

# 015 Streamlining the Business of the Law Department

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Kelley Drye &amp; Warren LLP

**Roberta Marcantonio***Vice President, Field Service Excellence*

Spherion Corporation

**James L. Marvin***Chief Corporate Counsel*

Heller Financial, Inc.

**Rebecca B. Ransom***Assistant General Counsel*

Raytheon Company

**Thomas L. Sager***Vice President & Assistant General Counsel*

DuPont Company

## Faculty Biographies

### **Robert L. Haig**

Robert L. Haig is a partner in the law firm of Kelley Drye & Warren LLP in New York.

Mr. Haig has served as president of the New York County Lawyers' Association. He was a member of the New York State Bar Association's Executive Committee, the founder and first chair of the Association's Commercial and Federal Litigation Section, and chaired its Committees on Federal Courts and Multi-Disciplinary Practice and the Legal Profession. Mr. Haig was the chair of the Committee on the Judiciary of the Association of the Bar of the City of New York and also chaired that Association's Council on Judicial Administration. He is a member of the House of Delegates of the ABA, a member of the American Law Institute, a Life Fellow of both the American Bar Foundation and the New York Bar Foundation, a member of the Departmental Disciplinary Committee of the Appellate Division, First Judicial Department, a member of the New York State Judicial Salary Commission, and a director of the Committee for Modern Courts. Mr. Haig is cochair of the Commercial Courts Task Force to create and refine the Commercial Division of the Supreme Court of the State of New York.

In 1991, Mr. Haig became the only New York lawyer to receive the "Award For Excellence in Continuing Legal Education" from the Association of Continuing Legal Education Administrators. On May 7, 1995, the New York State Bar Association's Commercial and Federal Litigation Section presented Mr. Haig with the Section's first annual "Robert L. Haig Award for Distinguished Public Service." The Section has named this award after Mr. Haig, and presents it in his name each year.

Mr. Haig is the editor in chief of *Successful Partnering Between Inside and Outside Counsel*, a book published by West Group in a joint venture with ACCA. He is a member of the board of editors of Matthew Bender & Co., Inc.'s *Federal Litigation Guide Reporter*. He is also a member of the board of advisers to Business Laws, Inc.'s *Law Department Management Adviser*.

Mr. Haig graduated from Yale College and from Harvard Law School.

### **Roberta Marcantonio**

Roberta Marcantonio is vice president of field service excellence for Spherion Corporation, headquartered in Ft. Lauderdale, Florida. Spherion provides recruitment, outsourcing, and technology services to help companies efficiently plan, acquire, and optimize talent to improve their bottom line.

Ms. Marcantonio's responsibilities include implementing best practices and metrics to maximize productivity across all Spherion business units. Her areas of expertise include developing user requirements and standardizing business processes within Spherion's field operations and corporate headquarters.

**James L. Marvin**

James L. Marvin is chief corporate counsel and managing attorney at Heller Financial, Inc., a publicly-held middle market finance company with over \$1 billion in operating revenues and principal operations located in Chicago. As chief corporate counsel, his responsibilities include legal oversight of Heller's corporate legal function, including corporate maintenance and securities laws compliance. He also provides legal support for Heller's capital markets and equity investment activities and for staff groups responsible for investor relations, internal audit, marketing, and information technology. Prior to this position, Mr. Marvin was the legal services relationship manager for Heller Corporate Finance, Heller's cash flow and asset-based financing business unit.

Prior to joining Heller, Mr. Marvin was a partner in the finance and reorganizations practice group at Katten Muchin Zavis, a Chicago-based law firm, where his practice concentrated in representing commercial lenders in a wide variety of financing transactions.

Mr. Marvin is a member of the board of directors of the Public Interest Law Initiative and provides pro bono legal services for Deborah's Place, a Chicago-based nonprofit focused on providing housing and counseling for formerly homeless women. He recently implemented a formal pro bono program for Heller's internal legal staff and is a member of Heller's Charitable Contributions Committee.

Mr. Marvin received a BA from the University of Illinois and his JD from the University of Illinois College of Law.

**Rebecca B. Ransom**

Rebecca B. Ransom is assistant general counsel, litigation for Raytheon Company. Ms. Ransom oversees the management of all litigation for the company, including selection of outside counsel, directing litigation strategy, and controlling costs through Raytheon's automated legal matter tracking and reporting system.

Prior to joining Raytheon, Ms. Ransom was a partner and associate in the Virginia office of Venable, Baetjer and Howard. While at Venable, Ms. Ransom practiced in the areas of commercial and construction litigation and government contracts.

Ms. Ransom is a member of the Public Contract Law and Litigation sections of the ABA. She is actively involved in volunteer work with her church and local community.

Ms. Ransom received a BA *magna cum laude* from the University of Utah and received her law degree from the George Washington University Law School.

**Thomas L. Sager**

Thomas L. Sager is vice president and assistant general counsel of the DuPont Company where he also serves as the chief litigation counsel. Mr. Sager helped pioneer DuPont's Convergence and Law Firm Partnering Program.

Mr. Sager has served on the board of several organizations including ACCA, the Minority Corporate Counsel Association, the CPR Institute for Dispute Resolution, the Delaware Law Related Education Center, and the American Red Cross in Delaware. Mr. Sager served as chair of the Delaware Chapter of the American Red Cross. He was honored in 1997 with the Lamont duPont, Jr. Memorial Award for outstanding and devoted service to the community through Red Cross—the highest honor the American Red Cross in Delaware can bestow on a volunteer. He has also served on the board of overseers of the Widener University School of Law.

Mr. Sager received the ABA's 2001 "Spirit of Excellence" award, established to celebrate the achievements of minority lawyers and others who actively promote the full and equal participation of minorities in the legal profession. He also received an award from ACCA for his article "DuPont's Performance Metrics" published in the *ACCA Docket*. ACCA also honored Mr. Sager with a "Recognition of Excellence" for professional accomplishments in corporate practice, personal integrity, and commitment to the advancement of the in-house practice of law. The Minority Corporate Counsel Association established the Thomas L. Sager award in his name; the award was given to him in recognition of his individual efforts and achievements to promote diversity in the legal profession. Mr. Sager also received the 1998 Brundage Award, presented by the Wallace Law Registry, acknowledging outstanding energy, commitment, and dedication to improving the legal profession.

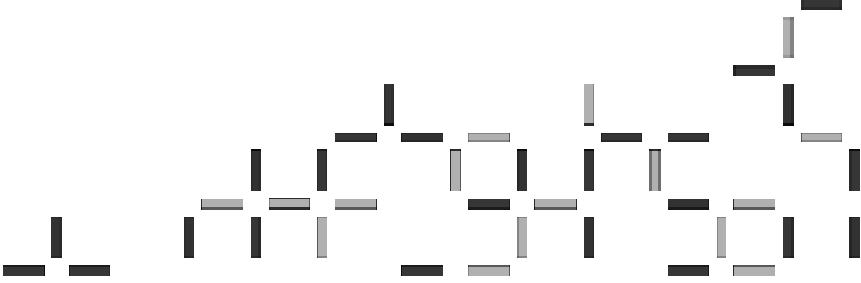
Mr. Sager received his JD from Wake Forest University School of Law and

**WELCOME**



**Leveraging smart PMO solutions to minimize risk,  
while maximizing investments**

**Enterprise  
Program Management  
Office (PMO)**

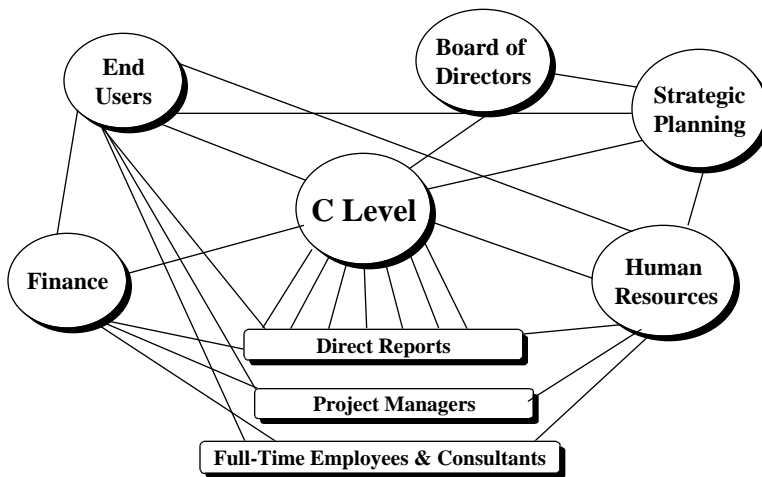


# Project Management Facts

According to Gartner Group Research

- . . . . . **Over 80% of IT-related projects are:**
  - Late
  - Over-budget
  - Lacking functionality
  - Never delivered
  
- . . . . . **Causes of project failure include:**
  - Poor participation from sponsor
  - Insufficient business and user involvement
  - Difficulty in defining work in detail
  - Poor project management
  - No clear objectives or requirements
  - Continual and unregulated changes
  - Inappropriate experience and competence
  - Denial of risk

# Common Communication & Information Flow



# Challenges

## Executive Management

- ▶▶▶▶ **C**ompeting in the e-business market
- ▶▶▶▶ **A**ligning and bridging technology solutions with corporate goals
- ▶▶▶▶ **S**triving to refine and redefine business practices
- ▶▶▶▶ **M**aintaining revenues for continued growth
- ▶▶▶▶ **R**etaining quality resources

# Challenges

## Project Manager

- ▶▶▶▶ **N**eed for regular, consistent, up-to-date reports for projects, resources and budgets to Senior Management
- ▶▶▶▶ **S**upporting a stated, practiced, and consistent project management process and methodology
- ▶▶▶▶ **D**elivering quality projects quickly
- ▶▶▶▶ **A**nticipating problems before they significantly impact a project

## What is your experience?

Have you worked with a PMO or Project Office?

As a result of Year 2000 or a large project

As a company initiative

- Was it successful or unsuccessful? ◆
- Was it hard to define? ◆
- Was it hard to implement? ◆
- Was it hard to staff? ◆
- Did it have the right sponsorship? ◆
- Is it going to last? ◆

## Enterprise Program Management Office Definition

- An organizational approach that serves as a means for organizing, aligning and implementing initiatives between business and technology.



## PMO vs. Project Office

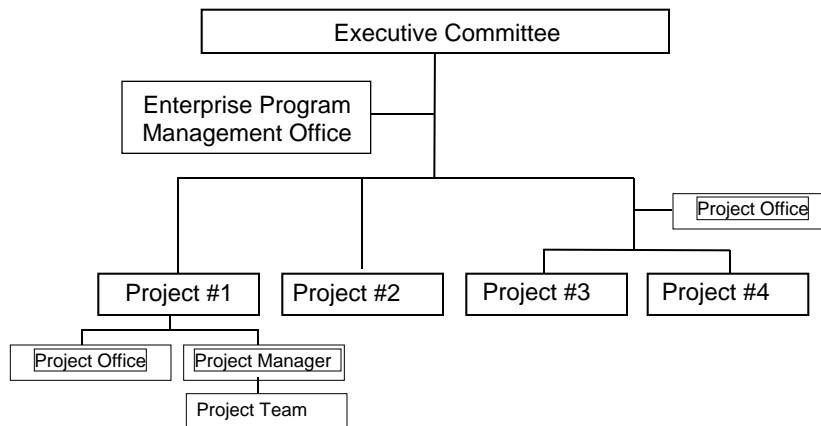
### Project Office

- Supports and enhances individual project manager and large projects or groups of related projects
- Provides project control & support through
  - Project Plan, Resource & Budget Maintenance
  - Status Reporting
- Could run the project(s) day-to-day activities

### Program Management Office

- Reports to the highest level in an organization
- Provides liaison between Business and IT
- Maintains managerial objectivity
- Enforcer of process and methodology
- Support strong project management processes

## Our Version of Enterprise PMO & Project Office



## Purpose of an Enterprise PMO

- Develop and/or implement a standard methodology
- Act as a liaison between Business and IT
- Promote effective project management practices
- Implement standard project management tools
- Provide accurate and timely information for decision making

## Typical PMO Structure



## Do you need a PMO?

### Do you...

- ä Know how many initiatives you have? The status of each? Expected completion dates?
- ä Know what your resources are working on?
- ä Use project management tools for tracking client/server, mainframe, and web development projects?
- ä Know how your managers handle multiple initiatives?
- ä Know what a project is really going to cost?
- ä Have a way to manage scope?
- ä Have large projects that are out of control?
- ä Know how much you spend on maintenance?

## Benefits of a PMO

- Provides a central point of contact for targeted company initiatives
- Elevates the level of client leadership by identifying and providing training, coaching and mentoring
- Enhances communication between IT and Business
- Provides managerial neutrality
- Provides a mechanism to elevate issues to the attention of the appropriate level

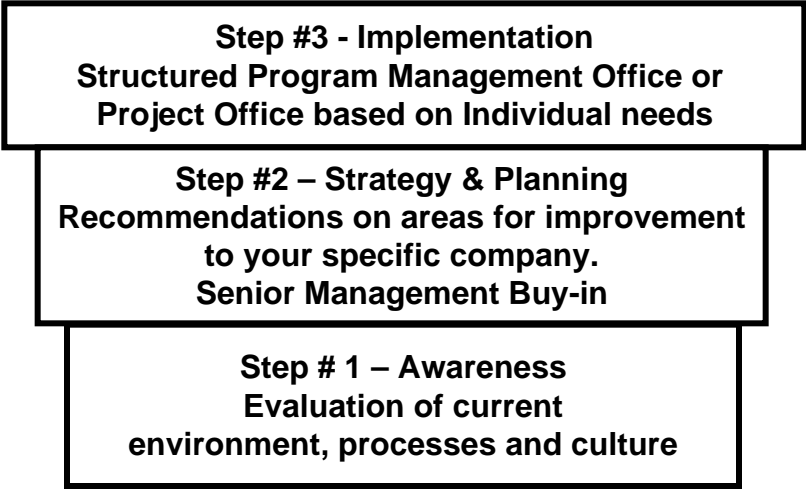
## Benefits of a PMO (cont.)

- **Reduced cost and greater effectiveness through the implementation of methodology and promotion of best practices**
  - **Incorporates current company best practices**
  - **Drives consistent project management standards, tools and measures across all initiatives**
- **Accurate and timely information to support decision making**
- **Pulls it all together and adjusts to the environment**

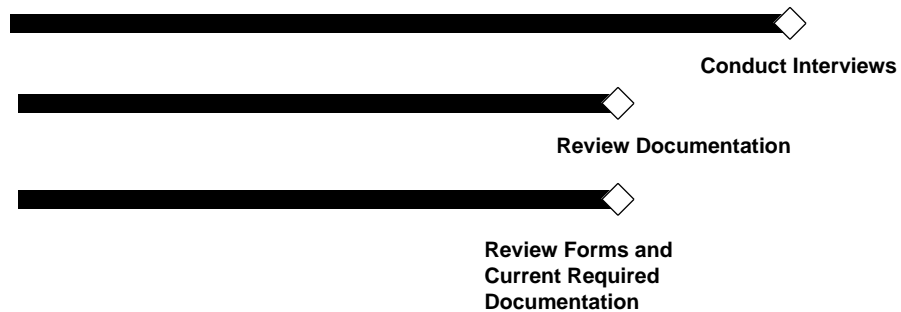
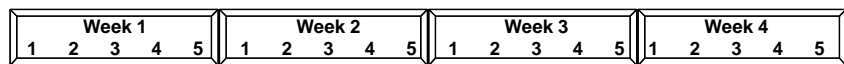
## Quantifiable Value of PMO

- q **Efficiencies**
- q **Turnover Retention**
- q **"Right" deliverable at the "right" time**
- q **Proactive rather than reactive**
- q **Solve problems before they impact a project**

## What are the Steps?



## Awareness Phase



Approximate Timeline: 2 – 4 weeks

# Awareness

## Interview Matrix

QUESTIONS:	INTERVIEWEES:	INTERVIEWEES:	INTERVIEWEES:	INTERVIEWEES:	INTERVIEWEES:
	NAME OF	NAME OF	NAME OF	NAME OF	NAME OF
What are some key project or client or team success stories?					
Who provides project M&C?					
Who selects the project to IT?					
Who does the initial project or public participation. In general, or looking to be appointed? What is the scope of work?					
Who assigns the project?					
Who handles the project manager?					
What is the role of the Project Manager?					
Who does the client or project to client and then client?					

# How Do You Substantiate Your Strategy?

\_\_\_\_\_

- u **Flowchart current process**
- u **Develop 30-60-90+ day plan**
  - u **Set expectations**
  - u **Expert help available**
- u **Develop roles & responsibilities matrix**
  - u **Essential to ensure buy-in**
- u **Create strategy document with priorities**
- u **Approximate timeline: 30 – 60 Days**

## Strategy/Planning

### 30-60-90+ Day Plan

The screenshot shows a Microsoft Excel spreadsheet with a detailed project plan. The spreadsheet is organized into several sections, including '30-60-90+ Day Plan' and 'Responsibilities Matrix'. The columns include task descriptions, dates, and names of responsible individuals. The tasks are listed in a hierarchical manner, with sub-tasks under main headings.

