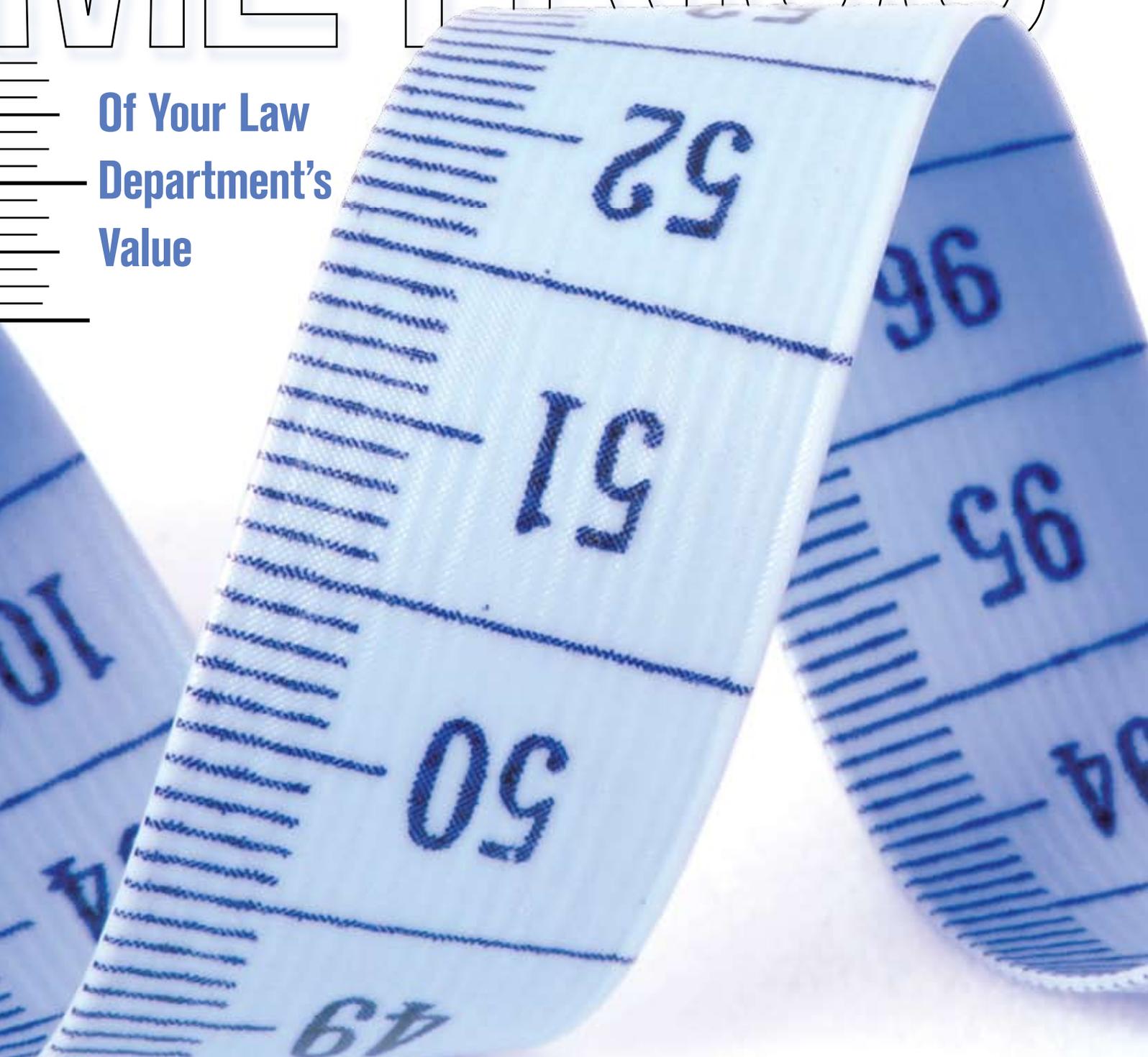


Constructing Standard

METRICS

Of Your Law
Department's
Value

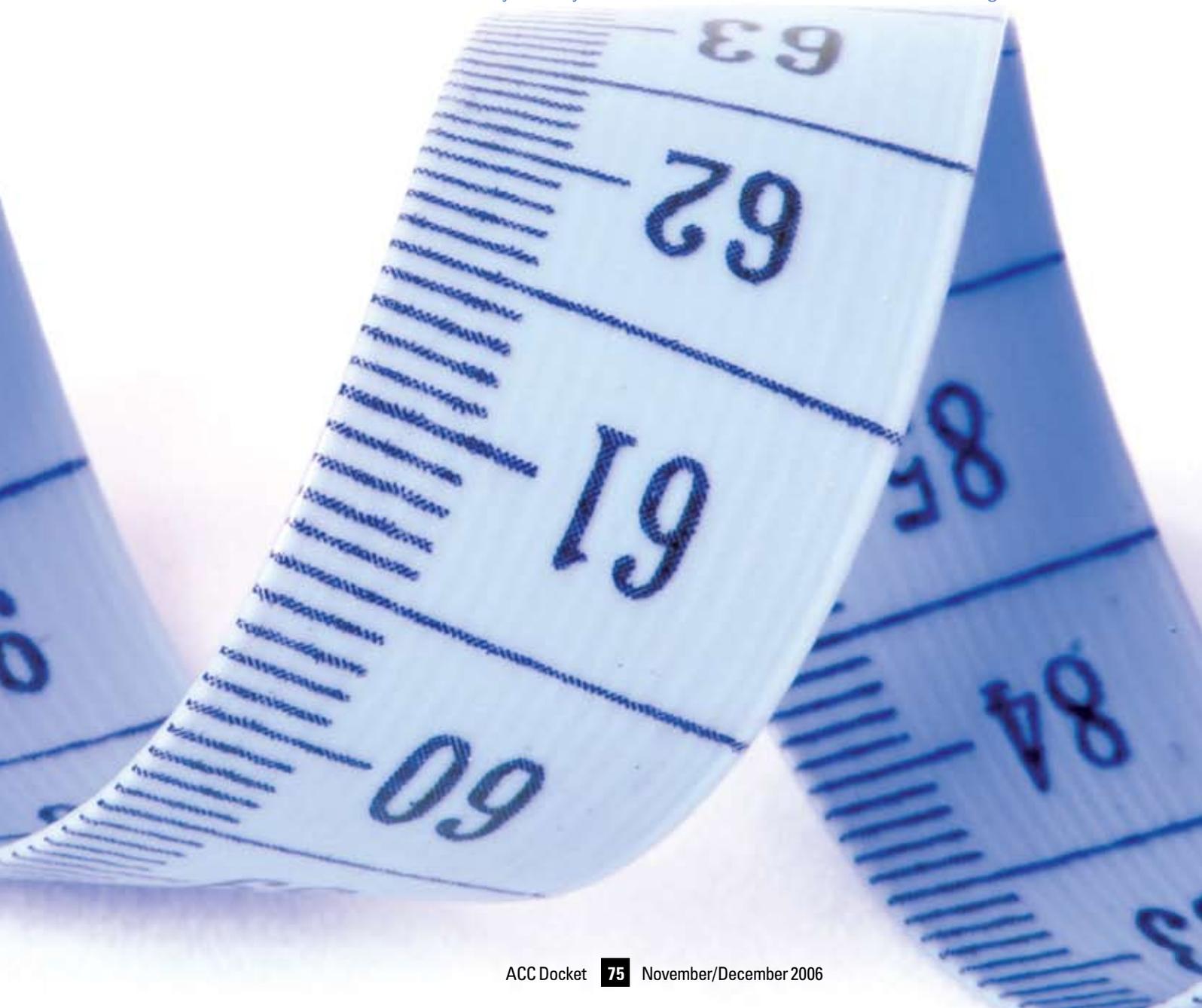


You do a great job of safeguarding your company's legal interests (after all, you're an ACC member). Does that mean the CEO loves you, your future is assured, and that nothing further is necessary?

Of course not. It's no longer enough simply to perform brilliantly. If you can't demonstrate to senior management—preferably with charts and diagrams—not only that you are performing well, but also exactly how well you're performing, then as far as management is concerned, you aren't performing at all. These days, law departments must demonstrate their value as well as run efficient operations.

