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202 Metrics to Creating & Fostering a Successful Law Department

Legal Manager Track

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Session 202
Metrics to Creating & Fostering a Successful Law Department

MEASURING WHAT YOU DO
Without Having To Hire a Scorekeeper

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INTRODUCTION

Why am I here? There is no point in measuring what is not important to your company. Before you can measure the important things, you have to figure out what is important. A good place to start is asking why the Company has a Legal Department in the first place. The answer will not be the same for everyone. If you legal department is new, you can think back to the interview. If it is well established, think about what operations and management people ask about most often.

Here are some possibilities.

Litigation Management.

Contract Review and Negotiation

Compliance Monitoring and Training

IP Management

Regulatory Interaction

Examine your situation, and take the top 3 or 4 to try to measure.

What do people ask about most often? When meeting formally or casually with your business people, what do they want to know about? This gives you a clue to what they care about. Then look for ways you can be helpful.

Do they want to know how the lawsuits are going?

Do they ask about contract or other forms for their operations?

Do they invite your input on business issues?

It is a good starting point if you can measure what your clients care about.

No, No, anything but time records. Yes, one thing to measure is what you spend your time on. This may be especially helpful for the solo practitioner. This need not be as detailed as the old hourly billing time records we all had to keep in private practice. Divide what you do into a few general areas, and keep a running total of how much of your time is spent in each. After a while you can get some percentages. This can then be reported along with other things. The **next page is a form** I used for about 10 years. Add up hours, daily, and figure the percentages monthly. At the end of the year you can average your percentages, and include the information in your annual report. *See Below.*

LEGAL DEPARTMENT ACTIVITY

Month of ______________________

DATE	Litigation Management	Contract Review	Corp HQ Assistance	Corp Secretary	Real Estate	Dept Admin
Total						
%						

Notes:

Know Your Hourly Rate. Hopefully your budget can be separated into the cost of operating a Legal Department,(e.g. salary, benefits, supplies, equipment, CLE, travel) and other costs for which you are responsible, but which the company would have even if they had no legal department.

If you take the total of the operating budget, and divide by 2000 hours per lawyer, you can come up with an approximate hourly rate. This may or may not include a proportionate share of the office rent. This can be used to compare the cost of any number of matters, to what it would have cost had it been sent to outside counsel.

Litigation Measurements. Almost everyone wants to keep score on litigation. If you only have a handful of cases open at a time, you can do it on a case by case basis, as statistics are difficult with small amounts of data. One big case throws everything out of whack. If you have hundreds of cases, you may be able to get more sophisticated.

So what do you measure?

> Outcome against estimates or reserves. You can use a hard estimate, a range, a high and low potential.
>
> Total cost of defense or prosecution. Many view outside legal fees with more concern than the actual liability exposure.
>
> Cost against recovery. Was the result worth the cost of the fight. This may be more appropriate when you are the plaintiff.

The first form that follows is a simple way to keep track on an annual basis of matters that are concluded during the year, and how you fared against the original estimate of exposure. These are the cases where your company was the defendant. Legal expense is not a part of this calculation. That can be tracked separately.

This was originally a spreadsheet, which did the math automatically as you went along. The “Net” number at the bottom nets all cases for the year, so that you can even out the extremes.

You could set a target for percentage under reserves, but you almost need a high and low. If you are too far under, it means you are too high on your estimates. The opposite is true if you are way over. While we would like to be at or under on every case, there always seems to be one that gets away. Try to come up with a reasonable deviation form a zero net.

The “NUMBER” column is your case designation

The “NAME” column identifies the matter.

The “AMOUNT” column is the amount paid in settlement, or judgment.

The “RESERVE” column is the amount of your estimate or reserve. This should be the amount you set, at a time when you have enough information to make a good evaluation. You may get assistance from defense counsel and insurance claim representatives on this.

The “VARIATION” Column is AMOUNT minus RESERVE. A negative number is good here.

The “NET SETTLEMENT/RESERVES” at the bottom is the Sum of the VARIATION column. This gives you a bottom line for the year.

