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Don't Let the Digital Tail Wag the Transformation Dog: A Digital Transformation Roadmap for Corporate Counsel

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Don't Let the Digital Tail Wag the Transformation Dog: A Digital Transformation Roadmap for Corporate Counsel

MICHELE DESTEFANO, BJARNE P. TELLMANN, AND DANIEL WU*

ABSTRACT

Due in part to the COVID-19 pandemic, enhancements in technology, as well as shifts in the macroeconomic and socioeconomic dynamics of globalization, Digital Transformation (DT) has become an enterprise-wide imperative for most multinational companies (MNCs). As a result, legal departments are being challenged to embrace enterprise DT and start their own departmental DT journeys. Despite these trends, there is little scholarship and research about how MNC legal departments are addressing the DT challenge. How are General Counsel (GCs)

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currently approaching DT? Is what they are doing effective and value-accretive? And importantly, how *should* GCs approach DT to best generate value?

This article attempts to fill the literature gap. Based on interviews of 25 GCs and Chief Digital Officers of S&P 500 MNCs along with the authors' professional experience and secondary research, we explore how legal departments are responding to and approaching DT. We identify a Three-Phased Digital Maturity Framework that maps the typical MNC legal department DT trajectory. We argue that this trajectory is suboptimal because it emphasizes technology at the expense of the foundational, non-technological elements of DT that are critical for success. Too often, GCs appear to let the digital "tail" of DT wag the transformational "dog." The legal department itself must be fully transformed before the digital elements can add full value. By failing to transform the non-digital foundations of their departments in collaboration with the business *before* they introduce new technologies, GCs are leaving the most difficult aspects of DT—the organizational and structural, behavioral, and cultural changes—for last. This *post-hoc* approach (that leaves client-centricity and change management last) is disruptive, adds unnecessary cost, and threatens the credibility, viability, and timing of the entire DT effort on a go-forward.

As an alternative to this typical Three-Phased approach, we articulate a Best Practice 5-Step Model for how GCs *should* approach DT. Our approach is distinctive in that technology is only considered and applied *after* the service delivery model has been designed and processes have been optimized in accordance with the broader strategic and organizational contexts of both the legal department and the MNC itself. Moreover, ours is iterative. Our approach is also distinct in that throughout this process, change management principles are thoughtfully and consistently applied in each step. Contrary to standard depictions, we contend that if deployed correctly, DT can significantly transform how a legal department operates and can enable legal departments to add value in ways that go beyond generating efficiencies, reducing costs, and increasing speed-to-market. Our model provides a roadmap to help GCs better execute DT and leverage DT-generated data and insights, moving the legal department away from its standard depiction as a cost center to that of a revenue generator and value creator that is seamlessly integrated with the rest of the MNC.

In addition to filling some of the gaps in the literature, this article provides a vision that has broad applicability beyond the MNC legal department context and can be used as a model for law firms and other legal services providers to harness DT in their own contexts, to keep pace with—and better serve—their digitally transforming client base.

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INTRODUCTION

Due in part to the COVID-19 pandemic, enhancements in technology, as well as shifts in the macroeconomic and socioeconomic dynamics of globalization, the world is undergoing digital transformation (DT) at a rapid pace.¹ Although the trends that are driving companies to transform are not new, they are “newly urgent.”² As companies have gone virtual and digital, consumer needs and desires have shifted significantly.³ Digital initiatives that were previously mapped in one to three year increments are now scaling in days or weeks, with the quickening pace evident across industry sectors and geographies.⁴ The scalability and interconnectedness of networks together with artificial intelligence (AI) and machine learning technologies⁵ are transforming how companies and firms operate, compete and define their scope and scale, enabling firm growth beyond historical, deep-rooted limits.⁶ In keeping with these dynamics, DT has become an enterprise-wide imperative for most multinational companies (MNCs)⁷

Given the breadth, importance, and impact of enterprise DT, General Counsel (GCs) of MNC legal departments are under acute pressure to embark on their own departmental DT journeys to deliver enhanced legal services and improve internal client and customer experience.⁸ The questions this article addresses are: How are GCs approaching digital transformation? Is what they are doing effective and value-

1. Sanjay Srivastava, *The Blistering Pace of Digital Transformation is Only Going to Get Faster*, FORTUNE (April 21, 2021, 3:00 P.M.), <https://fortune.com/2021/04/21/digital-transformation-automation-data-economy-reskilling-retraining/>.

2. Microsoft CEO Satya Nadella may have been correct when he said that the first two months of the COVID-19 lockdowns forced corporations such as Microsoft to digitally transform more in two months than they had in two years. Jared Spataro, *2 Years of Digital Transformation in 2 Months*, MICROSOFT (April 30, 2020), <https://www.microsoft.com/en-us/microsoft-365/blog/2020/04/30/2-years-digital-transformation-2-months/>.

3. See *infra* note 33.

4. Simon Blackburn et al., *Digital Strategy In A Time Of Crisis*, MCKINSEY DIGITAL (April 22, 2020), <https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-strategy-in-a-time-of-crisis>.

5. For a definition of AI, see B.J. Copeland, *Artificial Intelligence*, BRITANNICA (Mar. 18, 2022) <https://www.britannica.com/technology/artificial-intelligence> (defining AI as “the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings”). For a discussion of how to define AI, see IBM Cloud Education, *Artificial Intelligence*, IBM (June 3, 2020), <https://www.ibm.com/cloud/learn/what-is-artificial-intelligence>; Jacques Bughin et al., *The Case for Digital Reinvention*, MCKINSEY QUARTERLY, Feb. 2017, at 1, 7-8.

6. MARCO IANSITI & KARIM R. LAKHANI, *COMPETING IN THE AGE OF AI: STRATEGY AND LEADERSHIP WHEN ALGORITHMS AND NETWORKS RUN THE WORLD* 3 (2020).

7. See *infra* notes 27-38.

8. CEOs and executive teams of MNCs expect all areas within the organization, including the legal department, to undergo DT as it is critical to the success of the enterprise effort. Brian Solis & Jaimy Szymanski, *The Race Against Digital Darwinism: Six Stages Of Digital Transformation*, ALTIMETER, April 14, 2016, at 25-33; for further support and discussion, see *infra* Part I.

accretive? And importantly, how *should* GCs approach their DT journeys to generate new forms of value?

There is a wealth of literature on how DT has made what is commonly referred to as “the more for less challenge” more acute.⁹ There is also a wealth of literature about how the role of the GC has expanded over the years,¹⁰ recently focusing on how GCs have been driving innovation by adopting new (and potentially disruptive)

9. The “more for less” challenge refers to the prospect that inhouse lawyers face of having to manage an increasing and increasingly complex workload with fewer resources. See RICHARD SUSSKIND, TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE 4-5 (2013); For a review of Susskind’s TOMORROW’S LAWYERS, see William D. Henderson, *Letting Go of Old Ideas*, 112 MICH. L. REV. 1111 (2014); Digital transformation often places significant economic friction, including pressure on revenue and profit growth, by enabling more competition and starkly separating winners from losers. This has been the experience of co-author Bjarne P. Tellmann as well, who had to reduce fixed legal costs in one large public company, where he worked as GC, by over 40% over the course of a few years. Other GCs at large corporations who are personally known to the authors and/or interviewed by the authors have experienced similar levels of cost pressure in recent years. See Jacques Bughin et al., *The Case for Digital Reinvention*, MCKINSEY QUARTERLY, Feb. 2017, at 26, 29 (noting that profit pressures generated at the corporate level tend to result in reduced budgets at the legal department level); see Gregg Wirth, *Corporate Law Departments Focusing On Key Priorities Amid Altered Legal Market*, *Says New Report*, THOMAS REUTERS (Apr. 21, 2020), <https://www.thomsonreuters.com/en-us/posts/legal/2020-state-of-corporate-law-departments-report/>. For a discussion of these trends, see also SUSSKIND, TOMORROW’S LAWYERS, *supra*; RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES (2nd ed. 2010); BJARNE P. TELLMANN, BUILDING AN OUTSTANDING LEGAL TEAM: BATTLE-TESTED STRATEGIES FROM A GENERAL COUNSEL 32-39, 113-14 (2017); WOLTERS KLUWER, 2020 THE FUTURE READY LAWYER SURVEY, 2-3 (2020). A chart created by author, Bjarne Tellmann, illustrating the needs, demands, and solutions relating to the “more for less” dynamic is on file with the authors and available upon request.

10. See, e.g., David B. Wilkins, *The In-House Counsel Movement*, THE CHANGING ROLE OF GENERAL COUNSEL, May/June 2016, at 1. <https://thepractice.law.harvard.edu/article/in-house-counsel-movement/> (noting the expanding and continuous “power and prestige of in-house lawyers,” explaining that “in-house legal departments in the United States now also rival large law firms as a destination of choice for talented lawyers”); Ben W. Heineman Jr., *The Inside Counsel Revolution*, THE CHANGING ROLE OF GENERAL COUNSEL, May/June 2016. <https://thepractice.law.harvard.edu/article/inside-counsel-revolution/>; see also, David B. Wilkins, *Is the In-House Counsel Movement Going Global? A Preliminary Assessment of the Role of Internal Counsel in Emerging Economies*, 2012 WIS. L. REV. 251 (2012); Michele DeStefano Beardslee, *Advocacy in the Court of Public Opinion, Installment One: Broadening the Role of General Counsel*, 22 GEO. J. LEGAL ETHICS 1259 (2009) (arguing to broaden our view of General Counsel’s role in managing legal PR for their corporate clients); For a historical account of the expanding role of GCs, see Robert Eli Rosen, *The Inside Counsel Movement, Professional Judgment and Organizational Representation*, 64 IND. L.J. 479 (1989).

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technologies,¹¹ and enhancing legal operations¹² to deliver increased productivity, efficiency¹³, and add incremental value.¹⁴ Further, there has been much written

11. This literature often focuses on how leading GCs are beginning to take advantage of productivity-enhancing technologies, specifically designed for the legal services market, that have emerged in response to this growing demand. These include *efficiency and collaboration tools*, such as contract management, e-discovery, matter management, and transaction support technologies; as well as *analytics and transparency tools*, including e-billing software, online bidding platforms, and compliance and discovery tools. For a discussion of some of these tools see SUSSKIND, *TOMORROW'S LAWYERS*, *supra* note 9, at 39-49; see also TELLMANN, *supra* note 9, at 42-43; see also KPMG'S U.S. CEO OUTLOOK 2021 at 28 (2021) (reporting that over 53% of respondents said that "[T]op priorities" are "extraction from documents and document automation" and 45% said data analytics was a top priority in the coming years); In order to support the demand for improved productivity, legal departments are increasing their use of technology. Indeed, spending in this area as a percentage of the overall budget increased 1.5 times between 2017 and 2020 and is projected to increase threefold between 2020 and 2025. See Rob van der Meulen, *Gartner Predicts Legal Technology Will Increase Threefold by 2025*, GARTNER (Feb. 10, 2021), <https://www.gartner.com/en/newsroom/press-releases/2020-02-10-gartner-predicts-legal-technology-budgets-will-increase-threefold-by-2025>.

12. This literature often focuses on how GCs are hiring legal operations specialists to lead initiatives to unbundle the traditional legal services delivery system and disaggregate workflow into ever smaller components, with each solution being farmed out to the most effective provider (that offers a range of solutions, including offshoring, nearshoring, and hybrid staffing). See, e.g., CHRISTIAN VEITH ET AL., *LEGAL OPERATIONS: GETTING MORE FROM IN-HOUSE LEGAL DEPARTMENTS AND THEIR OUTSIDE COUNSEL 4* (2018), <https://legaltechcenter.de/pdf/Bucerius-Legal-Ops-2018.pdf> ("Moreover, roles dedicated to improving legal operations have gained considerable visibility both inside the organizations creating them and in the legal industry itself. This is exemplified by the growth of entities such as the Corporate Legal Operations Consortium (CLOC) and the Association of Corporate Counsel (ACC) Legal Operations group."); see also *id.* (reporting that "Europe lags behind U.S. in legal ops maturity"); see also WOLTERS KLUWER, *supra* note 9, at 19 (reporting that at least 35% of legal departments are establishing a Legal Operations Function and 36% are developing their own in-house legal tech solutions); see also TELLMANN, *supra* note 9, at 41-43.

13. For an overview of these dynamics, see TELLMANN, *supra* note 9, at 32-49; For a discussion of the pressures imposed on corporations in general as a result of digitization, see JAMES MANYIKA ET AL., MCKINSEY GLOB. INST., *DIGITAL GLOBALIZATION: THE NEW ERA OF GLOBAL FLOWS 3-7* (2016), <https://www.mckinsey.com/~/media/mckinsey/business%20functions/mckinsey%20digital/our%20insights/digital%20globalization%20the%20new%20era%20of%20global%20flows/mgi-digital-globalization-full-report.pdf>.

14. There is a significant amount of literature focusing on how GCs have leveraged potentially disruptive technologies, including AI, machine learning and associated tools for data analytics, as well as blockchain and other automated decision-making technologies in order to deliver new forms of value for their corporate clients, including data-driven insights and analytics, transactional innovations, such as issue identification tools and contract analysis and generation technologies and automated risk analysis and compliance systems. See, e.g., David Fisher & Pierson Grider, *The Blockchain in Action in the Legal World*, in *NEW SUITS APPETITE FOR DISRUPTION IN THE LEGAL WORLD 375-386* (Michele DeStefano & Guenther Dobrauz eds., 2019); Bjarne P. Tellmann & Susan R. Sneider, *Digital Transformation and Re-bundling of the Legal Value Chain*, in *1 SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL § 16:2.50* (Robert L. Haig ed., Supp. 2021), Westlaw SPARTNER; John Armour et al., *Augmented Lawyering* (Eur. Corp. Governance Inst., Law Working Paper No. 558/2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3688896.

about how these disruptive technologies have already changed or will impact the work of inhouse and other lawyers.¹⁵

However, there is little academic scholarship and research that carefully considers how GCs of MNC legal departments are attempting to meet the DT challenge—and analyzes whether this is how they *should* be doing so. Drawing on interview data from 25 General Counsels and Chief Digital Officers of Fortune 500

15. See, e.g., SUSSKIND, TOMORROW'S LAWYERS, *supra* note 9; SUSSKIND, END OF LAWYERS?, *supra* note 9; RICHARD SUSSKIND, TRANSFORMING THE LAW: ESSAYS ON TECHNOLOGY, JUSTICE, AND THE LEGAL MARKETPLACE (2000); RICHARD SUSSKIND, THE FUTURE OF LAW: AND FACING THE CHALLENGES OF INFORMATION TECHNOLOGY (1998). Recent research supports the notion that AI is changing the practice of law in both law firms and legal departments. See, e.g., Bernard Marr, *The Future of Lawyers: Legal Tech, AI, Big Data And Online Courts*, FORBES, January 17, 2020; David Fisher and Pierson Grider, *The Blockchain in Action in the Legal World*, in NEW SUITS APPETITE FOR DISRUPTION IN THE LEGAL WORLD 375-386 (Michele DeStefano & Guenther Dobrauz eds., 2019); Accenture Recruitment, *Today's Career Meets The Future. Are You AI Ready?*, ACCENTURE CAREERS BLOG (Jan. 30, 2018), <https://www.accenture.com/us-en/blogs/blogs-todays-career-meets-future>; Jaap Bosman, *In-House 2026: Between Scylla and Charybdis*, ACC, October 2017; Julie Sabowale, *How Artificial Intelligence Is Transforming The Legal Profession*, ABA JOURNAL (2016), https://www.abajournal.com/magazine/article/how_artificial_intelligence_is_transforming_the_legal_profession; Mark A. Cohen, *Law's Tipping Point Is About Digital Transformation, Customers, And Capital - Not Firm Partners*, FORBES, June 2021; Richard K. Sherwin et al., *Law in the Digital Age: How Visual Communication Technologies are Transforming the Practice, Theory, and Teaching of Law*, 2 B.U. J. SCI. & TECH. L. 227, 234-235 (2006); Chris C. Goodman, *AI/ESQ.: Impacts Of Artificial Intelligence In Lawyer- Client Relationships*, 72 OKLA. L. REV. 149, 154-161 (2019); Michael Mills, *Artificial Intelligence In Law: The State Of Play 2016*, THOMSON REUTERS LEGAL EXECUTIVE INSTITUTE (Mar. 2016), <https://www.neotalogic.com/wp-content/uploads/2016/04/Artificial-Intelligence-in-Law-The-State-of-Play-2016.pdf>. One study, for instance, suggests that while AI will replace humans in some legal tasks, it will increase the human capital of other professionals. Armour et al, *supra* note 14, at 61, 62 (contending that lawyers who consume the output of AI, for example, will have their skills augmented by technology, thereby enhancing the value of their output (including decision making). Additionally, new roles will emerge for legal experts and MDTs who manage or produce AI-enabled services).

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and Global 500 MNCs¹⁶ along with the authors' professional experience in the field¹⁷ and secondary research, this article first investigates and assesses how GCs are digitally transforming their legal departments. It then articulates a Best Practice 5-Step Model for how GCs *should* approach DT and identifies the sources of value in-house legal departments (could and) should attempt to generate as a result of DT.

This article is not designed to provide an overview of DT at the enterprise level nor to consider the impact DT is having on corporate legal departments across different industries, company types or legal department sizes. Our sample size is small and not statistically significant. Moreover, this article's focus is limited in nature. Its purpose is not to provide a general discourse on the emerging technologies and trends that are impacting the legal marketplace, i.e., that are being used to increase productivity and efficiency and also commoditize legal services and create new solutions and new forms of value.¹⁸ Its purpose is not to

16. This research was conducted to help enlighten exploratory analysis of the questions posed. There is a great deal of research on the value of qualitative interviewing to enhance understanding. *See infra* notes 219 and 227 in the Appendix. Also, many legal scholars have utilized qualitative interviews and/or a mixed methodology of qualitative and quantitative interviews to aid similar investigations and analysis. *See, e.g.*, Elizabeth Chambliss & David B. Wilkins, *The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms*, 44 ARIZ. REV. 559 (2002); Howell Jackson & Eric Pan, *Regulatory Competition in International Securities Markets: Evidence From Europe in 1999—Part I*, 56 BUS. LAW 653 (2001); Ronald Mann, *Strategy and Force in the Liquidation of Secured Debt*, 96 MIC. L. REV. 163 (1997) (employing case study technique); Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. MEM. L. REV. 631 (2004); *see also*, Urszula Jaremba & Elaine Dr. Mak, *Interviewing Judges in the Transnational Context*, 2014 LAW AND METHOD (exploring the use of qualitative interviewing in legal studies and finding that "it is challenging but . . . with a great added value and the potential to enrich legal studies as a complementing method to the classic doctrinal approach."). These interviews focused mainly on GCs working at Global 500 and Fortune 500 companies that have high demand for legal services. The interviews sought information about the company's and legal department's organizational structure, recent efforts by the company and by the legal department related to technology improvements in general and more specifically related to DT. They also explored the role of inside and outside legal professionals in managing DT and included a self-assessment of the importance of DT, alignment with the business priorities, level of collaboration with the business, and the progress of DT for the legal department. Each interviewee was asked to share vignettes describing the legal department's DT journey so far and what was working well and also what barriers existed. For a more detailed explanation of the sample and methodology, *see* the Appendix.

17. Michele DeStefano and Bjarne P. Tellmann are both Faculty Members of the Digital Legal Exchange (DLX), a global non-profit institute of leading thinkers and practitioners in academia, business, government, technology and law, committed to accelerating digital transformation. Both DeStefano and Tellmann write and speak regularly on the topic of digital transformation in legal organizations. Tellmann has more than 7 years of personal experience implementing organizational alignment and digital transformation within large corporate legal departments from his current work as GC of GSK Consumer Healthcare and, prior to that, as GC and CLO of Pearson. He is also a member of the Futures Group of the UK Civil Justice Council, which provides the civil justice system with a long-term view of the impact of technology on the administration of justice. Dan Wu, a Senior VP of Product at Stake and former Senior Product Manager, Privacy Counsel, and Legal Engineer at Immuta. He has helped Fortune 500 companies, governments, and startups with ethical and agile data strategies.

18. For an illuminating legal technology framework grid, *see* SUSSKIND, THE END OF LAWYERS?, *supra* note 9.

landscape or theorize on how DT will impact or disrupt the work of professional service providers who generate income by creating and distributing knowledge and expertise. We leave those topics to other experts and scholars who have researched and written extensively on this, including Richard Susskind in relation to the impact of technological disruption on the lawyers, the courts, and the professions,¹⁹ and the late Clayton M. Christensen in respect to organizational innovation and disruption more generally.²⁰ We also do not address issues relating to the theory of innovation transmission, including, the extent to which differences across organizations or individual GCs might impact the speed with which DT is adopted in specific legal departments, or the extent to which the GC as a MNC insider is uniquely positioned to affect DT.²¹ While these are all fascinating topics of inquiry, they are beyond the limited scope of this article. Instead, our purpose is threefold 1) to describe, from the legal operating environment perspective, how DT is being embraced by GCs in actual corporate legal departments,²² 2) to highlight some of the pitfalls with the current approaches, and 3) importantly, to provide a usable, Best Practices roadmap to demonstrate how GCs *should* approach and leverage DT to generate new forms of value and shift the legal department from being a cost center to a revenue generator and value creator. As such, this paper, although

19. See, e.g., *id.*; SUSSKIND, THE END OF LAWYERS?, *supra* note 9; SUSSKIND, TRANSFORMING THE LAW, *supra* note 15; SUSSKIND, THE FUTURE OF LAW, *supra* note 15; RICHARD SUSSKIND, ONLINE COURTS AND THE FUTURE OF JUSTICE (2019); RICHARD SUSSKIND & DANIEL SUSSKIND, THE FUTURE OF THE PROFESSIONS (2015).

20. See, e.g., CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA (1997); see, e.g., CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA (1997); Clayton M. Christensen & Michael Overdorf, *Meeting the Challenge of Disruptive Change*, HARV. BUS. REV. (Mar.-Apr. 2000), <https://hbr.org/2000/03/meeting-the-challenge-of-disruptive-change>; Clayton M. Christensen et al., *Innovation Killers: How Financial Tools Destroy Your Capacity to Do New Things*, HARV. BUS. REV. (Jan. 2008), <https://hbr.org/2008/01/innovation-killers-how-financial-tools-destroy-your-capacity-to-do-new-things>; Clayton M. Christensen et al., *Reinventing Your Business Model*, HARV. BUS. REV. (Dec. 2008), <https://hbr.org/2008/12/reinventing-your-business-model>; Maxwell Wessel & Clayton M. Christensen, *Surviving Disruption*, HARV. BUS. REV. (Dec. 2012), <https://hbr.org/2012/12/surviving-disruption>; Clayton M. Christensen et al., *What is Disruptive Innovation?*, HARV. BUS. REV. (Dec. 2015), <https://hbr.org/2015/12/what-is-disruptive-innovation>; Clayton M. Christensen et al., *Consulting on the Cusp of Disruption*, HARV. BUS. REV. (Oct. 2013), <https://hbr.org/2013/10/consulting-on-the-cusp-of-disruption>.

21. For a seminal consideration of innovation infusion, see EVERETT M. ROGERS, DIFFUSION OF INNOVATIONS (4th ed. 1995).

22. The Association of Corporate Counsel (ACC) has developed a legal operational maturity model that is intended to act as a reference tool to assess legal department maturity across 14 operational variables, such as contract management and metrics and analytics. While perhaps useful as a gauge to determine operational maturity in respect of each specific variable, we question the utility of such an approach. The ACC model is inherently tactical in nature, approaching the question of operational maturity from the perspective of each independent variable, as if each were separate from the whole. Therefore, the approach provides little utility in determining overall DT maturity. Indeed, it reflects many of the underlying pathologies we discuss in respect of the Three-Phased Digital Maturity Framework, including that it is neither holistic nor strategic in approach, disregards client-centricity, and overlooks the power of appropriate sequencing. See ASS'N OF CORP. COUNS., ACC LEGAL OPERATIONS MATURITY MODEL, <https://www.acc.com/sites/default/files/resources/upload/MM2.0-Booklet-DIGITAL%20Final.pdf> (2020).

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narrowly focused, is descriptive, normative, and prescriptive in nature, focusing on how legal departments are responding to and should be approaching DT.

To that end, we present a Three-Phased Digital Maturity Framework that illustrates the typical MNC legal department DT trajectory. It describes how DT is typically rolled out in-house. Although the framework—in and of itself—is valuable as it can be used for internal benchmarking and lessons learned, we argue that this approach is suboptimal in large part because GCs get the sequencing wrong by failing to transform the non-digital foundations of their departments in collaboration with their business clients before they introduce new technologies. Under the current Three-Phased Digital Maturity Framework, GCs often find themselves forced to undertake profound organizational, structural, behavioral, and cultural changes after new technologies have been rolled out (sometimes unsuccessfully). This *post-hoc* approach (that leaves client-centricity and change management last) is disruptive, adds unnecessary cost, and threatens the credibility, viability, and timing of the entire DT effort.

