KNOWLEDGE MANAGEMENT PRIMER

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Knowledge Management Primer

by

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I.   INTRODUCTION

"Knowledge Management" is a term that 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's been the subject of books,[4] magazine articles and numerous seminars and presentations. What is it and why does it matter?

This article discusses knowledge management from the perspective of a lawyer in a large, international company. My thesis, however, is that Knowledge Management is an issue to be addressed both at the macro level in a company as large as BP and at the micro level for each practicing lawyer, whether in a company or in private practice.

II.   WHAT IS KNOWLEDGE FOR LAWYERS?

What, exactly, does a lawyer know?

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[1] The views expressed herein are solely those of the author, and may not necessarily reflect the view of BP America Inc., its affiliates or subsidiaries. No attempt is made to render legal advice.

[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); T. Davenport and L. Prusak, *Working Knowledge* (Harvard Business School Press 1998); Ikujiro Nonaka, Hiro Takeuchi, and Hirotaka Takeuchi, *The Knowledge Creating Company* (Oxford University Press 1995).

Well, there's all that stuff we got in law school, like <u>Hadley v. Baxendale</u>,[5] the Rule Against Perpetuities, what's required to have an enforceable contract and what are the necessary elements of a tort. After getting out of law school, we added, 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. 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.

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

All in, we know a lot of stuff, through training and experience. And a lot 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 preferred case is that the hiring attorney teaches the new attorney that "practice" part of law that law school told us about. The hiring attorney passes on what he or she knows about how things are really done. He or she will work with the new attorney, reviewing the 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).

He or she does this by telling the new attorney stories and sharing files and examples and contact numbers. The new attorney is willing to listen and participate in this process, because he or she believes this is how new lawyers have always learned "the law." If the process goes well, and the new attorney works out, the model says he or she will eventually be made a partner. The two partners, in that case, will to a large extent share how they do things, how they practice law. Together, they may hire yet another new attorney, and continue the cycle.

The situation gets a little more complex when the attorney, instead of hiring an associate, takes on a partner from elsewhere. 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

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

Extending the model a little further, the process and the conflicts grow exponentially when the lawyers add an office in another city, or when the practice is expanded by adding a lawyer or lawyers in different areas of practice. Economically this can make sense, as it provides additional coverage and creates the opportunity for cross-selling, where a client who came to one attorney in the practice to have a will drafted then wants to acquire a company. If the client likes the first lawyer, the client may be willing to work with another lawyer in the same firm, on the assumption that the attorneys must be much the same or they wouldn't be practicing law together.

In many cases the clients are right. There are firms where the lawyers are similar in their approaches and in their quality. That is not, however, always the case. But I digress.

How do these lawyers share the knowledge that they have, about the law, about "their" clients, about the opposition, about the judges, about the contacts, and about their files? The process by which this is done would come under one of the definitions of "Knowledge Management."

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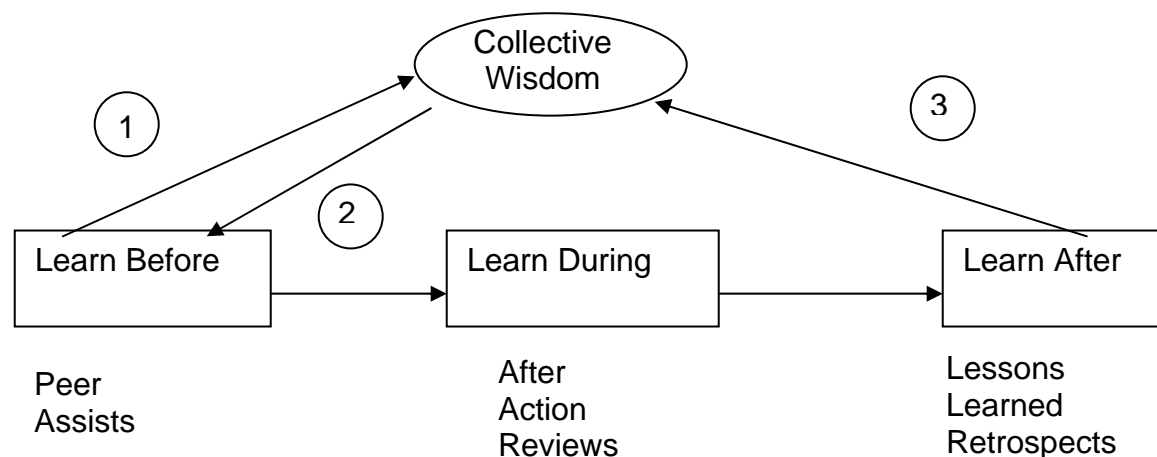
By asking this series of questions, you can collect a lot of information and data, and then proceed to organize it and make it available to others. This information and data can include items such as form contracts, checklists, sample contracts, prior opinions, indexes, and practice files, but certainly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

