

How to Control Costs Inside Legal Departments

Models of cost control have long guided law departments in their dealings with outside counsel. From metrics models like Six Sigma to trends of the day like electronic billing to the embrace of procurement as a panacea, an observer can spot, name, and describe each model's essential attributes.

Over the years, five distinct approaches to cost control have evolved. A sixth model, which puts lawyers front and center in the effort to contain costs and measure value, is likely to arise in the future, combining some of the best features of past strategies. As with all models, one might never find a law department that exactly fits a model and only one model. Rather, most departments have mixed and matched. The lesson, even so, is that understanding the core definition of each model lets you more knowingly craft the hybrid that best serves your resources and cost-control goals.

1. We're legal professionals, leave us alone.

For years preceding the late 1980s, no one paid significant attention to the spending by law departments on outside counsel. Lawyers were lawyers, and what the high priests did within their sacred law departments was incomprehensible to mere lay people. Law departments liked this model because it left them alone.

Bills submitted from firms "For services rendered" came to embody this model, as did announcements by law departments that "We exceeded our budget."

The model was one of the magisterial professional's "unquestioned, little understood, trusted implicitly. Business managers acceded to this model because they did not have to attend to the arcane intricacies of legal cost control. Comfortable and complacent, they surrendered themselves to doing nothing about this unique area of knowledge possessed by lawyers.

The demise of this model came about because of its evident weaknesses: costs became a pressing concern in all companies, law departments adopted management precepts, and business managers increased their general sensitivity to the law.

2. You can only manage what you measure.

The defining attribute of this second model of outside counsel cost control, was (and remains) metrics.

General counsel installed matter management systems to capture and report on spending metrics. Uniform task-based billing methods (UTBMS) allowed law departments to amass more data. Total Quality Management, or TQM, projects developed histograms and other statistics. Balanced scorecards came on the law department scene with a wider array of metrics, and benchmarks became omnipresent.

Consultants and vendors selected numbers against which law departments could measure their performance. Was your outside counsel spending less than 0.25 percent of your company's revenue? Six Sigma is the latest manifestation of the metrics model.

Speaking the language of metrics allowed managers of law departments to communicate with their business colleagues. Metrics also gave a semblance of certainty to managing in an otherwise qualitative world. If you have four lawyers for every paralegal, at least you can defend yourself as typical.

Metrics spawned comparisons, trends, and endless PowerPoint graphs. What many people did not want to admit, however, was that metrics fall far short of illuminating the core functions of in-house lawyers: making judgment calls, negotiating fair positions, selecting knowledgeable firms, effectively managing the work of those firms, and disseminating the knowledge they created. Then too, possession of a results number—like 40 lawsuits resolved annually per litigator—told very little, if anything, about what a department should do to improve.

3. Technique of the day.

A third model consists of a plethora of techniques. Techniques are individual initiatives, programs, or processes that can stand alone against a tide of law firm costs.

At various times during the past decade or so, law departments seized upon reducing the number of outside counsel initiatives widely known as convergence, instituted programs to encourage alternative dispute resolution (ADR), and set up early case-assessment processes. Others beat the drums for budgets from their law firms. The technique of electronic billing has been the latest shiny bauble. Management conferences and legal journalists seize upon new techniques and immediately proclaim many of them "trends."

Techniques, by which I mean targeted activities aimed at a specific control point for outside counsel spending, definitely have their place in law department management. If a department does not try outside counsel guidelines, for example, it is missing a lever to shift spending patterns. If it does not have a list of approved counsel, costs can escalate. But a grab bag of techniques fails to grasp systemic causes of outside counsel spending.

Moreover, for a general counsel, techniques seem always to be activities that someone else should do, that pass the unpleasant work elsewhere. Who really wants to enforce a new process of bill review? Further, strategies can change from one moment to the next according to the latest technique du jour. Today, let's experiment with alternative billing; tomorrow, we'll favor small law firms; in a few days, perhaps we'll hire a bill auditor.

A techniques-based model raises the risk that no one will step back and try to coordinate the techniques

or recognize contradictory initiatives. How can you shrink your stable of law firms yet test that you hire the lawyer, not the firm"? The continual changing of the techniques guard also made it difficult for law firms to comply.

4. Let your administrator do it.

In the past decade, a fourth model has walked the law department runway, one where the administrative staff of law departments plays a definitive role. For example, at one pharmaceutical company, a lawyer with a business degree oversees cost-control efforts. At a mortgage company, a business manager marshals metrics and rides techniques in hot pursuit of outside counsel foxes. Many administrators oversee budgets of outside counsel spending, analyses of matter management systems, and the enforcement of outside counsel guidelines.

This administrator model represents the evolution of the prior three. The first model, and perhaps the oldest of the group, was hands-off; the second looked to numbers; while the third embraced isolated techniques. This fourth model introduces people, but at the level of support staff. (As we will see, the future model brings lawyers to the front line.) The advantages of the model follow from the presence of people— they can think, adapt, and create. The disadvantage, however, is that administrative staff have little clout. They cannot develop policy or change course. They implement rather than create.