Drawing from the experiences of others as well as our own, we set forth an alternative Best Practice 5-Step Model for how GCs *should* approach DT. Our model is distinctive in that technology is only considered and applied *after* the service delivery model has been designed and processes have been optimized in accordance with the broader strategic and organizational contexts of both the legal department and the MNC itself. Moreover, our model is iterative in one critical dimension. Throughout this process, change management principles must be thoughtfully and consistently applied, much like a leitmotif or an iterative loop in an algorithm.²³ As such, our 5-Step Model ensures that the legal department's DT journey is designed to achieve maximum value for the MNC. By clarifying the legal department's purpose and mission in a client-centric manner, identifying bottlenecks, and redesigning the department's service delivery model, all while managing through the change-related challenges that such a journey presents, GCs can more effectively apply technology as a value-additive overlay. It is the combination and appropriate iterative sequencing of these efforts that yield optimal results, not the rollout of technology on its own. Indeed, the term "digital transformation" is itself unfortunate because it underplays the critical non-digital aspects of DT and encourages an overemphasis on the digital overlay. Contrary to standard depictions, we contend that when applied correctly, DT enables the legal department to create new forms of value that can include revenue generation, more effective strategic partnering, data-driven insights, decision-making and

23. In computer programming, a given code statement may be repeated several times until a condition has been satisfied. This process of iteration, often referred to as "looping", allows for a code to be written once but executed many times, thereby providing re-usability and simplifying problem-solving. See *What is an iteration in programming?*, ENJOY ALGORITHMS <https://www.enjoyalgorithms.com/blog/fundamentals-of-loop-in-programming-and-algorithms> (last visited Mar. 12, 2022).

forecasting, improved team culture, digital fluency and versatility, better customer (and internal client) experience and satisfaction, expedited and optimized triage, and a mission and purpose driven culture that is closely aligned with the MNC itself. In short, a well-executed DT effort can significantly transform how a legal department operates, enabling the GC to manage the inhouse legal department as if it were a stand-alone business, while simultaneously leveraging DT-generated data and insights to frame opportunities and provide seamless integration with the rest of the MNC. Our model provides a roadmap to help GCs better execute DT and leverage DT-generated data and insights, moving the legal department away from its standard depiction as a cost center to being a revenue generator and value creator that is seamlessly integrated with the rest of the MNC.

The Article proceeds in three parts as follows:

In Part 1, after providing a brief overview of the importance and pace of DT at the enterprise level, we quickly turn to how MNC legal departments are approaching DT. We consider secondary sources, primary interview data, and our own professional experience and find that in-house legal departments are eager to digitally transform but many are not quite ready to do so, and they recognize it. We hypothesize that one of the primary reasons for this gap is the way that the DT journey is approached. Typically, legal departments are initially driven to DT reactively i.e., to secure efficiencies and cost effectiveness (e.g., streamline intake, improve responsiveness, decrease time) and only later do they take a more strategic approach. As such, we find that the inhouse DT journey is often disjointed, evolving gradually and somewhat peripatetically.²⁴ However, while each department is influenced by its own specific circumstances, industry dynamics, and maturity levels, there are certain commonalities in the order and manner in which legal departments approach DT. We capture these commonalities and the MNC's typical DT trajectory in what we call The Three-Phased Digital Maturity Framework. Then we describe the three phases generally as follows:

In the first phase, the department is seduced by the promise of specific technology solutions; these are acquired without sufficient thought given as to why they are needed or how they will fit within the broader operating environment. Seen in isolation, the technology might seem attractive, but once deployed, the expected return on investment does not materialize because the technology does not address underlying problems. The second phase involves the realization that the department should have considered the broader context before acquiring the technology, including identifying and prioritizing the services it provides, uncovering the bottlenecks that prevent optimal service delivery, and redesigning (non-digital) processes and structures to eliminate those bottlenecks. It is only when this work is done that it becomes clear to the department whether, and to

24. This is similar to how many corporations approach DT i.e., incrementally and in phases. *See supra* notes 22 and 23 (discussing enterprise approach as piecemeal).

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what extent, a given technology solution generates the expected return on investment. In this second phase, the department is thinking inwardly about its processes, tools, systems, and structures to enhance the user experience within the department. In the third phase, however, the focus turns to enhancing the experience, not only of the legal professionals working within the department, but also of the client base, and potentially even external customers and suppliers. Further, legal leaders can begin to see the true value of DT which is integrating the insights captured from its data with the data captured elsewhere in the MNC, allowing them to better partner with and serve the business and provide new sources of value. In Phase 3, GCs realize however, that these new sources of value can only be harvested by designing new ways of working, including developing new skill sets and new mindsets. Phase 3 GCs then begin to focus on the transformational aspect of DT, embracing the notion that a successful transformation requires leadership on their part to infuse their team members with accountability and responsibility for department-wide success.

We explore each of these three phases in depth, providing a glimpse into the mindsets of the GCs who lead these efforts through the voices of our interviewees. Part 1 of this paper, although descriptive in nature and not statistically relevant, fills a gap in the literature by bringing to life how some GCs think about, feel about, and approach the DT journey and the difficulties they face as they move through the phases. As with any framework, it can be used as a benchmarking tool and, most importantly, serve as a useful resource for learning about (and perhaps avoiding some of the trials and tribulations that can occur) during DT.

In Part 2 of this paper, we move from the descriptive to the normative, providing a critical analysis of the Three-Phased Digital Maturity Framework. We focus on the shortcomings of the current Framework, arguing that, while elements of it can be value-additive, approaching DT this way is inefficient and will typically inhibit the realization of the full potential of DT. We identify various reasons for this, with the most important being the failure to address the non-digital aspects of DT *before* deploying technology combined with the failure to take a client-centric approach from the start. In other words, the current approach starts with a keen focus on the *digital* in DT (i.e., the technology) instead of the *transformation* aspects of DT *and* this focus is only pointed inward on the legal department as opposed to also externally and inclusively with the business.

While DT can, at a basic level, be defined as the use of technology to create new forms of value, it involves much more than that. Rather, DT is a complex, multidisciplinary change management effort that demands a thorough redesign and re-imagining of the organization's (or department's) core purpose, operating environment, and service delivery model.²⁵ We argue that addressing these

25. KPMG INT'L, DESTINATION (UN)KNOWN: KEY STEPS TO GUIDE YOUR DIGITAL TRANSFORMATION JOURNEY 8 (2017) https://assets.kpmg/content/dam/kpmg/uk/pdf/2017/09/digital_transformation_guide_2017.pdf (describing

foundational, non-digital, issues up front, *before* deploying technology—and doing so in collaboration with the business—is important not only because it helps avoid acquiring the wrong technology, but also because it facilitates the change process and ensures that redesigns are aligned with the internal clients’ needs and desires. Transformational change is inherently difficult because it involves retraining employees, who must overcome old habits and change ingrained behaviors and attitudes. Such efforts are typically met with strong resistance. Overcoming these barriers demands a holistic, strategic, and client-centric change effort. The peripatetic, inwardly focused, organic approach of corporate legal departments leads to trials and tribulations, and learnings that stymie such an endeavor. In sum, GCs who let the digital “tail” wag the DT “dog” often fail because the legal department itself must be *holistically* transformed before it can be *digitally* transformed.

In Part 3, we move from the normative to the prescriptive. Drawing upon lessons from our interviewees’ experiences and our own, we articulate a Best Practice 5-Step Model for how GCs *should* approach DT to generate new forms of value and shift the legal department from being a cost center to a revenue generator and value creator (see Figure X)—without having to re-do and re-start as they are having to do in the current Three-Phased approach discussed in Part 2. Like all models, ours is an imperfect heuristic, but we believe it provides a practical, iterative roadmap for how to roll out DT in a legal department in a holistic, strategic, and value accretive manner.

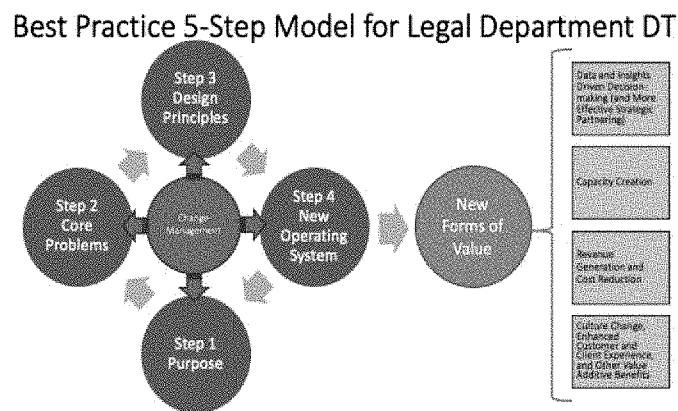


Figure X

what KPMG identifies as the four steps to digital transformation; the third step is: articulating an enterprise-wide operational strategy). For more discussion, *see infra* Part I.

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Rooted in design-thinking, our model involves five steps. We present these in a linear format but emphasize that our approach is iterative in one critical respect. Specifically, throughout the DT process, in our model, change management principles must be thoughtfully and consistently applied. Although we call it Step 5, which includes communication, buy-in, marketing and all other aspects of change management, it is woven throughout like a leitmotif or iterative loop in an algorithm. Our model entails the holistic transformation of the legal department itself, not just its digital aspects. Step one starts with a detailed focus on identifying the legal department's purpose and brand. We argue GCs must consider why the department should have a license to exist, what its brand and unique selling proposition are, and what jobs it must perform. Step two focuses on identifying the core problems that are preventing the department from realizing its purpose. What barriers and bottlenecks prevent the department from providing optimal service delivery? Step three considers the design principles the department should adopt in structuring itself for success given its core purpose, brand, and priorities—and importantly the needs and desires of the internal client base. Step four focuses on how to construct the department's operating model based on the foregoing, including its organizational and technology architecture. Step five, which must be implemented throughout the entire process, highlights the importance of change management, marketing, and communication for management buy-in, investment, and support. After explaining the five steps, we then articulate the forms of value the department can and should capture with our model including data-driven insights and decision-making (and more effective strategic partnering), capacity creation, revenue generation (in addition to cost reduction), culture change, and a re-energized, re-engaged, re-skilled workforce that delivers enhanced customer (and internal client) experience.

In short, we contend that our model (as opposed to the current approach) enables GCs to unlock a broader scope of value from DT, both for the legal department and for the MNC itself.²⁶ This is because the entire process is more closely aligned with the goals of the MNC and it is executed in collaboration with the business, lending credibility to (and enhancing viability of) the entire DT effort. Moreover, our model ensures that the legal department now operates like any other department in the MNC, i.e., as if it were a stand-alone business. This, in turn, transforms the relationship between the legal department and other departments giving the enterprise a more expansive view of the in-house legal department value

26. See *infra* Part III.B. Note: Environmental Social Governance (ESG)-related initiatives are one area where we see the potential for a digitally transformed legal department to add additional, significant value related to DT. However, a fuller consideration of this is beyond the scope of this article, and we leave that topic for another day and a future paper.

proposition rather than the transactional and cost-centric views often previously adopted.²⁷

Given that DT is growing in importance in the legal marketplace, we conclude with two calls of action. First, we urge academics to do more research about DT in the legal department context. Second, we urge legal service providers of all kinds to embrace DT and embark on their own DT journeys.

In addition to filling some of the gaps in the literature, this article provides a vision that has broad applicability beyond the MNC legal department context. It can be used as a model for law firms and other legal services providers to harness DT in their own contexts, to stay at pace with—and better serve—clients with the never-ending DT challenges emerging on their horizons.

I. DIGITAL TRANSFORMATION AND THE CORPORATE LEGAL DEPARTMENT

The world is undergoing digital transformation at a rapid pace.²⁸ DT is increasingly a top business priority.²⁹ AI and related technologies are profoundly shaping the dynamics and altering the operational and structural foundations of MNCs.³⁰

Due perhaps to the COVID-19 pandemic, the trend toward DT appears to have significantly accelerated in recent years. Digital initiatives that were previously mapped in one to three year increments are now scaling in days or weeks, with the quickening pace evident across industry sectors and geographies.³¹ Global spending on the technology and services that enable DT is predicted to surpass what would

27. See, e.g., Armour et al., *supra* note 14.

28. Sanjay Srivastava, *The Blistering Pace of Digital Transformation is Only Going to Get Faster*, FORTUNE (Apr. 21, 2021, 3:00 PM), <https://fortune.com/2021/04/21/digital-transformation-automation-data-economy-reskilling-retraining/>.

29. EY, *THE CEO IMPERATIVE: HOW HAS ADVERSITY BECOME THE SPRINGBOARD TO GROWTH FOR CEOs?* 8 (3d ed. 2021), https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/ceo-imperative-study/ey-ceo-imperative-study-2021-v3.pdf (reporting that 61% of CEOs “plan to undertake a major new transformation initiative”); IDG COMM’NS, INC., *STATE OF DIGITAL BUSINESS TRANSFORMATION 4* (2018) (reporting from a survey of 628 companies across a broad range of industries that the top objectives for a digital-first strategy were improving process efficiency, enhancing customer experiences, improving employee productivity and driving revenue growth).

30. For a comprehensive discussion of how AI is transforming the corporation and the implications thereof, see MARCO IANSITI & KARIM R. LAKHANI, *COMPETING IN THE AGE OF AI: STRATEGY AND LEADERSHIP WHEN ALGORITHMS AND NETWORKS RUN THE WORLD*, (2020).

31. SIMON BLACKBURN ET AL., MCKINSEY DIGIT., *DIGITAL STRATEGY IN A TIME OF CRISIS* 3, (2020), <https://www.mckinsey.com/business-functions/mckinsey-digital/our-insights/digital-strategy-in-a-time-of-crisis>; However, geographically, the pace of technology adoption is faster in the United States than in some other countries. In terms of AI readiness, for instance, a 2019 McKinsey survey found that the U.S. led the world in AI readiness, due to its strong AI ecosystem and positive ICT connectedness. See also JACQUES BUGHIN ET AL., MCKINSEY GLOB. INST., *NOTES FROM THE AI FRONTIER: TACKLING EUROPE’S GAP IN DIGITAL AND AI* 2 (2019), (finding that Europe lags behind the U.S. and China in digitization and adoption of AI).

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equate to \$1.3 trillion USD in 2020,³² and the majority of CEOs of MNCs are planning major investments in data and technology.³³ To remain competitive in this environment where customer needs and expectations are changing rapidly, DT has become an enterprise-wide imperative for most MNCs.³⁴ Recent surveys by the big four consultancies and Harvard Law School report that digitization is a top priority among CEOs at large MNCs across the globe³⁵ and that they are (or are planning on) investing in digital transformation.³⁶ They are using newly adopted digital processes

32. Michael Shirer & Eileen Smith, Int'l Data Corp., *New IDC Spending Guide Shows Continued Growth for Digital Transformation in 2020, Despite the Challenges Presented by the COVID-19 Pandemic*, BUS. WIRE (May 20, 2020 8:30 AM), <https://www.businesswire.com/news/home/20200520005094/en/New-IDC-Spending-Guide-Shows-Continued-Growth-for-Digital-Transformation-in-2020-Despite-the-Challenges-Presented-by-the-COVID-19-Pandemic>.

33. EY, *supra* note 29, at 8-9 (reporting that 68% of CEOs anticipate these investments in the next 12 months and that "65% of CEOs expect to spend more on transformation over the next three years as compared to the last three years").

34. *Id.* at 10 (reporting that most CEOs cite "changing customer experiences and expectations" along with "accelerating technology and digital innovation" as a top "trend[] having the greatest company impact"); see also IDG COMM'NS, INC., *supra* note 29, at 4 (reporting from a survey of 628 companies across a broad range of industries that the top objectives for a digital-first strategy were improving process efficiency, enhancing customer experiences, improving employee productivity and driving revenue growth.).

35. DT has been a strategic priority for CEOs since as early as 2015. GERALD C. KANE ET AL., *ALIGNING THE ORGANIZATION FOR ITS DIGITAL FUTURE* 18-26 (2016), <http://sloanreview.mit.edu/digital2016> (providing survey results from the 2015 Digital Business Global Executive Survey conducted by MIT Sloan Management Review and Deloitte); KPMG, U.S. CEO OUTLOOK 2017, at 14 (2017), <https://assets.kpmg/content/dam/kpmg/us/pdf/2017/06/us-ceo-outlook-survey-2017.pdf> (surveying 400 U.S. CEOs and reporting that 45% of CEOs state they are not leveraging digital effectively to connect with their customers based on an in-depth and noting that almost 90% of enterprise decision makers believe they have less than 2 years to implement digital transformation before sustaining adverse financial and competitive impact); see also KPMG INT'L, *supra* note 25, at 8; A recent 2021 study by EY in collaboration with Harvard Law School consisting of over 2,000 interviews reported that digitization is the number one priority among CEOs. CORNELIUS GROSSMANN & DAVID B. WILKINS, *HOW DO YOU TURN BARRIERS INTO BUILDING BLOCKS?* 8 (2021), https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/law/law-pdf/ey-general-counsel-imperative-series-how-do-you-turn-barriers-into-building-blocks.pdf; EY, *supra* note 29, at 16 (stating that "CEOs identified digital transformation as the No. 1 area requiring C-Suite attention in the 2019 CEO Imperative Study and again in this most recent edition of research" and reporting the percentages as 55% of CEOs in 2019 and 56% of CEOs in 2021).

36. See, e.g., GROSSMANN & WILKINS, *supra* note 35, at 5 (reporting that sixty-one percent are expecting to make significant investments into data and technology); Rebecca Sentance, *A Fifth of Large Enterprises Are Investing in Digital Transformation Initiatives During the Coronavirus Pandemic*, ECONSULTANCY (April 27, 2020), <https://econsultancy.com/a-fifth-of-large-enterprises-are-investing-in-digital-transformation-initiatives-during-the-coronavirus-pandemic/>; TEKSYSTEMS, *STATE OF DIGITAL TRANSFORMATION* 7 (2021), <https://www.teksystems.com/en/insights/-/media/teksystems/DX2021/state-of-digital-transformation-2021> (compiling results from a survey of more than 400 technology and business leaders in 2020 and reporting that one in five are currently pushing new investments into DT, a quarter are increasing spending in tech and infrastructure, and almost 50% of surveyed business leaders are investing between \$5 million or more per DT initiative); KPMG, 2021 KPMG U.S. CEO OUTLOOK: PULSE SURVEY 2 (2021), <https://www.kpmg.us/content/dam/global/pdfs/2021/2021-us-ceo-outlook.pdf> (surveying 500 CEOs at large

and are emphasizing (and marketing) their digital, consumer-centric products and services,³⁷ and the new digital roles and functions within their companies that help them with DT.³⁸ These dynamics are logical consequences of the competitive advantage that DT brings to an enterprise, including improved product or service delivery models and data driven insights and analytics that facilitate better strategic and functional decision-making.³⁹

Despite the high levels of enterprise investment in DT, the profound changes being wrought because of it, and the volumes of scholarship written on it, there is no universally accepted definition of what DT is.⁴⁰ One literature review identified 23 unique definitions⁴¹ while our literature review identified 43.⁴² Although there

companies across the globe and finding that 54% of CEOs plan to invest in digital transformation, customer centric tools, and technology).

37. GROSSMANN & WILKINS, *supra* note 35, at 4; EY, *supra* note 29, at 1; Despite this increase in investment and attention, digital transformation is not happening as rapidly as one might assume. Few organizations adopt technologies effectively. For instance, research on US companies found that only 29% say they are good at connecting analytics to action. Brian Hopkins, *Think You Want To Be “Data-Driven”? Insight Is The New Data*, FORRESTER (Mar. 9, 2016)

https://go.forrester.com/blogs/16-03-09-think_you_want_to_be_data_driven_insight_is_the_new_data/; A recent study of 5,000 companies worldwide across 18 industries found that less than 30% of all business processes across industries are digitized and that digitization is still in the very early stages across most companies. TRIANZ, STATE OF DIGITAL TRANSFORMATION WORLDWIDE: 2020, at 15 (2020), <https://www.trianz.com/pdf/state-of-digital-transformation-worldwide-2020-Others>; *id.* at 18 (reporting that “[m]ore than 70% of companies don’t yet understand the meaning or significance of ‘digital-KPIs’—leading success/failure indicators that show the adoption rate and effectiveness when rolling out new business models and processes”); *id.* at 28 (“Less than 30% of business functions have deployed predictive analytics while more than 40% of Digital Champions rely on advanced analytics for R&D, marketing, legal and service management”).

38. KANE ET AL., *supra* note 35, at 18–26 (providing actual survey results from the 2015 Digital Business Global Executive Survey conducted by MIT Sloan Management Review and Deloitte and identifying the new roles including “digital strategists, chief digital officers, digital engagement managers, digital finance managers, digital marketing, digital managers, and digital supply chain managers, among other positions.”).

39. WORLD ECON. F., DIGITAL CULTURE: THE DRIVING FORCE OF DIGITAL TRANSFORMATION 8–10, 29 (2021) (use digital tools and data-powered insights to drive decisions and Customer-centricity while innovating and collaborating across the organization. When implemented purposefully, digital culture can drive sustainable action and create value for all stakeholders).

40. For a comprehensive understanding of DT and the different and conflicting ways DT has been defined see Gregory Vial, *Understanding Digital Transformation: A Review and a Research Agenda*, 28 J. STRATEGIC INFO. Sys. 118 (2019) (surveying 282 works on DT and identifying and analyzing 28 sources offering 23 unique definitions of DT).

41. *Id.* at 119–121; see also Madhu Bala, *Digital Transformation: Review of Concept, Digital Framework, and Challenges*, in THEORETICAL AND EMPIRICAL DEVELOPMENT IN MANAGEMENT AND IT 135–36 (Vijay Prakash Gupta & Deepak Bansal eds. 2018) (identifying 9 different definitions from their literature review and claiming that the varying definitions “emphasize the drastic nature of the transformation that is underway” in terms of time, space, and access); see also Bala, *supra* note 41, at 135 (explaining that digitalization and digitization “are often used interchangeably”).

42. The authors conducted a deeper analysis of how to define DT categorizing 43 unique 1–2 sentence definitions. On file with the authors and available upon request.

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are similarities, definitions vary, and terms are conflated and can sometimes be unclear, circular, or unhelpful.⁴³

While DT would appear from its name to primarily or exclusively involve digital technologies, it encompasses a far broader range of elements, many of which are not digital but are nevertheless critical to its success. These include the process optimizations and upgrades, new and better ways to measure and engage with customers, and importantly, changes to corporate culture, behavior, and organizational structures.⁴⁴ Experts agree that DT is multifaceted. In *The Digital Transformation Playbook: Rethink Your Business For The Digital Age*, David L. Rogers, a member of the faculty at Columbia Business School, and a globally recognized leader on digital transformation, identifies 5 domains of DT: Customers, Competition, Data, Innovation, and Value.⁴⁵ Similarly, the Digital Legal Exchange has developed a DT model for corporate legal departments that encompasses 5 pillars: Purpose & ESG, Client-Centricity, Culture & Workforce, Value Generation, and Data & Metrics.⁴⁶ Regardless of how the facets of DT are categorized, there is agreement that DT involves a lot more than just technology.⁴⁷

43. Vial, *supra* note 40, at 119–21 (finding that its analysis of 23 unique definitions of DT “reveals that circularity, unclear terminology, and the conflation of the concept and its impacts, among other challenges, hinder the conceptual clarity of DT”); Gerald C. Kane, *Digital Maturity, Not Digital Transformation*, MIT SLOAN MGMT. REV., (Apr. 4, 2017), <https://sloanreview.mit.edu/article/digital-maturity-not-digital-transformation/>. (contending that “there’s not much agreement on what that term [DT] means” and “the overuse and misuse of this term in recent years has weakened its potency.”). In order to better understand the sources of this lack of clarity, we conducted our own analysis of 43 unique 1-2 sentence-long definitions. We found that the most critical variation, contributing the most to a lack of definitional clarity, revolves around a failure to describe both the broad impact that DT has and its ultimate purpose. On balance, we considered all of the definitions reviewed to be too narrow in one respect or another.

