



BELLNUNNALLY

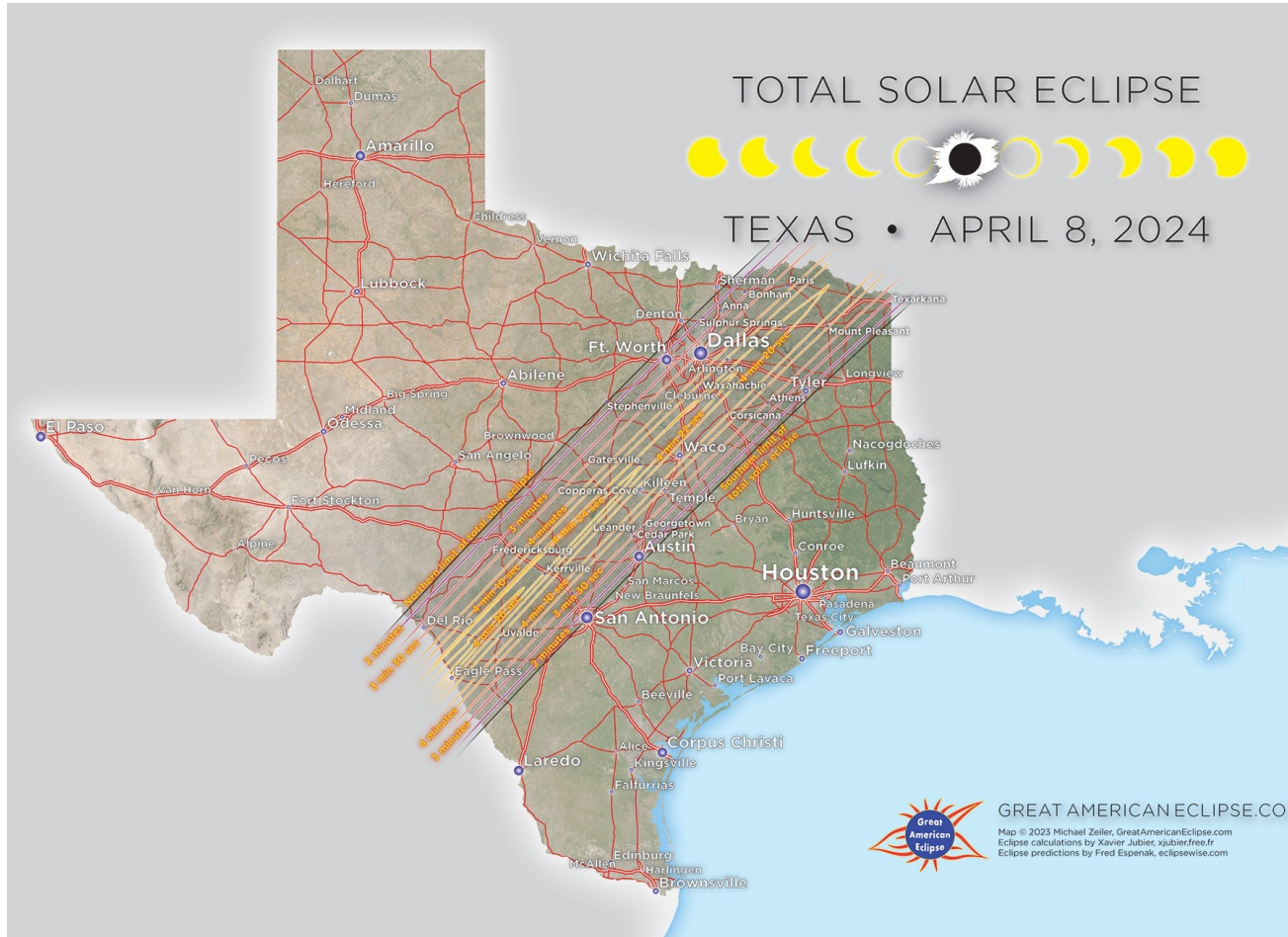
ENHANCING COMMUNICATIONS BETWEEN IN-HOUSE AND OUTSIDE COUNSEL

Jarod T. Moss

ACC DFW 2024 Symposium

February 7, 2024

GRAB YOUR SHADES



April 8: 1:30-1:50

Once every 50 years visible in Texas.

