

A Short History of Legal Pricing and Legal Procurement



Much has been written about the rise of pricing roles in law firms over the last few years. We are also now beginning to see increased attention being given to the other side of the proverbial coin, that of legal procurement within law departments. This chapter provides a very short overview on how each of these roles have come to have such widespread and increased attention. Stuart J.T. Dobbs, CPP is Director, Global Pricing and Legal Project Management at Baker & McKenzie Global Services LLC. He can be reached at Stuart.Dodds@bakermckenzie.com. This article is the first chapter in a recently published eBook entitled *Pricing on the Frontline*. Excerpted from the book *Pricing on the Front Line* (ABA Publishing, 2017), used with permission by the American Bar Association.

Chapter 1

If you are reading this book you are likely to be (a) already involved in pricing legal services, (b) developing an interest in pricing legal services, or (c), writing an article or book about pricing, or procurement of, legal services.

The last point may seem strange to include but there has been a huge volume of articles published about the rise of pricing, the demise of the billable hour, and the importance of pricing and procurement professionals within the legal sector over the last few years. Therefore, no book on this topic would be complete without first including a short overview of how we got here. As one of the longer serving pricing directors in a law firm (and as someone who has been in both roles), it is perhaps fitting that I address this topic.

Many of the articles identified in this chapter's footnotes will provide you with much greater context (and I recommend that you read at least a few of these), but I would like to highlight a number of the key developments below.

One of the very first, if not the first, articles to directly discuss the rise of the pricing director in law firms was written by Jim Hassett and Jonathan Groner of LegalBizDev in February 2012⁽¹⁾. At the start of this article, the authors highlighted a number of statistics from the previous December issue of *The American Lawyer*, namely that 81% of law firm leaders said more clients were requesting discounts and 55% of those were requesting deeper discounts.

The article also quoted a separate survey from Altman Weil, where 90% of managing partners and chairs concurred that increasing price competition was a permanent change in the legal marketplace, not temporary as many had hoped. This, coupled with the shift of power from a sellers' market to a buyers' market (i.e. one more favorable to a law firm client than a law firm) played a key role in encouraging a number of law firms to address this challenge more proactively and visibly.

One key consequence of this was the creation of roles focused specifically on pricing, rather than being part of an existing function (like Business Development, although as we will see later in this book this can vary by geography and firm), with these newly defined roles typically being at a director or equivalent senior management level within the law firm concerned.

In that same year, Susan Hackett in a short series of articles for *Corporate Counsel*⁽²⁾, described the pricing director role as the "hot new hire of 2012." By June 2013 the first proper survey of (and for) pricing professionals in the legal sector was released by ALM Legal Intelligence, entitled "Here For Good - Pricing Professionals in Law Firms and Their Impact on Clients and Firm Business."

On face value, in little under 18 months the role of the pricing officer (however defined) had gone from a position which only a few firms had to one that was deemed to be integral to the fabric within a successful law firm. Although like any survey, respondents were self-selecting (there were 63 firms which participated), the main findings of the survey included the fact that 67% of respondents had pricing officers, another 13% had a committee to review pricing, and for those who did not yet have a pricing officer, 43% were considering hiring someone within the next year, and 14% in the next few years⁽³⁾.

Fast forward to July 2014, and the figures were even more startling - 76% of big firms now employed some form of pricing role, and of these, 44% were created in the last two-year period⁽⁴⁾. A similar theme was highlighted in an anecdote that it took seven years for the first 30 pricing directors (as defined by title) to be in place but only seven months for the next ten⁽⁵⁾.

On the law department side, we have also seen the parallel rise of legal procurement professionals, albeit at a much lesser rate as (initially) large pharmaceutical companies, financial institutions and selected others sought to manage their legal spend more effectively (for example DuPont focused on this areas as early as 1992, and a number of others started making concerted efforts

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in the early 2000's).

This raises the key question on what were the main drivers behind each of these developments?

The Rise of the Pricing Officer within Law Firms

The Global Financial Crisis (GFC) in 2008 may have dramatically accelerated the pace of change (or indeed been the catalyst), but change was going to come. Given that in the decade prior to 2008 law firms in the United States increased their rates between 6 - 8% per annum on average (often double the prevailing rate of inflation), something was going to give - and it did.

The legal market from that point on has remained relatively flat, with capacity creeping ahead of demand and overall fee earner productivity declining. Given the need for most firms to chase a relatively static level of demand and therefore differentiate themselves in terms of matter efficiency and client satisfaction it was unlikely that companies would want to revert to the more casual and costly pricing of earlier days ⁽⁶⁾.

Whereas previously it was perhaps sufficient in law firms to have loose guidelines on how matters could be priced (or even have a central group review and approve, as the focus on pricing intensified) it was clear that a more dedicated group of resources was required to help manage both the increasing volume and complexity of these demands.

