Angry corporate clients say they want a revolution

For corporate counsel, learning that the 'going rate' for a brand new associate at large New York firms was $160,000 was the final straw.

The news came on the heels of a *Wall Street Journal* front page report that some lawyers were now charging $1,000 per hour. Add to that the centerfold in *American Lawyer* magazine heralding this year's record profits per partner at law firms.

Corporate general counsel ('GC') say that they gingerly justified eye-popping attorney rates and partner compensation to sticker-shocked CEOs. But when soaring associate pay went public, corporate counsel immediately knew they'd be footing that bill. The gap between cost and perceived value of services became an abyss. And with it, frustration deepened to anger.

The result of that ire is a collective call for wide-scale change in the ways law firms conduct business and a challenge spear-headed by the Association of Corporate Counsel (ACC).

"Individual conversations about a 10 percent discount for a matter when fees go up 15 percent a year just don't make sense," according to Susan Hackett, ACC's senior vice president and general counsel. The Association of Corporate Counsel (ACC), the in-house bar association, has grown to nearly 25,000 members in 75 countries, employed by over 10,000 organisations. ACC members represent all of the Fortune 100 companies, and internationally, its members represent 74 of the Global 100 companies.

Traveling cross-country, Hackett presented a new slide show entitled "ACC's Law Firm Project: Re-Connecting Costs to Value." During a presentation in Los Angeles, Hackett invited legal marketers to involve their firms in formulating the new relationship between in-house and outside counsel.

Revolution Rising

The proposed ACC project has a relatively calm working title of "Re-Connecting Costs to Value." But its leaders refer to the desired change as a revolution.

Buoyed by the success of its previous shakeup of diversity hiring and minority counsel, ACC members don't want ad hoc discounts, temporary rate freezes or blended hourly rates – they seek institutional and meaningful changes.

ACC's latest challenge focuses on increasing efficiencies and aligning law firm's competitive business practices with their clients' operational models.

"The rules of business do apply to law firms," says former chairman of the ACC board and program co-presenter Michael Roster, former General Counsel of Golden West Financial Corporation and former managing partner of the Los Angeles office of Morrison & Foerster.

He says that the steady rise of attorney fees, despite disappointing performance, just does not make business sense: "We do not want hand wringing and memos. We want solutions and outcomes."

Value pricing and expense-conscious approaches are what Roster calls the 'Wal-Mart model'. Not coincidentally perhaps, Wal-Mart's legal department was also the powerhouse behind ACC's diversity campaign.

Pressing their advantage

Corporations are pressing their advantage now that US law firms have entered a recession, which will include a drop in profits per partner, declining spending for legal services by corporations, attorney layoffs and a major competitive threat from law firms in London.

Nowadays there is more 'push back' from clients regarding firm rates and billing practices than there there was five years ago. According to Hildebrandt Inc., evidence includes:

- The widespread use of RFPs (tenders) for legal services,
- The growing client perception that some types of legal work previously thought to be highly complex (like project finance) have now become routine and should be priced accordingly,
- The involvement of corporate procurement departments in outside counsel selection,
- On-going patterns of 'convergence', in which a corporation bids out all of its legal work with the aim of drastically reducing the number of law firms it uses.

"This will make it more difficult for firms to grow their way out of the present slow-down with rate increases," Hildebrandt states in its January 2008 Client Advisory.

Kill the Billable Hour

The call for value pricing in itself is not a radical proposition.

The billable hour's fading allure is a main-stream, oft-mentioned concept, most recently covered in the *New York Times* Style Section under the headline 'Who's Cuddly

Now? Law Firms'.

While a transformation to warm and fuzzy law firms is not explicitly on ACC's wish list, they are seeking healthier and happier ways to conduct business through systemic change. And they know that a myopic stance will undermine their chances of success.

