

Legal Business World eBook Series

PERFORMANCE FOR LAW DEPARTMENTS

Part 2. Organization and Resources of the
Law Department, Performance and Metrics
and Benchmarking, Surveys and Retreats

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This is the second of 3 books based on the series '[Performance for law departments](#)' by Richard G. Stock.

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- [What you need to know before buying legal services](#)
- [My favorite approach to pricing](#)
- [How to secure sponsorship when buying legal services](#)
- [This is the most effective approach to buying legal services](#)

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ORGANIZATION AND RESOURCES OF THE LAW DEPARTMENT

1. Adding Another Lawyer to the Law Department?

Surveys and interviews show that one of the biggest challenges facing General Counsel and their legal teams are workloads and workflows including the pace of work. The frustrations can be quite specific and include demands from clients with incomplete documentation and poorly considered scope of work. These issues take time to sort out, but the deadlines do not change. And of course, clients believe that the legal department is responsible for the hold-up.

Corporate counsel are annoyed with constant interruptions, the volume of e-mails (many of them useless) and the extent of hand-holding required by clients. Careful analysis shows that up to 15% of a work week is lost and unproductive for want of relevant legal practice and relationship management protocols. This can amount to 300 hours of “lost time” per lawyer per year.

Preparing the business case to add a lawyer to the legal department begins by ensuring that the department is highly productive. This is quite different than ensuring that everyone is committed and working hard. Those who approve additional head count will be more sympathetic to a request for resources if a measurable improvement to productivity can first be demonstrated.

The second element of the business case depends on the preparation of a detailed demand forecast, typically expressed as the number of matters, the legal specialties, the number of hours and the level of complexity of the work for each major client group within the company. This matrix of work should incorporate planning assumptions and their probability for two or three years. Formal discussions with each client group are essential. They should occur at the same time as the annual business planning cycle. The General Counsel then has a graphic representation of the legal work by type and business unit. It should be 90% accurate for the year.

The third element of the business case entails matching the demand with the available internal and external resources. Most legal departments tend to refer litigation, labour and employment, intellectual property, tax and other specialty matters to external counsel. The preference is to handle most corporate and commercial work internally. Smaller legal departments typically refer M+A and securities work

because they rarely have the experience mix and availability to take on the work. Consideration should be given at this stage to in-sourcing some of the work often referred to external counsel.

The fully-loaded hourly rate for inside counsel is typically 40-45% of the hourly rate of external counsel for the same level of experience. For example, the work of external counsel billing at €480 per hour (this is on the low end for senior partners in larger metropolitan areas) can be done by qualified inside counsel whose notional hourly rate is €180 to €220 per hour. This type of in-sourcing only works if there is a critical mass of this work available for two or more years.

External counsel working 650 hours per year at €480 per hour will cost €312,000. Most legal departments can afford a full-time senior counsel position for this amount of money.

Assuming a yearly target of 1850 hours, 650 hours are directed to work previously referred out, leaving 1200 hours of standby capacity to be allocated. This type of business case is the easiest to make because it does not require the company to increase its total legal spend—only to approve an increase in head count.

In circumstances where in-sourcing is not a realistic option and the demand forecast indicates a resource shortage in

the department, two options are available. Neither, however is popular with inside counsel, mostly because they introduce more structure in the relationship with clients and in how individual practices are managed.

The first option is to identify the number of “occasional users” of the legal department. Studies show that up to 25% of all users require less than 30 minutes of legal support in a week. General Counsel introduce working protocols with business units to reduce the number of individuals that can call the legal department. The same protocols describe the demand for legal work by the business unit and reduce the number of users to a minimum- often only to experienced users of legal services. The pain is worth the productivity gain of 5%-10% or 100 to 200 hours per year in counsel time.

The second option is mitigate the volume of work at the point of intake. Some legal departments publish quite explicit guidelines on when to call—and when not to call—the legal department. Often, the “risk management reflex” in a legal department is to have everyone call and let the lawyers sort it out. A more cost-effective approach however, is to train clients to make these choices and be accountable for them.

After careful consideration of these alternatives and the determination that there are at least 1000 hours of

unallocated work in the plan, then the business case for another position should be presented accompanied by the demand forecast, evidence of appropriate in-sourcing, service level agreements with business units, and productivity improvements within the legal department.

Assuming that a case is made for the addition of another position, what type and level of position should it be? It rarely makes sense to add a junior lawyer with less than 4 years of experience. Inside counsel tend to do 100% of the work in 90% of their files, even in larger departments. Law firm staffing profiles with leveraged junior positions rarely make sense for a law department—with one exception: experienced paralegals. A review of the tasks assigned to corporate counsel shows that 10%-20% are paralegal or clerical in nature. When pressed, lawyers say they do this work because there is no one to give it to or because they believe it is more efficient to do everything themselves. The reality is that often inside counsel have poor delegation skills and very little experience working with paralegals.

