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Demonstrating Value in a Challenging Environment

– By David Cambria, Director of Operations,
Law Department, Aon Corporation

Chair, Law Department Operations Advisory Board



This time last year, law department operations directors were evaluating the challenging business and legal environment and keeping their fingers crossed that the economy would rebound in 2010. But in spite, or maybe because of this, the *Third Annual Law Department Operations Survey* shows that the return on investing in a law department operations specialist continues to grow as more companies add this capability for their own departments.

This survey, once again developed with Blickstein Group and our advisory board, gives us a consistent platform to benchmark ourselves as a profession. We continue to provide leadership and strategic vision to our businesspeople and attorneys. We have kept an unrelenting focus on driving change and have tirelessly sought out ways to identify opportunities for business improvement and cost savings. We have honed our expertise in e-discovery, and we continue to explore alternative fee arrangements, along with other ways to control internal and external costs.

The work is not done. Fewer than half of our legal departments are capturing data, although those of us that do effectively mine and utilize the information. Developing truly innovative outside counsel billing arrangements, rather than variations on hourly bills, is not yet an easy task. And for many of us, the grim reality is that reducing staff and freezing salaries remain among the most effective ways to control internal costs.

Legal department operations have made striking progress even since this survey was introduced in 2008. The fact that we have continued to do so in an extraordinarily difficult economic environment speaks to our abilities and the inherent value that we bring to our organizations. While the challenges remain, we must stretch ourselves even further to continue that progress we have made. Our ideas and our experience bring more value now than ever before. ■

When the Only Constant Is Change

Law Department Operations Directors Rise to the Challenge



Since the first Law Department Operations Survey was launched in 2008, LDO directors have seen many changes. The economy has had staggering implications for in-house counsel, law firm attorneys and business people alike. Many organizations have begun to fundamentally rethink how they manage the legal function. Judges and lawyers have had time to digest the revised Federal Rules of Civil Procedure, and the concepts of defensibility and repeatability have become ingrained in the discovery process. Political parties in Washington have traded power.

While the last few years have been particularly turbulent, legal department operations directors have also become more established in their positions, with a track record to prove the value they bring across the organization. Of course, no one in today's business environment can rest on their laurels, and LDO professionals understand that. It's all part of the evolution of the pressure and responsibilities that everyone in corporate law departments face today, not just those responsible for operations. "It used to be that managing risk was the major focus of the legal department, and containing costs was less of a focus," says Brad Blickstein, principal of Blickstein Group, the co-publisher of the *Third Annual Law Department Operations Survey*. "The importance of controlling costs hasn't become more important than managing risk. Now it is a risk to *not* control costs."

"We are trying to lead the charge. We want to implement changes that help us focus on the highest-value work."

— Aaron Van Nice
Baxter International Inc.

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This is part of a major rethinking of the legal function for in-house attorneys and staff. For the second year in a row, respondents ranked driving/implementing change as the top challenge of their position (Chart 1, pg 8). In 2010, just like in 2009, identifying opportunities for improvement was the second greatest challenge. But just as the challenges exist, so do the chances to make a real impact, says David Cambria, chair of the Law Department Operations Survey Advisory Board and director of opera-

tions of the law department at Aon Corp. "Legal department operations directors are perfectly situated to help guide attorneys and business people through these turbulent times," says Cambria. "They can bring both their legal knowledge and their business skills to the table."

Indeed, respondents recognize that the most important attribute for managing law department operations functions is business acumen, followed by legal department knowledge (Chart 2, pg 8). Being able to balance legal

ramifications, quantitative information and intangible benefits are critical skills, according to Blickstein. "Operations directors are seriously challenging themselves to drive change. They can do it through the hard numbers and the data," he says. "This is where the ability to identify key performance indicators is so critical, and where professional management really pays off."

Aaron Van Nice, director of operations for the Baxter International Inc. legal department and a member of the



Respondents to the *Third Annual Law Department Operations Survey* were solicited from the largest companies in the United States—primarily the Fortune 250. The online survey was conducted between September 21 and October 22, 2010.

