

Information Technology Outsourcing From a Court Perspective

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Abstract

The practice of outsourcing Information Technology (IT) functions in private industry is not new and has been in existence, in various forms, since the late 1960's. The outsourcing activities of private industry over the past decade indicate that the trend of outsourcing IT functions continues to gain momentum. Recent research indicates that "by the year 2002, most large organizations will be outsourcing 25 to 30 percent of their IT budget." (Wilcox). So too, the public sector appears to be following this trend – this has become evident over the past five years especially. "Five years ago, IT played a support role in government, now, IT has become a cornerstone for new processes and an enabler in government, just as it has in business.

The Federal Government has taken significant steps towards outsourcing IT functions. According to one research firm's predictions, "the federal IT outsourcing market will surpass \$3 billion in 2003, up from \$2.3 billion" in 1998. "Key outsourcing areas for federal agencies will include desktop and network management, as well as business-operations outsourcing, which entails turning over IT for an entire business function to a third party." (Governments Opt)

Even states are getting into the act with the well-publicized negotiations between the State of Connecticut and computer giant EDS, to outsource the states' IT functions – a deal which potentially would have amounted to about \$1 billion over a 7-year contract. Additionally, the State of Pennsylvania successfully negotiated and recently finalized its strategic outsourcing contract with Unisys Corp., agreeing to have the company consolidate up to 20 state agencies' data centers into a single centralized data center and provide management and operational support. The seven-year deal is valued at about \$500 million and is "the most extensive data center outsourcing contract of its kind at the state level." (CIVIC.COM).

civic_8261999_paoutsourcing). Although the negotiations to outsource Connecticut failed, it is clear that public agencies are looking more and more towards outsourcing – aggressive outsourcing - as an alternative.

In the case of the San Diego Superior Court, outsourcing has become a reality. On December 13, 1999, barely over year after court unification, the San Diego Superior Court transitioned the entirety of its IT functions to an outsourcing vendor. This bold move was done in tandem with the outsourcing of the County of San Diego’s IT functions. The 7-year contract between outsourcing vendor Computer Sciences Corporation (CSC) and The County of San Diego and The San Diego Superior Court was for \$644 million; the Superior Court’s portion of the contract was \$72 million.

The significance of this is great, marking the largest technology outsourcing pact among local governments to date. Needless to say, the progress of the San Diego County/Superior Court outsourcing will be closely watched by outsourcing vendors, the public sector and interested public in general. From the perspective of the County, Superior Court and CSC, the stakes are high and their desire for this new venture to succeed is paramount.

San Diego County’s and San Diego Superior Court’s move to outsource it’s IT services has driven home the fact that outsourcing is a very real option for local government leaders to consider. This paper provides recommendations on how to go about determining whether or not an organization should outsource its IT functions and outlines processes involved should the decision be made to go forward with IT outsourcing.

The model produced by the County of San Diego and the San Diego Superior Court was used as a “real world business” example for this paper. Indeed, local government leaders can learn from their experience and can gain valuable insight if they are considering outsourcing. The

decision to outsource IT services is not a small one and the implications and ramifications of outsourcing are significant. The more information Court leaders have before making the decision, the better.

This paper uses the County of San Diego Superior Court's recent experience with IT outsourcing to discuss the question "Was the outsourcing of its entire IT function the best alternative for the San Diego Superior Court and the County?"

This paper concludes that, outsourcing of IT functions – total outsourcing – was the correct solution for the San Diego Superior Court and the County. By partnering with the County, they were able to increase their appeal to world class vendors and to leverage their negotiating power with those vendors.

In one regard, being one of the first local governments to negotiate a total outsourcing contract of this magnitude was an extremely risky move on the part of County and Court leadership. But in another regard, it ensures that the County, Court and contracting vendor will make the success of the outsourcing partnership a major priority. Essentially, there is no turning back on the decision to do total outsourcing without incurring tremendous expense – both monetary and political. The only desirable option for County and Court leadership, at this point, is to commit to making the partnership with the contracting vendor a success in order to realize the short- and long- term benefits that were identified during the outsourcing process.

The fact that the County and the Court now have one common vendor, and therefore one focal point for steering IT direction, increases the likelihood of collaborative IT solutions within the County and between the County and the Court. This is a different *modus operandi* from the old "each agency and entity marching to the tune of various IT drummers" that used to exist within the County.

Public organizations can derive benefits through collaboration, especially in the area of technology, where integration, compatibility and open systems are critical to maximizing the effective use of technology. The court's willingness to partner with the County to outsource IT functions established a foundation for future cooperation and collaboration with their IT solutions.

Introduction

“During the Industrial Revolution, good government was measured by how well bridges, roads and sewer systems were built. During the technological revolution, good government will be measured by how well government uses technology to better the lives of its residents”. These are the words of Ronald Lane, a Manager of Information Services for San Diego County.

The sentiment is reiterated by J. Douglas Walker, Senior Technology Associate, National Center for State Courts, in the on-line bulletin, “Reflections on Technology in the Courts”, where he states that the “public is rapidly adopting the expectation that information will be available electronically via the Internet. Citizens growing accustomed to shopping, banking, renewing automobile registrations, and filing tax returns on line will expect to be able to use their computers to pay a traffic tickets, determine and reschedule an appearance date, respond to juror summonses, and conduct other routine court business.” (Reflections 24)

With growing public expectation, the fast pace of technology and increasing workload, court leadership is faced with the challenge of implementing technology that will enable them to meet expectations. With technology growing more complex, the breadth of knowledge required to implement new technologies is increasing. The ability for a court to keep up with the technology and cover all bases – hardware, software, operating systems, programming languages, network, telephony services and internet – has become increasingly difficult.

This daunting challenge is clearly depicted in the following excerpt from The Warner Group’s, a consultant firm, strategic assessment of San Diego County’s Information Technology:

“During this time of explosive growth in technology, the County has fallen behind. Communications networks are fragmented and often unreliable. Critical software applications are aging and need replacement. Several large systems projects are underway, but technical methodologies, tools, and practices are inconsistent and often not industry-

standard. The County is experiencing significant difficulties in the hiring and retention of qualified technology staff, as well as in the reengineering of skill sets of existing staff. The County's IT organizational structure, which limits the CIO's ability to make enterprise-wide decisions, does not lend itself to provide the governance and decision-making to promote County-wide integration and standardization. With a budget of approximately \$98.5 million in 1998-99 for technology, the County does not have effective ways to measure and manage its technology investments. These challenges, and others, impeded the County's ability to deliver high quality service to customers in a cost-effective manner." (The Warner Group i-ii)

The key recommendation of The Warner Group assessment was that the County should outsource its IT functions. One definition of insanity is "to keep doing the same thing over and over again, yet expecting a different result each time". Indeed, if different and better results were the desired outcome, continuing to manage their IT the same way was not the answer for the County. To carry on the same way, in light of The Warner Group's assessment, would have been, in a sense, "insane". It was clear that a change in the County's approach to managing their IT was necessary and the county had a huge decision to make on whether or not to go forward with The Warner Group's recommendation.

The County, after careful consideration, did elect to go forward with The Warner Group's recommendation and, after a long outsourcing process, the San Diego Board of Supervisors approved the \$644 million, seven-year contract with outsourcing provider CSC, on October 26, 1999.

The San Diego Superior Court participated in The Warner Group assessment and was found to be facing the same IT challenges as the County (see Appendix E, San Diego Superior Court Decision Paper, IT Outsourcing, for more details). In addition to the IT challenges identified by The Warner Group, the court was also undergoing significant structural and organizational change brought about by court unification in December 1998. Prior to unification, each of the County courts had its own IT division. As a consequence of unification, the court was faced

with bringing together 5 separate IT departments, a challenge made more difficult by the differences - some extreme – in the types of desktops, Local Area Networks, case management systems and IT philosophies amongst its old IT divisions.

