

Zen & The Art of Legal Networking

INSIGHTS & COMMENTARY ON RELATIONSHIP BUILDING WITHIN THE INTERNATIONAL LAWYERS NETWORK

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ILN Conference Re-Cap: Getting Out of the Box in Counsel Engagement and Service Delivery - the Value Challenge



During the ILN's 2010 Regional Meeting of the Americas in Houston, Texas last week, we were treated to a presentation by our host firm's managing partner, [Martin Beirne](#) of [Beirne Maynard & Parsons](#), and [Jeff Carr](#), Senior Vice President, General Counsel, and Secretary of [FMC Technologies](#). Jeff's presentation focused on "Getting Out of the Box in Counsel Engagement and Service Delivery - the Value Challenge."

Beirne introduced Carr, saying that he's the author of the [Associate of Corporate Counsel's Value Challenge](#) - something that he's been talking about for fifteen years.

Carr said that FMC Technologies is a 9 year old company, with about 120 years of history, and is one of those that touches people's lives in many ways.

Carr jumped right into talking about his experience as a general counsel, saying that his legal spend is less today than it was in 2001, in a world where firms' rates go up 10% a year. He added that FMC Technologies pays, on average, 107% of their invoices to law firms - he would later explain how and why this happens.

How is it possible to have a smaller legal spend? Carr said companies need to change how they buy what they buy, how they pay for it, and go from being reactive lawyers to being proactive lawyers. What drives him? If he can save his company \$1 million, that equates to a half a cent of share earnings. That's what drives companies.

He said that his legal team's mission statement says that they're not lawyers - they're there to help achieve business goals. Only one person who is currently on his team was with him in 2001 because the others either didn't want to move when they changed their headquarters to Houston, or they didn't want to practice law the way that his team does. They were not willing to embrace change and the discipline that they require to be successful lawyers at FMC Technologies.

The End of Lawyers?

Carr assigned the audience some homework, telling them to read ["The End of Lawyers?" by Richard Susskind](#). He showed the assembled delegates a graph made up of four boxes. Across the top were two boxes – the first box was labeled “advocacy” and the second box was labeled “counseling.” Across the bottom, the third box was labeled “process” and the fourth was “content.”

Carr said that all legal services fall into these four boxes, and added that the best use of a lawyer is in the counselling box.

According to Carr, 70% of lawyers in the US are unhappy in the profession because they spend too much time in process and content, and not enough in counseling. Lawyers really want to be counselors, and that’s what general counsel want from them as well. Carr confirmed that they’re willing to pay a lot for this. But they’re not willing to pay a lot for process and content.

He observed that change is painful, but necessary, and said that advocates of change can expect lukewarm support at best, and attempts at undermining from advocates of the status quo at worst. Carr said that there’s nothing wrong with selling commodities, and it’s possible to make a lot of money standardizing process. He suggested that the attorneys in the audience think about increasing their profit margin instead of always focusing on top-line growth.

Carr said that high-value legal work is going to be less in the future, so there will have to be fewer lawyers to provide it. He said that reactions to this statement always range, and did so in our audience too, from skeptical to terrified.

He said that if he was wrong about there being less of a need for lawyers, if firms were to do the things he suggests anyway, he’s given them the recipe to take share from every other law firm in the world and make more money.

Psst...Wanna Buy an AFA?

He asked how many attorneys in the room work at firms who do most of their work on an hourly basis, and almost all the lawyers in the audience raised their hands. There was one who said the majority of their work was fixed fee, and another that said the majority was a contingency basis. A couple of people said their firms charge on a performance basis. [Doug Winthrop](#) of [Howard Rice](#) commented that when his firm does alternative fee arrangements, sometimes they’re performance-based – if they get a certain result on appeal, for example, they would get a premium at the end.

Carr said that this described his favorite form of alternative fees. He joked that every time he hears “alternative fee arrangements,” he feels like he should be in an alley somewhere offering to sell someone something out of his coat. He said it’s as though lawyers consider it to be a freak of nature, against the rules of normal economic life. He doesn’t like calling them alternative fees – if it’s truly effective, it’s a performance- or value-based fee.

