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This is a revised and expanded version of a LegalBizDev white paper that was published eight weeks ago. It will continue to be revised from time to time to include new developments. For updates, see Jim Hassett's blog Legal Business Development (at www.jimhassett.com).

Trends in Legal Project Management

by Jim Hassett, Ph.D.

When I interviewed AmLaw 100 chairmen, senior partners and C-level executives for a recent survey of alternative fees, many predicted dramatic changes in the legal profession.¹ The prediction that surprised me the most was a move to adapt project management techniques from other businesses. As the CFO of a firm with more than 1,000 lawyers succinctly put it, "If we teach our people to manage, we can make more money."

Project management techniques can reduce costs and increase profitability for any type of legal billing arrangement, though the results are easiest to see with fixed fees. When a law firm agrees to handle a certain matter for a flat rate, it must find a way to meet legal needs within a limited budget. The less the firm spends, the more money it will make. But, as that CFO went on to explain, "A large number of lawyers do not know how to manage. [In the past], the more hours that got charged, the more money [they] made, and so they've never really had to manage [costs]."

Similarly, a senior partner at a 500-lawyer firm said that:

For alternative billing to be successful for both the client and law firm, the partners have to re-think their approach and try to decide the most efficient way to approach matters. For example, instead of sending an associate off to research 50 issues that could come up in a litigation case, you might focus strictly on the small number of issues that are likely to be most important.

¹ www.legalbizdev.com/survey

The executive director of a third large firm said:

Lawyers are not known for being the greatest project management folks in the world. If they are going to try alternative billing methods, they have to be able to deliver what they are offering. This is a fundamental change in the industry, and lawyers will have to improve their project management skills in order to succeed in this area.

In the summer of 2009, when I conducted this survey, almost no one was writing about legal project management on the web or anywhere else.

In November 2009, a few weeks before I published the survey results, Paul Lippe posted this query on Legal Onramp: “I am at a Law Firm Managing Partners Conference in Toronto and the question just came up on how can law firms learn about Project Management. Any thoughts?”

Just four people responded. Of the four, I was the only one who mentioned a legal project management training program which was then in progress. If Lippe posted that same question now, just a few months later, so many consultants would rush to describe their training that Legal Onramp’s servers might crash.

On March 18, 2010, I published AmericanLawyer.com’s first article on the topic “Teaching Lawyers How to Manage: Can It Improve the Bottom Line?”²

Two weeks later, Law.com shook up the legal project management world with an article titled “Dechert Puts Its Attorneys Through Project Management Training.”³ The article announced the completion of project management workshops for every partner at Dechert, including “training sessions [that] included no more than 20 partners at a time for four- to six-hour sessions.” Associate training was just getting started when the article appeared on April 2.

Lawyers love precedent, and all of a sudden project management proponents had one. The idea that an AmLaw 50 firm was training every one of its lawyers inspired a sudden fear of falling behind. Many firms discovered a sudden interest in the topic, and many consultants discovered a sudden expertise. Whether you want a one-hour webinar, a three-day workshop, or anything in between, someone now has just the course for you.

² <http://amlawdaily.typepad.com/amlawdaily/2010/03/hassett.html>

³ <http://www.law.com/jsp/article.jsp?id=1202447368069>

Legal project management under the radar

If you believe what appeared on the web in the weeks after the Dechert announcement, you'd think that the idea of applying project management principles to legal matters was brand new. In fact, however, some lawyers have been focused on these ideas for years, developing new tactics and tools, often under the radar.

Some law firms have made substantial investments in project management.

A few firms have made substantial investments in this area. According to its web page, UK-based Eversheds has invested “more than £10m” (\$16 million) on project management systems, technology, and “training all of our people to apply our project management methodology.”⁴ That program started several years before Dechert's, and their web page describes two formal systems: RAPID Resolution, “a project management system for handling disputes,” and DealTrack, the “project management approach for all of our non-contentious work.”⁵ (Although these efforts have been publicized for the last several years through the ACC Value Challenge, Eversheds has gotten relatively little attention in the press, perhaps because all 47 of their offices are outside the United States.)⁶

On a smaller scale, last January the *Wall Street Journal* described several new software programs being used to deliver services more efficiently at Foley & Lardner, Bryan Cave, and Latham & Watkins.⁷

Or consider the case of *Deal Dashboard*, a web-based collaborative deal space custom developed for two former in-house lawyers who went back to firm practice. It's been available for several years, and is currently being used by several in-house departments and one law firm: McDermott Will & Emery.

⁴ https://www.eversheds.com/uk/Home/About_us/How_we_work_with_you/project-management.page

⁵ www.eversheds.com/uk/Home/About_us/How_we_work_with_you/Rapid_resolution.page?,
www.eversheds.com/uk/Home/About_us/How_we_work_with_you/DealTrack.page?

⁶ www.acc.com/advocacy/valuechallenge/toolkit/upload/VP_Eversheds.pdf

⁷ Koppel, Nathan. Using Web Tools to Control Legal Bills Big Law Firms Turn to Technology to Provide Clients With Real-Time Expenses, Automate Tasks. *Wall Street Journal*, January 5, 2010.

When Byron Kalogerou conducted a demo of McDermott's tool, he explained that he had previously worked for 14 years as in-house counsel at Tyco, where a great deal of emphasis was placed on developing new systems to cut costs. But when he moved to an outside firm and began talking about project management, he felt that he was living out his college motto: "A voice crying in the wilderness." (Kalogerou went to Dartmouth, so naturally the motto was in Latin: "Vox clamantis in deserto.")

