

December 2011

# Findings from the 4<sup>th</sup> Annual Law Department Operations Survey

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# Business Pressures Put the Onus on Operations



By **David Cambria**,  
Senior Director, Enterprise Information  
Management, CDW  
  
Chair, Law Department Operations  
Advisory Board

Respondents to this year’s survey, our fourth, identify opportunities for business improvement and cost savings as one of their greatest challenges.

When we launched the *Law Department Operations Survey* in 2008, indications were that law department operations managers were reaching beyond their own departments to take on new roles in other facets of the business.

With budgets remaining tight and the overall business environment becoming ever more complicated since then, we’ve seen that trend grow more pronounced in subsequent surveys. Law department operations managers have become increasingly integral strategic players within their organizations. And apparently they understand that they must use their unique skill sets in new ways to tackle their additional responsibilities. Case in point: Respondents to this year’s survey, our fourth, say identifying opportunities for business improvement and cost savings is one of their greatest challenges.

Recently, several law department operations managers came together in Chicago to discuss results of the *Fourth Annual Law Department Operations Survey* and how they are identifying and implementing new opportunities. One way to do that is by pushing more commoditized work out to the businesses, so in-house counsel can focus on more strategic legal matters. But law department operations managers aren’t just haphazardly throwing the work to businesspeople and expecting them to figure it out. They are playing an invaluable role by providing training, insight and structure to the management of these tasks, while serving as a bridge between legal and business. They bring the expertise and experience to systematize processes that are repeatable, defensible and auditable.

The survey has been developed once again by *InsideCounsel* and Blickstein Group, in consultation with an eight-member advisory board representing a range of *Fortune 500* companies.

This unique survey focuses solely on the operations function and seeks to provide benchmarks that are useful to the largest law departments. As always, we rely on the survey findings to gauge the impact, trends and priorities of 21<sup>st</sup> century law department operations. Read on for a revealing and incisive look not only at where law department operations stand today, but where they’re heading in the years ahead.



**BACK ROW (L. TO R.):**  
**Terri Martorana**,  
Abbott Laboratories  
**Bobby Jahanbani**, Mitratach  
**David Dresden**,  
McDonald’s Corp.  
**David Cambria**, CDW  
**Elizabeth Jaworski**,  
Motorola Mobility  
**Brad Blickstein**, Blickstein Group

**FRONT ROW (L. TO R.):**  
**Blane Erwin**, Bridgeway  
**Aaron Van Nice**,  
Baxter International  
**Rich Seleznov**, Huron Legal

# Playing the Hand They’re Dealt

Lean Times are Testing Law Department Operations Managers, Forcing Them Into Tough Trade-Offs and Out-of-the-Box Strategies, Latest Survey Findings Show



“We are leaving the era of efficiency and entering the era of prioritization.”

— Brad Blickstein, Blickstein Group

For years, the mantra among legal departments has been, “Do more with less.” Faced with a battered economy and pressure from the C-suite, law department operations managers and their teams have been leaving open positions unfilled, limiting travel and pushing law firms to reduce rates, all in the name of creating efficiencies and cutting costs.

Now, however, it appears many legal departments are finally reaching their limits. Instead of doing more with less, they are now realizing they have to do less with less, according to respondents to the *Fourth Annual Law Department Operations Survey*.

“We are leaving the era of efficiency and entering the era of prioritization,” says Brad Blickstein, principal at the Blickstein Group, a co-publisher of the survey.

That sentiment was echoed by several law department operations managers and consultants, who recently gathered in Chicago for a roundtable to discuss the survey results, the challenges their own departments are facing and the best practices they have instituted to address them.

While they are still continuously striving to improve their own processes, today’s law department operations managers are also working to prioritize what in-house counsel can and should do. In many cases, that means pushing more work out to the business units. In other situations, that means re-evaluating basic litigation strategies and whether legal should even be involved in some matters.

“When you freeze headcount, the work doesn’t go away,” points out David Cambria, previously director of operations in the law department at Aon Corp. and now senior director enterprise information management at CDW. “In the legal department, we don’t look for work. It finds us, based on what the business is doing.”

## Managing Resources

Since their workload isn’t getting any lighter, some legal departments are rethinking how they approach that work.

“We’ve been trying to become more efficient, more effective and do some things differently,” says David Dresden, senior director, legal administrator with McDonald’s Corp. “However, we’ve finally gotten to the point where this is more difficult to do, so you have to look at prioritizing the work.”

