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Who the Best In-House Lawyers Are

By David Stiepleman¹

Sixth Street Partners is a global investment firm with over \$34 billion of assets under management and I'm one of Sixth Street's co-founding partners and its COO. My partners (ten of us originally) formed Sixth Street eleven years ago and we conduct our complex business from nine offices with over 275 people around the world.

I've learned a few lessons about effective business lawyering as a law firm lawyer, in-house counsel at an investment bank and private funds business, and having transitioned to building and managing businesses. I've also seen some mistakes (including my own).

At Sixth Street, we set out to design a custom business infrastructure to accommodate our investment philosophy rooted in flexibility and patience. We are constantly developing new investment themes and creating liability structures to accommodate the goals of our diverse investor base and broad investment mandate.

Our legal and compliance team represents a fast-moving, creative and far-flung business. They issue spot, advise and execute across a broad and interconnected array of disciplines, including securities, bankruptcy, M&A, regulatory, tax, fund formation, corporate governance and employment law. The team has demanding and opinionated internal clients, and maintains relationships with external advisors around the world. It is a fun and challenging role.

Energy, growth and complexity define firms in many industries, and present corresponding challenges for internal lawyers and risk managers. We have spent a lot of time thinking about what makes great lawyers and compliance professionals at our firm. It is boiled it down here to what hopefully is a useful guide for any in-house lawyer, especially senior people making the transition from the outside to inside, from an expert outside service provider to someone who needs to distill diverse expertise in the service of providing the best business advice. This is also crucial for law firm lawyers to understand: your best in-house clients should be expecting you to facilitate great, commercial advice so they can do their jobs the way outlined here, to the benefit of all.

The language of transactional lawyers and “deals” is used here from familiarity and for convenience, but the basic concepts — focusing on your process and maximizing your impact as

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a risk manager — should apply equally well to transactional lawyers and litigators, generalists and specialists, and to senior professionals across disciplines.

As final introductory remarks, there are discrete subject matters and tasks over which mastery and control will surely be useful in your business. There are also basic building blocks to being a great professional generally: good cheer and collegiality, responsiveness, not making stuff up, having a point of view, showing up prepared, communicating clearly and succinctly. These are assumed. The advice that follows is what business leaders expect from, and should help you as, a key risk manager and a leader.

You are not a deal jockey. First is what we don't expect. The job is not to execute on every transaction we do – your goal is not to have instant recall of every provision of every agreement entered into by your business. It's not realistic and not helpful. You will be effective on a handful of transactions at a time at best. You will burn out because you will be overwhelmed. You will not be spreading yourself across the broad range of matters in your business and you will not be thinking about the next risk and helping your teams prepare for it.

You are not a deal jockey – that's what your external law firms are for. Your job is to assemble a team of eyes and brains and arms and legs on the many matters your business is working on at once and get reporting from them on a regular, repeated basis. If multiple law firms are all working on matters for you, you have agreed with each the identity of their key point person and have his/her direct dial and mobile phones memorized. You are getting issues lists and recommendations from them as needed, and you are speaking to them in 10-minute bursts on what's going on, getting a download, peppering with questions, and making them hear your concerns.

You are not waiting for your businessperson to tell you something is wrong and you are not learning about issues or risks from other people on big conference calls that you aren't driving. It's not an efficient use of your time and it means someone you don't know and who doesn't know what's going on in your business is setting your priorities for the day. Why would you let them do that?

Having this system in place presumes you've had an upfront conversation with your key outside lawyers at the start of any transaction or process that this is how you expect to work, and that you expect them to be in the center of the web corralling their various experts so that your interactions will be substantive and efficient. This upfront work is essential and worth the time investment. Think about that senior law firm partner who has great lieutenants doing the work. She or he is checking in, managing clients when needed; issue spotting; elevating and framing issues for debate at the client and making judgment calls; thinking big thoughts; and getting out there and knowing what's happening in the market. In your business, that's you.

There is a large caveat to this, generally when you are new to your business, and that's about establishing credibility. You can't be the person who shows up and starts dispensing judgments from on high. You need to build trust and that's most often going to work by getting in the trenches with teams to know how they work, to show that you care and are thoughtful and commercial, that

you will go the extra mile to help them get deals done. You must learn what it is your business actually does.