5. Procurement to the rescue!

Given continuing soaring legal costs, it was inevitable that law departments (or their companies) would move toward a fifth model, the procurement model. Procurement professionals bring their viewpoint to the process of selecting, managing, paying, and evaluating outside counsel.

Procurement likes lowering unit costs. It likes standardizing all aspects of the process and conducting internal audits on compliance. Procurement likes online auctions and market discipline, not "partnering." Procurement moves the model of administrative support one step further, because procurement has more clout.

Working against the success of the procurement model is its ignorance of the law firm/law department relationship and the world of professional service providers. Purchasing pencils differs enormously from retaining a partner who intimately knows the Sherman Act.

It would be facile to observe that all law departments should borrow from the best of each of these models. One can and should apply key attributes of each of these models. Only professionals can knowledgeably manage other professionals. If you don't have numbers, you can't begin to manage a process. If you don't have steps to take, techniques to put into play, you can't bring down those expense numbers. If you don't have support staff who can help implement, you may be misusing your lawyer time or relying too much on consultants. If you don't think in procurement terms, you can be undisciplined, nonprocedural, and amateurish.

Still, having acknowledged the strengths of these five lenses for viewing outside counsel cost control, it's possible to see what has been underplayed. I foresee that a sixth model will arise.

6. Enlist the lawyers.

For law departments trying to manage external costs, perhaps the most crucial piece of the puzzle is found in the myriad, day-to-day interactions between in-house lawyers and those from the outside.

Inside lawyers must be enlisted in the struggle. They must feel they have a stake in the game, in the confrontation over value obtained for dollars spent. Currently, bonus decisions rarely consider cost control. Rarely are the lawyers at the coal face, who should be actively scraping away at costs, trained in the many techniques and tools of cost discipline. Almost never do evaluations set fiscal constraint objectives.

To the contrary, it serves the personal interests of in-house lawyers to have excellent relationships with outside counsel, and a key part of maintaining that bond is paying firms whatever they charge. The inside lawyers, who wield the most influence, have been left out of the picture.

This sixth model of cost control will incorporate the best of the previous five models. The professionals who interact with outside counsel will make use of metrics and techniques and administrative staff to help them. They will draw on some of the capabilities of procurement, but ultimately need to apply the lens of a lawyer to the dollar cost-cutting. They will have personal and professional reasons for curtailing costs, and the sixth model will take center stage.

Models of Cost Control for In-House Legal Departments

Models of cost control have long guided law departments in their dealings with outside counsel. From metrics models, such as Six Sigma, to trends of the day, such as electronic billing, to the embrace of procurement as a panacea, an observer can spot, name and describe each model's essential attributes.

Over the years, five distinct approaches to cost control have evolved. A sixth model, which puts lawyers front and center in the effort to contain costs and measure value, is likely to arise in the future, combining some of the best features of past strategies.

As with all models, one never might find a law department that exactly fits one model and only one model. Rather, most departments have mixed and matched. Even so, the lesson is that understanding the core definition of each model lets a GC more knowingly craft the hybrid that best serves your resources and cost-control goals.

1. We're legal professionals, leave us alone. For years preceding the late 1980s, no one paid significant

attention to law departments spending on outside counsel. Lawyers were lawyers, and what the high priests did within their sacred law departments was incomprehensible to mere lay people. Law departments liked this model because it left them alone.

Bills "for services rendered" submitted by firms came to embody this model, as did announcements by law departments that "We exceeded our budget."

The model was one of the magisterial professional -- unquestioned, little understood, trusted implicitly. Business managers acceded to this model because they did not have to attend to the arcane intricacies of legal cost control. Comfortable and complacent, they surrendered themselves to doing nothing about this unique area of knowledge possessed by lawyers.

The demise of this model came about because of its evident weaknesses: Costs became a pressing concern in all companies, law departments adopted management precepts and business managers increased their general sensitivity to the law.

2. You can manage only what you measure. The defining attribute of this second model of outside counsel cost control, was [and remains] metrics. General counsel installed matter-management systems to capture and report on spending metrics. Uniform task-based billing methods [UTBMS] allowed law departments to amass more data. Total Quality Management, or TQM, projects developed histograms and other statistics. Balanced scorecards came on the law department scene with a wider array of metrics, and benchmarks became omnipresent.

Consultants and vendors collected numbers against which law departments could measure their performance. Was outside counsel spending less than 0.25 percent of the company's revenue? Six Sigma is the latest manifestation of the metrics model.

Speaking the language of metrics allowed managers of law departments to communicate with their business colleagues. Metrics also gave a semblance of certainty to managing in an otherwise qualitative world. If you have four lawyers for every paralegal, at least you can defend yourself as typical.