2006 SETTLEMENTS AND RESERVES

NUMBER	NAME	AMOUNT	RESERVE	VARIATION
2005-12	Smith v. ABC Corp	10,000	12,000	(2,000)
2006-01	Acme v. Ajax, Inc. v. ABC Corp	150,000	175,000	(25,000)
2004-06	Jones v. ABC Corp	50,000	30,000	20,000
2006-03	Dept of Labor v. ABC Corp	12,500	15,000	(2,500)
	NET SETTLEMENT/RESERVES			(9,500)

Matters Settled without Outside Counsel. Be sure to include a description of matters that were concluded without the need to engage outside counsel. This can be a direct credit to your “what have you done for us lately” bottom line.

What about the matters where your company is plaintiff?

This can be measured n a similar way. In our department we find that most of the cases we file, or matters where the Legal Department is involved in asserting the claim are collection matters where we have completed a job, and there is some problem with payment for the work. Other types of businesses may have more variety. A company with a lot of licensed IP, may have an aggressive enforcement campaign to protect trademarks, copyrights and the like.

Another option is to net the amounts out against the costs of pursuing it, if outside counsel was involved. If no outside counsel is involved, you can put zero, which helps the bottom line. However, if your department charges the operating unit for your time, then put in your charge, which should still be lower than outside counsel

You can also show the Net as a Percent of Recovery, which is some measure of the efficiency of the Legal recovery effort.

It may seem to your business people that you should measure the recovery against the entire amount of the receivable. This of course sticks you with all the business issues that have caused the matter to become a problem receivable in the first place. I have resisted this. Presumably the only collection matters you will get are the ones that are already in trouble. They don't call you to say what a great receivable this is.

2006 COLLECTIONS AND ENFORCEMENTS

NUMBER	NAME	RECOVERY	EXPENSE	NET
2005-12	ABC Corp v. Ajax, Inc.	10,000	2,500	7,500
2006-01	Acme v. ABC Corp (Counterclaim)	150,000	75,000	75,000
2004-06	ABC Corp v. Jones	50,000	0*	50,000
2006-03	ABC Corp - Bankruptcy claim v. XYZ	6,000	800	5,200
	TOTALS	216,000	78,300	137,700
	* Matter handled In house.			
	NET as a Percent of Recovery			63.75%

You can set a Percent goal here and measure your efforts against it. But you are never sure how many of these matters there will be. The more effective you are, the more you will probably get.

Contract Review, and Transactional Work. The easiest thing to measure here is turn around time, and it may also be the most important to your operations clients. They probably wait until the last minute to send the Contract to Legal, and want it back ASAP, even thought they may say they are sorry for the short notice. In our industry, it is often the ultimate customer who does not bother to send the contract they want to use, until the job is only a day or two away from starting.

A simple LOG of matters in and out, can be useful in keeping this record. The majority of our work is reviewing remedial construction contracts that are on other people's forms. No matter who gets it first, it can be logged in. The reviewing attorney (there are 2 of us) can make comments, and log it out when the changes and comments are sent back.

The Log is better in a landscape format, but here is the basic set up. The headings can be don in a "header" so you don't have to re- do it on each page.

Date In	Business Unit	Contact	Customer	Description, Comments and Action	ATTY	Date out
1/3/07	St. Louis	J. Smith	XYZ Bldg	Contract for $100,000 masonry restoration.	JWO	1/4/07
1/4/07	Boston	R. Jones	New England Hosp	Contract, concrete repair, $250,000	JVB	1/5/07
1/6/07	Los Angeles	G. Brown	Big Const.	Subcontract – waterproofing $75,000	JWO	1/6/07

On a monthly basis, we summarize the number of transactions, what business unit sent the request, and how fast we turn it around. This is measured against a goal of an average business days to turn the request around. Set whatever goal you think you can beat, that is satisfactory to the CEO. We report this to the CEO, and the COO, who uses it to see which units are following the recommendation about sending contracts in for review.

All of these forms are made using "Word" tables. A sample of the Log is below, and the report is on the next page.

Contract Review Summary as of 2/28/07

Contracts Reviewed 2007	66
Average Return Time	1.18 Bus. Days*
Contracts Reviewed by Branch	**Number**
St. Louis	7
Chicago	6
Boston	6
New York	5
Dallas	5
San Francisco	5
Ft. Lauderdale	5
Atlanta	5
New Orleans	4
Tulsa	4
Denver	4
Honolulu	4
Salt Lake City	3
Los Angeles	3

*The Target is 2 business days or less.

If you propose changes, you can also keep track of how many customers agree to those changes, and make that information available.