Along with making a business case to add more legal staff, McDonald’s is also becoming more strategic about cases. “When

it comes to outside counsel spend, litigation is the bulk of our expenses,” says Dresden. “We’re trying to be more strategic, particularly with the larger cases. We are taking a look at whether we should fight cases over a period of years or if it makes more sense to settle and realize an overall net savings.”

Deciding whether to fight or settle lawsuits often entails making highly complicated, emotional decisions within companies, roundtable participants agreed. How a case is prioritized strategically often hinges on publicity issues, the amount of money involved, the number of claims, corporate strategy and other factors, according to Aaron Van Nice, director of legal operations in the law department at Baxter International.

According to Van Nice, Baxter has also looked at other ways to prioritize and spend money intelligently. One way is by carefully considering whether attorneys need to be involved in every legal-related task. “We’ve worked to identify the right resources and look at processes to determine whether other resources can do a particular assignment. These are resources that are less expensive than attorneys,” he says.

The appropriate person for a task may not even be in the legal department. Several participants report that their companies are directing more work to other departments, such as purchasing, or directly to the businesspeople. This can be particularly effective with contracts.

“Abbott business managers work on lower-risk contracts with Global Purchasing,” says Terri Martorana, senior manager, legal division, at Abbott Laboratories. In order to make that process more effective and minimize potential risks, Abbott legal has instituted training for the businesses and provided contract templates on the company’s internal SharePoint site.

“With proper preparation, more contracts can be handled at the business level. Their advising attorney doesn’t need to be involved in every contract,” she says. “The business managers are given prepared materials and templates, legal guidelines and the ability to execute terms already determined acceptable.”

This points to a movement among legal department operations managers to assess and weigh the risks involved with work that in-house counsel have traditionally — and automatically — done, then to allocate and delegate accordingly. “Legal departments have to get better at tiering risk,” says Dresden of McDonald’s. “They shouldn’t manage everything as if it has the same risk. In the environment today, we don’t have enough resources to be involved in everything. In-house counsel have to analyze risk and decide if this is something the client can do instead by utilizing templates and training provided by legal.”

Bowing to the Bottom Line

Stretching budget dollars for tech functions and other purposes remains a challenge for survey respondents and roundtable participants, some of whom shared the various ways their organizations approach the budgeting process.

Some use a shared services model; others have dedicated IT staff embedded in the legal department. Some retain their budgets throughout the year, while others regularly revisit and revise theirs to reflect ongoing matters and needs. The same economic conditions that have been driving the “less is more” mantra are also making it difficult to work proactively, according to some participants.

“It’s been a challenging economy, and we end up sacrificing some of the things we would like to do proactively,” explains Van Nice. “We have to make the pitch every year for resources that will allow us to

work proactively. In some cases, the value may not be apparent for a few years, but my view is that we can spend the money now or we can spend it later.”

Some legal departments are still finding efficiencies and technologies that can help stretch limited budgets. “Many companies are moving to the cloud for email and document management,” says Rich Seleznov, managing director of Huron Legal. “That’s part of the trend to maximizing the value of IT resources. So many organizations are trying to move away from basic infrastructure, so they can use their resources for a more strategic approach.”

Budgeting can also be complicated by the slack billing habits of some law firms. Aon worked to solve that problem by imposing time limits, according to Cambria. “If a law firm submits an invoice line item that is older than 90 days, we don’t pay it,” he says. “That’s the rule built into our e-billing system, and if it’s that late, the system kicks it out.”

Integrating E-Discovery

Since the first *Law Department Operations Survey*, e-discovery has been an ongoing challenge for legal department operations managers. The good news is that for many roundtable participants, it has become a routine part of operations.

Generally, participants say they have developed the internal expertise and technology to collect their own potentially responsive documents from custodians. The bad news, though, is that most are still buried in

Chart 1: Please select, in no particular order, the top three challenges of managing law department functions:



“We’re trying to be more strategic, particularly with the larger cases. We are taking a look at whether we should fight cases over a period of years or if it makes more sense to settle and realize an overall net savings.”

— David Dresden, McDonald’s



Results of the Fourth Annual Law Department Operations Survey are based on responses from large U.S. companies

(most of which are listed among the *Fortune 500*). The survey was conducted online between Aug. 17 and Sept. 27, 2011.

