

Law Department Condition *Getting by or Critical?*

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This is the thirty-second in a series of articles about how corporate and government law departments can improve their performance and add measurable value to their organizations.



Since March 2020, the global economy has been transformed not to say stressed. The nature continues to change. Companies are making structural, operating and financial adjustments in response to economic realities. Employees are feeling vulnerable.

Law departments in every setting must adjust their priorities, practices and resources. Better to do so in anticipation of change rather than as a defensive reaction to change. Law departments have come into their own over the last 25 years. Internal clients are used to having them around--as part of the fabric of the company. But are they nimble enough? Are they goal-tenders or on the front line seeking out ways to add value? In too many cases, the law department is getting by and too “comfortable” with



what it is doing and how it is doing it.

It has been nearly 20 years since two dozen GCs gathered in New York City to set out what they then considered to be the Critical Success Factors (CSFs) for a progressive law department. Their 17 CSFs were anchored by 52 constituent elements or statements. Although the factors and elements now need some updating, they are still relevant. Tough economic times and difficult working environments challenge the Chief Legal Officer to ensure that the business plan for the law department is up to the test.

There are 6 CSFs that I believe are particularly relevant to legal leadership. The factors are equally important and worth considering

along with their supporting elements. Each CSF should be assessed for compliance on a 10-point scale by scoring its constituent elements. My report card follows all the while finding law departments that demonstrate exceptional performance on all factors.

CSF—A trusting and effective working relationship with the CEO, executive officers and clients.

There are five elements or statements in support of this CSF:

- The CLO has frequent dialogue with the CEO
- Executive officers are briefed on the steps the law department is taking to align itself with company objectives and business

- The CLO creates opportunities for lawyers to work with executive officers
- The CLO monitors the quality of the relationships between lawyers and executive clients
- Client satisfaction surveys are conducted

The highest mark is awarded for monitoring working relationships with executive clients. Client surveys are conducted by fewer than half of law departments and this is done on an irregular basis. The other elements of this CSF are informal at best and rarely documented. In summary, law departments are much too passive in managing internal relationships. They must make the time to plan and do so. In general, I would not assign today's law departments a higher score than 4 for this critical success factor.

CSF—There exists an effective strategy for integrating lawyers with client/user management teams.

Four elements support this CSF:

- Significant business unit management teams include a lawyer as a participating member
- Lawyers have a formalized role in new product development processes
- Lawyers review and contribute to annual business plans
- Legal teams review major policy decisions before they are announced

Law departments score better on this factor than when I conducted a similar analysis nine years ago. Increasingly, business units have in-house counsel attend their meetings and

review major policy decisions. However, law departments are seldom called upon to contribute to business unit annual plans on a systematic basis. The main barrier is the limited availability of in-house counsel for other than urgent legal work. Overall, law departments deserve no more than 6 out of 10.

CSF—The annual and long-range plans of the law department are closely aligned with corporate objectives.

Three elements anchor this CSF:

- Written annual and long-range plans with objectives are explicitly linked to corporate objectives
- Evidence exists that the legal team works with clients to identify a joint long-range plan
- The assumptions about legal issues driving the business environment are identified in the plan

Most law departments have written annual plans. But fewer than 20% of departments have written long-range plans for the law department and only some of their objectives are closely aligned with corporate objectives. Planning assumptions are rarely documented and are not supported by multi-year forecasting of the demand for legal services expressed by volume, type and complexity. Law departments do complete corporate planning forms but remain poorly aligned and reactive in deploying their resources---deserving only 5 out of 10.

CSF—The law department has effective budgeting processes and financial reporting systems in place.

There are three elements:

- There is agreement on a comprehensive reporting format for financial reporting by the law department to its clients
- Procedures and systems are in place for the law department and external counsel to collaborate on budget management
- Clients monitor legal spending and provide input

Few law departments record time by matter and clients, and I do not suggest that they begin to do so.

Even without this law firm type of tracking, quarterly reporting to business units about the level and type of activity and the legal resources to support them seldom occurs. Fifteen years on, and legal project management and budgeting with external counsel remain in their infancy. Overall, law departments deserve a score of only 3 out of 10 for failing to apply budgeting methodologies to complex matters and for not moving beyond discounted hourly rates with external counsel.

CSF—There is a strategic sourcing approach to external counsel retention and management.

Two elements are sufficient for this factor, given the hard-wired and relationship-based nature of law departments with external counsel:

- The law department retains external counsel based on strategic alliances, competitive bidding and performance evaluations aligned with core competencies used to evaluate inside counsel

- Billing data is used to identify and reinforce use of best practices

CLOs prefer to avoid competitive processes to retain external counsel. Despite new competencies available in some procurement departments for sourcing professional services, they are not at ease with preparing specifications, drafting RFPs, introducing non-hourly fees as the dominant form of billing, promoting project management, and negotiating with preferred counsel. This is in part because they fail to examine billing data, to intervene in law firm business practices, and to make the time to do so. There is now more rigor when sourcing professional services in banking, most levels of government, and for some corporations. However, even with these, there is precious little innovation and risk/reward sharing with multi-year partnering agreements. On the average, law departments receive 5 points for this factor.

CSF—Professional development initiatives are focused on current and future core competency requirements.

Four elements are in play:

- Development is focused on core competencies for lawyers and paralegals
- Future talent requirements are forecast
- Career path plans and management/leadership skills development tracks exist
- There is multi-source feedback on individual performance

Public companies and most levels of government benefit from strong HR support for this factor. This is less true in other settings. Core competencies for counsel are not