Running the Legal Department with Business Discipline: Applying Business Best Practices to the Corporate Legal Function

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Abstract

Running a successful business is difficult—ask any CEO. First you must face the reality of where you stand today. Then you need to develop a point of view about where you want to be in the future, by when, and design a strategic plan that sets out what you will do to get there—but just as importantly, what you choose *not* to do. You must prioritize the initiatives you will focus on, sequence their order, and build consensus, alignment and buy-in—both internal and external to the department—without which your plans will not succeed. Then you must execute. You must constantly measure, improve and course correct. You must analyze and manage your costs. You must scan the technology horizon in order to respond to threats and take advantage of opportunities. You must recruit, train, retain, and even inspire your people. You must decide what to build and what to buy. And you must do all these things at the speed of business! This article examines how leading legal departments are tackling the "more for less" challenge that they face by adopting applicable business disciplines from other corporate functions.

1 Introduction

Successful legal departments are addressing the growing "more for less" challenge by adopting proven, relevant practices from other business functions. The most effective General Counsel and senior legal department leaders have stepped into

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their “C-suite of Legal” shoes, running the legal department with business discipline.

As any C-suite executive will attest, running a successful company or function is challenging, but fortunately the world of business has already developed, tested, and documented a range of applicable best practices that can be studied and applied. With few exceptions, executives succeed by adapting and applying proven strategies and tactics that have stood the test of time.

The good news for legal department leaders seeking to run their department successfully is that they too can draw on this rich base of best practices. Not only are best practices inherently effective, they are understood by other business leaders outside of the legal department—in Sales, Finance, Operations, HR and so on—which facilitates communication, understanding, cooperation, and even respect between the General Counsel and other executives in the company’s C-suite.

So, what are these business disciplines specifically, and how are they being applied in leading legal departments? They fall into several major categories: strategy, systems and processes, use of technology, people and organization, right-sourcing, spend and supplier management, and metrics.

2 Strategy: Determining Where You Are and Where You Want to Go

“Failure to plan is a plan to fail.” This maxim applies to the legal department as much as it does to any business. Successful legal departments don’t just plan quarter by quarter or initiative by initiative, they look further ahead, developing multi-year strategy roadmaps linked to company strategy, stakeholder input, and objective assessment data including benchmarking.

Well-developed strategy roadmaps do several things:

- Articulate a realistic picture of the department’s current state
- Lay out a purpose and vision that aligns with the strategy of the company overall
- Set specific goals that align with and support the overall goals of the company
- Identify and prioritize initiatives and measures of success for achieving those goals

One of the best strategic roadmaps we’ve ever seen (see Fig. 1) was created by the NetApp Legal senior leadership team, under the guidance of Matthew Fawcett, GC, who literally held 100 meetings in 100 days to take stock of the legal department’s current state when he first stepped into his role.

The most effective strategy plans are designed to enable the business, manage risk and cost, and clearly communicate to all members of the legal department what the priorities are—and are not—and what is expected of them. The strategy plan should connect the overall goals of the company and other departments to the goals of the legal department, cascading to the departmental priorities, then down to team and individual goals, linked to metrics that will be used to measure performance.

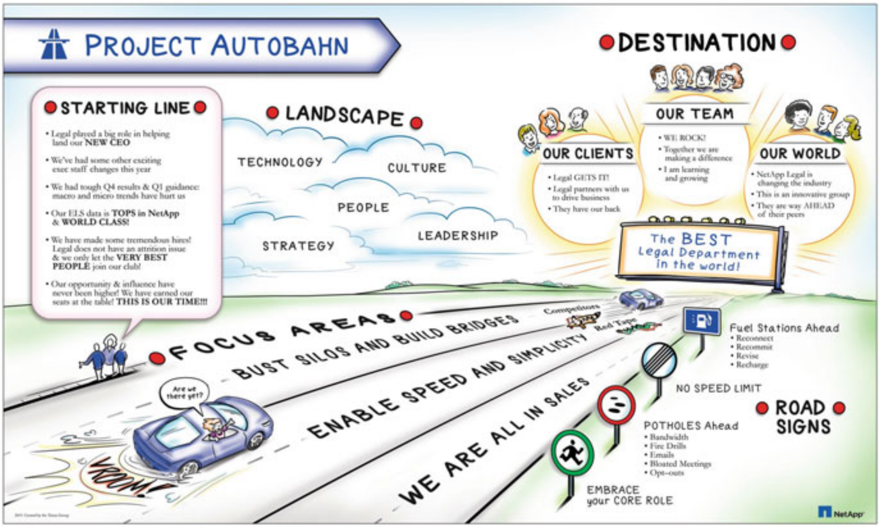


Fig. 1 Illustrated summary of NetApp's strategy roadmap, dubbed "Project Autobahn" (Source: NetApp Legal)

In our experience, determining which initiatives to prioritize and deciding on their sequence is complex because many factors must be considered. There is no "one size fits all" decision framework, but key areas of consideration include:

- Understanding and supporting the strategic activities of the business
- Identifying areas of risk to manage, and to what extent to manage them
- Carefully planning the sequence of initiatives, which may reveal that some activities need to happen in the right order to prepare the way for others in terms of technology, processes, staffing, and even change management
- Analyzing costs and effort involved, identifying relatively "easy wins" that can fund costlier subsequent initiatives.
- Being realistic about what can be achieved over what time-frame, effective change management and pacing, to foster buy-in, build momentum and avoid burning out in-house staff

A strategy is only as good as what you do with it, and successful legal departments are characterized by a distinctive ability to put their plans into action. Not only do the GCs of these companies achieve real operational improvements in their legal department, but they also gain the respect of the rest of the company C-suite, who understand and respect the value of this business discipline.

Developing a strategy requires starting out by understanding the department's current state, then developing a shared point of view about an improved future state, and finally, creating a multi-year roadmap to get there.

A clear understanding of the department's current state requires subjective input from relevant stakeholders, objective measures, and peer benchmarking (Fig. 2). The best legal departments measure key performance indicators (i.e., metrics) that provide objective information about how the department is performing. We will discuss metrics in more detail in Sect. 8.

Gathering subjective input can be difficult, but it is essential to do so in a structured manner in order to develop a true picture of the performance and effectiveness of the department, without bias or relying on anecdote. Subjective or qualitative information should be gathered using online surveys (see Fig. 3, an example from the legal department of BlueScope Steel, a multinational steel company) or through interviews with the in-house legal team, colleagues in Sales, Finance, Procurement, HR and other key groups, customers, and the company's legal service providers (law firms and non-law firms).[1]

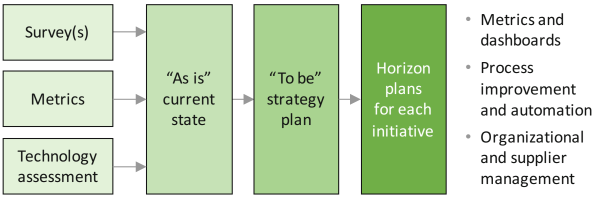


Fig. 2 Strategic planning process (Source: Elevate)

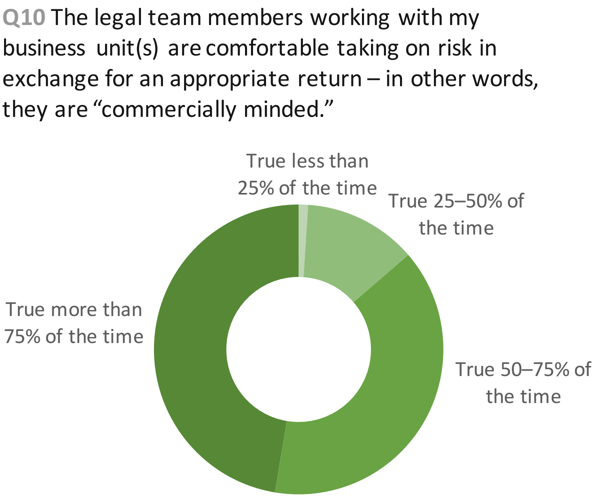


Fig. 3 Example results of online survey question (Source: Elevate)

[1]Disclaimer: As the founder of a number of legal technology and service providers that are not law firms, I take it as a given that most effective legal departments now use both law firms and non-law firm legal service providers.

