

By Susan M. Diehl

How to Run Your In-House Legal Department Like a Profit Center

Introduction

I have always had a love of business, even when I knew I wanted to be a lawyer. Reality set in at my first in-house position, during the height of an industry slump. That job taught me what often defines the life of corporate positions: being “overhead.” I learned that when times get tough, overhead gets going (right out the door). The nearly quarterly demands to trim our already meager ranks were also accompanied by the question, “What, exactly, is it that you *do*?” This hard lesson spurred a journey to prove that what an in-house lawyer *does* is something worthwhile for business.

The question is how to define and demonstrate the value creation potential of an in-house legal function. Despite numerous articles on law firm convergence, e-billing, and TQM (total quality management) for dummies, none provided me a road map of how to translate individual actions and transactions into a total system for value creation. This system also needed to be translatable to the business. Ultimately, the answer came from the principles of business itself: strategy and execution.

In this article, I will discuss how our company’s legal function evolved from an assembly of high-quality lawyers acting individually to a high-performance team that has leveraged its small size by using tested business principles to create and execute a strategy. The goal—to be a corporate service that adds to, not detracts from, our company’s bottom line—is still a work in progress. As with most things, the fundamentals are critical. Then, it is about basic strategy, execution, and continuous improvement.

FAST FACTS:

Understanding your company’s business and strategic goals is an important step toward formulating a legal strategy that brings value to your client.

Leveraging your company’s existing processes and resources can enhance the credibility of the legal strategy and reduce costs.

Acknowledging and rewarding the support of the legal department team members and others in the organization is important currency in keeping the team motivated.

First, the Fundamentals

There are four fundamentals to take on the journey toward value creation: (1) know the business you serve to the same degree or *better* than other business managers, and understand its value creation drivers; (2) be fluent in business as a second language; (3) assess the processes and resources available through the business and leverage them to good advantage; and (4) build a superior team of people who will create and execute a legal strategy that generates value for the business.

To “know” the business you serve is the mantra of effective corporate counsel. One of the simplest and best articulations of this fundamental is in “Reebok Rules,” by John B. Douglas III.¹ In his classic article, Douglas reminds corporate counsel to attend business meetings and exercise business judgment.² Practice these rules and use legal training techniques in meetings to develop and challenge ideas, and suggest some of your own. Participate actively in the business as a whole, and become as good a business manager as your clients. Most importantly, learn what creates value for your business and apply these drivers to the selection of the work you perform.

Be fluent in business as a second language. This is vital to your credibility as a business leader and ensures that you can translate legal concepts and strategy into business value terms. A good example is in the finance area. Many lawyers feel vulnerable when others are discussing financial concepts, and often will refrain from a financial discussion to avoid making a mistake. Recently, we had an opportunity to settle a piece of pending litigation one of two ways: one allowed us to capitalize the settlement with minimal bottom-line impact for the year, and the other had an immediate and significant adverse effect on our bottom line. Using your business fluency helps the two-way dialogue with business partners, leading to choices that are consistent with enterprise-wide objectives.

Learn how the company’s existing business support resources and processes can relieve your team of non-core work. Leveraging these resources and processes allows greater focus on core legal activities that create value. It also helps the department forge collaborative relationships with other corporate services and exposes department members to key business processes.

Assemble a superior team of people with a good complement of skills. Like the businesses we serve, having a high-performing group is all about finding, developing, and retaining great people. And, if your team develops terrific business leaders, there is no greater value that you can bring to your company!

Next, Develop Your Strategy

Our team is small, so we recognized that its strength was enhanced by being aligned to a common purpose. We worked with an outside consultant to help discover that purpose and to visualize our future. Using our company’s purpose, mission, and values as our guide, the legal team developed its own version of these elements to begin to answer the question, “What, exactly, is it that you *do*?” In the end, the department set a goal to be the

“best in the world” at running an in-house legal function like a profit center.

As its next element, a legal department strategy needs a “functional business plan” to identify how it should focus resources to support the company’s overall business strategy. In its plan, our legal team identified three strategic “anchors” that define the function’s key characteristics. These anchors direct our performance and are the basis of our strategy.

With our anchors set, we also elaborated the drivers of value creation for the department. These drivers are criteria for the selection of the short- and long-term initiatives the department chooses to execute its strategic objectives. In our group, cost effectiveness, prevention, and claims management are how the department brings value to the enterprise. But these drivers cannot be viewed out of context; they need to align further with the company’s overall strategy.

A brief word on the bottom-line focus of the legal strategy is appropriate. In the end, enhancing shareholder value is a principal goal of the business. Of course, the legal function provides ethical leadership and integrity, enhancing the organization’s license to operate. Nevertheless, the executive leadership of most companies wants to understand how much the enterprise spends on internal and external legal services and how the department influences the use or investment of that spending. That “influence” factor is the foundation of the definition of the value a department creates.

