

# Unless You Ask

## A Guide For Law Departments To Get More From External Relationships

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## An Introduction to Asking for More

“Clients aren’t asking for it.” When surveyed, law firms’ response as to why they are not doing more to change the way they deliver legal services is that “clients aren’t asking for it.” Given that clients are already voting with their wallets and their feet, “clients aren’t asking for it” might not be the best guide to action. But there is merit to the argument that while law firms know they need to change, they don’t know how to change in ways that will satisfy their clients. **You should be asking for more and be more specific in what you ask for.**

You should be asking your external providers to get demonstrably better. Stripped to its most basic, **you should always be able to identify how your primary providers are measurably improving their delivery of legal services to you.** You should have credible evidence—descriptions *and* metrics—of their process improvements and innovation.

While this compilation will go deep into potential methodologies for starting and structuring such data-driven conversations, do not get distracted by the details or paralyzed by a compulsion to develop a comprehensive approach. If you can’t answer the question, “What evidence do we have that our primary providers are measurably improving their delivery of legal services to us?” ask them for some. Then ask again in six months. Repeat.

Don’t detour into discounts. Discounts are fine, as far as they go. But they do not go very far in actually modifying behavior. Your relationships with your primary providers most likely resemble long-term supplier commitments with high switching costs and intermittent price renegotiation. **With people and price in place, it is process that offers the most levers to drive continuous improvement.**

You are the urgency driver. If you ask, your external providers will find new ways to add value. If you ask, your external providers will improve the processes by which they deliver legal services to you. This volume will provide you with a menu of potential asks that go directly to process.

At its core, *Unless You Ask* is about conversations. How to start them and what you can get out of them. You may not get everything you ask for. But unless you ask, you are almost guaranteed to get none of it.

After a note on keeping score, this volume is divided into three primary sections.

**Value-Plus Services.** If you ask, you can get value from external expertise that extends beyond legal advice on discreet matters. We provide explanations and guidance on working with your external providers on secondments, training, CLE, advice hotlines, alerts, pro bono, etc.

**Value Enablement.** Client inattention to firm infrastructure has resulted in under investment. You have a role to play in asking, and caring, about how your firms leverage their legal expertise through process and technology. We give you the tools to engage your firms in structured dialogue and weave continuous improvement into the fabric of your relationships on topics such as staffing, project management, knowledge management, billing hygiene, and the use of analytics.

**Why.** Most law departments do not currently put much emphasis on systematically obtaining value-plus services from their external providers or working with their external providers to improve value enablement. Even with concrete guidance, the ideas presented will be new. Many lawyers do not respond well to new. Presented in FAQ form, the Why section will explain the reasoning behind the practical advice in order to equip you to address concerns raised by internal and external skeptics.

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## Keeping Score

As the name implies, *Unless You Ask* encourages law departments to ask for more in order to get more from their external relationships. Beating up suppliers is not the objective. We want to encourage structured dialogue to arrive at sustainable, win-win improvement initiatives. Presented herein is a menu of potential approaches, programs, and areas of emphasis. There is, however, a justifiable fear that the untempered introduction of every item on the menu could result in asking for too much. “Be reasonable” is a good guiding principal here, as elsewhere. But reasonableness is notoriously hard to measure. If you are going to take a comprehensive approach, our advice is to keep score. You should track what both sides are investing in the relationship. Reciprocal return on investment is an important element of [deep supplier relationships](#).

One option is to have external providers submit their investment figures as part of the annual performance-review process. Have them tally their expenditures on value-plus services (e.g. secondments), their expenses incurred for client-specific, value-enabling upgrades (e.g., document automation), and their non-recouped outlays to client-mandated vendors (e.g., the client’s e-billing platform). All of it can be expressed in raw dollar terms, as well as a percentage of payments received. Over time, history will accumulate and trends will emerge.

A second option is for the firm to maintain a client-credit account. That is, based on what the client pays the firm, the client accrues credits to spend with the firm in the future. This can simply be a more relationship-enhancing, forward-looking version of a discount. The client uses credits accrued on current spend to offset future spend. It can be a structured version of cross-selling. The client spends the credits with practice groups the client is not currently using. It can be a mechanism to fund value-plus services. The client allocates credits to ‘pay for’ secondments, training, helplines, etc.

These approaches are not sacrosanct. Nor are they mutually exclusive. There are specifics to be worked out as to what constitutes investment. There are questions of how credits are to be accrued, allocated, and spent. In a certain sense, the devil is in the details. In another sense, however, the details don’t matter nearly as much as the conversations that arrive at them.

The conversations around what and how to measure become conversations about what the client values, where investment is needed, and what behaviors should be rewarded. When the measurement has occurred, the data becomes a framework for discussions about the current and future state of the relationship. Why is a firm being sent large volumes of work not investing in the relationship? Why is a firm that invests heavily not getting more work? Where does the client spend its credits? Why does the client not spend the credits it has accrued? These are solid beginnings to vital conversations—valuable proxies for other questions that are rarely asked because we lack the structure in which to ask them.

It can't be all talk. Well, it can, but it shouldn't. The numbers create bi-directional transparency as to what the client actually values. Firms should see a return on their investment not out of some obligatory sense of reciprocal altruism but because the investments deliver value to the client. If the client is not rewarding relative investment with more work or more profit on existing work (e.g., higher realizations), then the client is asking its firms to invest in the wrong things. This is on the client, and something for which the client needs to take ownership. If the firm accepts the risks, the client bears the responsibility.

Relationships come with mutual obligations. The legal market has suffered because law departments and law firms have for too long refused to be explicit about what they expect from each other. Clients are dissatisfied. Firms are confused. We need real conversations, real investment, real rewards, and real transparency. All of which are more tractable if we start keeping score.

## Value-Plus Services

Being an expert is often an excuse for not leaving your comfort zone. The *Unless You Ask* series is directed towards breaking the complacency in the law department/firm dynamic by getting both sides to exit their comfort zone. We are comfortable displaying domain expertise while discussing substantive legal issues relevant to individual matters. But, sometimes, we need uncomfortable, data-driven conversations to address systemic issues like how that expertise is leveraged through business process and technology.

Still, the primary value is in the domain expertise. Additional value can come simply from finding alternative avenues to utilize it. Beyond matter-specific legal advice and labor, law firms are a superb resource—often untapped—for all sorts of services that align with a holistic approach to [strategic sourcing](#).

These value-plus services are a fantastic opportunity for you get more from your external relationships. But they are also a fantastic opportunity for your firms to get to know you and your business. Approached correctly, both sides should benefit from the provision of value-plus services, which include:

- [Legal Training \(CLE\)](#)
- [Company Training](#)
- [Support Training](#)
- [Allied Professionals](#)
- [Secondments](#)
- [Advice Hotlines](#)
- [Updates/Alerts](#)
- [Pro Bono](#)

### Legal Training (CLE)

If we're being honest, MCLE is frequently a waste of time. Mandatory Continuing Legal Education (MCLE) are credits lawyers in most states need to maintain their license to practice law. Because they need the hours, lawyers sit in rooms playing on their smartphones while someone else drones on. Or the lawyers turn on MCLE videos with the sound off so they can focus on real work. MCLE can be a colossal timesuck. But it does not have to be.

MCLE is intended to address a legitimate problem. Lawyers are so focused on their immediate work that many are unable to carve out time to stay current or think through the downstream effects of the ceaseless changes in our statutory, regulatory, economic, and technological environments. Done right, MCLE can provide real value, especially with a quality speaker addressing relevant topics tailored to the audience. Who better to deliver on that potential than your outside counsel?

The firms' deep expertise should be a given. Pertinent legal acumen, after all, is the threshold consideration in their retention. Likewise, your firms are paid to become intimately familiar with your specific legal issues. They should know your particulars, priorities, and pain points. They should also have some sense of what your internal lawyers know and what they don't. Your firms should be well suited to crafting MCLE presentations that are timely, relevant, and useful.

Moreover, because they need to provide MCLE for their own lawyers, firms of a certain size often have the requisite administrative infrastructure. This may include, but is not limited to, arranging and paying for lunch—a free sandwich and cookie remains the most empirically sound method for getting lawyers to show up for anything in the middle of the day. It extends to being an official MCLE Provider—i.e., an entity approved by a state bar to grant MCLE credit for an educational activity—and handling the paperwork to ensure credits are awarded.

Likewise, firms with more than one office are often setup to provide MCLE across multiple jurisdictions and media. If you have lawyers located or barred in different locations, the firm can make sure they get the necessary credits. For some, this may mean watching a live or taped broadcast of the tailored presentation. Alternatively, the firms may have MCLE libraries that their own lawyers can tap on demand. Many firms would be more than happy to provide their clients access to those libraries.

You receive useful, tailored, and convenient MCLE. The firm also benefits. The firm gets face time during which the firm's lawyers meet a client need by showing off their substantive expertise and explaining why it is relevant to the client. MCLE is an ideal marketing opportunity because it is a true value add.

### [Company Training](#)

The training your firms can provide is not limited to CLE or to lawyers. The theory behind CLE is that lawyers should set aside time to learn about topics of import that may not be obvious to them as they rush from urgent project to urgent project. In this, lawyers are not alone.

The law department is rarely the root cause of legal problems. Rather the law department gets called in to clean up or prevent legal problems. There is probably too much of the former and not enough of the latter. Most law department end up overwhelmed with clean up because they lack the resources to do proper prevention. External providers are excellent supplemental resources. And training is essential for implementing most prevention strategies. The external experts who advise the company on compliance, discrimination, harassment, cybersecurity, privacy, litigation holds, etc. are well positioned to assist you in crafting and providing training to the company at large on compliance, discrimination, harassment, cybersecurity, privacy, litigation holds, etc.

Training is something both the law department and the company need. It is something that your external providers can supply at reduced, or no, cost. Training is also something your providers are likely interested in supplying because it increases their visibility and integration.

Crafting the training presentation is a prime opportunity for them to gain deep insight into your business in the context of a sanctioned, value-adding activity.

## [Support Training](#)

Your external experts are expert in more than just law. A foundational conceit of this volume is that legal acumen should be complemented by business process and technology. It follows that your external providers should have individuals with facility in process and technology. Many of them are allied professionals rather than lawyers. But the lack of JD does not make them any less competent in their area of expertise nor any less of a resource for you to tap.

To take a simple example, many more law firms than law departments have technology training teams. This is more a function of scale—permits specialization—than need. In-house teams, lawyers and staff, are just as technology dependent as their external counterparts. In-house teams can benefit just as much from technology training and can take advantage of the fixed training assets in which the firm has already invested.

Or maybe the firm outsources much of its technology training. The in-house team would need to do the same. Except, in areas of overlap, the combined spend could be leveraged to bring down costs. The firm could choose to absorb more, if not all, of the financial burden as part of their tracked [investment](#) in the relationship, as a use of [client credits](#), or as an alternative to sending 46 lbs. of Belgian chocolate as a holiday gift.<sup>1</sup>

## [Allied Professionals](#)

Indeed, you should be able to find support from one of your firms in almost any area of internal need. Pricing directors can help you analyze your spend, create budgets, or transition to value fees. Project managers can help you re-engineer your internal processes. Knowledge mangers can help you organize the deluge of internally and externally created information. Information technologists can help you identify new tools that meet your specifications and budget. Et cetera. They can not only do things for you, they can also teach you how to do them yourselves. If you don't have internal analogues for these allied professionals, your firm can provide access to them for support and training. If you do have internal analogues, then your allied professionals and their allied professionals should be working together to better integrate the two entities. Multiple points of connection make for much stronger bonds.

## [Secondments](#)

Most law departments are perpetually understaffed. Most law departments also go through periods of acute staffing deficiencies due to the confluence of internal (departures, leave) or

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<sup>1</sup> Some contributors commented that this last suggestion was dangerous. According to them, any interruption in the chocolate supply would first lead to mutiny and eventually to anarchy.

external (major acquisitions or litigation) events. Your outside providers are well positioned to offer supplemental resources to fill the gaps.

Law firms are often willing to second lawyers at reduced, or even no, cost to their clients. Law firms are genuinely interested in being of service and advancing their clients' interests. Moreover, law firms recognize that by embedding their lawyers and staff with clients, they can deepen the relationship. There is no substitute for being onsite and working alongside the client. You, too, should want outside lawyers who have insight into your operations.

The source of secondments can vary. For primary firms, regular secondments can be included in the additional-benefits portion of a comprehensive, value-focused relationship. For second-tier firms seeking to win more business, secondments can be part of concentrated effort to develop a greater understanding of, and rapport with, the client. For firms trying to establish a new client relationship, secondments can be a high-touch, low-risk opportunity to open a communication channel. For alternative service providers, the insights gained from secondment can serve as the foundation for a managed-services proposal tailored to the client's actual needs.

Similarly, secondment programs can take many shapes. Secondments can be used intermittently to bolster headcount during periods of sudden need—i.e., because personnel are out or there is a temporary increase in workload. Secondments can be used tactically to address one-off projects and improvement pushes. Secondments can also be ongoing initiatives to cost-effectively expand department resources and strengthen ties with key law firms.

Start wherever you have a need. If you are unclear on your needs, our recommendation would be to start with some targeted secondments on the operations side of the house. That is, bring in secondees for a finite period to achieve a discreet objective that has not been pursued due to resource constraints. Examples of stand-alone improvement initiatives include policy documents, training materials, template upgrades, process mapping, and clean-up from system migrations. Once you have found success in utilizing secondees to complete well-defined improvement projects, you can expand to a more regular rotation of secondees in operational and substantive supporting roles.

Secondment programs can also be integrated with other initiatives. For example, you can pair secondment with the department's efforts on diversity. You can use secondment to provide young, diverse attorneys from your external firms the opportunity for sustained client contact. You can also have secondees team with externs to give the secondee some management experience while providing the extern a mentor that is not too far removed from law school. The secondment might act as a feeder to employment in your department while the externship serves as a feeder to your primary firms.

For those law departments that prohibit first years from billing to their matters, imagine a secondment-centered alternative. What if, instead, junior attorneys were not permitted to bill to your matters *unless* they had been through a four-week, co-created training program followed by an eight-week, onsite secondment. Or for law departments worried about succession planning for key partners, imagine how much more comfortable you would feel if

the succeeding generation included team members that had done multiple rotations in your organization. Secondments are temporary, but the benefits are lasting.

Ultimately, the secondment should improve the welfare of everyone involved. The relationship between the department and the firm should be strengthened. The department should get the supplemental support its needs to pursue its mission at low, or no, cost. The law firm should gain unparalleled insight into the client. The secondee should have an experience that separates her from her peers and prepares her to serve the client for years to come.

## [Advice Hotlines](#)

Paradoxically, much of the impetus for imposing more structure comes from the need to create the conditions for more freedom. The focus of this volume on ensuring that legal expertise is being properly leveraged through process and technology comes from a place of respect for that expertise. We want our lawyers put to their highest and best use. That, however, requires an operating structure where they are not constantly derailed by necessary-but-low-value-add work. The lawyer, or someone on her team, should be able to generate the basic contract from an automated system or clause bank ([knowledge management](#)) and then be able to automatically update the numbering and cross-references when the matter-specific edits are made ([tech training](#)) so that the lawyer can devote her finite energy to the unique characteristics of the contract rather than spend time screwing around with the basics.

Structures are not inherently rigid. Flexibility can be deliberately engineered. A great example is the way that law departments and law firms can make informal conversations a formal part of their relationship through an advice hotline. While there is no requirement for a physical Bat Phone, it can be a great benefit to in-house counsel to be able to intermittently pick the brain of their external experts without expending energy on creating an entirely new matter.

An errant thought, idiosyncratic situation, or random question from the business warrants a quick conversation with outside counsel that is not within the scope of any active matter. Without an advice hotline arrangement, there are two ways this can go. Outside counsel can bill for every second. Beyond the annoyance of being nicked and dimed, the law department has to authorize a new matter, budget, approve timekeepers, etc. Or the outside counsel can forego billing. That is fine until it isn't—until some inside counsel starts abusing outside counsel's largesse as a way to avoid their own budget accountability.

An advice hotline is a mechanism to [keep score](#) without the pain of creating and budgeting for individual matters. As part of the overall relationship, the firm can agree to provide a set amount of hours of advice—free or at a low, flat fee—beyond the bounds of existing matters. The outside counsel can record their time to a non-billable matter, and the firm can let the client know when the limit nears. At that point, the client can stop calling, setup individual matters, or start paying on a billable *miscellaneous advice* matter—which is fine as long as it is capped at a de minimus percentage of overall spend. The available hours can be replenished monthly, quarterly, or annually depending on the nature of the relationship.

The benefit of the advice hotline for the requesting internal lawyers is self-evident. Likewise, for the department and the company, the advice hotline makes it likelier that problems are addressed sooner and that serious issues are escalated. External lawyers benefit most directly when the non-matter morphs into an actual matter, and the advice-giving external lawyer sits in pole position to land it. But there is also the more general relationship benefit of being seen, and turned to, as a trusted advisor. Advice hotlines are instances where external experts can really be put to their highest and best use without the intrusion of commercial concerns. Both sides benefit from such exchanges, as does the health of the relationship.

## [Updates/Alerts](#)

Lawyers are best in supporting roles. While litigation puts lawyers in the spotlight, most litigation is the result of something gone wrong. Good law departments excel at cleaning up business messes. Great law departments also excel at helping the business avoid messes. But operating conditions become more challenging every day. The rate at which cities, counties, states, provinces, territories, countries, and transnational organizations add, change, and reinterpret statutes, regulations, and administrative rules is only surpassed by the inconstancy in politics, economics, and technology. Lawyers are essential to supporting the business in navigating this swirling thicket of risk and uncertainty.

No individual lawyer is supposed to keep up with it all. We have teams and employ outside experts because it is neither feasible nor advisable for any one person to be the repository of all relevant knowledge. Specialization is a hallmark of sophistication. Specialization is responsible for many of the returns on economies of scale. Yet, specialization can also bring diseconomies of scale as critical information becomes siloed. As communications overhead increases, we have to come up with more formal methods for ensuring that critical knowledge is shared. Managers are not just supervisors, they are channel intermediaries that are supposed to facilitate communication among organizational units. But bureaucratic layering is not the sole mechanism for addressing information silos.

We hire outside counsel because they know things. They know things that are vital to our business interests. How do we make sure that critical knowledge is transmitted from outside to inside counsel? In the context of active matters, the responsibility should be self-evident. Outside of active matters, [CLE](#) is an excellent opportunity to explain and contextualize key developments. But CLE does not occur at the speed of modern business. An [advice hotline](#) fills the gap by permitting inside counsel to gain immediate access to external expertise on questions that arise outside the scope of active matters. But advice hotlines only answer questions that inside counsel know to ask. There are many instances where outside counsel should be providing updates to prompt conversations that would otherwise occur too late.

