

Becoming a True Partner to the Business

JULIE A. PRENG

Managing Director, Legal Specialty Practice, Korn/Ferry International, USA

CEOs and directors today demand a general counsel who operates as a partner to the business, as involved in strategy formulation and execution as any member of the company's senior management team. Long gone is the notion that being a talented technician alone is the ticket to success for budding chief legal officers.

“The general counsel, as curious, broad-gauged business partner, must help define, debate and develop business positions on broad company issues,” Ben W. Heineman, Jr. the former general counsel of General Electric Co. has said. They should be “at the table,” according to Heineman, on “key operational initiatives, economic risk assessment and mitigation, major transactions, new strategic directions ... important template contracts, resolution of major disputes ... and major accounting decisions that have a forensic dimension.”¹

Much has been written about this iteration of general counsel as business partner/holistic risk manager, and much time and effort has been spent in the hope of building on the success that the GE legal department famously enjoyed under Heineman.

The reality, however, is that few in-house attorneys arrive with the results-oriented, solutions-driven skills that are needed to create the value that CEOs expect. As a result, few achieve the iconic status of “trusted advisor.” Despite some recent innovations, law schools and private law firms are not places where teaching corporate strategy and business judgment is considered relevant, much less a priority.² The burden has fallen to corporate law departments, but they are often ill-equipped or insufficiently motivated to change the culture.

So how do in-house lawyers – and their leaders -- make the leap? How do they become constructively, proactively helpful in furthering organizational goals? How do they make themselves invaluable?

To explore the disconnect between the needs and expectations of CEOs and the skills with which candidates for chief legal jobs often present the author spoke with some forward-thinking general counsel who have made headway. What distinguishes these people is that they have become thoughtful, even granular, about what it really means to be a trusted advisor and business partner.

They are actively reaching out to business units in their companies, surveying their needs, and devising possible solutions to business problems, even before they are

¹ “The General Counsel as Lawyer-Statesman,” by Ben W. Heineman, Jr., 2010, Harvard Law School Program on the Legal Profession

² See, e.g., “Teaching Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead,” by Eric J. Gouvin, 2009, University of Missouri-Kansas City Law Review, Volume 78

asked. They are increasingly using metrics and other assessments to evaluate their own performance, and where that performance falls short, looking for new and innovative ways to train their attorneys and increase accountability. They are taking bold steps to advocate for themselves, communicating what they are doing throughout organizations. They are building credibility while giving business insiders opportunities to involve themselves more deeply in legal issues.

Such moves, to be sure, are foreign to traditional legal departments, which have been immune from the requirements of planning and performance measurement that have always applied to other business units. But that is what CEOs expect, and the demand for rigor is only increasing as more corporations become more aggressive in embracing comprehensive performance management programs, and as the in-house legal movement continues to expand globally.³ That is the new normal.

Here are some action steps favored by in-house lawyers who are successfully executing on this evolved paradigm, successfully changing the culture in which they operate, and consequently living every day in the inner circle.

Survey Business Units about Needs, Perceived Gaps

Many corporate lawyers firmly believe they have already achieved trusted advisor status.

“Ask any lawyer worth his salt, ‘Are you a strategic lawyer?’ and he will say, ‘Of course, I am. It is insulting to suggest I am anything else,’” says G. Richard Shell, professor of legal studies and business ethics and management at the University of Pennsylvania Wharton School of Business.⁴

The trouble is, as Shell and others point out, they can rarely prove it. The best judges of who are the best strategic lawyers are the clients, and the lawyers hardly ever ask them.

That is ironic because that is where the process of becoming a strategic lawyer begins. Just like any other service provider, the in-house attorney has to understand the needs of his customers and the perceptions of his ability to deliver. Once that is known, he can make a plan, develop ways to measure success, and make mid-course adjustments.

Surveys are a good way of doing this, establishing a regular channel to get feedback on whether clients within the business believe their lawyers are acting strategically and adding value. They can help identify situations where in-house lawyers have been helpful—and not so helpful.

Importantly, they can also identify the goals and expectations of the business, near-term and beyond, so the lawyers can adjust their own conduct, and plan accordingly. After an initial survey, regular follow-ups should become part of the annual planning process.