For more information, or to purchase the full results package, please contact Brad Blickstein at brad@blicksteingroup.com or 847.256.5298.

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LDO Survey advisory board, agrees. “We are trying to lead the charge. We want to implement changes that help us focus on the highest-value work.”

Measuring and Managing

At Baxter, that involves an increased use of goals and metrics, so the legal department has strategic plans with identifiable goals, Van Nice says. The future emphasis on hard data in the legal department also presents an opportunity for attorneys to manage to the same type of objective criteria their business counterparts have long been subject to. “At the end of the day, the legal department may have been more focused on qualitative goals, and there was a sense that the attorneys could subjectively accomplish the goal,” Van Nice says. “This will bring us more in line with the business.”

Making critical use metrics and reporting can help operations directors make their cases, according to several experts. However, it’s not an easy concept to introduce in some legal departments. Fewer than half of the respondents have a formalized metrics/reporting program. But of those who do, 70 percent feel they make effective use of the information it provides. And the great majority, 90 percent, say that metrics/reporting is one of the ways in which the success of the law department is measured (Chart 6, pg 12). More than half, 60 percent, have plans to improve or change their metrics/reporting program in the next 12 months.

The most popular indicator that respondents track is legal spend as a percentage of revenue and total expense; another 70 percent track both total cost of outcome and total

DRIVING REAL CHANGE IN LEGAL DEPARTMENTS

– Interview with Rich Seleznov – Managing Director, Huron Consulting Group

A lot has changed in the last few years, but implementing any type of change never seems to get easier. According to respondents to the *Third Annual Law Department Operations Survey*, their greatest challenge, for the second year in a row, lies in driving/implementing change.

Asking people to adjust the way they work is no small thing, according to Rich Seleznov, Managing Director of Huron Consulting Group, the underwriting sponsor since the inaugural survey. “When changing technology or a business process, you are asking people to change the way they work, even if it’s been a habit that has worked for years,” he says.

In order to actually drive or implement real change, it’s critical to make the business case for why those in the legal department or the business units should go through the time and trouble of adapting. “You have to be able to offer an incentive,” he says. “They need to know what’s in it for them, and they need to feel the benefit of change will outweigh the discomfort in making that change.”

Explaining exactly how attorneys or staff will benefit makes change that much easier to implement. “It may be that they can be more responsive to the business, or that they won’t miss an important deadline,” Seleznov suggests.

This may require a change in mindset for those looking to drive the change, whether that is the law

department operations manager or the outside service provider. “There used to be a ‘build it and they will come’ mentality,” he says. “If you rely on that now, you will fail.”

Success in this area takes a lot of work—in some situations, it may even require a personalized approach to every person of whom you are asking change.

Consider that, in almost any population, there are three groups, he says:

- 1: Those who enjoy change;
- 2: Those who can go either way; and
- 3: Those who don’t want to be bothered.

The second group is the one that you must carefully identify and market to, he says. The first group won’t need much persuading, and you can spend a great deal of time on the third group and have little to show for your efforts.

It may be necessary to do a stakeholder analysis to see who will fall into which group. Once the different groups have been identified, there are three steps to take in order to tout the benefits of adapting a particular technology or process, according to Seleznov: communicating, communicating, communicating. “Some may need one-on-one attention, others may be fine in groups.”

“Either way, try to make people part of the change,” he suggests. “Stress that you are not doing something to them, but rather, you are doing something for them.”

For more information visit www.huronconsultinggroup.com.

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expenses by firm for particular groups of matters.

The difficulty some legal departments obviously face when it comes to devising and using meaningful metrics doesn't surprise Heidi Rudolph, vice president, government and legal affairs at the law department at Sara Lee Corp. and a member of the LDO Survey advisory board. "Many departments aspire to having metrics, but the reality of legal is that metrics are not so easy to devise,"

she says. Rudolph points out that while a business unit can measure sales against the prior year, for example, legal departments deal with less quantitative issues, such as the value of prevention.

