

Peering Into the Future?

Six strategic tools help law departments spot trends, head off problems.

BY REES W. MORRISON

“If you can look into the seeds of time, and say which grain will grow and which will not, speak then to me,” said Banquo to the witches in “Macbeth.” In the same way, general counsel must look into the future and plan how best the law department can grow to meet the needs of the company.

But what’s the best way to plan for the future? From time to time, general counsel must step back and think about the department’s staffing needs, use of outside counsel, acquisition of technology, client-service plans, and other significant issues.

Here are six tools to help general counsel in strategic planning. All of them have strengths and weaknesses, but trying out different tools might help planners figure out what works best for each company.

SWOT PATROL

- One tool, a SWOT analysis technique, calls for laying out the strengths (S), weaknesses (W), opportunities (O), and threats (T) facing the law department. Strengths, for instance, might include an experienced cadre of paralegals or efficient trademark filing and tracking systems. Weaknesses might include no clear successor to the general counsel or even unclear areas of responsibility. An opportunity could be a demand by a client for locating a lawyer with the client’s group. Finally, a threat could be lawyers in India who can provide legal services much more cheaply. Using a SWOT framework, a law department can consider what it needs to work on, what it should worry about, and what is in good shape.

When one energy company’s law department used the SWOT technique, it was able to develop a clearer sense of its law department. The SWOT framework clarified a range of factors that might affect the department and gave everyone involved in its development a common vocabulary. On the downside, a dis-

advantage of SWOT analyses is that departments usually do not put priorities on the findings. In addition, findings can sometimes fit into more than one category. For instance, would low client satisfaction scores represent a threat—or an opportunity? Is having many senior lawyers a strength or, if they are being paid highly but doing lowly work, a weakness?

SEE THE SCENARIO

- A second tool invokes scenarios. A law department can identify major potential changes and imagine a scenario for each one. For example, a law department might anticipate that employment-related matters—age discrimination suits, harassment claims, severance disputes—are looming. Taking that one potential change, the department digs deeper into what such a scenario portends. Perhaps the department should plan to work more closely with HR to modify new-employee training, host more training sessions for managers regarding evaluations, hire another employment counselor and another employment litigator to keep that work inside, set up a new arrangement with law firms that specialize in employment matters, or even explore a mediation program to reduce the number of EEOC claims.

Scenario planning has the advantage of focusing the law department on two or three key shifts in the future and pushing the department to think through their consequences. The downside of this technique can be that forces in the future will often interact, and they cannot realistically be thought about in isolation. Scenario planning allows for an expansive exploration of a few dimensions of change, but it’s hard to predict what other factors might alter the picture.

- Third, general counsel can conduct what is known as a “future scan.” One way to do that is to appoint a team to read and interview widely and pick out potential trends that bear on the law department. For instance, the team could look carefully

at the strategic plan for the business and staff units it supports. The team then ranks the likelihood of each trend occurring and identifies its consequences to the law department.

Unlike scenario planning, which bases a few scenarios around major drivers of change, a future scan tries to identify a wide variety of possibilities. This technique broadens the horizon of consideration. A disadvantage, of course, is that a department can find it hard to know when to stop scanning and how to evaluate the relative significance of the trends it spots. Is an aging population significant? A change in the White House? A future scan succeeds best where the people doing the scan realize that there are limits to making predictions based on such a range of possibilities.

WATCH THE WORKLOAD

- The work analysis method provides a fourth tool. With this method, each lawyer in the company projects how he sees his workload changing over the coming 12 to 24 months. At the same time, the law department asks clients to predict what their legal needs might be during the same period. For instance, lawyers handling corporate work might anticipate infrequent acquisitions, but their clients might foresee a steady series of them.

By identifying that gap, the law department could plan to hire another corporate paralegal or install a panel of law firms to handle M&A. A law department could even go further and speak to outside counsel who represent the law department about what they see coming. Marrying the two (or three) forecasts creates a picture of legal service demand. In one case, a major financial company on the West Coast undertook a work analysis and found that they needed to spend much more time on preventive services and compliance.

The strength of work analysis is that it emphasizes the work being done in the department as well as the clients' views of the future value of that work. The strategic planning is close to home, so to speak. Diminishing the value of this technique, however, is the fact that it is based more on current work being performed than on peering at the future and trying to forecast unexpected changes.

TAKE A VOTE

- The Delphi technique (sometimes called the “nominal group technique”) uses a team from the law department, its clients, and possibly its outside counsel to brainstorm potential changes that might affect the law department. After some discussion, the team votes for those changes they think are the most likely to occur. Those changes receiving the most votes then undergo further research and discussion. Another vote narrows

down that group. The process ends when there are two or three points that the group agrees are the most important determinants of the future.

This technique can work in tandem with identifying scenarios or with elements of a SWOT analysis. Or the Delphi technique can stand alone to identify and rank likely changes. A pitfall with this technique is that peer pressure and groupthink can weaken its conclusions. But it worked for one manufacturer who followed this process in its long-term thinking on outside counsel. The process helped educate the department and bring it to a consensus on the direction to follow. A Delphi strategic planning process generally brings about better understanding and helps legal departments develop a shared view of what seems important.

- Client satisfaction surveys create a sixth tool for strategic planning. When law departments ask clients to evaluate the importance of attributes of the department, they can learn what clients anticipate needing in the future. To do this, the department must ask survey questions that address its clients' perceptions of change over the coming few years. For example, if clients give low marks on the department's turnaround time and rate highly the importance of prompt service—a common complaint—the law department might decide that it needs to invest in document assembly software and a contract management system so it can speed up its services in those areas.

A strength of client satisfaction surveys is that they go to the source of much of the work for law departments: its clients. Since law departments mostly react to business initiatives, client feedback may be the surest indicator of change and its scope and direction. A weakness of surveys is that they require significant administrative time and they reduce the role of lawyers on their own thinking about what the future holds.

These six techniques enable general counsel to peer into the seeds of time. They use different perspectives and approaches to the challenge of figuring out what will likely happen in the future—but they share the same goal: what the law department can do now to prepare for the coming years.

Judicious use of these techniques over several years will teach a general counsel what seems most comfortable and useful. Furthermore, by using more than one technique, a law department will more likely arrive at an accurate estimation of what is to come. These six tools ought to be available and familiar to all general counsel for strategic planning.

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