

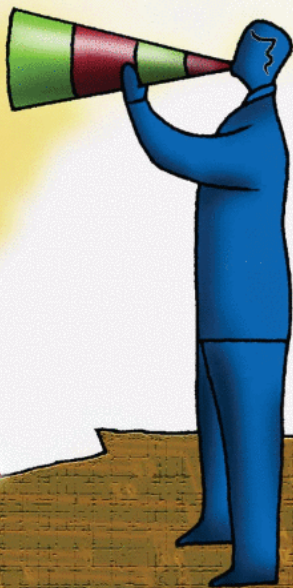
Networked Law Firms:

One Company's SOLUTION

By Michael Zylstra



With more than 560 restaurants and retail food outlets located in 41 states across the United States, Cracker Barrel Old Country Store Inc. (Cracker Barrel) faces a significant challenge: coordinating and managing the legal needs of a national corporation and its widely dispersed operations without wasting valuable time, money, and resources.



For most in-house counsel, establishing and maintaining effective relationships with outside counsel isn't just a good idea—it's an absolute necessity. This is particularly true as a business expands in size, geographic distribution (of its customers and operations), and the scope of products and services it delivers. Consider the following real-world challenge that faced my own company.

Cracker Barrel, like most retail stores and restaurants, is highly concerned about premises-liability issues. From both an ethical and a business perspective, employee and customer safety are paramount. As part of our effort to minimize personal risks and corporate exposure, we recently recognized that we needed more specific information on potential liabilities and regulations with respect to our restaurant parking lots in 18 states.

If I were to assign this research to one of my own staff, this relatively simple but critical project would have eaten up an inordinate number of attorney hours—time that could be better spent handling any number of the issues we deal with every year.

Instead, I made a single call to Michael W. Hawkins, my primary outside counsel from Dinsmore & Shohl, a member firm of the legal network ALFA International. Within a very short period—considerably less time than it would have taken one of my associates—David Paxton, one of the network's business liability attorneys from the Roanoke, VA, member firm of Gentry Locke Rakes & Moore, was able to gather and coordinate parking lot liability information from more than a dozen of their affiliated attorneys across the country, and delivered a concise, 18-state summary of the applicable law.

This situation represents just one of many stories highlighting the ways in which my 14-year association with a legal network has benefited our department. Certainly, a legal network may not be the answer for every company. Likewise, as with any client-vendor relationship, the occasional bump in the relationship sometimes requires ironing out. But for companies such as mine, legal networks offer a compelling option for managing both predictable and unpredictable demands.

Let me offer some background on how the relationship between Cracker Barrel and our outside counsel began. As a newly minted attorney, fresh out of law school, joining Cracker Barrel as its first in-house attorney was an exciting opportunity—and a daunting challenge. When I was hired in 1992, Cracker Barrel already had over 100 restaurants and retail stores in 10 states. It did *not* have an internal legal department.

Thus, my task was two-fold:

- ensure that all of the company's ongoing legal needs were being met, and
- create the support structure and develop the resources required to meet future demands.

A tall order, indeed.

Fate was on my side. Shortly after joining Cracker Barrel, I was invited to attend a legal event in San Francisco, sponsored by ALFA. In fairly short order, it became clear that I had found just what I needed to help me in my task.

One more personal detour: Although I was quite confident in my skills as an attorney and a businessman, I was in no way deluding myself. I had a lot to learn, and needed to learn it on the run. The most effective means of gaining the experience and knowledge I needed was to identify someone who understood my requirements and was willing to provide the essential support.

Hawkins soon became an informal mentor. His guidance, advice, and concern for my professional development—as an attorney, and not just as a client—played an early, key role in helping me become a better lawyer as I gained the skills required to build and manage our legal department at Cracker Barrel.

Meeting Diverse, Dispersed Legal Needs

Even before being introduced to the formalized law firm network concept, it was clear that for a company such as Cracker Barrel, effective outside legal counsel was a necessity. Maintaining a full, in-house staff of attorneys in every state in which we do business, in order to meet all of our existing and potential legal needs, was, and still is, simply impractical.



MICHAEL ZYLSTRA, vice president and general counsel of Cracker Barrel, joined the company directly out of law school as its first in-house attorney in 1992. At the time, Cracker Barrel consisted of more than 100 stores in 10 states. As the company has expanded, he has likewise experienced an exponential growth in his responsibilities. He can be contacted at mzylstra@crackerbarrel.com.

At the same time, our outside counsel needed to be capable of providing a full range of legal services, offer extensive geographic and jurisdictional coverage, and have the flexibility and resources to respond to emerging issues and situations at a moment's notice.

Our situation, then and now, was not particularly unique. In today's global economy, businesses of every size and industry often have manufacturing facilities, retail operations, corporate offices, and customer/vendor relationships that extend well beyond their own backyards and corporate headquarters.

Advances in technology and communications have helped push this globalization trend forward. Internet commerce, email, teleconferencing, and overnight delivery services, not to

mention shipping-, enterprise-, and distribution-management software, have all become increasingly affordable and increasingly mainstream. This is particularly true for companies that do not rely as heavily on face-to-face customer interactions as Cracker Barrel.

In the past, business leaders and in-house counsel in my position had two primary options when identifying and procuring legal services in unfamiliar jurisdictions.

For some, developing a relationship with a large national or international law firm—or megafirm—with attorneys and offices in major business centers was an appropriate solution. Several decades ago, such firms were often the only place to find the coordinated resources, experience, and contacts required to address legal and regulatory issues in unfamiliar regions of an expanding business world.

For both client and attorney, the successful practice of law is based on positive working relationships; in a word, trust.

A second option was to “cherry pick” local firms as circumstances dictated. If, for example, a new manufacturing facility was opening in a particular location—whether across state lines or national borders—new attorneys and firms were identified and approached to fulfill specific needs. Ideally, these legal advisors were identified through reputable referral sources.

While arguments can certainly be made for and against either option (and businesses should engage in a degree of self-examination in order to pinpoint their particular requirements; see sidebars), the growth of

legal networks in the past 10-20 years has offered clients a worthy, third option.

At Cracker Barrel, we have found that working with a legal network offers us the best of both worlds: the resources of a global law firm combined with the first-person attorney-client relationships and legal focus found in many smaller, local firms.

Relationships Built on Trust

For both client and attorney, the successful practice of law is based on positive working relationships; in a word, *trust*.

Most likely, you know what I mean when I use the word trust: confidence, faith, expectations, reliance, etc. Trust is built on the knowledge that my company is important to my attorney. Outside counsel's best and brightest lawyers should be meeting my company's needs and addressing its concerns. Their fees should be commensurate with the task at hand and the experience level of the attorney doing the work.

I trust the attorneys of my legal network. I know that every time I pick up the phone to describe an emerging need or to discuss an ongoing matter, I will be answered by someone who will not only do the job well and do it right, but will make sure that the right resources are assigned to the task.

Another of my expectations is that my legal counsel understands that client service extends well beyond a specific matter. While an engagement may have a clear beginning and end point, an effective business relationship does not.

What Are Legal Networks?

Although they may vary in size, and geographic coverage, most legal networks are associations of between 30 and 150 independent firms with local member practices in different states or countries. These firms have joined forces to provide coordinated, comprehensive services to clients across multiple jurisdictions.

Some legal networks are organized according to specific areas of legal practice. For example, there are several highly regarded networks made up of "boutique" law firms that focus on labor, employment, and employee benefits law. Others are industry-related; these include networks that serve the healthcare, transportation, and other key economic sectors. Still others are organized to provide full-spectrum legal services to clients virtually everywhere they do business, whether that includes intellectual property matters, real estate transactions, and everything in between.

This means that whether I have a particular need or am faced with an apparently discrete matter, the issue is not evaluated, addressed, and written off as a one-time event or problem. Instead, it is seen as yet another opportunity to help position Cracker Barrel to meet its long-term objectives. Over time, this creates a sense of confidence that leads to a more effective working relationship.

Likewise, I expect my outside counsel to keep me apprised of emerging business and legal issues that may affect my company, my industry, or my customers. My key relationship attorneys and their associates should act as another set of eyes and ears.

Legal departments must often meet specific, clear goals within strict budget parameters.

Cost-Efficiency

Virtually every business decision is based on expense, expected returns or savings, resource requirements, and timing, all of which ultimately have an effect on profitability. No matter the formal written mission of the company, it is the rare business that achieves its objectives by losing money.

This fundamental rule applies to in-house legal staff and legal departments. Legal departments must often meet specific, clear goals within strict budget parameters. We are becoming increasingly lean. And as a business begins exploring opportunities, in-house legal staffs are often stretched even more thinly.

Even for companies that are pursuing a less strenuous growth model, the core issue remains the same: How does the company meet the legal needs of distant operations and build meaningful business and legal relationships without incurring excessive and unnecessary costs?

At Cracker Barrel, we have found that when negotiating fees with the law firms that make up our legal network of choice, we are better able to correlate fees and costs to the local, real-market value of the services we receive. Although there is not a specific guarantee that prices will be always be lower as compared to other firms, there is a clear overall relationship between the cost of legal counsel, the services provided, and the resources made available to us.

A secondary, but important effect of working with local law firms is their direct connection to the local economy. Principals of network member firms generally understand what it takes to succeed in the local market as well as on a national stage while competing with national and international providers. The client and the law firm have often walked a similar path within a very crowded and competitive business community.

Client Service

Another important consideration is client service. Among other elements, good client service is made up of responsiveness, communication, and attention. Without a doubt, any law firm, large or small, makes client service a top priority. Any firm that does not will likely find itself running seriously short of revenue.

As a client of a legal network, I find that the unique structure of internet work firm relationships reinforces strong client relationships. At Cracker Barrel, we are fully aware that members of legal networks rely on a strong cross-jurisdiction (and service area) referral structure. We understand that the quality of the services we receive goes a long way toward our willingness to refer other businesses to the network.

Frankly, word spreads very quickly in smaller markets and within a legal network based on regions. Member firms must not provide anything less than their absolute best, as each of their clients represents a larger proportion of their overall earnings and can have a significant impact on their local and network reputation—which, if favorable, is more likely to lead to future business and referrals.

Matching Resources to Need

At Cracker Barrel, we recognize that everyone starts their careers at the beginning—we were all new to our jobs at some point. As the beneficiary of mentorship, I understand the need for guided learning experiences for less-seasoned attorneys.

Managing the Relationship

At Cracker Barrel, we've learned that managing a relationship with outside counsel follows many of the same rules of any successful business relationship. Here are some tips:

- Make sure your attorney can tell your story. Work closely with your key relationship attorney to make sure that your business and its objectives are fully understood and can be communicated clearly by the lead attorney to others within the network.
- Make sure your attorney understands and integrates your business culture. Even businesses within the same-targeted industry sector can be quite different from each other. Culture, business processes, visions, traditions, and expectations are defined differently by every organization. It is critical for outside counsel to know and understand the business philosophy and reality of any client. Thus, it is incumbent on the client to deliver to outside counsel the importance of their organization's culture and it's equally important for outside counsel to understand that the corporate vision is not just corporate lip service. Key learning always makes a good early impression with a client and can be the foundation of a long relationship.
- Document the relationship. The more clearly you can set expectations and define agreements—including contracts, retainer fees, deliverables, etc.—the better the service you will receive. Simply put, as with any business relationship, you must not make assumptions.
- Establish clear communications parameters. Identify a limited number of points of contact, the most effective communications procedures (e.g., voicemail, email, routine calls, etc.), and expectations for response times.
- Be candid and expect full disclosure. As with any business relationship, your legal providers are only as good as the information you provide.
- Expect accountability. Legal providers should be willing and able to provide periodic and ad-hoc reports on fees, resource usage, and key information on the attorneys assigned to matters (to ensure that the right resources are applied to the right issues).
- Recognize the difference between deliverables and outcomes. Attorneys and firms should be able to meet expectations regarding those things that are in their control; however, they cannot be expected to guarantee particular outcomes.
- Know when to step in and when to back off. Just as you need to know when not to micromanage your staff, you need to know when to let your outside counsel do what they do best. This doesn't mean allowing yourself to be uninformed or involved; it simply means taking full advantages of your attorneys' skills without getting in the way.
- Recognize that attorneys are in the business of protecting their clients. Business people—entrepreneurs in particular—are risk takers. Most attorneys, seeking to protect their clients' interests, are risk-averse. Understand this difference, and use it to help you consider both sides of an opportunity or issue before making a final decision.
- Ask questions. Always ask the difficult questions, such as: Are there other options? What does that mean? Doing so encourages creative thinking, stimulates new ideas, and ensures that you and your outside counsel are working out of the same playbook.

I also recognize that not every matter requires a senior partner at the helm. On the other hand, it is comforting to note that the demographics of legal networks skew toward more experienced lawyers, with a relatively higher proportion of partners to associates than that found in many large firms.

What does this mean for Cracker Barrel? It means that we enjoy greater control as to who will actually be handling the matters delegated to outside counsel. It means that high-level, complex issues will be handled by more experienced attorneys, and that more routine needs can be served by associates on the rise. And it means that the rates charged for these services are likely to be cost-effective and commensurate with the need.

On the flip side of this equation (and in the truest sense of the proverb that begins, "Teach a man to fish..."), the best law firms—and the best legal networks—are committed to client education.

A legal **network** provides clients with a ready-made pool of attorneys with this **critical knowledge**.

As active members of the local legal community, network firms are another source of seminars and programs that relate to specific legal concerns and business issues within their own jurisdictions. Firms collaborate with other network law firms to host and sponsor periodic client meetings and international symposia that deal with cross-border transactions, trade, employment, and other client concerns. Many develop legal handbooks, newsletters, and other publications that offer information regarding international legal and business issues.

As I was mentored, likewise, are Cracker Barrel's legal staff through our association with a legal network. My own staff attorneys are given access to attorney-mentors practicing on the cutting edge of today's emerging legal and business issues.

Local Knowledge, Global Resources

Local law firms share many of the same concerns as their clients. They understand the people with whom they are doing business and share in their successes. They are steeped in the laws, regulations, and customs of the local legal and business environment. They speak from direct experience.

A legal network provides clients with a ready-made pool of attorneys with this critical knowledge. In most cases—and often with a single phone call—I am able to contact attorneys from coast to coast with the local experience to

What to Look For in a Legal Network

The process of identifying and selecting a legal network can place business owners, leaders, and even some corporate counsel outside of their comfort zone. This can be especially true with respect to smaller businesses, whose senior management may be used to working closely with a smaller or regional law firm, and with whose lawyers they have enjoyed positive, long-established relationships.

The first step in identifying a legal network is to clarify your own needs. Among others, ask yourself the following:

- Are there specific gaps in our in-house capabilities?
 - Are these gaps related to specific legal disciplines (e.g., employment law) or geographic areas (e.g., the Pacific Northwest)?
 - Does it make business sense to fill these gaps in-house or through the use of outside counsel?
- Ask the following of the legal network:
- What are the requirements for membership?
 - Are there potential areas or industries in which conflicts of interest might arise?

Note: The best legal networks set high standards for membership. Candidate firms generally are required to undergo thorough reviews and interviews, to provide access to existing clients, and to demonstrate extensive experience and capabilities in their areas of practice. These firms have not followed clients into a particular geographic or metropolitan area; they are well-established, well-networked firms that provide services to local businesses, as well as new companies in the marketplace.

help address my needs efficiently and accurately.

For example, Cracker Barrel was recently faced with allegations in which two individuals claimed to have found a mouse in the food they were served. Not only was this charge false, it was also evident that the action taken by the couple was intended to force a financial settlement from our company. Through the connections at our legal network, an ALFA attorney—one who was quite familiar with the local prosecutor's office—was assigned to represent Cracker Barrel. This attorney was able to initiate several meetings with individual prosecutors, which subsequently led to conspiracy to commit extortion charges being filed

against the couple, followed by a successful conviction. This referral not only led to a successful outcome in the case described, it also generated a new business contact and a good friendship with the local counsel.

Minimizing Conflicts of Interest

Occasionally, clients of multinational law firms discover that their attorneys are unable to provide legal counsel on specific matters because of conflicts of interest. It can be frustrating for in-house attorneys to learn that their outside counsel will be forced to step aside because their counterparts in another city or country are already providing services to a competitor or the party on the other side of the negotiating table.

Generally, these conflicts of interest arise less frequently when working with the members of a network of regional firms. As organizations of independent, small- to mid-sized firms, the primary concern is whether the local firm is doing client work that might be incompatible with the work done for us. This situation is much less likely to occur than one in which attorneys from a distant office of a multinational firm are representing a competing business.

ACC Extras on... Outside Counsel

ACC Top Ten

Top Ten Methods to Manage Outside Counsel (2006). Read up on tips on how to appropriately manage your outside counsel. www.acc.com/resource/v7740

InfoPAKSM

Outside Counsel Management (2006). Sponsored by Bridgeway Software. This updated InfoPAKSM contains checklists, sample billing guidelines, engagement letters, and RFPs. Additional sample documents are available at ACC online. www.acc.com/resource/v247

Sample Forms

Outside Counsel Policies and Procedures (2007). These guidelines are directed at outside counsel to achieve three goals: high quality legal representation that produces maximum value results; the most efficient use of resources; and results in the most cost effective manner. www.acc.com/resource/v8426

ACC has more material on this subject in our Virtual LibrarySM. To create your personalized search, visit www.acc.com, click on the "Research" pull down menu button, then select Virtual Library. Type in your keywords and search to see the other resources we have available.

In my years at Cracker Barrel, I cannot remember a single instance in which one of our network firms was obliged to forgo representing my company due to a conflict of interest.

Client-Focused Technology and Best Practices

The effective use of technology is very important. Like most companies, Cracker Barrel is committed to taking full advantage of the efficiencies provided by communications, accounting, project-management and other technologies. However, we are very strict in our use of technology—it must provide real value, not simply act as window dressing.


Today's business world demands freedom and flexibility.

Given their size, and their inherent need for efficiency, network member law firms tend to direct resources where resources are needed most. Rather than maintaining expensive conference rooms and event facilities, network firms direct their infrastructure spending in areas that continually improve client service. When a particular matter requires more extensive but temporary technology or services, these firms can easily lease or obtain these facilities and resources as needed. They avoid the costs of maintaining these resources over the long term, or passing them along to their other clients, through higher fees.

Since network firms are not in direct competition with each other, they are usually comfortable sharing best practices and lessons learned. I am regularly on the receiving end of client alerts and other communications generated from member firms and exchanged throughout the network on a wide variety of business and legal subjects: emerging issues and strategies, legislative developments, administrative processes, financial practices, and more.

Legal Networks Provide Variety

Today's business world demands freedom and flexibility. Since business and legal matters rarely come in neat packages, they often require attorneys with experience and skills in diverse areas of legal knowledge.

As a client of a legal network, I have learned firsthand that the combined resources of a legal network enable it to handle virtually any matter that arises, no matter where, when or in which legal discipline it arises. As compared to other options for accessing legal services, legal networks provide a strong middle way, blending the best of both large and small firms. 

Have a comment on this article? Email editorinchief@acc.com.