## Strategy/Planning

### Roles & Responsibilities Matrix

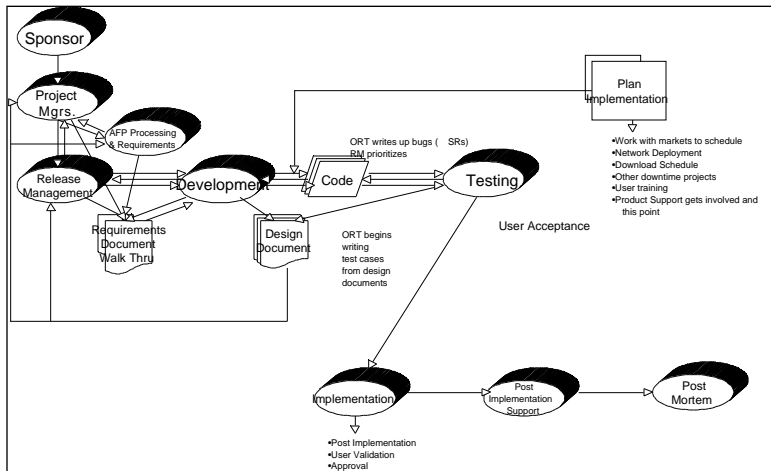
The screenshot shows a Microsoft Excel spreadsheet titled 'Roles & Responsibilities Matrix'. The spreadsheet is organized into a matrix with columns for roles and responsibilities. The rows list various project tasks and activities. The matrix is used to assign specific roles and responsibilities to different team members for each task.

Is PMO sustainable? Resource commitment is required.

# Implementation – Tools & Techniques

- u Process Documentation
- u Project Document Library
- u Standard Methodology
- u Standard Project Management Tool
- u Work Request & Approval Process
- u Consistent Project Review Meetings
- u Customer Satisfaction Surveys
- u Communication Plan
- u Training & Coaching

## Implementation Sample "As Is" Process Flow Diagram

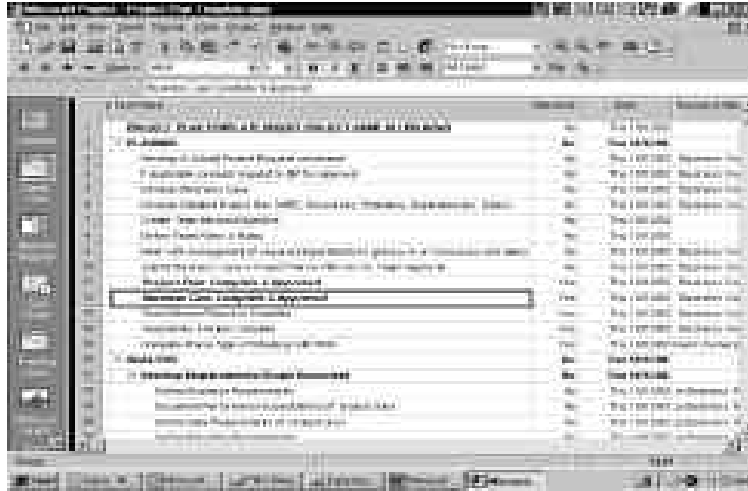


Purpose: Document how processes currently work and identify areas for improvement.



## Implementation

### *Sample Project Plan Template*



Purpose: It has to be managed like any other project.

## Implementation

### *Sample Project Review Status Report*



Purpose: Standard, consistent reporting is key.

## What has to Come from Your Company...

**R**ecognize that change is needed

**B**e ready to receive a PMO and make long-term commitment

**S**enior Management Buy-in

- Determine cost to continue to do business poorly

**P**<sub>MO</sub> Sponsor

- Someone who can speak for both IT and Business

**C**lear communication of direction and deliverables

## The Realities of Implementing a PMO

- Should not be a large group
- Reports to the highest level in an organization
- Liaison between Business and IT
- Maintains managerial neutrality
- Enforcer of process and methodology
- Support strong project management processes
- Approximate implementation timeline = 6 months to 2 years

## Absolute Requirements for Success

- 4 Senior Management Buy-in
- 4 PMO Sponsor who is willing to remove obstacles that impede progress
- 4 Access to a variety of resources across the organization to interview and document process
- 4 Access to standard forms and templates for review
- 4 Empower the PMO to be accepted as a peer by project management
- 4 Communication of a clear organization-wide understanding of the role PMO is to play

## What You Can Turn to Outside Expertise to Handle...

### *Assessment*

- Unbiased
- Independent review

### *Recommendations*

- Based on experience of implementing PMO's at companies similar in size

### *Implementation*

- Best Practices easily accessible
- Already know what *not* to do

## Qualifications

- ä Experienced in implementing PMOs and Project Offices
- ä We believe in strong methodologies & processes
  - ä Spherion's Methodology
    - ä Process Continuum – Spherion Project Methodology
    - ä Testing Methodology (eVALI/TEST PRO)
    - ä Xceed/Spherion Joint Methodology
    - ä Deliverable Quality Method (DQM)
- ä We ensure that our consultants are trained to support our methodologies and processes

## Our Consultants

### Extensive Interview Process

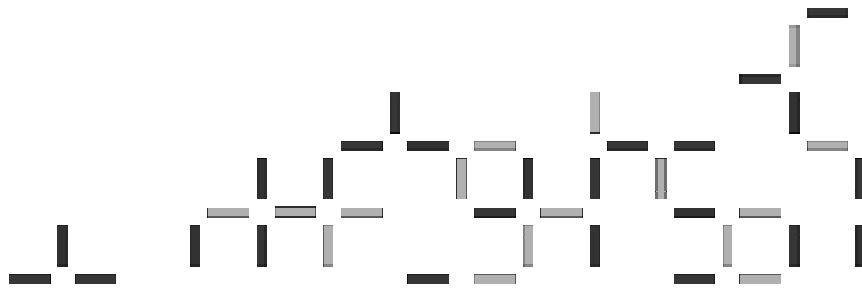
- n References Checked
- n Technical Interview
- n Marketing Interview
- n Management Interview

### Skill Profile Includes

- n Methodology
- n Process Definition & Improvement
- n Financial Analysis
- n Project Management Tools & Techniques

## A Success Story...

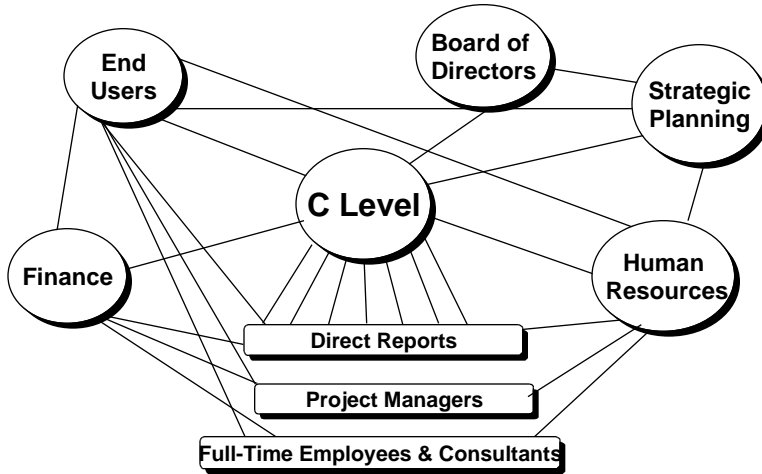
### The HoneyBaked Ham Company



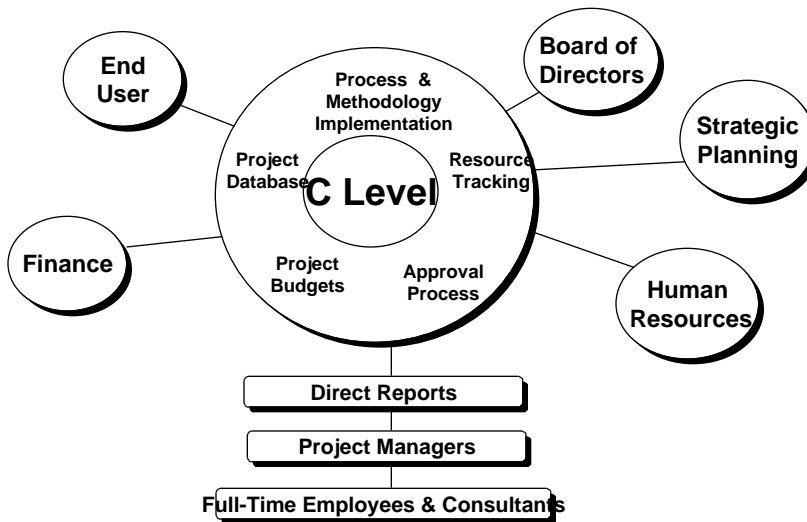
## Why PMO?

- **Enhanced communication, participation and accountability between business and technology**
- **Reduced project risks, increased project success rates and consistent quality**
- **Real-time and accurate management reports to support the decision-making process**
- **Proven and repeatable project management standards and methodologies**

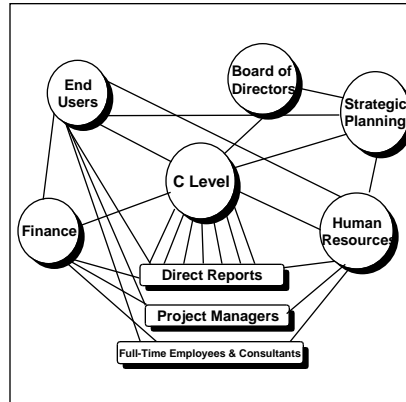
## Common Communication & Information Flow



## Information Flow with a PMO

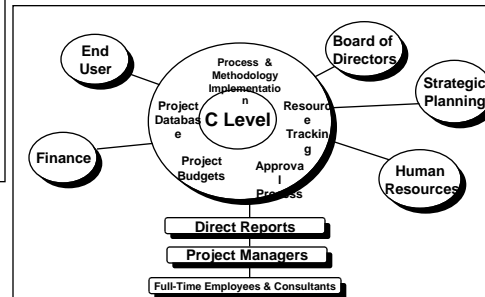


# Which one do you prefer?



Without a PMO

## With a PMO



**Raytheon**

## Office of the General Counsel

Rebecca B.  
Ransom  
Asst. General Counsel  
Litigation

**Raytheon**

## Raytheon Legal – Then...

- â Out of control outside expenses
- â Matters were not budgeted independently
- â Over 1200 "approved" firms
- â No tracking of legal invoices / invoices not paid on time
- â Relied on Finance Dept. to provide burn rate information on Legal Dept. budgets
- â Division Mgt. did not get timely information regarding their liabilities



## Raytheon

### Raytheon Legal – Now...

- n All outside counsel provide quarterly budgets
- n "Approved" firms cut from 1200 to 400
- n Negotiated pilot "Preferred Provider" agreement
- n Re-vamped "Outside Counsel Policy"
- n Upgraded case management database
- n Redesigned the process for the payment of legal invoices
- n Reduced outside legal service expenses from \$120M to \$75M (a 35% bottom line savings)

## Raytheon

### CaseTrack – Matter Mgt. System

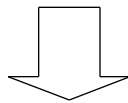


## **Raytheon** Budgeting

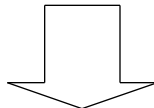
- S All outside counsel submit a yearly budget per matter, by quarter
  - a Raytheon Managing Attorney (RMA) involvement
  - a Alternative fee arrangements considered
  - a Quarterly budget updates
  - a Litigation matters also require case plan, early case assessment
- S Business unit management buys into the budgeted amount and holds RMA to budget
- S RMA actively monitors budget
  - a Hands on involvement
  - a CaseTrack's invoice to budget comparison
- S Monthly meetings are held at each level to ensure that information flows back to the client

## **Raytheon** "Show me the Metrics"

**Legal Cost Tracking**



**Risk Prioritization**



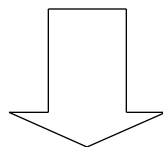
**Cost Reduction**

**Raytheon****"Show me the Metrics" Cont.**

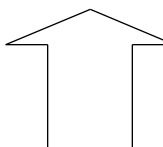
- o CaseTrack matter mgt. system tracks total legal costs, including legal expenses *and* damages and settlements
- o CaseTrack generates reports that accurately reflect actual and projected costs
- o Historical data provides basis for legal risk prioritization
- o Legal Dept. communicates financial implications of legal risks to Business unit leadership
- o Leads to risk prevention measures

**Raytheon****"Show me the Metrics" Cont.**

End Result. . .



**Legal Costs**



**Client Satisfaction**

**Raytheon****Six Sigma and Legal...**

- 3 Invoice payment processes
- 3 Administrative services
- 3 Record retention
- 3 Legal reference material
- 3 Patent processes
- 3 Corporate Sec'y function
- 3 Real Estate Portfolio Mgt.

**Raytheon****Utilizing legal E-Commerce...**

- | DotRisk.com
- | CaseCentral.com
- | eLawForum.com
- | MyRaytheon.com
- | Quickview.com

On line West Law billing report...



**Raytheon**

Legal's SQL databases...

- F CaseTrack
- F Strategen
- F OMNIS
- F Aurigin
- F World Records



# Six Sigma

Thomas L. Sager  
Vice President and  
Assistant General Counsel

2001 Annual Meeting  
American Corporate Counsel Association  
San Diego, California  
October 15-17, 2001



*Miracles of Science*

# Six Sigma

# 6σ

**WARNING: Don't try this at home!**

Off limits:



**60**

## What is Six Sigma?


$\sigma$  = Greek letter  
representing a  
Standard Deviation

***SIX SIGMA IS A WORLD CLASS STANDARD***

## Defect Levels

<u>Sigma</u>	<u>Defects per Million</u>	
6 sigma	3.4	
5 sigma	233	
4 sigma	6,210	
3 sigma	66,807	
2 sigma	308,537	< Typical Manufacturing
1 sigma	690,000	< Typical Transaction






## What's Possible?

If we are at 3.5 sigma  
30,000 defects per million  
or  
costs of \$6.0 billion (waste)

If we improve to 5 sigma  
200 defects per million  
or  
costs of \$3.2 billion (waste)

\$1.7 Billion ATOI Stake



## Financial Goals

We will deliver Six Sigma Projects  
with PTOI rate of:

- \$100MM in 1999
- \$1B in 2000

## Resources

- Champions
  - lead deployment, define projects, remove barriers
- Master Black Belts
  - advanced training and skills
  - train and mentor black belts and green belts
- Black Belts
  - respected technical individuals - full time on 6 sigma
- Green Belts
  - part time involvement; potential future black belts
- Teams
  - teams led by black belts
  - measure, analyze, improve, and control (MAIC)

## Educating the Troops

Considerations

- Is there a process in place?
- Are there controls or standard operating procedures?
- Is there duplication, waste, non-value added?
- Do you question why a certain step or action is taken?

Keep in Mind

- When evaluating a prospective project the focus of the Black Belt is on performance of a process not on the performance of individuals

## Incentives for the Troops

### People, Projects and Rewards

- Six Sigma Projects are assigned to a team led by a Black Belt
- Each person working under the guidance of a Black Belt on a Six Sigma project is a member of that team
- Contributing team members on a successful Six Sigma project are candidates for awards under the Reward and Recognition Program
- **BOTTOMLINE:** 25% of Variable Comp is based on our meeting Six Sigma goals in 2000

## Six Sigma in Legal

### How it Works

- Project-oriented
- Transactional vs. Manufacturing
- Define, Measure, Analyze, Improve, Control
- Validation by financial analyst
- Fundamental changes to:
  - processes
  - products
  - culture-company & employees
- Challenges traditional methods

## Six Sigma in Legal

### Project Types:

- Litigation - document management
- Records retention/case file management
- Administrative services
- Patent processes
- Invoice payment processes
- EEOC charge handling process
- Transportation claim recoveries
- Office moves
- Workers' compensation
- Contractor claims and indemnification

Board of Directors Meeting

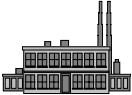


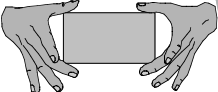
Legal Department Saves DuPont \$3.5  
Million Through Six Sigma!

## How Does a Legal Department Apply Six Sigma?


- Transactional vs. Manufacturing
- Do we have a process that parallels one performed at a manufacturing site?
- Discovery = the collection, review and exchange of information in litigation
- Document Management is the key process
- Primary Work Units are Documents
  - Paper Based
  - Electronic Based

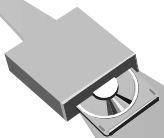


## Six Sigma Methodology Applied to Document Management

- The "Hidden Factory"   
Fallacy: Increase Quality by Increasing Number of Inspections
- Defects = Paper Touches (Human Error) 
- Reduce Variation: Standardize the Process 
- Challenge Culture: The Comfort of Paper 

## Processing Paper Documents

<p><b>Before</b></p> <ul style="list-style-type: none"> <li>● Collect *</li> <li>● Copy Originals *</li> <li>● Number Copies *</li> <li>● Stamp with Designations *</li> <li>● Create Manual Index *</li> <li>● Copy for Storage *</li> <li>● Index *</li> <li>● Code into Database *</li> <li>● Pull for Production</li> <li>● Copy for Production *</li> <li>● Produce (Paper)</li> <li>● Refile Copies</li> <li>● Update Database</li> <li>● Store &amp; Maintain *</li> </ul>		<p><b>After</b></p> <ul style="list-style-type: none"> <li>● Collect *</li> <li>● Image</li> <li>● Index *</li> <li>● Produce (Electronically)</li> </ul>
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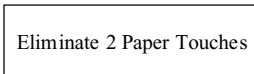


Eliminate 10 Paper Touches

<p><b>14 Steps</b></p> <p><b>Cost per Page: \$1.91</b></p>	<p><b>4 Steps</b></p> <p><b>Cost per Page: \$.78</b></p>
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\* = Inspection Step Needed

## Processing Electronic Documents

<p><b>Before</b></p> <ul style="list-style-type: none"> <li>● Collect *</li> <li>● Print</li> <li>● Paper Review</li> <li>● Image</li> <li>● Index *</li> <li>● Print for Production</li> </ul>		<p><b>After</b></p> <ul style="list-style-type: none"> <li>● Collect *</li> <li>● Electronic Document Conversion</li> <li>● Electronic Review</li> <li>● Produce (Electronically)</li> </ul>
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Eliminate 2 Paper Touches

<p><b>6 Steps</b></p> <p><b>Cost per Page: \$1.00</b></p>	<p><b>4 Steps</b></p> <p><b>Cost per page: \$.20</b></p>
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\* = Inspection Step Needed

# Benefits to DuPont

- Hard Cost Savings = \$3.5 MM Annually



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# Achieving Total Quality: Total Quality Management for the Corporate Counselor

by Thomas F. McCaffery, III

Editors' Note: Everyone sees quality in a different fashion, and every work environment has different criteria for the success of a program. Accordingly, we do not believe that any one article can provide all the information you need to get moving or to improve your process. The following pages provide three authors' perspectives on Achieving Total Quality in an in-house legal practice.