Updates can come at different intervals and take different forms. They can be weekly, monthly, or quarterly. Or updates can be delivered as alerts that go out whenever a major change is afoot. The most basic form is “X happened.” Rarely, however, are the implications of X self-explanatory. So most updates should be accompanied by “X happened and the general implications

are Y...” Often, this is enough. But the updates may prove more useful if the analysis is focused on a particular sector, as in, “That X happened should lead widget manufacturers to consider Y because...” And in the context of on-going relationships, the updates can be more tailored to focus on your business, “That X happened has Y broader implications in the market but could really impact your Z initiative because...”

Useful updates are strongly biased toward quality over quantity. The same limitations on attention that make it impossible for any individual to keep up with all the news apply equally to keeping up with all the potential updates about the news. An interesting aspect of [keeping score](#) for the purposes of regular performance reviews is seeing the different value internal and external counsel place on the updates that external counsel provides.

Your preferred providers should have a list, or lists, of internal personnel to whom they send regular updates and irregular alerts within their area of domain expertise. But updates are also an excellent low-risk, low-touch way to screen potential providers. If your potential firm is sending you more pertinent information and cogent analysis than your incumbent firm, there are questions to be asked to as whose expertise you should be investing in.

It is easy to imagine a scenario where a free alert is by far those most valuable service a firm renders in a given year. But it is equally easy to imagine a timely alert resulting in work for the firm. Even without a direct connection to new work, updates and alerts strengthen the client/firm relationship and keep the firm top of mind. As always, providing great value to the client is the best marketing.

## [Pro Bono](#)

Value is subjective. A traditional operating definition of value is “what the customer is willing to pay for.” *Unless You Ask* is presented as a menu directed towards enabling structured dialogue between clients and their preferred providers because of the need to reach a mutual understanding of what the client is willing to pay for. Value, however, is dependent on values. Thus, while we still encourage [keeping score](#), the concept of value can extend beyond measurable economic benefit.

Law departments and law firms alike participate in pro bono legal services and other charitable endeavors because it aligns with their values. There are relationship benefits from working together on worthy causes even though no money changes hands. While doing good is the primary goal, it is possible to build a pro bono program that has ancillary benefits.

Pro bono provides an excellent opportunity for internal and external counsel to work together and build personal rapport outside the hierarchy of their standard exchanges. The client and their firm(s) can simply choose a cause and have their lawyers roll up their sleeves as a team to assist those in need. Good is done. Relationships are built. And that should be, and often is, enough.

But if the client and the firm are really going to co-invest in a long-term commitment to pro bono, it is also a chance to collaborate on system design and integration. While there is

absolutely no question that lack of resources—money and lawyer hours—is the primary problem facing most non-profits, there are limits to the amount of money and time that can be indiscriminately thrown at an issue. As with everywhere else in legal, expertise should be leveraged through process and technology. On top of their commitment to putting boots on the ground, law departments and law firms can work together to bolster the institutional infrastructure of the outfits they support.

Pro bono then becomes not just an opportunity for internal and external lawyers to build rapport but also an occasion for their respective allied professionals to coordinate and contribute to a communal goal. Just as the lawyers can be deployed to help on the lawyering, allied professionals can assist on project management, knowledge management, document automation, etc. They can introduce processes and technology that amplify the work being done by their lawyer colleagues and all the other lawyers contributing time to the organization. They have roles to play as part of a multidisciplinary team seeking to deliver interdisciplinary solutions to real legal problems.

This additional emphasis on making a systemic impact also recommends bringing vendors into the fold. Legal technology vendors share the altruistic impulse. And, like a law firm, they are loath to pass up an opportunity to build a relationship with a client. A pro bono project can be a great opportunity to conduct a trial run of a new technology. At worst, it doesn't work, and the status quo continues. At best, the non-profit gets something of value, and the law department/firm team discovers a new tool that makes them ask, "Why aren't we using this?"

Do pro bono because it is the right thing. Contribute money and lawyer hours because those are sorely needed. But recognize the opportunity for ancillary benefits from team building, relationship strengthening, and experimentation.

## Value Enablement

Law firms are usually required to translate abstract legal insights into concrete deliverables like contracts and motions. The value is in the insight. But much of the labor—and the cost and the waste—is bound up in the translation. A law firm that excels at legal insights does not necessarily excel at legal service delivery.

Clients should be concerned with legal service delivery because it affects outcomes—quality, cost, and speed—especially over the long term. Clients should talk to their firms about legal service delivery because firms are highly responsive to client priorities. Clients are the urgency driver.

Everyone suffers from urgency bias, the preferencing of the immediate over the important. But the temperament of lawyers and the structure of law firms are particularly focused on the present—this project, this matter, this month, this year. Clients can exacerbate this tendency by only discussing the now—this motion, this contract, this rate, this invoice. Or clients can counterbalance short termism by insisting that some attention be paid to the long term. What clients cannot do is abdicate their role. Silence will be taken as assent to the status quo.

Clients are not satisfied with the status quo. Surveys indicate widespread dissatisfaction. Attempts to find the root cause of that dissatisfaction uncover that, overall, clients remain content with the expertise of their external lawyers. It is the lack of innovation and the attendant cost of service delivery that is the source of client frustration. Clients have tried to address this frustration mostly through talking to firms about costs, primarily in the form of discounts. This approach has not sufficiently modified behavior. With people and pricing in place, process offers the most levers to drive continuous improvement. Addressing process requires actually addressing process.

Very few clients engage in dialogue with their firms about how legal services are delivered. Even fewer try to deliberately weave continuous improvement into the fabric of the relationship. The legal market will be healthier if this changes.

*For more on the reasoning behind value enablement, see the [Why](#) section.*

### Step 1: Questions

To improve legal service delivery, law firms should be doing more to leverage their legal expertise through process and technology. The problem is that while clients are relatively comfortable assessing legal expertise, we lack the tools to assess the quality and utilization of the systems supporting that expertise, like project management, knowledge management, staffing, and analytics. Except we don't. The tools for vetting legal expertise and value-enabling process/technology are fundamentally the same: ask good questions as a prelude to good

conversations. When it comes to process and technology, we are simply not accustomed to inquiring and discussing.

The lawyer-selection process is instructive. It is far from an exact science. We use quantitative proxies where available—years practicing, similar cases/deals handled, appearances before a particular court. We rely on interviews to get a better sense of candidates. When we can, we speak to peers with personal experience working with the lawyer. And then when we find a lawyer we like, we stick with her not only because the vetting process is inexact but because there are genuine advantages to incumbency. We now have a track record. And a lawyer becomes more effective as she becomes acclimated to our priorities, protocols, personalities, and pain points.

Vetting value enablement—i.e., looking at the process and technology that support legal expertise—is similar. We use standard questions and quantitative proxies as the foundation for constructive conversations. And if the relationship progresses properly, our law firms improve over time. That the vetting process is inexact does not make it any less useful.

Before moving on, however, we should pause and repeat advice that kicked off this volume:

You should be asking your external providers to get demonstrably better. Stripped to its most basic, you should always be able to identify how your primary providers are measurably improving their delivery of legal services to you. You should have credible evidence—descriptions and metrics—of their process improvements and innovation.

While this compilation will go deep into potential methodologies for starting and structuring such conversations, do not get distracted by the details or paralyzed by a compulsion to develop a comprehensive approach. If you can't answer the question, "What evidence do we have that our primary providers are measurably improving their delivery of legal services to us?" ask them for some. Then ask again in six months. Repeat.

If nothing else, have your primary firms respond to the basic request, "Please provide some evidence that you are measurably improving the delivery of legal services to us." Then talk to them about what they submit. Then schedule a time to revisit and discuss the progress made. Quarterly business reviews, annual performance reviews, or the annual rite of firms submitting rate-increase requests are all good opportunities to introduce and follow-up on such issues.

If you want to offer more guidance, you can use this volume not only as resource but also as a reference, "We are interested in engaging in structured dialogue about where and how you are improving the delivery of legal services to us. Following the *Unless You Ask* playbook from the ACC Legal Ops Section, please provide us by [DATE] with an overview and metrics of how you have recently improved and are currently improving the way you leverage legal expertise through process and technology."

Likewise, you can use the availability of this volume to get more specific without getting more detailed by selecting categories and placing parameters around what is submitted, "We are

interested in engaging in structured dialogue about where and how you are improving the delivery of legal services to us. Following the *Unless You Ask* playbook from the ACC Legal Ops Section, please provide us by [DATE] a primer—one page each with supporting metrics and documentation—on your staffing, project management, and use of data/analytics.”

Or you can send them a request-for-information (RFI) type questionnaire. The [Appendix](#) collects all the questions from each category presented in this volume. Like the categories themselves, the questions are a menu—you do not need to use them all. The questions are also generic. You can, and often should, tailor your questions to the types of matters being handled by the subject firm(s). Because the categories are porous and only offered for organizational coherence, the questions overlap in some instances. Finally, the questions are deliberately repetitive—they are consistent in form from one category to the next.

The categories contained in this volume are not exhaustive. Below is a list of model questions that can be modified to assist you in crafting inquiries for whatever category you devise. The questions are driven by a few interlocking considerations that are intended to get past puffery. This is not advertising copy. You are after concrete answers tied to measurable improvements in legal service delivery to you.

**Puffery.** Every firm seems to be full of seasoned, client-centric experts dedicated to delivering superior results, incredible value, and unparalleled client service via process-driven, team-oriented, cross-functional collaboration that results in efficacy, efficiency, and client satisfaction. And they’ve got the awards to prove it. That’s great. But it offers little informational value. Lawyers are dexterous with words but evidence speaks louder.

**Concrete.** The firm needs to tell you what they are doing. It is even better if they show you. Descriptions of processes and technology can be supplemented with process maps, reports, and screen shots. In many instances, the firm should be able to point to actual work they’ve done for you and how the process/technology played a role.

**Measurable.** Not everything that can be measured is meaningful. Not everything that is meaningful can be measured. But even where the improvements are more qualitative than quantitative, you can usually use proxies to provide a generally accurate, if not precise, picture that service delivery has improved. At the very least, usage statistics can reveal whether the initiative is real or vaporware. In short, the firm should be able to define success and identify indicators thereof.

**Legal Service Delivery.** Firms do spend money on technology upgrades. But the value to you of their investment in docking stations for their open-office plan or the new video system for their conference rooms are not self-evident. The burden is on the firm to link the investment to your legal outcomes, speed, and cost.

**To You.** Firms do innovate. But the innovations do not always scale. The firm may have invested in a new platform your lawyers don’t use or innovated in an area that has no impact on your work.

Some generic, exemplar questions:

- Define [] from the firm’s perspective.
- Detail firm’s [] practices and platforms that affect the work firm handles for client.
- Explain how firm’s [] practices fit into the workflow of the attorneys handling client’s matters.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm’s [] systems.
- Provide any available, applicable process maps that cover firm’s [] practices or that indicate how [] plays a role in firm delivering legal services to client.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in the firm’s [] practices.
- Specify how much and to whom firm awards billable credit for [] activities.
- Report whatever statistics are available with respect to firm’s applicable [] practices:
  - Volume of material contained in [] platforms
  - Frequency/volume of access to [] platforms
  - Percentage of lawyers/staff who access [] platforms
  - Frequency/volume of updates to [] platforms
  - Percentage of lawyers/staff who update [] platforms
  - Average time per lawyer recorded for [] activities
  - Any other useful, available statistics re [] activities
- Outline [] projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm’s delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe [] projects that firm has done for other clients that could be used as models for a [] project that would improve firm’s delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how [] is integrated into firm’s delivery of legal services to client.

These types of questions can be used in conjunction with an RFP or convergence initiative to vet new providers or consolidate existing providers. These types of questions can also be incorporated into an existing structured dialogue, such as a QBR, annual performance review, or annual rate review. These types of questions can also stand on their own—i.e., a new law department initiative to prompt and sustain conversations with external providers.

## Step 2: Interviews

In some cases, questions and answers will be sufficient to get a proper dialogue going. For your primary providers, however, we recommend an intermediate step: an interview.

Just as you would interview outside counsel to get sense of their legal expertise and philosophical approach, you can interview them and their team to get a sense of how they augment that expertise and implement that philosophy with process and technology. Interviews can be conducted remotely (e.g., screenshare), in person (e.g., when they come to your office), or onsite. Time permitting, you should interview a few attorneys actually doing your work—i.e., the ones recording the most hours on your matters—as well as the firm’s subject matter experts in the area of emphasis like billing hygiene, project management, etc.

The answers to the questions already asked and answered serve as your foundation. You will therefore have the information necessary to conduct a targeted interview with your front-line attorneys, such as, “The firm states it uses X platform, please show it to me, tell me how and how often you use it, and provide some examples where you have used it on our matters.” Once you have gone through the specifics, you can also be broad. Ask them where, when, and how frequently the process improvement plays a role in the work they do for you. Ask them not only how valuable specific process improvements are but also how valuable they could be. Towards that latter point, ask them about potential process improvement that would augment their handling of your matters.

Then ask the same questions of whomever the firm has put in charge of the area—e.g., a CIO, COO, CKO, Director of Client Value, Pricing Director, or Innovation Partner. There are likely people at the firm, especially the leads in specific categories, bursting with ideas that the firm has not given them the resources to implement. The distance between their ideas and the firm realities is a good data point for trying to understand where the firm stands. This knowing-doing gap will also help identify potential next steps in the subsequent phase of the process (i.e., structured dialogue).

No firm will be perfect. But you are likely to find a high degree of variance with a depressingly large percentage of firms clustered on the poor end of the spectrum in many categories. That variance will not just be interfirm, it will be intrafirm.

The idea that sizeable law firms do not innovate is not quite accurate. There is a fair amount of innovation across the legal spectrum, including in BigLaw. Rather, the larger the firm, the harder the time they have scaling innovations. You might have one practice group that is genuinely offering an innovative delivery model. But this fact has almost zero informational value if you are considering giving work to a separate practice group. The inconsistency from practice group to practice group, and even from lawyer to lawyer, is one reason interviews of primary providers can prove so important. You really should understand how your lawyers are handling your work.

In addition, the difference between a firm or practice group that excels at service delivery and one that does not will not necessarily be reflected by dollars invested in advanced technology.

There are vast graveyards of expensive tools that were purchased but never rendered effective because of the lack of complementary investment in time, training, and process redesign. Conversely, a group of dedicated legal professionals can substantially improve their service delivery with some time, attention, and sticky notes followed by the commitment and discipline to actually modify behavior.

If you find that your firm excels in a certain category, fantastic. You have other categories to talk to them about. Plus, you have a benchmark against which to compare your other firms. If, like most firms, they are behind, don't despair. The interview is only the first conversation.

### [Step 3: Structured Dialogue](#)

If your external lawyers are bad at lawyering, get new lawyers. If your external lawyers are bad at process and technology, give them an opportunity to improve. Don't demand great answers the first time you ask about project management, knowledge management, analytics, etc. Demand better answers the second time you ask. Don't demand that they fix everything immediately. Demand, however, that they always be improving at something. Don't underestimate the [aggregate impact of marginal gains](#).

When you have identified deficiencies, set priorities and work together on one or two well-defined projects every six months. Establish milestones and embed metrics in the improvement initiative. Do after-action reviews asking how much improvement the investment yielded and what lessons are to be learned. Apply those lessons to the next project, or the next phase of the same project. Repeat. After a few years, the firm will have made substantial upgrades in delivering legal services to you, and you will have woven continuous improvement into the fabric of the relationship.

While you will likely have ideas about how services should be delivered—especially because you will be benchmarking your primary providers against each other—you should still ask your firms to propose improvement initiatives, as well as timelines and the metrics by which those initiatives should be judged. There is a huge amount of latent potential for innovation inside law firms, including allied professionals, young lawyers, and under-resourced team leads.

Most initiatives will not fit neatly into one category or another. Such overlap is expected. Category boundaries are porous and used only for organizational convenience. Knowledge management, project management, etc. are not ends in themselves. But they are means worthy of attention.

They are also specialties. Modern legal services is a team sport. Expecting your law firms to deliver legal services in an interdisciplinary manner—i.e., legal expertise augmented by process and technology—often demands multidisciplinary teams. The allied professionals in charge of areas like knowledge and project management are essential stakeholders who have much to contribute to structured dialogue on improved service delivery. They should be in the room and part of the conversation. You don't need the relationship partner repeatedly reminding you that the firm has really, really good lawyers who work extraordinarily hard and care deeply. Of

course they do, or they wouldn't be your firm. You still need the people close to, and with expertise in, the labor-intensive portions of the work to provide insight as to how it can be done better.

These data-driven conversations should be a true dialogue with a 360-degree perspective. That means that you should be open to suggestions about improvements and innovations of your own. Maybe one reason that outside counsel is slow to turn around particular types of documents is that you are slow to get them the internal company reports on which those documents rely. Maybe one reason that outside counsel appears to have poor billing hygiene is that while you are quick to initiate matters via email, you are less expedient in opening new matters for them to bill against. Maybe the law firm approaching your work the way it does is an unintended consequence of your billing guidelines.

There should be something in it for exceptional firms. Their commitment to the relationship should be rewarded with more work or more profit (e.g., higher realizations) on existing work. There is so much slack in the legal market—time that is not recorded, preemptively reduced by the law firm, or cut by clients—that there is ample room to simultaneously improve quality, reduce costs, and increase profitability. This is not a zero-sum game. The most sustainable outcomes are win-win.

In formulaic fashion<sup>2</sup>, we are going to run through the 3 steps in the following categories:

- [Knowledge Management](#)
- [Process and Project Management](#)
- [Data/Analytics](#)
- [Paper Intensity](#)
- [Expert Systems](#)
- [Technology Training](#)
- [Staffing](#)
- [Firm-Defined Categories](#)

Again, these categories are porous and overlap. They also are not exclusive. You can use the approach as a model for your own categories.

## [Knowledge Management](#)

Wheel reinvention is a considerable source of expense and variation in quality. Law firms should develop systematic processes for repurposing and iteratively improving prior work product, as well as identifying subject matter experts within the firm. Most don't. Most rely on an *ad hoc* cut-and-paste approach contingent on materials the individual lawyer happens to have on hand or can acquire from the few other lawyers with whom they happen to be friendly. The result is that the size of the law firm has almost no impact on economies of scale.

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<sup>2</sup> While we lay out extensive questions for each, the sections on interviews and structured dialogue get progressively shorter because the approach is fairly uniform.

But how can we gain the visibility to tell whether our firm has good knowledge management practices? **We ask.**

## Questions

You can always point your firms to this volume as a reference—i.e., a guide to what you are asking and why. Or you can select from the menu of questions below and tailor the questions to the kind of work the firm handles for you. For litigators, the questions might focus on case law research and brief templates. For deal lawyers the questions might center on clause banks and model contracts. Whatever questions you select, you can mitigate the length of the response with an instruction such as, “Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining how the firm utilizes knowledge management to deliver value to client. Items the summary might address include:”

- Define knowledge management (KM) from the firm’s perspective.
- Detail firm’s KM practices and platforms that affect the work firm handles for client.
- Explain how firm’s KM practices fit into the workflow of the attorneys handling client’s matters.
- Indicate how firm uses experience management to identify subject matter experts and the interplay between firm’s experience management and client matter intake.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm’s KM systems, including identifying lawyers or staff dedicated to the KM function.
- Provide any available, applicable process maps that cover firm’s KM practices or that indicate how KM plays a role in firm delivering legal services to client.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in the firm’s KM practices.
- Specify how much and to whom firm awards billable credit for KM activities.
- Report whatever statistics are available with respect to firm’s applicable KM practices:
  - Volume of material contained in KM platforms
  - Frequency/volume of access to KM platforms
  - Percentage of lawyers/staff who access KM platforms
  - Frequency/volume of updates to KM platforms
  - Percentage of lawyers/staff who update KM platforms
  - Average time per lawyer recorded for KM activities
  - Any other useful, available statistics re KM activities
- Outline KM projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm’s delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and

improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.

