Chapter 11
Law Departments Work with Many Types of External Providers

Businesses require legal service in a wide variety of contexts and their reasons for securing counsel vary as well. Whether for purposes of defending its position in a dispute or to secure regulatory approval of a business method or simply to assist in negotiations for its acquisition of land or a subsidiary, a business has need of legal counsel. Increasingly, companies secure at least a portion of the legal service that they require by hiring attorneys on staff, who then function as the company’s counsel.

Even when a company has in-house attorneys, though, it often requires external counsel in many situations. With the evolution of the legal profession and the appearance of entities other than law firms that offer services related to or replacing to some degree the traditional service that law firms have provided, the choices available to companies—and to the corporate law departments that represent the companies of which they are parts—have multiplied considerably.

Consequently, why would a client retain a law firm? The easy response, relatively unhelpful for our purposes, would simply list things such as litigation, real estate transactions, mergers and acquisition work, and lobbying. For our inquiry, a much more useful approach is to recognize that the client is looking for legal service(s) that will help it to advance toward or to achieve one or more strategic business objectives at a cost commensurate with the company’s perception of the risk attendant to the matter at hand. The term “risk” in this formulation encompasses a variety of types of risk, including but not limited to law-related risk.

Before digging into the strategic purposes for which companies retain outside lawyers, we need to review how the utilization of outside counsel by corporate clients has changed over time and how clients evaluated their performance.

For many years, corporate general counsel simply picked up the phone, doled assignments out to law firms, and sometime later passed along to the finance department nondescript one- or two-line invoices from the firms bearing a scribbled legend indicating “OK to pay.” Lucky was the firm where the general counsel had been a partner or, perhaps even better, the firm had some other close connection to the company, like a relationship with the chief executive officer, because such a
relationship generally assured a continuing stream of work. Value, however con-
jured up, typically was not explicitly considered and, when it was, it was inextricably
connected solely to cost.

As businesses found themselves subject to more complex regulation and needing
to satisfy varying compliance initiatives and society became evermore litigious,
companies’ portfolios of legal matters expanded. Businesses found that they had to
increase the resources (usually budgetary authority more than personnel) required
to manage these matters. Additionally, the need to have legal matter avoidance
strategies captured the attention of in-house attorneys (where employed) and their
chief executive officers.

The cost of legal services began to be more than an immaterial amount in the
corporate annual financial plan. The utilization by companies of outside counsel
began to draw more attention from C-suite executives. As the needs for legal ser-
vices expanded and the corresponding costs escalated, more and more corpora-
tions examined whether or not hiring in-house attorneys would be an effective cost
management strategy to reduce legal costs. Depending on a company’s portfolio
of legal matters and their risk profile, staffing an in-house legal department more
frequently made sense.

Hiring In-house Staff for a Company

Before hiring any attorney on its staff, of course, a company has to secure any legal
service on an as-needed basis from external providers. This approach carries with it
some advantages and some disadvantages; the inconsistency of the need for such ser-
vices and the absence of a clear, predictable future path for that need stand in the way of
setting up an in-house law department. At some point, though, a company determines
that its need for legal counsel is consistent enough that its former reliance solely on
the episodic use of external resources represents a less-than-desirable approach going
forward. When that realization hits, a company will hire at least one in-house attorney,
thereby creating a law department. A mission statement for a new law department (or
for the arrival of a company’s first in-house attorney) might read like this:175

We seek to use the law to advance the business of XYZ Company.

The Legal Department is the principal legal advisor to the Chief Executive Officer
and has the responsibility for managing all of the legal affairs of XYZ Company.

175 This model of a law department’s mission statement appeared in A Company’s First General
Counsel, an InfoPAK published by the ACC and updated in June 2006.
The Legal Department is dedicated to:

- Ensuring that the business affairs of XYZ Company are carried out promptly in compliance with ethical standards, existing laws and administrative regulations, and in a manner, which minimizes the likelihood of adverse publicity arising from disputes or lawsuits.
- Representing the interests of XYZ Company in resolving disputes, claims or lawsuits against it, in a manner, which is both economical and consistent with the best business and ethical interests of the company.
- As a service unit within XYZ company the Legal Department will respond quickly and efficiently to requests from management for legal advice and service.

