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Leveraging CLO Intellectual Capital

THE KEYS TO TRANSFORMING YOUR LAW DEPARTMENT

BY STEPHEN E. NOWLAN

When the Chief Legal Officer of the 21st Century Advisory Group met in August—literally in the shadow of the World Trade Center—to discuss how to accelerate the transformation of law departments from the Traditional to the Gateway Model, we didn't know that 25 days later our goal of identifying the best ways to reshape the culture of law departments would take on even greater urgency. If anyone doubted that life—and business—in the 21st century would be very different from the last several decades, the events of Sept. 11 surely have changed all that.

To successfully achieve corporate objectives, law departments that have functioned primarily as traditional

To make the culture transformation from running in the Traditional Model to the Gateway Model, law departments must engage in spirited discussion, develop attorney core competencies and implement ways to measure it all.

"in-house law firms" must add far greater value to their companies' bottom lines. Like other corporate executives, general counsel are being explicitly challenged to leverage the impact of their resources to contribute significantly more to corporate momentum and success. Rather than operating on the margins of business decision-making and risk management, lawyers are increasingly expected to join their business colleagues at the core of business development and expansion, to add their judgment and energy throughout decision-making processes, from the formulation of objectives to the protection of profits and assets.

This new role requires the reconceptualization of

the mission and strategies of legal functions, from reactively providing legal advice and services to proactively integrating creative and collaborative lawyers with good business sense into the business teams themselves. Inevitably, this requires a dramatic shift in the mindset found in most law departments, and indeed, in the very culture of the departments that provide lawyers with the coaching and encouragement on which they depend for daily guidance.

Today's vastly complicated legal risk environment expands the influence of legal and liability considerations on virtually every business decision. In the past, business colleagues planned and implemented

far-ranging initiatives in the world marketplace, colliding only occasionally with legal and liability landmarks. The current business landscape is blanketed by an uncharted ecosystem of legal quagmires waiting to ensnare the innocent. Since Sept. 11, every law department has been revising and expanding its legal maps to help business partners recognize and avoid these traps.

In a marketplace where not even the reliability of mundane monthly invoice mailings can be taken for granted, lawyers who are effectively integrated into the heart of business decision-making can help their business partners navigate the legal terrain and make good choices. However, the consensus of the CLO 21 Group is that law departments which cling to the Traditional reactive “in-house law firm”

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culture will be marginalized by business partners who are struggling to cope with the velocity of change affecting every aspect of business.

THE GATEWAY MODEL

The Gateway Model is premised on the idea that attorneys must think like businesspeople who can add unique value derived from legal expertise and judgment. The mission of the Gateway law department is to help formulate and implement strategies for achieving corporate objectives, not just react with legal defenses when business partners run into trouble. Gateway lawyers actively participate with business partners to identify business strategies that take advantage of the legal and regulatory framework. They don't just wait to react to plans devel-

oped by business partners. Gateway lawyers place as much importance on knowing the business inside and out as they do on knowing how laws and regulations apply; this is ultimately what gains them a seat at the table with their business partners.

In Gateway law departments, lawyers become integral participants in business activities at earlier stages, and technology resources and client education are leveraged to provide a greater scope of legal services. A Gateway law department has attributes more similar to a line function than a staff function, because its energies are directly focused on increasing revenue, profits and assets through better corporate decisions and strategies.

The very term “client” now gives way to “business partner” in recognition of the fact that the relationship

GATEWAY CORE COMPETENCIES

THE GATEWAY ATTORNEY:

1. Thoroughly learns the operations, objectives and critical success factors of the business. It is not enough to have a passing familiarity with the business. To be credible and effective, a Gateway lawyer needs depth and expertise to develop an accurate, instinctive understanding of the critical success factors of the business.
2. Helps business partners formulate and achieve corporate objectives that will succeed in the legal environment. Don't wait for the business team to do all the creative work. A Gateway lawyer needs to invest energy and creativity alongside the business partners to truly collaborate in

