

Organizational Goals and Structures: What Is Legal's Product?

By [Robert F. Cusumano](#)

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This article is the third in a six-article series discussing the changing and dynamic role of general counsel and the realities they face as they create strategies to facilitate profitable and compliant business practices.

Being a frequent consumer of reporting about in-house lawyering, I find myself continuously baffled by the disconnect between what commentators think is “a good thing” and what my experience has proved to me is “a good thing.” Generally speaking, the trade press tends to cater to those who believe that the outputs from a legal department should be standardized in some manner, that productivity should be measured in terms of the quantity of such outputs per unit of time or compensation (presuming a certain minimum standard of quality), that Legal should embrace managerial tools aimed at enhancing efficiency, and that the highest and best use of lawyers in a corporation lies in their execution of an agenda created by the rest of the corporation. We can fairly refer to this as the “facilitative and efficient model” for in-house lawyering.

I have nothing against the use of such a model. Many legal crafts can be made more efficient in production, and in most large organizations, those crafts comprise the lion's share of the everyday work of the department. Lawyers should be subject to the usual rules of engagement within capitalistic enterprises, and efficiency and objective performance metrics are two of them.

All that being freely admitted, I have become deeply concerned that lawyers have lost their way, and perhaps their identity. The facilitative-efficient model of lawyering works only for the more pedestrian of legal assignments, and it breaks down completely when called into a different room in which people are struggling with really complex problems. In that non-routine room, the facilitative-efficient model becomes counter-productive, as the quantity of outputs necessarily declines due to the difficulty of producing product. In that room, often, the very notion of being facilitative with management is itself called into question, because the issue under discussion is how to extricate management from what they have wrought.

I offer for consideration a different model, which can be summarized in the following sentences: “In-house legal departments are small businesses that create and distribute intellectual property. Although they rarely deliver revenues from external sources, in-house legal departments assist companies in keeping a larger percentage of their revenues than in their absence. These small businesses should not just be measured by outputs and costs, but by the value of the intellectual property itself.”

This model is as facilitative as any other. It is as business friendly as any other. Its distinguishing feature is that it expressly premises notions of value on the quality of the output relative to the difficulty of the problem. Without such a sliding scale of performance evaluation, the best and most important things that good lawyers can do become undervalued or not valued at all.

This model also preserves, and perhaps elevates in significance, the notion that good lawyering at the highest levels *is about insight* and not only about quantitative output. Centering a legal organization on the idea of delivery of excellent intellectual property considered in a broadly holistic valuation is excellent for morale and for

reputation. It is also good for business, since it is unquestionably true that a single good judgment by a lawyer can save companies millions or billions, and therefore dwarf the miniscule savings associated with quantitative models of “efficiency.”

My experience also tells me that good lawyers can find places to create value that are not so evident to line managers, or even to CEOs and CFOs. Good legal departments work up and down the lines of production and management, and they often find ways to save money or trouble by changing this or tweaking that. Sometimes, as in a few instances I personally experienced, the savings from a single good insight can pay for the whole legal department for years.

In the end, the commentators who believe that GCs should focus mainly on being facilitative and saving expenses undershoot the best ambitions of good lawyers. The best legal departments understand that they are “IP shops” who deliver custom-tailored products to customers, and they design their internal performance metrics around that basic truth. They *also* understand that a primary goal of Legal must be to facilitate the successful implementation of corporate strategy. But they conversely understand that limiting yourself to just that goal may make managers happy but it almost inevitably makes the corporation poorer.

So I would add “insight” and “judgment” and “hidden value” to the list of nouns that describe law departments, right along with “facilitative” and “efficient.”

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