

Effective Management of Outside Counsel

Tools of the Trade

By Daniel J. DiLucchio and Darren R. Guy

To effectively manage millions of dollars in annual outside counsel legal spending, today's well run law department must learn how to capitalize on state of the art technology as a means to mine critical data and drive efficiencies. The technology must be used both for the processing and the management of vast numbers of invoices as well as for drilling into the data that can be derived from such invoices. What can we learn from the data that might influence thinking or behavior?

The law department must know how to mine the data that it is collecting and facilitate real-time management of its legal spending and strategic relationships with outside counsel. The Prudential Financial law department is an example of a department that understands the data mining and real-time management concepts. They have acted and turned these concepts into a functioning legal management "performance dashboard."

Prudential Financial's law department has been able to use technology to gather various sources of data throughout the organization to:

- better track outside counsel metrics;
- better track internal law department metrics;
- make more informed, real-time management decisions;
- drive efficiencies, not just with the matters at hand today, but for those in the future.

To better understand the rationale, process and implications of the technological improvements Prudential has made, this author, a principal of Altman Weil, Inc. and consultant to Prudential's law department on its outside counsel preferred provider program, interviewed Darren Guy, Vice President, Strategic Operations and Finance, in the Law, Compliance and Business Ethics Department at Prudential Financial.

DiLucchio: What led to the creation of the Prudential dashboard?

Guy: The idea for creating an executive dashboard to track department metrics (both internal and external) really began with a convergence project initiated in the law department in late 2006 to review our overall outside counsel strategy. Key senior law department team members formed a project team to establish an outside counsel preferred provider program. The implementation of this program highlighted the need to closely monitor our progress with our outside counsel relationships by tracking, in real time, a variety of meaningful outside counsel metrics. We knew other law departments had a history of measuring all kinds of data, and we saw the preferred provider program as an excellent platform to institute similar metrics reporting here at Prudential. Around the same time, we procured an e-billing system in order to take our outside counsel bill-paying process from a manual, paper-intensive process, to an electronic process. The confluence of these department events crystallized for us a feeling that we had data everywhere from disparate sources (e.g., matter management system, e-billing system, general ledger), but we had no real way to bring the data together quickly for senior management review without some form of time consuming *ad hoc* reporting. Hence, the idea for the dashboard was born.

DiLucchio: The preferred provider program served as the catalyst for the technological improvements; what was the overall goal for the preferred provider program?

Guy: There were multiple objectives for our Preferred Provider project, including:

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Daniel J. DiLucchio

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- enhancing our selection and management of outside counsel;
- harvesting additional value we might gain through forging these strategic relationships;
- enhancing the delivery and quality of legal services and mitigating any disruption to our business partners.

Establishing metrics through the design and implementation of the executive dashboard was a way for us to measure success. This was just one component of our overall strategy, however. This program was not just about cost savings — although that was an important component. We also used this initiative to seek opportunities for pro-active lawyering aimed at early warning identification across business units, broader representation by women and minority-owned firms on our matters, and a reduction of the administrative burden on our in-house attorneys so that they could be deployed to perform more value-added services.

DiLucchio: How did the implementation of the convergence program help you get started?

Guy: We were able to establish approximately 70 different legal work packages that we used for the initial RFP process in the convergence program. From that we were able to initiate a process to track our work in these areas. Tagging our work going back two years in our matter management system was time consuming, but nonetheless, helped us establish a baseline of work for future comparison purposes.

Since knowledge of our historical, discounted fee arrangements was not well documented and largely based on one-off conversations by

attorneys, we needed a way to begin to establish a baseline for measuring cost savings from the program year over year. Of course, establishing true savings over a prior year is still a challenge, as legal environments change, regulatory environments evolve, and our matter portfolio is never the same from one year to the next.

DiLucchio: What does the dashboard allow you to do — how is it used?

Guy: A law department metrics dashboard is similar to a dashboard of a car — visually, there is a screen that needs to have a clear and easy-to-read design, and speed of comprehension is critically important. Good dashboards take your eyes straight to potential data anomalies using indicators such as green/yellow/red stoplight colors, or up and down arrows. For executives, dashboards can act as a single place where they can quickly monitor the status and trends of all key quantitative aspects of their business. “Drill downs” and sorting capabilities are vital for information requiring more detail to make an effective decision.

DiLucchio: That is interesting from a conceptual basis, but I think people will want to know what exactly you track.

Guy: We track a variety of internal and outside counsel metrics in the dashboard. Among our most popular outside counsel metrics, we have a top-20 matter analysis screen where we can toggle between significant and non-significant litigation. We have screens that analyze rates and staffing by each level at a law firm, overall hourly rates, total expense by firm over a three-year period, analysis by approximately 70 distinct areas of legal work, allocation of work to preferred firms, and outside counsel staffing on Prudential matters by

minority and female attorneys. All of these categories have drill-through capability where our leadership can dig into as much detail as they want, as well as the ability to sort by any column or row of data.

DiLucchio: One of the things that often surprises me is the fact that most law departments do not formally rate their outside counsel. What are you doing in this regard?

Guy: We do rate our outside counsel. We show our internal rating of our outside counsel firms via a new report card process, which helps us understand feedback from our attorneys on the firms they use (using both verbiage and scoring) without relying on “hearsay.” We intend to share this data with our preferred providers in our relationship manager meetings — and we encourage feedback as a two-way street. We also track discounts on our fee arrangements, internal timekeeping, as well as the time it takes to turn around bills in our e-billing system.

