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WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

YOU MIGHT SAY...



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WHO REPRESENTS AMERICA'S BIGGEST COMPANIES

BY ANTHONY PAONITA

YOU SAY YOU WANT AN EVOLUTION?

The crisis has led to changes in the client-firm relationship—in lots of little ways.

THREE YEARS AGO, WE PLASTERED THE DETERMINED FACES OF FOUR PROMINENT GENERAL COUNSEL across alternate covers of this magazine. We asked, “Is It Their Hour?” The legal chiefs in question were champions of alternative fees and, generally, pressuring their outside law firms to change their way of doing business. The context was the previous autumn’s financial meltdown and the resultant recession. It’s painful to remember even four years on, but it was a time when two major automakers were basically nationalized, and many large financial institutions were still in business because they were propped up by the federal government.

At the time, we and many others believed that the economic meltdown would lead to a major upheaval in the relationship between corporate legal departments and their outside law firms. I wrote in my editor’s note, “The current downturn isn’t behaving like normal ones, during which growth heads into reverse gear, but then everyone expects to go back to their old habits afterward. Instead, this year some corporate legal departments are taking the opportunity to make good on previous threats to change how they hire and deploy outside counsel.”

Brave words. Four years after the crash, however, has that revolution come about? Is the in-house/outside firm relationship different? Are law firms changing age-old practices and doing everything they can to keep their cherished clients? Well, yes and no.

THERE IS NO QUESTION

that the rhetoric has ratcheted up. Go to any conference with chief legal officers in attendance, and you will hear talk about restructuring the business of law, about value challenges and alternative fee arrangements, about getting more value from law firms. You’ll hear panelists discuss outsourcing, the disaggregation of legal work, and the fall of the law firm superstar. The law firm partners in attendance will laugh nervously and make supplicating noises, murmuring that yes, they get it.

You can say that these hoped-for changes in how legal services are provided were overdue. General counsel, even absent a recession, are under constant pressure to reduce costs, and get more from vendors and their own staff. And big firms recognize that pressure, even if they may not like it. “Things have certainly changed since 2008, but those changes were a long time coming. The economic crisis just made the situation more acute,”

says White & Case chairman Hugh Verrier. “We work closely with our clients around the world to make sure we deliver our services in the way that is most appropriate and makes sense for them.”

The revolution has in reality been a slow-moving evolution. It’s even simplistic to talk about a unified movement, says Susan Hackett, former general counsel of the Association of Corporate Counsel and currently CEO and CLO of Legal Executive Leadership LLC. Change is happening, but like most change, it’s not proceeding in a predictable, orderly fashion, she and other interested observers say. That dance, again. Law firms adapt in various ways, and so do the departments that hire them.

“I describe it as the difference between feeling pressure and feeling pain,” says Daniel DiLucchio, a principal at Altman Weil Inc. in Newtown Square, Pennsylvania, talking about what law firms are dealing with these days. “Is there more pressure?” he asks. “Yes. Pain? No.”

BOTH KIRKLAND & ELLIS'S
EUGENE ASSAF (RIGHT) AND MINTZ LEVIN'S
ROBERT BODIAN SAY THEY'VE FOUND VARIOUS
WAYS TO FORGE CLOSER RELATIONSHIPS WITH
THEIR CORPORATE CLIENTS.



BUT FIRST, THE SURVEY. Back in prehistory, before most of the people on this magazine's masthead worked here, this survey was launched. The method was simple, even if the logistics weren't. We asked law departments which firms they used. The editor in charge temporarily hired a platoon of college students and recent graduates, gave them phones and lists, and they made cold calls. (This was pre-Web, mind you.) She tabulated the responses, and the survey went to the press.

The process was refined over the years from an informal phone survey, to a mail-in campaign, to an online survey. We were always looking to improve our methodology. Self-reporting meant that some legal departments would decline to respond—apparently, some departments consider what we can glean from any number of court papers a trade secret. Or different people tasked with filling out the questionnaire would give different answers from year to year, out of serendipity, a desire not to offend a firm, or simply a lack of access to their department's data. Besides, we'd ask for their "primary" law firms, and we found out that the word "primary" means many things to many people.

So we switched gears and combed court filings—thousands of them, in fact. Then the ALM editorial data team eliminated duplicates and tabulated the number of mentions a given law firm got. The results appear in the charts of top mentions and the large one that accompanies this package. The survey is an accurate picture of matters in court and before some regulatory agencies. (We apologize in advance to some law firms that do an admirable job of keeping their clients out of court; they inevitably get short shrift.)

Firms move up and down in the standings, but the rankings don't matter as much as a given law firm's presence on our charts. (And even with our refinements in how we gather the data, most blue-chip firms are regulars.) With this survey, we aim to show who's hiring whom. Plus, it gives us a good reason to examine one

of the most crucial decisions made by corporate legal departments: which law firm to hire when the company's future could be in peril.

MAKE NO MISTAKE: The client/outside counsel relationship may be an old one, but it's constantly changing, even if the changes don't amount to bloody revolution. (And it bears remembering that the sacred billable hour itself is a fairly recent invention, dating back to the 1950s, and only a standard practice since the 1970s.) A survey by Altman Weil last year shows how the relationship has morphed.

