source of this estimate, and the accompanying footnote simply says CEB “research.” Perhaps the author estimated that to review normal, hourly rate invoices takes about eight hours a month. If a single matter is under the arrangement, there is no way to reach the 100-hour savings mark. No one pores over bills with that much time and attention.

To me, the negotiation figure for the general counsel is anybody’s guess and varies wildly. I think it also unrealistic to maintain that a fixed-fee arrangement entails no maintenance time during its term.

**Whether law firms “pad their bills” and the trend in perceptions of that** (July 17, 2007)

From Inside Counsel, July 2007, at 58, its latest survey of in-house counsel and law firms asked for the third year in a row the views of in-house and external counsel on the statement “Most law firms pad their bills.”

In 2005, 36 percent of the in-house lawyers agreed with the statement, 37 percent disagreed and the remainder were neutral. Last year, 42 percent agreed while 33 percent disagreed; the latest survey found that 39 percent agreed and 37 percent disagreed.

Bear in mind that the number of law department respondents has grown steadily, from 295 two years ago to 407 last year (about 200 were general counsel) and to 862

this year (40% were general counsel). Thus this year more than doubled the number of previous participants from law departments and doubled the percentage who are general counsel (See my posts of July 16, 2005, on the first survey; and Aug. 26, 2006, for the second survey and questions on this particular statement.).

Over three years the distribution of responses has remained remarkably stable. Mistrust of bill padding runs deep. However, a “neutral” response might mean that the lawyer has no view on this issue – which leans, in my mind, toward not agreeing that padding is rife – or that they believe the situation is too close or too complicated to oversimplify to yes or no, or even that they don’t care about the issue at all, which leans toward “disagree.”

Third, the number of respondents who agreed dropped about eight percent, from 42 to 39 percent. Assuming the shift is not attributable simply to margin of error, how can the magazine hold this finding out as a bad situation when a much larger and higher-ranked population expressed a nontrivial improvement in their views?

**A test to see whether discounts on billing rates have saved money** (June 30, 2007)

One way to test whether discounted billing rates actually translate into savings is to compare the post-discount effective rate of a law firm to its pre-discount effective rate (See my post of June 13, 2006, for the definition of “effective billing rate.”). To do so take a representative selection of invoices from the law firm that has granted you a discount. Divide the total professional fees by the total professional hours as billed and you will know the effective billing rate.

If you then do the same calculation for a large sample of invoices after the discount has been granted, you will know or at least have an inkling whether the discount has lowered the firm’s effective rate.

Yes, all matters are not the same in the pre- and post-discount bundles but if the billings are large enough, the figures should be representative, especially if the types of matters are fairly similar. Billing rate increases may have taken effect, but you can reduce any invoices subject to higher rates by the higher rate percentage and then make the comparison (See my post of May 26, 2006, that derides discounts.).

# New York Law Journal



Thursday, July 19, 2007

## Law Department Management

BY REES W. MORRISON

**W**HEN a law department retains a law firm to handle a large matter or a series of matters, the law department should make sure the law firm selects a core team. The core team should consist of the fewest associates, paralegals and partners necessary to get most of the work done competently and timely. For smaller cases or matters, the core team might be as small as a partner and an associate. For larger matters or a number of matters over a period of time, a core team might expand to as many as six or eight lawyers and paraprofessionals.

With a core team, a law department can reasonably expect 70 percent or more of the work on the matter done by the team members. What the core team is designed to lessen is associate churn, where a number of associates come in, bill some amount of time on the matter, and then disappear. The law department might go further to curtail in-and-out billing and say that no one else can charge time to the matter without the prior permission of the lawyer in the law department who is responsible for it. As an inducement,



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*Dedicating the same outside lawyers to most matters has more advantages than drawbacks.*

the law department might allow the firm to charge it for some amount of intra-team meetings or group development activities. After all, the core team should be the repository of institutional knowledge about the client and its matters.

As with all outside-counsel management techniques, advantages and disadvantages can be put forward for core teams. Note, however, that an argument for core teams by a law firm might be opposed by a law department, and vice versa. My view is that the advantages outweigh the disadvantages, and I will conclude with some broader consequences if law departments apply this technique. Consider six reasons to argue against a core-team arrangement.

The first two arguments against core teams involve the work itself: the need for specialist lawyers and the ebbs and flows of work. A core team might legitimately need the services of specialty lawyers. The core lawyers might know how to do an asset acquisition, but if

an environmental problem bubbles up, the team will need to seek counsel from an environmental lawyer. If the law department has required prior approval before a specialist can pitch in, an additional level of administrative complexity and delay has been imposed.

As to fluctuations of workload, if there is enough work to keep the members of the team busy, all is well. But lawsuits and transactions have high tides and low tides, and if all you can charge your time to is a matter where the tide's out, you have a problem of morale and economics. Yes, it is plausible that a core-team member can work on other matters of the firm during down periods, but that kind of thinking cuts against the grain of what a dedicated group means. You can't just turn spigots of chargeable work on and off.

An expectation in a core-team arrangement is that the law department will give the law firm enough work to keep the core team members adequately occupied. That might be a problem at some times, given the occasionally uneven flows of work.

Two other drawbacks of core teams have psychological components. I think of them as disenchantment and interpersonal friction. One drawback for a law firm that designates certain people to be on a core team is that one or more of those team members may come to wish for more variety in their responsibilities. To work mostly on one matter or one type of matter for a client lacks appeal for those who wish to broaden their experience rapidly. This is an example of an argument that cuts both ways. To a law firm, similar work done over and over bores ambitious associates; to a law department, efficiency comes from specialization and repetition.

It is also a knock on core teams that the members must work together. What if you

are an associate put on a team with a partner that you dislike? What if a team member is irritating or offensive?

A core team has dynamics of its own. When lawyers work on a purely transactional basis, shuttling from one project to the next, no one needs to be as concerned about how the people get along with each other. If a core team anticipates several years of work on certain kinds of matters, it becomes much more important to mobilize the team as a team. Handling group dynamics often does not fall within law firm partners' expertise.

With the above issues, consider turnover and administrative burden as the last two of the six issues. Given the high levels of associate attrition in large law firms, a core team might lose members or dissolve completely. If one associate leaves on maternity, another takes a job at a different firm and a third shifts to part-time work, the core team becomes an empty notion. Law firms do not want to commit a group of lawyers to a client if the group might erode and change, despite the best efforts of the firm.

Part of turnover might even be poaching. One might imagine some law firms being sensitive to the risk that a core team member will wish to join its corporate client. After all, both sides will get to know each other very well. My view is that the departure of a lawyer to a client is good for both sides. On a larger scale, in this age of lateral mobility, if a self-contained unit in a law firm handles much of the work of a particular client, the law firm is more vulnerable if the partner-in-charge decamps for another firm.

The administrative burden comes down to restrictions on partners. Some partners may feel that the core team approach ties their hands to some degree when it comes to staffing matters as they see fit. It does, and that is one more manifestation of the trend toward law departments intervening in the operations and decisions of law firms. Over time, law department lawyers will contribute to the evaluations of associates and partners in the firm.

To summarize these six points, some people don't favor core teams because they can't be assured of steady work streams, they conduce to boredom, they risk turnover, they foment personality clashes, and they may be awkward regarding the exigencies of specialization. They also create some extra amount of administrative oversight on both sides.

Sounds a bit bleak, perhaps, but the advantages of a core-team arrangement, in my

view, significantly outweigh the disadvantages. Let's consider six of them, starting with three that boost client satisfaction: familiarity with the business, clear roles, and selection of lawyers.

### Productivity and Collegiality

As compared to a system where each matter of a client might be staffed with different lawyers and paralegals, with dedicated core teams it is easier for a law firm to develop a deeper understanding of the client's needs and styles. The members of the team will meet the client's executives and lawyers, learn the history that led up to the legal services needed, and identify more with the client. The business savvy of a team is a strong point in its favor.

Clients also like to know clearly who has what role. Where there is a core team at a firm, the law department knows whom to call, and likewise the team members at the firm know the players on the client side. Less time is

“Consistency of staffing avoids the repeated learning curves of drive-by billers. Everyone on the team can build on their accumulated experience and turn out work as productively as possible.”



taken with intermediaries, like relationship partners at law firms, and more time can be devoted to getting the work done, well. Over time, internal clients work with the team members directly.

Third in this group is that the law department has much more influence on staffing of its projects. It is also true that the law department has a greater stake in the assignment of members to the core team than when the law firm chooses people unilaterally. Some law departments see that as a salutary power whereas others may see it as an imposition, reasoning: 'Let the law firm staff it as it deems appropriate.'

The other three reasons why core teams are a good idea basically boil down to productivity. Experience increases output; training increases; and collegiality helps glue it all together.

Consistency of staffing avoids the repeated learning curves of drive-by billers. No one has to come up to speed because the same people stay on the project. Everyone on the team can build on their accumulated experience and turn out work as productively as possible. This may be the most telling point in favor of core teams.

On the flip-side of the nasty partner

risk, there is the collegiality that can build up among those who work together over a period of time on a common mission. Going beyond wearing tee-shirts with perky sayings on them, collegiality develops out of respect and collaboration over time. Cohesiveness partly comes from cross-training and depth. A core team also makes it easier for the law firm to cross-train members of the team, which gives it resilience and depth. When a group of professionals works together, one of them can fill in more easily for another if something happens.

### Consequences

What might be some consequences for law firms and law departments if there were a collective move toward more client core teams at law firms?

- Knowledge management efforts will become easier because the information, systems, and learning will be collected in a much more focused way. Teams will have more incentive to keep track of what they do and to think how to improve their processes.

- More efficient ways of handling the work are likely to arise, not just because of knowledge management, but also because the same people are focused on the process

and substance.

- Alternative billing arrangements may become more common because the law department is making a commitment to volume and the law department will better understand how it can accomplish the tasks.

- A different set of management skills, more people- and team-oriented, will flourish on both sides. It seems also plausible that a core team approach will boost the frequency of secondments. After all, it is a close relationship.

As a last point, the core team concept favors larger law firms. They tend to have clients that have more matters and spend more dollars and therefore can sustain a core team. Likewise, the larger firm can staff from among the larger pool of members than can a smaller firm.

All law departments (and law firms) should regard the ideas of this article as core.

**Invite to a competitive presentation only the associates who will work on a matter** (August 4, 2007)

Bait-and-switch is an ugly term for an unfortunate practice: the suave and senior partner stars at the competitive presentation, but if the firm is selected, other lawyers actually work on the matter. Some law departments, those who favor core team, might try a variation.

Ask that the two or three associates who will work mostly on the matter to present on their own. By that device, a law department can get a better sense of the interpersonal style, intellectual ability and experience of the lawyers who will account – presumably – for most of the hours billed.

Yes, certainly it is the partner or partners who bring the judgment and connections and experience, but they can have their say in a separate presentation. To bifurcate the levels is to gain a better understanding of the workhorses and to underline how important to the department is the core team of associates.

**Administrative obstacles to law firm partners when agreeing to alternative fee arrangements** (July 19, 2007)

Law firm partners, especially those in very large firms, often cannot act unilaterally when they seek to work out the economic terms for how they will represent a law department. At least five gatekeepers may put up their hand to stop or alter a deal.

Partners may have to run a conflict check (See my post of July 16, 2007, on law firm conflicts of interest and references cited.) but as far as the billing arrangements go, the only “conflict” I can think of might be related to a most-favored nation commitment (See my posts of Oct. 30, 2005; Nov. 21, 2005; and Jan. 25, 2006, on difficulties with MFNs.). Law department managers hear the line “We can’t concede those terms or we’d have to do it for many other clients.”

Sometimes partners have to obtain approval from a new matter committee or a committee or partner who vets deviations from the firm’s standard billing rates (See my post of June 10, 2007, regarding alternative billing arrangements.).

In some firms the partner must seek approval from staffing coordinators to make available particular team member (See my post of Dec. 8, 2006, about core teams in law firms.). Clever fees don’t work sans clever lawyers.

Practice group leaders may have to weigh in on workload, staffing, or billing terms (See my posts of Oct. 4, 2005, and March 11, 2007, on practice groups and secession from a firm; March 6, 2007, on comparisons of law firms by practice group strength; and March 11, 2007, on how practice groups in law firms might use social network software.).