There was therefore a greater need for law firms to be pragmatic and 'nimble' when responding to their clients' collective requests, and this frequently challenged some long held traditions and models around firm profitability, the traditional partnership model, 'appropriate' quality of work product, hiring and retention, to name a few.

As law firms' collective client base seemed increasingly focused on securing bigger and bigger discounts and greater certainty of outcome, it often felt a daunting prospect to be a practicing lawyer, and even more so, to be a profitable practicing lawyer. Add into this mix clients' frequent requests to implement agreements which lasted multiple years and for agreements seeking to transfer more commercial risk to their selected law firm providers - the sense of being overwhelmed was felt by many lawyers.

This contributed to the rise in importance of the legal pricing (and also legal project management) discipline generally, and 'alternative fee arrangements' specifically, as now essential skills within the arsenal of today's lawyer or as a minimum today's law firm. The logic of having a central source for capturing pricing and fee information and standardizing non hourly pricing approaches so these could be re-used and improved continued to grow, with the realization that very little was likely to actually change unless there was a resource in place to drive it. Indeed, as of today (June

2016) the legal pricing profession has grown rapidly in terms of visibility and people are recognizing it not only as a very clear career path within a firm's business support functions but that it is also a skill set that not every partner or associate has.

But, as the most recent ALM pricing survey points out, having a dedicated pricing officer can often also correlate with the size of law firm itself. For example, 82% of those with more than 1000 attorneys had a dedicated pricing resource, compared to 77% of firms with 501 to 999 attorneys, and only 39% of firms with 500 attorneys or fewer ⁽⁷⁾.

Of this group, very few have any form of direct engagement with the client (an opportunity missed perhaps?). As the ALM survey observes "having pricing officers interact with clients is still relatively new territory for law firms" ⁽⁸⁾. This may also be symptomatic of something else (as Aric Press commented in a 2014 article), namely the confidence that firms have in their pricing executives. (emphasis added) ⁽⁹⁾.

Unsurprisingly given the focus on law firm profitability that many of these law firm pricing roles directly support, most report via the finance reporting line (about 75%) with another 13% in business development (which is where I have reported through in both of my law firm pricing roles to date).

Although the legal profession typically views the expansion of law firm pricing related roles through a 'United States lens' (and to a lesser extent 'mature' legal markets such as the United Kingdom and Australia) we are also now beginning to see increased attention on this in a wider range of jurisdictions and regions as a number of recent

articles have highlighted ⁽¹⁰⁾ perhaps emphasizing that this is no longer a relatively localized phenomenon.

However, one theme that is very likely to be at the forefront in the coming months and years will be the scarcity of suitably qualified resources for both law firms and law departments alike. This impact to law firms has been very neatly described as the "unicorn problem" in the recent ALM survey ⁽¹¹⁾, as a combination of people, financial and process skills are sought. To quote directly from the survey itself, "firms effectively ask someone to be a salesperson, a financial analyst and an operations manager."

'Barbarians at the Gate'? - The Emergence of Legal Procurement

Looking at this from a law department perspective, and the same is probably also true with very few skilled resources in place for two or more years. Law firm clients are therefore casting their net wider than their own organization, with many now beginning to look at recruiting those currently in law firm roles, something that is already underway ⁽¹²⁾, and most likely to continue and ac-

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celerate over the next few years.

How did we arrive at this point ? ⁽¹³⁾

In its most rudimentary terms, the recognition that the days prior to the Global Financial Crisis of demand (lots) and pricing pressure (little), have gone for good. But there was an interesting by-product.

With the greater attention being given to an organization's balance sheet and external expenditure, the 'need' for organizations to get a better grip on external costs was paramount, with most large companies spending anywhere between 40 - 60% of their revenue on external goods or services.

External legal counsel can often be one of the top three of four cost items for an organization. Whilst this varies company to company, it is often near the top, and with that brings an appropriate focus. For many companies seeking to navigate through the choppy waters of late 2008 and 2009, a key area to potentially reduce external expenditure was therefore legal services. Enter (legal) 'procurement' stage right.

Although initially there was certainly a mismatch of skills and expectations in a number of companies as to what procurement would be able to deliver (and also a certain degree of reticence from those in 'legal' to allow procurement to enter their world), this has now become less prevalent.

Yes, it was true that initially many procurement resources were more familiar with buying office supplies, or other 'easily definable' services. Yes, it was true that this meant there was a keen focus on cost (often to the detriment of everything else). And yes, it was true that there were bumps along the road with legal teams often of the view that procurement did not understand the complexity of the work they did, nor the importance of 'relationships' when using external legal services, and would proclaim these facts loudly from the roof tops (the same arguments were also voiced by others who traditionally used other professional services, such as accountancy or management consultancy).

