

# Managing a three-way relationship

Effectively managed, the three-way business partnership, between the internal client, the legal department and external counsel, can add value to a company's business. The first of Martindale-Hubbell's US Counsel To Counsel Forums gave participants an opportunity to compare notes on ways of improving internal performance and maximizing the productivity of external legal resources. Michael CLARKSON reports

The days when in-house legal departments were seen by clients as internal business prevention units are, hopefully, over. Crucial to the role of in-house counsel now is the ability to successfully manage what is effectively a three-way business partnership, between the internal client, the legal department and external counsel.

Sector-specific issues, available resources, the legal services requirements of the company, its geographical spread and other variables influence how any individual General Counsel decides to approach this challenge. However, whatever the scenario, to keep the focus of the department sharp and to maximize the value added by the legal services (both internal and external), he or she needs to ask certain questions on a regular basis:

1. Are we sufficiently close to the internal client?

2. How are we choosing external lawyers?

3. Is the relationship with each external firm sufficiently deep?

4. Are we giving adequate feedback to external firms?

5. How can we improve our cost to value ratio?

## 1. Are we sufficiently close to the internal client?

Many legal departments have reorganized in recent years to mirror the structure of the company they service. There has been a distinct shift towards departmental structures that are organized along business unit, rather than purely geographical, lines.

One consequence of this approach is that it tends to involve greater specialization on the part of the individual lawyers within the department. Instead

of having responsibility for a wide range of legal practice areas in one particular geographical region, individuals focus more closely on one or a small number of areas of law, often on a relatively wide geographical basis. Some argue that specialization is eroding the traditional view of in-house counsel as a generalist, somewhere between a business person and a pure lawyer. For those that take the view that a generalist can have a better sense of business than a specialist lawyer, increased in-house specialization is not necessarily a welcome development.

However, for many companies, having lawyers focus on particular business streams or practice areas has a number of advantages, not least of which is that it allows lawyers within the department to get closer to understanding the business objectives of their internal clients. "In a small decentralized legal department like ours, with relatively few lawyers," says Elizabeth Wilson, Vice President and



Elizabeth Wilson  
CNA



James Marvin  
Heller Financial, Inc.



Michael McCabe  
Allstate Corporation



Timothy Moore  
American Medical  
Security



James Sheehan  
Tellabs

Deputy General Counsel, Worldwide Field Operations at CNA, "we really need to know the business." CNA's decentralized legal department places lawyers physically within the individual business units they service. "The fact that we are part of the unit's budget is an added bonus that allows us to spend time exploring with them ways of achieving their end goals and educating them on issues to look out for," she says.

With all legal departments under pressure to add value to the business, being closer to the commercial teams allows in-house lawyers greater access to the commercial thinking of the company. "The key to adding strategic value is to ensure that there is effective communication between the legal department and senior members of the business unit management," says James Marvin, Chief Corporate Counsel at Heller Financial, Inc. "Each business unit within Heller has a senior internal lawyer that acts as a relationship manager for that unit. In addition to a dotted line reporting relationship with the head of the business unit, this lawyer in most cases sits on the management or operating committee responsible for strategic planning and significant operational control for that unit and accordingly gets involved early in its strategic thinking." Allstate Corporation adopts a similar approach. Michael McCabe, Senior Vice President and General Counsel, explains that the company is in the business of trying insurance cases. "The legal function is an integral part of what the company does. Each business within the company therefore has a General Counsel and the lawyers effectively live with the business people," he says.

One tangential benefit of this approach

for the company as a whole is that the legal department can act as a bridge between gaps which may exist in the communication channels between the individual business units themselves. "One advantage of our system," comments Marvin, "is that the exchange of information within the legal department can be fed back out to the business units through our involvement on the management committees."

Another is that it can reduce duplication of work internally. Timothy Moore, Senior Vice President, General Counsel and Secretary at American Medical Security, explains that last year he allocated particular lawyers to each of the two main functions his department performs (regulatory research work and product building) and then split the product building function to match individual product types. "Before," he says, "when our advice resources were spread more thinly, we found that we were constantly reinventing the wheel and consistency of advice inevitably suffered. With our new system we are more streamlined and are better placed to match the priorities of the business units. The reorganization programme also allowed me to reduce lawyer numbers."

**2. How are we choosing external lawyers?**

Unless closely controlled, the process of appointing external advisers can give rise to situations on which the legal department ends up having to spend a disproportionate amount of management time. Sometimes, for example, local firms, appointed in another jurisdiction by a business team in that jurisdiction (or, equally common, by members of the in-house team located there) fail to perform and

the home department is called in to rectify the situation. There is also the issue of the unwanted inheritance: a multi-jurisdictional acquisition can result in the legal department inheriting a raft of external foreign advisers that it might not have chosen had it had a free hand.