Training. Does your Legal Department do Training? If not, why not? How to do this is the subject of a whole different program. It is a great opportunity to get out in the business units, learn what they do, and take some of the mystery out of the “legal” stuff. If the program is designed to speak to them, they will surely get something out of it, and will be less reluctant to call you if they have a question

Once you start doing this training, set a goal for how many “person hours” of training you should be doing during the year. For example, if you do a four hour program for 10 people, that is 40 person hours of training. At Western we try to make 500 person hours each year. We have our own programs, and also participate in company wide programs.

Again, a simple spreadsheet or Table chart can show this graphically.

Legal Department Training Summary

Date	Location	Program	Hours	Persons Attending	Person Hours
1/12/07	Corp Office	New Employee Orientation	1	7	7
2/15/07	Dallas Office	Contact Basics	4	5	20
2/17/07	New York Office	Collection Tools	3	6	18
2/27/07	Sales Meeting	Contract Tips for Selling	1	50	50

Total person hours as of 2/28/07 **95**

Now what do I do with all these tables and lists?

Because lawyers in business organizations are often working behind the scenes, giving information and advice to the business people so that they will make better business decisions, the lawyer's role is often just a part of the background that makes up the whole transaction. If people aren't sure what you have done this year, tell them. Annual and Quarterly reports on the activities of the Legal Department can answer questions before they are asked.

Annual Reports.

Management is accustomed to seeing lengthy annual reports on financial matters, you can give them a thorough annual report on what the Legal Department has accomplished during the year. Below are listed some of the items you might consider putting in such a report. The report can be narrative, but with appropriate charts and tables attached.

Executive Summary, or Overview. Hit some real highlights, or significant threats, that you want to make sure get someone's attention on the first page.

Litigation Summary. Unless you have a huge turnover of cases in a given year, you can list the matters that have been resolved during the year, the matters that have opened, and what is carried over. If you have a large volume, just list the types, rather than the individual matters.

Other things you can report on:

> **Cases by Type.** Note any trends in the types of cases. Does this suggest any areas where more training, or different practices should be looked at? A little research on the history of cases can get you started on selecting the types. Once you do that try to keep it constant.

TYPE	2006	2005	2004	2003	2002	2001	2000
Product Cases	2	1	0	3	1	1	2
Employment Cases	4	3	5	2	4	4	1
Premises Liability	5	5	2	7	3	4	3
IP infringement	1	0	0	1	1	0	0
Vehicle Cases	2	4	3	6	4	5	5
Contract	2	0	2	1	2	0	1
Collection	2	2	4	3	4	1	1

When you produce charts like this, try to comment on the data.

Outside Legal Fess. You can track these by year to show trends. If there is a spike, explain it. The expenses can be categorized in any number of ways.

Insurance covered cases under deductible
Non-insurance Costs
Defense costs
Plaintiff Cases

Settlement and Collection Charts. These can be used in the annual report.

Contract Review, And Negotiation. In addition to the charts shown above, you should list any significant transactions with which your department provided assistance during the year.

Training. List all the training programs you have conducted or participated in.

Acquisitions, Or Other Outside Ordinary Course Of Business Projects. The Legal department almost always has a hand in these larger projects. It never hurts to remind them.

Significant Matters done in house that used to be sent out. This can show an immediate impact if you are a new department, or a new lawyer that has come in to handle things recently sent out side. However, the veteran in house lawyer may still want to point these things out.

To summarize, you can do yourself some good with the Annual Report, because it demonstrates to management how many things you really do. If you keep a few of these records on a monthly, weekly, or eve a daily basis, you can put the report together in a reasonably short time.

Quarterly Report. You can put together an abbreviated version, perhaps showing just the highlights, on a quarterly basis.

Conclusion. Measuring, or "Metrics" need not be a statistical nightmare, or an exercise on putting square pegs in round holes designed for finance or operations. Analyze what you do every day, and look for ways to measure, or at least quantify the tasks, so you can report on them. Remember doing more contract review, and less litigation management is a good thing in most CEO's eyes.

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Session 202
Metrics to Creating & Fostering a Successful Law Department

THE GOOD, THE BAD (AND THE UGLY) TRUTHS AND MYTHS ABOUT METRICS FOR THE INTERNAL LEGAL DEPARTMENT

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INTRODUCTION

You may be contemplating the following question:

"What are metrics, and why does someone think that the unique requirements of managing the legal function can be measured?"

