

The Disruptive But Inevitable Move To Alternative Fees



A four part series co-authored by a Fortune 500 GC, a Managing Partner, a leading practitioner in alternative fee arrangements, and a management consultant.

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INTRODUCTION

In article 1, we explored the structural impediments in large law firms to alternative fees, the role of the relationship partner, and the need for the client to push for and support the relationship partner in adopting alternative fee structures.

Article 2 examined the pitfalls of some so-called alternative fee structures and laid the groundwork for an alternative fee structure that works for both the client and the firm.

In article 3, we turn our attention to the client – and in particular the in-house team responsible for delivering legal services to the client. This awakening giant that has both enabled and empowered the firms to structure the relationships as they are today now holds the key to driving change to value focused engagement models.

In our final installment, we provide a number of recommendations to firm leadership as to the various courses of action that can be taken to transform good intentions into specific actions moving forward.

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Time For Alternative Fee Arrangements

BigFirm partners are anxious about their firm's futures, and their individual status, ranging from preserving income shares, to remaining partners, to keeping a job. Anything that suggests reduced delivery of revenue to the firm by shortfalls to partners' expected quota of billable hours or targeted hourly rates is toxic. The rule of survival branded on partners today is simple: deliver hours and rates, or suffer the consequences of reduced income, de-equitization, or forced departure.

In general, even equity partners have no independent authority in BigLaw firms to create their own alternative fee arrangements. Typically, select partners in a BigLaw firm are empowered to review and make decisions regarding alternative fee arrangements. The process has been centrally reviewed and scripted. Everything other than standard rates and hours arrangements must go through them for approval. Alternative fee arrangements have previously been limited to situations where a firm may otherwise lose a client, pursues business it strategically wants, or presented so little risk that there was significant likelihood of a windfall to the firm. In the salad days of BigLaw, that was infrequent and clients faced a "take it or leave it" proposition, with little opportunity for a materially better deal across the street. Hourly rates among "peer" firms were comparable. If the client was not perceived by management as essential to the present and future law firm, the partner may very well be denied the request to establish an alternative fee arrangement because there was neither the time available nor inclination within firm management to spend the effort to retain the client. "If they don't want to pay, they can go elsewhere."

Raising the issue of alternative fee arrangements was often perceived as a weakness in the ability of the relationship partner to deliver the type of client and work that the firm sought to define itself as serving; "as many hours as it takes and at whatever rates we can command." This is not defensible, but it is the way it has been. In-house and outside counsel must together to break through this barrier to establish a new value delivery model for legal services.

Recognize that when approaching the firm for an alternative fee arrangements discussion, the General Counsel does it through the relationship partner. There are consequences to the relationship partner once the process begins, so how does the GC get started working with the relationship partner to embrace a redesign of the economics of the delivery of legal services to provide the client better value?

The client has to make the starting proposal. If the GC goes to the partner for assistance in crafting it, the client may get some help. Indeed, the relationship partner may enthusiastically see the wisdom and mutual benefit of doing something together. However, this has been perceived by BigFirm management as being asked to negotiate against themselves. They have an arrangement they are satisfied with, and therefore, do not see the benefit of using a different approach unless it is guaranteed to be even better than what

they already have. That kind of income guarantee to the law firm is not what has brought the client to the negotiation table.

Thoughtfully determine what the client wants, bring it to the relationship partner, do some groundwork to shape it (as she should know what the managing partner, who controls the intake of alternative fee arrangement matters, is willing to do), and then make the proposal formally, meeting with both the relationship partner and the alternative fee arrangements "intake" partner.

Support the firm and the relationship partner. But to get what the client wants, be prepared to do more than speak words. Be prepared to take action. The power to make the deal desired by the client derives from the power to walk away from the deal offered to but not wanted by the client. If the client cannot get what it wants from the firm, take it to a firm with well-qualified lawyers who "get it" and who will do it. If the client has not worked that option through in advance, you could be wasting your time.