"While financial metrics such as percent to budget are not difficult for legal departments, it is nonetheless challenging to measure the aspects of legal that really matter," she says. "Measurements for prevention, client service and quality of legal work present a need for

more creative metrics development."

It may be that legal departments haven't unlocked this "secret," she says. But Blickstein urges operations directors to try to do just that. "Operations directors need to be able to conduct cost-benefit analysis, and it's not just with finances," he says. "They need to be able to explain how changes and improvements can minimize risk or save time or preserve political capital within the organization."

Chart 1. Rank the top three challenges of managing law department operations.

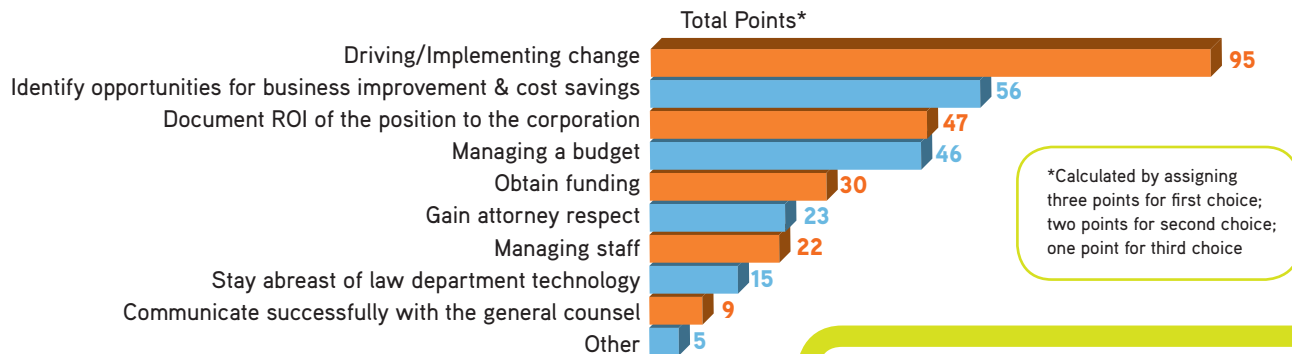


Chart 2. Rank the top three attributes for managing law department operations.

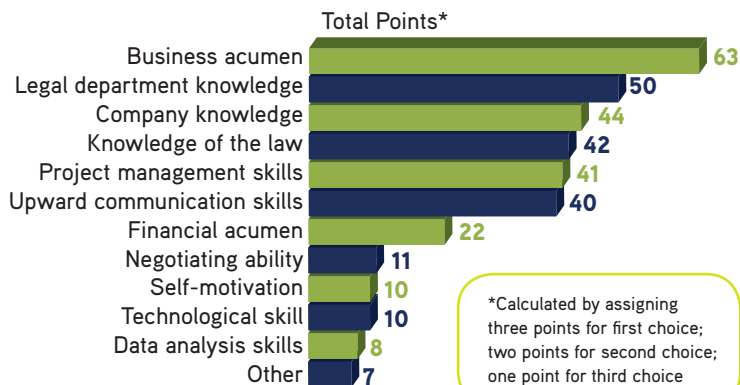
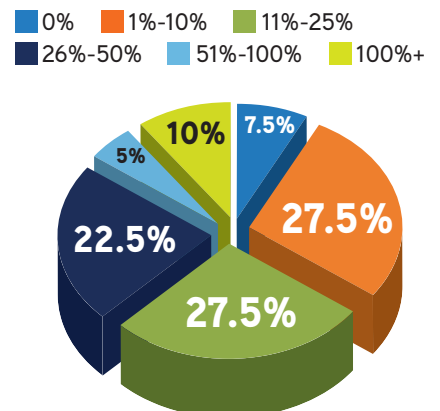


Chart 3. By what percentage do you think your company's legal spend would increase without a legal department operations position?



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IF YOU MANAGE TO DO MORE WITH LESS TODAY, WHERE WILL THAT TAKE YOU TOMORROW?

