Communicating the Strategic Value of Your Law Department

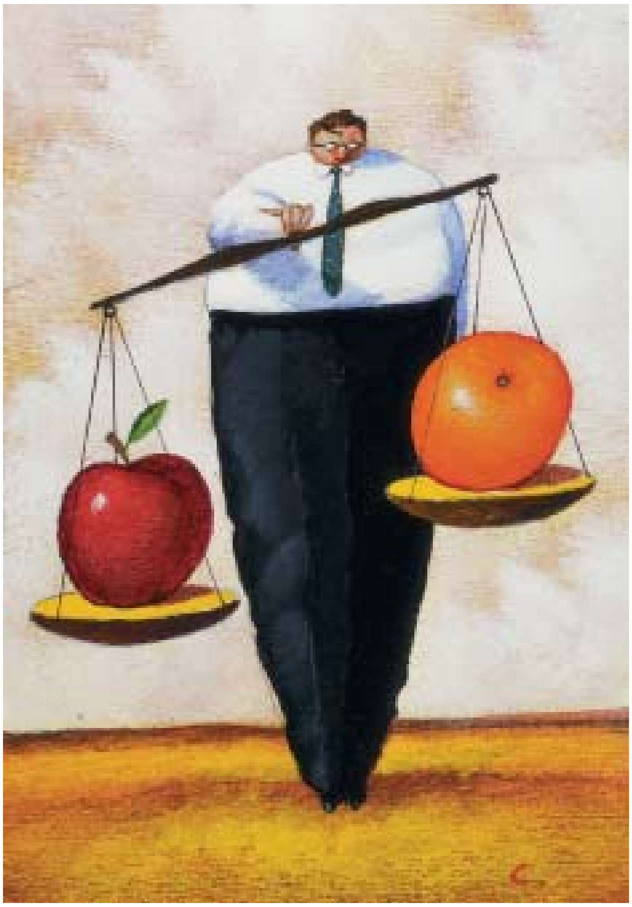
"What have you done for me lately?" This is a common question from the CEO when reviewing the legal department's budget. The Strategic Value Analysis approach is a three-step process where the CLO engages clients to develop a shared vision, a joint approach to setting priorities and in using metrics to monitor performance.

BY STEPHEN E. NOWLAN

CLOs can gain greater support from executive officers for law department budgets by tracking and regularly reporting what the law department is doing that enables the company to achieve profit and growth targets. Many CEOs and executive officers have told me that traditional spending metrics serve only to provide assurance that their law departments aren't "out of line" with other departments in the company. But they fail to show how their law departments' strategies and performance generate legal and financial outcomes that add value to the bottom line.

Before reading further, ponder how your CEO and board of directors would answer these three questions:

- Do we know what proportion of the legal department's resources is focused on legal projects that support the company's growth products and businesses?
- Do we know the progress the law department has made in achieving risk-management goals that will lead to reduced future liability exposure?
- Does the law department use metrics to measure all goals?



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Executive officers expect the law department to provide tracking metrics that reveal what is being *achieved*, not just what is being *spent*.

As one CEO told me succinctly, "I want data that show whether the resources spent by the law department are focused on the right priorities and generate value we can measure. Until I get better data, my best option is to keep pushing for lower costs."

High-Priority Performance Categories

Executive officers most often identify the following high-priority performance categories as those in which they want more effective metrics and tracking data from the law department:

- Allocating resources to high-risk legal matters and managing them effectively
- Achieving preventive law objectives
- Supporting company growth products and businesses
- Completing high priority projects as designated by executive officers
- Managing litigation outcomes

Not surprisingly, these five performance areas are closely linked to every company's profitability and growth objectives. As a group, they comprise a specific framework that can be used to help describe the "strategic value" of the law department in terms that are more revealing than traditional spending metrics. Specific tracking metrics developed in each area will enable the

CLO to explain the law department's achievements and satisfy the expectations of executive officers who want better data before they'll agree to support law department budget proposals.

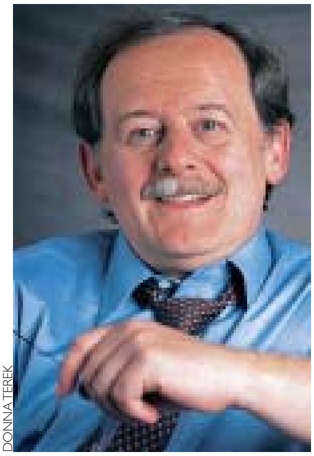
Regularly reporting the law department's results to executive officers using this performance framework can help to shift the C-suite view of the law department from being just a "necessary cost" to the more desirable view as a "strategic investment" that produces tangible benefits for the company.