- Describe KM projects that firm has done for other clients that could be used as models for a KM project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how KM is integrated into firm's delivery of legal services to client.

Since most law departments have zero visibility into the KM practices of their law firms—or any other aspect of value enablement—the answers to the foregoing questions will provide infinitely more information than they currently possess. The picture will not be complete. But this will be a good start.

### **Interview**

If you choose to conduct interviews, you might select some of the heaviest billers, as well as the firm's KM lead. You should ask them not just to tell you about KM in general terms but to actually show you how they use KM to deliver legal services to you. Because you will already have the answers to the written questions, you will be positioned to ask much more specific versions of the following:

- Detail how if you came across an issue that is outside your core competencies you would go about identifying someone else in the firm with experience on the issue
- Demo the KM platforms you use
- Explain how and how often you use the platforms on our work
- Give me some recent examples of where you have used KM on our work
- Share what you like most about the firm's KM
- Tell me about the firm's shortcoming in KM
- Identify what firm KM offerings are, in your opinion, most underutilized and give your opinion as to why
- Talk about whether the firm utilizes KM differently for any other clients and, if so, whether there are any aspects of that alternative approach that are superior to how the firm uses KM for us
- Expound on how, in your opinion, the firm might use KM better on our matters

### **Structured Dialogue**

A common picture that you might find in KM:

The firm has licensed several platforms over the years. But most of the platforms are dependent on lawyers being serious about uploading, updating, annotating, and tagging material. Since the lawyers are busy and don't typically get billable credit, they have never taken the time to get these KM systems to the point of being useful. The closest thing the firm has to a widely implemented KM platform is an indexing engine that sits on top of their document management system. In

theory, lawyers can use keyword searches to find relevant work from elsewhere in the firm. In practice, the lawyers don't use it much because the existing work is rarely precisely on point, is frequently outdated, and often screams out to be redone because it appears to have been solely the work product of a junior associate with whom the searcher has no direct experience (not sure if they can trust it). Most lawyers have their own personal but limited repositories of matters they have worked on and a small network—no economies of scale—of other attorneys who they will ask for examples of completed work product.

A less common picture:

The firm has invested heavily in both KM platforms and the allied professionals to support lawyers in using them. The firm mandates that lawyers utilize and constantly update the KM source material. The firm supports the mandate with up to 100 hours of annual billable credit for KM contributions. The result is a wiki-like living resource with up-to-date templates, research, annotated guidance, and identified expert contributors to whom users know to turn if they have additional questions. Access and update statistics confirm that the KM platform is the first and last stop on almost every matter, routine and non-routine.

A vital point about these two divergent depictions: **these could very easily be descriptions of the same firm.** Remain cognizant of intrafirm variation and laser focused on how KM is being utilized to improve delivery of legal services to you.

Assuming that KM is the area you have targeted for an improvement initiative, the preceding steps have equipped you with: (i) ideas from multiple sources within the firm on how KM can be upgraded for your matters, (ii) examples of KM projects the firm has completed for other clients, and (iii) visibility into what your other firms are doing/proposing. It's time to sit down and decide what comes next.

To make the example more specific, let's assume that a consensus emerges that one major driver of wasted resources is the same basic legal research being repeated over and over again by a rotating cast of junior associates. This despite the fact that your outside counsel guidelines prohibit first-year associates from billing to your matters and are explicit that the company does not pay for research. The work is being done by second- and third-year associates who capture all their effort under block entries like "draft motion."

You are upset. But the firm has been a valued partner for a long time, and you are interested in true dialogue. You listen to what the firm has to say and are ultimately convinced that the rate of change in the case law does demand some research. But junior associates are not the ones to do it, especially because the real value would be found in an organized and annotated case law repository. The firm's research specialists, whose usage your guidelines currently prohibit, are best suited to the task and, because they are faster and charge less than junior associates, can immediately bring down your costs.

Thus, you agree that you will pay for research on new case law by the research specialists if the firm (i) undertakes a project at its own expense to use their existing KM system to build the repository from prior matters, and (ii) awards the research specialists billable credit—not charged to you—for turning the new research you paid for into KM system content. When you meet again in six months, the firm will show you the platform and provide you with a bevy of statistics:

- The change in the median cost of your cases the KM initiative is intended to support
- The number of hours credited for KM on the initiative versus the number of research specialist hours you paid for
- The volume of material in the KM platform
- The frequency with which the KM material is accessed and updated

In reviewing the platform and the statistics, you should also discuss what went right and what went wrong. There should be a list of lessons learned to apply to the next project, or the next phase of the same project. The above initiative, for example, could evolve as part of a move to value fees. Instead of paying for units of research, you could transition to paying a subscription fee for direct access to a mature version of the repository that has been turned into an [expert system](#). The subscription could also include regular [updates and alerts](#) tailored to the company's risk profile—i.e., encompass a value-plus offering.

In concert with the firm, you have (i) decided on a concrete improvement initiative, (ii) established milestones with respect to time and performance, and (iii) identified the metrics that will serve as indicia of success.

Measurement is important. But, to reiterate a point from above, measurement of dollars invested in technology does not, in isolation, provide much informational value. Software can be purchased without being deployed. Software can be deployed without being used. Software can be used without being used well. Conversely, some very useful institutionalizing of knowledge can be accomplished by a group of lawyers who are consistent in updating a shared Word document they store on a common network drive. Kludge or not, what matters most is whether it gets the job done.

Further, while the above example improves quality while reducing costs, it also involves a client changing its policy to accommodate the reality of the situation. In theory, it should also increase the firm's realization rate on the client's work because less time is written off. This is a good result. These initiatives should be a win-win. But mutual benefit usually requires both sides to give a little something.

### [Process and Project Management](#)

*Achieve the right outcomes by having the right work done by the right people the right way at the right price.* Easy to say. But it does not come naturally, especially to lawyers. What comes naturally to lawyers is hard work. They apply their considerable mental faculties to a challenge and then grind as much as necessary. When the challenge is too big, they indiscriminately

throw more well-educated bodies at the problem until it appears to be under control. Grit combined with intelligence is admirable, formidable, and useful. But it can induce a kind of myopia wherein every problem is a nail and expensive lawyer hours are the hammer.

The client defines the right outcomes. But it is hard for a client to understand how those outcomes are being pursued if they lack transparency into what the firm is doing, why the firm is doing what they are doing, or what stage the firm is at in doing it. Unless the firm has a well-defined process with built-in planning, tracking, and reporting, it is equally hard for the firm to communicate strategy and status to the client.

Identifying the right work is a challenge. The understandable urge to leave no rock unturned is incompatible with resource constraints—the lawyer's, the firm's, and the client's. Some of the most vital decisions involve determining what work not to do. A well-defined, data-driven process can help delineate what's important and provide a framework for resource allocation.

The right people are not always the most seasoned lawyers. Some work is unavoidably labor intensive and should be delegated to less expensive resources. Some work demands skill sets that are not taught in law school. The lawyer might be the one to utilize the information gleaned from data in a spreadsheet, but someone expert in Excel might be needed to organize the data in a way that surfaces the information. What work to delegate and to whom are important aspects of proper project management.

Doing work the right way involves following the right processes and using the right tools. Neither will emerge from the ether fully formed at the moment of need. Both are the result of a systematic approach to thinking through and re-engineering service delivery. Process and technology, like people, are capacities that need to be consciously built and sharpened over time.

The right price is a function of the foregoing. There will be tradeoffs to be made in outcome priorities, the scope of work, the resources assigned, and the tools used. It is a conversation. But it is a conversation that can only be meaningfully conducted when informed by a genuine understanding of options and tradeoffs. This requires transparency and tractability.

Process can be improved and projects can be better managed without any purchase of new technology. Sticky notes are not high tech, but they are highly effective. One of the reasons that process improvement and project management initiatives fail is that people look for the easy way out—just buy some new technology—rather than do the hard work of rethinking and modifying behavior.

## **Questions**

You can always point your firms to this volume as a reference. Or you can select from the menu of questions below and tailor the questions to the kind of work the firm handles for you. You can be very broad in your approach and inquire whether, in general, the firm is process oriented or uses project management principles. Or you can be very targeted, drilling into areas of particular concern such as legal research, contract drafting, due diligence, discovery, etc. Whatever questions you select, you can mitigate the length of the response with an instruction

such as, "Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining how the firm utilizes process and project management to deliver value to client. Items the summary might address include:"

- Define (i) process and (ii) project management (PM) from the firm's perspective.
- Explain how the firm approaches process and PM, and how that approach affects work on client's matters.
- Provide copies of all existing process maps for the matter types handled by firm on behalf of client, as well as maps for sub-processes that support the matters handled by firm on behalf of client.
  - Provide previous iterations, or descriptions thereof, of process maps so client can understand how the processes have evolved over the past three years.
  - Where applicable, provide a future-state map, or descriptions thereof, so client can understand what process improvements are currently in the works.
- Describe how firm plans, budgets, and allocates resources to client matters and then tracks performance.
- Detail how, when, and where firm utilizes PM, including standard approaches to PM like Agile, Lean, and Six Sigma.
- Specify when, where, and how the firm uses tools like decision trees, after-action reviews, etc. to aid, assess, and improve handling client's matters.
- Explain how firm's PM practices fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals in PM as it applies to client's matters.
- Identify firm personnel whose primary function is PM, explain their roles, and indicate when/why they are assigned to client matters, including any recent client matters (last 2 years) to which they were assigned.
- List the technology tools the firm uses to manage, track, and calendar client's matters.
  - Provide the standard reports from those tools for client's five largest cases (by moneys paid to firm) in the last two years.
  - Provide any available statistics on what percentage of client matters these tools are used, as well as how frequently these tools are accessed and updated during the course of client matters.
  - Explain what matter-level data the firm captures, as well as how firm uses the data during client matters and to inform future matters.
- Describe your reporting capabilities with a specific emphasis on tools that provide client with real-time visibility into the status of client matters, including staffing and performance against budget.
- Detail your quality control/assurance protocols.

- Provide copies of checklists that are used on client's matters and an explanation of when, where, and by whom they are used.
- Identify procedures and software tools that are used to review documents prior to finalization.
- Outline firm projects currently in progress to improve PM or the utilization of PM within firm.
- Describe PM-related projects that firm has done for other clients that could be used as models for a PM project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how PM is integrated into firm's delivery of legal services to client.

## Interviews

Interviews, though optional, can be crucial for understanding how your primary providers are delivering value to you. Jessie may be a PMP-ACP who has Leaned, Six Sigmaed, and Agiled the hell out of the firm's mailroom. This is great, but it has minimal impact on how your work is getting done.

While process improvement and project management can be very jargon heavy, there is no need to discuss theory. Ask the lawyers doing your work—and some firm project managers, if they exist—about those things that are tangible, tractable, and measurable:

- Walk me through the process maps that are applicable to our work with emphasis on recent and ongoing process improvements
- Explain to me how project management plays a role in our work and who is responsible for which aspects of project management
- Show me whatever tools you use for project management by opening up a couple of our current matters
- Run some reports on a couple of our matters and explain to me when and how you would use those reports
- [*Present parameters of a common matter*] Take me through the process of generating a budget, a project plan, and selecting resources for the matter
- [*Identify recent documents sent to client*] Detail the quality control protocol that those documents went through

## Structured Dialogue

In the beginning, you will most frequently find that your firms' approach to process and project management is to hire really smart lawyers. They take smart, young lawyers and have them work under smart, experienced lawyers. The smart, experienced lawyers rely on their experience to run the case the right way. Did we mention they are smart? And experienced?

If that is sufficient, you should not pursue this line of inquiry. If, however, you are convinced that discipline, rigor, organization, tools, and systems thinking are all essential augments to individual talent and experience, that response should not be enough. Good processes and

project management can enhance effectiveness and efficiency. Bad processes and project management can impair quality and be a major drag on productivity. The work will always get done, just not as well or as quickly as it should.

For many firms, the first initiative that comes out of structured dialogue might be a request for them to actually produce process maps. The second initiative might be to develop and start tracking statistics (e.g., cycle time) for the process, as well as for constituent phases and steps. A third initiative might be to start introducing some formal project management to the process and then measure the effects thereof. A fourth initiative might be to give you real-time visibility into the status of your matters as they run through the now well-defined workflow.

Or you could pursue a similar sequence with a focus on budgeting. The first initiative focused on more accurate budgeting. The second initiative directed towards better tracking of performance against budget. The third initiative addressing root causes of variation from budget. The fourth initiative providing you real-time visibility into the performance against budget on your matters.

Or an endless number of other options that could materially and measurably improve delivery of legal services to you. The thesis of continuous improvement is that there is no finish line. You are never going to be done. But that is no reason not to start. Progress, not perfection, is the goal.

### [Billing Hygiene](#)

Management guru Peter Drucker used to tell the story of an executive who as part of an improvement exercise was asked how he spent his time. He confidently divided his time into thirds, each devoted to important categories of his work. Drucker then asked the executive's secretary to track the executive's activities.

The actual record of his activities over six weeks brought out clearly that he spent almost no time in any of these areas. These were the tasks on which he knew he should spend time—and therefore memory, obliging as usual, told him that they were the tasks on which he actually had spent his time.... when his secretary first came in with the time record, he did not believe her. It took two or three more time logs to convince him that the record, rather than his memory, had to be trusted when it came to the use of time.

The effective person therefore knows that to manage his time, he first has to know where it actually goes.<sup>3</sup>

Knowing where time goes is important. Memory is unreliable. Yet, in many law firms, many lawyers are reverse engineering their time at the end of every month. Their accessible memory

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<sup>3</sup> Drucker, Peter F. (2009-10-13). *The Essential Drucker* (Collins Business Essentials) (p. 227). HarperCollins. Kindle Edition.

is quite general: they know they worked very hard for very long hours to provide excellent service. Their memory is also implicitly informed by hour targets and the explicit fact that their compensation is tied to how many hours they record. Days and weeks separate them from much of their work, and they have limited clues—emails, scheduled meetings—from which to piece together the historical record. Plus, they hate filling out time sheets and are inclined to complete the process as expediently as possible. This is the recipe for garbage data.

Engaging with your firms in a structured dialogue about how they leverage legal expertise through process and technology is meant to produce not just data but information—i.e., information being data organized in a manner that is useful for decision making. Good information requires good data. Otherwise, garbage in, garbage out. One of the great tragedies of the legal market is that what should be among our best sources of information—decades of billing records—is polluted by garbage data. We are data rich but information poor.

It need not be this way. And for some firms, it isn't. Firms can mandate that time be captured on a daily basis. Towards that end, firms can avail themselves of all sorts of desktop and mobile time tracking technology, including passive time capture. By 'observing' when documents are active, phone calls are made, and appointments occur, the machine can offer the timekeeper initial recommendations for allocation of her time. In describing what she did, the timekeeper can supplement standardized entries that follow a well-defined workflow rather than start each entry from scratch and introduce near infinite variation into task-level narratives. Time and narratives can be run through a rules engine that instantly reviews every line item using thousands of algorithms to flag entries for block billing, vagueness, skills mismatch, etc. Low-information entries can be made more robust before being sent to client.

The counterintuitive part of the superior approach to generating records is that it ultimately takes less time. Used correctly, the combination of process and technology assumes the bulk of the burden of tracking, entry generation, and narrative review. There is, undoubtedly, upfront investment in tech, training, and process redesign. And there is a learning curve as timekeepers become accustomed to generating information-rich entries. But, at a certain point, life gets easier for everyone on both the producing and receiving end of time entries.

As always, however, be wary of any purely tech-based solution. One firm might invest nothing in new technology but drastically improve their billing hygiene through increased emphasis and better management. A second firm might invest large sums in the state-of-the-art system but not have the management culture to get their lawyers to use the state-of-the-art features. The objective is not better technology that has the potential to generate better data. The objective is better data.

## **Questions**

The firm may have invested in any number of time capture tools. But that does not mean your lawyers are using them. The firm may have a strong policy on contemporaneous time recording. But that does not mean your lawyers are following it. In asking questions to try to get a true picture of their billing hygiene, you can always point your firms to this volume as a reference. Or you can select from the menu of questions below. Whatever questions you select,

you can mitigate the length of the response with an instruction such as, “Please provide a one-page summary, and whatever backup materials you deem appropriate, outlining the firm’s approach to and execution of generating information-rich invoices for client. Items the summary might address include:”

- Outline the firm’s time recording and communication practices on client’s matters.
- Provide the median and mean number of days between the date billable activity was performed and the date on which the time was recorded for client’s matters over the last calendar year. In other words, how long timekeepers are waiting to enter their time.
- Attach the firm’s billing protocols, including mandates related to the timeliness of entries and enforcement mechanisms thereof.
- List the technology tools that the firm utilizes to generate time records for client, including time capture, time recording, and invoice review with a particular emphasis on mobility, passive-time capture, text expansion, and algorithmic review of entries.
- Identify any technologies that the firm makes available to client to give client a real-time view of the time being recorded on client’s matters.
- Provide any available statistics as to the human resources committed to time capture, as well as the outcome thereof:
  - How much attorney time is spent on invoice generation and/or review.
  - How frequently time entries and narratives on client’s work are sent back to the original timekeeper for revision.
  - How much time (raw, mean, median) is cut from client’s invoices before being sent to client.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the velocity, accuracy, and informational value of time entries. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe projects related to billing hygiene that firm has completed for other clients that could be used as models for a billing-hygiene project that would improve the informational value of client’s invoices.
- Include any additional information that you consider important/useful for client to have in order to understand how the firm captures and communicates time on client’s matters.

## **Interviews**

An associate should be able to show you in pretty short order how they track their time and generate their entries. Likewise, a partner can demonstrate how they review and approve invoices before those are sent to you. And a COO or pricing director can walk you through the various statistics.

## Structured Dialogue

Everyone's life should be easier than it is. In a world of progressively improving billing data, clients should be able to shift emphasis from nitpicking information-poor invoices to using information-rich invoices to populate large data sets that yield useful insights. Something is wrong if a client erects a comprehensive invoice review protocol, including engaging third-party reviewers or using analytic technology, and the protocol delivers consistent results over an extended period of time. Consistency suggests that the client-side protocol is failing to change behavior. A perpetuation of the status quo is not the object of the exercise. But the status quo will persist unless clients and firms work together to bring more discipline and rigor to generating good data.

