

Journey to the Center of Work

Focusing on 'core competencies' is not as easy as it might sound.

BY REES W. MORRISON

I want my lawyers to concentrate on core competencies, insist many general counsel. But they probably have very different ideas regarding what that term means. This lack of consensus exists despite the crucial importance of focusing on certain skills.

The general notion of core competencies crops up frequently in management writing and has even surfaced a few times in discussions of in-house counsel. What no one has done is to define fully and usefully the term "core competency" in the context of corporate law departments.

IN-HOUSE COUNSEL

Fundamentally, the thought is that when limited resources face unlimited requests for assistance, law departments ought to focus on a subset of services and do them very well. General counsel might agree with that proposition, but that doesn't make implementing it straightforward.

WHAT IS CORE?

Let's start with four possible definitions of the term "core competency"—excellence, frequency of service, business acumen, and client alignment.

(1) *Our core competencies are those things that we do better than anyone else.* That definition comes from a recent book by Edward Russell-Walling, *50 Management Ideas You Really Need to Know* (Quercus 2007).

The problem is that definition sets the bar too high. What can a law department do better than anyone else, especially an experienced law firm?

Inside lawyers don't know as much as outside legal experts about the myriad laws and regulations that affect their company, and they don't know their company's business as well as their nonlegal colleagues do. But they can be the best at understanding the intersection between the law and their company's business opportunities. "We work for Widgets Inc., and we know more than anyone else about the laws that affect widgets."

Having expertise in that overlap of legal experience and familiarity with a company's business, however, doesn't exactly narrow down what inside counsel should be focusing on. What parts of the business are most vital to know? What laws and legal principles are most important for those parts of the business? A core competency definition that purports to combine two hard-to-know pieces is a poor definition.

(2) *Our core competencies are what our lawyers do most.* All law departments spend substantial time on contracts, cope with human resources issues, resolve litigation, and keep the legal trains running on time. That would make bread-and-butter solutions to legal agreements and employee disputes every law department's core competencies.

The risk here is that the urgent will swamp the important, the minor will muscle out the major. What's core shouldn't simply be what's common.

(3) *Our core competencies are our knowledge of the business and our delivery of practical advice in comprehensible style.* Why should we privilege substantive legal knowledge? Competencies focused on legal concepts and applications are by no means the only appropriate focal points for a law department.

This definition is troubling because we are lawyers, after all, and the law—not our "deskside" manner or familiarity with the business—should be the center of what we do for our corporate client.

(4) *Our core competencies are those few areas of law that most directly and specifically support our company's distinctive strengths.* At consumer products companies, for instance, legal support for marketing and sales should constitute core competencies. Those practice areas require the most attention from in-house counsel at such companies and also depend on the most intimate knowledge of the client's business.

Similarly, patent law is core for technology companies; federal or state contracting prowess is crucial for companies that sell to the government; regulatory procedures are key for utilities and insurance companies. Their best lawyers

ought to practice in those core disciplines. Legal work peripheral to the strategic posture of the client might as well flow to outside counsel.

But even this definition doesn't answer everything. Large companies—those over a few hundred million dollars in revenue—are not so legally monolithic and simplistic. For example, can you really say that Procter & Gamble is just a “consumer products” company? Is antitrust law “core” to every market-dominant company? Such links seem too facile.

Definitions aside, or maybe because all these definitions cover so much conflicting ground, the idea of core competencies for in-house lawyers might not have much traction. Perhaps, like “mission statements” and “partnering,” the term sounds good but it evaporates in the sunlight of close inspection.

Most usefully, the term covers the admirable goal to think hard about where the law department can help the client the most and then marshal resources and talents to that end. It zeros in on productivity, client satisfaction, and value produced—the core concerns of all well-managed law departments.

SERVICES AND SPECIALISTS

Does focusing on core competencies change the way a law department works? In many areas, I submit.

- **Size of the legal team.** Is it possible for small law departments, say those with two to five lawyers, to nurture core competencies as much as larger departments might? No. When there are only a few lawyers, they are likely to be generalists. Even so, small departments ought to develop some basis for identifying their priorities and building their abilities around them.

- **Services de-emphasized.** If a core competency is a strategic decision to press the pedal on some areas of law, then logically a law department ought to throttle back its efforts in other areas. Some brakes include triage, *de minimis* standards for what the department will handle, low-priority status for certain work, self-help by clients, and delegation. Decisions regarding noncore activities help define the role of the law department and go far to shape client satisfaction with in-house counsel.

A “full-service” law department is one that has spread its legal talents too thinly. Law departments should not strive to do everything. They should have a reasonably clear sense of what their priorities are and treat high-priority work differently than lower-priority work.

- **Specialists in areas of law.** Can a legal specialist be a core-competency lawyer? It's unlikely.

Litigators should not be privileged because the well-run company will confront little litigation. Similarly, employment law is not a core competency because it is mostly problem-oriented counseling, not having anything to do with developing business talent. Companies hardly yearn for tough human relations disputes.

The same arguments hold for environmental law. A few companies that consume copious resources or produce nox-

ious wastes may encounter strategic legal problems in this area, but fundamentally companies care about their products, not the legal effluents.

Likewise, some securities expertise is a necessity for publicly traded companies, but it's not a competitive tool or a business generator. Antitrust counsel handle both defensive and offensive tasks—such as mergers and acquisitions—but neither represent the client's main business.

On the other hand, some law departments give advice and counsel in practice areas that define their company, such as intellectual property or federal regulations. For example, a gas transmission company ought to have in-house leading lights focused on the Federal Energy Regulatory Commission. These specialized areas of practice are core competencies.

But the fortunes of few companies rise and fall on their real estate activities (except REITs); few companies create shareholder value with environmental strategies (unless their business is remediation); and none litigate to make profits (unless they're patent trolls). No corporation exists to pollute the countryside or cope with discrimination and harassment. In short, most specialist lawyers cannot sensibly be included in the circle of core competencies.

STRUCTURAL INTEGRITY

- **Years of experience.** Does a concentration on core competencies require more senior (read, expensive) lawyers? Not necessarily. The notion of core services does not have to mean that the legal work put on a pedestal is particularly sophisticated. Junior lawyers can also contribute.

- **Knowledge management.** To the degree that a law department targets certain areas of legal support as core, the department should build around them its systems, training, guidelines, and quality control. Hiring should also pivot on the meat of the department's work.

- **Outside counsel.** If you narrow the work done in-house to core work, won't you find yourself retaining more external counsel? Or retaining different firms than before, on different terms? Possibly both, but as you climb the skill curve of your core competencies, you'll use outside counsel in those areas less.

Law departments need to concentrate their expertise and efforts in those few key areas of legal practice that make the most difference to their company's success. The term “core competencies” has become almost a metaphor for a general sense that focus makes a difference and that focus means making choices. Deeper thinkers will appreciate that how you define core competencies affects the value your in-house counsel can create and influences more broadly how you structure all aspects of the law department.

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