Some of the most strategic lawyers go a step further. Sheila C. Cheston, the general counsel of Northrop Grumman Corp., has an “all-hands” workshop with her attorneys and leaders of various business units every year. Over two days, she asks the operations’ executives to discuss what “good looks like” to them, and invites

³ “Is the In-House Counsel Movement Going Global? A Preliminary Assessment of the Role of Internal Counsel in Emerging Economies,” by David Wilkins, 2012, *Wisconsin Law Review*, Volume 2012, No. 2

⁴ Interview with Shell

specific dialogue about what the business units expect from their lawyers. She also invites the business leaders to discuss their perceptions of barriers that prevent the attorneys from meeting their expectations.⁵

Lawyers at Ford Motor Co. are not considered to be doing their jobs unless they take concrete steps to gain a deep understanding of the business objectives and market challenges of the units for which they are responsible, according to David G. Leitch, Ford's general counsel. They insinuate themselves, in a collaborative way, by attending business meetings with no particular agenda, other than to gain insight into the operations of various units and their personnel. They visit operating sites and watch as employees develop and manufacture products.

Indeed, just as Ford has restructured its car-making operations in recent years, so quietly has its corporate legal department. When he was named to the top legal post in 2005, Leitch says he found a group of individually talented lawyers – who did not have the business leader access or support he deemed necessary to function as problem solvers. Getting lawyers to master the business has been a way to boost their credibility. Today, an in-house lawyer at Ford, he says, must “earn his advocacy by showing the business high engagement, rapid response and a very real solutions orientation.”⁶

Make a Strategic Plan

Having a business plan is as important for a law department as any other corporate unit. What are some of the features of a workable and sustainable one?

MassMutual Financial Group, through its general counsel, Mark Roellig, engages in an elaborate planning process that acts as a blueprint for how the company legal department can affirmatively advance specific business unit objectives.⁷

The plan takes its cues directly from the strategic plans of each MassMutual business unit. If the goal is to increase revenue, for instance, Roellig identifies ways for the legal group to help do just that. Working to change the regulatory environment, for instance, is one way his department can make a tangible contribution to opening new markets, enhancing revenue generation and helping the business meet its goals.

The strategy relies heavily on constant communication between the legal group and business units to ensure their respective goals are aligned, and on strict accountability of the in-house lawyers for their work. Each project is assigned to an in-house lawyer or group, and their accomplishments are measured to see if the goal was achieved, and in what manner. Roellig has a series of quantitative objectives to which he attaches ratings that are tied to compensation for bonus and salary decisions.

Lawyers and legal departments have struggled with strategic planning because they have focused only on traditional measures of performance. Exceeding industry norms for productivity may win awards at bar meetings. But it does not necessarily make a strategic lawyer.

Lawyers really can and do create discernible, quantifiable value. They just have to listen closely to their business unit customers, and think more creatively about the work that they do. Strategic goals can include facilitating growth of a company's patent portfolio as a way of boosting royalty income, or helping open new markets

⁵ Interview with Cheston

⁶ Interview with Leitch

⁷ Interview with Roellig

for expansion-minded business units by working to change state and local tax laws. Lawyers often create concrete value when they provide input into the design of financial and other products.

At MassMutual, strategic thinking and planning has had this result: the law department now has a reputation internally for creating business value, and the business is incentivized to invite lawyers to the strategy table, because they know that they are all in on accomplishing and supporting their objectives. “We have found this discussion alone increases business leaders’ respect for the lawyers,” Roellig says, adding that the feedback is often in the vein of “You mean you are here actually to assist me in meeting my objectives?”⁸

Establish Metrics to Evaluate Performance

Lawyers have been heard to complain that their contributions to an organization often go under-appreciated, and that they are viewed primarily as a cost center. At the same time, relatively few law departments engage in a systematic process of self-evaluation and analysis. The fundamental nature of legal services, such thinking goes, is inherently incapable of being rigorously evaluated or measured.⁹

That is a big mistake. Today, the absence of metrics for law departments feeds the suspicion that they are cost centers without redeeming value. The creative use of metrics can help counter that impression, and help legal departments manage expectations in how they deploy resources.

Assessments should include “hard” measures of financial and operational efficiency, such as law department spending as a percentage of revenue as well as data on legal matters opened and closed by in-house lawyers over a year. Increasingly important, however, are “soft” measures of relationship building and business development. Indeed, at a time of growing scrutiny of legal departments, CEOs are likely to care less about overall spending compared with industry norms than the contribution being made to overall corporate competitive advantage.

