

# ILLINOIS LEGAL TIMES

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## GCs to Firms: Remember Who Loves You, Baby



*"It's a buyer's market. Market forces are making firms more competitive. If you're not responsive to the client's needs, there are enough other quality law firms."*

—Roger H. Marks, H<sub>2</sub>O Plus

**ILLINOIS LEGAL TIMES ROUNDTABLE**  
Corporate counsel say they're ready to reward firms that adapt to modern business practices, but those firms just don't exist. Instead, firms over-staff projects, over-produce simple memos and over-bill for the most routine matters. The people responsible for hiring law firms want attorneys who can budget, take the time to learn the client's business and maybe even answer their e-mail. These corporate counsel say that even the best firms take their clients for granted and prefer to operate with archaic business principles. Roundtable begins on page 18.

*"There are still times when we assign a matter to an outside counsel and they take it and think it's theirs instead of the company's."*

—Rebecca J. Lauer, Commonwealth Edison



## ARDC: Enforcer With Teeth or Paper Tiger?

By STEVE RHODES

ON THE MORNING of Jan. 25, Bernard Maurice Ellis walked into One Prudential Plaza to face his accusers. He took the elevator to Suite 1100, walked through the doors and turned left into Hearing Room 1, a teal carpet under his feet and bright lights overhead. He sat at the defendant's desk.

Across the room two attorneys prepared to argue that Ellis, a practicing lawyer in Chicago since 1959, ought to be disbarred. The hearing was scheduled for 9 a.m. At 9:10, Scott Renfroe, one of the prosecutors, handed Ellis a binder of documents, warning him that there had been some changes since the last binder he received.

"How am I supposed to know what's in here?" Ellis asked.

"Pay attention," Renfroe said.

"That's cute," replied Ellis.

That rancor characterized the rest of the hearing. At 9:20, Mary Robinson, the administrator of the Illinois Attorney Registration and Disciplinary Commission, began her opening statement, describing to a hearing board why Ellis ought not be able to practice law anymore.

Throughout the arduous hearing, Ellis frequently objected to Robinson's questioning of witnesses, clearly frustrating the

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## Lawyers Walk, Client Balks, Settlement on the Rocks

*Fees, Principles Collide On Courthouse Steps*

By ANGELA WISSMAN

HOUSE OF BLUES manager Romell Giddens just became his own advocate. Two sets of lawyers have withdrawn from his racial discrimination case against Bennigan's restaurant, his former employer, and settlement talks have foundered. Now Giddens says he may brave federal litigation on his own, if necessary.

Giddens' difficulty with his lawyers demonstrates the tension between an adamant client and a plaintiff's attorney gambling on compensation. Most individual plaintiffs can't afford to pay an attorney by the hour, leaving contingency fee agreements their only option. But working on contingency, especially in risky and

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PHOTO BY DAVID KAMBA

Romell Giddens' race discrimination action against a Chicago Bennigan's restaurant illustrates the problems that arise when a client's desire to make a point collides with a plaintiff's lawyer's desire to make a buck.

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Illinois attorneys defend the sanctity of Sammy Sosa baseball cards; your odds of winning a Nobel Prize. **Page 3**



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Our new opinion section debuts with an article from Mayor Daley on why he's got the gun industry in his sights; plus, we weigh in on the tobacco fee issue. **Page 6**

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# The Client Speaks

Corporate Counsel Discuss Their Expectations and How Firms Aren't Meeting Them

## ILLINOIS LEGAL TIMES ROUNDTABLE

Jennifer E. King, *Corporate Legal Times* (Moderator):

Why don't we start by going around the table to describe how your company uses outside counsel.

**Rebecca J. Lauer, Commonwealth Edison:** Commonwealth Edison has worked in the last six years to build up a full-service in-house department that gives us the ability to in-source additional work and to get a better handle on managing the outside counsel that we have.

We've focused our efforts on finding out what are all the legal matters that affect the company, because we came into a situation where Commonwealth Edison's reliance on outside counsel was coming from a number of different directions within the company. Business people were directly hiring lawyers to do bits and pieces of work along the way.

We have now succeeded in knowing what our true legal affairs are in managing and partnering with outside counsel. Almost every matter now is staffed in a way that allows an inside counsel to be involved in making all of the strategic decisions that are necessary for matters.

**Theodore L. Banks, Kraft Foods:** We've tried to staff the law department to reflect the company's philosophy that it doesn't want a huge law staff, but it's possible that you can be lean and mean and still add value to the corporate functions. So the philosophy is to staff for the valleys, not the peaks, of legal work and focus on adding attorneys where the in-house function provides the most value. Then we out-source legal where it's an occasional over-worked situation or where there are what we call "generic legal services," where there's no particular value added by having someone in-house.

We can handle routine real estate transactions, for example, outside the company, because having someone in-house doesn't add a lot of value. However, we try and do as much of our trademark work as we can inside. We have a relatively large trademark department, because we're a marketing-driven company and this is the key to our success.

**William J. Bowe, Encyclopaedia Britannica:** Britannica has gone through a fairly dramatic change in the structure of the in-house legal function, and this is very much parallel to the shift that the company



Roundtable participants are (from left to right): Jennifer E. King, *Corporate Legal Times*; Rebecca J. Lauer, *Commonwealth Edison*; Theodore L. Banks, *Kraft Foods*; Roger H. Marks, *H<sub>2</sub>O Plus*; William J. Bowe, *Encyclopaedia Britannica*.

itself has gone through.

