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FOCUS

President's Message

Chris Wasson

"Things which matter most must never be at the mercy of things which matter least."—Goethe

Goethe's quote seems obvious and self-evident but after a long day of meetings and constant activity, it can often seem that very little is actually accomplished. The fires are put out, or at least quenched, yet other important but not as pressing projects remain untouched.

I am typically not a fan of books with numbers in the titles but one that has stuck with me over the years is the excellent book by Stephen Covey—[The 7 Habits of Highly Effective People](#). First published nearly 20 years ago, Covey's treatment of time management still rings true—organize and execute around priorities. If you read [7 Habits](#) years ago, I recommend you dust it off. If you have never read it, you can pick up a copy on the cheap from Amazon.com. Covey speaks of a time management matrix with four quadrants:

- Quadrant I—Activities that are Urgent and Important,
- Quadrant II—Activities that are Not Urgent and Important,
- Quadrant III—Activities that are Urgent and Not Important, and
- Quadrant IV—Activities that are Not Urgent and Not Important

Most of us don't struggle with Quadrant I and Quadrant IV. We all know that we need to focus on important client projects with deadlines (Quadrant I), and we all also know that we should not be playing solitaire on the office computer (Quadrant IV). However, the trick is to avoid Quadrant III and spend more time in Quadrant II. This is a neat trick if you can make this transition, but it takes forethought and the right tools.

ACC can't really help you with the "forethought" but we can help you by giving you additional tools to add to your professional "toolbox." At the national level, ACC's website (www.acc.com) is a virtual Lowe's where you can shop for new "tools." Depending upon the project or issue you are grappling with, ACC's Virtual LibrarySM is a great place to start. For example, a quick search of "time management" identified several relevant articles. Another resource on the ACC website are InfoPAKSSM. InfoPAKS are a comprehensive and in-depth collection of documents, forms, articles, and other resources all focused upon a particular topic. For example, one



of the most recent InfoPAKS focuses on homeland security and is intended to raise in-house counsel's awareness of the legal issues that have arisen in light of the nation's heightened attention to this area.

The Central Ohio Chapter is more akin to your local hardware store than to Lowe's. While CO-ACC does not have the tool selection that ACC has, CO-ACC sponsored CLEs and social events are a valuable resource to tap into for their educational value and the opportunity to meet and network with your peers—think of CO-ACC and its members as the friendly "old-timer" in your local hardware store who can tell you exactly how to use your new tool, and the best way to tackle your project. Acquiring new tools and consulting with your peers will not magically move you from Quadrant III to Quadrant II, but it can certainly help facilitate the process and help you better focus on those "things which matter most."

(R)evolution in the Law Firm Service Market

Susan Hackett

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THESIS: Traditional law firm business models for providing legal services and law school training for lawyers are not necessarily aligned with what corporate clients want: value-driven, high-quality legal services that deliver performance for a reasonable cost and develop lawyers as both savvy counselors and efficient business partners.

THE PROBLEM: Sometimes I feel like the “old lady of the in-house bar” (even at 47) ... I’ve been at ACC for close to 20 years. If one thing has remained a constant, it’s that members are less than satisfied with their outside counsel relationships. They may like their outside lawyers (or at least some of them), and they may agree that there’s incredible expertise out there—there is no shortage of smarts or talent. They may even tell you about the 4,017 different metrics and mechanisms that they employ to assure themselves that they’ve got a handle on their outside spend. But still ...

... Even in the best relationships, in-house counsel often don’t feel their outside costs are predictable or value-driven. Somehow or another, for all that they like in their outside lawyers, they have a lot of concerns regarding the firms they employ. Somehow or another, more time often is spent arguing over the bill after the fact than in setting expectations and goals upfront that everyone can manage to meet. Somehow, they feel that more precious time is spent on process than on counseling.

Another thing that hasn’t changed is that clients aren’t happy about their in-house lawyers’ inability to get a handle on their ever-increasing legal spend. The “inelasticity” of the price increases in the law firm business is, frankly, mind-boggling. In every other marketplace of services, prices go up and down with the economy or as new efficiencies or ideas surface and talent moves about. At firms, especially bigger firms, prices go up 6 percent per year, and we all have a sneaking suspicion that even if we negotiate a 10 percent price reduc-

tion on our matter, they’ll simply bill us for 15 percent more “service.” And all this happens at the same time that in-house departments, across the board, have decreased their own expenses, while at the same time increasing efficiencies and productivity.