The client may need to be prepared to empower its relationship partner to move to a firm that "gets it" and will support your alternative fee arrangement service/value proposition. It reminds one of the movie *Casablanca*, where Humphrey Bogart has two gentlemen on the couch and announces that he is going to pistol whip both of them until he gets what he wants, which means that one of them is going to take a beating for nothing! That may sound tough, but without it, you are only working with words and so far, for clients, that just has not delivered results from BigLaw firms.

As GC you know the client's business and the legal service needs better than anyone. Your relationship partner has his professional survival intimately tied to the client. Calculate that for every \$100,000 of fee payments you channel through them, or redirect else where. The relationship partner is personally impacted by at least \$35,000. Relationship partners want to help the client. But they need some help from the GC to get it done. Work together to succeed. Sit down, off the meter, for a frank discussion around how the client might measure the value proposition. How does the GC determine "value?" What is the outcome of the effort worth for a transactional or litigation matter? What is the relationship partner's direct contribution to the outcome and what is that worth? (You need to reflect on that one before the meeting!) What are the law firm's costs in obtaining and completing the matter; do they have the right cost structure to be able to afford to deliver a meaningful alternative fee arrangement for the client? If not, what can be done to change that? What value added does the client bring to the firm by simple virtue of being a client?

An annual spend of \$2,000,000 or more should command the attention to get what the client wants without moving to another firm in this market. An annual spend of \$1 million should be enough for an alternative fee arrangement, though perhaps not entirely to your desire, it almost certainly would command a move of the relationship partner to a different firm that would accommodate the client's needs; firms where that is a quarter to a third of what an equity partner is expected to deliver annually to meet the

expectations of the firm to retain their partner status. A partner who loses that size of a business will be materially impacted with the loss of the account. Just be aware of that consequence, because it is real and immediate. People lose their jobs in law firms when such business is relocated. A spend of \$250,000 to \$500,000 may command some change, but may not be enough to cause the relationship partner to relocate, unless she has other strong client loyalties that will follow a move. Be prepared for a BigLaw firm to reject the alternative fee arrangement when spending less than \$250,000, which also places the relationship partner at risk of a pay cut. Presently, this is often not enough business to "move the needle" for the firm to keep you as a client, though it can result in significant harm to the relationship partner.

Before you get too concerned about the relationship partner, do consider that part of the gambit played by BigLaw firms over the past 15 years in their annual raise of rates and hours has been to force their relationship partners to push increases down the throats of clients to generate higher revenues. Relationship partners who delivered the rates were rewarded. Relationship partners who could not deliver took pay cuts (Whether the client remained a client at lower rates, or moved to firms that were priced more attractively). Some partners were confronted deliberately by BigLaw management with the choice of watching their client base erode under pressure of higher rates, until their ability to retain their partnership status was lost, or leave the firm while they still had client relationships of value to obtain a position in a new law firm that appreciated the business and provided alternative arrangements/lower rates that the client needed.

The situation is difficult all around. Everybody is hurting. Opportunity exists now to seize initiative and address your needs. Efficient delivery of legal services by highly qualified professionals is available. IF the firm you are working with does not give you what you need, there are firms and lawyers that will, and you just need to get one that does. Once that catches on as the new paradigm, change may come to you from law firms where superior client service at a better value becomes as much a part of the law as it has been a part of business.

Alternative Fee Arrangements: Wannabes, Pretenders and the Real Deal

The problems associated with the hourly billing model have been placed under an increasingly harsh light as economic conditions deteriorated during this business cycle. Predictably, the hourly billing model began to wither. Its saving grace has been the three dimensional intersection of inertia, general risk-aversion and a “devil you know” mentality. But the budget restraints of the new economic reality have caused a growing number of inside lawyers to more aggressively seek alternatives to the billable hour. Understandably, there are questions regarding what works and how to distinguish between true “win-win” propositions and proposals that simply lock in law firm profit via slick new packaging of the same old stuff. I hope to provide some insights that will assist inside counsel and far-sighted outside counsel navigate those treacherous waters.

One note at the outset. Lawyers are trained to look for the exception to the rule, and, as a class, are very good at it. Should you feel the temptation to look for exceptions to the propositions I discuss, save your energy. While perfectly compatible with every kind of matter, these ideas are offered in the context of bread and butter, ordinary course litigation. Try to be different and imagine circumstances where these propositions can apply. Failure to achieve perfection should not impede movement to the better.