	Early Stage	Maturing	Mature	Best Practice
Business Alignment	• No team specialism • Reactive services coverage model based on business demand • No assessment of legal risks	• Business aligned structure • Service provided based on subjective analysis of key legal risks for the business • More proactive legal involvement in all steps of business lifecycle	• Business aligned relationship teams, with shared teams providing consistent delivery by practice area • Formal risk assessment sets parameters of legal service coverage • Some formal embedding of legal management into business boards	• Framework service agreements with business incorporating SLAs • Legal work guided by clear understanding of commercial benefits / legal risk to business • Presence of legal in all key business function boards enabling advice 'at source'
Resource Management	• Limited in-house team, 'pass-through' service to external counsel • Law firms provide both overflow resourcing and capability coverage	• In-house capability grown to match BAU demand, large projects still cause significant disruption • Firms still used heavily regardless of value / complexity • Formal role definitions for in-house teams, but inconsistent	• Internal and external resourcing decisions increasingly based on work value / complexity and understanding of volumes • Some understanding and use of alternative legal service providers (ALSPs) • Simple demand planning • Consistent role definition / work allocation across in-house teams	• All internal and external resourcing choices aligned with assessments of value / complexity of work • ALSPs fully embedded in ecosystem • No use of law firms for capacity; ability to flex resourcing quickly • MI and proactive demand planning supports resourcing decisions
Spend Management	• Uncontrolled external spend • Spend tracking relies entirely on Firm MI • No matter scoping • Engagements on rack-rate fees using Firm Ts&Cs	• Rudimentary efforts to consolidate spend with Firms • One-off spotlights on global spend for budgeting • Scoping, AFAs and bespoke Ts&Cs used for major matters • Ad-hoc invoice review	• Major spend areas designated to tender or consolidate with Firms • Regular spend data updates and analytics at practice area level • Scoping and AFAs extended to lower value matters • In-house Ts&Cs and billing guidelines, consistent approach to invoice review	• Formalized strategy to consolidate or tender at matter-level for all work • Real-time data analytics and scorecards • Automated, widespread usage of scoping and AFAs at all levels of matters • Automated straight-through bill review (third party or in-house), approvals and spend recovery embedded in invoice payments process
Operations, Processes, and Metrics	• No Legal Ops roles and responsibilities, ad-hoc ops issues supported by in-house lawyers and personal assistants • No documented processes	• Appointed Legal Ops roles and responsibilities, focused on back office processes e.g. invoice payments / IT delivery • Isolated efforts to improve processes and streamline spend mapping • KM processes are ad hoc	• Well defined legal processes and guidelines supported by legal project management • Dedication to continuous process improvement • KPIs defined in some areas • KM strategy defined	• Partnership with Firms and ALSPs extends to back office functions • Dedicated strategy and roadmap for improvements in front-to-back office technology and processes • Responsive management by KPIs • Proactive KM approaches adopted consistently
Technology	• Ad-hoc data collation via spreadsheets • Knowledge stored on individual work stations • Fully paper invoices • Hard-copy signatures	• Formalized data and document management on shared drives • Some adoption of e-billing • Contract management and knowhow systems in place, but not updated and used • IP docketing system in place • Formal relationships with e-Discovery providers • E-signature for NDAs / basic agreements	• Enterprise search across all data sources • Centralized contract management and knowhow systems widely used • IP prosecution /patent lifecycle system in place • TAR used occasionally in e-Discovery process • Integrated matter management / e-billing • Formal technology strategy • Fully integrated e-signatures and workflow with contract management system	• Centralized real-time dashboard and analytics capability • Paper based filing eliminated • TAR consistently used for all e-Discovery • Consistent and inter-operable systems architecture • Digital approvals for all legal and non-legal transactions

Fig. 4 Legal department maturity model (Source: Elevate)

In helping legal departments with strategic planning, we often use an operational maturity model (see Fig. 4, an example assessment framework we used with British Telecom's legal department) to: (a) develop a rich picture of the department's current state; (b) provide a framework for discussion of what the future state should be, and then (c) identify what the gaps are. At a summary level, the discussion addresses questions such as:

- How do the current activities of the legal department support the needs and goals of the company overall?
- What needs to be added, changed or discontinued?
- What is the most effective combination of resources, systems and tools to support the company's needs and goals?
- What are feasible next steps that can be taken now to achieve long-term goals?

In support of this assessment process, we typically gather and analyze data on work volumes and cycle times by task and complexity, legal spend and matter type, in order to identify performance trends and perform benchmarking, e.g., an analysis of a client's own portfolio of legal spend data against industry spend data for similar matters supported by similar firms, which can bring objectivity and actionable insights to an area that has historically been opaque and difficult to assess. However, different legal departments must manage different risks and other variables that impact spend, so not all industry-wide benchmarking is relevant. While benchmarking can be conducted as a one-off exercise, it is most impactful when conducted regularly, as shown in Fig. 5, where several months of data are included.

With the benefit of analytics, benchmarking, maturity assessment, and surveys from stakeholders, the legal department will have developed a clear picture of the "As Is" state. It can now start to brainstorm a mental picture of what it wants to look like in the "Future" state. During this facilitated workshop, the legal department will debate what it wants to start doing, what it wants to stop doing, what it wants to do more of or less of, in order to get to that future. The goal is to identify the key initiatives that the legal department wants to prioritize, and to create a one-page strategy plan that can be used to communicate to the whole legal team—see example in Fig. 6 that we helped IMS Health to produce. The framework illustrated here is based on the widely-used Balanced Scorecard approach.

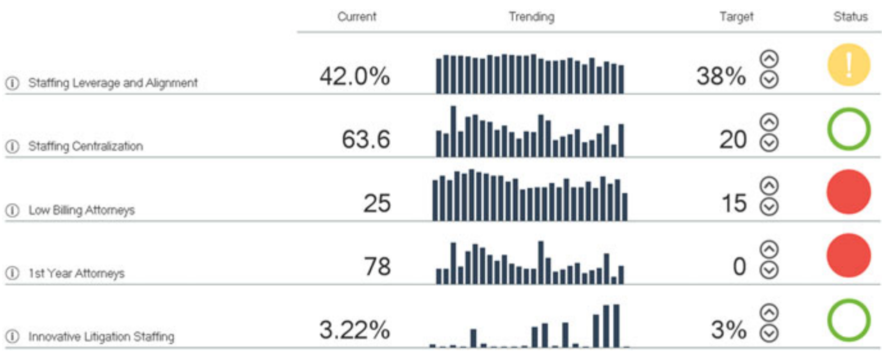


Fig. 5 Example spend benchmarking report (Summary Level), produced using our proprietary spend analytics tool Cael Vision. Similar reports can also be compiled manually, but technology can significantly streamline the administrative burden. (Source: Elevate)