Beirne added that if you look at BigLaw, the question is what are you really paying for? Could some work be done at \$500 instead of \$900 an hour? What’s really behind a firm’s reputation?

He showed a photo of a Bentley to illustrate his point, and said that when you look behind the fanciness of a Bentley, you find out that it’s really a Volkswagon. So he advised that clients need to be careful what they’re paying for and said that the lawyers in the room could stand up to their reputations and have the forces to stand behind them.

Carr showed a slide saying that legal work has gone from being bespoke to standardize to systematic to packaged and now to commoditized. He said it’s possible for firms to make more money while charging the client less.

Egads! Internet Lawyering

Carr talked about LegalZoom.com, a website where people on the Internet are providing legal services. He said that the site is a “threat to our livelihood” and we’ve “got to stop this outrage,” using sarcasm to express the sentiment that has come out of the legal profession about this site.

He likened it to the guild mentality – it’s like being a candle maker or chandler, professions that don’t really exist anymore because they tried to stop progress. Carr added that you can’t stop progress by putting up more rules.

However, you can address progress by being more competitive or challenging more. One of the problems in the US is a fundamental denial of access to legal services – not for people without economic means, but for people like him and everyone in the room. Carr asked if the attorneys in the room owned a small business today, whether they would go to any one of the firms in the room to do basic incorporation work.

None of them would because they couldn’t afford it. That’s what LegalZoom.com is – it’s there to help people with standard blocking and tacking, not high-value counsel work. Last year, they had 1 million people use their services. Carr commented that they’re the most well-known trademark in the legal industry.

Another site that they mentioned was FindLegalForms.com. Carr said that these examples illustrate the changes that have started to occur. This site offers forms for \$20 plus tax.

He added that FMC Technologies have their own database of standard forms on their Intranet, because it’s not a high value activity for them to be involved. They’re empowering their people for the services they truly need. Carr admitted that there’s a danger there because people may use a form inappropriately or maybe the situation is complicated, but he said that it’s a better risk to take than for them to use no form at all. With only ten attorneys on his team, they can’t answer every question.

Carr said that the next generation of Google is Wikipedia. He gave an example of why this will be the case, saying that if the CEO came in and told him that they wanted to sell a division the next day and asked how fast the deal could be done, to answer his question, Carr would have to go through an analysis. He would need to know if they have to get any regulatory approvals.

To answer this question, he doesn’t need outside counseling, he just has to determine whether they meet the criteria. But the criteria change every year, and the threshold changes every year. If he were to Google this, he’d get over a million results. Like most people, he’d look at the articles on the first page of results, which may or may not be accurate.

But if he went to Wikipedia and looked it up, he’d find one article, which would have the threshold. The network formed around the issue is the guarantor that the content is correct.

Carr said that Web 2.0/3.0 is not about billions of pieces of content - it’s about one piece of content that is accurate and up-to-date. It will be free or almost free, because the information itself is not that valuable. So the whole legal publishing industry will be turned on its head, as will the legal industry itself.

How does he know that? ***Because guys like him and others are going to build it themselves because they’ve already bought and paid for this information. They’ll start leveraging themselves if someone doesn’t build it for them.***

Beirne commented on a virtual law firm called Maryland Law, who won an ABA award for content and delivery. He said that most of the time, you never see a lawyer. You go online, they throw out questions and through their computer, they narrow down the field. He would assume that there are very few issues that they don’t solve right on the computer.

He added that most of these are smaller divorce/custody type of issues, but the attorneys can also show up at the courthouse. Beirne also mentioned [CPA Legal](#), saying they're not your mom and pop grocery store. He said Rio Tinto used them last year in assistance for acquisitions, forms, commoditized information, which saved the company \$24 million.

They were so effective that Rio Tinto's general counsel left and went to CPA Legal. Beirne said that they're not lawyers, but they're very effective and they have a big following. A lot of the general counsel in the US are paying attention.

He predicted that they will put some lawyers on staff, and after next year, 2011, when the UK allows law firms to go public and have shareholders, the stops will be open. Once the land of the common law decides to go "Costco," the legal profession will see some changes.