– Scott Giordano, Corporate Technology Counsel, Mitratach

Traditionally, the General Counsel's office was insulated from the rough-and-tumble world of the business, immune from performance scrutiny and ROI metrics. Today, *doing more with less* is top of mind, even in the GC's office.

Enter the Director of Legal Operations (DLO).

There's no question that the DLO has made significant contributions to drive down spend. But there is a limit to how much fat there is to trim. It's critical for the DLO to strategically focus the department, equally and in parallel, on business enablement so that while operating costs decline, value delivered is continually on the rise.

Bringing together legal knowledge, business acumen and technical expertise, the DLO is uniquely positioned to break through silos and align with corporate objectives. Whether implementing cost-cutting initiatives, recovery programs or resource management strategies, the DLO is capable of transforming Legal from cost center to business enabler by focusing on:

- Maximizing attorney productivity for high-value, low-cost work products;
- Yearly reductions in overall spend while operating with increased efficiency; and
- Supporting sales and business development activities that directly contribute to the enterprise's competitive advantage.

The primary challenge here is to focus in-house counsel on core, mission-critical activities by leveraging tools and technologies that automate routine tasks, provide attorney self-service and fluid collaboration and enable deep visibility into department metrics.

It's not enough to implement point solutions for specific problems when the underlying processes and requirements across functional areas are the same. Nor is a platform that uses clear text email as a collaboration mechanism going to suffice. A legal operations platform requires collaboration and accountability in equal measure to streamline operations, maximize output and reduce inefficiencies so that Legal effectively supports the business and contributes to its growth.

In evaluating platforms, there are several key factors to consider. In addition to rules, workflow, reporting and other core components, it must have the proven capacity to scale, withstand heavy use and communicate with other applications. Legal management applications must be built on top of a platform that is adaptable by internal business users, as well as a network of trained, certified partner and vendor resources.

Tight budgets mean that the longevity of technology investment is critical and any platform must be able to demonstrate that it can perform under load, is available and error free and is upgradable without increased costs or business disruption.

Through platform automation, the DLO can better manage Legal as an interconnected, results-driven department that directly contributes to the company's competitive advantage and promotes business growth in what is perhaps the most challenging business environment in history.

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Keeping an Eye on the Bottom Line

The hard numbers still matter, of course. In the 2009 LDO Survey, controlling costs were a major concern for respondents, and that has not changed in the last year. "The economy has affected everything, not just legal departments," says Jeffrey D. Paquin, divisional vice president and chief operations counsel for Abbott Laboratories and a member of the LDO Survey advisory board.

Chart 4. Is your organization planning any initiatives during the next 12 months to improve your discovery process?

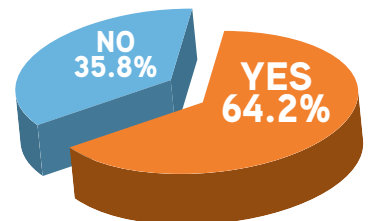
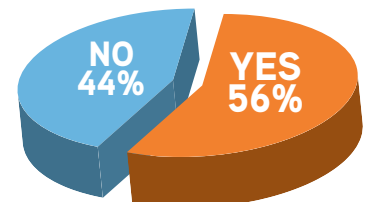


Chart 5. Are there plans to improve or evaluate a new matter management and/or e-billing system in the next 12 months?



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BALANCING RISK, COST AND THE DRIVING NEED TO BE EFFECTIVE

– Interview with Mike Lipps, Managing Director, Corporate Counsel Solutions, LexisNexis

It used to be that the primary mission of the corporate legal department was to protect the company from risk. “It’s not new news that things have changed,” says Mike Lipps, vice president and managing director of corporate counsel solutions for LexisNexis. “In-house counsel now must balance minimizing risk while controlling costs.”

Fortunately, there are solutions available. First, Lipps recommends that general counsel identify their core competencies, then look to outsource other areas. “You need to determine what you want to own, and what you want to leverage,” he says.