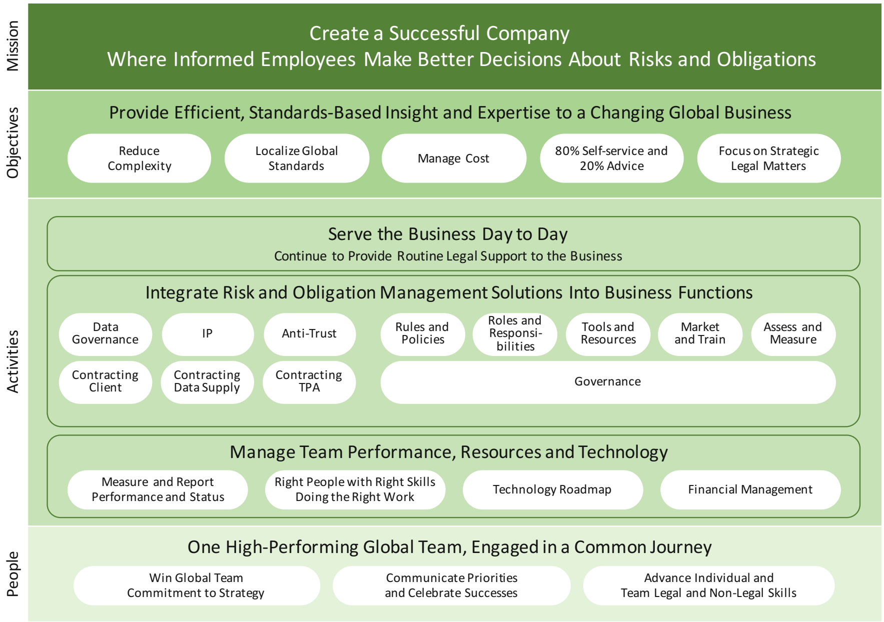


Fig. 6 Legal department strategy plan (Source: IMS Health and Elevate)

3 Systems and Processes: Working Smarter by Design

Efficient systems and processes directly affect the legal team's ability to meet the needs of the business, and they also have a profound effect on job satisfaction and retention. To assess and improve systems and processes, the legal sector has started to use Lean, a systematic method for increasing business value by eliminating waste, and legal project management ("LPM"), a growing trend likely to become table stakes within a few years.

Originally developed by Toyota, Lean is now widely used throughout the business world as a common standard for improving operations of all sorts, including both products and services. When applied to legal work, Lean does several practical things:

- It fosters continuous improvement by leveraging the experience and talent of the individuals closest to the work.
- It focuses the team's attention on the value provided to—and perceived by—clients and stakeholders for whom matters are handled.
- It encourages the development and use of standards and best practices.

Lean is sometimes confused with Six Sigma, a quality improvement approach that was originally developed by Motorola. Both are valuable in different ways, and in fact can be used in conjunction with each other—referred to as "Lean Six Sigma"—but in the legal sector Lean is more relevant because it is focused on improving the value of the output by eliminating process waste, whereas Six Sigma is focused on reducing defects to improve quality.

Lean provides a collection of practical tools and techniques, including defining a problem, mapping the relevant processes, conducting root cause analysis, identifying and implementing solutions, and monitoring corrective actions. These techniques allow the removal of waste and inefficiency in legal work that can take the form of waiting/delays, work that is out of scope, re-work, or "over-lawyering" work.

Using Lean techniques, we have helped NetApp implement systemic improvements in many areas of their legal department. One such was a new approach to client NDAs, which enabled the sales team to engage new clients more quickly, improved compliance, and reduced burden on the lawyers. Process Mapping (a Lean technique, but certainly not exclusive to the Lean approach) revealed a confusing, inefficient "As Is" process that was inherently slow, with too many hand-offs and unclear roles and responsibilities. A Lean question-asking technique called "The Five Whys" identified non-value added steps (waste) in the process. "The Fishbone Analysis" technique identified the resource and technology constraints. Using insights from these Lean techniques, we worked with the lawyers, legal ops team and sales team to simplify and automate a redesigned process whereby NDAs with no client changes—roughly 85 % of the total—can be processed on a self-serve basis using automated e-signature technology. Thus the majority of NDAs that previously took days can now be processed in minutes. The remaining 15 % of NDAs that require some legal review of client comments are routed to an Elevate legal team for review against a playbook. Less than a third of that 15 % segment actually require commercial negotiation and are escalated to the NetApp legal team. After implementing the new process, average time to NDA execution was reduced from five days to less than one hour, and the NetApp lawyer email noise was radically reduced—much to the lawyers' delight—as the new process allows them to focus on fewer than 200 NDAs per annum, compared to 4100 NDAs previously. (See Fig. 7.)

While not all examples of Lean process improvement are as dramatic as this one, substantial incremental improvements are made possible in many areas by tapping the expertise of individuals closest to the work. In addition to the improvements themselves, the Lean approach helps legal team members co-create and co-own the solution, increasing both buy-in and morale.

Improving systems and processes helps legal departments make optimal use of their people. While there are many valid approaches to improving systems and processes, we've seen the Lean approach prove to be effective in legal.

Law departments are increasingly bringing another common business discipline to the toolkit: project management. As with non-legal corporate functions, project management eliminates surprises; improving predictability of timelines, deliverables and budgets. Sophisticated legal departments now expect their law firms and other legal service providers to provide some form of legal project

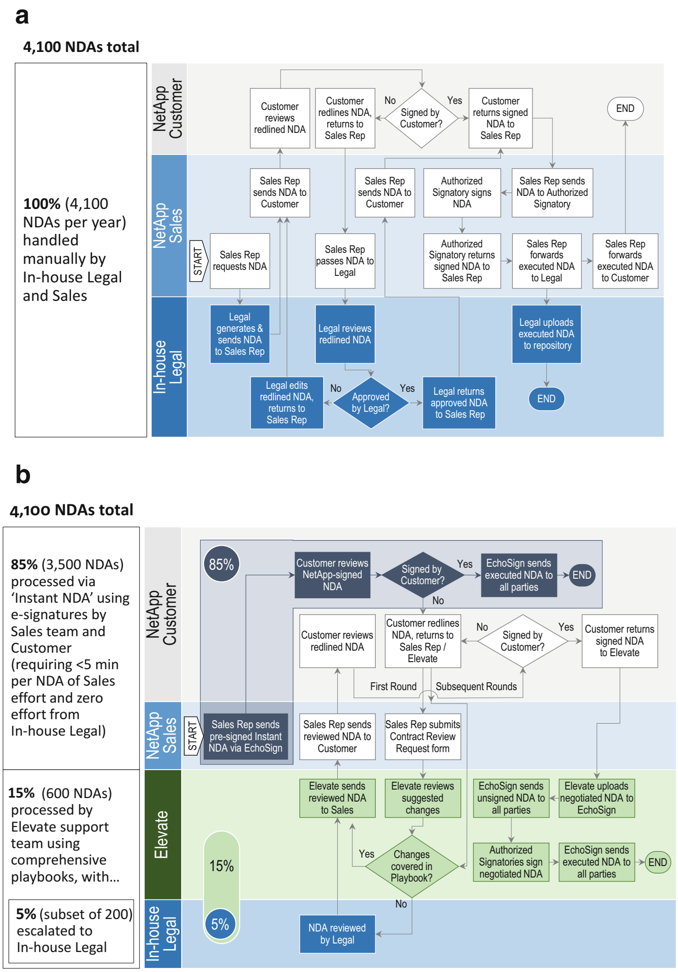


Fig. 7 System and process improvement facilitated by Lean for Legal (Source: NetApp and Elevate). (**a**) Before system and process redesign. (**b**) After system and process redesign

management (LPM), on both hourly and non-hourly fee engagements. More importantly, legal departments expect to benefit from the efficiencies and savings generated from LPM best practices.