devising business strategies that inherently take into account the legal and regulatory realities of the marketplace. Lawyers influence business strategy and decisions at the earliest stages when it is timely to counsel the business team away from initiatives that will engender undue risk before these initiatives are cast in stone.
3. Anticipates and clearly communicates how legal issues will affect business operations (in the context of the business proposal and the business team's facts) and recommends strategies to manage legal risks and take advantage of opportunities. Lawyers are better equipped than others to analyze and evaluate how emerging legal issues will create

threats and opportunities. Take the initiative to enable business partners to integrate emerging legal and risk factors into operations and initiatives.
4. Synthesizes legal issues into a hierarchy that reflects a big picture approach in which issues from one legal specialty do not inappropriately dominate the project at hand. Business partners need lawyers to stay focused on achieving business objectives without putting the business team in the position of having to sort out contentious views among the lawyers as to how important the various legal issues truly are to the matter at hand.
5. Acts as a facilitator and enabler (not just a “legal-services provider”)

is one of colleagues who are mutually dedicated to common objectives and results, rather than a relationship in which one group works merely as a service provider to the other and is inherently subservient to the other's will.

The transformation from the Traditional Model to the Gateway Model requires a paradigm shift. For example, a litigation unit shifts resources toward the goal of helping the company avoid litigation, not because the company is unwilling to assume some risk, but because the company is smart enough to avoid unwise and unnecessary risks. Experienced litigators should be spending their time talking with company executives about future business plans instead of talking to juries about yesterday's mistakes.

As a working definition,



• Stephen E. Nowlan is senior vice president of TyMetrix and serves as the facilitator of the CLO 21 Group. snowlan@lawexec.com

CLO 21 Group members agree law department culture is, "the totality of values, philosophy, behavior patterns, beliefs, informal and formal rules, organizational structure, rewards and recognition, and all other forms of products of human work and thought in the law department." They agree that law department culture must be reshaped to support the transformation to the Gateway Model, while preserving the best and timeless values of law departments, including integrity, legal expertise and sound judgment.

As the CLO 21 Group discussed, most law departments can readily identify situations in which some of their lawyers exemplify the Gateway Model while working with business partners; however, these examples are not the norm. For decades the Traditional law depart-

ment model has placed primary value on the extent to which lawyers expanded their legal expertise and helped clients solve problems. Promotions and compensation strategies have usually favored attorneys whose legal expertise is preeminent without regard for their efforts to be part of the business team. Too many law departments pride themselves in having a culture that operates somewhat apart from the business as a whole.

How can a CLO accelerate the shift to a Gateway culture?

The starting point in making the shift must be to enunciate a set of Gateway core competencies for legal staff which provides clarity for everyone—legal staff and business partners alike—that the mission of the law department is to leverage its

to achieve win-win solutions to complex problems. Results-oriented Gateway lawyers utilize their leadership and problem-solving skills to help their teams create enduring successes and don't restrict their roles to advising on legal alternatives.

6. **Helps business partners understand the legal process, laws and regulations related to each situation.** Gateway lawyers contribute to the development and perspectives of business partners by building their awareness. Such collaboration is reciprocal with the business team and leads to more creative and effective strategies.

7. **Contributes actively and effectively as a member of the business team.** Gateway

lawyers identify with the business team and look for ways to help, stopping short of compromising their legal judgment and principles.

8. **Negotiates to achieve the company's interests rather than arbitrarily insisting on practice-group formats or serving one's own ego needs.** Gateway lawyers address and achieve the business objectives without unnecessary rigidity about discretionary requirements, which may be gratifying to the lawyer but irrelevant to the business purpose.

9. **Candidly and effectively provides business partners with a complete and honest evaluation of legal requirements even though they may be unpopular.** Gateway lawyers ensure that business

colleagues are aware of how legal requirements apply to the facts of the business situation, so risks are anticipated and understood in advance.

10. **Demonstrates flexibility when legal constraints or business conditions require a new plan.** Gateway lawyers readily adapt to new circumstances and stay focused on achieving the desired results, rather than clinging to an approach that is unworkable.

11. **Wins the confidence of the business partners without compromising his or her duties as a lawyer for the company.** Successful Gateway lawyers recognize that they must become very effective communicators and partners without "selling out."

legal expertise and resources to help achieve corporate objectives.