Approximately 3 months into the court’s unification efforts, the County offered the Court the opportunity to “piggyback” onto the County’s outsourcing contract with CSC. Court leadership recognized that outsourcing was an alternative that had to be considered, especially in light of such a pivotal time in the Court’s IT history. As with the County, the court had to carefully weigh whether the risks of outsourcing were worth taking. In late February 1999, the court formally announced that it was evaluating the outsourcing alternative and, in September of that year, the final vote was cast and the announcement made that the court would be joining the County in outsourcing its entire IT operations.

Using the recent San Diego County and San Diego Superior Court outsourcing experience as a model, this report will analyze IT outsourcing as a possible option for other courts to meet their automation objectives. The advantages and risks of outsourcing are also discussed.

1. Definition of Outsourcing

The term “outsourcing” can be defined as the use of external agents to perform one or more organizational activities (e.g. purchasing of a good or service). Although outsourcing can apply to a full spectrum of organizational activities, including payroll, facilities management, human resources management, and procurement, for the purposes of this paper, the term outsourcing refers to Information Technology (IT) outsourcing specifically.

There is a variety of IT outsourcing practices. In Outsourcing Information Technology, Systems & Services, three main categories of outsourcing are presented:

Body shop—management uses outsourcing as a way to meet short-term demand. The most common type of body shop outsourcing is the use of contract programmers/personnel that is managed by company employees.

Project Management—management outsources for a specific project or portion of IS work. Examples of project management outsourcing include the use of vendors to develop a new system, support an existing application, handle disaster recovery, provide training or manage a network. In these cases, the vendor is responsible for managing and completing the work.

Total Outsourcing—the vendor is in total charge of a significant piece of IS work. The most common type is total outsourcing of the hardware (e.g. data center and/or telecommunications) operations. The newest outsourcing strategy is to turn over the entire hardware and software support to an outside vendor. Some have gone so far as to euphemistically term this type of outsourcing, turning over the “keys to the kingdom.” (Lacity 2-3.)

The first two definitions, “Body Shop” and “Project Management,” are more commonly referred to as “Selective” outsourcing. As the category title implies, selective outsourcing is the practice of identifying specific IT functions to be outsourced. Total outsourcing, obviously, is the practice of outsourcing all (or a majority of) and organization’s IT functions.

Total outsourcing transfers most equipment, staff, and responsibility for delivery of information services to a vendor, while selective outsourcing identifies specific functions or services to outsource.” (Klepper 76) In the definition used by Lacity, Willcocks, and Feeny, 1996, if 80% of your organization’s information systems budget is being used for outsourced services, you are engaging in total outsourcing.

2. Outsourcing Trends

Recent market research indicates that outsourcing services are on the upswing. “Due to a shortage of skilled labor and the prospect of lowering costs, companies of all sizes are expected to increase their spending on outsourcing in the years to come, according to a recent study from International Data Corp, (IDC) in Framingham, Mass. The research group expects that outsourcing spending will increase at a compound annual growth rate of 10 percent in the United States, creating a \$75 billion market by 2002 [...] The most sought-after outsourcing services are data center, network operations, desktop, application services, help desk, and disaster recovery.” (InfoWorld)

State and local governments are increasingly looking to the vendor community for expertise. The total external services segment of the state and local government market -- of which IT consulting is a component -- is estimated at \$10.1 billion for 1999, and is growing at a rate of 14.5 percent annually. (Buying Strategies)

“In government, outsourcing is increasing, but is still behind the rate of private industry. At the State of California, most departments have consolidated data center operations in centralized facilities such as Teale Data Center and the Health & Welfare Data Center. Further data center consolidation is planned in the future, and the outsourcing of statewide telecommunications and wide area networks is underway. Data centers were consolidated in Pennsylvania, and are underway in Michigan. Orange County, California has been outsourcing all telecommunications and IT services, including applications, since 1972; Solano County has outsourced its IT operations as well. Examples range from the large (e.g., State of Connecticut in progress, City of Indianapolis already completed) to the small (e.g., many local municipalities, including the Cities of Irvine and Fullerton).”(The Warner Group V)

3. Tempering the Trend Reports

In their book, “Information Systems Outsourcing, Myths, Metaphors and Realities”, Mary C. Lacity and Rudy Hirschheim bring up the point that, “taken as a body of information, public sources on outsourcing send a powerful message to organizations: outsourcing will become the standard practice for managing information systems. The reports may become a self-fulfilling prophecy unless the overly optimistic reports are interpreted with a more balanced view.” (22)

Their analysis points out that public information sources about outsourcing are often optimistic because: (a) reports are made during the honeymoon period [of outsourcing negotiations], (b) only projected savings are reported instead of actual savings, and (c) outsourcing failures are under-represented.”(22) They attribute the under-represented failures to the fact that “no company wants to report a failure. This simply may be a characteristic of human nature. After all, who wants to offer a personal failure for public scrutiny?” (22)

They also identified two other information sources that influence the organizational decision-makers: 1) **Outsourcing seminars** –“ which are typically conducted by outsourcing vendors in conjunction with a large consulting firm or research institution. Participants [in their studies] felt the consulting firms give the audience an illusion of objectivity, but vendors actually seem to provide most of the information.” and, 2) **Vendor solicitations** - “Participants [in their case studies] claim that vendors flaunt long client lists in front of their CEOs. The list is particularly impressive when the prospective client’s competitors appear in print. Once a vendor enters an industry, they call their client’s competitors to offer them similar deals. The vendors claim to be experts in this industry and can therefore offer prospective clients big savings. Another client comes aboard, thus perpetuating the bandwagon effect.” (21)

In short, along with all the other factors to consider when considering outsourcing, organizational leaders must also consider how they are being influenced by public information sources. “The ultimate goal is “smart-sourcing” – companies retain strategic applications while farming out only those services that vendors can provide more efficiently.” (2)

I. Making the Decision to Outsource

Cutting past vendor marketing tactics and inaccurate IT trade journal reports on outsourcing, the fact remains that outsourcing is something many organizations are considering and doing -- “...customers continue to seek the flexibility and cost savings that outsourcing promises. This quest is not always fruitful, but in the words of one of the top consultants in this field, it is clear that outsourcing continues to be “the least worst alternative.”(Halvey Preface).

Whether one views outsourcing as "the answer" to an organization's IT problems or as “the least worst alternative”, the decision to outsource should be weighed carefully, especially if total outsourcing is being considered. While outsourcing yields benefits, there are also costs and risks. The following sections discuss some of those benefits and risks.

1. Reasons Why Organizations Outsource

In their book, “Outsourcing Information Technology, Systems & Services”, Robert Klepper and Wendell O. Jones discuss the reasons why companies outsource and the risks involved. They’ve broken down the reasons for outsourcing in major categories of meeting business objectives, cost savings, organizational finances, information services, technology and skills, personnel issues, organizational change, and organizational politics. The major benefits outsourcing has to offer are summarized below:

A. Motives Involving Business Objectives

In terms of business objectives, outsourcing is considered because it offers opportunities for organizations to leverage and enhance business functions through the use of an outside vendor.

Through outsourcing, organizations can use a vendor to manage an information systems dependent business process with the specific objective of improving business results. An organization can also reengineer business processes with the help of a vendor who offers best practice methodologies for managing key business functions. Outsourcing also can enable an organization to link information systems service delivery and different kinds of business values using outsourcing as a way to position the enterprise for ongoing business and technical change. Through this, customer satisfaction, business options are increased and core business processes IT processes can be improved.

B. Motives Involving Costs

Cost savings is one of the more frequently cited reasons for outsourcing. Outsourcing offers the possibility of providing services at less cost than the internal IT department and making costs more predictable and better controlled when services are contracted for with a vendor.

Some organizations use outsourcing as a vehicle for transforming information services from a fixed asset with fixed costs to a more variable cost so that information services can be more easily ramped up in times of business increase and profitability and cut back when business conditions dictate. Additionally, it may enable organizations to bring IT budgets in line when the rapid increase in the performance relative to price of computing is not reflected in costs.

