

2010

White Paper, The Emergence of Knowledge Analysis: Change and Knowledge Management in Large Law Firms

Ronald W Staudt, *Chicago-Kent College of Law*

The Emergence of Knowledge Analysis: Change and Knowledge Management in Large Law Firms

Ronald W. Staudt

Professor of Law and Associate Vice President for Law,
Business and Technology at Chicago-Kent College of Law

Meet knowledge management's new internal customers: Finders, Minders and Grinders.

Knowledge management ("KM") teams in large law firms have new internal customers: the managers of the firms, the finders who are generating new business, the marketing chairs who are positioning the firms and the finance directors who are struggling to price the professional services of the firms as they face increasing demand for creative alternative fee arrangements. These new customers of KM need more than reliable information and knowledge; they need analysis of information and knowledge, to be able to do their jobs. KM is beginning to broaden its vision and expand its arsenal to meet these new challenges.

Change

Change is the most frequently used word to describe the legal profession today. While many of us thought that technology would be the driver of deep change in the practice of law, it turns out that the new economics of large firm law practice is the real change agent.¹ The deep recession of 2007 is driving top law firms and their clients to rethink many of the assumptions underlying their business relationships with clients.

The institutional practices of many of the largest law firms have been buffeted by reduced legal spending. Significant reduction in business activity has reduced the need for legal services.

There are fewer deals, fewer mergers, fewer company launches, and as a result there are lower revenues to law firms that serve companies. Businesses are also cutting costs in all areas including legal spend. This reduction in legal spend and business activity has produced layoffs of existing lawyers and deferred hiring of new lawyers by the largest law firms.

The economic downturn has energized the ACC Value Challenge, a continuation of more than a decade of emphasis by in-house counsel on alternatives to hourly billing business models for the purchase of legal services.² Alternative fee arrangements, AFAs, are on the lips of everyone who manages large firms. The economic downturn has triggered a sea of change in the direction of billing arrangements in large firms. More and more clients are exploring fixed fee arrangements. Law firms are offering more creative approaches as alternatives to the cost plus professional services deals of the past that relied exclusively on billing for lawyer hours expended.³

1. See, e.g. Ronald Staudt, All The Wild Possibilities: Technology That Attacks Barriers To Access To Justice, 42 Loyola L.A. L. Rev. 1117 (2009); Richard E. Susskind, The End Of Lawyers?: Rethinking The Nature Of Legal Services (2008). At 270: "To Cap It All, A Number Of Disruptive Legal Technologies Are Emerging . . . Which Will Directly Challenge And Sometimes Even Replace The Traditional Work Of Lawyers. For Many Lawyers, Therefore, It Looks As If The Party May Soon Be Over." Darryl Mountain, Could New Technologies Cause Great Law Firms To Fail? 52 Syracuse L. Rev. 1065 (2002); Darryl R. Mountain, Disrupting Conventional Law Firm Business Models Using Document Assembly, 15 Int'l J. L. & Info. Tech. 170 (2007); Marc Lauritsen, Fall In Line With Document Assembly: Applications To Change The Way You Practice, L. Off. Computing, Feb.-Mar. 2006, At 71.

2. Association of Corporate Counsel: "The Legal Industry Is Changing: The ACC Value Challenge offers proven tools and tips to help you save time and money while increasing your value to senior management." <http://www.acc.com/valuechallenge/index.cfm> last viewed, Dec. 14, 2010.

3. AFAs are a new development only in the large law firms that serve large corporate institutions. Small firms and solo practitioners have been using alternative fee arrangements since time immemorial. Personal injury plaintiff's work has been a contingent fee business forever and personal injury defense work for insurance companies is often a fixed fee engagement with triggers to move to higher per case fees as matters move through stages of litigation. As a result, there have long been incentives in these practices to be efficient with lawyer hours and to use technology and staff leverage to reduce the cost of delivering fixed fee services. Fixed fee engagements for personal legal services have long been common. Divorces and small business incorporations are advertised every day at fixed fees. The law firms and sole practitioners with family law practices and bankruptcy practices and estate planning practices face increasing competition from well-financed and highly automated legal information and form businesses like Legal Zoom. Codification KM that automates repetitive tasks and ensures high quality services in matters that can be well served by document assembly and Web enabled reengineering is an emerging requirement for these small firms if they are to survive.

KM's Lawyer Customers: Finders, Minders and Grinders

The new business reality creates a demand for a new type of KM for large law firms. The new economics will change the way lawyers do their jobs at all stages of their careers, from entry-level associates to managing partners. It will no longer be sufficient for KM teams to deliver model documents and enhanced work product from law firm files. Lawyers, at all stages of their careers, will need more advanced tools—KM that offers a preliminary analysis of documents, financial information and staffing histories.

Lawyers, as well as architects and other consultants, can be described as finders, minders or grinders. These three overlapping categories define the stages of professional development and the major impact of the work that professionals do on a daily basis.⁴

Finders are attorneys who bring in new clients. Minders manage the matters that the firm handles for clients and maintain relationships with current clients. Grinders do research, draft contracts, handle the depositions, review discovery documents and argue motions in court.