Gateway Core Competencies

To develop a common vision of how attorneys are expected to perform, it is essential to clearly communicate an official list of core competencies. Trust and teamwork grow in the organization when it becomes predictable that the legal staff will approach problems by demonstrating these competencies. This trust and predictability can be enormous advantages in situations where legal teams are forced to deal immediately with unexpected high-stakes issues. The absence of such clearly enunciated core competencies breeds frustration—or worse—from trying to reconcile the differing expectations of the chain of command, especially in an organization in transition.

The CLO 21 Group agrees that it is important to involve business partners in this process to ensure the foundation being laid allows for effective relationships in the future. If your business leaders believe that what they need and want is the Traditional in-house law firm model, it is better to clarify this before you get too far down the road. Business leaders themselves may be going through their own transformations—some at a slower pace than others.

Ideally, core competencies should be discussed in the context of the company's

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long-range objectives to be sure they are relevant. The law department management team should already be familiar with these objectives; if not, it is important to talk with senior business leaders to understand the current plans.

The core competencies listed on page 38, reflect the consensus of the CLO 21 Group and comprise a starting point for a department to create its own list. It goes without saying that developing legal expertise and demonstrating good judgment are prerequisites.

Taken together, these Gateway core competencies paint the portrait of a department deeply involved with the business team and actively looking for ways to create positive business results without giving up any of the traditional law department responsibilities for protecting the corporation from undue legal risk. But they are not the only competencies with which a department needs to be concerned. The department will need to include some of the Traditional competencies to build a complete list.

The CLO 21 Group agrees that there is tremendous value in having the law department management team vigorously discuss these competencies. One result of such discussion will be a consensus version of these competencies tailored to your company. But the more important outcome will be that the management team

will own the resulting list and support its use. This discussion is best staged over a few weeks or months to allow time for the practice groups to join in through their own meetings. What's needed is some intellectual thrashing about so people can digest the subtle implications and not merely sign off on the apparent meaning of it all.

Along the way, it is important to gauge whether the law department is taking the right steps to integrate effectively with business teams. The law department that is committed to such integration can use the Integration Checklist on page 41 as the basis for periodic reviews of the legal team's performance. The assessment can then be discussed with the general counsel and the business leadership. In some situations—for instance, where the legal team indicates that the business team is limiting its access to business plans or not sharing key details of upcoming initiatives—it may be appropriate for the general counsel and the business unit CLO to meet with the key business-unit executives to hash out a more explicit agreement as to when and how legal team members will be involved.

Gateway Culture Building Blocks

Once the department has adopted a specific group of core competencies, they should become the focus of all the department's culture

strategies and activities. The competencies should be incorporated into the department's annual performance review process and 360-degree feedback efforts. They should become the starting point of the department's training and professional development agenda so these activities are consistent with and actively support the growth of the core competencies. Compensation and promotion decisions should be made based on the success of legal staff in demonstrating the core competencies. Mentors should talk with their protégés about how these core competencies relate to challenging situations and provide guidance for achieving success.

The CLO 21 Group views these Gateway Culture Strategies as aspirational objectives that codify culture best practices. The Group agrees that 37 such aspirational objectives (see Building Blocks on page 42) will help a law department accelerate the shift to the Gateway Model. Most of the Group has successfully implemented some or all of these Building Blocks in their respective departments.

When these culture strategies draw their substance from the Gateway Core Competencies, they create a coherent working environment in which people know what behaviors are desired and valued. When a law department implements these strategies with consistency, continually drawing

BUSINESS INTEGRATION CHECKLIST

BUILDING THE BUSINESS

- The business unit CLO or lead attorney is a participating member of the business management committee and attends nearly all meetings.
- There is a formalized role in the new product development process through which the legal team is involved from the early stages of development.
- The legal team regularly participates in business-team meetings and training seminars so as to learn about key aspects of the business.
- Along with business colleagues, members of the legal team are active participants in the full range of company and business-unit teams and committees.
- The business-unit CLO is among those people who interview high-level business-unit job candidates.
- The legal team systematically encourages business partners to identify intellectual property and other assets that should be protected and helps harvest value from these assets.

