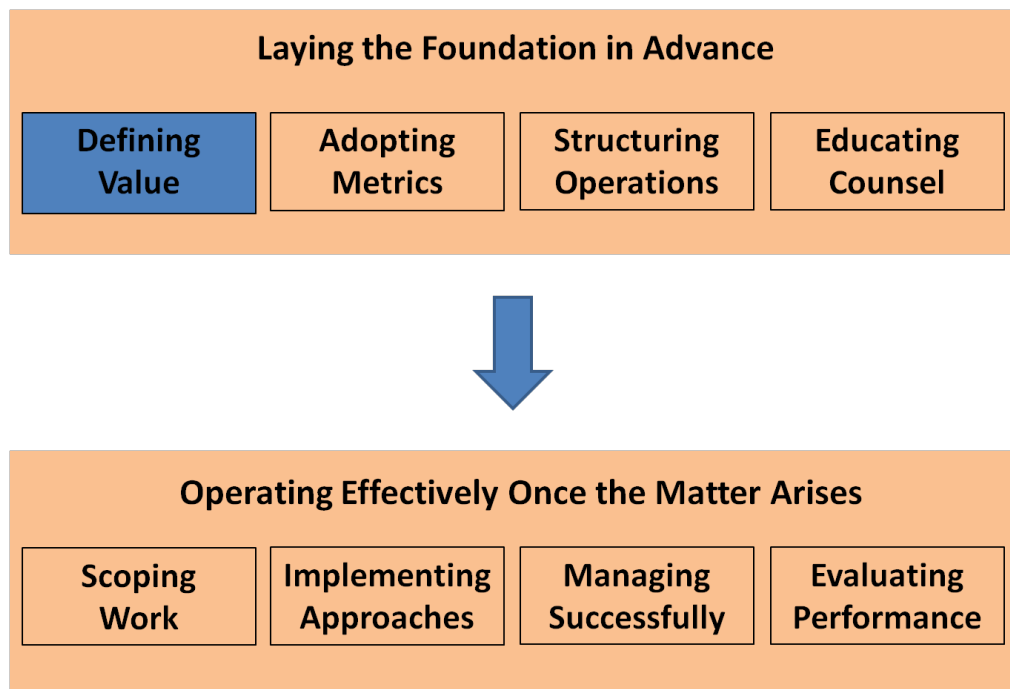


What is all the Fuss About: Legal Process Improvement and Legal Project Management?

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A. Introduction

A quick Google search of the terms “legal process improvement,” legal project management,” and “legal lean sigma” results in 29,100,000; 269,000,000; and 318,000 hits respectively. Some commentators have derisively suggested the term “legal project management” has become the new buzz word that everyone is uttering but few take seriously. There is a daunting amount of information, opinions, confusion, controversy, and chatter concerning legal process improvement and legal project management techniques and principles. Thankfully, the ACC has done a yeoman job in cutting through the chatter and getting to the heart of the matter. The ACC Value Challenge and the Value Champion programs are all about effective project management and process improvement. As outlined in the InfoPAK “Managing Value-Based Relationships with Outside Counsel,” Association of Corporate Counsel (2010), the relationship between process improvement and project management is graphically and succinctly depicted as follows:



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“Laying the Foundation” encompasses process improvement concepts and “Operating Effectively” addresses principles of project management.

Although there are competing and sometimes conflicting definitions of “process improvement” and “project management,” the following suffice for the purposes of this discussion:

Process improvement is an aspect of organizational development (OD) in which a series of actions are taken by a process owner to identify, analyze and improve existing business processes to meet new goals and objectives such as increasing profits and performance, reducing costs or accelerating schedules. These actions often follow a specific methodology or strategy to encourage and ultimately create successful results. Process improvement is also a method to introduce process changes to improve the quality of a product or service that better match customer needs (the “voice of the customer”).

Project management is the discipline of planning, organizing, motivating, and controlling resources to achieve specific goals. A project is a temporary endeavor with a defined beginning and end (usually time-constrained, and often constrained by funding or deliverables) undertaken to meet the project’s goals and objectives. The primary challenge of project management is to achieve all of the project goals and objectives while honoring the preconceived constraints. The primary constraints are scope, time, quality and budget. The secondary —and more ambitious— challenge is to optimize the allocation of necessary inputs and integrate them to meet pre-defined objectives.

The symbiotic relationship between process improvement and project management can simplistically be characterized as the poor project management of effective processes or the effective project management of poor processes will typically lead to the same results: inefficiencies, waste, and wide variances in quality. Thus, legal departments and law firms as underscored by the ACC must focus on both process improvement and project management to achieve the desired results.