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

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The Fourth Annual Law Department Operations Survey

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Inside the Numbers

Tech Trendspotting With Mitratch

**Q. Fewer than half of respondents to the 4th Annual Law Department Operations Survey indicated plans to improve or evaluate a new matter management and/or e-billing system in the next 12 months. Why is this so? And, since most respondents don’t plan to pursue new matter management systems, to what extent are law department operations managers making better use of the ones they have?**

**Scott Giordano, corporate technology counsel, Mitratch:** Legal departments have become increasingly technology-savvy over the last decade, especially since 2008, when capital expenditures were largely put on hold. Kudos to the law department operations who understand that acquiring more technology is not a strategy; rather, making existing technology do more by reimagining legal department processes and reconfiguring that technology is.

It’s also important to note that matter management and e-billing programs were originally separate tools that have been consolidated over time and most share a common feature set. law department operations recognize that that these point solutions have reached

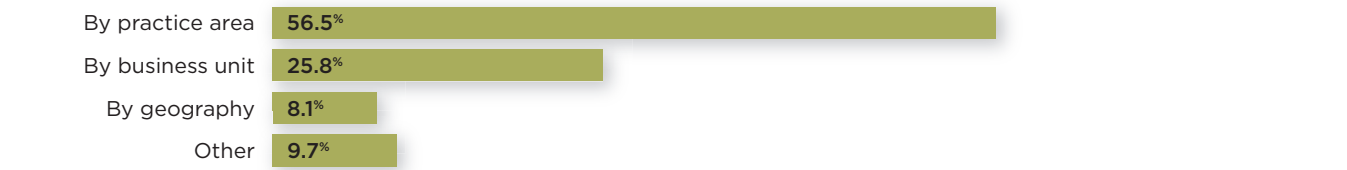
the limits of their designs and there’s little merit from an economic or functional perspective to replacing them every few years.

What is much more interesting is the migration by law department operations away from point solutions, to platform-based ones. Platforms by their nature are adaptable to changes in operational and technological requirements, enabling relatively rapid customization and integration with other enterprise technology. It’s the primary reason we’ve invested so much in our platform, and we’ve been impressed with how our clients have extended it. In one case, a global manufacturer reduced its FCPA-directed screening of new business partners from six months to one. In another, a global consumer products company multiplied the success of its anti-piracy operations using platform technology. And in yet another, a global technology company consolidated and documented compliance training for 100,000+ employees.

Expect to see this migration continue as law department operations share success stories with their peers — the power and promise of platforms is impossible to ignore.



Chart 2: How is your law department organized?



data and haven’t yet taken the step of hosting their own review platforms, leaving that to either law firms or service providers.

“We are spending a lot of time on information management, understanding our data and documents and trying to decide if we can delete it,” says Van Nice of Baxter.

Most organizations have problems deciding when it’s safe to delete data, according to Blane Erwin, vice president of research for Bridgeway Software. He likens it to hoarding, saying, “Organizations are trying to find out why people hold on to things. A hoarder holds on because they are afraid they are going to need it someday. It’s the same dynamic in over-preserving data.”

Deleting information that has been on legal hold is particularly challenging. “Despite escalating storage costs, it’s very difficult to get the litigation team to take custodians off of legal hold, unless they are absolutely comfortable that there is no longer risk associated with that decision,” says Martorana of Abbott.

The holds issue will continue to challenge legal departments, predicts Cambria. “The question is, when should organizations release holds? The legal team is focused on risk avoidance, and they are always going to err on the side of keeping data,” he says. “When the IT team and the records management people don’t get an answer from legal, they just buy more storage and do more of what they’ve been doing. So you end up with email storage and other data growing and growing and growing, and I just don’t see it going away in the short-term.”

Chart 4: Which of the following metrics do you track?