But what likely doesn't yet exist in hard copy form is the great wealth of 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 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 not to make the same mistake. But we don't normally share our mistakes with others.

The purpose of the "know-____" questions is to unearth the existing hard-copy data as well as to focus in on the stories of why we don't do this and why we do do this. Then you can use technology to help make this information available to 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:

```
                              ┌──────────────┐
                              │  Collective  │
                              │    Wisdom    │
                              └──────────────┘
          (1)                                         (3)
                  (2)

  ┌──────────────┐      ┌──────────────┐      ┌──────────────┐
  │ Learn Before │ ───→ │ Learn During │ ───→ │  Learn After │
  └──────────────┘      └──────────────┘      └──────────────┘

      Peer               After                 Lessons
      Assists            Action                Learned
                         Reviews               Retrospects
```

In the Learn Before stage, you are preparing to do a project. That is when you check to see who's done this before,[8] 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 know how can be a challenge.

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.

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[8] Of course, if you yourself have done several similar projects in the past, you might not need to involve someone else. While having a conversation with another experienced lawyer might add value, it is not necessary in every case.

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 to thirty minutes. 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 and should be 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 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? 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. Apart from collecting the artifacts, the key activity is asking and answering the question: "What would we do differently the next time, and why?"

After you have completed the Learn After stage, you then contribute that knowledge back into the Collective Wisdom, so that others will be able to find it later. This is indicated by the number 3 in the diagram on the preceding page.

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.

There are actually three main parts of any knowledge management implementation: People, Process and Technology. These are represented as follows:

People

Process   Technology
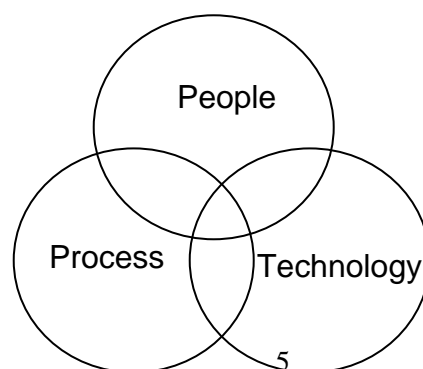
In order to "manage your knowledge," you need to have people who are committed to collaborating and sharing. This requires mutual trust and respect. You also need to have processes for capturing and synthesizing your knowledge. These can be as simple as a common index methodology to be used for all filings, whether those are paper files, hard drive files, e-mails, attorneys' files, or materials on a corporate local area network. Finally, you need to have a technology to support the organization, the access and the flow of knowledge. There are no bright lines between these different areas, and there is considerable overlap.

While you can make progress in that space if the People and Process are right, the People may not have the Technology to communicate with one another. If the People are motivated and the Technology exists to collect and access information, they may not have a Process to know how to synthesize and share that information. If the Process is right and you have the right Technology to support it, but not the People, then nobody's doing it. Unless you have all three elements working together, you will not get the full value of the process.