Answering the "what" question is straightforward. A "metric" is nothing more than some agreed-upon standard of measurement and the data collected under that standard. While that is easily said, as we will see, it is not so easily done. Answering the "why" question is also clear. To paraphrase Lou Gerstner,[1] people do not do what you expect, they do what you inspect.[2] This is a particularly important point – the metric will not only measure quality, but it will influence worker behavior. Using the wrong metrics can result in some seriously detrimental unintended consequences.

Developing and defining metrics involves addressing questions of bias, accuracy, precision and motive. A simple example of a metric is measuring a child's height on the door frame with marks year by year. The standard of measurement can be inches or centimeters, and the data collected is height by year. Metrics are useful (when the sampling is not biased) because they provide data that can be used to determine any number of things. Staying with our simple example, the parents follow the child's growth progression year by year. The data collected might show the child has stopped growing prematurely, prompting the parents to take the child to the doctor for examination.

This would be a self-diagnostic use of the metric data. The parents might also compare the data to the average child height to get a sense of whether their child was taller or shorter than average. This is called benchmarking. This simple example illustrates some important points about using metrics. First, the data must be collected in an unbiased and uniform fashion. It would make no sense to measure in inches one year and centimeters the next because of the difficulty in cross-comparison. Similarly, it would not make sense to measure the child barefoot one year and wearing shoes the next for the same reason. Finally, merely collecting the data is not sufficient; what are important are the "why" and

[1] Chariman of IBM from 1993 to 2002, Gerstner is credited with bringing IBM back from the edge of bankruptcy to one of the more profitable

[2] The full quote is: "Perhaps the greatest mistake I've seen executives make is to confuse expectations with inspection... I've seen great video, intranet, and face-to-face messages describing with excitement and passion a new and daring direction for an enterprise. But, alas, too often the executive does not understand that people do what you inspect, not what you expect." Gerstner, Louis. <u>Who Says Elephants Can't Dance?: Leading a Great Enterprise through Dramatic Change</u>, New York: HarperCollins Publishers 2002 (paperback ed.) at p. 230-31.

the "how." Why are the parents collecting the data? How do the parents interpret the data and what do they do with it. How they act on the data determines whether they have "improved" the situation.

Our example used a simple progression metric, height versus time. The legal department could employ similarly simple progression metrics, such as number of matters managed per year. The CEO and CFO, however, are not likely to be that interested in such basic "progression" metrics. After all, the finance department has probably been using quantitative and qualitative performance metrics for years to measure costs and productivity. Long before finance, the manufacturing facilities used statistical metrics to measure quality and productivity as well.

Most likely as the CLO, you have been asked to develop metrics for one (or more) of three reasons:

1. To justify continuing to have an in-house legal department (or expand or cut the department)
2. To measure year over year some specific legal cost that has become so high that it is on the CEO and CFO's radar screen (usually associated with litigation, such as a high number of serial litigation matters, a few significant litigation cases, or even one "bet the company" matter); and/or
3. To set targets for incentive compensation.

It is important to recognize that different metrics are needed to measure each of the categories above. Equally, the CLO should understand that there is a large body of metrology[3] that has evolved to measure just about every business process. Many large corporation CLO's have already introduced several metrics; many medium and smaller company CLO's are now being educated.

So how does the CLO apply metrics to the legal department processes to measure quality in a quantitative manner? The evolution from the original statistical process control charts developed in the 1920's to make better quality

[3] Metrology is defined by the Bureau International des Poids et Mesures (BIPM) as "the science of measurement, embracing both experimental and theoretical determinations at any level of uncertainty in any field of science and technology." The BIPM was originally created in 1875 under the Metre Convention Treaty to promote use of the metric system as the standard system of measurement. The metric system had been developed in France in 1795 because the "lack of a standardized system of measurements was a source of error and fraud in commercial and social transactions, putting a brake on international commerce and prevented the development of science as an international endeavour."
See http://www.bipm.org/en/convention/wmd/2004/history.html for more information and history on the BIPM.

widgets to today's various quality programs designed to achieve continuous improvement in every process[4] is a good place to start.

One caveat is required here however; although there is a serious movement to standardize the way legal departments perform both self-diagnostic metrics and benchmarking[5] (including an ACC subcommittee on the subject), each law department is different. The key performance indicators (KPIs) important to your senior management may be very different from your peer group and from other CLOs that you know. The most critical aspect of developing effective performance metrics, therefore, is to sit down with your senior management. Ask them what KPIs are important to them, and develop the legal department metrics accordingly.