Metrics spawned comparisons, trends and endless PowerPoint graphs. What many people did not want to admit, however, was that metrics fall far short of illuminating the core functions of in-house lawyers: making judgment calls, negotiating fair positions, selecting knowledgeable firms, effectively managing the work of those firms, and disseminating the knowledge they created. Then too, possession of a results number -- such as 40 suits resolved annually per litigator -- told little, if anything, about what a department should do to improve.

3. Technique of the day. A third model consists of a plethora of techniques: individual initiatives,

programs or processes that can stand alone against a tide of firm costs.

At various times during the past decade or so, law departments seized upon reducing the number of outside counsel in initiatives widely known as convergence, instituted programs to encourage alternative dispute resolution [ADR], and set up early case-assessment processes. Others beat the drums for budgets from their law firms. The technique of electronic billing has been the latest shiny bauble. Management conferences and legal journalists seize upon new techniques and immediately proclaim many of them "trends."

Techniques, by which I mean targeted activities aimed at a specific control point for outside counsel spending, definitely have their place in law department management. If a department does not try outside counsel guidelines, for example, it is missing a lever to shift spending patterns. If it does not have a list of approved counsel, costs can escalate. But a grab bag of techniques fails to grasp systemic causes of outside counsel spending.

Moreover, for a general counsel, techniques always seem to be activities that someone else should do, that pass the unpleasant work elsewhere. Who wants to enforce a new process of bill review? Further, strategies can change from one moment to the next according to the latest technique du jour: Today, experiment with alternative billing; tomorrow, favor small law firms; in a few days, perhaps hire a bill auditor.

A techniques-based model raises the risk that no one will step back and try to coordinate the techniques or recognize contradictory initiatives. How can you shrink your stable of law firms yet tout that you "hire the lawyer, not the firm"? The continual changing of the techniques guard also made it difficult for law firms to comply.

4. Let your administrator do it. In the past decade, a fourth model has walked the law department runway, one where the administrative staff of law departments plays a definitive role. For example, at one pharmaceutical company, a lawyer with a business degree oversees cost-control efforts. At a mortgage company, a business manager marshals metrics and rides techniques in hot pursuit of outside counsel foxes. Many administrators oversee budgets of outside counsel spending, analyses of matter management systems and the enforcement of outside counsel guidelines.

This administrator model represents the evolution of the prior three. The first model, and perhaps the oldest of the group, was hands-off; the second looked to numbers; the third embraced isolated techniques. This fourth model introduces people, but at the level of support staff. [As we will see, the future model brings lawyers to the front line.] The advantages of the model follow from the presence of people -- they can think, adapt and create. The disadvantage, however, is that administrative staff have little clout. They cannot develop policy or change course. They implement rather than create.

Key Attributes

5. Procurement to the rescue! Given continuing soaring legal costs, it was inevitable that law departments [or their companies] would move toward a fifth model, the procurement model. Procurement professionals bring their viewpoint to the process of selecting, managing, paying and evaluating outside counsel.

Procurement likes lowering unit costs. It likes standardizing all aspects of the process and conducting internal audits on compliance. Procurement likes online auctions and market discipline, not "partnering." Procurement moves the model of administrative support one step further, because procurement has more clout.

Working against the success of the procurement model is its ignorance of the law firm/law department relationship and the world of professional service providers. Purchasing pencils differs enormously from retaining a partner who intimately knows the Sherman Act.

It would be facile to observe that all law departments should borrow from the best of each of these models. One can and should apply key attributes of each of these models. Only professionals can knowledgeably manage other professionals. If you don't have numbers, you can't begin to manage a process. If you don't have steps to take, techniques to put into play, you can't bring down those expense numbers. If you don't have support staff who can help implement, you may be misusing your lawyer time or relying too much on consultants. If you don't think in procurement terms, you can be undisciplined, nonprocedural and amateurish.

Still, having acknowledged the strengths of these five lenses for viewing outside counsel cost control, it's possible to see what has been underplayed. I foresee that a sixth model will arise.

6. Enlist the lawyers. For law departments trying to manage external costs, perhaps the most crucial piece of the puzzle is found in the myriad, day-to-day interactions between in-house lawyers and those from the outside.

Inside lawyers must be enlisted in the struggle. They must feel they have a stake in the game, in the confrontation over value obtained for dollars spent. Currently, bonus decisions rarely consider cost control. Rarely are the lawyers at the coalface, who should be actively scraping away at costs, trained in the many techniques and tools of cost discipline. Almost never do evaluations set fiscal constraint objectives.

To the contrary, it serves the personal interests of in-house lawyers to have excellent relationships with outside counsel, and a key part of maintaining that bond is paying firms whatever they charge. The inside lawyers, who wield the most influence, have been left out of the picture.

This sixth model of cost control will incorporate the best of the previous five models. The professionals who interact with outside counsel will make use of metrics and techniques and administrative staff to help them. They will draw on some of the capabilities of procurement, but ultimately need to apply the lens of a lawyer to the dollar cost-cutting. They will have personal and professional reasons for curtailing costs, and the sixth model will take center stage.