C. Motives involving Organizational Finances

In certain circumstances, outsourcing can enable an organization to transfer equipment and other fixed assets to the vendor in exchange for cash as a way of dressing up the organization's balance sheet. This can free up capital funds for investment in areas that are important to strategic success. It can also improve the financial measures routinely scrutinized by the investment community by eliminating the need to show return on investment in non-core areas of the firm.

Some organizations elect to outsource the capital-intensive aspects of information systems as a way of avoiding discontinuous or lumpy capital investments in the future. For example, having to purchase new desktops every few years can create investment spikes.

In firms that experience large year-to-year fluctuations in business and in firms that are downsizing, outsourcing offers the ability to convert a fixed cost business into a variable cost business. Finally, some organizations outsource to get cash for a portion of a business unit that otherwise might not create value when sold or divested.

D. Motives Involving IT Services and Responsiveness

In some instances, where the I.T. functions are integral to the core functions of an organization, outsourcing of the mundane and routine information services functions enables the IT department to better concentrate on the activities and applications that allow it to contribute real value to the organization.

An organization can outsource old technology and the functions and applications it supports to a vendor (for example, legacy mainframe systems) to allow concentration on a move to new technology that better serves customer needs (for example, client-server applications). Performance of in-house IT staff may improve when there is greater focus, a challenging and cutting edge project, and less hierarchy in IT structure allowed by outsourcing part of the

information services burden. The new challenges may be strategic to the organization and allow it to focus on core competencies supported by or delivered by information systems technology.

Organizations can elect to outsource in cases where vendors can provide better quality service than in-house information systems resources. Vendors may have the edge because of their greater range of services, more skilled and/or motivated staff, better technology, or superior management. Outsourcing part of the IT function may also increase the motivation of in-house IT staff through reorganization and a sharper focus.

In some situations, outsourcing can increase an organization's flexibility and the ability to handle fluctuations in workload. An organization can outsource when the demands on information services rise and peak, and cut back on outsourcing when demands fall. In this situation, an organization can maintain a core IT staff, and use vendors to absorb the fluctuations in demand on the information systems function. This tactic will increase responsiveness if the hiring and releasing of vendors or vendor staff can be accomplished more rapidly than similar fluctuations in internal resources.

E. Motives Involving Technology and Skills

The term technology connotes new knowledge and new ways of doing things. Outsourcing IT functions is often driven by the fact organizations have difficulty keeping the skills and knowledge base of internal IT staff and technological resources in synch with the fast pace of technology. Through outsourcing, an organization can reap the benefits of access to cutting-edge technology and skills and gain the skills a firm cannot attract in the marketplace on its own accord.

An organization can gain access to resources available to outside equipment and service providers through the contacts and alliances established by these vendors that otherwise would

not be available to or not as accessible to the IT department by outsourcing. In addition, a firm can share the risks of new technology with a vendor or transfer the risks entirely to the vendor.

One other benefit of outsourcing is that it enables you to shift the risks inherent in obsolescence of technology and skills to a vendor for all or part of the organization's technological and human resource infrastructure. The potential gain is in access to resources and the ability to change these rapidly and flexibly, as conditions require. It enables an organization to concentrate on only those areas of technology and skills that create real value or offer competitive advantage.

F. Motives Involving Organizational Change and Politics

Outsourcing vendors offer resources and skills that can enhance an organization's ability to significantly restructure its business processes or to offload non-core functions. Outsourcing can be used to implement and accelerate organizational change.

Some start-up companies outsource their information services as a way of reducing the initial investment and removing one potential headache from an already overloaded agenda. Other organizations outsource to facilitate mergers, acquisitions, and corporate restructurings by contracting some or all of the work to vendors. Vendors may have experience and special capabilities in what are one-time-only experiences for the client company and its staff. Vendors are often immune from internal political pressures that stand in the way of structural change. Reliance on vendors can diffuse, deflect, or nullify the politics that accompany mergers, acquisitions, and restructurings.

An organization can elect to outsource to facilitate decentralization and corporate reengineering as a particular kind of restructuring that often involves information systems. Outsourcing offers the potential to both provide the information systems resources and

capabilities that underlie reengineered ways of doing business and of moving around political obstacles to the restructuring that reengineering often involves. Outsourcing in a partnership with a vendor can boost business performance while sharing the gains and risks of outsourcing with the vendor.

Outsourcing can also be used as a tactic to keep the IT department motivated and on task: an organization can benchmark the internal IT department against external standards and outsource (perhaps for a limited period of time) a portion of information systems work in order to compare quality and efficiency against an external source of service.

Outsourcing is also done to completely remove a mismanaged and ineffective IT function. Entwined in all organizational restructurings and changes are the political motivations for bringing about organizational change. If done right, outsourcing may also be a career-enhancing move for the senior IT or general manager who champions and motivates it. (47-51)

2. Risks of Outsourcing

Given all the advantages outlined above, why have not more organizations outsourced? The answer lies in the fact there are risks inherent in outsourcing. It is of course the responsibility of management to weigh the risks against the benefits before deciding to outsource. “The risks of outsourcing are many, and as a result, the anticipated benefits of outsourcing may not come to fruition. It is necessary to analyze the risks, and if they are unacceptably great or can’t be managed, outsourcing should be avoided. If the risks are not too great or can be managed outsourcing should be considered.” (Klepper 55).

A. Loss of Control

The first and most fundamental risk of outsourcing is loss of control. When you outsource, the employees of an outsourcing firm don’t report directly to you. (Klepper 56)

Outsourcing can involve some loss of control over the timely delivery of services and the quality of services. It may be that the high service level and quick response that the vendor was expected to provide do not materialize; and in some instances vendor service may be worse than IT service before outsourcing. This problem often arises when the client firm does not understand that outsourcing economics dictates that the vendor make money. Vendors have the incentive to closely control costs and only deliver what the contract calls for. They centralize functions, sometimes at long distances from the sites of clients; they standardize equipment and software to gain economies of scale; and they run minimal staff to meet what they see as the anticipated demand for their services.

Costs may creep. Clients are surprised when vendors present bills for extra charges. In some cases cost savings may not be realized if user-customers use discretionary money to go around the vendor and get information services from other sources. These costs may be largely hidden, so that it appears that outsourcing is saving money when it actually is not.

Up-front infusions of cash as vendors take over information services equipment and purchase company stock are often gained at the expense of long contracts... As the contract runs, technological change continues to cause the price-to-performance ratio to continue to plunge. The company that outsources pays the same flat fee to a vendor year after year and fails to enjoy the improved economics of information technology.

Information systems costs may not be lower with outsourcing. Usually, it's the unforeseen and unaccounted for changes that result in higher cost. Some areas that escalate the costs are discussed below:

- Employees are transferred to vendor, but unaccounted for vested pension and insurance benefits must be paid out resulting in a deal that costs more than it saves.

- Software license fees get passed to your organization as a cost of upgrading and continuing to run software that was handed over to the vendor to run.
- The time, effort, and labor necessary to manage the outsourcing arrangement with the vendor is large and only partially anticipated.
- You create a big hill to climb if you ever decide to insource and take it all back in the future. The longer the outsourcing contract, the more difficult it will be to insource, as your IT management capabilities may atrophy, and your organization develops a cultural dependence on the vendor as well as one based on services provided by the vendor.

It may be that an organization elects to outsource the whole of the IT function with the assumption that it is a utility, and so the organization can focus on core competencies. But later it is realized that IT has valuable, strategic contributions to make.

Corporate secrets and confidential information may be accessible to vendors and their personnel. And an organization's intellectual property can also be at risk in outsourcing situations.

B. Losing the Edge Internally

An organization that elects to outsource a significant amount of its IT risks losing "touch" with how technology can enhance the business processes. In effect, the link between the business and its technology can become weakened or separated when the IT functions are outsourced.