RISK MANAGEMENT

- The legal team has a systematic process for providing training and coaching to business staff to help them understand laws and regulations, as well as the emerging legal environment.
- The legal team has a systematic process to identify and report on emerging legal risks that should be addressed to head off future liability and damage to reputation.
- The legal team contributes to and reviews the annual business-unit plan for legal risks prior to its final approval.
- The legal team reviews the legal risks associated with major policy decisions before they are announced.

- The legal team plays a role in formulating compliance strategies for key aspects of the business and reviews resulting compliance reports for legal issues.
- The legal team reviews executive presentations and communications, which may have legal implications before they are delivered.
- Members of the legal team or the employment law team participate in the hiring and termination process for major positions and review employment agreements prior to offers.

LEGAL TEAM PRIORITIES AND PERFORMANCE

- The legal team regularly initiates or participates in joint team-building planning sessions with the business team to clarify roles, objectives, problems and ways to improve results.
- The legal team regularly reviews with business partners the status of legal projects and solicits guidance from business partners on the priority of projects and the level of resources committed to these projects.
- The legal team has a systematic process to solicit regular feedback from the business team on its performance, which is then taken into account in performance reviews, compensation and promotion decisions.
- The legal team regularly solicits business-team feedback about the performance of outside counsel and factors this feedback into engagement decisions.
- The legal team solicits business-team review of the legal budget and provides budget updates in a way that is conducive to the financial management practices of the business.

upon the core competencies for substance and focus, the transformation from the Traditional to the Gateway

mindset will take place at a much faster pace, because there are fewer mixed messages to confuse the staff

about what performance is truly desired.

The CLO 21 Group identified several ways that transformation barriers arise when culture strategies are not carried out consistently. Take, for example, the important objective of

The absence of clearly enunciated attorney core competencies breeds frustration.

providing effective and fair performance feedback that is given continuously, both informally and formally. A clear majority of attorneys are quick to say that the quality of the feedback they receive is fundamental to the evaluation of their overall

work experience. Most attorneys desire useful feedback that identifies specifics about what they need to improve, as well as feedback on what they are doing well, which helps bolster their confidence. The Culture Building Block to ensure that such effective

GATEWAY CULTURE BUILDING BLOCKS

	TOP TEN MOST WIDELY IMPLEMENTED BY CLO 21 GROUP	NEXT TEN MOST WIDELY IMPLEMENTED BY CLO 21 GROUP
ACCESS TO INFORMATION		
1. The legal department encourages staff at all levels to routinely share information that is not privileged or legitimately secret.	✓	
2. The legal department enables people to access information quickly through secure online knowledge bases.		✓
ANNUAL PERFORMANCE REVIEW		
3. Supervisors are trained to understand performance standards and how to deliver a substantive review and feedback.		✓
4. Legal staff creates self-assessments then supervisors develop the reviews. Results are compared and discussed.		✓
5. Reviews are monitored and tracked.		✓
360-DEGREE FEEDBACK		
6. Entire legal staff receives 360-degree feedback.		
7. Feedback covers all core competencies in which the department needs to excel.		
8. Participants must create and implement a development plan.		
9. Participants are held accountable for completing development plan.		
ANNUAL INCREASES AND BONUSES		
10. Supervisors explain in advance which achievements are required to be awarded maximum compensation.		✓
11. Compensation awards clearly favor the high-performing staff over the poor performers.	✓	
12. Supervisors are explicit with staff about which aspects of performance are factored into the compensation decisions.		✓
PROMOTIONS AND CAREER DEVELOPMENT		
13. The department publishes a career development plan and encourages supervisors to review it with each member of the legal staff.		
14. The criteria for promotions are communicated in writing to the entire staff and discussed during annual review meetings.		
15. Supervisors are held accountable for giving regular, candid career feedback and coaching and then given recognition when this is accomplished.		
TRAINING AND PROFESSIONAL DEVELOPMENT		
16. Training expenses are tracked by practice group to ensure they are fully utilized and used wisely.		
17. GC holds supervisors accountable for completed training plans of their staff.		
18. GC emphasizes the importance of continuing training and calls attention to those who meet goals.		
19. Completed training factors into compensation decisions either formally or informally.		

feedback is provided is to train supervisors to know the standards for substantive review and feedback discussions. The flipside of saying “most supervisors instinctively know how to give good feedback,” is that the group of attorneys working for the

It is important to gauge whether the law department is integrating effectively with business teams.

supervisors who do a poor job of giving feedback are losing the benefit of being able to calibrate their performance in meaningful ways.