They recognize that managing their matters more effectively requires thoughtful consideration of scope and assumptions at the outset, followed by planning and staffing the matter based on those factors, and subsequently revisiting the plan on a regular and frequent basis throughout the lifecycle of each matter. Based on our experience designing and implementing LPM frameworks—see Fig. 8 for an example—as well as providing enabling software for LPM, we expect the LPM trend to become table stakes in the legal market for both law firms and law departments within the next 3–5 years.

Fig. 8 Example legal project management framework (Source: Elevate)

The rise of LPM has also enabled more active and real-time collaboration on matters. Historically, lawyers in-house often had to wait until they received a monthly fee invoice to understand in detail how the law firm was spending its time and interpret what progress had been made in the previous month. That scenario was prone to surprises, often resulting in damaged trust and reactive discussions about fees and discounts as the corporate legal department sought to manage its budget. Today, a growing number of technologies enable easy, frequent monitoring of matter progress, hours spent and budgets to actuals, helping in-house teams and outside counsel stay in sync and course correct when needed, before things get out of hand.

Legal departments have begun to use sophisticated but practical approaches to working more effectively, both internally and externally with outside counsel and other providers. By embracing principles found in Lean and LPM, legal leaders are improving systems and processes, leading to better efficiency, outcomes, working relationships and job satisfaction, thus driving better business.

4 Useful Technology: Choosing and Implementing Effective Tools

Ensuring that legal teams have access to the right tools requires understanding the business or lawyer user needs, assessment and planning, selection, investment, implementation and, in some cases, experimentation.

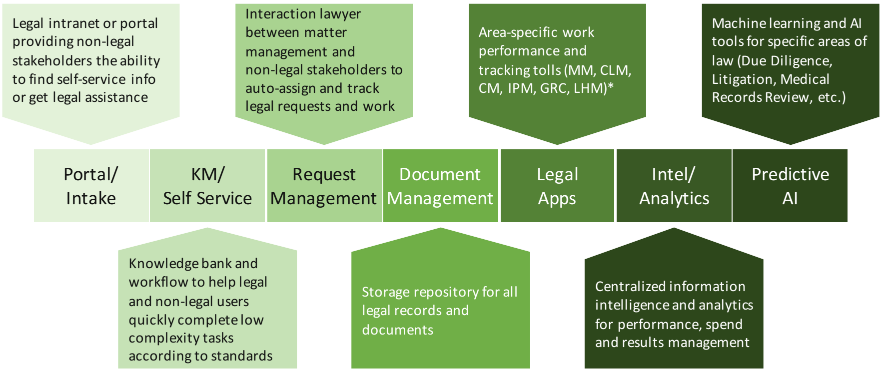


Fig. 9 Key technology elements for legal departments at the time of writing (Source: Elevate)

With the caveat that legal technologies continue to evolve rapidly, the current scope of a legal department's technology framework typically includes the key elements shown in Fig. 9.

To assess the state of a legal department's technology, we start with the technology dimension of the Legal Department Maturity Model to identify the opportunities. While we help GCs use a department-wide assessment to build a comprehensive technology "heat map," we quickly dive into a more detailed technology assessment focused on a specific function or need. For example, if a legal team believes that their contract lifecycle management (CLM) tools need to be updated, they can use this methodology to focus specifically on the selection of a new CLM system:

- Define legal and business outputs or objectives
- Map those objectives to desired technologies, features and workflows
- Explore availability and assess functionality of existing tools, and identify
- Understand actual usage of current tools, barriers to adoption use or other limitations, and identify any training needs to better leverage the current investments
- Perform feature comparison and cost analysis of technology options

Build a business case, project plan and change management plan for new technology purchases, if necessary. Because the world of technology changes quickly, it is important to scan the horizon for new technologies as well as changes to existing tools, including new version releases, mergers and acquisitions of existing products, and, in some cases, "retirement" of existing tools.

Legal departments often rely on outside providers for the implementation of new technologies and training. This gives the legal department access to additional resources and expertise. However, it is important to have people on the team with experience of having implemented that specific technology previously, and who have a crystal clear view of the process that is being automated or supported. This new breed of lawyers could be thought of as "legal engineers." Unfortunately, we see too many legal departments buy technology, e.g. matter management or e-billing systems, which are configured by the technology provider's professional services team without a deep understanding of the company's unique processes—so even if the technology is great, it doesn't ever quite do what the legal department needs it to do, leading to frustration and a misplaced future aversion to technology.

On the other hand, we also see some innovative legal departments experiment with technology, leading the adoption of new versions of existing products, as well as beta testing new tools and even collaborating to design new tools from scratch. This experimentation has ushered in an explosion of legal technologies such as electronic signatures, technology assisted review ("TAR"), auto-extraction of contract metadata, legal spend analysis, and centralized dashboards. Not surprisingly, legal departments that experiment or lead the use of new technology are in the minority; most prefer to let others work out the bugs first. However, the majority can still benefit by following what their experimentally-inclined peers are doing by listening to what they have to say at industry conferences, in articles and awards focused on innovation, and in groups like the Corporate Legal Operations Consortium ("CLOC"), a knowledge-sharing group. (More about CLOC in the following section and elsewhere in this book.)

5 People and Organization: Managing Your Most Valuable Resource

In recent years, sophisticated law departments have been hiring Legal Operations professionals to improve policies and processes, select and implement technologies, manage change, develop and track KPIs (key performance indicators), plan and manage projects and budgets, manage law firm and non-law firm legal service providers, and otherwise drive efficiencies. If the GC is effectively CEO of the legal department, then the Legal Ops head is effectively the legal department's COO, responsible for driving peak performance by coordinating the non-lawyering aspects of how the department functions. In 2015, the Association of Corporate Counsel estimated that about one third of GCs at Fortune 500 companies have Legal Ops staff.

The most senior Legal Ops professionals frequently serve as Chief of Staff to the GC, with responsibility to enhance the performance of the legal department's most valuable resource—its people. The Chief of Staff reinforces and communicates the GC's vision, and the mission, values, and culture of the department. Organizational planning and personnel development strengthens the legal team and the operation in many ways: improving management capabilities, succession planning, fostering teamwork and trust, and increasing job satisfaction and retention. Improved retention reduces the disruption and cost of staff turnover, protecting institutional knowledge and improving the effectiveness of the legal department. Legal Ops leaders serve as champions of culture, ensuring buy-in and adoption of changes and new initiatives among the department's lawyers. Most Legal Ops people are lawyers themselves, but many have formal business training, often JD/MBAs. Legal Ops leaders often attribute their success to their willingness to experiment and risk failure, coupled with confidence in their ability to course correct while initiatives are underway. Successful Legal Ops professionals "get things done" in the legal department from the inside—by partnering with the lawyers.

As part of this relatively new, but quickly growing discipline, many Legal Ops professionals participate actively in groups such as CLOC and the ACC's newly-formed Legal Ops sub-group, which meet regularly to share knowledge, best practices and advice. These groups have developed and published several legal industry guidelines for general use, including billing guidelines and a detailed profile of the Legal Ops and Chief of Staff role, with more guidelines in development, e.g. budget templates, e-signature policy, and GC metrics. More information on CLOC is available on their website at www.cloc.org, and more information on ACC Legal Ops is available at www.acc.com/legalops.

6 Right-Sourcing: Dividing (i.e., Unbundling) and Conquering

GCs are developing frameworks to decide what legal work to eliminate, automate, outsource, or retain in-house. Whether a legal department's people work in-house or as an extension of the department via law firms or other legal service providers, "right-sourcing" makes the best possible use of those resources, ensuring they are engaged in their "highest and best use" by assigning them the work that is most appropriate to their capabilities and cost. Right-sourcing results in improved levels of service to the business, operational efficiency and savings for the legal department, as well as job satisfaction and lawyer retention.