The addition of a position to a legal department is a unique opportunity to manage client expectations, save money with in-sourcing, inject discipline in how lawyers work with their clients, and re-distribute tasks across the legal team. General Counsel should consider all of the angles.

2. The Global Legal Organization in the Future

I recently re-read Ben Heineman's *The Inside Counsel Revolution*. As the former General Counsel for General Electric, and a prolific writer, he covered a lot of ground in his book. One section concerned "The Global Legal Organization of the Future". The chapter on "Law Firms and Alternatives" is of particular interest because it is still the best characterization of the continuum of practices and relationships that law departments have had with external counsel that I have seen in 20 years.

Like Stephen Hawking's *A Brief History of Time*, Heineman traces the evolution of the corporate law department response to the enigma of relationships with law firms as five different phases stretching over the last 40 years. And it is these five, sometimes overlapping, phases that are worth noting because they give law firms and GCs an idea of when / where they are in the time-space continuum.

The first phase of corporate law department responses is best summed up with the phrase "We hire lawyers, not law firms." As GCs began to populate their law departments with specialists, in turn these individuals selected external

counsel in an ad hoc fashion, based on their networks. At the same time, inside counsel began to take on some of the complex work themselves, especially when the critical mass of the law department made it cost-effective to do so. The 1980's was, for some law departments, the beginning of the movement away from being a collection of commercial generalists, acting as sole practitioners. Yet, almost four decades later, smaller law departments still believe that this is the best business model to serve their corporations. Moreover, perhaps encouraged by law firm colleagues, they continue to believe that "you hire the lawyer, and not the firm."

The second phase of responses to managing the relationship with external counsel was to "make competition more systematic," with a clear objective of cost reduction. Outside counsel guidelines were introduced but tended to focus on disbursements. The competitive aspects took the form of invitational requests to a small number of firms to propose fees on a matter-by-matter basis. Over time, informal requests evolved into formal RFPs, and in a few cases, reverse auctions. Blended rates and discounts, both variations of hourly rates, were secured. Invoices became more detailed and task-based. Witness the project to Canadianize the Uniform Task-Based Management System (UTBMS) for three code sets in 1996 and 1997. Institutional

consumers of legal services, such as banks, insurance companies, and utilities, did formalize processes. However, they did not systematically negotiate reduced fees, and they did not venture into alternative fee arrangements with the exception of fixed fees for commodity work.

The third phase reflects the transition from the “relational” to the “transactional” retention of external counsel. Heineman refers to the era of lists of “preferred providers”. Implicit preferences for law firms and for key lawyers became more explicit so that preferred firms joined a panel list. For more than 20 years, firms on panel lists have complained that beauty contests change nothing in reality. The largest volumes and the most interesting work continue to flow to traditional legal providers. It appears as if relationships and history continue to trump price, assuming that competence among the firms is equal. Law departments do not have the analytical tools and the appetite to parse law firm prices. It follows that they cannot determine how much more they are paying than they could pay to the same firms or to other panel firms. More than 80 % of law departments are operating at phase 2 and phase 3 levels when it comes to retaining external counsel.

Dupont and Pfizer were pioneers in developing strategic alliances (phase four) with far fewer firms. The company

commits a volume of work for several years in exchange for a flat annual fee. The conditions must be right if the work is to include complex litigation and transactions. The company secures budget predictability and the firm has regular cash flow. A handful of companies have had such arrangements in place for 10 years, typically as a series of 3-year to 4-year partnering agreements. Adjustment clauses to recognize significant variations in volume and matter complexity are included to minimize the risks of paying too much for the client or incurring a loss for the law firm. Collar arrangements of 15 % are usually sufficient for the firm to secure a predictable flow of work and to stimulate efficiency in the law firm. Some of the concerns arising from these arrangements over time are that service levels will diminish,

and that expertise will not be as readily available. Do firms have "B teams?" It followed naturally that fixed fees have evolved into hybrid fees consisting of a fixed fee amount and a variable portion tied to key performance indicators focused on efficiency, effectiveness and innovation. Such arrangements are still rare today.

Heineman describes phase five as the effort by corporate legal departments to "integrate more completely with law firms and make them strategic advisors." Goals and

objectives are set for matters as well as for the portfolio of work. Joint legal department and law firm teams select the optimal variation of fees for the matter or perhaps for a book of business. This type of integration extends much further than substantive legal work completed at the request of the “fortress law department.” It can incorporate LEAN initiatives, improving relationships with business units in the company, managing the network of local counsel, and preparing detailed trend and management reports regarding legal services delivery.

General Counsel and law firms must agree on the cornerstones for strategic partnering if they are to achieve their full potential.

PERFORMANCE AND METRICS

1. Three Basic Competencies for Corporate Counsel

We are all so busy that enough time is seldom taken to perfect the competencies to manage a legal practice within a law department. For that matter, not enough time is invested by senior corporate counsel to acquire the administrative, professional and management competencies to lead a law department. Not enough preparation, too much improvisation and only on-the-job training.

