

## Legal Departments Learn How To Measure Success

### GCs Share Best Practices For Proving That Legal Is More Than A Cost Center

BY CATHLEEN FLAHARDY

WAL-MART STORES Inc. was faced with a huge problem in 2001. After being hit with nearly 5,000 lawsuits the year before, the multi-billion dollar retailer decided it needed to overhaul its law department. But the department knew if it was to run efficiently, it had to shed management's perception that lawyers were nothing more than a necessary evil. To do that, it first had to find ways to prove its value.

"We had no real meaningful metrics by which anything was measured," said Tom Evans, vice president and general counsel of logistics at the Arkansas-based company. "We didn't realize we had a problem until something broke."

The sheer size of the client demanded the legal department become more dynamic.

"It's the largest company in the world, but the infrastructure of the legal department just couldn't hold up," Evans said.

Although the legal department is still ironing out the kinks of a change that is only three years old, it now is structured to deliver services much more efficiently. For instance, it is doing a much better job providing services to business units and keeping the client abreast of legal developments. More importantly, it has concrete evidence that it's more than just a cost center.

But Wal-Mart's legal department isn't alone in its struggle to measure up to its client's needs. Many departments today have found themselves in similar situations, and they are looking for new ways to become more efficient and measure their successes.

#### COUNSEL to COUNSEL COVERAGE

At a recent Martindale Hubbell Counsel to Counsel session in Chicago titled "How Do You Measure Up? Metrics and Measurements for Law Departments," a group of GCs discussed the various ways of accomplishing that.

#### Educating Inc.

For The Northwest Mutual Life Insurance Co., meeting their client's need was key. But the legal department struggled with how to create a measurement system for

achieving that goal.

"As a service unit, we don't write the policies or deal directly with sales or investments, as our clients do," explained Rachel Taknint, an assistant general counsel with the Milwaukee-based company. "Because our contribution is indirect, and we serve so many different departments, we found it hard to come up with a concise departmental strategy that aligned with the overall corporate strategy."

Ultimately, the legal department's objective was to identify and implement strategic goals that would deliver expert legal services to support Northwest Mutual's growth and risk management. To measure



(Clockwise from top left): **Tom Evans**, vice president and general counsel of logistics at Wal-Mart Stores Inc.; **Michele Smith**, general counsel of the engine group at International Truck and Engine Corp.; **Edward Gallagher**, vice president of law at NCR Corp.; **Rachel Taknint**, assistant general counsel at Northwestern Mutual Life Insurance.

its success, Taknint and other department members developed the Northwestern Mutual Law Department Strategy Map as part of the company's Balanced Scorecard Initiative. The map dissected the department's function as seen from different company perspectives—customer, financial, internal process, and learning and growth—and outlined how it could work to meet the needs of each.

"We put the customer on top because we are a service unit within the company," Taknint said. "We wanted to identify what we really needed to do for the customer, and how they needed to view us."

To achieve its goals, the legal team is in the process of creating a client survey. The survey questions will focus on key service delivery skills for attorneys, especially collaborating with clients to solve problems. "It is not always easy for attorneys to get into the trenches with the business people to try to solve problems," Taknint says.

"It's not easy to get into the trenches between business people and attorneys and try to solve problems," Taknint said.

The department is also developing educational programs to inform law department members about the company and its overall objectives, and Taknint believes this is a step in the right direction.

"Educating is important for delivering quality service," Taknint said. "It will allow us to see the big picture, beyond each attorney's particular area of legal expertise."

Not only is it important to stay knowledgeable about your client's needs, attendees said, but it also is important to understand your department's limitations so you can develop a strategy to overcome them.

## **Sigma Success**

For instance, when International Truck and Engine Corp. slashed budgets a few years

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ago, it scaled down the legal department to just a few attorneys and one IP lawyer—an important role in a company that has an increasing number of patent applications each year.

"We traditionally obtained a very small number of patents each year, but the business climate we now face in the automotive industry makes control of intellectual property much more important than it used to be," said Michele Smith, associate general counsel of corporate operations and GC of the engine group at International. "We recognized that we had scarce resources but had to find a way to increase the number and quality of our patents. We used metrics and measurements to both diagnose the root causes of our low numbers and to report on accomplishments."