44. Vial, *supra* note 40, at 122 (explaining that “[o]rganizations use digital technologies to alter the *value creation paths* they have previously relied upon to remain competitive. To that end, they must implement *structural changes* and overcome *barriers* that hinder their transformation effort.”); Jahangir Karimi & Zhiping Walter, *The Role of Dynamic Capabilities in Responding to Digital Disruption: A Factor-Based Study of the Newspaper Industry*, 32 J. MGMT. INFO. SYS. 39 (2015) (discussing the effects of DT on corporate culture); Lisen Selander & Sirkka L. Jarvenpaa, *Digital Action Repertoires and Transforming a Social Movement Organization*, 40 MIS QUARTERLY 331 (2016); Fredrik Svahn et al., *Embracing Digital Innovation in Incumbent Firms: How Volvo Cars Managed Competing Concerns*, 41 MIS QUARTERLY 239 (2017); Ryan McManus, *7 Tools for Building a Digital-First Business Strategy*, DUKE CORP. EDUC., <http://www.dukece.com/insights/7-tools-digital-strategy/> (last visited July 25, 2021).

45. DAVID L. ROGERS, *THE DIGITAL TRANSFORMATION PLAYBOOK: RETHINK YOUR BUSINESS FOR THE DIGITAL AGE* 1-19 (2016).

46. Professor Michele DeStefano co-developed the DLEX DT Model with Reena Sengupta, Managing Director RSG Consulting, Membership Experience Advisor of DLEX and former Executive Director of DLEX. With other members of the DLEX, they refined the model after workshoping it with several in-house legal teams from multinational corporations including GSK, Lazada, Pearson, Rio Tinto, and Vodafone.

47. See, e.g., Vial, *supra* note 40, at 118; Anandhi Bharadwaj et al., *Digital Business Strategy: Toward a Next Generation of Insights*, 37 MIS QUARTERLY 471 (2013); Christian Matt et al., *Digital Transformation Strategies*, 57 BUS. & INFO. SYS. ENG'G 339 (2015).

Our objective is not to harmonize these many definitions of DT or arrive at a universal source of definitional accuracy. Suffice it to say that the term is broad and multifaceted, encompassing a range of aspects depending on the context in which it is used.

However, for the purposes of this article, we consider it to mean: *a customer centric, cross-functional, change journey that leverages technology, skills, data, and metrics to evolve an organization's business and operating model to create (and capture) new forms of value.*⁴⁸

A. Current Status of Digital Transformation in Corporate Legal Departments: Eager but Not Ready

The impetus for legal department DT started in the early 2000s when the breadth and complexity of work undertaken by departments increased as a consequence of a number of macroeconomic trends, including globalization, digitization, and the emergence of disruptive technologies.⁴⁹ Economic globalization significantly increased the difficulty of running a legal department, at both the organizational and individual levels.⁵⁰ It forced multinational legal departments to address a range of complex new legal issues across multiple markets. As they expanded their operations, developing global workforces, markets and complex supply chains, the volume of legal matters and the impact they could have on the business grew.⁵¹ Environmental issues, labor disputes, and antitrust investigations in one market began to have spillover effects in other markets.⁵² These dynamics increased the demand for more effective legal support.

At the same time as demand for legal services increased,⁵³ the emergence of e-commerce, digital platforms, and disruptive network effects lowered entry barriers across many markets and enabled new entrants to scale rapidly.⁵⁴ This increased volatility of the marketplace and squeezed corporate profits, forced incumbent companies to transform.⁵⁵ That, in turn, placed pressure on corporate legal

48. The authors conducted a deeper analysis of how to define DT categorizing 43 unique 1-2 sentence definitions. On file with the authors and available upon request.

49. See Bjarne P. Tellmann, *Digital Transformation and the Legal Industry*, ACC DOCKET (Sept. 28, 2020), <https://www.accdocket.com/digital-transformation-and-legal-industry>; see also Tellmann & Sneider, *supra* note 14.

50. See TELLMANN, *supra* note 9, at 34–36.

51. See *id.* at 38; see generally Heineman Jr., *supra* note 10.

52. See TELLMANN, *supra* note 9, at 36.

53. See Jae Um, *#BadData, Part 1: (Topsy Turvy) Demand for Legal Services (279)*, LEGAL EVOLUTION (Dec. 12, 2021), <https://www.legalevolution.org/2021/12/baddata-part-i-toppsy-turvy-demand-for-legal-services/>; D. Casey Flaherty et al., *LexFusion's Legal Market Year in Review (280)*, LEGAL EVOLUTION (Dec. 26, 2021), <https://www.legalevolution.org/2021/12/lexfusions-legal-market-year-in-review-280/>.

54. See TELLMANN, *supra* note 9, at 42.

55. See Um, *supra* note 53.

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departments to do more—and more complex—work, with the same or fewer resources. Without transformation, legal departments simply could not keep up with the work with the same budget.⁵⁶ The traditional market, dominated by large law firms, failed, in part, to respond to many of these new demands,⁵⁷ causing GCs to seek alternative solutions. In response to this demand, new entrants developed, refined, and scaled new technologies that promised to help legal departments lower costs and improve their operational efficiency.⁵⁸ Over time, these solutions migrated from lower-margin process optimization tools to more sophisticated higher-margin substantive solutions. And gradually, GCs of legal departments attempted to implement some of these tools within their departments.

Given the above dynamics and the growing breadth, importance, and impact of DT at the enterprise level, GCs are under growing pressure to do more than modernize the legal department's technology. They are being pressed to implement departmental level DT in order to move the legal department from a cost center to a value center.⁵⁹ It is no longer sufficient for the legal department to remain separate from the rest of the MNC, responding reactively when legal problems arise. Instead, our interviews and experience working with MNC legal departments and DT makes clear that, in today's corporate environment, legal functions are expected to digitally transform in harmony with the MNC itself in order to deliver services that, in addition to being efficient and cost-effective, are as follows: increasingly proactive, client and customer centric, data and metrics driven, tech-enabled, collaborative and agile, purpose-focused, and, where possible, revenue generating.

When done correctly, a digitally transformed legal department can add enormous value to the MNC. One example of this is DXC, a US-based multinational that focuses on business-to-business information technology services. As reported

56. William Henderson, *The Legal Profession's Last Mile Problem*, LAW.COM (May 26, 2017, 4:15 PM), <https://www.law.com/sites/almstaff/2017/05/26/the-legal-professions-last-mile-problem/>.

57. See David B. Wilkins & Maria José Esteban Ferrer, *Taking the "Alternative" out of Alternative Legal Service Providers*, 5 THE PRAC. 1, 4–5, (2019), <https://thepractice.law.harvard.edu/article/taking-the-alternative-out-of-alternative-legal-service-providers/>.

58. See TELLMANN, *supra* note 9, at 41–44; Bill Henderson, *In-House is Bigger than BigLaw (262)*, LEGAL EVOLUTION (Sept. 30, 2021), <https://www.legalevolution.org/2021/09/in-house-is-bigger-than-biglaw-262/>.

59. For a good discussion of the importance of moving legal departments from cost centers to profit centers, see Markus Hartung, *Reflexionen über den Rechtsmarkt: Profit-Center [Reflections on the Legal Market: Profit Center]*, BECK-AKTUELL HEUTE IM RECHT (July 15, 2021), <https://rsw.beck.de/aktuell/daily/magazin/detail/profit-center> (Ger.); see also GROSSMAN & WILKINS, *supra* note 35, at 15 (reporting that “CEOs’ priorities for 2021 suggest that law departments will be under significant pressure to think and act differently for the foreseeable future. While cost control is certainly on the agenda, maximizing the legal function’s value to the organization appears most important to CEOs. Enabling growth and the business more broadly will be hugely important in the next 18 to 24 months as the global economy rebounds. Helping transform risk management so that companies can adjust to new realities and protect from future difficulties will also be crucial”); see also VEITH ET AL., *supra* note 12, at 1.

in the Financial Times, DXC's legal department, as part of the company's recent two-year DT journey, contributed to a 20% increase in new business generation by improving its contracting processes.⁶⁰ "Being a digitally-enabled legal function delivered significant impact to DXC's bottom line," notes DXC's GC, Bill Deckelman. "We reduced our overall legal spend by 35 percent in the first year of our transformation, followed by continuing year-over-year cost reduction while dramatically improving our speed-to-contract."⁶¹ Another example (one provided by one of our interviewees) is the legal department identifying revenue opportunities by analyzing contracts with clients to gauge how much product a client is using and opt for renegotiation to sell more product as opposed to auto-renewal. Yet another example is creating a new revenue line altogether by using data and know-how related to new regulation and selling it (e.g., via legal templates) to other companies in need of similar regulatory legwork and information. This is something that legal departments, as opposed to other departments, are uniquely positioned to do. As this GC interviewee (who, like Deckelman, is advanced in leading DT inhouse), explained: "With DT, corporate legal departments can be the first middle-to-back-office department at a company to create a revenue line. Others can't do it. Accounting, finance, HR, Operations can't do this, but a corporate legal department can because it is a collage of knowledge workers and it can sell this knowledge."⁶²

Our canvas of the secondary literature (along with our interviews) indicates, however, that most GCs are not as far along in their DT initiatives as Deckelman and the GC interviewee quoted above. Although GCs are attempting to digitally transform their legal functions,⁶³ there remains a gap between the objective and the reality. According to the literature, despite their intentions and efforts, most in-house legal teams are failing to keep pace with the complexity and accelerating rate

60. Reena SenGupta, *In-House Legal Teams Take the Lead on Speed and Spending*, FIN. TIMES (Dec. 12, 2017), <https://www.ft.com/content/a7b75088-d153-11e7-9dbb-291a884dd8c6>. Note: As Professor William Henderson, one of our readers, pointed out, DXC is somewhat unique in that their core business is enabling clients to outsource IT. As such, they had an advantage in that their culture was enabling, and the C-Suite was already supportive of the proposed style and pace of change recommended by the legal department.

61. Clare Rodway, *Digital Legal Exchange Builds Momentum Following First Quarter Launch: Initiative to Accelerate Digital Transformation of Corporate Law Departments*, BUS. WIRE (June 16, 2020, 3:00 AM), <https://www.businesswire.com/news/home/20200616005283/en/Digital-Legal-Exchange-Builds-Momentum-Following-First-Quarter-Launch>.

62. Interview with Anonymous Interviewee #25, Grp. Legal Chief Operating Officer, multinational inv. bank and fin. serv. co.

63. See Mark A. Cohen, *Minding Law's Digital Gap: It's Real, It's Big; And It Matters*, FORBES (July 21, 2021, 5:52 AM), <https://www.forbes.com/sites/markcohen1/2021/07/21/minding-laws-digital-gap-its-real-its-big-and-it-matters/?sh=726065c3af6d> (noting the legal industry's "digital gap" and referring to the C-Suite's "clarion call for a digitally transformed legal function" and noting that GCs are "first responders."); KPMG, *supra* note 11, at 3.

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of DT. This was true before the pandemic,⁶⁴ and it appears to remain true today.⁶⁵ A 2020 Legal Operations Maturity Benchmarking Report comprising responses from over 300 legal departments across 29 industries and 24 countries (with corporations ranging from the millions to the tens of billions of US dollars in company revenue), found that most organizations do not have a digitally mature legal department, lacking essential elements including sophisticated legal operations teams, process improvement, data capture, or technology usage.⁶⁶ They have failed to optimize workloads, headcount, or work allocation—all of which are key components of DT at the legal department level and essential for high quality work and client satisfaction.⁶⁷ According to a recent Global Legal Department Benchmarking Report compiled by the Association of Corporate Counsel (ACC) (a key in-house legal trade association), and Major Lindsey & Africa (a prominent legal recruiter), approximately 90% of document management and review, contract management review and drafting, and invoice review, is done in-house.⁶⁸ And over 60% of that work is done by lawyers themselves.⁶⁹ In other words, many in-house lawyers continue to spend too much time on low value work that could be done more efficiently with the help of technology.⁷⁰ Even though DT can streamline processes, decrease intake time, and divert lawyer time away from such work, nearly 60% of

64. Rob van der Meulen, *Gartner Says 81 Percent of Legal Departments Are Unprepared for Digitalization*, GARTNER (Dec. 12, 2018), <https://www.gartner.com/en/newsroom/press-releases/2018-12-12-gartner-says-81-percent-of-legal-departments-are-unprepared-for-digitalization>.

65. Joshua Lenon, *Are Lawyers Essential Workers in Your State?*, CIO, <https://www.cio.com/blog/lawyers-essential-services/> (Jan. 25, 2022); Lyle Moran, *Law Firms Are Considered Essential Businesses in Some States Amid the Coronavirus*, ABA J. (Mar. 26, 2020, 10:53 AM), <https://www.abajournal.com/web/article/lawyers-considered-essential-workers-in-some-states-amid-coronavirus>; see also Cohen, *supra* note 15 (“Legal can no longer operate as an insular, self-contained department; it must function as a proactive, data-driven, integrated pan-enterprise, holistic risk mitigating, agile business unit.”).

66. ASS’N OF CORP. COUNS., *supra* note 22, at 6–10 (assessing legal operations and defining legal operations as “optimizing legal services for the corporation . . . rooted in business fundamentals, leveraging processes, data and technology.”).

67. ASS’N OF CORP. COUNS., 2019 GLOBAL LEGAL DEPARTMENT BENCHMARKING REPORT 6 (2019), https://www.acc.com/sites/default/files/2019-06/ACC_Benchmark_062019.pdf (“Optimizing headcount is essential not only for effective legal coverage and product quality but also for internal client satisfaction and to operate in a proactive rather than reactive state.”); *Id.* at 10 (“Just as headcount and spend are intimately tied to one another, having a better understanding of current workload and work allocation directly affects proper optimization of headcount and spend.”); see also *id.* at 19 (reporting that legal departments rank work allocation as second to last in importance).

68. *Id.* at 11.

69. *Id.* at 12 (reporting that over 70% of document management and review, and contract management and review, is done by lawyers, 64% of legal operations is done by lawyers, and 45% of records management done by lawyers).

70. GROSSMAN & WILKINS, *supra* note 35, at 9 (noting that 57% of business development leaders say that “inefficiencies in the contracting process have resulted in lost business.”).

legal departments have yet to adopt any technology in these areas.⁷¹ Approximately one in every three legal departments self-report that they lack the necessary technology to do their work,⁷² and roughly 70% do not have a legal technology budget.⁷³ Of the 15 legal operations functions identified in the global 2020 ACC Legal Operations Maturity Benchmarking Report referenced above,⁷⁴ the four lowest-ranked in terms of maturity⁷⁵ were all essential for the effective DT of legal departments.⁷⁶

Survey data (along with our interviews) indicates that GCs are aware of these gaps⁷⁷ and they recognize the need to invest more in DT.⁷⁸ Unsurprisingly, in-house lawyers are dissatisfied with this status quo. For instance, in the Global Legal Benchmarking study cited above, they rank the use of technology to streamline processes and reduce time on low-value work as a top-10 strategic priority, yet these are also the areas they rank as least satisfactory.⁷⁹ The same is true when it comes to legal intake and measuring, managing, and tracking work allocation—in-

71. ASS'N OF CORP. COUNS., *supra* note 67, at 15 (reporting that contract management and document management is at about 40%; matter management is at 31.3%; eBilling at 27.2%; knowledge management is at 16.1%; analytics is at 14.2%, eDiscovery is at 12.6% for collections and processing and 8.9% for analysis and review).

72. GROSSMAN & WILKINS, *supra* note 35, at 8 (reporting also that “[o]nly 50% of law departments, for example, report they have made greater use of technology in the past 12 months.”).

73. ANDREAS BONG & STUART FULLER, KPMG INT’L, GLOBAL LEGAL DEPARTMENT BENCHMARKING SURVEY 29 (2021), <https://assets.kpmg/content/dam/kpmg/xx/pdf/2021/03/global-legal-department-benchmarking-survey.pdf> (noting that “[t]here were no significant differences between large and small companies with no budget. Of those that had a budget, the average amount was US \$248,041.”).

74. These include change management, compliance, contract management, eDiscovery & litigation management, external resources management, financial management, information governance (records management), intellectual property management, internal resources management, knowledge management, metrics & analysis, process & project management, strategic planning and technology management). ASS’N OF CORP. COUNS., *supra* note 22, at 7.

75. These were metrics & analysis, change management, e-discovery & litigation management and innovation management. *Id.* at 10.

76. *Id.* at 10–11; Also, interesting, “legal departments based outside of the U.S. perform better in Innovation Management, Knowledge Management and Process and Project Management” than those in the U.S. *Id.* at 21.

77. WOLTERS KLUWER, *supra* note 9, at 4.

78. See, e.g., BONG & FULLER, *supra* note 73, at 35; see also WOLTERS KLUWER, *supra* note 9 at 12 (reporting that 60% or more of legal departments recognize that they need to invest more in DT and that their top priorities are to “reduce/control outside legal costs, improve legal operations, and legal project management and provide strategic value to their company” and that 75% or more expect the top changes in legal departments in the next three years will be greater use of technology to improve productivity and increased emphasis on innovation.”); *Id.* (“Further 51% expect to increase their technology investment over the next three years.”).

79. ASS’N OF CORP. COUNS., *supra* note 67, at 19.

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house lawyers rank these as top 10 priorities, but they come in second and third to last in terms of satisfaction.⁸⁰

In sum, in-house legal departments are eager to digitally transform but many are not quite ready to do so, and they recognize it. If this is correct, what is driving the gap? Our hypothesis is that a primary cause is how the DT journey is approached. We find that the journey is typically disjointed, with legal departments evolving gradually and somewhat peripatetically. We believe this approach is debilitating and misguided in multiple ways and most especially because of how the journey begins. It starts with a laser focus on the *digital* in DT (i.e., the technology) instead of the *transformation* aspects of DT and this focus is pointed inward on the legal department as opposed to externally and inclusively with the business. We will now consider in greater detail how the typical in-house legal department's DT journey unfolds.

B. Legal Departments' Current DT Trajectory: A Three-Phased Digital Maturity Framework

As the prior section addressed, in-house legal departments are behind in their digital transformation initiatives even though they are aware of its importance—and they are under increasing pressure to accelerate their DT journeys. How do GCs typically approach DT? As there is little academic scholarship and research that carefully considers this question, we draw upon our own interview data and our relevant professional experience⁸¹ and secondary research, to investigate this.

Although the DT journey of each department is unique in the sense that it is influenced by its specific circumstances, industry dynamics, and base levels of maturity, we find certain commonalities in the order and manner in which our GCs are approaching DT. Based on these commonalities, we identify a Three-Phased Digital Maturity Framework that maps the corporate legal department DT trajectory across three maturity phases that we find legal departments typically experience in DT.⁸² Before delving into the three phases in detail, here is a brief description of each:

In Phase 1, the department acquires technology in a tactical and *ad hoc* manner, motivated by a desire to improve efficiency or reduce costs. Organizations going through this phase typically lack both a deeper understanding of the underlying problems they are trying to solve and a coherent strategic resolution framework.

During Phase 2, the objective moves from creating isolated pockets of departmental efficiency to harnessing DT more holistically and systematically. Legal

80. *Id.*

81. For further discussion of the primary interviews conducted by and the professional experience of the authors, see *supra* note 17 and accompanying text. See also Appendix A.

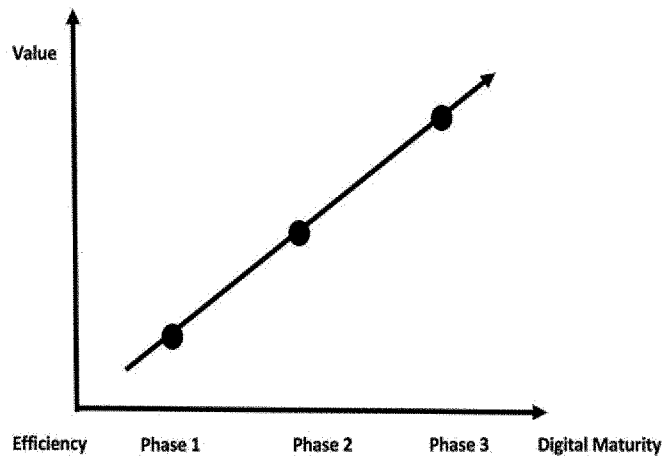
82. See Tellmann, *supra* note 49; see also Tellmann & Sneider, *supra* note 14.

departments realize that, in order to reduce costs and generate desired efficiencies across the department, they must identify and prioritize the services they provide, uncover bottlenecks, and redesign their workflow and optimize their processes. During this phase, the organization typically develops a strategic vision that unifies their technology estate around optimized processes and articulates an end-state vision and service delivery model that is focused on the sought-after efficiencies and cost reductions. As in Phase 1, the focus is inward-looking, focusing on the legal department's processes, tools, resources, systems, and structures, with a view toward increasing efficiency and enhancing the user experience within the department.

In Phase 3, the legal department begins to focus on improving the experience, not only of the legal professionals working within the department, but also of the client base, and potentially even external customers and suppliers. Further, as the redesigned delivery model matures, a data-centric value proposition emerges, enabling the organization to generate analytics and insights that add value in ways that go beyond merely reducing transaction costs or improving efficiency. Legal leaders begin to see the true value of DT which are insights from the data that they can now integrate with data captured elsewhere in the MNC, allowing them to better partner with and serve the business and provide new sources of value. Phase 3 GCs realize, however, that these new sources of value can only be harvested with new ways of working, new skill sets, and new mindsets. Importantly, Phase 3 GCs are now focused on the transformational aspect of DT and embrace the notion that its success is their responsibility. They belatedly begin to realize the change management aspects of this journey and seek to address change-related problems that hamper the transformation.

While not all legal organizations reach Phase 3, we find that as organizations mature across the phases, the changes they undergo in terms of process optimization, better behaviors, and a more dynamic culture in turn drive increases in operational agility and adaptability.

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1. Phase 1: The “More for Less” Dynamic and Ad-Hoc Acquisition of Tech

Phase 1 typically begins when GCs begin to acquire new technologies to lower costs and become more efficient. GCs in this phase understand that digital transformation is happening both in their MNCs and in the broader business and legal environments in which they operate and know that they need to embrace it. On a scale from 0-10, they might rate digital transformation at an 8 or 9. For example, a typical response from a GC in this phase was:

I'd say [on a scale from 0-10] it is at about an 8 in terms of importance. But I don't care if people know or think that my legal department has digitally transformed. I want my clients to know I am efficient, but I don't need external recognition. . . We need tools to help us be more effective and efficient and to collaborate more effectively internally in a global law department.”⁸³

In this phase (as discussed in more detail below), GCs mistakenly believe DT is mostly about technology, and automation. As our GC interviewees explained, for

83. Interview with Anonymous Interviewee #2, Gen. Couns. of an Am. multinational Glob. 500 and Fortune 500 corp. operating in many fields, including health care and consumer goods.

them, going digital means “technology stuff for efficiency”⁸⁴ or “sensibly using tech to make the department a more effective and efficient provider of legal services”⁸⁵ to enable them to spend more time on the strategic work that matters. At this stage, DT is about better understanding why they pay what they pay to settle cases e.g., applying data to a group of mass tort cases to be more efficient, or creating a repository of global agreements, or providing self-help tools to the business to enable them to get answers to basic, often repetitive, questions. This is their concept of DT. As such, they are not yet particularly concerned with developing a real plan and strategic vision—or if they are, they are convinced that it is not currently possible.⁸⁶ Although they may understand that it is their responsibility to help support and even build the business, they are not too concerned with proving or measuring the legal department’s value—at least not the way a business professional would. Instead, they believe the department’s value is intrinsic and understood and appreciated by their internal clients. They believe most internal clients would agree that the in-house department is responsive, provides qualitative legal input, is solution oriented and risk tolerant, and provides useful guidance. Further, they believe that it would be very difficult to objectively measure the law department’s value. As one GC interviewee explained,

It is not like we have a P&L. It doesn't work that way. It depends on how you keep score. We have a budget and budget performance is one of our KPIs. It's not like when we get a good result, we get to take credit on it in our P&L. It is also true in an adverse situation: we don't have to take the verdict in our P&L. If we try a case and there is a horrible outcome, e.g., we settle for a billion dollars, this is not going to be a good day, but it could be as much to do with a difficult situation as with advocacy or lack thereof. . . It is really hard to do objective measurements of law department value. We do surveys. . . Generally, our clients love us.⁸⁷

In this phase, GCs are mostly focused on individual, project-based, or use-case technology enhancements. For example, in an effort to better control cost on external law spend, a GC might purchase a new e-billing technology or sign up for an e-bidding platform. Then to streamline internal workflow and gain better oversight and collaboration of internal matters and teams, a GC might invest in a workflow or matter management tool. And to increase knowledge sharing and data

84. Interview with Anonymous Interviewee #12, Gen. Couns. of a large, Glob. 500 and Fortune 500 def. contractor.

85. Interview with Anonymous Interviewee #2, *supra* note 83.

86. Interview with Anonymous Interviewee #4, Gen. Couns. of an int'l Glob. 500 chem. producer.

87. Interview with Anonymous Interviewee #2, *supra* note 83.

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management, a GC might purchase a document management system or invest in a cloud contract management system. The department might also acquire an AI-based technology to make better decisions about settlement (perhaps not understanding the role of data lakes or that the AI has to be trained).