Therefore, a legal function *can never ignore* its legal spending, or attribute it to things beyond its control. In response to this reality, we set one- and three-year objectives for legal spending and created targets for reduction. And, simply because it is often a necessary expense, legal spending should be viewed as a business investment. Like any investment, business leaders want to see the yield of what is spent. For example, continuing to spend money on litigation when the additional investment can-

not create a better result is not prudent management of business resources. This resource investment and allocation is a daily part of our work as corporate counsel and is an important feature of our value-based model.

The strategic initiatives the team selects should be specific and measurable and support the company’s strategy. Our department sets its initiatives annually at an offsite event. The team comes prepared with the company’s goals in hand and does pre-work around “hot” issues on the horizon, based on discussions with internal clients and other key stakeholders. As the initiatives are debated and set by the team, the team aligns naturally to them and “buys in” to their importance. Each initiative has an “owner” who is responsible for communicating, tracking, and completing the initiative on time. Of course, like all business initiatives, the company’s performance management systems will reinforce behaviors that align with the strategy.

At the same session, it is important to establish metrics. Metrics are often a difficult concept for lawyers because lawyers believe that their work is more art than science. While setting the metrics is often tough, they are critical to the successful implementation of the strategy and continuous improvement of the processes that support the strategy. Metrics are the measuring tool that the department uses to communicate its role and outputs in business terms.

Now, Execute the Strategy

Once the strategy is in place and the initiatives are chosen, the challenge and exhilaration of implementation begins. Why exhilaration? Because it is at this stage you can transform the department from something that *acts* like a profit center to something that *is* a profit center.

First, communicate the initiatives. The communications take many forms, both written and verbal. Keep the messages simple



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and uncomplicated and use the language of the business. For example, when we discuss cost-reduction targets, we link them to the company's objectives to standard financial measures, like return on investment. This communications plan, which is more marketing than law, also promotes the legal team's performance culture within the organization.

Common sense dictates that an effective strategy is one that the team can deliver. To enhance the team's alignment and ability to deliver, we meet regularly to track progress, focusing on current priorities and advancing the initiatives. Upfront planning leads to productive meetings and effective team dynamics. These meetings also create individual accountability for completion of the initiatives, and mitigate the risk that initiatives fall victim to the daily routine.

Next, where necessary, develop business processes to facilitate execution of the initiatives. With an overall goal of reducing outside counsel spending, our team set an initiative for the year to reduce the number of cases pending by net 10 percent, without exceeding appropriate settlement ranges. The root cause of the creep in litigation numbers seemed to evolve from the "out of sight, out of mind" syndrome. To address this reality, we decided to meet bimonthly as a team to review all pending litigation and to track statistics that were predictive of our costs, such as the length of time a case was open. Each case has an "owner" who is accountable for the case, including its successful resolution. Within three years, the number of pending cases was less than 50 percent of the number existing at the start of the tracking. We then mapped the process to preserve institutional knowledge, which brings value to the organization.

As the initiatives proceed, it is important to continue to communicate progress made to date and changes to the scope of the initiatives or outcomes expected. This step reinforces the importance of the initiatives to the organization and confirms their relevance to the company's objectives. Communication is the key to creating buy-in to the value creation concepts and creates a sense that the department is committed to helping the business. It also helps to create allies who will be business partners in other initiatives.

Finally, celebrate your wins and thank those in the company who have contributed to your success as a team. Acknowledging

and rewarding the support of the team members and others in the organization is important currency in keeping the team motivated. Communicate (again) the outcome of the initiative and then seek feedback on what went right and what could be improved. Use this information to improve the processes, team dynamics, and execution methods.

Conclusion

The concepts contained in this article are an amalgamation of many business concepts. As I reflect on what our in-house legal department has done and what we have left to do, it's about planning, marketing and executing—things that lawyers practice regularly. But instead of letting others drive the work that the department does, convince them to support those initiatives that align with the organization's strategy and create value for the shareholder. Since 2001, when we began to track the outcomes of our initiatives, the department has contributed over \$30 million in EBITDA (earnings before interest, taxes, depreciation, and amortization) and an additional \$50 million in cash flow. This outcome required an internal investment of approximately \$1 million for the legal department and \$4 million for outside legal resources. The department has defined and demonstrated value equal to or better than the amounts the company has spent on legal services, which in business terms equates to a solid return on the investment in the department. Maybe, just maybe, the concept of lawyer as "overhead" can be a thing of the past. ■



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FOOTNOTES

1. Douglas III, John B., "Reebok Rules," *ACCA Docket*, Spring 1992.
2. *Id.*, rules 1 and 3.