The *Deal Dashboard* offers a sophisticated set of web-based tools that, as a McDermott brochure puts it:

Streamline the M&A process, reducing inefficiencies and costs. The Dashboard enables counsel to corral all of the moving pieces of a deal, so that everyone involved knows what needs to be done, by when, by whom, and at what cost.⁸

Kalogerou notes that he and his former colleague, Terry Mahoney, who had also spent many years in-house, sought to develop a tool that brings transparency, accountability, and predictability to the transactional relationship.

When work begins on a new deal, the client team sits down with McDermott lawyers to perform the kind of basic planning that professional project managers do on any new job: identify tasks, assign people to each task, set deadlines, and plan the budget. The brochure shows how this works for a typical deal with tasks grouped into four phases: due diligence, negotiations, closing conditions, and post closing.

As the deal proceeds, tasks and issues are tracked online in the *Deal Dashboard*, so that every team member on both sides of the table can find out exactly where things stand, minute by minute, by reviewing the latest updates at a password protected site on the web. In the brochure's fictional example, several high priority issues are highlighted for action, such as "plant lease – right of first refusal grant" and "determine whether pre-merger filing is required with the Federal Competition Commission in Mexico."

Just as important, a budget for each phase is established online at the beginning of the deal, whether the work is performed on an hourly basis or for an alternative fee. The system then tracks costs to date and compares them to the budgeted estimate. In the fictional example in the brochure, the negotiations stage was initially budgeted at \$125K. But by the time 75% of the work had been completed, only \$85K had been spent. The system calculates the "expected variance" from these figures to show that negotiations could be completed more than \$11K under the original budget. (When you do the math,

⁸ <http://www.mwe.com/info/dealsdashboard.pdf>

if 75% of the work cost \$85,000, 100% of the work would cost \$113,333. Subtract that from the original estimate of \$125,000, and you'll see a net savings of \$11,667.)

McDermott has embraced the Dashboard and legal project management and is looking to deploy the Dashboard in a number of areas, including in litigation. As Kalogerou notes:

Using legal project management and tools like the Dashboard drives efficiency into the way we deliver legal services; clients are demanding value from their law firms and we deliver it.

The concepts of using an online system to facilitate team communication like this, and to track spending, would be old hat in any other business. In the law, this is a breakthrough. But maybe not for long. Large firms are exploring a wide variety of tools that are springing up to meet the need to increase efficiency. Because clients are demanding it.

Six Sigma and Lean

Other approaches related to legal project management have also been growing in influence over the last several years, notably Six Sigma and *Lean*.

Six Sigma is a set of formal business methodologies designed to improve quality. It was developed at Motorola in 1981 to improve manufacturing quality control, and the name comes from its original goal of assuring that for every million parts that were manufactured, only three would be defective. (If you ever took a statistics course, you may remember that in a normal distribution three per million would be six standard deviations – or six sigma – from the mean.)

In the three decades since, Six Sigma has been used by more than two-thirds of Fortune 500 companies to improve quality and reduce costs. It is built around sophisticated tools and methodologies that force people to get to the heart of a problem and figure out how to re-engineer business processes. But like TQM, political parties, and Buddhism, Six Sigma has evolved and expanded in so many different directions over the years that it is hard to characterize as a single methodology.

The reason the term comes up so often in discussions of legal efficiency can be traced to the well-publicized success of a single firm: Seyfarth Shaw. Several years ago, Seyfarth managing partner Steve Poor went out to dinner with DuPont General Counsel Tom Sager to discuss how to increase efficiencies. Sager's advice on Six Sigma was crystal clear: you can have an enormous

impact if you do this right, but you should not start down this path unless top management is 100% committed to making it work.

In 2006, Seyfarth made a commitment to Six Sigma. According to *Six Sigma for Dummies*, the approach is “not for the faint of heart. It is intense and rigorous, and it entails a thorough inspection of the way everything is done.”⁹ Would you guess that implementing an approach like this would be fast or cheap? If you guessed *no* and *no*, you are getting warm.

Six Sigma is not for the faint of heart.

According to Carla Goldstein, Seyfarth’s director of strategic management, when the process started in 2006:

We were dying. [The consultants] came in with these binders of jargon and statistics and numbers and the lawyers’ eyes were rolling around in their heads.¹⁰

But Seyfarth stuck with it. They collected and analyzed an enormous amount of data about past projects in such categories as M&A transactions, real estate acquisitions, real estate leasing, single plaintiff employment litigation, summary judgments, commercial litigation, and more. In each category, groups of up to 40 lawyers and staff held meetings over several months to define efficient processes, and establish guidelines for how long each step should take.

This data analysis helped them to discover some interesting and counter-intuitive trends. For example, many general counsel believe that longer negotiations tend to produce better settlements, because it pays to be tough. In fact, when Seyfarth systematically analyzed data from past cases, just the opposite was true: the less time a case was open, the less clients typically paid in the settlement plus legal fees.

As the process proceeded, they certified 75 lawyers and staff members (including every lawyer on the executive committee) as “Six Sigma Green Belts,” which “requires completion of an intensive four-month training program and the successful completion of two Six Sigma projects.”

⁹ Craig Gig, Neil Decal, and Stephen R. Covey, *Six Sigma for Dummies* (Hoboken: Wiley Publishing, 2005), 10.

¹⁰ ABA Journal, “New Buzz Phrase in Efficiency Efforts,” www.abajournal.com/news/article/new_buzz_phrase_in_efficiency_efforts_process_management

According to partner Lisa Damon who headed the effort:

Clients love it. Not only do they save money, but they also get higher quality legal work. And the effect on morale is unbelievable, because this approach gives lawyers permission to do right by their clients.