And there is another smaller but important caveat: sometimes you have to do the deal (or the regulatory inquiry, or the litigation). It could be complicated or so franchise-making or -risking that your lens and your institutional knowledge are key and you have to own it soup-to-nuts.

But those are exceptions to the all-important rule that you are on top of a pyramid of resources and not spending hours on sprawling calls that someone else has decided is how you should spend your day (and night).

If you can't get this first topic right, stop reading because you won't have time or space to focus on the rest.

You are the “guardrails.” Hopefully, you have selected your employer or your partners well and you work in a business culture where leadership and other colleagues are sensitive to the issues you are steeped in. It can be lonely if you are the only person thinking about legal and regulatory risk, conflicts or ethics, or reputational risk. Those should be shared responsibilities. It's impractical otherwise. At Sixth Street, we have deliberately worked to create — and continuously work to maintain over a growing population — a risk management model of “self-execution”. Control-side professionals cannot be on every call, in every meeting or helping with every decision, and the business would not function if we were. This means we are responsible for helping colleagues develop instincts for issues and fostering a culture of communication to make sure that those issues are raised and discussed in a timely manner. Without that culture — and if it is not at the fore of your firm, you should be mindfully working to create it — lawyers have to spend all their time playing defense, explaining first principles and sniffing out bad actors. You don't want that as a full-time job.

Next, becoming senior and relied upon by senior people means you are not going to be a subject matter expert in most things, especially since in most successful businesses new subjects are always being introduced and conditions constantly change. But there are times where you will have the primary responsibility to make sure your business colleagues are considering risk issues you know about. As a senior lawyer who has created bandwidth to look out across the whole business, you should also have a more expansive view of what's happening across divisions or teams. You should make a point of being present in team-specific meetings with the goal of carrying messages and lessons across functions and borders. You should be using your time in those settings to help others build complementary instincts and knowledge. As a result of all this, you will be able to articulate why your firm, for example, hasn't given on a particular point in your form documents so you can advise whether to stick to that position or make a sensible, principled exception. You will remember why a certain type of activity may have regulatory implications for a team in another jurisdiction. If you are this right kind of generalist, you will be the keeper of history and judgment and wisdom in your business. You will know where the guardrails are and be a very useful risk manager.

Finally, people will sometimes over-focus on the reward and minimize the risk. It's human nature. You have to flag that too – first to the human in question and, if needed, to their boss.

This raises two important corollary points. First, as much as you will need to build relationships of trust with individuals on the team, you represent the business. You may need to make sure individuals understand that role and, when necessary, you must disclose the conflict. Hopefully, you will be able to show people that your role is to help them to get to their goal, but in the right way.

Second, speak up. Be a presence. If your business is like ours, your colleagues are good talkers and thoughtful and you should be seen and heard and be part of the conversation. And, even though you may not be as in the weeds as your business colleagues on a particular topic, don't assume you don't have relevant experience. Maybe you've done M&A-style transactions and asset purchases; or been through a regulatory inquiry or tax controversy or litigation; or negotiated credit agreements; or worked on securities offerings; or negotiated fund documents; or corralled tax, ERISA, labor, UCC, insurance and every other kind of expert to get them to reach a practical conclusion on an issue. Your colleagues may not have instincts about process and risks in these areas. Help them see the field and use your experience to map out how a process will likely work, and give dimension and texture to risks. Be prepared to assert yourself politely, back up your thoughts, be willing to revisit your conclusions (it's a sign of confidence and strength, not weakness) and remember the goal is to get business done, the right way.

You are the safety net. You want your clients to want your blessing on risk matters and, for that, it has to mean something. Saying that you are “comfortable” or “good to go”, that you are ok with the risk being taken, that you're “done” – you are doing your job if saying these things is backed up by conviction because you have asked the questions and you are satisfied. And you are doing your job if the team trusts you and your sign-off gives them a measure of courage. Maybe you work with terrific thinkers and diggers and risk-takers with strong personalities, but they still need to feel that they have a team with them who is helping them think through risks. Nobody likes to be in it by themselves, and nobody thinks of everything. Having conviction means you have paused – and have made the business team and your advisors pause – over an issue, you have pushed people with questions where appropriate, and you have taken time to reflect quietly and consult with others on whether what you are doing makes sense.

