

How to Jump-Start Productivity

Getting the most out of your lawyers requires a manager to balance experience, knowledge, brains, and personality.

Just saying 'work smarter, not harder' won't impress anyone.

BY REES W. MORRISON

Productivity—we know it when we see it, or so say law-department managers. But I'm not sure we all can agree on what causes an in-house lawyer to be productive or how we can boost productivity. Because improving in-house productivity may be the toughest management challenge we face, and yield the greatest return, let's consider what productivity is and what can be done to increase it.

Managers in law departments can jump-start productivity. Not with platitudes, which do nothing when it comes to improving the productivity of a corporate lawyer. Saying "work smarter, not harder" is like advising someone to think. Sure, but how? "Do the right things more than doing things right" raises the obvious questions: What's valued and how should we be more productive doing it?

First, however, note that the term "productivity" only works if we assume that **value** results from the task. Productivity also assumes some level of, at minimum, good **quality**. And it assumes that the productive person is using his abilities **efficiently** for his level. Finally, implicit in productivity are **metrics** or some other form of measurement. Thus most law-department managers define productivity as the quantifiable amount of worthwhile services done well by the right level of lawyer in a given unit of time.

Now let's consider nine factors that determine an in-house lawyer's productivity. Each can slow down productivity if overdone or misdirected; each can be improved if the department and its managers make the right decisions.

EXPERIENCE

Experience, obviously, speeds up a worker. If you have previ-

ously filed 20 proofs of claim in bankruptcies, you will knock another one off faster than your colleague who only knows Chapter 11 from novels. Experience can, however, be a drag on productivity if it locks a veteran into patterns of work that no longer serve the purpose. If you always have filled out proofs of claim by hand, now you may resist software that helps speed up the process.

Specialization quickly builds experience, as does hiring veterans. In addition, instructive performance evaluations can help shape anyone's experience.

KNOWLEDGE

Even with little firsthand experience, if a lawyer has a framework for understanding what to do, productivity will improve. If you have read how to prep a client for a deposition, you can close some of the gap between experience and knowledge. The downside of knowledge can be nit-picking and sophistry. "Paralysis by analysis" is another way to describe a lawyer who knows too much to accomplish a simple task quickly.

There are many ways to increase a lawyer's knowledge, including law school courses, CLE, professional reading, and listening to others.

INTELLIGENCE

With professionals, brains do make a difference. The productivity laurels usually go to the lawyer who thinks more subtly, quickly, or creatively than another. A smart lawyer figures out how to structure a deal efficiently; a less intelligent lawyer takes longer, and might not come to as good a solution. Productivity suffers if intelligent lawyers retreat into ivory-tower thinking or alienate the fools that surround them.

There's not much a manager can do about a lawyer's IQ except to hire smart lawyers. Creative thinking, however, is something that can be developed and practiced, to the benefit of productivity. According to Al Peters, assistant chief counsel of the Pennsylvania Turnpike Commission, "Creativity is an important but often underrated aspect of a lawyer's produc-

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tivity tools.” Books, courses, and tapes can all sharpen a lawyer’s creativity.

PERSONALITY

Productivity also depends on the personality of a lawyer. Is she a perfectionist; is he the type who can grind through debentures? Is she cautious; is he organized? “A confident lawyer,” says Leo Knowles, senior vice president and chief litigation counsel at ConAgra Foods, “gets more done because he or she makes decisions and moves on.”

Personality degrades productivity if a strong personality offends others or if there is a “halo effect,” which happens when someone gets an undeserved high rating because of a sparkling personality.

Personality-assessment systems can help lawyers manage others and understand themselves better. For example, methodical people accomplish some tasks better than people who like to have many tasks going on at once, and a personality test can identify both types. These assessment instruments are also keys to creating collegial teams and matching lawyers to clients. Sometimes people with the same style work well together; sometimes they need to complement one another’s styles. And although motivation also plays a role in pushing productivity, it’s unclear whether compensation accelerates productivity.