If you do not have a perfect system in place now for all three elements, you will probably be looking at a change management process to get from where you are to where you want to be. In that change management process, Technology is the easiest part. The next hardest is Process: developing and documenting procedures for knowledge capture and synthesis. The hardest is getting the People to change and practice law a new way. You need to have a fundamental culture of sharing and collaboration or you will have an expensive system and perhaps great processes, but it won't provide full value.

To illustrate this point, a word on the pie chart of Knowledge Management, as it applies to a computer-based site for lawyers. There are three principal components of a computer-based knowledge management system: the content area, the contact area and the flow area.

The content area is the static portion of the site, with the old contracts, samples and checklists, old presentations, links to useful web-sites, phone lists and client organizational charts and similar data. This needs to be organized, searchable, easy to supplement and update, and easy to weed.

The contact area is the place where you find who knows who and what and how. This requires the lawyers to prepare detailed profiles of what and who they know and what they have done. This, too, needs to be easily searchable and easily updated.

The flow portion of the site is where the interactions between attorneys take place, where it is possible to access the greater brain of the legal function. This can and should include moderated threaded discussion groups where natural work groups of lawyers with a common interest around a topic, say e-commerce or antitrust or oilfield production handling agreements, get together and share thoughts, and where people with questions will come seeking the expertise.

In terms of value, maybe 20% of the value of a "Knowledge Management system" comes from the content portion of the site. That is the electronic file cabinet. While valuable, and helpful to establishing consistency and avoiding recreating the wheel, this is not the major source of value. It is, however, the easiest thing to do.

Of the remaining 80% of possible value to be gained, maybe 30% comes from having a robust system for gathering and capturing and accessing the contacts that people have and the things that they have done. This allows lawyers to contact other lawyers who have done similar things in the past, or who have had a case before that judge or who have worked with that attorney. Or who have negotiated a deal with that company. Having a robust contact system allows the lawyers to connect at the one-to-one level with the person with directly applicable experience, and tap into that experience at an early stage of the process.

The other value to be gained -- and it represents fully 50% of the value of a Knowledge Management system for lawyers -- is in capturing the conversations of your lawyers around an issue. Discussion groups can go a long way to capturing this, or at least in providing the raw material for the capture. In law, there often is no one "right" answer; rather, the practice of law is an exercise of judgment, training and experience. It is difficult, if not impossible, to capture this all on a piece of paper. Having discussion groups allows lawyers to access the greater brain, around the world and around the clock, and across business units.

A discussion group is a good place for the experts to gather and discuss topics, and for others to access that experience. That access can be by way of questions sent into a threaded discussion forum. Or it can be by way of a review of prior discussions and other frequently asked questions. This preserves the knowledge and builds and supports the relationships of trust and mutual respect that are critical to any effective knowledge management process, and can operate seemlessly over multiple time zones.

VI.   WHAT HURDLES WILL YOU FACE?

Most of the hurdles that you will face in trying to implement a robust knowledge management system are cultural, not technical.

Either due to something in the selection process, or due to their training, lawyers place a premium on independent problem solving. Lawyers are good at organizing the facts, analyzing the situation and giving advice. They are good at pointing out the mistakes of others. As a rule, however, they are not very good at sharing, at taking advice, or at admitting their own mistakes. These are three major hurdles.

In trying to implement a knowledge management process in your organization, you are facing a management of change process. The lawyers have, like professional golfers, developed and finely tuned their independent skills. Except for events like the Ryder Cup, however, professional golfers do not play as teams.

Knowledge management, however, requires that the lawyers play football, not golf. While there may be individual stars on a football team, unless each player supports the others and each fulfills his or her individual role, the team won't, as a rule, win. So your

challenge is to convince a bunch of professional golfers to play football. Knowledge management, like football, is a contact sport.