Among the most important of these “soft” considerations:

Prioritization: Does the legal department focus on completing high-priority projects first? Is there a process in the legal department for flagging exigent matters, and giving them the immediate attention they deserve? Is the department nimble enough to respond quickly to shifting priorities?

Timeliness of Deliverables: The failure to deliver on a timely basis is a relationship killer. It reinforces the perception that lawyers are a barrier to business and clueless as to the attainment of organizational goals. Legal departments should have concrete standards transparent to their business clients that show them when they can expect to receive outputs. Regularly striving to beat such deadlines is a way to demonstrate that the department is service oriented.

There are various tools to identify needed improvements, including client satisfaction surveys and 360-degree feedback surveys, the former for business and corporate unit clients of the law department, the latter for colleagues, subordinates, supervisors and clients.

⁸ For a more extensive overview of the MassMutual legal department strategy, see “Making Your Legal Organization a Strategic Asset for the Business,” by Mark Roellig, ACC Docket, 2010, Vol. 28, No. 3, Association of Corporate Counsel

⁹ A survey by the Canadian Corporate Counsel Association found that 57% of corporate counsel respondents had no key performance indicators in place by which their contribution to the organization could be measured. “False Measures of Value?” by Richard Stock, Catalyst Consulting, 2011

Groups such as the Association of Corporate Counsel as well as myriad legal-consulting firms have developed sample surveys to assess legal team core competencies in areas such as client relationship management and entrepreneurship and innovation, in some cases developing forms that can be used to assess by multiple constituencies, including clients and peers.¹⁰

Among the personal attributes, leadership and development skills, and business/client competencies that have been isolated as core to any strategic lawyer:¹¹

- Anticipates and leads change to lead the business;
- Adds value by finding ways to make things better for the internal and external customers of the organization;
- Sets stretch goals to improve performance;
- Systematically maintains contact/gathers information in order to drive the organization toward positive results; and
- Understands the environment and is aware of projected directions of the industry.

Teachable Moments: Business, Accounting, Communications

High-performing legal departments, paradoxically, are always sending their lawyers back to school.

In-house attorneys at Tyco International are encouraged to take courses on understanding basic financial documents like balance sheets, and the fundamentals of finance. Business leaders give instruction to in-house lawyers on business and financial concepts, and how individual units rely on financial markers to analyze problems. The continuing education extends beyond business basics: attorneys are also schooled in language, communication and presentation skills in order to communicate more effectively with their business leader clients. Education, says the company's general counsel, Judith A. Reinsdorf, is often an important component of the development plans for individual lawyers on her team.¹²

The legal department at Northrop Grumman has its own "Business Academy," an eight-week program developed by Cheston, where lawyers huddle with functional corporate heads of such departments as finance, mergers, internal audit and investor relations.

At each meeting one of the business representatives leads the session to teach lawyers about something critical to his particular function. A recent tutorial explored the role of corporate finance in maximizing shareholder value. The side-effect, beyond the actual learning, is a cultural impact. The attorneys see how all the different functions beyond their own areas of expertise fit together.

Roellig of MassMutual has an on-going, multi-step process for ensuring that his attorneys are not only steeped in the business, but have opportunities for personal and professional growth, sending his strong performers to MBA or "mini" MBA programs, and retaining outside experts to sharpen insiders' communication, writing and presentation skills.

¹⁰ See, e.g., "How to Align Legal Team Competency and Performance Measures," Association of Corporate Counsel, 2008; "Using Benchmarks and Performance Metrics to Make Better In-House Compensation Decisions," by Marci Krufka, Altman Weil, Inc., 2005

¹¹ "Competencies for Lawyers," by Richard Stock, Catalyst Consulting, 2008

¹² Interview with Reinsdorf

He personally teaches an in-house course in probability analysis to help his lawyers speak more plainly and concretely to business insiders about the potential dollar-and-cents impacts of litigation and other actions. An Ivy League management professor is also periodically retained to teach business judgment.

Roellig and other strategic-thinking general counsel constantly make people stretch, whether they are already stars or whether they are relative newcomers in need of grooming. Leveraging the talents and strengths of in-house lawyers rather than pigeon-holing them in particular functions can create unexpected value.

