

FROM THE OUTSIDE IN:
MAKING THE CASE
TO BRING MORE WORK
IN-HOUSE



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In the wake of the 2008 financial crisis, legal department budgets came under increasing scrutiny; it was imperative to keep costs under control and predictable. One solution soon became clear: retain business-savvy attorneys to handle work in-house rather than hire outside counsel. Recent studies illustrate many legal departments are redirecting more of their legal work inward and hiring in-house attorneys to meet this growing need. For example, in a recent Thomson Reuters survey, 79 percent of the departments surveyed claimed they relied less on their outside counsel in the past two years and attributed that cutback to increased self-sufficiency or "bringing more work in-house."

Subsequently, in response to the growing demands on in-house teams, almost two-thirds of the departments (60%) made new hires in 2014.

The first of this two-part series will discuss the advantages legal departments are reaping as more work comes in-house, as well as provide practical guidance to initiate this change within the department. The second installment will showcase several best practices deployed by legal departments as they handle an increasing amount of work in-house.

THE BENEFITS OF THE SHIFT

For many years, legal departments were happy to pay for the high-priced expertise of outside counsel, often giving firms a proverbial blank check for legal services. But when the economy crashed in 2008, the perception of outside counsel's value began to shift, and a sea change took hold in the legal industry as general counsel critically reviewed their limited department budget. As a first response, legal departments battled with their firms, attempting to control costs through discounts, required use of budgets, or alternative fees. While several departments benefited from these techniques, many realized that more could be done in the name of efficiency by bringing more work in-house.

Very few legal departments can absorb 100 percent of its legal work in-house; accordingly, departments must identify which types of work are best suited and most cost-productive to be handled in-house. The Thomson Reuters Legal Department In-sourcing and Efficiency Study found that handling routine work like contract drafting was more cost-productive than using outside counsel for the same work. For this group of matters, an in-house attorney's familiarity with the business, knowledge of the company's products, and established relationships with stakeholders yielded quicker response and turnaround times for such agreements. The survey also confirmed that legal departments will continue to utilize law firms for more complex and specialized legal work, such as mergers and acquisitions, litigation, and intellectual property.

With more work directed to in-house resources, legal departments reaped a multitude of benefits, including cost savings and increased efficiencies.

Reduced cost

Multiple surveys and anecdotal war stories confirm attorney hourly rates continue to increase year over year. Partnering with and incurring the significant costs of a law firm make sense to a legal department that needs skilled litigators to fight "bet the company" cases, or M&A specialists who can negotiate significant transactions. But when it comes to day-to-day legal work, legal departments and their budgets are better served relying on in-house resources. For certain matters,

in-house counsels' knowledge of the business and ability to identify practical legal solutions to daily business problems can significantly reduce external spend in the face of tighter budgets.

Increased efficiency AND effectiveness

Although cost is a crucial driver in the move to bring more legal work in-house, it is not the only one. Outside counsel lack the deep expertise about their clients' business operations, products, industries, or risk tolerances. By investing and relying more on their in-house counsel, companies gain attorneys who become intimately familiar with the business operations and the industry in which they play. Unlike outside counsel who must manage hundreds of corporate clients, in-house attorneys have a laser focus and alignment with the goals and business objectives of an organization, making them a more effective resource.

TOP QUESTIONS TO ASK WHEN MAKING THE DECISION TO BRING MORE LEGAL WORK IN-HOUSE

Although bringing legal work in-house is an attractive proposition, it's still important for legal departments to make an informed decision and both quantify and qualify the benefits of this shift. These initial questions can help shape the department's strategy and activities as it prepares to bring more work in-house.

What is the current state of the legal department?

What does the current workload for each of your in-house attorneys look like? What kinds of projects do they work on, and to what extent can their loads be increased? How much time is spent on training and liability avoidance? How much time is spent responding to active disputes? Are attorneys being overloaded with administrative or manual tasks like approving paper invoices from law firms? Your team will gain insight by identifying and tracking certain high-level tasks. No need to collect activities in six-minute increments, but an in-depth study of your department will provide invaluable information that will help you identify which types of work and tasks might be best suited if shifted to different resources.