Growth products and businesses are key to the company's future, and they are tracked closely by the CEO. But it is unikely that C-suite executives comprehend the proportion of the law department's resources that are focused on legal projects that support these objectives. There are many benefits to be gained from quantifying and regularly reporting on the law department resources being spent to support these activities, now and in the future.

Similarly, because executive officers want to reduce future litigation expenses, they have a high interest in metrics that dimensionalize the preventive law actions being implemented by the law department with clients. Some executives will know about some of the preventive law steps taken, but most are unlikely to be familiar with the overall progress of the law department in achieving risk-management goals that will lead to reduced future liability exposure.

Demonstrate Alignment With Corporate Initiatives

By presenting performance information in an organized quarterly or annual report that includes many such metrics, you will be able to vividly communicate to executives and the board of directors that the law department's activities are aligned with and contribute to corporate objectives. Moreover, you will be able to demonstrate that a planning process is in place to ensure that this alignment and contribution will be adjusted and increased through careful strategy choices as business circumstances require.



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Create a Strategic Value Analysis

The process of creating a Strategic Value Analysis starts with three steps.

- **Engage Clients in Dialogue to Adopt a Shared Vision.** Once the law-management team has discussed the performance areas and identified some initial objectives and possible metrics, it is essential to expand the dialogue to include executive officers. The goal of the discussions is to develop a shared attorney-client vision of how law department activities should align with corporate and business-unit objectives. The unique needs and expectations of various lines of business should be identified and taken into account in the way the performance areas are defined and the metrics that are subsequently developed.
- **Jointly Develop a Tiered Approach to Setting Priorities.** Law department practice groups can create a list of their various activities and organize them into categories. Then, practice groups can work with clients to identify the level of priority that should be given to each type of activity in the allocation of law department resources. The benefit of having a common language for discussing priorities is that there will be fewer disagreements and misunderstandings about the effort and urgency the law department is expected to apply to various types of legal work.
- **Develop and Use Metrics to Monitor Performance.** With greater clarity about how the law department's activities are expected to align with corporate and business-unit objectives and the priority generally assigned to the various types of legal services, the next step is to develop metrics that both the law department and clients agree are useful, practical and appropriate to track the law department performance. The goal is to ensure that lawyers and clients have common terminology for discussing law department performance and strategic value beyond rudimentary spending comparisons.

The following discussion provides some perspectives and ideas in each of the five performance areas for implementing these steps with your management team and clients.

Allocate Resources to High-Risk Legal Matters

A critical role of the law department is to manage high-risk legal matters, and yet, executive officers usually are not familiar with specifically how much of the law department's resources are directly applied to such potential or current high-risk matters. Chances are, the percentage of your overall resources dedicated to all types of high-risk legal matters—not just litigation—will surprise them.

Lawyers often handle matters the businesspeople do not realize are high risk because the lawyers and businesspeople do not share a common risk language. Many mid-level managers probably think that some routine or moderate risk matters are "high legal risk" just because they could or

STRATEGIC VALUE ANALYSIS

There are three steps to creating a Strategic Value Analysis for your law department.

STEP	GOAL
Engage Clients in Dialogue to Adopt a Shared Vision	The goal of the discussions is to develop a shared attorney-client vision of how law department activities should align with corporate and business-unit objectives.
Jointly Develop a Tiered Approach to Setting Priorities	The goal is to create a list of activities and organize them into categories. Then, identify the priority of each activity.
Develop and Use Metrics to Monitor Performance	The goal is to ensure that lawyers and clients have common terminology for discussing law department performance and strategic value beyond rudimentary spending comparisons.

do involve lawsuits. Through informal discussions, most law department practice groups have likely defined what matters are "high risk" in the context of their companies' businesses, and some practice groups may have developed written definitions.

A working definition might be, "High-risk issues include matters where regulatory examinations are underway or there is the potential for regulatory fines or penalties exceeding industry averages; actual or potential class-action lawsuits or lawsuits that could end in significant awards, settlements or operational constraints; or, matters where the cumulative risks would materially impact on shareholder value, customer relations or public reputation."