The old adage that you get what you pay for is particularly apt with respect to fees. This adage is really a take-off of the equally old and true adage that money talks. If you pay for hours, that’s what you will get. The new reality has helped clients appreciate that they do not want hours, so they are learning to not pay for them. But what to replace them with? The most common objectives are better results (total costs), reduced costs to obtain results (fees), budget certainty and speed of resolution. The Alternative Fee Agreement system that I will discuss reflects the certainty that lawyers will respond to financial motivation and produce better behaviors when incentivized to do so.

A Model for Fixed Fees

Fixed fees obviously provide the budget certainty sought by most clients. One of the most oft-heard criticisms of fixed fees, however, is that lawyers have an incentive to push work down to lower-priced attorneys and to stop working when the maximum fee is reached. The best way to address this concern is to require outside counsel to have “skin in the game,” that is, to make a certain percentage of the fee dependent on the result obtained. This approach is commonly referred to as a holdback model, and typically requires a minimum of 20% of the fee to be placed into a “holdback bucket.” Depending on the result obtained, anywhere from none of the bucket to a predetermined multiple of the holdback amount is paid when the result is obtained. The bucket amount is a compelling incentive for counsel

to have the work performed by the best, experienced talent rather than downstreaming work to inexperienced lawyers.

Perhaps the most oft-asked question is how to determine the appropriate amount of fee. The easiest way to determine a fixed fee is to mine historic data and use historic averages for similar cases as a starting point. For this fee structure to yield savings, historic data must be the starting point from which reductions are negotiated. Not modest reductions, but material ones—on the order of 20-30%. How can these reductions be justified? First, the historic numbers have the law firms' profit included. In cases where hourly rates were paid, those rates had the firm's profit built in, and the firm did not take on any financial risk.

The second reason for downward movement off historic averages is that the fixed fee structure should cause the firm to behave differently. Firms billing by the hour tend to do more work than is necessary because the billing model motivates that behavior. Firms applying the fixed fee with results incentive do what is necessary, but eschew all unnecessary work as it eats into their profit margin. Firms also work harder to settle cases earlier within the targeted range in order to reduce transaction costs, thus increasing profit margin. With these behaviors fully incentivized, one would expect transaction costs to be lower than historic averages.

What to Watch Out For

In the absence of enough data, there is some uncertainty about how to set a fixed fee. In this situation, many firms resort to the approach used to budget a case: figure out the tasks to be done, how many hours those tasks will take and who will perform them, multiply hours by the relevant hourly fee and then add the results. Many firms add a cushion, either in terms of the number of hours or simply by adding some percentage to the preliminary total. That number becomes the firm's proposed fee.

The problem with this approach to determining the amount of the fixed fee is that it locks in the firm's profit, sort of a "heads-I-win-tails-I-win" approach that is an utter anathema to real fixed fee protagonists. If the client's sole goal is budget certainty, this approach suffices. But if costs savings, better results and risk-sharing are objectives, this approach reveals the proponent to be nothing short of a bad pretender. For this reason, it is essential that any potential buyer ask its firm how the firm calculated its proposed fee.

Here are some other hints. Do not include the cost of trial in the fixed fee proposal. Ninety-five percent of all cases settle. A trial component only drives up the total the client will have to pay. If you are uncertain as to the real value of the case, structure the fee into subparts so you don't have to pay additional pieces if the case settles early. Ask for references. Firms that are committed to fixed fees and use them to save their clients money should have large supply of cheerleaders who will proclaim great economic results. Finally, look for project management details. A firm that does not excel at

project management cannot maximize its profit margin. The absence of such skills is a tell.

Model, Model, Model

In real estate, it's location, location, location. The alternative fee version is model, model, model. A law firm's business model will determine whether a fixed fee proposal is bona fide or a marketing gimmick. Fixed fees place a premium on senior, experience lawyers. Experienced lawyers are much more efficient and capable of differentiating work that is critical to the outcome and work that is not.