Free glasses courtesy of Bell Nunnally!

PERSONAL EXPERIENCE IN-HOUSE AND OUTSIDE COUNSEL

In-House Counsel



Trammell Crow Company

Outside Counsel



BELLNUNNALLY
ATTORNEYS & COUNSELORS

IN-HOUSE COUNSEL'S PERSPECTIVE

- Timeliness of Response
- Certainty Upfront Regarding Legal Budget / Controlling Legal Spend
- Work Product Delivered in Plain English That Integrates Seamlessly Into Business Model
- Quantification, Not Just Identification of Risk
- Availability of, and Connectivity to Resources

OUTSIDE COUNSEL'S PERSPECTIVE

- Clear Understanding of Scope of Engagement
- Due Diligence Regarding Factual Background and Corporate Governance Structure
- Understanding of Business Priorities to Properly Assess Risk
- Payment/Aging of Invoices Matches Response Time
- Building on Relationship

SCOPE OF ENGAGEMENT

- Establishing Clear Objectives and Business Priorities
 - Timing Requirements
 - Budget
 - Desired Work Product
- Establish Clear Communication Protocols (including communication channels)
- Debrief After Each Matter To Review Quality of Work Product and Explore Additional Opportunities to Add Value

RULE 1.02

SCOPE AND OBJECTIVES OF REPRESENTATION

[A] lawyer shall abide by a client's decisions:

- (1) Concerning the objectives and methods of representation;
- (2) Whether to accept an offer of settlement of a matter, except as otherwise authorized by law;

A lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation

RULE 1.03

COMMUNICATION

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain the matter to the extent necessary to permit the client to make informed decisions regarding the representation.

RULE 1.12

ORGANIZATION AS A CLIENT

(a) A lawyer employed or retained by an organization represents the entity.

While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents, in the situations described in paragraph (b) the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization.

RULE 1.12

ORGANIZATION AS A CLIENT

- (a) A lawyer representing an organization must take reasonable remedial actions whenever the lawyer learns or knows that :
- 1) An officer, employee, or other person with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization.
 - 2) The violation is likely to result in substantial injury to the organization; and
 - 3) The violation is related to a matter within the scope of the lawyer's representation of the organization.

CONTROLLING LEGAL SPEND 2023 ACC BENCHMARKING REPORT

- The median legal spend increased \$2.4M to \$3.1M
- The median total legal spend as a % of company revenue also increased 0.63% compared to 0.56% the previous year
- Slight uptick on the percentage of legal costs spend internally
 - 53% internal costs
 - 47% outside costs

