

# FOCUS

## President's Message

**Manik Rath**

I am honored to serve as the 28th president of the Washington Metropolitan Area Corporate Counsel Association (WMACCA). It is a privilege to help set and achieve the association's goals for 2009.

WMACCA is an important organization not only within the legal profession but also in the Washington, DC business community. I have served on the board of WMACCA for five years, and have had a unique opportunity to observe through the lens of service the impact that WMACCA makes. Within ACC, WMACCA is the largest chapter, with more than 1,700 members from more than 700 private sector organizations. This makes WMACCA the largest regional in-house bar association in the world. But much more broadly, I believe WMACCA is also the premier professional association of any stripe in Washington, DC, Virginia, and suburban Maryland. Each year, WMACCA provides about 70 continuing legal education programs, a valuable outlet for national and business leaders to speak on matters of import, professional development opportunities for its members, and networking events that allow them to enhance their professional contacts.

At the beginning of a new year, we have an opportunity to reflect upon the state of the profession and set goals for transcendence. In 2009, the legal profession faces the greatest recession since the early 1990s, and perhaps since the Great Depression.

Several large firms have ceased, many more have released attorneys; law schools are pumping freshly manufactured lawyers into the exchange; and in-house departments are facing ambient budgetary pressures. Savvy new enterprises are fleet to vend thousands of contract lawyers near and off-shore in distant countries. Meanwhile, the economic model for practicing law has diverged from the best interests of the clients, as legal publications vaunt metrics such as revenues per lawyer and starting salaries as ersatz indicia of quality. The regulatory environment also presents challenges and concern. Nary a quarter transpires but that the enforcement machine focuses also upon a general counsel where once it was sated to investigate organizations, CEOs and CFOs, thus soliciting apprehension even amongst the wary. Indeed, even the vaunted safeguard of Constitutional rights—the attorney-client communication privilege—has come under attack by the very government that was sworn to uphold that Constitution. With these trends in mind, I have set three goals for myself and the WMACCA leadership for the coming year:

- First, WMACCA will serve as the leading destination for those seeking to develop their careers as in-house counsel. After all, WMACCA does



more than merely serve as an outlet for continuing education. Perhaps most importantly, WMACCA provides a convocation for in-house lawyers to exchange ideas, develop relationships, and seek personal opportunities. Goethe contemplated that while “talent may develop in tranquil pools, character

develops in the full stream of human life.” WMACCA provides that. Our website ([wmacca.acc.com](http://wmacca.acc.com)), emails and mailings over the course of the year will announce numerous opportunities to get together each month in a variety of locales and formats. I myself hope I will meet each of you this year at a WMACCA event, and hope you will get a chance to each meet each other.

- Second, the in-house bar, as the group most closely aligned with the clients we serve, must act as the protagonists for our profession. Accordingly, WMACCA will focus on creating opportunities for in-house lawyers to be sources to the media as background references, to be quoted, and to have their own articles published. If you are interested in participating in this effort, let us know. WMACCA will also hold a series of events to inter-network with the CXO community at large, as opposed to being merely inwardly focused.
- Third, ACC has issued a value challenge, and WMACCA will respond to

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this transformative opportunity. The Value Challenge is not about reducing legal spending, but about working with the private-practice bar to realign cost with value. Law firms that have long defined themselves by revenues will be encouraged to reconsider whether there are metrics more closely aligned to the value they deliver to the client. The goal is to encourage a more entrepreneurial approach to the practice of law. We are confident that our sponsors and the other firms that we engage will embrace

this challenge. Machiavelli observed that “[e]ntrepreneurs are simply those who understand that there is little difference between obstacle and opportunity and are able to turn both to their advantage.” In this case, the advantage of the in-house bar and the advantage of their outside counsel could and should be congruent. This year, WMACCA will hold a series of Value Challenge-oriented events aimed at furthering this dialog.

WMACCA is fortunate to have a diverse and dedicated leadership team. Our officers and board of directors, forum chairs, volunteer leaders and excellent administrative staff, led by our executive director, Ilene Reid, help to plan and execute WMACCA activities and initiatives. Our goals will be to (1) provide the leading destination for career development; (2) lead the legal profession in visibility before the media and the business community; and (3) challenge the legal profession to focus on entrepreneurial ways to achieve value. And have fun.

## Three Essential Reminders for Saving Money On Outside Counsel Bills

**Susan Hackett, Senior Vice President and General Counsel, Association of Corporate Counsel (ACC), [hackett@acc.com](mailto:hackett@acc.com)**

Everyone’s talking value: how to define and focus on value, how to assure that inside and outside counsel are adding value to the client’s legal work, how to reinsert, reconnect or recalculate value into the cost of legal services.