To a large extent, control over choice of firm in this context is closely associated with control over the purse strings. "We try to avoid problems arising by insisting that no legal services bill can be paid other than by the appropriate in-house regional counsel in the home department," says James Sheehan, Assistant General Counsel at Tellabs, a telecom company doing business in 80 locations worldwide. Fran Maher, Senior Vice President, General Counsel and Secretary of United Airlines, explains that her company permits local units to work directly with outside local lawyers on small dollar "doing business" matters. Above that threshold, though, all new matters are to be approved and supervised by the legal department. Standing local counsel is hired by the legal department with the input of the local unit, and everyone knows the rules. "We want to know what is going on before we get a bill," she points out.

Internationally, it can be advantageous from a tax and profit/loss perspective to have bills paid locally. "We establish the criteria for the selection of local counsel and then allow local commercial teams a certain amount of freedom in the choice and use of lawyers," says Michael Costello, General Counsel and Secretary of Agribrands International. "The legal department vets them for quality and makes it clear in meetings with local firms that they have to be sensitive to



Fran Maher  
United Airlines



Michael Costello  
Agribrands International



William Andrews  
Netco Inc.



Kelly Welsh  
Northern Trust  
Corporation



Crane Kenney  
Tribune Company

## The intranet and extranet as relationship tools

An active intranet can be an invaluable way of sharing company information internally. It can also be a useful source of general information about the company for external advisers working for the company. "Giving external law firms access to the company's intranet, or part of it, is a simple way of reducing the number of small queries you as in-house counsel would otherwise have to deal with," says Crane Kenney, Senior Vice President, General Counsel and Secretary of the Tribune Company. "Security is not an issue so long as the more sensitive information is password protected."

More and more law firms are taking the further step, as part of their investment in major clients, of developing private extranets. Transaction specific extranets, accessible by parties to the deal, are now a regular feature of larger deals. However, some firms are collaborating with clients to set up a more general site as a means of exchanging information between the company and their advisers.

### Walter

One such site is "Walter", a site co-developed some 18 months ago by Heller Financial, Inc. and Winston & Strawn, one of Heller's partnering law firms. Heller's legal department wanted to create a vehicle that would allow them to be more efficient in providing information about Heller to their external lawyers and other vendors. The site is named after Walter E. Heller, the founder of the company.

Walter now includes:

- Standard form transaction documents and selected policies and procedures for Heller's business units.
- Heller at a Glance - containing a variety of general information to increase law firm understanding of Heller's businesses, corporate organization, regulatory issues and strategic direction.
- SEC filings.
- Press releases.
- Billing guidelines and other vendor management policies.
- Descriptions of Heller's law firm partnering and business referral programs.
- Heller Legal Services and partnering law firm contact information.
- Internal and law firm training calendars.
- Significant Project Descriptions (such as status regarding the Company's efforts to address revised Article 9 of the UCC).

- General Legal Services news and updates and web links of interest to Heller and its vendors.

- Full text search function.

- Threaded discussion groups that permit users to post questions for input across Heller's law firm relationships (although this feature has not been as heavily used as expected - as in practice both Heller and law firms have found that individuals with particular questions tend to use more traditional methods for asking them and tend to call their known contacts - Heller still has hopes for more robust use of this feature).

### Respective roles

The site was technically designed and is hosted by Winston & Strawn's IT department - the information resides on the firm's servers (the development platform is Lotus Notes/Domino) and the firm provides the technical support for the site. Access to the site is password protected. Unlike many law firm extranet models, however, the primary content creation and editing role is carried out by Heller personnel by posting new documents and information directly onto the site. Users are able to determine when forms are updated or added by comprehensive indexes indicated the day of posting or updating.

### Hub and spoke

Unlike other law firm/client extranets, Walter is not a one-to-one pipeline between Heller and Winston & Strawn. One of Heller's goals for the site was to use it to enhance and further its law firm partnering relationships with multiple firms. Heller has given access to the site to lawyers in more than 35 other law firms it has engaged. "It is more of a hub and spoke model, with Heller at the hub," says Heller's Chief Corporate Counsel, James Marvin. Heller decided early on to adopt a shared model. Sensitive information - such as pending deal details - is therefore excluded. However, as Winston & Strawn's Terrence Brady points out, "The security model could easily be changed at any stage to create cordoned off password protected areas."

