

Knowledge Management: A Macro View

by

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I. INTRODUCTION

“Knowledge Management” has been bandied about a good deal of late, not only in the general business community,² but also in the legal community.³ It has been the subject of books,⁴ magazine articles and numerous presentations and conferences. What does it really mean?

This article discusses knowledge management from the perspective of a lawyer in a large, international company, but should apply equally to other companies and law firms, big and small.

II. WHAT IS KNOWLEDGE FOR LAWYERS?

What, exactly, does a lawyer know?

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² See, e.g., “Just-in-Time Delivery Comes to Knowledge Management,” Thomas H. Davenport and John Glaser, *Harvard Business Review*, July 2002, pp. 107-111; “Introducing T-Shaped Managers - Knowledge Management’s Next Generation,” Morten Hansen and Bolko von Oetinger, *Harvard Business Review*, March 2001, pp. 107-116; “What’s Your Strategy for Managing Knowledge?,” Morten Hansen, Nitin Nohria, and Thomas Tierney, *Harvard Business Review*, March – April 1999, pp. 106-116; “Successful Knowledge Management Projects,” Thomas H. Davenport, David W. DeLong, and Michael C. Beers, *Sloan Management Review*, Winter 1998, pp. 43-57; *Harvard Business Review on Knowledge Management* (Harvard Business Review Press 1998)(with articles from as early as 1987).

³ See, e.g., “Defining Knowledge,” Daniel Evans and Storm Evans, *Law Technology News*, March 2002, pp. 47, 50; “Use of IT for Knowledge Management in Law Firms,” Petter Gottschalk, *Journal of Information, Law and Technology* (1999)

⁴ E.g., Nancy Dixon, *Common Knowledge* (Harvard Business School Press 2000); Chris Collison and Geoff Parcell, *Learning to Fly* (Capstone Publishing 2001); Ikujiro Nonaka, Hiro Takeuchi, and Hirotaka Takeuchi, *The Knowledge Creating Company* (Oxford University Press 1995).

First, there is what we learned in law school, like Hadley v. Baxendale,⁵ the Rule Against Perpetuities, the requirements for an enforceable contract and the necessary elements of a tort. After leaving law school, we add, through our experience, how to practice law, including how to draft a contract, how to negotiate a business deal, how to interview clients and how to cross-examine a witness. Depending upon our respective practices, we may be familiar with the Securities Exchange Act of 1934 or the Defense Federal Acquisition Regulations, or the law of oil and gas in Oklahoma. We now know a lot of people and we've gained a lot of knowledge about the players in the industries in which we work, including, for the inhouse lawyer, our employers, our competitors, our employer's customers and our vendors.

We've also developed a network of friends and acquaintances. Some are other lawyers or clients we have worked with or against. Some are judges or regulators. Some are clerks or secretaries. In some cases, we know what they like and don't like, what has worked with them in the past and what hasn't.

All in, we know a great deal, through training and experience. Much of our learning has come not from the successes we've had, but from the mistakes we've made. For mistakes are the most powerful teachings.⁶ What doesn't kill you makes you strong.⁷

III. HOW DO LAWYERS MANAGE THEIR KNOWLEDGE?

A sole practitioner can manage knowledge in his or her head, with the additional support of a good filing system, either for the paper or for the electronic artifacts of a lawyer's professional experience. That, plus a good secretary and a Rolodex, may be enough.

What happens, though, when that attorney hires an associate fresh out of law school? The hiring attorney teaches the associate how things are really done. He or she will work with the new attorney, reviewing their work, pointing out "mistakes" and making suggestions for improvement. But the most valuable knowledge that the hiring attorney passes along is how things are done (or, more exactly, how he or she does them), and why they are done that way.

He or she does this by telling stories and sharing files and examples and contact numbers. If the process goes well, and the new attorney works out, he or she will eventually be made a partner. The two partners will to a large extent practice law much the same way. Together, they may hire yet another new attorney, and continue the cycle.

If instead of hiring an associate, the attorney takes on a partner, the process is different. That partner will have his or her own clients. He or she will also have his or her own set of experiences, contacts, files, forms and ways of doing things. And sometimes less of a willingness to have his or her partner point out "mistakes." This can lead to a situation that

⁵ 9 Exch. 341, 156 Eng. Rep. 145 (Ex. Ch. 1854)

⁶ See Dale Carnegie, *How to Win Friends & Influence People* (Pocket Books 1981), pp. xxiii-xxiv.

⁷ Apologies to Tim McGraw ("Carry On," *A Place in the Sun* (Curb Records, Inc. 1999)), and Friedrich Nietzsche (*Twilight of the Idols* (1895)).

in some respects resembles two sole practitioners sharing office space, rather than a partnership.