At this point, therefore, the DT journey is *ad hoc*. GCs believe they are helping their departments begin on the DT journey. They believe they are forward thinking and that they are responding to the needs of department professionals who are “on the ground telling [them] there might be more,” something better, convincing them to “mov[e] to a new shiny thing.”⁸⁸ However, they are often left in the discovery stage, exploring a multitude of opportunities without yet understanding how to effectively use what is on offer and how to piece together a coherent, strategic vision. Others have the wherewithal but lack the support, or the budget, or time, or the culture to take anything but a piecemeal approach. As one GC explained:

There are two ways to go about it: You can do the big lead like DXC and then there is the piecemeal approach, and you have to have a pioneering culture to do the big leap or a good opportunity to merge costs like in DXC. I have definitely promoted this in my company, but I feel that there is a hesitation for a global company. . . So why not do a piecemeal approach? We, in our company, will likely be in a piecemeal approach, not just talking tech but identifying opportunities and use-cases where we can reach out to tech providers and service providers to see how they can help and what they can help with and identify use-cases, step by step . . . I mean, I would love to do something like the Ulex approach, but it is not for a global corporation like us. The resistance is from the lawyers right now. We haven't even talked to the business.⁸⁹

And as this GC explained, the piecemeal approach is easier because it does not require universal buy-in:

So, if you really want to elevate the legal function, you need to have a top down . . . and an integrated approach - not only a legal approach but [an] overall enterprise approach. This is why the piecemeal approach seems easier. We have a venture with an oil company and 500 contracts, and it is a mess. We need to get better at contract management. I am getting someone to write a playbook and manage the claims and rights and obligations. You don't have to talk to the business; you do it and provide it. Yes, it is a piecemeal approach, not fully integrated with

88. Interview with Anonymous Interviewee #7, Gen. Couns. of an int'l Glob. 500 and Fortune 500 distributor. of IT products.

89. Interview with Anonymous Interviewee #4, *supra* note 86.

overall enterprise. But it is difficult to sell [a more holistic approach] to the business.⁹⁰

Another GC agreed, explaining that “people suffer from the fear syndrome.” For example, he would like to “stop the work altogether” and “centralize the work in a volume machine and reduce costs” but because he can’t get the buy in, he will “take an intermediate step: a low touch, automated solution where we will standardize treatment of those contracts with 20 people instead of 50 people and then lower the rate of the attorney.”⁹¹ Further, he emphasized the importance of starting small and narrow and focusing on where there was an unarguable burning need:

We are most successful when we have a narrow approach and roll-out is centralized like with ethical compliance . . . When you have a narrow scope with resources and a burning platform, a real need, we have success. But when it is loopy, not so much.⁹²

A way to understand the GC’s approach to DT in this phase is to imagine a homeowner who is seeking to upgrade their kitchen. Like the GC, the homeowner is taking a piecemeal approach as opposed to entirely remodeling (which would be much more expensive and a much bigger hassle and inconvenience). The homeowner begins making decisions motivated by a range of desires, all loosely centered around the urge to reduce the time it takes to make meals and the desire to extend the range of activities made possible by the kitchen. The homeowner discovers a plethora of exciting new kitchen utensils, tools, and gadgets. For example, the homeowner comes across a bread maker. They didn’t have these 10 years ago, the homeowner thinks. And wouldn’t it be healthier and easier if we could make our own bread? So, the bread maker is bought without much thought to the household demand for bread, alternative sources of quality bread, the level of experience or skill needed to properly use the machine, or the amount of available counter space it will consume. The primary motivator is a generalized vision of perfect bread that the homeowner imagines they will make for breakfasts and lunches.

Little thought is given to the fact that the family’s members mostly eat cereal for breakfast or skip food altogether in the morning. Nor does the homeowner reflect on the fact that few family members are at home for lunch most days of the week. Some are gluten-free and none are tech savvy—and this bread maker is complicated and requires training and practice to actually bake great bread. After

90. *Id.*

91. Interview with Anonymous Interviewee #7, *supra* note 88.

92. *Id.*

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purchasing the bread maker, one of the homemaker's children suggests that they change their stove from an electric one to a gas one as it will save money in the long run and be more efficient. A pot of water is brought to boil much faster. The new stove is placed far away from most of the usable counter space and on the opposite side of the kitchen from the refrigerator. It is placed there because that is where the gas lines enter the room. Not much thought is given to whether a gas range is actually needed or whether an induction stove, which could have more easily been placed anywhere, might have achieved the same results with greater configurability. Little consideration is made as to how simple it will be to move food items from other parts of the kitchen to the location of the new stove. The current countertop is made of wood; and although it is sturdy and has lasted for decades, it is also an eye sore. So the homeowner installs white marble countertops throughout the kitchen, primarily motivated by a desire to give the kitchen an airy and expensive "look." No thought is given to practical aspects, such as the extent to which the stone will stain if exposed to certain foods and how that might impact the actual cooking needs of the household.

Similar decisions are made with the other equipment and their overall layout in the room. Purchases are made based on desires of individuals and sometimes divorced from real needs. Pain points in the current layout are not fully understood, and no effort is made to reverse engineer the workflows that take place when meals are prepared. Kitchen technology is acquired based on the lure of individual features of each item; there is no overarching thought given as to what the slightly remodeled kitchen will be designed to do or how the various new features and investments should come together as a whole. The result is a collection of equipment and features, each of which in the singular is lovely (if the family knew how to use it or desired to use it) but none of which, in the aggregate, helps fundamentally solve the household's needs.

Eventually, the homeowner realizes that the kitchen is not well designed for the household's actual needs. The layout is not conducive to cooking habits. Chopped vegetables and meat must be carried from distant counters that need to be continuously cleaned during cooking to avoid stains. And the countertops, that are desperately needed for food preparation, have been displaced by large stand-alone items that are rarely used, such as the bread maker.

This is exactly how the in-house legal department looks during Phase 1. Decisions have been made about various technological tools based on their individual features and individual desires,⁹³ but there is no overarching thought given as to

93. As Professor Bill Henderson, one of our readers, notes, another major issue is that technology vendors often over-promise what their tools are capable of doing. In-house professionals, who are often under time and other pressures, fall prey to the hope that a particular tool will solve their problem — akin, perhaps, to how consumers fall for diet pills. This also serves to drive the *ad-hoc* approach to technology acquisition so characteristic of Phase 1.

how the various new investments should come together as a whole. The result is a collection of new tools, some of which might be effective but none of which, in the aggregate, fundamentally solve the legal department's—nor the business'—needs. Unsurprisingly, during this phase, GCs can become disenchanted with the whole idea of DT. This is because the tools that they have invested in often fail to provide the desired results and sometimes even create new pain points. For example, they might find that their new matter management tool may be technically useful, but few lawyers actually use it for various reasons including not knowing the tool exists or how to use it, not being willing to learn or change due to old habits or mindsets. Worse yet, often the tool is not intuitive, doesn't integrate seamlessly with other department systems, and has poor user interfaces, or it is not fit for purpose.⁹⁴ Other examples might include a timekeeping tool that does not track the time if a computer is plugged in to multiple monitors and that only tracks in increments and categories that would make sense for a law firm but not for a legal department. Or a contract management system lacks the most up-to-date templates and contracts because the lawyers still keep their most recent versions on the hard drives of their individual desktops.

The GC interviewees in this phase often expressed that they were frustrated and overwhelmed. They made clear that they needed help understanding all the tools that are out there so that they could make the right choices and/or leverage the right tools they already had in order to create efficiencies. As one GC explained:

There isn't really much out there and what is out there is overwhelming because I don't know how to navigate it. It is a big challenge. There are 10 applications being used in these different practice areas and it is not really connected, and we are more busy managing the applications than getting the productivity. We have a contract life-cycle management tool and we have been trying for two years, and we are not there yet and not rolling out to the business yet. . . The legal tech out there is not easy.⁹⁵

GCs in this phase crave an efficiency map that outlines where their processes can be enhanced or automated by technology and helps them prioritize which to focus on, when and how. But they don't know how to start such a process redesign or optimization. As such, the GCs remain in a quasi-state of disbelief and approach DT in a patchwork fashion. The following statement by a GC interviewee aptly brings this to life:

94. Interview with Anonymous Interviewee #2, *supra* note 83 (“I keep telling tech vendors it is all about the user interface. We have a matter management tool that may be technically useful but only a handful of our lawyers are comfortable using it — not like they are using Apple and Google that make tech user interface good.”).

95. Interview with Anonymous Interviewee #4, *supra* note 86.

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I'm not saying the sky is falling but when we look under the hood of most organizations, we don't have processes. . . There are not enough bright spots to prove we can execute against the plan. Once we have that, then we can take the quantum leap. But right now, it is just patchwork. . . I definitely don't have the answers, only half the answers. I'm more focused on the questions. . . I want a process, systems, and a playbook. Until I see that . . . and 80% works[]? I'm not going to suspend disbelief.⁹⁶

And there is no question that time is a limiting factor. As this GC explained, when he was in this phase, he would have preferred a strategy to run the legal department like a business, but he hadn't been "able to form the view of the strategy of the legal department. It is easy to ask: what is your strategy? But among all I have to do, there is little time for transforming the department."⁹⁷

At this point, many are not convinced that the process will be worth the financial and time investment or that lawyers will really follow through on it; or that internal clients will really want it, be satisfied with it or recognize the legal department for it. There is a concern that such investments will merely add costs to the bottom line and take time away from doing actual legal work. It begs the question: how do the legal department leaders spend their limited political capital? As one GC explained:

When we tried to push back in the business, related to contracts in the context of a reorganization the company did 3-4 years ago, we said our contribution to the re-org is that we stop doing the [low-value] work. There is little value and we don't need it. We know the risk, just sign whatever the vendor puts in front of you. The decision will be made on business drivers not on the terms of the contract. They pushed back: 'no, no, no, I don't sleep at night if someone is not reviewing the contracts.' It is as if there is some type of mythical value of contracts. NDAs are the most overstated documents of our profession. We don't see how people respect them. Some do but most don't (like private equity and banks). There is not a lot of adherence to the letter or spirit; but for whatever reason, it needs to be papered. We need a paper to exchange information and we need it to cover us; and because everyone does it, so we do. And we don't have the fortitude to say 'no, we are not doing it again' and to stop. So we automated NDAs and it is sort of self-service and even that is taking time to roll out because of the resistance.⁹⁸

96. Interview with Anonymous Interviewee #7, *supra* note 88.

97. *Id.*

98. *Id.*

Another GC described the resistance by lawyers in the legal department “Lawyers say ‘people like me, why do I need to change?’ I have to explain, this is how it works, i.e., why they need to change. It’s always an issue dealing with lawyers who get into every detail and ask this question and that question: 9 lawyers 10 opinions.”⁹⁹

Yet another GC described the resistance by both her own lawyers and the business:

*The resistance is from the lawyers right now . . . and also the business. Very difficult. In general terms and conditions, we go back and forth with our suppliers. They don’t like ours; we don’t like theirs. The risk of battle of forms. Why don’t we do an app like an Amazon app that people can click through something and they end up with a contract and the small print runs smoothly.*¹⁰⁰

Some GCs in this phase have taken the step of hiring a legal operations professional. However, internal resistance impairs potential progress. One GC explained that although her new legal operations professional’s directive was to create benchmarks and uncover where and how to achieve deep process improvements, her legal team was resistant—both to the new employee because they were not a lawyer and to the entire process. Another GC had a similar experience:

*I have someone that is doing legal ops, but it has grown out of litigation. It is a low-profile role. We just developed a legal ops and innovation role at a global level, but it is difficult because the concept and notion of legal ops outside the U.S. is a little different. They gave someone the hat that he doesn’t want. Therefore, I have to do the stuff no one else wants to do.*¹⁰¹

And law firms don’t make it easier. Many GCs are fed up with their law firms. As one GC explained:

My problem with legal tech is that I talk to law firms and they are even more behind than I am and so there is no one out there that can help me navigate all these tools. There are a few advisory firms but I’m lacking that outside help. . . I wake up wondering how to keep up with the pace

99. Interview with Anonymous Interviewee #3, Gen. Couns. of a global Fortune 500 health serv. org.

100. Interview with Anonymous Interviewee #4, *supra* note 86.

101. *Id.*

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and keep up with tech challenges and how to navigate them, but the law firm just sends me hours for stupid lawyers.¹⁰²

Another described the situation with law firms as follows:

We have several close encounters of the 3rd kind; and we peel the onion and peel the onion, and there is nothing there. It is smoke and mirrors. For example, with our data governance work, we did a RFP and invited firms and they all promised the moon. When we asked [the firm] to break it down to time, people, activities, and the proprietary software you claim to have and [they don't] and there is none. So, skepticism is formed.¹⁰³

Much like the homeowner discussed above, in Phase 1, the GC lacks the energy, departmental commitment, investment levels, or corporate support to do a full remodel and is stuck in a partly remodeled legal department that has failed to improve cost or efficiency dynamics. Rather than enhancing efficiency, the technology purchases have, in some cases, actually worsened the situation by imposing new, poorly integrated, processes and routines that complicate existing service delivery models and create dissatisfaction with the internal clients and external customers.

2. Phase 2: Process Redesign and Strategic Optimization

Phase 2 occurs when GCs realize that technology is not in and of itself a solution; rather it is merely a tool that can help to implement a solution. The GCs leading these legal departments are more forward thinking (and further along in their vision for digital transformation) than they were in Phase 1. To them, DT is much more than 'the app that no one wants to use' or a one-off contract life-cycle management or automation effort.

These GCs realize that, to make intelligent technology decisions, they must first clearly identify the problems they are trying to solve. One GC explained why it was painful but worth it to do this:

It's painful, but we have to do it. I'm going to use up x amount of time to see what the problem is to propose a solution or I'm going to continue to do what I've done and then the time adds up. Like learning how to type. It takes an investment up front which yields a bigger investment going forward; but people only do it if they see that there is the bigger or better way. This is easier said than done . . . You can always put off the exercise,

102. *Id.*

103. Interview with Anonymous Interviewee #7, *supra* note 88.

*but is that wise? Just for those 30 minutes, you might be more productive for the rest of the day. . . We need to take the time to do the right work in the right place—a little more organized. Generally, lawyers are not great at that.*¹⁰⁴

To understand the underlying problem, these GCs realize they must first focus on understanding the existing departmental processes to pinpoint “bottlenecks” i.e., areas where the processes generate inefficiencies or get impaired.

Once these bottlenecks have been identified, plans need to be developed to address them. If the organization has a highly inefficient contract management process, for example, the process roadblocks that are causing the issue must be addressed before any contract management software can be effectively rolled out.

These GCs also realize that technology solutions may themselves require inherent process adaptations to yield value. To benefit from a contract analytics system, for example, a department might first need to optimize its data entry processes, creating decision trees and escalation clauses. If it fails to ensure data integrity through appropriate process optimization, the ensuing analytics may be suboptimal, reflecting the old “garbage in, garbage out” adage. Some of the technologies that were acquired during Phase 1 might need to be re-positioned so that they are used properly, reconsidered, or even discarded during Phase 2, as the underlying needs and objectives come into greater focus. As one GC explained

*Although we have pockets of a 21st Century legal department in the way we do, for example, ethical compliance and vendor management, when it comes to transactional work, we are lagging behind either because we haven't embraced or adopted them, or the systems have inherent limitations. Take our matter management system. The short end of that discussion is that we can't blame the system for limitations until we have exploited its full potential and we haven't done so because there is poor discipline for using it and that is because of us, the leaders (not those in the field) for some reason haven't been able to rally our people behind the system.*¹⁰⁵

At its heart, Phase 2 involves undertaking such deep process and service delivery optimization in order to enable the organization to capture the efficiencies it initially sought with the ad-hoc technology purchases in Phase 1. Phase 2 technology transformation is characterized by a deep process improvement effort, often using one of several systematic approaches or methodologies, such as benchmarking or the application of lean principles. The specific approach will

104. Interview with Anonymous Interviewee #3, *supra* note 99.

105. Interview with Anonymous Interviewee #7, *supra* note 88.

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depend on the circumstances. If, for instance, the department is experiencing problems with how incoming work is received, handled, and allocated, the solution may differ from what is needed if it must better define the work that gets prioritized, how assignments get delegated, or how work more generally gets done. Different systems may be better suited for different problems:

We were so pleased with our technology decisions when asked to reduce our budget by 10 percent. Phase one was a total success. Then came the hammer. We needed to trim another 30 percent on top of the original 10. Phase two—understanding enterprise goals, risk tolerance, change management—was our only job. Phase 2 undid some of our Phase 1 achievements that were no longer valued. It was pure hell. You can't begin to appreciate the pushback. The worst from scared lawyers. Everyone was scared for their job (which was a real legit fear) and the [internal] clients balked at the simplest self-help tools. Eventually, persistence, and the company's financial reality, forced the legal department to get its act together. Some of the "expert" vendors sounded too good to be true. They were. [It] required serious digging to sort out real expertise from smoke and mirrors.¹⁰⁶

During this phase, GCs often begin to wish they could start all over because "processes from the past" can "drain the pump":

If we could start all over again, we would build it around systems and processes and obviously the people. There are a lot of activities we would not do. One of them is in our line of work. There is a lot of negotiation of distribution agreements with the OEMs (original equipment manufacturers) and every year it is the same freaking thing: a massive waste of energy and time and it justifies the jobs of many people. And many of the business folks are not so sophisticated. They see the role of legal as the reading comprehension department. So, I'd shut it down and drastically reduce the size and automate and outsource through playbooks and all those highly transactional, repetitive, low value processes along with the people. And I'd have a smaller team of more well-rounded types of folks.¹⁰⁷

Despite differences across departments, there is a growing recognition during this phase that a holistic, strategic plan is required—a true redesign that will coalesce the department's digital estate around a single, cohesive strategy. It

106. Interview with Anonymous Interviewee #13, Gen. Couns. of a FTSE 100 int'l educ. and pub. co.

107. Interview with Anonymous Interviewee #7, *supra* note 88.

becomes apparent that the legal department must begin thinking like a business by identifying its value proposition, inventorying its available resources, and designing a strategic plan and service delivery model around that. The following is a quote typical of GCs in this phase:

Think about it: where do you want to be in the next 5 years? If you don't have a plan, that is a problem and sometimes things happen because they are an evolution, but you really do need to think like a business a bit more i.e., what is the business trying to achieve and how can we help them and what are our highest priorities and how can we implement that . . . this is our growth projection and how to meet that because we are not going to be able to add x number of attorneys just because the business grew. We need to be efficient and thoughtful. As a legal department, how can we not just be adding more expense. And think about it from a strategic planning [perspective], just as the business does that, and focus on what the future is.¹⁰⁸

During Phase 2, GCs often hire a legal operations professional, an alternative legal services provider (ALSP), or a consultant to help create, lead, and execute on the strategic plan. This is because the plan is often a complex, multidisciplinary¹⁰⁹ undertaking that must be applied coherently and with discipline to avoid failure or a slippage back into Phase 1. As one GC aptly put it:

It is a big role because it involves integrating the people aspect, the tech aspect, the prospect, and budget, and strategy aspect and everything that . . . doesn't involve the practice of law.¹¹⁰

GCs in this phase begin to realize that there is a need for a design-based approach to ensure that the plan enables an efficient and effective workflow, an optimized user experience, and a focus on the highest-value work. Here is a representative description of this recognition:

We created a Chief Innovation Officer level in the team that is focused on people, product, and tech, and I think we are going to need some designers. I mean, not lawyers, but people that will help design experiences . . . We will need some process engineering. It's all about creating efficiency around the bulk of the work, 70% of the work that is

108. Interview with Anonymous Interviewee #3, *supra* note 99.

109. See *supra* note 25 and accompanying text.

110. Interview with Anonymous Interviewee #4, *supra* note 86.

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*more commonly done. The whole point is to free up time and bandwidth so we can . . . focus on the strategic and things that do matter.*¹¹¹

Continuing with our kitchen analogy, during Phase 2 the homeowner realizes that what they really need (and should have done up front) is a total kitchen remodel. The homeowner brings in a kitchen design expert, who explores the food consumed by the household, inventories cooking requirements, and examines the overall layout and workflow of the kitchen. Bottlenecks, such as the distance between the counters and the stove, are identified. The ensuing redesign focuses on solving pain points and bringing everything together, thereby enabling the food that the household demands to more easily and effectively be made. The gas stove is replaced by an induction stove and placed in a more optimal space adjacent to the countertops, eliminating the need to reconfigure the gas pipes. The marble is replaced with a more practical stone that meets the family's style requirements while staining and cracking less easily. Each piece of equipment is considered, not in terms of its individual features, but within the context of the whole. The bread maker is discarded because it is not needed, it is too complicated to use and it takes up way too much counter or cabinet space. Other equipment, including a microwave and a rice cooker, are introduced based on actual needs, equipment useability, and speed. So, the kitchen is re-organized, making it easier to prepare the kinds of food the household wants, freeing up quality time for the household to spend together, whether in the kitchen or outside of it. And their overall experience is enhanced which, in turn, incentivizes the family to use the kitchen in the intended new ways instead of resorting to old habits or skipping the kitchen entirely and ordering take-out meals.

This is similar to what happens to the legal department during Phase 2. The GC, along with the legal operations specialist, identifies and prioritizes needs, maps processes and bottlenecks, redesigns and optimizes service delivery, and leverages appropriate technologies and services to accelerate these changes and achieve scale. The range of technologies that can effectively be deployed in this phase is broad i.e., Richard Susskind has identified at least 13 separate categories.¹¹² Examples typically rolled out in this stage include efficiency tools, such as cloud-based contract management, e-discovery, or matter management systems, and transparency-enhancing tools, including e-billing software and on-line bidding platforms that generate insights that enable the department to negotiate better outside counsel rates.¹¹³ Qualified legal professionals might also be retained

111. Interview with Anonymous Interviewee #11, Gen. Couns. of a Glob. 500 and Fortune 500 Info. Tech. serv./consulting and computer, hardware/software co.

112. SUSSKIND, *supra* note 9, at 40.

113. See TELLMANN, *supra* note 9, at 42–43 (discussing these and other solutions that are typically deployed).

offshore or in a hybrid capacity to carry out lower-value and standardized work.¹¹⁴ From a technology perspective, the department is now well on the way to automating work that doesn't really require lawyers' input and the department is developing use cases to demonstrate the value to the business.

At this stage, the department is also getting better at measuring impact and value. As one GC aptly explained, the GC is no longer just measuring this based on "how our clients feel about us and whether they like us." Instead, this is based on "critical performance benchmarks."¹¹⁵ Data-driven analytics are also being deployed more effectively. For example, as an interviewee explained, a GC can prove through use cases that a given course of action in a negotiation "is faster and more reliable . . . and drives better results and less litigation in the long run because of an algorithm that the department developed that can be used in contracting—from the services agreement to negotiation."¹¹⁶

At this point, the department has remodeled its "kitchen" to aid the business by thinking inwardly about its own processes and tools and systems and structures and enhancing the user experience within the department. The GC is running the department more like a business and less as a cost center or internal service provider. It is now ready for the third phase of DT in the DT Maturity Framework, which involves harvesting the data that its systems are now capturing and further aligning with the MNC and its suppliers and customers. As one GC aptly put it, in phase 3, "the productivity needs to come from synergies among business and the legal function and the outside market (like the law firms) and the whole ecosystem needs to change to get the benefits."¹¹⁷ This is what we now turn to as we consider Phase 3.

3. Phase 3: Harvesting Data for New Insights & Analytics, Collaborating with the Business, & Focusing on the Experience, Skills, and Culture

Not all legal organizations reach Phase 3. For those that do, however, it typically emerges once new digital technologies have begun to yield efficiencies and legal leaders have come to realize that the true value of their DT lies in the data they can harvest, allowing them to better partner with and serve the business. As one GC interviewee noted, "[i]t is ... about technology in part, in part about resources, thinking about Legal as more than just a legal department but a value add and ... focusing on the business needs and really then developing your strategic plan around those."¹¹⁸ GCs in this phase understand that real digitization enables an intensely integrated, collaborative approach that results in a different experience

114. For a discussion of offshoring and similar options, see *id.* at 41–42.

115. Interview with Anonymous Interviewee #11, *supra* note 111.

116. Interview with Anonymous Interviewee #5, Gen. Couns. of a Glob. 500 large multinational pharm. co.

117. Interview with Anonymous Interviewee #4, *supra* note 86.

118. Interview with Anonymous Interviewee #3, *supra* note 99.

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for the internal business clients and the MNC's customers and suppliers. They also realize that achieving this requires culture change and a focus on talent (including skills and mindsets).