A more formal summary of results appears prominently on Seyfarth's homepage:

With more than 100 projects executed [we have] applied Seyfarth*Lean* in every practice throughout the firm to deliver quality and efficiency that also delivered client cost savings ranging from 15–50%.¹¹

You may notice that they are no longer calling the program Six Sigma. Now it is called Seyfarth*Lean*. That term is derived from the “Lean Six Sigma” approach that Seyfarth ultimately adopted that, in turn, can be traced back to the “lean production” movement to increase manufacturing efficiency, most famously in Toyota's efforts to eliminate the “seven wastes.”¹²

In the case of legal work, this means looking at **every** process from the **client's** point of view, analyzing whether each step adds value for the client, and eliminating the steps that don't.

Both Six Sigma and *Lean* are formal processes that require a commitment from the top to change the way an organization does business. Classic project management has the same goal: to increase efficiency and add value. But you could say it is leaner than lean. And if there are dozens of variations on Six Sigma and *Lean*, there must be thousands of variations on project management.

True, the Project Management Institute (PMI) has summarized key concepts in a book that many refer to as the bible of the field (*A Guide to the Project Management Body of Knowledge – Fourth Edition*). But in real life most people study this document only if they want to be certified by PMI. And even when they do get certified, far more weight is given to experience in the field than to formal study. For example, college graduates who wish to be certified as a Project Management Professional need 35 hours of project management education and 4,500 hours of experience “leading and directing project tasks.” Many extremely successful project managers never bother to get certified at all.

Among the lawyers and consultants who are interested in increasing efficiency, there are fans of each approach: Six Sigma, *Lean*, and project management. All

¹¹ www.seyfarth.com/index.cfm/fuseaction/firm_overview.six_sigma_approach/six_sigma_approach.cfm

¹² Toyota's seven wastes were excess inventory, excess processing, overproduction, transportation, motion, waiting, and defects. For details, see en.wikipedia.org/wiki/Lean_manufacturing and en.wikipedia.org/wiki/Toyota_Production_System

three can get you to the same place. The question each firm must ask is: which method will be the most efficient and valuable in our culture? To evaluate the relative return on investment, firms will need to assess the required time investment by staff and by lawyers, the speed of deployment, the degree of impact on law firm operations, and the direct cost of each program.

When they do this analysis, I believe that the vast majority of firms will choose project management over *Lean* or Six Sigma. *Any lawyer can try it without changing firm-wide practices, and you can see the results right away.* When something works, lawyers can quickly do more. When it doesn't, they can try something else.

The pressure to reduce costs

Which brings us back to the current momentum behind the alternative fees movement and legal project management. Both trends are getting a major boost from clients' needs to cut legal costs. This pressure started long before the Great Recession, with companies like DuPont, Cisco, FMC Technologies, Walmart, GE, UPS and Pfizer in the lead.

According to the General Counsel Roundtable, outside legal spending by the Fortune 500 has dropped 17% in the last three years, from \$16.7B in 2007 to an estimated \$13.8B in 2010.¹³

A recent survey from the Association of Corporate Counsel found that 81% of in-house counsel are still trying to reduce their legal spend.¹⁴ The BTI Consulting Group has reported in its Premium Practices Forecast 2010 that spending on outside counsel dropped 10.8% last year.¹⁵ It also predicted that it will decline 4.3% more in 2010.

But it is hard for lawyers to imagine doing more with less. For their entire careers, they have been trained to leave no stone unturned in protecting clients' interests. If it happened to take a large number of hours to turn over some of those stones, the client would be better off and the firm would make more money. As the American Bar Association's Commission on Billable Hours summed it up in their 2002 final report (p. 8), "Hourly billing allows, indeed may encourage, profligate work habits. A cost-plus contract can degenerate into disregard for basic market discipline."

¹³ <http://amlawdaily.typepad.com/amlawdaily/2010/03/0319future.html>

¹⁴ www.serengetilaw.com/News/p091019_ACC_Survey.htm

¹⁵ www.law.com/jsp/article.jsp?id=1202434410545

At a moment in history when no one can doubt that legal budgets are being cut, project management skills can help lawyers protect the profitability of hourly work. If a client's legal budget is reduced 10%, there are only two ways to keep the business: discount your hourly rates (and cut your profits) to save the 10%, or find a way to meet the client's true need at standard rates, in fewer hours. Project management will allow lawyers to deliver the second, more profitable, solution, and with greater certainty.

Project management skills can help lawyers protect the profitability of hourly work.

As a senior partner at one large firm put it in *The LegalBizDev Survey of Alternative Fees*:

More pressure on the lawyers managing the matter to be efficient and to staff the matter at the lowest possible level is a good thing. It forces lawyers to take a hard look at costs and benefits. Is it really necessary to proofread that agreement eight times?

Is it possible to predict legal costs?

Many lawyers believe that it is simply not possible to predict the costs of complex legal matters. As the managing partner of a firm with more than 1,000 lawyers put it in *The LegalBizDev Survey of Alternative Fees*:

[Some] litigators say [a fixed fee] just doesn't work at all, because [no one] knows what's going to happen. You hear all those stories about how you can get a fixed fee to build the Taj Mahal. A litigator will say, well that's true, but when you're building the Taj Mahal, there isn't somebody who's paid to fend you off; in a contentious engagement, that's what's going on.