An initial improvement initiative might be to bring down the time-to-record—i.e., shrink the delta between when activities are performed and when the time is recorded. This simple metric can do much to curb the problems of fickle memory. The follow-on initiative might be more challenging. There are many different, though often complementary, ways to increase the informational content of the written narratives. Most of them—task codes, standardized entries, defined workflows, algorithmic review—involve creating and imposing more structure. Finally, the big initiative is to start identifying patterns in the information-rich invoices as a prelude to altering the underlying behavior.

## [Data/Analytics](#)

Customers experience variation, not averages. There are legitimate reasons why a law firm not offering fixed fees has a hard time telling clients precisely what a matter will cost. Except most clients are not after false precision. We are concerned with general accuracy.

Experience with similar matters is a hallmark of most law firm sales pitches. Firms will tell you that they have seen this issue, fact pattern, deal type, judge, regulator, or counterparty on countless occasions and successfully handled the resulting matters to completion. They can tell you everything you ever wanted know about a matter except what it is likely to cost and how it is likely to end. When pressed on these critical pieces of information, they will bombard you with all the confounding factors that makes each matter unique and past experience such as imperfect guide.

In a narrow sense, they are correct, matters are unique. In the broader sense, the inability to provide insight into potential cost and outcomes is a failure to properly employ data and analytics. Indeed, the reason some law firms will tell you that they have handled similar matters on “countless” occasions is because they are, literally, unable to count past matters due to poor data and haphazard categorization.

Whether or not you are negotiating a fixed-fee arrangement, you should expect the firm to be able to (i) lay out a cost distribution of past similar matters, (ii) explain where your matter is likely to fall on the distribution based on available attributes and (iii) identify the variables that have the largest impact on the forecast. This analysis can be at the portfolio, matter, or task

level. To take an easy example of the latter, how many firms can tell you how many motions for summary judgment the firm has handled? Or their outcomes? Or the cost distribution? Or where your motion is likely to fall in that distribution? Some but not many.

Price is the most obvious area for improved use of data and analytics. But it is not the sole area. Your firm should also be able to provide you useful statistics about outcomes, verdicts, settlement values, turn-around times, time to resolution, staffing, etc. Any metric that you might want to review after the fact should be available as a projection and point of discussion before the matter commences.

Again, the analysis need not be precise to be accurate. The best example of the difference is life insurance. Life insurance is, in essence, a bet on when someone will die. The circumstances of their death will be unique to them. But people, in general, die in a fairly uniform distribution that has shifted in relatively predictable ways over time. The insurance company takes that distribution and tries to figure out where the person fits by relying on an array of weighted risk factors.

While a freak occurrence may render an individual bet inaccurate, the frequency of freak occurrences becomes another salient data point. Overall, however, the law of large numbers provides a well-run insurance company with consistent returns in predicting a large number of semi-random events. That is, the objective is accuracy in general rather than precision in the particular. This would not be possible without good data and excellent analysis (e.g., which risk factors have the highest informational value). Where lawyers try to use “it depends,” as a hedge, actuarial science takes “it depends” as a given and then endeavors to answer the questions “on what?” and “how much?”

Your law firm should be tracking enough data and doing enough analysis to be able to provide you generally accurate, if not precise, estimates at the task, matter, and portfolio level. And some firms can do just that. But not many, in part, because clients don’t ask.

## Questions

A firm may have licensed all sorts of analytic tools that they don’t really use or that they don’t use in any way that is meaningful to you. In trying to understand how, if at all, your firm uses data and analytics to improve legal service delivery to you, you can always point them this volume as a reference. Or you can select from the menu of questions below and tailor the questions to the kind of work the firm handles for you. Whatever questions you select, you can mitigate the length of the response with an instruction such as, “Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining how the firm utilizes data and analytics to deliver value to client. Items the summary might address include:”

- Select two of client’s recent matters, one opened and one closed, and provide copies of the firm’s standard matter reports.
- Explain what task, matter, and portfolio data firm tracks, how firm analyzes the data, and when/where the firm uses that analysis to inform decisions or projections.

- Identify the categories of data and analysis that could be made available to client such as projected costs, outcome, staffing, turn-around time, time to resolution, etc.
- Describe what projections firm makes re client's matters and how firms tracks performance against those projections.
- Summarize firm's key performance indicators (KPI) at the matter, portfolio, and client level, as well as how those KPI's are calculated and when they are reviewed.
- Explain how firm's use of data and analytics fits into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals in data and analytics as it applies to client's matters.
- Identify firm personnel whose primary function is data/analytics and explain their roles.
- List the technology tools the firm uses to track and analyze data from and for client's matters.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the utilization of data/analytics within firm. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe data- and analytics-related projects that firm has done for other clients that could be used as models for a project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how the use of data and analytics is integrated into firm's delivery of legal services to client.

## **Interviews**

These interviews are best targeted at whomever is overseeing your matters. In most cases, this is the partner. Having them walk you through what analytics they look at and how they use them on your matters should provide a good starting point for structured dialogue. You can then talk to a Pricing Director, COO, or some other similarly situated individual to understand the difference between what your lawyers are using and what is available to them.

## **Structured Dialogue**

Better data should lead to better analysis. Better analysis should lead to better conversations between you and your firms. Better conversations should lead to better relationships as a foundation for better outcomes.

A good place to start is with what you actually want to know. You likely want to know the outcome of each matter, as well as how long it will take and how much it will cost. You are unlikely to get satisfactory answers on any of these topics. And unless your lawyers are also psychics, you are never going to get perfect, precise answers (except on cost if you are using a fixed fee). But you can demand something more than "it depends" and expect that general accuracy of the answers will improve over time. It is not just that the data should be analyzed. The analysis itself should be analyzed—i.e., they should be tracking predictive accuracy and whether it is improving.

A first initiative might involve tracking data that is currently being ignored. A second initiative might focus on using the data to provide testable predictions and insights. A third initiative might be aimed at improving those predictions and insights. A fourth initiative might then try to be more methodical in using those predictions and insights to drive decisions (e.g., should we file a motion if it only has an 8% chance of success?).

## Paper Lite

Paper is great. Paper offers several affordances that are difficult, if not impossible, to mimic in digital form. Paper, for example, is both tangible and spatially flexible—i.e., easy to move around and organize—making it well suited to providing immediate visual cues. The most prominent project management and organizational techniques, for example, rely heavily on the elasticity of sticky notes. Likewise, there are many valid reasons—e.g., marginalia, different mental processing pathways—why some knowledge workers may prefer working with paper documents. But printing out documents for the purposes of signature and long-term file storage is not among them. With some very narrow exceptions, documents should be digitally executed and digitally stored.

About those narrow exceptions. The default rule is that digital signatures and the attendant records are just as valid as their ink and paper counterparts. Indeed, a true digital signature is easier to authenticate than ink scribbles.<sup>4</sup> There some document types, like wills, to which the statutes recognizing digital signatures do not yet apply. There are some courts that require some documents, like affidavits, to have an original ink signature and be retained for a period of years in original, physical form. And there is only one state, Virginia, that currently permits e-notarization. You know who should be aware of the applicable, narrow exceptions to the general statutory framework favoring digital signatures? Lawyers.

Speed is the easiest case to make in favor of keeping documents in digital form. Printing, signing, and sending a signed document via mail takes almost 22 minutes. Printing, signing, scanning, and emailing a signed document takes almost 11 minutes. E-signing and transmitting a digital document takes about 3 minutes.<sup>5</sup> At scale, that is a lot of wasted time.

But it is also important to keep in mind what happens to the document in the immediate. Assuming it is rescanned, the document degrades from a digital file that can be searched to an image file that cannot. The file size expands. The instances of a document, which now exists in both paper and digital forms, multiply. The opportunities for error increase, from the pages that did not scan because they are stuck together to original signature pages that get misplaced. These opportunities for error compound if the document needs to be executed by multiple parties operating in different locations.

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<sup>4</sup> Flaherty, D. Casey, and Corey Lovato. "Digital Signatures and the Paperless Office." Journal of Internet Law 17.7 (2014): 3-12.

<sup>5</sup> Avady, Mikhail. "Study: The Impact of Electronic Signatures on Law Firms' Efficiency." <https://www.goclientside.com/attorney-blog/the-impact-of-electronic-signatures-on-law-firms-efficiency-study/>

Likewise, it is important to think about what happens to the paper version of documents in the long term. They get filed somewhere. Finding them because you need them gets harder and harder as time passes and more paper accumulates. Finding them because it is time to dispose of them gets harder and harder as time passes and more paper accumulates. A small stack of documents has affordances. A room full of documents is a nightmare.

This dynamic holds whether or not the document is signed. It is frightening how frequently litigators have to go to PACER in order to find a document they or the opposing party filed. It is stunning how often someone from a firm is sent to dig through a physical deal binder because some item cannot be locate. That some lawyers continue to work with paper is fine. That they lack a process for making sure the digital originals remain organized and readily accessible is not. This point is of particular import in an increasingly mobile world. Mobility with respect to people working remotely. But also mobility with respect to people frequently switching jobs. Informal organization works for some people—until they are gone.

## Questions

The firm can have perfect written policies that are completely ignored or provide digital tools that go unused. On the subject of paper intensity, interviews might be more valuable than questions. But if you are going to ask questions, you can use this volume as a reference. Or you can select from the menu of questions below and tailor the questions to the kind of work the firm handles for you. Whatever questions you select, you can mitigate the length of the response with an instruction such as, “Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining if the firm has, or is, shifting to a paper-lite approach to executing and storing documents. Items the summary might address include:”

- Identify how the firm organizes client’s files and makes them available to firm personnel, including when personnel are operating remotely.
- Describe firm’s approach to limiting the use of physical paper both in general and in the particular as it relates to handling client’s matters.
- Provide available statistics, both past and present, that demonstrate how and how much firm’s reliance on paper has changed.
- Furnish firm’s policy on electronic signatures and identify the mechanisms by which compliance is promoted, tracked, etc.
- Provide any available statistics on the use of electronic signatures within firm.
- Provide any available process maps that cover or include document storage and mobile access.
- Submit examples of recent documents sent to or filed on behalf of client in which the firm used electronic signatures.
- List the technology tools the firm uses for document management, mobile document access, and electronic signatures and explain when and how the tools are used on client’s matters.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that make firm less paper dependent and mobile friendly. For completed projects, provide whatever measurements are available on usage and

improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.

- Describe paper-reduction projects that firm has done for other clients that could be used as models for a project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how the move to digital documents is integrated into firm's delivery of legal services to client.

## **Interview**

You don't necessarily have to send the questions in advance. While interviewing an associate on other categories, you can simply ask her to show you how she would (i) execute a document, (ii) upload it to your file, and (iii) access it remotely. You can then ask her to find a few files from your previous matters, one she worked on and one she didn't, to see how your matter files are organized. You can ask her when, if ever, she is forced to resort to paper files. You can ask her about mobility—i.e., how easy is it for her to access what she needs when she is not at her desk, not in the office, or does not have her firm-issued computer. You can then ask the CIO about the security safeguards in place to make sure that mobility does not come at too steep a price in security.

## **Structured Dialogue**

Your firms should be digital in their execution and storage of most documents. Digitization should facilitate mobility. In talking to your firms about improvement initiatives, you can take each of these in turn. First might be an initiative to use digital signatures. Second might be an initiative to move to comprehensive digital matter files. Third might be an initiative to make those files remotely, but securely, accessible. When the firm claims to have delivered on any of these initiatives, ask for whatever statistics are available (e.g., volume of digitally signed documents) and spot check as outlined in the interview above.

The inquiry into the paper intensity of your external firms' operations highlights an important aspect of vetting value enablement. You can be satisfied and move on. Some firms really have their act together on this front. Others don't. If you find your firm is in the former category, talk to them about other things.

## [Expert Systems](#)

Your outside lawyers' expertise is valuable. It should be leveraged to the utmost. As part of the [value-plus](#) section, we outlined numerous alternative ways to take advantage of external domain expertise through CLE, training, and an advice hotline. In the [value-enablement](#) section, we have also discussed how structure and discipline can ensure that expertise is employed systematically through knowledge and project management. Expert systems are an advanced application of knowledge management that merit independent attention. Expert systems are not about replacing human insight. Rather expert systems are a way to organize scarce knowledge and know-how in a manner that scales that insight.

To take a basic form of knowledge management, a clause bank is worthwhile for contract drafting. It is not as if an associate is going to draft an indemnification clause from scratch. Rather, absent other options, they are probably going to pull an indemnification clause from some available contract to use as a model to tailor to the situation. Instead of inviting such an ad hoc, cut-and-paste approach, a firm will setup a clause bank that contains fully vetted indemnification clauses that have been purged of the idiosyncrasies or errors that might infect a randomly selected exemplar.

Yet the associate is still making implicit and explicit choices. First, of course, is the choice to include an indemnification clause. Second is which indemnification clause to choose from the clause bank. Third is choosing other contractual provisions that are consistent and compatible with the selected indemnification clause, or vice versa.

Each choice warrants guidance of increasing complexity. The firm might have a simple rule to always include an indemnification clause. The firm might annotate the individual sample clauses to explain the proper situations in which to use each. The firm might also provide an annotated checklist highlighting all of the ways that indemnification clauses interact with other contractual provisions and explaining how to construct a coherent whole. All of which is much better than having an associate, and even most partners, develop a contract unaided.

Yet all of that knowledge and know-how can also be delivered via document automation software, a form of expert system. As opposed to the navigating large collection of text, the decisions to be made can be presented in a simple but dynamic questionnaire. The questionnaire is dynamic in the sense that what questions get asked are contingent on previous answers. Utilizing the same rules and logic that were contained in the text-based instructions, and operating from the most current template, the system can guide the user through the clause-selection process and assist them in building the entire contract in a coherent manner. The system can also maintain statistics on the contracts generated to better understand what templates are being used and what choices are being made. **Document automation** is probably the most familiar expert system. But there are other approaches.<sup>6</sup>

**Diagnostic systems** are a kind of interactive consultation. *TurboTax* is an example of a diagnostic system. The software asks a series of questions and then comes to conclusion about how much tax is owed in the same way a doctor might ask about symptoms and then diagnose their cause. **Planning systems** are the reverse of diagnostic systems in that you start with a desired outcome and work backwards. Staying with the tax example, you might identify limiting tax liability as the goal and then use the system to figure out the best way to achieve it.

**Procedural guides** are a way to ensure rules are followed and deadlines are met. Where the planning system might set out the optimal setup for limiting tax liability, the procedural guide would interactively present the steps to get there. Individual steps in the process might then use an **intelligent checklist** to confirm that all requirements were satisfied.

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<sup>6</sup> Examples taken from Susskind, Richard E., "Artificial Intelligence, Expert Systems and Law." *The Denning Law Journal* Vol 5, No 1 (1990) pgs 105-116.

Expert systems are a great example of the kind of infrastructure that firms can first build to streamline internal processes and eventually productize to offer to clients as an add-on or stand-alone service. Many firms have done this in many areas. Many more firms have not.

As a client, you should be interested in expert systems because there is danger in relying on knowledge that resides in only one person's head. It is worthwhile to investigate how that knowledge is being institutionalized. Moreover, as much as we lionize singular genius, teams usually deliver superior results. Approached correctly, expert systems should evolve as rules changes, people learn, and the product is iterated toward perfection.

## Questions

A firm may have developed many wonderful expert systems none of which touch upon your work. The questions therefore are not about whether the firm uses expert systems but whether the firm has deployed expert systems that benefit you. As always, this volume can be used as a reference in sending a request for information to your firm. Or you can select questions from the menu below and limit the length of the response with an instruction such as "Please provide a one-page summary, and whatever backup materials you deem appropriate, identifying and describing the expert systems the firm uses to handle client's work. Items the summary might address include:"

- Detail any expert systems the firm uses to handle client's work (e.g., document automation, diagnostic systems, planning systems, intelligent checklists).
- Explain how firm's expert systems fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm's expert systems.
- Provide any available, applicable process maps that indicate how expert systems play a role in firm delivering legal services to client.
- Provide any available statistics on expert system usage (for client's matter, if possible) and maintenance.
  - How frequently is each expert system accessed?
  - How frequently is the content of each expert system updated?
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in any expert system.
- Outline expert-system projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe expert-system projects that firm has done for other clients that could be used as models for an expert-system project that would improve firm's delivery of legal services to client.

- Include any additional information that you consider important/useful for client to have in order to understand how expert systems are integrated into firm's delivery of legal services to client.

## Interviews

If your firm identifies an expert system that is useful for your work, have them walk you through it and give you some time to play with it. Then ask the relevant people how they use it with a targeted request to review how it has been used on your recent matters.

## Structured Dialogue

Legal has fewer expert systems than it should. But that does not mean that expert systems are appropriate for every matter type. Regularity and repeatability are key. Regardless of whether an expert system ends up being the solution, it is a great exercise to sit down with your primary providers to discuss what aspects of your work are regular and repeatable and how the firm utilizes process and technology to ensure quality, speed, and consistency.

Where expert systems are a viable initiative, be patient. Creating expert systems has gotten much easier as technology advances. Still, designing and implementing expert systems is more challenging than it seems at first glance. While this is true of most enterprise technology—harder than it looks—expert systems are more akin to creating software than installing it. That said, in working with your firm on expert systems, think about its application beyond the firm's work on your discreet matters. You may be able to take advantage of the expert system on a subscription basis for work you do in-house. So, too, may your peers. Standardization has positive externalities. And the resulting scale from your peer group all using the same tool will only drive additional investment in the tool, to the benefit of you all.

## Technology Training

Google is rightly held up as an exemplar of a clean, intuitive user interface. Type some words into a box and press a button. More often than not, the page you are looking for is among the top results. You click on the link. Then what? How do you find the place in the page containing the terms you searched for? According to Google's search anthropologists, 90% of us skim down until we find the relevant text.<sup>7</sup> Only 10% know how to use the Find feature (CTRL/Command + F) to search within the page.

Find is just one of the many ways that standard web search can be enhanced. Google itself offers a six-week course on power searching. Training is necessary because depth comes at a price. While punctuation, search operators, and filters can markedly improve your Google-fu, they are not intuitive. And when Google adds them to an interface—see Google Advanced Search—it becomes considerably less clean. None of this makes Google anything but amazing.

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<sup>7</sup> Madrigal, Alexis C. "Crazy: 90 Percent of People Don't Know How to Use CTRL+F". *The Atlantic* (<http://www.theatlantic.com/technology/archive/2011/08/crazy-90-percent-of-people-dont-know-how-to-use-ctrl-f/243840/>)

They have found a way to offer most users an extremely streamlined experience while maintaining deep functionality that rewards power users.

Isn't Microsoft Word similar? In its simplest form, Word is a typewriter. Open a document and start typing. It would be hard to make it much easier. Where the difficulty lies—and where training becomes necessary—is when we want to go beyond that basic functionality. Once we start adding formatting and numbering and bullets and tables and track changes and..... Word starts becoming appreciably less intuitive. Rather than wondering why Word itself is not as simple as a single-purpose app, it is better to think of Word as a document drafting ecosystem and all those buttons on the Word ribbon as single-purpose apps—individual solutions to particular problems. Just as on our smartphones, the number of apps most of us use in Word is actually quite limited relative to what is available.