But just how a law department can demonstrate that value and improve its efficiency is the real question. The interest in legal performance metrics is widespread and growing; many in-house counsel tell ACC that they are inundated with performance and benchmarking surveys from a variety of sources. Unfortunately, though, the legal profession has not developed rigorous and consistent analytical approaches to these metrics-related and business-management challenges. Compounding the problem is the general conception most lawyers have that legal work is inherently amorphous and notoriously difficult to manage—making it difficult to measure.

By Jeffrey W. Carr, Steven A. Lauer, and Nena W. Wong



At the Open Legal Standards Initiative (OLSI), we are working to address these challenges. We have initiated and are coordinating the legal profession's efforts to measure law department and law firm performance in the same way that the business community has always done. We'll describe how we are coordinating the development of an industry-standard classification system of business processes and metrics, holding an annual program of Legal Process and Metrics Innovation Symposia, and launching an annual survey to collect and develop more uniform, comparable, and useful legal performance metrics. Finally, we will describe some of the ways that you can participate in developing the first rigorous metrics ever devised for our profession. (See "What Is the OLSI?" on p. 78.)

OLSI's Mission

OLSI's mission is to set the standard for quality and efficient legal services by developing business process and metrics classification systems, conducting benchmarking surveys, and preparing industry events and publications on these topics. OLSI sees the development of metrics as a critical step, and aims to develop separate business process and metrics classification systems for:

- corporate law departments;
- law firms; and
- government law departments (federal, state, county, and local).

We've already taken some important first steps to develop a uniform classification system for both corporate law department processes and the metrics that lawyers can use to evaluate those processes. But before we describe those steps further, we'll give you a brief overview of what we mean by "metrics."

An Overview of Metrics

As corporate management applies ever-greater scrutiny to legal services, the importance of metrics for law departments will increase. Management is likely to use metrics to identify and analyze the relationship between department activity and department achievement. Department metrics represent an increasingly common touchstone for the determination of executive salary, and that trend will probably be reflected in in-house counsel's compensation as well.

Before inviting you to jump on the metrics bandwagon,



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NENA W. WONG is the chair and CEO of the Corporate Legal Standard, Inc., a California and New York company that offers comprehensive legal performance and productivity management solutions using best practices in business process improvement, content, technology and ChangeThink™ consulting. She is also a cofounder, cochair, and president of the Open Legal Standards Initiative and can be reached at nwong@corplegalstandard.com.

however, we should explain what we mean by "metrics" and describe their importance.

When we talk about "metrics," we mean a standard of measurement—some standard that will make it possible to assess a legal process quantitatively. And of course, just having a standard isn't enough; you also need a way to collect, organize, and display data about a process (and its subprocesses and steps). If you can't organize, analyze, and display the data, it isn't going to be useful. In other words, "metrics," as applied to what in-house lawyers do, is an attempt to extract information about that work in numerical form and from its display derive useful insights about the work of the lawyers (both in-house and outside).

Even with an agreed-upon definition in hand, however, we should bear in mind some other considerations. First, two types of analysis come within the scope of the term "metrics." One is benchmarking. Let's call the other self-diagnosis and analysis, or self-diagnostic metrics.

Benchmarking

"Benchmarking" describes efforts to compare the features (e.g., organizational structures, reporting relationships) or operations of different organizations. Thus in the typical legal benchmarking exercise, data about one law department are compared with those from other departments (generally, the latter are derived from surveys by various consulting or other organizations).

This benchmarking analysis, while fairly common, may be less useful to a law department than at first appears. For one thing, the methodologies of the surveys of other law departments may be difficult to discern. This, in turn, can create uncertainty about the conclusions you can draw from those data. For example, surveys of law department structure often discuss the relative number of in-house attorneys who manage the departments as contrasted to those who handle directly the substance of the department's matters.

If you review the survey conclusions, however, you often can't tell whether the survey respondents had the same understanding of what "management" meant. If an in-house attorney oversees the work and impacts the compensation of one legal assistant some of the time, would some or all of the survey respondents count that attorney as a "managing" attorney? If they each apply a percentage-of-time-spent

test to make that determination, do they use the same percentage? Similar uncertainty surrounds many of these surveys.

A second weakness of benchmarking analysis is that most surveys give a snapshot of what was true some time before completion of the survey. The data may be at least a year old by the time the survey is available (if the survey even discloses when it was conducted). If you want to know whether your department is following “best practices,” this is particularly frustrating, as the practices reflected in the survey may be dated and no longer qualify as “best practices.”