In response to ever-increasing competitive pressures both within the United States and from abroad, Corporate America is reinventing itself under programs with names like "Total Quality Management" (TQM), "Continuous Improvement," and the like. Corporate legal departments are part of company-wide efforts to implement TQM programs. General counsel like Motorola's Richard Weise have done their part to describe a vision for TQM in their corporate legal departments. What remains is for corporate staff attorneys to devise the tactics to implement that vision. The following, and the contributions of Mr. Becker and Mr. Grove, as well, seek to provide the necessary information for interested counsel to get involved.

## **Kaizen: the Basis for TQM**

All TQM programs stem from the Japanese concept of Kaizen.<sup>1</sup> Kaizen finds its origin in 1950 in W. E. Deming's work on quality control. Thirty years later, fully implemented Kaizen management strategies gave Japan market dominance in a number of heavy industry and basic manufacturing business sectors.

Like the law, understanding Kaizen means understanding some key definitions. Kaizen means Improvement. Improvement is a mindset inextricably linked to maintaining and improving Standards. Standards are policies, rules, directives and procedures which serve as guidelines to enable all employees to perform their job successfully.

The final key Kaizen concept is Warusa-kagen. Warusa-kagen refers to things that are not yet problems but are still not quite right. Left untended they may develop into serious problems. The analogy between Warusa-kagen and preventive law is striking. The fact that corporate counselors pride themselves on their preventive law practice is an indication that corporate legal departments cannot only implement Kaizen but in fact should embrace it.

## **Kaizen and the In-House Legal Department**

All corporate legal departments are charged with delivering quality legal services. But what is quality? Although lawyers may think primarily in terms of the quality of legal advice, in the context of Kaizen strategy nothing could be farther off the mark. Kaizen is primarily concerned with the quality of people. This should be reassuring to corporate practitioners engaged in the very interpersonally intensive service of providing legal advice to clients. In the context of Kaizen, the corporate attorney must maintain focus on the quality of legal advice but have equal



concern for client needs, expectations, relationships and perceptions, in other words: customer (client) satisfaction.

The Quality Control (QC) system is a set of Standards or counselling practices to be implemented by staff level corporate attorneys that are both inspired by Kaizen concepts and will implement Kaizen strategies. These four Kaizen strategies are: Preventive Law, Response Time Management, Proactivity, and Client Education.

### **STRATEGY 1--Preventive Law**

Preventive law focuses on determining what factual circumstances give rise to future legal claims and then advising the client how to adjust those circumstances to avoid claims while enabling the client to achieve business goals. Preventive law also works to establish a response pattern for future similar situations.

The avoidance of legal claims might more properly be the realm of the study of human behavior rather than a purely legal analytical study. In the words of Dean Dauer,<sup>2</sup> "It is more important to predict what people will do than to predict what a court will do" in the practice of preventive law. Therefore, the preventive lawyer identifies practices, processes, etc. in the company which may encourage employees to act in a legally irresponsible but personally beneficial way. Next, the preventive lawyer works with the client to establish a means for both meeting business objectives and rewarding legally neutral or legally beneficial conduct. Here are some common practice applications.

One of the constantly recurring matters handled by in-house practitioners is the employee or third-party complaint. A litigation-oriented approach would see the complaint merely in terms of evaluating its legal viability. For the preventive lawyer, however, such complaints are opportunities to explore not only the substantive gravamen of the complaint but also the source of the complaint; this presents an opportunity to recommend changes to eliminate future similar complaints while still achieving the client's business goals. Likewise, in the context of a business deal, the lawyer could limit his or her advice to whether or not the agreement is legally binding, and whether the deal complies with the law and achieves the client's business goals. The preventive lawyer would go beyond to evaluate the deal as a system and predict the circumstances and interactions between the parties (as required by the agreement) that may strain the transaction, the negotiations, or the deal itself. The evaluation might suggest changes in the agreement that would ensure more productive future business relationships. This aspect of preventive law parallels the Kaizen concept of Improvement.

- \* Evaluate legal claims with an eye toward preventing future, similar claims.
- \* Evaluate and adjust current management practices and processes which may lead to future claims.

## STRATEGY 2--Response Time Management (a.k.a. Client Service)

Kaizen's people-focus is an ideal way to achieve client service goals, or, in Kaizen terminology, customer satisfaction.

Customer satisfaction is achieved by supplying cost-effective, competent legal services in a timely way. Competent means legally correct. Cost-effective means advice that is

neither over- nor under-lawyered. Timely may mean in accordance with client-imposed deadlines, or, timely may mean a lot more.

- \* Attorneys should answer their own phones before the third ring.<sup>3</sup> Return all client calls the same day received, in the order received, absent a client-stated urgency.
- \* Do not use phone mail or other electronic message systems during normal business hours. An attorney or secretary should handle all calls.<sup>4</sup>
- \* All routine<sup>5</sup> requests for legal advice (document reviews, document approvals, etc.) received before 10:00 a.m. should be answered the same working day by 2:00 p.m. Requests received between 10:00 a.m. and 2:00 p.m. should be answered by the close of business that working day. Requests received after 2:00 p.m. should be answered by 10:00 a.m. the following working day.
- \* For all non-routine requests for legal advice (major contracts, legal memoranda, etc.) and requests for significant or complex legal advice, the attorney should negotiate a specific due date for the work product. If the client due date cannot be met, the lawyer should call the client at least two business days before the due date to renegotiate a different due date or provide interim work product or advice.
- \* When faced with a backlog of matters, all of equal priority, the lawyer should first address a number of small jobs affecting many individual clients first and then address larger or more complicated matters affecting one client.<sup>6</sup>

The above standards are calculated to instill customer satisfaction in a maximum number of clients and to minimize the inevitable disappointments to as few clients as possible. Note also that the standards are focussed on client preferences and priorities rather than the attorney's.

Like all of the Standards in this article, the above Standards are goals to strive for and no attorney should expect or be expected to meet the Standards all the time. Clearly, travel, unscheduled demands, and other unforeseen circumstances will render the lawyer's performance less than perfect under these Standards. However, if an attorney meets these Standards only half of the time, customer satisfaction will be high.

### **STRATEGY 3--Proactivity**

- \* Whenever giving legal advice to clients, the attorney should first restate what he or she believes to be the client's business goal, then give the advice, then state how he or she believes the advice will achieve the client's business goal. This technique confirms to the client that the attorney understands the client's goal and allows the client to confirm with the attorney whether the advice does indeed achieve that goal.
- \* All written legal advice should be followed up within five working days with a telephone call to the client asking if additional information or advice is necessary and whether there are any questions about the written work product.
- \* Whenever possible, meet with clients in their offices. If time allows, the attorney should visit other clients on the way to and from that meeting to check on client needs and to create the perception that the attorney is available and involved in the business.
- \* The attorney should read at least two business periodicals each month, paying special attention to news and trends affecting the client's business. Lawyers should then circulate written summaries of the articles of particular interest to clients and include with those summaries the legal implications of the articles. This demonstrates to the client that the lawyer works hard to stay knowledgeable about the client's business and is in a constant state of vigilance to protect the client's interests.
- \* At least once per month visit with one key client to discuss long-range goals and ask, "How am I doing?"

### **STRATEGY 4--Client Education**

Consistent with Kaizen's people-as-resource orientation, client education is an important aspect of TQM in corporate legal departments. In this context, client education addresses substantive law issues as well as effective use of counsel.

Many clients find the law interesting and entertaining. The corporate counselor should use this interest to its best advantage in achieving the Client Education Strategy because ongoing substantive legal education makes clients more sophisticated, makes their use of lawyers better, and thus makes each legal activity more effective.

The corporate staff attorney should view every client-lawyer interchange as an opportunity to educate the client on both the substantive area of law in question, and on determining if there are alternate, more efficient means of achieving the client's goal.

The ultimate goal of the corporate counselor is to, in some respects, counsel him- or herself out of a job. While it is understood that this will never occur given the constantly changing state of the law and limited client expertise and focus, it is nonetheless a goal worth seeking. Increasing the client's legal sophistication is important because most legal liabilities occur not because legally incorrect advice is followed but rather because business decisions were made without first seeking legal counsel.

- \* Use every instance of oral legal advice as an opportunity to educate clients on substantive areas of law appropriate to the client's position and interest.
- \* Educate clients about the legal resource impact of various business alternatives or requests for legal advice.
- \* Where appropriate, let clients make their own routine calls on simple, recurring and fungible legal matters the attorney has trained them for.

### **Total Quality Control: Integrating the Strategies**

A closer look at the four strategies shows that each one acts in synergy with the other. For instance, a successful Response Time Management Strategy has a Preventive Law payback in that clients will be more apt to request legal advice knowing they will get it in a timely way. Client Education helps achieve Preventive Law by teaching clients how to identify ever more sophisticated legal issues. Client Education also has a Response Time Management payback because as clients handle more and more routine legal matters, attorneys will have more time to handle more complex questions in a timely way. Finally, Proactivity provides opportunities for Client Education.

In Kaizen terms these synergies are known as Total Quality Control (TQC). TQC are organized Kaizen activities involving everyone in a totally integrated effort towards improving performance at every level. This improved performance is directed towards satisfying such cross-functional goals as quality, cost, scheduling, manpower development and new product development. Kaizen assumes that these activities ultimately lead to increased customer satisfaction. Although defined in industrial and manufacturing terms, TQC is a goal all corporate legal departments strive for.

The Strategies and Standards are not the end of the discussion but the beginning. Given differences in various corporations business activities, corporate cultures, management style and overall plan for implementing TQM, an individual corporate legal department may find these Strategies and Standards more or less appropriate. All corporate legal departments probably embrace the Preventive Law, Response Time Management, Proactivity and Client Education Strategies, even if heretofore untitled in this fashion. The key is to identify and formalize Standards that will improve the quality and effect of your legal services.

### **Footnotes**

1. Imai, Masaaki, *Kaizen \_ The Key to Japan's Competitive Success*, McGraw-Hill, 1986. The terms Kaizen, Improvement, Quality, Quality Control, Warusa-kagen, Total Quality Control and Standards referred to in this article use and quote Imai's definitions.
2. From a lecture given by Dean Edward Dauer, University of Denver College of Law's National Center for Preventive Law, July 1987.
3. This is the so-called "Two Ring Rule," instituted by Richard V. Holmes, General Counsel, SmithKline Beecham Corporation, retired. It is understood that if an attorney is already on the phone or out of the office, the secretary should answer the call before the third ring.

4. Phone mail is a great invention, but using it to take incoming messages is not particularly helpful for a corporate legal department trying to create the perception of client service. For instance, a secretary can take a call in the attorney's absence and determine whether advice is needed before or after the attorney is scheduled to return. If advice is needed immediately, the question can be referred to another attorney. This is difficult to achieve, if not impossible, with phone mail. Also, clients can become very frustrated with phone mail message systems when they perceive a need for immediate attention. Often, clients will make decisions in the absence of legal advice in those circumstances. On the other hand, using phonemail for outgoing messages to clients is very helpful.
5. To be sure routine requests for legal advice do not include large, complex or complicated matters that take significant time to analyze. Clients understand that complicated things take time. What they do not understand is why it takes a week for an attorney to review a two-page letter and make few or no comments on it. The depth of the attorney's in-box is not the client's problem.
6. The key question the attorney should ask himself here is: "How many people are waiting for me to do my job so they can do theirs?" Do the matters with the larger number of people waiting first.
7. Worker suggestions are fundamental to Kaizen. See 'Suggestion Systems,' IMAI, at Note 1.

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## CHAPTER 42

### QUALITY MANAGEMENT, RE-ENGINEERING AND PROJECT MANAGEMENT

by  
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**§ 42:1 Scope note**

This Chapter discusses some tools that inside and outside counsel can use to evaluate old processes and develop new ones to improve the way they work together. Total quality management, re-engineering and project management disciplines, commonly used by business clients and some professions to improve their efficiency and effectiveness are described. Total quality management is the management model developed by W. Edward Deming to engage an entire organization in a commitment to continuous improvement in incremental steps. Re-engineering, a term coined by Michael Hammer and James Champy, refers to the radical re-design of business processes to achieve greatly improved results. Project management is a well developed set of tools used in a broad range of group activities from constructing buildings to designing and building the space shuttles to creating complex software. We describe how these tools can be applied to improving the combined services offered by inside and outside counsel to their ultimate clients. The experiences of the authors and some common problems are used as examples to illustrate the processes.

**§ 42:2 Objectives, concerns, preliminary considerations**

The skills we learned in law school are only some of the skills we need to successfully serve our clients. Lawyers have been criticized for pursuing their professional goals at the expense of the client's goals: the perfectly negotiated and drafted agreement; the elegant brief or litigation win, perhaps at all costs; the exhaustive legal analysis, regardless of the gravity of the issue. Guidelines issued by insurance carriers and some legal departments illustrate clients' concerns that the clients' objectives will be overlooked. The working model we bring from law school is that of the lone expert professional: thinker, advisor, do-er, self-regulator, self-inspector, quality controller. This working model does not include the role or skills of manager or team leader, of team member, of cost controller or analyst, of planner or process analyst. Nor does the hubris common to many professions, including the law, make it easy to look for or accept help from other disciplines.

The relationship model imbedded in an education in the common law is that of aggression, power, and rule-based behavior. Win-lose and the adversary system are still the core models, supported by the requirements of zealous advocacy and the belief that a trial or contest will achieve the right result. The belief, fostered in the competition of the law school and the profession, that the key to success lies

in brute force measured in long hours does not easily allow room for the idea that fewer resources but better processes can achieve superior results.

Add to this the long history of command and control management, *i.e.*, the foreman who directs the work and the workers who simply follow, and you have the making for some simple process models that have proved to be less effective but nevertheless may still predominate in law firms and law departments and govern the relationships between them. The “do what I say” model, otherwise expressed as “I know what I want and I know how you can meet my need,” is seen in retention guidelines used by some in-house counsel. One of the more notorious examples is the refusal of some inside counsel to pay for team planning conferences among law firm attorneys.

Another image that is used to characterize unintegrated relationships is that of a series of silos – each function or entity, *e.g.*, the law department and the law firm, or the product development department and the sales department, exists in its own “silo” which, if inter-connected at all, is only connected at one point. Still another image that is often used is that of a high brick wall separating two organizations, or even two people. The relationship between the people on either side of the wall is characterized by each group throwing a problem or demand over the wall and waiting until those on the other side throw something back – which may or may not be what is needed. This can happen within a law firm or law department or between them. Associates in law firms can often describe this phenomenon: the curt assignment that arrives by e-mail – with no opportunity to talk with the assigning partner. Their only available response is to write a memo and throw it back over the wall.

Another approach to relationships is the negotiated solution. On the surface this seems more enlightened. It involves communications, give and take, and a consensus-based resolution. It may not be as enlightened as it seems, particularly if it is based only on the relative power of the parties. This approach does not take into account the needs of both parties and does not allow for joint problem solving. For example, a negotiated solution may only shift costs between the parties rather than reduce the total costs to both of them.

To continue the imagery of the wall, a better solution may come when either the wall is knocked down, or at least some doors and windows are built into it. This image can apply to relationships between attorneys and the ultimate clients, the relationship among members of a team on a project, and the relationship of inside and outside counsel.

To overcome any instinct to see another participant in a process or project as independent or even as an adversary, the image of a “customer” is often used to focus on the mutuality of relationships and the changing nature of roles. The business client is the customer of the law department attorney



who also has the general counsel as a customer. The law firm partner has the law department attorney as his immediate customer, the business client as his ultimate customer. His firm is also a customer he must satisfy in the engagement. The associate attorney has all of these customers plus the partner. For some purposes in a team project, the law firm and its staff are customers of the ultimate business client and the law department, which must provide certain information or resources to outside counsel to allow them to do their part. Acknowledging the mutuality in the relationships between inside and outside counsel and the shifting nature of the relationships during the course of a project is an important step in developing better ways to work together.

It is also useful to recognize that the individual participants have personal needs that must be accounted for in any process used to manage the relationships. Let us take a moment to identify some of these common personal needs on both sides of the inside/outside counsel relationship. Failure to express or accommodate these needs often undermines our ability to achieve a truly satisfactory result. No list can be exhaustive. Here are the ones that seem to most influence relationships:

- the need to appear as the primary contact and in charge;
- the need to have personal working styles accommodated: personal risk tolerance, communications needs, interaction preferences (do they like peer-to-peer or subordinate relationships);
- the need for respect;
- the need for job retention;
- the need for job satisfaction;
- the need to meet organizational requirements;
- the need to satisfy the client's needs.

Both sides of the aisle feel the same needs. The hierarchy of personal needs may vary from one individual to another. Personal needs may come first for some.

“Organizational requirements” are a big bag of needs that are not necessarily the same for law departments and law firms. Law departments are looking for good results, satisfactory working relationships, appropriate cost-benefit ratios. Law firms are looking for worthy clients, challenging work, and profitable engagements. In the long run, law firms must make enough money to retain and attract high quality people and for investment in their infrastructure. The ultimate need for institutional firms is survival and, for many, growth. A smart law department will assure that its best firms survive and retain quality people, following the business trend of partnering with suppliers.