We went from a law department that, at the high water mark, had six lawyers and support staff to one that today has two full-time lawyers and, at any one time, two contract lawyers. The change in the law department reflects the fact that the company, since a change in ownership not long ago, has gone from selling a \$1,500 print set to selling CD-ROMS priced under \$100 through retail and over the Internet.

As you would expect, our prime in-house function is to keep track of the company's intellectual property. That is the core asset of the company; and so, in terms of copyright and trademark, as is with the case with Ted, that's a corporate asset. It's guarded and protected and, as to its legal aspects, managed at the headquarters in the corporate law department.

**Roger H. Marks, H<sub>2</sub>O Plus:** We have a relatively small legal department; and outside counsel are used on a very selective basis. There are cases in which, if a matter is going to escalate into litigation, we will call upon the resources of outside counsel. We also use outside counsel on regulatory matters that affect our industry. That may include franchising.

We also use outside counsel to assist us in intellectual property management. We have trademarks registered in 40-plus countries. And given the smallness of the legal staff, it's necessary to tap into outside counsel to assist us. But at the same time, it makes sense to bring value internally, bringing certain functions from the intellectual property area in-house.

**King, Corporate Legal Times:** Each of you work for companies that are evolving. How has your use of outside counsel changed in the last three years? Becky, you touched on this.

**Lauer, Commonwealth Edison:** We're in

a position, because of the changes that are going on in the industry and the fact that we're still a highly-regulated company, of needing outside counsel who are attuned to what the company is going through and attuned to our regulatory concerns. We need to make very strategic decisions in order to effectuate open access at the end of this year, and almost everything we do has ripple effects through everything else.

If you don't have your work concentrated in outside counsel who understands that, it's a very dangerous game. We frequently have situations where somebody will make an offhand remark, "This was mentioned to me in a meeting and I don't know if it means anything, but here's what I was told." And when you unwind it, you realize it's an indicator of a shift in a policy that's coming down the line or that one of our key stakeholders is not being fully satisfied.

We need to take that information, that intelligence, and act on it. If we don't have outside counsel who have the right sensitivity level to that, we can get ourselves in a lot of trouble. That's why I emphasize strategic decision making and the partnering with outside counsel.

**King, Corporate Legal Times:** You mentioned partnering. Do you concentrate your work in a few firms to really develop that strong partnership?

**Lauer, Commonwealth Edison:** ComEd overall uses a large number of different law firms for specialty needs; but when you talk about the core regulatory-type matters, the things that affect the restructuring that's going on now in the industry, that work is concentrated in just a couple firms.

**King, Corporate Legal Times:** Ted, how have you changed your approach to outside counsel in the past few years?

**Banks, Kraft Foods:** We've tried to focus

more on fewer firms—looking for the firms that can be responsive to or business needs. If you don't keep bringing in new firms, you don't have to reeducate them about the business each time they're retained. We have made efforts to encourage our firms to become efficient through the use of automation tools. And I'd like to say that we've been successful, but that would be an overstatement.

We continue to work with the firms to improve the use of e-mail for communications, using task based billing, using computerized tools for budgeting, things like that. We've made some progress, but it's been modest.

**Bowe, Encyclopaedia Britannica:** At Encyclopaedia Britannica, the change has not been so much in the function of work that outside law firms are doing, but in the categories of work that they're dealing with. Some areas of expertise that we used to be highly dependent on just have diminished enormously, even if they haven't evaporated. For instance, we've always out-sourced litigation. The difference is that today we have litigation related to Internet use of trademarks. That's turned out to be a much bigger area of legal activity for the corporation than I saw coming down the pike five years ago.

**Marks, H<sub>2</sub>O Plus:** Our needs, particularly this past year, have changed dramatically as H<sub>2</sub>O Plus has embarked on a path to expand its retail operations internationally. I'm finding myself increasingly engaging outside counsel around the world. It's been a challenge, both in the selection process of outside foreign counsel and working with foreign counsel, where it's been my experience that their training, in many respects, is very different from the training of lawyers in the U.S. or the British Commonwealth countries.

What I have found particularly is that U.S. lawyers are trained to take a more problem-solving approach to a particular problem; other foreign attorneys take more of a distanced academic approach to matters. They may be inclined to answer a question that's precisely put to them without contemplating all of the practical implications of that response. So there's a lot more effort that needs to go into working with outside counsel to make sure they're exhausting all the different avenues that should be explored and educating them that much more in terms of our corporate culture as well as,

PHOTO BY JOHN MCNULTY

to some extent, U.S. culture.

**King, Corporate Legal Times:** It sounds as if you've had to change the way that you communicate your expectations to outside counsel when dealing with counsel in some of these foreign countries.

**Marks, H<sub>2</sub>O Plus:** It's changed in the sense that we have always used retention or engagement letters at the outset of a relationship, and those letters are fairly extensive in outlining our expectations, our guidelines, our billing arrangements. But what I have found is that those letters tend to go unread, or foreign outside counsel don't recognize that we expect them to comply fully with this.

That may be a reflection of the cultural differences between national legal systems—billing practices, for example, are very different in foreign countries than they are here. We typically receive a bill three, four months after the work is done, and it will be one lump sum. Those are cases where I will send the bill back to them and say, "Look, we need a breakdown of attorney time on a daily basis, a brief description of the projects, and future bills need to be submitted on a monthly basis." So it's had its challenges, because I've had to do a lot of follow up, aside from issuing the guidelines themselves, to ensure compliance.