It's certainly true that the cost of defending a suit will be low if your opponent is willing to settle early in the process, and high if they engage in scorched earth tactics. However, it is interesting to note that the senior partner quoted above manages a firm that has signed a number of highly publicized, multi-million-dollar deals to handle litigation for a fixed price. He went on to explain

that success requires strong relationships and a “win some, lose some” mentality:

Everybody in business plays the odds. We’ve had situations in corporate deals where we’ve really gotten burned on something, but if it’s a good client, they don’t say “gotcha” and laugh about the fact that you made a bad deal. They say, “Well hey, we’re going to do more deals and life goes on,” and you assume that you’ll make it up in volume in being engaged with better situations.

Fixed price success requires strong relationships and a “win some, lose some” mentality.

Bartlit Beck is probably the most famous litigation firms that offers strictly alternative fees and refuses hourly work. As their web page explains:

Our approach to fees is unique, but simple. We believe our interests should be aligned with our clients’. To that end, we think we should get paid more if we win and less if we lose. We do not bill by the hour. Our fees depend on our success. We employ a variety of fee arrangements, including flat monthly fees, partial contingency fees, and similar alternatives. In virtually every matter, some portion of our fee is based on the outcome of the case. This approach works for us because we leverage our experience and efficiency to get a positive result, rather than leveraging an army of associates to run up the hours.

The firm’s founder, Fred Bartlit, has noted that while his firm has made extensive studies of what things cost and how to control costs, in the past competitors simply have not looked for that information:

Almost **no one** knows what tasks should cost done right. I usually ask meetings of General Counsel and other inside lawyers, “What should it cost to prepare for and take the deposition of an economic expert in a \$100-million antitrust case;” I get answers ranging from “\$30,000 to \$500,000” in the same room. So, to me, we have a dramatically atypical situation facing us: a huge market that is not competitive, that does not foster innovation in business processes, and has **no** useful metrics for comparing

efficiencies of different competitors or calculating roughly what various aspects of litigation **should** cost.¹⁶

Lawyers' inability to predict legal costs accurately is based in part on the fact that so few have tried. One of the most interesting observations in my research was made by a senior executive at a 1,000-lawyer firm who had previously worked at a publicly traded real estate company:

The two most important people we had in the company were the estimator and the project manager. Law firms historically have had no one play either of those roles. It's very dangerous to move into a world of fixed fees if you don't have somebody who's capable of estimating and you don't have somebody who's capable of project managing.

No one says that predicting costs will be easy, and no matter how good you get, some of your predictions will be wrong. As Nobel physicist Niels Bohr famously said, "It is very hard to predict, especially the future." But you can be right enough, often enough, to operate a very profitable business. Maybe even more profitable than it would be on hourly billing. Especially now, when so many clients want predictable legal costs and so few firms know how to offer them.

The discipline of project management

Predicting costs is just one aspect of the discipline of project management. Historians have traced its origins to the pyramids, the Great Wall of China, and civil engineers in ancient Rome who oversaw the construction of a 53,000-mile network of roads, many of which are still in use today. The modern discipline of project management developed in response to schedule pressures during and after World War II. Admiral Hyman Rickover developed the Program Evaluation and Review Technique (PERT) to manage the Nautilus nuclear submarine program from 1951-1954.¹⁷ In 1957, DuPont began developing the Critical Path Method (CPM) to plan the complex process of opening multiple chemical plants.¹⁸ The Apollo program applied these methods and more to put a man on the Moon by 1969.¹⁹

Since then, a number of professional associations have grown in influence, including the Project Management Institute, which now has "more than half a

¹⁶ http://adverselling.typepad.com/how_law_firms_sell/2009/02/alternative-fees-part-6-how-to-set-a-fixed-fee.html

¹⁷ en.wikipedia.org/wiki/Program_Evaluation_and_Review_Technique

¹⁸ en.wikipedia.org/wiki/Critical_path_method

¹⁹ en.wikipedia.org/wiki/Apollo_program

million members and credential holders in 185 countries.”²⁰ Some institutions of higher learning now offer master’s degrees in project management.

These days, project management techniques are routinely applied in many fields, including information technology, engineering, and construction.

The argument has already started about exactly how much of this knowledge lawyers need. We believe that less is more. As Lisa Damon, a partner at Seyfarth Shaw has noted, “If you get a group of lawyers and staff into a room to discuss how to make things more efficient, it’s very easy to find savings.”²¹

If you get a group of lawyers and staff into a room to discuss how to make things more efficient, it’s very easy to find savings.

For example, a few months ago we conducted a workshop at Warner Norcross & Judd in which senior partners quickly reviewed project management best practices and picked out the ones that best fit their needs.²² After reviewing our list, one lawyer decided to focus on setting estimated hourly goals before beginning each task. He noted that the firm already did this with law students in their summer programs. When these interns were given a new assignment, they were asked to estimate how many hours it would take before they began. If the estimate seemed out of line, the supervising lawyer discussed the task with the law student to see if he or she really understood what was required. The lawyer from our workshop is now adapting this technique for working with his partners on alternative fee matters.

How to reduce write-offs

Another best practice discussed in our project management workshop at Warner Norcross & Judd was just as simple and even more likely to quickly

²⁰ www.pmi.org

²¹ *The LegalBizDev Guide to Alternative Fees*, p. 21

²² www.wnj.com

impact the bottom line: “Hold difficult conversations before money is spent, not after.”

Anyone who has been involved with law firm finances knows the importance of the *realization rate*, the percentage of billable time that is paid for by clients. The precise definition of which hours are included and excluded from the realization rate varies a bit from firm to firm. The calculation typically includes work that was completed but never billed (for example, a junior associate running wild on a research assignment; the relationship partner might never bill the client for that work), and expenses that were billed but not paid. Unpaid bills may be classified as post-facto discounts, write-offs, or bad debts. But whatever you call them, they reflect incurred expenses and lost income, which could have gone directly to the bottom line.