In Phase 3, data that have been captured as a result of DT begin to yield insights. This data capture also enables the legal department to integrate its insights with data captured elsewhere in the MNC, providing new sources of value. The combination of business and legal data allows the department to connect and align resources around opportunities and risks. For instance, AI and predictive analytics can begin to pinpoint problem areas and highlight emerging risks; data lakes¹¹⁹ allow patentable technologies to be more rapidly identified; and negotiation strategies can effectively be crafted based on precedents and patterns. One GC aptly summed this up with respect to outside spend, law firm selection, and decision making in litigation:

Then there is always the analytics and data, which is more of a focus. For example, looking to see what is your spend, what are you spending it on, and what analytics you can use to determine the right firms to use or find out when this type of case typically settles for this [what kind of amount], i.e., do they typically settle at this time? Are there any differences in what the results are?¹²⁰

In this phase, the objective moves from creating departmental efficiency (e.g., better contract management) to harnessing DT more holistically and systematically for the benefit of the MNC as a whole. For instance, DT might now allow for patents and other intellectual property to be more effectively analyzed and licensed to third party non-competitors, bringing in revenue streams. AI-enabled technologies can combine data on contractual clauses with customer data to identify potential breaches across a large data set, enabling the MNC to pinpoint customer breaches and proactively seek restitution. One GC described how he is now able to “use a much more scientific and data driven approach to valuing its company’s customer relationships. If a customer has [a] value of X in claims but the value of rights are Y, we will go after Y, if it is bigger than X.”¹²¹ Further, he explained “this doesn’t have to interfere with the business relationship. We are in the business of making money. We can explain to [big motor company] that we value you and on an emotional level we want to be a supplier to you, but here is a real money issue and you owe us that

119. A data lake is a centralized repository that enables the storage of structured and unstructured data at any scale and the running of different types of analytics to guide better decision-making. *What Is A Data Lake?*, AMAZON WEB SERVS., <https://aws.amazon.com/big-data/datalakes-and-analytics/what-is-a-data-lake/> (last visited Mar. 11, 2022).

120. Interview with Anonymous Interviewee #3, *supra* note 99.

121. Interview with Anonymous Interviewee #4, *supra* note 86.

and we have assessed the value of the relationship. And then? It is a whole different discussion.”¹²²

To continue with our kitchen analogy: in Phase 3, the newly optimized kitchen is now able to deliver, with ever greater precision, the kinds of meals desired by the household. Less time is spent working in the kitchen preparing food and cleaning up because bottlenecks have been removed and the various kitchen elements are working in unison. Over time, the household members who cook in the kitchen are able to improve the range of meals they create because the optimized layout allows them to be more imaginative and value additive. External and internal dynamics are brought together to add value in new ways. Externally, they can explore new culinary trends and recipes because the improved layout and workspace give them more freedom to develop new dishes and even combine them with their growing repertoire of favorite recipes. Internally, the household cooks notice that, as the household evolves, its needs are changing. The children have grown older, and both parents have begun working from home. Tastes have changed, and there is a desire for a more sophisticated range of flavors and textures, and the demand for wine with meals has increased. The cooks are able to take stock of these changing needs and meet them. New equipment, including a wine cooler, is installed, to facilitate these new trends.

The kitchen remodel has evolved from an *ad-hoc* collection of equipment divorced from underlying needs in Phase 1; to a well-designed space that is optimized to cater to actual needs in Phase 2; to a space that enables and empowers upskilled and agile cooks to combine external and internal information, and thus deliver new sources of value to the evolving needs of the entire household, in Phase 3. And a big piece of that value is the enhanced experience of the *diners*—not just the *chefs*.

Similarly, in Phase 3, DT has enhanced the experience, not only of the legal professionals working within the department, but also of the client base, and potentially even external customers and suppliers. The focus has shifted from optimizing the department to adding value to the MNC itself. It is a more collaborative focus that involves partnering with business clients to enable the MNC to act with greater agility and precision in a fast-changing environment. As one GC noted:

Real digitization results in a different experience for the customer and the business clients. Digital transformation is about resources, strategy, thinking about legal as more than just a legal department (i.e., as a value add) and seeing how lawyers can really partner with the business by focusing on the business needs and then developing a strategic plan

122. *Id.*

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*around those needs to help implement against the business's highest priorities.*¹²³

Another added:

*I want a seamless digital experience when you buy my company's products—and that includes the legal back-office function and all the red tape [which] needs to feel as seamless as Amazon.*¹²⁴

Making this shift in this context, however, is not as easy as remodeling a kitchen. For instance, the homeowner is less concerned with ROI or measuring success and tracking than the GC is in this phase. Phase 3 GCs wholeheartedly believe that running the legal department like a business means “you care about customer service. And you care about the cost of raw materials. You measure inputs and outputs and you are accountable for the delivery or service *and* the costs it takes.”¹²⁵ And “you measure now vs. years ago.”¹²⁶ The goal is to measure everything in order to demonstrate ROI, which, as the interviewees made clear, is hard to do:

*Every activity needs to be linked to the notion of ROI which sounds easy but sometimes it is difficult to articulate when it comes to defending compliance risk for the company. . . It is hard to bake those into ROI processes.*¹²⁷

Because measuring the quality, input, or output of a legal department is difficult, Phase 3 GCs typically do so across multiple dimensions. For example, they use external surveys to measure whether the department's priorities align with what the MNC thinks the department should focus on. They also measure themselves in light of the MNC's results. If the business does well, the department should get some credit. The flip side is also true, if the business does not do well, then the department should share some responsibility. As one GC explained:

We want to be measured by how our clients are measured. This is a way to align our interest with the client; [to communicate] what is important to [them] is important to us. It is a proxy derivative, but it helps us [and

123. Interview with Anonymous Interviewee #7, *supra* note 88.

124. Interview with Anonymous Interviewee #4, *supra* note 86.

125. Interview with Anonymous Interviewee #6, Gen. Couns. of an Am., multinational Glob. 500 and Fortune 500 corp. operating in many fields, including health care and consumer goods.

126. *Id.*

127. Interview with Anonymous Interviewee #7, *supra* note 88.

them] see that we don't do our work in isolation. We need to adopt and support the overall entity's strategies, or we are not serving our purpose.¹²⁸

They also measure their own department as if the legal department is actually a business itself. As one GC explained, in this phase both input and output are measured:

We look at headcount. What we spend inside and outside and I look at output like IP. I look at the number of patents and applications and some things are quantitative e.g., the win-loss record, and the number of M&A deals. . . I have a dashboard that says what percentage of the work that we give to outside counsel is given to our preferred network; and we have a benchmark that we want to achieve and a substantial majority of that work as a custom fee agreement. . . We negotiate success fees and flat fees. So, I look at metrics, the percentage of a custom fee agreement.

They also measure their own department's energy level and inclusivity.

Every other year or so, we do an engagement survey, and we look to see how engaged are our people, how inclusive are they and have an inclusive index set up. It's an aggressive goal with that score . . . and all of that is a way to communicate what is important to us.¹²⁹

Another big difference between the GC and the homeowner in Phase 3 is that new ways of working require Phase 3 professionals in the legal department acquire new skills, including technology, strategy, business, communication, leadership, emotional intelligence, project management, and organizational design. GCs begin rethinking roles and tasks:

Lawyers are not great project managers. So we are hiring professional project managers for our legal department. It's about figuring out: where do you add value and where can someone else add value? It's about thinking about the profession a bit differently and being open to things that may not be in our wheelhouse . . .¹³⁰

128. Interview with Anonymous Interviewee #6, *supra* note 125.

129. *Id.*

130. Interview with Anonymous Interviewee #3, *supra* note 99.

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We are starting now to re-tool and re-purpose and upskill and reskill . . . If we start now, we operate [from] a position of strength.¹³¹

The legal department of the future is all about talent management and how to add value to the business and create value. How to train and retain the talent to support that mission. . . I need to start to re-tool and re-purpose and upskill and reskill my lawyers to maintain legacy knowledge but change how they think of their jobs.¹³²

Phase 3 GCs also realize that the change that comes with Phase 3 is hard and that its success is their responsibility. They lead the effort to change mindsets and behavior. As one noted:

The change management skill is really important . . . There is no law school class on change management or managing people and it is not built into our culture as lawyers. And the problem is lawyers need to think of themselves as part of the business and some lawyers are just really good at being a lawyer and not at the other element.¹³³

In sum, Phase 3 GCs have acquired a broader vision, a willingness to act on it, and a plan to do so. By now, they have experienced the benefits of DT and are fully committed to it. Yet, they also recognize that the DT journey is one of continuous improvement, that there always remains more to accomplish. One GC analogized DT to the evolution of the self-driving car:

[T]hink of digital transformation as the use of computing tools (data analytics and AI and machine learning) to change how work is done and how service is delivered. An analogy is self-driving cars that do the work that humans do today by taking rules and algorithms and applying it to external factors (weather, speed limits, etc.). Now sensors and other digital tools are enabling cars to do this themselves. We are probably still doing things at the cruise control level—that is, we still need the human for some things . . . The next phase - adaptive cruise control - is cruising not just [at] a constant speed but sensing the car in front . . . and adjusting . . . and adapting. We are in cruise control mode, moving towards adaptive but very far from the self-driving car.¹³⁴

131. Interview with Anonymous Interviewee #5, *supra* note 116.

132. Interview with Anonymous Interviewee #6, *supra* note 125.

133. Interview with Anonymous Interviewee #3, *supra* note 99.

134. Interview with Anonymous Interviewee #6, *supra* note 125.

His vision, like other GCs in Phase 3, is to take “the quantum leap,” and “develop an end-to-end solution” in which they can “put in risk parameters for every agreement type and program it to be very beneficial and engage the lawyers at the right time.”¹³⁵

One of our advanced GC interviewees explained it this way:

*The legal department and all the data capture and sharing is completely integrated with the business and fully implemented globally versus the patchy landscape that so many legal departments end up with. Too many focused on individual solutions and tried to patchwork them together. That’s not going to work; it’s just a complication of different small point solutions and a complete nightmare for data mining. The goal is to be able to mine every data that flows in and out whether from the internal client, legal department, or an external law firm.*¹³⁶

To bring to life how visionary this GC is, when asked how he would scale DT of his legal department from 1-10, he replied:

*I can’t do that because the scale doesn’t end at 10. There is a massive opportunity to transform how we deliver legal services through the front door, to create know-how and make it available to the business. There is massive upside potential when it comes to data and metrics. We just need to free up people. So, I’m not looking at it in 1-10. I’m thinking up to 50 but there is no telling how high it goes.*¹³⁷

II. CRITIQUE OF THE THREE-PHASED DIGITAL MATURITY FRAMEWORK: DRAWBACKS AND AREAS FOR IMPROVEMENT

While the current Three-Phased Digital Maturity Framework can be used by GCs as a benchmarking tool and to generate significant value in the latter stages, we find it suboptimal for three primary reasons. First, GCs fail to start their DT journeys off in the right way. In Phase 1, motivated by a desire to improve efficiency or reduce costs, they begin by adopting an *ad-hoc* approach that is primarily focused on technology as opposed to holistic transformation. Second, although in Phase 2 the objective moves from creating isolated pockets of departmental efficiency to harnessing DT more holistically and systematically, GCs fail to do so *in proactive collaboration with and for the business*. They focus on what is best for the department rather than internal client and external customer needs. They also typically underestimate the change management related aspects of the redesign

135. Interview with Anonymous Interviewee #6, *supra* note 125.

136. Interview with Anonymous Interviewee #25, *supra* note 62.

137. *Id.*

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they are now embarking on. Third, the emphasis on and urgency of putting in place a true, systematic change management process is saved for last. This *post-hoc* approach (that leaves client-centricity and a proper focus on change management to the end) is disruptive, adds unnecessary cost, and threatens the credibility, viability, and timing of the entire DT effort.

A. An Ad Hoc Approach Focused on Technology instead of Holistic Transformation

As explained above in Phase 1, GCs typically embark on their DT journeys with a keen focus on sourcing and installing new technologies as opposed to embracing a holistic redesign of the department itself and addressing the related change management aspects thereof. i.e., changing mindsets, skill sets, organizational structures, and culture. In other words, GCs typically take a piecemeal approach to DT as opposed to a holistic one.

Because the department acquires technology in a tactical and *ad hoc* manner, it lacks both a deeper understanding of the underlying problems it is trying to solve and a coherent strategic resolution framework. For example, if the department's technology acquisition is motivated by a belief that the objective is to reduce costs when in fact the client desires more agile and pragmatic legal support to close transactions more quickly, the department will be wasting time and resources in trying to solve the wrong problem. Alternatively, if technology is sought to help one group within the legal department—e.g., to provide a connected platform to streamline case management for the litigation department—not only might that technology not work with a later implemented centralized document management system but all the people who use the prior tool will have become accustomed to saving and storing their documents on a different platform. Unsurprisingly, this creates inefficiencies and missteps in the early stages that act as a drag and an impediment financially, behaviorally, and culturally. In many cases, the errors made in Phase 1 inhibit overall value creation, either by delaying its realization, adding additional costs to the effort, or creating different but ultimately ineffective ways of working—all of which can discourage GCs from continuing down the DT path altogether. By starting off on the wrong foot in Phase 1, GCs put themselves in a position where they must backtrack, start over, or navigate around failed initiatives in order to harvest the true benefits of DT. This can create significant friction in the overall process, resulting in the emergence of change fatigue and other hurdles that must then be overcome. According to research, 75% of change efforts fail, often due to poor management or execution.¹³⁸ A study of 62 corporate transformation

138. See Victor Lipman, *New Study Explores Why Change Management Fails - And How to (Perhaps) Succeed*, FORBES (Sept. 4, 2013, 01:54 AM EDT), <https://www.forbes.com/sites/victorlipman/2013/09/04/new-study-explores-why-change-management-fails-and-how-to-perhaps-succeed/?sh=664832f67137>; see also N. Anand & Jean-Louis Barsoux, *What Everyone Gets*

efforts suggests that a critical reason for this lies in the failure of leaders to do the right thing up front.¹³⁹

In an ideal world, GCs would start their DT journeys with a strategic plan in place, including a comprehensive, tactical plan with KPIs that has a digitally transformed organization model as the end goal. Unfortunately, by adopting a piecemeal approach in Phase 1 that begins with, and emphasizes, the addition of technology, GCs let the digital “tail” wag the transformational “dog,” resulting in a failure to capture holistic benefits and value creation without backtracking and going through the costly redesign of Phase 2.

In some ways, this is understandable. MNCs often start their own DT processes in small, non-linear, and phased increments, setting a poor precedent for legal departments to follow.¹⁴⁰ A lack of understanding for, and appreciation of, best practice at the MNC level might also undermine the GC’s ability to secure support for a more holistic approach to DT at the department level, however enlightened they may be.

None of this is helped by the lack of any universally accepted definition of DT,¹⁴¹ with many prevailing notions emphasizing the digital aspects.¹⁴² As noted earlier, the term “Digital Transformation” is itself unfortunate in that it emphasizes the digital over the transformational. It is true that organizations undergoing a DT must have a digital-first mindset, which has been described as “an attitude that reflects a broad tendency to seek out digital solutions first, use technology as a tool for advantage, and approach enterprise data in a systematic fashion.”¹⁴³ However, as noted earlier, for DT to succeed, technology must be recognized as a means to an end and not an end in itself. DT is a multidisciplinary change management process of the most difficult kind that thoroughly redesigns and re-imagines an

Wrong About Change Management, HARV. BUS. REV. (November–December 2017), <https://hbr.org/2017/11/what-everyone-gets-wrong-about-change-management>.

139. N. Anand & Jean-Louis Barsoux, *What Everyone Gets Wrong About Change Management*, HARV. BUS. REV. (November–December 2017), <https://hbr.org/2017/11/what-everyone-gets-wrong-about-change-management>.

140. For example, Solis and Szymanski describe DT in the corporate context as maturing in six stages that are not always linear. See Solis & Szymanski, *supra* note 8; see also TRIANZ, *supra* note 37, at 13 (describing 5 levels of digital transformation: pre-digital, digital beginners, digital progressive, digitally advance, converged digital enterprises).

141. See *supra* notes 41, 42, and 43. For a comprehensive understanding of DT and the different and conflicting ways DT has been defined, see Gregory Vial, *supra* note 40, at 119 (surveying 282 works on DT and identifying and analyzing 28 sources offering 23 unique definitions of DT).

142. See *supra* notes 44–47 [For more information see Appendix B].

143. Deborah L. Soule et al., *Becoming a Digital Organization: The Journey to Digital Dexterity* 8 (MIT CTR. FOR DIGIT. BUS. WORKING PAPER No. 301, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2697688.

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organization's (or department's) entire operating structure,¹⁴⁴ service delivery model, and core purpose.¹⁴⁵

As we recommend further below in our model approach,¹⁴⁶ successful DT must start with a clear, "North Star"—alignment and agreement around the corporate purpose and the vision and direction of DT,¹⁴⁷ and it needs to be done holistically, assertively, and across almost all dimensions of the department (and in alignment with the company). This can be a daunting task.¹⁴⁸ An early and enhanced focus on the *digital* part of DT (as opposed to the *transformational* aspects), combined with the lack of a coherent, collaborative strategy at the beginning, will make DT trials and tribulations inevitable¹⁴⁹ and result in extreme inefficiencies.

Before developing a comprehensive strategy, GCs need to understand and be able to identify and articulate the legal department's core purpose, so that problems preventing fulfillment of that purpose and the corresponding solutions can collectively be identified and implemented. As one interviewee explained, "the lawyers need to communicate more effectively so that it's clearer to everyone what they do. We make what we do seem like a black box. How can IT give us client service if they don't understand what we do?"¹⁵⁰

144. KPMG INT'L, *supra* note 25 (describing what KPMG identifies as the four steps to digital transformation, the third step is: articulating an enterprise-wide operational strategy); see discussion *infra* Part I.

145. A good example of this at the enterprise level comes from Phillips, which divested product lines that failed to support its new strategic vision of enabling a healthier world, while expanding lines that did. The company fundamentally redesigned its entire organization, from product development and marketing to sales processes, converting a consumer product company into a digital healthcare solutions service provider. Pursuing innovative digital technologies has allowed Phillips to give more value to its customers via technology innovations in communications connectivity and mobility. Jeanne W. Ross et al., *Architecting A Digital Transformation At Royal Philips*, MIT CTR. FOR INFO. SYS. RSCH. (Jan. 18, 2018), https://cisr.mit.edu/publication/2018_0101_PhilipsDigitalTransformation_RossMockerVanZoelen.

146. See recommendation *infra* Part III.C.

147. See EYQ, *The CEO Imperative Part 2: How Can Today's CEO Bridge The Gaps To Realize Tomorrow's Opportunities?*, EYQ (2021) at 17, https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/ceo-imperative-study/ey-ceo-imperative-study-part-2.pdf (recommending "a future-back approach using your corporate purpose to guide exploration and begin laying the strategic groundwork to build the capabilities necessary to ensure long-term relevance and resilience"); EYQ, *The CEO Imperative: How Has Adversity Become The Springboard To Growth For CEOs?*, EYQ (Jul. 19, 2021).

148. See Jacques Bughin et al., *The Case for Digital Reinvention*, MCKINSEY QUARTERLY, Feb. 2017 at 12-13; Peter Bendor-Samuel, *Digital Transformation Benefits Beyond Cost Reduction*, FORBES (Aug. 3, 2020), <https://www.forbes.com/sites/peterbendorsamuel/2020/08/03/digital-transformation-benefits-beyond-cost-reduction/?sh=4975d0d01755> (stating that before the pandemic, "many companies held back in the extent of digital transformation they were willing to undertake because the change management effort was huge").

149. ROGERS, *supra* note 45; see TRIANZ, *supra* note 37, at 32 ("Making digitalization investments is not enough. Results are achieved only when the workforce is trained to use the new processes and technologies, as shown by Digital Champions that are 2-3X more likely to have a trained workforce."); see also Solis & Szymanski, *supra* note 8; see also, Everett M. Rogers, *DIFFUSION OF INNOVATIONS* 4 (5th ed. 2003) ("[T]he diffusion of innovation is a social process, even more than a technical matter.").

150. Interview with Anonymous Interviewee #21, GC of a Fortune 500 global pharmaceutical company.

By failing to put a purpose and strategic plan in place, Phase 1 GCs spend too much time trying to navigate (understand, utilize, and leverage) the technology applications they already have or that are available on the market. Often in addition to not having an overarching strategy, GCs lack a technology strategy or roadmap. Instead, they focus on point-to-point solutions that are neither integrated nor fit for purpose. Solutions that seemingly address one issue often cause new complications. As one interviewee explained relating to the roll out of an in-house law firm auction technology and methodology designed to contain outside law firm costs:

It's a race to the bottom to get the lowest cost without regard to the context. If we need a simple legal opinion, we have to first jump through numerous hoops to prove we have the cheapest available firm, regardless of the quality. We are dealing with a highly sophisticated regulatory issue that needs to be addressed in a delicate manner and we have identified the right firm to help us; we need to retain the firm urgently; but before we can hire them, we have to write a memo to someone in procurement demonstrating that they are the cheapest solution.¹⁵¹

Additionally, the lack of a strategic vision means that MNC and legal department procurement teams that negotiate and buy the technology do not really understand what problems need to be addressed, resulting in suboptimal negotiation outcomes, incomplete piloting, or inadequate testing. For example, in one large corporation, litigators asked for a tool to help mitigate large discovery requests. The procurement team purchased a tool that was deployed across the entire legal department, satisfying the litigation need but resulting in major pain points across other places in the department when new work habits and processes were instigated to comply with the “solution”. The result was an unwarranted significant increase in administrative costs and a rise in frustration levels:

No one understands why we have this tool, other than the litigators, who think it's useful for discovery. We get all these random “solutions” that operations are pushing out, but no one understands why we have them or considers how they might fit in with everything else we are trying to

151. *Id.*; see also D. Casey Flaherty et al., *LexFusion's Legal Market Year in Review* LEGAL EVOLUTION #280 (William D. Henderson ed., 2022) (December 26, 2021), <https://www.legalevolution.org/2021/12/lexfusions-legal-market-year-in-review-280/> (“[S]pecific target operating models, and the capabilities required to support them, are fuzzy, at best, and therefore subject to interminable debate. Few have the time, and even fewer have the personal authority, to drive these debates to resolution—and then turn resolution into action.” . . . It is sad when we can direct someone towards a fit-to-purpose tool that will make their life less arduous, but the buying mechanics turn out to be too labyrinthine and friction-laden to make good things happen.”).

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do. There just is no joined up or strategic roadmap. It feels like no one has really considered the technology as a whole or how these tools are supposed to help us achieve our strategic objectives. If the litigator says 'we need this tool,' the ops people just go out and buy it, without thinking strategically. . . It's expensive and burdensome, and hard to remove once it is in place. Now we all have to live with it.¹⁵²

Thus, in Phase 1, legal departments remain fragmented and focused on short-term vs. long-term work, and lost in an increasing volume of low value work¹⁵³ using traditional delivery models.¹⁵⁴ The lack of a strategic plan in Phase 1 means GCs end up adopting solutions in an uncoordinated manner, searching for use-cases to justify one-off investments, without the vision or expertise needed to develop a business case to ensure buy-in.¹⁵⁵ Without a clear plan, the “tyranny of the urgent” takes hold in the face of the “more for less” dynamic.¹⁵⁶

Many GCs we spoke to expressed uncertainty about how they should go about developing a clear strategic plan for DT.¹⁵⁷ The lack of wherewithal is supported by secondary research. A recent KPMG survey, for instance, found that only 37% of legal departments employed legal operations specialists, even though many of the core elements of an effective DT were ranked as top priorities.¹⁵⁸ In another survey, 67% of in-house legal respondents believed big data and predictive analytics would have a significant impact on their department, yet only 25% claimed to understand the concept very well.¹⁵⁹ The failure to develop a strategic plan before embarking on DT is perhaps not surprising, given that lawyers are not typically trained to do this. However, the failure of GCs to hire legal operations professionals suggests that many of them do not even understand when or where to turn to for help.

152. Interview with Anonymous Interviewee #13, *supra* note 106.

153. See ASS'N OF CORP. COUNS., *supra* note 22.

154. See GROSSMANN & WILKINS, *supra* note 35, at 3.

155. See *supra* note at 11.

156. See *supra* note 9 regarding the “more for less” challenge; see also BONG & FULLER, *supra* note 73, at 33–34; VEITH ET AL., *supra* note 12, at 2–3; ASS'N OF CORP. COUNS, *supra* note 67, at 8 (noting the “internal staffing costs, external legal fees, and the resulting cost of not having adequate legal resources (i.e., the cost of regulatory fines and penalties)"); A recent study conducted by EY and Harvard Law School Center on the Legal Profession reported that “[w]orkloads are increasing faster than budgets and law departments are planning even more ambitious cost reductions. [GCs] expect workloads to increase by 25% over the next three years, yet 75% don't expect budgets to keep pace. At the same time, many law department leaders are planning significant cost reductions that will require major operational changes.” See GROSSMANN & WILKINS *supra* note 35, at 3.