For most people, the basic, intuitive iterations of Google, Word, etc. are sufficient. Providers of a high-end legal services are not most people. The kinds of advanced searches a power user might run in Google are similar to the kind of advanced searches a legal professional might need to sift through mountains of case law, discovery documents, due diligence, or SEC filings. The kinds of advanced features a power user needs to know so that Word becomes more than a typewriter with a glowing screen are the kinds of features that make it possible to construct complex legal documents with automated numbering and cross-references.

There is a large suite of technology tools that have become essential to delivering legal services. Our external providers not only need to use them, they need to use them well.

Using technology tools well means training. This is true for everybody, including the so-called “digital natives.” There are many empirical studies debunking the myth of the digital native (you can Google them)—i.e., the false notion that growing up with technology means young people automatically know how to use it. While, in general, young people tend to have a higher level of comfort with technology, the comfort does not translate into practical skills because, again, the deep functionality is not yet intuitive. Thinking that someone can use advanced functionality in Word because they opened a Twitter account in utero is like thinking that the teenager who can microwave a Hot Pocket is capable of cooking a gourmet meal. They are capable, if you train them.

Real training means real learning. Much of what passes for training is actually tourism. Sit people in a room or in front of a video and hope they absorb something rather than stare at their smartphone. Time is a poor proxy learning. Availability is even worse—there is an infinite amount of free training available on the internet and only a miniscule percentage of the population takes advantage of it. We can, and should, measure learning directly. Don't ask whether your external providers make training available. Ask how they have verified that the people handling your work actually have the skills necessary to use technology tools correctly.

## **Questions**

A firm may have an impressive sounding training offering that results in very little learning. Be more concerned with the evidence of skill than the evidence of training availability. As always,

this volume can be used as a reference in sending a request for information to your firm. Or you can select questions from the menu below and limit the length of the response with an instruction such as “Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining how you ensure that the personnel handling client’s work are properly trained on the technology tools you provide them. Items the summary might address include:”

- Supply a chart of timekeepers and staff working on client’s matters indicating what technology training they have completed. Include details about the form and length of each training with emphasis on whether any competence-based testing was done to ensure skill acquisition.
- Describe your screening mechanisms for potential employees. How do you determine whether applicants have the requisite technology skills for their position? How do you determine what the requisite technology skills for a position are?
- Detail the analysis you do to determine who needs training in which applications (e.g., pull usage data from the document management system, diagnostic assessments).
- Detail how you determine whether training was actually effective and trainees came away from the training possessing the subject skills.
- Outline technology-training initiatives firm is currently working on (with timeline of start and finish) and initiatives you have completed in the last three years that improve the firm’s delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe technology-training initiatives that firm has done for other clients that could be used as models for an initiative that would improve firm’s delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how technology training is integrated into firm’s delivery of legal services to client.

## **Interviews**

Candidly, this is the topic where interviews are of the least use. You can ask associates and staff whether the firm provides training, whether the training is mandatory, and whether the training is any good. You can also ask them their perceptions of the tech savviness of their peers, their subordinates, and their superiors. But people aren’t really able to judge how proficient they themselves are. The person who puts the meaningless “proficient in Microsoft Word” may believe it to be true. Confidence is often a product of ignorance—they don’t know what they don’t know.

Most people think they are good with basic technology tools because they use them all the time. They are wrong. Most firms think their people are good with technology tools because they use them all the time and, therefore, don’t need any training. They are also wrong.

## **Structured Dialogue**

Technology can be a fantastic way to leverage expertise. But there is a dangerous tendency to think that purchasing the technology is the final step, rather than the first. The best available studies suggest that properly integrating technology at the enterprise level often requires up to

10x the investment in personnel, training, and process redesign than was needed to purchase the technology.<sup>8</sup> Buying technology is the easy (and cheap) part. One of the reasons that technology always seems to fail to live up to the hype is that we fail to make the complementary investment necessary to make it useful.

It's great if your firms are investing in new technology. But you should always be interested in how that new technology is being applied to improve delivery of legal services to you. They can own software without deploying it. They can deploy software without anybody using it. They can use software without using it well.

Some of the biggest gains to be made on the process side come from people armed only with pens and sticky notes taking the time to re-engineer how work gets done. Some of the biggest gains on the tech side come from people learning to better use the tools they already have at their disposal. Asking your firms to invest in process and technology need not be about them buying anything new.

When your firm does develop a robust competence-based protocol for ensuring their personnel are properly using the tools at their disposal, see how it applies to the tools you use. Your firms are not the only ones in need of [technology training](#), a great value-plus offering.

## [Staffing](#)

Law firms have announced major reductions in force justified by claims that lawyers are substituting technology for staff. While this prompts the question of whether the lawyers (and remaining staff) are getting the [training](#) necessary to use the technology well, it is consistent with the studies on lawyer psychology. Lawyers score high on autonomy, skepticism, and urgency while scoring low on sociability and resilience. They have a tendency to prefer to do work themselves (autonomy) their way (skepticism) now (urgency) rather than communicate (sociability) and potentially live with the mistakes of other people (resilience).

A relevant anecdote comes from a partner who was handling a case involving a high volume of financial transactions.<sup>9</sup> The case was focused on transactions by a certain individual within a specific date range below a particular dollar threshold. Because he did not trust anyone else to maintain laser focus, the partner printed out more than 600 pages of spreadsheet data and meticulously went through it with a highlighter to identify the subject transactions. Of course, had he delegated the work to someone with even a modicum of Excel knowledge, the same

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<sup>8</sup> E. Brynjolfsson and L. M. Hitt, "Computing Productivity: Firm-level Evidence," *Review of Economics and Statistics* 8, no. 4 (2003): 793– 808; Timothy F. Bresnahan, Erik Brynjolfsson, and Lorin M. Hitt, "Information Technology, Workplace Organization, and the Demand for Skilled Labor: Firm-Level Evidence," *Quarterly Journal of Economics* 117, no. 1 (2002): 339– 76, doi: 10.1162/ 003355302753399526.

<sup>9</sup> All anecdotes are faithful to a point. They convey the basics of what happened but are altered to protect identities.

data could have been pinpointed in seconds without hundreds of opportunities for human error.

The partner didn't know what he didn't know. The advantages of delegation were therefore lost on him. Then again, there is no guarantee that the person to whom he would have delegated would have offered any advantages.

A second relevant anecdote involves a partner who did delegate. The matter involved a product recall driven a particular faulty part that had come off a specific machine within a defined time period. Similar story except there were two much larger data sets. The client provided one spreadsheet that had all the production information for the parts and the serial numbers for the products—a subset of which needed to be recalled—those parts were now in. The second spreadsheet paired serial numbers with customers, a subset of whom needed to be contacted about the recall. The partner sent both spreadsheets to a paralegal who spent weeks manually looking through the first spreadsheet for offending parts and then using the associated serial number to manually search for customers in the second spreadsheet. Of course, had the person to whom the work was delegated had a modicum of Excel knowledge, the entire project could have been completed in under two minutes—rather than weeks—and avoided tens of thousands of opportunities for human error.

Why did the partner pick the paralegal? Because the need to delegate such labor-intensive work seemed obvious. Because the paralegal was available. And because the partner, like the paralegal, had no idea there was a better way to achieve the desired outcome.

On the one hand, technology and the operating environment have exacerbated the tendency for lawyers to hoard work. A lawyer that grew up with a Dictaphone and a dedicated secretary was embedded in a workflow that necessitated delegation. A lawyer with a computer chooses what and when to delegate. Yet, most young lawyers these days learn their habits in an environment where they have no one to delegate to. Or, if they do, their work must sit in a queue and is accorded a low priority. As autonomy-seeking missiles with high self-regard and an acute sense of urgency, many would rather do it themselves now than wait for someone else to get to it eventually.

On the other hand, technology and the operating environment have made delegation trickier. The Dictaphone-wielding lawyer knew that her secretary had a comparative advantage as a typist. It is less obvious whether the person to whom modern legal work is delegated has a comparative advantage with word processing, spreadsheets, research, or discovery software. Sometimes, the lawyer is right that they will be better off doing it themselves. Much of the time, however, the lawyer is more wrong than they know. Their ignorance of the process or technology associated with completing the task correctly leads them to drastically underestimate the advantages of delegation—if the task is delegated to the right person.

The same issues of skill and specialization that make delegation tricky also make it essential. [Technology training](#), for example, is just as much about team assembly as it is individual competence. In the examples above, not everyone needed to be an Excel expert, but someone

did. Still, the senior folks should know enough to recognize (i) what to delegate, (ii) to whom to delegate, and (iii) generally how long the delegated task should require.

Without deeper insight, clients are in a bit of a bind. Clients should be concerned about more expensive lawyers hoarding work. There is something worth discussing when an \$800-per-hour resource is billing 8+ hours day after day. Clients should also be concerned about too much delegation to less skilled resources who take longer, increase the likelihood of error, and demand more oversight. There is something worth discussing when the average number of personnel assigned to a client's matters is closer to triple digits than single digits because the firm's concerns about utilization trump both skill and institutional knowledge in work-allocation decisions. Just like technical skills, knowledge of the client's file, protocols, and preferences are capacities to be built.

## Questions

Many allied professionals at your firms track hours the same way the lawyers do. For those who don't, the firm can still provide ratios of lawyers to staff. These statistics provide far more insight than abstract discussions about efficiency. As always, this volume can be used as a reference in sending a request for information to your firm. Or you can select questions from the menu below and limit the length of the response with an instruction such as "Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining your staffing ratios and delegation protocols, especially on client's work. Items the summary might address include:"

- In chart form, list the various positions and provide the number of personnel in the firm that might touch client work (i.e., number of equity partners, number of non-equity partners, number of associates by level, number of paralegals, number of admins, number of research specialists, number of project managers, number of word processors, etc.)
- Calculate and explain how your staffing ratios have changed over the past decade.
- Explain how you track who is handling client's work, including nonbillable staff, and provide a chart of who has handled client's work in the last two years including position and number of hours recorded (both to client and overall).
- Detail your staffing and delegation protocols and explain how they affect the handling of client's work.
- Provide and identify the origin of whatever statistics you maintain on who does what work and who delegates what work to whom (e.g., analysis from your document management or workflow coordination systems). Data specific to client is preferred, if available.
- Summarize how, if at all, you incorporate low-cost resources into your delivery of legal services from (i) your own near- or off-shore delivery center(s) to (ii) affiliations with legal process outsourcers and alternative service providers. Explain what impact your answers have on delivery of legal services to client.
- Outline any projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that alter your approach to staffing/delegation and improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what

measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.

- Describe any changes you have made to how staff matters or delegate work on behalf of other clients that could be used as models for a new approach to staffing/delegation on client's matters that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important or useful for client to have in order to understand how staffing and delegation support firm's delivery of legal services to client.

## **Interview**

With the statistics in hand, just go down the line. Ask the partners what they delegate to whom. Then ask those delegates what they delegate and to whom. Eventually, you will run out people to talk to. Compare their words to the numbers from the answers to see if they align.

## **Structured Dialogue**

Firms will differ in their personnel ratios—i.e., the number of people available to whom work can be delegated. Firms will differ in their approach to staffing and delegation. Some firms will maintain small teams and tight controls. Some firms will let individual partner decide. Some firms will use a pool system to even out utilization. Different approaches are not necessarily right or wrong. Some may be better suited to particular matter types. Moreover, staffing and delegation have a high degree of interplay with other categories.

A firm that has great knowledge management has a solid explanation for less matter-level delegation. The firm that tells you they don't need staff because their lawyers are using technology should have good answers for you on technology training questions. The firm that tells you their lawyers don't need technology training because they delegate labor-intensive work should have the staff to whom to delegate and the statistics that reflect heavy delegation. The firm that assigns work to whomever is available probably needs to score highly on process and project management.

There are few obviously right or wrong answers. But there are telling answers, especially in conjunction with other areas of inquiry. Staffing and delegation are a worthy subject for structured dialogue with your primary providers.

Staffing is also a place where your approach and guidelines may have unintended consequences. You might have no controls on the number of timekeepers meaning your work gets assigned to whomever is available. You may have really tight controls on the number of timekeepers, meaning that specialists—e.g., researchers, project managers, paratechnicals—do not get assigned to your matters. Maybe you think that the firm should be assigning the specialists to your matters but not bill for them. That your opinion does not align with the firm's actual practices is precisely the kind of divide that the questions are meant to illuminate and structured dialogue is intended to bridge.

Because time is the one thing that firms are accustomed to measuring, it should be easy to track metrics for changes in staffing and delegation following structured dialogue. Do not, however, forget that none of these categories are ends in themselves. Also track the matters

that the changes are intended to support. What is the impact on cost? On turn-around time? On measurable or perceived quality?

## Firm Defined

“Will clients care?” That is the question your law firms ask themselves when approaching many investment decisions. If the client is just going to stick with the same lawyers—because we hire lawyers, not law firms—whether or not the firm invests in infrastructure, the firm has every incentive to direct all their investment resources towards keeping those lawyers happy and in place. If clients are going to demand the same discounts and writedowns no matter what investments the firm makes—because the client operates from a general impression that all law firms are equally inefficient—then the firm has no incentive to invest in improving legal service delivery. If clients are not going to reward firms with more work or more profit on existing work for excelling at leveraging legal expertise through process and technology—because firms should be doing it anyway—firms have no incentive to invest in process and technology. The trouble with incentives is that they work.

Legal is a buyer’s market. As the buyers, law department usually get what we ask for. Really asking means more than virtue signaling on anonymous surveys that “X is important to us.” One major premise of this volume is that clients should engage with their firms in a structured dialogue about how legal services are delivered. Paying attention to *and* rewarding how firms are augmenting legal expertise with process and technology is one of the roles that clients need to play in the legal market.

But just because the balance of power favors clients does not mean clients have a monopoly on good ideas. Our firms are filled with people who are talented, brilliant, hard-working, and innovative. Many of these people are lawyers. Many are not. Many are allied professionals with their own expertise in technology, knowledge management, analytics, process, and project management. At present, the rate-limiting factor on what they can accomplish is not their intellect but the resources they are given to pursue improving the way legal services are delivered to us. What we decide to care about is instrumental in determining where resources are allocated.

We should increase our attention to how much and where our firms are investing in upgrading service delivery. We should also give them the freedom to surprise us. Every category of questions should be a bit open ended. For example, every set of question ends with some variation of:

Include any additional information that you consider important/useful for client to have in order to understand how knowledge management is integrated into firm’s delivery of legal services to client.

This question lets the firm define what constitutes knowledge management and gives them the opportunity to explain how the firm’s knowledge management practices affect the delivery of legal services to you. A similar question appends every set of exemplar questions in every category. But the categories themselves are constraints. The constraints are useful in focusing

the conversation. Yet there is also value in letting the firms define their own categories because the number of potential categories is infinite.

Thus, we recommend that in addition to selecting categories for inquiry, you also give your firms an undefined category in which to share investments and innovations that they think you will value. This opportunity does not fully answer the question, “Will clients care?” But it does make an affirmative answer far more likely.

## Questions

In giving a little bit of context to the undefined section, this volume can be used as a reference in sending a request for information to your firm. Or you can select questions from the menu below and limit the length of the response with an instruction such as “Please provide a one-page summary, and whatever backup materials you deem appropriate, explaining your staffing ratios and delegation protocols, especially on client’s work. Items the summary might address include:”

- Detail firm improvement initiatives that affect how firm is delivering legal services to client. Outline improvement initiative projects you are currently working on (with timeline of start and finish) and initiatives you have completed in the last three years that improve the firm’s delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Provide any available statistics that speak to the reach of the improvement initiatives (e.g., usage statistics) or the magnitude of the impact (e.g., lower costs, quicker turnaround, higher quality).
- Provide any process maps (past, present, future) that indicate how recent and current improvement initiatives alter the delivery of legal services to client.
- Explain how the firm identifies potential improvement initiatives and rewards those who are responsible for the idea or implementation (e.g., billable credit, innovation prize).
- Summarize the respective role of attorneys and allied professionals in both conceptualizing and executing improvement initiatives.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that were affected by a recent improvement initiative.
- Describe improvement initiatives that firm has done for other clients that could be used as models for a project that would improve firm’s delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how improvement initiatives affect firm’s delivery of legal services to client.

## Interviews

Since this is an undefined section, it is hard to provide detailed advice on interviews. It is, however, worth reiterating that interviews are a great way to get past puffery. Is the innovation something real or is it just something that will sound impressive when described on the firm’s website? Having them show you the innovation is effective for moving beyond happy talk. Moreover, while the innovation may be genuine, that does not mean it has a material impact on your work. Talking to the innovation champion is great. But talking to the timekeepers and

staff who are actually handling your work can be more informative. Have them show how they have actually used (past, not future tense) the innovation on your work—i.e., look at actual work they've produced for you and seek to understand how it was touched by the subject innovation.

### **Structured Dialogue**

Again, since this is an undefined section, detailed advice is a challenge. Structured dialogue is a way to have data-driven conversations directed towards weaving continuous improvement into the fabric of the relationship. It should permit you to talk to your firms about priorities and come to an agreement with them on what initiative they are tackling next. The initiatives and attendant metrics that come out of structured dialogue with your primary providers is what enable you to confidently answer the question, “what evidence do we have that our primary providers are measurably improving the delivery of legal services to us?”

But you should give your firms some flexibility and, if they've earned it, the benefit of the doubt, especially if they are trying to scale their innovations. While a small-bore initiative for an individual client can be a fantastic incubator for innovation, the dramatic changes occur when they apply those innovations across the firm. This takes real resources, and they, like you, have resource constraints. If they are switching from land lines to VOIP to save money, yawn and ask what they are doing that is actually going to improve service delivery to you. If they are currently working on process mapping and optimization with the practice group that handles your work—and have the stats on non-billable hours recorded to back up the time investment—maybe ask for the metrics that define success and track progress but hold off for a quarter or two on any additional demands.

Finally, just as you should not ever expect perfection in service delivery, don't expect perfection in improvement initiatives. They are not all going to work. Innovation means doing things differently. Different comes with risk. You should be encouraging your firms to take such risks. That some individual initiatives don't work out as planned is fine if, overall, the relationship is moving in a positive direction. Progress, not perfection.

## Why

Lawyers are the most skeptical people on the planet.<sup>10</sup> Skepticism is their defining trait, followed, respectively, by high autonomy, low sociability, low resilience, and high urgency.<sup>11</sup> This makes them very good at their jobs. You want someone who questions everything and tries to peer around corners for latent risks and unintended consequences. Just as you want someone who is independent (autonomy), self-sufficient (sociability), perfectionist (resilience), and on task (urgency). But these same traits can make them change averse. They don't want to have to talk to people (sociability) about changing the way they work (autonomy) because something might go wrong (resilience) or, at the very least, distract them from matters at hand (urgency). So they employ their professional issue spotting skills in defense of the status quo.

