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Choosing and Working with Outside Counsel

Are Law Expertise and Web Sites enough?

*Using Business Models to improve Alignment
between Law Firms and Clients*

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Topics

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Why use Business Terminology?

Business Models and Organizational Alignment

- Value Chain
- Business Strategy
- Business Model

Evaluating Outside Counsel

- The Firm's Business Model
- A Sample Corporate Law Department Business Model
- Comparing the Corporate Law Department and Law Firm Business Models

Evaluating a Firm's "Law Expertise"

Evaluating the "Business Model Gap"

Managing The Case

A Proposed New Law Firm Business Model

Summary

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Business Terminology

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Why talk about in-house counsel and outside counsel relationships in business terminology?

... because ultimately, the Business pays the bills

... and because when everyone describes their part of the world in a common language it drives clarity – misalignments are forced to the surface

Business Models & Organizational Alignment

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Value Chain -- the environment in which a business model "lives." The value chain focuses on the generic value adding components of goods and services as they move through the marketplace. The "primary activities" include: inbound logistics, production, outbound logistics, sales and marketing, maintenance. The "support activities" include: administrative infrastructure management, human resources management, R&D, and procurement. The costs and value drivers are identified for each value activity. For a given business area, there are often many value chains at work, and this interconnected system of value chains is often referred to as the "value system." A value system includes the value chains of a firm's supplier (and their suppliers all the way back), the firm itself, the firm distribution channels, and the firm's buyers (and presumably extended to the buyers of their products, and so on). A value chain's ultimate utility is as a tool to maximize value and minimize costs.

Business Strategy -- articulates the overall direction of the business and provides the interface between a business model and the value chain or value system in which the business model lives. A good business strategy should be clearly differentiated from those of other businesses in the same sector -- business strategies that are essentially identical to others are a prescription for value destruction. Another way to think of business strategy is to see it as high level decisions on positioning and direction.

Business Model -- Whereas business strategy is primarily about the overall positioning of a business within the value system, the term "business model" also includes key structural and operational characteristics of a business. In other words, "business model" is a broader description of a business than just its strategy. A business model is a general template that describes a firm's major activities, including its customers and the products and services it offers. A business model also provides information about how a firm is organized and how it generates revenues and profits. Business models combine with business strategy to guide major decisions at a firm.

More on Business Models

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As the mechanism by which a business generates revenue and profits, a Business Model is the totality of how a business:

- Selects customers
- Defines and differentiates its product offerings
- Creates utility for its customers
- Acquires and keeps customers
- Goes to market (promotion and distribution strategies)
- Defines the tasks to be performed
- Configures resources
- Captures profit

Generally, the business models of service firms are more complex than those of manufacturers and resellers. The oldest and most basic business model is the shop keeper model. This involves setting up a store in a location where potential customers are likely to be and displaying a product or service.

Business Models and Organizational Alignment

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Do you know your firm's business model, relevant value chains, and business strategies for interfacing the two?

Do you know your client's business model, relevant value chains and business strategies for interfacing the two?

Are your firm's business model and business strategies aligned with your client's business model and business strategies?

Evaluating Outside Counsel – The Firm's Business Model

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A Sample Law Firm Business Model

- Set price and value based on law expertise and *time* (lawyers, paralegals, patent agents, technical specialist)
- Main value component is *law expertise* (general IP, litigation, transactions, etc.)
- Use relatively sophisticated marketing efforts (marketing managers, web sites, better written brochures, “dog & pony shows”), however the primary goal is still to sell more “time” to clients
- Reward employees for billing more time
- Efficiency in delivering law services is often not managed in a systematic way
- Pass firm overhead to the client, where possible (internal photocopies, long distance phone calls, electronic research)
- Use software to better manage internal firm activities (prosecution docketing, matter management, litigation support tools).
- Price is an issue, but attracting and maintaining clients is still very heavily driven by the firm's law expertise and *personal relationships between individual lawyers and clients* .

Evaluating Outside Counsel – A Sample Corporate Law Department Business Model

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A *Sample* Corporate Law Department Business Model

- Deliver *solutions to business problems*
- Use *Law Expertise* as a tool in delivering solutions to business problems
- Manage the cost of law services to the business (internal staff, outside counsel, disbursements)
- Contribute \$\$ to the business bottom line
- Time spent on law analysis is not a useful measure of value to the business
- Allocate some infrastructure (people, processes and software) toward understanding the company's Business Models and the business problems that manifest for the company within those models
- Reward employees for developing blended business/law solutions that solve business problems. In this model, law expertise is important yet only one of several levers the law department uses to connect with the company's business and deliver value.