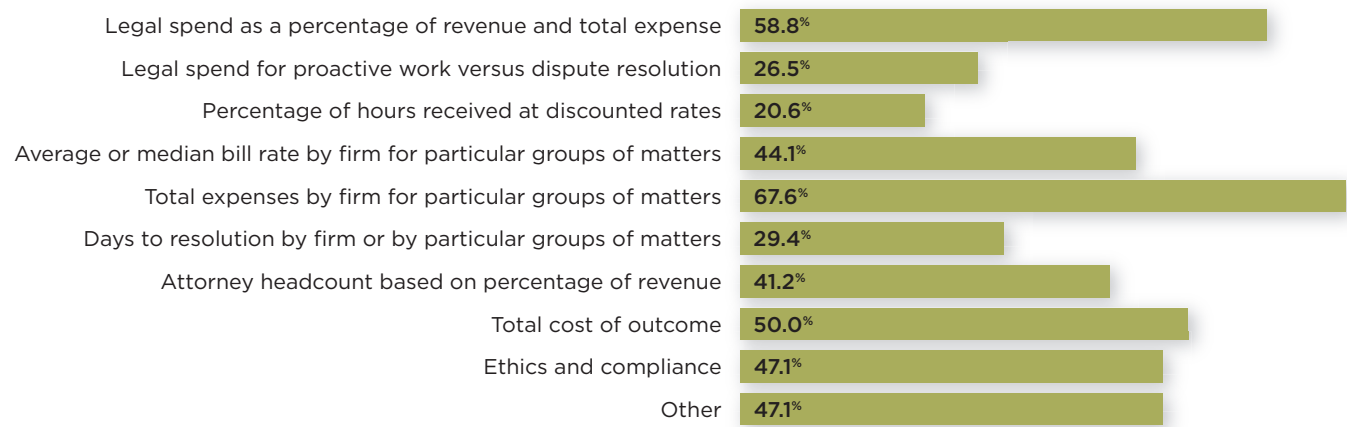
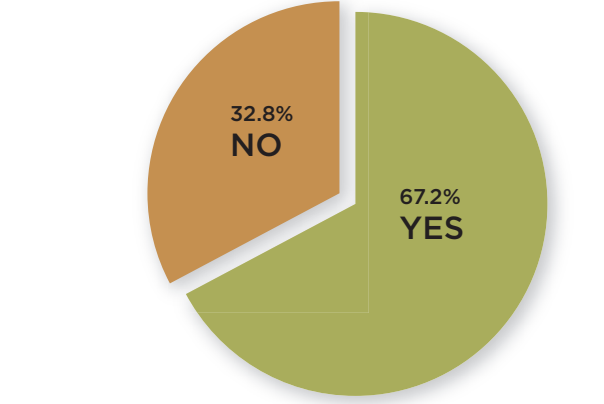


Chart 3: Do you have a formalized metrics/reporting program?

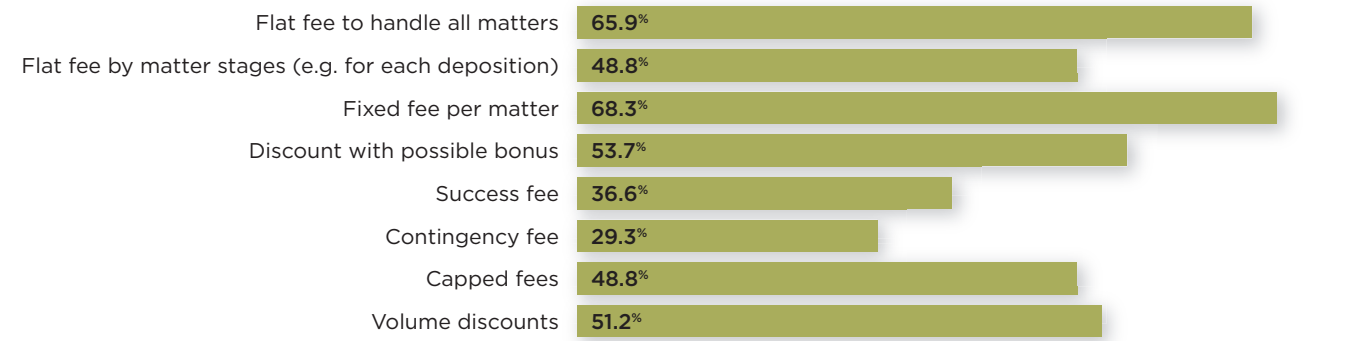


As legal holds become more extensive, organizations are devoting more resources and people to implementing and managing them, according to Bobby Jahanbani, a director at Mitratech. “Four or five years ago, a few people managed the legal hold, even in a very large organization. Sometimes there was only one person — one very busy person. Today, an organization can have 50 people trained to manage or administer the process, so it is much more dispersed.”

Data and Metrics

Approaches to tracking data and metrics vary widely among survey respondents and roundtable participants (see charts 3 & 4).

Chart 5: What types of alternative fee arrangements have you tried?



At Baxter, for example, in-house counsel are increasingly responsible for managing outside counsel work. “We look at individual cases and hold internal attorneys accountable for managing outside counsel,” says Van Nice. “We do annual budgets and a budget for the life of a matter, then attorneys defend how they are managing outside counsel work and budgets. If budgets need to change, then the deputy general counsel needs to approve that.

“It should be inside counsel managing outside counsel on the work that needs to be done. But many times in the past, outside counsel would just provide updates on the case,” he says.