When we launched the ACC Value Challenge last year, our premise was to help members drive greater value into their inside/outside relationships and management. We had no idea the markets would tank, that large firms would lay off lawyers by the thousands, that household-name companies would be going under, and that those still standing could be capable of cutting back to such a great extent.

So is it fair to say our timing was good with this project? Sure. But the client’s tipping point of disgust had been reached even before the economy went south. Bad markets or good, when it comes to the cost of sophisticated corporate practice, especially at big firms, the emperor has no clothes. The downturn is “convenient” because it makes it impossible for lots of folks who’d prefer to continue to admire the emperor’s wardrobe to do so.

You know you can’t keep doing things the same way if you wish to respond to your client’s directive to reinvent the company’s cost structure, and yet the company’s legal work will not conveniently cooperate and taper off. For many, their client’s legal needs are expanding as their budgets and internal staff are shrinking. I’m here to help by offering what we have learned through the ACC Value Challenge.

Given the short space allotted here, here are my first three suggestions:

First, resist the urge to ask your firms for a rate cut. I know it seems like an easy and obvious fix, especially since the inelasticity in yearly firm rate increases is the only dependable metric we have in corporate practice. But trust me: it’s not going to save you money at the end of the day and it’s not going to create an incentive for firms to re-think the way they do your work.

You’ve got a seismic change agenda to implement, so you need to ask your firms for something far more fundamental by way of change. And 10, 20, even 50 percent off of the inefficient way it’s always been done is still going to leave you mired in the “way it’s always been done.”

Everything we’re learning suggests that the all-in costs of a matter do not shrink when the firm agrees to cut their rates or discount their services. They simply bill more hours, assign less efficient staff to your work or add costs in other ways. They’re not necessarily evil folks, but there seems to be this “gravity” that pulls them toward a higher bill regardless of what you negotiate for their rates. And this is the wrong result. If you want your firms to focus on value, you both need to rethink the way that the firm is charging for work and not just their hourly price tag.

Problem is, of course, that darned few of us know how to actually assess the value of a lawyer’s contribution to a matter by standards other than how many hours they worked

on a project multiplied by whatever rate the local or industry law firm services market will bear. This creates a financial disincentive for a smart lawyer to give you a 20-minute answer to your problem, rather than a 40-hour memo and 12 strategy meetings between four lawyers in the firm.

So here’s my second suggestion: even if you’ve never done it before, spend some really serious time mining the knowledge that many of us either ignore or don’t understand. Ask your firms to give you reports on the kinds of matters they’ve handled for you and the all-in costs for each. Then ask them to provide sub-reports on major functional portions of your matters that are regularly repeated: depositions, contract drafting, negotiation or settlement costs, whatever. Not law firm or lawyer tasks, such as meetings to discuss strategies, research or phone calls with clients—all-in costs of every service provider and expense that led to the completion of the major functions that the lawyers were performing.

Then look at what you know about how much it costs you to do such things in-house (if you also share some of those jobs), and see if you can find out more about the costs that others in your industry or locality are paying. Then benchmark it. (Hey kids, that’s what ACC local chapter meetings and committee listservs are for, right?)

I know the process won’t be exact or perfect. Indeed, the accumulated costs you’re researching are likely all-based amounts that were generated by the hourly system that we’re trying to move beyond. But you have to

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start somewhere. This data is available and if it's not already packaged, then it's a first great exercise for you and your firm in looking at what the stuff we do really costs. And there are vendors out there with matter management systems that are designed to help you and your firms enter data going forward in ways that allow easy manipulations and, perhaps best of all, firm-to-firm comparatives.

Ah, comparatives. Now you'll know more about whether you've got a couple of firms that are doing great and doing it for less. How come? What do they do that's replicable in other firms or in your future management of matters? Is it fewer people billing the project? Is it the lawyers' location that makes them cheaper? Is it an ethic within the firm simply not to gauge clients? Do these firms have a better grasp of legal process management and available staff and technology options? Whatever it is, those firms should get rewarded with more work from you, and you can suggest price reductions to others—not on their rates, but as a percentage off of the accumulated bills that represent the total fees charged for the matter.

