



704 Litigation Triage

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Faculty Biographies

Timothy Lindon

Timothy Lindon is vice president and associate general counsel Philip Morris Latin America and Canada, Inc. based in New York City.

Previously, Mr. Lindon was associate general counsel, litigation, for Altria Corporate Services, Inc. In that position, he was responsible for developing and implementing strategies for litigation issues facing the Altria group of companies, focusing on smoking and health litigation against the group's domestic and international tobacco companies. Prior to that, he served as regional counsel for the Asia regions of Philip Morris International Inc., based in Hong Kong.

Mr. Lindon received a B.A. from Tufts University and is a graduate of the New York University School of Law. Mr. Lindon clerked for the Honorable John D. Butzner Jr. of the U.S. Fourth Circuit Court of Appeals before joining Arnold & Porter in Washington D.C.

J.L. Novak

J.L. Novak is assistant general counsel at AOL in Dulles, Virginia. He manages litigation and regulatory issues on behalf of AOL and its subsidiaries (including CompuServe Interactive Services, Inc., Netscape, and MapQuest).

Before joining AOL, he was a partner at McGuireWoods and, before that, a law clerk to the Honorable Charles R. Richey, United States District Judge for the District of Columbia.

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Definition of “Triage”

Main Entry: **tri·age**

1 : the sorting of and allocation of treatment to patients and especially battle and disaster victims according to a system of priorities designed to maximize the number of survivors

2 : the sorting of patients (as in an emergency room or an HMO) according to the urgency of their need for care

Merriam-Webster's Medical Dictionary, © 2002 Merriam-Webster, Inc.



Definition of “Litigation Triage”

Main Entry: **litigation tri·age**

The *development*, sorting and allocation of litigation resources according to a system of *goals and priorities* designed to maximize results and the number of survivors



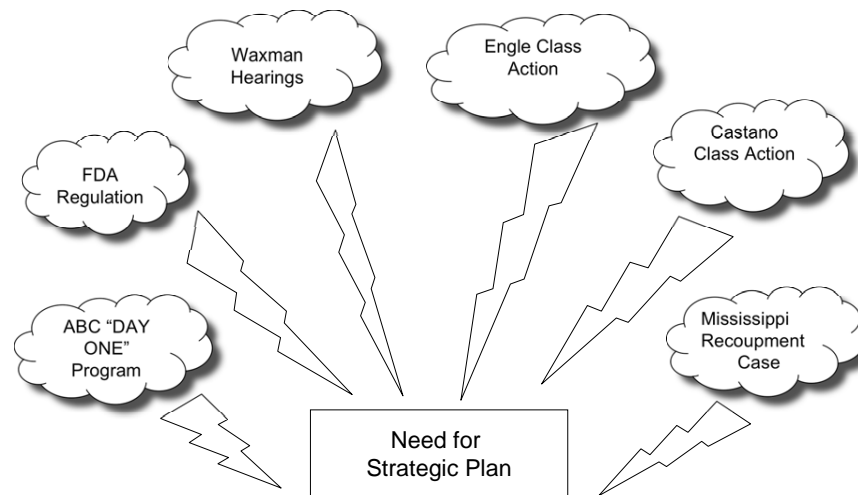
Three Steps of Litigation Triage

- Preparing for and avoiding the onslaught
- Assembling and directing the team
- Managing through chaos

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The Tobacco Wars – The 1994 Storm



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Attorney General Cases - 1994