In a traditional law firm, power flows to "rainmakers," the lawyers who generate *revenue*. There is little concern about profitability, because hourly rates have the firm's profit built into them and realization rates show how much profit the firm is retaining. As a result, the firm's rainmakers are motivated to extract more from their clients' wallets. At the same time, associates are indoctrinated with the need to billable hour targets, that good enough is not acceptable and that more hours in the pursuit of perfection, even on simple, routine issues or matters, is excellent lawyering and not only justifiable, but essential to making partner. These days, the message to associates is even starker: meet your billable targets or lose your job.

Over time, these institutional and cultural messages have become integral components of most firms' DNA. A firm that does not aggressively seek to alter this institutional DNA will find it impossible to embrace the model on which effective alternative fees are based—experienced people doing those things necessary to a successful outcome, but nothing more, looking for ways to reduce time on a matter, not increase it. A firm cannot have partners seeking to advance and accumulate power based on the revenue billed scorecard while another group is focused on profit margins and cost control. This schizophrenia is no healthier in law firms than it is in humans.

The hallmarks of firms that have made the kind of client-focused commitment to alternative fees that will pay off for the client are those that have dramatically altered their leverage, focusing on experience and production instead of body count. In these firms, senior associates and young partners are the foundation on which a team is built because they are starting to have the experience needed to provide value. The benchmark firm will not be bringing in legions of rookies and then suffering through turnover at double-digit figures. The firm will invest heavily in the training of its people because it will be relying on them to produce results quicker and thus improve the firm's profit margins. The lawyers in the firm will have extraordinary insight into the firm's cost structure, because no one's costs is critical to being able to determine one's profit margins. These firms will be relentless focused on lowering costs and streamlining work and work processes because these things also will add to the bottom line. The differences are ones business people know well as the difference between a business that must continuously become more efficient and those that engage in cost-plus billing, which do not face the same pressure.

Conclusion

The relationship between business and its lawyers is on the cusp of tectonic change. That this change will come is certain. As is true in a period of great change, some will take advantage of the situation to improve themselves and better position themselves for the future. Others will simply seek to take advantage of the situation for more immediate gain. Still others will hope that the inevitable change is not inevitable at all – or at least can be put off to another day (when they are no longer so personally affected). The challenge to business is to align with those firms which are using the current environment to remake themselves into a business based on a model that aligns the firm's interest with that of its clients and not be victimized by firms looking to extract the last dollar from the old model.

Value Focused Fees: It's No Longer Whether or Even Why Not – Now It's When?

The critical element in alternative fee structures is having an element of shared risk and performance. We call these “value-focused” fee structures, and while some debate the interstices of the definition of “value,” it really comes down to efficiency, effectiveness and customer satisfaction. The debate is no longer about why or whether we should move to value based legal service delivery models – it's about how and when.

The “stickiness” of the billable hour reflects four basic realities. First, billing by the hour is in the interest of the firm because the enterprise is built on increasing revenue, realization, and leverage.. Second, lawyers, while analytical and calculating, are known neither for creativity nor risk appetite. We tend to be conservative, focused on precedent, identifying legal barriers for our clients by amplifying the negative, and seeking ways to eliminate, avoid or mitigate actual, potential or imagined risk. Third, lawyers are generally better at arguing and debating than doing. We've had more than a decade of discussion about alternative fees and the demise of the billable hour, but little actual movement. Sure, there are pockets of enlightenment and the environment for change has ripened. Perhaps even a tipping point has been reached. But complacency and vested interests in perpetuation of the status quo, traits shared by both outside and inside counsel, remain as formidable hurdles to change. These barriers are due to the failure of the in house counsel to foster and demand change. Fourth, while law now is “big business,” most lawyers lack the training, instinct and interest in understanding how business really operates. Most are unprepared to perform the managerial functions essential to running an efficient and effective economic enterprise.

Let's examine how to get where we all agree we are going.

We have to stop the “it's all about me” mentality.

It should be about the firm and the company, not the individual. Reducing net legal costs and increasing net recoveries contribute directly to the bottom line. In house and firm lawyers should recognize their interest and responsibility for each and be rewarded and penalized accordingly.