Comparing the Corporate Law Department and Law Firm Business Models

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For High Stakes matters (e.g., multi-million dollar litigation or very large M&A transactions) the traditional law firm business model likely dominates because the critical factor is law expertise

For most other matters, the Corporate Law Department's Business Model dominates.

Because the two business models only overlap in the area of law expertise, once you get beyond that issue, the two entities are largely not aligned

It is therefore difficult for Corporate Law Departments to evaluate law firms because the different Business Models make it hard to see the firm capabilities that really matter to the company

Also creates a "management burden" for the Corporate Law Department because the firm you select will likely have a business model that is not aligned with yours, so those areas where you are not aligned will need to be managed

Where do you end up?

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Identify law firms with strong law expertise and billing rates proportional to the stakes

Select the firm that comes closest to your Law Department Business Model

Manage the "Business Model" gaps throughout the relationship

Evaluating A Firm's "Law Expertise"

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In-House Evaluation & Management Team

- Need in-house lawyers with the right backgrounds
 - IP lawyer with at least some litigation experience
 - Litigation lawyer with at least some IP litigation experience

General

- Do the firm lawyers have deep IP experience?
- Do the firm lawyers have deep trial experience?

References, References, References

- Other trial lawyers are the best references. Often opposing or co-counsel.
- Find someone you trust who has first hand experience with the firm lawyers you are evaluating
- Meticulously prepared, or do they wing it?
- Scorched earth, or balanced and strategic?
- Have the firm lawyers prepared cases, taken them to trial and won?

Results, Results, Results

- How many Markman hearings?
- How many did they win?

Evaluating The "Business Model Gap"****

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Compensation: Who's paid what and how?

- Minimum Billable Hours?
- Hours-based bonuses?

Knowledge Management: Where's the access to your information?

- KM describes how a firm catalogues and accesses its institutional intelligence
- Do the firm lawyers actually use the KM system?

Diversity: Are appearances deceiving?

- Income Partners vs. Equity Partners
- Part-time statistics
- Obtain multi-year statistics to identify trends
- New hires offset by departures?

Attrition: Does your account have staying power?

- Be wary of excessively high associate attrition rates, particularly among junior associates, which may be a sign of inferior management

Training: Who's paying for it?

- Sophisticated, well planned, professionally administered training?
- On the job training?

****The Inside Story on the Outside Firm, by James R. Sandman, Chief Legal Executive, Fall 2003

Managing The Case

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Use Early Case Assessment Process

- Recovery/Defense theories
- Line up evidence
- Damages/Exposure
- Know the End Game—what do you want; what is the settlement value

Budget at the start and throughout—Make sure that OC knows you are continuously paying attention to the costs and that costs matter

Periodic status calls between In-house lawyers and OC

- Procedural matters and updates
- Force the firm to organize the case and stay organized throughout
- Raise strategy and resource issues up front
- In-house and OC must SHARE responsibility for important strategy decisions, however, In-house lawyers must insist that the OC actually give their advice and not just present a table of options

A Proposed New Law Firm Business Model

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A *Proposed* Law Firm Business Model

- Sell *solutions to business problems*
- Use *Law Expertise* as a tool in delivering solutions to business problems
- Use *time* more so as an internal control metric for law professionals (lawyers, paralegals, patent agents, technical specialist), not as the sole measure of value to the client
- Price services based on a blended combination of time, value, affordability and task. Pricing in the new model is combination of art and science
- Allocate to overhead the people, processes and software needed to understand Client Business Models and the business problems that manifest for clients within their models. Share business insights gained from this activity freely with clients at no additional charge
- Build flexibility into the firm's business model so it can be easily adjusted to support the client's business model
- Reward employees for developing blended business/law solutions that solve business problems. In this model, law expertise and time are important, but are one of several levers the firm uses to connect with clients and build value
- Attracting and maintaining clients is heavily driven by the strength of the firm's business solutions, and *personal relationships between individual lawyers and clients* are less critical

Summary

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There is built in tension between Corporate Law Departments and Law Firms because their Business Models are different and not generally aligned

Focus on the areas where the two Business Models overlap and select law firms with the least misalignment

In-house lawyers have to actively manage the OC relationship and share the responsibility for making important strategy decisions

Challenge law firms to review their Business Models and think critically about whether they have the right one