157. In addition to lacking understanding, many in-house legal professionals also lack the expertise to identify the most effective technological solutions. See GROSSMANN & WILKINS, *supra* note 35, at 3.

158. BONG & FULLER, *supra* note 73, at 31–33.

159. WOLTERS KLUWER, *supra* note 9, at 14.

B. *Insufficient Proactive Collaboration with the Business*

In addition to the shortcomings of the *ad hoc* approach of Phase 1, there is insufficient proactive collaboration with other parts of the MNC in Phase 2. At this stage, while GCs realize that they need to remodel/redesign their departments, most of it is done from an internal perspective, taking into account what is best for the department, rather than focusing on internal client and external customer needs. It is only when they reach the more mature stages of Phase 3 that close coordination with the rest of the MNC and its operating environment begins to come into focus, and even then, it is not fully developed. Comprehensive and systemic involvement of the business throughout the process, from the conceptualization and design phases, through to implementation and rollout, would have been far better, because it would ensure that the effort put into the transformation fully matches the priorities and needs of the client. Consequently, GCs face a significant risk that they configure their DT with an immature end-state that fails to fully consider client and customer needs. Trade-offs must be made along multiple dimensions of the DT journey, ranging from cost vs. quality to self-service vs. supported solutions. Business priorities might also change along the way, such that the end state no longer matches where the MNC is heading. Even as the legal department moves along the DT trajectory, adding new forms of value with data and analytics, the MNC might want to configure things differently to serve emerging preferences. Adding value in a way that clients do not agree with is not actually adding value, even if it generates revenue. And it is not client-centric.

Evidence suggests that there is indeed a gap between what GCs *think* clients want and what the clients *actually* want.¹⁶⁰ In one survey involving 115 participants across 35 indicators, 74% of business respondents ranked value creation (including co-creating revenue streams) by the legal function as extremely important or important, while only 54% of legal departments ranked it as such.¹⁶¹ Similarly, 97% of business respondents ranked value creation as an important metric, with over half ranking it as extremely important, yet only 25% of legal department respondents ranked it as important.¹⁶² Though many GCs state client experience is a key DT objective and client satisfaction an important KPI, much of the granular information that would be helpful in understanding client needs, such as response time or time-to-conclusion, are typically not tracked.¹⁶³ Additionally, department

160. Reena SenGupta and author, Michele DeStefano co-developed this digital alignment survey during our collaboration at the Digital Legal Exchange.

161. *Survey, The Digital Disconnect*, DIGITAL LEGAL EXCHANGE 5 (2021) (on file with author); see also Cohen, *Minding Law's Digital Gap*, *supra* note 63.

162. *Id.*; see also BONG & FULLER, *supra* note 73, at 26 (finding that most GCs do not view adding business value as valuable—only 25% found it significant).

163. BONG & FULLER, *supra* note 73, at 26.

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performance is often rated poor to fair by internal clients.¹⁶⁴ It is indeed indicative that not one of our interviewees considered the need to conduct client interviews or create client “customer stories.” Nor did any of them speak about how to market or position the newly redesigned legal department to internal clients to enhance embracement. How to market, sell, or position proposed changes to internal clients must not be an afterthought in a well-designed DT journey. It must be done proactively. The legal department serves the MNC and GCs need to proactively collaborate with internal clients, both at the outset and throughout the DT journey.¹⁶⁵ Communication throughout the journey allows for the necessary buy-in for the clients to engage with the new systems and processes.

While GCs are aware of the need to be client-centric,¹⁶⁶ they are usually not trained in design thinking and may not know what it means to be truly client-centric or how to behave that way.¹⁶⁷ The three-phased approach exemplifies this deficiency. It fails to start with a clear focus on the experience of the client to ensure that root causes of problems are separated from symptoms and there is a real understanding of pain points that takes into account the perspectives of all stakeholders, including (most importantly) the ultimate consumers of legal services.¹⁶⁸ By failing to take this into account up front and consistently throughout, GCs not only risk embedding inefficiencies into their DT journeys that will require subsequent redesigns, they also risk their relationships with internal business clients. In-house legal professionals ultimately only add value to their MNC clients if they are trusted and seen as partners in the business. Putting client-centricity at the end jeopardizes that trust and partnership.

C. Failure to Focus on Change Management Until Last

A final but critical flaw in the current Three-Phased Digital Maturity Framework is the delayed realization of the importance of change management to the DT journey. It is not until the very end of Phase 3 that there is a recognition of the criticality of putting in place a true, systematic change management process.

164. See *The Digital Disconnect*, *supra* note 161.

165. For further support for the notion that clients want proactive co-collaboration from their legal service providers, see MICHELE DE STEFANO, *LEGAL UPHEAVAL: A GUIDE TO CREATIVITY, COLLABORATION, AND INNOVATION* 28–55 (John Palmer et al. eds., 2018); see also Michele DeStefano, *Innovation: A New Key Discipline for Lawyers and Legal Education*, *NEW SUITS: APPETITE FOR DISRUPTION IN THE LEGAL WORLD*, 2019, at 82, 87–89.

166. Only fifty-two percent of GCs report that the work of the legal department is aligned with business strategy and only fifty-two percent report that the legal department is adding value to the business. GROSSMANN & WILKINS, *supra* note 35, at 9.

167. See DE STEFANO, *LEGAL UPHEAVAL*, *supra* note 165, at 28–55 (conducting over 100 interviews of GCs and law firm partners).

168. For more information on a design-thinking approach successfully utilized in the law marketplace, see Michele DeStefano, *The Leader Upheaval Handbook: Lead Teams on an Innovation & Collaboration Journey with The 3-4-5 Method* (forthcoming 2023).

Waiting until Phase 3 to attempt to change mindsets, skill sets, and behaviors, risks setting the DT journey itself up for failure. This is because, as noted earlier, DT is a multidisciplinary change management process of the most difficult kind that thoroughly redesigns and re-imagines an organization's (or department's) entire operating structure,¹⁶⁹ service delivery model, and core purpose.¹⁷⁰ As such, it requires talent to be upskilled and reskilled across all facets of the department, along with behavior and culture change.¹⁷¹ Only once that has been effected can technology be harnessed to generate new forms of value, including long-term value.¹⁷² Therefore, saving the change management efforts, the upskilling, and reskilling talent for last can be mission debilitating. Our research supports this premonition. It suggests that GCs encounter fierce resistance in both Phase 2 and Phase 3 when their teams are compelled to adopt technology solutions without being given sufficient context or input. Further, in order to capture the true value from DT, legal professionals have to learn new ways of working and collaborating with existing and new colleagues with different multi-disciplinary backgrounds. This requires upskilling i.e., learning new skills to do their *current* jobs, including communication, leadership, project management, and technology skills, as well as

169. KPMG, *supra* note 25, at 8 (describing what KPMG identifies as the four steps to digital transformation with the third step being articulating an enterprise-wide operational strategy); For more discussion, *see infra* Part I.

170. A good example of this at the enterprise level comes from Philips, which divested product lines that failed to support its new strategic vision of enabling a healthier world, while expanding lines that did. The company fundamentally redesigned its entire organization, from product development and marketing to sales processes, converting a consumer product company into a digital healthcare solutions service provider. Pursuing innovative digital technologies has allowed Philips to give more value to its customers via technology innovations in communications connectivity and mobility. Ross et al., *supra* note 145.

171. Experts in the field agree that DT and DT strategy is multifaceted. Rogers, for instance, identifies five domains of DT: Customers, Competition, Data, Innovation, and Value. *See* ROGERS, *supra* note 45; similarly, the Digital Legal Exchange has developed a DT model for corporate legal departments that encompasses five pillars: Purpose and ESG, Client-Centricity, Culture and Workforce, Value Generation, and Data and Metrics. Professor Michele DeStefano co-developed the DLEX DT Model with Reena SenGupta, Managing Director of RSG Consulting, Membership Experience Advisor of DLEX, and former Executive Director of DLEX. With other members of the DLEX, they refined the model after workshoping it with several in-house legal teams from multinational corporations including Lazada, Pearson, Rio Tinto, and Vodafone. Regardless of how the facets of DT are categorized, there is agreement that it is varied, and involves a lot more than just technology. Vial, *supra* note 40, at 2 (“[T]echnology itself is only part of the complex puzzle that must be solved for organizations to remain competitive in a digital world.”); *see also* Bharadwaj, *supra* note 47; Matt, *supra* note 47.

172. This has been underscored at the enterprise level by companies that have received recognition for their digital transformation efforts, including Best Buy, General Electric, Home Depot, and John Deere. *See, e.g.*, Gamelearn Team, *7 Examples of Successful Digital Transformation in Business*, GAMELEARN (2021), <https://www.game-learn.com/7-examples-of-successful-digital-transformation-in-business>; Alison DeNisco Rayome, *10 Companies That Are Spearheading Digital Transformation in Their Industry*, TECHREPUBLIC (Jan. 25, 2018), <https://www.techrepublic.com/article/10-companies-that-are-spearheading-digital-transformation-in-their-industry>; *see also* ROGERS, *supra* note 45, at 4 (“An important factor regarding the adoption rate of an innovation is its compatibility with the values, beliefs, and past experiences of individuals in the social system.”).

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re-skilling, i.e., learning new skills to do *different* jobs, including those related to data mining, data metrics, and data insights. In-house lawyers of the future will need to be client and customer-centric, results-oriented and able to collaboratively, creatively problem solve—in collaboration with the business—to create new forms of value. This, in itself, is a huge undertaking given how lawyers are trained in law school and what could be called the lawyers' temperament, i.e., that lawyers are known to be risk and change averse, to have fixed mindsets (as opposed to growth mindsets), and to prefer to work autonomously vs. collaboratively.¹⁷³ Furthermore, DT also requires upskilling and reskilling of the GC because successful DT requires leadership, management, and operational expertise of a new and different kind. It requires a GC who can inspire, and create an inclusive, collaborative, and innovative climate that is able to evolve over time into an optimal department culture.¹⁷⁴ It requires a GC who can lead and manage and oversee DT efforts that include leading through strategic, organizational, and structural change.¹⁷⁵ Doing this is hard, and it is made nearly impossible if it is saved for last.

III. RECOMMENDATION: AN ITERATIVE BEST PRACTICE 5-STEP MODEL FOR LEGAL DEPARTMENT DIGITAL TRANSFORMATION

Given the imperative need for an effective roll-out of DT in the in-house legal department context and the challenges that many GCs are clearly facing in doing so, we believe that a recommended model approach is both useful and urgently needed. Below is our proposed Best Practice 5-Step Model for legal department DT that we believe can serve as a “best practice” approach for legal departments looking to digitally transform.

Our model is based on a combination of our collective professional experience working with Legal DT over many years in both academic and operational settings, interviews conducted by us with twenty-five GCs and Digital Officers of MNCs across the United States, the European Union, and the United Kingdom, and examples and insights gathered by us from ALSPs and other experts that have supported the DT journeys of MNC legal departments

173. See DeStefano, *LEGAL UPHEAVAL*, *supra* note 165, at 28–55.

174. DeStefano, *supra* note 168; it is important that the department's subculture remains fully aligned with the broader culture of the MNC. While peripheral values can differ, core values must remain identical. For a discussion of this important concept and how more broadly to build and/or influence departmental culture, see Tellmann, *supra* note 9, at 208–09; see also Flaherty, *supra* note 53 (“Operations is about running the organization. Projects are about changing the organization. Projects not only come at the expense of resources that could be allocated to operations, but the resulting changes disrupt operations (in order to alter them). Oh, and, currently, the failure rate of projects is 65%.”).

175. For the importance of being both a leader and a manager, see DeStefano, *supra* note 168; see also Jeff Carr, *Four Waves of Change in #LawLand*, *LEGAL EVOLUTION* (Jan. 2, 2022), <https://www.legalevolution.org/2022/01/four-waves-of-change-in-lawland-282>.

Our five-step approach is rooted in design thinking¹⁷⁶ and is intended to provide actionable guidance to GCs of large legal departments to enable them to successfully unlock future value through DT. It also takes into account the flaws identified above in respect of the typical Three-Phased approach. By grounding our model up front in a purposeful and client centric strategic plan, it sidesteps Phase 1 entirely and avoids the transaction costs of the Phase 2 workaround, enabling GCs to capture the benefits of Phase 3 more rapidly and with less effort and cost. Our message is not to simply avoid Phases 1 and 2, however, because our proposed model differs from Phase 3 in many respects. Because the foundational, non-digital issues are addressed up front in our model (before deploying technology) and in collaboration with the business, the change process is facilitated, and the department's redesign is aligned with not only the legal department but also internal clients' needs and desires. Unlike Phase 3, our model avoids the risk of creating an end-state that fails to fully consider the internal business and external customer needs and desires and that results in dissatisfaction and potentially irreparable distrust in the legal department's ability to serve as a collaborative partner with the department's business clients. It also ensures that the "digital" tail of DT does not wag the transformational dog, but instead that appropriate emphasis is placed on the transformational elements, which are the most critical and difficult aspects of DT, upfront.

Lastly, the value proposition we identify is significantly broader than the transactional, cost-centered focus that lies at the heart of other analyses.¹⁷⁷ Rather than limiting Legal DT to a conventional, internally focused effort centered on cost reduction and efficiency improvement, our experience suggests that the definition of Legal DT success is outward-looking, company-wide, and in proactive collaboration with the business. It is focused on advancing the company's own DT through organizational agility and alignment, improved customer experience, data-enabled insights and analytics, and revenue generation in a holistic and systematic manner. Client-centricity must be embedded into the model from the start and

176. Design thinking is a problem-solving philosophy that is centered on user-centric ideation and solutioning that can rapidly be turned into tangible, testable prototypes. David M. Kelley, the founder of IDEO (a consulting and design firm) and a professor at Stanford University, is generally credited with popularizing design thinking in the corporate world. Tim Brown, *The Making of a Design Thinker*, METROPOLIS, (Oct. 1, 2009), <https://metropolismag.com/viewpoints/the-making-of-a-design-thinker> ("David Kelley . . . said that every time some-one [sic] came to ask him about design, he found himself inserting the word thinking to explain what it is that designers do. The term design thinking stuck."); To learn more about design thinking, see, e.g., THOMAS LOCKWOOD, DESIGN THINKING: INTEGRATING INNOVATION, CUSTOMER EXPERIENCE, AND BRAND VALUE (Allworth, 2010); TOM KELLEY & JONATHAN LITTMAN, THE ART OF INNOVATION: LESSONS IN CREATIVITY FROM IDEO, AMERICA'S LEADING DESIGN FIRM (Doubleday, 2001); RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS—REVISITED: REVISED AND EXPANDED (Basic Books, 2014); DANIEL H. PINK, A WHOLE NEW MIND: WHY RIGHT-BRAINERS WILL RULE THE FUTURE (Riverhead Books, updated ed. 2006); TIM BROWN, CHANGE BY DESIGN: HOW DESIGN THINKING TRANSFORMS ORGANIZATIONS AND INSPIRES INNOVATION (HarperCollins, 2009).

177. See, e.g., Armour et al., *supra* note 14.

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throughout the DT effort for it to generate maximum value. This is also the case with respect to change management. While we have identified change management as Step 5 of our model, it is a constant requirement that must be applied consistently throughout the DT journey, much like a leitmotif in a score of music or an iterative loop in an algorithm.

In our experience, cost reductions and efficiency gains, while desirable by-products, are not the ultimate source of Legal DT value. By considering Legal DT through the lens of our client-centric 5-Step Model, we believe the ultimate value proposition becomes clearer, enabling a reframing of the purpose of the in-house legal department, from cost center to revenue and true value generator.

A. Our Best Practice 5-Step Model for Legal Department DT

1. Step 1—Identify Purpose

Step one starts with a simple question: if consultants were to propose to the company's CEO that they could save money by eliminating the legal department and replacing it with outsourced resources, why should they turn that down?

The answer to that question will help to uncover and define the legal department's core purpose, which might also be called its "license to exist." It requires the GC to identify those services that the legal department is uniquely able to provide and that no outside provider can match. Crucially, the value proposition must go beyond providing mere cost efficiencies, for if cost were the only competitive driver, then the CEO should have no reason to reject the proposal since everything the department did would be a commodity.

Discovering the answer to this question typically requires the GC to consider the company's overall core purpose and its commercial objectives and then work back from that to examine how the legal department supports and advances those goals. What is the company seeking to ultimately achieve—and what, to borrow Clayton Christensen's phrase—are the "jobs to be done" by the legal department?¹⁷⁸ This requires thorough investigation which includes systematic consultation with clients across all departments of the MNC.

The fact that most legal departments have not been entirely outsourced, despite the rise of cost-effective alternatives that include offshore ALSPs and AI-enabled technology solutions, suggests that most companies have "jobs" for in-house legal

178. According to Christensen, when customers buy a product, they essentially "hire" it to help them do "jobs," which is shorthand for what an individual really seeks to accomplish in a given circumstance. "Jobs" are multifaceted and never simply about function. They have powerful social and emotional dimensions, and the circumstances are more important than any buyer characteristics, product attributes, new technologies, or trends. Clayton M. Christensen et al., *Know Your Customers' "Jobs to Be Done"*, HARV. BUS. REV. 54 (2016); see also Abstract, Clayton M. Christensen et al., *Know Your Customers' "Jobs to Be Done"*, 94 HARV. BUS. REV. 54 (2016).

teams to do that go beyond keeping costs low. This would also suggest that commentators who assume the in-house value proposition is primarily or exclusively centered on cost effectiveness have failed to correctly identify the “jobs to be done” by in-house teams.¹⁷⁹

In our experience, the jobs to be done by legal departments will vary depending on the objectives of the companies for whom they work. There are, however, typically three “jobs” that tend to recur across most organizations. First, companies look to their legal departments to help them solve their legal challenges (transactions or litigation) in a commercially pragmatic manner that enables the business objective to be achieved. This is a “job” that in-house teams are uniquely well-suited to do because it requires them to combine their legal expertise with their deep knowledge and appreciation of the company’s commercial context, risk appetite, and overall objectives. Arriving at a commercially pragmatic solution that allows the business objective to be achieved requires legal professionals to accurately assess the risks involved and assume accountability for those assessments. It requires an intimate understanding of how things get done inside the company, how to navigate processes, how to leverage numerous personal relationships built on trust, and how to communicate using a common vocabulary and a joint commitment to the overall objective at stake. The bulk of the value proposition in this context lies in the in-house lawyer’s ability to configure the recommended legal approach to the real-world context, taking into account, as Christensen might put it, the social, emotional, and circumstantial dimensions¹⁸⁰ of the MNC. It is in this last leg, or “final mile”, that much of the “job” gets done.

None of these components can be easily done by an outside provider. They are less familiar with the cultural, commercial, industry, and business context, have far fewer inside relationships, and don’t speak the “language” of the business, resulting in a poorer understanding of the ultimate objectives and needs. In most cases, even if they could navigate these barriers, outside providers would be deeply uncomfortable in providing the same service, suggesting that they are typically hired to do other “jobs” for the company. Law firms are often hired to advise in-house teams with their deep legal expertise in respect to a very narrow subject — the “upstream” legal product that can then be assembled and configured “downstream” by the in-house team. ALSPs are often hired to handle repetitive, lower value commodity work at an efficient cost point. This “job” is very different in that it does not require much in the way of downstream configuration by the in-house team.

179. Susskind has made this point, noting that lawyers typically “confuse their methods of working with the value they deliver.” Instead of considering what they do today and how that can be done more cheaply, quickly, or better, they should be focused on identifying the true value and benefits clients seek when they instruct. SUSSKIND, *supra* note 9, at 159.

180. See Clayton M. Christensen et al., *Know Your Customers’ Jobs to be Done*, HARV. BUS. REV., Sept. 2016.

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A second unique “job to be done” by in-house teams lies in preventing problems from arising in the first place. This requires strategic advice that is rooted in the company’s overall mission, close proximity to business colleagues, participation at planning and strategy meetings where ideas and projects are developed, the identification of both potential problems that might arise as a result of the company’s activities, and the provision of helpful workarounds that enable the business to achieve its objectives without incurring the problems identified. Outside providers are typically hired for a different “job”—to help solve legal problems that have already crystallized. Their status as outsiders who are brought in on an hourly basis for specific tasks underscores the difference in jobs to be done.

Third, in-house teams are hired to enable the business to move quickly when executing its objectives. This requires agility, the right culture, talent, and mindset, and the right processes, skill sets, and technologies, as well as a deep knowledge of how to “get things done” inside the company. While external providers are also expected to act with speed and agility, their job is limited to the upstream workflow.

Finally, in all cases, the in-house team must deliver these and other jobs to be done efficiently and at the right cost point. However, what that cost point is will vary from company to company and from context to context. In this sense, it is rarely a “job to be done” in its own right, divorced from the broader objectives at issue.¹⁸¹

Once the GC has clarified the company’s purpose and correctly identified the “jobs to be done” by the legal department within that context, the GC will be in a position to articulate the department’s Unique Selling Proposition (USP), that is to say the unique benefits that the in-house legal department provide that distinguish it from other providers.¹⁸² That, in turn, helps to clarify what the department stands for, what its “brand” is, i.e., how the department wants to market itself to internal clients inside the company. One GC Interviewee explained its brand, how it wanted the business to think of his law department as:

181. Our analysis of the “jobs to be done” by in-house counsel differs from the perspective presented in the literature, which focuses on in-house lawyers as cost centers, suggesting that the “job to be done” by in-house teams mainly involves keeping costs low. See, e.g., Armour et al., *supra* note 14 (arguing that a “pervasive problem for in-house teams is that, to the firm’s management, their function is simply a cost-center,” which is why outsourcing solutions that provide lower costs are attractive to corporate legal departments). Our view is that the reality of the in-house context is more nuanced than this and that, more often than not, the actual “job to be done” by in-house counsel in a MNC is more qualitative and strategic in nature than process and cost-centric.

182. *Unique Selling Proposition*, OXFORD REFERENCE (last visited Aug. 12, 2021), <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803110719745> (“Unique Selling Proposition” is “a product benefit that can be regarded as unique and therefore can be used in advertising to differentiate it from the competition”).

'On your side, by your side.' 'On your side' communicates the partner and guardian point and the relationship point is 'by your side.' It is not enough to be on your side. We want to be by your side which requires a combination of skills and service we provide with a human element and the EQ over the IQ.¹⁸³

As this example makes clear, a brand helps the department to articulate to its internal clients what it stands for.

As noted above, before moving to Step 2, it is imperative that the department meet with the business to discuss and align around its newly articulated purpose and brand and revise as needed so that there is alignment across the business and within legal as to the department's core charge. Unlike the flawed Three-Phased approach, ours begins holistically by identifying the legal department's purpose and it does so in collaboration with the business at the start to ensure that the perspectives of the internal client and external customer are taken into account.

This first step is crucial, because without it, the GC will be unable to articulate *what* the department is uniquely capable of doing that adds value to the company. And they will lack the support and buy-in from the business. Only once the "what" has been identified, and reaffirmed or revised in collaboration with the business, can the next steps be taken, which focus on the "how."

2. Step 2—Identify the Core Problems & Client Desires

Once the legal department's core purpose has been clarified, the GC will be in a position to consider what barriers and obstacles are present that prevent the department from effectively delivering the "jobs" needed by the company to be done. What, in other words, are the core problems and "bottlenecks" that are preventing optimal service delivery?

Answering this question will require the GC to first connect deeply and in a structured manner with her client groups to understand where the gaps lie between what her clients are receiving today and how that differs from the ideal state of delivery. These gaps will be unique to the specific company context, but typically the specifics will fall into two broad categories. The first involves human capital, including culture, skills and capabilities, and talent. Does the department have the right culture, i.e., does it have in place and reinforce the right values and beliefs to drive the desired behavior? Do lawyers in the department have a sense of urgency and feel appropriately empowered to make decisions? Is the culture "safe" for people to go beyond the call of duty and deliver exceptional results? Is there an appropriate approach to process optimization? Are people service oriented? Are

183. Interview with anonymous interviewee #6, GC of an American multinational Fortune 500 corporation operating in many fields including health care, and consumer goods.

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they data driven? Are people aware of the department's purpose and are they working in alignment with it? What stories do department personnel tell themselves about their role and that of the company? And are these cultural attributes aligned with the company's broader culture?