We have to recognize that while the system may be broken, we're in this together.

While “in-sourcing” is always less expensive, we can not afford to have the capacity and capability inside for all types of legal service, let alone peak demand. While in-house lawyers need to reduce costs, they also need outside providers. This means the outside providers must be financially sound and profitable. The goals of providers' profitability and reduction of in-house costs are not mutually exclusive if both parties

shift away from top line revenue growth for the firm to increasing profitability through cost reduction and efficiency.

We have to make value the focal point of all relationships.

Article 2 said it best – if you pay by the hour you buy hours – not results or satisfaction. If we shift the engagement to value, we'll focus naturally on efficiency and effectiveness.

We have to build systems that are not zero sum games.

The client's most basic fears about alternative fees are that they will ultimately pay more, that the firms are simply locking in profits and avoiding risk. Firms fear that clients will not treat them fairly and want to reduce firm profits. Individuals on both sides of the aisle fear performance criteria threatens their job and economic security and diminishes their "professional" independence and stature. Effective value focused structures recognize and reconcile these conflicting fears and interests.

We have to move towards the highest and best use of lawyers.

Law firms are economically inefficient at providing process and content – partly because of high labor rates but primarily because both inefficiencies bolster revenue generating hours, which is consistent with the current structural model. Lawyers are good at (and get more job satisfaction from) advocacy and counseling – but those activities generally yield lower aggregate hours. Value focused systems should encourage efficiency in the former and reward effectiveness in the latter.

We have to stop mutually destructive practices.

Every time we say "we hire the lawyer, not the firm," we empower the individual attorney to act as a free agent. Every time a firm "buys a book," we encourage the view of clients as chattel. Once we find a firm that walks the value talk, we should see the relationship as B2B not B2A, and stay with the firm so long as it continues to walk that talk. Firms, on the other hand, should hire and keep only those attorneys that get the importance of value focused engagements.

We have to make this important for those that work for us.

It is the responsibility of leadership to replace law firm remuneration systems that encourage inefficiency and in house engagement models that ignore value-focused disciplines. Without the right tone at the top, the mood in the middle and the focus on the floor cannot move to value.

We have to understand that with change sometimes comes dislocation.

For the good of the enterprise, it can neither hire nor afford to keep those that do not embrace the particular flavor of value focus that's appropriate for the enterprise. Those that won't or can't share those values may be perfectly good lawyers – indeed they may be great lawyers – they just are not going to be good lawyers in the enterprise and they should move on.

We have to rally around those that are doing it right.

There are many paths to enlightenment in this area and one size does not fit all. We need to celebrate and promote the success stories, learn from what has and has not worked, and offer to be mentors to the increasing number of fellow travelers that want to start but somehow just can not find their way. The brighter we make the light of those who have taken the road less traveled, the easier it becomes for others to see their way.

Finally, we have to have the courage to lead, the creativity to experiment, the fortitude to persevere and, yes, even the character to learn from failure.

There will be failures. It happens whenever something new is tried. So the fact of failure is not significant. What is significant is how we learn from those failures.

FMC Technologies, a Fortune 500 company, spends less today on total legal services than it did eight years ago. That's pretty astonishing in a world where law firms have raised their rates approximately 8 to 10 percent per year, internal costs (driven primarily by personnel expenses) increased approximately 4 percent annually, and there is increasing demand due to regulation, globalization and growing complexity. We have reduced actual legal spend while more than doubling the size of the company. One of the most important reasons for that performance is that we have for years used performance based, value focused fee structures. For several years, 100 percent of our U.S. work, and most of our international work, is done on an alternative fee basis.. Our most common model is a variant of the hold-back model. We call our version the Alliance Counsel Engagement Model or ACES©. In our simplest iteration, we hold back 20 percent of the fees and expenses paid and then pay 0 to 200 percent of that hold back based on the firm's report card. That report card has six factors - -which, are the same six factors used in the Serengeti Tracker attorney evaluation tool and the ACC Value Index. Those factors all relate to effectiveness, efficiency and customer satisfaction – in other words, value.