Right-sourcing ties strategic planning, organizational design, and supplier management together. To make right-sourcing decisions, legal departments must assess the factors that impact the appropriate profile and location of the resource. Examples include:

- Whether the work is tied to the competitive advantage of the business
- Risk
- Regulatory considerations, such as cross-border data restrictions
- Specific jurisdiction or practice area knowledge requirements
- Level of knowledge of the business required
- Requirement to interact in-person or during same office hours with the business
- Turnaround time requirements and expectations
- Other dependencies, such as availability of talent or access to proprietary systems required
- Opportunity to automate
- Cost
- Project management and tying the work together

Legal departments now realize that some legal matters are divisible and assign each component of a legal case or transaction to a resource or provider whose capabilities, cost or business model are best suited to that specific task. By "unbundling" legal work, legal departments ensure that lower level work is delegated to more junior resources, freeing up more senior in-house lawyers for work that is more valuable to the business, or more complex work that would ordinarily be sent to outside counsel. This improves the development of junior team members while managing risk appropriately, and it reduces the amount of lower level work being done by senior lawyers, increasing their job satisfaction. In some cases, right-sourcing identifies some work that doesn't need to be done by lawyers and reassigns that work to paralegals or administrators—or doesn't need to be done at all.

Over the last decade legal departments have successfully unbundled litigation matters into value-added, bespoke advisory work, which is sourced from law firms; and repeatable, systematized document review and e-discovery, which is now handled efficiently by a non-law firm provider. With that large spend under control, many legal operations are now applying similar efficiency strategies to due diligence and contracts, including: streamlining processes, implementing technologies for automation, delegating repeatable work to lower cost resources, etc. In addition to significant cost savings and freeing up valuable in-house resources, this also provides several strategic advantages. Robust contract lifecycle management can improve service to the business, increase visibility, reduce risk, and improve compliance. It has enabled a global banking client of ours to support ring-fencing requirements and has enabled a global technology client to shorten speed to revenue by 14 days.

To ensure that work is methodically and efficiently delegated to appropriate resources, we work with our clients to implement formal systems for assigning work requests based on relevant factors of risk/impact and complexity. We have found that it is helpful to designate a "Legal Front Gate" that is the point of contact for stakeholders requesting support. As outlined in Fig. 10, this role uses a pre-defined complexity matrix to assess and assign work to a range of experience levels, as well as collecting metrics on turnaround time, work volumes, SLA compliance and other operational KPIs. In addition to enabling operational reporting, this creates a built-in feedback loop that helps the Legal Front Gate continuously improve criteria and processes for assigning work.

One of our clients, a global metals and mining company, has used this "Legal Front Gate" support model to manage a significant volume of in-house work in both English and French, tapping resources (provided by Elevate) based in the U.S., U.K. and India to support their legal offices in 11 countries worldwide.

Many GCs and Legal Ops leaders leverage non-law firm legal service providers to "extend and enable" their department, supporting a wide variety of day-to-day activities such as contract management, litigation investigatory document review, due diligence, and project management. This enables in-house lawyers to focus on

Legal Front Gate assesses work and tabulates complexity score based on work/task type, transaction complexity, and monetary value of underlying transaction

Work Type	Description	Complexity Level
Drafting, Negotiation	Simple amendment or SOW to existing agreement	1
Drafting, Negotiation	Complex amendment or SOW to existing agreement	3
Drafting, Negotiation	One time procurement – short form	1
Drafting, Negotiation	One time procurement – long form	2
Drafting, Negotiation	Long term procurement agreements – short form	1
Drafting, Negotiation	Long term procurement agreements – long form	2
Drafting, Negotiation	Creation of customized contract for strategic sourcing purpose	3
Drafting, Negotiation	Simple Termination Letter or Agreement	1
Drafting, Negotiation	More complex Termination Letter or Agreement	3
Review of changes to Terms	Review and respond to changes proposed by Supplier to standard terms (topics covered in playbook)	1
Review of changes to Terms	Review and respond to changes proposed by Supplier to standard terms (topics not covered in playbook)	3
Review of changes to Terms	Review of Supplier comments or changes to simple Termination Letter or Agreement	2
Review of changes to Terms	Review of Supplier comments or changes to more complex Termination Letter or Agreement	3
Review, Negotiation Supplier Terms	Review of supplier's simple amendments, SOWs to existing agreements	1
Review, Negotiation Supplier Terms	Review of supplier's complex amendments, SOWs to existing agreements	3

Legal Front Gate assigns work based on complexity score, turnaround time required, and resource availability

Aggregate Complexity Score	Resource Required	Description
1–3	Contracts Specialist / Junior Attorney	3–5 years' experience
3–4	Mid-level Attorney	5–10 years' experience
5–6	Senior Attorney	10+ years' experience

Fig. 10 Legal Front Gate assigning work using complexity matrix (Source: Elevate)

providing the business with exceptional legal services. It also enriches the careers of the in-house team, allowing them to take on more fulfilling challenges while providing hands-on experience delegating and managing work to others—a skill set that will be useful to their future careers.

7 Spend and Supplier Management: Applying Business Savvy to Buying Legal Services

Law firms and other suppliers of legal services constitute the majority of legal department spend, therefore effective legal spend management requires effective supplier management, which has several aspects: systematic use of a panel of law firms and non-law firm legal service providers, an effective engagement letter and billing guidelines, electronic billing tools, a formal program for outside counsel selection and management, and a framework for "legal spend under management."

Buying legal services cost effectively begins with having a range of sound choices in the legal department's panel of providers, then ensuring that work is assigned appropriately depending on the profile of the work. The most effective legal operations use a systematic approach to match matters to appropriate firms and alternative providers based on type of matter, complexity, risk, business impact, and other factors, balancing priorities and outcomes required against cost. Such a system can also facilitate effective alternative fee arrangements.

Implementing an effective engagement letter enables the legal department to reset expectations and terms of engagement across all prior relationships, both formal and informal, with panel firms. When we help clients develop engagement letters and billing guidelines, we recommend a concise charter for working together with outside counsel, including:

- A statement of purpose
- Partnership expectations
- Technology and information security requirements
- Matter and timekeeper procedures
- Billing and invoice submission rules (including resolutions and penalties)
- Budgeting, forecasting and accrual rules
- Staffing guidelines

Also, CLOC has defined a set of standard billing guidelines for use by legal departments across a wide range of industries. These guidelines are publicly available on the CLOC website at cloc.org.

Electronic billing was once seen by legal departments as a nice-to-have technology, but now it is viewed as an essential tool for effective spend management, streamlining the invoice review and approval process, enabling automated rules to help enforce billing guidelines, and making possible sophisticated legal spend analysis and management.

E-billing also increases the efficiency of expert invoice review. Professional invoice review services typically identify 5–10 % savings on legal bills while also reducing the amount of in-house time and resources spent on invoice review. An effective review methodology will check compliance to guidelines, reasonableness of charges, and billing accuracy. In-house lawyers who rarely look forward to checking invoices and negotiating with outside counsel are often relieved to have this responsibility taken up by the legal ops team or a third party service, escalating to them only when necessary. While e-billing and expert invoice review can be used independently of one another, they are substantially more effective when used together.

In addition to cost containment, legal departments can use expert invoice review to gain insights into what lawyers are actually doing, and then use those insights to more efficiently approach certain practices of law. For example, one of our clients used this analysis to identify and selectively assign specific activities to firms that were especially efficient in those areas. Another client used our analysis of invoice line items to calculate benchmarks for flat fee structures, making cost more predictable for certain kinds of matters. In other words, expert invoice review can reveal insights from the massive volume of billing data, which can deliver targeted opportunities to reduce budget uncertainty.