What Is the OLSI?

The Open Legal Standards Initiative (OLSI) was founded in 2004 by Nena Wong, CEO of the Corporate Legal Standard, Inc., and Steve Lauer, director of Integrity Research for Integrity Interactive Corporation, to initiate and lead the effort to create metrics and collect data that can help lawyers understand, explain, and improve the functioning of their legal departments. Earlier this year, OLSI, in collaboration with ACC and the Corporate Legal Standard, Inc., launched the Legal Process & Metrics Innovation Symposium, a series of 16 “webinars” on process and metrics classification systems, collection and reporting methodologies, and implementation strategies for law departments and law firms. In October, OLSI launched the first industry-wide survey of performance metrics, The Performance Metrics and Benchmarking Survey (“OLSI Survey”), with results to be released in early 2007. If you would like your department included in this survey—or if you would like additional information about OLSI—contact Nena Wong at nwong@corplegalstandard.com.

OLSI is all too aware of the time in-house counsel currently spend responding to various legal industry surveys. We are currently exploring the possibility of saving in-house counsel time by acting as a data clearinghouse to standardize the data collection and reporting requirements for all the major surveys in the legal industry. In-house counsel interested in promoting efforts for such an industry-wide approach to data collection and reporting should contact OLSI at info@openlegalstandards.org.

ACC’s Law Department Management Committee has formed a subcommittee to monitor OLSI. If you have a background in Six Sigma and would like to join this new subcommittee, email Al Peters, assistant chief counsel of the Pennsylvania Turnpike Commission and vice chair of the LDM Committee, at apeters@paturnpike.com.

Many of these problems can be reduced or eliminated by appropriate survey design if benchmarking research is conducted by or on behalf of a single department. To keep the cost down, however, such a survey is usually more limited in scope (fewer respondents) or depth (fewer issues examined) than the industry-wide studies available. Its usefulness may be diminished accordingly. In addition, to the extent the law department’s survey reflects that department’s needs (as unique as they may be), its comparability to other surveys, and the utility of its findings, might be reduced also.

An Example of Self-diagnostic Metrics

Benchmarking isn’t the only game in town. Another, often more useful type of metrics is the self-diagnostic kind. Self-diagnostic metrics are focused inwardly. They represent an effort to understand how the subject law department operates—not at a single point in time, but over time. This type of analysis demands more of the analyst than does benchmarking, because she must both collect and analyze the data. The data must be collected consistently over time so as to permit reliable comparison from year to year. It also requires a certain faith at the beginning of the process, because data collection will precede—perhaps by as much as two or three years or more—the collection of enough data to show any meaningful trends.

Self-diagnostic metrics can be much more useful than benchmarking for a number of reasons:

- If data are collected consistently over time, trends that appear from the data are more reliable.
- This type of analysis reveals more about the department’s management and operation than does comparing the department to departments identified in a benchmarking survey that may already be dated in any case.
- This analysis can be the foundation for ongoing, periodic re-analysis in an effort to continuously improve the management of the department.
- The analysis can be extremely useful to a general counsel whose compensation depends on demonstrating improved results to senior management. A benchmark survey, in contrast, won’t be as helpful; comparing your department to others doesn’t tell you whether either your department or the surveyed departments are managing their legal services well, only how each compares to the others in terms of the reported numbers.

FMC Technologies’ legal team tracks, over time, various performance-related metrics. These are summarized in an easy-to-understand, one-slide snapshot of the data that FMC’s legal team and senior management consider most important. (See a snapshot of FMC Technologies’ most important data on p. 79.) Of course, one of the most important metrics is the company’s spending on outside legal service. (See “Total

FMC Technologies - 2006

Major Legal Issues

*List of the company's most significant legal issues.