By having skin in the game, paying bonuses for truly outstanding performance (not just good quality work), we have constructed a system that requires up front establishment of expectations, encourages constant communication of progress and variations, provides meaningful feedback on performance, and fosters continuous improvement. Though our total legal expenses have declined over time, last year we paid on average 107 percent of invoice – in other words, we bought fewer hours, paid more for them, but received value in the form of efficiency and effectiveness. The firms realized a higher profit margin on those hours and had more inventory or capacity to sell to others. In my world, that's a win-win!

It can be done – but it requires discipline, introspection, creativity, dislocation and perseverance, The question for you is not should you move to value focused fees or even why haven't you? The environment and even your fiduciary responsibility to your company have answered those questions for you. The tools are there. The help and mentoring is available. The time is

ripe. The only questions now are what particular type of value focused fee structure works for you and how will you get your stakeholders to change?

Moving Forward - To Embrace Alternative Fees And To Enhance The Value Provided Clients

Law firm leadership is being tested as never before. “Firms may be telling everyone how they’re on budget,” says one managing partner, “but the reality is that many will experience a decline in revenues again this year.”

In light of this, firms should focus their attention on securing relationships with their best clients, helping them do more with less. Unfortunately, many look at their client’s situation through the lens of their desire to increase revenues. Many general counsel sense that when their firm talks about “building relationships” it becomes nothing more than a euphemism for “give us more work,” while “providing added value” means, “at higher rates!”

The transition from hourly fees to alternative billing may be more evolutionary than transformational for many law firms. What will it take for more law firms to abandon the billable hour in favor of something that provides real value? Firm leadership that actually engages in a deliberate initiative to drive change, rather than forming internal committees to study alternative fee arrangements, has been lacking. Here are our recommendations for what capable leadership needs to do:

I. PROVIDE CLEAR EVIDENCE THAT TIMES ARE REALLY CHANGING

• Show partners how abandoning the billable hour can provide for competitive opportunities.

The “change” bus has left the station. Becoming more efficient in adding value to clients is fundamental to developing competitive advantage. To truly grasp this situation, you must appreciate the economics of corporate legal budgets. Microsoft has disclosed having to trim over \$100 million from its legal budget over the last 18 months. Microsoft is typical of companies whose legal budgets are being slashed, while the amount of work to be performed increases. Consider how Microsoft's response followed the general counsel of Citigroup disclosing that they now handle 30 percent of their work under alternative billing arrangements. There is now ample evidence of corporations moving farther away from the billable hour in response to their economic circumstances. One may debate how fast the movement is happening, but not whether it is happening.

Publicize these examples to your colleagues. Explain how you cannot afford to ignore the needs of clients and rely on the security of past relationships. Show them that the current market provides a tremendous opportunity to differentiate yourself by offering creative fee arrangements and enhancing the value you provide.

- **Point to the successes of those firms pioneering new approaches.**

Your partners are always interested in learning about what other firms are doing. One firm you might tell them about is UK-based Eversheds. Eversheds has repeatedly hit the headlines for its willingness to experiment with value-based fees and has been a pioneer in having forged an £10 million innovative partnership with Tyco International (which boldly ditched between 175 and 200 firms in favor of Eversheds). Eversheds has also become the sole adviser to six other global companies, including Samsung and Akzo Nobel, using this fixed-fee approach.

What is the secret weapon that Eversheds uses to get general counsel salivating with its reasonable and transparent costs? Sources at the firm explain it is two-fold.

First, *all* of Eversheds lawyers receive specialist external project management training, which also forms part of their advanced litigation skills training, and involves how to think about resources, timetables, and budgets.

Second is a proprietary computer software package. The 'Global Account Management System' program, provides a management system by which general counsel are firmly in charge of the purse strings and must sign off on fees *before* any work is started. The system breaks down the client's legal spend by country, jurisdiction, practice area, and provides an indicator of where money is either wasted or used efficiently.

Eversheds' quiet revolution is now sets the standard, as other firms scramble to be 'fast followers.'

