



QuickCounsel

Using VRQs to Reach a Consensus with Your Client About Value

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Overview

As lawyers, we understand that language must convey meaning to serve its purpose. Whether we are trying to convince a counterparty to moderate its negotiation expectations or trying to ensure that a judge rules in our favor, we apply our training and use language that causes the other person to adopt a position consistent with our own. The same goal should apply in our dealings with our clients, whether in-house (for in-house counsel) or corporate (for outside counsel).

Speaking our clients' language increases the chances that they will understand our message and follow our advice. Memoranda that use erudite language resembling judicial opinions will not resonate with our clients, who are often bottom-line-focused business people. Without talking down to our audience, we must be certain our advice is couched in terms that are readily understood within the context of the client organization.

We must also keep in mind that our business clients do not think like lawyers, but take a very pragmatic view of the value of the legal service provided to the organization. Chief executive officers do not focus on the time spent in solving a law-related question or issue, but rather on how well that legal service helps their company accomplish its business goals. In other words, the company will measure its team of lawyers in terms of the "value" of the legal service (and, by extrapolation, the lawyers) from a business perspective. The team of lawyers, therefore, must ensure that the client can recognize the "value" of the services rendered.

To that end, it is useful to break "value" down into more specific, and therefore more useful, building blocks. A helpful construct revolves around identifying various qualities of legal service that clients desire in differing combinations, depending on the matter in question. For example, in some contexts, the cost of the legal service is a priority. In very routine matters or those that pose little risk, the business goal likely will not support much expense for addressing the legal aspects of the situation. In other contexts, such as in the pursuit of a preliminary injunction to prevent software piracy by a recently departed employee, speed occupies the top rung of the value chain.

Utilizing these "value-related qualities" (VRQs) can serve several purposes in the management of legal service. First, because they consist of discrete aspects of the service, they are [more measureable than overall "value."](#) and are easier for the law department to collect as data and use in the maintenance of [metrics demonstrating its management of that service](#). Second, they can serve as markers in fee arrangements that more closely calibrate to the client's view of how the legal service serves the company's interests.

A well-respected blogger recently [explained how law firms and law departments approach the subject of fee arrangements differently](#) and how in-house and outside lawyers must understand each other: "For a fee arrangement to be successful it needs to be crafted with a client's specific fee concerns in mind. As a client, your fee drivers will change from matter to matter, for each type of legal practice need, and maybe even over time. Sometimes risk sharing will be the right approach. [Other times monthly predictability will be best suited.](#)" [1](#)

An exhaustive list of VRQs may prove difficult to assemble [due to the varying needs and perspectives of different clients](#) [2](#). Nonetheless, by identifying at least the primary drivers of value that matter most to a particular client, counsel will be able to serve that client more specifically and in greater conformity with the client's expectations and desires.

With those thoughts in mind, the following recommendations should lead to a more meaningful exchange between the legal team and its client, and a shared understanding of the ultimate goal and the steps toward that goal. This enhanced communication will ultimately lead to a clearer perception of the value of the legal service in the client's eyes.

Become Fluent in the Company's Language and Needs

The lawyers must understand the client's business intimately. Only by understanding the business operations thoroughly and in detail will the lawyers be able to anticipate legal issues that could arise in the course of those operations. That understanding will also enable the lawyers to counsel the client in a manner that resonates as true to its activities and realistic in terms of impact and significance.

Many businesses operate within industries that possess their own norms and unwritten rules. The companies themselves, in turn, have adopted or possess additional behavioral norms that can affect the delivery of legal service. Some companies rely more on lawyers than do others. If a company's lawyers understand the business intimately—including industry norms and the client's internal style—they will be able to do more than simply react to their clients' expression of their legal needs. They will be able to anticipate those needs.

A recent InfoPAK, [ACC Value Challenge Practices for the Small Law Department](#), illustrates this point well. A case study in that publication described the efforts of an in-house lawyer at an engineering firm to deliver greater value to that company. The lawyer's clients, as engineers, regularly apply project-management techniques and utilize metrics to monitor the progress of their work. The general counsel adopted a similar approach in providing legal service and in managing legal [services received from outside law firms](#) [3](#). By using the same tools and techniques that the clients use as a matter of course, the general counsel took advantage of proven techniques to control costs and complete complex projects, as well as demonstrating to the internal clients that the law department shares their approach.

Choose the Legal Team Deliberately, with Specific Responsibilities in Mind

As professional project managers understand, the selection of the members of the team responsible for completing a project is the true key to controlling costs and maximizing the value of a human resources investment. Experienced in-house lawyers know that not all law firms and not all outside lawyers are created equal. Some gain a reputation for excellence in certain fields, while others become known for controlling costs while delivering the service the client demands.

In the past, law departments typically expected each firm they retained to provide all the work necessary to complete a project assigned to it. That approach is changing dramatically. In some cases, corporate counsel and their outside law firms bring in vendors for specific services. Prime examples include electronic discovery management and document production. Some law departments have applied this concept, sometimes called "[unbundling](#)" or "[disaggregation](#)," to other types of service, such as legal

research or the [use of temporary or contract lawyers 4](#).

