

Discovery insights 5 questions about enhancing legal operations



An interview with Jack Walker, Deloitte Advisory Principal, Deloitte Transactions and Business Analytics LLP

Management of corporate legal department operations has focused historically on controlling outside counsel costs, reviewing and processing invoices, and responding to pleadings. Today, though, the legal operations function is more critical and complex, driven by increasing regulations, hearty appetites for litigation, voluminous discovery, and growing pressure to reduce costs. Legal department leaders can benefit from considering several questions as they adapt to these intensifying demands.

Questions

Jack Walker's take

What are some of the major operational issues facing legal departments today, particularly in corporations with global operations?

Companies continue to grow, evolve, and adapt. Decentralization enables business units (BUs) within a company to operate relatively independently in their organizations, and often those BUs go their own way in how they develop, organize, and operate. At the same time, corporate downsizing and mergers and acquisitions have caused many people to switch roles, often depleting institutional knowledge and leaving legal operations to decipher important nuances of operations across the enterprise.

Legal operations can better contribute to risk management and organizational efficiency by partnering with BUs to understand their challenges, identifying leading practices to address these issues, and sharing those practices elsewhere in the enterprise.

For example, Archer Daniels Midland Company (ADM), one of the world's largest agricultural trading and processing companies, faces hundreds of legal claims annually involving such risks as storm-delayed barges, damaged docks, rotting shipments, and physical harm to vessels and people. While claims management requires geographically relevant experience to address local jurisdictional and regulatory requirements, the variability of approaches being used impeded the ADM legal team's efforts to control spending globally. Exploration of the various approaches around the world identified leading practices at one of ADM's German subsidiaries, which are now being used globally to identify disputes sooner and resolve them earlier in the litigation life cycle.

What roles can process change and technology deployment play in transforming legal operations to meet current and future demands?

The potential returns offered by technology can drive adoption of a new process, but it's important to first have a good understanding of what the process should be and the result it is intended to provide. Technology to measure and enhance the performance of that process can then be identified. In a divestiture, for example, certain information in corporate records and databases has to be provided to the acquiring party. This requires a process to identify what information should be provided, extract and move the information, and confirm it was both sent and received. Once these process requirements are understood, technology to manage the information transfer can be chosen and deployed.

Processes and technology can also have a significant positive impact on discovery and on records and information management. Technologies that can assist companies in understanding the information that their organizations maintain can help lower discovery costs.

Questions

Jack Walker's take

More narrowly, what impact can analytics and predictive coding have?

Whether the priority is matter management, claims handling, or invoicing, legal operations can leverage analytics to help understand how legal department drivers translate into metrics such as effort spent on a matter and how much money goes to outside counsel.

Metric-driven methodologies are not foreign to leading corporations. Sophisticated analytical frameworks such as Six Sigma, "five nines," and other initiatives are strongly adhered to in many manufacturing, quality, and development groups to improve and enhance performance. Effective intelligence tools can help create and measure business value in these departments.

For legal departments, and in the discovery environment, predictive coding is a business process that can provide significant cost savings, and it is often championed for its defensibility. More than just a tool, its power is in the way it supports an analytic framework. That power is rooted in its algorithms, the approach employed, and its measurability when used time after time. Its repeated use can enhance institutional knowledge capture and collection. For instance, repeated use of analytic methods supports development of libraries of repeated-use terms (e.g., creating matter over matter value).

What are some risks legal departments may face if they don't keep pace in legal operations transformation?

A big part of the legal operations director's role is to help identify, qualify, and quantify potential risks – and risks abound. Lack of a discovery process can expose an organization to hefty discovery spending, especially in a BU subject to high litigation activity or regulatory activity. Inertia to maintain an existing, suboptimal claims management platform may often persist until an event, such as the CFO wanting to know why payments to outside counsel are so high or claims have ballooned, prompts review of existing processes. Failure to vet distributors consistently and effectively, both during onboarding and periodically on an ongoing basis, could potentially make responses to formal or informal anti-bribery requests more difficult. These examples point to the importance of identifying risks that can potentially descend on the legal department.

What are some important considerations in initiating or energizing legal operations transformation?

It starts with having a dedicated team and then, as discussed earlier, reaching out to the BUs to align legal operations and capabilities with their needs and priorities. The next step is to define and prioritize specific short-term and intermediate-term transformation goals that are both achievable and straightforward. Generally, legal operations infrastructures, such as software or hardware, do not need to be complex.

However, the sorts of activities that the infrastructure organizes can be quite complex. One key downfall of legal operations solutions has to do with the discipline that resources have in managing to outcomes using the available tools, and the quality and currency of the data that resides in the tools. As a result, simple and efficient tools and processes are often better than complex and too labor-intensive ones. One additional note on prioritization of goals—there are hard dollar costs associated with legal operations, be it discovery, records, or outcomes-related. Because of the increasing data volume and cost related to discovery in the US and globally, quantifying a return on investment associated with implementing or re-energizing a legal operations program is easier than it was a decade ago.

After the direction is set, stakeholder support is in place, and a vision is established, then implementation starts to resemble a traditional system implementation, with appropriate tailoring for various legal groups across the enterprise that will be leveraging the available tools. As with any operational exercise, measurement and monitoring and demonstrating better operational results substantiates the investment. Typical focus areas to start include discovery, matter management, records and information management, and electronic invoice analysis and reporting to monitor spending.

My take: Legal operations will continue to face new responsibilities and opportunities.

Legal operations is becoming more sophisticated because of the growing requirement to understand a company's infrastructure, not just facilitate the traditional practice of law. Encouragingly, analytics that can support legal and compliance activities continue to become more accessible, making it easier to acquire data and analyze it on behalf of the parent company and BUs across the enterprise. Legal operations can and should become a forward-thinking partner to the broader business, finding ways to create value, seeking cost-reduction opportunities, and identifying and helping address potential areas of financial, reputational, and regulatory risk to the enterprise.

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