II. HELP YOUR LAWYERS LEARN NEW WAYS TO ADAPT TO CHANGING CONDITIONS

- **Train your lawyers to talk to clients about alternative billing and identify with clients what adds value.**

When first retained, we are likely hired to resolve problems that the client's legal department does not have the skills, resources, time, or inclination to handle. Your job is to ensure that your client's expectations are met.

To understand client expectations, have empathy for the environment in which they work. The average associate general counsel for litigation handles anywhere from 20 to 200 different matters in numerous jurisdictions. Even important matters may receive an hour's attention each week; other matters perhaps a few minutes. The matter that you are working on is only one that your client is juggling.

The ramifications are obvious. If we are to have any hope of becoming the client's trusted business partner, law firm leadership must: ensure that every lawyer has keen appreciation for the workflow and demands on the time of

that in-house lawyer giving us the assignment; work to identify and distill the key factors that add value to the client's organization, and record those factors at the outset of every assignment; and initiate internal systems that ensure your lawyers are meeting with corporate counsel to lay out the commercial objectives, develop strategies to advance those objectives, and prepare an engagement understanding that can be reviewed and monitored as the matter progresses.

Your team should understand that there is nothing more valuable than starting every new matter discussion by asking, "Can we please begin with you telling me what you would like to accomplish as a result of litigating/settling this suit or closing this deal?" You must establish the objectives of the engagement, the ideal outcome, the results necessary, and why this client is seeking to have this work done. This needs to be done initially, before work is undertaken, not on a rolling basis. Clients too frequently delay the internal investigation needed to provide clear direction, which makes preparing a budget and a strategic plan consistent with the client's objectives problematic. Further, we must resist the temptation to accept, at face value, our client's presentation of the problem. They may be able to articulate what they want, but sometimes they miss completely what they really need, or visa versa. Getting to the problem behind the problem is one of the more valuable things a professional can do.

• Have each practice group examine how they could improve productivity.

Clients complain they must exert fee pressure because they see little evidence that law firms are concerned or invested in saving their clients' money. They are right. Firms traditionally have not invested time, money or effort establishing ways to improve productivity, the cost of achieving an end, rather than the more traditional definition of productivity—how many hours each person is working. Many firms have senior professionals who spend time doing things that could be done by less costly resources, through training, organization and (perhaps) technology.

Any firm that can outperform its competitors in reducing the cost of doing a project will have a clear competitive advantage, whether or not it passes all the savings to the client. A top priority is to study how you perform your transactions/litigation and look for ways (including outsourcing, training, methodologies, tools, templates, etc.) to lower your costs. Firms also need to carefully examine leverage. The alternative fee operations model depends on experience more than body count; on profitability of work, not gross revenue.

Every leader must initiate a discussion with their group on examining productivity. The specific question worth posing for discussion and action planning is: "In what ways can we improve our efficiency, handling our transactions and litigation, and achieve results at lower cost?" The preparation of this list should be ruthless and exhaustive. Decisions about which items should be adopted may be tempered by other factors.

- **Explore creative methods and share best practices.**

It is up to both the law firm and the client to agree on a fee structure that provides for better value from the relationship. Firm leaders should explore with their colleagues different ways to price their services. For example, lawyers in each practice group can determine fixed fees for each incremental stage of a transaction or litigation matter. The key to the process is to identify the savings the client wants to realize and then reverse engineer how services are provided to achieve specific results in a manner that provides profit to the firm. This is an entirely new way of thinking for most firms.

While there are various tools which can help you model your various alternative fee arrangements from a financial point of view, experience will be the best teacher since there are lots of variables you cannot always anticipate. Whether experimenting with fixed fees on full engagements or on phases, various retainer arrangements, risk sharing "collars", success fees, earnbacks or partial contingent arrangements, you need to constantly communicate new ideas and best practices across your firm. This needs to be a regular agenda item for those meetings where all of your group leaders are gathering to discuss their challenges and successes.

These are, in many respects, communication skills rather than technical legal skills. The goal is to identify value objectives from the outset, and effectively demonstrate the value of your contribution in terms that relate directly to client objectives, rather than 'legal' outcomes.

Could it be any clearer? Could it be any more daunting a challenge to implement? The answer to these questions is obvious!