Outsourcing, creates an "extraordinary paradox" in that outsiders (outsourcing vendors) become involved in some of the most important, intimate, and vulnerable aspects of an organization. The computer systems that are tied to an organization's core functions – that allow them to do their work is the lifeblood of every organization. Core business functions may be

totally dependent on these outsourced systems. Automation and telecommunications are often vital components of the most critical work of an organization. (Ripin 12)

The outsourcing company may assume the vendor will share new technology as it comes along, only to find the vendor continues to offer what is now outdated equipment and service technologies.

Another risk is that by outsourcing, you cut your organization off from learning about new developments in technology and the application of technology in your business.

The information systems world is constantly changing – there is “endemic uncertainty” in the IT industry. Technology keeps charging ahead and takes directions that are not well anticipated. The business environment also changes in unpredictable ways. When you outsource, you run the risk of losing the capacity to innovate in ways that the business requires because the business and the IT functions have been separated somewhat by outsourcing.

C. High Expectations, No Clarity, No Defined Deliverables

Outsourcing a troubled, poorly managed, and poorly understood IT function almost always leads to disaster. Outsourcing success demands that the outsourcing relationships be managed, so that the failure of management is like to be carried over to management of the outsourcing relationship as well. And without a clear understanding of the function to be outsourced, it is not possible to structure and manage a successful outsourcing relationship with a vendor. Get information systems under control, then consider outsourcing.

Outsourcing to get around the constraints of staff with outdated and inappropriate skills may boomerang. The vendor may not provide superior staff and superior skills. In fact, the outsourcing agreement that moves much of the client’s staff to the payroll of the vendor may

result in the same people, who are now disgruntled former employees, providing the service from the vendor's side.

D. Victim of the Vendor

Risks arise from the nature of specific vendor firms and their behavior. In outsourcing, your organization depends on a vendor but doesn't have control over the behavior of a vendor in the way your organization has control over the behavior of its own employees. The following are fundamental sources of risks related to vendors, and must be mitigated in tight contract language, to limit exposure and risk of the outsourcer:

- Vendor in a position to take advantage of you once you outsource all your staff and equipment.
- Ensure the vendor's culture and ways of operating are similar to those in your organization. If there's a mismatch, it may result in conflict and inefficiency.
- Vendor firm is young and unseasoned or doesn't have the right mix of resources. It may make big mistakes while servicing your account in the process of learning or building up its resource base.
- Ensure the contract limits the ability of the vendor to outsource part of your work to a third party.

E. Loss of Flexibility

Because of the contractual obligations with outsourcing, the flexibility an organization has can be hampered. Any change in requirements must be accomplished through and with the consent of the vendor. You lose short-term flexibility, you lose adaptability, and the ability to evolve your technology depending upon the nature of the outsourcing contract and the relationship with the vendor.

You may also lose the ability to rapidly scale up or down in information systems operations or move in new technological directions depending on the nature of the vendor and the nature of the contract that defines the relations with the vendor.

II. Court Environment

1. Differences from Private Industry

Courts have additional considerations and challenges that private organizations do not normally have to deal with when looking at outsourcing their IT functions. Because they serve the public specifically and ultimately, they have a bigger challenge in justifying the decision to outsource and have a tougher set of parameters to work with during the outsourcing process. Since the measurement of success for a court is not defined in terms of profit margins, but rather in favorable public opinion and improved service, i.e., intangibles, the decision to outsource can be detrimental to its “success” if the outsourcing is perceived as ineffective, costly or if it strikes a political nerve. Some of the outsourcing challenges specific to courts are discussed below.

A. Not an Independent Entity – “Linkage”

Courts are linked politically, legally, financially to other agencies and must consider how their decision to outsource impacts not only the immediate entity, i.e., the court itself, but also how it impacts other agencies. If not approached carefully, a court’s efforts to implement new technology (or to outsource) may be delayed or stopped if outside agencies feel the decision will impact them negatively. Courts are generally in the middle of the justice process and are linked to the County and other agencies. There is a wide range of levels of independence state to state.

In his article “Critical Factors in Technology Success,” John Peay writes, “Agencies and offices external to the courts can also be affected by a court’s technological decisions. If given fair warning and the opportunity to plan for a new process, as a consequence of a new technology, external agencies will be more cooperative. If, on the other hand, a change is dictated to them, the courts can then expect the word to spread about the problems their project is creating. Take time to look for win-win opportunities when introducing technology. They can

pay huge dividends down the road.” (6) The article drives home the fact courts exist in a political arena where “pay offs” come in the form of good relationships with other agencies (that can either support or block a court’s move to outsource).

B. Regulations

Courts are also more vulnerable to state and federal regulations that can often significantly delay an outsourcing process. In an article about the outsourcing negotiations between the State of Pennsylvania and Unisys Corp., it was identified that federal and state agencies had involvement in the approval process. “The contract was announced last September, but both state and federal agencies needed to review it to ensure it met various guidelines and requirements. The state agencies that run the current systems needed time to evaluate the change facing their departments, and federal agencies reviewed the deal because it affected state programs they are involved in, the spokesman said.” (CIVIC.COM. civic_8261999_paoutsourcing).

“Regulations make the process of finding and implementing an outsourcer longer and more costly for the public sector” (The Push) “Aside from staffing, other unique circumstances exist in government outsourcing deals, primarily because the politics involved with government initiatives generally cause deals to take longer to close. For example, Connecticut’s union of IT managers opposed the state’s plan to outsource, which created controversy. The state wound up postponing the announcements of its final decision several times, eventually waiting to disclose its choice until December 1998, a month after November’s statewide elections.” (Governments Opt 6)

It is almost impossible to do a major outsourcing in less than a year because of the time-consuming documentation required by government procurement rules. Normally it takes 18 months to implement the process and sometimes longer. (The Push).

C. Budgetary Constraints

The budgetary and purchasing processes for courts is not geared for keeping up with the fast (and expensive) rate of technology. “Many courts find themselves bound by cumbersome purchasing policies that were designed to purchase beans and asphalt, not technology.

Frequently, the timelines associated with traditional RFP (request for proposal) procedures are so long that the technology being examined has been replaced by more current solutions. (Peay 7-8)

In addition, courts do not have 100% autonomy over their IT budgets. The direction of how IT budget is to be spent is often influenced by the State, therefore making planning for outsourcing, or any large scale IT project, more difficult. The outcome is that the County (and court) invest piecemeal in its technology infrastructure, which has resulted in investment “spikes”, infrastructure fragmentation and inefficiencies. (The Warner Group ii)

D. Risk Aversion – Political

Courts are usually slow to adopt to change and take risks. The political ramifications and risks of outsourcing can be numerous – and the more extreme the outsourcing, the higher the political risk. From the standpoint of the Judges, who are elected officials in many states, a failed outsourcing attempt could risk their re-election. “For state and local IT officials, the decision to hire a consultant is fraught with worry. From the outset, there is concern about whether a situation warrants the expense of taxpayer money for an outside expert.” (Buying Strategies) Public opinion, or the fear of negatively impacting it, can significantly impact a

court's decision to outsource. The failure of the State of Connecticut's outsourcing deal with EDS was caused primarily by "backlash and political pressure from the unions" (Straight A's)

E. Structural

Outsourcing is a bold idea – especially if the court is considering total outsourcing. Because most courts are run by a committee of judges, the decision to outsource will be slow in coming, if at all. This is no reflection of the decision-making prowess of judges, but rather, of how committees function when a decision of great magnitude and complexity is at hand - no bold idea or move ever comes out of a committee. The idea of outsourcing may very well get discussed to its death, and never leave the conference room.

F. Personnel

Outsourcing involves the layoff of long-term court personnel. This is a tough decision for court leaders when they consider the impact of their decision on the livelihoods of the IT staff being outsourced. And, unfortunately, staffing problems can worsen for already-stretched government IT shops while they're in the process of outsourcing. The uncertainty about jobs causes many IT people to jump ship.

Outsourcing also impacts non-IT staff. Not only will they have sympathy for, but also an empathy with, the IT staff being outsourced and may see the IT outsourcing as a sign that their function may be considered for outsourcing at some point.