B. Why Bother?

We can once again turn to the ACC to provide the rationale:

[There] is a widespread view among in-house lawyers that the cost of legal services, in many cases, had come to bear little if any relationship to the benefit realized by the client. Even when the cost was equal to or greater than the benefit, it was often a result of happenstance, since the fees and costs were arrived at without a conscious determination or consideration of value.

...”Value” can be understood as the degree to which the legal service assists or enables the client to achieve that client’s business goals with an associated cost that is not disproportionate to that goal. A company will attribute value to legal service to the extent that the service serves a demonstrable business purpose identified by that organization.... The service completed by the lawyers – either in-house or by outside counsel on the

organization's behalf – must assist the organization to achieve its goal or that service might as well not have been performed.

...Nevertheless, simply achieving the business goal at any cost would be inappropriate in virtually all circumstances. Consequently, the measure of effective legal service must include an analysis of the cost of that service and a determination that the cost bears a reasonable relationship to the benefit that the client realized from that legal service.

InfoPAK, "ACC Value Challenge Practices," Association for Corporate Counsel (2012)

Clients expect and are increasingly demanding that legal departments and law firms embrace the principles that have long ago been embraced by virtually every business unit within an organization and by virtually every other economic endeavor. Lawyers, law firms and legal departments no longer have the luxury of working in silos that are immune from the pressures that require a demonstrable return on investment. The C-Suite is demanding more with less of the organization's legal departments just as these demands have been placed on other organizational areas for years. Long gone is the luxury of the legal profession to cloak its legal processes from scrutiny by characterizing it as an "art" as opposed to a "science" that hide inefficiencies and waste in an impenetrable black box. Although not core subjects in law school, process improvement and project management are two tools that must be added to the toolbox of legal counsel as proven methods of responding to the C-Suite's demand for "value added" and "return on investment."

C. Process Improvement Methodologies

Process Improvement as one might suspect requires the application of a specific "process" and there are a multiplicity of process improvement methodologies to choose from:

- Benchmarking
- Business Process Improvement
- Business process reengineering
- Process Redesign
- Capability Maturity Model Integration/Capability Maturity Model
- Software Process Improvement (SPICE)
- Goal-Question-Metric
- Hoshin Kanri
- ISO 9000
- IT Governance
- Just In Time manufacturing
- Kaizen
- Lean manufacturing
- Performance improvement
- Process management
- Process Improvement and Management (PI&M)
- Six Sigma
- Theory of Constraints

- Total Quality Management
- Trillium Model
- Twelve leverage points

Before an exploration of the “right” methodology, it is most appropriate to discuss the incredibly important purpose of objective “metrics.” It is no accident the ACC chart depicted above begins the journey to process improvement and project management with the essentials of “Defining Value” and “Metrics.” Defining Value demands the legal organization focus on the “voice of the customer.” If the customer does not value the outputs of the legal process improvement and project management efforts, the simple question that might be asked is “why bother?” Thus, effective process improvement requires a determination of the organization’s goals and objectives.

If you are providing legal litigation services, the client may most value, for example, an overall reduction in the cost of processing the organization’s portfolio of litigation risk. If the client is a real estate developer, it may most value the reduction in time it takes to acquire the property and negotiate the contracts and leases that will lead to the development and occupancy of the property at the earliest practicable date. In these examples, the chore then becomes to establish the base line metrics that will demonstrate whether the legal services being delivered are on a steady march toward providing the “value added” that best serve the organization’s goals. When it comes to the importance of metrics, two business truisms attributed to the management guru Peter Drucker underscore the point: “You become what you measure” and “If you can’t measure it you can’t manage it.” As such, objective metrics lay at the heart of all effective process improvement and process management activities.

D. What Methodology to Choose?

Each methodology has its proponents but let’s briefly explore just a few of the methodologies that appear to have the greatest applicability to the delivery of legal services.

Theory of Constraints (TOC):

A management paradigm that views any manageable system as limited by a very small number of constraints (i.e., time, financial resources, personnel resources, policies, etc.). TOC maintains there is always at least one constraint, and TOC uses a focusing process to identify the constraint and restructure the organization around the reduction of the constraint in achieving the goals of the process. Essentially, TOC leverages the common idiom that “a chain is no stronger than its weakest link.” TOC relies upon an analytic process that has a logical flow:

1. Gain agreement on the problem;
2. Gain agreement on the direction of the solution;
3. Gain agreement that the solution will solve the problem;
4. Agree to overcome any potential negative ramifications attributable to the solution; and,
5. Agree to overcome any obstacles to implementation.