Except it isn't framed as a defense of the status quo. Instead, they make the perfect the unassailable enemy of the good. They put the entire burden of proof on the person recommending any attempt at innovation or process improvement. And they intimate that action should be delayed until every concern is satisfied, which is never. You can always have one more meeting or one more conference call. Be thoughtful but also be bold. Start, make mistakes, and iterate. Learning from mistakes will yield substantially more progress than endless pontificating about the (im)possibility of perfection.

Since this volume focuses on the mesh point between law departments and law firms, your skeptics may be internal or external. Below we get into some of the most frequently raised objections so that you are equipped to respond. But we should concede a few items up front.

**Not perfect.** Nothing in this volume is prescribed, it is a menu of suggestions to assist you in formulating your own approach. Be confident, however, that nothing you come up with will be perfect. Not everything is knowable in advance. Your resources are finite. You will make tradeoffs and compromises. Anyone who looks hard enough will be able to find shortcomings. If your interlocutor can come up with an alternative that is both perfect and achievable, fantastic. If not, the questions should not be whether your initiative is perfect but whether it will drive progress and is worth the opportunity costs.

**Not comprehensive.** Even if you were to follow every piece of advice in this volume, you will not address every problem facing your legal department. Modern legal departments are multi-faceted and have to excel on many different fronts. It's easy to derail a conversation about outside counsel process improvements by pointing out the problems—e.g., cybersecurity—it

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<sup>10</sup> This is meant in love. Many of the authors are lawyers and identify with these statements. Some of the authors are not lawyers but like us anyway.

<sup>11</sup> Richard, Larry "Herding Cats: The Lawyer Personality Revealed"  
(<http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20-%20WEBSITE%20-%20ARTICLE%20-%20Herding%20Cats%20-%20Richards1.pdf>)

does not solve. In a conversation about priorities and tradeoffs, such comparisons are essential. In a conversation about the merits and mechanics of an initiative based on this volume, it is a distraction.

**One thing to hate.** This volume is dense. If you send it to someone who is looking for something to which to object, they will undoubtedly find what they are looking for. They will point to some suggestion they believe to be silly, stupid, odious, counterproductive, or dangerous. If they make a compelling case, don't do that one thing. Again, it is a menu. Moreover, it is a menu that is a product of distilling the practices of several different law departments. There is no contributor who has implemented every piece of advice herein. There isn't even a contributor who agrees with every piece of advice herein. Like them, feel free to discard the bits that don't currently fit your culture or operating environment. Focus the discussion on what you actually might do rather than what you definitely will not do.

Now onto the frequently raised objections

[Q: Shouldn't we be focused on finding great lawyers?](#)

[Q: You keep referring to "strategic sourcing" and "deep supplier relationships." What do those terms even mean? How do they relate to law?](#)

[Q: Should we really have to ask our firms to do things they should already be doing?](#)

[Q: How will our firms respond to these kinds of additional requests?](#)

[Q: Don't we need to get our own house in order before asking our firms to do so?](#)

[Q: Aren't we too busy to run someone else's business for them?](#)

[Q: Doesn't this only speak to incremental improvement?](#)

[Q: Shouldn't we use our leverage to ask our firms for deeper discounts on billable rates?](#)

[Q: Wouldn't much of this be addressed by a transition to AFAs?](#)

[Q: How does all of this apply to working with alternative service providers?](#)

[Q: Why is this suddenly so important?](#)

### **Q: Shouldn't we be focused on finding great lawyers?**

**A:** Yes. But once this threshold is met, there are other factors to consider.

While we should hire for legal expertise, we should avoid basing our standard operating procedure on edge cases. How often is there only one qualified lawyer for a matter that is completely price insensitive? Sometimes. But rarely. We should be sophisticated enough to approach bet-the-company differently than run-the-company. With respect to the latter, we have leverage because we have choices. Former ACC Chairman Michael Roster, who is also the former managing partner at Morrison & Foerster, estimates that for 85% of a company's legal spend, "there are typically 10, 20, or more law firms and practice groups who can handle the work superbly, not just okay, but superbly."<sup>12</sup>

This volume is focused on that 85% of spend. Those 20 or more lawyers are fungible until we select them. Then we are dealing with incumbents. High switching costs mean that we should pay attention to all levers for getting value out of the relationship. [Strategic sourcing](#) should inform our selection, and we should develop [deep supplier relationships](#) to improve delivery of legal services over the course of the relationship.

Clients should emphasize continuous improvement of legal service delivery because it affects outcomes—quality, cost, and speed—especially over the long term. We should be concerned about the infrastructure that supports great lawyers because, often times, it is the support structure that is handling the bulk of our work. **The less the expertise is supported by process and technology, the greater the proportion of spend diverted away from the high-value legal counsel towards low-value labor.**

Right now, most clients are hypocrites in this regard. That we hire lawyers, not law firms, is in evidence from our words and actions. But then we complain about law firms, not lawyers. Surveys that try to get to the root of clients' widespread dissatisfaction find that clients, in general, continue to respect the legal acumen of their external counsel. The problem is not insight but infrastructure. Our firms are good at generating legal insights but bad at legal service delivery—i.e., the institutional processes by which those insights are translated into concrete deliverables. This should surprise no one since we tell and show the world that service delivery does not factor into our retention calculus. It is a buyer's market. Most of the time, buyers get what they ask for.

Clients are essential to making firms "sticky"—i.e., the institutionalization of expertise and service delivery so tailored to meeting the client's needs that the logic of the relationship does not disintegrate with the departure of a lawyer from the client or firm. Without the voice of the customer, partners can resist internal calls for change based on the fact that they hear no external calls for change. As long we permit our business to be treated as chattel, they can veto

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<sup>12</sup> Quoted in Beaton, George, and Imme Kaschner, *Remaking Law Firms: Why and How*.

attempts at change by threatening to enter a red-hot lateral market rather see ‘their money’ (i.e., the money we pay the firm) directed towards investments in infrastructure. Our silence is taken as assent to the status quo.

The status quo may be acceptable in some of your relationships. You may have a trusted advisor whose billings are primarily for answering phone calls and dispensing invaluable advice. You may have an emergency matter of such existential importance to the company that the only good option is to hire the biggest name in the area and let them do what they do. You may have some small, one-off matters spread across remote jurisdictions where you are unlikely to ever appear again. There is nothing wrong in treating exceptional circumstances as exceptions. But the existence of exceptions should not be an excuse. You can make substantial progress by working with your long-term incumbents to improve their delivery of high-volume work.

### Strategic Sourcing and Deep Supplier Relationships

**Q: You keep referring to “strategic sourcing” and “deep supplier relationships.” What do those terms even mean? How do they relate to law?**

**A:** Strategic sourcing and deep supplier relationships are ways to approach long-term purchase decisions where price is not only the factor. Investigating value is more complicated and critical than determining price, especially in circumstances (like legal) where moving to a new supplier entails high switching costs. There is much to learn from other industries that have spent decades working with sophisticated suppliers.

Strategic sourcing is a supply-chain management technique premised on the value inherent in long-term, mutually-beneficial relationships. The hard and soft costs incurred in switching suppliers afford advantages to incumbency. Exemption from reasonable scrutiny, however, is not among them. Rather, strategic sourcing calls for a rigorous but collaborative approach to continuous improvement across the entire value stream.<sup>13</sup> This requires abandoning ad hoc purchase decisions based on unjustified preference or complacency. It also requires moving beyond cost to the more comprehensive goal of trying to obtain the best service at the best value. Instead of beating up suppliers solely on price, strategic sourcing seeks to address all levers for quality improvement and savings.

Finding levers for driving quality improvement and savings in legal starts with the recognition that the provision of legal services is not solely a matter of abstract legal insight. While the insight is primary source of value, execution matters for quality, consistency, speed, and cost. Much of the labor (and waste and error) comes in translating abstract insights into concrete deliverables such as contracts, closing documents, filings, etc. Expanding the focus from individual aptitude to the mechanisms by which legal services are delivered substantially

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<sup>13</sup> See “What is Strategic Sourcing” from the University of Michigan (<http://ast.umich.edu/pdfs/What-is-strategic-sourcing-102811.pdf>)

increases the levers available to drive continuous improvement. With people and price in place, it is process that offers the opportunities to increase value.

The primary purpose is not to punish incumbent law firms for operational inefficiency but to build deep supplier relationships that move continually towards operational excellence. This starts with committing to co-prosperity and learning about how your suppliers work.

The modern model for deep supplier relationships is the Japanese automakers when they first became an existential threat to the American Big 3.<sup>14</sup> As management guru Peter Drucker observed,

Knowing the cost of your operations, however, is not enough. To compete successfully in an increasingly competitive global market, a company has to know the costs of its entire economic chain and has to work with other members of the chain to manage costs and maximize yield....

The legal entity, the company, is a reality for shareholders, for creditors, for employees, and for tax collectors. But economically, it is fiction....

Toyota is perhaps the best-publicized example of a company that knows and manages the costs of its suppliers and distributors; they are all, of course, members of its keiretsu. Through that network, Toyota manages the total cost of making, distributing, and servicing its cars as one cost stream, putting work where it costs the least and yields the most.<sup>15</sup>

When the competition from the Japanese intensified, the Big 3 studied the Japanese cost structure. They found, as Drucker had, that the supply base was a major source of Japanese cost advantage. The Big 3 tried to close the gap by leaning on their suppliers for cost reductions. The Big 3 achieved cost reductions. Just not enough. They also had to deal with inferior quality parts and decimated, antagonized suppliers, many of whom eventually went bankrupt.

The Japanese automakers responded to the competitive pressure by setting cost reduction targets of their own. They achieved cost reductions. At the same time, quality improved, and the Japanese automakers deepened their relationship with an engaged, profitable supply base. Their suppliers, including American companies, were able to profitably satisfy the twin mandates of cost reduction and quality improvement because the Japanese automakers helped them do so. The Japanese automakers dispatched teams of consultants to map supplier value streams, identify high-impact process improvements, and implement improvement plans in a

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<sup>14</sup> Liker, Jeffrey, and Thomas Y. Choi. "Building Deep Supplier Relationships." *Harvard Business Review* (2004): 2-10. (<https://hbr.org/2004/12/building-deep-supplier-relationships>)

<sup>15</sup> Drucker, Peter F. *The Essential Drucker* (Collins Business Essentials) (p. 100). HarperCollins. Kindle Edition. Ironically, as Drucker notes, it was GM who started managing the entire cost stream. Likewise, Toyota is famous for Lean, which came out of the Toyota Production System, which was originally modeled on Ford.

sustainable manner. These effort exemplified the concept of *gemba*, a term meaning “the real place.” Going to gemba entails actually seeing how work gets done.

The Japanese automakers were just as hard on their suppliers, if not harder, than their American counterparts. But they approached their suppliers in the spirit of active engagement rather than antagonism.

The American legal market has grown more antagonistic since the Great Recession. As reflected in surveys, plummeting realization rates, and many other lagging indicators, inside counsel already ‘know’ their outside counsel are inefficient. But these are imprecise impressions of poor service delivery, not a concrete identification of remediable problems. Law firms therefore have limited opportunity to demonstrate value and alleviate client concerns. Clients do not reward process improvement with higher realizations or additional work. With no return on investment in innovation, stagnation reigns and client discontent deepens.

Transparency benefits both sides. A client that understands the mechanics of service delivery can set clear expectations for improvement. Rather than a vague, unilateral mandate, these expectations should serve as a foundation for a structured dialogue about priorities, timelines, milestones, and measurable results. The interaction should run both directions, with the law firms also identifying the ways in which the client can help facilitate the delivery of superior legal services.

There is no finish line. Individual projects will run their course. There will always be more levers to press. Progress, not perfection, is the objective. Progress includes the alignment of interests between client and firm through structured dialogue and continuous, mutual improvement.

### [Must We Ask?](#)

**Q: Should we really have to ask our firms to do things they should already be doing?**

**A:** Not in a perfect world. (*Spoiler Alert: we don’t live in a perfect world*)

In a perfect world, we would not have to ask our law firms for anything other than legal advice. Their fiduciary duty would compel them to put our interest above theirs and not only pursue the most favorable outcomes but also do so by having the right people do the right work the right way at the right price. We do not live in a perfect world. In our imperfect world, law firms, like everyone, have to make hard choices due to tradeoffs and resource constraints. We therefore have a key role to play in setting priorities.

The inherent tension is not just between their professional duties and their personal profit motive. All people, some of whom are lawyers, have a natural inclination to focus on what they know and pursue areas where they already excel. Being an expert is an excellent excuse not to leave your comfort zone. The path of least resistance for someone who has found success as a lawyer is to keep doing that which made them successful—work hard and apply expert legal judgment to interesting intellectual puzzles. Almost no one went to law school to be a system builder, a project manager, or data analyst. If we keep silently sending them work and paying

their bills, it is natural for them to keep doing what they do the way they've always done it. If no one is complaining that it's broken, why fix it? This holds true even if they know it's broken.

A great example of this dynamic is law firm cybersecurity, or the dangerous lack thereof. Law firms knew cybersecurity was important. We know they knew because they charged us substantial sums of money to advise us that we should audit third parties who hold sensitive data. We listened too well. We observed that law firms are third parties who hold troves of our sensitive data. Law firms demurred on the grounds that law firm seriousness about cybersecurity should be taken as self-evident and therefore left to self-regulation. This actually worked with some clients for some time. But when we started auditing our law firms for cybersecurity, we found them wanting despite their obvious expertise on the potential dangers. Once we started asking, they started taking it seriously. But not until then.

Knowing is different than doing. Knowing that cybersecurity is important is, in a sense, easy. Putting strong cybersecurity protocols in place is challenging and resource intensive. Saying you are good at cybersecurity is easy. Achieving actual competence in that regard is hard. Law firms did not allocate insufficient resources to cybersecurity because they are greedy. They allocated their resources elsewhere—e.g., getting your work done well and on time—because those areas seemed like a higher priority. Given the choice between answering a client email and attending the firm meeting on cybersecurity, most lawyers would strongly prefer to answer the client email.

Or consider electronic discovery. Nothing diminishes the importance of a great trial attorney and how she uses key exhibits in executing her case. But the relative importance and cost of filtering the available documents down to those key exhibits has been one of the most important trends in litigation. The volume of potentially discoverable material keeps increasing by orders of magnitude. The trial attorney needs her key documents. The process by which she gets them, and how much it costs, is not necessarily her prime concern. Clients who have taken control of their ediscovery process can tell story after story of their immense savings and process improvements because they, unlike their external experts, looked at ediscovery as something other than a pass-through cost. The sad part of such stories, however, is that many of their firms had actually built great ediscovery teams that the partner overseeing the work failed to bring in—i.e., until the client started asking.

Clients have an important role to play in redirecting time and attention by asking the right questions. Time and attention, like money, are finite resources that are allocated according to priorities. Law firms are client focused. Clients set the priorities. Clients are the urgency drivers. Sustained attention and structured dialogue can prioritize continuous improvement in leveraging legal expertise through process and technology. If we don't, they won't. Both sides can continue to pay it lip service, and the status quo will abide. If the status quo is acceptable, we don't need to ask. If the status quo is unsustainable, then, yes, we do need to ask.

### **Q: How will our firms respond to these kinds of additional requests?**

**A:** Really well. One would hope.

While this volume is unabashedly client centric, it proceeds from the premise that there is no versus. Our external providers are our partners, not our adversaries. The objective is not to use our leverage to pound them into submission. This is not governance by fiat. Rather, the goal is provide playbook for creating deeper, more mutually beneficial supplier relationships that contribute to the long-term health and prosperity of every participant in the legal value chain because, at the end of the day, that is in the best interest of the ultimate client.

Our firms should be hungry to take advantage of alternative avenues to demonstrate and deliver their expertise ([value plus](#)). Our firms should welcome the opportunity to win more business or earn more profit on existing business because clients are finally taking a sustained interest in innovation ([value enablement](#)). Our firms should be excited by the chance to become more deeply integrated into our legal value chain and tell us what we can do to better facilitate their delivery of legal services.

It is not as if firms are monolithic in their resistance to innovation. There is considerable interfirm variation, and those innovative firms are begging for a world where clients level the playing field by looking past brand and pedigree as the indicia of a commitment to quality. There is considerable intrafirm variation, and those innovative partners welcome a paradigm shift that permits them to thrive. There is considerable latent potential for innovation across the legal market because in deciding not to make investment in infrastructure the dispositive objection is usually “clients aren’t asking for it.” We need to start asking, and we are likely to find a very receptive audience.

The alternatives appeal to no one. A decade ago, there would be massive, if passive, resistance to any attempt to stop the gravy train. But the Great Recession happened. Everything changed, not overnight, but in a pretty steady progression that keeps inching closer to a reckoning. Demand flattened. Realization rates continued to fall. Worked rates stagnated.

Meanwhile, we started insourcing. As a collective, our internal spend is now at parity with our external spend. That growth also brought sophistication, which has meant RFPs, metrics, convergence initiatives, rate reductions, AFAs, unbundling, alternative service providers, and invoice auditing. Actually having a conversation about how to work together to strengthen the relationship should be a welcome departure for most of our law firms.

Through all the turmoil, many firms have gotten more profitable. But they have accomplished this in a manner that tends to only work once. They de-equitized partners. They fired lawyers. They fired staff. They cut benefits. They cut overhead. They cut investment. Even now, they’re not admitting new partners at a replacement rate. Instead, they are all trying to grow through a hyperactive lateral market that threatens their inherently fragile business models—firms produce considerable revenue and earn enormous margins, but they start every year deep in

the red. High-profile bankruptcies and merger mania have appreciably accelerated. Firms are vulnerable, and clients are the only refuge.

None of this portends an imminent end to law firms—it is an erosion, not a collapse. There is relative stability, though limited growth, at the industry level. But beyond the outliers at the very top of the rankings, there is appreciably more volatility at the firm level. The divergence of fortunes is even more extreme for individual partners—average profits per partner are quite misleading. And there are multiple cohorts of young, ambitious lawyers who currently have no prospect of making partner not because they want for talent or work ethic but because there are no openings.

In short, we should find a very willing audience given the economic environment. But we suspect that our law firms would have been eager to engage even without continued commercial pressure. This volume is client centric. So are our law firms. They follow our lead. What we find interesting, they should find fascinating. We just have to ask and then keep asking so they know we're serious.

The big impact, of course, will come when a critical mass of clients start asking. That is when the incentives really shift from individual improvement initiatives to systemic re-engineering of service delivery. That kind of collective culture shift is a central objective of this volume.

Oh, and if your firms demur on account that you should trust them, our recommendation remains: *trust but verify*.

## [Hypocrisy](#)

### **Q: Don't we need to get our own house in order before asking our firms to do so?**

**A:** No. Law departments have an understandable urge to avoid hypocrisy. And there is a sense in which asking your firms to be more on point than your own department feels hypocritical. There are three quick responses to this concern, two superficially satisfying and one of deeper import.

