Rightsourcing: The agile legal department's competitive advantage

by Ethan Patashnik

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For in-house corporate counsel, the perpetual mantra to "do more with less" is really just an open-ended mandate to make the most effective possible use of the people, technology, and resources at the department's disposal. In 2020, the "more" part of the equation includes anticipating the future needs of the business and any potential legal issues the company might face, while the "less" involves allocating the workload (insourcing vs. outsourcing vs. technosourcing) in a way that maximizes both the cost-effectiveness and quality of the results.

Every legal department faces these allocation problems (aka opportunities) and finding the right balance of solutions is a constant challenge, especially in the face of mushrooming options. Not only is every legal department increasingly staffed by people with a different blend of talents and capabilities, the tools, technology, resources, and support models available to legal departments is rapidly evolving, making the calculus that much more difficult.

The volume, complexity and risk associated with corporate legal issues has grown tremendously as well, forcing in-house Chief Legal Officers (CLOs) and/or General Counsel (GCs) to implement more time and cost-effective solution models. The need to consider a different mix of sourcing options inevitably arises because traditional legal service providers (i.e., law firms) don't always have the necessary expertise, technical know-how, bandwidth or cost and investment model to handle the demands of this proliferating pile of work. Moreover, most law firms are not strategically or tactically positioned to be effective at managing the "business of law," especially compared to the resources, capabilities, and geographical reach of other providers (e.g. Big Four). Highly successful law firms also tend to focus on the "practice of law," and on developing deep benches of expertise in specific practice areas. Containing costs for their clients is not necessarily their top priority.

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Rightsourcing

"Rightsourcing" is the art and practice of matching a legal department's various work needs with the ideal mix of sourcing solutions (insourcing vs. outsourcing vs. technosourcing) to deliver the best results at the lowest practical price point.

Rightsourcing isn't just about costs, however. Legal operations that rightsource correctly and reliably can elevate the role of their department in a company by turning rightsourcing itself into a competitive advantage. This potential contribution can help raise the stature of CLOs in the C-suite and reinforce the importance of optimizing the management of the "business of law" for the legal department.

The importance of right sourcing should be viewed against this backdrop of strategic decision-making and improved overall business performance. Indeed, the skyrocketing popularity of the Corporate Legal Operations Consortium (CLOC) as a legal operations trade group is a significant indicator that right-sourced legal departments are making increasingly valuable contributions to their organizations. Recognition from the C-suites isn't the only metric of value for these types of operations, either. Everyone in a well-managed legal operations department, no matter their role, should see themselves as a key contributor to the success of the legal department and company. This awareness is about more than profit; it can also serve as the foundation for the sort of *esprit de corps* that many departments strive for, but few actually achieve.

An ever-expanding support universe

What strategic legal departments need, then, is a more foolproof method for analyzing both the company's needs and the resources, capabilities, and limitations of the legal department itself. What challenges does the company face? What in-house capabilities does the department have? Where are the biggest performance gaps? What kind of results does the company want or expect? After conducting a methodical review of in-house capabilities and organizational expectations, that analysis should then be supported by a broader, more holistic understanding of the outside support universe available to the organization.

The internal piece of the puzzle is perhaps the easiest part, but only because the universe of options for outside legal support is expanding so rapidly.

To be sure, the options for outsourcing various types of legal work have exploded over the past few years. Legal departments can still hire individual consultants and other law firms to do specialty work, but the Big Four accounting/tax firms (e.g. Deloitte with $50B+ in annual revenue) are aggressively re-branding themselves as "Managed Legal Service Providers" (MLSP's) offering a wider range of process-optimized legal project-management services for mid-size and large businesses, often for a fixed price.

Also, the landscape for Alternative Legal Service Providers (ALSPs) — support businesses that have historically specialized in specific labor-intensive legal tasks (e.g., document review, research, eDiscovery) — has grown and diversified considerably. Technology providers of all kinds also offer legal departments an increasingly sophisticated array of management tools — e-billing and matter management (MM) systems, document-management systems (DMS), contract lifecycle management (CLM), knowledge management (KM) — that are designed to facilitate the speed and flexibility necessary to operate in today's fast-paced business environment. In addition, some law firms are now competing with ALSPs by providing some of the same lower-cost, optimized workflow processes and hyper-efficient legal solutions. Indeed, the worlds of some outsource providers are colliding with the expanding universe of law firms competing for market share in the same space.