III. Key Steps A Court Should Take Before Deciding to Outsource

The intimidating complexities of information systems technologies have fed the trend of outsourcing. Some executives and organizational leaders may believe outsourcing to be the "easy way out" – a way to let an outside vendor deal with the headaches of managing their IT.

Outsourcing can be a very useful strategy but it can also be a high-risk endeavor. Before deciding to outsource, there are a few fundamental and key steps that should be taken in order to ensure that the decision is a good one:

1. Define Your Organization's Goals

You must know first what you want for your organization as a whole. Know the technology trends of your counterparts, competitors. "Technology is useless unless it serves a specific purpose. This holds true for both the private and public sectors. Always start by defining your goals and then reach for the technologies that will help you attain them." (Reflections 4)

In the article "Reflections on Technology in the Courts", John D. Ferry Jr. points out that the "challenge is not in the technology but rather in understanding how to make the best use of the technology and its applications [...]" (5) "Courts need to first pay attention to fundamental design of court processes to meet the needs of their consumers, and then determine the type of technology applications that fit those needs. We see too often the drive to acquire the latest or the best technology without any thorough understanding of the need to evolve the mission and supporting functions of the courts to meet the changing needs of their communities."

2. Assess Where You Are

The second step is to know the current condition of your IT environment; outsourcing a problem IT division may not resolve your problem. It is hard to improve on something if you're not sure exactly what is wrong with it. In short, define your requirements and goals for IT within the context of your organization's strategy." This involves a feasibility study and a thorough analysis if the best decision is to be made regarding IT outsourcing. (Klepper 81-82)

It is also necessary to look beyond your own world. Identify current technology trends being implemented by counterparts in your industry to improve their operations. Consider what resources will be required and what changes have to occur within your organization.

3. Perform an Analysis

This is a time-consuming step, but it is critical that you get a true picture of the strengths and weaknesses of your IT operations. At this point, it may be wise to hire a consulting firm to assist with the analysis, especially if you are considering a major outsourcing. As this may be a very expensive and time-consuming endeavor, you should be prepared to dedicate the monetary resources, the personnel and the time to the task. The analysis should help you size your IT problem and provide you with information that will enable you to weigh the benefits against the risks.

Risk evaluation should be part of the analysis phase before the decision to outsource is made. Risk evaluation consists of (a) identifying risks, (b) analyzing the significance of each identified risk, and (c) prioritizing the risks identified and analyzed. Again, the use of a professional consulting firm is beneficial in this evaluation process – especially when considering total outsourcing.

4. Make the Decision to Proceed Or Not

Once you have identified your IT goals and assessed your current situation through careful and thorough analysis, you can then make an informed decision on whether to outsource (and what to outsource). It should be clear that getting to the point of being able to make the decision can be a very challenging endeavor in, and of, itself.

If the decision is made to outsource, it is recommended that you hire assistance from an experienced consulting firm.

IV. THE OUTSOURCING METHODOLOGY

A sample methodology described in *Outsourcing Information Technology, Systems and Services* involves 6 stages of outsourcing. This is just one method or process; there are others that can be followed. The key point is that as systematic approach to the outsourcing process is crucial to the success of the outsourcing. A court can increase their chances of succeeding by hiring an experienced consulting firm to lead them through the labor intensive, expensive and risky process of outsourcing. The 6 stages are summarized below:

1. Feasibility and Planning Phase: The phase in which the objectives and scope of the outsourcing idea are defined and scrutinized and made to pass various criteria or screens before a decision is made to proceed. The ensuing effort is planned in terms if time, budget and resources needed.
2. Analysis Phase: Baselines are constructed, if needed, and the service levels required of vendors are specified. Relationships between the information systems functions(s) to be outsourced and other functions that will remain in-house are also clarified so that contracts with vendors are certain to include proper interfaces with IT performed in-house. The Request for Proposal (RFP) is developed, responses are collected from vendors and analyzed and a vendor is chosen.
3. Design Phase: Negotiations go forward with the vendor and contract is developed and signed.
4. Implementation Phase: The transition from in-house provision of information system services to outsourcing is made.
5. Operations Phase: The outsourcing relationship with the vendor is managed and any maintenance or changes in the outsourcing relationship are negotiated and implemented.
6. At the end of the contracting period the cycle begins again and the decision must be made whether to negotiate with the existing vendor, a new vendor or to bring the IT function back inside the organization.

V. GOLDEN RULES TO FOLLOW...

1. When Exploring Outsourcing

There are some actions that will help the success of your outsourcing endeavor. They are outlined below:

- Identify persons who will take the leadership responsibility, do the analysis and make the decisions. Determine the appropriate level of management for the job. For larger outsourcing initiatives, top management must play a role. An executive sponsor or champion is necessary if the situation calls for involvement in organizational politics and/or if the outsourcing considerations are of great magnitude.
- Form a team that has representation from the managerial and technical perspective along with representatives from user areas directly and heavily impacted by the outsourcing under consideration. Keeping in mind though that smaller teams are more effective. It is best that those members on the team be able to devote the time necessary to get the job done right.

2. If You Decide to Outsource

- Identify persons in the IT department who will be given responsibility for oversight and management of the outsourcing arrangement and vendor relations after the contract is signed. These managers should be part of the team that crafts the contract. Their inclusion is critical for several reasons. First, there is no better way to understand the issues involved in outsourcing than to be involved in all aspects leading up to the deal. Second, relationships with vendors start at the moment discussions begin. Being on the ground floor and having continuity in the relationship with people in the vendor organization contributes to success.
- Caveat: If outsourcing is being considered because of high costs or poor performance of the IT department, it may not be possible to rely on internal sources for accurate estimates of internal costs or internal effectiveness. Under these circumstances, bring in objective outsiders to do some of the assessment work (Klepper 76).

- Never outsource all of IT Management. It may be obvious, but it is important enough to emphasize that at the outset of total outsourcing, no organization should outsource its capability to manage outsourcing and information systems technology strategy. Don't outsource all information systems responsibility to a vendor. Retain a small group of IT managers who: (a) manage ongoing outsourcing relationships with vendors, (b) oversee and pass on vendor technical decisions, (c) develop experience with outsourcing and help make future outsourcing decisions, (d) negotiate and enforce future outsourcing contracts, (e) develop the information systems technology strategy of the organization for the future as it relates to support of business needs, and (f) keep overall information systems strategy in alignment with overall corporate strategy as it evolves over time (Cronk and Sharp 1995).”

The retention of strategic control by the customer is often key to a successful outsourcing relationship because it ensures that the customer has control over its technology direction, which is “core” to the customer’s business even if the actual implementation of such direction may not be.” (Halvey 50).”

- Make sure you count all costs. For example:

The number of information technology and telecommunications positions working within the scope of this proposal was 347 staff years for Fiscal Year 1998-99. Approximately 300 of the positions were filled at the time. In addition, there were approximately 25 employees filling non-information technology support positions impacted by the proposal. Thus, the total was approximately 372 staff years. The County created approximately 37 positions to monitor the contract, provide departmental critical support functions, focus on a smooth transition and ensure that the County retains critical expertise.

- Management/Vendor Relationship is critical.
 - How the relationship between customer and vendor is framed and managed is another critical element.
 - Vendors can bring extensive expertise to a technology project. However, they are going to want to minimize their risk and maximize their profits. Court officials need to acknowledge this reality and work to acceptably distribute the risk between the vendor and the customer while allowing the vendor to make a reasonable and justifiable profit.
 - A solid contract between a court and the vendor can go a long way to reducing conflict during the course of the project. However, it is important to realize that problems will arise. How the courts and the vendor have established their working relationship will go a long way in determining how problems will be resolved. Vendors become frustrated with customers who have several people representing the court's interest. Ultimately, the courts need to designate a single individual who will represent the court when interacting with a vendor during a technology project. Ultimately, the vendor needs the court as much as the court needs the vendor. A successful project is to the benefit of both, and that realization should be kept in the forefront of the relationship with the vendor.” (Peay 5-6)
- Communication with the Customer and the Staff regarding the events of the outsourcing is critical.