Grinders

The predominant professional activities in the early years of a large firm lawyer's career are document review for discovery, research and document drafting. All the tools of legal research are knowledge management tools that help professionals locate the wisdom and analysis previously written by judges, expert scholars and lawyers for adaptation, and use it in the context presented by a current client. Traditional KM, like Lexis® Search Advantage, uses enterprise search, like Vivisimo®, Recommind® or Autonomy, and adds its own real-time search enhancement to find documents in law firm files needed by these lawyers and to enhance those documents with real time *Shepard's*® citations and on-the-fly linking to related internal and external content.

The combination of enterprise search and document enhancement delivers a powerful set of tools to new lawyers seeking models and a starting place for new drafting work. But these traditional forms of KM are not enough to meet the demand for lower fees and fixed-fee pricing for legal work.

New tools are now available that analyze discovery documents and leverage attorney time spent on discovery review. Preliminary tests show that the assisted lawyer can be significantly more effective, finding the relevant documents in much less time and therefore, at a much lower cost.⁵

Minders

Senior associates and young partners are entrusted with management responsibilities. At this stage in their careers they are minders responsible for a team of lawyers and paralegals delivering legal services needed by the firm's clients. In the pre-2007 world dominated by hourly billing, minders focused on quality, ensuring that deadlines were met and that matters were staffed with teams of lawyers able to deliver timely and effective services.

New economics now drives these minders to track the progress in fixed-fee engagements against budgets and historical maps of the phases of similar engagements. Keeping engagements within budget is a totally different job. These lawyers now require information about the matters that the firm is handling drawn from a variety of internal information sources like the time and billing system, the conflicts system, the document management system and external sources like LexisNexis® news reports, Web updates and stock market reports. KM must begin to analyze all this disparate data and help minders track current activities against legal work process maps drawn from prior engagements.

4. D. Maister, *Managing the Professional Service Firm*, (The Free Press 1993); D. Maister, *Measuring Profitability Matter By Matter*, *The American Lawyer*, MAISTER ON MANAGEMENT, 38 (July/August, 1994).

5. Chuck Soder, 'Predictive' software eases lawyers' burden in document searches, *Crain's Cleveland Business*, Sept. 27, 2010, last viewed Dec. 14, 2010 at [http://equivio.com/files/Crains%20Cleveland%20\(9-27-10\).pdf](http://equivio.com/files/Crains%20Cleveland%20(9-27-10).pdf).

Finders

In the client development phase of a lawyer's career, when finding business takes a larger part of a lawyer's professional day, knowledge about clients, prospective clients and their business has been the dominant KM deliverable. Finders relied on news and stock reports to keep them informed about prospective clients and client industries. A clear understanding of all the work in process for any particular client was also critical to grow new business from existing client relationships. But the new economic reality puts enormous demands on finders to be able to package bids for new work in new, innovative fee structures. Financial analysis tools are, of course, essential. Finders must explore historical financial data, and time and billing records to understand the staffing and phases of typical engagements and to tease out the differences that the firm will face in delivering a powerful result in new engagements.

Today finders and minders, together with their professional colleagues who do not practice law, like law firm CEOs, marketing directors and finance directors, must focus on two new business needs. First, AFAs require law firms to bid work at a fixed fee. Firms must be able to predict the staffing and the amount of time it will take to complete a prospective legal engagement to make a compelling proposal that will also be profitable.

This bidding work requires, at a minimum, that finders, marketing directors and financial officers identify past engagements that are similar enough to prospective business to permit predictions about the amount of time and costs needed to complete the new work. Second, when firms win new fixed-fee business, minders must have tools to monitor and manage the work to make sure it is handled with professional excellence but also with sufficient efficiency to fit within the predictions of the original client proposal.

It is no longer enough for KM to find similar work product for grinders to use as models for current tasks. It is no longer enough for KM to find these models and then enhance them with links and embedded references to similar work in the firm, on LexisNexis and across the Web. It is no longer sufficient for KM to deliver instant updates and validation using *Shepard's Signal*™ indicators, as impressive and valuable as this current KM process can be.

While all of this work must continue to improve the effectiveness of the grinders in the firm, to step up to the new challenges, KM needs to be smarter and more analytical and new tools must be invented. Existing data sources need to be coordinated with one another and available analytical tools need to be enhanced, expanded and pointed at the coordinated sources. The traditional tools of KM are certainly the building blocks on which this new set of capabilities will be built, but the next stage of KM evolution is all about analysis; KM must become knowledge analysis.

Knowledge Analysis Example

Point Solution for Minders and Finders—Lexis® Matter Experience

One new example of KM analysis for finders and minders is a point solution from LexisNexis® aimed at the problem of responding to fixed-fee requests and managing the work after the firm wins the competition to secure such fixed-fee engagements. AFAs are but the tip of the spear driving the need for new KM tools to analyze work and predict the path of new engagements. Yet the point of the spear is sharp and demands attention now. Apparently some finders are reasonably good at cost estimation and others are not. No one yet knows how to tell the difference or why some are better than others. It is difficult to use prior engagements as reliable predictors for the amount of firm resources needed to complete future work.