In the Beginning

Quality was measured in the manufacturing process as early as the 13th century when European craftsmen organized into guilds and put quality seals on their products. Each manufactured item was individually inspected and passed or failed. As one might expect, this was a time-consuming, labor-intensive, inefficient process. In the 1750's, the concept of factory production was developed in England, and then later spread throughout Europe. Quality continued to be measured by "factory inspection" – reviewing the finished product at the end of the manufacturing process on a pass or fail basis. In Europe, a whole new layer of management was created – the office of inspection or inspection department, with a chief inspector, and senior and junior inspectors.

[4] These programs include Six Sigma, a hybrid statistics, process mapping and process control approach first called Six Sigma by Mikel Harry, a former Motorola engineer. Six Sigma was made popular by the adoption and widespread application by companies like Motorola, General Electric, United Technologies and Dupont. A full discussion of Six Sigma is beyond the scope of this paper, but for those who are interested, an excellent resource is Thomas Pyzdek's The *Six Sigma* Handbook (McGraw Hill 2001). Another useful resource is Representing the Corporation: Strategies for Legal Counsel (Aspen Law & Business, updated annually) by Richard H. Weise, former General Counsel of Motorola. Earlier quality programs include Statistical Process Control (SPC), first created by Walter Shewhart (the "grandfather" of quality); Total Quality Management, a program developed by Shewhart disciples Dr. J. M. Juran (considered one of the "fathers" of quality) and W. Edwards Deming (another "father" of quality) that focuses on quality control, quality improvement and quality planning; and QS 9000, a quality initiative developed by the automakers for their vendors, to name a few.

[5] See Carr, J., S. Lauer and N. Wong, "Constructing Standard Metrics Of Your Law Department's Value", ACC Docket November/December 2006 pp. 74-86. The authors are the principle founders of the Open Legal Standards Initiative (OLSI). The OLSI was created to develop standard metrics and collect data for CLOs and law firms to "understand, explain, and improve the functioning of their legal departments." The OLSI and ACC have developed a series of "webinars" on metrics systems, data collection methods and implementation strategies for law departments and law firms.

This new layer of management created new issues, such as: what standards should be used; was proper training being done; was data being recorded properly, similarly by different inspectors and with accurate measuring equipment. It soon became obvious that the "chief inspector" was responsible for more than just final product pass/fail. Now the inspection department had to set the standards that governed pass/fail as well. Companies came to recognize the need to prevent defects before the product was completely assembled. This led to the birth of a new department, the "quality control department" led by the "quality control manager." The quality control manager was responsible for creating ways to measure manufacturing quality so that the final product would pass the factory inspector's inspection.

As the industrial revolution started to mature in the United States after World War One, companies looked for ways to measure manufacturing quality more efficiently.[6] Rather than focusing on inspecting each end product, companies questioned whether quality could be improved and maintained by measuring the manufacturing process itself. In the 1920's Bell Telephone hired the first "father" of quality, Walter Shewhart, to answer this question. Shewhart responded by creating a metric called statistical process control (SPC).[7] Although the factory model had existed since the turn of the century, SPC led to greater automation of manufacturing into the 1940's and 1950's. With greater automation and better ability to measure precision[8] during the manufacturing process, companies could

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[6] Part of being more efficient meant reducing the significant headcount necessary to have a properly staffed inspection department by engineering quality into the manufacturing process.

[7] Walter Shewhart, a physicist and empiricist, was hired by Bell Telephone Laboratories to determine how much of an observed outcome was deterministic, and how much was random. He started by defining "control" in the following manner: "A phenomenon will be said to be *controlled* when, through the use of past experience, we can predict, at least within limits, how the phenomenon may be expected to vary in the future. Here it is understood that prediction within limits means we can state, at least approximately, the probability the observed phenomenon will fall within the given limits." The approximate limits are called standard deviations. In other words, if the desired outcome is to heat a beaker of water to 100°F, and the acceptable range is 95°F to 105°F, then the standard deviation is +/- 5%. Shewhart created "process control charts" to visually distinguish chance causes from assignable causes of variation. The charts attempted to define the deterministic element from the random element. By finding the causes of variation, Shewhart could then eliminate them and improve the precision in achieving the desired outcome. The first published control chart was issued as an internal Bell Telephone Laboratories report in May 1924. After Shewhart's initial work, SPC fell out of favor until the 1940's. In *Statistical Quality Control*, published in 1946, Eugene Grant transformed the basic concept into the more robust system of acceptance sampling, data analysis and interpretation, and managing for quality. Today SPC is commonly defined broadly as the application of statistical tools to improve quality and productivity. A complete discussion of SPC is beyond the cope of this paper, but a good introductory article is: Hare, L., "SPC: From Chaos To Wiping the Floor," July 2003, American Society For Quality, available at: http://www.asq.org/pub/qualityprogress/past/0703/58spc0703.html