Handling billing data electronically also enables other valuable business practices. For example, we helped the NetApp legal department use their billing data to create an automated system for verifying whether proposed hourly rates for outside counsel lawyers are “fair market value.” The system benchmarks proposed rates entered in the e-billing platform against NetApp’s historical spend data as well as industry-wide legal spend data.

The legal operations team uses this information to set systematically approved rates in the e-billing system, and they respond to the outside counsel firm with an auto-generated letter informing them of the rates approved by NetApp, advising the firm to respond to NetApp within 14 days if the approved rates pose any concern. This shifts the management burden of initiating any renegotiation from the legal department to outside counsel. The legal department openly invites their outside counsel firms to collaboratively use this benchmarking system with them so firms can proactively determine rates that fall within the objectively determined, approved ranges. With this new approach, the legal department has solved a typical cost management challenge of receiving annual rate increase letters from law firms. Made possible by an e-billing platform, this sophisticated business strategy has lowered costs by an average of 7 %, while helping NetApp legal reward outside counsel firms that propose market-appropriate rates (Fig. 11).

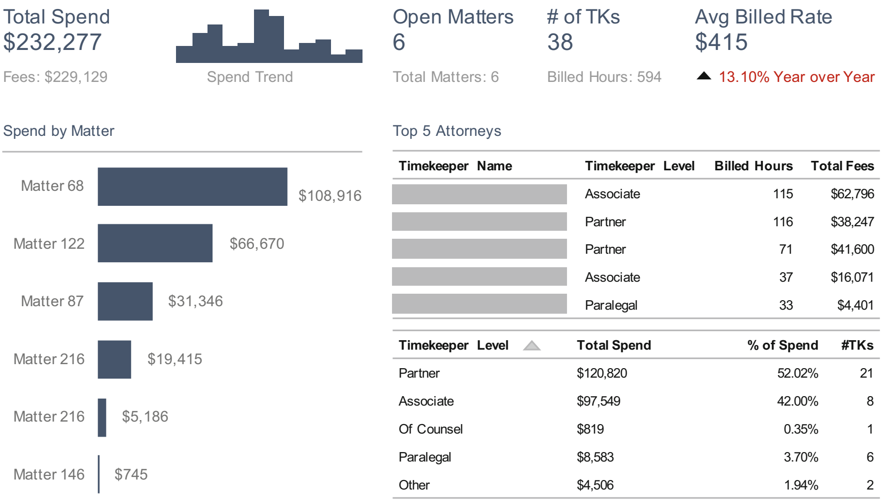


Fig. 11 Example of spend analytics benchmarking for a law firm, with timekeeper names redacted for confidentiality (Source: Elevate)

Business everywhere understands that spend management is most effective when coupled with relationship management for a holistic Supplier Relationship Management (SRM) program. This is especially applicable in the legal market, given the nuances, complexity and quality expectations inherent in legal work. In our experience, the best legal department programs for outside counsel management involve an investment of time in a regular rhythm of scheduled business reviews, supported by balanced scorecards (see Fig. 12 for an example used by the NetApp legal department), which measure and report performance across a range of criteria that the legal department values. Such investment delivers high ROI, including: improving the value of legal services delivered, increasing budget transparency and predictability, enabling successful alternative fee arrangements, fostering more objective discussions about law firm performance relative to law department needs, and generally improving working relationships with outside counsel.

Legal departments often wonder how deep to go with SRM. In our experience, it varies depending on the size of the company, the legal department, and the size of panel firm relationships, but we often advise clients to apply an 80/20 rule: the bottom 80 % of spend should be passively managed through analytics, reporting, engagement letters, billing guidelines and bill review, but the top 20 % of spend

Qualitative Analysis

Category	Score
Subject Matter Expertise	3.5
Business Alignment	4
Responsiveness/ Accessibility	3.5
Project Management	4
Budgeting Accuracy	2.5
Creativity	3.5
Proactive Execution	3
Aggressiveness to Resolve	1
Communication	3
Partnership/ Trustworthiness	3
Quality and Presentation	3.5
Results/Outcomes	3

Quantitative Analysis

Category	Performance Details	Score
Staffing Models	• High Partner-leverage (65%) for compliance and products matters • Overall, high partner leverage across all matters (47%)	2
Staffing Efficiency	• 55 Unique TKs used to provide 1.73 FTEs worth of work (32 TK/FTE); 52% higher than firm portfolio average (21 TKs/FTE) • Legal research activities are being performed by high-level resources at very high rates ($404 WABR);	1
Fees/ Costs	• Partner-level rates higher than portfolio averages for compliance and products area ($652/hr. vs. $561/hr.) • Associate-level rates generally in line with Client portfolio averages	2
Compliance	• Paralegal rates well above allowed averages ($246 vs. $100) • Billing precision score is 3.55/5; Ranked 49/77 Firms • Timely, accurate and consistent submission of invoices problematic.	3

Fig. 12 Balanced scorecard example used in outside counsel management by NetApp for one of their law firms (Source: NetApp and Elevate)

should be actively managed using regular business reviews, balanced scorecards, alternative fees, etc. In general, focusing on the firms and matters that account for the largest amounts of spend will achieve the largest impact.

These same SRM principles apply to non-law firm legal service providers, including, discovery and document review providers, traditional LPO and other “NewLaw” type providers. As a non-law firm provider of legal services, we actively encourage clients to participate in quarterly and annual business reviews of our performance, using a balanced scorecard.

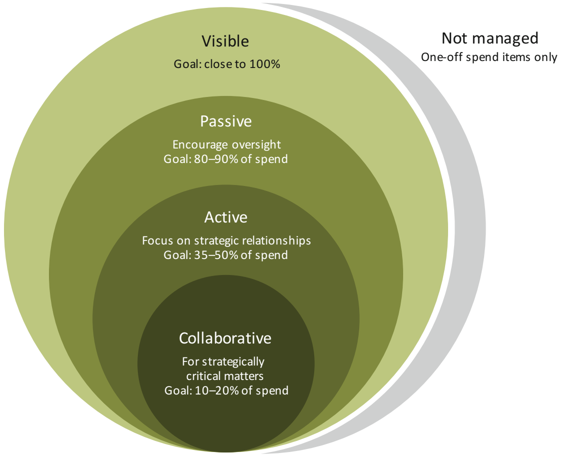
We have seen law departments realize annual savings of 5–15 % in outside legal spend using SRM programs, which have led to lawyers at both the law firm and the legal department working more effectively and efficiently. It takes time, but by working with outside counsel methodically, an SRM program provides the continuous improvement framework and roadmap to implement other business disciplines, such as better budgeting, project management, alternative fee arrangements, and unbundling or right sourcing legal work.

At a macro level, it is valuable to monitor “legal spend under management,” a concept adapted from sourcing organizations, which originally developed the idea of “spend under management” to gauge how much control and effectiveness they have in managing cost. The premise is that the most effective management of spend and service provider performance uses a blend of passive, active and collaborative measures, with increasing levels focus for spend associated with strategic or critical matters. The model we use to advise clients on legal spend under management is shown in Fig. 13.

Within this framework, legal departments should strive to manage almost all spend at the *Visible* level or better. The *Not Managed* category should include only a small percentage of spend, comprised of mostly of one-off spend items or spend controlled by another department. Beyond that threshold, a legal department’s passive, active, and collaborative strategies will be influenced by the department’s size, scope, and goals. Achieving the ideal state typically takes several years (see Fig. 13c), and we advise legal departments to build this into their strategic plan.