Rather than just asking for more money to hire additional legal department staff, Smith and her team looked for ways to improve productivity.

"We hired a contract IP attorney and enrolled him in the company's Six Sigma Green Belt training," Smith says. "He then studied our patent process as his project."

When he discovered the root cause of the problem—the cycle time to obtain patents was too long—the legal team went to work.

"First, we revised the invention submission form, and put it online," Smith explained. "Second, we revised our patent incentive award to include an upfront award for submissions."

Under International's new system, an inventor would receive \$250 for each accurate invention submission form. As a result, the number of patents submitted went up 300 percent in one year—a rate the department has maintained for three years—and the time from invention conception to submission dropped 19 percent.

"More importantly, the time for law department preparation of patents has dropped 28 percent because of more accurate invention submissions," Smith said. "[The new system] has resulted in even greater patent filings and increased involvement in company strategies by the IP attorneys."

Applying the Six Sigma approach also proved successful for another attendee.

In 2001, NCR Corp. decided to move most of its legal work to outside counsel to save money. But the department also knew the importance of measuring the efficiency of its outside counsel.

The technology company developed a

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cross-business unit approach to litigation that included specific metrics and Six Sigma tracking. Because the company continued to perform most of its prelitigation work in-house, it needed a system that would provide feedback in the early stages of a case.

"We encourage some heavy-duty early analysis by requiring a risk memo within four months," said Edward Gallagher, NCR's law vice president for litigation. "That gives us a fairly early sense of what the case is worth, where we might want to take it tactically, how we might resolve it other than traditional settlement, or if we want to try to settle it."

NCR's metrics system allows for comparative measurements of the performance of both in-house and outside counsel working on an issue. But Gallagher maintains it is critical to evaluate outside counsel and measure the return on investment.

"In post-case evaluations, we do scoring of our outside counsel on timeliness of response, accessibility, knowledge and expense management," Gallagher explained. "All of these are tracked as Six Sigma items, and help determine whether the particular counsel will be retained for future cases," he said.

## **Staying In-House**

While NCR's decision to outsource most of its litigation work has proved successful, one conference attendee has done well with the exact opposite approach.

"The philosophy at FedEx is we do most of this work in-house," said Rush O'Keefe, senior vice president and general counsel of Memphis-based FedEx Express. "We have 128 lawyers in all the FedEx companies."

FedEx Express, a division of FedEx Corp. that makes up about 80 percent of the company's overall core revenue, does virtually all the legal work in-house,

including regulatory and transactional work. But even more surprisingly, virtually all of FedEx Express' litigation work is handled in-house.

"The No. 1 reason is cost. We can do it significantly cheaper than it would cost to hire it out," O'Keefe said. "And the No. 2 reason is success. We think we take a fairly aggressive position."

To maintain that goal and keep the legal department running efficiently, O'Keefe and his team have set in place several ways to measure performance. For example, the team conducts an annual report and analysis on the litigation work it has done in the previous year.

"It's a metric to measure ourselves inter-

nally in the legal department but also to measure ourselves from a budget perspective," O'Keefe explained. "We want to know how we're controlling costs, we want to measure costs versus results, and we also want to measure what our average cost per case is."

In today's corporate culture, implementing the proper metrics and measurements is crucial to a legal department's success, especially as budgets remain flat. More importantly, though, they provide information that helps a department gain the trust and respect of company executives.

"Finding the right measurement is the crux of any strategic planning initiative," Northwest Mutual's Taknint said. ◀

## The Counsel to Counsel Forum At A Glance:

### "How Do You Measure Up? Metrics and Measurements for the Law Department"

#### Co-Chairs:

- > **Tom Evans**  
Vice President and General Counsel  
Wal-Mart Stores Inc.
- > **Dawn Haghighi**  
Vice President Division Counsel  
Charter One Bank

#### Law Firm Co-Hosts:

- > **Foley & Lardner**
- > **Seyfarth Shaw**
- > **Sonnenschein Nath & Rosenthal**

#### Facilitator:

- > **Ann Lee Gibson, Ph.D.**  
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