Accordingly, a lot of very unhappy corporate counsel tell me that their corporate procurement departments are closely scrutinizing the legal department and their spend. And increasingly pressured managing in-house managers counsel look for the fix: they host beauty contests, develop convergence strategies, apply collars and cuffs and whatever’s new in fee management, they set up dashboards and compare costs by firm and regions and matter type and turnaround time, and they spend lots of time training their lawyers to engage in early case assessment. While some have some success (and while none of these are “bad” ideas), at best, all this tinkering does little more than rearrange the deck chairs on the Titanic.

Some blame the ubiquitous billable hour and its perverse drivers toward inefficient and terribly expensive results. Some blame the morph of law firms (professional entities) to a business model (profit driven). Others point to the almighty “profit per partner” ratings, highly leveraged pools of stunningly inexperienced and overpriced associates, and an increasingly de-equalized middle class of partners. Indeed, one of the most disturbing trends in all of this mess and despite the tall stacks of money paid out by clients is the incredible number of lawyers who are either pushed out of the profession, or run screaming from the building, often before they’ve enjoyed any semblance of the career and professional fulfillment we all envisioned we’d have when we were in law school.

In-house counsel from large departments, small departments, and every kind of company in every kind of industry are very powerful people and we can choose to hire

whom we want—everyone says so, right? And yet, we just can’t seem to get outside counsel and their costs “under control.”

THE SOLUTION: So I say: Time to roll our sleeves up and talk about what we *can* do if we work together to create long-term institutional change, rather than railing that everything we try on our own doesn’t return results consistent with our expectations—nothing changes on the larger scale.

Revolution + Evolution = (R)evolution?

SETTING EXPECTATIONS: I recognize that nothing anyone can do will change everything overnight, and lots of different folks want lots of different things, so there’s not even consensus around what success might look like even if we could envision it. So here’s what we ask and what we think is a reasonable expectation: join ACC in thinking like a revolutionary change agent (that is, thinking big picture and out of the box), but also help us implement real reform by working on evolutionary advances over time (that is, focus on practical solutions).

The Proposition: ACC’s Value Challenge—Re-connecting value to the cost of legal services.

What ACC’s Value Challenge is and isn’t: The value challenge is not an answer, but a movement. It’s not about laying blame; it’s about creating responsibility for change.

So let’s all agree that firms need to be responsible for addressing client dissatisfaction. And let’s recognize that no one’s saying that firms shouldn’t profit; on the contrary, firms must be sustainable entities. Let’s also get it straight: a focus on connecting cost to value does not mean that everything should be cheap or that we’ll lose our commitment to quality. There are lots of expensive lawyers out there who are worth every penny (the problem is the expensive lawyers who aren’t), and there are many high quality

lawyers who don't cost what some of their peers in big firm practices charge for the same services.

On the corporate counsel side, if firms are providing services we aren't happy with, why do we keep buying those services, thereby enabling inefficiency, inflated cost structures and poor practices? It's in-house counsel's responsibility to better manage their spend, help firms understand what we and our clients want, and reward outside counsel who deliver the outcomes we've asked for. If we're to convince corporate management that we know what we're doing, we better start recognizing that in 2008, no one gets hired or promoted just for retaining the expensive firms with big reputations. Regardless of their ranking status, in-house counsel will be evaluated for managing firms that provide value and results.

Accordingly, ACC will:

- promote intelligent and facilitated dialogue among corporate counsel, law firms, and eventually other stakeholders, including law schools, to help drive alignment and focus on value;
- develop methodologies and metrics that corporate counsel can use to assess the strengths and weaknesses of law firm vendors;
- create tools that in-house counsel and firms can share to drive change in the performance of valued legal services; and
- enhance awareness and promote communication of success stories in achieving value and alignment—creating practical benchmarking.