There are many reasons write-offs occur, but poor communication is frequently the key. Consider this scenario from a senior partner of an 800-lawyer firm in our survey:

[The client asks] “What’s it going to cost?” and [the lawyer] says “Oh, I can’t tell you, we don’t have enough facts. But normally a deal of this size would run \$120K-\$150K.” The client hears, “You’ve promised me \$120K.” And then that’s it. That’s your fixed fee. And you don’t know that, of course, because you thought what you did was say, “This is what it costs on average,” and at the end the client would say, “Gee, this cost \$200K, how is that possible?” And you think, “Well, you know, your CEO got fired in the middle of the deal. The deal dragged on for three years. It turned out you got sued. Yeah, it cost \$200K.”

In the same interview, the COO of the firm commented that:

You can’t wait until the end to talk about all the change orders. You really have to not be afraid to address these issues. A lot of partners don’t want to do that.

If the lawyer in this scenario had discussed the issues with the client early in the process, she might have gotten a larger payment, or perhaps she could have satisfied the client’s true need with fewer billable hours.

Unsatisfactory realization rates have always been a problem for law firms, and they are getting worse. Hildebrandt Baker Robbins tracks data on billing realization and collection realization rates in their Peer Monitor survey of 40 AmLaw 100 firms, 35 AmLaw 101-200 firms, and 52 additional firms. As noted their 2010 Client Advisory, in 2007 both rates were around 95%.²³ By

²³ www.hildebrandt.com/2010ClientAdvisory

the end of 2009, billing had declined to about 93% and collections to about 90%. Project management tactics offer the potential to improve those rates and have a huge impact on the bottom line.

Eight key issues

Now, you don't need a master's degree in project management or a professional certification to discuss ideas like "estimate hours in advance" or "have difficult conversations before you spend, not after." With lawyers, it is easy to find ways to reduce costs. The hard part is getting them to do it.

Hold difficult conversations before money is spent, not after.

The difficulty of getting from knowledge to action is the core challenge of all adult training programs, and it is one that my company has been working on for 25 years.

One key way that training experts maximize follow-up is to let each individual focus on the topics that interest them the most, rather than trying to force everyone in a group to review the same general concepts. When lawyers participate in our project management workshops, they use a customized version of our *Legal Project Management Quick Reference Guide*, which lists dozens of best practices organized in terms of eight key issues:

1. Set objectives and define scope
2. Identify and schedule activities
3. Assign tasks and manage the team
4. Plan and manage the budget
5. Assess risks
6. Manage quality
7. Manage client communication and expectations

8. Negotiate changes of scope

Getting lawyers to act on the items they select requires an understanding of how lawyers operate at large firms and how to effectively communicate with them. The bad news is that an effective program requires professional training techniques, politics, psychology, and unrelenting follow-up. The good news is that it works. And it starts by getting lawyers to buy into the concept of tradeoffs.

It's all about tradeoffs

If we lived in a perfect world with unlimited resources, no one would need project managers. But in reality, resources are limited and managers are constantly forced to make difficult choices. For example, when computer programmers develop a new product, no matter how good the product may be, someone can always think of a way to make it even better. But each new feature requires time and money. If software companies intend to stay in business, someone must decide which changes are worth making, and which are not. That's why experts talk about the "project management triangle;" every project is constrained by scope, schedule, and budget. If you change one, the others change too.

It is human nature to always seek a better solution and for each of us to add our own personal stamp. It is the project manager's job to keep human nature in check and thus assure that projects are completed on time and within budget. As a Deputy Division Chief at NASA put it in an article about the space program:

In our zeal to solve problems in new and innovative ways, project managers must be prudent not to allow requirements creep or design solutions to bankrupt the whole project.²⁴

When Voltaire wrote the phrase "better is the enemy of good" in the late eighteenth century, he was not thinking about the needs of legal clients. But the phrase is extremely relevant to the challenges lawyers face today as they adapt to what Paul Lippe has called "the new normal."²⁵

In the "old normal," lawyers developed a culture of perfectionism in which no stone went unturned. When litigators were trained to prepare for a case, they were taught to consider every twist and turn of any argument that could

²⁴ http://askmagazine.nasa.gov/issues/03/03p_practices_better.php

²⁵ <http://amlawdaily.typepad.com/amlawdaily/2010/03/0319future.html>

possibly be raised by the other side, no matter how unlikely. When transactional lawyers were taught how to draft contracts, they were encouraged to draft language that anticipated every possible threat that might arise.

Clients seemed to care little about efficiency, and most lawyers did not care at all. In fact, truth be told, the hourly billing model implied that the more inefficiency a client would pay for, the more hours would be billed and the more revenue would be generated.

In the new normal, clients want to decide what they will pay for, and what they won't.

But the world has changed and legal budgets are tighter than ever before. The phrase “better is the enemy of good” is not an endorsement of mediocrity. It is an endorsement of pragmatism, of analyzing the cost of each action in advance, and proceeding only if that cost can be justified by its return.

In the new normal, clients want to be the ones who make decisions about what they will pay for. Many have concluded that if a “perfect” legal solution requires more hours and a bigger bill, they would prefer a lower cost legal approach that is simply “good” and meets their most pressing needs.

A few years ago, after I gave a business development speech at a law firm retreat, one lawyer came up to me to ask how to handle a client problem. He had recently completed an assignment for a real estate developer, and written what he called “the perfect lease.” It was one of the proudest moments of his legal career, and his colleagues agreed that he had crafted language that would protect the client’s interests under any conceivable scenario. There was just one problem: the client hated it. Well, they didn’t hate the lease, they hated the bill. They also refused to pay it, because they had been expecting a much lower cost.