Six Sigma

A set of tools and strategies for process improvement originally developed by Motorola and popularized by Jack Welch who made it a central focus of General Electric's business strategy. It relies upon a set of quality management methods, including statistical methods and creates a special infrastructure of individuals within the organization ("white belts," "yellow belts," "green belts" "black belts") who are experts in the application of these methods. Historically, a six sigma process is one in which 99.99966% of the products manufactured are statistically expected to be free of defects (3.4 defects per million). Motorola set a goal of "six sigma" for its manufacturing operations, and this goal become a byword for the management and engineering practices used to achieve it.

The term six sigma is derived from the statistical analysis developed at Motorola based upon standard deviations. That statistical analysis requires an evaluation of the number of errors associated with the DPMO (defective parts per million opportunities) of any process as set forth below:

Sigma Level	DPMO (defective parts per million opportunities)	Percent defective
1	691,462	69%
2	308,538	31%
3	66,807	6.7%
4	6,201	.62%
5	233	.023%
6	3.4	.00034%

As an organization's processes continuously improve through the different six sigma levels, the number of defects and the variance in the outputs of the process significantly diminish.

Six Sigma projects follow a rigorous methodology known as DMAIC. The five steps of DMAIC are:

Define the problem, the voice of the customer, and the project goals specifically;

Measure key aspects of the current process and collect relevant data;

Analyze the data to investigate and verify cause and affect relationships. Determine what the relationships are and attempt to ensure that all factors have been considered. Seek out the root cause of the defect under investigation.

Improve or optimize the current process based upon the data analysis using techniques such as design of experiments, mistake proofing, and standard work to create a new, future state process. Set up pilot projects to establish process capabilities and introduce further refinements to the process as dictated by the pilot project.

Control the future state process to ensure that any deviations from the target are corrected before they result in defects. Implement control systems and continuously monitor and improve the process through effective project management techniques.

Lean

A production practice that considers the expenditure of resources for any goal other than the creation of value for the end customer is wasteful and a target for elimination. Working from the perspective of the customer, “value” is defined as any action or process that a customer would be willing to pay for. Lean is a management philosophy derived mostly from the Toyota Production System and is renowned for its focus on the reduction of the original Toyota seven wastes to improve overall customer value. The seven types of waste (“muda”) are: transport, inventory, motion, waiting, overproduction, over processing, and defects.

In some applications an eighth and ninth waste have been added: the manufacturing of goods or services that do not meet customer demands or specifications and the waste of unused human talent.

Kaizen

Japanese for “improvement,” kaizen is a daily process the purpose of which goes beyond simple productivity improvement. It is also a process that, when done correctly, humanizes the workplace, eliminates overly hard work (“muri”), and teaches people how to perform experiments on their work using the scientific method and how to learn to spot and eliminate waste in business processes and is the antithesis of “command and control” change in processes.

All of the process improvement methodologies have advocates and practical applications. For purposes of legal process improvement, the simple and less than gratifying answer is no single process improvement methodology is a panacea. It is not unusual for process improvement in the legal service industries to draw on elements of many methodologies to maximize effectiveness given the culture and history of the organization; flexibility and adaptability is critical. To borrow from Peter Drucker yet again, if every problem is viewed as a nail, then every solution will look like a hammer. Process improvement must be tailored to address the various problems that may require a multiplicity of solution sets.

E. The Process Improvement Conundrum: So Much to Do and so Little Time

G.E.’s legal department popularized and trail blazed the concepts of legal process improvement and legal project management and has certainly underscored the benefits of achieving metric driven goals. Seyfarth Shaw has devoted millions of dollars and thousands of unbillable hours to the Seyfarth Lean Six Sigma initiative. It really does work. Notwithstanding that fact, what are legal departments and law firms to do when contemplating the time and effort process improvement requires; the most precious “constraint” for most legal professionals is time. Given all the pressures imposed upon in-house counsel and law firms how does one make the time to devote the requisite attention to process improvement and

project management. There are no facile or easy answers other than to suggest that, in the words of Jack Welch, if you are not changing as rapidly as your environment the “end is in sight.”

Also consider the attractive alternative to what can be characterized as the “fire-fighting doom loop.” The fire-fighting doom loop can be described as: too many conflicting priorities, being performed with insufficient resources, engaging in inefficient processes, which yield inconsistent results, and fail to meet the true needs of the legal organization’s customers. This vicious cycle leads to an ever escalating consumption of the organization’s limited resources in performing “non-value added” legal tasks. That never ending “doom loop” is to be contrasted with effective process improvement and project management activities that allow the legal department and law firms: 1) to evaluate and measure process capabilities and efficiencies objectively; 2) prioritize and decide those processes and aspects of the processes that require the most attention; and 3) improve the processes strategically to eliminate waste and non-value added activities. In essence, instead of the fire-fighting doom loop the organization starts the incredibly rewarding journey toward a continuous improvement loop that results in greater productivity and efficiency that are driven by the “voice of the customer.” Like they say in the Nike commercial, “Just Do It.”