DiLucchio: What are the sources of the data you use — how is information populated?

Guy: The data comes from a variety of sources throughout the company — our e-billing system data warehouse, our home-grown matter management system, the general ledger, and hardcopy information such as accruals by matter, currently tracked via Microsoft Excel spreadsheets. We are partnering with our e-billing vendor to create an accruals module, which we hope will get us off our dependency on Excel spreadsheets to monitor accruals, and will take us to more of a true, real-time view of our data. In 2009, we will also be partnering with the vendor to create an alternative fee arrangement module,

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which will help automate the enforcement of fee arrangements rather than relying on manual intervention in the e-billing application. It is our hope that these initiatives will help evolve the overall e-billing experience from a straight bill-paying application to more of a strategic tool.

DiLucchio: Who has access to the dashboard now? What are your plans going forward?

Guy: Due to the confidentiality of the matter information in the dashboard, we have limited access to the dashboard to a handful of senior law department associates. We are now in the process of figuring out the best way to create a mini-dashboard concept, where we can take pieces of the dashboard and distribute certain critical data to more associates on a need to know basis; this should help maximize the benefit of the tool.

DiLucchio: From your perspective, what are some of the most impressive things that have resulted from implementation of the dashboard?

Guy: I would say the most impressive results are:

1. **Enhanced speed to market** — senior management in the law department at Prudential can have just about any *ad hoc* question with respect to outside counsel answered in about five minutes. That alone leads to more real-time decision-making, which we feel helps our overall speed to market.
2. **Metrics consensus** — For the first time, we have general consensus as to what we are measuring — which again cuts down on multiple, *ad hoc* requests that can take days or even weeks to produce under normal circumstances.

3. **Elimination of data confusion** — We have cut down on the ability to generate multiple versions of the truth, which until now, in my opinion, was an unfortunate byproduct of technology advancements in the financial analysis/expense management arena. Twenty years ago, executives sat around with one piece of paper with one number on it, and decisions were made from a number that everyone agreed on, even if it was written on a napkin and they used a calculator. Today, technology has created the ability to e-mail Excel files and Word documents anywhere in the world, which can actually lead to decision-making inefficiencies if you begin with multiple versions of the truth. I think the dashboard helps us get away from those inefficiencies.

4. **Enhanced credibility with senior business leaders with respect to expense management** — The dashboard has provided real-time data to support proactive communications with senior business clients regarding expense transparency.

I would say that there is one other point that I personally found intriguing. As I analyzed the raw cost data in the dashboard, I found that one must be careful in making the leap that cheaper equates to better. As a non-attorney with business training working in a corporate law department, I came with a decided bias towards cheaper law firms — based on hourly rates. Through this process, however, I have learned over time that a firm with higher hourly rates may end up saving you significantly down the road based on efficiency and outcome. As with many industries, services, and products, you tend to get what you pay for. So, the real thing that you're looking for is value for the service — or cost-effectiveness rather than straight cost savings.

DiLucchio: What should law firms understand about law department dashboards — what are the lessons they need to learn?

Guy: Ultimately, I think that law firms would be wise to embrace a common set of metrics with their clients to help improve transparency over their charges, whether in the form of a dashboard, an e-billing system, or another method. I know it's cliché to say that the days of "for services rendered" bills are over, but it is the truth — except in the most extreme of sensitive, bet the company matters. When we were going through our RFP process for the preferred provider program, I was surprised at how inconsistent firm metrics were across the board — we would find a statistical ranking in one publication on an outside counsel firm and we would place that information in our internal rankings scorecard. Then, the same firm would come in with wildly different statistics from another publication, and we found the information challenging to reconcile. As a result, our internal rankings of the firms became largely impressionistic — important, but not everything on which you would want to base an important relationship.

With the economy as it stands today, and with the evolution away from the hourly rates and towards alternative fee arrangements, firms and their clients need to agree jointly on statistical measurements in order to maximize trust and minimize risk between parties. The only way I can see how alternative fee arrangements (not just hourly rate discounts) will really last — is when both sides, firm and client, can feel good about a deal.

DiLucchio: What is next on your agenda for the Prudential dashboard?

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Guy: In 2009, we will be taking a closer look at operational department metrics in the dashboard, rather than just pure financial, performance-based metrics. For example, employee opinion survey results, or a business client feedback mechanism will be in the dashboard. The dashboard has been very well received so far, and we want to push the utility of the tool as far as we can to help our management make more real-time informed decisions. ♦

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Daniel J. DiLucchio is a principal of Altman Weil, Inc., working out of the firm's offices in Newtown Square, Pennsylvania. He can be reached at (610) 886-2000 or djdilucchio@altmanweil.com.

Darren Guy is Vice President, Strategic Operations & Finance, in the Law, Compliance and Business Ethics Department at Prudential Financial. His responsibilities include outside counsel financial management, department administration, operations, and strategic project management support (including law and compliance technology solutions). He can be reached at (973) 367-7661 or darren.guy@prudential.com.

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Altman Weil, Inc.
Two Campus Boulevard
Suite 200
Newtown Square, PA 19073
Telephone (610) 886-2000
FAX (610) 359-0467

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