



The Evolution of Corporate Legal: Rethinking the “Department of NO”

Historically, corporate Legal Departments were gatekeepers focused on managing a company’s risk. Being highly conservative in its outlook, the Legal Department typically sought to mitigate risk and liability regardless of the organization’s priorities and strategic goals.

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Not surprisingly, Legal Departments were referred to as the “Department of NO.” One of my colleagues was referred to as “Doctor No!” It was for this reason that corporate Legal Departments were disconnected from the company.

Today’s modern, in-house teams, however, are empowered to apply the risk mitigation mindset and integrate legal knowledge and business acumen to enhance the company’s productivity and efficiency, and save costs.

At the same time, the legal profession has become more complicated and demanding. In-house counsel must navigate through an ever-changing landscape of multidisciplinary responsibility.

These evolving changes and demands have been a catalyst to the evolution of the Legal Department and the role of in-house counsel. They

are now more integrated into the value and service delivery of the business.

Outside counsel as well, are adapting to these changes and demands. Which causes law schools in turn, to modify their curricula so that law students learn how to cope with the multidisciplinary demands of the legal profession.

Corporate Recovery Programs

One key area where in-house counsel are developing new skills and adding value to companies is in the area of Corporate Recoveries. In-house counsel can use company-wide knowledge to work collaboratively with business units to define and generate value. Too often, companies have become willing to accept or ignore underperformance from trading partners. Underperformance, however slight, is a source of business uncertainty and unwanted precedent.



NO

NO

Legal Departments should evaluate and determine whether underperformance should be grounds to pursue a recovery on behalf of the company. At a minimum, using tactical negotiation to assert the company's rights to the counterparty's will garner attention and facilitate important dialogue. Pursuing a recovery should act as a warning mechanism that a company will assert its demands for first grade performance on the agreed terms of business partnership.

Seeking redress for faulty performance invites a serious discussion. I have observed a law firm develop a practice area focused on helping companies seek appropriate redress. The methods used can set the course of the future business relationship. More importantly, they recognize the importance of adopting an approach that extends far beyond the typical outside counsel mindset. For example, a process like mediation or other non-litigation methods should be used to identify all parties' interests, and focus on efficiently resolving disputes. This ethos revolves around the inner workings and vulnerabilities of business conflict and how to help clients pursue claims while preserving relationships.

Corporate Recoveries programs are designed to identify and reduce conflict while nailing down value along the way. When properly implemented, such programs directly align Legal Departments with business objectives by boosting the bottom line, enhancing contract performance, policing and enforcing IP assets, and reducing future conflict with difficult constituents. Through a simple yet systematic approach, a centralized core team regularly identifies where the business is leaking value and applies an efficient means to evaluate if a recovery is worth pursuing.

Corporate Recoveries programs provide the in-house Legal Department with the ability to bring in revenue across diverse, quantifiable rights and assets, from cash (royalty payments, settlements, adjustments) to intellectual property rights. As a program builds momentum, its results will enhance Legal's alignment with the

business by establishing a reputation that demands first grade performance from trading partners, suppliers, third parties, and customers while instilling standards and consequences if parties fall short of obligations.

Implementing a Corporate Recoveries Program

A Corporate Asset Affirmative Recovery (CAAR) program is an advisory based approach that begins with an assessment of the potential fit. Exploratory discussions should evaluate the company's goals, and how a program can result in the generation of "recovery revenue" that enhances the productivity of Legal. Ultimately, the CAAR program adds to the company's bottom line.

It requires that a company confront its vendors, customers, and other trading partners to seek compensation for their substandard performance. The promise of a CAAR program to prevent trouble in the future is only limited by the intention of the parties involved and the creativity to find agreeable resolution.

Once an in-house lawyer has embraced the evolution of their role, it is vital to retain and develop their standing within the Legal Department. Failure to remain relevant as a strategic contributor could result in the Legal Department being viewed as a cost center – and possibly inside counsel even outsourced!

In-house counsel (and by extension outside counsel) can become all-round business advisors and team players that just happen to be legal experts. While this may be easier said than done, there are great ways to safeguard the future of in-house counsel:

- Being a visible and engaged business advisor
- Participating in the business planning process and ensuring the Legal Department is aligned with the business's objectives
- Being innovative and embracing change including implementing



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and/or leading initiatives such as a Corporate Recoveries program

- Taking a strategic approach to the legal advice
- Being flexible, adaptable, agile, and approachable
- Expanding management, business finance and leadership skills
- Developing people skills

In-house counsel must be patient and persevere. While not always welcome, in-house lawyers have an opportunity to win new respect among business colleagues. At the same time, as the costs of running a legal function increase, more will be demanded of their teams from ever tightening budgets – and consequently many companies will further embrace a Corporate Recoveries program.

As for in-house lawyers themselves, evidence suggests that their roles will continue to evolve and expand. In addition, law school professors will need to monitor shifts in the profession to adapt law school curricula to integrate legal knowledge and business acumen, in order to assure that Legal Departments are not the Department of "No".