Hackett assured the audience that no one is saying that law firms should not be profitable. But her co-presenter Roster later warned there are business signs law firms should heed. These include Tyco's profligate spending, the current climate of CEO compensation scrutiny, and the rise of alternatives to legal services, such as e-discovery providers.

Susan Hackett

Among the areas where ACC does hope to instigate transformations and invite discussion are:

- **Associates** – The $1,000 per hour lawyer is less the problem than the $400 per hour associate says Hackett. In-house law departments are infuriated about paying for the learning curve of what they deem an overstaffed, untrained and frequently departing workforce.
  Roster suggests that corporate counsel bluntly demand that associates be assigned to them, albeit in reasonable numbers, be mentored and managed by partners, and valued by the firm. The goal is for associates to grow and remain with the client as well as the firm.
- **Value-Service gap** – One GC pet peeve is being billed for the 'privilege' of correcting mistakes by an outside attorney, once, twice and then a third time. The existing billing hour structure discourages GCs from expressing dissatisfaction. Lawyers need to focus on meeting and exceeding expectations and GCs need to better clarify what those expectations are. The example of having clients name their own price for legal services was offered as one method for aligning expectations, service and value.
- **Regional law firms** – GCs admit that their protective mindset and tendency to only hire brand-name law firms have contributed to the dysfunctional relationships between firms and in-house counsel.
  There is a greater interest in hiring regional law firms. Members of the audience and panel both extolled the value and quality of these smaller and highly capable firms. Handling a larger roster of outside firms requires that GC improve their management skills in order to reap the rewards that non-mega firms offer.
- **Professional development** – The belief is, says Hackett, that by eliminating the dominance of the billable hour we can improve the practice of law. Career development, mentoring and training – a return to the ideals that attracted people to the profession – become far more feasible. Retention and recruiting benefits could accrue to law firms and corporate counsel gain a stable, well-trained and professionally satisfied legal team.
- **Performance measurement** – Alternatives to the showy metrics of profits per partner are also sought. Firm staffing changes and associate satisfaction rates are numbers that GCs would like included as indications of a firm's internal health.
- **Marketing** – "It is about more than a pretty logo," said Roster in his focused directive to law firm marketers. He urged marketing departments to make sure that their lawyers stand behind the logo and that they deliver services that exceed expectations. Both he and Hackett encouraged firm marketers to open conversations between their firms and ACC members to define and attain quality.

Bringing the revolution to market

ACC's pending challenge, scheduled for launch in October, will spark reactions of Bastille-storming intensity. Generating passionate discourse was precisely the purpose of the programme and reaction has broken out on blogs in the US and abroad.

Hackett and Roster are reaching out to marketers, thought leaders, judges and the wider legal community in order to develop effective tools for ACC's membership to change the corporate legal landscape.

ACC's plan is in its early stages. Hackett reports that when she proposed these ideas at the annual retreat of a global law firm, the room applauded in approval.

The local LA community's reaction was more reserved. There is cautious concern over the practicality of overthrowing the billable hour and curiosity over the role marketers can play in the process. "We are active in client loyalty and service programmes but I am not sure how influential we can be at the level of compensation and billing," says Jonathan Fitzgarrald, Greenberg Glusker's director of marketing.

Michael Roster

Attorney Jeffrey Kramer, a partner at business law firm Troy Gould, questioned the applicability of the Wal-Mart model. "It's not price points that sell legal services, it's competency and professionalism," he remarked while recognising an increased opportunity for smaller firms in ACC's proposed scheme.

Agreeing with the ascent of smaller firms is Mark Miller, marketing manager of accounting firm Stonefield Josephson. He reports that major clients are already selecting his firm over the globals to realise substantial savings.

While change may not always be fun, the ACC's 'revolutionary' plans certainly promise to engage the legal community. And with the conversation is an opportunity for legal marketing professionals, as Rex T. Fontenot , Holland + Knight's Los Angeles marketing manager observed: "Any time we hear back from clients, it's a good thing."

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