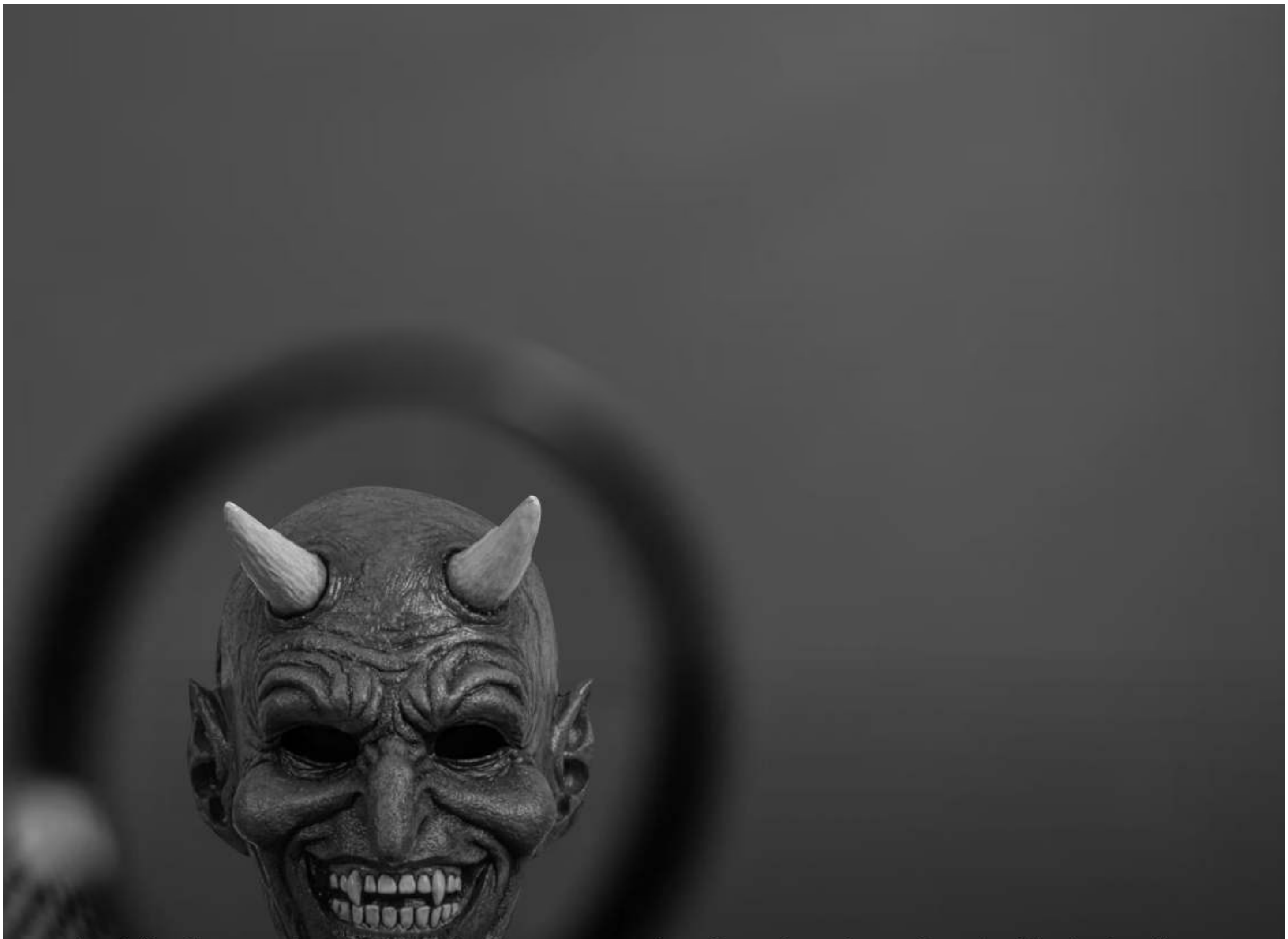
WHY THE DEVIL IS IN THE DETAILS

By Richard G. Stock, M.A., FCG, CMC, Partner with Catalyst Consulting

This is the fiftieth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.

Over the last four years, Legal Business World published two articles that focused on injecting a measure of predictability, not to say control, over the cost of complex legal work: Budgeting Complex Legal Work (Issue 1 2020) and Legal Project Management is Overdue (Issue 6 2022). A summary of my observations at the time provides context for what can be done when sourcing and pricing complex litigation is overflowing with "known unknowns" and "unknown unknowns".

It has been 25 years since detailed matter plans and budgets for complex legal work have been required by some companies. Few firms volunteer them unless they are asked. Clients should encourage their law firms to budget phases, tasks, and planning assumptions for the most likely (e.g. 85 % probability)



and not for the worst-case scenarios.

Matter plans and budgets are not only about the money. Three basic benefits are important to keep in mind. First, they streamline the business aspects of legal work because they focus on time and the value delivered. Law firm planning and pricing teams appreciate this. Second, legal project plans modify the techniques for work already being done by lawyers because of the need for appropriate task delegation. And third, plans and budgets better organize and oversee the work of external counsel.

All of this depends on a degree of project management skill in both the law department and the law firm. At the time, I reported on one survey which found that 60 % of law departments used project budgets often enough, but that only 26 % did so consistently. Yet the same companies also said that they were always on or below budget only 1 % of the time. Firms must get better at estimating phases and tasks, each with an 85 % probability of occurrence – with much less of a buffer than used to be the case. And law departments must become more proficient in reviewing, revising, quantifying, and approving the phases and tasks making up the matter plan and budget.

I do not think that the “start of the art” has changed much in the last five years. At the time, my review of matter budgets with seven law firms found that only two prepared planning assumptions at the task level, but none provided a probability factor for each assumption. Read Stephen Levy's *Legal Project Management*: Control Costs, Meet Schedules, Manage Risks and Manage Security.

Time for a short case study based on real life. The company was interested in renewing a 3-year pricing arrangement for a unique piece of litigation. Relations with the law firm were excellent. I was asked to review the initial matter plan and budget (± 12,000 hours covering 14 phases with more than 40 planning assumptions) covering 3.5 years. The firm was very helpful in detailing its planned leverage of timekeepers for each phase and providing its preferred rate structure.

The client was very knowledgeable about the case, familiar with the members of the legal team, and understood the applicable substantive law and litigation procedures very well. A detailed review of each assumption reduced the planned hours to ±8 500 hours. A few adjustments were also made to the planned distribution of hours (leverage) for each phase covering the 3.5 years. Admittedly, it was easier to introduce such changes on a matter that had been active for five years and had another five to go.

The next step was to secure the firm's comments on the changes to some of the planning assumptions and the related tasks, as well as to the number of hours and their distribution across the legal team. It took a few days, but agreement was reached on all points. Two spreadsheets provide examples of the necessary detail.

Percentage Distribution of Hours by Experience Band

Phases	Sr Partner (25+ YOE)	Partner	Sr Associate (7+ YOE)	Mid Associate (4 to 6 YOE)	Jr Associate (1 to 3 YOE)	Paralegal
Phase 1	10%	35%	29%	8%	10%	8%
Phase 2	5%	12%	33%	0%	25%	25%
Phase 3	10%	16%	36%	0%	15%	23%
Phase 4	20%	40%	20%	20%	0%	0%
Phase 5	4%	48%	48%	0%	0%	0%
Phase 6	13%	13%	55%	20%	0%	0%
Phase 7	14%	30%	20%	20%	10%	6%
Phase 8	0%	40%	50%	10%	0%	0%
Phase 9	15%	35%	23%	10%	13%	5%
Phase 10	23%	33%	34%	0%	0%	10%
Phase 11	18%	18%	33%	10%	3%	18%
Phase 12	5%	20%	25%	37%	11%	2%
Phase 13	10%	20%	20%	20%	10%	20%
Phase 14	15%	23%	25%	9%	18%	10%
	12.8%	24.3%	26.2%	11.7%	13.0%	12.0%

Distribution of Hours by Experience Band

Phases	Sr Partner (25+ YOE)	Partner	Sr Associate (7+ YOE)	Mid Associate (4 to 6 YOE)	Jr Associate (1 to 3 YOE)	Paralegal	Total
Phase 1	56.4	197.4	160.7	45.1	56.4	45.1	56
Phase 2	12.6	30.2	83.2	-	63.0	63.0	25
Phase 3	70.0	112.0	252.0	-	105.0	161.0	70
Phase 4	40.0	80.0	40.0	40.0	-	-	20
Phase 5	5.0	60.9	60.5	-	-	-	12
Phase 6	5.0	5.0	22.0	8.0	-	-	4
Phase 7	105.0	225.0	150.0	150.0	75.0	45.0	75
Phase 8	-	140.0	175.0	35.0	-	-	35
Phase 9	127.5	297.5	195.5	85.0	106.3	38.3	85
Phase 10	13.8	19.8	20.4	-	-	6.0	6
Phase 11	36.0	36.0	66.0	20.0	6.0	36.0	20
Phase 12	14.0	56.0	70.0	103.6	29.4	5.6	27
Phase 13	130.0	260.0	260.0	260.0	130.0	260.0	1,30
Phase 14	412.5	632.5	687.5	247.5	495.0	275.0	2,75
Totals	**1027.8**	**2152.3**	**2242.8**	**994.2**	**1066.1**	**935.0**	**84**

This left pricing. Historically, the firm preferred a schedule of discounted blended rates: one for two levels of partners; several for associates; and one for paralegals. The client opted for a single discounted blended rate to be applied to all timekeepers as the best way to capture the agreed leverage for each phase. In addition, the rate factored in annual increases for the duration of the engagement. And, finally, the firm agreed to absorb office-related disbursements.

There are several elements that made this approach effective, especially at the midpoint of a 10-year legal matter. First, the client and the law firm must trust each other and accept that the plan and budget are a business arrangement and not a question of professional qualifications. Second, the client should be proficient in legal project management and budgeting and understand law firm economics well enough, including the effects of hours, leverage, and rates on total cost. Third, the terms of engagement should include a robust review and adjustment mechanism that systematically re-examines the planning assumptions, hours, leverage, and the blended rate at regular intervals.

The terms of engagement or master agreement should include the planning assumptions and tasks for each phase, as well as the spreadsheets for hours, leverage, and fee calculations. The company also asked for a detailed monthly accounting of the hours for each of the 40 + planning assumptions as a companion piece to monthly invoicing. It is time for law departments and law firms to move to the next level of defining expectations for cost-effective legal services applied to complex work. The additional effort is a win for every stakeholder.

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About the Author

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