### § 42:3 Some practical examples of issues between inside and outside counsel

A simple example – disbursements and expense charges by outside counsel – can be used to illustrate the processes used by inside and outside counsel to deal with an issue that can be annoying to both.<sup>1</sup> Inside counsel or their clients are concerned about the extra cost of charges for telephone, fax, copies, computer research and the like. Reviewing these charges on bills takes time that has low value and a low level of enjoyment. These charges add or subtract little from the success of an engagement, but they are a fact of life. Wherever the legal work is done, some incidental costs will be incurred. Whoever incurs them needs to be sensitive to the volume. The cost of the time and equipment spent managing them is often disproportionate to their value overall.

Let's look at some typical ways they are being handled between inside and outside counsel, and let's start with charges for photocopies, faxes, messengers and express delivery. Let's see what the impact is on both sides and on the ultimate client.

It is tradition that most law firms charge separately for these costs rather than including them in their overhead and billing rates. It is also traditional for many law departments to require that these charges be separately itemized. To do that, law firms pay for the technology to compile the charges. They pay staff to find and key in the charge categories. They pay for other staff and technology to translate the charges into bills for clients. A law firm attorney spends some time, if only a small amount, looking at the charges. Corporate law departments have to write policies about what will be paid for and how much.<sup>2</sup> The policies have to be sent to the law firms. The bills have to be reviewed and compared to the policies, if the policy is meant to be enforced. Staff and technology are necessary to do this. Occasionally, phone calls have to be made or letters written or bills rejected to discipline errant outside counsel. That starts much of the billing and review cycle over again. In-house counsel reading this description will quickly say, "then why don't they stop doing this?" Outside counsel will say, "because it is costing us a lot to make copies for clients and it is not built into our rates."

Let's take another example with some more subtle and expensive implications: WESTLAW® and LEXIS® charges. All of the above applies with several additional twists. Some clients require advance approval to use the services, while others have policies refusing to pay for them.<sup>3</sup> They are all justifiably motivated by concerns about cost. Do the policies provide an effective way to deal with the

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<sup>1</sup> See Chapter 15 "Expenses and Disbursements," *supra*.

<sup>2</sup> See *id.* at § 15:54.

<sup>3</sup> See *supra* § 9:26.

issue? Consider the obvious implications. Advance approval delays the work, takes the time of both inside and outside counsel, and puts limits on the way the work is accomplished, all of which may have a cost near to or greater than the charge. Suppose the request is denied or that outside counsel deems the burden of making the request too great for whatever reason. What happens next? The lawyer gets up from his or her desk, walks to the library and sets about the process of manual research, keeping track of all the time spent. Is this cheaper? Probably not. Will this extra time be easily identified in the next bill? If it is, will the process of getting the time charges reduced or eliminated be cost-effective? What will be the other costs to the client and the law firm of such a policy? Will key current information be missed, resulting in bad advice to the client and even a claim by the client against the firm?

Look at these examples and think about the processes that we are using to deal with it. Here are typical responses. One approach is command and control – you will not do it, or not without permission. Another is exercising the buyer's power: if you charge me, I will not hire you. Another is similar: I will pay you only so much. Even negotiation over the price or terms of the charges does not address the core issues. Any of these solutions amounts to just throwing the problem back and forth over the wall. None of these solutions does much to consider the needs of both sides or affect the processes that either side uses. Because most legal projects will require both photocopies and electronic research charges, all of the solutions that require separate billing will increase the cost to each side, and the total cost to the ultimate client, including the cost of the data collection and monitoring.

Now that you have read these examples, test your problem solving bias by recalling your emotional reaction to the situation. Were your instincts to think that an adversarial solution was what was called for: "I am paying, I make the rules" or "I am doing this to help solve their problem, my firm should not have to pay for it"? Did you think about how the process could be changed to reduce overall costs to both sides of the transaction, so that the discussion could be about how to share those savings? If you are an inside counsel, have you thought about offering a fee increase to eliminate the charges and reduce the unnecessary costs? If you are an outside counsel, have you thought about negotiating a fee increase in exchange for eliminating the costs? Has either side tried an approach that treats the routine charges differently than the extraordinary, *e.g.*, convenience copies versus copies of thousands of discovery documents? By the continuing prevalence of these charges as separate items on bills, we judge that neither side has found a *process* that has been effective in resolving these issues in an effective manner.

Let us take a third example: a litigation. The significant litigations that business clients face are a source of stress and frustration for the client, in-house counsel, and outside counsel. A lot of ink has

been spilled on the problems of the litigation process and how to improve it. Progress has been made at the interface between inside and outside counsel through the use of policy guidelines, budgets, and, in some cases, periodic litigation plans. Policy guidelines, budgets and plans, however, are not necessarily win-win solutions and can be administered in ways that either improve processes or make them worse. Consider, for example, imposed budget limitations combined with a refusal to change any inside/outside processes or a litigation plan that is driven by cost considerations, while at the same time the client is insisting on a no-holds-barred defense. Or consider a schedule that does not take into account the available time of key client or in-house personnel, or policies that refuse to pay for team planning conferences. Or consider ongoing clusters of litigation where inside and outside counsel do not hold periodic post-case reviews to see what can be learned for the future. The level of ongoing concern suggests to us that our profession still has opportunities to improve the way we handle larger scale and continuing litigation projects.

Our business clients regularly use three strong disciplines for improving their processes and results: total quality management; project management and re-engineering. The remainder of this Chapter will summarize the principles of each discipline and look at examples of how they can be used to improve the work done by inside and outside counsel.

#### **§ 42:4 TQM, project management and re-engineering defined**

The disciplines of total quality management (“TQM”), re-engineering and project management are processes that can lead to improvements in the way inside and outside counsel work together. Total quality management is the management model developed by W. Edward Deming to engage an entire organization in a commitment to continuous improvement in incremental steps.<sup>1</sup> TQM can be implemented by an organization on its own and is appropriate to a law firm or law department that is willing to make a major ongoing commitment to improving processes. Re-engineering, a term coined by Michael Hammer and James Champy, refers to the radical re-design of business processes to achieve greatly improved results. It can be implemented on a project basis, or as part of an ongoing program.<sup>2</sup> It can be applied to internal or internal/external processes.

Project management is a well developed set of tools used in a broad range of group activities from constructing buildings, to designing and building the space shuttles, to creating software. It is a

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<sup>1</sup> See, e.g., Mary Walton & W. Edward, *Deming Management Method* (1988).

<sup>2</sup> See, e.g., Michael Hammer & James Champy, *Re-engineering the Corporation* (1993).

process that can be used to manage all but the most trivial or transient of engagements between inside and outside counsel. It is a repeatable process, which if learned by lawyers, whether they are inside or outside counsel and their law firms and legal departments, can improve the efficiency and results of any project. The key elements of project management are: explicit definition of project scope and objectives; explicit assignments of responsibilities; explicit schedules and budgets; ongoing monitoring and regular structured communications within project team and to the client with explicit means for modifications of scope, plan and responsibilities; and explicit project steps to wrap up and close out the project including retrospective review.<sup>3</sup>

While different in scope and purpose, the above described disciplines have a number of common elements and challenges for lawyers. They require solid management skills that must be learned and practiced. In their best form, they require effective delegation, empowerment of all participants, and a willingness on the part of leadership to listen to, and be open to, ideas that may be new to the profession. They require high quality, thorough, and frequent communications shared broadly with the participants. They require a consistent commitment to the team as well as to the goal.

Lawyers and their organizations have often been reluctant to make the commitment necessary to learn these skills and make them a daily part of their practice. When push comes to shove, the skills learned in law school and perhaps those that brought us to law school predominate and the pressures of the moment cause us to abandon our attempts to improve. Those legal departments that have adopted TQM and reengineering have most often done so in the context of a corporate wide program under the direction of senior management and with considerable corporate resource for training and implementation. Few law firms have been willing, on their own, to launch such programs or to make the ongoing investment necessary to make them successful, though many have the financial resources to do so. Some, under pressure from their clients have paid some attention to the process. To apply TQM principles across organizational boundaries, requires both organizations to have the skills and a willingness to work together to seek improvements that will benefit both. Similarly, for project management in its best forms to work, both inside and outside counsel must understand the skills and believe better management will produce better results.

Here is a summary of the key elements of each process.

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<sup>3</sup> See, e.g., J. Davidson Frame, *Building Project Management Competence* (1999).

## § 42:5 Total quality management (“TQM”)

Total quality management or total quality service principles have been the basis for a revolution in business, first in Japan and then in the United States. The movement gained the attention of inside and outside counsel in the late 1980s and early 1990s where efforts were made to use the principles in the management of legal services. The fervor has died but the principles remain as valid and powerful as ever. Here is a brief summary.<sup>1</sup>

1. Customer Focus. Success is measured not by whether a set of internal standards are met but by whether the needs of customers or clients are met.
2. Continuous Improvement. An organization practicing TQM principles must be institutionally committed to a continuing examination of what it does and how well it does it in the eyes of its clients, and to continually look for ways to change and improve.
3. Organizational Skill. The organization must develop within it not only the commitment but the skills necessary to find and implement improvements. This is a particular challenge for the legal profession, which is steeped in precedent. The prospect of continuing change must be embraced not resisted.
4. Error Avoidance Not Error Correction. There was a common misunderstanding about TQM. It is not traditional “quality control,” which is based on the concept of detecting errors and correcting them. TQM is based on developing work processes that “get it right the first time,” thus avoiding the cost and delay of error detection and correction.
5. Measurement. It is a tenet of TQM that if you cannot measure it, you cannot improve it. Opinions are not measurements, particularly if the opinions come from the lawyer and not the customer. This is a challenging concept for lawyers, who are not disciplined data collectors and who have been trained in the power of a logical deduction rather than empirical problem solving.
6. Process. TQM focuses on developing repeatable processes that produce highly reliable results. The objective is not to be smarter or work harder but to work smarter and in ways that others can learn and follow. This emphasis on systemizing the work runs counter to the “craftsman” culture that permeates the legal profession. Related objectives are reducing hand-offs, reducing cycles, and reducing cycle times. Simply put, fewer cycles

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<sup>1</sup>Philip B. Crosby, *Quality Without Tears* (1984).

are better because it results in reduced time, cost, and opportunity for error. Faster cycle time does the same thing. Both improve the timeliness of delivery, which is nearly always a key element in customer satisfaction. Fewer hand-offs, *i.e.*, the fewer people or organizations necessary to complete a task, result in lower costs and fewer opportunities for errors.

7. Empowerment. TQM rejects hierarchical or “command and control” approaches to problem solving. It is based on the premise that the best solutions emerge only if employees, at all levels and in all stages of a work process, are involved in analyzing issues and developing solutions. A corollary often is that employees at all levels should have the authority to solve client service problems immediately, even if it costs the organization money.
8. Partnering. This principle has found its way into TQM. The premise is simple. To achieve its goals, an organization cannot stop at its own walls in implementing quality management principles. Many processes can be improved by integrating the activities of the supplier and the customer. In business the most often cited example is the “just in time” inventory approach, which requires careful integration of supplier and customer. One object of partnering can be to reduce the total cost of the activity as viewed from the perspective of both supplier and customer, producing an opportunity for a win-win. This is appropriately viewed as a better approach in price and requirement negotiations than trying to toss the costs over the wall – a pattern all too common in the relationship between inside and outside counsel.
9. Benchmarking. This is a rejection of the “not invented here” mentality in favor of an ongoing search for the best practices, on a worldwide basis, that have been applied to any process. It is a commitment to learn from outside an organization as well as to learn from within. In the legal profession the greatest challenge seems to be to create a willingness to learn from other professions, from non-lawyers within the legal organization and from business.

Some examples of applying this highly developed discipline to corporate law departments and law firms follow. The art and science of building organizational commitment and training organizations

to adopt these principles has developed into an industry itself. For those who want to jump into this pool, there are shelves of books on the topic and a plethora of consultants and trainers.<sup>2</sup>

## § 42:6 Implementation of TQM

After an organization has committed to the process, the typical implementation steps are these:

1. Incorporation of total quality service into the mission of the organization. The organization must sign on to the proposition that quality means understanding and meeting client requirements. For a law department this can come from the CEO and the general counsel. In most law firms commitment must come from not only management but from the partners. In either case, the commitment must be “sold” throughout the organization.
2. Appointment of a senior manager or partner to lead the process. This person must have the respect, the time, and the clout to get things done, and the unqualified support of management. This is a challenge for legal organizations, which most often view this as a job to be done in someone’s “spare time,” with no reduction in service delivery requirements.
3. Budgeting for the initial investment in the process. You have to plan to spend money for training, for time to analyze and implement, and for investment. In other words, you will have to spend money to begin to save money and improve service. Corporations that make the commitment generally understand this; law firms, whose partners are often focused most on improving their income from year-to-year, often do not, though they are willing to make other kinds of investments, such as in well-appointed office space or technology.
4. Training of managers, facilitators and trainers, and a broad base of employees in quality management principles and processes. Many people will have to be involved in the process and many more will have to understand and accept it. Group facilitators and trainers from within the organization can improve effectiveness and reduce cost. Practice group leaders and lawyers as well as staff managers and staff will need to be trained. This competes with service delivery requirements.
5. Creation of quality improvement teams. These are the groups of people who will identify the problems and help create the solutions. There may be a hierarchy of teams, but the teams themselves will likely be interdisciplinary and from many levels of staff. They

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<sup>2</sup> See also discussion of TQM in Chapter 7 “Optimizing the Number of Outside Counsel Through Counsel Convergence and Partnering Strategies” at *supra* § 7:3.



should not be organized or run in a hierarchical fashion. For example, a team made up of a senior lawyer, a junior lawyer, a paralegal, a secretary, a staff person, and even a client representative might be the best group to tackle an issue, but if the team members relate to each other on a hierarchical basis, the team will not be as effective. All members must be given a chance to participate, group decision making should be the norm, lawyers should not be allowed to dominate the process.

6. A commitment to measuring and creating appropriate measurements. Many businesses have a variety of measurement systems. Law firms have few. Measurements will have to be devised to be used to determine if improvement has been achieved and results displayed to gain the attention of those whose efforts can make a difference. You can measure client satisfaction with surveys.<sup>1</sup> You can measure the time taken to return phone calls. What you do not measure, you are unlikely to improve. The two common challenges here are: getting a commitment to the time and effort necessary for record keeping – think of the ongoing challenge of timely and accurate timekeeping in law firms; and agreement on what should be measured. In the example of phone calls, is it how fast the call was returned or whether it was returned within the time frame requested by the client? The first measurement reflects an inner directed approach, the second, which will require asking the client what the expectation is, is more focused on meeting client needs.
7. Building awareness in the organization through ongoing communication. Implementing TQM is a transformational process for the whole organization. Ongoing education of and promotion to the whole organization is essential. These communications compete for time and attention with the many other communications that lawyers must deal with each day.
8. Planning for maintenance of employee well-being and morale. To many, TQM is associated with reductions in force and disruption in daily routines. To be successful, attention must be paid to those who will be affected by it or they may subvert your efforts. For example, a commitment to redeploy rather than terminate employees may produce better results.
9. Identifying and prioritizing corrective actions. Two competing factors come to bear here. Early victories are important to selling and sustaining the process so pick some projects that will be successful. At the same time, some things have greater impact than others.

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<sup>1</sup> See for example *supra* § 4:42 and *infra* § 41:40.

Find out what drives client satisfaction and focus on the vital few. When those client needs have been met, move on to the next.

10. Goal setting. Since you will be using measurements, set concrete goals that describe your desired state, even if they are a stretch, and then work toward them. Lawyers, typically risk averse and trained to try to get "A's," will usually set a low and easily achievable goal rather than a stretch goal, which even if not fully achieved will produce a better result.
11. Implementing improvements. Do not underestimate the effort, focus, and follow-up that will be necessary to make permanent changes in the way people do things.
12. Measuring success. After the improvements have been implemented, measure results and compare.
13. Recognition and reward. Promote the program and encourage participation by finding and publicizing heroes within the organization and rewarding them. It is often said that people do what you pay and not what you say, so building TQM-based performance into the evaluation and compensation system will produce better results. It will be a challenge to do that for law firm partners who have been conditioned from the beginning of time to focus on short-term productivity measures as the basis for compensation.
14. Doing it all over again. Build the process into the everyday life of the firm or law department and keep it going. This is one of the key tenets of TQM.

#### § 42:7 Applications of TQM

Total quality management or service is an organizational skill, not just an individual skill. The process of transforming the law firm or legal department *must start at the top* with a commitment to: (1) sell the benefits to the rest of the organization (2) invest in the training and processes necessary to improve, (3) drive the process throughout the organization, and then (4) sustain it. Even if the skills are present, the process of continuous improvement will not work unless the commitment is sustained and periodically renewed. The law firm or legal department must find ways to engage in quality renewal as part of the working process. The benefits of the process, which must be sold to the organization, are:

- improved productivity;
- reduced costs;
- increased client satisfaction and loyalty;
- increased lawyer and staff satisfaction and loyalty;

- improved competitiveness; and
- improved profitability.

The one benefit that often surprises people is the positive impact on employee satisfaction. The TQM process emphasizes empowerment and participation of employees at all levels in an organization in problem solving and improvement; it assumes that anyone, and most often those closest to a process, can see avenues for improvement. Implementation of the process necessitates improving communications at and among all levels of an organization. In an environment where people are working together to improve, it is natural that morale will improve.

For purposes of applying total quality service to the legal profession, and law firms and law departments in particular, *service must be defined as all aspects of the functioning of an entity that can affect the clients' experience* and should include every process and person from the receipt of the first call through to the billing and collection process. Client and employee surveys have repeatedly demonstrated that the "service" we provide is a total package, not just a document, a closed deal or a litigation won, and that all aspects of that package affect client satisfaction.