Legal spend management and supplier relationship management go hand in hand, applying business discipline to the business of law. Key elements of this include spend analytics, managed use of a panel of legal service providers (including law firms and others), an effective engagement letter, billing guidelines, electronic billing tools and expert invoice review, and a systematic approach to outside counsel management—all of which can be monitored at a macro level by applying the “legal spend under management” framework. Integrating these disciplines typically delivers 15–35 % savings per annum.

a



b

Level	Definition	Key Performance Indicators
Not managed	Spend is decentralized, invoices are manually collected and paid, no consistent way to collect spending data	• Accounts Payable spend reports (or nothing)
Visible	Spend is centralized in an e-billing system, data is managed through ad hoc reporting or a business intelligence tool, and reports can be generated and delivered to track spending	• E-billing system implemented • Data linked to business intelligence tool • Spend reports can be communicated by department/group
Passive	Spend is managed through e-billing rules, basic invoice auditing, and new matters and timekeepers are monitored for compliance. Performance reporting is provided internally.	• Engagement letters • Billing requirements • New timekeeper and matter processes • Internal spend and rate reporting • Light legal bill review
Active	Rate approvals are managed centrally through a negotiation process. RFPs, competitive bids, or discounts are used to set rates and drive down costs. Optimum bill review is deployed to all spend. Work is right-sourced to appropriate firm or third party provider	• Timekeeper rate negotiations process • RFP/RFQ policy • Alternative fees and discounts • Unbundling/realigning work • Optimum bill review
Collaborative	Competitive bidding managed at the matter level and budgets are provided. Matters are actively managed and outside counsel, staff attorneys, and legal operations work in partnership to manage critical matters. Shared ROI and alignment with outside counsel & other vendors	• Legal project management • Detailed matter budgeting • Predictability and forecasting • Benchmarking • Sharing of best practices

c

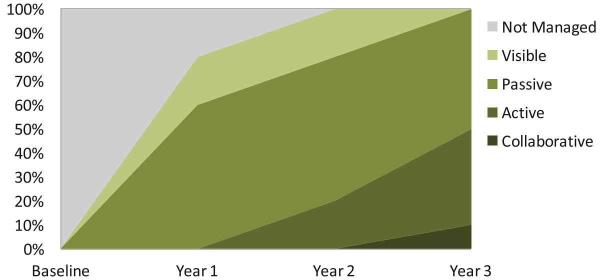


Fig. 13 Legal spend under management model (Source: Elevate). (**a**) Legal spend under management: conceptual framework. (**b**) Legal spend under management: definitions and key performance indicators. (**c**) Legal spend under management: example of multi-year progress

8 Metrics: Measuring What You Manage

So you know where you are today (survey, benchmarking, capability maturity assessment); where you want to go and the route you want to take (mission and strategy); you're driving a well-tuned car for the journey (systems, processes and technology); with the right people in the right seats (organization and people). To ensure you get to where you're heading, on time, you need to keep track of the car's location, direction, speed, and fuel level—and to make course corrections throughout the journey. Likewise, the modern GC uses metrics to monitor how the department is performing. As the business world likes to say, "You can't manage what you don't measure."

In order to be useful, the metrics framework must measure information relevant to the legal department's business goals and objectives. In order to be practical, the scope of measurement must be proportionate to the department's stage of operational maturity. When we help clients develop legal department key performance indicators (KPIs), we recommend focusing energy on collecting and reporting only those measures that inform management decisions or actions. Where possible they should be "forward indicators" giving visibility ahead, rather than "lagging indicators" that only look behind. To understand the whole picture, include measures of both internal and external performance—that is, collect data from within the in-house team, from customers and other stakeholders (see Fig. 14). After distilling law department performance from "anecdata" (anecdotal data) to objective KPIs, we recommend monitoring trends over time and using benchmarks to evaluate where the department stands against peers.

It is important to remember the audience; different metrics may be required by different levels of management. At the strategic level, the GC measures the overall status of the department and progress against major goals and objectives using metrics such as total legal spend as % of revenue or total legal spend per in-house headcount. Meanwhile at the tactical level, more granular metrics help managers to measure day-to-day operations, such as cycle time to execute a contract and volume levels. And at the micro level, which fallback positions are being used most often, in order to continuously improve a contract playbook. Effective reporting generally

Productivity and efficiency	• Volumes and cycle times of various tasks • Implied cost or revenue associated with various tasks • Retention/attrition (since turnover reduces productivity and efficiency)
Cost and right-sourcing	• Total legal spend (as a % of total revenue) • Outside legal spend (as a % of total revenue) • Total legal spend/ in-house headcount (right in-house/ outside legal service provider balance)
Client and stakeholder satisfaction and engagement	• Satisfaction survey results • Unsolicited feedback (both positive and negative) • Usage of self-service tools/systems

Fig. 14 Example KPI framework with both internal and external dimensions (Source: Elevate)

provides managers with no more than six to ten high level summary metrics and the ability to drill down to more detail levels as needed.

From a business perspective, all relevant metrics measure cost, value, or both in some fashion; where possible, they also enable budgeting and prediction. To use a simple example, metrics on litigation volumes by matter type, complexity and risk profile enable more accurate budgets. On the more sophisticated end of the spectrum, we have helped clients cross-reference litigation portfolio metrics with outside counsel spend data to create a system for selecting panel firms more cost-effectively, depending on matter type, complexity and risk.

Metrics frameworks vary depending on the operational maturity of the legal department. To be of practical use, they must focus on what is currently relevant and feasible to measure that will enable the department to progress to the next stage of development—at which point the metrics framework can be refreshed to address the new current state. To help inform this discussion with legal departments about the ongoing evolution of metrics, we often use the same operational maturity model shown in Fig. 4, earlier in this chapter.

Effective legal operations use data and metrics to manage performance against strategic goals and objectives and to inform decision-making. Smart GCs automate data gathering where possible and take advantage of new technologies that display analysis of the metrics in easy to use dashboards. Automation can reduce the human time and effort required to gather and display relevant data. Many technologies, from e-billing to contract lifecycle management tools, provide some automatic report generation. More advanced operations use centralized dashboard tools and business intelligence technologies to aggregate data from many sources (e.g., e-billing, matter management, contract management, e-signature tools, IP management, etc.), providing a unified interface for real-time reports and ad hoc analysis. See Fig. 15 for examples of Elevate's Cael Vision dashboard and reports for VMware, a technology provider of cloud and virtualization services. These dashboards have helped the VMware legal team to manage their innovative contract lifecycle management approach, including heavy use of electronic signatures (see Fig. 15c).

Regardless of the level of sophistication a legal department has reached, we encourage GCs to adopt the mantra "visibility is valuable," because there is almost always room for material improvement. The most successful GCs know what data they have, what they need, and what they know they want but cannot yet capture (see Fig. 16) in order to drive the objectives they seek—lower cost, higher efficiency, greater predictability and better outcomes. In this context, the key to making data useful is to work towards improving the quality of it, taking incremental steps to move it from the lower right quadrant to the upper left quadrant.

Often the data from the various sources is not easy to tap into in real time, without manipulating in some way, in which case we recommend an analyst develop and document a repeatable methodology to gather and normalize the data so that the dashboards are kept up to date—there is much less value in reports that are used once a year than a live dashboard that is referred to and used proactively to make management predictions and decisions.