Your goal is to identify and quantify the actual scope of the law department resources allocated to managing the high legal risks of the company, by line of business or division. Tracking and presenting this data helps build C-suite confidence that the law department is diligent in both systematically identifying and managing risk. By delineating the actual resources required to manage these risks appropriately, the CLO focuses attention on the portion of total legal cost associated with managing high legal risks that cannot be outsourced or ignored.

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A report or graph depicting the level of law department resources applied to high-risk legal matters in each line of business or division can be especially revealing. It might reveal to the C-suite that some parts of the company are generating disproportionately higher levels of risk than other parts. Drilling down even further might help identify whether these high risks are engendered by the nature of the business or by management in those units being less focused on appropriate risk management.

Achieve Preventive Law Objectives

The CEO and business-unit heads want to know what the law department is doing to prevent future liability exposures.

One approach is for each practice group to track how fully its risk-tolerance standards are complied with by the company activities each practice group supports. For example, the employment-law unit and its human resources client may have set a standard that there must be written employment agreements in place for all managers and executives at a certain level. This requirement may include standard non-compete and non-disclosure clauses.

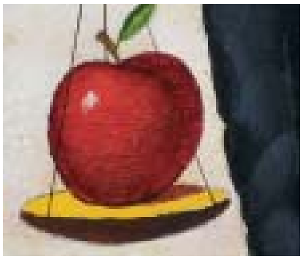
With the established tracking guidelines and help from HR, the employment-law unit could identify the number of executives in the company with whom such agreements *should* exist and identify the number or percentage for which they *do* exist. The number of agreements that were signed without the required non-compete or non-disclosure clauses could also be identified. (Presumably, these would arise from situations in which the recruiting executives waived the requirement over law department objections.)

The tracking report might show, for example, that there are 57 executives employed at levels where a written agreement is required, and appropriate agreements exist in 55 cases. Of the 55 agreements in place, the recruiting executives waived the non-compete clauses in two cases over the law department's advice. Metrics such as these provide clarity about the attainment of preventive law goals.

Each practice group could identify and apply a set of risk standards tailored to the nature of its work. Through a formal process or just informal discussion, the practice group could identify the preventive law elements it believes should be reflected in its work product, whether these are contracts, leases, purchase agreements, joint-venture agreements, private placements or sales agreements. The next step would be to track projects to identify to what degree these standards were met at the completion of each project.

Another tracking metric can address client legal and compliance education. If the law department provides seminars, the number of attendees can be tracked by subject, business unit and other demographics. If the law department sponsors online or intranet-based programs, it can track—again with demographic breakouts—the number of registered participants, the subjects for which they register and the number of courses they complete.

A law department that does not track its performance using such metrics has a less compelling story to tell management. In the case of contracts, it can report only that it negotiated a certain number of agreements but won't be able to identify whether the contracts met the preventive law standards. This does not yield insights as to whether the contracts could have been negotiated just as successfully by businesspeople operating on their own.



CEOs give their greatest support to executives who creatively leverage company resources to achieve company objectives.

Support Company Growth Products and Businesses

Executive officers want to know what the law department is doing to provide priority support for the company's growth products and businesses.

With client input, the law department can relegate legal matters into three categories. "Legacy activities" might be defined as legal work arising from old problems, such as liability lawsuits from products sold in the early 1990s. "Continuing need" activities could be related to servicing legal needs of ongoing business activities, such as facility lease agreements or terminations, purchase or service agreements, or regulatory permits. "Growth initiatives" could refer specifically to new product development, joint ventures, acquisitions or divestitures, distribution chain agreements and other activities, which have revenue and profit targets in the long-range business plan. Using this classification system, the law department can track and quantify the resources it allocates to each category of matter.

In one company, the CEO asked the law department to report specifically how much of its resources were allocated to growing the company. The law department created a report for each line of business showing the hours and spending allocated to matters in each of the three categories. After review, the CEO concluded that an inadequate number of lawyers were supporting growth initiatives in two key divisions on which he was banking to meet the company's long-range objective for new revenue. The CEO approved an increase in lawyer headcount to support new product development. But the CEO also expressed concern that the law department had not been more effective in providing this type of performance analysis at an earlier stage.