In-house counsel should also look at their fundamental business processes to see where they can improve.

Technology can also help balance all the different areas that today’s legal departments may struggle with. “Look for tools that can help,” Lipps says. He pointed to LexisNexis’s CounselLink, which is designed to help legal departments manage matters and expenses with one solution that is configured to match existing business processes. With this type of integrated, analytical technology, legal departments can gain greater visibility into their performance by having information and metrics at their fingertips.

“General counsel know what they need to do, but they struggle to get access to the data,” he says. “These steps can help in making more intelligent decisions.”

For more information visit www.lexisnexis.com/counselink.

MANAGING THE LITIGATION HOLD PROCESS

– By Joshua Rosenberg, Director of Litigation Strategy, LexisNexis

By creating a “duty to preserve” electronically stored information (ESI) in the discovery phase of a legal matter, the new Federal Rules of Civil Procedure (FRCP) forced us to rethink how document retention policies are applied to electronic files. At the heart of these discussions is the crucial execution of litigation holds. Much has been written about case law impacting litigation holds, but far less attention has been given to the latest trends in how successful organizations are managing the litigation holds process.

There is an obvious legal trend presently emerging — the courts are placing an unprecedented level of scrutiny on litigation hold procedures and are not afraid to issue serious sanctions when litigation holds are not ordered, executed and managed properly. Another growing management trend with litigation holds is the movement toward the deployment of automated systems that improve the consistency of turnaround times with issuing notices.

The ultimate goal here is to put in place a defensible audit trail as it relates to litigation holds, one that will hold up in court if the matter goes to trial. There are several possible frameworks for how to accomplish that goal, but it seems certain that the common thread will be a dedication to collaboration between in-house and outside counsel.

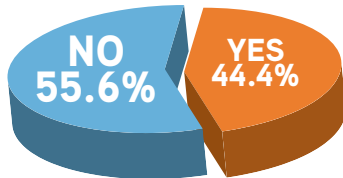
For more information visit www.lexisnexis.com/hold.

But this is another area where professional managers can lead the charge. Consider alternative fee arrangements. While law firms may pay lip service to the idea of moving away from the hourly rate, very few outside counsel are actually proposing new ideas. According to survey respondents, more than 90 percent of the time, it’s those in the law department, not outside counsel, who set up alternative fee arrangements. And legal departments are eager to break away from the hourly billing rate. Most respondents have tried a fixed-fee per matter approach, and half have experimented with paying their outside counsel a flat fee to handle all matters in an area. Other popular approaches include volume discounts and a flat fee by matter stage. Legal departments are also increasingly trying a contingency fee rate with their outside counsel, according to survey respondents.

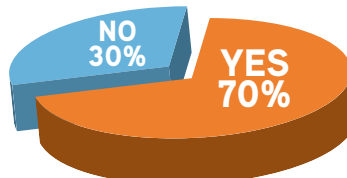
But even as interest in new approaches continues, implementation remains a challenge—the majority of respondents cite either a lack of data or the unpredictable nature of matter activity as the biggest impediment to using alternative fee arrangements. This is another area where operations directors can step in. “Up until now, most law firms have dictated their prices, and legal departments have generally paid those prices,” says Blickstein. “If corporate legal departments are setting the prices on alternative fee arrangements, determining how much they are

Chart 6.

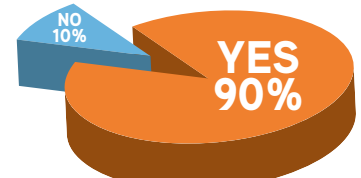
Do you have a formalized metrics/reporting program?



If you have a metrics program, do you feel your law department makes effective use of the information it provides?



Is metrics/reporting one of the ways in which the success of the law department is measured?



E-DISCOVERY AND LAW DEPARTMENT OPERATIONS – Interview with Rich Cohen, President, RenewData

For legal departments and their operations managers, e-discovery is still a work in progress. According to the *Third Annual Law Department Operations Survey*, most of the respondents—64 percent—are planning an e-discovery initiative within the next 12 months.

