



Today's Business Attorney

Outside Counsel, Inside Thinking

By Steven J. Enwright

Introduction

What are today's business executives looking for in a legal advisor? Top-notch, technically sound legal advice? The ability to convey complex legal information in terms they can understand? Sure. But these attributes are no longer enough. Today, there is a new breed of younger, entrepreneurial-minded executives who believe that good legal advice is the baseline—a given. They often complain that their attorneys provide legal advice in a vacuum and do not truly understand how legal counsel relates to their business needs. They grumble that lawyers are overly technical and simply do not “get it” when it comes to *their* company. In addition to complaints about poor communication and high fees, an often-cited source of frustration is the inability to “understand the clients' business objectives.”¹ Simply put, today's executives demand attorneys that contribute both legal and strategic value to their businesses.

Modern businesses operate under a customer-centric business model and expect their attorneys to do the same. In an age when you can Google® to find an opinion on almost any subject, modern executives do not have patience for pontificating lawyers, but instead are looking for attorneys that understand “*my* business and *me*.”

In many ways, modern executives feel that they are looking for the proverbial unicorn. They know what they want from an attorney, but they are not sure it exists. The increasing demand for strategic legal advice ultimately presents a tremendous opportunity for innovative law firms to gain market share by offering the best of both worlds to their business clients. How does a law firm exploit this opportunity? It is the classic “buy or build” decision. A firm can go out and acquire strategic attorneys or it can create strategic attorneys organically. Ideally, it can find a way to do both.

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In these difficult economic times, what can you do to get the upper hand? Offer what the struggling clients are desperate for: strategic legal advice. Today's businesses want more; today's attorneys need to provide more.

Characteristics of the Modern Business Attorney

A good business attorney knows the law and knows it well. The *modern* business attorney, however, also approaches the client's challenges with the client's overall business strategy—“the big picture”—in mind. The modern business attorney will often start a project by thoroughly reviewing (or sometimes helping to create) the client's business plan and immersing himself or herself, to the extent possible, in the client's company culture. The attorney recognizes that providing strategic legal advice requires a thorough understanding of the client's business situation and is willing to make an investment of non-billable time to acquire this insight.

Investing time in understanding the client's business pays dividends in two ways. First, it helps position the attorney and firm as valued, long-term partners. Secondly, but perhaps more importantly, it arms the attorney with knowledge that could strongly influence the nature of the counsel he or she provides.

Strategic legal advice is not always obvious. In fact, it is often *counterintuitive*. For example, a strategic attorney may advise a client to concede a litigation matter on the merits of the case because deploying the client's resources elsewhere is more strategically appropriate, i.e., more *on strategy*. On the other hand, it could mean fighting hard on the merits even though the dollar amount at stake is insignificant, simply because the underlying message or principle is strategically of value to the company.

The trick is to know how various legal actions relate to strategy. Modern executives understand the action items that are within the business strategies required to achieve their business objectives, but are generally (and understandably) unable to transfer this ability to a legal context. Accordingly, the modern business attorney brings the legal function of a business in line with the rest of the business.

Buy It: Look In-House

To benefit from the perspective of modern, strategic business attorneys, firms must know where to find them. To find attorneys who understand business, one should look first to the businesses themselves: in-house counsel.

Generally, in-house counsel has a seat at the table, alongside the chief executive officer, chief financial officer, and other executives, as they plot their company's objectives and strategies. By virtue of extensive interaction with corporate executives, in-house attorneys naturally become well-skilled at communicating with business teams and develop strong business acumen. They develop an understanding of financial statements and banking arrangements and often participate in capital-raising. By interacting at this business level, in-house attorneys gain a detailed and accurate understanding of the financial feasibility of certain transactions that is not always afforded outside counsel. The intimate understanding of business strategy and objectives gained



by in-house attorneys generally translates into an ability to better address legal matters.

As an in-house attorney interacts with the financial and growth aspects of a company, he or she is viewed as a partner in the company, rather than as an outsider who concentrates solely on the law and legal analysis. He or she is consulted accordingly, not just on the legal angle, but on the merits and implications of the action being considered. So the unique access to business operations, coupled with being enmeshed in the corporation's entrepreneurial spirit and culture, provides the in-house attorney with a unique perspective that cannot help but serve his or her company.

In the same way that private practice prepares an attorney to go in-house, in-house practice prepares an attorney to re-enter private practice. In fact, an attorney re-entering private practice with in-house experience under his or her belt has a distinct advantage from a client relations perspective. It is analogous to a team having a coach that played the sport—he or she fully understands what it's like to physically be in the game, which informs his or her expectations, planning, and strategy. Attorneys who bring in-house experience with them when returning to private practice possess legal skills, contacts, and perspectives that can help their firm acquire and keep business clients.

Build It: Strategic Training

In many ways, a law-firm setting provides new attorneys with an ideal environment to “cut their teeth.” First, a law firm helps attorneys with the law's socialization process. Most law firms have formal mentoring programs that provide young attorneys with an experienced role model to learn from. In private practice, attorneys develop the lexicon of a particular practice area and learn the ins and outs of the legal profession. Law firms can also provide attorneys with the deal or case flow they need to develop their skills and grow into first-rate practitioners. Other attractive features of a law firm include a diverse client base, extensive firm resources, a support staff, significant advancement opportunities, name recognition and prestige, and intellectual challenge.

One thing a law firm cannot provide to a young attorney is life on the client side. That is why a law firm would be well served to include an in-house “rotation” as part of its training program. A firm with such a program could “loan” associates to the in-house legal departments of its clients (or non-clients) for two to three years. Or, perhaps for a certain number of days per week, the firm could ar-

range to have its younger associates work at the clients' offices. A crucial element of such a program would be to ensure that the associate remains on the “partnership track” while he or she is working in-house.

Even without such training opportunities, it is still quite possible for the individual attorney to gain the advantage of an in-house perspective. Attorneys can take time to interview the company's officers and read its business plan so they can see the business from the leadership's point of view. Attorneys may find it helpful to gain an understanding of the company's business goals (short-, mid-, and long-term) as well as the basic financials, revenue stream, and profit drivers. A good grasp of the company's culture and industry terminology can also help position an attorney as a valued partner with invaluable expertise that's not easily replaced.

Conclusion

In today's market, where legal services are increasingly being viewed as a commodity and businesses are outsourcing (and even offshoring) legal work to save money, United States law firms need to maintain a competitive edge. In the modern business environment—increasingly driven by a strategic understanding of customer needs, wants, and expectations—attorneys with a strategic mindset have the competitive edge. Law firms that desire to provide strategic legal advice geared toward the modern executive will focus effort and resources on developing more strategic attorneys—both recruiting attorneys with in-house experience and providing their attorneys with training and experience to gain a strategic perspective. ■

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FOOTNOTE

1. See *17th Annual Survey of General Counsel*, InsideCounsel (July 2006).

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