An additional aspect of human capital that often arises relates to skills and capabilities. Does the legal department have in place the right skills and capabilities to deliver the jobs to be done? What skills are lacking? Are these "soft" skills, such as communication, grit, creativity, leadership? Or "hard" technical skills, such as areas of expertise or knowledge? Finally, does the department have the right talent? Is the workforce diverse? Are the right people in the right roles to help deliver the "jobs to be done"?

The second category involves operational bottlenecks. These typically include deficiencies that add unnecessary complexity and slow down turnaround times. Examples might include too many management layers, complex decision-making processes, heavy bureaucracy, poor triage, a lack of designated responsible personnel, or inefficient processes. Where in the process do things get stalled and why? Are there workarounds? If so, what are the barriers to putting them in place?

The solutions needed to address each of these gaps will depend on the specific context and a discussion of these are clearly beyond the scope of this article.¹⁸⁴ The important thing to bear in mind for our purposes is that the focus on problem identification must be centered on uncovering the specific gaps that act as brakes on the legal department's ability to optimally deliver the jobs its internal clients need to have done and to do so in a client-centric way. Thus, it is during this step that the legal department should seek to uncover the way and manner that the client prefers (and does not prefer) to receive services and be communicated with i.e., what type of experience will not only be optimized but also delightful?

3. Step 3—Identify Design Principles

Only once the GC has been able to identify the core problems that prevent the legal department from delivering the right "jobs to be done" in a manner that leverages its USP, is consistent with its core purpose, and delights its clients will it be in a position to begin the process of identifying the best way to solve for those problems. The first step in doing that is to identify the underlying design principles that the department should adopt as it seeks to address its core problems and set itself up for success.

Design principles are critical because they set the foundational basis upon which all specific solutions will rest. They ensure consistency and complementarity, providing a "North Star" to guide important operational choices and ensure that

¹⁸⁴ For a more detailed discussion of the potential approaches that can be taken to address some of these challenges, see TELLMANN, *supra* note 9, at 54-282.

each component of the whole fits within the broader context. Well-constructed design principles will reinforce the legal department's USP and ensure that its brand and purpose underpin its approach to problem solving and service delivery.

Clearly, the specific design principles to apply in any given context will very much depend on the specific circumstances, including the legal department's purpose, the jobs it needs to deliver, and its unique selling proposition.

One way to identify the appropriate principles is to run a thought experiment wherein the legal department itself as a stand-alone business. If the legal department were a business, who would the primary target be of the legal department and what would be its main offering and point of difference? Once that has been decided, the next question in the experiment is to ask: in that scenario, what well-known company would the legal department want to emulate and why? The answer to this will depend on the "jobs to be done" and the specific strategic and operational context of the client.

Two examples help illustrate this approach. In the first case, imagine that the client is a private equity firm and the primary "job to be done" consists mainly of delivering high value, highly complex, labor-intensive transactional work at a rapid pace. In such a case, a company to emulate might be the consulting firm McKinsey, which relies on attracting and retaining a highly skilled workforce of well-compensated professionals who are experts in their fields and are motivated to work long hours to deliver results at whatever cost is necessary. Cost sensitivity is relatively low because the complex and high-stakes nature of the "job to be done" means that the value of the output to the client in any given case exceeds most input costs. Design principles that the legal department might adopt in this case could include autonomy, quality, creativity, and collaboration, with cost sensitivity a secondary consideration.

By contrast, if the client is a large consumer utility company and a central "job to be done" involves processing vast quantities of fairly simple transactional work or customer contracts, the GC might consider emulating McDonald's, which excels at creating world-class processes that allow each of its many restaurants around the world to deliver large volumes of meals with a consistent level of quality and at a reasonable cost without being dependent on a highly-skilled workforce and low levels of turnover. In such a case, cost is a more important component, together with consistency. The design principles might in this case include process optimization, efficiency, scale, and prioritization.

Alternatively, if self-service tools were an option for the utility, the department could look to IKEA. This company develops beautifully designed products that rely on assembly by customers following clear instructions and intuitive configurations.

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Its brand clearly and unambiguously involves customer assembly, which they accept in exchange for low costs and attractive designs.¹⁸⁵

The core idea is that the design principles adopted should service the “jobs to be done”, focusing first and foremost on identifying the actual, underlying, customer need rather than on a process, technology, or other input on its own. This customer-centric focus will help drive decision-making toward design solutions that address the actual gaps that stand in the way of flawless delivery. Therefore, the legal department must involve its business clients in identifying the core “jobs to be done” in order to arrive at design principles that work with those jobs in mind. In this way, there will be agreement around the objectives, expectations will be managed, and internal clients’ needs will be met or exceeded.

4. Step 4—Design an Operating Model

Having identified the best design principles, GCs can proceed with the more detailed operational work involved in constructing the best operating model to address the problems that prevent optimal service delivery. These efforts include the development of organizational and technology architecture for the department.

It is important to note that technology has not been considered until this step. Unlike in Phase 1 of the Three-Phased approach outlined earlier, in our 5-Step Model the selection and rollout of technology is halted until the purpose, priorities, unique selling proposition, and gaps have been identified and clarified. This minimizes the inevitable waste and inefficiency that comes with rolling out solutions before problems have been fully identified. Having clear design principles to guide this work is a critical component to ensuring that decisions are made in a manner that is consistent with the overall effort.

The experience of one legal department’s DT journey using design thinking might illustrate how Steps 3 and 4 come together. During Step 3, the department identified three principal problems that were causing gaps in their service delivery model:

1. Complexity: Structures and systems were too complex, with a particularly excessive number of policies and standard operating procedures. These negatively impacted department culture, causing lawyers to be cautious, hesitant, and reluctant to make independent decisions, preventing lawyers from providing the kind of rapid, field-facing solutions the business required.
2. Speed: As a result of complexity, turnaround times were lagging behind the needs of the fast-moving industry that the company operated in. It took the

¹⁸⁵. Note: although there is disagreement about this, for the purposes of this analogy, we will assume that the instructions are easy to follow and that the furniture is easy to be put together without added service or help.

legal department too long to deliver on the “jobs” that the company needed to have done.

3. Customer Experience (CX): CX suffered from the red tape, lack of empowerment and slow turnaround, leaving business opportunities to linger or fail while clients waited for the legal solutions they needed. Where solutions were forthcoming, they were perfectly constructed in a legal context but divorced from the actual business imperative. Clients came to view the legal department as part of the problem rather than part of the solution.

Having identified complexity, speed, and CX as their three main problems, department leaders considered what company might best inform their design principles. They settled on Amazon because of the central focus the company places on CX, which they believed was driven by a powerful platform containing a simple, intuitive, and seamless user interface on the front end, and a unified delivery model on the back end dedicated to customer-centricity, data capture, predictive analytics, and speed. The legal department believed that Amazon’s design principles enabled it to capture critical data points and insights about customers and their actual needs. These data points and insights, in turn, were effectively used to provide even better and more seamless CX on the front end, with a virtuous flywheel effect emerging, whereby ever more data drove better CX, which in turn generated more business, providing more data, etc. Leveraging Amazon as its inspiration, the department adopted the following design principles:

- Simplicity: Low-friction, streamlined processes and engagement protocols with clients and within the legal department itself.
- CX: Insightful, satisfying and “delightful” collaboration between clients and the legal department.
- Synergy: Effective, consistent service delivery across silos within the legal department and other governance functions, with an eye toward continuous improvement.
- Agility: Proactive, yet flexible solutions that match the “speed of business.”

Based on these design principles, the legal department developed an organizational architecture centered around an enterprise-wide, technology-driven legal and compliance platform that provided analytics and insights, standardized templates and playbooks,¹⁸⁶ as well as policies, and internal systems. That platform

186. Playbooks contain “the strategies, approaches, programs, actions, etc.— the ‘plays’ that the company executes in its operations. Playbooks can be formal documents called playbooks, but they are also business process workflows, standard operating procedures and cultural values that shape a consistent response – the

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supported lean, upskilled and agile teams of field-facing lawyers and hybrid groups of enterprise-wide experts and multi-disciplinary support teams (MNTs). The hybrid nature of these teams meant that the department would be able to react more rapidly and flexibly to demand spikes and other shifts in workflow (see Figure Y).

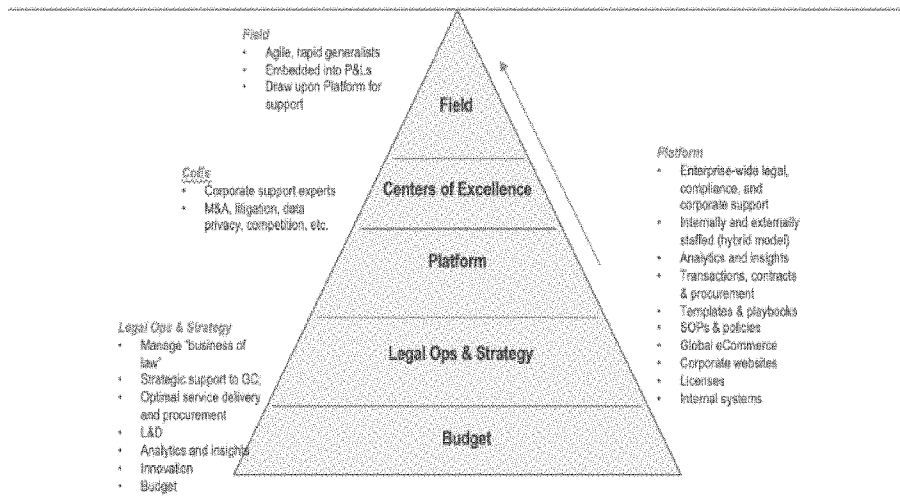


Figure Y

With the overall organizational architecture complete, the department set to work constructing a technology design modeled on Amazon. A front-end portal with a simple, intuitive user interface provided clients with entry access to the legal department. A triage system provided clients with a self-service portal with request intakes, knowledge repositories and automated templates for simple transactions. More complex matters were automatically forwarded to the appropriate team. A time bar at the bottom of the interface gave clients real time updates on the status of their requests. On the back end, the portal plugged into a sophisticated workflow tool that connected into various departmental technology systems, including its contract and matter management tools, IP management and e-billing systems, and enterprise-wide sales and HR tools, SAP, etc. All of the data generated by these various connections were drained into a governance data lake with an AI-enabled business intelligence technology capable of generating insights and analytics.

The foregoing discussion should make it clear that a best practices model should not attempt to offer specific technology solutions or recommend specific vendors

play." Mark McDonald, *A Different Playbook For Digital*, ACCENTURE DIGITAL TALK BLOG (Jan. 31, 2014), <https://www.accenture.com/us-en/blogs/blogs-different-playbook-for-digital>.

or providers. The exponential growth in processing speed and innovation means that specific discussions become obsolete before the ink has dried.¹⁸⁷ More importantly, however, the “right” technology solution or vendor depends on the specific circumstances and problems identified and the solutions designed. In much the same way as it is impossible to recommend a specific “best” process improvement or consultant, it is impossible to recommend a specific technology or tool. It depends on the problem one is trying to fix.

5. Step 5 (Iterative)—Secure Buy-in and Lead Change Management

In order to implement DT, secure funding for it and ensure the right levels of acceptance from department personnel and internal clients, it is imperative that GCs take the right steps to appropriately market, communicate and manage the DT process. Two aspects are worth considering in this context: securing management buy-in and investment; and managing through the change arising from a DT.

Securing Buy-In & Investment

One common error GCs make when contemplating DT is failure to make an appropriate investment proposal. Careful thought must be given to this aspect of the journey. A clear communication strategy should be developed that articulates the legal department’s purpose, validates the “jobs to be done” for the company, highlights the gaps identified and articulates the way forward.

Investment levels, required resources, and implementation timelines need to be clear, and an adequate and defensible return on investment must be presented. The case must emphasize the “why”—that is to say why there is a compelling need/opportunity—as much as the “how,” i.e., specific implementation parameters.

It is critical for the GC to work closely with outside providers and internal resources, including finance and HR colleagues and project managers, in putting this work together. A team of senior leaders from the legal department must also be engaged and able to provide input. Internal clients should also be consulted and brought on board before a formal proposal is brought forward. The investment proposal is also an opportunity to restate the legal department’s purpose and highlight its USP and value proposition to management. The closer the GC involves these groups in developing the proposal, the more likely they will be to secure successful buy-in for the proposal.

Outside vendors should be held to their commitments, with compensation reduced for missed targets or cost overrides. Negotiation of agreements and

¹⁸⁷. The rapid development of technology in recent years has been fueled in part by the exponential growth in computing power, sometimes referred to as “Moore’s Law”, together with the emergence of Big Data, cloud computing, and AI. For a discussion of these dynamics, see TELLMANN, *supra* note 9, at 185-189.

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project plans with ALSPs and other vendors can be complex and time consuming. It can be valuable for the GC to consider bringing in adequate full-time expert resources to help manage this, including legal operations professionals and outside consultants.

Managing Through, Measuring, & Marketing the Change

Change management principles must also be carefully considered throughout the change journey discussed above. DT is a major undertaking that can profoundly impact the legal department and its personnel. It is therefore very important to be thoughtful about how to help the department navigate through the change from the very start. If possible, internal and outside change management experts should be brought in to help craft a communications strategy. GCs must not underestimate the potential impact of change on themselves, their clients, their teams, and their ability to successfully roll out a DT.¹⁸⁸

Lawyers are often change-resistant by nature. They are trained to be risk-averse, precedent-driven and comfortable with incremental evolution. DT by contrast can be messy, risky, and uncertain. GCs should anticipate and indeed expect resistance to the change they are advocating for.¹⁸⁹ In articulating the change to department personnel, GCs must make the case for why the change is needed, outline the path forward, articulate why the change is valuable and necessary not only for the company but also for department personnel, and manage concerns appropriately.

It can also be important to give department personnel a regular opportunity to openly express their thoughts and concerns about the DT. Wherever possible, input should be solicited and obtained from personnel. The more they can be involved in the effort, the greater the likelihood of success. Transparency must, however, be calibrated with confidentiality, as variables can take time to play out, can change over time, and might significantly impact the prospects of individuals in the department.

As the project rolls out, success should be monitored and measured, with rapid response when problems surface. With behavioral changes, new colleagues, different expectations, and new ways of working, success can quickly go off track unless careful controls are put in place. Measuring team engagement throughout the process is also essential.

Measuring and marketing the wins—the small and big wins—is also important to creating and maintaining the change and the culture—especially when the legal team is accountable for driving business results. The department needs different

188. For a practical analysis of the emotional dynamics of the corporate change cycle and how to navigate them, see JEANIE DANIEL DUCK, *THE CHANGE MONSTER: THE HUMAN FORCES THAT FUEL OR FOIL CORPORATE TRANSFORMATION AND CHANGE* (Random House eds., 2001).

189. For a useful discussion of change management tactics to consider in the context of legal department transformation, see TELLMANN, *supra* note 9, at 286-301.

ways to measure it and different ways to market it e.g., through storytelling and award giving and career advancement.

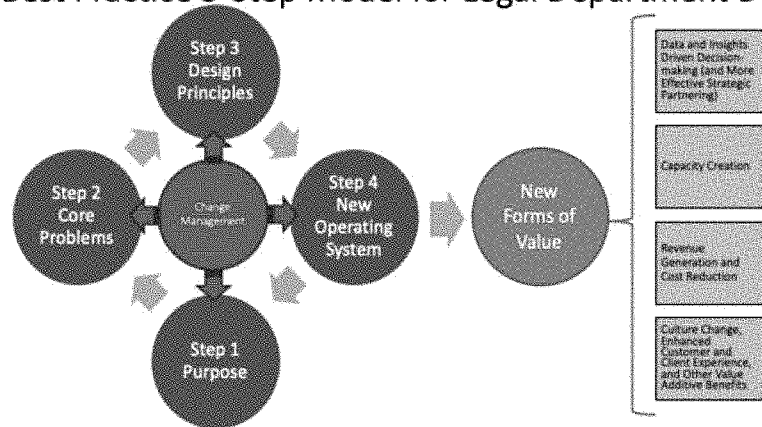
Change management is a huge and complex topic. Obtaining professional guidance and support to navigate through change variables during DT is critical to ensuring the ultimate success of the effort.

B. Benefits of Our Best Practice 5-Step Model: Creation of New Forms of Value

By completing Steps 1-5, legal departments will have created a powerful operating model that builds off a clear purpose and well-defined USP to deliver the “jobs to be done” that its corporate clients care about and in a way that they desire. They will have identified the problems causing gaps in their service delivery and used design thinking to identify a principles-based organizational and technology architecture to address those gaps.

While departments that have reached this point will have generated cost savings, improved productivity and smoother workflow, they will begin to recognize that such benefits are merely baseline value drivers. The longer the model remains in place, the more novel value drivers will emerge, much of it from data that is captured via the organizational or technology architecture. These new forms of value are often more impactful in the long term than the baseline cost efficiencies because they help transform the legal department from cost center to value driver and business enabler.

Best Practice 5-Step Model for Legal Department DT



As depicted in the chart above, some of the new forms of value that can be generated at this stage include:

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Data and Insights Driven Decision-making (and More Effective Strategic Partnering)

DT at its later stages often generates significant increases in both the speed and quality of legal decision-making. Decisions that previously were based on experience or hunches, such as, for instance, the appropriate cost or turnaround time for a particular matter or the extent to which a given contractual clause is favorable or unfavorable, become objective and data-driven and based on precedents from the company's own data lake. Costs for a matter can now be sliced in different ways and analyzed against aggregated or individualized comparable costs by other providers for similar types of work. Contractual clauses can be evaluated and ranked against comparable clauses from other contexts.

These sorts of capabilities are increasingly appearing in law firms as well. DLA Piper's Contract Dashboard, for instance, enables clients to determine whether contracts are aligned with its risk profile across multiple criteria and to benchmark its supplier contracts against a universe of comparable contracts in the industry. It also enables contract drafts to be modified and automatically generated based on the sample universe to reflect desired criteria in a data-driven manner.¹⁹⁰

A tool like this has numerous benefits in-house as well. For instance, rather than relying solely on attempts to explain to a client how favorable a given clause is, in-house practitioners can establish that the clause at issue is, say, a "7 out of 10" based on a large universe of comparable agreements.

Data insights also lead to more effective strategic partnering. Consider the adoption of a Non-Disclosure Agreement (NDA) tool. Capturing data from hundreds of negotiations can, for instance, help the legal department to empirically determine whether turn-around time will be materially faster if the company uses its own NDAs as opposed to the other side's form. These kinds of insights can be used to better partner with the business to change ways of working and increase speed-to-contract. Capturing and sharing such insights reinforces the discipline of data-driven decision-making and generates greater efficiencies than would exist if the department's technology was only able to help them better manage drafting and negotiation. By reducing friction and enhancing speed to contract, such data-driven approaches can also help strengthen relations between the legal department and its business partners.

Depending on the legal department's technology configuration, data can also be aggregated not only across the department but also including various parts of the enterprise (e.g., HR, internal audit, procurement, Salesforce, SAP and other data sources). Data lakes¹⁹¹ can also be plugged in with external sources to create

190. DLA Piper, *Contract Dashboard*, DLA PIPER (last visited Jan. 3, 2021), <https://www.dlapiperoutsourcing.com/tools/contract-dashboard.html>.

191. See *supra* note 119 defining what is a data lake.

actionable, business-focused insights. The potential sources of insight that can be gleaned from such combinations is vast. Examples include:

- Predictive litigation analytics resulting in enhanced settlement strategies.
- More accurate time, cost, and bottleneck estimates for transactional work.
- More effective playbooks, templates, and other resources, benchmarked against real-world comparables, enabling legal teams to better support business initiatives with more accurate and data-driven insights, greater capacity for and quality of strategic support, and increasingly rapid response times.
- Data-driven insights that better evaluate contractual terms and secure more competitive negotiating positions.
- Clearer visibility and alignment of workloads and needs between internal clients and the legal department.
- Better oversight and control of external costs across a range of providers, with benchmarks and averages enabling more effective negotiation and identification of most efficient external providers.
- Primary, secondary, and tertiary due diligence and background checks on vendors, customers, and third-party providers.

Capacity Creation

More efficient and aligned workflow designs enable digitally transformed legal departments to utilize available capacity more effectively. Portals and triage systems allow the right team members to be assigned to the right types of work (and in some cases the work can be directed to self-service tools, thereby bypassing the legal resource altogether). Work that is allocated to the appropriate level professional can also be steered to individuals based on available capacity, ensuring that the utilization of human capacity is optimized. By contrast, in a non-digitally transformed legal department, work is often allocated based on who picks up the phone call, rather than who has the most capacity and is best equipped to respond.

Reduced time spent on lower value tasks or work that is not suitable for the level of professional involved also ensures that highly skilled legal department professionals are able to devote most or all of their time on strategic work rather than on lower value operational matters. This strategic capacity overlay can generate significant value for the business on many levels, including enabling higher quality input at a rapid pace on matters of critical importance to the company. As discussed more below, it also creates higher engagement and satisfaction levels among the legal department professionals which in turn, aids the culture needed for DT.

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Revenue Generation and Cost Reduction

DT provides a large number of ways for the legal department to move from simply managing costs efficiently to generating untapped sources of revenue for the business. Contracts can provide one source of such revenue. For instance, by leveraging AI and automated processes, legal departments can sift through the company's contract repository to identify untapped areas of opportunity, such as contractual clauses or commitments that have not been properly and systematically monitored by anyone due to a lack of resourcing, prioritization, insight, etc. A particular type of standard form agreement might, for example, contain clauses such as payment deadlines, notice provisions, etc. that counterparties frequently breach, but the value to the company in seeking redress for these relatively minor breaches is outweighed in the individual case by the cost of identifying the breach and pursuing it. By tagging specific attributes, AI tools can be leveraged to cost effectively identify such opportunities. For example, it can mine the repository and cross-check specific clauses with payment or other records to efficiently identify breaches. Standard legal letters can then be generated and sent out, with follow up assigned to call centers or collection agencies. The identification of such revenue items and the prioritization of contracts based on top revenue characteristics can improve contract performance rates by 10 percent.¹⁹² Identifying repeated breaches in a contract structure via data analytics have also been used by in-house counsel to negotiate the restructuring of commercial arrangements and deal structures in ways that generate greater revenue opportunities for the companies they work for.¹⁹³

By integrating technology and workflow with data, DT can also lead to a faster moving, more agile legal department, resulting in improved contract turnaround times and faster revenue collection by the company at lower administrative cost points.¹⁹⁴ Experience has shown that digitally transformed contracting can accelerate cycle times by between 10 and 40 percent, reducing company costs by over 30 percent, and increasing department capacity by 35 percent, thereby freeing up time and resources for higher value work. These are all tangible and measurable value drivers for the business. In one case study, a digitally transformed contracting framework reduced a company's average negotiation time by 50 percent across their portfolio, generating value in excess of \$1B over an 18-month period.¹⁹⁵ Tangible benefits included:

192. UNITEDLEX, ACCELERATE REVENUE GAINS DIGITALLY TRANSFORMED LAW DEPARTMENT GENERATE REVENUE FOR FORWARD-THINKING COMPANIES 2-4 (2020).

193. Based on communication by one of the authors with a former GC of a biopharma company on January 24, 2022.

194. See UNITEDLEX, *supra* note 192, at 2-4.

195. UNITEDLEX, DATA-DRIVEN COMMERCIAL CONTRACTING 2-4 (2020).

- Response time efficiency gains of over 21%
- 46% improvement in contract turnaround time for selected transaction categories
- Reductions in backlog from approximately 70% to 20% in 12 months
- 28% lower labor costs
- 15% reduction in expenditure on outside counsel to support transactional work¹⁹⁶

The British telecommunications company BT has leveraged AI in a number of such ways to generate greater value from their contract databases. These include using AI to rapidly understand and respond to the obligations of various parties across thousands of highly complex master service agreements, thereby minimizing revenue leakage, reducing negotiation times, improving deal velocity, and more rapidly assessing risks.¹⁹⁷ AI has also been used by BT to trawl through large data sets in the regulatory context. For instance, the company used AI to examine half a million customer and supplier documents in order to rapidly identify where potential amendments might need to be made in order to comply with the General Data Protection Regulation (GDPR) when that law was introduced in the European Union.¹⁹⁸

Digital transformation also enables the legal department to have better oversight of the company's IP portfolio. Legal departments can apply technology to continuously evaluate, manage and monetize their patent or trademark portfolios to yield substantial year-over-year returns on investment through activities such as the identification of novel monetization opportunities (e.g., through sale, licensing, or litigation).¹⁹⁹

Additionally, DT allows legal departments to efficiently and cost effectively identify high intrinsic value patents or other assets out of large portfolios, ranking the quality of each by the application of various parameters, such as market and technical relevance, enforceability, and applicability to other technologies.²⁰⁰ In one

196. *Id.*

197. Paul Branch & Peter Wallqvist, *Contract lifecycle management" Artificial Intelligence partners with humans to create BT success story*, WORLD COMMERCE AND CONTRACTING (Jul. 5, 2019), <https://www.worldcc.com/Resources/Blogs-and-Journals/Contracting-Excellence-Journal/View/ArticleId/10909/CONTRACT-LIFECYCLE-MANAGEMENT-Artificial-Intelligence-partners-with-humans-to-create-BT-success-story>).