[8] In this context, precision can also be read to mean accuracy or falling within tolerance depending on what is being measured.

measure quality in the manufacturing process more cost-effectively. Post World War Two, most companies began using SPC (and similar quality programs built on SPC) to measure manufacturing tolerances.[9] The result was the practical elimination of the "final product" inspection method. Most manufacturing operations continue to employ some form of statistical process control today to ensure quality in the manufactured product. It was not until the 1980's, however, that American companies began to apply that same approach to creating quality metrics to measure human processes.

The Good

Not long after Shewhart developed quality metrics for the manufacturing process to replace individual inspection of every manufactured item, his disciples (most notably Deming, Juran and Feigenbaum[10]) questioned whether similar metrics could be developed to measure quality performance by people.

Total Quality Management

The evolution of Deming, Juran and Feigenbaum's work broadly became known as Total Quality Management, or TQM. Deming's fourteen point plan focused on putting accountability for quality on management and is captured in the Deming Cycle: 1) Plan what is needed; 2) Do it; 3) Check that it works; and 4) Act to correct any problems or improve performance. This is also known as the PDCA cycle. Deming built metrics into steps 3 and 4, on the theory that management was responsible for 94% of the quality problems. Juran created the "quality trilogy" – quality planning, quality control and quality improvement – but focused on customer satisfaction rather than management. To properly *manage* quality, quality actions must be planned, improved and controlled. This is also sometimes referred to as "continuous improvement to customer needs." Feigenbaum combined Deming's focus on management with Juran's focus on customer satisfaction to develop "total quality control." TQC has three steps to quality: 1) quality leadership; 2) modern quality technology; and 3) organizational commitment. If the department achieves these three steps, they should be able to provide service at the "most economical levels that allow full customer satisfaction." These TQM programs were not initially widely accepted in the United States, and Deming, Juran and Feigenbaum implemented most of their programs in Japan in the 1950's. By the 1980's, Japan exported most of these programs (along with several breakthroughs by Japanese quality gurus) to the

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[9] The theory being that if each component of the product met the manufacturing specifications, the product as a whole would be a quality finished one. This assumed, of course, the initial design and specifications, if followed, would yield a quality product.

[10] Armand Feigenbaum is attributed as the founder of "total quality control," which he defined as "an effective system for integrating quality development, quality maintenance and quality improvement efforts of the various groups within an organization, so as to enable production and service at the most economical levels that allow full customer satisfaction." Feigenbaum, A. V. *Total Quality Control*, McGraw-Hill Professional (2004).

United States. Many legal departments tried some form of TQM, however, many found it to be too difficult or complicated to implement.

Six Sigma

Six Sigma might be described best in lay terms as an extension of statistical process control to provide a methodology for developing quantitative measures for total quality desired results. A complete description of the Six Sigma methodology is beyond the scope of this paper, however, it has been touted as the best management program to create a world-class organization.[11] Like the later forms of TQM, Six Sigma is customer-driven. The primary difference is that Six Sigma employs a full array of tools to enhance not just quality, but to enhance quality while increasing production, profitability and the like. One caveat – using Six Sigma can become heavily data collection intensive, and the law departments that use Six Sigma need to be selective in how much of the program they try to implement.

Specific Metrics

The OLSI is working to develop a uniform metrics classification system that would allow law departments not only to develop accurate and precise self-diagnostic measurements, but also be able to use them with more confidence in benchmarking.[12] The metrics are described as Key Performance Indicators. While KPIs are not new, the attempt to create a uniform way to measure and apply them is new. There are general KPIs and specialized KPIs on OLSI's list. The OLSI list provides a useful starting point to developing the KPIs that are important to your specific customers. Some examples of specific metrics are:

1. For outside counsel management:

    a. budget to actual internal and external expense ratio;
    b. actual spend versus budget variance;

2. For client satisfaction:

    a. Cycle time to resolve/conclude matters
    b. Average time to respond to company request for legal advice/legal work

[11] Pyzdek, at xii.