So this lawyer asked me: How can I make my client understand that the perfect lease was worth the money? My answer: You probably can’t. If that’s not what the client wanted, it is not perfect. What you need to do is go back to the client, ask a lot of probing questions, and listen. Don’t argue, don’t talk, just listen. When you understand what they wanted to buy, then you will be in a position to negotiate a price they will pay, and you can try to salvage the relationship so you will get more of their business in the future.

It all goes back to the best practice mentioned above: hold difficult conversations before money is spent, not after.

The underlying issue of how to deal with perfectionism is hardly unique to the legal world. The phrase “better is the enemy of good” is often heard in other businesses when project managers discuss how to stay on time and within budget.

When the US was racing Russia to the moon in the 1960s, the Americans had a reputation for technological excellence and innovation, the Russians had a reputation for getting things done. Desk signs were therefore printed up for key members of the Apollo engineering team with the words that were engraved over the entrance to the U.S.S.R. Technical Institute:



Враг хорошего -- это лучше.

The rough translation is – you guessed it – “better is the enemy of good.”

According to one often-repeated anecdote, when US astronauts needed a pen that would write in space, NASA spent over \$1 million developing “The Zero Gravity Pen.”²⁶ It was later marketed to Earthlings by the Fisher Space Pen Company because its pressurized ink cartridges were said to write “in zero gravity, upside down, underwater, over wet and greasy paper, at any angle, and in extreme temperature ranges.”

Russian cosmonauts faced the same challenge, but they believed “better is the enemy of good,” so they used a pencil.

(This is a great story, except for one little problem: it is not quite true.²⁷ NASA did not pay for the development of the pen. The patent owner, Paul Fisher, did. And before the Space Pen became available, both Americans and Russians used pencils. But the story is repeated to this day because it is such a vivid illustration of a fundamental truth.)

The pitfalls of perfectionism are becoming more obvious to lawyers as a result of both client pressures to reduce costs and the growth of alternative fees. In a white paper on entitled “Creating the Law Firm of the Future,” Ralph Palumbo of Summit Law Group wrote:

²⁶ http://en.wikipedia.org/wiki/Space_Pen

²⁷ <http://www.snopes.com/business/genius/spacepen.asp>

Today, most lawyers are paid as hourly laborers. The hourly billing system does not reward efficient legal service. Plodding, pedantic legal service is rewarded. When lawyers are paid by the number of hours worked, conscious or unconscious self-interest can and does affect a lawyer's judgment as to what legal services are required.

An experienced lawyer is often able to give an answer that has a 90% probability of being correct. If the lawyer spends only a few minutes giving the answer, the lawyer is paid little for his answer – despite the fact that years of experience and a high level of expertise and judgment is required to give a good answer. Paid by the hour, the lawyer is under-compensated for the service provided. If the same lawyer assigns two associates to research the problem and write memoranda on the issues, the probability that the client will get the right answer may increase from 90% to 95%. The lawyer will make much more money and, in a few cases, the improved probability may be worth the extra fees charged. But in most cases, the customer would have been better off to accept the 90% answer and pay less for the advice.²⁸

Some lawyers will find it hard to change their ways. Others have concerns about “missing an issue,” however remote it might be. Clients may help them make this transition by refusing to pay some bills. According to the 2010 Client Advisory from Hildebrandt and Citi Private Bank, billing and collection realization rates have been declining for the last 12 quarters.²⁹ Could client dissatisfaction with over-lawyering be one of the reasons?

If some lawyers feel that strongly about continuing the perfectionism of the past, I don't think there is a client in the world who would object to having extra hours devoted to their matters, as long as the lawyers pay for them. But if clients are expected to pay the bill, they get to decide what they need.

²⁸ <http://www.summitlaw.com/PalumboArticle.pdf>

²⁹ <http://www.hildebrandt.com/2010-Client-Advisory-Issued-by-Hildebrandt-Baker-Robbins-and-Citi-Private-Bank-03-03-2010>

The future

When large law firms decide to increase efficiency, what exactly should they do? Should they radically re-engineer business processes using formal methodologies like Six Sigma, or simply look for the low hanging fruit? Should they identify some people as “project managers”? Is that a responsibility for each relationship partner, or is it a separate role in the firm? Full time or part-time? For lawyers or non-lawyers? Should project managers be certified? How? Should the firm invest in project management software?

There are a lot of law firms in the world, and they have different needs and different cultures, so I don't think any of these questions will be answered simply in the short term. The answers will vary not only from firm to firm, but even between practice groups within a firm. The best solution will fit each group's culture, and the strengths and interests of the individual members.

This is a new frontier for law firms. Some experiments will succeed and some will fail. A general consensus will take time to emerge.

Some firms already have project managers in-house in IT and other departments, and in many cases their roles have started to expand to include helping to plan legal work. Other firms are hiring new project managers specifically for that purpose. That's a bit riskier since law firms are extremely complicated organizations, and newly hired individuals who don't know the key players or the politics may have a hard time getting lawyers to act. Some firms may waste a lot of money on having project managers devise plans that influential partners will ignore.

In the end, I believe that the vast majority of firms will find that the most efficient first step is to quickly train senior lawyers on proven project management principles. Each individual can then select action items that fit their practice and personality, and give it a try. When they work, do more. If they don't, try something else.

