

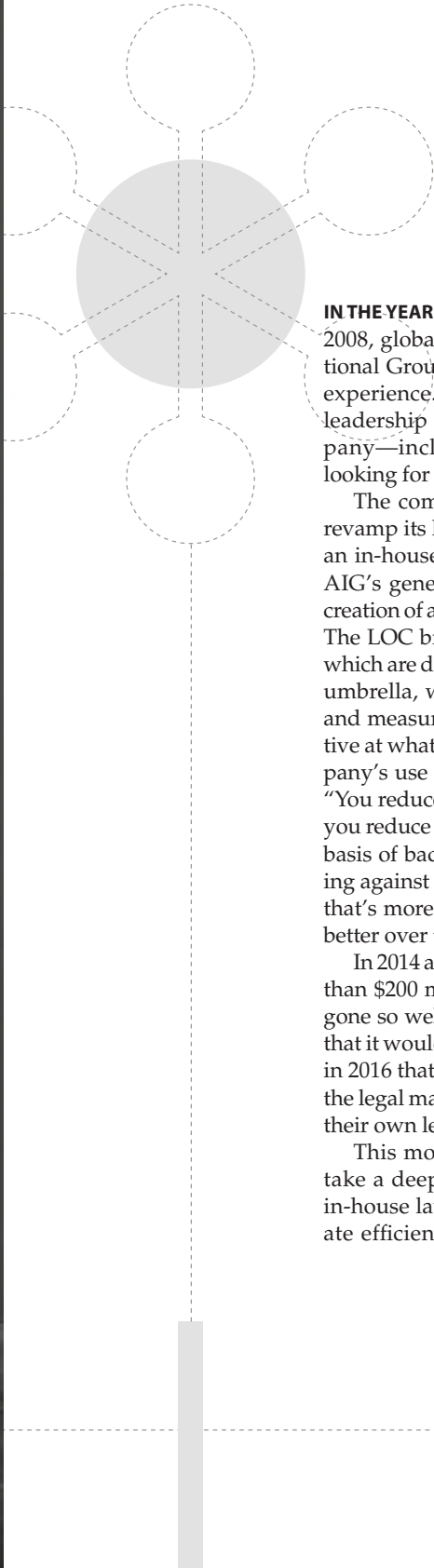
LEGAL DEPARTMENTS BY THE NUMBERS

In this age of Big Data,
more and more lawyers
seem to be keeping score.

BY REBEKAH MINTZER



DAN CURRELL,
SUSAN HACKETT AND
AARON KATZEL



IN THE YEARS FOLLOWING THE FINANCIAL CRISIS OF 2008, global insurance giant American International Group was recovering from a near-death experience. After a government bailout and a leadership shakeup, the New York-based company—including its legal department—was looking for new ways to trim down.

The company decided to deploy metrics to revamp its legal function. In 2012, Aaron Katzel, an in-house lawyer and former chief of staff to AIG's general counsel, Thomas Russo, led the creation of a new Global Legal Operations Center. The LOC brought the company's legal services, which are delivered all over the world, under one umbrella, where all activity could be analyzed and measured. "You wind up being more effective at what you do," says Katzel, about his company's use of metrics to drive decision-making. "You reduce the noise, you reduce the anecdote, you reduce the number of decisions made on the basis of bad information, and you start delivering against the priorities of your clients in a way that's more predictable and that gets better and better over time."

In 2014 alone, the LOC says, it saved AIG more than \$200 million in legal costs. The project has gone so well that the company even announced that it would launch a legal consultancy business in 2016 that uses the center's internal data about the legal market to help other companies achieve their own legal operations savings.

This month, Corporate Counsel decided to take a deep dive into data. We looked at how in-house lawyers are leveraging metrics to create efficiencies in their departments, whether

through smarter use of people or process. Then, we examined how this increased focus on measuring legal work has influenced, and documented, the broader trends across law departments.

To get a sense of how seriously departments are taking metrics, in-house attorney membership organization the Association of Corporate Counsel asked in its latest Chief Legal Officers Survey how many CLOs had employees doing operations work. Some 19 percent of U.S. respondents—almost 150 out of more than 750—reported working with between one and nine legal operations professionals. In what seems to be a sign of the times, this year was the first time ACC asked CLOs a question about legal ops professionals, and in March ACC even started a new membership section specifically for them.