### Bad Billing

**King, Corporate Legal Times:** Ted, I saw you nodding in agreement.

**Banks, Kraft Foods:** The phenomenon of firms ignoring the retention letter is not unique to foreign firms. A lot of U.S. firms will accept that letter and then do whatever they do normally. What I've found out is that some firms eventually sent us their retention letters, which are truly egregious, allowing them to waive any conflict they see fit, charging a dollar a page for copying and building all of this stuff in. If you don't read it very carefully, it's a real trap financially.

The interesting thing I find is that the use of the bill, whether it's on this lump sum basis, like a lot of U.S. firms used to do and foreign firms still do, negates the value of the bill as a communication tool. The bill should enable the firm to inform the client what work is being done, not just how much it costs.

In the ideal world, there would be a dialogue all the time between the client and the firm that says, "OK, here's what we're doing and why and here's how much it will cost." And all of this, of course, is because of a plan that you've agreed to previously. But those opportunities are often just ignored by the firms. And in-house counsel are partially to blame, because we haven't pushed it enough to say, "There should be a dialog on what's going on. We're not just turning the matter over to you and saying go run with it and let us know when it's over."

**Lauer, Commonwealth Edison:** You're lucky if you get a bill that's a sufficient audit of the work that was done and have a sense of what was actually done, let alone using it to communicate. When I did billing in an outside firm, I didn't

think of putting down my time for that purpose. I thought of putting down my time to simply account for it, so a bill can be struck. We need to tell firms how we want to see the bill used, that it can be a very valuable tool for us to see what work is going on.

**Bowe, Encyclopaedia Britannica:** Law firms don't always appreciate the importance of following the engagement letter. I find that sending bills back, as Roger does with foreign firms, has a marvelously motivating effect in getting firms focused on meeting our expectations. In addition, the ability to track the economics of what's going on with outside firms has increased dramatically in the last five to 10 years.

It was once very difficult for my law department to get information from our financial department in a timely way and in sufficient detail to see a picture of outside legal expenditures. Now the input is fairly sophisticated, so you're getting billing by task that can be tracked by management software and with no effort at all. At your desktop, you can pull up a task, see what's gone on in the last three to six months, and jump on budget overruns that might never have come to light in the same way.

**King, Corporate Legal Times:** Are you all using task-based billing or requesting task-based bills from your law firms?

**Marks, H<sub>2</sub>O Plus:** We do not. We engage in a number of different alternate billing arrangements. It's been my experience that the hourly rate, in many ways, is a very insufficient rate, because it acts as a disincentive to resolve a case early on, and so there's a tendency to engage in excess discovery or unnecessary research. So when we use firms on a repeated basis, we look at quantity discounts, if the work is repetitive and justifies it. If the work is going to exceed a certain dollar threshold, we look at percentage discounts and explore other options, as well, that might make sense to both parties.

### Communications

**King, Corporate Legal Times:** Let's go back to the concept of partnering. Other than the retention letter, how are you communicating your expectations to outside counsel? How do you bring them into your company and make them true partners?

**Lauer, Commonwealth Edison:** We have attorneys with enough experience in substantive areas that we are able to have someone in the in-house department paired with the outside counsel, and so there's basically ongoing interaction.

Now, there are exceptions to that. With some of the litigation that we do, there are matters that won't require that same partnering. They're simply farmed out, and then there's more of a management relationship as opposed to a partnership. Each case is evaluated on its own merits to determine the best staffing. But sensitive matters, things that have political overtones to them, things that have regulatory overtones or things that are crucial to the strategic direction of the company, will

## Roundtable Participants

Photos by JOHN MCNULTY

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**William J. Bowe** is the executive vice president, general counsel and secretary of Encyclopaedia Britannica. The encyclopaedia is in its 15th print edition, but Britannica today is primarily an Internet publisher. Before joining Britannica, Bowe served as general counsel for United Press International and The Bradford Exchange. He earned his J.D. from the University of Chicago Law School.



**Jennifer E. King** is managing editor of Corporate Legal Times, this magazine's sister publication. Corporate Legal Times a national monthly business magazine with a circulation of more than 45,000 U.S. and Canadian in-house counsel in public and private corporations and government legal departments. She has also served as managing editor of Illinois Legal Times and U.S. Business Litigation. King graduated from Northwestern University's Medill School of Journalism.



**Rebecca J. Lauer** is deputy general counsel in the law department of Commonwealth Edison. She is responsible for ComEd's legal affairs related to state and federal regulatory matters and nuclear and environmental issues. She also provides legal counsel to ComEd on all aspects of electric industry restructuring. Prior to joining ComEd, she was a partner with Schiff Hardin & Waite. Lauer earned her J.D. from Northwestern.



**Roger H. Marks** is general counsel and secretary of H<sub>2</sub>O Plus. The company manufactures, distributes and retails bath and body products, fragrances and cosmetics. The legal department oversees all company legal affairs, including contracts, internationalization, litigation, intellectual property management and product labeling issues. The human resources department reports to the legal department. Marks received his J.D. from Cornell Law School.



always have someone in the in-house law department with responsibility for it. It's our job to keep the communication going with outside counsel, to tell them what the expectation is.

**Bowe, Encyclopaedia Britannica:** One of the things that we have in our engagement letter that isn't always looked at with the same seriousness that we put it in there is that we want the in-house lawyers to be involved in all of the significant decisions that are made in the course of the representation. The second thing we see that

we're not having that ability to control and guide the handling of the task so that it matches the business requirements as we see them. It isn't so much a question of holding up the engagement letter and waiving it in their face as it is in coming back to it as a basic principle in the engagement and partnering we want to do.