The Legal Department plays three primary roles as:

1. An integral member of the management team
2. A participant in decision-making processes, offering both legal and strategic business advice
3. A manager of legal affairs within the entire organization

Legal services will be provided by a mix of In-House and outside counsel. In-House Counsel will be employed when it is cost justified and in the best interests of the organization.

When it is necessary to engage outside counsel, the General Counsel will retain the highest quality outside law firms—within proper cost-control guidelines—and supervise their work closely to ensure that the company’s objectives are met and that outside counsel fees and expenses are reasonable and proper.

To accomplish this mission, the Legal Department will:

- Be responsible for all corporate legal matters.
- Act as legal consultant to XYZ Company management.
- Participate in corporate policy development.
- Be responsible for all litigation.
- Establish a corporate-wide, consistent policy for the retention, management and evaluation of outside counsel.
- Be responsible for reviewing and amending, as appropriate, the company’s policies for Business Conduct, Legislation and Lobbying, Contract Preparation, Risk Management, Fraud Investigation, Corporate Compliance, Intellectual Property Law and Litigation/Legal Support.
The breadth of that mission appears daunting. It clearly places on a company’s in-house attorney(s) the burden—both substantive and budgetary—of managing the entire range of a company’s legal affairs. As general counsel appeared in more and more companies and as they added other attorneys to their departments’ staffs, they generally structured departments in conformity with one of two paradigms: to handle mundane, repetitive, high-volume-but-low-risk legal matters in house while assigning the more complicated or riskier “sexy” work to favored firms, or to handle those more significant matters in-house while relying on external lawyers to handle the repetitive cases. Most law departments did not pursue a “combined” approach or undertake a more nuanced analysis. Moreover, when they retained outside counsel, most in-house attorneys did not attempt to micromanage those outside attorneys; they entrusted matters with minimal oversight.

Law Departments Incorporate Management Thinking in Their Management of Counsel

As corporate legal departments grew and asserted their role as representatives of their companies for legal purposes and shepherds of the companies’ law-related budgets, they looked for specialized management technology with which to manage that legal service, as the cost of that service began to mushroom. Software was developed that created and aggregated data on outside counsel costs. Invoices from outside counsel were still very simplistic and, for the most part, paid without contest and rarely measured for value contribution.

In order to render invoices for legal services more understandable and useful, in-house counsel, working in a task force with outside attorneys and consultants, developed a series of codes with which outside attorneys could label time-based entries in their invoices. The codes identified the types of tasks with which the time entries were identified. Those codes, approved by the American Bar Association and ACC, were issued as the Uniform Task-Based Management System (UTBMS) for legal service providers to follow when submitting electronic billings for payment by their corporate clients. The UTBMS codes were incorporated in software developed for the submission of invoices electronically. The software also allowed for the review of invoices electronically by the law departments, enabling in-house attorneys to delve into the minutiae of invoices that had previously eluded them.

Organizations like the General Counsel Roundtable partnered with outside counsel invoice-processing giants to examine billions of dollars worth of services using the industry standard UTBMS codes, costs per hour, etc. as a basis for analysis. These analyses organized and summarized the data by many different
criteria. Armed with these data, in-house attorneys were empowered to and did hold conversations with their outside counsel regarding the legal fees that centered more directly on the question of value. Value, however, was still a one-dimensional concept, focused entirely on the cost of the service. The codes accompanied time-based entries in the invoices because time-based billing still prevailed.

The recession that began in 2007–2008 caused a tidal change. The pressures on law departments to manage the budgets as assiduously as they did the substantive matters entrusted to them intensified to the point that the multidimensional understanding of value entered the consciousness of the in-house community. ACC launched the ACC Value Challenge in 2008, initiating a dialogue regarding that concept that has continued to the present.

Law departments began to cut back on the use of outside counsel spend and, in many cases, to reduce the number of in-house attorneys as well. The contraction of law department budgets led many law firms to begin laying off attorneys.

