

# Controlling Legal Costs: Steps You Can Take

Long-time readers of *Business Horizons* will recall that these pages have not lacked for things to say about lawyers. My predecessor, Harv Bunke, praised Singapore for its "blessedly low level of litigiousness" and took lawyers to task for stretching individual rights to societally dysfunctional extremes. In reply, Mike Metzger (who was trained as a lawyer but is not otherwise particularly sinister) replied that lawyers are the effect, not the cause, of our litigiousness. Moreover, Metzger noted, "no data exist to show that business people are any less likely than the man in the street to give in to the temptation to litigate when they or loved ones suffer some real or imagined loss." And if you have any doubt that corporations have for some time now been throwing gasoline on the conflagration of rising legal costs, then you just haven't read John Grisham's *The Rainmaker*.

One corporate response to escalating legal costs has taken the form of in-house counsel. But, as S.S. Samuelson noted in a special issue of *Business Horizons* (September-October 1990), such a solution often creates its own thorny problems.

So one delights in hearing from Stanley B. Kay, a former corporate general counsel, that there are steps managers can take to control legal costs. If, as Harv Bunke argues, lawyers have exploited the amoral forces of the market and in so doing have brought us to our present sorry state—and if, as Metzger contends, lawyers themselves are the products of a market economy—then perhaps, as Kay reasons, the oversupply of lawyers means the market can work toward making their fees more reasonable. The market can't do this unless managers take the same sensible approach to legal resources as they do to any other cost of business. Having failed to do so, they must recognize, like Pogo, that "we have met the enemy, and they is us." Let's see how one lawyer wants to help us help ourselves. ►

## Controlling Legal Costs: Steps You Can Take

by Stanley B. Kay

Nicholas Carroll wrote in his book, *Dancing With Lawyers*, "A product of legal education is likely to be the most troublesome temporary employee you will ever hire." Because I am a lawyer, I am naturally inclined to bristle at this characterization of us as "troublesome temporary employees." However, I must admit there is a sizable part of the public who shares Mr. Carroll's view, especially concerning the fees we charge.

Complaints about the high cost of corporate legal services have been around for a long time. A former chairman of the Control Data Corporation once said, "Our lawyers have an unlimited budget, and every year they exceed it." That view may be an overstatement these days, since "legal management" is less of an oxymoron than it used to be. Nevertheless, many company executives still perceive lawyers as poor managers of the timeliness and cost of their services. Why?

Very few people think of going to law school to become business managers (or, indeed, the manager of anything else). Despite shifts toward realism and economic relevance in the curriculum of some law schools, the bulk of legal education is still predominantly academic. Law students are taught to "think like a lawyer," which is more of a method of thinking narrowly about facts than about focusing on the big picture.

*When the big, bad lawyers huff and puff for your hard-earned dough, here is what you do.*



This narrow vision is not aided to any great extent by an understanding of basic concepts of efficiency. A lawyer's education does not include project management, accounting and cost control systems, or productivity (although the current generation of law school graduates is more computer-literate than its predecessors).

Keep that in mind when you hear about the long hours lawyers work—it does not necessarily mean they are working efficiently. The traditional structure of a law firm focuses on multiplying the number of junior attorneys to do work that could be done more quickly—and cheaply—by fewer skilled lawyers with computers and paralegals. In the grand old days of the flush '70s and '80s, a cost-type business such as a law firm could easily pass the high cost of more bodies on to its customers. It was easy because the practice was widespread—weren't defense contractors and hospitals doing it too? In an era when the financing practices of Michael Milken were king, there was money to burn. Who cared about cost control?

Well, the party is over. More bodies are landing on the street instead of padding a customer's bill. "Reengineering" and "right-sizing" in the 1990s are the by-products of a vigorous drive by companies to reduce costs and stay competitive. It is time for you to do the charitable thing for

your lawyers (and also act for your own self-preservation) by encouraging them to provide cost-competitive services like your other vendors. Here's how.

### Start With A Plan

It has been said that if lawyers have a blank check to do what's necessary, they are likely to fill it in. To prevent this from happening, you need to do the following:

1. *Define your objective.* Decide what you want . . . and what you probably can live with, if necessary. Do you really need a contract that is freighted with every contingency known to man for a relatively simple transaction with a trusted customer? Do you really want your lawyer to engage in limitless discovery for a small lawsuit? Would a negotiated settlement between the principals serve your interests better than a legal solution?

2. *Think and act like a project manager.* Many legal services can be managed like any other project at your company. (Of course, all bets are off if it gets criminally indicted.) Like any other project, you need to determine the steps to complete it, how long it will take, who will do the work, and how much it will cost.