Alternative Fee Arrangements

Respondents and roundtable participants also approach alternative fee arrangements in varying ways (see chart 5). Some companies are bundling related work and sending out the bundle for RFP.

McDonald’s, meanwhile, is engaging in some fixed fee arrangements by matter stages, then evaluating how to proceed with the matter, reports Dresden. The company is also beginning to explore other AFAs. But Dresden sees that approach as being a fairly limited one for his organization. “One struggle we have is that

Inside the Numbers

Managing Change: Strategic Insight From Huron Legal

**Q. Respondents to the LDO survey rank “Driving/ implementing change” and “Identify opportunities for business improvement and cost savings” as their two greatest challenges. How to juggle these demands in this economy? Should one take priority over the other? And, how can legal department operations managers respond to the need to identify opportunities for business improvement and cost savings? Do you expect this to be an ongoing challenge, or will this become less important when the economy rebounds?**

**Rich Seleznov, managing director of Huron Legal:** These two demands do not need to be juggled, but rather managed in the proper sequence. Before driving change in an organization, one should take care to identify the best opportunities for change that will have the greatest positive impact on the business and drive down costs. I suggest to begin identifying the best opportunities by asking the following questions:

- **What services is the legal department delivering to the business?** To best answer this question, establish the baseline by quantifying how resources are currently being used. This includes

an internal resource analysis as well as an analysis of how outside counsel are being used.

- **How do we value the services currently being delivered?** This is more of a qualitative valuation of the work, based on risk and contribution to achieving the company’s strategy. It is not enough just to be busy; are all the legal resources focused on the most valuable work?
- **Who is delivering the services?** This question focuses on how the work is being sourced. It is important to understand whether the work is in-sourced or outsourced relative to the value of those legal services. Many factors need to be considered when optimizing the sourcing of work.
- **What can be done to drive costs down while improving the quality of services delivered?** Seek to identify changes in the current approach that can result in cost savings and the adoption of best practices. In identifying initiatives, make an effort to align internal resources to the most highly valued work while using law firms and other vendors most cost effectively.



we use firms based on matters, and our top 10 firms shift every year,” he says. “That makes it more challenging to broadly use these types of arrangements.”

Faced with these and many other formidable challenges, legal department operations managers are finding new and creative ways to remain productive and proactive, according to Blickstein. “By prioritizing and evaluating risks,” he says, “law department operations managers will be able to bring their expertise and highest value to their clients.” ■

“With proper preparation, more contracts can be handled at the business level. Their advising attorney doesn’t need to be involved in every contract.”

Terri Martorana, Abbott Laboratories



Chart 6: How often do you produce management reports for the following constituencies:

	WEEKLY	MONTHLY	QUARTERLY	ANNUALLY	NEVER
General Counsel	5	21	12	5	9
CEO	1	8	11	14	17
Finance department	2	15	11	2	18
Board of Directors	0	3	15	10	21
Law department senior mgr	3	15	12	2	17
Business unit heads	3	6	14	1	24
Risk management department	3	7	8	5	25

Inside the Numbers

Exploring the E-Billing Edge With Bridgeway Software

Q. Survey findings indicate that legal departments use e-billing to control external costs more than they use aggressive rate negotiation and alternative fee arrangements. Surprising?

Blane Erwin, vice president of research for Bridgeway Software:

E-billing systems provide insight into the activities and costs associated with outside counsel and have become indispensable for departments seeking greater control over external expenses. This control manifests itself in catching unexpected rate increases and billing errors, identifying which firms are performing which matter types, at what cost, and for what length of time. It’s not surprising, then, that the most effective rate negotiations and alternative fee arrangements come from departments that use e-billing solutions.

Q: How can legal departments make better use of their e-billing systems to control costs and gain more meaningful insights into their functions and relationships with outside counsel and providers?

Erwin: For many organizations, outside counsel fees represent a significant portion of their overall legal spend. E-billing solutions provide the insight necessary to control those associated costs. However, to truly optimize performance, gain greater efficiency and make more informed decisions, legal department executives need visibility into all costs associated with the service they deliver, both internal and external.

As such, today’s legal departments require an integrated e-billing and matter management solution that provides complete financial transparency with regard to the costs, performance, timeliness and outcomes of legal matters. With greater context into overall legal spend, organizations can analyze portfolios of legal services with metrics such as: costs by time, by matter or by outcome; duration of time by matter, by firm or by outcome; and, hours worked by matter, by role or by task. Metrics like these provide the transparency legal department executives need to demonstrate the value of the legal services their departments provide.



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