Offshoring/Outsourcing

Carr touched on the topic of offshoring and outsourcing, saying that it's an interesting concept that falls into the process/content side of things. He said it takes the lower part of the grid he showed earlier and says there are other people who are more cost-effective at doing this.

At FMC, sometimes they in-source. Carr said that there's a flowchart for deciding whether to outsource something, that asks questions:

1. Is it a legal question? If yes, then...
2. Is it something that I, as the intake person or counselor, has the capability of doing? If yes, they handle it, but if no...
3. Who else on the legal team has the capability? If there isn't someone, then outsource, but if there is, then...
4. Do we have the capacity? Can we spend our time doing this? If no, then outsource.

Carr commented that they haven't outsourced to India yet, but may in the future, or expect the firms that they use to outsource as well.

He agreed that there are ethical considerations. Why do we talk about ethics? Carr said it's so that we can avoid change. But it is important to ensure client confidences, disclose outsourced legal work and outsourced lawyers, and take into consideration the unauthorized practice of law concerns.

Carr said if a firm uses an Indian shop, he will hold the firm accountable for the quality of the work. He said that unauthorized practice of law matters only to people who are involved in criminal justice, and unsophisticated buyers of legal services. He said he wants people to engage in the unauthorized practice of law because he wants the lowest cost providers in those four boxes that he can get.

Outsourcing/offshoring is considered a cancer in the legal society, but it's not in society at large for consumers like him.

RFP's - Headache or Opportunity?

Carr then asked the audience who likes to respond to RFPs and only one person in the room raised their hand. He said he often hears complaints from law firms that they cost a lot of money to respond to, but he argued that it costs his company a lot of money to get ready to do bids. It's simply the cost of doing business.

He said that the last RFP his legal team ran, they called a [non-RFP](#). They invited every law firm in the United States to participate. 52 firms showed up.

Phase One

Phase one of their non-RFP process was a [two-page questionnaire](#). Thirteen questions with yes or no answers, though Carr admitted some firms found a way to answer "maybe." The questions had nothing to do with the things that law firms might consider important. Instead, they were things like "Do you accept Visa for payment of legal fees?" "Do you do budgets?" "Would you agree to our terms of engagement?"

This was the tool that they used to get to the second stage. In the first cut, neither he nor his team knew the names of the firms that had submitted the questionnaire. He just got a grid with thirteen questions across the top and 52 rows - a red dot was no, a green dot was yes, and a yellow dot was maybe. Culling firms from this questionnaire was dependent on which dots they had and what questions they answered correctly.

Carr commented that this might be incredibly frightening to the audience.

The second page of the questionnaire asked firms to tell them why they're different. He said that he included this question because it was something he learned from his daughter - when she was a moody and defiant teenager, she had a sticker that said "You laugh at me because I'm different; I scoff at you because your the same."

As legal service providers, Carr said that all law firms are the same. ***Quality is no longer a differentiator. (Because I think that's important, I'll say it again, larger)***

Quality is no longer a differentiator.

Carr said that quality is the price of admission - if you're in his office, you're qualified to do the work.

So what differentiates firms now is cost and culture. It's not quality. He said that firms' name, brand, trademark, the color of their logos, the beauty of their marketing materials doesn't matter to people like him.

Phase Two

In stage two, it was a one page spreadsheet that forced the remaining firms to rank themselves. Carr also included FMC's types and number of cases and at the bottom of the spreadsheet, there was a similar grid that asked the firms for the same data. He asked the audience how many of them could immediately provide that data? Only Marty Beirne raised his hand. Carr said that he would be able to do that right now, for any period since 2001.

He commented that the scariest part of this grid was probably the column for "default budget." He asked the audience how many of them think there is such a thing, and no one raised their hands. He said that if they all had the data he mentioned, adding that they do because they have electronic billing systems, but they don't know how to mine them, they could look at it and see a bell curve.

This is because all statistics fall into a bell curve. There would be a mean and a median, and there would be a clear number. So even though all these cases are factually different, with a high degree of certainty, a large proportion are the same.

And with this data, you could give him an over/under. If things changed during the case, a firm could use a change order.

Phase Three

In phase three, 33 firms were invited to use Twitter and send a "tweet" - 140 characters to explain what makes them different and why FMC should meet you. The results were fascinating - most people had no idea what

Twitter was, which was part of the test. Getting a lawyer to say something in only 140 characters was also part of the challenge. What did Carr want to hear? "Value, value, value."

Phase Four

Phase four was the "[Wow, not Woo](#)" face-to-face meetings. To FMC, legal marketing is, at the end of the day, that everyone is the same, so who do you want to have a drink with? Who do you want to sit down and talk about the interesting questions of law with - this happened at the end of the process, not the beginning. Their system was designed to find this out.

Carr said that one firm did a video of how to make a tweet. Some wrote poems, others quoted Buffett. Their presentations ranged from the substantive, to the cute, to the relevant, to not. FMC wanted to find a cultural match. In the end, the firms that distinguished themselves included:

- ILN member, Beirne, Maynard & Parsons
- Fulkerson
- Littler
- Seyfarth
- Summit
- Sutherland
- Valorem
- Womble

There was a big range in the size and type of firms. They brought them all together and decided to do one of two things:

- a) Plan A was JV to leverage capability
- b) Plan B was a shark tank - mini RFPs

Most of Carr's team wanted to go with Plan B. He said it was interesting, and would get them cost over the short term, but he's more focused on getting value.

So instead they've gone with Plan A and formed an alliance. When a new piece of litigation comes in, they form a team from all the assets at their disposal. They do that under their performance-based pay system, which takes the lowest bid budget that came out of Phase Two.

There are incentives, it's not a hard target. Maybe the team is made up of only one attorney, or maybe it's attorneys from a couple of the firms. They form the team, do the litigation, and at the end of the year, they look at their total litigation budget, how they did, and how to share the savings with all of the players.

ACES

ACES is FMC's "[Alliance Counsel Engagement System](#)," which is all about performance-based pay. Carr observed that the law firm economic model is very simple, but firms make it complex. Basically more billed hours = more pay.

The in-house counsel is opposite - more money for fewer hours. They have fundamentally divergent economic interests, but at some point they come together. FMC will pay more per hour, but this is predicated on efficiency.

FMC gives their firms a report card based on six factors:

1. Understood goals
2. Expertise
3. Efficiency
4. Responsiveness
5. Predictive Accuracy
6. Effectiveness

The firms' payment depends on their grade. FMC uses a one to five scale. Carr observed that the most interesting conversations he's had have been about the report card. He asked an attorney in the front row how he would feel if he said to him "you've done really good work; you get a three" and he answered that he'd feel average. Carr agreed that a three feels average and he often gets an argument about it.

He said that everyone thinks they are outstanding. But "exceptional" just became the new "good." Firms have to do more to be truly outstanding. If they do, they'll get 100% of their invoice. If they go above and beyond, he'll pay more. It forces him and his team to have difficult conversations about the performance of their lawyers.

Carr asked how this cognitive disconnect is possible, where attorneys think they're exceptional but the GCs think they're average. He said it's because the two sides don't talk. General counsel need to tell their outside firms what they're expectations are and how to meet them. The system he described isn't all about money, it's about dialogue. They have formed a system that allows his team to have that difficult conversation.

Carr said there's nothing wrong with a law firm being good. But it's helpful to talk about why a firm got a two in one category and a four in another. Because if a firm can fix the things that he's dissatisfied with, they could be a four or a five, make more money, and he'd be happier. This system provides a context to have a conversation that firms probably don't have very often.

Carr suggested that the next time someone in the audience goes in for a sales call, instead of saying that they're good at what they do, they should say that the company has a lot of choices, but they're convinced that their firm can give value to them and their company and they're willing to put compensation at risk. Tell them that if they don't like what the firm is doing, they can fire them. And if the firm doesn't like how the client treats them, they can fire them as a client.

He said he's never had that conversation, because GCs are gutless - they never tell their firms what they want. They have an inexhaustible supply of counsel, so they just don't call a firm when they're unhappy. He said that if he were sitting in the audience's shoes, he would continue doing what he'd always done because it's easy and profitable. But in the long run, there's going to be more and more people just like him in the world than not.

So a firm should start going in and saying "I want to be your partner" - Carr said that partnership doesn't mean that you want to know their business, because you'll never know it as well as the GC will. It means that you want to share risks and rewards, understand their business objectives so you can help them obtain them cost-effectively, while still retaining the ethical compass.

Question & Answer

[Tim Lukas](#) of [Holland & Hart](#) asked Carr how they avoid grader bias in their compensation system. Carr answered that his attorneys' compensation is based on how they manage their own portfolio. He said that if you link it to compensation, it's self-correcting.

Lukas asked whether that means that first-in is better served than last-in. Carr said no, they've been doing this in earnest since 2004. They have 1227 evaluations in their system, and the firms' average grade is 3.2. If he looks at this for 2010, it's 3.4. This means that over time, they have gotten rid of lower-performing counsel and those who have stayed have gotten better. He admitted that left to its own though, grader bias will occur.

Winthrop asked, from the law firm perspective, how do their profit margins compare for matters that they're doing for FMC versus other matters. Carr said that he didn't know, that he wants his firms to be profitable, but to do this by reducing their costs as opposed to raising his prices. On the culture side, he wants to know if firms think like a businessperson. He wants lawyers to say to him, "here's my advice" not "on the one hand, this and on the other hand, that." Carr said this isn't useful to him.

It's about culture - do their lawyers understand that they're not in the business of answering interesting questions of law. They're in the business of making and selling stuff. For them to provide legal services, maybe there are a hundred questions about law, but Carr doesn't care about them. He wants to know if firms are focused on helping his business succeed as a business.

[Michael Lasky](#) of [Davis & Gilbert](#) said that Carr had mentioned that lawyers tend to be reactive, but the best counsel in that second box (counseling) are proactive. He said that if you have that kind of lawyer who is not afraid, but his or her client is living in yesterday, how do you counsel clients. Carr said in this case, if you're talking to someone who is below the general counsel, but in charge of significant work, you have to talk to the GC. He said that unless and until the GCs make this important, the internal counsel won't.

He called August 24, 2009 "V-Day" for "Value Day." On this day, a story appeared on the front page of the Wall Street Journal about the cost of legal services. Specifically, it was about the Pfizer deal. Carr said that although there's lots of debate about value in online forums and magazines, things won't change until a CEO or CFO walks into their GC's office and throws down an article like the one in the Wall Street Journal, saying "why aren't we doing this?"

Carr tells fellow GCs that it's their job to deliver value. If they're not focused on this, they're not doing their jobs and they're breaching their fiduciary responsibilities. If the GCs can get this, it will filter through. But if they don't, it's tough.

Carr closed with a quote and a poem - the quote was from US Army Chief of Staff, General Eric Shinseki - "If you dislike change, you're going to dislike irrelevance even more."

The poem is from Felice Wagner, called "The Client's Poem." Carr encouraged the audience to think about these words, and if their firms change and deliver value the way that clients see value, they will take share from the big boys and the regional folks that they're competing with. Carr said it's not about being focused on your client, it's about focusing on what your client sees as valuable.

[The Client's Poem - Felice Wagner](#)

If only you'd ask, I'd be happy to say
I wish you would do things more often my way.

If only you'd ask, I'd be happy to say
I don't like that new partner that calls everyday.

If only you'd ask, I'd be happy to say
I'd like you to bill me in an alternative way.

If only you'd ask, I'd be happy to say
We have four new matters that came in just today.

If only you'd ask, I'd be happy to say
Being responsive to me means you call back the same day.

If only you'd ask, I'd be happy to say
There are three other law firms we're considering today.

If only you'd ask, I'd be happy to say
I expect your budget to reflect what I'll pay.

If only you'd ask, I'd be happy to say
When you go over budget, I see my career slip away.

If only you'd ask, I'd be happy to say
I wish you would do things more often my way.

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