An IP lawyer may truly understand and appreciate the value of the company patent portfolio, and its enormous strategic significance. But think how much more robust his value and contributions would be if he reached out of his comfort zone and gained a working knowledge of finance and accounting. New ways to monetize assets could emerge. Working knowledge of changes in tax laws might well suggest new and lucrative templates for structuring licensing agreements.

Law department leaders should also resist the natural and reflexive temptation to give work only to people who are really good at it. The lawyer for the widget division may not be the strongest public speaker on the team, but unless he gets more chances to practice those skills he will never become a true part of its leadership.

Top attorneys can be challenged, too. A high-achiever might be given a high-profile special project that involves face time with top management or the board. Service on the audit committee or in the corporate secretary's office can enhance the law department's institutional knowledge of governance principles, while priming the individual lawyer's own leadership skills. Look upon the law department as an incubator, and be flattered when lawyers are hired away to be general counsel elsewhere.

Accountability & Athletes

CEOs want lawyers who make decisions and figure out how to win – rather than just call balls and strikes. The strategic lawyer tries to find solutions rather than options.

That is a much different mindset than a generation ago. Times used to be when lawyers were told that when a client asks a question their job was to present the risks of various options and let the managers who know the business be the decision-makers. Now CEOs want lawyers to make decisions. That is the essence of personal accountability.

As it happens, decision-makers make the best sort of in-house attorney (and the best general counsel). They are not afraid to take on something new. They are not afraid to be innovative. They are not afraid of adversity. They are ready, willing and able to just figure it out as they go along. I call them “athletes.”

Tyco's Reinsdorf says she has found that the best strategic lawyers have what she calls strong “learning agility capabilities.” They have an ability and appetite to learn. They are interested and curious in solving problems. They have an instinct that is just as natural and fundamental as someone who is socially adept. General counsel should cultivate and encourage agile minds.

A solutions-driven general counsel should look for – and reward -- lawyers who put their hands up and say “Give it to me,” even if it is something that is outside their normal sphere of experience or expertise, even unrelated to their current

organizational duties. These can be projects to advance the whole strategy of aligning the legal department with the objectives of the company or individual matters of substantive law.

Some athletic moves:

An immigration problem develops in the course of vetting a sought-after candidate for a sensitive engineering position. The legal department's top expert on software piracy hears of the problem and pipes up at a meeting: "You know what? I have never seen this before. Why not give it to me? Let me see what I can find out. I will tell you where we stand, and whether this is something we can negotiate in a week."

The higher-ups suggest that the law department has not been sufficiently prioritizing its work, and that it gets bogged down in the daily business of contract management without seeing the big picture. A lawyer puts his hand up and offers to do some research into best practices for intake management. An internal ratings system evolves where significant risks are quickly elevated so that no one is blindsided.

Communicate

Once all this work is done, concrete steps should be taken to highlight the role that the legal department has had in supporting company growth, products and businesses. General counsel run the risk of having resources cut back if they do not advocate for themselves and their departments, demonstrating that they are effectively and efficiently using resources to support organizational goals.

Effective dialogue can be established through something as straightforward as a regular newsletter or town-hall style presentations featuring departmental accomplishments, or discussions between business leaders and counsel on current corporate issues.

Steps can also be taken to make the law department more client-friendly. Circulate a chart with the names of lawyers, their contact information, and business specialty, so business leaders know who to call when problems erupt.

Develop self-help legal tools. Some law departments have templates that allow non-lawyer operations personnel to put together contracts based on pre-defined menu choices, all without having to call legal. This sort of thing can only enhance mutual respect and trust. It also makes everyone happy: the dealmakers get their deals done quicker, and the lawyers can focus on weightier matters.

Conclusion

It's often said that "law school teaches one to think." It is up to in-house legal departments to promote the evolution of that thinking into the business arena: anticipating risk, analyzing potential outcomes, and proposing solutions. Particularly critical, in-house attorneys must broaden their skills from making arguments to making decisions. Only then, with the confidence and support of the business, can lawyers expect to be true partners and advisors, leaders rather than laggards, and permanent fixtures "at the table" where companies resolve the most pressing issues of the day, every day.

Julie Anne Preng received her juris doctorate degree from Hofstra University School of Law and a bachelor's degree in political science and philosophy from New York University, graduating magna cum laude and Phi Beta Kappa. After a successful career as an attorney practicing in New York and specializing in litigation and corporate/commercial work, embarked upon executive search focusing on the recruitment of senior-level executives in the legal and compliance professions.

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