Lawyers also do not normally point out where they have made a mistake, or even admit that they would do something differently the next time. A major source of the value of a knowledge management system is admitting your own mistakes and leveraging not only your own mistakes but also the mistakes of others.

The more senior lawyers have not grown up with e-mail and the Internet, and some may suffer from either mild or extreme cases of technophobia. It can be easier for them to learn in private, perhaps with a non-challenging mentor, such as a high-school or college student. If the senior lawyers don't use it, the system will not generate full value, as they are generally the ones with the most knowledge of the history of the organization and the industry, as well as being a major source of the know-who.[9]

If your organization does not have a single computer platform office-wide and world-wide, you will need to deal with incompatibilities. So, too, if you do not have one common culture across all offices, what works in one place might not work in others. One size does not fit all.

Lawyers can be somewhat resistant to sharing "less-than-perfect" contracts or drafts for group use. This can be because they think their peers will criticize their work, or that one of their peers may not use the contract for the right situation, and the drafting lawyer will somehow be held responsible. And if the lawyer does not know the person who drafted the form agreement, and cannot personally vouch for that attorney's quality, he or she won't use the work product from an unknown or untrusted source.

The players need to know and trust the other side of the exchange. Short of frequent meetings of all the attorneys in your organization (which is impractical and expensive in a large organization), or providing cash incentives for contributing material to the system, and for actually using the system rather than writing on a clean page, this is not an easy problem to solve.

One of the biggest hurdles is time. The lawyers will say that they do not have the extra fifteen minutes a day or a week to add something to the system or to check the system to see if something's there that might save them time. Without an investment up front by all, even at the expense of some slippage on delivery of other projects, you will have difficulty making progress. Lawyers will expect an immediate return on their investment, and need to be patient. Changing the course of a large ship takes time. And this takes money, too.

You will make mistakes in some of your early rollouts, as there is no one right way to do "Knowledge Management." Those lawyers who resist the change for whatever reason will point to these early failures as proof that the system will never work. One way to balance this is to find a lot of early successes, even on small things, and publicize those broadly. Celebrate those successes.

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[9] *See,* Rob Cross and Larry Prusak, "The People Who Make Organizations Go – or Stop," *Harvard Business Review*, June 2002, pp. 105-112.

You will need someone to coordinate all this collaboration, at least in the early days. This will not become part of your new culture unless you have someone driving the effort. This is not a part-time job, and needs to be done by someone relatively senior. Otherwise, the effort can be dismissed or ignored. There needs to be a federal direction and budget for at least a part of this, as otherwise no one office will have enough incentive to "gold plate" some of the early efforts to stand as examples for others. There may be a tendency to do it on the cheap, ignoring the greater value, or to not do it at all, because the first try will be too expensive.

VII.   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 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 items, such as collecting the information that only the people at a small team level use and need, need to be done, 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 has to 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 does need to include creating full personal profiles of what they've 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.

At the other end, either at the individual lawyer level or at the individual team level, the lawyers need to think about what they do and how they handle matters. Where do they look, and what do they use to get their job done? After they've done it, how do they find it again? If they've done a draft contract, they need to do a memo to the file to explain to the next person why that contract shouldn't be used except in this unusual fact situation, or why the indemnities are the way they are. This doesn't need to be a detailed note, but the effort needs to be made. Otherwise, the document has no context except for the lawyer who wrote it. There is a checklist of questions you might ask and answer attached as Exhibit 1.

The individual lawyers need to prepare profiles of what they've done and who they know as well, so that they can be found by others. You need to be easy to be found in your area of experience, or you leave this to chance. All these profiles can be put into a system so that if you need to know someone who's done government contracts, you can find them. Or if you need to know someone who knows someone at a competitor, or who has worked with or against an external lawyer. This is the know-who, know-how information that fits that model.