We're often writing about "convergence," or the winnowing down of a company's law firm roster to a select group from an unwieldy constellation of hundreds of firms. E.I. du Pont de Nemours and Company was an early champion of convergence, and fairly recently the drug giant Pfizer Inc. slashed its firms to fewer than two dozen. Altman's survey shows, in fact, that 67 percent of the departments that were polled have either a formal or informal panel of firms.

Says consultant Leigh Dance, president of Brussels-based ELD International Inc.: "Convergence is the quickest way to make yourself a hero within the company." Especially, she adds, when outside counsel costs typically amount to half of the legal department's spending.

MORE TELLING is the pressure the departments are exerting on their firms to "change the value proposition" (rather than, as the survey says, merely cutting costs). The survey asked the departments to note on a scale of 0 to 10 (10 being intense pressure) how hard they're riding their firms. In the past two surveys, the average response rose from 5 to 6.4, with a sizable 13 percent of the respondents in the most recent survey, 2011, giving an "8" response.

The survey also showed a wide disparity in what firms seem to be willing to do in response to this pressure from law departments. When departments were asked how



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serious firms are about change, the largest response, almost 26 percent, rated them only a 3.

Still, there's a certain amount of inertia involved. "The GC's job is on the line" when trouble hits, says Altman's DiLucchio: "You don't shop around when you have a heart attack." Adds Hackett: "It's very, very hard to fire a law firm."

So we're not exactly seeing a revolution here; change has been incremental. What's more, it really depends on the nature of the work. Some work—routine labor matters, for example—can be bundled and subject to a reduced rate. High-stakes litigation? Not so much. But even there, says Dance, "there's still pressure on pricing." In-house counsel are watching closely on how matters are staffed, and e-billing allows them to keep close watch on expenses.

In-house lawyers, too, are wary of saying that the post-2008 climate is revolutionary. "Those years didn't *cause* change, but accelerated it," says Cameron Findlay, general counsel of Medtronic Inc. and one of the winners of *Corporate Counsel's* Best Legal Departments this year. The crisis "forced every company to scramble to cut costs."

What helps the in-house departments, adds Findlay, is their relatively newfound ability to see what their firms are up to, thanks to better technology. "All that data comes in electronically, and you can massage it and see what happens at different stages [of a matter]," says Findlay. "If someone's an outlier, it arms you to have a discussion."

DESPITE THE INERTIA, white-shoe law firms are showing increasing flexibility, both in fee structures and the types of freebies they offer to clients.

A partner at a prominent Am Law 100 firm who asked not to be identified says, "I'm always willing to engage in billing that is sensitive to the needs and constraints of the client. If you're willing to be sensitive, you'll come up with better solutions."

Another who spoke on the record, Robert Bodian, managing partner of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, told me, "Around the margins, I see a lot of proactive thinking about how to assist the client relationship. We try to provide more value, and be a part of the client's life and business."

One way that firms—even firms that stand steadfast against

such heresies as flat rates and incentives—go beyond the hourly bill is by offering more freebies than ever. Instead of charging for such services as continuing legal education classes, they'll invite the legal department in for free sessions. Dance says there's an added bonus to this practice: Departments can tap into insights that their firms glean from working with other clients.

They'll also partner with their clients for "soft" work like legal pro bono programs, something that legal departments were loath to get involved in (for reasons ranging from a lack of insurance coverage to a shortage of resources). Eugene Assaf, a Washington, D.C.-based partner at Kirkland & Ellis, touts the benefits of this kind of partnership. "There's a tremendous intellectual energy when clients and their firms work together," he says, adding:

"We have to remember we're a profession. You want to be dedicated to the craft."

MANY PARTNERS

I spoke to for this essay told me that in the past three years they haven't always hit the bill button when a close client calls. And the firms are more willing to package commodity work for a flat fee. "The old days of the 1970s, when a client picked up the phone and then got billed," says Assaf, "just wasn't healthy for the profession—or the clients."

Bodian also says his firm puts together what he calls a menu for his clients. "It's a good starting point," he says. Clients "can have an understanding of rates and how they apply" to particular matters. "Hard times have made us figure out ways we can add value to a company."

Several outside counsel interviewed for this article also say that the crisis has resulted in a new honesty—that sometimes it's even better for them to turn down work that they're not comfortable doing. Says Jeffrey Stone, a partner at McDermott Will & Emery in Chicago: "A challenge for a firm my size is to do everything we can to assure the best provision of services—even if it means recommending someone else."

In the end, then, in maybe a perverse way, the downturn has led to closer legal department–outside counsel relationships. Stone, for his part, says the crisis has led firms to do whatever they can to hold on to clients. "When lawyers see collapses like Dewey's," he says, referring to this year's messy demise of megafirm Dewey & LeBoeuf, "it creates a natural tendency to guard your relationships closely." ■

"THERE'S A TREMENDOUS INTELLECTUAL ENERGY WHEN CLIENTS AND THEIR FIRMS WORK TOGETHER," SAYS EUGENE ASSAF.