CONTROLLING LEGAL SPEND

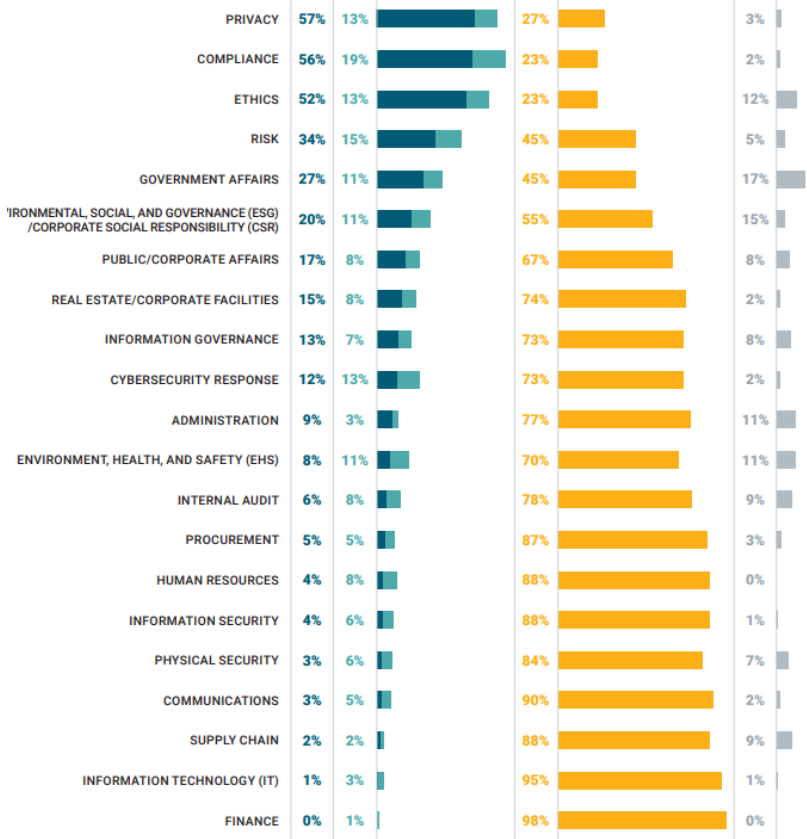
INTERNAL STAFF

NUMBER OF STAFF PER POSITION AND COMPANY SIZE

	ALL PARTICIPANTS	LESS THAN \$1B	\$1B TO <\$5B	\$5B TO <\$20B	\$20B OR MORE
LAWYERS	4	2	10	38	80
PARALEGALS	1	0	2	6	15
LEGAL OPERATIONS PROFESSIONALS	0	0	1	2	4
ADMINISTRATIVE/ SECRETARIAL STAFF	0	0	1	4	9
OTHER STAFF	0	0	0	10	12
NUMBER OF TOTAL LEGAL STAFF	7	4	17	81	145
CONTRACT (TEMPORARY) STAFF	0	0	0	2	3