So the conversation goes: "I'd like to retain you to do this matter at this cost—all in. If you can't agree that this is a price you can live with, or if you can't figure out if that's profitable for you since you don't know what it costs you to do my work, that's fine. The X firm will take the work. If you take this work at this cost, there will be no additional fees (unless these predefined kinds of unlikely events happen). I don't need to see weekly or monthly bills, and I don't care how you staff the matter so long as Cathy is in charge of the project. I don't care if you fly first class or take two associates with you to court to learn the ropes. I kinda hope you will. I'm paying this cost and you decide how you want to pay your bills and do your business. If you get more efficient and make a good profit on our work while accomplishing the objective we've set and offering us the quality we know is your hallmark, I will not ask for any of the money back—you'll have earned it, because you've provided me with the value I defined at the cost the matter was worth."

Something like this is what you're after if you really want to save money and create the budget management and predictable results that your company expects of everyone who supervises client assets and procurement of services.

Third and last tip: I'm obviously making this sound easier than it is. You can't reinvent your or your firms' processes overnight. You can't expect that everything you do will fit well into this format, especially as we're all just learning this value game. We're going to have to work toward it incrementally. And we may discover even better solutions along the way. You all are really smart and inventive people. So here's my offering to you on how to start to make it happen: Meet/Talk/Act.

Meet/Talk/Act is perhaps the most important initiative for members in the ACC Value Challenge community. There are no pat answers to any of these questions and no "one-size-fits-all" solutions (indeed, one size fits one!) The only way you'll discover what can work for you, especially given the personal relationships and highly qualitative factors that often defy easy quantification, is to sit down and talk about all this in a collaborative fashion with your department team (take yourself out for a contemplative lunch with friends if you're a solos) and your outside lawyers.

So here's the task: Pick their three best firms, however you define that. Meet with them. Set an agenda (there's a menu of possible agenda topics for you to consider on our Meet/Talk/Act information sheet online—see links below). Talk about what's most important to the continuation of your relationship in a more productive and value-driven fashion. Solicit ideas from each other for lowering costs, process and staffing improvements, budgeting and planning or metrics to evaluate progress. And then act. Just choose a few of the things you talked about as first focus points and do them. Don't try to change the world on the first day or tackle lots of things at once. Choose something quantifiable, something measurable, something that drives efficiency and value as opposed to rehashing "more of the same."

ACC will be helping to take Meet/Talk/Act around the country by cohosting ACC Value Challenge events with selected chapters. At these sessions, we'll put about 20 top in-house and 20 top outside counsel leaders (folks with executive decision-making capacity and influence within their institutions) at round tables of 10. We're going to give them problems that have been identified by large numbers of members and firms like, what are the appropriate metrics by which to evaluate a firm's or lawyer's performance on a matter? How can early case assessment and resolution

be better integrated into the cycle of litigation at a company? How can we address the entry-level associate crisis? What kinds of staffing options work best on each of the following matter types? And so on.

Then we're going to make them talk and capture their ideas, benchmarks, solutions and further queries. And we're going to publish them for you. So maybe you ask for an invite to come to a session—the events schedule is posted below. Or maybe you just read some of the findings that will begin to trickle out from these sessions and use them as agenda items for your own Meet/Talk/Act sessions with your firms. Or maybe, since we're asking firms to do the same (call three of your best clients and invite them to lunch to talk about...), you'll get invited to a Meet/Talk/Act session by one of your firms. How refreshing!

Want more detail? Want to see the ideas and practices that we've already captured and posted that can help drive your practice toward value? Want to host a Meet/Talk/Act with your firms or an internal meeting on this topic in your department? There are resources online for you at [acc.com/valuechallenge](http://acc.com/valuechallenge). And, as always, you can contact ACC staff or our Steering Committee leadership with your thoughts and questions, too!

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Meet/Talk/Act Overview (a 1-pager on how law departments and law firms can get started to reconnect value to costs of legal services): [www.acc.com/valuechallenge/meetTalkAct](http://www.acc.com/valuechallenge/meetTalkAct)

Leadership Resource Page (for those who want to host a meeting or review project summary-type documents on this topic): [www.acc.com/advocacy/valuechallenge/Leadership-Resource-Center.cfm](http://www.acc.com/advocacy/valuechallenge/Leadership-Resource-Center.cfm)

ACC Value Challenge "Covenant with Counsel" (a sample charter for firms and departments that want to reinvent their relationship and set the terms of their partnership): [www.acc.com/valuechallenge/covenant](http://www.acc.com/valuechallenge/covenant)  
ACC Value Challenge Toolkit (a library of practical resources for those interested in driving value): [www.acc.com/advocacy/valuechallenge/toolkit/index.cfm](http://www.acc.com/advocacy/valuechallenge/toolkit/index.cfm)

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