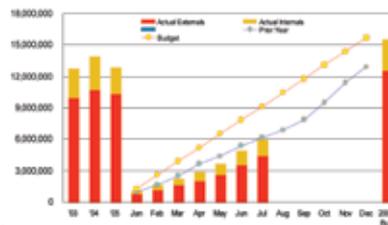
Metrics

	Month	YTD	2005	2004
Legal \$/SM Sales	\$	\$	\$	\$
Matters		+/- (net)		
New Matters				
Closed Matters				
Training ²				
After Actions ²				
EthicsLine Calls				
Patents ²		+/- (net)		
IP \$ Spent	\$	\$	\$	\$
IP\$/SM Sales	\$	\$	\$	\$

Litigation

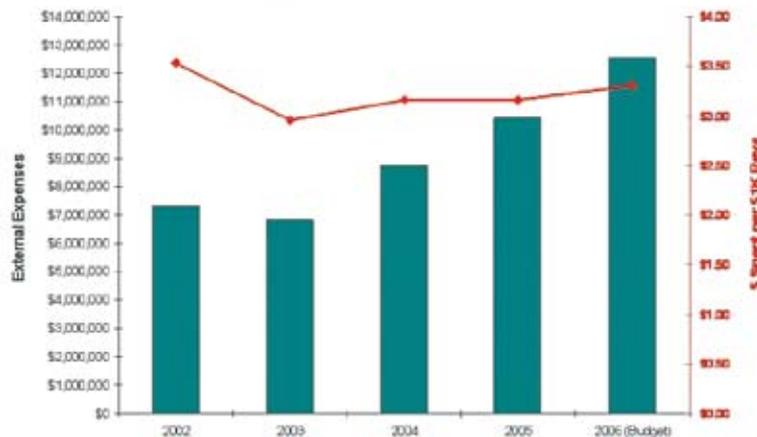
	Month	YTD	2005	2004
Active		+/- (net)		
New				
Closed				
CycleTime	days	days	days	days
Settlement \$	\$	\$	\$	\$
Lit Costs \$	\$	\$	\$	\$
Lit\$/SM Sales	\$	\$	\$	\$
DevEval ²	%	%	%	%

Legal Budget to Actual



FMC Technologies

Total External Legal Spending Trends



FMC Technologies

How OLSI Creates Metrics Classification Systems

The first phase of OLSI's work, completed in 2005 and early 2006, focused on creating two classification systems: one for the business processes of corporate law departments and one for the metrics that could be used to evaluate those business processes.

OLSI spent several months collecting ideas on how law departments typically approach their various responsibilities in order to prepare these classification systems. Inasmuch as the inputs were somewhat limited, however, we consider these systems to be "works in progress." Accordingly, further refinement of those systems will occur as we collect more information. We invite readers to get involved in OLSI's efforts and provide us with their insights. In that way, OLSI's work will continue to represent the real world of in-house practice and serve as much more useful referents for in-house counsel in the future.

This year, OLSI also began to define the process and metrics classifications for law firms. These systems for classifying data are of course a prerequisite to designing any survey collecting data.

The OLSI Survey: How You Can Participate

As a follow-up to the Innovation Symposia, OLSI recently launched the first industry-wide survey of performance metrics. The OLSI Survey addresses a significant gap in metrics data collected and used in the legal industry by: standardizing both a list of metrics and the methodology used to collect those metrics; and

External Legal Spending Trends," on p. 27.) Since the legal team collects the underlying data consistently over time, we know that the data in each year are of comparable reliability. That law department collects the amounts paid to individual law firms in another graph so that the company's lawyers and senior management can better understand some of the detail that the gross spending numbers cannot divulge.

focusing on the performance-related metrics of cost-effectiveness, staff productivity, process efficiency, and cycle time. We expect that results will be released in early 2007. The OLSI Survey has been sent to Fortune 100 and ACC-member corporate law departments; we encourage you to contact us if you would like your department to be included.

