

# Mixed Reactions to K&LNG's Top of Mind Survey

In-House News:

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## Mixed Reactions to K&LNG's *Top of Mind* Survey

By Amy E. Wong

Kirkpatrick & Lockhart Nicholson Graham LLP (K&LNG) released their third *Top of Mind* survey on the Senior In-House Counsel on January 3. However, there has been speculative criticism about the validity of K&LNG's report.

On January 30, Rees Morrison, a law department consultant, argued the high number of non-lawyers' responses undermine the methodological rigor of *Top of Mind's* survey.

Morrison scrupulously discerns that the *Top of Mind* survey interviewed people with titles that suggest that they are not in the law department. He highlights that, of the 129 people interviewed, 32 people are not from the law department. Of the 32 interviewees under scrutiny, 20 of them worked as CEOs, COOs, Presidents, VPs of Operations, HR, CFO, or Executive Vice Presidents.

Morrison asserts that, "The major use of outside counsel comes from companies with law departments, and most law departments control the retention of outside counsel. A survey on outside counsel issues, therefore, should mostly solicit responses from senior members of law departments."

Despite Morrison's attack on *Top of Mind's* validity, he forgets two important points: (1) many lawyers are promoted within their companies and often end up

outside the legal department, and (2) many non-lawyer executives have a lot of decision-making power in hiring outside counsel.

*LexisNexis Martindale-Hubbell* conducted a survey in the Spring of 2005 that attempts to understand the changing dynamics between in-house and outhouse counsel. They present a compelling counter-argument to Morrison's vilifying contention; namely, "CEOs play a significant role in the identification, evaluation and, in some cases, selection of outside counsel."

*LexisNexis Martindale-Hubbell* also created a chart that documents the different levels of involvement people-businessmen and lawyers-wield when hiring outside counsel. The President and CEOs are involved in hiring outside counsel 52% of the time. Deputy General Counsels are involved 49% of the time. Senior lawyers are involved 45% of the time. CFOs are involved 45% of the time. This shows that executives are just as involved as lawyers are when hiring outside counsel.

The Chief Legal Officer of U.S. Pharmaceutical Company also comments on executive's growing legal role, saying, "The CEO has a natural curiosity about who represents the company and wants to participate and add value."

*Top of Mind's* expressed goal is to better understand the challenges and opportunities faced by in-house counsel. Although the relevancy of these results is questionable in light of recent debates, the survey still reveals a few key findings.

"A major theme that emerges from this year's survey findings is the distinct value proposition law firms offer to their clients," comments Peter J. Kalis, Chair

OF R&LING'S Management Committee. He elaborates, "The value proposition is how a law firm manages the balance between quality and cost in order to provide value to its clients."

The survey also reveals a significant trend among the Fortune 500 and 1000 companies. While in-house counsels have become more conscious of their spending, they also focus on the effectiveness of convergence, or reducing the number of law firms they use.

The survey reveals that mean spending on legal costs have remained relatively flat for the past two years. Still, there is a huge focus on cost management. As cost pressures continue to mount, companies are taking active measures to control outside counsel cost and forecast their litigation expenses.

At the same time, the overall value of outside counsel remains high. 62% of a company's legal budget is spent on outside counsel. The key elements of an outside counsels' value include their cost effectiveness, their work, and their efficiency.

The survey also reveals that companies are being more selective in hiring their outhouse counsel. Important attributes that companies desire go beyond the fundamentals of experience and credentials. Companies are looking for service attributes such as good communication skills and the ability to be a team player. They also expressed a desire to find enjoyable attorneys with compatible hourly rates.

Less important attributes for the outside counsel include gender diversity, racial diversity, the proportion of African-Americans, and pro bono activities.

Because FORTUNE 500 and 1000 companies are facing pressures to control legal costs, in-house attorneys are being asked to do more with less. Therefore, the work volume has steadily increased year after year since 2002. In both 2002 and 2003, 56% of those interviewed said that their work volume has increased. In 2005, the percentage has risen; 66% of those interviewed felt that their work volume has increased.

The three most prevalent files that in-house counsels handle deal with litigation, compliance issues, and corporate governance issues.

The outside counsel's role has also undergone dramatic changes between the years 2002 and 2005. After the corporate scandals and subsequent legislation and regulation, many companies hesitate to partner themselves up with outside law firms. Now, companies usually use outside counsels to deal with company interactions and handle fee arrangements.

K&LNG's *Top of Mind's* third survey of senior in-house counsel attempts to show the legal "cost-value equation." Significant changes have occurred because FORTUNE 500 and 1000 companies have been concentrating more and more on cost management. For in-house counsels, 2005 has brought about the demand to do more work with less money. It has also brought about the corporations evolving relationship with outside counsel.

Clara Boza, Chief Marketing Officer at K&LNG, stated, "As our clients and the markets in which they operate continue to evolve, it's imperative that their outside legal counsel understand and adapt to their changing needs and demands. Our market research survey, the third we've commissioned, is one of

the ways by which we seek to better understand what is top-of-mind for in-house counsel. The better we understand our clients, the better we can serve them."