IN-HOUSE LEGAL DEPARTMENT FUNCTIONS: PRIVACY OVERTAKES COMPLIANCE

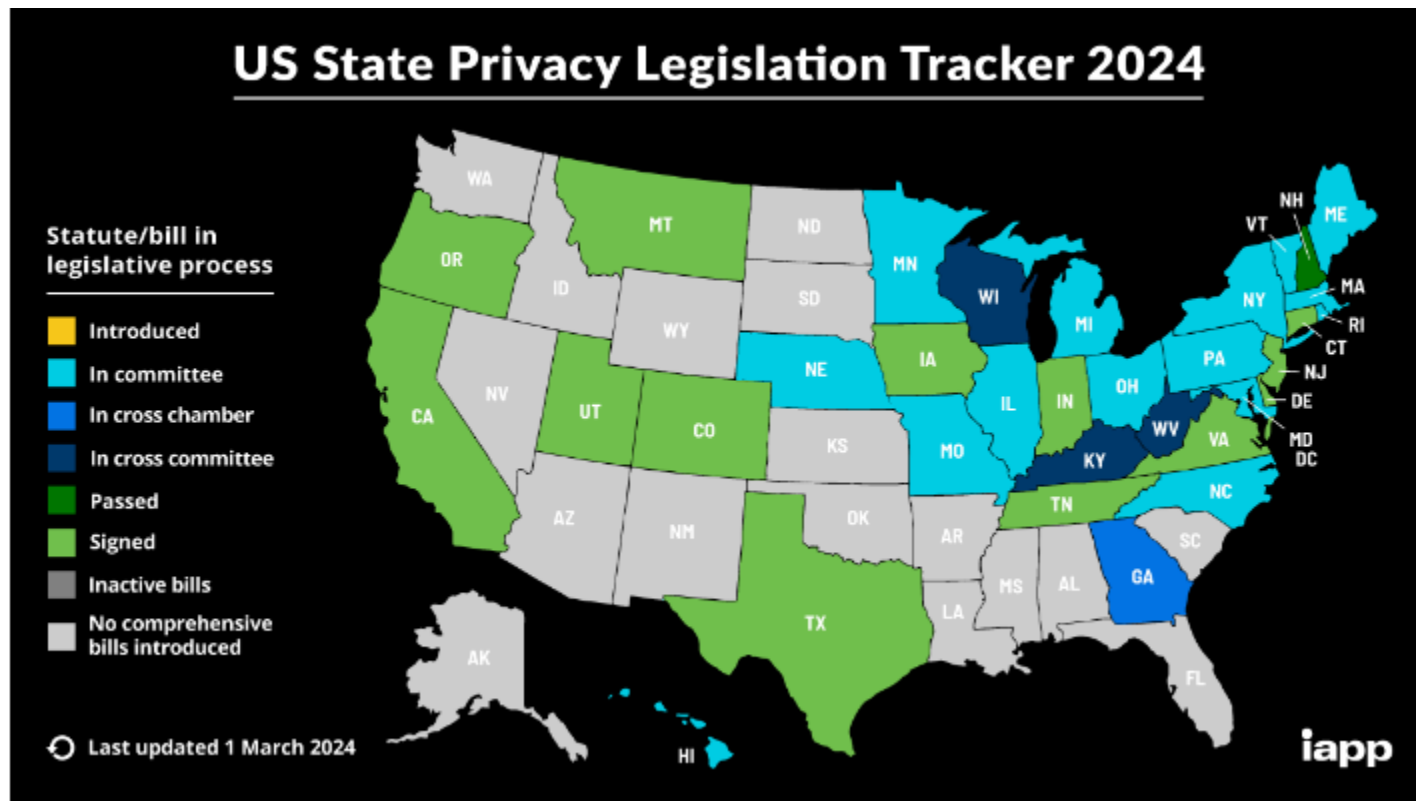
LEGAL DEPARTMENT FUNCTIONS



■ Part of legal ■ Separate function reporting to legal ■ Separate function NOT reporting to legal ■ Not known

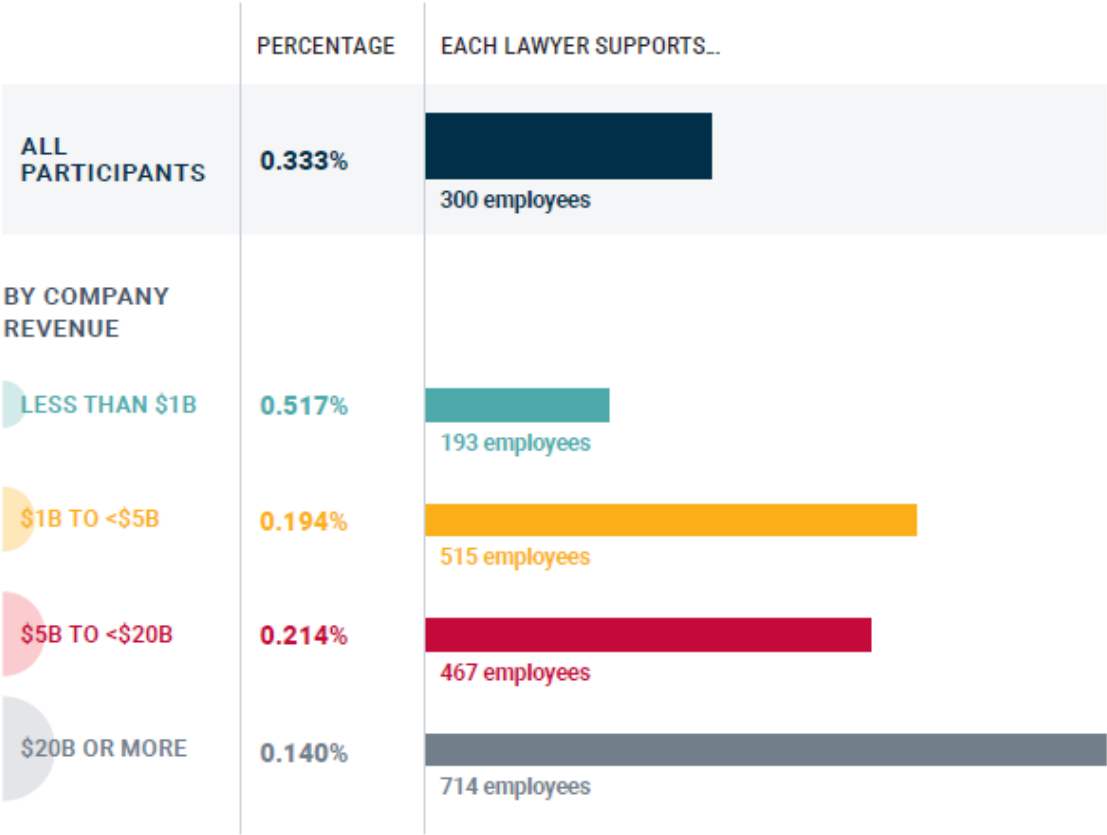
EMERGING STATE DATA PRIVACY LAWS

- Following EU's GDPR, U.S. Privacy laws continue to develop as several jurisdictions have enacted and updated privacy legislation in addition to California's Consumer Privacy Act ("CCPA")



