

# BARRISTER

January-March 1988

## IN-HOUSE VS. OUT-HOUSE

An Outside View of Client-Lawyer Relations From the Inside

Patrick A. Shea\*



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In 1985, I left Van Cott, Bagley, Cornwall & McCarthy to become General Counsel for KUTV and its affiliated communications companies. The premise of the move was to switch from the "hawkeye" reactive private legal practice to, what I considered to be, a General Marshall, reflective in-house legal practice. After seven years of private practice and two years of practice in Washington, D.C., I was frustrated that I was not involved in the client's planning and implementation of business decisions. Rather, I was called in as the Monday morning quarterback, well after the business decisions were made, when a problem arose that the client believed could only be solved by a lawyer.

I miss certain aspects of my private law practice at Van Cott, Bagley, Cornwall & McCarthy. For instance, the camaraderie of the law firm was a constant source of humor and comfort. When a legal problem seemed insurmountable, I could always walk next door, discuss the problem with another lawyer and reach a satisfactory solution, a solution which would have taken

much longer to arrive at independently, if at all. In the law firm, there existed a common respect for and understanding of the law and the legal processes. Non-lawyers often fail to grasp (or do not seem to care about) the intricacies of a summary judgment or the process of a deposition.

However, I do not miss certain aspects of my private law practice. I do not miss law firm politics, the China Wall pecking order, client-generated crises, billings, billable hours, and, what I describe as, "other world" residue. This "other world" residue includes distinguished lawyers who specialize in retaining significant clients, yet operate in the halcyon days of legal practice when clients did not question bills and always had time for another story.

Now, let me try to describe some of the major characteristics of in-house practice. In a way, an in-house lawyer may be described as an outsider within a company. There are, to my surprise, as many, if not more, intense jurisdictional jealousies as exist in any law firm. For the in-house lawyer, the robe on your back (or the

degree on your wall) often defines the room you, the lawyer, may be permitted to enter. And, just as the private legal client often did not tell the lawyer the whole story, fellow employees, frequently, selectively, omit or edit important bits of information. In either case, the lawyer's ability to provide effective legal advice is hindered as a result.

At KUTV, my time is divided between handling a variety of business transactions and dealing with problems relating to threatened or actual litigation. My experiences at Van Cott, Bagley, Cornwall & McCarthy were similar. However, now having been the lawyer and, in many instances and at least in part, the client, I offer the following advice to lawyers in private practice:

1. CLIENTS ARE NOT IMPRESSED BY INTELLECTUAL EXERCISE WITHOUT PURPOSE. In law school, a friend and I would diagram the "mental gymnastics" (our term) of some of our classmates. We believed the students

**INSIDE: TWO SECTION MEMBERS CHOSEN AS YOUNG MILITARY LAWYERS OF THE YEAR**

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## CALENDAR OF EVENTS

1988

APRIL '88	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)
6	
4-8	YLS Election Nominations
8-10	Rocky Mountain/Southwest Regional Affiliate Outreach Project Meeting (Las Vegas, Nev.)
11-12	YLS Election Platform Statements Filed, and Statements and Ballots Mailed
12-22	YLS Election Balloting
25	YLS Election Results Announced
30	Law Day Run This Is The Place Monument 9:00 a.m. Starting Time
	Meet-a-Lawyer Fair Ogden Mall
MAY '88	
2	Law Day Luncheon Noon, Ft. Douglas
2-3	Meet-a-Lawyer Fair Crossroads Mall, Salt Lake City
4	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)
JUNE '88	
1	YLS Executive Council Meeting (Noon, 10 Exchange Place, #1100)

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performing were attempting to impress the professors with their (in many cases, self-perceived) mental agility. When such intellectual exercises are performed for the client, the client often assumes they will only result in an unnecessary expense. Consequently, the lawyer should try to answer the client's questions directly, without trying to unnecessarily impress them or satisfy the "law professor." The lawyer certainly should make follow-up suggestions to the client, but need not delve into the aspects of the law that might be enjoyed or appreciated by another lawyer, but that are beyond the needs of the client.

In giving advice to a client, the lawyer should make sure that, if intuitive "red flags" have gone up over a client problem, the lawyer makes follow-up suggestions and phone calls. What was good advice for situation A may have been misapplied by the client to situation B without the lawyer's knowledge. As a client, I appreciate phone calls, inquiring whether and how a particular problem was handled. Moreover, such calls allow the client (with the lawyer's assistance) to explore and consider ways to ensure the problem does not resurface in the existing or another business context.

2. IS THE LEGAL ADVICE BEING USED AS INTENDED? As indicated above, the lawyer should attempt to find out if the legal bullet produced for the client is being used for the purpose originally intended. All too often a client, because of the cost, will take the "form" created by the lawyer and, without further consultation, modify the form to fit what they perceive to be a similar situation. As a lawyer, you can appreciate how this seemingly innocuous application of the initial solution can cause enormous legal problems. At KUTV, I often refer to the George Hatch (the Chairman and owner of KUTV) School of Law. George Hatch is a genius in the communications business; he somehow

knows what the communications marketplace will need five or ten years ahead of his competitors. However, George Hatch also is famous for saying, "Oh, just use the old forms." Ninety percent of the time, the old forms probably would work. However, the 10% of the time that the "old forms" do not work can easily cost the client 100% more in monthly billings. Consequently, the lawyer should tactfully ensure that the client does not inadvisedly "use the old forms."