Clients, armed with data, took additional steps to reduce the cost of outside counsel. Many law departments determined that they would not accept routine rate increases in the hourly rates charged by their outside counsel without justification. General counsel instructed the law departments’ in-house attorneys to manage their legal matter portfolios in a more businesslike fashion. Legal departments embraced technology and many hired professional operations management staff. But the utilization of the hourly rate model prevails as the basis for determining the value of legal services. Cost still drives the notion of value, to the almost total exclusion of other considerations.

Does survey data provide us any insights into these issues? A survey released in December 2016 highlighted some interesting perspectives of corporate legal departments participating in the survey. Respondents were asked to agree or disagree with each of the following specific statements and their responses are illuminating.

176 See Thomas Sager & Steven Lauer, The Pernicious Effect of the Hourly Rate on Client/Counsel Relations, 22(12) Of Counsel, Dec. 2003, at 5 (“law firms should expect to, and their clients should expect them to, justify increases in their hourly rates. A simple statement by a firm that an increase is warranted to keep up with the market is or should meet skepticism at least. Instead, a firm should provide clients sufficient data to establish that the firm has settled on the increase as a last resort and that it has attempted, at least, to avoid the need for an increase through efforts to more efficiently achieve the client’s goals. A firm should make a measured, disciplined, articulated case for any rate increase that it proposes to impose on its clients.”).

177 Findings from the Ninth Annual Law Department Operations Survey, supra note 9, questions Q90-6, Q90-3, Q90-9, and Q90-16 appearing on pages 40, 39, 41, and 44, respectively.
• Outside counsel generally make strong efforts to understand the problems we face as a law department. [Q90-6]
  - 58.7% agree
  - 41.3% disagree
• Generally speaking, law firms and service providers ask me for feedback about how well they are doing. [Q90-3]
  - 32.0% agree
  - 68.0% disagree
• Our law firms are innovative. [Q90-9]
  - 33.8% agree
  - 66.2% disagree
• Measuring the value of legal services is more art than science. [Q90-16]
  - 70.7% agree
  - 29.3% disagree

Although law firms got points from the respondents for trying to understand the problems facing corporate legal departments, they seemed to fall short on a few other important dimensions in the eyes of clients. Moreover, they came up short where the rubber meets the road on these issues.

Now, let's look at strategic goals. A legal department’s strategic goals can serve as a foundation for building a long-term, mutually beneficial relationship. Most departments will have articulated both strategic and tactical goals. Strategic goals establish how the legal department expects to address the company’s substantive legal issues and mitigate business risks on an enterprise-wide basis. Tactical goals address the need for corporate legal department activities to be efficient and cost effective on a matter-by-matter basis. Broadly stated, the corporate legal department must work to ensure the avoidance of operational malfeasance when old and new regulations and laws impact process. Risks must be assessed and, where deemed necessary, avoided. All of that must be accomplished as efficiently and effectively as possible, both strategically and tactically.

Law firms that possess a working knowledge of their clients’ businesses, their business risks, the environments within which they operate, and emerging changes and trends in the legal, political, and environmental landscapes will be recognized by those clients as valuable business partners. A law firm that also demonstrates a concern for cost management will quickly become a firm recognized as essential to the success of the legal department and company. VRQs can serve as the essential lexicon for corporate legal departments to articulate how law firms can create value for their companies when rendering legal service, in terms that are easy to understand and apply. They also serve as an effective glossary for law firms to use when engaging clients and potential clients in discussions surrounding those
companies’ hopes and expectations in respect of how the legal service can assist them to achieve their business objectives.

Strategic goals can also be more matter-, project-, or transaction-specific in nature. They are more amenable to the development of more specific, prioritized, and more easily measured VRQs.

As easy as that sounds, though, remember that for each client, each law-related matter or project can be represented by a different set of issues and risks and, correspondingly, require different VRQs. The law firm or legal service provider must take this into account when structuring the delivery of legal services. Understanding how different VRQs matter to the client under a particular set of circumstances is critical to the management of the specific tasks at hand. For example, is cost control the most important, or even a non-negotiable, necessary aspect of the work to the client at that time? Is a rapid resolution of the issue of greatest concern? Is complete vindication of the client’s position in a dispute the only possible outcome the client will or can accept? These questions, along with a host of others, are important issues to discuss in order to understand the client’s position completely. They all pivot on VRQs that can advance the service in ways more conducive to achieving those aims.

A client that is comfortable with a high level of risk might opt for legal service that elevates cost control to a higher plane even though “cutting corners” might invite greater legal scrutiny and, consequently, greater risk. A client that cannot afford or does not want any law-related exposure, on the other hand, might be willing to pay some form of premium for the assurance that such will be less likely. Satisfying clients with such disparate attitudes requires a finer calibration of effort by the lawyers, even without the lawyers knowingly assuming high risk. VRQs enable counsel to focus on more discrete, measureable elements of value rather than the somewhat vague, nebulous term in its full scope. They allow the dialogue of client and counsel to advance in such a way as to allow for more meaningful application of value drivers to that client’s situation.

When it comes to identifying and retaining counsel, when looking to achieve strategic goals as well as corporate-mandated cost management objectives, law departments increasingly look for appropriate counsel. What exactly is appropriate counsel? Appropriate counsel represents the choice that strikes the right or appropriate balance of resources needed to achieve the client’s articulated success factors (i.e., its VRQs), tempered by the matter’s risk profile, with the assets that a firm can deploy to achieve success. (Note that a primary VRQ that will be critical in today’s fractured legal services will be the firm’s and/or ALSP’s ability to collaborate! It’s imperative that that external providers willingly and openly communicate with each other as well as with the client, allowing the transfer and sharing of information and knowledge for that client’s benefit.)
One of the authors held responsibility for the management of the company’s environmental matters and for the management of such issues as they arose in the course of business. As to environmental disputes in which the company was involved, he created a network of eight firms to handle the company’s environmental litigation. To improve the management of those matters and to achieve greater consistency in that regard, he met annually with representatives of all of the firms. The discussions at those meetings addressed the company’s approach to those issues (as opposed to the substance of the disputes in which it was engaged). Common approaches to discovery, to the investigation of possible contamination on the company’s real estate assets, and to other topics appeared on the meeting agendas.

By establishing consistent approaches in those disputes, the company expected to reduce its exposure to adverse outcomes in those disputes as well as to save money through greater collaboration among the firms in the network. An unanticipated benefit resulted when two of the firms, which represented other companies that were in litigation with each other, became more familiar with each other and settled that case after much time when they and their respective clients had been at loggerheads. Though that settlement did not benefit his company directly, the author believed that the firms’ greater ability to look beyond the litigation in which they were engaged improved their outlook in the context of the network, which itself represented a benefit.

This brings us back to our earlier question: Why do clients use outside counsel? It’s clear that a more accurate and useful answer than the one implicitly proffered above is “when those counsel can help the client to achieve its strategic goals.”

A More Granular Approach to Counsel Selection: Appropriate Counsel

As a rule, legal work for a corporation requires more than one individual’s effort. For some matters, teams of dozens of lawyers (both partners and associates), legal assistants, clerks, and others spend time on the particular effort over time (often quite a few at once). When multiple individuals work on a matter, their contributions must complement each other in order to be as efficient and effective as possible. The creation of a team to complete a project (a legal matter is a project) presents some not insignificant personnel–management challenges, not the least of which is identifying the necessary skills and the individuals who have those skills but also have the necessary attitude (team focus, commitment to the project, etc.) for the team to succeed.

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178 With respect to issues such as environmental investigations, the lawyers in the network met with outside environmental consultants, who met annually with the company’s in-house environmental engineers.

Can a law department, then, choose outside counsel solely by reviewing the qualifications of one attorney without considering the capabilities of the law firm? To do so would, in most if not all situations, invite disaster and criticism. Even if a law department has identified the most qualified attorney for its work, the department should assure itself and its client that the attorney will receive all necessary support in some fashion. If the needed support is not available within that attorney’s firm, the department should locate the resources necessary to provide that support and arrange for them to be available to assist that individual. This might mean identifying an ALSP or deploying internal resources to support the outside attorney.