In other words, what makes one lawyer more productive than another lawyer depends on experience, knowledge, brains, and personality. Other factors that influence productivity depend on the law department and the client.

ORGANIZATION OF WORK

Other things being equal, a lawyer will be more productive if the law department makes it possible to delegate and team up well. If lawyers work together and skillfully execute a document-discovery plan, they will locate more responsive documents in the same period of time than others who are less disciplined. A lawyer is more productive if he is in a position that suits his capabilities.

The downside of organization for productivity is a bureaucratic insistence on procedure at the expense of progress. If it takes a team of people in lengthy meetings over months and months to study anything and recommend changes, productivity will suffer because progress will be slow.

It helps to assign work intelligently (by type, amount, and challenge) and to have paralegals, legal assistants, office administrators, and other support staff let the lawyer focus on the best use of his time. As Phil Crowley, assistant general counsel of Johnson & Johnson, says, “You can improve communication and teamwork in a law department, which helps productivity.”

TECHNOLOGY AND TOOLS

Many tools enable in-house counsel to accomplish more in less time. Think of personal computers, libraries, BlackBerries, dictation equipment, filing cabinets, matter-management systems, fax machines, scanners, and even pencil sharpeners. Productivity suffers, however, if the technology becomes too

complicated or lawyers spend too much time tinkering or sending personal instant messages.

Technology is the easiest investment to make, assuming corporate IT permits it and it can be individualized. The best steps here are to train lawyers, encourage them to share lessons they have learned, and equip people according to their needs and motivation to make use of technology. Technology furthers productivity, experience has shown, when you let lawyers try out what they think they might use, rather than impose the tools.

EMPOWERMENT

Productivity goes hand in hand with the ability of the lawyer to make decisions. If the assistant general counsel can decide on settlements up to \$50,000, the department will resolve lawsuits more quickly. Productivity is hamstrung when others have to weigh in, be consulted, and approve—or, by contrast, if overempowered rogues run amok (ask Barings Bank, which was taken down by one trader who disastrously acted on his own).

Don’t micromanage. Set clear levels of authority that everyone understands. And remember that it’s always important to back people up if something goes wrong.

Finally, there are external forces that also affect productivity.

FLOW OF NEW WORK

The kinds of questions and tasks submitted to a corporate lawyer make a difference in that lawyer’s level of production. Factors such as which contracts come for review, in what condition of completeness, and with what kinds of complexities make one lawyer more or less productive than a peer.

The downside here can be a lack of clarity about the role of the law department and lawyers doing quasi-legal work. No law department can turn around work quickly and effectively if its lawyers are asked to do work that the ethics or compliance departments, or even clients, should do.

Prune out quasi-legal work, and perhaps set up a gatekeeper on the client side. Train clients as much as possible to think of ways lawyers can make the best use of their legal skills—that is, work most productively. Consider even a self-serve, in which the emphasis is on clients doing as much legal work as they responsibly can.

Ironically, to keep productivity at a high level, make sure people take vacations. Burnout scorches productivity. In addition, define the role of the law department and make sure that clients know how best to use their in-house group and unleash their productivity. Service-level agreements help.

CLIENT EXPECTATIONS

No one can outproduce someone else if the standard is too high or constantly changing. Clients need to be consistent and fair and balance their expectations of legal knowledge and business knowledge.

Problems with productivity can occur if a CEO insists on comprehensive surveys of legal risks, replete with full discussion. Then it will be harder and slower for the lawyer to produce that quality of output. Productivity will suffer.

Every task done by a law department lawyer means a trade-off—something else cannot be done. If you spend time here, you can't spend it there. The usual thinking is that the more time and effort the lawyer devotes to something, presumably the better the lawyer can protect the client from legal risk. But if in-house counsel and their clients are willing to take a few more legal risks, they will get more done and boost productivity; if they are risk averse and clamp down on legal risks, turnaround times for documents and guidance will slow, which means less productivity.

The key points here are that productivity translates into quality, furtherance of important ends, the full use of each person's abilities, and metrics. In addition, all of the facets of productivity can be improved by the judicious deployment of various techniques.

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