In the normal course of my consulting practice, I meet many capable 8 - 10-year corporate counsel being put in charge of significant matters and portfolios of legal work for a legal department. Sometimes they serve as primary relationship managers for a number of business units. Sometimes they are the expert for a legal specialization such as regulatory affairs, tax or health law. The big challenge is to stay on top of the work, because business units do not always provide the law department with a lot of advance

notice or documentation. The internal “client” is undisciplined. In summary, the relationship is not “managed” as such.

It follows that the law department’s workflows are erratic and that workloads “seem” excessive. I say “seem” because corporate counsel often believe themselves unable to influence the flow of work. Everything is a scramble. Industry surveys suggest that there has been no real increase in the length of the work week in the last 3 years. Yet, the demands for service are insatiable. What can be done?

There are at least three competencies which corporate counsel should master by the time they reach the 10th year of practice. The first is efficiency. This is where one finds ways to accomplish the most with the available time and resources. There should be evidence of getting things done more quickly with less money and fewer people, regardless of whether the resources are in-house or with preferred law firms. Senior counsel should be able to organize their professional practices to achieve multiple objectives or tasks simultaneously.

We have conducted regular studies to evaluate the backlog of work in individual practices, the number of in-bound and

out-bound e-mails and phone calls per day, and generally to gauge all forms of interruptions to daily work. The bottom line is that a minimum of 10 % of available time is lost because of the failure to manage communication traffic on a daily basis. That represents at least 200 hours per year per lawyer. Imagine the chaos at our airports if air traffic controllers took the same approach in the delivery of their services. So, some structure and skill are necessary to achieve and maintain efficiency. There should be no problem sacrificing the accessibility of business units to the law department in order to improve turnaround times.

The second competency for senior counsel is relationship-building. Proficiency here recognizes the importance of positive personal relationships in business. Senior counsel establish mutual trust and credibility with business units and other stakeholders through a track record of reliability and results. Some law departments formally align individual lawyers with specific business units to deepen relationships.

Still, there are many law departments with legal specialization as the primary organization criterion competition, commercial law, litigation and so forth. I have seen 4-lawyer legal departments made up of 2 commercial lawyers, 1 labour lawyer and 1 litigator with responsibility for

up to 16 business units divided among them.

In one company, the business unit is also told who the back-up lawyer is in case of emergency - not unlike how general practitioners manage in the medical community. Relationship lawyers make it their business to anticipate the type, volume and demand of all legal work from their business units, regardless of whether some of this work is then referred to another member of the law department or to external counsel. This type of alignment with business units is essential to proficiency in building and maintaining relationships.

Some companies rotate their lawyers through a wide range of business units over the years so that they can expand their working relationships beyond a handful. They also get to learn the business from operating and strategic points of view.

The third competency calls for formal training in legal project management (LPM). Long practiced by engineers, IT and some clinical professions, project management is now acknowledged as a core skill set for legal services delivery. Law firms have specialists training partners and associates in LPM. They have invested in the software and the research capabilities to ensure consistency and

financial viability of plans and related budget estimates across the full life cycle of individual legal matters.

It is good discipline to develop a legal project plan for matters projected to have as few as 50 hours. Good plans will detail phases and tasks for matters. They will detail the planning assumptions for all phases and most tasks, and they will suggest the probability (percentage) of those assumptions or hypotheses being valid. The LPM plan goes on to allocate tasks by lawyer and technical staff and includes a schedule for every element. Law departments should start by getting their professional firms to share LPM techniques and tools. They can ask their preferred law firms to train members of the law department in LPM.

Efficiency, relationship-building, and legal project management skills are three basic and essential competencies for corporate counsel. Proficiency in the early years depends on operating protocols, training, and frequency of opportunity to practice the three competencies. Multi-disciplinary project teams and the volatility and pace of business need corporate counsel to demonstrate this type of knowledge and skill across the board.

2. The Five Pillars of Performance for the Legal Department

After absorbing years of trade literature and attending inside counsel conferences discussing value, doing more with less, scorecards, metrics and key performance indicators, the time has come to distill the ingredients into five basic elements. I term these the pillars of performance for the legal department because they will support an array of paradigms, programs and operating practices.

Over the years, I have relied on 17 critical success factors and 52 indicators for law departments, the 29-point check-up for legal departments, and endless variations of balanced scorecards with 12 key performance indicators. So what works best, is practical and resonates with Chief Legal Officers in the quest for performance?

Years ago, the legal department was viewed as part of the necessary overhead. In the worst cases, it was regarded as the business prevention police and over-enthusiastic gatekeeper to manage risk. Times have changed and most departments work hard and are highly service-oriented - perhaps to such an extent that they discover they have become all things to all people.