While law firms have offered a complete team to their corporate clients historically, that may no longer suffice. In order to realize the most effective team for the assignment, a law department needs to assess more specifically the qualifications of the members of the team. While reviewing resumes of every individual who might work on the matter may not be necessary in every instance, a law department should take steps to determine what talents will be called on over the course of the matter and whether those talents will be available when needed.

This goes to the heart of project management because “[t]he people on a team ultimately determine whether or not a project succeeds.”\textsuperscript{180} By carefully selecting members of the team, an in-house attorney can improve the chances that the team will achieve the goals set for the project. Take litigation as an example:

Proper management of litigation is a team effort. No one person has all the insights and perspectives necessary to fully represent a company’s interests. That is the basic concept of “strategic strengths.”

Strategic strengths can result from the organizational “place” of the person—inside counsel, outside counsel or executive. Some of them derive from personal characteristics of the individual. Once strategic strengths of each member of the team are identified, they can be used to accomplish goals.

Just like a football team that blends the talents of tackles, guards, tight ends and running backs, the litigation team must have various players to fully defend its own end zone and advance toward the opponent’s goal line.\textsuperscript{181}

\textsuperscript{180} Id. at 34.

\textsuperscript{181} Steven Lauer, \textit{In-House Counsel, Executive Must Play Strong Role: To Win in Litigation, All Players Must Take the Field}, 2(8) U.S. BUSINESS LITIGATION, Mar. 1997, at 16, 17.
To complete that analogy, the in-house lawyer responsible for the management of a specific matter should serve as the quarterback of the team for the matter.\textsuperscript{182} This role reflects the responsibility of the law department for proper management of that and all matters on behalf of the company, as in the mission statement just quoted.

Members of the team could include, for any specific matter, lawyers from one or more law firms, legal assistants from law firms or the law department, document management experts from the department, a law firm or a vendor that specializes in such work, technology resources from any of those sources, and perhaps experts from one or more other organizations. The needs of the project, as laid out in the project plan, determine the specific staffing needs of the matter and those needs should be identified and filled as specifically and granularly as possible. (This approach might not be as necessary in some less-complicated or less-risky matters as in others.) By focusing on the qualifications and capabilities of the individuals whom he or she considers candidates for the team, the in-house lawyer can maximize the company’s odds for success.

How do corporate legal departments determine when to engage outside counsel? We certainly can’t speak for all clients, but should be able to describe the levers used to make the “go–no go” decision for securing outside counsel. Current internal staffing would be on the list of criteria. Corporate law departments can’t afford to carry a full staff day in and day out at levels that cover the corporation’s every need for legal services. (That would be similar to a retail store carrying staff over the course of 12 months that can handle the high-volume, concentrated holiday selling season.) Such a strategy doesn’t make sense. It does make sense for the general counsel of a corporation to understand the ebb and flow of the legal services needs over a fiscal year. A client-centric law firm will understand this flow of work as well and how its service might best fit in the mix. (Note: Why? How about stealing the just-in-time mantra from inventory managers? Imagine, Just in Time Legal Services!\textsuperscript{183})

Analyzing the Work on Company-Specific Terms

We believe that corporate legal work can be divided between two basic categories: steady-state matters and anomalous matters. Steady-state matters constitute

\textsuperscript{182} Lauer, \textit{supra} note 51, at 1, 8.

\textsuperscript{183} Just-in-time legal services might lead a law firm to “partner” with an agency that can provide short-term, contract lawyers for discrete projects, obviating the need for the law firm to ramp up for such a project and then find itself with excess capacity when the project ends. See Lauer & Ryce, \textit{supra} note 102.
the bread and butter of the law department’s work, for which the general counsel typically will build an in-house staff to manage.

In today’s market and economic conditions, general counsel might not want to hire the best courtroom talent to achieve their everyday goals. Typically, they need lawyers who can manage large, sometimes diverse, portfolios of matters. Legal knowledge and experience are critical for the in-house staff, but project management skills are just as essential. Anomalous matters can break the bank. They require thoughtful consideration regarding risk assessment, budget considerations, special staffing needs, and immediate C-suite engagement.