There are some obvious reasons for this fact: cost plus pricing of the type that was common before 2007 are managed differently than fixed-fee engagements. Incentives are arranged in a different way pushing the staffing and approach to legal work in different directions. So the time and tasks on a typical legal job before 2007 may bear little resemblance to a similar job to be performed in 2011. Time entries in most past engagements were written to convince the client to pay the bill, not to define the “phase, task or type of work.”⁶ But the tip of the spear remains sharp and law firms must respond to fixed-fee requests or lose the opportunity to get this work.

An emerging example of the type of knowledge analysis that KM must step up and deliver is a new point solution from LexisNexis® called Lexis® Matter Experience. It is a remarkable combination of traditional KM techniques that crunch through previously unexplored data sources like timekeeper notes and a new user interface that delivers analysis tools to decision makers.

Lexis Matter Experience points the traditional Lexis Search Advantage tools at new data sources to analyze time keepers’ notes and matter profiles from time and billing systems and documents retrieved from universal search. Analysis of these diverse data sources identifies matters by type, jurisdiction and a variety of topical categories that may be vital in crafting AFA proposals. In addition, the tool can apply structured task codes, like the ABA L codes, to prior work to help managers understand how lawyers spent their time on classes of cases. In short, Lexis Matter Experience delivers the analysis that finders need to prepare strong and profitable fixed fee proposals. Additionally, Lexis Matter Experience will deliver synthesis tools required to make the data from time and billing systems more useful to manage ongoing engagements within budget.

Conclusion

KM needs to begin to work across all the data of the firm: CRM information, financial data and billing notes, documents and electronic mail. From these divergent data stores, KM must begin to help law firm managers draw some preliminary conclusions about core law firm processes. KM needs to be the resource that helps draft a new AFA proposal. KM needs to work with legal practice experts to build process maps that guide delivery of fixed-fee legal services to ensure that the firm is on track and at or under budget. The key difference between KM of the past and this emerging KM is that the new realities demand that KM do more than find and enhance existing documents. KM must begin to offer analysis of those resources, analysis that delivers powerful leverage for finders, minders and grinders alike. The question is not whether there is a future for KM. The question is whether KM can deliver on its potential to carry the profession into a better and more effective and more profitable future. Early indications suggest that the new KM, as knowledge analysis, may be able to meet this challenge.

6. Mary Abraham, Above and Beyond, reporting on Toby Brown’s presentation at Ark Knowledge Management in the Legal Profession conference, October 27, 2010: “Analyzing time and billing records tends to provide limited useful data because until now billing practices have focused on creating a narrative a client will accept and have not been about providing data that help the firm understand the phase, task or type of work involved.” <http://aboveandbeyondkm.com/2010/10/using-km-in-fixed-fee-pricing.html>, last viewed December 14, 2010.

About the Author

Ronald W. Staudt is Professor of Law and Associate Vice President for Law, Business and Technology at Chicago-Kent College of Law. He teaches Copyright Law, Public Interest Law, Intellectual Property Law Strategies and a clinical course called Justice and Technology Practicum. He is Director of the Center for Access to Justice and Technology—a law school center using Internet resources to improve access to justice with special emphasis on building Web tools to support legal services advocates and pro se litigants. The Center is co-developer and co-owner of A2J Author™ a software system for building graphical interviews delivered on the Web widely adopted by courts and legal-aid organizations.

Professor Staudt received a B.S. in mathematics and a B.A. in philosophy from St. Joseph's College, Rensselaer, Indiana. He is a graduate of the University of Chicago Law School, where he was a member of the University of Chicago Law Review. Before joining the Chicago-Kent faculty in 1978, he practiced with the firm of Hubacheck, Kelly, Rauch & Kirby for two years, was staff attorney and assistant director of the Pima County, Arizona Legal Aid Society and was a clinical fellow and lecturer at the Mandel Legal Aid Clinic, University of Chicago Law School. From 1994–1998 on leave from Chicago-Kent College of Law, Professor Staudt served as Vice President of Technology Development and Vice President of Knowledge Management for LexisNexis and he currently is a LexisNexis consultant.

LexisNexis® <http://www.lexisnexis.com> is a leading global provider of content-enabled workflow solutions designed specifically for professionals in the legal, risk management, corporate, government, law enforcement, accounting and academic markets. LexisNexis originally pioneered online information with its Lexis® and Nexis® services. A member of Reed Elsevier [NYSE: ENL; NYSE: RUK] www.reedelsevier.com, LexisNexis serves customers in more than 100 countries with 15,000 employees worldwide.

All information provided in this document is general in nature and is provided for educational purposes only. It should not be construed as legal advice. For legal advice applicable to the facts of your particular situation, you should obtain the services of a qualified attorney licensed to practice in your state.