3. The Contract Is the Thing

Regardless of the reason for outsourcing –“rational/political/financial survival – outsourcing clients must negotiate a sound contract to insure their outsourcing expectations are realized.”

(Lacity 242) “The first step to a successful outsourcing arrangement is to realize that *outsourcing vendors are not partners because profit motives are not shared.*” (Lacity 243) [...] “The danger in viewing the outsourcing vendor as a partner is that the customer may sign a very loose agreement. After the agreement goes into effect, the vendor may not provide the level of service the customer expects. Instead, the vendor may refer to the written contract as the only source of obligation. Customers may subsequently be charged excess fees for services that they assumed were in the contract.” (Lacity 243) The authors state that you should always consider yourself the customer of the outsourcing vendor, not a partner of.[...] “Once potential outsourcing customers realize that vendors are running businesses and are therefore motivated to maximize profits, they can protect themselves by signing an airtight contract. *The contract is the only mechanism that establishes a balance of power in the outsourcing relationship.*”

From their analysis of 13 organizations that went through a formal outsourcing evaluation, Lacity and Hirshheim documented the “Lessons in contract negotiations” learned by the organizations. Their findings are summarized below and should prove to be most helpful to those who have decided to go forward with outsourcing:

Lesson 1: Discard the vendor’s standard contract.

Vendors will offer their standard contract to prospective clients. These contracts typically obligate the vendor to perform the same level of service that the company’s internal IS department provides during a baseline period. These contracts, however, neither set performance standards nor include penalty clauses if the vendor fails to meet requirements.

The authors recommend that a site-specific contract be created.

Lesson 2: Do not sign incomplete contracts.

Because the process of going through outsourcing negotiations can be taxing, both parties are often anxious for the relationship to begin and the temptation to close negotiations swiftly is strong. The outsourcing vendors, in particular, may convince clients to sign the contract before items are clearly specified. “They assure their clients, “we’ll take care of the details later.” But since the vendor is not legally bound to alter the contract “a posteriori,” they may never agree to supplement the original contract.”

Lesson 3: Hire Outsourcing Experts

Vendors will use a host of their technical and legal experts to represent their interests during negotiations. These experts thoroughly understand the way to measure information services and how to protect their interests. In order to counterbalance the vendor’s power, customers should hire experts to represent their interests.

Two types of outsourcing experts are recommended- a technical expert and a legal expert. With regard to timing, Lacity and Hirshheim found that “customers will typically wish to hire a legal expert at the final stages of negotiation. A technical expert, however, is typically needed much sooner, particularly during the measurement of baseline services.” (Lacity 246)

Lesson 4: Measure EVERYTHING during the baseline period.

“During contract negotiations, the customer’s current information services are documented during the baseline period. The baseline period becomes the yardstick that determines what services the vendor is obligated to provide to the customer. The outsourcing vendor will charge a fixed fee for delivering this bundle of services, but will charge an excess fee for services above and beyond the baseline. Therefore, customers must measure every service during the baseline period to ensure that these services will be included under the fixed fee obligation.” (247) Baseline measures must be monotonously detailed. The length

of the baseline period is also an important consideration. Since service volumes typically fluctuate with the tax season, seasonal business oscillations, end-of-year processing, etc., a baseline period of six months is recommended.

If the outsourcing arrangement encompasses the entire IS department, customers should measure data processing, telecommunications, applications development, applications support, and residual services such as user consultation, training, report distribution, and office moves.

Lesson 5: Develop service level measures.

The baseline period discussed above identifies what services the vendor must provide the customer. Along with defining the exact services to be provided, the customer should “unequivocally express” the level of required service for every service that the vendor is expected to provide.

A subset of Lesson 5 is to “Specify 100% service accountability.” For example, if the vendor agrees to process 90% of all service requests within 3 days, then make an additional requirement that specifies the remaining 10% be completed within a set period of time, e.g., 5 days. Require that the exceptions be fully documented and reported.

Another subset to Lesson 5 is “Know the basic Laws of Probability.” Vendors may dilute measure by exploiting some simple laws of probability. The example given by Lacity and Hirschheim best explains this advice: The firm’s “consultants agreed to the measure, as long as the service was delivered correctly. The vendor countered with a proposal to implement two measures. The first measure specified 95% of the service is completed by the target date. The second measure specified that 95% of the service will be accurate. By

proposing two measures, the vendor attempted to dilute the service level since the probability of the service being delivered on time *and* accurate is only roughly 90%.”

Lesson 6: Develop service level reports.

During outsourcing negotiations, companies may spend a significant amount of time developing measures, then fail to require the vendor to report on these measures. Service level reports should document the agreed upon service level, the service performance for the current time period, exception reporting for missed measures, and a trend analysis of the performance from previous reporting periods. These reports are critical since service level measures cannot be monitored without service level reports.

Lesson 7: Specify escalation procedures.

The vendor and the customer should negotiate and agree upon problem escalation procedures and determine how they will handle situations when service levels are not met and “fault” – either the vendor’s or the customer’s – for not meeting the service level must be identified.

Lesson 8: Include cash penalties for non-performance.

In cases of severe service degradation, the customer may insist on cash compensation and they may wish to escalate cash penalty amounts with frequency. Cash penalties motivate the vendor to perform. Conversely, cash incentives motivate the vendor to exceed requirements – for example, negotiate an incentive payment if the vendor completes implementation of your disaster recovery system 1 month earlier than the target delivery date – both parties win.

Lesson 9: Determine growth rates.

Most outsourcing contracts include a growth rate where the customer gets a certain amount of growth for free. The reasoning is that the cost of a unit of processing decreases

every year, so the customer deserves to share the benefits of price/performance improvements. The problem, however, is that the vendor understands growth rates much better than the senior executives with which they negotiate. The customer is warned that if growth is under-estimated, they may be charged excess fees in the future.

Lesson 10: Adjust charges to changes in business.

Customers should also include a clause for severe volume fluctuations caused by acquisitions, mergers or sale of business units.

Lesson 11: Select your Account Manager.

Although this is not always possible, the customer should have input on who manages their account. A clause should be included that allows the customer to specify who their account manager is.

Lesson 12: Include a termination clause.

Most lawyers will insist that a termination clause be included in the contract. The clause protects both parties, since the desire to terminate by one party will severely affect the other party. Most contracts require either party to notify the other within a specified time period. Failure to give adequate notice may result in a severe penalty charge.

The customer should take care to consider that it will typically require more than 3 months to find an alternative to meet their information needs. Negotiations with another vendor may take six months; rebuilding an internal IS department may require a year or more. Therefore, vendor assistance should be specified as a requirement for termination- regardless of the initiating party.

Lesson 13: Watch out for “Change of Character” Clauses.

A “Change of Character” clause is a provision that states the customer will be charged for any changes in functionality. Customers should carefully specify what changes will trigger an excess charge and what changes will be included in the baseline fee.

An example of a “change of character” issue follows: “At FIRM7, [...], the vendor wanted to charge FIRM7 for changing their word processing software. The vendor argues that a change in software represents a change of character since the new product was not supported during the baseline period. FIRM7 argues that this is not a change of character since the function- word processing- has not changed, only the software.” (254)

Lesson 14: Take care of your people.

Companies have a social responsibility to treat the IS staff who are being outsourced fairly. That includes informing them of the decision to outsource as soon as possible and helping them secure positions elsewhere. Commonly, the same IT staff who elect to transition to the outsourcing vendor will be the ones serving you after they have been outsourced. If done conscientiously and carefully, there is opportunity to make the transition less traumatic for your organization and for the IT staff.