Steady-state activity can be managed on a much more predictable basis, both in terms of cost and staff. Generally, certain identifiable predictors can telegraph the volume of future matter activity. For example, if a company is adding new operating units, it’s reasonable to project the level of customer claims or employee claims generated by these new units will be linear and additional to current demand. Depending on the state and its reputation or special compliance requirements, that projection could be adjusted based on input from experienced outside counsel. (This could provide an opportunity for outside counsel to contribute to a client’s need for strategic value.)

Steady-state activity relates not only to the volume of matter activity but also to the complexities of the legal work. Routine or non-complex legal work could also be considered steady-state legal work. Examples would be basic services or purchase order contracts, trademark search work, many types of employment-related claims (e.g., equal opportunity complaints and union contract disputes), some torts work, and so on.

Occasionally, a spike in the volume of these types of matters can throw a corporate legal department or small company off its resource budgets. Outside counsel can easily come to the rescue in a couple of ways. Most often, a firm can assume responsibility for a certain number of the matters needing resolution and handle these as it would any other new business for the firm. Another, and often more helpful, way to pitch in under such a circumstance would be to offer to second the needed resources to the law department. Doing so creates a great opportunity to demonstrate flexibility regarding the types of work arrangements the firm is willing to consider, a desire to learn more about the client’s needs and culture, and contribute to the building of the long-term relationship. Of course, the selection of who represents the firm within the walls of the client is critical. As important as legal skills are in this situation, so are people skills. We probably all agree that the work environment in a law firm can be very different from that in the corporate legal department environment. A firm offering to second one of its lawyers to a client should select wisely, because the continuation of the relationship could be affected (negatively or positively) by that choice.
There may be times when a client will want to retain one attorney from a firm rather than the firm. Clients should understand that, to a degree, such a step can be difficult for a firm to execute. After all, the attorney in question may have built his or her reputation by leveraging the skills and resources from other areas or lawyers in the firm, not to mention the development of trusted internal relationships. A firm approached by a client with such a request that wants to accommodate that client should discuss appropriate rules of engagement for the situation that need to be clear but not restrictive or exceedingly costly for either party.

A client will consider anomalous matters very differently. These are generally high-cost, business-disruptive, technology-stressing, long-lived matters requiring extreme expertise. They very well might require the participation of a myriad of legal service providers. We’ll describe the opportunities that anomalous matters present to law firms to build relationships when we discuss the powerful utilization of the VRQ framework in Chapter 13.

Some law departments have undertaken a more fundamental review of their companies’ legal work in order to assess the appropriate mixture of internal and external resources more deliberately and to assign work in a more value-focused fashion. The law department of Cisco Systems, Inc., developed the matrix shown in Figure 11.1 to channel the decisions regarding the use of internal or external resources for different types of work. As you can see, the divergence between work completed internally and that assigned to external resources is far different than what law departments traditionally followed. Although not every law department engages in such a detailed exercise, more and more of them are developing their own approaches to this basic issue that affects value, staffing, and many more issues.184

184 The authors thank the Cisco law department for its permission to reprint this graphic in order to illustrate how a corporate law department might address the “make-or-buy” challenge and determine which work would best be performed in-house and which should be assigned to an external provider. Not all law departments will undertake an analysis like the one illustrated because their circumstances will differ from those of Cisco. The graphic, then, is offered only as an illustration of an approach that a law department can and might take. The point to take away is that the “do it in-house or retain a firm to handle it” decision will be specific to the company and its in-house lawyers. The continuing evolution of corporate law departments and their undertaking a different tranche of the work on their companies’ behalf (perhaps on a company-by-company basis) likely will continue, as two observers of the legal profession recently noted. “[W]e can expect the displacement from Big Law to in-house to continue and to center on work of greater sophistication.” Hugh Simons & Gina Passarella, The Rise (and Fall?) of In-House Counsel, The AMERICAN LAWYER (February 27, 2018, 2:08 PM), https://www.law.com/americanlawyer/sites/americanlawyer/2018/02/25/the-rise-and-fall-of-in-house-counsel/.
The appropriate counsel concept represents a more granular and proactive approach to managing the staffing of a company’s matters that will markedly improve a corporate law department’s ability to increase its company’s chances of success, particularly, but not solely, in disputes and litigation. Rather than focus on the outside law firm or solely on the individual lawyer, the law department should catalogue the specific talents and expertise that it will need on its team for a specific matter. It should then assemble those talents, experiences, and expertise into a team by selection of those individuals who bring those particular talents to the fore. In many ways, the appropriate counsel concept expands the legal services universe well beyond a typical law firm and the services it offers. The concept allows the corporate client not only to benefit from a law firm’s expertise and skills, but to leverage the special capabilities readily available from the ever-growing and service-and-cost-oriented ALSP industry. The sooner law firms embrace this brave new world for sourcing legal work, the quicker clients will see them as valued business partners worthy of long-term relationships.

