

Top Performance and Knowledge Workers

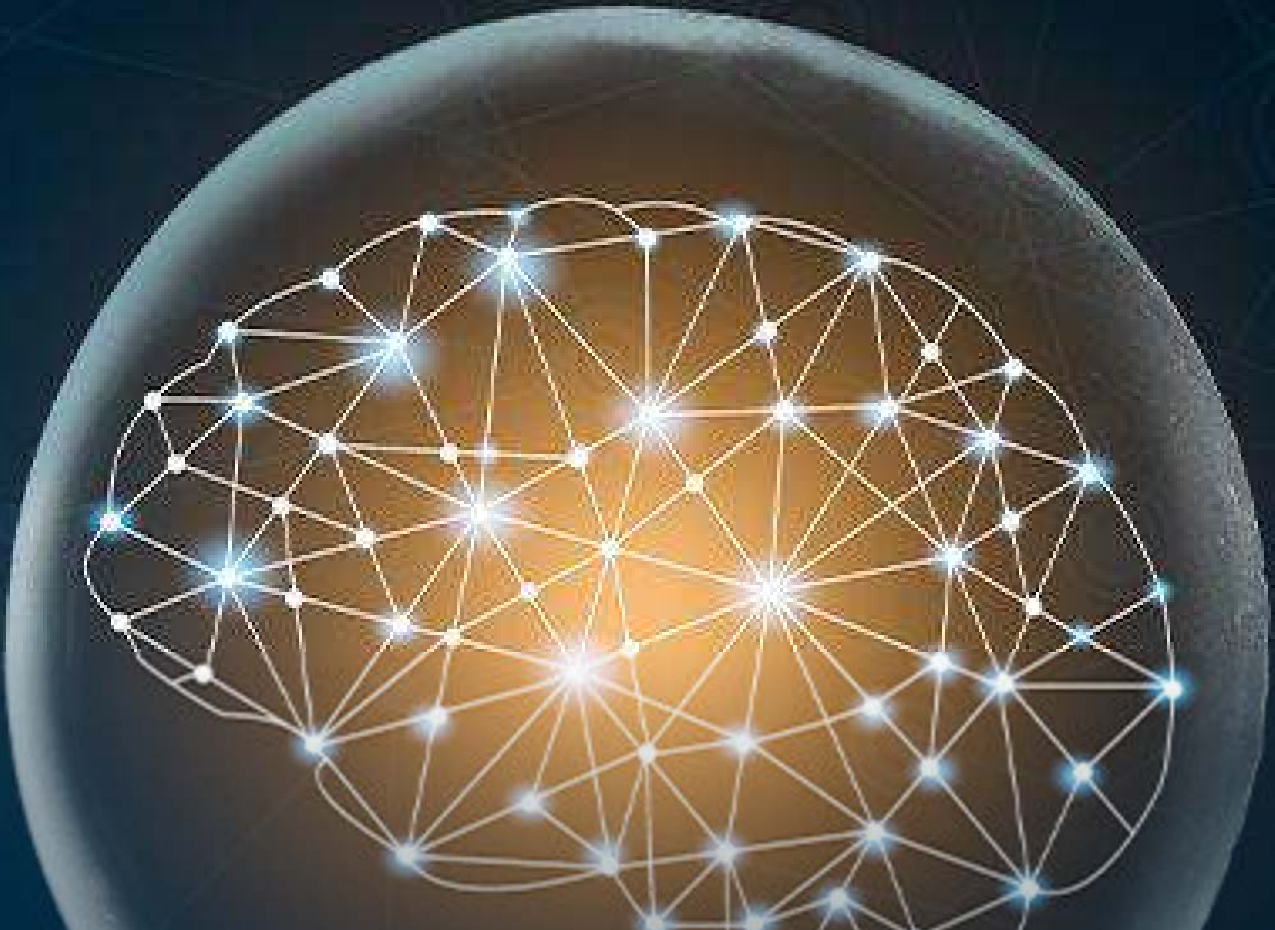
By Richard G. Stock, M.A., FCG, CMC, Partner with Catalyst Consulting

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



“If our companies are going to be more profitable, if our strategies are going to be successful, if our society is to become more advanced – it will be because knowledge workers did their work in a more productive and effective manner.” Thomas H. Davenport (Thinking for a Living, Harvard Business School Press) wrote nearly 20 years ago about how to get better performance and results from knowledge workers, including lawyers in corporate, government and institutional settings. This segment of society now represents more than the 25 per cent of the workforce in Europe and North America than it did 2 decades ago.

For some years now, I have been saying that “managing” a group of lawyers in a law department or in a law firm is like managing the artist colony in Montmartre.