External Legal Expenses - YTD Mar 2006

Firm	Business Unit/Focus	2005	2006				
		\$K	Avg Days ¹	Evaluation ²	\$K ³	% ⁴	Files ⁵
Firm	Litigation	542	24	2.7	208	12.5	6
Firm	Processing/Production - Gen & ABB Lit	2,237	22	3.0	171	10.3	19
Firm	All - Annuity Payments	542	13	N/A	152	9.0	N/A
Firm	Europe - IP	591	22	None	98	5.8	24
Firm	ALL - Litigation & Corporate	611	12	3.0	88	5.2	9
Firm	Employment	556	21	2.8	85	5.0	16
Firm	Litigation & Halvorsen	342	24	2.4	82	4.9	12
Firm	All - TM	264	37	2.0	59	3.5	29
Firm	Processing/Production - IP	361	13	3.0	58	3.4	44
Firm	IP	300	22	2.2	46	2.7	36
Firm	IP	265	4	2.8	41	2.5	20
Firm	IP	97	11	1.9	31	1.9	20
Firm	Litigation	1,073	16	2.9	28	1.7	3
Firm	Contracts	66	27	None	28	1.6	1
Firm	IP	72	20	2.2	27	1.6	19
Firm	IP	79	22	None	27	1.6	10
Firm	IP - Litigation	108	11	None	26	1.5	1
Firm	Arbitration	0	28	None	26	1.5	1
Firm	Compliance	0	1	None	25	1.5	1
Firm	Litigation	46	17	1.2	25	1.5	3
Others	Misc.	2,273			349	20.8	
TOTALS		10,425			1,680	100	



Survey Components: Top 25 KPIs

The OLSI Survey is organized into two lists—one for law departments and the other for law firms—of “top 25” key performance indicators (KPIs) to serve as the benchmark for improvement across various key functions of each organization.

These top 25 KPIs are measures that OLSI encourages all law departments to track. General Top KPIs include “time to resolve/conclude matter” and “percentage of disputed matters resolved by ADR,” for example.

Optional Metrics: Top Specialized KPIs

In addition, OLSI has compiled other, more-specialized lists of metrics that might provide valuable information to law departments. Although OLSI does not currently track the results of such metrics, OLSI offers them to law departments who may wish to drill down in greater detail in the areas noted.

Those other metrics represent the following eight categories:

- Demographic Information,
- Top General Law Department Metrics,
- Top Law Department Operations Metrics,
- Top Litigation Metrics,
- Top Non-Litigation Metrics,
- Top Intellectual Property Metrics,
- Top Knowledge Management Metrics, and
- Top Compliance Metrics.

The foregoing are KPIs in several specialized areas that OLSI encourages law departments to track if relevant to their needs. (Top specialized KPIs include, for example, metrics that focus on law department operations, litigation, nonlitigation, intellectual property, knowledge management, and compliance.)

With respect to all of these lists, OLSI invites the reader to provide insight into how useful this information is or would be. Whether by taking the survey, where that insight can be submitted, or by contacting OLSI directly, give us your thoughts on this subject. This iteration of the OLSI Survey constitutes a “pre-

survey” survey in that we hope it will serve as the foundation for much more useful surveys in subsequent years.

Focus on a KPI Approach

Of course, if you look at all of the metrics listed in the OLSI survey, you can quickly become overwhelmed. The eight categories of metrics in our survey collect over 200 separate metrics. We expect that no law department collects or is in a position to collect data for every metric listed.

One focus of the survey is therefore to help law departments narrow their data collection efforts by focusing on KPIs. Defining an appropriate list of KPIs helps us avoid the trap of collecting data or analyzing numbers for their own sake. A KPI would represent a measure of a particular law department’s performance on some scale or in respect of some specific area of performance or focus. For example, if a law department renounced the use of outside counsel, it would no longer have a reason to collect data on the number of outside firms retained or the amount of fees paid to outside lawyers. On the other hand, this same law department would

benefit from tracking a KPI that measured the effectiveness of its in-house lawyers’ work.

OLSI’s KPI approach also avoids an overdetailed drill-down into the numerous performance indicators and data points that could be measured for more detailed segments of the Process and Metrics Classification Systems. In this way, OLSI hopes to encourage a broader survey response that will generate more helpful data for benchmarking purposes.

Focus on Performance Metrics

Although one could choose relevant KPIs on any of several bases, OLSI is focusing on “performance-metrics” KPIs—metrics that drive the desired increases in quality, productivity, and efficiency that law departments seek. The OLSI Survey therefore focuses on metrics that can be used to provide: (1) feedback to guide change, (2) assessment and baseline information, (3) a compelling business case, and/or (4) a diagnostic tool to identify areas for improvement and set priorities. There are four general types of performance metrics:

Displaying KPIs in Dashboards

To simplify their use, key performance indicators (KPIs) can be grouped and displayed in what are known as dashboards. Dashboards provide insights into business performance in a snapshot format: They provide a high-level understanding of how a business is performing by simultaneously illustrating data about several aspects of the organization’s performance.