F. Hidden Traps

Alright, now that you are possibly a believer in the benefits of process improvement and project management and committed to moving forward into this brave new world there will be any number of challenges that you will need to deal with. A few of these hidden traps that might profitably be mentioned and briefly discussed.

1. The Insatiable Appetite

The temptation is to fix the “big problems” or tackle all the process improvement elephants in the room in one fell swoop. This could be a problem in that it runs the risk of taking too much time, consuming too many resources, lead to organizational overload and frustration, and will not gradually build the organizational momentum and commitment necessary to sustain change over the long term. Initially, focus on one small corner of the world, make the business case for undertaking the specific change, enlist management support and commitment for the change, and then go about the task of achieving an early, quick and measurable victory. There is undoubtedly a smorgasbord of improvements that can be made to the legal processes in any organization. Don’t sample every offering immediately. Rather, begin with an easy to digest appetizer and then move slowly and steadily through the high priority menu items.

2. The Importance of the Team

Don’t underestimate the critical importance of the composition of the process improvement team who reports to a management sponsor of the process improvement project. The ideal is to identify a team of approximately 5 to 6 individuals (who bring cross-functional experience to the team), including the team leader, which reports to a key manager (the project sponsor) who will be advised of the progress of the team’s work, assists the team in identifying the critical resources needed to support the team, approves the

team's budget, ensures the team has the support and resources when necessary, and ensures the team stays on task, within budget, and provides the promised deliverables in a timely manner. Hmm, sounds like project management.

The team leader should ideally be an individual who has experience in effective team leading and has the ability to draw on the strength of the diversity of the individual team members and help create the atmosphere necessary for an effective team. Team leading is not a simple task and the team leader should not be an individual who feels compelled to be the smartest person in the room. The team leader is part task master, psychologist, confidant, and "multiplier." As aptly observed by one commentator:

Some leaders drain all the intelligence and capability out of their teams. Because they need to be the smartest, most capable person in the room, these managers often shut down the smarts of others, ultimately stifling the flow of ideas. You know these people because you have worked with them... At the other extreme are leaders who, as capable as they are, care less about flouting their own IQs and more about fostering a culture of intelligence in their organization. Under the leadership of these "multipliers," employees don't just feel smarter, they become smarter.

Bringing Out the Best in Your People, Wiseman and McKeown, Harvard Business Review (May 2010)

In the team leading context, EQ is often far more important than IQ.

A review of the literature to explore the effective team is well beyond the scope of this paper. However, let's review a number of the crucial common characteristics of the high functioning, effective team.

a. Trust Matters

Trust in a team is the belief that one will be treated with respect, listened to, told the truth, and have one's legitimate needs and concerns dealt with. Where there is trust, creative conflicts can and should be raised within the team and effectively addressed without negative consequences.

Trust lies at the heart of a functioning, cohesive team. Without it, effective teamwork is all but impossible. Unfortunately, the word trust is used and misused so often that it has lost some of its impact and begins to sound like motherhood and apple pie. That is why it is important to be very explicit about what is meant by trust.

In the context of building a team, trust is the confidence among team members that their peer's intentions are good (i.e., solely focused on the success of the team and not individual aggrandizement) and there is no reason to be protective or careful with the team. In essence, teammates must be comfortable with being vulnerable with one another.

This description stands in contrast to a more standard definition that centers around the ability to predict a person's behavior based on past experience. True trust requires team members to be confident that their vulnerabilities will not be exploited or used against them. In sum, the trust required allows each team member to subordinate their personal goals and aspirations to the mission of the team and all team members must believe this is the sole motivator of each team member. If any team member violates the team's rule that personal egos and agendas are subordinate to the objectives of the team, then team leadership must act and act quickly and decisively. Don't select as a team member any individual who will be unable to foster the climate of trust necessary for a high functioning team. It can be a prescription for disaster.

b. Positive Conflict

Conflict within a well-functioning team is inevitable, desired, and positively embraced. Positive conflict typically occurs around the priorities, goals, and choices the team will be called upon to make or recommend. Most of this conflict is very helpful allowing for the robust and healthy discussions within teams that assures the best decision-making. When positive conflict is suppressed, decision-making usually suffers. However, for conflict to thrive without crippling the team there needs to be trust. This allows for the discussions, even contentious discussions, but also permits the contention to end when a decision is made so the decision can lead to focused, supportive action by the team.

There are times when conflict is centered on one person's personal issues, or a clash of egos or personalities, that has nothing to do with the issues and priorities of the team or the legitimate needs and concerns of the individual. These are the times that team leadership needs to be exercised and staffing may need to be coached or replaced if they are unable to "play in the team sandbox." Thus, avoid selecting an individual for the process improvement team who will be unable to foster and cultivate positive conflict.

c. Building Commitment

In the context of a team, commitment is a function of clarity and buy-in. Great teams make clear and timely decisions and move forward with complete buy-in from every member of the team, even those who voted against the decision. They leave the meetings confident that no one on the team is quietly harboring doubts about whether to support the actions agreed upon or will engage in passive-aggressive activities to undermine the team's decision.

Great teams understand the danger of seeking consensus and find ways to achieve buy-in even when complete agreement on a problem or a solution is impossible. They understand that reasonable human beings do not need to get their way in order to support a decision. They only need to know that their opinions have been heard and respectfully considered. Great teams ensure that everyone's ideas are genuinely considered, which then creates the willingness to rally around whatever decision is ultimately made by the team.

Great teams also pride themselves on being able to unite behind decisions and commit to clear courses of action whether there is little assurance about whether the decision is correct. That's because

they understand the old military axiom that a decision is better than no decision. They also realize that it is better to make a decision boldly, be wrong, and then change direction with equal boldness where appropriate, than to waffle interminably and avoid making a decision.

d. Accountability

Accountability, like “legal project management,” is a buzz word that has lost much of its meaning and has become overused like the terms “empowerment” and “quality.” In the context of team work, it refers specifically to the desire of each team member to meet deadlines and undertake assignments in a timely manner. It also encompasses the willingness of team peers to call each other on performance or behavioral issues that might impede the progress of the team.

Accountability also results in the willingness of team members to tolerate the interpersonal discomfort that accompanies calling a peer (who might also be a personal friend) on inappropriate behaviors and the more general tendency to avoid difficult conversations. Members of great teams overcome those natural inclinations, opting instead to enter the danger zone with one another in a respectful and honest manner. This is where building loyalty and relationships matters as well as the belief that constructive criticism is based on the genuine desire to benefit the team rather than a selfish or egocentric purpose.

e. Results Orientated

Results matter and any team that does not achieve results is a failed team regardless of all the other positive characteristics they might possess. Every good team specifies what it plans to achieve in a given period of time and keeps to this commitment. That is why the team leader must be part task master (along with the team sponsor if necessary). The purpose of a team is not to just meet but deliver the results committed to and promised.

The characteristics of the highly effective team are of such importance it is no accident that the first two steps taken by highly effective teams are to establish a team charter and a project time line. The charter is a simple and straight forward statement of the conduct expected of team members that is intended to foster trust, positive conflict, commitment, responsibility, and accountability. Whenever any team member’s conduct deviates from that required by the charter, each team member is granted permission to respectfully call the inappropriate conduct to the attention of the offending team member (including the team leader). The time line is important to establish the urgency of keeping the team on task to deliver the results required in a timely manner.

3. Project Creep

Somewhat related to hidden trap number one, the insatiable appetite, is project creep. The highly effective team will be amazed as it works through the define, measure and analyze phases of the DMAIC process just how many process inefficiencies are identified that are tangential to the problem that is set forth in the team’s problem statement. The tendency of intelligent individuals committed to solving problems and engaged in process improvement is to begin to formulate potential solutions for these

problems during the analyze and implement stages. While laudable, this tendency needs to be avoided. The identification of potential process improvements should be placed in the team's "parking lot" and included as potentially recommended process improvement activities in the team's final report or otherwise discussed with the project sponsor. The highly effective team does not become side tracked with process improvement activities that are out of scope in resolving the problem defined by the team and approved by the project sponsor.

G. Conclusion

Effective process improvement and project management work in legal organizations. There are far too many examples of successful models to deny their efficacy in increasing productivity, enhancing quality, and greater client satisfaction. In achieving these goals, the importance of an effective team cannot be over stated. If the organization selects a less than optimal process improvement methodology, a high functioning team will still achieve remarkable results. On the other hand, the perfect methodology will be of little value in the hands of a dysfunctional team.

Process improvement and project management are not easy. While the principles may be relatively straight forward, there are any number of institutional, cultural, and historical impediments that need to be successfully negotiated. If there is a commitment by management and process improvement is pursued intelligently and doggedly the results will reap huge rewards to the legal organization that are far superior to being trapped on the "doom loop" treadmill. Good luck.