From procurement's perspective in the early days, there was also frustration. There was limited objective information available to help support any buying decision, the 'services' required were (and often still are in some areas) relatively hard to define, and the individuals involved in making these decisions were frequently very senior within their respective organizations, making procurement's job even harder to influence and change behaviour.

The skills required in this type of situation were very clearly different from buying pens and pencils. As David Cheyne, at the time, the Senior Partner of my previous law firm, Linklaters, observed "(W)hat we're not sure about is whether the average purchasing manager understands the different services firms provide and what differentiates one law firm from another. Some have come from buying bulk services or products where you can specify your requirements precisely and negotiate a discount without compromising quality. The concept of value for money in a professional services context is more complex: you can end up paying over the odds for routine work and getting poorer quality advice on important transactions" ⁽¹⁴⁾.



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To add some fuel to the flame, Jack Welch once notoriously said that "engineers who can't add, operators who can't run their equipment, and accountants who can't do numbers become purchasing professionals." What General Electric's legendary boss was reflecting was (is?) however perhaps a common perception of the function, regardless of how it is stated: namely, that the purchasing/procurement function was little more than a necessary evil in business.

Procurement's reputation was also not helped by some early high profile, unsuccessful interventions. I remember (whilst still a procurement consultant working in the UK) watching with lurid fascination as one of the major UK banks sought to reverse auction legal services in 2002, this being conducted for the best of intentions. For a number of reasons this effort was doomed to failure. It was completely out of left field for many law firms (many of which refused to participate), it was seen as a blunt instrument to commoditize a high value, relationship-driven service, and also there was a lack of defined focus on how both routine and high end work were then going to be delivered. For many years thereafter (at least in the UK) there was a wariness subsequently attached to anyone from the procurement function becoming engaged in sourcing legal services.

Thankfully, today these once valid concerns are less to the fore, especially when it comes to legal. Procurement has 'grown up' when it comes to helping companies procure their legal services, and now have a valid seat (for the most part) at the table. Indeed, those in legal procurement roles are now increasingly coming well-equipped with either legal qualifications or business ones (such as MBAs). The time of the 'widget buyer' trying their hand at the legal category is now fast disappearing.

There is also a more fundamental shift in what legal procurement practitioners are getting involved with in terms of legal areas of spend, and commensurately, their influence over legal budgets.

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Silvia Hodges Silverstein, one of the very first to identify these practitioners as being a key piece in the legal services puzzle (and the first to conduct extensive studies of legal procurement in 2011, 2012, and 2014 along with a number of related books), commented that legal procurement is now moving into “complex, high-value, and high stakes legal services” in addition to those which are deemed as being more day to day ⁽¹⁵⁾.

A key finding when looking across all three surveys conducted to date is the increasing influence procurement is now having on the category of legal spend. One telling statistic is that between 2012 and 2014, the estimated influence of those in these roles increased, with approximately half the survey respondents saying they now influence 28% of the legal budget (note, spend may also occur elsewhere in an organization), up 8% from 2012. Similarly, more than 25% of respondents were said to influence 90% or more of the category budget, up from less than 10% two years previously ⁽¹⁶⁾. The overall perception of procurement has also continued a positive upward trajectory as evidenced in a recent Altman Weil ‘Chief Legal Officer Survey’ (2014) when determining procurement’s level of engagement and authority. I am sure each of the trends outlined above will continue to move upwards.

Here to stay

Jordan Furlong observed recently that if “you go back about five years you would be hard-pressed to find a pricing officer in the US law firm . . . it is not just the use of pricing officers that is new, so is the concept of pricing” ⁽¹⁷⁾. Parallels now exist from a law department perspective with legal procurement.

The benefits of having a pricing function in place within law firms are also now beginning to bear fruit, with “75% of firms that changed their strategic approach to pricing (reporting increases) in profits per equity partner compared to 66% of firms that had not made these changes” ⁽¹⁸⁾, over and above any positive client relationship impacts which may be felt. Similarly, those law departments which have legal procurement expertise on hand are also reporting stronger financial and relationship benefits.

It has taken a while, but legal pricing and legal procurement are very much now here to stay, and it is clear that each respective party should now get to know one another and seek to develop mutually favorable solutions and approaches not only with regards to fees but also in terms of matter delivery. Neither is going away.

Don't forget (a summary of the key points):

- The growth in legal pricing resources has been significant over the last few years, leading to a potential talent shortage, although placement may also be driven by law firm size.
- Procurement has shaken off its less favorable reputation of

the past, witnessed in the increased rise of legal procurement and their respective coverage of legal budget, practice area, matter scope and influence.

- It may feel a bit like an awkward first date (at least initially), but legal pricing and legal procurement need to get to know each other to help continue to make positive strides in the ‘business of law’.

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