Marvin adds: "One of the more significant benefits of Walter is the elimination of the need for massive document circulation among law firm vendors whenever form documents used by Heller need to be updated. The logistics of such an effort, and the lack of assurance that those efforts reached all of the desired targets, limited Heller's desire to update its basic transaction documents very frequently. This technology permits us to instantly upload form revisions to the resource we now require all of our outside lawyers to access for our form documents. It also provides the vehicle for virtually instantaneous communication of important company news to a large population of lawyers that increases their knowledge of our business and makes them better representatives of Heller in its business transactions."

the parent company's policies and procedures."

Once firms are appointed, it is helpful

to set the boundaries between in-house counsel and the internal client up front when it comes to giving instructions. One approach is not to

allow management to contact the external lawyers directly and to insist that all communications are effected through the legal department.

# Whirlpool's Process/Project methodology for delivery of legal services

## Background

Whirlpool's Process/Project methodology is a disciplined approach to legal service delivery.

### A. Regular, recurring work is called a **Process**, with:

- A business client (or clients).
- A Senior Lawyer who "owns" the process.
- Performance indicators.
- Specified data to be collected on resources consumed.

### B. **Projects** are major tasks outside of normal, recurring Process work.

### C. This methodology facilitates managing and improving the delivery of legal services. It:

- Improves client communication and understanding.
- Provides evidence of improved legal service delivery.
- Provides data for decision-making.

## Project management approach

### A. What is a Project?

- NOT regular recurring work.
- Major exposure/task.
- Likely to require considerable legal resources (time/\$\$).

### B. Key elements of Project management approach:

- A defined process - imposes discipline.
- Designation of a business owner/decision-maker - clarifies

accountability.

- Designation of lead lawyer and other team members - clarifies responsibility.
- Up-front planning:
  - agreeing on and documenting objectives;
  - a project plan (tasks and times) and budget;
  - identifying and documenting customer satisfiers.
- A disciplined post-project review.

## Techniques for more successful Projects

- Early involvement of and consultation with outside counsel.
- Task based billing.
- Outside lawyer compensation tied to achieving business objectives.
- Technology:
  - electronic link to outside firm;
  - project management software;
  - document management software.

## Benefits

- Clearly defined roles, accountabilities and objectives.
- Provides a means of collecting information to improve/evaluate/plan future projects.
- Facilitates training of new team members.
- Facilitates better integration of outside counsel.
- Yields improved project results at a lower cost.

However, the reality of large transactions and cases often makes this approach impractical. Consequently, clarity (as to who is giving the instructions) and consistency (as to continuing the chain of instructions) become paramount. William Andrews, General Counsel and Vice President of Netco Inc, believes that if the original instructions are to be given directly by management, then management, at the

same level, must be brought in at every stage at which the instructions are to be altered. "Otherwise misconceptions can arise within management as to why the objectives set out in management's original instructions have changed," he says.

Maher agrees: "Having the business people give instructions can lead to confusion," she says. "It is funda-

mental for the external law firm to know from whom they are taking instructions." Her own approach to meetings involving management and an external law firm is to debrief the external lawyers after each meeting to make sure all agree on exactly what the instructions are.

The problems associated with managing an ever-widening circle of ad-



Michael Haverkamp  
Ohio National Life  
Insurance



R. Scott Falk  
Kirkland & Ellis



Daniel Hopp  
Whirlpool Corporation



David Carpenter  
Metal Management



Herbert Zarov  
Mayer, Brown & Platt



Michael Foradas  
Kirkland & Ellis



Steven Molo  
Winston & Strawn



Robert Walner  
Grubb & Ellis Company



Terrence Brady  
Winston & Strawn



Bill Brennan  
Bissell Inc.

visers have led many companies to adopt the "preferred advisers" model, focusing down on a small number of outside firms. "For a relatively thinly-staffed department such as Heller's, which relies heavily on outside advisers," says Marvin, whose company, Heller Financial, Inc., has US\$1 billion in operating revenues and 20 lawyers, "it makes sense to limit our choices and build stronger, deeper relationships with a small number of firms which, through steady and predictable work flow and constant communication, become value-added partners for our business."

Similarly, Whirlpool Corporation's Daniel Hopp, Senior Vice President, Corporate Affairs and General Counsel, is in no doubt that his company's decision in 1995-1996 to reduce the number of external advisers from several hundreds to just three firms, has paid dividends. "The process has dramatically improved the partnering relationships we now have with our external advisers," he says. This partnering capability grew out of Whirlpool's systematic methodology for delivery of legal services (*see box "Whirlpool's process/project methodology for delivery of legal services"*).

### 3. Is our relationship with each firm sufficiently deep?

The tendency on the part of many corporations to instruct fewer firms, combined with the ever-increasing complexity and geographical spread of deals and, often, the not inconsiderable volume of work outsourced, has changed the way in which many departments now view the relationships they conduct with their external advisers.