3. BILLING IS A SOURCE OF ENORMOUS MISUNDERSTANDING. The relationship between KUTV and Van Cott, Bagley, Cornwall & McCarthy is clear regarding billings for legal services. KUTV always receives, for each legal matter, monthly reports, which show the number of hours billed to date, the present monthly billable hours, and the projected billable hours to completion. Obviously, the projections to completion often are a best "guesstimate." However, the reports provide a useful chart, which allows me to more effectively allocate my resources than would otherwise be the case, and to ascertain whether any particular segment of our communications business is requiring a disproportionate amount of legal resources.

Under any billing procedure, where significant and, perhaps, unexpected increases in legal fees arise, an advance notice to the client may be warranted and is always wise. Tom Berggren, my primary contact at Van Cott, Bagley, Cornwall & McCarthy, contacts me in advance, if there are any significant increases or deviations that will be shown in the monthly report. This advance conversation allows me to communicate with the officers responsible for the financial well-being of KUTV and make sure that the business activity generating the billing has been (and that the legal bill will be) approved, and to determine whether the business activity should continue.

One more suggestion, which many attorneys seem hesitant to implement, is to follow-up after legal bills have been sent to the client. Clients often consider an outstanding bill as an indirect way of financing the client's business. Generally, clients are aware that lawyers do not like

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suing their clients and, as a result, use lawyers as an indirect financier of the client's business. However, with a considered approach, the lawyer can nudge the client into paying the bill for legal services timely. I believe this improves the attorney-client relationship and ensures that accrued expenses do not create unnecessary tension between the client and the lawyer.

**4. GET USED TO MAKING ESTIMATES.** Some legal matters, particularly those involving litigation, do not lend themselves to accurate estimates of legal fees. Nonetheless, an estimate is good practice, for the client and the lawyer. The practice forces the lawyer to consider the immediate and long-range legal problems, which should ensure that most important legal aspects of the matter will be anticipated and, at least to the same extent, unnecessary problems, time and research avoided.

**5. CLIENTS LIKE THEIR LAWYERS TO TAKE AN INTEREST IN THE CLIENT'S BUSINESS.** If a lawyer reads legal or other publications that may interest the client, the lawyer should share them with the client. If there is a seminar, lecture or other activity that may interest the client, the lawyer should inform, and, perhaps, take the client to the activity. Shared experiences often provide a life raft for maintaining the client-lawyer relationship during periods of tension or difficulty.

**6. LET THE CLIENT MAKE THE FINAL DECISION.** I have been involved, both as outside counsel and inside counsel, on matters where there has been a "take-charge attorney." Admittedly, some clients prefer a lawyer at the helm, making the critical decisions. However, nothing damages attorney-client relationships more

than the client's, often unarticulated, resentment of the lawyer who does not outline the options available to the client in making a particular decision. Consequently, before discussing a matter with the client, personally or otherwise, the lawyer should attempt to delineate the options available in a particular situation, as described by the client. Then, the lawyer should make recommendations describing the upside and downside of each option. And, in every case, the outside lawyer should make the client understand that the client will be making the final decision.

Remember, as outside counsel, a lawyer is not involved in the client's entire business day-in and day-out and, unfortunately, clients often perceive lawyers as attempting to control (or manipulate) the law to suit the lawyer's, rather than the client's needs. Accordingly, the lawyer must attempt to understand the client and the client's needs. The lawyer must make every effort to overcome any misperception by the client about who is in charge. Such misperceptions can be harmful to the client and the client's business and, perhaps by loss of the client, costly for the lawyer.

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## PRESIDENT'S REPORT



Stuart W. Hinckley\*

The Section is sponsoring some activities in the next few months that will be of interest to many young lawyers. The Membership Support Committee of the Section has scheduled brown bag luncheons that will continue to feature interesting speakers discussing topics pertinent to young lawyers. Highlights are as follows:

The Section's Law Day Committee will be cosponsoring events with the Senior Bar that will give interested young lawyers an opportunity to share their skills with the public. Volunteers are needed to meet the public at the Law Day Information Fair that will be held May 1-2, 1988, at the Crossroads Mall. Additional volunteers are needed during Law Week to participate in a planned televised panel discussion and radio talk shows.

In addition, the Section's Needs of the Elderly Committee will be sponsoring lectures at senior citizens centers, located outside of Salt Lake County, during Law Week. These lectures will be centered around the Section's Senior Citizens Handbook, which succinctly outlines legal

matters that are especially interesting to senior citizens.

These are a few of the programs that are being sponsored by the Section. Your participation is essential to the success of these programs. I encourage you to actively join in Section activities by calling the chairpersons listed in this publication. You do not need to have any particular expertise to participate. The committee chairpersons will do their best to match your area of expertise with the committee needs and, in some cases, such as with the senior citizen lectures, the committee will provide you with the information necessary to successfully complete an assignment. None of these assignments will consume an inordinate amount of time. Just inform the chairperson of your availability, and the chairperson will tailor an assignment that will fit your calendar.

*(Editor's Note: For information regarding certain Section Committees, please see the "Worth Noting" section of the Barrister.)*

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