In one advanced example of the use of data, Intel's Business Legal group has borrowed and adapted best practices in supply chain management to create units of

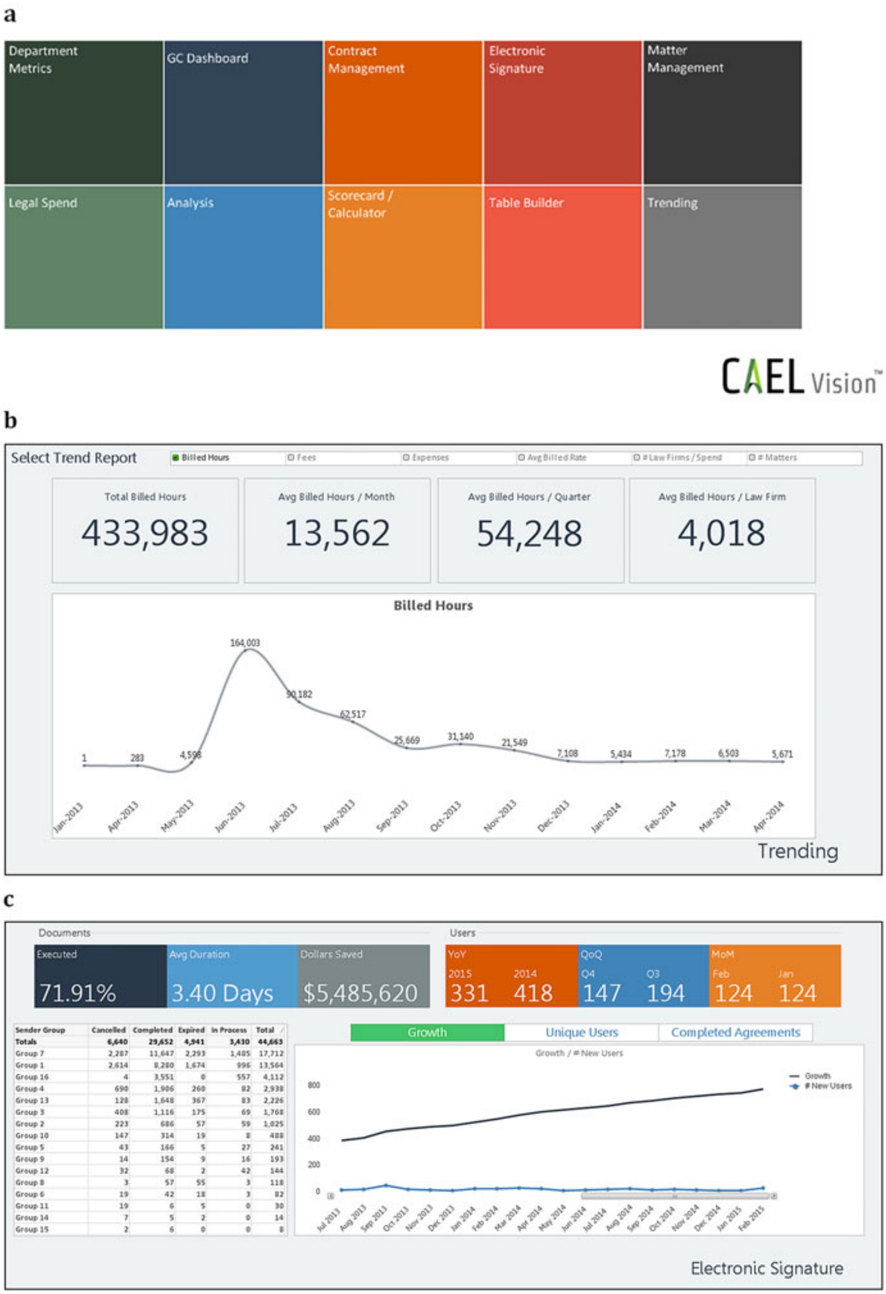


Fig. 15 Example of centralized dashboard, reporting and analysis tool (Source: VMware and Elevate). (**a**) Menu showing reporting and analysis areas. (**b**) Billed hours report. (**c**) Electronic signature usage report

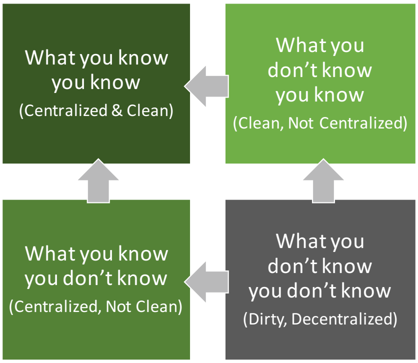


Fig. 16 Different states of data. *Arrows* indicate progress towards greater usefulness (Source: Elevate)

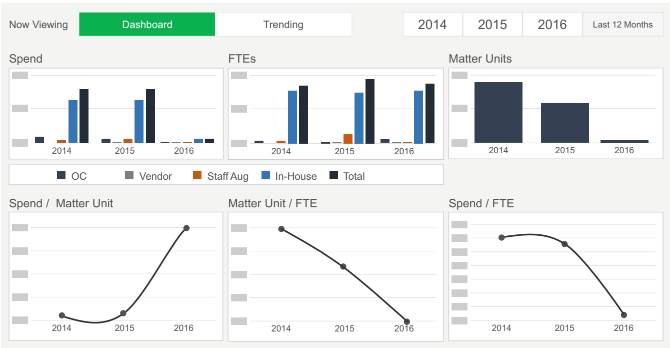


Fig. 17 Intel's legal dashboard uses supply chain best practices to measure value and identify opportunities for efficiency. Values redacted for confidentiality. (Source: Intel's Business Legal group and Elevate)

measure for the throughput of legal work. The idea—still in development—is to create units of measure for volume of work (Matter Units) and lawyer resources (FTEs), based on internal and external Spend, which will enable Intel to monitor trends such as Spend/Matter Unit. Done right, this will help Intel's legal department measure value and identify opportunities for efficiency. (See Fig. 17.)

9 Conclusion

By adapting and applying strategies and tactics that have already stood the test of time in the world of business, the most successful GCs and senior legal department leaders now function as "the C-suite of Legal," running the legal department with business discipline to achieve results. Best practices in strategy, systems and processes, useful technology, people and organization, right-sourcing, spend and supplier management, and metrics improve the effectiveness and efficiency of the legal department and win the respect of colleagues and peers throughout the business.

Liquid Legal Context

By Dr. Dierk Schindler, Dr. Roger Strathausen, Kai Jacob

Brown offers the pure and stringent future vision for a legal department that aims to be run as a business. He basically states that this requires the department to be made up of and to monitor the same elements as the business overall, i.e. strategy, processes and systems, technology, people, budget, a partner ecosystem etc.

If that is the starting point, his point that legal needs to think of its leadership as the "C-suite of legal", is nothing but consistent and it reveals the magnitude of the challenge that legal faces in the transformation. Yet, is the change he describes not too much in one leap, too ambitious a goal to be achieved while keeping the eyes on day-to-day work? This is when Brown offers a Legal Maturity model, which is based on the reality of this being a multi-stage journey and at the same time provides for orientation as to "where we are" on that journey.

Based on his vast amount of experience in building up and leading the new types of LPOs and advising clients on exactly that journey, Brown displays very practical and detailed examples on the various building blocks for running legal as a business, or rather for running legal with business discipline to achieve results that add value to the business.

Liam Brown has spent over 20 years as an advisor and consultant helping general counsel and law firm leaders design and implement successful strategic change programs focused on improving effectiveness and efficiency. He founded Elevate in 2011, a next generation legal service provider with the mission to help corporate legal departments and law firms operate more effectively. He was the Founder, President and CEO of Integreon, Inc., a global legal process outsourcing provider, which he led from startup in 2001 to annual sales of nearly $150 million by 2011, before he sold his stake to the private equity investors to launch Elevate. Prior to Integreon, he was the President, COO and co-founder of Conscium, Inc., a pioneering Web 1.0 legal virtual data room technology company, which he sold in 2001. Liam is a frequent speaker at legal conferences and regularly publishes articles about trends in the legal sector. He is also an active investor in Web 2.0 and Cloud technologies in the legal sector, and an executive coach for founders of startups.