Knowledge Management: A Personal View

by

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I.   INTRODUCTION

"Knowledge Management" has been talked about, off and on, a good deal in the past twenty years or so, 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 gives an overview of knowledge management for lawyers from the standpoint of an in-house lawyer, and focuses on the question of what you can do to start "managing" your "knowledge."

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.,* Thomas H. Davenport, *Thinking for a Living* (Harvard Business School Press 2005);Dorothy Leonard and Walter Swap, *Deep Smarts* (Harvard Business Press 2005); Gretta Rusanow, *Knowledge Management and the Smarter Lawyer* (ALM Publishing 2003); Nancy Dixon, *Common Knowledge* (Harvard Business School Press 2000); Thomas H. Davenport and Laurence Prusak, *Working 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 <u>Hadley v. Baxendale</u>,[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 teachers.[6]

HOW DO LAWYERS "MANAGE" THEIR KNOWLEDGE?

The term "Knowledge Management" is a misnomer. Assuming we can all agree on what "knowledge" is, we can no more manage knowledge than we can manage the weather.

What you can do, however, is leverage knowledge. This is done by creating, identifying, capturing, organizing, distilling, and reusing knowledge, thereby multiplying its value. A sole practitioner can leverage 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.

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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.

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 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 their collective knowledge or wisdom. This is as true in a law firm as it is in a corporate legal department. The problem of leveraging 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"[7] is all about.

IV.   KNOWLEDGE MANAGEMENT MODELS

There are many models for explaining knowledge management. The process model used in BP for knowledge management is the Learn Before > Learn During > Learn After model. That is represented graphically as follows:
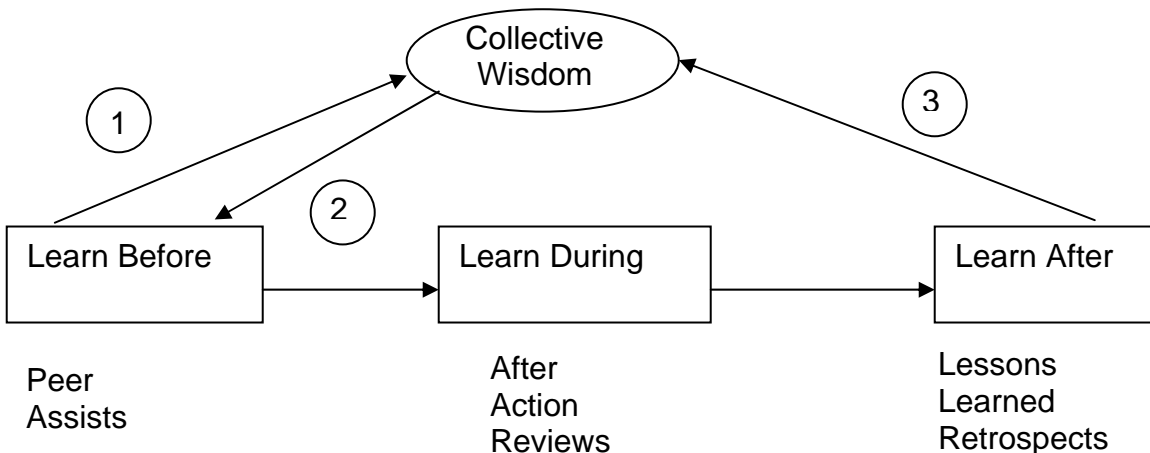
In the Learn Before stage, you are preparing to do a project unlike others you have done in the past. That is when you check to see who's done this before, and what's been done. This gives you access not only to the work product, but also to someone with whom you can discuss how to go about this and 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 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

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[7] What can I say? The term used in the trade is "Knowledge Management," not "Leveraging Knowledge" or "Leveraging Your Company's Collective Wisdom," either of which would more accurately capture the concept. To avoid confusing you any further, I will use the common terminology.

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. After you have reviewed the "prior art" and prepared a proposed approach to the project, your team gets together with other people who have done similar projects before and asks them for their input, based on their prior experiences. While at the end of the day how to proceed with the project is your team's responsibility, others can point out issues that you have missed, resulting in a better plan.

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 on a flip chart. 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 or a summary thereof 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 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. It is easier if you start at the beginning with this end in mind, and collect these tidbits as you go along, and put them to one side for later review.

This highlights the key difference between, on the one hand, information and data and, on the other, knowledge. As used here, "knowledge" tells you what part of the information is important, and why. Managing information and data[8], with the technology available today, is relatively easy. Identifying, much less "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.

