



FIVE INCREASINGLY VALUABLE SKILLS

for Outside Corporate Counsel

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Historically, outside business and mergers and acquisitions counsel (OC) have been called upon primarily reactively and for “traditional” purposes: to paper a deal, review a contract, and draft resolutions. But, as budgets shrink and margins narrow, the OC’s role can head down one of two paths: toward characterization as avoidable overhead (i.e., something to be phased out or minimized wherever possible) or in the opposite direction—that of a valued, high-ROI business resource.

While good OC have always played an important strategic and advisory role—especially those who’ve been fortunate enough to enjoy long-term client relationships—businesses are increasingly seeking value from their OC that extends beyond just raw legal skill. Knowing how to do deals well, how to draft agreements, and having a good precedent base are all rapidly becoming “table stakes” for OC—the price of

admission. Clients assume, largely correctly, that many lawyers and firms are capable of competently doing basic legal work. It’s not enough anymore; the market wants more from us.

Having spent most of my career on the client side of the relationship, I learned that while many law firms can do fine legal work, when I found a lawyer who had experience in my particular business, who knew the jargon and players in my industry, who could help me analyze legal issues in context (i.e., factoring in an understanding of our financial position, our strategic goals, and so forth), they became an invaluable resource that delivered far more than basic legal work. The best OC became more akin to a business and legal spec ops team versus an occupying lawyer army, so to speak—a highly skilled, cross-functionally capable resource. And while the bills from those special types of lawyers weren’t inexpensive,

they were nonetheless worth every penny. I wasn’t just getting drafting resources from them, and they didn’t just give me access to bodies or associate bandwidth; rather, their capabilities gave me a real, competitive business advantage. Knowledge, insight, expertise, and experience all packaged in a legal wrapper. They weren’t just the lawyers, they were knowledgeable experts who just happened to also be adept at business law, mergers and acquisitions work, intellectual property, and more. Great lawyers yes, but also great business partners.

While the individual characteristics among these special kind of resources can vary (e.g., different personalities, varying styles, some from a big firm, some from a small firm), the best nonetheless did share several characteristics. They’ve now become the type of characteristics I try to continually work on and improve in my practice, and they are the skills that we impress upon

and train our up-and-coming business lawyers to strive for in their professional development.

ADD BUSINESS VALUE

While we need not be accountants, KPI experts, or management consultants, achieving some competence (via experience, education, or both) in these areas can help bring important context to our legal work and make it even more valuable to our clients. Whatever the immediate legal work happens to be—an acquisition, a contract review, a governance dispute—bringing an understanding of these other potential aspects can add an additional layer of value to the engagement that extends beyond just a narrow academic or technical approach. For instance, if a client we know who may be eventually seeking venture capital asks us to review an IP license, our review can become much more valuable and holistic if we're able to not only comment on the technical legal terms but also understand how it fits in (i.e., how the deal itself might impact the company's fundraising efforts). Bringing a bigger-picture view along with the narrow legal advice is almost always appreciated.

UNDERSTAND UNIQUE RISK PREFERENCES

A deep understanding of a client's risk tolerance can go a very long way toward adding value to their business. While some clients (e.g., those in the health care industry or other regulated industries) have a serious need to minimize any potential risks, others (e.g., cutting-edge start-ups) are often fine assuming much higher degrees of risk. Some clients want their attorney simply to surface and discuss risk with them; others want their attorney to eliminate it completely. But having a deep understanding of these highly variable preferences—which vary by client and can even vary by project for the same client—can teach the degree to which certain contract terms need to be granularly negotiated as opposed to which we can pass on entirely, even if some risk may follow. Few things are worse than dealing with opposing counsel who is (expensively, and time-consumingly) “digging in” on terms that, unbeknownst to them, their clients don't even place a high value on. For them, the representation can inadvertently become almost an academic exercise. Learning your client's preference, whether by experience, open and regular communication, or both, can make attorneys' work much more directed while increasing the client's legal ROI.

SPEAK THE LANGUAGE; USE THE TOOLS

Business lawyers who are comfortable with financial statements, basic valuation and financial analysis methods, a client's industry practices and jargon, and the like will instantly be more valuable to their clients. Similarly, business lawyers who are comfortable with—and better yet already routinely work with—today's basic business technology tools (e.g., Microsoft Teams, Excel, PowerPoint, etc.) will also offer a large advantage. As a former client, I can attest that working with a lawyer who is already familiar with the language and tools of my business is appreciated right away. A lawyer who is tech savvy; who is (at least nearly) fully functional away from their office as they are in the office; who is organized, timely, and who doesn't need an admin or a team of 10 associates to accomplish work that businesspeople (who themselves don't have armies of admins or secretaries) handle daily is just better. It's an entirely superior relationship experience to be able to work with a lawyer who works like the client works. Pre-COVID-19, when I was hiring OC as a software CFO and I saw that it required the OC's entire IT department, a secretary, and multiple associates for me to set up a simple remote meeting with them, I knew right away it would not work well, no matter how good of a technical lawyer they might be. Being able to work like our clients work, to speak their language and use the same tools they do, goes a long way toward increasing our practical value.

BE AN EXPERT (OR ADMIT YOU'RE NOT)

As lawyers, we have ethical duties of competence, yet most of us have experienced (more than once) the lawyer who oversells their expertise. And, while there are few things better than working with truly expert, experienced counsel, conversely there is nothing worse than having OC claim expertise on a matter only to find out—after the representation is underway—that their definition of “expert” is much different. Sadly, during my career I've heard some lawyers half-jokingly note they're “now an expert” after handling a particular type of matter for the first time. As a former client, hearing that was cringeworthy. What OC doesn't always understand is that if a client asks for expert advice on something, admitting they don't have it will not keep the client from sending the next project their way. It's precisely the opposite: it'll make the client trust their judgment even more. In the end that's what a client needs from their OC more than anything: to have complete faith and trust.

TREAT YOUR WORK LIKE AN INVESTMENT

The work we do for our clients isn't—and shouldn't be—inexpensive. Knowing that, a key piece of any project ROI calculation is planning for and managing project costs. Legal projects are no different. Professional interactions that our clients choose to have with us always need to be viewed in that context. Using our resources shouldn't be thought of as a “spend budget” or “legal costs”; rather, they're investments. The goal of the investment can take many different forms: trying to reduce risk, add revenue, save on other costs, or advance a strategic initiative. But whatever the objective, the investment in OC needs to withstand independent scrutiny. Clients have sent us contracts to review, and before deep diving into the terms, we ask: what's your objective? How does this fit it? The next set of questions is just as important: what do we think, together, is the appropriate legal investment in this? What's worth it? A standard lease document involving a short commitment and a relatively small dollar amount typically doesn't warrant much, if any, OC investment, and legal terms may, as a practical matter, be largely nonnegotiable anyway. A key part of making sure we are delivering positive ROI is to always keep costs in the picture. To do that, we should be conducting open and honest analyses of how much and what kind of OC is appropriate—both at the outset of the project and, if appropriate, during the project if it pivots or evolves. Talking costs is not embarrassing, it's not uncomfortable, it's a simple and completely appropriate piece of any resource investment analysis.

The role of OC is continually evolving. Our work can be improved by striving to have sufficient understanding of the business, having an understanding of the company's unique risk preferences, knowing—and better yet, having experience with—the underlying business transaction at issue, and recognizing that ROI is virtually always a key consideration.



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