

COST VS. VALUE: BEYOND BUDGETS, TOWARD TRUST

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COST v. VALUE:

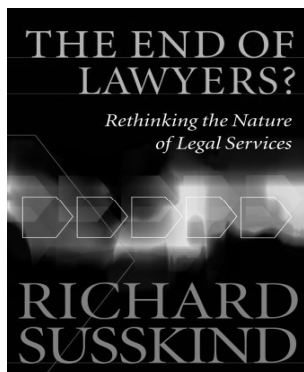
*Beyond Budgets,
Towards Trust*

Jack Sharman

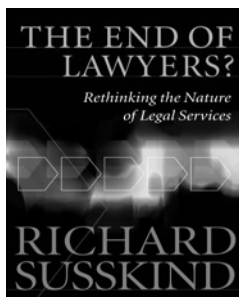
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TRUST



21st CENTURY LAWYERING



- Commodity
- Technology
- Sourcing
- Unbundling
- Formal hybrids
- Legal-knowledge engineer

PRICE and VALUE



What An AFA Is NOT



- Discounts and blended rates
- Prepaid blocks of time
- "Collars"
- Budgeted case-segments expressed as hours

What An AFA Is



- Fixed fee
- Flat fee
- Hybrid
- Shared-risk

Why Everyone Lies When They Say They Hate Hours



A BUDGET IS NOT A PROXY FOR VALUE



WHEN TO DEMAND A BUDGET



- Uncertainty
- Exposure
- Standard deviation greater than 2 from relevant case population

IF YOU DEMAND A BUDGET



- A-Team/B-Team
- Budgeting firm
- Bidding firm

AFAs REQUIRE DATA



AFAs REQUIRE DATA



- Historical data
- What is a steady-state litigation budget outcome over retrospective period?
- Character data: what types of cases spread across the budget?

AFAs DEMAND THOUGHT



AFAs DEMAND THOUGHT



- What do I want?
- What is my trust level with this outside lawyer?
- Does the internal business client endorse AFAs?
- How do I explain the cost/benefit of hourly v. AFA?
- How much risk can I tolerate?
- Do I have time for this?
- Can I "lose" on an AFA?
- What credit and recognition do I and the law department receive for an AFA?

AFA MISTAKES BY CLIENTS



- Lock-up
- Resources
- Unwilling or unable to share data
- Collect data . . . But don't analyze it
- Worry about "losing"

Am I Being Held Up?



~~Am I Being Held Up?~~



What Is Your Value To My Enterprise?



AFA MISTAKES BY OUTSIDE COUNSEL



- Little client research
- Revenue over value
- Insufficient cost data
- No skin in the game
- Reward books of business rather than value in the supply chain

Modules



THINK BY SERVICE MODULE



- Gross level: business line, product and region
- Mid-level: lawsuit life-phase or task series
- Granular-level: pleading-groups and rifle-shot tasks

AFA Checklist



- Data available
- Company and law department goals
- Budget goals
- Internal business environment
- Modules
- Cost/benefit of hourly v. AFA for the module
- Risk tolerance
- Personal tolerance
- Trust



JACK SHARMAN

PARTNER

PRACTICE AREAS

[Intellectual Property](#)

[Environmental and Toxic Torts](#)

[White Collar Criminal Defense and Corporate Investigations](#)

[Electronic Discovery and Digital Information](#)

[Corporate Plaintiff's Litigation](#)

[Securities and Shareholder Disputes](#)

Jack is a partner whose practice focuses on toxic torts, white-collar criminal matters and electronic discovery issues. After practicing in Washington, D.C., he joined the firm in 1995.

In the environmental and toxic-tort area, Jack has represented a variety of industries and businesses for more than fifteen years in state and federal courts in Mississippi, Alabama, Florida, Pennsylvania, New York and the District of Columbia. He has extensive experience defending personal injury and property damage claims involving facilities in the chemical, petrochemical, nuclear, wood-treatment and pulp-and-paper industries. .

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EDUCATION

J.D., Harvard Law School, 1989.

M.F.A., Washington University, 1986.

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ADMITTED

Mississippi, 2002

Alabama, 1996

District of Columbia, 1991

Georgia, 1989

On the white-collar side, Jack has experience in corporate internal investigations, grand jury investigations, defense of criminal environmental offenses, due diligence issues under the Foreign Corrupt Practices Act, Congressional investigations, election contests, defense of health-care entities in civil and criminal matters, including Medicare fraud and *qui tam* lawsuits under the False Claims Act, and investigations by military officials.

As a lawyer in the firm's Electronic Discovery and Digital Information practice, Jack has represented clients in a host of electronic-information issues pre-trial, at trial and on appeal. He is a frequent speaker on electronic discovery.