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[8] Document management and financial or systems management have been the focus of numerous vendor presentations, often under the title "Knowledge Management." No wonder people get confused. What we should be talking about and focusing on is "leveraging knowledge," which requires a systematic process for creating, identifying, capturing, articulating, storing, sharing, accessing, using and refreshing what's

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 and articulating the unwritten knowledge, you're on the road. What other knowledge exists in unwritten form? Or in written form that isn't otherwise collected 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 FEW WORDS 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 a 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 are still pockets of rebel resistance where there is 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.   WHY HASN'T KM WORKED FOR LAWYERS?

The three main reasons that knowledge management hasn't worked for lawyers, generally, are (1) the nature of lawyers, (2) the compensation model, and (3) confusion.

Lawyers, generally, and the more senior lawyers in particular, were trained a certain way and have common traits. They're trained to look to the past, and not to the future; they are individual performers; they're competitive; they have large egos; they hate to admit mistakes to anyone; they're very critical; they're not inherently process-oriented; they're political; they're technophobic; and they are resistant to change. All of these make the move to a new culture – and that is what achieving success with knowledge management requires – a challenge.

The compensation model, both at firms and in-house, discourage the type of sharing that is required for knowledge management to work. The hourly rate does not reward

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important for the next user about the data or draft or contract or relationship or situation, etc., or what mistakes to avoid.

efficiency immediately, although the people who write wills would starve if they didn't use more efficient models than other lawyers use. Partner compensation is not based on how much knowledge you've shared with others in the firm, or how efficiently you've handled matters for the clients. Clients are pressing for more efficiencies, but it's a heavy slog. The in-house environment is not remarkably different, as compensation is based largely on individual performance, not on team performance. In either environment, are lawyers required to help others and admit mistakes in order to get promoted or get paid more?

There is, as I've said elsewhere in this article, a lot of confusion surrounding knowledge management. What is knowledge? What is management of knowledge? What are the accepted techniques for managing knowledge?

For me, knowledge management efforts will not be successful unless the cultural impediments are recognized and addressed, and people take a basic, non-technical approach to the practices and procedures that underlie knowledge management. Instead of looking at more and more technologies for data and information capture, we should be looking at the fundamental practices developed outside of the legal arena. Build, support, nurture and reward networks and communities of practice. Develop a functioning expertise bank, not of documents but of people who know useful stuff.

VII. HOW TO IMPLEMENT AT A MICRO LEVEL

Assuming that you want to do something to more effectively leverage the collective knowledge of your organization, I recommend a four-step process.

Step One: Read *Working Knowledge*, by Larry Prusak and Tom Davenport. This will give you a deeper understanding of the essence of knowledge management.

Step Two: Read *Leading Change*, by John Kotter. This will give you guidance on the eight steps to leading a major change initiative.

Step Three: Start with yourself. You need to model the behavior for others.

How do you start with yourself?

First, draw up an inventory of what you've done, covering the nature of the various projects or matters you have worked on in the course of your career. This needs to include, but go beyond, a listing of law school and job titles since graduation. What are your areas of competence and, more importantly, recognized expertise? Write those down.

Second, create an inventory, starting with your core documents. What are the contracts, presentations, checklists and guidelines that you keep in that special file, and that you reuse time and time again? Would these be useful to others? Then add a list of who you know, whether that's within your own company, or in your industry, or in the courthouse or external firms or government. Who do you know who might be useful for someone else? Think of it as reverse Client Relationship Management. This is the articulation step.

Third, as you complete projects, start to create a one-pager for the file outlining what went right, what didn't, and what you'd do differently the next time. This is a helpful learning for you, and gets you into the practice of knowledge identification and capture. Start asking the question, at the end of a meeting, "Based on what happened here, what do we want to do differently the next time?"

Fourth, be on the look-out for stories. These can be the stories that define your history or your company's history. Was there a lawsuit that had a huge impact of the company's ongoing behavior? What characteristics of your company are embedded in those stories? Stories are an efficient way to transfer knowledge and values, and are civilization's earliest form of knowledge management. They still work.

Fifth, start to share. Share the inventory you created in Step One with others with whom you practice. Start with your immediate work team. Also, would your core documents collected in Step Two be of value to them? Do you trust your immediate team enough to give them these documents? If not, your problems are not knowledge management problems. Share your one-pagers created in Step Three.

The purpose of the modeling of the behavior is to infect others in your work place with the knowledge creation and sharing virus. These people are, by and large, pretty bright folks. They will see the value in sharing. As they use your material, you will get even more stories of how much work this saved Mary or Paul. And it builds a different sense of team. And they will discover things about you that they never knew, and that could be useful to them in the future. It is then much easier to get them to start to change.

Step Four: Expand your sharing network. Include other teams, line management, and your clients. What about your outside counsel? As you share, start to encourage others to share back. Unfortunately, you have to give to get. If you give first, then you are a catalyst for the creation of the culture of collaboration and sharing that is what leveraging knowledge is all about.

VIII.   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 our learnings along the way and capture the stories that define us, we can provide better, more efficient legal services to our clients.

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