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Focus

It Takes Different Strokes to Thrive In-House

By Irv Hepner

When I took a position as in-house general counsel some years ago, I found it interesting that my law firm colleagues typically congratulated me on escaping the tyranny of time sheets. I dislike time sheets as much as anyone else, but what struck me was that my colleagues seemed sure that this one disagreeable chore was the heart of the difference between my old and new jobs. I was soon to learn that the differences go far deeper.

The distinctions between private and in-house practice seem to flow directly from two related and inescapable realities of the function of law firms and corporate legal departments. First, law firms are organizations whose mission is the practice of law and whose central figures are therefore lawyers; corporations are organizations with a wide variety of missions (generally not including the practice of law) and whose central figures are therefore not lawyers. Second, in a law firm, the lawyers are participating directly in delivering the product of the enterprise — legal services to clients. In other words, the lawyers are the profit engines of the organization. In a corporation, the legal department is acting in a service capacity, which, although frequently crucial and generally respected, is nevertheless not how the corporation makes money.

These functional differences play a major role in determining how in-house and private-practice lawyers work, as well as in determining which of them are most comfortable and which are more likely to succeed in their work environments.

Take, for example, specialization. I believe that more often than not, those who specialize in relatively narrow areas of legal practice are more at home in law firms. It is probably not accidental that some of the most successful senior legal officers seem as comfortable evaluating litigation strategy as they are commenting on arcane drafting, while few in private practice would find any reason to venture into both of those worlds. Although it might seem that this is a function of the size of corporate legal departments, my thesis is that it is really a product of the mission. After all, many corporate legal departments are larger than quite a few private

law firms. From a functional point of view, the more marketable a specialization is, the more valuable the specialist is to all of the potential clients who need the specialty. That marketing edge means nothing to a corporate legal department, unless the specialty is central to the company's business.

Speaking of marketing, self-promotion represents the clearest case of a skill less useful in a corporate law department. Without denying the axiom that everyone must market in the professional world (for it is a sad truth there is only so much timid, silent brilliance that will ever be discovered or valued), marketing is part of the core mission of a law firm. Corporate legal departments, at most, need to persuade their own corporate management that the department can handle a task more cost-effectively than an outside provider — and the legal department will almost always be given the benefit of the doubt. As a result, lawyers with highly refined marketing skills will tend to find themselves most valued, and therefore most at home, at law firms. In the corporate setting, marketing by lawyers is a matter of doing just enough, but in the law-firm culture, marketing is the frequently necessary, and occasionally sufficient, path to greater market share and profitability.

In the corporate environment, an innate understanding of who needs access to information is an essential survival skill for lawyers. One of the rudest shocks that I had in my introduction to corporate life was that there was no section in the employee manual on what information should be communicated to what parts of the organization and when. Lawyers in the corporate legal department are frequently the first to learn important information, and how they handle that information can be critical. In a law firm, the flow of communication is fairly straightforward: If you are toward the bottom of a project team, you push significant information up a rung; if you are at or near the top of the team (or if you are the entire team), you deliver the information to the client, usually represented by one person with whom you have the most contact.

Corporate settings, although usually understood as more hierarchical than law firms, rarely

have simple up-down flows of information — in fact, they are complex webs of communication, where the group that generates information typically moves it in many lateral directions simultaneously. It is not unusual for the same bit of information to be potentially useful to departments as diverse as government relations, sales and finance. The faster each department has it, the better. Corporate counsel is frequently in the position of information distributor, and one measure of an in-house counsel's success is the judgment that he or she brings to that role. It is ironic, but undeniable, that successful in-house counsel are those who can instinctively operate in what is a more complex, and therefore less structured, environment than a law firm.

Having begun this piece by mentioning time sheets, I will not resist the temptation to bring them up again. Of course, it is not true that in-house lawyers have escaped time sheets. Many legal departments, particularly larger ones, have found that time sheets are a useful way to track and budget internal legal expenses. It seems that the larger the corporate legal department is, the more attention must be paid to making sure that the workload is fairly balanced and that the opportunity cost of doing work within the department is calculated accurately. Among other things, this makes it easier to compare the efficiencies of performing legal tasks in the legal department with sending it to outside counsel. Nevertheless, even in a large corporate legal department where time sheets are every bit as detailed as at any private firm, they play an entirely different role.

At a law firm, time sheets are at the heart of the organization's cash flow, the life-blood of the business. At a corporation, if time sheets are used at all, they are just one metric among many. Here's my favorite example: I've been fortunate enough to have come up with a good idea now and then, a strategy that saved my company a lot of money, or made a deal happen. That idea may have taken five minutes to create. And, at least for a while, I was a hero. At a law firm, well ... I would have billed five minutes.

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