**King, Corporate Legal Times:** You have to be kept in the loop on the decisions.

**Banks, Kraft Foods:** Well, there are different  
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## ROUNDTABLE

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dimensions to the relationship and different kinds of relationships. The first thing would be the retention for a major matter, where you're going to be dealing with a litigation plan or transaction plan. There will be budgets and periodic meetings and reports, and it will be something that you hope will go according to a plan. There might be retention for repetitive, small activities.

Let's say you're retaining a firm to handle all of the qualified domestic relations orders that come in against the pension plan. You want to set up a process that will be efficient and have periodic reports, but you don't need the reporting that you would for a major lawsuit or major transaction. So the nature of the relationship and the nature of the retention will depend on the relationship.

We don't always say we want task based billing, because it doesn't make sense all the time. Sometimes an hourly rate makes sense, because it can alert you to situations where a partner did the work of an associate or a paralegal. But we try to combine the appropriate type of initial contact with the firm with at least annual follow-ups with them and say, "Here's how we thought you did during 1998. Let's talk about how we can improve things for the coming year."

What is most surprising to me, however, is the virtual absence of outreach by law firms back to the client. Almost none of our firms say to us after a case, "Let's sit down and evaluate how we did. Let's do a debrief, let's talk about it."

In fact, we had one firm come in the other day apologizing for asking us questions about how we thought they did; we said, "Guys, you're missing the point. You don't apologize for this. This is what we want you to do." If you're going to be an effective service provider, you ask what the client wants. This was a revelation to them.

We're talking about outstanding lawyers, who are clueless when it comes to client service. Some people call it marketing, but it goes beyond that. It's about how to respond to what the clients want. A lot of growth needs to occur before most of the law firms in Chicago get the picture.

*Marks, H<sub>2</sub>O Plus:* I have never received a client survey from any of the law firms that I've ever dealt with. I would be very impressed if I saw a law firm wanting to pursue that feedback.

To me, it would demonstrate a willingness to ensure that the client's needs are being served, to learn the areas where they may be able to improve. It would be a very useful tool for law firms to cement existing relationships and deliver a message to the clients that we do want to keep you and we want to make sure that you're satisfied.

*Lauer, Commonwealth Edison:* I've got a routine meeting every two weeks with certain outside counsel, key folks at a couple



PHOTO BY JOHN MCNEULY

**"Don't call in December and ask that your bill be paid by the end of the year unless you're willing to provide your bill in the way that best serves the client."**

**—William J. Bowe,  
Encyclopaedia  
Britannica**

of the big firms we use a lot, to simply go over the list of matters that are going on, how is the staffing going, whether there are problems in working relationships and things like that, to just keep my eye on staffing and other matters.

*King, Corporate Legal Times:* Ted, you said that you have feedback meetings once a year where you offer the feedback to the firms. Do you see an improvement? Do firms really respond to that feedback?

*Banks, Kraft Foods:* Mostly, the improvement is very specific and focused on what we talk about, because if there's not improvement, there's a replacement of the firm. In our experience, no one is irreplaceable, especially in this legal market.

The burden is on us, too, to identify areas of improvement and communicate them well. So I recognize it's a two-way street. But we have found that the communication does benefit the process. If you just say, "I've got a meeting coming up next week to talk about it," you start to think about it and things will come to mind, even if you haven't focused on it before.

*King, Corporate Legal Times:* Bill, are you able to offer feedback? Have you had law firms come to you and ask about your client satisfaction?

*Bowe, Encyclopaedia Britannica:* Yes, but, believe me, it's been a long time. What convinced me of the utility of the tool was doing it inside in a formal way. We went out to our clients inside the corporation and asked how the law department was functioning. How is this lawyer working with your division? Is there an understanding of the business objectives? Is communication what it should be? Well, that was unexpectedly enlightening. It's a reminder to in-house counsel that communicating with our clients inside the corporation is critical.

Nothing corrupts that principle when you look at yourself as a client of an outside firm. There is a wealth of marketing information there for those firms to tap to solidify the relationship, understand how to deliver a better product, find out if they're conforming with what other firms are doing. Outside firms have a lot to learn from inside counsel because of the diversity of firms that inside counsel work with.

*King, Corporate Legal Times:* Let's talk about specifics. You've each said that you appreciate having a firm come to you for feedback. We've talked about a specific way that firms aren't meeting your expectations, which is communicating through the bill. What are other positive things that firms have done that stand out? In what ways are firms specifically not meeting your expectations? How can they improve their service?

*Banks, Kraft Foods:* We've found that the firms still focus their computer operations on generating their bills and not on meeting their clients' needs. My goal is to understand what work was done and to meet my internal clients' needs.

Firms don't understand that in corporations, everyone is driven by budgets, and the manager of a product, if that person is getting billed for legal services, needs predictability. They need to know what their costs are going to be; even if it's just an estimate of future costs. Most law firms don't understand the need for data to come in so that someone can manage a business and factor in legal costs.

The law firms are telling us still that their internal accounting systems can't accommodate task based billing fields, because it was never designed to do that, and they're working on it; and, it's been a slow process. We have said to the firms, "We want you to try to do this." We understand that it's very difficult for a firm to do something different for every

client, and we're reasonable about those demands because, we know how it feels when a customer comes to us and says, "Do this just for us." So what we've said to our law firms is, "Look, we don't ask for anything special. We'll go with the standard American Bar Association codes. Can you just accommodate this?" And most of them still say no.