The importance of personal contact cannot be underestimated and it is still not uncommon for in-house counsel to

express the view that they "appoint lawyers, not law firms." Some in-house counsel would not look favorably on a firm that allows a lead contact lawyer to move off their company's work. "The key player needs at least to stay in touch," says Michael Haverkamp, Vice President and Counsel of Ohio National Life Insurance. Introducing additional external team members gradually and making sure that the original main contact is not entirely unavailable are ways for the law firm to soften the blow.

However, when teams on both sides, internal and external, are large and the relationship is ongoing, growth of the business partnership needs to be multi-faceted. Pairing up people at corresponding levels within each organization makes the relationship less dependent on the General Counsel/lead lawyer nexus, allows for greater flexibility in putting teams together and increases the knowledge base of the two teams. "We try to get our junior lawyers working with junior lawyers at the client, young partners with more senior lawyers and so on," says R. Scott Falk of Kirkland & Ellis. "This allows us to build on our client knowledge at different levels." Kelly Welsh, Executive Vice-President and General Counsel of Northern Trust Corporation, agrees: "It works both ways - the in-house team can learn a lot about the law firm too."

For smaller legal departments that outsource a lot of work, the depth of the external team is the overriding factor in the choice of firm. "As a one-man department, I don't pick individuals, I pick a team," says David Carpenter, Executive Vice President and General Counsel of Metal Management. "I need to know that if A is unavailable, I will be happy with B - I do not have time to deal with political fallout."

### 4. Are we giving adequate feedback to external firms?

But problems do occur. One-off issues are best dealt with as they arise. For example, members of the business unit may from time to time be unhappy with the performance of a particular member of a firm. However, these are often personality or style conflicts. "Being able to be candid with your key contact is vital," comments Costello. This allows the firm to address the issue without damage to the firm-client relationship.

Herbert Zarov of Mayer, Brown & Platt agrees: "Trust is critical. For each major client we appoint a relationship partner - someone who is intimately connected with the legal work being done by the firm for the client. His or her job is to be the trusted go-between who can deal sensitively with personnel issues with minimum disruption."

More ingrained, subtler issues may be best addressed in a more formal way, either in regular deal post-mortems or through a more general review process. Michael Foradas of Kirkland & Ellis explains that at one stage his firm realized that most of the feedback it was getting from clients was anecdotal and about five years ago decided to implement a systematic audit system. Partners not involved with particular clients visited the clients and asked for feedback on some of the more macro aspects of the relationship. "A lot of very positive changes have grown out of this approach," he says. Other firms have adopted similar techniques. "We have found that sending questionnaires to legal departments for whom we act and asking them to reply anonymously allows some of the real issues to surface," says Steven Molo of Winston & Strawn.

Welsh is happy as General Counsel to

sit down once a year with a firm's relationship partner to talk about how things are going. "It is normal for an employee to go through an annual assessment with his or her supervisor - the same process works well in this context," he points out. "You can get to a lot of issues in just a 15 or 30 minute conversation."

The annual or more formal review also has the advantage of allowing feedback from the client as a whole. General Counsel can prepare by asking other divisions of the company how they find dealing with the firm. How does the accounts department find their procedures, for example?

**5. How can we improve our cost to value ratio?**

One issue which is at the forefront of the minds of all parties to the relationship at all times is the question of fees. Here, as in other aspects of the three-way relationship, communication is key. In recent years the practice of law firms and in-house departments agreeing budgets for regular work or one-off jobs has become standard practice. But that alone is not enough. "Adequate defin-

ition of the task is paramount," says Foradas, "particularly where a fixed fee has been agreed." "Conducting checks along the way is essential too," adds Robert Walner, Senior Vice President, General Counsel and Corporate Secretary, Grubb & Ellis Company. "We need to agree at the outset on the various elements of the project, including staffing, strategic objectives and a budget," he says. "If the project involves litigation, we need to explore settlement at an early time. At each stage of the project, the results to date should be benchmarked against the prior criteria and changes in the criteria should be considered as the project progresses. If the project is litigation, settlement should be considered at each stage of the litigation."

As relationships deepen, flexibility becomes the watchword. "Very little of the work we commission is now charged on an hourly basis," says Hopp. Being creative with fees involves more than discounts and blended rates. Hopp gives the example of instructing a firm to terminate a series of contractual arrangements and offering the firm at the outset a success premium if it achieved the end result without liti-

gation in any of the individual cases.

Used in this way, fee structures incorporating incentives are a means of enhancing the likelihood of the business objectives involved being met. However, as Bill Brennan, Vice President and General Counsel at Bissell Inc. points out, "They are more likely to be palatable to the internal client when the work involved is of high commercial value to the company."

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