3. *Define the steps.* Ask the the lawyers to spell out the specific steps required to accomplish the objective, such as documents to be prepared, pleadings to be filed, government approvals to be granted, and the time required for each step. Such a breakdown will allow you to decide which tasks can be minimized or eliminated. Along with each step, ask them to give you a preliminary assessment of any risks (worst case scenarios) so you can decide whether you should take an alternative course of action in the future.

4. *Who will do the work and how will it be done?* Lawyers are still trying to understand what Total Quality Management means to them, while their customers have already graduated from that to Business Process Reengineering. That means businesses are aggressively redefining what needs to be done, and by whom. Don't assume that your lawyers share your same sense of urgency on this subject, or even understand it. It is up to you to encourage them to focus on their processes for doing your work by carefully scrutinizing the lineup for the task. Not every task needs to be done by the senior partner, or even by a lawyer at all. Nor does every project need to be handled by a large firm. Some lawyers are using computers more today to generate their own documents without much assistance from junior lawyers, secretaries, or paralegals. You may be able to reduce your costs by providing employees of your own company to review and collate documents, or by having documents

stored in your own computers or facilities for litigation.

5. *How much will each step cost?* Ask the lawyers for a budget for each task, not just for the entire project (more on this concept below). Expenses should only be reimbursed at actual cost, unless you specifically approve a disbursement in advance. Moreover, unless you approve them in advance, you should not be paying extra for:

- Legal research that may either be unnecessary or that has already been done for someone else.
- The time it takes you to educate lawyers about your problem (especially when a new lawyer rotates on to the team).
- Office overhead expenses, including supplies, photocopying (for more than 8 to 10 cents per page), mail, local couriers, local telephone calls and faxes, and secretarial or word processing services (including paralegal services that are essentially secretarial work).
- Any other staff charges, such as meals, filing, or proofreading, regardless of when incurred.
- Computer time (other than computer research that you specifically authorize).
- The time spent by the lawyer in preparing your bill.
- Attorney time during travel (and no first class air travel).
- The time spent by more than one lawyer at a meeting.

6. *Change to a fixed fee whenever you can.* To the maximum extent possible, move away from the hourly rate to a fixed fee, especially if there are few risks associated with a task. A Price Waterhouse survey of *Fortune* 100 companies revealed nearly 20 categories of routine work handled at a fixed fee, including small claims, patent applications, and blue sky securities reviews. The task-based billing procedures I will describe below are helping some companies negotiate fixed fees as an alternative to the straight billable hour.

### Get Competitive Proposals

The days when one law firm could handle all of your needs are over. One beneficial effect of the oversupply of lawyers is that there is a golden buyers' market for their services. Take advantage of it, and solicit proposals from several firms for your work. Ensure that their proposals meet the guidelines that I have described above.

### Put It In Writing

After you have selected the lawyer(s) that you will use, and you are satisfied with the project

planning information they have given you, specify those details in a written engagement letter with them. The engagement letter should also provide for your ability to monitor their performance, as discussed below.

### Monitor! Monitor!

Oversight is important. Make sure you stay in control of the process through the following procedures.

1. *Periodic Reporting.* Your lawyers should give you periodic written updates on their activities. These reports should be weekly, monthly or quarterly, depending on the nature of the task, and should refer also to the projected time periods and budgets for each task. Additionally, periodic meetings are necessary so you can ensure that the lawyers remain focused on your objectives.

2. *Task-Based Bills.* Refuse to accept the traditional bill, which lists everything done by every lawyer on a given day, and which lumps different activities into the same time entry. Instead, the invoice should be separated by the fees and costs for each task, and the format should be consistent with that for the original budget. This is called "task-based billing," and it allows a customer to monitor legal costs associated with specific tasks. Many large companies such as GE and Du Pont are using it, and an American Bar Association task force has recently recommended its use. These companies are also using this billing format to compare a firm's costs to group averages for particular tasks to winnow out the inefficient.

**F**inally, *keep lawyers focused on your business!* Take the mystery out of much of their incomprehensible syntax, and you will realize that they are service providers just like your accountants, cleaning services, and caterers. Thus, you should expect them to keep their focus on you, their customer. This may not sound remarkable, but make no mistake about this point. Lawyers are not usually accustomed to doing this. They should know better than to take the task at hand to some far reach of the universe that you never intended—but they sometimes do.

The procedures I have described can help them keep that focus. But their ultimate success will depend on whether they can make the same paradigm shift you have, that is, take an active interest in the customer. You can help them along this path. Make sure they understand your industry, products, services, and strategic plans (and that you do not pay them for this education). Explain to them that they will be making an investment in a relationship with you, one that will ensure your future business with them.

And if they need another incentive beyond that, it is this: Perhaps all those bad lawyer jokes will begin to disappear. □

**References**

Nicholas Carroll, *Dancing With Lawyers* (Lafayette, CA: Royce Baker Publ., 1992).

**Stanley B. Kay** is a former corporate general counsel who provides legal and management services to entrepreneurs and smaller companies in the Boston area.