What type of work is better suited for an in-house resource? How much do we spend on outside counsel for this type of legal work?

Indeed, decreasing the amount of work that is sent to law firms can save money, but how does a department determine which type of work to in-source? In order to answer this question accurately, you must have a clear picture of how much the department is spending on outside counsel. Looking at historical law firm invoices will inform your decision about which work might be redirected in-house. This analysis should not only focus on the volume of legal spend directed at any one firm, but should also consider the type of work outside counsel has been doing. For instance, is the amount being paid to outside counsel primarily in contract drafting? Or in managing litigation? Is it concentrated in specific areas, such as employment or intellectual property law? When reviewing matters handled by outside counsel, also consider whether there is a steady stream of this type of work, or whether the volume is sporadic and/or temporary.

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Can the existing legal department staff take on more?

Does the legal department have the appropriate tools and resources within its four walls to respond to an increased volume of work without increasing headcount? When making this analysis, legal departments must be realistic about workloads. Although attorneys should be challenged, they can't be overloaded to the point of burnout. The need to get more work accomplished in-house must be delicately balanced with the realities of how much can be reasonably asked of the attorneys within the department. When legal departments demand too much, they run the risk of losing valuable and efficient talent armed with deep knowledge of their business and industry as well as the strong relationships with the company's internal business partners.

Can the legal department increase its headcount? If so, should it hire a generalist or a specialist?

Justifying the need for increased headcount is no small feat. How would the cost of a new hire's salary and benefits stack up against the cost of having the same work handled by outside counsel? Is the work to be redirected in-house steady or episodic, and will it justify a full-time position? Oftentimes when executives see their legal department growing — especially when other departments are contracting — they'll want a thorough justification and business case for the additional hire. The only way to successfully prove increasing headcount is necessary is to be armed with sufficient data. A complete cost-benefit analysis should clearly demonstrate how, dollar for dollar, hiring new staff is a more attractive option than outsourcing the work.

Additionally, based on the company's legal work and strategic plans, what type of resource makes more sense: a specialist or a generalist? While generalists are usually more common hires for smaller legal departments because of their diversified skills, specialists may make sense depending on your company's current and future needs. For instance, a legal department might consider hiring an in-house securities attorney following a company's IPO to handle all the SEC-related work and reporting. Additionally, when an organization has seen a steady increase in employees, perhaps through merger and acquisition, the legal department may need an employment attorney to partner with human resources to more quickly respond to employee disputes and more efficiently create policies governing the employer-employee relationship. Of course, if your legal department is seeing increased work spread across several areas, a "utility" player armed with the right technology tools who can be a "jack of all trades" might be the better fit.

How do I leverage technology when bringing more work in-house?

In many cases, technology can play a prominent role when bringing more work in-house. Take stock of what technologies and tools you have available to your department, and investigate what other departments are utilizing. Look at current activities and evaluate whether the increased use of tools and technologies will make existing attorneys and support staff more efficient. You may discover that with additional technological resources, you can stretch current headcount and don't need additional staff after all.

Could your legal department be more efficient by eliminating certain manual, time-consuming processes, such as reviewing invoices from law firms? If that's the case, the department should consider e-billing. Perhaps significant time is spent scanning folders across email folders or searching online for form templates or clauses. If so, the department should consider creating an extranet site that houses department-approved forms and agreements. Another way to stretch your existing personnel is to provide them with industry-leading "know-how" tools that curate best practices, annotations, and checklists for a myriad of practices.

Technology, if intelligently implemented and adopted by the department, can focus attorney time on higher-value work rather than administrative work. Note, if legal departments conclude they need additional technology, another successful business case will need to be made to their CFO or other executive decision makers in order to purchase it. As with increased headcount, the key is to create a business case that demonstrates a return on investment for the technology.