This makes it difficult to answer the question “What difference do the lawyers make?” Part of the answer must be the extent of “strategic impact” of the legal department.

Lawyers can add value to the extent that they help business get done. While that requires daily operational support of business units, some analyses reveal that the amount of strategic legal and project work typically consumes less than 30% of department resources. The first pillar of performance for a legal department must be its contribution to the strategic priorities of the organization. These can be transactions, regulatory hurdles, or high-profile litigation. The CLO must find a way for allocate enough legal resources to such priorities by allocating at least 20 % less time for operational support and upwards of 50% for work of strategic value. It follows that these priorities must planned and featured as the top priorities in the legal department’s business plan.

The second pillar of performance is intellectual capital. Surveys consistently find that a CLO’s biggest worry and challenge is to keep the lawyers engaged. This may not be much of an issue for counsel in their first 5 years as lawyers , but after a while the novelty wears off. Legal specialization and gaining an intimate knowledge about the business will take another few years. And then perhaps

a few experienced counsel can secure a transfer to another part of the company or are able to lead a business unit or special project. Talent management should not be a matter of survival of the fittest. Too many legal departments fail to live up to their full potential. The stamina needed to work 50 hours per week is not a substitute for leveraging the intellectual capital that is legal services, especially the capabilities of senior counsel. The CLO must insure that the initiatives making up this pillar are at the forefront of the department business plan and embedded in lawyers' personal development plans.

Professional associations and trade publications alike have been recognizing legal departments for innovation for the last 7 years. Many awards feature improvements in how counsel work with their clients, while others highlight collaboration with external counsel.

Every balanced scorecard addresses business process improvement, LEAN initiatives, and productivity in some form. Productivity measures are a tough sell with counsel used to working as solo practitioners with their clients. However, considered through the lens of innovation for efficiency, the possibilities become interesting. Efficiency improvements have to be measurable. They can be designed to reduce client dependency on legal for

operational support, or they can take the form of technology literacy such that counsel can function without significant assistance from law clerks and paralegals. Measures to improve turnaround time for client work are always welcome. Without innovation as the third pillar of performance, lawyers will always find themselves behind the demand curve and will grow frustrated because of their unavailability for strategic work.

It is inevitable that costs be the fourth pillar of performance for the legal department. CLOs and their companies want predictability of their legal spend for individual matters referred to external counsel and for the fixed costs of the department. Studies show that inside counsel lose up to 20 % of their available time on administrative matters, non-productive meetings and interruptions.

Quovant's Other studies show that they under-leverage available technology and are overly dependent on support staff. Setting targets to lower unit costs, that is to say the effective hourly rate for legal and advisory work, is a viable approach to strengthening the fourth pillar. Equally important is the use of alternative fee arrangements with external counsel that will motivate law firms to better delegate tasks and minimize the number of hours needed to get the job done. Too few legal departments master law

firm economics and non-hourly fee arrangements. The pillar of cost performance has been weak for decades. There is always a way to reduce total legal spend.

Management and administration are not synonyms for leadership in legal services. Ensuring that a legal department performs to its full potential is the responsibility of everyone in the department. It is the reason that some companies extend formal leadership training to all lawyers as a matter of course and not as an elective. Leadership relies on a broad range of attributes, skills and knowledge. Analytical skills, oral and written communications, negotiating skills, team building, and adaptability are just a few. Without sufficient leadership as the fifth pillar of performance, there will be very little strategic contribution, innovation, cost-effectiveness and growth in intellectual capital

3. Doing Metrics Right

Some of the trade literature has been featuring metrics and performance for law departments over the last 6 years - about as long as there have been awards for innovation in law department innovation. Nevertheless, fewer than 10% of departments have sufficient and solid data that can be analyzed in a useful way.

CounselLink, part of the Lexis Nexis software suite, offers cloud-based software for enterprise legal management. The product helps large and small corporate law departments manage operations by collecting data and by providing analytics and benchmarking tools. Last year, Kris Satkunas and Justin Silverman co-authored a CounselLink white paper on “Managing Metrics for Success”. They set out 7 characteristics for effective metrics that are worth considering, mostly because they are experienced-based and full of common sense.

Assuming that metrics for law departments are inevitable and useful, we suggest that General Counsel should include them in a four-part package that also includes the department business plan, its budget, and objectives and development plans for individual lawyers.

The first characteristic of effective metrics is to ensure that they are be linked to the company's business goals. It is the only way for a law department to position itself as a strategic partner that adds value rather than as part of the overhead. Less than a quarter of law departments produce detailed business plans linked to corporate plans - plans that are more than the annual budget. And it is these plans which should anchor the metrics used to monitor and report the performance of the law department and of individual lawyers.