The more lawyers you combine together, the more complex the collection and sharing of knowledge. This is as true in a law firm as it is in a corporate legal department. The problem of managing the information creation, capture and flow on a larger scale, across different people, different clients, different legal specialties, different collections of information and different locations is what “Knowledge Management” is all about.

IV. KNOWLEDGE MANAGEMENT MODELS

There are many models for approaching knowledge management. Here are two.

A. THE “KNOW-_____” QUESTIONS

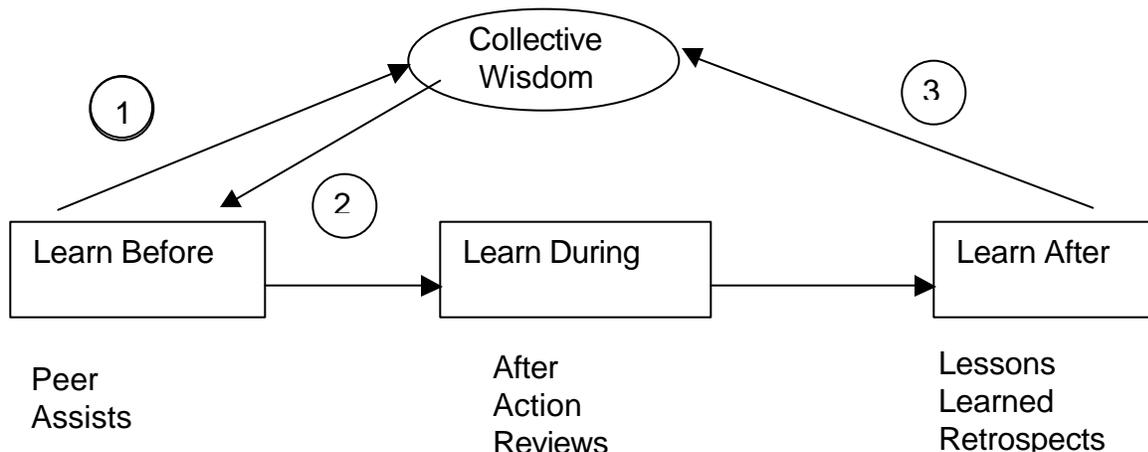
One of the conventional approaches to knowledge management is what might be called the “Know-_____” questions model. This involves using a series of questions to capture what people know, and then making that knowledge available to others. The questions focus on what you know, who you know, why things are done that way, and why things are not done another way. Thus, one can list them as the know-how, know-who, know-when, know-where, know-why, know-why not, and know-about questions.

By asking this series of questions, you collect information, data, and documents, and then proceed to organize it and make it available to others. This will include items such as form contracts, checklists, sample contracts, prior opinions, indexes, and practice files, and certainly needs to include your business Rolodex or its equivalent, complete with phone numbers. All these items exist in written form already, either in hard copy or electronically.

After you have collected this information and data, you can use technology to share this with everyone in your organization who needs it. But be careful – the information in its raw state is not as useful as information that has been synthesized first.

B. THE LEARN BEFORE>LEARN DURING>LEARN AFTER MODEL

The process model used in BP for knowledge management is the Learn Before> Learn During>Learn After model. That is represented graphically as follows:



In the Learn Before stage, you are preparing to do a project unlike others you have done in the past. That is when you check to see who's done this before, and what's been done. This gives you access not only to the work product, but also to someone with whom you can discuss how to go about this and what problems to avoid. In a large organization, spread over several locations, finding the people who've done it before can be a challenge. But once you've found them, by talking with them you can leverage their learnings and avoid their mistakes. They can provide you the type of information that is normally not written down, and thus is not capable of being found by a computer.

You check your files for similar projects you may have done in the past, and the collected files of others, if relevant. Maybe even go to the library. All these materials together represent a portion of the "Collective Wisdom" that is then available to you. This checking is represented by the numbers 1 and 2 in the diagram above.

If the project involves a team of people (even if only one lawyer), you might ask for a Peer Assist, where your team gets together with other people who have done similar projects before and ask them what they learned and what they would do differently if they were doing another similar project. You plan how to proceed.

In the Learn During stage, you check after meetings or discrete stages of the project and ask four questions:

- What was I (or the team) trying to accomplish?;
- What did I (we) accomplish?;
- Why was there a difference?; and
- What will I (we) do differently the next time?

This is a quick process, and should take no more than fifteen minutes, including writing it down. In the Army, where this part of the process comes from, these are called After Action Reviews, or AAR's. The output of these AAR's is primarily for the team that prepared them, but there will be occasions when the AAR's have value for others, in which case the learnings themselves should be captured in writing and shared more broadly.