There is a possible dissonant note this might sound in your head. This isn't *at all* saying that you have to know everything and is not incompatible with saying that “you are not a deal jockey”. We are all fallible humans, making the best judgments we can in compressed timeframes with limited information. But the bargain you need to have clear, and that you should make clear at your business, is that while you may not know with certainty what a jury will decide or how to value a borrower's collateral, and you have to be able to rely on the outside lawyers that the documents say what they are supposed to say, you are the person who is pulling back from the minute-to-minute with a bird's-eye view to fill any legal, regulatory or risk gaps in the thinking. You are spot-checking the central provision that may be the keystone assumption in a document on a commercial or risk issue. It is assumed that you have done that work and vetted any concerns by the time you are saying “done”.

The surest sign that your clients value this part of your work is that they are clearing things with you before they present to senior management or running an issue up the flagpole. It means they want to advertise that you have focused on an issue in their memo or presentation, because your imprimatur is real.

You are the advisor. You are the person who people seek out to test their ideas and voice their concerns. You should be having conversations that colleagues initiate with phrases like, “I’m not sure this works” or “I want to get your read on this” or “This may be a stupid idea”. People are coming to you to take the germ of an idea and help put some actual framework around it. You are a counselor (“here’s how we could frame that better”) and an adult (“if you are asking me that way, you already know the answer”). It may be peculiarly American to associate this role with lawyers, but whether you associate this more with your doctor, clergy, notary, shrink or sibling – that’s part of your job.

At the institutional level, this means you have to listen and understand (and hopefully help set) the business’s strategy – what jurisdictions are you going into, what products are you developing, what types of transactions are you pursuing, what counterparties you will be working with – and think about whether you are equipped for the trip. The lower-order questions you should be asking about this include: Do we have the right licenses? Do we know the right advisors? Do we want to hash this out in a privileged communication – and is that possible? The harder questions include: Should we be spending time on that? If we start doing that, will it be in conflict with what we’ve been doing and will anyone have an objection or, worse, a claim? Are we sailing into an iceberg as regulatory scrutiny ramps up in this currently unregulated space? Is this correlated risk?

If you know enough about your business and what is going to happen, if you have created the time and machine to ask these questions timely, and to suggest how to navigate the shoals, this is where you earn your keep.

You are connective tissue. This is a corollary to some of my other points, but distinct enough to say it explicitly. If you are playing a multi-disciplinary role, you will know more people than most and know what they do across your business. Put people together who can help on issues. Maybe you have in-house experts in tax and accounting and compliance and real estate collateral and financial covenants and software and speakers of multiple languages and on and on. Maybe you have some or all of the resources your business needs assembled as part of your external network. Put them together on issues where they could use the help.

It’s also important to note the ownership you take as an inside counsel: the outside lawyers move on but you don’t. You should be thinking about whether a contractual undertaking is performable in a sensible way by your operations or accounting colleagues before you bind them to it. Stay connected with your deal team and current on developments after an acquisition. Be able to anticipate and help with interpretations of your rights, or disputes, or regulatory scrutiny and keep a current handle on risks.

You are running a business. Leave it to a recovering lawyer to put this point last, but it ties it all together. Yours is the business of providing legal, risk management and advisory services to a company. You need to have systems in place to know what's happening across your business. You need to go to bat for the business internally and externally where appropriate, and you need to advise the business how to pick its spots. You need to know the market to know who is best situated to help you on the outside, you need to make external advisors want to work with you (if not because you have interesting work to do, then you have to create other reasons), and you need to cultivate those relationships even when you don't have an active matter together. You need to know what you are spending on legal services and negotiate a fair price for them. You need to read widely and efficiently enough to know what issues you face. You need to be thinking about talent you know, and meet and pick the superstars you maintain relationships with for information sharing and for possible hires down the road. You need to plan your headcount and your budget for two years out at least. If you have a team, you need to manage them, thinking about their substantive growth and career trajectory. (Volumes have been written and careers are spent on this last point — my only observation here is that legal training is not management training and you ignore the latter at your peril.)

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If you follow these guidelines, you will help your business accomplish its goals quickly and in the right way, and you will be a relied-upon counselor deserving of the name.