The dashboards below contain data about the internal and external expenses of FMC Technologies along four business

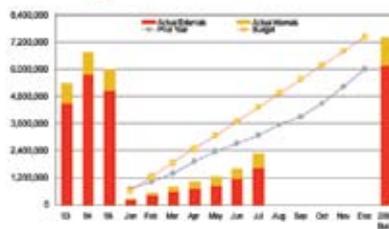
segments and those segments’ performance against budget forecasts. Note that although FMC designed its reports prior to OLSI’s development of its KPIs, the sum of internal and external legal expenses shown in FMC’s charts should correlate approximately to OLSI’s KPI, “Law Department’s Total Budget.” These graphs, since they appear in one screen, allow the reader (senior corporate management comprises the intended audience) to readily compare those segments’ performance. Of course, you can create a dashboard display for any KPI that is especially critical for your legal department’s performance.

FMC Technologies - 2006

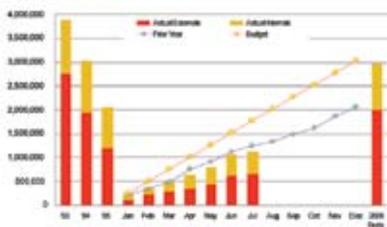
Segment 1



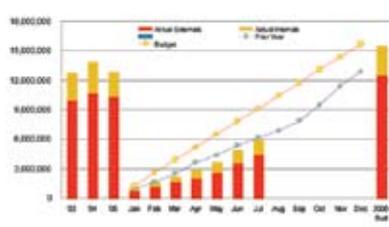
Segment 2



Segment 3



All (w/Group & Internals)



- **Cost-effectiveness (e.g., \$6.22 per invoice):** these measures tell how well companies manage cost, including allocation of personnel resources.
- **Staff productivity (e.g., 93 invoices processed per FTE):** these measures describe how much output each FTE has produced.
- **Process efficiency (e.g., 11.2 percent error rate):** these measures provide insight into how well procedures and systems support the organization.
- **Cycle time (e.g., processing time of 3.8 days):** these measures describe how long it takes to complete a task.

The OLSI Survey also seeks to fill a gap in current benchmarking data: customer evaluations of outside counsel and law firm (name, region/city, type of work); dispute disposition and settlement data (type of dispute, region/city, complexity); and legal fees and expenses (type of matter, region/city, complexity, type of work).

Standardizing Definitions and Methodology for Metrics

Effective “apples to apples” and “oranges to oranges” benchmarking comparisons require common measurement approaches. OLSI is therefore using the survey as a way to facilitate the standardization of legal department metrics by asking surveyed law departments both to list the metrics that they are currently collecting (whether those metrics are on OLSI’s list or not), and to provide data as they can for any KPIs that OLSI has proposed. Future versions of the survey will use these data to further refine which KPIs are most useful and which methods of collection are most practicable.

The OLSI Survey will contain, where relevant:

- definitions of appropriate terms,
- consistent formulas for calculating KPIs,
- guidance on the utility of the particular KPI, and
- suggested standardized methodologies for collecting and tracking metrics data.

OLSI is mindful that certain metrics, although highly useful, may be difficult to measure and track. If in the process of identifying methodologies OLSI determines that the cost of tracking a particular metric outweighs its usefulness, OLSI may recommend against including that metric in the proposed KPIs.

A Word About Measuring Quality

Defining consistent criteria for measuring quality in delivering legal services and operating a legal department is difficult. In-house counsel feedback to OLSI has indicated particular concern over subjective KPIs. Accordingly, OLSI has focused on developing KPIs that measure quality indirectly via a more objective proxy. For example,

one way to think about quality is to envision it as representing an absence of errors (this is similar to the concepts that underlie Six Sigma and total quality management), so that the more frequently an organization follows its own procedures in a class of tasks, the higher the quality is for that particular procedure. Strictly adhering to a mandate to prepare a budget for every litigated dispute in excess of a specified threshold would represent high-quality on matter budgeting. For another example, instead of a measure that directly goes to satisfaction ratings (which may not exist in areas like the proactive delivery of legal advice), we have proposed a KPI to measure the degree to which the department is meeting the client satisfaction targets it has set for itself in collaboration with its clients. This approach gives users flexibility while maintaining a degree of comparability. Since OLSI metrics do not contain a distinct category for “quality,” we have classified quality-focused metrics as process efficiency metrics.