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.[10] They may need to be reminded that their role is to assist, not to do. Do an AAR (a guideline for this is included as Exhibit 2). Spend fifteen minutes as a team asking and answering the four questions. At the conclusion of a project, sit with the other core people involved and do a "Lessons Learned," asking and answering the questions set out in Exhibit 3. Or just ask yourself: "What is it that I learned from this project that would be useful to someone else?"

VIII. LESSONS LEARNED

Here are some of the lessons learned:

- The two most critical elements for successful implementation are: (1) active involvement by top management in the process, including use of the new processes and technology, and (2) the need to recognize and reward the participants for their contributions to the collective wisdom.
- This takes more time and more patience than you expect; sustaining the effort is a challenge.
- While it is simple to do a quick website using FrontPage® or similar, the world is moving to dynamic sites, using active server pages (talk to your techie geek and he or she can explain). Plan for a lot of simple sites that get redone and/or connected together "later."
- Make it easy to add material.
- You have to give to get; if you use materials from the system, you need to contribute materials for others.
- Ask the users what they want.
- Avoid the "knowledge management" nomenclature. Lawyers can be turned off by the use of what appear to be buzz words.
- Organize the materials the way the lawyers who use them do.
- A strong search function is critical.
- Establish moderated discuss groups that send interested users an e-mail when new questions or answers are posted in that discussion group. If top legal management participates in these discussion groups on a regular basis, it creates momentum and visibility within the organization.
- Lawyers were slow to adapt to e-mail; they might be more willing to accept a system that looks more like e-mail than they are to accept one that looks like a webpage.

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[10] 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.

- Technology is the easy part. The personal change is the hard one.

IX.   CONCLUSION

While the explicit knowledge lawyers have created in the past – the contracts, the memos, the opinions, etc. – form a large part of our collective knowledge, the true power of a knowledge management system comes from capturing and making available to others the "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.

EXHIBIT 1

<div align="center">Checklist</div>

1. What is the nature of the project?
    _____

    Have you done this type of project before?   Yes   No

                                                          ___   ___

    If so, how many times? _____

2. Who did you talk with to prepare for this project before starting work?
    _____

    _____

3. What materials did you review before starting work?
    _____

    _____

4. Did you look for materials on the network?   Yes   No

5. Did you prepare any outlines, checklists, forms or other materials that would be
    helpful to other people working on similar projects in the future? Attach copies.

6. What was unusual about that project that required adjustment from the standard
    approach or document? Attach description.

7. What would you do differently the next time based on your experience on this
    project? Attach list of top five items.

8. What were the main legal issues?
    _____
    _____

9. What were the main commercial issues?
    _____

    _____

Name:_____

Location: _____

Date: _____

EXHIBIT 2

AFTER ACTION REVIEW GUIDELINES

As a team, answer the following four questions. This should not take more than fifteen to thirty minutes.

1. What were you trying to do (what was the intended outcome)?

2. What actually happened (key events, themes and issues)?

3. Why was the result different, or why did it work (why it happened)?

4. What would you do differently the next time (how would you improve)?

Rules:

Informal and open, but write it down

Soon after event

All key players attend and participate

Everybody is an equal

Focus on facts and actions, not feelings

Be specific, not general

Avoid criticism, focus on learning from mistakes/errors/weaknesses

Keep it positive, objective

EXHIBIT 3

LESSONS LEARNED

During the course of my/our work on this project, I/we learned the following things about the company (generally, or a specific business or function or law or people):

_____

_____

_____

Were I/we to do this project again, the five main things I/we would do differently would be:

_____

_____

_____

During the course of this project, I/we worked closely with the following other people:

_____

_____

_____

The major objectives of this project that were achieved were:

_____

_____

_____

The major objectives of the project that were not achieved were:

_____

_____

_____

Other major achievements, not within the original project objectives, were:

_____

_____

_____

Other interesting aspects of this project were:

_____

_____

_____

_____

Name of Project:

Nature of Project:

Start Date:

Completion Date:

Prepared by:

Location:

Prepared Date: