The State of Corporate Law Departments

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

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 igo 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 Pffefer and Sutton's *"Knowing Doing Gap – How Smart Companies Turn Knowledge into Action."*

Links by CLIH to previous columns

- Allocate Time Strategically
- World Class Effectiveness
- Law Department Innovation Audit

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