Another good example is the objective of expanding information-sharing within the law department. If the

department tolerates the behavior of some attorneys who routinely make it difficult or impossible for colleagues to get non-privileged information they need, this behavior becomes a direct attack on the teamwork goals of the department. This

TOP TEN MOST WIDELY IMPLEMENTED BY CLO 21 GROUP
NEXT TEN MOST WIDELY IMPLEMENTED BY CLO 21 GROUP

MENTORING

- 20. The department encourages supervisors to develop mentoring relationships with staff in accordance with an explicit set of standards.
- 21. The department encourages members of the legal staff to develop relationships with mentors inside and outside the department and maintains some method of tracking these relationships to be sure they exist.
- 22. Good mentors are recognized. ✓

RECOGNITION FOR SPECIAL ACHIEVEMENTS

- 23. The law department collaborates with business partners to ensure that the legal staff is given commensurate recognition at the same time as business-team members. ✓
- 24. Supervisors are encouraged to identify legal staff members who achieve good results, and the GC memorializes the achievements with letters or gifts. ✓

SPECIAL ASSIGNMENTS

- 25. Supervisors pick high performers who will be good role models. ✓
- 26. Potential rewards are spelled out for the leader and the team. ✓
- 27. Management shows that it is holding the team accountable and demonstrates support. ✓
- 28. Recognition and rewards are designed to motivate others to volunteer for special assignments.

DIVERSITY

- 29. The GC and the management team provide spirited leadership on diversity priorities inside and outside the department. ✓
- 30. The department fosters a value system that is inclusive, team oriented and capitalizes on the diversity of its team to provide more effective legal advice and services. ✓
- 31. The department implements a coherent diversity strategy and reports results inside and outside the department. ✓

ROTATION INTO THE BUSINESS

- 32. The GC helps place attorneys in business positions with a reasonable assurance of a “return ticket” and recruits lawyers back after two-to-three years.
- 33. The department encourages legal staff to participate in business training programs.

EMBRACING CHANGE

- 34. The department gives adequate notice, information and training about expected changes. ✓
- 35. Recognition is given to early adopters as role models. ✓
- 36. Implementation of changes is tracked and discussed openly with encouragement given to slow adopters. ✓
- 37. People are held accountable for meeting deadlines for changed behaviors.

behavior erodes morale and discourages collaboration and trust. If an attorney cannot get the information required to help substantiate an idea or legal theory, the attorney may hold back from talking about the idea with the business team, when such discussion could be to their advantage. Yet, many departments tolerate such information power brokers who use their control of certain information as a way to inappropriately extend their control to wider spheres. The department should be clear that information-sharing is a key Building Block of its culture. This will help foster a trusting and entrepreneurial team.

While most general counsel will quickly report that their departments practice effective performance feedback and open information sharing, many departments do not do so as effectively as they should—and usually not in the context of deliberately seeking to reinforce specific Gateway behaviors.

Supervisors with good common sense are generally free to give feedback in the ways they are most comfortable giving it, even if some attorneys remain dissatisfied with the usefulness and coherence of the feedback.

Another problem is that in many law departments, the legal staff works in a high-pressure environment where the focus is on meeting today's urgent deadlines. This high-speed treadmill requires intense concentration to avoid being thrown off. Attorneys trapped in this



Is the department stretching itself to leverage its behaviors for the best possible results, or is it muddling through thinking there is nothing egregiously wrong?

routine are often reluctant to realize that part of the reason for this dilemma is it's futile to try to deal with today's challenges using yesterday's methods. Trying to cope with an increasing workload by speeding up without changing strategies and methods only accelerates burnout and failure.

In the absence of clearly enunciated core competencies articulating how people should approach their work, people improvise. While the appearance may be that they are successfully coping with the workload, the improvisation disguises major inefficiencies and bottlenecks, because everyone is coping in different directions. Over time, these inefficient improvisations become accepted as "the way we do things here."