198. *Id.*

199. See UNITEDLEX, *supra* note 192, at 2-4.

200. UNITEDLEX, *supra* note 192, at 2-4.

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study, a Fortune 50 company was able to generate \$100 million in licensing revenues by applying this approach.²⁰¹

Sven Riethmueller, the former GC of a life sciences company, noted that such value can also be generated by in-house counsel in the M&A context from secondary assets that were not even the focus of the initial deal:

*We found secondary assets that were not the primary focus of the M&A acquisition but that we turned into revenue generating opportunities. In one case, we created an entire revenue generating opportunity that, for a while, generated material revenue annually from a single secondary asset that my company acquired in an acquisition, even though that was not the focus of the acquisition. We had to do some contractual engineering/renegotiation, but it turned out spectacularly well. It turned us into a true profit center.*²⁰²

Culture Change, Enhanced Customer and Client Experience, and Other Value Additive Benefits

In addition to measurable revenue gains, Legal DT yields other forms of value that, while less tangible, are no less important to improved performance and the delivery of “jobs to be done”. One such gain can be a re-energized and engaged workforce. By freeing up capacity and aligning the department behind clear company priorities, legal professionals often gain a newfound appreciation for being on the cutting edge of new initiatives and technologies. As DT takes hold inside a department, data-driven mindsets begin to take hold as part of the culture. And collaboration-driven mindsets take hold too. One GC interviewee explained an opportunity that he had recently thought of that he believes is how his team should approach the work in the legal department of the future:

In all of our consumer companies (within our company), we have marketing reviews for the literature on their products and stuff on websites and how we describe our products. There are paralegals and teams to do the review, to make sure we are not making claims that are not true and that are consistent with rules of the country. One of the ways to win on that is, if my company is the best at doing that, I just avoid a claim. But I could add more value and save money and time if I could do that with the other companies i.e., if I partner, if we pool together the marketing reviews. It would take some work and design but conceptually

201. *Id.*

202. Communication between author and Sven Riethmueller, former VP and GC of LION Bioscience AG, January 24, 2022.

*this type of work is not as unique as people like to think of it. . . This is an example of the thinking, in being open to doing something differently.*²⁰³

Hybrid staffing models, in which full time employees work closely with outsourced teams on joint projects via unified platforms, can also be an opportunity to create a broader conception of what constitutes a “team”. It may also provide employees with new opportunities to manage outsourced staff, develop leadership capabilities and broader, enterprise mindsets. As the DT journey unfolds, similar collaboration efforts can arise with outside counsel, creating additional layers of collaboration and teamwork that can further develop such approaches and skills.

By introducing new skills and more agile ways of working, DT also has the potential to expand the number of digitally adept colleagues, fostering a “digitally native” culture that attracts higher caliber talent with multifaceted and multi-disciplinary skills to the department. And, a focus on improving CX can create closer collaboration and involvement of legal department professionals with other parts of the business, drawing them closer to the company’s purpose and generating more strategic, business-oriented outcomes. This, along with all the other benefits above, delivers enhanced customer (and internal client) experience.

There are countless additional forms of potential value creation from DT of the legal department. One is related to our recommendation (to be discussed in a future paper) that the definition of DT include an ESG (Environmental, Social, and Governance) component.²⁰⁴ GCs in their DT journeys are primed to lead the effort in helping companies articulate, measure and leverage their ESG activities to create new forms of value and limit risks related to disclosure (and failures of disclosures) including liability, public criticism, and regulatory harm.²⁰⁵ ESG is one of those new opportunities and capabilities that stems from DT and our model. One of our

203. Interview with Anonymous Interviewee #11, *supra* note 111.

204. ESG “broadly refers to a company’s efforts to address stakeholder interests that involve your company, its workforce, its products, or its impact on society.” Callahan, Michael and Larcker, David F. and Tayan, Brian, *The General Counsel View of ESG Risk* (September 14, 2021). Rock Center for Corporate Governance at Stanford University Working Paper, Available at SSRN: <https://ssrn.com/abstract=3923913>. For a paper discussing GCs view of the importance and risks related to ESG *see id.*

205. *See, e.g.,* Thibaut Millet, *How to Weave ESG Factors Into Your Digital Strategy*, EY (Jan. 2020), https://www.ey.com/en_ca/mining-metals/how-to-weave-esg-factors-into-your-digital-strategy/; Peter Gassmann & Colm Kelly, *How ESG Will Drive the Next Wave of Transformation*, PWC (Jan. 2021), <https://www.pwc.com/gx/en/issues/reinventing-the-future/take-on-tomorrow/esg-transformation.html>; *see also* Daniel Englberger et. al., *DIGITAL CULTURE: THE DRIVING FORCE OF DIGITAL TRANSFORMATION 7* (World Economic Forum 2021), https://www3.weforum.org/docs/WEF_Digital_Culture_Guidebook_2021.pdf; WORLD ECONOMIC FORUM, *ANNUAL REPORT 2019 - 2020* (World Economic Forum 2020); Liz Davis, *5 Key Takeaways for A Successful ESG Digital Transformation*, BENCHMARK DIGITAL (Feb. 2, 2021), <https://benchmarkdigital.com/blog/5-key-takeaways-for-a-successful-esg-digital-transformation/>; Kerry Clarke-Potter, *ESG Should Be At The Core Of Every Business’ Digital Strategy*, BLOCKCHAIN BLOG (Nov. 19, 2020), <https://blockheadtechnologies.com/esg-should-be-at-the-core-of-every-business-digital-strategy/>.

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interviewees described a new tool they were using to allow the department to “drive social agendas like D&I as much as the cost agenda” with outside law firms to “force law firms to come to the D&I table.”²⁰⁶

There are more. Of course, the opportunities depend in each case on the specific circumstances. The theme, however, is clear: Legal DT enables and empowers and ever-closer collaboration between the business and the legal department, creating a holistic focus from what may previously have been silos, and adding new forms of value based on insights, data and analytics, improved capacity, agility and cultural norms.

CONCLUSION

Given that DT is growing in importance in the legal marketplace, the purpose of this article is twofold. First, it starts to fill the gap in the research and the literature by depicting and analyzing how corporate legal departments of MNCs are currently approaching DT. It highlights the impediments and the benefits of the current Three-Phased approach concluding that the approach generates new forms of value but does not enable the full potential of DT to be harnessed. Second, it articulates a Best Practice 5-Step Model for how legal departments should approach DT to generate new forms of value and shift from being a cost center to a revenue generator and value creator.

We conclude with two calls to action. First, we urge academics to do more research about DT in the legal context. More primary research needs to be done on how corporate legal departments are embracing the DT challenge. Armed with more case studies, and more proof, more in-house leaders will have the confidence and leverage they need to garner support to embark on their DT journeys.

Second, we call on legal departments and law firms to embrace the lessons of DT in order to position themselves to be in the vanguard of change within the legal profession. The macroeconomic and technological landscapes unmistakably point in the direction of DT. The sooner the legal profession recognizes and accepts this and begins to think about how it can best adapt to the changing context, the more successful it will be. Failure to evolve will relegate legal professionals to second-tier status.

There has been some change. Over the past decade, for example, some large law firms have made incremental improvements to their business and service models to continue to sustain excellent business earnings.²⁰⁷ They have become more

206. Interview with Anonymous Interviewee #5, *supra* note 116.

207. *Why Big Law Will Keep Getting Bigger in the 2020s*, THE ECONOMIST, (Jan. 1, 2022), <https://www.economist.com/business/why-big-law-will-keep-getting-bigger-in-the-2020s/21806919>; Thomson Reuters & Geo. L. Ctr. on Ethics & Legal Pro., 2020 REPORT ON THE STATE OF THE LEGAL MARKET 2-5, (2020); see also WOLTERS KLUWER, *supra* note 9, at 2 (“Client-focused firms recognized the importance of increasing productivity and efficiency . . . seeking approaches to foster innovation, strengthen areas of specialization and

multidisciplinary, increasing the prevalence of C-suite business professionals.²⁰⁸ They have improved their internal systems to drive efficiency, enhanced use of technology to improve processes, and have begun to outsource and sometimes even create captive subsidiaries.²⁰⁹ They are even using data to enhance profitability.²¹⁰ A plethora of alternative legal service providers (ALSPs) and other organizations including the big 4 accountancy firms, have also emerged to meet the DT needs of large corporate legal departments.²¹¹ And this group of non-law firm competitors is growing significantly with the use of them by clients.²¹² These ALSPs will either be critical partners in this evolution or competitors offering alternative ways to solve legal “jobs to be done” in a rapidly changing corporate landscape.²¹³ Given this and the pressure from clients, law firms will need to do more to continually transform themselves to provide the same benefits to their in-house clients that companies do for their customers.²¹⁴ This means taking a more client centric, experience-focused and integrated approach to services in addition to adopting new technology and new processes.²¹⁵ That entails everything that DT

increase collaboration, all while ensuring great cost efficiency.”); William D. Henderson, *Innovation Diffusion in the Legal Industry*, 122 DICKINSON L. REVIEW 395 (2018) (identifying factors that can promote and that can inhibit innovation within law firms).

208. Thomson Reuters & Geo. L. Ctr. on Ethics & Legal Pro., 2020 REPORT ON THE STATE OF THE LEGAL MARKET 17, (2020).

209. *Id.* at 17-19.

210. *Id.* at 17.

211. See David B. Wilkins and Maria Jose Esteban Ferrer, *Taking the “Alternative” out of Alternative Legal Service Providers*, in *NEW SUITS APPETITE FOR DISRUPTION IN THE LEGAL WORLD* 29-58 (Michele DeStefano & Guenther Dobrauz eds., 2019).

212. Thomson Reuters Legal Exec. Inst. et. al., *Alternative Legal Service Providers 2019: Fast Growth, Expanding Use and Increasing Opportunity 1* (2019) (reporting \$10.7 billion in global annual revenues for ALSPs and a 12.9 percent compound annual growth rate from 2017-2019 and predicting growth at 24 percent a year.”); *Id.* at 4-6 (finding that use of ALSPs by corporations is growing at double pace and that 38% of corporations use them for some services). The 2019 survey included 517 responses — 335 from law firms and 182 from corporate law departments; see also Wilkins and Ferrer, *supra* note 211, at 29-58 (“[T]he Big Four legal networks now have a significant presence in every important legal market in the world with the notable exception of the United States. Nor are the legal services delivered by these networks confined to tax. Although tax-related advisory services remain an important cornerstone, the Big Four legal networks are now delivering services in a broad range of legal fields, including premium practices such as finance and M&A, and fast-growing ones such as compliance and employment law.”).

213. A failure by law firms to heed the challenge posed by ALSPs could ultimately result in the disruption of their business models by innovative market entrants such as ALSPs, who typically emerge at the margins of the market. For a discussion of this dynamic more broadly, see CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA* (Harv. Bus. Rev. Press, 1997).

214. Thomson Reuters & Geo. L. Ctr. on Ethics & Legal Pro., 2020 REPORT ON THE STATE OF THE LEGAL MARKET 2-5, (2020) (“Clients are now effectively exercising their new-found power over the market in ways designed to push improved efficiency, predictability, and cost effectiveness in the delivery of legal services.”).

215. See also Wilkins and Ferrer, *supra* note 211, at 29-58 (“Specifically, we argue that corporate clients will increasingly demand professional services that are “integrated,” “customized,” and “agile.” These demands, in

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offers for any enterprise: data and metrics, technology, people, skills, and culture. Unfortunately, like in-house legal departments, law firms and ALSPs alike report that they are unprepared for the critical components to effective DT.²¹⁶ On a positive note, for the law firms, and ALSPs that become ready and that figure out new valuable ways to help in-house legal departments on their DT journey, this could be a huge opportunity because they need the help.²¹⁷

While the proposition is clear, we have also shown that the journey of Legal DT can be haphazard and ineffective if not undertaken in a structured and thoughtful manner. Many legal departments have embarked on the DT journey without a clear understanding of their purpose, unique selling proposition, the specific “jobs” their corporate clients need to have done, the problems that cause gaps and bottlenecks in their service delivery, and a design centered approach that solves for those gaps with organizational redesign, process optimization, and the thoughtful application of technology.

Our Best Practice 5-Step Model for Legal Department DT is designed to help departments undergo DT in a manner that will take these variables into account. Importantly, our model demonstrates that the potential value of a legal department can be greater than improving efficiency or lowering costs. DT can result in substantial increases in capacity and revenue. More than that, our model demonstrates in-house legal departments have an advantage over outside legal services. This is because in-house lawyers have a better and deeper understanding of the MNC’s strategic priorities and risk preferences and, therefore, are better at identifying the right and best opportunities to leverage and exploit to the MNC’s advantage.

In addition to filling some of the gaps in the literature, this article provides a vision that has broad applicability beyond the MNC legal department context and can be used as a model for law firms and other legal services providers to harness DT in their own contexts, to stay at pace with—and better serve—clients with the never-ending DT challenges emerging on their horizons.

turn, will move what are now considered “alternative” providers, such as technology companies, flexible staffing models, and multidisciplinary service firms like the Big Four, to the core of the market, while putting pressure on law firms to articulate how their services contribute to producing integrated solutions for clients.”).

216. See WOLTERS KLUWER, *supra* note 9, at 4 (reporting that only 28% of respondents from law firms, corporate legal departments, and business service firms, indicate that their organization is prepared to keep pace with changes in the legal marketplace and meet the increasing importance of legal tech, and only 31% believe they are ready to meet the changing client expectations, and that the biggest barrier is difficulty of change management and leadership resistance).

217. See DESTEFANO, LEGAL UPHEAVAL, *supra* note 165, at 28–55; see also VEITH ET AL., *supra* note 12, at 21–23.

APPENDIX

A. Research Methodology

This Article is based in part on secondary research (articles and surveys) as well as primary research, and qualitative interviews conducted by Professor Michele DeStefano, one of the authors. The primary goal of the interviews was to explore the perspectives of GCs servicing large, fortune 500 and global 500 corporations regarding the way they are currently approaching DT of the legal department.²¹⁸

1. Qualitative Interviews: Overview & Sample Characteristics

The interviews sought information about the company's and legal department's organizational structure, recent efforts by the company and by the legal department related to technology improvements in general and more specifically related to DT. They also explored the role of inside and outside legal professionals in managing DT and included a self-assessment of the importance of DT, alignment with the business priorities, level of collaboration with the business, and the progress of DT for the legal department. Each interviewee was asked to share vignettes describing the legal department's DT journey so far and what was working well and what barriers existed. The study focused on GCs because they are usually the professionals in charge of leading the DT efforts within their legal departments.

218. It is true that the use of the interview method as a way to collect data to inform researchers' understanding of participants' lived experiences had been critiqued. See, e.g., Paul Atkinson & David Silverman, *Kundera's Immortality: The Interview Society and the Invention of the Self*, QUALITATIVE INQUIRY (Jun. 29, 2016); Alexa Hepburn & Jonathan Potter, *Qualitative Interviews In Psychology: Problems and Possibilities*, QUALITATIVE RESEARCH IN PSYCHOLOGY, 281-307 (2005); However, there is a great deal of research on the value of qualitative interviewing to enhance understanding and analysis and it is an important approach in the curriculum of many graduate-level courses on qualitative research. See, e.g., THE SAGE HANDBOOK OF QUALITATIVE RESEARCH (Norman Denzin & Yvonna Lincoln eds. 2nd ed. 1998); MICHAEL CROTTY, THE FOUNDATIONS OF SOCIAL RESEARCH (Michael Crotty ed., 1998); James L. Paul & Kofi Marfo, *Preparation of Educational Researchers in Philosophical Foundations of Inquiry*, 71 AM. EDUC. RSCH. ASS'N. 525-47 (2001); Kathryn Roulston, *Considering Quality in Qualitative Interviewing*, QUALITATIVE RESEARCH, 199-228 (2010); ELLIOT GEORGE MISHLER, RESEARCH INTERVIEWING (2009) (arguing against critiques and advocating for the use of qualitative interviewing as a research method in the human sciences; proposing an alternative model of interviewing to that of standardized survey interviews); Furthermore, there is also research demonstrating the value of qualitative research is not only for the researchers but also for the participants. See, e.g., Soria Colomer et. al., *Participants' Experiences Of The Qualitative Interview: Considering The Importance Of Research Paradigms*, 15 QUALITATIVE RESEARCH 351, 351-72 (2015) (analyzing six different research projects with varying types of subject matters and interviewing styles and identifying the benefits across all of them as "the opportunity to: 1) talk to someone; 2) self-reflect; 3) emotionally cleanse; 4) become knowledgeable about a topic of personal/professional interest; 5) connect with a broader community based on shared experience; 6) advocate for a community/cause; and 7) help someone else down the road").

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In total, detailed interviews were conducted with 25 General Counsels and Chief Digital Officers.²¹⁹ All but three of the interviewees worked at Global 500, Fortune 500, or FTSE 100 corporations.²²⁰

These samples were neither random nor meant to be statistically representative. The target of inference was large MNCs across various industries, but with a particular focus on industries where digital transformation would be relevant.²⁹⁶ The industries of the interviewees included: IT products and services/consulting, computer hardware/software, consumer products and goods, health care, pharmaceuticals, health services, insurance, chemicals, defense contracting, financial services, publishing, e-commerce, and telecommunications. Although the interviewees had diverse professional backgrounds in career trajectories, experience, and responsibilities, the interviews uncovered notable similarities in the way GCs think about and approach DT. Further, how the GC interviewees described their role and the DT trajectory of the legal department comported with the secondary literature and surveys.

Admittedly, there is likely some sample bias. And of course, the sample only consists of interviewees who were willing to be interviewed. Furthermore, one could argue that all of the interviewees have an invested interest in painting a sunny-side up picture—especially with respect to their progress in transforming their legal departments. That said, as described above, the picture most painted was not that sunny, likely because DT is a new challenge and many GCs are searching for the right way to approach and, therefore, are willing to admit they don't have all the answers.²²¹

2. Qualitative Interviews: Methodology & Content Analysis

To elicit participation, all the GCs were contacted by email on average two times. The GCs were told that the topic for the interview was digital transformation.²²²

219. The title General Counsel is used to refer to Chief Legal Officers, General Counsels, and Deputy General Counsels. For ease of reference and to protect anonymity, this Article refers to all of these interviewees as simply General Counsels. The title Chief Digital Officer is used to refer to Chief Legal Innovation Officers, Chief Legal Operating Officers and VP and Chief Digital and Information officers. Of the 25 interviewees, all but 4 were GCs.

220. Of these 22 interviewees, 21 worked at companies that were listed as Global 500 or Fortune 500 companies within the last three years and 1 worked at a FTSE 100 corporation.

221. Admittedly, most of this research stems from conversations with the corporate bar and, therefore, is subjective. However, as Professor Lonnie Brown pointed out in the compelled waiver context, whether beliefs are "real or imagined, [those] belief[s] alone could prove to be . . . self-fulfilling prophec[ies]." Lonnie T. Brown Jr., *Reconsidering the Corporate Attorney- Client Privilege: A Response to the Compelled-Voluntary Waiver Paradox*, 34 *HOFSTRA L. REV.* 897, 946 (2006).

222. All of the interviews were conducted by author Michele DeStefano. Some of the interviewees were originally conducted as part of research for the development and creation of the non-profit the Digital Legal Exchange. Those respondents were told that the topic was digital transformation and the purpose was to help

They were not pre-informed about what questions would be asked. However, permission was requested to proceed with questions on the topic of DT during the interview. Of the 25 interviews, 19 were conducted via telephone or video conferencing and were told that they and their companies would remain anonymous.²²³ Six were interviewed immediately prior to a recorded podcast with the permission of the author to publish the podcast and without the promise of anonymity. All of the interviews were conducted between July 2019 and December 2021. The anonymous interviews averaged 60 minutes. The interviews conducted in conjunction with the podcasts lasted 90 minutes. Notes were taken during all the interviews.²²⁴

The interview approach was fairly systematic. Each interviewee was asked the same questions but the order and flow varied somewhat depending on the answers to the questions.²²⁵ Some answers covered or led to some of the outstanding questions. That said, each interview generally began with open ended questions around Digital Transformation and the legal department. Closed-ended questions around ranking the DT maturity of the department and some information on legal department size and structure were saved towards the end of the interview because they are less engaging. The interviewees were found via a “snowball sample” technique²²⁶ wherein the initial participants were contacted via e-

develop a new entity focused on DT in the legal marketplace. At that time, we did not know if the Digital Legal Exchange would solely focus on inhouse legal departments or also law firms.

223. In one instance, one Respondent was interviewed more than once because that GC moved positions from one company to another over the course of the interview period. Also, in another instance, one interview was conducted alongside others from the company, all of whom were promised anonymity, however, only information provided by the GC was included in this Article.

224. None of the interviews were recorded nor the interviews that occurred before the podcasts. The podcasts, themselves, however, were recorded and transcribed.

225. Although the interviewers covered substantially the same questions with each Respondent, often the interviews did not go in exactly this order. The flow changed based on the way the Respondent answered the question. Because no real preparation was needed for the interview, the questions were not provided to the interviewees before or during the interview.

226. Snowball sampling is “a standard technique for sampling populations that are difficult to reach through randomized methods.” Angela Littwin, *Beyond Usury: A Study of Credit Card Use and Preference Among Low-Income Consumers*, 86 TEX. L. REV. 451, 456 (2008); It is developed by starting with one or more people within the target population. *Id.* at 456-57; Those initial participants refer the researcher to other people who meet the study criteria. *Id.*; For a more detailed description, see Leo A. Goodman, *Snowball Sampling*, 32 Ann. Of Mathematical Stat. 148 (1961) (defining snowball sampling); Charles Kadushin, *Power, Influence, and Social Circles: A New Methodology for Studying Opinion Makers*, 33 AM. SOC. REV. 685, 694-96 (1968) (discussing the strengths and weaknesses of snowball sampling); see also, Jean Faugier & Mary Sargeant, *Sampling Hard to Reach Populations*, 26 J. Advanced Nursing 790 (1997); Sarah H. Ramsey & Robert F. Kelly, *Using Social Science Research in Family Law Analysis and Formation: Problems and Prospects*, 3 S. CAL. INTERDISCIPLINARY L. J. 631, 642 (1994); Legal scholars have used snowball samples to study legal issues. See, e.g., Littwin, *supra* note 226, at 456 (using a snowball sample to study “the perspective of low-income consumers regarding the advantages and disadvantages of increased access to credit cards in the wake of deregulation”); Jose B. Ashford, *Comparing the Effects of Judicial Versus Child Protective Service Relationships on Parental Attitudes of Juvenile Dependency*

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introductions by GCs known to the author and then those initial participants referred the author to other GCs at Global or Fortune 500 companies who were interested in or engaging with DT of the legal department.

After each session, the author reviewed the notes taken. To ensure anonymity, a number was assigned to each interviewee and a labeling system developed revealing the title of the interviewee and the industry within which the interviewee works.²²⁷

To the degree possible, the author attempted to analyze the interview notes using content analysis—a method of qualitative analysis frequently used to analyze political speeches, advertisements, judicial opinions,²²⁸ and interview transcripts.²²⁹ The author started by reading all the notes. The author then developed a codebook to analyze the notes. The codebook consisted of questions that could elicit specific answers, e.g., ranking of DT maturity of the legal department, importance of DT to the legal department. The author also coded for some of the themes that emerged from the interviews. For example, the author coded the number of respondents that left culture change efforts to last.

Process, 16 RES. ON SOC. WORK PRAC. 582 (2006) (using a “convenience sample” of forty parents involved with child protective services to study the effect of judicial and case-worker relationships on perceptions of fairness); Chambliss & Wilkins, *supra* note 16 (using a snowball sample to study “the emerging role of compliance specialists in large law firms”); Kirkland, *supra* note 16 (utilizing a snowball sample of twenty-two lawyers practicing in ten large law firms to investigate “how bureaucratic legal workplaces shape lawyers’ ethical consciousness”).

227. For the most part, the numbers reflect the sequential order in which the interview was conducted.

228. See, e.g., KLAUS KRIPPENDORFF, CONTENT ANALYSIS: AN INTRODUCTION TO ITS METHODOLOGY 26–9 (2nd ed. 2004); Littwin, *supra* note 226.

229. See ROBERT P. WEBER, BASIC CONTENT ANALYSIS 9 (2nd ed. 1990); Littwin, *supra* note 226.

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