One of the primary ways that metrics are helping legal departments is by signaling how much work would be best sent to outside firms in order to make spending more efficient. According to David Cambria, the global director of operations at Archer Daniels Midland Company, the Chicago-based agriculture processor, getting the right balance of in-house to law firm spending takes a clear understanding of the types of matters that the department handles and the price points for each type of work. "What that leads you to is workload optimization, so that you're aligning the high-value, high-risk work to the people with the most experience and knowledge to handle it within your organization," says Cambria, who is in charge of operations for compliance and government relations in addition to

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legal. "Or, if you don't have the expertise," he continues, "you're getting the most out of an investment in outside counsel."

AIG certainly grapples with the issue of managing outside counsel relationships. The company is responsible not just for its own legal matters but for the legal needs of its 90 million insureds in 100 countries and jurisdictions. AIG uses more than 1,500 law firms on more than 25 approved "panels," with each panel corresponding to a line of business or business function. When it comes time to decide whether a firm on the panel is right for a particular matter—say, an employment case in Oklahoma—the relevant

decision maker can take a look at the metrics that the LOC collected about that firm and its past performance. "The lawyer who is selecting the counsel," Katzel says, "can look at who is approved for panel usage for employment in Oklahoma and see: How many matters have they handled historically? How big is the team that can handle the matter? How have they done in terms of the outcomes, and what's the overall value proposition? Have they been able to do it across a statistically meaningful number of matters that makes sense relative to what their peer firms are doing?"

Of course, getting legal work done isn't just about law firms anymore. There are now more alternatives to the traditional firm than ever before in the form of legal service providers. Susan Hackett, CEO of Legal Executive Leadership, a consultancy for corporate legal departments located in Chevy Chase, Maryland, explains that in-house counsel are realizing that just because an outside lawyer has a top pedigree, that doesn't mean that he or she is the best for the job at hand. "Sometimes the best team to drive the better-quality result is the more efficient team, or the team that has had the better-quality experience working with this kind of matter," she says, "or where people have been particularly trained for certain kinds of tasks so that their level of expertise is amazing on it." Without measuring who does which task at which price point, and having law firms that will provide data on their end, it can be tough to decide where the most value is coming from.

Like many other large companies, AIG must decide how to use service providers to tackle the large volume of litigation that its legal department has to manage. Using metrics, the LOC identified e-discovery as one area where outside specialists may help get the job done more efficiently than law firms. "We essentially looked at our data and found that for litigation, where there is a critical mass



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of documents that need to be reviewed, it makes sense to use those services," says Katzel. The next step was establishing metrics-driven standards that will signal to in-house lawyers when an outside provider may be the right choice. "In partnership with the heads of our lines of business and our litigation team," Katzel explains, "we created policies here that provide that if you exceed a certain number of documents in your litigation, you should explore using alternative service providers to do your discovery hosting and collection and document review."

Besides helping legal departments decide how to use their human resources, metrics can also help in-house counsel save time and money by making internal processes speedier and more accurate. Dan Currell, director of client solutions at Chicago legal services firm Novus Law, notes that activities such as reviewing contracts often wind up taking extra time and costing more money because in-house lawyers have not properly defined what they are looking for in these documents, and haven't created steps to separate what is important from what is not. "The process isn't really being managed, and people can find themselves getting wrapped around the axle on the work they are doing," says Currell, who writes the Business of Law column for our website. "They aren't efficiently moving through information." Metrics such as looking at the time it takes to review a contract (cycle time) or how long a document is sitting around waiting to be read (lead time) can be helpful tools in figuring out where the process could be focused and streamlined.

Another example of how metrics can be used to cut waste is in the area of law department overproduction. "It's not something that people tend to think about, let alone measure," says Currell, "but there is a difference between how much work product you create and how much really gets used." By using metrics to see how time and work product are being devoted to a particular area versus how much of that work actually



proves useful to the business client, legal departments can save a lot of time and resources.

The upside of metrics has become pretty clear, but experts also voiced caveats about using these tools. Hackett, the former longtime general counsel of ACC, warns that a legal department new to metrics would be wise to limit the data that it collects initially, or else it will be difficult to measure anything at all. "If you try to drink from the fire hose, as a department getting started on this," she warns, "you will surely choke on the water."

While legal departments should not overdo it, according to Cambria, they need to make sure that they collect enough data to provide sufficient context for each particular data point.

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—DAN CURRELL



He uses an example from his company's hometown to explain why isolated facts don't mean much. "I could tell you that the temperature of Lake Michigan is about 62 degrees, and then you would say: 'Great, what do I do with that?'" he says. "You don't know if that's cold or warm for Lake Michigan. You don't know if you should get the wetsuit or break out the bikini." Without knowledge about other relevant data as context, a price point for a legal matter, like a temperature measurement for Lake Michigan, probably won't be terribly meaningful.