How can a corporate client most effectively apply the concept of appropriate counsel? Let’s start by framing how we see the legal services marketplace today. It should surprise nobody that we see a bifurcation of legal service providers. Historically, a law firm served as the primary if not sole source of legal services for its clients. It would assume the responsibility of delivering services by either having skills within the firm or having connections with third-party providers that it man-
aged on behalf of the client, passing the costs of those third parties on to the client, sometimes with a markup.185 Today, law departments often prefer to be the overall managers of their legal projects. They want to be directly involved with the myriad of third-party legal services providers, with no markup on costs. This translates to a transfer of management control from law firms. With this transfer of control, firms risk the loss of a portion of their historical profitability. Corporate clients refer to this as “unbundling legal services.”186

The concept of ALSPs and the emerging ALSP market have developed from and contributed to the emergence and growth of the unbundling movement. ALSPs have been steadily developing distinct legal-process advantages over law firms in several respects. ALSPs are typically started by or with lawyers very familiar with the legal-process aspects of the service being provided. They make investments in top-drawer technology and often develop proprietary software for their work. They might lease or build secure data processing centers. Efficient work flow processes are their standard operating procedures. Their staffs demonstrate expert project management skills, and they train non-lawyers in legal processes and/or leverage contract lawyers to perform discrete tasks associated with the service provided, such as the discovery process, intellectual property research and management, surveys, and so on. The services offered by ALSPs represent their core competencies, so their marketing pitch is that they can perform that service better than any law firm, usually with a price advantage because they eschew the overhead costs that law firms typically bear. The service is all they do. Some even eschew a brick and mortar presence to minimize their costs.

The unbundling concept can be seen at the law firm level as well. A law firm doesn’t and shouldn’t profess to be in a position to provide corporate clients legal


186 As one commentator put it: “Legal delivery’s greatest opportunity is also its biggest challenge: to determine when good is good enough and to identify the appropriate resources required to accomplish the client’s/customer’s objective. Why is this something new to the legal industry? Short answer: clients, not lawyers, are now calling the shots, and they are demanding more accessible, cost-effective, efficient, metric and result-driven legal services.” Cohen, supra note 39.
expertise and guidance in all possible areas of the law. Most firms have a sweet spot regarding expertise. Clients generally know what that sweet spot is and will seek to leverage it across their matters or within one specific matter.

More and more commentators have remarked on the trend among law departments to take greater control of the legal service that they need. Much of the impetus (but not all of it) stems from the pressure exerted on those departments by CEOs and CFOs across the corporate landscape. Clients are demanding a say in how to structure the legal service in order that they realize the most value possible for their business operations. VRQs represent the preferred tool best designed to bring law firms and corporate legal departments into alignment in the context of discussion concerning the value of legal service, using the same language.

**Suggested Actions**

1. **Understand how the client determines whether to assign work internally or externally.**
2. **Determine how the firm can address the client’s needs for legal service in conformity with its preferred distinction between work to be handled in-house and work to be assigned externally.**
3. **Consider working with one or more ALSPs to augment the firm’s internal capabilities for the client’s benefit.**
4. **Approach these issues strategically and, to the extent possible, in collaboration with the client.**

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187 See, e.g., JORDAN FURLONG, LAW IS A BUYER’S MARKET (2017) and TELLMANN, supra note 43.