The size or complexity of a case or transaction may weigh in favor of utilizing the services of multiple law firms, each with a specific role. For example, one firm might undertake the due diligence necessary to a large corporate transaction, while another firm approaches government authorities for approval of the matter. In litigation, one firm might serve as a client's coordinating counsel while another handles a particular case overseen by the coordinating firm.

The important point, from the perspective of ensuring that the client receives maximum value for its investment, is that the specific needs of the assignment be linked with the particular talents and expertise of the team members. Once selected, those experts must be managed well to [ensure that their respective tasks contribute to the project as needed](#):

Think of it as serving as the quarterback of an all-star football team. The individual players are all expert at their respective roles and the aggregation of talent on that team usually exceeds that of any team in the league. They usually don't play as a team, however, throughout a season or several seasons. Unlike members of one team, they don't have the opportunity to become familiar with each other's talents and idiosyncrasies, sharing strategies and playbook. This puts a premium on the ability of the team leader (the "quarterback") to [meld those talents effectively on the spot. 5](#)

Sometimes a particular need that justifies the involvement of a particular expert will recur regularly. In that instance, the law department should consider engaging the expert, whether a vendor or a law firm, prospectively under specified terms, so the expertise is available whenever needed. [Those terms can be specified in a request for proposals](#) (RFP) for legal service. [6](#)

VRQs, described above, can serve as the [basis for fee arrangements](#) that more accurately reflect a client's view of the value of the legal service for the specific engagement. [7](#)

Legal Matters Do Not Manage Themselves

A legal matter constitutes a project and [must be managed to its conclusion 8](#). The manager cannot await developments but must take the initiative, since "[project management discipline needs to be proactive 9](#)." A company with in-house counsel expects those lawyers to be responsible for the resolution of its law-related challenges, whether litigation or transaction. Those lawyers, therefore, should take the initiative for their own benefit as well as that of the company.

Since virtually all legal matters involve parties with disparate, often diametrically opposed, interests, allowing a matter to progress at its own speed, or only on the initiative of another party, equates to ceding control. This leads to excessive cost and often to an unsuccessful outcome.

For business, time is money. The longer a matter remains unresolved, the longer the uncertainty surrounding it persists. This uncertainty may prevent the company from pursuing business on its own terms and on its own timetable, due to the constraints that pertain to litigation (for a disputed matter). It may cause a business to defer goals and accrue concomitant costs such as carrying charges (if the business goals required external funding). It also may divert the attention of the business and its leaders toward resolving the legal matter and away from advancing the business's goals.

By applying project-management techniques proactively, in-house lawyers should be able to minimize such adverse effects from the matters entrusted to them. With the assistance of properly selected outside professionals, they should be able to do so as efficiently and effectively as possible.

¹ T. Brown, "[AFA Advice for Clients](#)," 3 Geeks and a Law Blog, posted at . S. Lauer, "[From AFAs and VBFs to VRQs and OOFs: Toward Fee Arrangements More Closely Calibrated to Value](#)," Of Counsel (Wolters Kluwer), vol. 31, no. 1 (Jan. 2012), pp. 5, 6.

² Case study 17 on page 46 of [ACC Value Challenge Practices for the Small Law Department](#).

³ S. Lauer, "[In-House Counsel, Executive Must Play Strong Role: To Win in Litigation, All Players Must Take the Field](#)," U. S. Business Litigation, vol. 2, no. 8 (March 1997), pp. 16, 17 and S. Lauer & E. Ryce, "[A Management Imperative: Staffing Flexibility Addresses Client Needs and Delivers](#)

[Greater Value](#)," Of Counsel, vol. 30, no. 1, (Jan. 2011), p. 8.

⁴ S. Lauer, "[Project Management - Clients Demand It](#)," Bottom-Line Management for Law Firms (Altman Weil), vol. 3, issue 7 (July 1998), pp. 1, 8.

⁵ S. Lauer, "[Litigation is a Team Sport - Draft Your Players Carefully](#)," Committee on Litigation Management & Economics Newsletter, vol. 2, issue 4 (American Bar Association, Summer 2001), p. 1.

⁶ S. Lauer & S. Harmon, "[The Development of the Corporate Law Department and Its Consequences](#)," Of Counsel, vol. 29, no. 12 (Dec. 2010), pp. 6, 15-16.

⁷ See S. Lauer, "[From AFAs and VBFs to VROs and OOFs: Toward Fee Arrangements More Closely Calibrated to Value](#)," Of Counsel (Wolters Kluwer), vol. 31, no. 1 (Jan. 2012), pp. 5, 6.

⁸ S. Lauer, "[Project Management - Clients Demand It](#)," Bottom-Line Management for Law Firms (Altman Weil), vol. 3, issue 7 (July 1998), pp. 1, 8.

⁹ T. Mochal, "[If you're going to be a project manager, be a proactive one](#)".

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