From the legal department perspective, general counsel should consider surveying their staffs and their internal business clients for their views on the effectiveness of outside counsel. They should consider asking outside counsel about their experiences dealing with in-house staff and business people and for suggestions to improve the ways they work together to benefit the corporation. It is a measure of where the two parts of our profession are that this last suggestion may be controversial in some quarters and that outside counsel may be as reluctant to be candid as in-house counsel is to ask. Though it is the key to TQM, it is surprising how few firms survey in a regular and organized way to determine their clients' satisfaction with their services.<sup>1</sup>

In both our law firm and our company we use client surveys as a basis for measuring success and identifying targets for improvement. We use 360 degree surveys for performance reviews of our professionals. We do follow-up surveys on specific projects to determine client satisfaction. We test the working environment with employee satisfaction surveys. In the legal department we do annual quality checks using the Baldrige Criteria For Performance Excellence of the Baldrige National Quality Program. The key goals of the Baldrige National Quality Program are:

- Delivery of ever-improving value to customers
- Improvement in overall organizational effectiveness and capabilities.<sup>2</sup>

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<sup>1</sup> See *infra* § 41:40 for an illustrative client satisfaction survey.

<sup>2</sup> Malcolm Baldrige National Quality Award, Gaithersburg, MD, National Institute of Standards and Technology (1997).

Work teams from the legal department and patent department measure the performance of their departments in terms of the seven Baldrige categories: leadership, strategic planning, customer and market focus, information and analysis, human resource focus, process management and contribution to business results. The scoring identifies areas for improvement that should be addressed by the specific unit action plans.

Here are some brief examples of how TQM techniques have been applied in a law firm.

A law firm faced two problems: higher than necessary staff costs and complaints about internal service such as temporary secretarial support, fax department services, etc. It surveyed internal customers on all aspects of staff support. It benchmarked staff ratios and costs by comparing its staffing to that in other well managed firms and offices within the firm that were meeting their internal client needs. With the survey data, it focused on areas where improvement was needed, as measured by internal client satisfaction surveys. Surprisingly, some of the areas with potentially excess staff were also the areas with poor client service ratings. Objectives for the program were set in terms of improvement in client satisfaction. Firm objectives were set in terms of cost reduction. Staff was assured that no one who was willing to be re-assigned would be asked to leave and that the firm would provide training where re-assignments were necessary. Teams were formed to analyze processes and improve them. Managers and staff were evaluated on the basis of the improvement in internal client satisfaction and bonuses were paid for improved results on internal client satisfaction surveys.

Through normal staff attrition and restrictions on hiring, staffing was reduced. As staff reduction opportunities were identified, staff were either re-assigned to fill new vacancies due to attrition or, pending such an assignment, were put in a project pool, which was used to staff improvement and temporary infrastructure projects. Over a three-year period, internal client satisfaction rose significantly, while staff size was reduced by more than 50, and no employees were let go as a result of "downsizing."

In another example, a group of secretaries in a practice group asked to be allowed to try to improve the process of recording billable time in the group. They were successful in convincing the lawyers and paralegals to commit to better practices. They reorganized the way the work of entering time was shared among the secretaries in the group by committing to share the tasks and enter the time the same day they received the timesheets. They set up a measurement system to track progress. The success of the program convinced the firm that much higher standards were possible. Some of the secretaries became trainers and advocates for the new system, which was implemented around the firm.

The improved timekeeping practices allowed the firm to set up an earlier deadline for sending monthly bills – an improvement of eight to ten days over its prior practice. Again, working with the

secretaries who prepared the bills, a training program was developed, a measurement system devised, and goals set. Results were published. As a result, the firm reduced its inventory of both work in process and receivables. The firm's prior external client satisfaction survey had shown some client dissatisfaction with the firm's billing practices, though not with the amount of the bills or the value received. The next survey showed greater client satisfaction with the firm's billing processes, which now were rated better than the other firms with which it was compared. Employee satisfaction also improved as secretaries were relieved of the stress associated with last minute time entries and billing. The publicity about mounting success in some areas of the firm encouraged others to get on board.

In another situation, one law firm litigation practice specialty had encountered a problem with client dissatisfaction about the amount of fees charged on a certain type of case, particularly those of the type that settled early. The specialty group created a team, which included lawyers from the firm and the client, technical specialists in the firm who worked on the cases, and paralegals and secretaries, to analyze how the cases were being prepared and where and for what functions costs were being incurred. The team identified the client needs overall and at various stages of the case. The team reordered when certain tasks were done in relation to the progress of the case, deferring certain expensive work to a time when it was more certain that it would have to be done. The result was lower average cost per case for the client, no reduction in the hourly rate charged by the firm for work on the cases and a continued high win rate for the cases that did go to trial. The group received more of the cases at the expense of another firm doing the same work.

In a patent law department, obtaining timely and cost-effective prosecution services from outside counsel seemed to be a constant challenge. There were cost over-runs, need for frequent revisions by inside counsel and no sense that the process was getting better. When the managing patent lawyers analyzed contributing factors, they concluded that the way they selected and used outside counsel was itself flawed. The solution was to describe the desired state (35 patent applications, timely filed without requiring substantial re-work, for a specified flat fee per application) and put the work out to bid as a lot, while also guaranteeing a minimum volume of work. The patent department carefully identified its requirements and work processes. In the bidding and interviewing process the requirements of the law department and the outside firm were discussed and clarified. The law department selected two firms to do the work. After a full year of experience, the approach is working for both outside firms as well as for inside patent counsel. Both sides feel they have won.

Finally, a transactional group in a law firm working on fixed fee work of a repetitive nature put a team together to analyze work flow. It automated some of the process, re-assigned certain tasks to lower

cost fee earners, and eliminated some re-work by improving project management and communications, thereby reducing significantly the cost to produce the work and significantly improving the firm's profit on the work.

#### **§ 42:8 Factors that can undermine TQM**

Commentators report that more businesses, law departments, and law firms have failed in whole or in part to implement TQM than have succeeded. The causes are common among organizations, though several unique aspects of the legal profession are particularly challenging. Common contributors to failure that you should watch out for are:

1. Lack of forceful and committed leadership.
2. Inadequate commitment of time and resources. Don't get distracted by the short-term goals of getting the work done and controlling costs or making money. Invest for the future.
3. Inadequate initial and follow-up training. The assumption often is that a day or less of training will be enough, and lawyers can be disdainful of "management gimmicks" and non-legal training. For TQM to be effective, everyone needs to be trained, and that training needs to be reinforced.
4. Hierarchy concerns. The longstanding inherent hierarchies in the profession, if not broken down, discourage lawyers and staff from working together on a problem solving team, discourage initiative and open communications from staff, and encourage lawyers not to listen seriously to staff suggestions.
5. In situations where a partnering solution is necessary, the law firm or law department is not open to the process or their organization does not support it. The result is that one side or the other cannot be an effective participant and the opportunities for improvement in the joint process are not achieved. This can also produce a fear of win-lose. Improvements are achieved and the client or the firm attempts to capture them all for itself. This can happen if win-win goals for the process are not established up front.
6. The focus becomes internal and not on the ultimate goal of meeting client requirements. Some organizations are so inwardly focused that all efforts and opportunities are assessed against internal requirements and the focus on the customer or on real improvement is lost.

7. Measurement systems are in conflict with goals. The most obvious example where this exists in law practice is in the billable hour and the hourly rate and undue emphasis on both in pricing and measuring contribution to a firm.
8. Excess ambition. Trying to do too much too fast can mean there are no victories, discouragement sets in, and the process is abandoned.
9. Failure to reinforce the program through recognition and reward.
10. Lack of “renewal” – a periodic re-commitment to the process. Re-training and other efforts are necessary to keep the commitment to continuous improvement in front of employees who are also concerned with getting their work done.

#### § 42:9 TQM is a continuous journey

Quality management is a continuous journey and not a destination. Truly committed companies build TQM principles into their corporate cultures as a core value and view the skill as a core competitive competence. They also recognize that their commitment needs to include ongoing training for new and existing personnel. They also recognize that their commitment must be renewed periodically to emphasize the importance of quality management to their success.

World class companies such as Corning Incorporated, General Electric and Motorola have worked long and hard to build quality management into their cultures. As an example, Corning, one of the pioneers, has been on the journey for 17 years and is renewing its commitment again, with improved processes and resources. It is the *process* that these companies rely on to succeed.

Any law firm or legal department that sets out to implement quality management principles should not expect the task to be quick or easy. Nor should they expect significant results without sustained effort and substantial investment. Our business clients have demonstrated the power of the process. The challenge for our profession is to apply it to the delivery of legal services.<sup>1</sup>

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<sup>1</sup> For additional reading, we recommend the following books:

Philip B. Crosby, *Quality Is Free: The Art of Making Quality Certain* (1992).

Mikel Harry & Richard Schroeder, *Six Sigma* (2000).

Joel F. Henning, *Total Quality Management of Law Firms* (1992).

Richard C. Reed, *Applying Total Quality Management to the Office* (1993).

A. C. Rosander, *Deming's 14 Points Applied to Services* (1991).

Joseph V. Walker & Barbara L. Ciaramitaro, *Total Quality Management in Action* (1994).

## § 42:10 Project management process

Project management is a smaller scale process that can be used in any context to better structure how a group of people work together to achieve an agreed result. It can also be used as a tool to implement TQM-based projects or re-engineering projects.<sup>1</sup>

Project management is a skill and a process widely used and highly developed in other professions and industries, such as construction, equipment design and manufacture, and software design. It has yet to find much acceptance in the legal world because of both a lack of familiarity with it and a belief in the profession that lawyers are different and therefore must do things differently. Law firms and law departments undertake many large scale projects and complete them successfully. These projects require some form of organization and management. What we have observed over many years is that projects get done as often through the brute force of lawyers' intelligence and willingness to work very hard against a final deadline as through careful planning and methodical execution. The result can be inefficiencies and unnecessary cost. As an egregious example, some law firms prepare 200-page drafts of "briefs" and then work extra long days to pare them down to the court's limit of 50 pages. Criticism is applicable to both law departments and law firms. Either could take the lead in managing a project more effectively.

We all know from experience that large buildings, airplanes, or sophisticated software are not designed or made without sophisticated project management. While many legal projects are too limited in time or scope to require the sophisticated tools or skills that are widely used in other endeavors, the basic principles and disciplines can and should be used at the interface between inside and outside counsel or by the teams they create. Some fairly simple training and the commitment to apply it until it becomes habit could make more sophisticated project management part of a lawyer's skill set.

The key elements of the discipline of project management are fairly simple. There are four basic project stages and requirements for each stage:

### **1. Phase I: Project Intake or Project Initiation**

The first step is to define the objective of the project and its scope: what does the client want to accomplish, and which tasks necessary to achieving that objective are the responsibility of the project team or supplier and which are not. In the legal environment, the project initiation includes:

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<sup>1</sup> Eric Verzuh, *The Fast Forward MBA in Project Management* (1999).

James P. Lewis, *Fundamentals of Project Management* (1995).

For additional reading on Project Management, see J. Davidson Frame, *Building Project Management Competence* (1999).



- understanding the project: what does the client want us to do – *e.g.*, defend or settle the lawsuit or close the deal;
- understanding the client's objectives – *e.g.*, I want it now, I want it done at the highest quality, and I want it done cheaply, or some mix of these;
- understanding how the objectives relate to one another and which ones are critical to success – *e.g.*, time is of the essence, but we cannot afford to lose this case, and we will spend more to get the result we need;
- filling in important details of the engagement: conflicts check, engagement letter, fee arrangements, etc.;
- perhaps identifying initial team members.

## 2. Phase II: Planning the Project

The planning stage determines what needs to be done, by whom, and when in order to meet the client's objective. A project plan consists of an explicit work breakdown structure that lists all of the tasks and subtasks, who will do each task, and how long each task will take in order to accomplish the project objective. All tasks should be scheduled in such a way that the delivery date can be met. The planning stage should include:

- identifying the tasks/activities that must be performed;
- identifying the task durations and any dependencies between tasks;
- estimating the resources (*e.g.*, how many people, how much money) including best/worst case planning;
- identifying responsibilities (delegation and staffing);
- preparing a project budget and a budget tracking system (such as litigation task coding<sup>1</sup> for time charges), if necessary; and
- communicating the planning results to the ultimate client.

In a typical interaction between inside and outside counsel this should be a joint effort, and very often it should be a joint effort that includes the business client, not just the lawyers. When the business client is not involved there can be confusion about: goals, resource allocation in the business, expected demands on the business client's time and resources to support the legal project (*e.g.*, defending this suit will cost \$X and will require the CEO to testify in depositions and in court for three days), costs, schedules, etc.

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<sup>1</sup> See *supra* § 14:17 for the Uniform Task-Based Management System code sets.

### **3. Phase III: Monitor Project Progress**

This entails performing the necessary work identified in the planning stage. The project plan must be continually assessed by the team leader during this stage to ensure that the project is on track to meet its objective. The monitoring stage should include:

- communication between the project team and the client on a previously agreed basis – how often, about what, etc.;
- a focus on efficiency in the use of resources;
- management/supervision of tasks and activities;
- project team meetings/communications to keep team members advised of progress, changes, etc.;
- status reports to those specified in the planning stage;
- budget tracking; and
- updating necessary aspects of the planning phase, if an unanticipated variable enters.

This last item is particularly important. The discipline to take the time to redo a plan, re-negotiate the arrangement with a client, and communicate those changes effectively to the project team is both crucial to success and often overlooked by lawyers.

### **4. Phase IV: Project Completion**

The project completion stage consists of a post-project review, including a review of the team's performance. The results or learning from the post-project review can be applied to the team and the organization as a whole. In the legal environment the project completion stage should include:

- soliciting feedback from the client on the result and the process by which it was reached;
- soliciting feedback from the project team (what went well, what could be improved);
- providing feedback to the project team;
- organizing and closing the files, including distributing them for archiving as directed by the client; and
- completing the financial arrangements of billing and paying.

These key steps in project management, simple to read and apparently obvious, should be in the souls of most lawyers and a part of their daily practice. Soliciting feedback promptly upon project completion is vital to process improvement. Lawyers are strongly encouraged to do it – and yet this step is sometimes omitted.

## § 42:11 Implementation of project management

Here are ten points to keep in mind when thinking about whether and how to implement project management:

1. It is about getting a project done better, faster, and cheaper, with less unnecessary work and re-work. It is also about satisfying the client and the team during the process and minimizing the frustrations that come from poor communications and the disruptions of poor planning.
2. It is part of a TQM approach – a well thought-out, repeatable process that will yield consistent high quality results.
3. It is a skill and a habit, not a piece of intellectual learning. Learning project management is not like reading music, it is like playing it.
4. It will take commitment and follow-up to get a law firm or law department to embrace disciplined project management as a part of its practice.
5. It is best done with the ultimate client in a joint effort and not in separate silos of business client, in-house counsel, and outside counsel.
6. A broad definition of the team (*e.g.*, partner, associate, paralegal, secretary, in-house counsel, her secretary and paralegal and the ultimate client and staff) is best for planning purposes and for communications purposes.
7. It is not a static process. Each plan must account for the likelihood that the plan will change and anticipate when and how the plan will be revised by specifying processes for plan review and amendment.
8. It can be supported by a wide variety of readily available software (such as Microsoft Project® and FastTrack Schedule®), but the software will not substitute for the commitment and work of the team members.
9. There is much to be learned about project management techniques and benefits from outside the legal profession, for example from architects and engineers, or software developers.
10. The process by which the legal project is executed is one of the determinants of client satisfaction.<sup>1</sup>

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<sup>1</sup> See discussion of project management in the request for proposals process in Chapter 5 “Requests for Proposals, Bidding, Presentations, and Beauty Contests” at *supra* § 5:26.

## § 42:12 Introducing project management into a law firm or legal department

Introducing project management into the legal process is a challenge because lawyers are ambivalent about it. Some examples of that ambivalence include: reluctance by some clients to pay for time used to prepare budgets or litigation plans; limitations by clients on the number of lawyers who can attend project related meetings; limitations by clients on charging for office conferences between attorneys, which are often essential elements of project management; reluctance to pay for or even encourage the use of project “process leaders” whose role would be to bring project management skills and templates into a project and to see that the processes are followed. Most of these tasks would be considered essential to the successful completion of any other type of large scale project, such as a construction project.

On the other hand, in well run companies, in-house counsel have access to project management training, process leaders, and project management templates that have been developed from experiences and practices throughout the company. Aggressive use of these resources with the legal department and with outside counsel can significantly improve the efficiency and results of a project.

One law firm's experience with project management began with data from two surveys used as part of its total quality management program. One was a client satisfaction survey, which revealed that while clients were highly satisfied with overall service, they thought the area of project management presented an opportunity for improvement. The second survey was an employee satisfaction survey, which revealed the perception that better project management would improve the working environment. The issues common to the two surveys were a need for improved communication about project status, scheduling, and managing to project milestones to avoid the cost and confusion of last minute changes and the relatively typical rush to meet deadlines. This data was shared with everyone in the firm. After the usual lawyerly disputes about the validity of the data, agreement emerged that improvement was needed. The firm concluded that while elements of project management were being applied, it was the lack of a comprehensive approach, consistently followed, that was preventing higher levels of satisfaction from being reached. The firm concluded that training was necessary. It looked both inside and outside the legal profession for test marketing several approaches within the firm.