To accomplish these goals we're prepared to really dig in, dig deep, and commit ACC resources and stake our reputation for delivering results. While we have lots of ideas on tap and will be working on several plans concurrently, I wanted to use this forum to discuss an early role for chapter leaders and members:

WHAT CAN YOU DO?—Getting Started. We hope to engage members, local law firm leadership, ACC chapters, local and national bar groups, law schools, and other stakeholders to discuss what we should

do and how we should do it in a highly interactive discussion format involving small groups focused on delivering recommendations and direction. These conversations will cover a variety of topics, discuss best practices at work, help define "value" in legal services, discuss alternative models for law firms to use to conduct their business and to cost/bill their work, and really drill in on retention, training/development, and promotion of talent (at the entry level, in the middle ranks, and at the highest end of business). We will use the resulting intelligence to help shape more and better tools, resources, models for consideration, best practices and so on. In other words, we'll evolve together.

You will also be receiving an email soon (depending on publication dates, some of you may have already received it) from ACC's Value Challenge Steering Committee that asks you some simple survey questions that will allow us to collect some baseline information and feedback to target meaningful dialogue in these first sessions. Please watch for it and invest the 3-5 minutes it will take to complete this survey (it's online, so it's simple to do).

WHAT WE HOPE TO ACCOMPLISH: Desired Outcomes

1. Create a national dialog about the need to reconnect value to costs, especially within the law firm community, with a common language and framework that ACC will have helped define and that our members will help drive.
2. Identify and empower core groups of leaders in the in-house and outside firm communities, as well as in consulting houses, vendor organizations, legal and business media, and the law school community: engage them and then solicit more participants every year.
3. Offer a tool kit for use by in-house counsel and another for outside firms (and shared resources, as well, of course), containing leading practices, management tools, models for managing value, and networks by which participants in this process can communicate their experiences and ask questions of each other, including "who do you use and how do you do this?"

4. Nourish the development of an in-house client community that gives law firms reasonable comfort that their efforts to implement change will be supported and rewarded.
5. Encourage law firms that are more focused on retention of talent valued by clients, and matter management driven by the client's expectations and needs.
6. Foster greater satisfaction and pride in their work for both inside and outside lawyers—spending less time bickering over bills and more time focused on solving client problems.
7. Ensure recognition by senior (non-legal) management that in-house counsel are taking the lead, rather than simply being reactive, and that they are exercising strong business skills in balancing their inside and outside legal spend—targeting results and outcomes, rather than just hoping to manage an unpredictable process.

All of this is in pursuit of perhaps the most important outcome: a legal profession in which all attorneys deliver value.

As the "increasingly mature" lady of the in-house bar, I see this initiative as the culmination of my career with this organization to date; yeah, I guess that makes it personal for me. But if these problems, and your dissatisfaction with the way things are is personal to you, too, please join me in starting the ACC Value Challenge (R)evolution. We here at ACC can think of nothing that's more *valuable* that we can offer you, your clients and our profession.

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Free to Fudge the Facts

By Ken Isaacson

As lawyers, we're constrained by facts. A client comes to us with a problem—a deal to put together, a lawsuit to commence or defend—and the first thing we must do is learn the facts. From then on, all the advice we give and the actions we take are dictated by the immutable facts of the case.

For those of us who are litigators, this is often confounding. We have a meritorious case and a deserving client. If only the facts weren't so...so factual. You know what I'm talking about. Why'd the client have to write that particular email? Why'd he have to say that in front of all those witnesses? It's such a great case, and we're still in the right, but the client went and did something stupid. And now, as Desi used to tell Lucy all the time: "You've got a lot of 'splainin' to do." If only the facts were just a little malleable, we could avoid a bit of unnecessary tap dancing.

As a lawyer, I write for a living. And I suppose there are cynics who'd even say that lawyers write fiction for a living. We've all heard the complaint that litigation isn't about finding the truth, it's about finding whose version of the truth will prevail. While there may be something to that view, I can honestly say I've never fabricated facts, or intentionally hidden them, to gain the upper hand in a legal matter. But what if we weren't bound to the reality that the facts impose upon us? What if, in the middle of your big case, when you realize that the facts aren't playing out just as you'd hoped they would, you could go back and change things? Un-write the ill-advised email, or un-say the indiscreet remark? You could make things come out just the way you want them to be.

That's the great thing about writing legal thrillers. I get to make stuff up. And if I don't like how it turns out, I get to go back and change it. I'm free to explore "what ifs" and "how abouts" to my heart's content. I can be perpetrator, victim, witness, prosecutor, defense counsel, judge and jury. In short, I get to make up my own facts, and there's nothing unethical about it!

My first legal thriller, *Silent Counsel*, was published in September 2007. The idea for it came to me upon reading a true account of a hit-and-run incident along a highway in Florida some time ago. In that case, the driver hired an attorney and charged him with the task of negotiating a plea agreement with the authorities while at the same time keeping his (the client's) name secret under a claim of privilege. A court battle ensued, testing the bounds of the time-honored doctrine of attorney-client confidentiality: Could the simple name of a client be "privileged information?"

That case resolved itself before the novel legal question was answered by the courts—the driver ultimately came forward on his own. But the magazine article got me thinking. What if the court were to hold that a lawyer attempting to negotiate a plea agreement for a hit-and-run driver didn't have to reveal his client's identity? The prosecutor, no doubt, would refuse to bargain. But what if the mother of the small victim found out that the lawyer knew who had killed her child but maintained his silence, relying on the privilege? How far would the mother go to find out who killed her child? And how dedicated to the principle of attorney-client confidentiality would the attorney be when the going got tough?

With these questions in mind, I set out to write *Silent Counsel*, the story of attorney Scott Heller and mother Stacy Altman. After Stacy's six-year-old son is run down in front of their house, with no witnesses to the tragic accident, she learns that the driver has hired Scott to negotiate a plea arrangement with the prosecutor. But he's instructed Scott to keep his name secret until a satisfactory agreement is in place. The prosecutor refuses to make a deal, and the court rebuffs Stacy's efforts to force Scott to tell her—or even the authorities—who his client is, holding that it is privileged information. Since the court won't do anything to help Stacy track down her son's killer, she takes matters into her own hands, and is determined to make Scott talk—at any cost... When Stacy's stalking of Scott's young daughter escalates

into a kidnapping, Scott makes the only reasonable choice a parent can—cooperate and give up the client. That's when Scott discovers that doing the right thing isn't as easy as he thought, and now the mother isn't the only one looking for the child's killer.

When I first sat down to begin writing *Silent Counsel*, I didn't have a clue how to proceed. I decided to approach the task as I did a legal case, and I remembered an instructor in one of my continuing legal education classes advising of the importance of developing a theme for your case. "A case without a theme is just a bunch of testimony," I'd been told. "A car crash doesn't happen in a vacuum—it's a tragedy that involves real people and real consequences." Cloaking your case with a theme gives jurors a reason to stay interested and alert: "This case is not just about young Will being injured when the buckling mechanism on his infant seat came loose. It's about the kind of corporate greed that places the cost of recalling a defective product and the benefit of saving a child's life on opposite ends of a scale—and tips that scale against the child." Now, with that theme in the jury's mind, otherwise dry testimony about how this strap connects to that latch may be, if not interesting, at least a little more bearable. There's a reason to care.

In the context of a legal case, we start—necessarily—with the facts as they're presented to us. We search for a theme that relates well to those facts and exerts the right amount of emotional pull to grab hold of the jury. Writing fiction, though, allows the reverse.

When I started, the page was quite literally blank. There were no facts, only an idea: What if the attorney representing a hit-and-run driver didn't have to reveal his client's name because the court held it was privileged information? With that intriguing premise in mind, I began constructing facts: I decided that the victim of the driver had to be a child, because readers (my jury) would care more about this arcane legal issue if the attorney-client

privilege was being used to shield someone responsible for a youngster's death. I knew that the lawyer in my story would face a difficult ethical dilemma—needing to protect the confidences of a client while feeling that the “right” thing to do would be to help the grieving mother.

Because I had never faced such a challenge, I decided my lawyer should (like me) be unaccustomed to criminal practice and protecting the rights of the guilty. I made him a corporate litigator handling a “quick referral” for a friend—just a matter of making a few phone calls to the prosecutor to see if a deal could be made. This way, in the process of writing, I could experience the doubts and misgivings of my protagonist as he did, for the first time. And, I decided that my lawyer should have a young child of his own, so the conflict he felt between duty and right would strike close to home.