1. **Paying a premium entitles you to premium service.** Most people rightly expect a better meal and better service when they go out to a nice restaurant. Law departments pay more for law firms to handle work than it would cost to do it internally. This is partially about expertise (i.e., the top partner as top chef), partially about bandwidth at peak load, and partially about enhanced service level. There is nothing hypocritical about expecting more when you pay more.
2. **Effect change when and where you can.** Politics is the art of the possible. The internal politics of a law department can be complicated. The internal politics of a law firm can also be complicated. The voice of the client can make law firm politics less complicated. While you should be interested in making progress internally, any obstacles thereto should not diminish your interest in driving change externally. You should take

advantage of your capacity to influence positive change wherever that capacity is manifest. That's not hypocrisy, its realism.

3. **Yes, it is hypocrisy if you demand immediate and lasting perfection.** The approach outlined in this volume is directed towards starting and structuring conversations. Sustained commitment to data-driven dialogue is a mechanism to weave continuous improvement into the fabric of the relationship. The implicit assumption of pursuing improvement is that your external resources are not perfect. They're not perfect. You're not perfect. Neither of you ever will be. The world moves too fast. Even if you catch up today, you will be behind again come tomorrow. The real question then is progress, not perfection. It is incumbent upon you to drive change both internally and externally. Feel free to turn the lessons of this volume inward. But do not lose sight of your responsibilities with respect to external resources. Claiming you don't want to be a hypocrite can be an excuse for complacency.

### Too Busy

#### **Q: Aren't we too busy to run someone else's business for them?**

**A:** Yes. But the suggestions in this volume are modular, and your role is largely supervisory.

It's a menu. Pick what will work in your operating environment given your resource constraints. You could apply the lessons herein simply by asking your top firm to provide an onsite CLE presentation once a year. If you then wanted to go one step farther, you could mention this volume to them when they are onsite and request that they be ready to talk to you about their improvement initiatives during the same meeting the next year. Indeed, since you can use this volume as a reference, the least labor intensive approach is to ask your firm(s) to read it and then come to you with descriptions, metrics, and proposals.

You can start a simple conversation with a single email. Or you can develop a comprehensive program that encompasses all of your preferred providers. The potential approaches are infinite. But do start, and soon. The greatest obstacle to implementation is that these issues can always be addressed tomorrow. Or the day after. The crushing urgency of the present too often takes away focus from that which will be important in the future—i.e., the things you look back and wish you'd spent your time doing. For most law departments, there is no sense in worrying that they may be in danger of spending too much of their time optimizing the long-term value of their external relationships. For most law departments, the concern is whether they are spending *any* time optimizing the long-term value of their external relationships.

Urgency bias, the preferencing of the immediate over the important, does not just affect law departments. It is endemic to law firms, a business model inherently directed to the short term—this case, this deal, this month, this year. We can amplify that predilection by placing all our emphasis on right now. Or we can curb that proclivity by engaging your firms in conversations about how to build towards a more productive, long-term partnership. What we cannot do is abdicate our role. Our silence will be taken as an assent to the status quo.

Agenda setting is different than planning and execution. While it is absolutely our responsibility to redirect some attention towards continuous improvement in service delivery and finding alternative methods to get value from external expertise, we are not required to know and do everything. Our law firms are filled with smart, capable people. They should be able to make proposals to us and execute on those proposals. We only need to judge the proposals at a high level and intermittently monitor progress—much easier if metrics are embedded in the improvement initiative.

The problem with the traditional ways of doing things is not necessarily that they are wrong but that they are not scalable. Your current setup is perfectly optimized to yield the results you are currently getting. Are those results acceptable? If not, change is needed. If so, the question then becomes: are they sustainable? The velocity, volume, and variety of the demands placed on law departments is only increasing. It is worth reflecting on whether you are spending enough of your time today preparing to meet the challenges of tomorrow.

For your primary providers, you should be able to set aside a few hours every year to discuss the overall relationship, not just individual matters. If you want to go beyond that, but you don't have the bandwidth, or you feel like the subject matter is too far afield from your core competencies, the time-intensive parts of the engagement are amenable to involving a consultant. The consultant can pose the questions, review the answers, conduct the interviews, and provide the analysis that sets the stage for structured dialogue between you and your primary providers. It's not quite the same as doing it yourself, but it is one of the tradeoffs that could be worth making if the alternative is to do nothing at all.

We all have time. The issue is how we allocate it. Saying "we don't have enough time" is another way of saying something isn't a priority. The issues covered in this volume should not be a law department's top priorities. But these issues are important enough to warrant regular attention—e.g., several hours a year or a few hours a quarter. Our attention need not be constant, but it should be sustained.

### [Only Incremental](#)

**Q: Doesn't this only speak to incremental improvement?**

**A: Yes.**

If you are going to do something transformational, do it. That's not snark. That's genuine appreciation for periods of punctuated equilibrium that redefine your internal workings and external relationships. Revolutions are necessary from time to time. This volume is directed towards the in between.

But that this volume is directed towards the in between does not mean the lessons should be ignored during periods of massive transformation. You should be thinking about what follows the transformation and how to build continuous, if incremental, improvement into your new or redefined external relationships.

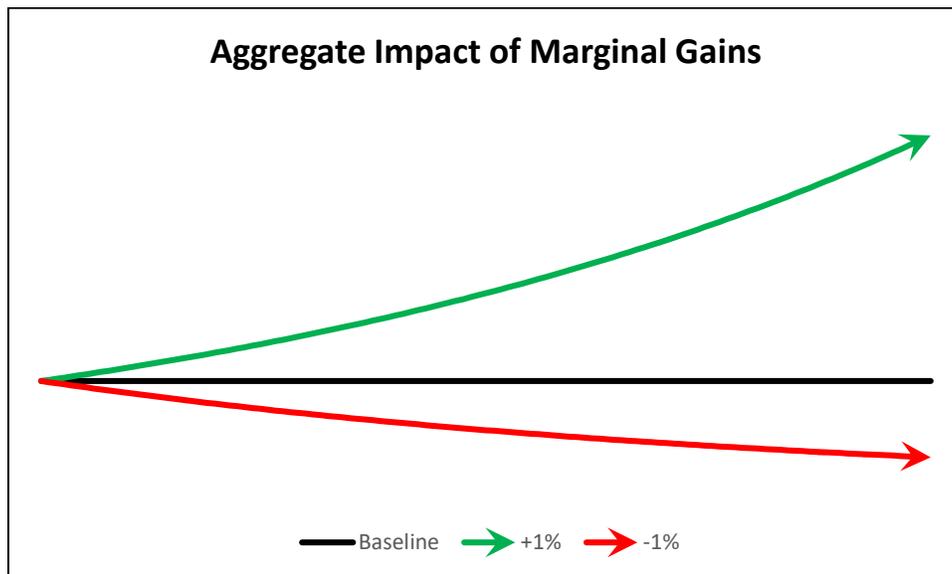
Also, do not discount the effect of incremental improvements or their aggregate impact.

It is counterintuitive, but it does not make the following any less true: **you can save more time/money by getting a 80% inefficient process to 60% inefficiency than you can by taking the process from 60% inefficient to perfectly efficient (i.e., 0% inefficient).**

For ease of discussion, assume that a necessary task that should take 10 minutes (with the proper use of process and technology) currently requires 50 minutes (i.e., 40 minutes, or 80% of the time, is waste). You make the minor tweaks to get the time down from 50 minutes to 25 minutes. You've shaved off 25 minutes. Moreover, there are only 15 additional minutes to shave off to get the task from 25 minutes to a perfectly efficient 10 minutes. Yet, the task is still 60% inefficient (15 of the 25 minutes is still waste). Regardless, the only subsequent improvement that could save as much time as the initial, incremental improvement would be to automate or eliminate the task entirely (i.e., you saved 25 minutes initially, and would save an additional 25 minutes by automating/eliminating the task). This might be easier to digest in table form:

Stage	Target Time	Time Taken	Time Wasted	Time Saved
80% inefficient	10 min	50 min	40 min	-
60% inefficient	10 min	25 min	15 min	25 min
Perfectly (0%) inefficient	10 min	10 min	-	15 min
Automated/Eliminated	0 min	0 min	-	10 min

And the goal is not isolated incremental improvements. There should be a synergistic impact as the incremental improvements aggregate over time. A chart is probably the best way to demonstrate the effects of aggregation. Below is what happens over a ten-year period if you get 1% better every month, as compared to staying the same or getting 1% worse.



If we stand still, we do get worse. Entropy is a closed system's gradual decline into disorder. Unforeseen occurrences, quick fixes, work arounds, and exemptions tend to accumulate. The

result is that even the best planned processes wear down if they are not regularly revisited and improved. Moreover, what we are dealing with today is only a prologue to what we will be asked to tackle tomorrow. Our current systems being sufficient for extant demand does not make them future proof. At some point, we will need to get better. Now is an excellent time to get started.

## Discounts

**Q: Shouldn't we use our leverage to ask our firms for deeper discounts on billable rates?**

**A:** Sure. But then what?

For the majority of law departments, using leverage to get a discount is precisely what they've been doing for the last decade or more. So this question is really another way of asking whether you should continue to pursue the exact same strategy. The answer depends on whether you want different results.

While the ACC has a long-standing commitment to value-based fees<sup>16</sup>, there is no benefit in pretending that the billable hour does not continue to be the most pervasive approach to paying for legal services. For those still on the billable hour, you should absolutely be concerned with the rates you are paying. In this regard, discounts are fine, as far they go. But untethered from value, they do not go very far when it comes to modifying behavior.

If you are going to demand the same discount from all of your firms regardless of how they deliver legal services, they have no incentives to change the way they deliver legal services. For many, the annual rate discussion is a form of kabuki theater. The firm expresses a sense of entitlement to higher rates and justifies their request by reference to natural law or some inscrutable deity known as "the market." The law department responds by taking umbrage and flexing their muscles before submitting to a routine bit of baby splitting.

To the extent you entertain the annual rite of rate increases, it should be intimately connected to an annual performance review. Value-plus services should be one aspect of a comprehensive performance review. Improvement in value enablement—how legal expertise is augmented by process and technology—should be another. The discussion of rates should be a single strand in a larger discussion of how the firm delivers value to you. The firm should walk away fully comprehending the reasoning behind any change, up or down, in their rates, as well as understanding how they could measurably improve to be better positioned for the same discussion the next year.

Without some grounding in value, discounts just become a game.

First, you can only push the discount lever so many times. A recession hits or you run a convergence initiative. You get your firms to take a big haircut. What's next? It will probably be

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<sup>16</sup> See ACC Value-Based Fee Primer (<http://www.acc.com/advocacy/valuechallenge/toolkit/upload/acc-value-based-fee-primer.pdf>)

a few years before you can return to that well in any meaningful way. Continuous improvement, on the other hand, should be a constant. There is always some process to refine, some assumption to question, or some technology to take better advantage of. Discounts can be part of a strategy. But a strategy that relies entirely on discounts is hollow.

Second, there is a huge volume of data that suggests that while most clients see themselves as negotiating progressively deeper discounts, what they are really doing is negotiating down the size of the rate increase. Last year, the client got a 10% discount off a \$500 rate. This year, the client gets an 11% discount off a \$520 rate. What really happened is that that firm increased the effective rate from \$450 to \$463. You can perform this trick—4% rate increase, additional 1% discount—for a quite long time before the rate flattens out. How long? 66 years. In 2081, the paid rate (\$1,600/hr) would finally stop increasing as the discount (75% off a published rate of \$6,399/hr) caught up to the rate increase.

Third, while almost every law department will proudly refer to the deep discounts they've negotiated, only about half even get one. That's because a true discount is not calculated versus a lawyer's published rate—of which there may be several—but is calculated by reference to something called a standard rate, an internal firm number used to determine realizations, profitability, etc. With a few exceptions, almost no one pays published rate and therefore everyone thinks they are getting a discount. But only about half of clients actually pay below standard rate. And even they are not getting as deep a discount as they think.

Fourth, if you count discounts as savings, please stop. If you've reduced rates below what you were paying previously, that's one thing, especially if you also have a mechanism to monitor and hold the line on hours. But if you are just counting the delta between the published rate and your paid rate, it introduces some bizarre incentives. It encourages firms to jack up published rates so they can offer you the optical illusion of a bigger discount. It encourages you to select higher priced firm so you can report greater 'savings'—i.e., you show double the savings by paying \$700/hr to a lawyer with a published rate of \$900/hr than you do paying \$350/hr to a lawyer with a published rate of \$450/hr. And your savings accumulate with every extra hour of work the firm bills. There is something inherently perverse about a savings metric that makes you look better the more you spend.

Fifth, finally, and most importantly, undue emphasis on discounts tends to confuse unit price with total cost. Rate differences are linear. Hours can differ by orders of magnitude. The \$350/hr associate might look relatively cheap until it takes them ten hours to deliver work half as good as what the \$800/hr partner delivered in one. Attention to the unit price (\$350 v. \$800) will obscure both quality and total cost (\$3,500 v. \$800). We intuitively understand the difference experience can make. Systems—the proper integration of process and technology to augment expertise in delivering legal services—are experience institutionalized. Systems merit attention in trying to understand the relationship among quality, unit price, and total cost. Discounts are only a small fraction of one piece of that puzzle.

Did we mention the ACC's long-standing commitment to value-based fees?

**Q: Wouldn't much of this be addressed by a transition to AFAs?**

**A:** Some, not all. But we like where your head is at. That question is similar to coming to the end of a volume on exercise and inquiring as to whether diet might not be more important to health. If you only have the bandwidth to do one thing, start with a move to value-based fees. Still, there is much to be gained from attention to value-plus services and sustainable value-enablement. This is true whether or not you transition to *appropriate* fee arrangements (AFAs). A few points.

**AFA Efforts.** For various reasons, some law departments have looked at AFAs and made the decision not to transition. Likewise, some have attempted the transition and abandoned the effort. Why is a discussion for another volume. The transition to AFAs is not essential to applying the guidance herein. Nor does the transition to AFAs, while a great start, address every issue.

**AFA Avoidance.** There is an unfortunate tendency for some who make the inquiry about the primacy of AFAs to be less than serious about actually transitioning to AFAs. They simply dismiss any effort to improve the law department/firm dynamic as doomed to fail until the billable hour is vanquished. They then do nothing to move beyond the billable hour. They claim that the billable hour cannot be banished until the other side gets serious about the issue—i.e., skeptical clients are waiting for firms to offer them AFAs they like, skeptical firms are waiting for clients to force them to offer AFAs. These premises are false. And the conclusion is a poor excuse for complacency.

**Outcome Incentives.** The trouble with incentives is that they work. AFAs shift incentives. But not all AFAs are created equal in this regard, especially some fee structures often labeled AFAs (e.g., blended rates) that retain almost all the incentives of the traditional billable hour. Further, like any change in incentives, AFAs can have unintended consequences.

One feature of most AFAs is that they shift the onus onto firms to find their margins rather than rely on the margins built into the cost-plus structure that is the billable hour. With some kind of fixed, capped, or diminishing fee, the firm needs to devise a way to manage their costs to maintain or increase their margins. This incentive to innovate is a key argument in favor of AFAs. But innovations are not ineluctably pro-client.

Firms can find margins different ways. It is entirely possible to improve quality while cutting costs through superior people, process, and technology. But it is often easier to sacrifice quality to achieve cost reduction. It is, for example, simple to reallocate work to less expensive, less experienced resources as a way to immediately bring costs down. But it is not necessarily easy to embed those lower-cost resources in a process that produces the same, or better, quality work.

The billable hour incents firms to have high-level personnel do low-value work too slowly. Some AFAs incent firms to have low-level personnel do high-value work too quickly. The latter do not reduce the client's need to monitor who is doing their work and how—i.e., you still need to ask.

The more advanced AFAs have addressed this problem by tying some, if not all, of the fee to outcomes. By pairing the incentive to find efficiency with the incentive to achieve superior outcomes, these types of AFAs—e.g., the ACES model—should reduce the client's burden in monitoring matters.

**Compensation.** Many of the leading proponents of transitioning to AFAs suggest that the impact of the attempt to change incentives is blunted if the firm otherwise remains wedded to the billable hour. That is, if a firm is only making 20% of its revenue from AFAs, their behavior will continue to be driven by the 80% of the work that still comes from the billable hour. This is nowhere more evident than in how the lawyers are compensated. If they are still compensated for billing hours, they will bill hours to the AFA file in the very much the same way they would to any other file. They may even bill more because some types of AFA invite much less internal and external scrutiny. This will, in turn, affect how AFAs are priced.

A common way for firms still dominated by the billable hour to price AFAs is simply to estimate their billable hours, multiply by their billable rate, and then add a cushion for the unexpected. Often referred to as “a wolf in sheep's clothing” or the “billable hour in drag,” this approach offers almost none of the sought-after benefits of AFAs. The types of questions presented in this volume can help you understand how your firms are pricing your matters.

**Competitive Pricing, Screening, and Differentiation.** One way to address the wolf-in-sheep's-clothing issue is to run a competitive-pricing exercise. These are made possible by another positive feature of many AFAs: they offer price predictability. With predictability comes an opportunity to perform meaningful price comparisons. The firm that is simply adding a big cushion to its billable-hour projection will have a hard time competing on price against a firm deliberately-designed to deliver value.

But a competitive-pricing exercise needs more than one participant. Firms therefore have to be screened. To the extent firms can be differentiated on expertise, experience, and record, go with those. But, as is often the case, if a large number of firms meet the quality threshold, quality stops being a useful differentiator. And the screening precedes the opportunity to differentiate them on price. Value-plus offerings, process orientation, technology integration, quality assurance, etc.—the focus of this volume—can serve as differentiators if a second level of screening is needed.

Alternatively, you may winnow the field based on qualifications and then conduct the pricing exercise. The exercise has two potential outcomes: prices diverge or converge. If the prices diverge, you should be interested in what enables the lower priced firms to beat their competitors' prices. Just as there are multiple ways—some good, some bad—to find margin, there are multiple ways for firms to beat their competitors on price. If prices converge, price will, like quality, no longer be a point of differentiation. In both instances, a deeper dive into the firms' approaches to service delivery can assist in making your selection.

**Negotiation.** To the extent you do not use a competitive exercise as a price-discovery mechanism, you will use negotiation. This is true on the initial matter: what should the AFA cost? This is also true on subsequent matters: should the price rise, fall, or stay the same? In both instances your ability to negotiate can be enhanced or hindered by your access to useful data and your understanding how your matters are being handled. In particular, just as if they were raising hourly rates, you should want to understand what justifies a proposed AFA price increase from your firms.

**Alignment and Integration.** Central to the value-chain worldview is the distinction between individual performance and system efficiency. Even with AFAs, you still have to worry about the latter. That means you still have to work with your firms on reporting, alignment, compatibility, integration, etc.

**Best Practices.** Firms, like AFAs, are not created equal. The combination of price and outcome may lead some firms to stand out. Give them more work. But also learn from them. By analyzing what is driving superior results, you can propagate best practices throughout your legal value chain, including internally. Asking is not just about holding your firms accountable. It is also about gaining new perspectives on what delivers value.

**Value Plus.** Value-plus services—e.g., secondments, hotlines, alerts—are perfectly compatible with AFA relationships. But that does not mean they will arise spontaneously. You still have to ask.