Law departments are gathering metrics on their own internal operations and the work of their law firms and service providers, but how about big-picture trends? Benchmarking data compiled by organizations and consultants this

year seems to show that some trends from recent years are continuing. One set of data that legal departments might find interesting is on total department budget. The ACC's 2015 CLO survey indicates that budgets at U.S. law departments seem to be either staying the course or growing slightly. Some 27 percent of respondents reported no change in budget in the previous year, and 24 percent saw a minimal budget increase of between 1 percent and 5 percent. Only 4 percent of respondents decreased budgets by more than 10 percent, while 13 percent saw a comparably large increase.

This trend presents a cautiously optimistic outlook for legal departments, but of course, there are plenty of variables that might make some shops' budgets look different. "It's hard to generalize, because I think the dynamics really differ significantly depending on which industry you're in," says Katzel. The more granular the data is by type of matter or activity, he adds, the more that benchmarking can reveal about how legal departments are directing spending.

Another area where plenty of data gets collected is in measuring work done by in-house versus outside counsel, and by some accounts, the trend of insourcing seems to be continuing. A 2014 survey of CLOs from legal consulting firm Altman Weil, which looked at law departments with lawyers both in the U.S. and abroad, shows that between 2012 and 2014, more departments were reducing outside counsel use than growing it. For instance, in the 2014 data, 26 percent of respondents decreased their use of outside counsel, while only 14 percent increased it. And when asked where the work taken away from outside counsel would go, 86 percent of respondents said it would move back inside the law department.

There is some evidence that this year the tide may be turning, though. In a study of corporate counsel, the vast majority located in the U.S., BTI Consulting found that while collectively \$8 billion in total spending has moved from outside counsel back in-house since 2011, this year,



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\$8 BILLION IN LEGAL SPENDING MOVED IN-HOUSE, 2011 TO 2014

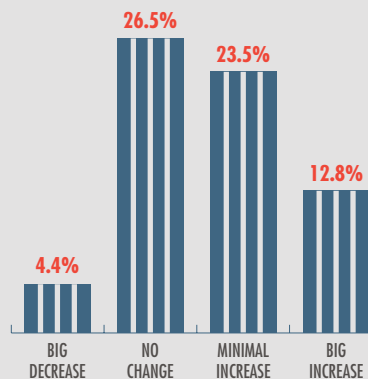
\$851 MILLION OF IN-HOUSE SPENDING MOVED BACK TO LAW FIRMS IN 2015

NUMBER OF LAW FIRMS USED



SOURCES: BTI CONSULTING AND ACC (CHART ON FAR RIGHT)

LAW DEPARTMENT BUDGETS 2014



reversing that trend, \$851 million will actually move back to law firms.

If the BTI data proves accurate, it's difficult to figure out precisely why this is happening. It could have something to do with big-ticket, bet-the-company litigation, which Currell says he has seen on the rise recently. "Those cases can easily account for 50 or more percent of total legal spend a year for a department, even a big one," he notes. "And so it may still be true that they're pulling in more matters by number, while they are pushing more dollars by volume out." Currell adds that companies also need to remember that the in-house versus outside counsel dichotomy doesn't tell the whole story when it comes to spending, because emerging legal service providers are getting a piece of the pie as well.

Another trend that the benchmarkers have been keeping tabs on is law firm convergence: legal departments shrinking the number of outside firms they use. As most in-house counsel will know, convergence helps departments use volume to drive down outside counsel prices and negotiate more alternative fee arrangements. In BTI's 2015 Survey of General Counsel, the average number of firms used by companies dropped from 46 to 36 between 2013 and 2014. In another study, the Thomson Reuters Legal Department Insourcing and Efficiency Report, some 55 percent of U.S. departments have held steady in the

number of firms they have used over the last two years, while 23 percent use fewer and 22 percent use more.

Although convergence still appears to be a trend in many departments, the number of firms that a company uses often depends on the work and circumstances. AIG, for instance, has gone through convergence, but still has 1,500-plus law firms around the world on its panels. For a large company with lots of work that requires local representation in numerous jurisdictions, having so many firms may be a necessity. And for AIG, the added benefit of collecting data from all those firms is that it seems to have positioned the company to hang a shingle as legal metrics consultants.

Obviously, not every law department will be able to turn their metrics program into a business. But it's difficult to imagine a corporate legal department out there that couldn't benefit from measuring its own activities, and comparing its results to those of other law departments, with an eye to improvement and savings.

"You could have a single lawsuit this year," says Currell, "and yet manage it with rigor from start to finish and have metrics and measurement." One hundred lawsuits or one, there's a lot to learn when you measure. And as the adage goes, if you can't measure it, you can't change it. ■