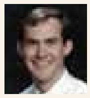
Increasing the Organizational Impact of Your Law Department

BY TRAVIS N. TURNER

The role of the law department must evolve to maintain its organizational relevance. Law departments have historically served to police and protect their companies from myriad legal, regulatory and compliance-related risks. In a dynamic capitalist market, however, the most significant risk a company faces is "creative destruction" from traditional competitors, new global providers and innovative disrupters. As significant as liability and compliance risks are for most companies, competitive pressures and market risks significantly outweigh the risks traditionally managed by legal departments. No wonder many law departments are perceived as being out-of-touch or even deal breakers by their business counterparts.

Today's most effective law departments don't just practice law, but instead help their companies achieve business and strategic goals. This article highlights six ways that legal departments can expand their organizational impact by focusing on essential activities, supporting business goals, driving revenue, managing assets, reducing expenses and risks, and delivering excellent customer service.



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Streamline the law department with effective strategic planning

Effective strategic planning is the key to focusing the law department on essential, business-critical responsibilities, while delegating or eliminating low-value activities. Strategic planning can streamline the handling of current matters (such as compliance and customer contracts) and past liabilities, while freeing up resources to support business goals and future company growth. Strategic planning includes:

1. understanding the company and its law department;
2. identifying and focusing on essential responsibilities;
3. reducing or eliminating non-essential work; and
4. setting specific goals and priorities for the law department.

The first step in strategic planning is to become familiar with and assess both the company — its business units, personnel, facilities, etc. — and the law department, including its structure, budget, lawyers, staffing, outside counsel, and the type and volume of its legal matters. In addition to traditional legal responsibilities, it is also helpful to inventory the law department's ancillary responsibilities that often include corporate governance, brand protection, entity management and risk management. Because no law department exists in a vacuum, it is useful to understand how the law department interacts with the rest of the company (including contributions it has made to the company and its perceived reputation), and how the law department compares to others in the same industry.

The second step in strategic planning is to identify which of the law department's responsibilities are mission-critical to the company, its goals and its growth. The law department should focus primarily on activities that have the greatest potential to impact revenue growth or contribute to expense reduction. Essential responsibilities include any that are key to company growth and goals, and might include areas like intellectual property, mergers and acquisition, licensing, employment, and contract management. In contrast, non-essential responsibilities are things that must get done but do not contribute to the company's goals or success, like maintaining the company's entity structure, certain tax and business licensing filings, and numerous other compliance-type responsibilities.

The third step in strategic planning is to delegate non-essential matters to capable outside counsel and other trusted service providers. Outside counsel tend to work most effectively where the value of litigation is low because of a large volume of similar claims (foreclosures, bankruptcies, collections or worker's compensation), or where the stakes are extremely high and expert counsel is required (antitrust, mass tort litigation or corporate bankruptcies). Similarly, service providers can create the greatest value for law departments for certain types of compliance or "run of the mill" matters, such as trademark searches, corporate transactional filings, business licenses and annual report filings, because they have the necessary staffing and expertise.

The final step in strategic planning is for the law department to set specific goals in support of company growth and its business goals, including creating new revenue and reducing expenses and risks. The law department can drive revenue, directly or indirectly, in a number of ways, such as: (i) by obtaining regulatory approval for a complex acquisition, (ii) seeking to influence the regulatory environment, (iii) negotiating joint venture agreements, (iv) assisting collections with high-value matters, or (v) effectively managing sales contracts for a fast-growing business unit. A law department can proactively reduce expenses through effectively managing its legal budget, and by partnering with businesspeople to reduce business expenses and risks.

Align the law department to support business goals

The key to achieving company and law department goals is to structure and align the law department to support the goals, and to devote adequate time and attention to them. Law departments should ensure that they are adequately staffed to support the goals and the specific areas of law that can have the greatest impact on bottom-line results. Non-essential activities should be delegated or outsourced to the greatest extent possible.

It is often helpful to assign specific lawyers to support different business units, territories or specific business executives. This ensures that lawyers are closer to the business units and allows for more effective legal strategy. This also helps in-house attorneys gain a better understanding of the business challenges facing the specific business unit, which often enables them to find ways to add more value to the business. For example, M&A or licensing lawyers might partner with business development in exploring and developing new opportunities. Trademark lawyers might spend more time on major product launches or assisting in the earliest stages of product development.

To increase the value of contribution to the business, law departments should encourage attorneys to obtain business education in addition to fulfilling their traditional continuing legal education requirements.