Second, the configuration of metrics must be balanced to make them palatable and relevant to lawyers. Financial metrics such as external spend and the cost of the law departments are a start but do not speak to the value provided by legal counsel. Objectives and targets to improve the operational efficiency of the internal and external legal supply chain are essential. Satkunas and Silverman go further by proposing metrics to better manage risk and legal outcomes that are several levels beyond basic activity tracking. General Counsel can then better answer the question "What difference do the lawyers make?"

The third feature of effective metrics are lagging and leading performance indicators. Collecting historical data

will help to set some performance targets for the future. Yet, not all performance can be reduced to readily quantifiable elements such as the number of matters, legal spend and turnaround just because they are compatible with a matter management system. The white paper did not suggest metrics or performance indicators for value-added performance of the law department: special projects, strategic impact, knowledge transfer to clients, and the development of the law department's skills and knowledge to take on increasingly complex work. All except one indicator presented in the example relate to financial control or operational efficiency.

Next, the number of metrics for the law department should be limited - from 6 to 10 with no more than three or four being finance-related. Fifth, the white paper favours metrics that are "controllable" at the level being measured. We think that this is much too restrictive and understates the value-added contribution that counsel can and do make on a regular basis. Instead, formulation of objectives and targets that "can be influenced" by counsel makes sense because these are more suitable for an enabling department such as law in a company. The general counsel can set objectives and targets tied to the outcome of transactions and litigation. Stretch goals and targets for the

department and for individuals can then make it to the scorecard.

It is hard to disagree with CounselLink's sixth characteristic for good metrics - comparability to a baseline - as long as the focus is on financial and efficiency indicators. This is difficult to apply to developmental objectives, to special projects, and to the strategic contributions that legal teams can make. "Production line" metrics are unavoidable but insufficient. Activities that call on the special skills of experienced counsel should be featured: analytical abilities, written and oral communications, negotiating skills, leading teams, and training clients to be more self-sufficient. Add to this the need for most inside counsel to beef up their technology skills and to master the economics of their company. It is then that the configuration of developmental objectives and targets comes into focus with strong potential to add measurable value.

Satkunas and Silverman conclude by suggesting that metrics should readily feed a scorecard or some form of reporting that makes it easy for the law department to capture and communicate its contribution to the company. Some General Counsel report progress with select

achievements by the law department to the corporate executive team every quarter.

Metrics may give lawyers hives - shades of law firm timekeeping and of having the legal artist paint by numbers. Getting metrics right depends on striking the balance between resource allocation and success in getting business done.

4. Innovation as a Performance Indicator

Why change anything in a law department when nothing is wrong? Work is plentiful, most of it is interesting and the other departments genuinely appreciate the contribution of the in-house counsel and have no real complaints.

Innovation in legal services is not invention. It is about introducing something new that perhaps has been done elsewhere. Or it is about improving what is being done and the way it is being done. Legal professionals do this by inclination and training.

Over the last 5 years, I have noticed that more law departments have formal, annual business plans in place than in the early 2000s. Some are developed from the bottom up after consulting the members of the department. However, not enough of these seem clearly aligned with the company's corporate business plan and operating priorities. All the boxes are ticked, but it is difficult to see how the legal team leverages its knowledge of the company and its skills to add value in the company. There is lots of activity, but the strategic impact of the plan is indirect at best.

By definition, a key performance indicator (KPI) is designed to focus resources on priorities that will make a difference to the company and to those who rely on the law department. The earliest editions of performance plans for law departments always contained activities to improve service levels and overall satisfaction with the law department. This was pretty much the same basic approach that one would expect from a law firm.

The next generation of business plans saw the introduction of KPIs tied to corporate targets. These were more sophisticated in that they included contributions to specific projects, controlling the cost of external counsel, and developing the capabilities of senior members of the law department. Every one of the objectives had an innovation component. Innovation was embedded and assumed in the initiatives or actions supporting other KPIs like efficiency, cost-reduction, technology and knowledge transfer.

Yet in the last 4 years, I have come to the conclusion that having a stand-alone KPI for innovation, as well as having “innovative” activity supporting other KPIs, is well worth it. This is not because law departments need a longer list of things to do or to measure. Instead, an innovation KPI requires that the leadership and members of the law

department actually discuss innovation, develop initiatives that make a difference in the company, and then invest the resources to make this happen.

There are several categories that should be priorities for innovation in the law department. These include:

- shifting more of the resources from daily operational support of business units to developmental and corporate projects that the company regards as priorities
- insuring a much greater self-sufficiency of business units with a combination of training, systems, templates and a more limited role in contract reviews, all with a view to boost the available capacity of the law department by 25 %
- abandoning hourly-based legal work in favour of performance-based fees for external counsel
- making sure that the lawyers and other members of the law department have substantially challenging work most of the time
- raising the proficiency of the department's lawyers in skill areas: leadership, business negotiations, and project management - all intended to ensure that they are not "strictly legal" as time goes on

Innovation has several beneficial side effects: it demands creativity; it depends on discipline to execute the

initiatives; and it is transformative. Moreover, innovation is interesting - far more than working faster or longer hours or getting greater discounts from law firms.

For the most part, the best innovations for a law department are externally focused. They are dedicated to corporate projects and to the priorities of the business units rather than to the internal workings of the law department. Successful innovation answers the question "What difference do the lawyers make?"

Many legal trade associations now have national and international awards available for law departments that innovate. Service and adaptability can be replaced by innovative contributions on multiple fronts as the hallmark of law departments determined to add value. "May the best innovators win."

BENCHMARKING, SURVEYS AND RETREATS

1. The State of Corporate Law Departments

Chief Legal Officers seldom find enough time to read material regarding the law department management. It is worth commenting on some of the findings from Thomson Reuters Institute's "2022 State of Corporate Law Departments - Benchmark, Optimize and Innovate: Law department performance in a post-pandemic world." [here](#). Data sources for the report include 2 000 telephone interviews with senior in-house counsel, input from 1 000 law firm lawyers recommended from the interviews, and input from legal operations professionals subscribed to Thomson Reuters Legal Tracker.

While the report covers a range of topics - legal spending, sourcing patterns, experiences with law firms, and general marketing trends - it offers the chance for participants to benchmark their responses against their peers. I have

chosen three factors likely to improve the contribution of the law department: changing the value proposition as a strategic contributor, effective ways to partner with primary law firms for innovation, and metrics to drive behavior and resources for legal stakeholders.

Strategic Positioning I was heartened to learn from the report that 90% of law departments relied on some form of metrics in 2021 compared to 75% in 2015. The most important metrics are still legal spend, efficiency and quality. Despite this, it is discouraging to see that cost pressures have significantly increased the importance of the legal spend metric and reduced the importance of quality metrics compared to 2015. Thomson Reuters states that “such one-sided reporting of corporate law departments’ performance may fail to properly quantify the value they are adding to their organizations.” Global inflation is prompting law firms to adjust their pricing by 10% in many markets. All the more reason for quality indicators to be front and center.

The four quality metrics reported – quality of responses from the law department, client satisfaction, results, and complaints – are meaningful but they are at times difficult to measure. They also tend to be lost in the forest of spend, efficiency and effectiveness metrics.

Changing the expectations that a company has of its law department and of its external counsel is a priority. The report talks about law departments embracing “transformational change”. Yet this message is at times undercut where the report also states that “the enduring purpose of an organization’s legal function is to safeguard the business”. One cannot argue with the need to “serve and protect”. I believe that while law departments are a service function like HR, Finance and IT, they can and should be strategic contributors provided they establish this position in a widely disseminated statement of roles and responsibilities. Here is a formulation introduced by one law department that has set out to:

- Be a stimulus for results in the company’s areas of strategic focus
- Be a center of excellence in contracting practices for the company
- Have 75% of its department objectives mapped to client business plans
- Exceed the required proficiency levels for 80% of the department’s business, leadership, and legal competencies
- Re-structure its client relationships to be more effective and efficient
- Be a center of expertise in a number of legal specialties

- Demonstrate top tier performance in risk management and dispute resolution

To be effective, this type of manifesto must be supported by a detailed business plan with specific initiatives and targets for both the law department and for its members. The company can then expect a contribution that is strategic, innovative, and gets business done.

Effective Partnering

The Thomson Reuters report offers practical steps to maximize law department outcomes. A section on “optimizing law firm selection” lists seven factors that have a role. Interestingly, none of these factors is cost or price. The report opines that “most in-house lawyers surveyed say that the strength of individual lawyers is the primary selection criterion – and that industry experience is high on their checklist.” Otherwise said, hire the lawyer and not the firm. Thomson Reuters goes on to say that “law departments seeking successful partnership with their firms should assure as many of the levers as possible.”

“Levers” are selection criteria such as brand affinity, feedback systems, client-centric lawyers, and an innovative approach. To this I would add non-hourly fee arrangements for all complex and regular work.

According to the report, one third of law departments benefit from innovative solutions “to address a range of objectives and challenges - primarily technological solutions, creative legal advice, and pricing.” Partnering with a select number of firms will accelerate achievement of other elements in the department’s manifesto such as excellence in contracting, legal project management, risk management and a measurable contribution to select, high profile and strategic initiatives identified by the company. A balance in risk and rewards for the firm is an essential pre-requisite for such services. It should not be aligned with an hourly fee arrangement.

The Right Metrics

Metrics and indicators without targets will capture activity levels and resource consumption but they will not capture the value of a law department. Based on the interviews, Thomson Reuters reports metrics in four categories: spend metrics, efficiency metrics, effectiveness metrics, and quality metrics. Most of the effectiveness metrics concern legal resource consumption. Although they do track activity, they are not focussed on outcomes.

I prefer effectiveness metrics that answer the question “what difference do the lawyers make?” A category called

“Quality and Effectiveness Metrics,” each with initiatives and targets go a long way toward communicating the value of the law department. Consider the following indicators for this revised category:

- Results, determined by a formal survey of all business units
- Strategic Impact
- Quality of responses
- Client satisfaction, determined by a formal survey of all business units
- Knowledge transfer
- Lawyer satisfaction

Accepting the premise that the primary purpose of the law department is to help get business done implies proficiency in legal project management, negotiation, and communication skills. Measuring the strategic impact of the department is not a usual performance indicator. I recommend three to five high-profile corporate priorities with the law department playing a significant part are identified as part of the corporate planning cycle. At times, the law department may need to go out of its way to make a contribution that extends beyond strictly legal. The CEO or the responsible VP decides the value of the law department's contribution on a 3-part scale - meets

expectations, exceeds expectations, or does not meet expectations. The results are broadly communicated. Law departments are an important part of a company's intellectual capital. Knowledge transfer should be selected as an effectiveness metric to determine the success in transferring competencies from law firms to the law department, among lawyers within the department, and from the law department to business units.

Finally, a metric for lawyer satisfaction is essential. HR departments can help with experience and methods to assess the law department's effectiveness in recruitment, advancement, retention, and morale.

Action Plans

The Thomson Reuters report proposes a 7-part action plan with practical steps for its readers. Three of these align well with a developmental and strategic business model for law departments that embraces "transformational change."

- Re-position the law department as an organization value center
- Ensure a broad scope of factors are considered when selecting law firms including business understanding and innovation "Build value-oriented metrics into performance monitoring"

The report paints a valuable picture of law departments and merits consideration. Every CLO must be wary to avoid falling into Pfeffer and Sutton's "Knowing Doing Gap - How Smart Companies Turn Knowledge into Action."

2. Benchmarking Legal Operations Maturity

Law departments seldom have access to comprehensive and valuable benchmarking material at no cost. I have had a chance to review the report released by the Association of Corporate Counsel (ACC) in partnership with Wolters Kluwer Legal & Regulatory in the spring of 2020. See <https://www.acc.com/resource-library/2020-legal-operations-maturity-benchmarking-report>. There were 316 participants, spread across 24 industries and 29 countries. This article should be regarded as an abstract intended to encourage all law departments to study and act on the full ACC report.

The ACC's maturity model is designed for law department leadership and management to "place themselves in three stages of maturity by benchmarking against companies of different sizes and industry sectors." The model surveyed 15 functions and 92 sub-functions.

The 15 functions are:

- Change Management
- Compliance
- Contract Management

- eDiscovery and Litigation Management
- External Resources Management
- Financial Management
- Information Governance (Records Management)
- Innovation Management
- Intellectual Property Management
- Internal Resources Management
- Knowledge Management
- Metrics and Analysis
- Process & Project Management
- Strategic Planning
- Technology Management

Five key findings of the report provide important context when considering the statistical results.

1. departments that employ legal ops professionals are more advanced across the 15 functions
2. there is significant variation in maturity across functions with Compliance and Financial Management most advanced and eDiscovery and Litigation Management and Innovation Management the least advanced
3. larger departments tend to report higher maturity levels
4. budget limitations, leadership scepticism about the value of legal operations , and resistance to change are barriers to improving operations maturity

5. only 8 (2.5 %) law departments are in an advanced stage of maturity across 10 or more functions

The benchmark report evaluates each function on a 6-point scale. The average score for the Compliance function is 3.46 - Intermediate Stage One. Financial Management scores an average of 3.34, also Intermediate Stage One. The remaining 13 functions each score below 3.0, demonstrating that most companies can do much more to improve their legal operations.

External Resources Management

I have elected to look at one function - external resources management - to illustrate the report's treatment of the sub-functions. This function had the fifth highest score at 2.85, yet only 11% of the law departments reported that they were in the advanced stage.