From this germ of an idea, and these few basic facts, emerged competing themes: Silent Counsel would be about a lawyer's struggle with his personal beliefs when confronted with the fundamental need for secrecy between client and attorney. It also would be about a mother's frustration and rage at a system that places more value on a legal technicality than bringing the killer of a six-year-old boy to justice.

I knew little more about *Silent Counsel* than this when I began writing. I've since

heard the writing process compared to driving from New Jersey to California in the dark, being able to see only as far as your headlights illuminate. You know where you are, you know where you ultimately want to be, and you have a vague idea of how you're going to get there. But all you know for sure right now is the ground you'll be covering within the range of your headlights—and something just outside your view may change your plans. You discover that the bridge you planned to take across the river is washed out, and instead of going directly from Point A to Point B, you find yourself driving miles along the river until you come upon the next way across. You planned on driving west, but unforeseen weather conditions force you to take the southern route instead. This is how writing was for me: I'd start a chapter knowing generally where I was heading, with some specific short-range ideas of what route to take, and find out quickly that the characters had something else in mind. I'd watch, almost a spectator, as dialog unfolded, and I'd discover things about my characters and the story that I hadn't known before.

That's when it becomes really useful to be able to control the facts. Remember, I lamented a lawyer's inability to un-write the ill-advised email, or un-say the indiscreet remark? In the middle of writing fiction, when the story takes an unexpected left turn, and the sun-shiny day mentioned a few chapters ago no longer

suits your purpose, you can simply go back and create a thunderstorm. Believe it or not, it actually takes some getting used to. I remember the first time during the writing process when an action one of my characters was about to take just wasn't consistent with the facts up to that point. I was stumped. How could he possibly do that in view of what had come before? Then it dawned on me—what I had already written was not etched in granite. I could go back and rewrite history. A little thought and a couple of keystrokes, and a new path opened for my character. That was heady stuff.

As lawyers, we all have the tools necessary to write fiction. We're an imaginative and creative bunch, we can organize facts and concepts, and we know how to convey our ideas in compelling fashion, in writing. And, our day-to-day activities are fertile grounds for material. Don't like the ruling the judge just made in the middle of your trial? Just sit back and enjoy conjuring up the fate that might befall him if he were a character in the book you're writing.

Ken Isaacson is general counsel to Allstates WorldCargo, Inc., a freight forwarding company headquartered in Forked River, New Jersey, and is a member of the New Jersey chapter of ACC. A native of New Jersey, he graduated from the Massachusetts Institute of Technology in 1975 and received his law degree from Columbia Law School in 1979.

Welcome to New Members

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J Brady, Nationwide Mutual Insurance Company

Christopher Garber, Nationwide Mutual Insurance Company

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ACC News

ACC Seeking Nominations for “Excellence in Corporate Practice”

ACC is now accepting nominations for the 2008 “Excellence in Corporate Practice” award for exemplary achievement within the in-house legal profession. Nominees must have achieved success in one or more areas involving services and contributions to the legal profession. Nomination forms must be received no later than July 1, and awards will be presented October 19–22 at ACC’s 2008 Annual Meeting in Seattle, WA. For the 2008 nomination form and a list of past recipients, visit www.acc.com/php/cms/index.php?id=282. For information on the Annual Meeting, visit am.acc.com.

Recruit a Member and Win A Prize—Guaranteed!

Each time you use the Association of Corporate Counsel network, you gain valuable skills and experience only available through ACC. More members in ACC translate into improved educational opportunities, enhanced networking, increased online resources, and advancement of the profession worldwide. You can help expand your ACC network by taking part in the “Everybody Wins” membership drive. When you recruit new members to ACC, you will win prizes ranging from complimentary \$5.00 Starbucks’ cards and cutting edge electronics including portable DVD players, digital cameras and new computers, to free ACC Annual Meeting or ACC Europe Annual Conference registration and a \$750 travel stipend. ACC’s “Everybody Wins” membership drive ends on August 30—so don’t delay, recruit today! Learn more at www.acc.com/everybodywins.com.