IN SYNC: WHAT IN-HOUSE COUNSEL AND BUSINESS CLIENTS EXPECT FROM THEIR OUTSIDE COUNSEL
Gary Batenhorst, Cline Williams Wright Johnson Oldfather LLP
Gillian Scott, Osler Hoskin & Harcourt LLP
Donald Wray, Subway Franchise World Headquarters LLC
The Story of the Hot Air Balloonist
The Client/Outside Counsel Disconnect

The Cambridge Study identified 3 ELEMENTAL CAUSES of DISCONNECT:

A. Service offerings by law firms
B. Service quality
C. Predictability of the delivery of services
Outside counsel need to appreciate that clients “are looking for an endgame – not just a legal solution.”

Inside counsel are looking for support in reaching resolutions “that make business and legal sense,” to have “productive give-and-take” conversations with their outside counsel “about legal strategy and business concerns.”
B. Service Quality
C. Predictability of Delivery of Services

Inside counsel were not receiving sufficient information on ...

The cost and timing of delivery of legal services to provide to their business people.
Outside Counsel Survey respondents repeatedly described their (or their firm’s) consistent practice of “over and above” service.

Certain Inside Counsel Survey respondents had yet to experience “over and above” service from an outside attorney.
Inside & Outside Counsel Surveys

- 29 Inside Counsel
- 20 Outside Counsel
- U.S. and Canada
- Diverse mix of business and firm size
- Anonymous

Outside Counsel Survey ➔
- <5 to >1000+ lawyers
- Transactional + litigation

Inside Counsel Survey ➔
- North American systems;
- 600-2000+ units
- Companies holding franchise brands
Bridging the Gap — Addressing the Disconnect

• Accept that the gap exists
• Identify where it most manifests
• Work together to communicate around touchpoints
• Modify behavior
The Continental Divide – Unique Considerations for International Work

• Approach to selection of counsel
• Cultural differences
• Language
• Geopolitics
• Exchange rates
• Substantive law and procedure
• Privilege considerations
In the Beginning – Pitching

Outside Counsel Like to Sell...

- Access to information
- Strategy
- Negotiator
- Courtroom skills
- Experience
- The “best and the brightest”
- No stone unturned

Clients Like to Buy...

- A solution to their problem
- Plain and simple
- Less expensive is better than more expensive
- Faster is better than slower
- An 80% solution may be fine
Role of Expertise

Subject matter expertise is increasingly seen as a commodity

“All but the most sophisticated clients find it famously difficult to accurately assess the quality of their lawyers.”

"I'm sorry—this is literally my first rodeo."
Differentiating expertise – how can outside counsel add value to the prospective client’s business

✓ Tailor expertise/scenario specific
✓ Experience with jurisdiction, size of client, industry
✓ Strategy and insight – free legal advice
✓ Endorsements and recommendations
✓ Inside information
“Sometimes the reason we have a small budget for a project is because it is low risk or low priority for us.”

“Price is rarely a race to the bottom of which firm can do it the cheapest.”
Price vs. Value

- What are the client’s goals?
- How much is the work worth and what is the budget?
- What has experience shown to be the cost of similar work?
- What innovations can drive cost savings and/or greater efficiency?
- Can AFAs be used to better align?
Alternate Fee Arrangements

Inside Counsel
- AFAs
- “new and creative”
- “flexible” billing arrangements are key to counsel selection

Outside Counsel
- Only 50% proactively offer AFAs to clients
- Other 50% split on offering only when prompted or not at all

What’s in a name? What is an AFA and is not?

What makes an AFA work for both inside and outside counsel?

Examples of AFAs suited to franchise matters
“Outside the legal world there has been a massive evolution in what is considered good customer service. You used to simply buy a hammer at Home Depot. Now when you go to Home Depot to buy a hammer, you get training in how to select the right hammer, courses in how to use it, personal advice on how not to misuse it and so forth. . .The application to the service you provide clients should be obvious.”
Service Experience — The Age of the Customer

Firms performing at best in class service levels experience

✓ 30% higher profits
✓ 7% rate premiums across all staffing levels
✓ 2x the fees from a single client
✓ 35% higher client retention

Service Experience — The Age of the Customer

✓ Responsiveness (almost every respondent to the Inside Counsel Survey)
✓ Supporting the client in success with its stakeholders
✓ Knowing the client’s business and industry
✓ Maintaining a relationship outside of the file
“If there is just one thing outside counsel should know, it’s how important it is that they understand my business” – Jennifer Hightower, Cox Communications

✓ FDD
✓ Public Filings
✓ Web research
✓ Industry trends
✓ Ask questions
✓ Check in
✓ Industry events
✓ Visit the business
✓ SWOT
✓ Media alerts & social media
Your Foundation — Engagement Agreements

✓ set expectations
✓ scope
✓ staffing
✓ billing and payment
✓ reporting and communications processes
✓ resolve areas of potential conflict
Staffing – A Fine Balance

- Some hire specific “lawyers and not law firms”
- Others hire a “demonstrated deep bench” so that “more than one attorney at the firm can help me”
- Question of “the right attorney for the right job; if a second year associate can draft with review time by a partner, the partner shouldn’t be doing all the work”
- Should “the partner do the work rather than an associate who spends double the time and has meetings and reviews with the partner on numerous occasions”
- The last word – client or firm?
Relationship Bigger than the File

Distinct Series of Transactions vs. Overarching Relationships
Cross-Selling vs. Cross-Servicing

“What is important to understand is that the cross-selling of legal services to clients is not actually about selling but about lawyers being responsible, concerned professional advisors. It really is a matter of being client-centered and doing what is best for the client.”

Russ Alan Prince, The Art Of Cross-Selling Legal Services, Forbes (Feb. 22, 2016)
Streamlined and Consistent Client Experience

✓ Client teams
✓ Client plans
✓ Regular (monthly, quarterly) internal meetings
✓ Brainstorming on new issues they are facing or may face
✓ Group email address for team
✓ Centralized shared space for “non-file” client documents and correspondence
✓ Use of supportive technology
**Staying in Touch**

<table>
<thead>
<tr>
<th>Plan it</th>
<th>Calendar appointments, tickler or other reminder systems</th>
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<tbody>
<tr>
<td>Share</td>
<td>CLE invitations, client newsletters, relevant general information</td>
</tr>
<tr>
<td>Invite</td>
<td>Client events, community events, social event for them</td>
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<tr>
<td>Celebrate</td>
<td>Milestones and achievements</td>
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<tr>
<td>Follow</td>
<td>LinkedIn, Twitter or other relevant social media</td>
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<tr>
<td>Show up</td>
<td>Industry events, conferences &amp; meetings</td>
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Content Marketing – Newsletters & Such

✓ Personal
✓ Accessible
✓ Insightful
✓ Timely
✓ Judicious
“The purpose of a business is to create and keep a customer.”

• 1/3 of inside counsel surveyed by the ACC terminated at least one outside counsel relationship for underperformance in 2017 and

• Almost 1/2 of inside counsel surveyed by the ACC are planning to or considering terminating an outside provider or firm in 2018

The expense, time and pain experienced in a client’s transition between attorneys makes this particularly unsettling

ACC Chief Legal Officers 2018 Survey, Ass’n Corp. Counsel: Legal Resources (Jan. 24, 2018)
“Fatal” Mistakes

- Changing staffing without prior discussion/approval
- Failing to contain costs/file overwork
- Poor billing practices & reflexive rate raises
- Unresponsiveness
- Breaking chain of communication
- Not knowing the business