These results represent a trend by in-house counsel to take a more proactive approach to e-discovery, according to Rich Cohen, President of RenewData. “In the past, when e-discovery was a shiny new object, everyone was willing to let outside counsel play the primary role in the decision making,” he says. “Now that the expense involved in e-discovery has become quantifiable and is substantial, there is wisdom in bringing some personnel in-house to manage the process.”

In-house counsel increasingly understand the importance of getting e-discovery efforts and costs under control, even as the amount of data that companies produce continues to grow and new technologies are being introduced all the time. The days of a potential “smoking gun” staying hidden in a dusty, desolate archive room in a box of papers are long gone. Nowadays, that smoking gun will almost certainly emerge when electronic records are scoured during discovery. “When I was a general counsel many years ago, the issue that kept me lying awake at night was not knowing what I didn’t know,” he says. “Somebody was responsible for records management, but it wasn’t the highest priority in the organization.”

For today’s in-house counsel who find themselves lying awake at night, the key to getting to sleep involves gaining a better grasp on e-discovery and the company’s retention policies and procedures. “It’s a real problem, with real costs and implications,” Cohen says. Fortunately, there are good solutions available.

There is no one-size-fits-all approach when it comes to e-discovery technology or partners, though. But developing strong relationships is an important step, according to Cohen. “Not every outside counsel or service provider will be right for every engagement,” he says. “In-house counsel should pick and choose. When it’s truly a partnership, not every firm or group will get all the work, but they will be sitting at the table to be considered as a viable and dependable option.”

In order to figure out how to engage the right people and tools for each matter, Cohen suggests that in-house counsel define their vision of success in a particular situation and then work backwards to determine the steps necessary to reach that solution. “It’s a lot easier than figuring it out as you go along,” he says.

It also helps to involve those at the highest level of the organization, all the way up to the board of directors if possible. As judges hand out sanctions for flawed or mismanaged e-discovery, it becomes much easier to make the case, he says. “This is a real-world concern with real financial implications,” Cohen adds.

For more information visit www.renewdata.com.

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“... it is nonetheless challenging to measure the aspects of legal that really matter. Measurements for prevention, client service and quality of legal work present a need for more creative metrics development.”

— Heidi Rudolph, Sara Lee Corp.

willing to pay and on what basis they will pay, then the law department operations director becomes one of the most important people in the room.”

As their position becomes more important, operations directors are becoming increasingly knowledgeable as well. Among respondents to the 2010 survey, more than half have a J.D., and almost 30 percent have either an MBA

or are CPAs. “Lawyers are recognizing that legal department operations is more of a career path,” says Paquin.

Law department operations are also being given the freedom to explore new processes and technologies, even in tough budgetary times. Among survey respondents, 64.2 percent are planning initiatives during the next 12 months to improve their discovery process (Chart 4, pg 10), and 56 percent plan to improve or evaluate a new matter management and/or e-billing system in the next 12 months (Chart 5, pg 10).

Their chain of command has also moved higher up—among respondents to this year’s survey, 44.1 percent report directly to the general counsel, while 27.1 percent report to a deputy/associate/assistant general counsel (another 10 percent report directly to the CEO). In last year’s survey, 37 percent reported to the GC.

In difficult economic times, legal department operations directors can

provide real value. Nearly 10 percent of survey respondents said their positions were added in 2009, and nearly 13 percent of their positions were created in 2008. But while there has been growth in numbers, who is hiring varies across companies and industries.

There are still many opportunities for legal department operations directors to bring improvements to processes, procedures and technologies. About half of the respondents estimate their company’s legal spend would increase 11 percent to 50 percent without a legal department operations director. Another five percent think costs would increase 51 to 100+ percent if they weren’t in their positions (Chart 3, pg 8).

But no matter what happens with the economy, in Washington, D.C., or with law firm billing rates, legal department operations directors will continue to face new and exciting challenges. “Change is the norm,” says Paquin of Abbott. ■

— By Amy I. Stickel

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