[12] See: http://www.openlegalstandards.org/pdfs/OLSI%20Law%20Dept%20Metrics%20List%20_All%20KPIs_.pdf

Another metric that in-house lawyers often use is hourly cost of the internal lawyer versus average hourly rate of outside counsel. While this metric can be used, the in-house counsel needs to be careful. Law firms are leveraged, using partners, associates and paralegals (and spreading overhead across all of their clients). It is not an accurate comparison to simply divide the in-house counsel's total compensation (including bonus and non-cash compensation such as company car, etc.) by 2,080 (40 hours times 52 weeks) and compare that to a specific outside partner's hourly rate. To properly do the calculation, the fully loaded cost of the legal department should be compared to the average cost of the outside legal services provided.

Finally, many companies compare total legal spend versus total company revenue, and total lawyers per 1,000 employees. These are useful cost metrics, but not necessarily quality metrics.

The Bad

As early as 1937, Juran conceptualized the Pareto Principle as a way for managers to measure quality performance.[13] Juran stated that managers could achieve 80% of a desired result by focusing on the vital few tasks (the 20%) rather than the trivial many (sometimes also called the "useful many"). Thus, if they wanted quality work from employees, they needed to identify the vital tasks to achieve quality. There continues to be a lot of debate over whether this principle really applies to all human tasks. In the context of developing legal department metrics, misapplication of the principle could result in unintended consequences. For example, if the CLO focuses only on the vital cases facing the company (often called "bet the company" cases), she or he may miss an important trend of new litigation that a more robust metric would capture. While the principle is a well-known and oft-used phrase by MBAs, it is not necessarily the best metric for the CLO.

Another metric category that has long been touted as a panacea is "surveys" and "benchmarking." Both of these metrics rely on a comparison between two (or more) sets of data to establish a defined set of criteria. A typical example is the general counsel compensation survey provided each year by the ACC. Another example is when one legal department compares its outside legal costs for litigation against its "peer group." Surveys and benchmark studies are common and readily available for no cost (from various providers on a variety of subjects for general data) up to tens or hundreds of thousands of dollars for specific surveys conducted by specialty consulting firms.

[13] The Pareto Principle is often called the "80/20 rule" because it states that for many phenomena, 80% of the consequences stem from 20% of the causes. Juran named it for Italian economist Vilfredo Pareto, who observed that 80% of the land in Italy was owned by 20% of the population.

There are two reasons that surveys and benchmarks are not really useful and most companies should bother using them. First, the publicly available surveys published in various legal publications or by consultants mostly contain old and imprecise data. Similarly, most surveys and benchmarking are done without the requisite precision and accuracy to provide truly unbiased (and therefore useful) data.[14] Worse yet, since benchmarking is based on two legal departments having comparable legal issues and then measuring for variation caused by *implementation* of legal processes, the two departments have to be comparable in the first place. This is often described as being an “apples to apples” comparison mode. But often benchmarking results only show that the two legal departments were not truly comparable in the first place; i.e., they were “apples to oranges.” The legal department has now spent thousands of dollars to learn that it could not compare itself to the company it just benchmarked with.

Rather than waste time, resources and money benchmarking, the smart inside counsel can (and should) use the ACC listserve resources to get a broad knowledge base of best practices. One can often get as much value by asking a question on the listserve and reading through the thirty or forty answers typically received. The listserve approach has two advantages: 1) the answers are more likely to be “real world” best practices that are more targeted to the specific question the lawyer asks; and 2) the data is obtained more quickly and is often fresher.

Another example of a “bad” metric is “data mining” or “knowledge management.” Electronic billing systems tout the ability to slice, dice and parse billing data from each firm and across firms in infinite ways. Unless there is a defined purpose, and the data being compared (like benchmarking) is comparable, these metrics are not meaningful. Does the average time per lawyer per law firm for preparing for a deposition tell you anything if the litigation ranges from worker’s compensation matters to a “bet the company” government enforcement case? Rees Morrison (a Vice President of Hildebrandt International, one of the larger law department consulting firms) put it best when he said: “Combine a spurious metric with an amorphous figure and the resulting data has all meaning sucked out of it.”