VI. SAN DIEGO COUNTY AND SUPERIOR COURT MODEL

1. Big Risks, Big Decisions

The magnitude and seriousness of risk the County and Court took in their decision to do total outsourcing is emphasized by the following excerpts from the article, “Information Technology: The Lifeblood of an Organization”, written by Leslie Wilcox, of the Oxford Institute of

Information Management in London and Mary Lacity, :associate professor of management systems at the University of Missouri:

Evidence “indicates that most companies that outsource their IT choose selective outsourcing, which constitutes 15 to 20 percent of their IT Budget. The study shows 82 percent of United States’ companies choose selective outsourcing.

Total IT outsourcing, which constitutes 80 percent or more of total IT budget, is much less common, Willcocks says. In the U.S. only 8 percent of companies have gone the total-outsourcing route.” The numbers for total IT outsourcing are low for a good reason; they are very risky deals. Data collected from 29 of the 120 plus largest total-outsourcing deals in the world shows a 35 percent failure rate, Willcocks says. Overall, according to Willcocks, selective outsourcing seems to be the most effective approach to outsourcing and is why it is done most often.”

“If you keep more in-house capability you inherently maintain some understanding of your technology and control of your IT destiny,” he says. “If an organization chooses total outsourcing, those abilities are eroded over time.” Nonetheless, the County and the Court elected to do total IT outsourcing. The rationale and process used to come to this decision is discussed in the following sections.

2. Why They Outsourced:

The court took a deep, hard look, with the help of consultants, at their current IT status to determine what it would take to reach their vision of being the best court in California. Their analysis came to the conclusion that there was no way they could, with current staff and level of funding, and the current state of their IT, accomplish their IT goals.

Likewise, they conducted an analysis of the County's outsourcing initiative and determined that through outsourcing its IT, their goals could be achieved. This conclusion was reached in part because outsourcing would:

- 1) Allow for an infusion of capital right away, which would spread the cost over 7 years.

This would facilitate a much-needed upgrade to the County's and court's network infrastructure, telephone systems, desktops, etc.,

- 2) allow for its 5 separate IT operations to be combined into a single, common strategy,
- 3) Allow the court to partner with the County to achieve common IT goals such as standardizing network infrastructure, E-mail systems and office applications. The partnership also opened up future possibilities of implementing common human resource and financial management systems, along with developing and integrated criminal justice system.

A. The "Big Bang" Approach

The County and court chose a "Big Bang" approach to outsourcing, i.e., they opted for total outsourcing, which included data center operations, local area networks, desktops and end-user support services. While this is not the only way to do an outsourcing, they elected to do so for the following reasons:

- One prime contractor allows for a single point of accountability
- Economies of scale
- Participation of a world-class IT vendor and best in-class subcontractors
- Achievement of contract leverage
- Close integration of services.

B. How the Court Outsourced

As discussed earlier in the paper, the RFP and contract phase is the key to successful outsourcing. The County and court invested significant funds and hired the best consultants, including the Gartner Group, PricewaterhouseCoopers and the Gordon and Glickson law firm to assist in a very quick, yet intensive year-long RFP process. The process included the following main components:

1. **RFSQ Process** -- A Request for Statements of Qualifications (RFSQ) was issued which required interested outsourcing vendors to demonstrate their ability to meet the County's and court's requirements. A Source Selection Committee made up of representatives from all of the groups, County Counsel, Chief Financial Officer, and the Department of Information Services was formed to review the responses from the vendors.
2. **RFP Phase** – This was the most labor- and time-intensive phase wherein the detailed requirements of the contract were identified. The RFP also identified the selection process and the process for negotiating a contract with the outsourcing vendors.
3. **Proposal Review Phase** -- Each of the vendor proposals was reviewed and ranked by a selected committee of experts that included, but was not limited to consulting firm experts, representation from key groups, selected departments, County Counsel, Purchasing & Contracting, and the Department of Information Services.
4. **Best and Final Offer Phase** – After the initial review of the qualified vendor proposals, the qualified candidates were given one more opportunity to address key issues identified during the Proposal Review Phase. As the term implies, this is the final opportunity for the service provider to prove that they are the best candidate for the outsourcing contract.

5. **Cost Comparison Phase** -- As specified by a County of San Diego's Board Policy, a "Finding of Economy and Efficiency" was required. This meant the County had to do a financial analysis to determine whether the cost of the proposed contract was more economic and efficient in comparison to the County performing the same functions identified in the contract.

The Auditor and Controller was made responsible for the preparation of the cost comparison. The Warner Group, PricewaterhouseCoopers, and the Department of Information Services provided assistance in the cost comparison study. The cost comparison was reviewed and validated by an independent CPA firm. The analysis validated that outsourcing costs would be no more than the costs would be to perform the functions "in-house".

6. **Contract Negotiations Phase** – As the title of this phase implies, this is where the vendors and the County and court came together to negotiate the details of the proposed contracts. Again, as with the other phases, key players were identified in this process. It is in this phase that the outsourcing vendor is selected.
7. **Implementation Phase**– The County and court wanted a very quick implementation phase – (60 days from signing of the contract) – during which key processes and procedures for obtaining vendor services were implemented. The key goal was to avoid any disruption of service to the customers.
8. **Transition Phase** – A six-month transition phase was scoped out that identified the milestones for transitioning key IT functions over to the outsourcing vendor.

9. Transformation Phase – The County and court, in conjunction with the outsourcing vendor, defined a 2-year plan that would enable them to realize their IT outsourcing goals.

3. The Things They Did Right

In reviewing “how to” literature on outsourcing, and comparing it to the processes followed by the County and the court, it became clear that they took careful measure to do the outsourcing right. The things they did right are discussed below briefly. More detailed background can be found in Appendixes A, B and C:

- The Chief Administrative Officer of the County of San Diego championed the outsourcing effort, and hired professional, experienced consulting firms were hired to assist and guide the County through the critical phases. In addition, the County garnered support from outside entities impacted by the outsourcing. In short, the effort had executive-level backing – which is key to the success of any organizational initiative.
- The Court leveraged its negotiation power by piggybacking off the San Diego County Contract. This essentially was a Win/Win arrangement for the County, Court and the service provider.
- The County and court were careful to address the regulatory requirements, paying careful attention to Union issues and Board policy requirements, such as the “Finding of Economy and Efficiency” study.
- A tight contract was negotiated – again with the use of professional, experienced consultation. The required “Minimum Acceptable Service Levels” (MASLs) were defined (see Appendix E) and included both disincentives and incentives in the contract.

- A Best and Final Offer Phase was included with the procurement process to maximize competition, and ensure the best solution to the functional requirements.
- The County and court recognized that implementing a management structure to govern the outsourcing vendor and to manage it's IT direction was critical. The County and court created the necessary number of positions that included managers, technical subject matter experts and contract managers to oversee the service provider. The management structure is shown on Page 14 of Appendix B.
- They recognized the importance of solid change management processes to keep staff informed and to minimize the trauma of the outsourcing.
- They recognized the value of the IT staff who were being outsourced and developed an Employee Retention Strategy (See Appendix D) and established an Employee Communication Plan (See Appendix C, Pg. 12). They made sure to have continual communication regarding the outsourcing with the IT staff and County and court staff and with the public.
- An internal technology employee review team was assembled to provide the outsourcing team with input throughout the procurement process.
- They reengineered. The County and Court realized that reengineering business processes and the revamping of automation systems go hand-in-hand. In short, a bad business process can be automated just as well as a good business process. The County and court were wise to reengineer their business processes first - prior to bringing in new automation systems.
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4. The Things They Could Have Done Better

A. Set More Realistic Employee Expectations

The use of terms such as “world class” and “best of class” to describe the potential outsourcing vendors created a high level of expectation of what the new outsourcing vendor could immediately deliver. In reality, the implementation and transition phases of an outsourcing can be an especially difficult time for everyone involved. The County and Court could have set a more realistic expectation level by making it clear to the customer that they should expect some transitional difficulty. The customers sometimes have an easier time accepting difficulties if they are forewarned.