Driving revenue by facilitating business transactions and strategic deals

In-house lawyers should strive to facilitate day-to-day business transactions and other significant deals by overcoming legal, business and regulatory barriers with creative legal solutions. When the law department is viewed as a business partner by the rest of the organization, it is consulted more frequently as a sounding board for legal and business issues, and is often called upon to participate in early-stage deal negotiations. Law departments should actively work with their business counterparts to support business development through product development, acquisitions, licensing, reselling or partnership opportunities.

A good place to start is by having an efficient process for drafting and negotiating sales contracts, so the legal department does not delay them. It is also helpful to review contracts for both legal and business terms, drawing attention to terms that business executives may not have fully appreciated. Effective contract administration can also improve bottom-line results by monitoring price increase clauses (whether favorable or unfavorable), and the dates on which contracts can be renegotiated or must be renewed.

The law department can do much to facilitate acquisitions or other major deals by getting involved early on in the deal process. This helps ensure that potential problems can be identified and resolved earlier, including obtaining adequate financing and consents (if necessary) from the board of directors, shareholders and regulatory agencies (including Hart-Scott-Rodino and SEC filings). The law department can serve the critical role of assembling internal and external deal teams — comprised of business executives, in-house lawyers, outside counsel and financial advisors — and dividing and coordinating responsibilities among the team members.

Instead of getting bogged down in minutia, it is important to focus on the primary purpose of due diligence, namely to provide sufficient information to those who will decide whether to consummate the transaction, and if so, on what terms. Properly conducted due diligence can help determine the best transaction structure, uncover unknown liabilities (such as mass tort or environmental), reveal lower-than-expected asset quality and valuation, and help the business execute a smooth post-closing transition by becoming familiar with the purchased assets or company. When deal documents are being drafted, in-house attorneys should provide any outside counsel with as much context as possible, including how the deal fits in with company goals and strategy, the important (and unimportant) aspects of the deal, and how timing will impact the value of the deal and company objectives.

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One of the biggest (and frequently missed) opportunities to add value to the business is by ensuring the success of the deal post-closing. Law departments should manage the legal items, including obtaining contract consents to assignment, handling indemnification and escrow matters, and reviewing important operating contracts (customer, licensing, IT, IP, real estate, vendor, etc). In addition, the law department should make sure that there is an effective integration team in place — comprised of operations personnel, business unit executives and in-house lawyers — working to ensure a smooth transition. This team should meet with customers and vendors early on to prevent transition losses, which could undermine the success of the deal. In addition, this team should seek to realize the cost savings that often justified the acquisition in the first instance by consolidating redundant areas, such as with administrative staff, sales, insurance coverage, real estate, office and telecommunications equipment, vendors, IT infrastructure and corporate entities.

Effectively manage IP and other valuable assets

Law departments often find it challenging to effectively manage and optimize company's intellectual property and other assets. As one of the company's most valuable assets, intellectual property often receives more attention from the law department than other assets. The preliminary step in managing IP is to conduct an inventory of the company's entire IP portfolio, including patents, trademarks, copyrights, trade secrets and unprotected inventions. An IP inventory allows law departments to uncover gaps in protection that may have occurred as a result of acquisitions, rapid growth or expanded service offerings. For instance, companies often fail to register new trademarks or other valuable IP in connection with new products and services. Law departments should also

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- *Global Law Department (June 2010). www.acc.com/infopaks/gld_jun10*

Articles

- *Five Common Pitfalls for Managers (Dec. 2010). www.acc.com/pitfalls-managers_dec10*
- *Developing a High Performing and Change Resilient Legal Team (June 2008). www.acc.com/dvlp-legal-team_jun08*
- *Corporate Legal Departments: Doing More with Less in a Global Age (June 2008). www.acc.com/cld_glblage_jun08*

Education

More than ever, it's critical for in-house counsel to understand the business aspect of an organization and advise appropriately. For a primer on essential business skills, attend ACC's Mini MBA for In-house Counsel, presented in partnership with the Boston University School of Management. This three-day program is designed specifically for in-house counsel, to enhance their knowledge in critical MBA disciplines. For more information and to register, visit *www.acc.com/minimba.*

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develop a process and guidelines for protecting IP in the future, including how and under what circumstances IP will be protected.