Even the accounting department may have a say in potential arrangement, such as regarding its e-billing requirements or the format or content of invoices (See my post of Feb. 21, 2007, on e-billing vexations of law firms.).

**Further reflections on obstacles to improving outside counsel management** (June 30, 2007)

A previous post discusses my concurrence with and dissent from some obstacles within law departments to improving outside counsel management (See my post of June 30, 2007.). Some reasons were not mentioned at all by that compilation.

Law firms, to put it bluntly, are flush. If they have as much work as they can handle, why should they care about pleadings by their clients for cost restraint? A second obstacle is the fear of inside lawyers to try something new, especially if there is a risk (See my posts of April 12, 2006, on risk aversion and personality styles; Oct. 18, 2005, generally on lawyer on risk aversion; Dec. 17, 2006, on Type I and II errors; and Aug. 27, 2005, on mutual blame as to why alternative fee arrangements not succeeding.). A third brake is the lack of palpable incentives for individual lawyers to reduce costs.

One other hurdle that should be recognized is a manifestation of the principal-agent problem (See my posts of Jan. 16, 2006, on the principal-agent split; May 16, 2006, on why individual lawyers don’t reduce costs; and Jan. 28, 2007, on agency theory.). Finally, the reality is that many law departments have needs for outside counsel that are sporadic and spread out, so there is difficulty having a critical mass of services and thus gaining traction on cost control.

## ABOUT THE AUTHOR

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Rees W. Morrison is a Vice President of Hildebrandt International, the leading management consulting firm to law departments, and co-head of the firm's Law Department Practice Group. Based near New York City, he consults solely to law departments: operational reviews, technology, benchmarking, cost control, re-engineering, structure and organization assessments, client satisfaction, and other issues. During his 18 years of consulting, Rees has assisted more than 200 law departments including Aetna, Air Products, Alcoa, American Express, Amway, AT&T, BASF, BellSouth, CableVision, CMS Energy, Coca-Cola, Colgate-Palmolive, Compaq, Continental Bank, Deutsche Bank, Diageo, El Paso Energy, Exxon, the Federal Reserve, FDIC, Halliburton, Harris, Ingersoll-Rand, John Hancock, Johnson Controls, Lehman Brothers, Lucent, Marsh McLennan, Merck, MetLife, Mirant, Motorola, Northrop Grumman, Occidental Petroleum, Office Depot, Pfizer, Pharmacia, Philip Morris, Port Authority of NY/NJ, Prudential, PSE&G, Schering-Plough, GlaxoSmithKline, Sun Life, TIAA-CREF, TXU, and Westinghouse (CBS).

Prior to joining Hildebrandt, Morrison was a partner at Altman Weil and at Arthur Andersen, after serving as the Consulting Assistant to the General Counsel of Merck. Before that, Morrison was a Director in the Law Department Services Group of Price Waterhouse, marketing vice president of Analytic Legal Programs and ComplInfo, and an associate at Weil, Gotshal & Manges and two other New York law firms.



Graduating from Harvard College in 1974, Morrison earned his law degree from Columbia Law School (1978) and an LLM from New York University (1984). He taught at Cardozo Law School and moderated the Lexis Counsel Connect Law Department Management discussion section. He is a Certified Management Consultant, a fellow of the College of Law Practice Management, has been on the Board of Advisors of Corporate Counselor, Law Department Management, and Metropolitan Corporate Counsel, is a Life Fellow of the American Bar Foundation, and participates in the ABA's Law Practice Management Section and ACC's Law Department Management Committee. He founded the monthly newsletter, *Managing Litigation Costs*. He has addressed more than 100 groups in his career, co-chaired 11 law department management conferences, and has published six books and more than 100 articles. Morrison wrote *Law Department Benchmarks: Myths, Metrics, and Management* (Glasser LegalWorks 2nd edition, 2001); *Client Satisfaction for Law Departments* (Corp. Legal Times 2003); and *Law Department Administrators: Lessons from Leaders* (Hildebrandt Institute 2004). He founded and chaired the Association of Consultants to Law Departments. He hosts the blog, [LawDepartmentManagement.typepad.com](http://LawDepartmentManagement.typepad.com), which currently has nearly 2,700 posts.