A final point regarding “bad” metrics is worth highlighting here. Any specific self-diagnostic metric tool that is otherwise useful (or neutral) can be rendered bad when applied for the wrong reasons. The same way that you would not use a hammer to screw a nail into drywall, you should not use metrics that are not designed to measure what you want to measure. Be careful not to use the wrong

[14] Most surveys say something like “legal departments surveyed.” But that really means is “legal departments that responded to the survey.” More importantly, what it really means is that those lawyers who cared enough to answer, answered about what they cared about. This is called selection bias, and it distorts the statistical analysis in a way to make the results meaningless. Other errors include selecting non-representative respondents, arbitrarily partitioning data in too few categories and excluding outlyer or anomalous data from the study.

metrics, or allow the metrics you are using to be corrupted by another department's agenda. As Benjamin Disraeli is attributed with saying: "*There are three kinds of lies:* ***lies, damned lies, and statistics***."[15] Do not get caught allowing someone else to use the persuasive power of numbers to substantiate inaccurate arguments about the legal department.

The Ugly (or Not So Ugly Once You Get the Right Metrics In Place)

The introduction of this paper listed the three most common reasons that the CLO is asked to develop metrics. All of the reasons are adversarial to some extent. Developing metrics to satisfy those reasons, therefore, can result in unintended consequences. For example, most lawyers (even seasoned in-house counsel) are not used to being measured to justify their jobs. The unintended consequence can be a serious morale problem. After all, the in-house counsel has only so much control over many of the legal issues the company faces. In-house counsel managing litigation can hire the best outside lawyers, manage the outside legal budget perfectly, protect every privileged document, etc., and yet the company could still lose the case. The in-house contracts attorney can draft iteration after iteration of the contract to best protect the company, but the deal can fall through because the company cannot deliver what the customer needs. If the metrics are based on "success" as defined by the CEO or CFO, the legal in that company probably has a very short lifespan.

Outside counsel spending metrics are probably the most robustly developed of all metrics today. The problem is whether they are precise and accurate. It is impossible for the CLO to measure year-by-year spend in those companies that have a small number of litigation matters. There is just not going to be enough data to be statistically significant to eliminate outliers and provide accurate comparisons. Companies that have large numbers of lawsuits going back many years may have the data; the questions then are was it always kept in the same format and how accessible is it. Finally, the CLO can benchmark outside litigation spend against other companies. The problems with benchmarking are so great, however, to make it a costly exercise for highly questionable (and perhaps disingenuous) data (as previously discussed).

Unlike department justification and outside counsel spending, setting targets for incentive compensation is not unique to the CLO. The same metrics that the Human Resources department uses for the rest of senior management apply here. The CLO should, however, try to avoid the trap of setting incentive compensation based on ill-defined "success" in handling matters. Instead, basic metrics that use quantitative measures are all the CLO needs. This is the area where the metrics will drive the behavior. The CLO should be careful to make sure that what she or he is measuring among the rest of the legal department will produce the desired results. Measuring number of contracts drafted by cycle

[15] Twain, M. "Chapters from My Autobiography," *North American Review*, No. DCXVIII., July 5, 1907.

time will result in a lot of contracts being drafted quickly – but not necessarily drafted well. The quantitative measures should reflect and be indicative of the underlying quality that you desire to achieve.

At the turn of the century, department store icon John Wanamaker wondered which half of his marketing dollars were being wasted. From that question developed the business focus on return on investment (ROI) that continues today. Everything, including the legal department spend is subject to an ROI analysis. Businesses, therefore, will continue to use metrics to measure the legal department against various standards – is the legal department still providing a good return on investment, or should we outsource the need; are we getting good value from our outside counsel representing us in litigation or do we need to restructure their incentives; are we getting a good return from the internal lawyers in a measurable way (more productivity, better response or cycle time, etc.) from the incentives we have provided. As lawyers we should not try to buck the trend and avoid the metrics, but rather embrace them to make sure that the right metrics are applied for the right reasons. Finally, the best metric of all is customer satisfaction. If you work hard to be helpful, and your customers keep coming back to you on a regular basis, you will not need as many fancy charts, intricate tracking mechanisms or cumbersome data gathering tools to justify your existence.