Thus we come to the nub of the issue in transforming cultures: Is the department stretching itself to leverage its behaviors for the best possible results, or is it muddling through on the premise that there is nothing egregiously wrong, so there is little merit in rethinking and fortifying its methods? Culture transformation is not a casual proposition unless you have a decade to bring it about. As members of the CLO 21 Group point out, inconsistent behaviors and disparate improvisations send mixed messages and cause the law department to devolve into a state of collegial chaos where results are attained, but only with an undue expenditure of time, effort and money.

Implementing the Gateway Culture Building Blocks

The first implementation step is to assess what the department says in print about its culture practices—much like you would assemble and assess documents in the discovery process. Most departments will discover a hodgepodge of memos, policy statements and guidelines that, taken together, fall short of coherently communicating Gateway Core Competencies and the practices used to animate them. The results of past surveys and focus groups can be helpful sources of information that may be revealing, although these often prove to be too general to be truly useful.

Another effective step is to interview members of the legal staff who have joined the department during the last year. New employees are forced to become acquainted quickly with the written and unwritten rules and procedures of the department. You can gain the benefit of their energetic explorations by asking them to describe what they have learned in this process. They will highlight information gaps, unclear objectives, confusing procedures and inconsistent behaviors in the organization and help you understand what steps to take to clear up these problems. With these research results in hand, the wise general counsel will ask a cross-functional team of law department and human resources rising stars to revise

the charter documents to consistently highlight and communicate the desired messages and methods.

Ultimately, it is essential to publish the charter documents for the whole law department, including expansive descriptions of the roles and responsibilities of management and staff in implementing the Building Blocks. CLO 21 Group agrees that departments must be prepared to sustain a vigorous ongoing dialog about the Core Competencies and the implementation of the Culture Building Blocks, with the dual purpose of stimulating ideas and creating ownership through the ranks. Such dialogue creates clarity as to how the department wants to perform, and when situations arise in which someone falls short, it becomes possible for others to bring the objectives forward as a standard that should be achieved.

The general counsel should also step-up public recognition of the people whose performance provides a role model for others. By using basic metrics to track the performance of practice groups and individuals, it is useful to engender some competition for excellence within the law department. Ask these questions: What percentage of attorneys has mentors? What percentage of attorneys completes the 360-Degree Feedback process? How many complete their Individual Development Plans? Which supervisors serve effectively as mentors? How successful is



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the legal team in fulfilling the Business Integration Checklist?

Such competition motivates people to embrace the new standards more quickly, and it creates the opportunity for general counsel to call attention to those with the best results. This can also be tied to compensation in an informal way so the most effective performers understand they are getting paid for doing well.

Role of the General Counsel as Leader

During the last 10 years, globalization and the acceleration of business decision-making have been quietly forcing major changes in how businesses operate. Law departments have been, to a great degree, immune from these forces because executive officers—who themselves have little experience in legal functions—have been willing to let the separate cultures of law departments go untouched while they concentrate on other functions where they are more comfortable, such as marketing and operations. Today, executive officers find themselves depending to a greater degree than ever on legal counsel to master each day's issues.

General counsel already know that the earth has shifted, and yet, the legal staff has not yet come to this realization. The CLO 21 Group agrees that is essential for general counsel to take on the job of communicating and convincing their staffs that we have entered a new epoch

requiring not merely some incremental changes in the way law departments operate, but a transformation.

It is ironic that while most people resist change when it comes incrementally and during times of relative tranquillity, they are quick to rise to the challenge when confronted with a calamity. As long as the changes are required of everyone equally and are clearly relevant to survival, people will put their shoulders to the wheel and push.

The most successful leaders through history, from Henry V and Elizabeth I to Churchill, Roosevelt and Kennedy, have used meaningful oratory to explain that great challenges were at hand and new responses were required to meet them. Their rhetoric, demeanor and actions were all aligned to achieve great objectives in the face of daunting adversity.

General counsel must communicate to their staffs in meaningful terms that similar great challenges are at hand. They need to ignite the emotions and aspirations of their people to meet these challenges. No guarantee exists that any company or the global economic system will survive and prosper in the years ahead. There is only the opportunity to transform what we are doing now to new methods and cultures with the hope and expectation that success will follow. ●

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