The responses from attorneys were helpful and also somewhat predictable. One general response, having heard a presentation, was, “that's obvious.” The second was, “that won't work in the legal profession or not in ‘my’ practice.” From the first response, it was clear that the lawyers had to be convinced of the benefit of the consistent practice of the discipline and not claim it as a brilliant

intellectual insight. The second reaction was more problematic. It was right and it was wrong. It was right because some of the training taken without modification did not fit the work of an attorney and because experience with clients, usually other lawyers, indicated that many in-house client lawyers would not understand or want to follow the practice. The firm took several approaches to overcoming the second objection. First it searched for a training supplier with some legal background. While the content of the training was the same, the “qualifications” of the trainer and the use of law practice examples helped convey how the precepts could be implemented. It gave this general training to leaders in the firm. Next it offered the training, not to general groups of attorneys, but to practice groups, either formal or informal, who worked on the same projects, and encouraged the groups to include not only lawyers but support staff. There was some reluctance on the part of the lawyers to include enough people who would work on the project in the training; the instinct was to exclude secretaries, for example. The trainers tried to use relevant practice group examples, and the training focused on managing the types of projects done by the group being trained.

Acceptance improved, but there were still three important issues to deal with. The first was that general training, even with examples from personal practice, was still too abstract and unfamiliar for some. Second, this process competed for time and attention with work that needed to be done. Third, some of the “early adopters” were reporting resistance to the process from their in-house clients. This led to several changes.

First, the firm encouraged groups to use the training when they had a real project that they wanted to plan. It used actual engagements in the training programs and assured participants that one of the outputs from the training would be a plan for their project. The training curriculum was adapted to do that. Second, where it could, it brought the clients who were part of the team to the training and let them learn the skills and plan the project together with the firm team members.

The firm has had good results from this approach when the client has been willing to take the time to participate. The reasons are obvious. The law firm lawyers were not trying to sell a process to a resisting customer. The training gave the team a chance to work together and a common experience. The plan that was produced was a result of input from both inside and outside counsel. The process was even more successful when the business client was part of the team that was trained. Several other useful things have come out of this experience. First, the firm qualified this type of training for credit in many states with mandatory CLE. Second, a number of clients or in-house attorneys had been exposed to some type of general project management training but found this type of training, with the project team producing the project plan, to be more helpful.

In benchmarking its approach, the firm learned that a facilitated project planning process with suppliers and clients, at a very early stage, has been used successfully in the construction and aircraft industries. Some of these facilitated early-stage planning meetings went so far as to cause the team members to identify and communicate their working styles and preferences with the objectives of reducing interpersonal friction and misunderstandings on the project. For example, a project participant might disclose that she has a combative style of management but that it does not carry over into personal relationships. Another might declare that her silence in a meeting should not be interpreted as either acquiescence or a lack of interest. Yet another might indicate that he requires information a certain number of days in advance because of his more deliberative management style. The firm has encouraged project participants to be more explicit about their personal styles and needs and about lines of authority, reporting requirements, communication protocols, deadlines, project change processes, such as would be referred to as “change orders” in a construction process, and the like.

Another group took the discipline of project management and used it to produce a template consisting of a generic checklist and information sheet that could be followed, filled in, and shared with all project participants. They had the checklist laminated in a form that could sit by the phone of each attorney. Others have used pieces of the discipline. Litigators have used project management procedures to develop more sophisticated case tracking and planning methods. It is now fairly common for some clients to require counsel to develop and submit a litigation plan and budget for approval. It is less common for those plans to be developed jointly, to involve the ultimate client, or to be monitored and modified regularly. Some project teams have conducted post-project reviews with clients to identify best practices and opportunities for improvement. Others have adopted a practice of holding an internal meeting at the beginning of a project, which includes any and all staff who may have to support the project, to familiarize them with its objectives and requirements. Others have not yet warmed to the idea.

#### **§ 42:13 Practical examples of project management**

Historically, business transactions have lent themselves to good project management techniques, such as the use of closing agendas as a guide to the work flow, early agreement on distribution lists, division of responsibilities for drafting and other aspects of the transaction, and regular negotiating and drafting sessions that serve as communications and coordination vehicles. Even here there is room to improve, particularly if the critical path of deal points (*e.g.*, those necessary to make the deal and which

will influence the details of the drafting) could be identified in the beginning to permit drafting to be scheduled in a sequence that would avoid unnecessary revisions. Private Web sites containing key documents and schedules, etc. are one new technique for facilitating better project communications and coordination.<sup>1</sup>

Here is an example of how a project management technique can improve the relationship between inside and outside counsel. On a very large assignment, a law firm and an insurance carrier needed to break through the cycle of bill review that was producing negative comments 45 to 60 days after tasks were performed by the law firm. This is a common predicament for billing attorneys, and often irritating to both the billing attorney and to the insurer's staff. Questions about how particular tasks were staffed, or how much time senior lawyers were devoting to matters that might be done by less expensive lawyers, were appropriate – but not especially helpful when raised well after the work was completed. Rather than engage in debates about the merits of every item billed, the law firm looked for better means to inform the insurer about how the work was being managed and staffed.

The breakthrough solution combined a timely “workload report” sent by e-mail or fax early each month with a progress report sent two weeks later. The workload report included a report of recently completed activities; a report of total hours spent on the matter during the prior month; and a breakdown of those hours showing the percentage of time charged by partners, associates and paralegals. It also included a trend-line report comparing hours recorded in recent months and a forecast of principal up-coming activities and tasks and who was expected to work on those activities and tasks.

Rather than defending what was already billed, the law firm had found a way to share management information with the insurer before the work was performed. The progress report, sent by the 20<sup>th</sup> of each month, supplemented the workload report by adding new developments and revising the forecast of charges and trends. The two reports helped convey all the information about staffing that the insurer was attempting to derive from the bills – it also demonstrated that lower-cost timekeepers were performing the majority of the work, and that the average billable charge was reasonable. Although the insurer still questioned an occasional charge, the relationship between the insurer and the billing attorney improved markedly.

Another example was described in Section 42:12, *supra*, involving case management. A template was developed and followed for each case which called for early evaluation and then differing tracks for development, depending on a number of factors, including the likelihood of settlement, the

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<sup>1</sup> See Chapter 48 “Transactions” at *infra* § 48:14 concerning “cybermeetings” and § 48:21 concerning electronic management of transaction documents.

verdict potential in the case and the complexity for the technical issues presented. The templates were integrated with standardized reporting formats and regular defense team meetings which included law firm and client personnel.

#### § 42:14 Re-engineering

Re-engineering is defined by its leading proponents as the “fundamental re-thinking and radical re-design of business processes to achieve dramatic improvements in critical contemporary measures of performance, such as cost, quality, service and speed.”<sup>1</sup> Proponents assert it to be a more fundamental and radical approach than may be implied in the TQM process. TQM processes might ask the question: “How can we do a better job of collecting data for law firm charges for its costs and disbursements and billing them to a client in a way that will make the client satisfied as to the appropriateness of the charge and willing to pay it on a timely basis.” The start of a re-engineering process might involve the joint question between law firm and legal department: “Is there any value to either party in doing this at all, or can we meet the objective of allocating these costs in some other way, such as increasing the law firm’s hourly rates and eliminating all of its other charges?”

The term “radical” is used in terms of its Latin origin “radix” or root. “Dramatic” means to emphasize that the objective is not marginal improvement, as in TQM, which is based on the belief that many continuously made smaller improvements will produce the desired results. Proponents of re-engineering argue that larger scale problems or objectives must be dealt with with radical solutions that have the objective of obtaining exponentially greater change.

In re-engineering, the term “process” is used to refer to “a collection of activities that takes one or more kinds of input and creates an output that is of value to the customer”<sup>2</sup> as distinguished from individual tasks, which, though they might be done better, may not need to be done at all.

Overall, re-engineering looks at larger problems from a higher level of abstraction and seeks to produce major performance improvements. The process requires a willingness to challenge long established rules and break them. It is also often based on creative use of information and communications technology.

While understanding that there are differences between TQM and re-engineering, they are part of the same continuum and there is no need to spend much effort on correctly labeling a particular

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<sup>1</sup> Michael Hammer & James Champy, *Re-engineering the Corporation* 33-36 (1993). For further reading, see Michael Hammer, *Beyond Re-engineering: How the Processed-Centered Organization is Changing Our Work and Our Lives* (1997), and Michael Hammer, Steven A. Stanton, *The Re-engineering Revolution: A Handbook* (1995).

<sup>2</sup> Hammer & Champy, *supra* note 1, at 35.



initiative. We do accept the value of very ambitious goals and the likelihood that they will be achieved only with more fundamental change. Our experience has shown us that neither law firms nor legal departments are particularly inclined to embrace the most ambitious forms of process change which would be called re-engineering.

#### § 42:15 Examples of re-engineering

There have been some dramatic changes in relationships between inside and outside counsel that meet the definition of re-engineering: the complete outsourcing of law departments, the DuPont counsel program,<sup>1</sup> the rise over the years of captive law firms for insurance defense, and the outsourcing for an annual fee which includes the costs of all local counsel for the defense of all product liability claims brought against a company. These examples have resulted in significant changes in processes by which in-house and outside counsel work together. Other developments in the legal marketplace are making re-engineering possible: a robust market for contract attorneys, Internet sites that intend to create an electronic auction floor for bidding on legal projects, shared private Web sites for client-specific precedent files and for specific projects, and emerging expert systems for drafting.

Since this Chapter is more about process than specific results, however, let us use the example of outsourcing the defense of all product liability suits to illustrate the process of re-engineering. A typical approach to this situation, which is *not* re-engineering, would be to treat it simply as a contract negotiation, allocating responsibilities, risks, and rewards. Price/cost would be determined along with adjustment mechanisms. Incentives and penalties could be negotiated. Responsibilities would be allocated between the client and the firm, requirements or performance criteria would be agreed on and carefully reduced to contract clauses. If this were the sole analytical approach used, it would likely miss opportunities for better results.

True re-engineering would address the processes inside the law department and the law firm as one continuous inter-related process and look for opportunities to radically change the *total* process.

Here are the questions to be asked in re-engineering a process and some related questions specific to the outsourcing example.

1. What are the ultimate business clients' objectives? Is it lowest total cost of defense, settlement and judgment? Are there client reputation issues? Will the outcome affect future sales? Are there public relations issues? What are the state or federal enforcement issues?

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<sup>1</sup> Chapter 75 "Case Study: Dupont's Legal Model for Strategic Partnering," *infra*.

2. What are the processes currently used in both organizations to handle claims? Can the processes be mapped? Does anyone know what the processes are?
3. Where is money and time currently being spent and for what value? What are the total in-house and outside legal, management and support costs? How is success or failure of the process defined and how is it measured?
4. Where do internal and external processes overlap and does that provide value? How much time is spent reviewing outside counsel work? What value comes from that?
5. How can the processes be changed to reduce the amount of resources used? Is work product being effectively re-used? Can different cases be treated in different ways and still meet client objectives?
6. What are the opportunities to use new information technology and communications tools? Can information be created once and shared by many? Can repetitive work product be automated? Can processes, schedules, budgets, etc. be tracked and reported with minimal employee time spent?
7. How can the number of people, costs and cycle times be reduced?
8. How can the locus of decision making be changed to increase efficiency while assuring that the ultimate clients goals are met?
9. Who decides how a case should be handled? Who decides whether a case should be settled and for how much?
10. How does a proposed new process match up with currently existing accountability and reward structures in both organizations and what must be changed or accommodated? Do billable hour requirements interfere? Is inside counsel evaluated on the costs of outside counsel or the total costs, inside and outside spent on the project? Is compensation awarded on the basis of total budgets managed or numbers of subordinate personnel?
11. What new accountability and reward structures will reinforce the new process?
12. Are there a few radical changes to the processes that will dramatically improve results?

The answers to these questions could lead to a series of incremental changes or they could lead to a radical re-design.

What more radical approaches might come out of this process to improve a company's product liability defense? Here are a few possibilities, some or all of which may have been implemented by some clients.

- Could the cost of defense and settlement be looked at as one cost and outside counsel given a single annual budget to defend or settle?
- Could the role of inside counsel be reduced to just quarterly reviews of results and an occasional policy decision with resulting internal savings?
- Could the support structure for product liability defense be assigned not to the client or the law firm but to another, cheaper supplier?
- What traditional legal tasks could be assigned to non-lawyers, *e.g.* settlement negotiations, medical issues analysis, etc.?
- Could the claims be triaged and worked up by non-lawyers, much as insurance claims people do?

Proponents of re-engineering cite a number of common reasons re-engineering can fail, which are useful cautions for our profession:

a willingness to settle for minor or incremental results;

focusing only on process and not enough on the context in which the process change must occur and the challenges of implementation;

quitting too early;

placing prior constraints on the definition of the problem and the scope of the effort;

trying to make re-engineering happen from the bottom up; and

trying to make it happen without making anyone unhappy.

The challenge and the opportunity of re-engineering is to make dramatic differences in the cost and quality of the services inside and outside counsel render to our business clients. To do that will take a high level of cooperation and creativity. For those of us without the stomach for or institutional commitment to re-engineering, the more incremental approach offered by TQM is better.

For re-engineering processes to be successful at the interface between inside and outside counsel, a new approach is necessary. Mutual problem solving will have to replace positional bargaining. Candor and thoroughness about the needs and cultures of both organizations must be part of the discussions and when necessary part of the agenda for change. The environment in each organization needs to be open to radical changes. A longer-term horizon is necessary. The adversarial instincts of the lawyers need to be replaced by an attitude of trust and a commitment to mutual problem solving. The parties need to view the relationship as ongoing and organic and not one frozen in time by a contract. These are concepts that are familiar to our business clients and need to be more familiar to law departments and law firms.

**§ 42:16 Practice checklist****A. Checklist for Implementing TQM (See §§ 42:5-42:9)**

1. Incorporate TQM in the mission of the organization.
2. Appoint a senior person to lead the process.
3. Budget for investment in the process.
4. Train leaders, managers, facilitators and a broad base of employees.
5. Create quality improvement teams.
6. Create appropriate measurements and commit to use them.
7. Build awareness of the process through broad-based, frequent communication.
8. Plan for maintenance of employee morale to offset fears of downsizing.
9. Identify and prioritize creative actions.
10. Set goals against which to measure results
11. Follow through on implementing improvements.
12. Measure results.
13. Recognize and reward success using the TQM process.
14. Do it all over again.

**B. Project Management Checklist (See §§ 42:10-42:12)**

This checklist provides a general overview of the project management process and should be adapted to the specifics of each project. Most components of this checklist, however, should be incorporated into each and every project undertaken – regardless of size of project or estimated time to complete.

**1. PHASE I Project intake**

- Understand the project (whys and hows)
- Understand client's objectives – including cost and time
- Complete necessary paperwork – including new client/matter screening form, conflicts check, ENGAGEMENT LETTER, file request form
- Fee Arrangements

## **2. PHASE II Planning the project**

- Identify tasks/activities that must be performed – complete project schedule
- Estimate resources – include best case/ worse case planning
- Delegation and staffing of all personnel
- Prepare budget and task coding, if necessary
- Communicate planning phase results to client

## **3. PHASE III Monitor project progress**

- Perform necessary legal work
- COMMUNICATE, communicate, communicate – external and internal
- In-person meetings, when appropriate for in-house staff
- Focus on efficiency – use firm resources
- Manage/supervise tasks and activities
- Re-do necessary aspects of planning phase [and revisit fee arrangements]

if unanticipated variable enters

- Use status reports, as necessary
- Budget tracking
- Communicate to client as needed

## **4. PHASE IV Project completion**

- Give feedback to working group
- Solicit feedback from client
- Post-mortem on ways to improve
- Files finalized
- Bill prepared and sent
- Archive appropriate documents

# Managing a three-way relationship

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Effectively managed, the three-way business partnership, between the internal client, the legal department and external counsel, can add value to a company's business. The first of Martindale-Hubbell's US Counsel To Counsel Forums gave participants an opportunity to compare notes on ways of improving internal performance and maximizing the productivity of external legal resources. Michael CLARKSON reports

The days when in-house legal departments were seen by clients as internal business prevention units are, hopefully, over. Crucial to the role of in-house counsel now is the ability to successfully manage what is effectively a three-way business partnership, between the internal client, the legal department and external counsel.

Sector-specific issues, available resources, the legal services requirements of the company, its geographical spread and other variables influence how any individual General Counsel decides to approach this challenge. However, whatever the scenario, to keep the focus of the department sharp and to maximize the value added by the legal services (both internal and external), he or she needs to ask certain questions on a regular basis:

1. Are we sufficiently close to the internal client?

2. How are we choosing external lawyers?

3. Is the relationship with each external firm sufficiently deep?

4. Are we giving adequate feedback to external firms?

5. How can we improve our cost to value ratio?

**1. Are we sufficiently close to the internal client?**

Many legal departments have reorganized in recent years to mirror the structure of the company they service. There has been a distinct shift towards departmental structures that are organized along business unit, rather than purely geographical, lines.

One consequence of this approach is that it tends to involve greater specialization on the part of the individual lawyers within the department. Instead

of having responsibility for a wide range of legal practice areas in one particular geographical region, individuals focus more closely on one or a small number of areas of law, often on a relatively wide geographical basis. Some argue that specialization is eroding the traditional view of in-house counsel as a generalist, somewhere between a business person and a pure lawyer. For those that take the view that a generalist can have a better sense of business than a specialist lawyer, increased in-house specialization is not necessarily a welcome development.

However, for many companies, having lawyers focus on particular business streams or practice areas has a number of advantages, not least of which is that it allows lawyers within the department to get closer to understanding the business objectives of their internal clients. "In a small decentralized legal department like ours, with relatively few lawyers," says Elizabeth Wilson, Vice President and



Elizabeth Wilson  
CNA



James Marvin  
Heller Financial, Inc.



Michael McCabe  
Allstate Corporation



Timothy Moore  
American Medical Security



James Sheehan  
Tellabs

Deputy General Counsel, Worldwide Field Operations at CNA, "we really need to know the business." CNA's decentralized legal department places lawyers physically within the individual business units they service. "The fact that we are part of the unit's budget is an added bonus that allows us to spend time exploring with them ways of achieving their end goals and educating them on issues to look out for," she says.