Once IP rights have been adequately protected, the law department should seek to maximize the revenue received from IP assets. Inbound and outbound licensing agreements should be reviewed and carefully enforced to ensure that the company is receiving bargained-for benefits. IP assets that are not being fully used should either be licensed (or re-licensed on better terms), or sold to realize the value of the IP. The law department should also develop a cost-effective policy for determining when it will sue for infringement of its patents, trademarks, copyrights and online brand. Often overlooked is the potential for online abuse of the company's valuable intellectual property. The law department can ensure that the company's trademarks and brand are protected online by appropriate monitoring and defensive domain registrations, which balance the cost of registration, the value of traffic directed to the company website, and the potential for infringing domain sites.

Besides IP, there are other assets, such as accounts receivable, real estate and human capital, that deserve the attention of the law department. For instance, some law departments assist the finance and collections function with large delinquent accounts exceeding a certain dollar limit. Law departments can also anticipate and prepare for future company real estate needs, and negotiate real estate leases for favorable terms and cost savings. The law department might protect company human capital by handling non-compete litigation, key employment contracts, and providing training and support to HR in creating a positive work environment.

Proactively reduce expenses and risks

Law departments can contribute to the company's bottom line by focusing on expense reduction and reducing future expenses by carefully managing risks. Expense reduction should begin with the law department's budget, including carefully evaluating how funds are being spent. The law department might reduce expenses by changing outside counsel spending and billing policies, consolidating multiple technology vendors with integrated solutions, or taking more work in-house. Once the law department has been streamlined, it is helpful to partner with business executives to find additional savings opportunities throughout the company. This might include getting more involved with vendor negotiations (especially for companies without a procurement function), and reviewing vendor contracts and leases for savings opportunities.

In the absence of a risk management department, many law departments are charged with developing a risk management plan. The preliminary step is to identify potential

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risks, which includes reviewing recent claims, insurance data and legal liabilities. Risks that occur infrequently may not be part of the data but should nonetheless be considered because of their potential severity, including possible business disruption, data security breach, significant reputation damage, criminal or regulatory action, natural disaster, or loss of a major supplier or customer. Once all the risks have been identified, the risks should be ranked based on their frequency and potential magnitude. A risk management plan should include adequate insurance for insurable risks and preventive actions taken along in partnership with the business.

Provide excellent customer service

A customer-service mindset and culture is the single most important practice of highly effective law departments. Law departments that strive to serve their organizations and facilitate business goals and growth will get invited to the table earlier and more frequently. More often than not, they will find that their advice is taken seriously and is consulted more frequently. This allows law departments to uncover what is really going on throughout the organization, and as a result, create more value by identifying opportunities to support growth and mitigate risk. Law departments should strive to master the four "C"s of great customer service: a "can do" attitude, commitment to the client, competence and communication.

"Can do" attitude — While it is true that occasionally in-house lawyers must "lay down the law" to prevent corporate malfeasance or unwise business practices, too often in-house lawyers fall into the trap of focusing on what cannot be done. In contrast, the best law departments are intensely solution-oriented. Where there are roadblocks, in-house lawyers work with the business to find viable alternatives. Very often, if those involved are creative and persistent enough, there are alternative courses that will accomplish a particular business objective without running afoul of the law. Generating multiple alternative solutions, even if they are not what the business had in mind, are vital if the law department is to be viewed as a business partner rather than as a hindrance to achieving business goals.

Commitment to client — The importance of being committed to the client cannot be over-stated. Commitment can be demonstrated through accessibility and visibility, including by visiting company personnel and business leaders regularly and attending meetings where critical legal or business issues will be discussed. Demonstrating prompt service is particularly important when a client is owed specific deliverables such as customer contracts, which can hold up a deal closing, client onboarding and revenue recognition.

Competence — While clients may not have the skill and knowledge to effectively judge what separates "good" from "great" lawyering, they can easily identify a "bad" lawyer. In-house lawyers should strive to not only understand the legal aspects of a matter, but also the business issues impacting a deal. In-house lawyers should strive to always deliver superior results on every project. In addition, while it is helpful to lay out the pros and cons of a particular course of action, make sure to leave your client with a clear recommendation and explanation of why a particular option is the best course of action.

Communication — Lawyers have a reputation for being bad communicators. When speaking with business people, make sure to communicate clearly, ask a lot of questions and use plain language. Where you must use legal terms, make sure to go slowly and explain jargon. Ultimately, strive to communicate legal advice in business concepts and language, including costs and probabilities, with a clear recommendation and plan. To effectively facilitate communication with the business, it is helpful to make sure the law department is represented on any internal intranet or wiki, as well as to regularly train business groups on critical issues with legal significance to the company.

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