Standardizing Data Collection and Reporting

In order to promote effective benchmarking, one of OLSI’s key missions is to standardize the process by which law departments collect and report data. Until such industry standards are finalized, we offer several guidelines on data collection.

- A law department should strive to collect the appropriate data as simply and as effortlessly as it can. Technology can help. For example, by using electronic submission of law firms’ invoices, a corporate law department will regularly receive the invoices of its outside counsel in a format that enables that department to examine and analyze that information easily, either by individual law firm or by multiple firms.
- Try to assure that any specific datum is collected by the individual or entity that possesses that datum first. This may be the outside lawyer (or legal assistant) or the in-house personnel. Since matter cycle time is an important KPI, for example, whenever outside counsel represents a company, that counsel should be able to enter start and completion dates most efficiently (counsel must, of course, be aware of those dates and probably already inputs them into some docketing system or other database). If a matter is handled entirely by in-house personnel, those personnel would possess that information and be able to enter it into the system.
- A consulting expert on a litigated matter might even be the party with the information for inputting purposes.
- Take steps to prevent duplicate data entry, because that only introduces more opportunities for error or for inconsistent data.
- Capture as much data as possible in a single, flexible

database to which all those who might have use of the information possess direct access.

Some matter-management systems might allow a law department to collect data, for purposes of preparing reports, easily from information otherwise entered into the software for general management purposes. For example, starting and ending dates for legal matters appear in all matter-management systems, and one might generate a report that aggregates those data for classes of matters and thereby produce a report on cycle time organized by matter class (e.g., environmental matters or employment-law matters).

A More Businesslike Approach to the Practice of Law

So, what should you do? Rather than wait for your company's management to ask you to demonstrate that your department is on top of all the company's legal issues, take an inventory of your department's use of data. Can it collect information about those issues that can help you demonstrate how your department has mastered them? Does it have the systems in place to analyze data so as to anticipate issues and problems before they become too large to confront successfully? Answer these test questions:

- Do the in-house and outside lawyers routinely collect information about the legal matters on which they work, such as cycle time and budget success?
- Do you report to management regularly with data from those matters and demonstrate the department's management of the company's legal affairs?
- Does the department regularly collect and index its intellectual product in a database that the in-house and outside lawyers can access in order to reuse that knowledge and avoid redoing prior work?

If you answer "yes" to these questions, you're already using metrics and applying businesslike concepts to your management of the company's legal affairs, and you deserve congratulations. We hope you will get involved in OLSI and offer your insights as we work to develop a consistent approach to law department and legal metrics. But if you answer "no," we suggest that you take another look at how metrics and management principles can help you. Consider joining the other, innovative law departments that have begun incorporating business management principles to help them operate more leanly and efficiently. 

Have a comment on this article? Email editorinchief@acc.com.

ACC Extras on... Metrics

Leading Practice Profiles:

- *Law Department Metrics*, ACC, 2005.

Description: Effective metrics programs create a framework for continuous evaluation against objectives and include components that lead to action. They also can serve as a solid platform from which to demonstrate to clients how the law department is supporting business objectives and adding value. This practice profile explores metrics practices implemented by six law departments, including BellSouth Corporation, Charter One Bank, NA, MCI, and United Technologies Corporation.

www.acc.com/resource/v5899

Annual Meeting Course Materials:

- *209 Metrics Methodologies*, ACC and others, 2005.

Description: 209 Metrics Methodologies

www.acc.com/resource/v5581

- *304 Litigation Management-Using Metrics to Demonstrate Value*, ACC and others, 2005.

Description: 304 Litigation Management-Using Metrics to Demonstrate Value

www.acc.com/resource/v5585

Webcasts:

The following ACC webcasts and transcripts are available:

- *How to Measure the Effectiveness/Value of the Legal Department*, 2005.

Description: Smart companies measure results. In an era increasingly driven by metrics, it is essential for law departments to find or develop tools that provide some measure of the value of the work being accomplished. Our law management authorities will explain key performance indicators and benchmarking data for in-house counsel that can be used to measure and track the performance of a law department and how you can apply these tools to the performance of your own department.

www.acc.com/resource/v6403