With all legal departments under pressure to add value to the business, being closer to the commercial teams allows in-house lawyers greater access to the commercial thinking of the company. "The key to adding strategic value is to ensure that there is effective communication between the legal department and senior members of the business unit management," says James Marvin, Chief Corporate Counsel at Heller Financial, Inc. "Each business unit within Heller has a senior internal lawyer that acts as a relationship manager for that unit. In addition to a dotted line reporting relationship with the head of the business unit, this lawyer in most cases sits on the management or operating committee responsible for strategic planning and significant operational control for that unit and accordingly gets involved early in its strategic thinking." Allstate Corporation adopts a similar approach. Michael McCabe, Senior Vice President and General Counsel, explains that the company is in the business of trying insurance cases. "The legal function is an integral part of what the company does. Each business within the company therefore has a General Counsel and the lawyers effectively live with the business people," he says.

One tangential benefit of this approach

for the company as a whole is that the legal department can act as a bridge between gaps which may exist in the communication channels between the individual business units themselves. "One advantage of our system," comments Marvin, "is that the exchange of information within the legal department can be fed back out to the business units through our involvement on the management committees."

Another is that it can reduce duplication of work internally. Timothy Moore, Senior Vice President, General Counsel and Secretary at American Medical Security, explains that last year he allocated particular lawyers to each of the two main functions his department performs (regulatory research work and product building) and then split the product building function to match individual product types. "Before," he says, "when our advice resources were spread more thinly, we found that we were constantly reinventing the wheel and consistency of advice inevitably suffered. With our new system we are more streamlined and are better placed to match the priorities of the business units. The reorganization programme also allowed me to reduce lawyer numbers."

## 2. How are we choosing external lawyers?

Unless closely controlled, the process of appointing external advisers can give rise to situations on which the legal department ends up having to spend a disproportionate amount of management time. Sometimes, for example, local firms, appointed in another jurisdiction by a business team in that jurisdiction (or, equally common, by members of the in-house team located there) fail to perform and

the home department is called in to rectify the situation. There is also the issue of the unwanted inheritance: a multi-jurisdictional acquisition can result in the legal department inheriting a raft of external foreign advisers that it might not have chosen had it had a free hand.

To a large extent, control over choice of firm in this context is closely associated with control over the purse strings. "We try to avoid problems arising by insisting that no legal services bill can be paid other than by the appropriate in-house regional counsel in the home department," says James Sheehan, Assistant General Counsel at Tellabs, a telecom company doing business in 80 locations worldwide. Fran Maher, Senior Vice President, General Counsel and Secretary of United Airlines, explains that her company permits local units to work directly with outside local lawyers on small dollar "doing business" matters. Above that threshold, though, all new matters are to be approved and supervised by the legal department. Standing local counsel is hired by the legal department with the input of the local unit, and everyone knows the rules. "We want to know what is going on before we get a bill," she points out.

Internationally, it can be advantageous from a tax and profit/loss perspective to have bills paid locally. "We establish the criteria for the selection of local counsel and then allow local commercial teams a certain amount of freedom in the choice and use of lawyers," says Michael Costello, General Counsel and Secretary of Agribrands International. "The legal department vets them for quality and makes it clear in meetings with local firms that they have to be sensitive to



Fran Maher  
United Airlines



Michael Costello  
Agribrands International



William Andrews  
Netco Inc.



Kelly Welsh  
Northern Trust  
Corporation



Crane Kenney  
Tribune Company

## The intranet and extranet as relationship tools

An active intranet can be an invaluable way of sharing company information internally. It can also be a useful source of general information about the company for external advisers working for the company. "Giving external law firms access to the company's intranet, or part of it, is a simple way of reducing the number of small queries you as in-house counsel would otherwise have to deal with," says Crane Kenney, Senior Vice President, General Counsel and Secretary of the Tribune Company. "Security is not an issue so long as the more sensitive information is password protected."

More and more law firms are taking the further step, as part of their investment in major clients, of developing private extranets. Transaction specific extranets, accessible by parties to the deal, are now a regular feature of larger deals. However, some firms are collaborating with clients to set up a more general site as a means of exchanging information between the company and their advisers.

### Walter

One such site is "Walter", a site co-developed some 18 months ago by Heller Financial, Inc. and Winston & Strawn, one of Heller's partnering law firms. Heller's legal department wanted to create a vehicle that would allow them to be more efficient in providing information about Heller to their external lawyers and other vendors. The site is named after Walter E. Heller, the founder of the company.

Walter now includes:

- Standard form transaction documents and selected policies and procedures for Heller's business units.
- Heller at a Glance - containing a variety of general information to increase law firm understanding of Heller's businesses, corporate organization, regulatory issues and strategic direction.
- SEC filings.
- Press releases.
- Billing guidelines and other vendor management policies.
- Descriptions of Heller's law firm partnering and business referral programs.
- Heller Legal Services and partnering law firm contact information.
- Internal and law firm training calendars.
- Significant Project Descriptions (such as status regarding the Company's efforts to address revised Article 9 of the UCC).

- General Legal Services news and updates and web links of interest to Heller and its vendors.

- Full text search function.

- Threaded discussion groups that permit users to post questions for input across Heller's law firm relationships (although this feature has not been as heavily used as expected - as in practice both Heller and law firms have found that individuals with particular questions tend to use more traditional methods for asking them and tend to call their known contacts - Heller still has hopes for more robust use of this feature).

### Respective roles

The site was technically designed and is hosted by Winston & Strawn's IT department - the information resides on the firm's servers (the development platform is Lotus Notes/Domino) and the firm provides the technical support for the site. Access to the site is password protected. Unlike many law firm extranet models, however, the primary content creation and editing role is carried out by Heller personnel by posting new documents and information directly onto the site. Users are able to determine when forms are updated or added by comprehensive indexes indicated the day of posting or updating.

### Hub and spoke

Unlike other law firm/client extranets, Walter is not a one-to-one pipeline between Heller and Winston & Strawn. One of Heller's goals for the site was to use it to enhance and further its law firm partnering relationships with multiple firms. Heller has given access to the site to lawyers in more than 35 other law firms it has engaged. "It is more of a hub and spoke model, with Heller at the hub," says Heller's Chief Corporate Counsel, James Marvin. Heller decided early on to adopt a shared model. Sensitive information - such as pending deal details - is therefore excluded. However, as Winston & Strawn's Terrence Brady points out, "The security model could easily be changed at any stage to create cordoned off password protected areas."

Marvin adds: "One of the more significant benefits of Walter is the elimination of the need for massive document circulation among law firm vendors whenever form documents used by Heller need to be updated. The logistics of such an effort, and the lack of assurance that those efforts reached all of the desired targets, limited Heller's desire to update its basic transaction documents very frequently. This technology permits us to instantly upload form revisions to the resource we now require all of our outside lawyers to access for our form documents. It also provides the vehicle for virtually instantaneous communication of important company news to a large population of lawyers that increases their knowledge of our business and makes them better representatives of Heller in its business transactions."

the parent company's policies and procedures."

Once firms are appointed, it is helpful

to set the boundaries between in-house counsel and the internal client up front when it comes to giving instructions. One approach is not to

allow management to contact the external lawyers directly and to insist that all communications are effected through the legal department.



## Whirlpool's Process/Project methodology for delivery of legal services

### Background

Whirlpool's Process/Project methodology is a disciplined approach to legal service delivery.

#### A. Regular, recurring work is called a **Process**, with:

- A business client (or clients).
- A Senior Lawyer who "owns" the process.
- Performance indicators.
- Specified data to be collected on resources consumed.

#### B. **Projects** are major tasks outside of normal, recurring Process work.

#### C. This methodology facilitates managing and improving the delivery of legal services. It:

- Improves client communication and understanding.
- Provides evidence of improved legal service delivery.
- Provides data for decision-making.

### Project management approach

#### A. What is a Project?

- NOT regular recurring work.
- Major exposure/task.
- Likely to require considerable legal resources (time/\$\$).

#### B. Key elements of Project management approach:

- A defined process - imposes discipline.
- Designation of a business owner/decision-maker - clarifies

accountability.

- Designation of lead lawyer and other team members - clarifies responsibility.
- Up-front planning:
  - agreeing on and documenting objectives;
  - a project plan (tasks and times) and budget;
  - identifying and documenting customer satisfiers.
- A disciplined post-project review.

### Techniques for more successful Projects

- Early involvement of and consultation with outside counsel.
- Task based billing.
- Outside lawyer compensation tied to achieving business objectives.
- Technology:
  - electronic link to outside firm;
  - project management software;
  - document management software.

### Benefits

- Clearly defined roles, accountabilities and objectives.
- Provides a means of collecting information to improve/evaluate/plan future projects.
- Facilitates training of new team members.
- Facilitates better integration of outside counsel.
- Yields improved project results at a lower cost.

However, the reality of large transactions and cases often makes this approach impractical. Consequently, clarity (as to who is giving the instructions) and consistency (as to continuing the chain of instructions) become paramount. William Andrews, General Counsel and Vice President of Netco Inc, believes that if the original instructions are to be given directly by management, then management, at the

same level, must be brought in at every stage at which the instructions are to be altered. "Otherwise misconceptions can arise within management as to why the objectives set out in management's original instructions have changed," he says.

Maher agrees: "Having the business people give instructions can lead to confusion," she says. "It is funda-

mental for the external law firm to know from whom they are taking instructions." Her own approach to meetings involving management and an external law firm is to debrief the external lawyers after each meeting to make sure all agree on exactly what the instructions are.

The problems associated with managing an ever-widening circle of ad-



Michael Haverkamp  
Ohio National Life  
Insurance



R. Scott Falk  
Kirkland & Ellis



Daniel Hopp  
Whirlpool Corporation



David Carpenter  
Metal Management



Herbert Zarov  
Mayer, Brown & Platt



Michael Foradas  
Kirkland & Ellis



Steven Molo  
Winston & Strawn



Robert Walner  
Grubb & Ellis Company



Terrence Brady  
Winston & Strawn



Bill Brennan  
Bissell Inc.

visers have led many companies to adopt the "preferred advisers" model, focusing down on a small number of outside firms. "For a relatively thinly-staffed department such as Heller's, which relies heavily on outside advisers," says Marvin, whose company, Heller Financial, Inc., has US\$1 billion in operating revenues and 20 lawyers, "it makes sense to limit our choices and build stronger, deeper relationships with a small number of firms which, through steady and predictable work flow and constant communication, become value-added partners for our business."

Similarly, Whirlpool Corporation's Daniel Hopp, Senior Vice President, Corporate Affairs and General Counsel, is in no doubt that his company's decision in 1995-1996 to reduce the number of external advisers from several hundreds to just three firms, has paid dividends. "The process has dramatically improved the partnering relationships we now have with our external advisers," he says. This partnering capability grew out of Whirlpool's systematic methodology for delivery of legal services (*see box "Whirlpool's process/project methodology for delivery of legal services"*).

### 3. Is our relationship with each firm sufficiently deep?

The tendency on the part of many corporations to instruct fewer firms, combined with the ever-increasing complexity and geographical spread of deals and, often, the not inconsiderable volume of work outsourced, has changed the way in which many departments now view the relationships they conduct with their external advisers.

The importance of personal contact cannot be underestimated and it is still not uncommon for in-house counsel to

express the view that they "appoint lawyers, not law firms." Some in-house counsel would not look favorably on a firm that allows a lead contact lawyer to move off their company's work. "The key player needs at least to stay in touch," says Michael Haverkamp, Vice President and Counsel of Ohio National Life Insurance. Introducing additional external team members gradually and making sure that the original main contact is not entirely unavailable are ways for the law firm to soften the blow.

However, when teams on both sides, internal and external, are large and the relationship is ongoing, growth of the business partnership needs to be multi-faceted. Pairing up people at corresponding levels within each organization makes the relationship less dependent on the General Counsel/lead lawyer nexus, allows for greater flexibility in putting teams together and increases the knowledge base of the two teams. "We try to get our junior lawyers working with junior lawyers at the client, young partners with more senior lawyers and so on," says R. Scott Falk of Kirkland & Ellis. "This allows us to build on our client knowledge at different levels." Kelly Welsh, Executive Vice-President and General Counsel of Northern Trust Corporation, agrees: "It works both ways - the in-house team can learn a lot about the law firm too."

For smaller legal departments that outsource a lot of work, the depth of the external team is the overriding factor in the choice of firm. "As a one-man department, I don't pick individuals, I pick a team," says David Carpenter, Executive Vice President and General Counsel of Metal Management. "I need to know that if A is unavailable, I will be happy with B - I do not have time to deal with political fallout."

### 4. Are we giving adequate feedback to external firms?

But problems do occur. One-off issues are best dealt with as they arise. For example, members of the business unit may from time to time be unhappy with the performance of a particular member of a firm. However, these are often personality or style conflicts. "Being able to be candid with your key contact is vital," comments Costello. This allows the firm to address the issue without damage to the firm-client relationship.

Herbert Zarov of Mayer, Brown & Platt agrees: "Trust is critical. For each major client we appoint a relationship partner - someone who is intimately connected with the legal work being done by the firm for the client. His or her job is to be the trusted go-between who can deal sensitively with personnel issues with minimum disruption."

More ingrained, subtler issues may be best addressed in a more formal way, either in regular deal post-mortems or through a more general review process. Michael Foradas of Kirkland & Ellis explains that at one stage his firm realized that most of the feedback it was getting from clients was anecdotal and about five years ago decided to implement a systematic audit system. Partners not involved with particular clients visited the clients and asked for feedback on some of the more macro aspects of the relationship. "A lot of very positive changes have grown out of this approach," he says. Other firms have adopted similar techniques. "We have found that sending questionnaires to legal departments for whom we act and asking them to reply anonymously allows some of the real issues to surface," says Steven Molo of Winston & Strawn.

Welsh is happy as General Counsel to

sit down once a year with a firm's relationship partner to talk about how things are going. "It is normal for an employee to go through an annual assessment with his or her supervisor - the same process works well in this context," he points out. "You can get to a lot of issues in just a 15 or 30 minute conversation."

The annual or more formal review also has the advantage of allowing feedback from the client as a whole. General Counsel can prepare by asking other divisions of the company how they find dealing with the firm. How does the accounts department find their procedures, for example?

5. How can we improve our cost to value ratio?

One issue which is at the forefront of the minds of all parties to the relationship at all times is the question of fees. Here, as in other aspects of the three-way relationship, communication is key. In recent years the practice of law firms and in-house departments agreeing budgets for regular work or one-off jobs has become standard practice. But that alone is not enough. "Adequate defin-

ition of the task is paramount," says Foradas, "particularly where a fixed fee has been agreed." "Conducting checks along the way is essential too," adds Robert Walner, Senior Vice President, General Counsel and Corporate Secretary, Grubb & Ellis Company. "We need to agree at the outset on the various elements of the project, including staffing, strategic objectives and a budget," he says. "If the project involves litigation, we need to explore settlement at an early time. At each stage of the project, the results to date should be benchmarked against the prior criteria and changes in the criteria should be considered as the project progresses. If the project is litigation, settlement should be considered at each stage of the litigation."

As relationships deepen, flexibility becomes the watchword. "Very little of the work we commission is now charged on an hourly basis," says Hopp. Being creative with fees involves more than discounts and blended rates. Hopp gives the example of instructing a firm to terminate a series of contractual arrangements and offering the firm at the outset a success premium if it achieved the end result without liti-

gation in any of the individual cases.

Used in this way, fee structures incorporating incentives are a means of enhancing the likelihood of the business objectives involved being met. However, as Bill Brennan, Vice President and General Counsel at Bissell Inc. points out, "They are more likely to be palatable to the internal client when the work involved is of high commercial value to the company."

*The Martindale-Hubbell Counsel To Counsel (c2c) Forum on which this article is based took place in Chicago on 4th April, 2001. The Forum was co-hosted by Kirkland & Ellis; Mayer, Brown & Platt; and Winston & Strawn and was organized by ELD Project Marketing International, Inc. The facilitator was Ross Fishman, in association with ELD. Martindale-Hubbell was represented by Timothy Corcoran, Senior Director, Sales and Operations, and Marilyn Canning, Vice President, Marketing. The c2c series is one of the services Martindale-Hubbell offers to connect law firms and clients. For further information on forthcoming sessions, call 1-800-526-4902, ext. 5029 or email c2c@martindale.com or visit www.c2c.martindale.com*

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**Practice Profile:**

**Raytheon Creates Real-Time Outside Counsel Budget Burn Rate Monitor**

**Featured Company**



Company:	Raytheon Company
Industry:	Aerospace and Defense
2000 Revenue:	\$16.9 billion
2000 Employees:	93,700
Legal Department:	70 attorneys
Research Contact:	Woods Abbott, Legal Administrator

**Executive Summary**

- **Situation:** Raytheon Legal finds budget reports available via their case management system and finance department to be untimely and inadequate, resulting in insufficient tracking of outside counsel spending.
- **Action:** Raytheon develops Web-based tool that displays real-time burn rate of outside counsel spending against the fixed annual department budgets on a single screen.
- **Result:** Real-time budget burn tool allows managers to proactively identify budgeting problems, reallocate dollars from one budget to another and monitor outside counsel costs.

**The Challenge**

**Legal Department Experiences Difficulty Retrieving Relevant and Timely Outside Counsel Spending Data**

Prior to utilizing CaseTrack, a case management system, the process for collecting legal department budget data was onerous, resulting in data several months out of date.

In 2000, the legal department gained more control over budget reporting with the implementation of a new policy that all legal vendor invoices would flow through CaseTrack for payment. This system allowed managing attorneys to generate reports to view the status of their outside counsel spending against budget.

Raytheon Legal found, however, that the system was only effective if attorneys run reports on a regular basis (which they tended not to do). Furthermore, the system did not allow managing attorneys to view all budgets on a single screen in a user-friendly format.