Ever since the Dechert story came out, I have been getting calls from firms that were suddenly thinking about offering project management training to all of their lawyers. My ambivalence came out quickly in these discussions. On the one hand, the customer is always right. On the other hand, I find it hard to believe that a program to train EVERY lawyer is the best way for firms to spend their money in the current economy.

From my perspective as a professional trainer, I believe most firms could achieve a much higher return on their investment by applying state of the art *just in time, just enough* training techniques. (My financial advisors have

pointed out that I could make a lot more money by training every lawyer, but I never listen to that kind of advice.)

When I started LegalBizDev 25 years ago, the company was named Brattle Systems and we developed custom training programs for government agencies and for companies from American Express to Zurich Financial Services. Over the two decades that we specialized in custom training, the business changed significantly as clients cut back on traditional training budgets and shifted instead towards a more cost effective *just in time, just enough* approach.

Most firms will achieve the best return on investment with a “just in time, just enough” approach to training.

For example, in the late 1980s there was a huge market for people taking classes to learn how to use new software. But when was the last time you took a half-day class on a software program? These days, when people want to know how to use advanced features of Word or Excel, few would consider signing up for a class or even looking up the answer in a book. Instead, they use the convenient *just in time, just enough* training tools that Microsoft has built into each program, and simply look up what they need when they need it.

Just in time, just enough training tactics have been applied to almost every field you can think of, including project management. For one example, see the study of “The use of just-in-time training in a project environment” that appeared in the *International Journal of Project Management*.³⁰ The authors start by pointing out that “Around 40% of the knowledge acquired in training is lost after a break of one month, rising to 90% after six months,” and go on to show how the problem can be solved.

LegalBizDev is the first, and so far the only, company to adapt this pragmatic *just in time, just enough* model to legal project management training.

Do I think our approach is the only one that will help lawyers increase efficiency? Absolutely not. To be honest, at this moment in time, almost ANY

³⁰ www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6V9V-433PBK5-3&_user=10&_coverDate=07%2F31%2F2001&_alid=1314695237&_rdoc=1&_fmt=high&_orig=search&_cdi=5908&_sort=r&_docanchor=&view=c&_ct=631&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=d0e6cedc277e256b18529002fc232edb

training approach can help lawyers to become more efficient. Given the venerable hourly business model of the legal profession, nobody ever asked lawyers to be efficient, and few lawyers have tried. With a little guidance, most can quickly come up with dozens of ways to save time and money.

However, please note that I said “almost any training approach.” I’ve heard a number of off-the-record horror stories lately of some rather dramatic failures in legal project management training. In each case, the course was led by someone who knew an enormous amount about project management and very little about law firms. Some were academics, and some were famous consultants. But when they tried to teach the courses that had worked so well with other groups, they fell flat on their face with this critical, busy, focused and impatient audience.

In a recent article about Canadian legal project management programs, Borden Ladner Gervais’ Andrew Terrett, a professional project manager and lawyer, explained how important it is to get it right the first time: “You only get one shot. [Lawyers are] a pretty skeptical group.”³¹

The article went on to explain that these are confusing times, because “Project management is so new to the legal profession that everyone is still trying to figure out what it can do and how to make it work.”

I believe that project management is a key component in the sea change that is just starting to transform law firms. It will ultimately require comprehensive, long-term, top-to-bottom changes in the way lawyers do business.

The question is how do we get from here to there? What should your firm do today?

I say start this long journey with a small step which accepts lawyers’ reluctance to change, and their independent streaks. The first step we often recommend is a large group presentation to review basic project management concepts and help lawyers identify simple and immediate action items. With some firms, we recommend highly interactive workshops in which a small group of key partners work together to find tactics that fit each practice and personality. When lawyers implement the action items from one of our presentations or workshops, they see immediate results. And when they talk to their partners about what worked, the best practices spread from the bottom up.

Some firms will undoubtedly prefer the “top-down” approach and choose to invest heavily in training for everyone. That’s what Dechert and Eversheds have done, not to mention Seyfarth’s work with Six Sigma. That approach will

³¹ <http://www.canadianlawyer.com/Buzzword-2010-project-management.html>

work too. In the twenty years my company developed custom training, we created a number of very successful programs of this sort. In one example, we developed and delivered a five-day, top-down training program for 3,500 government employees in 14 cities, and won an award from the US Small Business Administration as the best small business in New England. Not just the best training company, but the best small business.

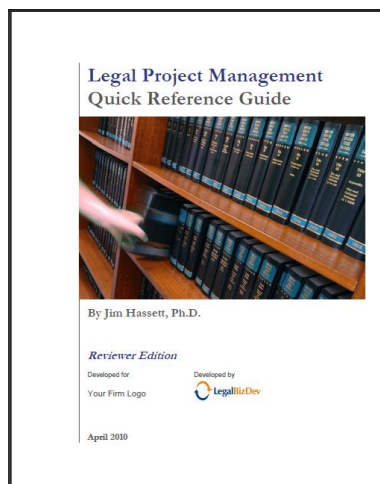
But we also know how complicated and expensive top down programs can be. To maximize the results, you need to pick just the right moment, when the audience accepts the fact that they need to change. In my opinion, in the vast majority of law firms, this is simply not the moment. Many lawyers still believe the good old days will be back soon and there is no need to change the way they have practiced for their entire career.

Can I GUARANTEE that our bottom-up *just in time, just enough* approach will be more effective than a top-down mandate from management? Of course not. But I can guarantee it will be a whole lot cheaper.

Whatever firms decide to try, it is clear that they must try something. As one large firm decision maker put it in the *LegalBizDev Survey of Alternative Fees*:

We need to be better managers of what we do for clients. If law firms do not take the lead in getting clear agreements with clients about the work we are expected to do and then manage our resources carefully to meet those agreements, we will be doing the same work for a lot less net income.