The image underscores the difficulty, but not the futility, of influencing experts in positions whose primary purpose is to create, distribute or apply knowledge. The difficulty increases with the degree of the work's complexity. It is further compounded by a company's geographic reach. Moreover, the mobility of corporate counsel with less than 20 years of practice makes legal services delivery a serious, permanent undertaking for the General Counsel / CLO. The market for legal talent will be even more volatile and costly than ever in 2023.

Getting Results

Experienced counsel, whether members of a corporate law department or of a law firm, thrive in relationship-driven, service-sensitive environments. But they are also finding that

having satisfied clients (users of legal services) is no longer enough in a corporate setting. For some time now, companies have wanted to “measure” effectiveness by introducing “metrics” in legal services. They want to be able to answer the question “What difference do the lawyers make?” and they want an answer in terms that the company can understand.

For some years, corporate performance management programs have applied company-wide templates dominated by financial indicators to service departments like human resources, IT and legal. Rarely were the indicators reflective of the type of work done by members of the law department. Instead, the department was challenged to define its contribution to corporate and business unit goals. When it was unable to do so, its goals were

simply rolled into a composite indicator made up of headquarters' corporate / service departments. If the company did well, then corporate and legal would do well with performance pay. The law department's contribution was not tracked, featured, or rewarded as a discrete contribution, in large part because of its inability to articulate and quantify the results it needed to achieve. Even when the plans and results have been specific enough, corporate performance management systems provided too little latitude for the contribution of the law department to be properly featured.

Law departments play a big role in managing risk and preventing or minimizing losses. These are traditional, core functions carried out with legal drafting, litigation management, and advice about the applicability of laws, regulations, and policies.

There is no doubt that operational support in a company requires these services and the skills to provide them. At most levels, these contributions do not make it onto the corporate radar screen. They are indirect, albeit essential, expert services provided by the law department and by the law firms they retain. In summary, they are not seen to be intrinsically "strategic."

Effective Processes

In-house counsel vary widely by type. Davenport uses several dimensions to categorize knowledge workers, including lawyers. He considers 1) judgment and collabora-

tion needed, 2) knowledge activity, including the creation (or not) of new knowledge, 3) cost and scale, 4) the nature of the work processes they perform, 5) their business criticality, and 6) their mobility. General Counsel responsible for setting goals and getting results must do so with processes that reflect the types of lawyers and the law departments and industry sectors in which they are found. The law department of an oil and gas company differs from that of a Schedule I bank, and both differ from the law department of a national media company.

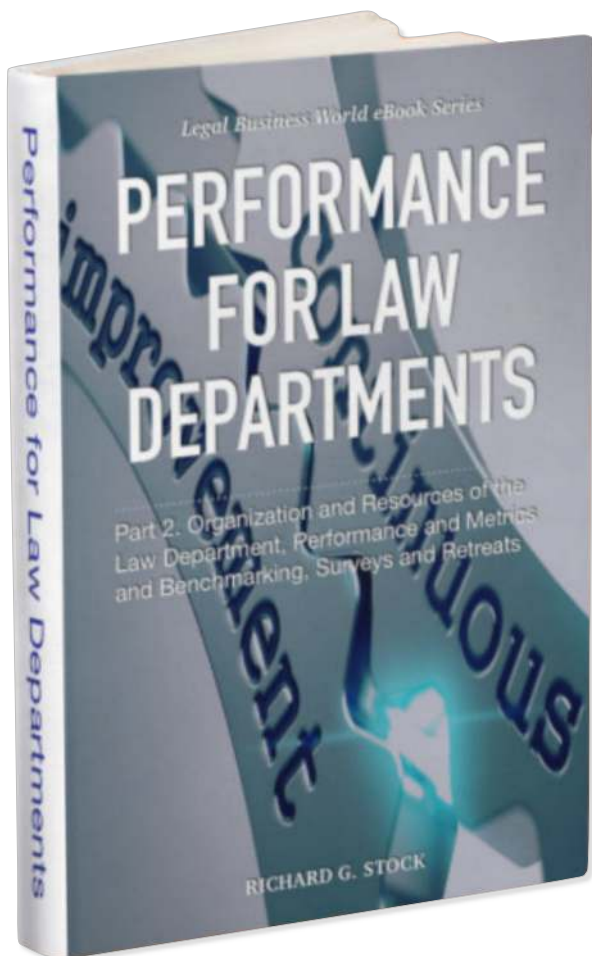
Getting the best "results" from legal counsel ("knowledge workers") and from law departments in such disparate settings requires considerable insight into their unique characteristics. Finally, the processes used by the General Counsel to set objectives and measure the contribution for counsel must take into account the more challenging characteristics of knowledge workers - even of consultants. They crave autonomy, it is very difficult to specify detailed steps and the flow of knowledge compared to other types of work and securing commitment to anything depends on "fair processes" to get there. As well, knowledge workers do not share their knowledge - i.e. their assets - readily.

When managing performance, General Counsel must balance getting results with effective processes in setting the goals and monitoring the contribution of counsel.

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