As a result, Raytheon Legal did not analyze outside counsel spending regularly and attorneys lacked information about others' budgets.

The legal department business manager was interested in providing outside counsel budget data to all managing attorneys and the general counsel in an accessible, real-time format.

**The Solution**

**Raytheon Legal Develops Real-time Budget Burn Rate Monitor Using Corporate Portal Software**

Raytheon Legal customized Plumtree corporate portal software to query the CaseTrack database and display real-time cross-department budget burn rates (18 separate budgets) on a single Web screen. This budget burn rate monitor allows attorneys to view all managing attorneys' real-time outside counsel spending relative to their annual budget.

**Benefits:**

- GC can track outside counsel spending by practice area and/or business unit on a real-time basis
- Managing attorneys easily monitor outside counsel spending against budget and proactively notify GC of budgeting issues
- GC and managing attorneys readily identify budgeting errors and can request fund transfers from finance department
- Portal is user-friendly, including "fun" content such as stock quotes, travel information, horoscopes, etc

**Case-in-Point:**

Budget burn rate for one managing attorney is only 1%. Managing attorney investigates and learns that insurance matters are not hitting CaseTrack. Rather, invoices go directly to insurance companies. Legal department learns that they had inaccurately budgeted insurance matters.

**Implementation:**

Time: Several months to customize portal software for comprehensive functionality; consultant created budget burn rate tool in less than a day.  
 Cost: \$200K for 500 licenses enterprise-wide (150 for Legal).

# Six Sigma: Positioning for Competitive Advantage

January 2001 ACCA Docket

By Thomas L. Sager and Scott L. Winkelman

*Thomas L. Sager is vice president and assistant general counsel, DuPont Legal, and a Six Sigma Champion.*

*Scott L. Winkelman is a partner with the law firm Crowell & Moring LLP. He is his firm's engagement partner to DuPont, a Six Sigma Black Belt, and chair of the firm's eBusiness Group*

Six Sigma has emerged as the latest and hottest quality initiative within corporate America. Pioneered and embraced by such companies as Motorola, Allied Signal, and General Electric, this statistically driven, data-intensive methodology has become a key business strategy for increasing client satisfaction, reducing costs, and improving earnings for America's Fortune 100. DuPont is a recent convert and has placed considerable talent, resources, and expertise behind this process-focused effort.

A common reaction to Six Sigma is that, whatever its value when applied to the manufacturing settings where it originated, it does not translate well to transactional functions, such as the practice of law. Our two years of experience suggests otherwise. Analytically, the statistical and organizational principles underlying Six Sigma apply naturally to a broad array of legal functions. The challenge is how to identify those functions and to translate concepts originally conceived in an engineering environment to a company's legal department. We trust that our experience at DuPont Legal demonstrates that this translation effort is time well spent.

## SIX SIGMA--HUH?

First, some basics. Six Sigma is a methodology focused on improving processes. The term "six sigma" is a statistical measurement, signifying 3.4 defects per one million opportunities for failure. By way of comparison, four sigma is an average process: it equates to about 6200 defects per one million opportunities. Another example: three sigma is equivalent to one misspelled word per 15 pages of text, whereas six sigma is equivalent to one misspelled word per 300,000 pages. Thus, when we say Six Sigma, we mean best in class, a virtually defect-free process.

To define the term "defect," we must determine a customer's expectations. The customer is the intended beneficiary of any given process, whether it be the purchaser of the product created or the user of the service provided. If the customer's goal from a given process is quick delivery, then slow delivery is a defect. If the customer's goal is low cost, then high cost is a defect. Six Sigma efforts strive to maximize customer satisfaction and, hence, maximize quality by driving quality at the front end rather than playing catch-up at the back end after failure has occurred.

Six Sigma purports to be different from previous quality initiatives in its dedication to rigorous scientific proof. Six Sigma reduces all processes to a common statistical formula: a sigma value signifying x number of defects per unit. To satisfy Six Sigma rigor, process improvements must

then be statistically proven to improve that sigma value. Thus, Six Sigma trainees learn to use such tools as process mapping, failure mode and effects analyses, standard deviation calculation, and related methods to ensure that the savings we think we are seeing and hope we are seeing are in fact realized.

Six Sigma, in short, represents the maximum performance a process can feasibly obtain. But Six Sigma is more than a formula. It is a culture shift. It drives an organization to drive all of its processes toward total quality and to join all its personnel in this mission.

## **GETTING STARTED**

Six Sigma begins with training--and lots of it. A company's Six Sigma army consists of "Champions," "Green Belts," and "Black Belts." As implemented by DuPont, Champions receive one week of training; Green Belts, two weeks; and Black Belts, four weeks, all conducted by outside Six Sigma experts. The training is essentially an intensive primer in statistics and process management with plenty of homework and both individualized and tag-team efforts at actual process improvements.

At DuPont, the Champion's role is to quarterback a business unit's Six Sigma effort by defining its Six Sigma goals (amount of savings, numbers to be trained, areas of application), identifying its Black Belt candidates, removing cultural, institutional, and other barriers to implementation, and creating a sense of urgency and optimism in support of the unit's efforts. Black Belts are the foot soldiers who must complete four to six major projects per year with annual savings of about \$175,000 per project. Green Belts work with Black Belts on ad hoc projects that are typically smaller in both scope and forecasted dollar savings.

At DuPont Legal, Black Belt candidates are culled from attorneys and staff who possess some technical/scientific competence, familiarity with legal processes, a facility for bottom-line, business-like thinking, and, perhaps most important, a willingness to accept with good humor the inevitable ridicule of peers and to pursue action that threatens the legal status quo.

## **IMPLEMENTATION AT DUPONT**

So how has Six Sigma played out at DuPont Legal? Quite well thus far, we think, thanks largely to three factors.

First, this initiative, like no other, has the full support of DuPont's senior management. A high degree of focus, intensity, resource commitment, and accountability at the executive level has greatly facilitated the rollout of Six Sigma within DuPont Legal and elsewhere. To that end, how we perform relative to our Year 2000 Six Sigma goals in DuPont Legal will directly affect everyone's variable compensation. That's right, everyone: lawyers, legal assistants, office managers, human resources professionals, and staff. This initiative also includes financial incentives for extraordinary contributions by our law firms and suppliers.

Second, most of our personnel view Six Sigma as an opportunity to become more knowledgeable about and aligned with the company's core business values and processes. This viewpoint has proven to be a tremendous motivator for many.

Third, because of our strategic partnering relationships with DuPont's network of primary law firms and suppliers and our previous collaborations on metrics in support of the DuPont Legal Model, project identification and implementation have occurred in the spirit of continuous improvement. Everyone (both inside and outside) focuses on the right solution for the client, in this case DuPont. That focus may mean fewer resources allocated to a given task. But we all learn from the process and become more competitive in our respective marketplaces. This focus also explains, in part, why we chose two professionals from our outside network to join our Six Sigma effort and to become Black Belts, to ensure that DuPont sees through the eyes of valued partners how to best implement these projects to ensure support from our firms in the field.

## **CORE PRINCIPLES**

Almost two years of Six Sigma experience have left us eight core principles that drive our efforts within DuPont Legal--principles that, we believe, could similarly aid any other legal organization's embrace of Six Sigma.

### **Identify Processes**

Six Sigma is, at bottom, a methodology for measuring and improving process capability. For starters, then, the legal Black Belt must seek out legal processes, by which we mean functions characterized by repetitive, recurring steps. How the department stores litigation case files, how the department purchases deposition transcripts, and how the department compiles company business records for production in lawsuits are all processes susceptible to Six Sigma analysis no less than how a product is made or shipped.

### **Start with Paper**

All legal processes can generally be grouped into two categories: (1) paper-driven processes, such as how the department collects and maintains litigation documents and whether the department maintains records in paper or electronic form, and (2) people-driven processes, such as how efficiently attorneys take depositions and what role local, as opposed to national, counsel should play in pleadings preparation. Our experience suggests that it is best to focus initial Six Sigma efforts on paper processes. The reasons? First, Six Sigma philosophy frowns on variability, and paper processes often lend themselves to standardized process improvements that necessitate little tolerance for variance: thou shalt image, thou shalt retain these categories of litigation files but not those, thou shalt use this copying vendor but not that vendor, and so on.

Also, paper processes often yield the quick victories, the low-hanging fruit that Black Belts seek out to achieve the early Six Sigma success stories that are essential to building confidence in the

company's effort. Third, proposed improvements in paper processes tend to encounter less resistance than changes in how people behave, attorneys often being of the view that how they spend their time is sacrosanct with no room for adjustment.

Accordingly, the legal Black Belt's first trip is often to the company's records custodian. He or she knows how paper processes operate in the legal department, has already compiled much of the data needed to measure process defects and improvements, and, most important, has pent-up opinions about what works and does not work in the legal function and has likely been frothing to share those opinions.

## HOW DO YOU PROVE SAVINGS WITH SIX SIGMA?

In Six Sigma, we can't assume savings: we must prove them. At DuPont Legal, the challenge is to compare the costs of a given legal process in its current state with the costs once we have applied Six Sigma analysis and have eliminated defects in the process. Basically, this process involves seven steps:

- (1) Define the defects. Through process-mapping and other tools, we first work to understand the process in question and how to improve it. For instance, a recent DuPont Legal project focused on what becomes of litigation files when the litigation ends. We concluded that the process defects were that we retained too much file material and that we retained the wrong categories of materials.
- (2) Identify the cost variables. We then identify the cost elements of the process. In the closed litigation file example, those variables are the costs associated with (a) processing (culling the file), (b) purchase of the box used for off-site storage, (c) shipping the box to the storage facility, (d) costs of storage, and (e) any real estate space saved by retaining fewer records.
- (3) Distinguish hard from soft savings. At DuPont, only hard savings count toward our dollar objectives. By hard, we mean those cost items for which DuPont actually pays out money. Thus, the manual labor associated with processing a closed litigation file is a hard cost if an outside vendor does the processing, but a soft cost if a DuPont employee does the processing, because freeing up an employee's time, while of great value, does not directly reduce DuPont's bottom line.
- (4) Identify a measurable unit. To compare the world as it is with the world post-Six Sigma, we must choose a standard unit of measurement. In the closed litigation file example, the unit chosen was costs per box of closed files.
- (5) Compare the old to the new. To determine the costs of the current process, we took a statistically significant sampling of litigation files, making sure that the files fairly represented the litigation docket in terms of size of case, subject matter of litigation, and so on. Using data over a five-year period, we then calculated the cost per box and total boxes stored historically to arrive at a total annual cost of closing files under the current system. We then performed the same analysis again, this time assuming that the new process was in place with its new



guidelines governing which litigation files to retain. The difference between the results of the two analyses represent annual savings from this project.

(6) Review with an expert. We are neither statisticians nor financial analysts. Our next step, therefore, is to review our data analyses with an assigned financial analyst, himself trained in Six Sigma, to reality check our calculations and methodology. At DuPont Legal, this step often results in the Black Belt project leader being directed back to the drawing board before the project is initially validated with defined projected savings.

(7) Control. Even once the project is initially validated, the Black Belt's work is not done. With the process improvement in place, we must then analyze its implementation, continue to gather data, and return for final validation in which projected savings are in fact proven or disproven.

### **Map the Process**

Of the analytical tools used in Six Sigma, we have found process mapping most pivotal to successful legal projects. The concept is simple: diagram, in flow-chart fashion, each step in the legal process under review, such as how a pleading winds its way from outside counsel to in-house counsel to client to open litigation file to closed litigation file and so on. Done correctly, the result is often multiple versions of a map: the process as we believe it exists, as it in fact exists, and as it should exist once defects are eliminated.

Mundane though it sounds, process mapping often yields dramatic results. Litigation paper, for example, typically travels through a legal function in mysterious, labyrinthine ways, often for no better reason than historical accident or unchecked bureaucracy. Defects abound, from redundant steps to wide variability to excessive paper touches. Eliminating such defects can yield substantial savings and efficiencies without any damage to company interests. Process mapping is also important for isolating both the specific process defect and the unit of measurement, whether it be cost (the dollars it takes to store a box of litigation paper), cycle time (the number of days it takes for clients to receive transcripts), or some other measurable unit.

### **Target Unconscious Spending**

Legal departments routinely take action without internalizing or even considering the costs of that action. Attorney A orders an expedited transcript when no case urgency exists. Attorney B retains all drafts of pleadings in her litigation file without considering the storage and processing costs associated with maintaining the file. Attorney C sends a pleading to a client simultaneously by mail, email, and fax, again for no apparent reason. Attorney D notices a deposition without analyzing why the noticed witness is material to the case, offensively or defensively. In each instance, the defect is not a questionable attorney decision but a nondecision, an action driven by reflex, not reflection.

Legal processes teem with such unconscious actions, not surprising given that careful analysis of the costs and benefits of legal action is rare. Six Sigma, as a statistical methodology, can help impose rigor on legal decision-making and better discipline legal action. Six Sigma forces us to

ask why process steps are as they are. Absent good reason, those steps are eliminated. In the course of their analysis, Black Belts routinely stumble upon mindless process steps in which inefficiencies have gone unnoticed. Better yet, eliminating such inefficiencies is often pain-free: defects are eliminated, and money is saved, without any corresponding erosion in the quality of legal services.

### **Apply Information Technology**

Six Sigma trainees are taught to focus on process inefficiencies first and solutions later. In practice, however, information technology fixes often bubble up early on in legal projects. Analysis of a litigation document repository, for example, instantly stimulates the question, "Why are we not imaging?" Purchasers of transcripts soon wonder, "Why are we ordering paper transcripts when computer disks are available, cheaper, and more readily searchable?" Likewise, legal processes that seem needlessly slow cry out for technology applications that reduce cycle time. By employing technology to improve legal processes, Black Belts not only further their Six Sigma goals, but also help motivate a company's attorneys to become more adept at using litigation technology.

### **Strive for Absolutes**

The best Six Sigma legal projects typically lend themselves to absolute, standardized guidelines. Many aspects of the practice of law are poor candidates in this regard because they necessarily involve judgment and case-specific analysis. How to cross-examine a trial witness, which expert scientist should testify in this case, and which affirmative defense is best argued on summary judgment are all functions that require attorney discretion and are not the best targets of initial Six Sigma projects. It is better to start with projects that are amenable to across-the-board, absolute process mandates: thou shalt electronically image collection documents; thou shalt retain litigation records for x years; thou shalt reimburse outside counsel for this form of deposition digest but not for that form; and so on.

Of course, attorneys will reflexively resist most any absolute mandate as a shackling of their creative freedom and will insist on exceptions to rigid Six Sigma rules. Don't buy it. Plenty of legal processes are ministerial, have no effect on legal outcomes, and lend themselves well to corporate mandates that are binary (lights on, lights off), enforceable, measurable, and controllable.

### **Leverage Learnings or Don't Change the Subject**

Upon completing a Six Sigma legal project, the Black Belt's strong temptation is to turn next to altogether different legal functions. Resist that temptation. Six Sigma successes can expand exponentially when a company leverages project lessons to similar functions elsewhere in the business. Thus, upon completing a statistical analysis of which litigation files a company should retain at the conclusion of a lawsuit, the next question should be whether the resulting guidelines could improve the process for retaining nonlitigation files, active case files, or even files outside the legal area. By leveraging projects in this way, the legal department can pioneer Six Sigma's application to transactional processes company-wide.

## **Be a Forum for Pent-Up Grievances**

Most legal departments feature their share of attorneys and staff who have long been thinking along Six Sigma lines without knowing it--identifying process defects and wondering why we practice law in the inefficient way we do--but have lacked a forum in which to voice their insights. The Six Sigma legal team should be that forum. Pent-up pet peeves are often the stuff of superb Six Sigma projects. Create a suggestion box or chat site on the company intranet. Call town meetings to invite project suggestions. In these and other ways, the legal team should energize the entire legal function around common Six Sigma goals and thereby harness existing project concepts before feeling obliged to generate projects anew. This initial invitational step should yield promising projects, lighten the creative burden facing the Six Sigma team, and promote a climate of inclusion and buy-in to the legal Six Sigma effort.

## **IT WORKS FOR US; HOW ABOUT YOU?**

Do we commend Six Sigma to others in the corporate legal world? Yes, for some. Six Sigma principles will resonate with those who believe legal professionals should bear some responsibility for their client's bottom-line success, with those who think that legal services, no less than other services, can improve through process analysis, with those who agree that process is not something to create anew every time a new lawsuit or commercial transaction surface, and with those driven by a commitment to continuous improvement and who recognize that the complete lawyer brings more to the table than legal acumen.

Of course, your Six Sigma efforts will meet plenty of skepticism, from attorneys in particular. Expect such reactions as "Isn't this just the newest corporate flavor of the month?" and "Maybe this works fine in an assembly plant, but not in the practice of law." As we trust we have demonstrated here, such reactions don't move us and shouldn't move you. Fairly answering such doubts requires a mixture of balance (conceding that Six Sigma does not apply to all legal functions), proof (in the form of actual Six Sigma successes), persuasion (demonstrating analytically that the principles apply), and patience (tolerating, even humoring, those skeptics whom you can never hope to turn around). The fact remains that not everything an attorney does is impervious to process improvement. And the fact that core features of Six Sigma--attention to efficiency, elimination of process defects and redundancies, and striving for process standardization--are countercultural for lawyers is merely one more reason to embrace Six Sigma, because attorneys often are most in need for the wake-up call that Six Sigma provides.

Our experience at DuPont suggests that Six Sigma translates well to the legal function. That is not to say it translates indiscriminately to all legal processes; it does not. But with careful application, the payoff can be significant. Indeed, by getting its own Six Sigma house in order, the legal function can lead a company's effort toward efficiency and improvement and thereby round out its usual image as a drag on company resources.

We at DuPont Legal are by no means experts in the application of Six Sigma. But it takes no expert to recognize its value to the practice of law. 1