In the Learn After stage, you have completed the project. Now is the time to sit down and take stock of what you accomplished. Are there written artifacts (samples, checklists, first drafts, phone lists, business cards, etc.) that would be useful to others on similar projects? Are there any lessons that you learned that you should capture for the next team that does a similar project? Now is the time to write down what otherwise will never get written: what you would do differently the next time. This is "knowledge," as opposed to information and data. If the project is big enough, and if your company does a lot of similar projects, a more rigorous collection of the learnings, called a Retrospect, may be worthwhile.

This highlights the key difference between, on the one hand, information and data and, on the other, knowledge. Managing information and data, with the technology tools available

today, is relatively easy. Managing knowledge, in its raw, uncaptured state, is nearly impossible. The key is to begin to institute a process to capture knowledge and write it down, so others can find it later.

After you have completed the Learn After stage, you then contribute that knowledge back into the Collective Wisdom. This is indicated by the number 3 in the diagram above.

Once you get the concept of capturing the unwritten knowledge, you're on the road. What other knowledge exists in unwritten form? Or in written form that isn't otherwise collated and shared? Knowledge about what has worked in the past and what hasn't, what this judge prefers and what that judge hates, why Client X requires a long form contract and why Client Y wants it all on one page, and, most importantly, the stories of the mistakes you or others have made in the past? These mistakes were a powerful source of learning for you, and can be immensely valuable for someone else to know so that they don't make the same mistake.

V. A WORD ON TECHNOLOGY

Much is made of the role of technology in the field of knowledge management. It is important to keep this in perspective, however. The underlying principles of knowledge management pre-date the personal computer; the pre-Atari generation had its processes for collecting and accessing knowledge. Technology -- chiefly the web and e-mail -- does change clients' expectations for turnaround time, and does provide momentum for law firms to move from the practice of leveraging associates to leveraging knowledge and experience. But technology is the easy part.

Getting people to change and practice law a new way is your most difficult challenge. You need to move to culture of sharing and collaboration or you will have an expensive system and perhaps great processes, but it won't provide full value. Your next most difficult challenge is capturing the knowledge of your senior lawyers, as there is generally an inverse relationship between the amount of experience a lawyer has and his or her comfort factor with the technology. This requires special attention and patience.

VI. HOW TO IMPLEMENT

The place to start is to ask the potential users what they would like or need to make their jobs easier. Then use that information to develop a plan.

Where to start? You could start at the top and build a system and a process for the entire organization from the top down, or you can start from the bottom, at the individual team or office level, and build up. I recommend that you do both.

There are some tasks that can only be done at the organization-as-a-whole level, such as hiring consultants for the design and construction of a large technical system. Other steps, such as collecting the information that only a few people need and use, need to be taken, but they can be done simply. After allowing many of these small teams to design something that works for them at the micro level, you can then distill from their approaches

general principles and connect the different sites to the mother ship at the right time. These will be where some of your early successes are. It doesn't take much more than a copy of FrontPage[®] (a software package from Microsoft that simplifies creating a website) and some server space – technology is not a barrier. But the end product must be useful to the users.

The top people in your legal organization need to be seen using the tools. This is not limited to participating in the discussion groups on the website, but also includes walking the walk in other ways by pointing out where, in retrospect, they might do something differently the next time, and why. Overcoming the resistance to discussing “mistakes” or “opportunities for improvement” is a critical step. This can be as simple as asking, at the end of every meeting, “Based on this meeting, what would we do differently the next time?” It will require creating full personal profiles of what your senior attorneys have done and who they know. This needs to go beyond name, rank and serial number, and can be used as a model for the other lawyers in the department to follow when they prepare their own profiles. The more complete the profiles, the easier it is for the entire organization to find out who knows who, and how, and when.

Try out some of the processes. At an early stage, do a Peer Assist and ask some people who've done similar work to advise and assist, based on their prior experience.⁸ Do an AAR. At the conclusion of a project, sit with the other core people involved and do a “Lessons Learned,” asking (and answering) “What is it that we learned from this project that would be useful to someone else?”

VII. CONCLUSION

While the written work product lawyers have created in the past – the contracts, the memos, the opinions, etc. – form a large part of our collective wisdom, the true power of a knowledge management system comes from capturing and making available to others the unwritten “tacit” knowledge we have – the people we know, the mistakes we've made, and the reasons why we do it this way and not that way. To the extent that we can write down the stories that define us and that we can access the collective brain on a real-time basis, we can provide better, more efficient legal services to our client. To manage both forms of this knowledge across multiple locations and multiple disciplines is a challenge, but one that yields huge value.

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⁸ On the business side of the hall, some business clients require a Peer Assist as part of the approval process for a major project. Those business clients might look favorably on lawyers who use the same techniques in their area.