Nothing in the foregoing should be taken as a criticism of AFAs. AFAs are fantastic. The ACC encourage them, especially value-based fees. But AFAs should be treated as the beginning, not the end, of an ongoing project to drive better value. The lessons of this volume are complementary to a transition to AFAs but not dependent upon it.

## [Alternative Providers](#)

**Q: How does all of this apply to working with alternative service providers?**

**A:** Pretty much the same.

There is absolutely nothing wrong with labor arbitrage. Getting the same results at lower cost is a compelling value proposition. Most law departments should explore managed-services relationships with the idea that the initial savings will come from reduced labor costs.

But just because managed-services relationships save money versus firm/in-house alternatives does not mean they should be exempt from scrutiny with respect to process and technology. The categories of work that get unbundled and sent to managed-services providers are often the most amenable to standardization and automation.

Not all managed-services providers offer the same value proposition. Some rely solely on keeping labor costs low. Others invest in increasing the yield from that labor. To discover the difference, we should have the same data-driven conversations with our managed-service providers as we have with our law firms. That this volume has been primarily focused on our

relationships with law firms rather than alternative providers is more empirical than normative. At present, the vast majority of external spend goes to law firms. The proportions are shifting. As they should. But that shift should only strengthen the dictate that your external service providers get measurably better over time.

The simple version of alternative service providers is that they pay lower wages so they charge less. Again, this is fine. If you can get the same quality at lower cost, do it. Indeed, there are areas where we should ask whether gold plating is worth the premium. Slightly reduced quality at radically cheaper prices is sometimes a wise path to pursue in a world of tradeoffs and resource constraints.

But, in theory, alternative providers should be able to outperform law firms in certain respects. Their capital structure, cost structure, compensation system, and culture should all be better suited to addressing the problems of scope and scale that plague modern business and, by extension, their law departments. Rather than deep individual expertise—that can lateral on a whim—the alternative providers’ primary value should be in their expertly designed systems. Systems are engineered. Systems produce data. Systems should be able to show *measurable* improvement over time.

None of this is to discount individual expertise. Law departments operate in a multi-faceted world. Sophisticated law departments should be able to determine what requires a brilliant lawyer, what requires a brilliantly designed system, and what requires a mixture of the two. Law firms continue to have substantial stocks of intellectual capital that law departments need to tap on a regular basis.

Moreover, law firms have every opportunity to incorporate better systems and low-cost labor into their service delivery model. Law firms can assimilate decades of experience in other industries with process and project management. Law firms can invest in technology-enabled infrastructure. Law firms can build their own low-cost delivery centers. Or law firms can affiliate with alternative service providers in an infinite variety of re-bundled offerings.

Whether we are relying on traditional law firms, alternative service providers, or some form of hybrid, recognize that it is incumbent upon us to periodically peer under the hood. There are different ways to reduce costs. There are different places our external providers find their margins. It is usually possible to reduce costs while improving quality. But it is usually easier to reduce costs by sacrificing quality.

If you have a reliable method for regularly measuring output quality, use that as your primary indicator. But if output quality is inconsistent at the provider level, process probably has something to do with it. And if output quality varies greatly between providers, it is worth investigating why. Understanding what drives superior provider performance enables us to hone our provider-selection criteria and spread best practices among our provider network. Likewise, if outputs are too difficult or resource-intensive to monitor and judge, then periodic check-ups on process can serve as a proxy.

This results-driven, process-oriented approach becomes particularly important during periods of transition—i.e., when you are projecting the impact of some change on output quality. If you are choosing a new provider, you should be interested in the processes that underpin their promises of improvements in quality or cost. If you are setting new quality or cost targets for your existing providers, you should be interested in how they mean to satisfy your mandates. And if your providers are looking to alter the terms of your arrangement, the underlying processes, including improvements or lack thereof, are important data points for the negotiations. The next time anyone asks you for a price increase, they should have to justify it by a commensurate increase in value, which means they are going to have to show you how they've gotten better. Ask for measurements, not just words.

Take advantage of labor arbitrage where it makes sense. Managed services, however, can deliver more than cheaper labor. The challenges of scope and scale keep growing, as does the attendant importance of systems in meeting those challenges. Managed-services systems should be part of a comprehensive strategy to keep pace with the speed of modern business. But realizing that potential still requires deliberately weaving continuous improvement into the fabric of the relationship.

## [Why Now?](#)

### **Q: Why is this suddenly so important?**

**A:** It has always been important. But what's changed fairly dramatically over the last several years is the size and sophistication of in-house teams. There have long been large, sophisticated clients. Everything in this volume has been done before—it just a distillation of existing practices. Many of these concepts have been around in one form or another for decades. While this volume is a useful consolidation, there is nothing particularly new in the logic or the approach. What has changed, however, is the capacity of a critical mass of clients to put these ideas into practice.

The creation of the ACC Legal Operations Section, from which this volume emanates, is a prime example of client evolution. For the Legal Ops section to come into being, there first needed to be a sufficient number of law departments with legal ops personnel. That threshold was met in 2015, a true watershed. The first ACC headline of 2016 was “ACC Chief Legal Officers Survey Finds Drastic Growth in Legal Operations Staffing.” In just one year, the number of law departments that reported having legal ops staff had doubled to 48%.

Employing legal operations personnel is not a necessary condition to following the guidance of this volume. But the growth in legal operations is emblematic of the increased size and sophistication of law departments. Legal operations is an important part of the story of how the balance of power has shifted to law departments and what law departments are poised to do with that power.

As law departments grow and professionalize their internal management, they have more bandwidth to pursue multiple objectives simultaneously. The in-house counsel who needed

super human efforts just to keep up with her individual matters did not have the spare capacity to worry about value-plus services, value enablement, or the optimization of service delivery. The in-house team, by contrast, can organize itself to properly handle individual matters *and* devote some attention to ensuring that continuous improvement is woven into the fabric of external relationships. There is nothing magic about being able to accomplish more with more resources.

But just as we are doing more with more, we are also being required to do more with less. The growth in law departments is dwarfed by the growth in the demands placed on law departments. On a relative basis, we have fewer resources. We do not have enough bodies to throw at the barrage of matters we need to tackle. Nor do we do we have enough budget to pay outside counsel to throw bodies at our matters. We need to find better ways to serve our clients, and those better ways need to be sustainable—i.e., they need to scale right along with the business outcomes we are asked to pursue.

Like the companies we serve, we've found that our people need to be augmented by process and technology to be successful. We need to leverage people as much as we can. That makes people more valuable, not less, but it also forces us to pay attention to the systems in which they are embedded. Systems are the institutionalization of our expertise. Our emphasis is no longer just on individual performance but on the effectiveness of our systems.

What is true for us is true for outside counsel. We should take a systems view of how we can best utilize such valuable resources. Alternative avenues to take advantage of their expertise (value plus) and increased emphasis of how they leverage that expertise through process and technology (value enablement) are essential to meeting the challenges of today. Weaving continuous improvement into the fabric of these long-term supplier relationships is essential to meeting the challenges of tomorrow.

Why now? Because there is no time like the present.

## Coda

Thank you for reading. But the best thing you can do is act. You can start small. But start. Ask your firms about value-plus services. Ask your firms for credible evidence of ongoing process improvement and innovation. Then ask again. Make such conversations a standard feature of your primary provider relationships.

Then tells us about it. This is Version 1.1 of this guidebook. It is intended to be a living document. Like legal service delivery, it should evolve and improve. We'd like case studies for every category. We'd like new categories. We'd like to add that which we haven't even considered yet. We need you to give us feedback, fodder, and foresight. You can email constructive criticism, suggestions, and content to [LawDepartmentOps@acc.com](mailto:LawDepartmentOps@acc.com).

The best result for this guidebook would be its obsolescence. It would be outstanding if you handed Version 1.0 to someone five years in the future and their response was, "This is silly. Everybody already does all these things, and so much more."

## Appendix

This Appendix collects all the questions from the categories in the volume. Those categories are:

### Generic

- Define [] from the firm's perspective.
- Detail firm's [] practices and platforms that affect the work firm handles for client.
- Explain how firm's [] practices fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm's [] systems.
- Provide any available, applicable process maps that cover firm's [] practices or that indicate how [] plays a role in firm delivering legal services to client.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in the firm's [] practices.
- Specify how much and to whom firm awards billable credit for [] activities.
- Report whatever statistics are available with respect to firm's applicable [] practices:
  - Volume of material contained in [] platforms
  - Frequency/volume of access to [] platforms
  - Percentage of lawyers/staff who access [] platforms
  - Frequency/volume of updates to [] platforms
  - Percentage of lawyers/staff who update [] platforms
  - Average time per lawyer recorded for [] activities
  - Any other useful, available statistics re [] activities
- Outline [] projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe [] projects that firm has done for other clients that could be used as models for a [] project that would improve firm's delivery of legal services to client.

- Include any additional information that you consider important/useful for client to have in order to understand how [] is integrated into firm's delivery of legal services to client.

## Knowledge Management

- Detail firm's KM practices and platforms that affect the work firm handles for client.
- Indicate how firm uses experience management to identify subject matter experts and the interplay between firm's experience management and client matter intake.
- Explain how firm's KM practices fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm's KM systems including identifying lawyers or staff dedicated to the KM function.
- Provide any available, applicable process maps that cover firm's KM practices or that indicate how KM plays a role in firm delivering legal services to client.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in the firm's KM practices.
- Specify how much and to whom firm awards billable credit for KM activities.
- Report whatever statistics are available with respect to firm's applicable KM practices:
  - Volume of material contained in KM platforms
  - Frequency/volume of access to KM platforms
  - Percentage of lawyers/staff who access KM platforms
  - Frequency/volume of updates to KM platforms
  - Percentage of lawyers/staff who update KM platforms
  - Average time per lawyer recorded for KM activities
  - Any other useful, available statistics re KM activities
- Outline KM projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe KM projects that firm has done for other clients that could be used as models for a KM project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how KM is integrated into firm's delivery of legal services to client.

## Process and Project Management

- Provide copies of all existing process maps for the matter types handled by firm on behalf of client, as well as maps for sub-processes that support the matters handled by firm on behalf of client.
  - Provide previous iterations, or descriptions thereof, of process maps so client can understand how the processes have evolved over the past three years.
  - Where applicable, provide a future-state map, or descriptions thereof, so client can understand what process improvements are currently in the works.
- Describe how firm plans, budgets, and allocates resources to client matters and then tracks performance.
- Detail how, when, and where firm utilizes project management (PM), including standard approaches to PM like Agile, Lean, and Six Sigma.
- Specify when, where, and how the firm uses tools like decision trees, after action reviews, etc. to aid, assess, and improve handling client's matters.
- Explain how firm's PM practices fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals in PM as it applies to client's matters.
- Identify firm personnel whose primary function is PM, explain their roles, and indicate when/why they are assigned to client matters, including any recent client matters (last 2 years) to which they were assigned.
- List the technology tools the firm uses to manage, track, and calendar client's matters.
  - Provide the standard reports from those tools for client's five largest cases (by moneys paid to firm) in the last two years.
  - Provide any available statistics on what percentage of client matters these tools are used, as well as how frequently these tools are accessed and updated during the course of client matters.
  - Explain what matter-level data the firm captures, as well as how firm uses the data during client matters and to inform future matters.
- Describe your reporting capabilities with a specific emphasis on tools that provide client with real-time visibility into the status of client matters, including staffing and performance against budget.
- Detail your quality control/assurance protocols
  - Provide copies of checklists that are used on client's matters and an explanation of when, where, and by whom they are used.

- Identify procedures and software tools that are used to review documents prior to finalization.
- Outline firm projects currently in progress to improve PM or the utilization of PM within firm.
- Describe PM-related projects that firm has done for other clients that could be used as models for a PM project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how PM is integrated into firm's delivery of legal services to client.
- Describe PM-related projects that firm has done for other clients that could be used as models for a PM project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how PM is integrated into firm's delivery of legal services to client.

## Billing Hygiene

- Outline the firm's time recording and communication practices on client's matters.
- Provide the median and mean number of days between the date billable activity was performed and the date on which the time was recorded for client's matters last calendar year. In other words, how long are timekeepers waiting to enter their time.
- Attach the firm's billing protocols, including mandates related to the timeliness of time entries and enforcement mechanisms thereof.
- List the technology tools that the firm utilizes to generate time records for client, including time capture, time recording, and invoice review with a particular emphasis on mobility, passive-time capture, text expansion, and algorithmic review of entries.
- Identify any technologies that the firm makes available to client to give client a real-time view of the time being recorded on client's matters.
- Provide any available statistics as to the human resources committed to time capture, as well as the outcome thereof:
  - How much attorney time is spent on invoice generation and/or review.
  - How frequently time entries and narratives on client's work are sent back to the original timekeeper for revision.
  - How much time (raw, mean, median) is cut from client's invoices before being sent to client.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the velocity, accuracy, and informational value of time entries. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe projects related to billing hygiene that firm has completed for other clients that could be used as models for a billing-hygiene project that would improve the informational value of client's invoices.
- Include any additional information that you consider important/useful for client to have in order to understand how the firm captures and communicates time on client's matters.

## Data/Analytics

- Select two of client's recent matters, one opened and one closed, and provide copies of the firm's standard matter reports.
- Explain what task, matter, and portfolio data firm tracks, how firm analyzes the data, and when/where the firm uses that analysis to inform decisions or projections.
- Identify the categories of data and analysis that could be made available to client such as projected costs, outcome, staffing, turn-around time, time to resolution, etc.
- Describe what projections firm makes re client's matters and how firms tracks performance against those projections.
- Summarize firm's key performance indicators (KPI) at the matter, portfolio, and client level, as well as how those KPI's are calculated and when they are reviewed.
- Explain how firm's use of data and analytics fits into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals in data and analytics as it applies to client's matters.
- Identify firm personnel whose primary function is data/analytics and explain their roles.
- List the technology tools the firm uses to track and analyze data from and for client's matters.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the utilization of data/analytics within firm. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe data- and analytics-related projects that firm has done for other clients that could be used as models for a project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how the use of data and analytics is integrated into firm's delivery of legal services to client.

## Paper Lite

- Identify how the firm organizes client's files and makes them available to firm personnel, including when personnel are operating remotely.
- Describe firm's approach to limiting the use of physical paper both in general and in the particular as it relates to handling client's matters.
- Provide available statistics, both past and present, that demonstrate how and how much firm's reliance on paper has changed.
- Furnish firm's policy on electronic signatures and identify the mechanisms by which compliance is promoted, tracked, etc.
- Provide any available statistics on the use of electronic signatures within firm.
- Provide any available process maps that cover or include document storage and mobile access.
- Submit examples of recent documents sent to or filed on behalf of client in which the firm used electronic signatures.
- List the technology tools the firm uses for document management, mobile document access, and electronic signatures and explain when and how the tools are used on client's matters.
- Outline projects firm is currently working on (with timeline of start and finish) and projects you have completed in the last three years that make firm less paper dependent and mobile friendly. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe paper-reduction projects that firm has done for other clients that could be used as models for a project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how the move to digital documents is integrated into firm's delivery of legal services to client.

## Expert Systems

- Detail any expert systems the firm uses to handle client's work (e.g., document automation, diagnostic systems, planning systems, intelligent checklists).
- Explain how firm's expert systems fit into the workflow of the attorneys handling client's matters.
- Summarize the respective role of attorneys and allied professionals (i.e., staff) in both utilizing and updating firm's expert systems.
- Provide any available, applicable process maps that indicate how expert systems play a role in firm delivering legal services to client.
- Provide any available statistics on expert system usage (for client's matter, if possible) and maintenance.
  - How frequently is each expert system accessed?
  - How frequently is the content of each expert system updated?
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that have their genesis in any expert system.
- Outline expert-system projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe expert-system projects that firm has done for other clients that could be used as models for an expert-system project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how expert systems are integrated into firm's delivery of legal services to client.

## Technology Training

- Supply a chart of timekeepers and staff working on client's matters with an indication of what technology training they have completed. Include details about the form and length of each training with emphasis on whether any competence-based testing was done to ensure skill acquisition.
- Describe your screening mechanisms for potential employees. How do you determine whether applicants have the requisite technology skills for their position? How do you determine what the requisite technology skills for a position are?
- Detail the analysis you do to determine who needs training in which applications (e.g., pull usage data from the document management system, diagnostic assessments).
- Detail how you determine whether training was actually effective and trainees came away from the training possessing the subject skills.
- Outline technology-training initiatives firm is currently working on (with timeline of start and finish) and initiatives you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe technology-training initiatives that firm has done for other clients that could be used as models for an initiative that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how technology training is integrated into firm's delivery of legal services to client.

## Staffing

- In chart form, list the various positions and provide the number of personnel in the firm that might touch client work (i.e., number of equity partners, number of non-equity partners, number of associates by level, number of paralegals, number of admins, number of research specialists, number of project managers, number of word processors, etc.)
- Calculate and explain how your staffing ratios have changed over the past decade.
- Explain how you track who is handling client's work, including nonbillable staff, and provide a chart of who has handled client's work in the last two years including position and number of hours recorded (both to client and overall).
- Detail your staffing and delegation protocols and explain how they affect the handling of client's work.
- Provide and identify the origin of whatever statistics you maintain on who does what work and who delegates what work to whom (e.g., analysis from your document management or workflow coordination systems). Data specific to client is preferred, if available.
- Summarize how, if at all, you incorporate low-cost resources into your delivery of legal services from (i) your own near- or off-shore delivery center(s) to (ii) affiliations with legal process outsourcers and alternative service providers. Explain what impact your answers have on delivery of legal services to client.
- Outline any projects you are currently working on (with timeline of start and finish) and projects you have completed in the last three years that alter your approach to staffing/delegation and improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Describe any changes you have made to how staff matters or delegate work on behalf of other clients that could be used as models for a new approach to staffing/delegation on client's matters that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important or useful for client to have in order to understand how staffing and delegation support firm's delivery of legal services to client.

## Firm Defined

- Detail firm improvement initiatives that affect how firm is delivering legal services to client. Outline improvement initiative projects you are currently working on (with timeline of start and finish) and initiatives you have completed in the last three years that improve the firm's delivery of legal services to client. For completed projects, provide whatever measurements are available on usage and improvement. For current projects, explain what measurements will be available on usage and improvement. Specify what success looks like and what its indicators will be.
- Provide any available statistics that speak to the reach of the improvement initiatives (e.g., usage statistics) or the magnitude of the impact (e.g., lower costs, quicker turnaround, higher quality).
- Provide any process maps (past, present, future) that indicate how recent and current improvement initiatives alter the delivery of legal services to client.
- Explain how the firm identifies potential improvement initiatives and rewards those who are responsible for the idea or implementation (e.g., billable credit, innovation prize).
- Summarize the respective role of attorneys and allied professionals in both conceptualizing and executing improvement initiatives.
- Identify recent documents (or parts of recent documents) firm sent to, or filed on behalf of, client that were affected by a recent improvement initiative.
- Describe improvement initiatives that firm has done for other clients that could be used as models for a project that would improve firm's delivery of legal services to client.
- Include any additional information that you consider important/useful for client to have in order to understand how improvement initiatives affect firm's delivery of legal services to client.