*King, Corporate Legal Times:* And those codes are three or four years old now.

*Banks, Kraft Foods:* Right, this is not rocket science. We give them an Excel template on a diskette, because some firms can't do e-mail yet or they can't attach documents to their e-mail. So we give them the thing and say, "Just using Excel, can you give us a spreadsheet with the information we need?" Such a small percentage of our total number of firms can do it, it's really depressing.

Our goal is just to try and understand the work that's being done for us and to build a knowledge base so that in the future we'll be able to say, "In this type of case, for a deposition, you should have no more than eight hours on it, and you should only have five depositions." But right now, neither the firms nor we have the knowledge to understand to evaluate these cases.

We'd like to go to alternative billing so we could say, "If someone brings us this product liability case, we know how much it should cost; so let's negotiate the fee," and we can get away from this billing hassle all together. We're working on it. It's been awfully slow. And this is an opportunity that, frankly, the firms have missed to get more business, because they haven't jumped on it. They don't want to change; therefore, they'll keep doing it the way they're doing it, because they're good lawyers, and, of course, we want to hire them because they're good lawyers, they're smart; and, that's all they need.

*Bowe, Encyclopaedia Britannica:* I second the point about the unevenness in outside law firms' adoption of technologies. We know how difficult it is to manage technology efficiently. On the other hand, our company has had to change its distribution channel to deal with the electronic methods that are enormously efficient. We're staffed for a fairly high-tech environment that is very different from the one I started with. Some outside law firms see that there are economies of scale in moving ahead, but it's still spotty. We're sympathetic up to a point; but, it becomes a nagging little element in the relationship.

*Marks, H<sub>2</sub>O Plus:* Moving beyond technology, what we need from outside counsel mirrors what management needs from me: advice, options and risk assessment. So it's very important for us that the advice provided by outside counsel is pragmatic and tailored to our needs, and that underlies the importance of outside counsel getting to know the client, getting to understand the corporate culture, management style and business objectives. What I certainly don't want is to have advice rendered in a vacuum or in an academic

sense that really gets away from the realities of our corporation and what we're about and what our objectives are.

**Lauer, Commonwealth Edison:** An area of frustration for me is that there are still times where we assign a matter to an outside counsel and they take it and think it's theirs instead of the company's. You see on the bill that it's been staffed with people you never heard of, whom they haven't talked to you about. You shouldn't have to ask, "Who are these lawyers who are showing up on the bill?" They bill for work product that you've never seen.

My greatest frustration is to know that a chunk of research has been done and a memo has been written and nobody in-house has seen it. You want to know those things, both to make sure that it's being done in a way that you'd want and that it's not being duplicated somewhere else. You also want it for the work product.

Outside attorneys need to realize that inside counsel need to approve the work, inside counsel need to get the work prod-

**"We had one firm come in the other day apologizing for asking us questions about how we thought they did; we said, 'Guys, you're missing the point. You don't apologize for this. This is what we want you to do.'"**

**-Theodore L. Banks,  
Kraft Foods**

uct and inside counsel need be involved in the shaping of the matter.

Occasionally, we still have problems with review times on things. We spend a lot of time with internal clients and in meetings. We're not at our desks a whole lot, and we still get a fair amount of outside attorneys telling us, "I sent it to you for review and 24-hour turnaround." Well, I haven't been at my desk for 24 hours, and nobody left me a voicemail to tell me that it's there. And so, no, I didn't read it and sign-off on it. Outside counsel need to accommodate some of that scheduling.

But, again, I take it as an ownership issue. They need to realize they are working for ComEd, not doing their own case.

**King, Corporate Legal Times:** Do you find that your outside lawyers are reading the news reports about you that appear in the Tribune and other trade magazines? Do they know what's going on in your company all the time? Or do you feel like sometimes you're really bringing them up to speed on the company again and again?

**Lauer, Commonwealth Edison:** I'm lucky to know day-to-day where our company is, so it's expecting a lot of outside counsel to know where we are. Things are changing so fast that communication within our law department, within the company and with outside counsel is quite challenging. We spend a lot of time on

communication. A lot of teams have been created, task forces, project managers for this and that. Cutting across all of those groups to make sure that everyone is up to date as to where things are headed is difficult; but by concentrating in a couple key firms you have the ability to, in effect, co-opt the attorneys so they become pretty close to you.

**Banks, Kraft Foods:** Some of the best firms we've used will make it their practice to know about what goes on in the company. They'll even subscribe to trade magazines, Supermarket News or Advertising Age, that relate to what we do so that they are authoritative about the business.

Other people, when I suggest this, give me a blank stare and ask, "Why would we want to do that? And I guess we'll bill you for that subscription." So their focus is totally difficult. It's hard to reorient the thinking of attorneys who have been schooled in a very traditional way of doing the work for themselves. We've gone so far as to tell our firms: "If you're going to do a research memo, do not spend a lot of time polishing it. Do the work, put it in rough form, and we better see it in rough form." We need to see it, because it's ours, too; but we don't need to see something beautiful. We've had firms send in bound stuff that we have sent back, saying, "You spent a lot of money on binding this. It doesn't fit in our file anymore, and we don't want to pay for this, so from now on, send it by e-mail, if you have it."

**Marks, H<sub>2</sub>O Plus:** We often prefer advice to be delivered verbally rather than in writing. It not only reduces the cost, but on the spot, you can ask hard questions and reach a prompt resolution. We instruct our outside counsel to control their time needlessly polishing a memo. I don't need to see some beautiful work of art. I need to get the essence of it. That can be delivered verbally. I view it as my job, as in-house counsel, to take the information that outside counsel provides and translate it into meaningful terms to our management. I'm very unlikely to submit an outside counsel's memo to our management.

**Bowe, Encyclopaedia Britannica:** Some firms do very well in following the way our market is changing. We use some firms because we've seen that they have their own subscription to Internet World and the like.

I feel the same way about written memos. Don't do it unless it's discussed and don't polish it when you give us a copy. The other thing that is always a part of our discussion, as we talk about how our business and our legal needs are changing is staffing, staffing, staffing. I was made sensitive to it as a young lawyer when I worked at a firm. I remember going to a client's office with a senior partner, and the client said to us, as we walked in the door, "Lawyers are like nuns: They always travel in pairs."

#### Staffing

**King, Corporate Legal Times:** Becky, you alluded to staffing, but nobody has

*Roundtable continued on page 22*

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## ILLINOIS LEGAL TIMES

## ROUNDTABLE

Continued from page 21

mentioned it as a problem until now.

**Marks, H<sub>2</sub>O Plus:** Communication really is key. The retention letter is only the beginning of defining your expectations. When I work with outside counsel, we work through the case strategy. If a matter has significant dollar exposures, we need a budget and that requires outside counsel to think through the various strategies and scenarios at the beginning. We use that as a measuring stick to help keep costs in line and translate the strategy into financial terms. Throughout the process, we have to continually define the scope of the relationship and the roles of in-house counsel and outside counsel. The communication doesn't stop when you retain them.

**Banks, Kraft Foods:** Outside counsel should feel driven to make dealing with them as painless as possible, as transparent as possible. Many of the consultants who purport to serve law firms as marketing experts don't really understand that. They tell firms how to make a glossy brochure or how to set up a Web site. But of the brochures I've received, I've saved none. I have no firm Web sites that I look at more than once.

If I were to give a law firm advice, I would say: Find out how the client does business. Do they have an annual budget-



PHOTO BY JOHN MCNUITY

ing process that requires the budget meetings to start in August? Maybe the law firm should think, in August, about which cases will go into the next year. Law firms need to think about the way the client does business; if you provide information along those lines, you make yourself a painless and yet invaluable part of the client's life. That will solidify the relationship.

Perhaps through natural selection, the law firms we use that make themselves easiest to deal with find the matters going to them increasing. The ones that are peculiar or idiosyncratic, no matter how good they are, if it's a pain to deal with these guys, I'll go to the guy who's easy to deal with. That's the marketing philosophy that a number of the firms don't

understand. When they market themselves, they still think about showing you the law schools their guys went to; some of them may say, "I want to talk about the cases we've won." Those are interesting facts, but it's not addressing the things that a client needs to know. If a law firm wants to get more business from someone, that's the threshold they have to cross.

**Marks, H<sub>2</sub>O Plus:** These issues raise the question of whether you retain the firm or the particular attorneys at a firm. Many of the traits that you're looking for are individual traits that you can't generalize for the law firm. So when we seek outside counsel, the law firm in many cases becomes secondary. We often look for an attorney who has good judgment, who can aggressively represent our interests and who has creative solutions. And there's always that intangible chemistry factor that you can't apply to a firm as a whole.

**Bowe, Encyclopaedia Britannica:** It's an old truism that you hire a lawyer and not a law firm. One of the reasons it's true is that any good long-term professional relationship has to be based fundamentally on loyalty. Loyalty doesn't just happen. It's earned, like other values that are esteemed.

One thing that makes a long-term relationship with a firm work is that some firms are better than others at rising to the occasion when there is a challenging development in the practice. To see a lawyer you're depending on rise to the

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occasion without being asked, and his or her colleagues really jump in and do what needs to be done, that builds loyalty.

I was reminded of that recently, when a legal problem developed late on a Monday afternoon. As it was assessed, without being asked or told, it was clear to one lawyer that he had to be on a plane immediately that night. His colleague, again without being asked or told, was there that night until 3:00 a.m., was at the workstation at 6:00 a.m., without much time to do anything other than brush his teeth. Now that's a firm that rises to the occasion. It's unusual; but when the need is there and a firm does it, because that's second nature, that's important to recognize and helps build long-term relationships.

*King, Corporate Legal Times:* How do you recognize or reward that loyalty in the firm that goes above and beyond expectations, other than continuing to give them a steady stream of work?

*Bowe, Encyclopaedia Britannica:* Of course, giving them more work is most appreciated in the long run. But more directly, at the time, recognize it, praise it, be thankful, make sure people see that there is some notice taken of extraordinary activity, even if it's what you expect when you hire that lawyer.

*Banks, Kraft Foods:* Yes, it's true you hire the lawyer and not the firm, but the job of the firm is to establish what I call the brand name. If you hire the firm, you

*"If I'm put in a position of feeling that I really have to exert pressure, 10 law firms are waiting in line for the same work."*

*—Rebecca J. Lauer,  
Commonwealth  
Edison*

should be guaranteed a certain level of service. Firms need to put their mind to it, understand that better and do more things to establish a uniform set of criteria for all of their attorneys, including client responsiveness and technological sophistication. Otherwise, we are stuck hiring the indi-



PHOTO BY JOHN MCNEILLY

vidual attorney, and it makes it much less efficient for the client.

When it comes to rewarding outside counsel, the first question is whether they're meeting expectations. If so, their reward should be in the form of the hefty fees they get and our continued business.

If they're exceeding expectations, there may be opportunities to do additional things. Some firms have sent us bills where they have given themselves a bonus, and that's not appropriate. There are little things we can do.

For example, a couple years ago, I had a case that was dragging on for several weeks, where a large group of attorneys and support staff from a firm were away from home, really working hard. They did an outstanding job, and we realized this was a burden on their personal lives. So we sent the families of all the attorneys back at home a care package. We sent all the families something to say, "Thank you, we realize that you are all sacrificing for this job." Amazingly, we got almost unquestioned loyalty and responsiveness from that firm for this very small investment in showing appreciation.

Although we've been dumping on firms a lot today, it goes both ways. Very often, they do outstanding work and we take it for granted. If you put yourself in their shoes and show some recognition, it truly yields benefits that are felt for years to come, because when there is a Kraft matter again, they'll think, "Oh, goody, could I work for Kraft again? They are the guys who appreciate us."

*Marks, H<sub>2</sub>O Plus:* I have also responded in the same way Ted has. When a law firm does a very good job, I don't hesitate to send them a gift of H<sub>2</sub>O Plus product. The benefit is that the product may sit on their shelf for many months, and as

*Roundtable continued on page 24*

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## ILLINOIS LEGAL TIMES

## ROUNDTABLE

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they're working on an existing project or perhaps project down the line, they're reminded of the goodwill between us. It's a very small gesture that goes a long way. Compliments for a job well done also go a long way, because outside counsel, like anyone else, appreciate a pat on the back. It engenders goodwill and enhances the law firm's commitment to the client.

*Bowe, Encyclopaedia Britannica:* And it's so rare.

*Lauer, Commonwealth Edison:* We obviously don't send electricity to our outside lawyers, but we do have memorabilia things, things that have our company logo on it, that we've shared with outside counsel, and we make a little presentation ceremony to recognize extraordinary efforts.

I also make an effort to make sure that whoever at the firm I feel is the mentor for an attorney or the billing partner's attorney for the firm, that you give them the feedback on what the working attorneys are doing, what affects their individual compensation, it affects where they line up the firm, and they need that feedback. That's an opportunity, when someone has made an extraordinary effort, really given



PHOTO BY JOHN MCNUITY

their all for a matter for the company, that I make sure that the right person at the firm hears it.

*King, Corporate Legal Times:* DuPont received a lot of publicity for consolidating its legal work to about 30 law firms,

which have agreed to discount their billing. In exchange, DuPont promised to publicly recognize the good work the firms do and to help them get more business. Do you have any reactions to what DuPont has done? Have you thought about trying to help your best firms get

*"I have never received a client survey from any of the law firms that I've ever dealt with. I would be very impressed if I saw a law firm wanting to pursue that feedback."*

*-Roger H. Marks,  
H<sub>2</sub>O Plus*

business from other companies?

*Marks, H<sub>2</sub>O Plus:* DuPont is unique in the vastness of its business and the need to consolidate. My philosophy is different, but it's probably borne of the size of H<sub>2</sub>O Plus Plus. I'm more inclined to seek out the smaller and more specialized boutique firms, which are more eager to please. Their rates often are going to be lower because the internal compensation structures of large law firms don't make them as cost competitive. And, in some case, I find the smaller firms seem to be better connected to the local legal community. If there is, for example, a zoning issue, I'm more inclined to use a well-connected sole practitioner than a large law firm.

The other thing I have found in using larger law firms with branch offices around the country is that there is a lot of inconsistency in the quality of the branch offices. At one time, many of these branch offices were autonomous firms with their own management styles and their own specialties.

#### Megafirms

*King, Corporate Legal Times:* Many firms are merging, trying to become large full-service firms, because they think that's what clients want. Do you want a full-service firm that has offices in every major city in the United States?

*Marks, H<sub>2</sub>O Plus:* In theory that's ideal, but I don't think that really works in prac-

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tice. Law firms are known for certain specialties, and it's those specialties and strengths that I will tap into. If a law firm has a good litigation practice and a weak securities practice, for example, I'm not going to look at their securities practice just because I'm very pleased with the employment practice.

**Banks, Kraft Foods:** That's been my experience too. The main value we've seen in the national law firms is that when they have an office a second city, we can bring in one of the partners from the first city and use the second office's conference rooms. But they haven't established a uniform brand name of excellence, where you can just go to whatever city it is - New York, Washington, D.C., Chicago or Los Angeles - and just assume you will get the same level of service. Law firms look at expansion as an opportunity to increase profits by capturing some business; it may, in fact, do that for them. But it will only work if they focus on what the clients are expecting from them. Clients don't automatically transfer their loyalty.

**Bowe, Encyclopaedia Britannica:** I've seen the same issues with domestic firms that have foreign offices. Their locations and areas of expertise are spotty at best; even if a firm offers the services you need, their office might be in Poland while you need to be in Moscow or St. Petersburg. Domestic firms perform a very good service to global companies in making referrals. We recently established

*"Many firms are merging, trying to become large full-service firms, because they think that's what clients want."*

**-Jennifer E. King,  
Corporate  
Legal Times**



PHOTO BY JOHN MCNEILLY

a subsidiary in India; starting a publishing company there is not a routine matter. We got a referral to a law firm in Delhi. We had other firms that we used over the years in our distribution activities there. But we had a very good referral, and the job got done well.

**King, Corporate Legal Times:** Becky, you're not going into foreign countries, you're going into states you have never been in before. Is your process for establishing relationships with new firms in new states similar to hiring outside counsel in foreign countries?

**Lauer, Commonwealth Edison:** Yes. As Unicom looks at opportunities on a regional basis, we're finding that we have to go outside the state of Illinois. We've used a variety of methods to find local counsel in other states.

Obviously, if there is a local office from one of the firms that we use here in Chicago, we will consider them and talk with the folks that they recommend. We look to outside counsel to help us with referrals, even if they don't have branch offices.

#### Leverage

**King, Corporate Legal Times:** In this economy, is it a buyer's market or seller's market for legal services? We've talked a lot about the pressures that you're putting on your outside counsel. Can they tell you to take a hike? How much pressure can you put on outside counsel these days?

**Marks, H<sub>2</sub>O Plus:** It's a buyer's market. Market forces are making firms more competitive. If you're not responsive to the client's needs, there are enough other quality law firms, so the market dictates that the service will be good or the corporate client will go elsewhere.

**King, Corporate Legal Times:** In your minds, do you have a lot of leverage over outside counsel?

**Marks, H<sub>2</sub>O Plus:** Yes. There's no reason for a law department to have to accept  
*Roundtable continued on page 26*

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manufacturer of solid state resettable fuses. He has a list of rules for outside counsel to follow in order to have a successful relationship with his company:

- Understand that client expectations govern the relationship.
- Have a sense of urgency.
- Make and meet commitments.
- Know the numbers.
- Plan the work, then work the plan.
- Talk straight.
- Communicate effectively.
- Spring no surprises.
- Never substitute your judgment for that of the client
- Assume responsibility for the success of the entire project and team.

Any reactions? Do you disagree with any

of those rules, or would you add to them?

*Bowe, Encyclopaedia Britannica:* At Britannica, back when it was a direct-selling company, a central rule in the training of the sales people and throughout the administration was "company work the company way." Outside counsel need to think in terms of doing law firm work the company way.

*Marks, H<sub>2</sub>O Plus:* When I evaluate outside counsel, I often ask whether they will spend my money or the corporate client's money like it was their own money.

*Lauer, Commonwealth Edison:* Many of those rules should apply to inside counsel

as well.

*Banks, Kraft Foods:* Sometimes you do want the outside counsel to disagree with you and not be so beholden to you that they're afraid to express their opinion, so you want someone who is independent enough to tell you when he thinks you're wrong and smart enough to know when he's lost the argument.

*Bowe, Encyclopaedia Britannica:* I would offer one more rule: Don't call in December and ask that your bill be paid by the end of the year unless you're willing to provide your bill in the way that best serves the client.

ILLT

## Judge

continued from page 13

judge shouldn't become part of the debate. If the ruling needs clarification then you call the parties together, reargue it and you clarify it there."

Gillis never felt pressure to rule a certain way, he says. However, criticism from the community, such as that lodged against Cook County Circuit Judge Daniel M. Locallo for the Lenard Clark beating case during Locallo's retention bid, may have a different effect for other judges.

"There are some other judges out there who will say, 'I don't want that to happen to me, so I will take some kind of middle ground position on something so I don't encounter that,'" Gillis says. "But you want somebody who does the right thing

and does the brave thing. That is what our country has always been built on. There has to be support from other judges. Judges should engage in scholarship about history and what other judges have done."

Gillis struck down only one other law for being unconstitutional, a city ordinance regulating beer gardens that he ruled overly broad, and overturned one jury verdict in an armed robbery case. He describes his judging philosophy as one that centers on serving the public and creating a courtroom environment in which litigants feel that justice has been done.

"When I had pro se litigants, they asked if that was OK and I said, 'It's your courtroom. You pay for the electricity. You pay for the rent. It's yours if want to sit at the table.'" Gillis says. "I had the deputies ask the jury if they are ready to come out

into the courtroom instead of saying, 'Come into the courtroom.' It's their right, their court, their justice system."

For close calls on the admissibility of evidence Gillis says he favored the side he thought was losing or should lose. The strategy worked, Gillis says. He never had a jury trial reversed for trial error, he says.

"You want people to feel they got a fair shot at it," Gillis says. "I presided over a jury trial where a man sued his employer for wrongful termination. The jury disagreed with him. He was a motorcycle rider type of guy, a tough-looking individual. I ran into him on the way out of the courthouse. He came up to me and said, 'You gave me every chance that I could have. I lost, but thank you.' That makes you feel good."

ILLT

## Three Tales

continued from page 12

your client.

It can be difficult to tell a client that he might be the problem or that she should leave the business she worked so hard to build. Sometimes attorneys need to appeal to the client's broader interests. If the client doesn't make a change, he could lose his house or the ability to support his family. The danger of personal bankruptcy should outweigh any wounds to the client's pride.

Other entrepreneurs will seem highly qualified to change their companies. If they're currently troubled, perhaps they simply didn't respond quickly enough to industry changes. You can help your clients put the brakes on supplier cutoffs and similar problems. You can also suggest they seek outside help where appropriate.

Perhaps the best advice attorneys can give their business clients is to encourage them to be as forthcoming as possible from day one. Attorneys must continuously speak with their clients and meet with them on their own turf to spot the problems clients often cannot see for themselves. By keeping the peculiar challenges of small businesses in mind, attorneys can offer the best solutions and far greater value to their clients.

ILLT

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