One seasoned executive, Norman Haighton, explained in that you should “Expect the quality of service to worsen in the few months following the change over,”[...] You can expect it to get worse because new managers come in and introduce new systems and new ways of doing things. It typically takes three to six months to get the services back where they started, and then you typically start seeing very significant improvements.” (The Push)

B. There is a Need to Measure

Most government agencies do not adequately measure the cost of their IT functions, nor do they measure performance levels of their IT staff. The County of San Diego and The San Diego Superior Court were no different. The consequence is that it will be difficult to determine whether outsourcing is actually saving the County and court money.

C. Too Much Change Going On

In many ways, the timing was right for total outsourcing within San Diego Superior Court. As mentioned earlier, the recent unification of the San Diego Courts created a very real and tremendous IT management challenge and, after careful analysis, total outsourcing was the best

answer for the court. Although the County and the Court made the right decision ultimately, i.e., the decision to do total outsourcing, it should be noted that there were key factors during the time the decision to outsource was made, that made the outsourcing exceptionally risky for the court and the County. They are discussed below:

- Although the County and court were confident that their Y2K readiness efforts had prepared their systems for Y2K, outsourcing exposed both the County and court to losing knowledgeable Systems staff at such a critical time.
- The Court was in the process of tremendous change. The unification brought about the reorganization of major departments and divisions – which included management shifts. The outsourcing activity added more difficulty to what was already a difficult time.
- The court had plans to bring in a new case management system in the near future. Perhaps it should have considered delaying the outsourcing of their applications staff in order to have in-house expertise readily available to assist with the evaluation of the new case management system.

VII. OUTSOURCING – AN ALTERNATIVE FOR ALL COURTS?

1. What Other California Courts are Doing

A short survey was done to determine the outsourcing profile of a few California Courts (see Appendix I for survey questions). The survey was distributed via FAX to a random group of California courts and a response rate of 44% was realized. Of the courts that responded, the results of the survey indicate that:

- All of the courts are currently utilize a combination of in-house court IT staff, County IT staff and outsourced IT staff, to address their current IT requirements.
- 75% of the respondents had a significantly higher (by more than 50%) percentage of court IT staff supporting their systems as compared to the percentages of County or Vendor staff.

- 75% of the respondents reported satisfaction with the IT support provided by their County, but only 50% felt that they were getting good value for the service.
- 75% felt that their current court IT staff has the ability to keep up with the evolution of technology as it applies to their court.
- 50% felt that they were at least even with other government agencies with regard to IT; and 50% felt they were ahead of other government agencies.
- 100% of the respondents have considered outsourcing a significant part of their IT; 25% have taken steps to outsource support of their case management systems, 25% indicated they outsource major IT projects..
- With regard to what would most concern them about outsourcing, responses covered the whole spectrum of the listed concerns and no pattern of could be determined.

The results of the survey implied very strongly that the courts that responded had a very positive outlook on meeting future IT demands. All of them felt they were “in the IT running” in comparison to other government agencies in their area. One common factor in the respondents is that they represented the larger California courts. This positive outlook perhaps can be attributed to the fact that these larger courts have had to put more emphasis on their IT operations – out of necessity more than likely - than smaller courts, which has consequently made them more progressive and optimistic about their IT management.

Additionally, the fact that no pattern of “concerns about outsourcing” could be determined indicates that each of the courts has a different set of political, technological, budgetary, staffing, etc. concerns. In short, each court, if considering outsourcing, must evaluate the option in the context of their “culture” and environment.

2. New Possibilities

Total outsourcing is new to the court arena and it is too soon to determine whether the outsourcing IT goals of San Diego County and the San Diego Superior Court will come to fruition. There is no doubt that their decision to do total outsourcing was a bold move that will perhaps serve as a catalyst for other courts and counties to begin exploring creative and bold IT

outsourcing possibilities that will help them accomplish their mission. Some ideas for how courts can use outsourcing follow.

3. Possibilities for Smaller Courts

The size of the San Diego County and San Diego Superior court contract, and the fact that it was one of the first of its size within the local government/court arena, drew the interest of prominent outsourcing vendors.

For obvious reasons, smaller courts and counties are not as appealing to large outsourcing firms. As an alternative, smaller courts can explore the possibility of partnering with several other courts within the same geographical area to negotiate a “group” outsourcing package with outsourcing vendors. Needless to say, the logistics and contractual complexity of accomplishing this may prove to be difficult, but it should be explored to determine whether new outsourcing alternatives could be created for smaller courts.

It is foreseeable that, as more and more counties and courts outsource more and more IT functions, outsourcing vendors will become adept at providing services tailored specifically to court needs. They may consider developing different outsourcing packages that can address the needs of the smaller courts that will still enable the outsourcing vendor to realize a profit. In effect, experience may gain efficiency.

4. Role of the AOC

The AOC can play a vital role in helping to expand the outsourcing alternatives for courts by creating a steering committee of technical representatives who would oversee the development of a “network” of outsourcing vendors. The AOC would serve the role of educating both the outsourcing vendors and the courts on the desired technical direction of court IT from a

statewide perspective. Additionally, the AOC can research the possibilities of developing a staff of outsourcing experts who would be available for courts to utilize. They can also guide the development and publish a “best practices” outsourcing guidebook for courts.

VII. CONCLUSIONS

The focus of what is called the Second Industrial Revolution is much more on facilitating decision making, innovation, and service (in contrast to manufacturing efficiency). (Ripin 15) In this day and age, the effective application of information technology is key to organizational success – it can expedite decision-making, enable innovation, and enhance service.

Unfortunately, managing information technology – keeping up with the almost blistering pace of hardware and software advances, keeping IT staff adequately trained and maintaining existing systems – has become increasingly difficult. More and more, private and public organizations look to IT outsourcing as an alternative that will enable them to manage this monumental responsibility.

If done right, outsourcing can be used in a variety of ways to improve an organization’s effectiveness and to perhaps save money. The leadership of each court must carefully analyze their own set of IT circumstances to determine which outsourcing route is best for their court. In the case of San Diego Superior Court, the option to outsource it’s entire IT operation was chosen and, for them, it was the right thing to do. Both San Diego County and San Diego Superior Court took the necessary steps to determine whether total outsourcing was the best alternative for their given situation.

“Outsourcing efforts are not simple or easy. Careful planning, strong leadership, and specialized expertise are required to make outsourcing work. However, a well-conceived and

structured partnership with private industry represents the best strategy for technology services at the County in the future [...]” (The Warner Group) The relationship between the County and court and the outsourcing vendor is its infancy, and there will no doubt be challenges along the way. The commitment of the County and court leadership to have the right people, with the right skills – technological and administrative skills - in key positions to oversee, and lead the direction is key to the future success of their outsourcing contract. The partnership with the outsourcing vendor must continue to be developed and maintained.

If there is a clear vision, a thorough knowledge of the business and goals and a commitment to establishing, providing and maintaining the level of resources necessary to sustain an outsourcing relationship, successful outsourcing is possible. This drives home the fact that an organization can outsource its IT functions, but it can never relinquish the responsibility of managing and steering its technological direction.

The courts must push forward to create new ways in which to leverage the ability to bring about new technologies --faster, cheaper and better. The lessons learned from San Diego Superior Court can serve as a catalyst for other courts experiment with different ways of molding statewide court technology partnerships.

Outsourcing is definitely a trend emerging in both the Public and Private sectors, as technology becomes more and more an integral part of providing services. It is incumbent upon the Nation’s court systems to consider outsourcing as an option to achieve their operational goals.

Appendix A - San Diego Strategic Assessment of Technology

Appendix B – Sample Board Letter for Outsourcing

Appendix C – Information Technology Questions and Answers

Appendix D – Information Technology Proposed Retention Plan

Appendix E – Superior Court –Decision Paper on IT Outsourcing

Appendix F – IT Details – San Diego Superior Court

Appendix G – Superior Court Presentation on Outsourcing

Appendix H – Foreword to San Diego County’s Outsourcing RFP

Appendix I – Example of Survey Questions

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