IN-HOUSE LAWYERS COMPARED TO TOTAL EMPLOYEES

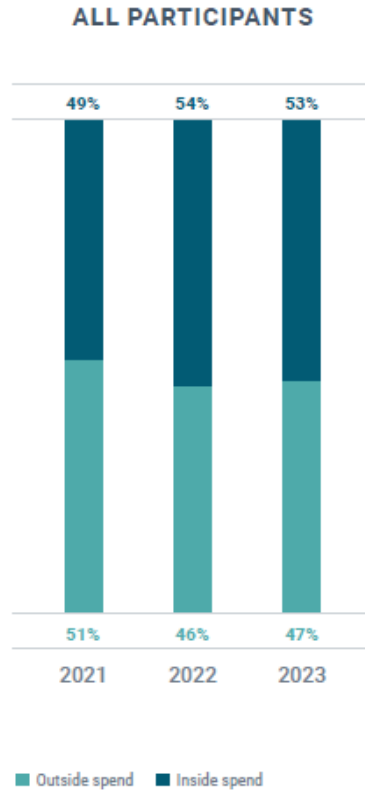
LAWYERS AS A PERCENTAGE OF COMPANY EMPLOYEES



Median values reported.

LEGAL SPEND INTERNAL AND EXTERNAL DISTRIBUTION

INTERNAL AND EXTERNAL SPEND DISTRIBUTION



Average values reported.

BY COMPANY SIZE



RULE 1.04

FEES

- (a) A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

- (b) Factors that may be considered in determining the reasonableness of a fee include, but not to the exclusion of other relevant factors, the following:
 - 1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - 2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - 3) The fee customarily charged in the locality for similar legal services;
 - 4) The amount involved and the results obtained;
 - 5) The time limitations imposed by the client or by the circumstances;
 - 6) The nature and length of the professional relationship with the client;
 - 7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - 8) Whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

LEGAL SPEND FEE STRUCTURE

TYPES OF OUTSIDE COUNSEL FEES USED

	ALL PARTICIPANTS	LESS THAN \$1B	\$1B TO <\$5B	\$5B TO <\$20B	\$20B OR MORE
DISCOUNTED HOURLY RATES	83%	75%	95%	93%	100%
STANDARD HOURLY RATES	77%	75%	75%	83%	79%
FLAT FEES FOR ENTIRE MATTERS OR FOR SOME STAGES OF MATTERS	61%	51%	66%	86%	83%
CAPPED FEES	46%	38%	53%	59%	79%
RETAINERS (INCLUDING PERIODIC RETAINER FEES FOR A PORTFOLIO OF SERVICES)	38%	27%	45%	57%	72%
BLENDED HOURLY RATES	37%	27%	38%	64%	76%
CONTINGENCY FEES (INCLUDING REVERSE CONTINGENCY FEES)	15%	9%	15%	28%	41%
INCENTIVES OR SUCCESS FEES	12%	7%	12%	31%	24%
PERFORMANCE-BASED HOLDBACKS	4%	3%	3%	7%	7%
OTHER	2%	1%	3%	5%	0%

FINAL COMMUNICATION THE “INVOICE”

- Critical That Invoices Be Timely
- Trend Towards Elimination of “Block Billing”
- Before Receipt of Invoice, Client Should Be Continually Aware of “Work In Progress” or “WIP” to Avoid Surprises
- Time Entries Should Be Clearly Written and Detail Each Task Performed To Allow Client To Quickly Ascertain Context

LONG TERM COMMUNICATION ENHANCEMENTS

- Awareness of Long Term Strategic Plan
- Establish Alignment on Legal Budget and Business Interests
- Establish Clear Communication Protocols And Individual Lines of Communications Between Various Corporate Departments and Subject Matter Experts
- Anticipation of Regulatory Changes That Impact Business Model