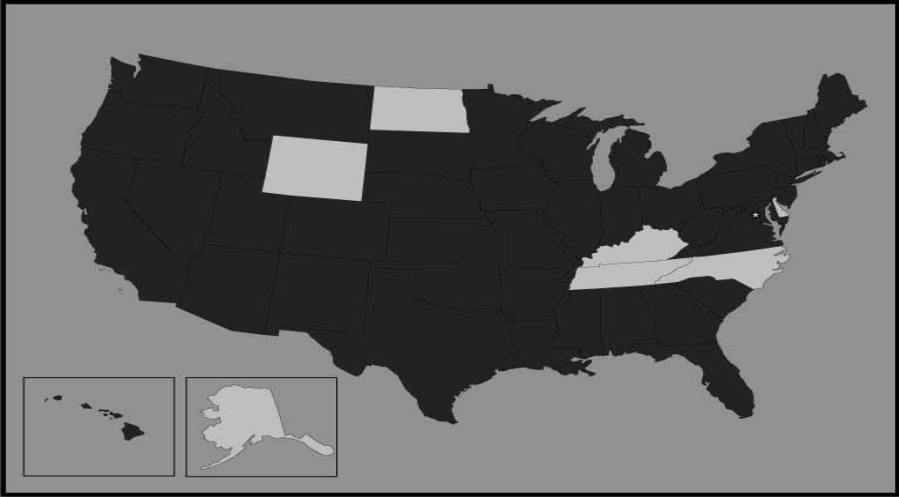


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Attorney General Cases - 1997



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Class Actions - 1994

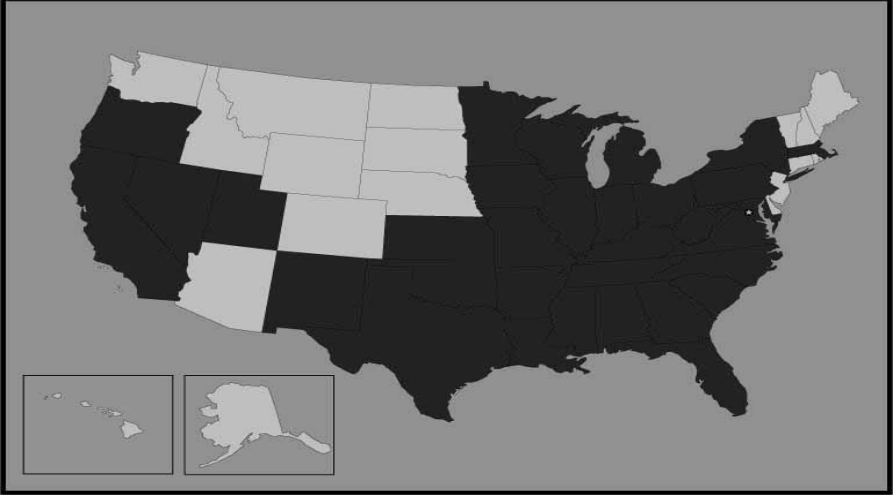


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Class Actions - 2000

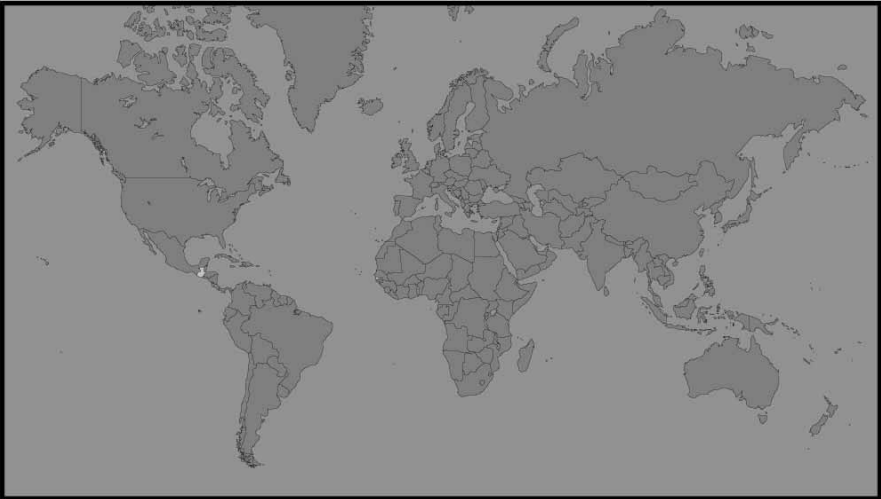


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Foreign Sovereign Cases - 1998

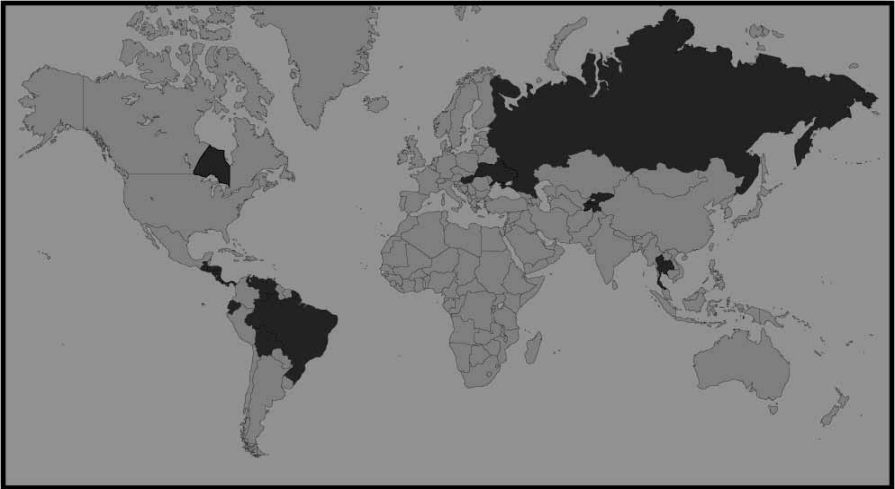


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Foreign Sovereign Cases - 2001



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Avoiding Litigation Triage

- Effective risk assessment process
- Establishing a collaborative team
- Collaborative technology

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Predicting the Future

- Act as your own FEMA
- Who are the best futurologists?
- Diverse members make a team smarter
- Act on hunches and trends

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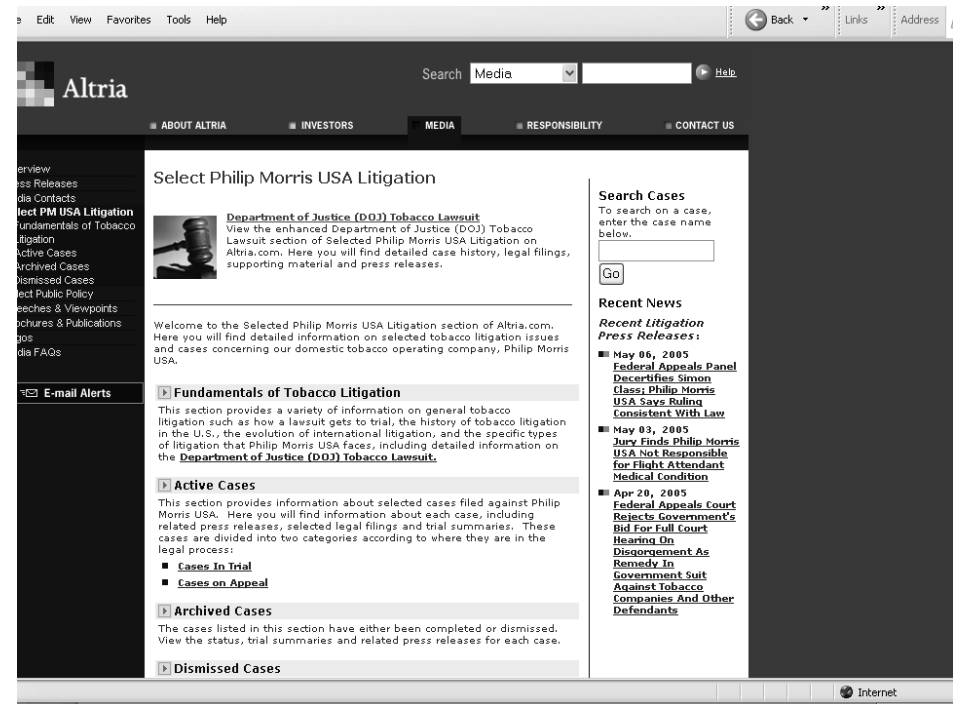


Get Your House In Order

- Organize litigation communications – avoid distractions
- Identify and inform stakeholders
 - Business executives
 - Employees
 - Shareholders
 - Investment community
 - Media
- Set up your intranet and internet sites

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Set Goals and Priorities for Triage

- Focus on company-specific risk profile
- Remove – Get Out of Dodge
- Strategize and sequence on national stage
- Cost parameters
- Settlement strategy

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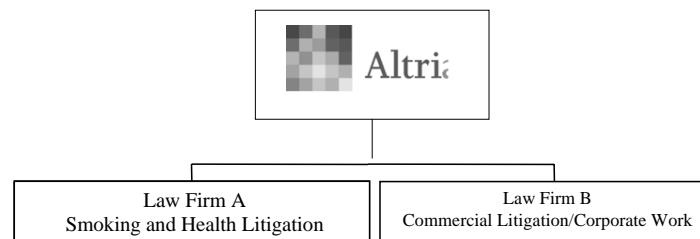


Make Yourself Mass General Hospital

- Larger, well-prepared organizations have less triage issues
- Develop in-house resources
- Create collaborative outside counsel *team*

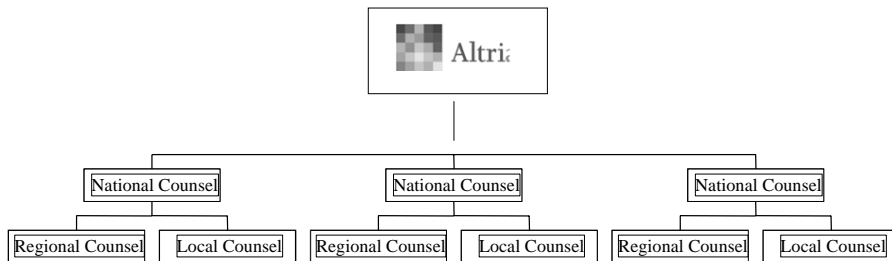


The Traditional Organization





National Counsel System

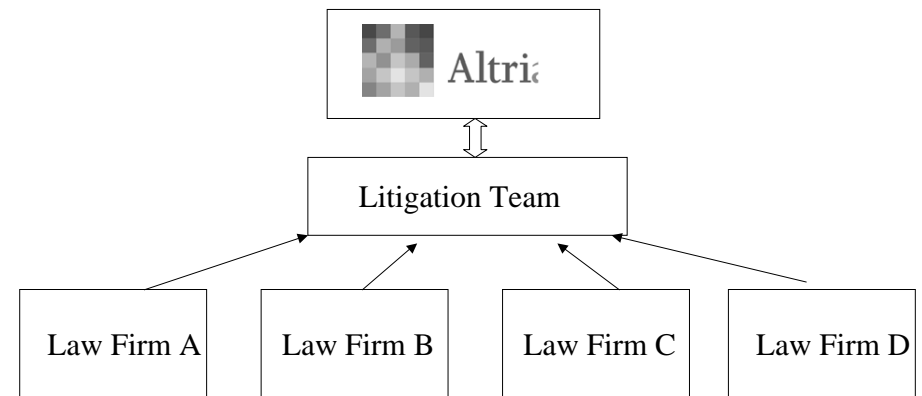


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Team Approach for Strategic Actions



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Dupont Collaborative Model

- Pick Team Players
- Build Trust
- Define Team Goals
- Encourage Communications
- Build Reward Systems


Rusing, Shomper & Kuchler, "Building the Virtual Law Firm through Collaborative Work Teams, ACCA Docket (Oct. 2001)

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Using an Authority Matrix for Order

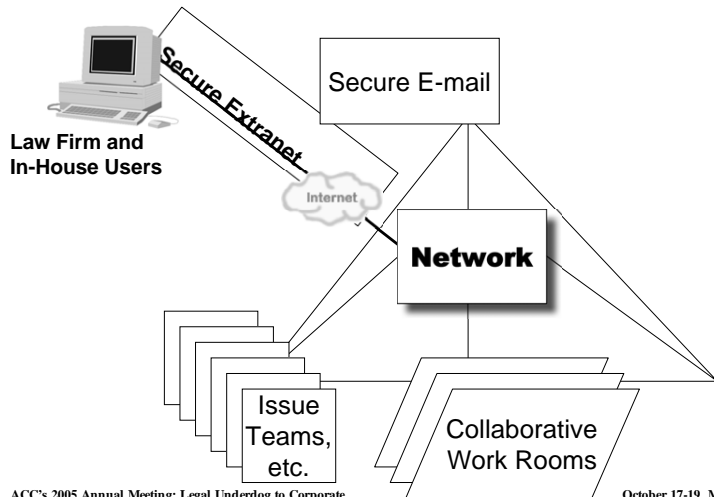
Setting Overall Direction		Altria		
Designing Team and Organizational Context	Company Responsibility			
Monitoring and Managing Work Process and Progress		Law Firm(s) Responsibility		
Executing Team Task				
	Client-Led Teams	Self-Managing Teams	Self-Designing Teams	Self-Governing Teams

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Using Collaborative Tools



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Assembling and Directing the Team: A Hands-On Approach

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Assembling and Directing the Team

- Three reasons people win cases
 - Teamwork
 - Teamwork
 - Teamwork
- Everybody says they belong to a Team, but most have no idea what a real team looks like or how one builds one or how one leads one
- Most apparent in times of crisis

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Assembling and Building the Team

- If you build it - they will come
 - Structure (Preferred Providers, Convergence)
 - Network
 - Searches
 - Bake Offs
- Needles and haystacks – “Triaging” the lawyers
 - Intangible virtues
 - Sandbox rule
 - New litigators for new times

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Assembling and Building the Team

- Three dimensional litigation chess board
 - Multiple jurisdictions
 - Multiple parties, defendant and plaintiffs
 - Multiple, complex issues
 - Multiple cultures
- Three Dimensional Teams
 - Cross functional
 - Cross disciplinary
 - Diverse
 - Global
 - Non-hierarchical

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Assembling and Building the Team

- A Lone Ranger is a Dead Ranger
 - Premium on players prepared to thrive in the new world
 - “Lead” litigator must be as much statesman as warrior
 - Teams must be assembled with the new realities in mind
 - Only when team is aligned with the new realities can the chaos generated by crisis be effectively managed

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Assembling and Building the Team

- And where are the Company's lawyers?
 - Today, front, center, in the middle and all over
 - The only effective way to do a modern in house litigation job is to become hub of the Team "wheel" – the lead partner
 - Must be decisive, informed, knowledgeable
 - Must be part mediator and part motivator
 - The calm at the center of the storm

Managing through Chaos

First steps: getting your arms around the known knowns and unknowns; doing your best guessing about the unknown unknowns.

- What are the issues?
- Have we been there before?
Positions taken? Outcomes?
Exposure? Investment?
Internal and External Staffing?
Related impacts? Business owners?

Sure-fire recipe for “swirl” is
information clutter due to localized
storage orientation.

Localized storage orientation
means . . .

- Dependency on individual, idiosyncratic information management.
- Daisy-chained e-mails and endless cc: lists.
- Setting your department up for the hit by a bus scenario.

The solution: several modules enabling cradle-to-grave matter management

- Electronic Service of Process
- Document Management System
- Case and Matter Management Platform
- Electronic Invoicing
- Internal and External Collaborative Platform

Quantitative

- Reduction in total overall litigation costs including quicker, less-costly settlements
- Robust data management providing more timely information for decision making (i.e., settle vs. litigate)
- Avoidance of sanctions through better document and information management of discovery and regulatory activities
- Automated support of streamlined workflows, guidelines, policies and procedures, reporting
- Dynamic budgeting and forecasting of departmental costs and cases/matters
- Reduction in cycle and response times
- Improved utilization of existing resources
- Cost accumulation and management for bill-backs and productivity measurement

Qualitative

- Reduction in clutter and swirl through closed loop communication and intra-department and cross-issue visibility means more meaningful substantive engagement and better risk management.
- Central document repository – capture and repurpose institutional knowledge and prior work product.
- Efficient distribution and effective management of workloads
- Process control – ensure early involvement of business owners while avoiding redundant or unnecessary impacts.
- Consolidated “message management”
- Succession management – audit trails provide a history of who did what, and when