For more information, see:



The *Legal Project Management Quick Reference Guide* is provided to participants in LegalBizDev project management workshops.

The table of contents is customized for each client. An example appears below.

Table of Contents (customized for each client)

Preface: How this Guide can help you

Part 1: Tools

- Your action items

- Checklists of best practices

 - Set objectives and define scope

 - Identify and schedule activities

 - Assign tasks and manage the team

 - Plan and manage the budget

 - Assess risks

 - Manage quality

 - Manage client communication and expectations

 - Negotiate change orders

- Examples

- Templates

 - Matter planning template

 - Project risk analysis template

 - RACI matrix

 - Six steps to better budgets

 - Budgeting with UTBMS and other standard codes

 - Key questions project managers should ask

 - How to reduce cost by improving delegation

 - How to debrief at the end of a matter

Part 2: Background reading

- Trends in legal project management

Legal project management under the radar
Six Sigma and Lean
The pressure to reduce costs
Is it possible to predict legal costs?
The discipline of project management
How to reduce write-offs
Eight key issues
It's all about tradeoffs
The future
Nine common types of alternative fees
What law firms should do to improve project management
What clients should do to improve project management
Where to begin
Part 3: Proprietary templates and documents

“The Legal Project Management Quick Reference Guide answers the ‘how to’ questions that everyone has. It provides best practices, templates, guidance and Jim's wisdom on how to accomplish this massive change by focusing on low hanging fruit and seizing early wins to demonstrate the value of this skill set... This is an exceptional piece of work that you will want to examine.”

-- Patrick Lamb, Valorem Law Group

The LegalBizDev project management team



Jim Hassett is the founder of LegalBizDev, which helps law firms increase profitability by improving business development, alternative fees, and project management. Before he started working with lawyers, Jim had 20 years of experience as a sales trainer and consultant to companies from American Express to Zurich Financial Services. He is the author of eight books, including *The LegalBizDev Survey of Alternative Fees*, *Legal Business Development: A Step by Step Guide*, and *The LegalBizDev Desk Reference*. He has also published more than 80 articles in the *New York Times Magazine*, *Of Counsel*, *Legal Management*, *Strategies: The Journal of Legal Marketing* and other publications. Jim is a frequent speaker at law firms and at the Massachusetts Bar Association, the New York Bar Association, Harvard Law School, DRI, and

at Legal Marketing Association meetings in Boston, New York, Philadelphia, Washington, Savannah, and Vancouver. He conducts webinars through West LegalEdcenter, the National Law Journal, The International Lawyers Network, TAG Academy, and the Legal Marketing Association. Jim writes the blog *Legal Business Development* (www.jimhassett.com) which was featured at the ABA TECHSHOW in 2009 and again in 2010 (in its list of “60 Sites: Latest and Greatest Internet Hits”) and by TechnoLawyer (in its list of “the most influential legal blogs” in BlawgWorld). He has a Ph.D. from Harvard and is an Adjunct Associate Professor at Boston University.



Steve Barrett has been active in large law firm strategy and marketing for more than 20 years and has served as chief marketing officer at AmLaw 100 firms based in Los Angeles, Seattle and Philadelphia. He has also presented at partner retreats for more than a dozen major U.S. law firms, led business development training programs at eight law firms, authored chapters and articles for several legal publications, and made more than 25 speaking appearances at legal industry and association conferences. Steve also consults to law firms in the areas of alternative fees, strategy and marketing. He previously headed corporate communications for the Aetna Life & Casualty Companies in Hartford, Connecticut, and founded and headed LMS/Barrett Public Relations in Providence, Rhode Island, a major New England public relations firm. Steve received a dual degree in political science and journalism at Syracuse University, with graduate communications study at Boston University.



Mike Egnatchik has been a practicing attorney for over 30 years, and was formerly Associate General Counsel, International, at Xerox Corporation. Prior to that, he worked in the New York and Paris offices of Shearman & Sterling, and earned his JD at Harvard Law. Mike has several decades of experience in worldwide legal project management and has earned a Lean Six Sigma Yellow Belt. At Xerox, he managed and trained a network of in-house and outside counsel in over 100 countries, and had significant responsibility in the areas of international joint ventures, acquisitions and divestitures, compliance, arbitration and dispute resolution. Mike has been a member of the Association of Corporate Counsel since it was founded in 1982. He is also a former US Air Force Officer, and a member of the State Bars of New York and California.



Kirk G. Forrest has over 30 years of experience in law departments and in law firms, including senior management positions at three multi-billion dollar companies: as General Counsel at Sam's Club and at Minerals Technologies, and as Associate General Counsel at The Williams Companies. He has also been a litigation partner at Carroll, Burdick McDonough, and served on the legal staff at MAPCO, International Paper, and Xerox. Kirk received his JD from Harvard Law School and his undergraduate degree from Cornell University. He has extensive experience in litigation, risk management, corporate governance and business counseling, and he led the litigation function at International Paper, MAPCO and Williams. Kirk has served as Vice President of the International Association of Defense Counsel, and on the Board of Directors of several bar associations, including the Minority Corporate Counsel Association. He was a founding member of the American Corporate Counsel Association, and has been writing and speaking about alternative fees for more than fifteen years.

To discuss how LegalBizDev can help you increase profitability by improving business development, alternative fees, and project management, contact us today or visit our web page at:

www.legalbizdev.com



225 Franklin Street, 26th floor
Boston, MA 02110
800-498-7246

info@legalbizdev.com