Complete High-Priority Projects

In quarterly meetings with divisional CEOs, lawyers can review legal projects and ask the CEOs to identify high-priority or urgent projects. The law department can then quantify and report the level of resources being spent to support these projects, broken out by line of business and law department practice group. Here again, the law department becomes specific about the scope of the resources it is using to support the projects that senior clients have identified as most important to them.

There is usually a close match between those legal projects designated as high risk and those designated by the business-unit CEO as high priority or urgent. However, there are legal projects where the legal risk is low but the business need is urgent. Examples include situations where a regulatory approval is needed quickly or a large but routine technology purchase needs to be completed promptly.

A side benefit of having the division CEO identify priorities for projects is that some projects which mid-level clients insist are "extremely important to the business-unit CEO" are revealed to be of a much lower priority when the CEO's opinion is actually sought.

Manage Litigation Outcomes

Executive officers are always concerned about the costs of litigation. Most law departments regularly report litigation expenses using various performance metrics.

In the reporting, many law departments don't differentiate between the costs of offensive and defensive litigation. Tracking and reporting the costs of offensive and defensive litigation separately provides an opportunity for the law department to demonstrate that it is creating value by recovering costs or protecting assets (such as patents and business processes) or challenging regulatory barriers. These offensive lawsuits represent purposeful efforts to protect the company's future income and business rights.

A focus for defensive litigation metrics would be to track the results of Best Practice litigation strategies such as early case warning systems, early case settlement programs and mediation efforts. The resulting performance metrics from such initiatives can show executive officers how the law department's strategic approach to litigation management generates greater value through decreasing case costs.

Report Strategic Value Performance

After your team has worked with clients to create the Strategic Value Analysis process, the next step is to develop a format for an overall report that will best communicate the results. An important criterion for success is having data capture, compilation and analysis processes that are sustainable over time. The leadership and support of practice group heads and others on the management team are crucial. The goal is to find the right balance between generating useful new insights and generating too much work. You may want to report on some measures quarterly and others annually.

You also may want to experiment with various formats to test which one has the most clarity and value for executive officers. One good approach is to start with a relatively short list of performance categories and metrics you can present on one page and that will be of high interest to your executives. Then, you can add more detail for lines of business, as well as historical data and trend indicators as your executives become comfortable with the analysis and ask for more detail.

To get the most value from the analysis for law department management purposes, you may want to consider a more detailed internal version that breaks out results by practice group. This report can serve as the basis of management and practice group review meetings. Also consider how best to train your senior team members in their role as communicators with clients. Certainly there is a need for everyone presenting the report to clients to understand the definitions, methodologies and meaning of the measures and resulting data.

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Better Performance Metrics, Better Strategy Decisions

Reliable periodic performance metrics will enable you and your management team to make better strategy choices by focusing attention on how resources are used.

In one law department, eight business-unit lawyers spent a great deal of time responding to client questions. Their responsiveness created high client satisfaction scores. However, when the questions and advice were analyzed, it was learned that about 3,000 hours of attorney time was spent annually answering low-risk questions related to low-priority projects. The lawyer team decided to develop an online frequently-asked-questions system for common client questions so the legal team could focus more time supporting high-priority client growth initiatives.

In another example, the CLO of a financial services company recognized that economic downturns historically lead to more litigation from customers who question the investment practices of the money managers. One strategy option was to expand the litigation staff in anticipation of the increase in lawsuits. A very different strategy, which was adopted, was to hire more compliance people earlier in the economic cycle to ensure that compliance activities were fully adequate to minimize the need for future settlements resulting from bad practices.

Such a decision—hiring more compliance people as opposed to more litigators—is a good illustration of how strategy choices directly affect spending patterns. There is greater value created by maintaining customer respect and avoiding litigation than there is in managing litigation, even if the litigation is managed extremely well.

Basic strategy choices arise every day, but sometimes these are lost in the daily triage of legal work unless the management team has systems in place to evaluate the results being achieved. The old adage "what gets measured gets managed" has great relevance.

CLO Credibility with Executive Officers

Efficiently managing legal costs and meeting spending targets are important dimensions of leadership. However, CEOs give their greatest support to executives who creatively leverage company resources to achieve company objectives. Developing and applying strategic value metrics will enable you to more effectively demonstrate to executive officers specifically how the law department's strategies and performance contributes to the attainment of company objectives. The increased credibility gained through this results-oriented approach will generate greater support from executive officers for adequate funding for the law department to fulfill its potential as a vital company resource. ●