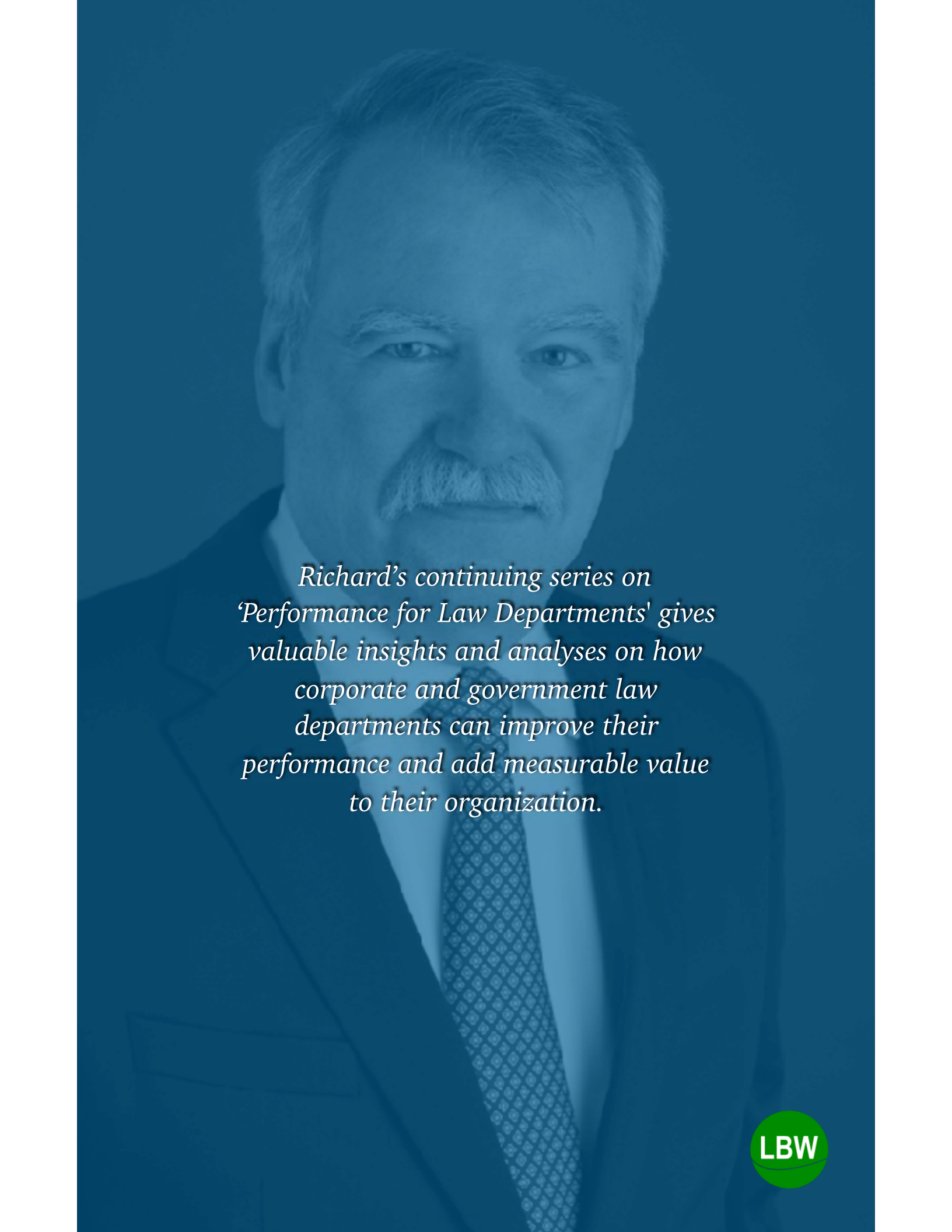
The report relies on 13 sub-functions to determine operational maturity for external resources management. These follow with the total percentage of participants stating that the elements are "not yet in place" and "planning to be in place". Otherwise said, these departments are at best in the early stage.

Sub-Functions	% not in place
a) Sourcing decisions are ongoing considerations and legal service providers (LSP) are integrated in the legal services delivery model	47.1
b) Use of legal services is driven by value provided at the phase/task level	28.0
c) Law firm/LSPs are considered value producing business partners, continually improving performance and relationship	27.9
d) Outside counsel and vendor management are centralized function(s) within legal operations; involvement in RFPs; engagements, pricing and performance review	42.8
e) AFAs are considered on all matters and are heavily used	65.0
f) Systems smoothly incorporate/support AFAs in billing and metrics/ dashboards	
g) Procedures exist to assess value and reconcile pricing to cost variances	62.3
h) Frequent review of budgets and performance (at least quarterly)	40.4
i) Standardized supplier quality/performance metrics	75.3
j) Regular, structured and mutual feedback	59.4
k) Vendor management metrics integrated with GC dashboard	77.2
l) Systematic use of value adds (e.g., training, secondments) and value-enabling capabilities such as firm/LSP-provided project management and technology	64.9
m) Win rates (outcomes) are considered in vendor selection	63.3

Observations

With few exceptions, almost all the sub-functions for managing external resources should be embedded in a law department's annual business plan. However, 50% to 75% of the 316 participants have nothing in place for 7 of the 13 sub-functions. The report revealed that about 255 of the participants plan to "standardize quality/performance metrics" and to "secure regular, structured and mature feedback" from their external resources. This suggests that a significant majority of law departments are only in the early stages of thinking about how best to manage themselves and the resources that they use.

Law department leadership and management should set aside incremental adjustments to operating practices and resource management in favor of comprehensive business plans that will advance their performance across all 15 functions. The ACC benchmarking report provides a good self-assessment tool and a solid foundation for change across 24 months.



Richard's continuing series on 'Performance for Law Departments' gives valuable insights and analyses on how corporate and government law departments can improve their performance and add measurable value to their organization.

LBW