A more strategic approach: resource mapping

Coordinating all of these elements into a more strategic, right-sourced approach to legal operations requires a much higher level of organizational awareness than simply farming work out to available solution providers. A more complete strategic sourcing model begins with a deep understanding of the company's goals, needs, and opportunities, as well as its business strategy for navigating them (to which CLO's now often contribute). This knowledge is the foundation for future decision-making and is essential for providing the kind of business advisory intelligence that C-suite execs increasingly expect their legal departments to provide.

To manage their expanding docket of responsibilities, leading corporate legal departments need much more than top-tier legal expertise; they need a diverse network of support providers that have the range and ability to integrate legal, business, and technological expertise on a global scale. They also need to develop a process for allocating outside work in the most efficient, cost-effective way they can. Furthermore, as a result of the COVID-19 pandemic, the sourcing calculus has morphed to include solution providers in other states and countries. Geography is irrelevant for many types of legal work, so the options for outsourcing have expanded considerably.

Unfortunately, prioritizing these variables without data and insights is like throwing darts blindfolded — it's a hit or miss game, and you can do a lot of damage. Indeed, a truly optimal allocation of limited legal resources requires a deliberate process for "mapping" the department's needs in order to identify the ideal mix of insourcing, outsourcing, and technosourcing.

For GCs, an effective mapping process for rightsourcing might begin by mapping out the ever-expanding universe of company needs. For example, many legal touch points for a company now include corporate social responsibility factors that were small or non-existent 10 years ago. Diversity, gender discrimination, climate change, public activism, data privacy/security concerns — these are all areas of corporate stewardship that carry the potential for legal action. Knowing the nature and extent of issues can help managers set up a process to sort or "tag" legal issues emanating from all touch points. These tagged issues can then be run through a central legal hub, where they can be further sub-divided according to whether they can be addressed by a self-service or automated solution, or if some element of human intervention is required.

Self-service/automation

Self-service/automation options allow stakeholders to obtain answers via access to FAQs, AI enabled Q&A chat bots, self-service legal documents (e.g. contracts with pre-defined options, NDA's), and other solution alternatives, all without physically interacting with a lawyer. Self-service solutions can also be expanded to include systems that allow the legal department to collect information from stakeholders — by allowing them to log legal complaints, raise HR issues, report compliance concerns, etc.— and automatically organize and route these inputs according to their relevance, significance, and urgency.

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More sophisticated automated solutions allow users to create customized workflows that guide people toward the answers they seek, as well as tools for data extraction and visualization, matter tracking, reporting, and even communication. Machine learning and artificial intelligence are swiftly expanding the usefulness of such tools, so developing a familiarity with the technology behind these solutions, including the programming of relevant AI algorithms, is paramount for legal departments that want to take full advantage of the technology's capabilities.

Conclusion

In-house corporate legal departments are increasingly being tasked with more and different types of legal work, much of which requires levels of legal expertise, technical acumen, and human resources that the company itself cannot handle alone. Mandates to do this work as efficiently and cost-effectively as possible have also prompted legal operations managers to consider leveraging more resources outside the company, as well as forms of automation technology that can streamline workflows and provide additional efficiencies in areas of information gathering and data analytics.

Automation tools and self-service technologies can help ease the burden of busywork in a department serving multiple stakeholders.

Because so many variables are involved, however, back-of-a-napkin calculations are no longer sufficient to achieve the desired results. Instead, in-house legal departments need to consider developing a methodical, deliberative, data-based process for "resource mapping" that assesses each element in the legal value chain and gives managers a much clearer idea about what their outsourcing and technosourcing options are. Such a mapping method also provides managers with a logical, data-driven rationale for resource allocation, one that can stand up to scrutiny and serve as a foundation for better decision-making in the future.

In a related white paper, **Strategic Legal Sourcing — the Key to Agility**, we delve deeper into the actual process of developing a strategic mapping "framework," one that provides legal operations managers with a reliable methodology for assessing and allocating both internal and external resources. We'll also discuss why developing such a framework can be a strong competitive advantage, and why so many corporate legal departments are focusing on "the business of law" to serve their organization's leadership and improve their bottom line.

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Ethan Patashnik is an Enterprise Client Success Manager with Thomson Reuters Legal Tracker software where he provides advice to clients, including many Fortune 500 companies. Ethan has been involved in legal operations for nearly 20 years, including more than 13 years in Microsoft's legal operations group where he supported a 1,000+ person legal department through various efforts: served as global supplier account manager and liaison to more than 800 law firms in more than 100 countries; developed and managed policies, programs and processes to drive cost savings and streamline operations; developed and executed global RFP's, negotiated rate agreements; spearheaded development and application of data models, key metrics, business intelligence and analytics providing insight into cost optimization and targeted procurement sourcing efforts; and proactively advised and influenced business owners to use industry leading alternative sourcing models.

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