Lawyers as Accidental Project Managers (The Case for Project Management in the Practice of Law)

By Grant W. Collingsworth

You're sitting at the closing table for an important corporate acquisition. You've been working on this deal for the past six months, while also fulfilling the duties of your "day job" as a general counsel meeting the needs of your business units. Understandably, you relied heavily on outside lawyers to take the lead. This was an important transaction to add revenue to your company's income statement. Needless to say, time was of the essence.

You couldn't be more pleased with the acquisition terms. Virtually all your key business objectives were met. The acquisition agreement itself is also top-notch. Although a number of due-diligence issues arose, your company is well-protected through the representations and warranties, indemnification and escrow provisions.

When the deal became more complicated, however, everything slowed down. As the lawyers reviewed issues, exchanged documents and negotiated terms, it seemed that days, and sometimes weeks, would go by without significant progress. Progress seemed particularly slow when you were pulled away to attend to other duties and couldn't drive the process. The past week was frenzied because of all the loose ends that needed tying up.

As a result, you're now at the closing table nearly two months later than originally expected. Your CFO informed you last night that the loss of those two months of revenue from the new acquisition puts the company's quarterly revenue and earnings projections at severe risk.

And you've just received your legal bill for the transaction, which exceeded your budgeted amount by more than $100,000. So now you have to explain to your chief financial officer that not only will revenue be lower than expected because of the delayed closing, but you also will be over your budgeted expenses for the quarter, and possibly the year—two direct hits on the bottom line.

Question—Do you feel good about the transaction?

Answer—Not likely. After all, your CEO and CFO probably don't feel good about it right now.

Question—Could this have been avoided?

Answer—Most likely, if you had employed project management.

Project Management

Chances are that the company you work for uses project management in running its business. If it embarks on developing a new product, opening a new plant, launching a new marketing campaign or starting some other significant project, you can almost be assured that project management principles and techniques are put to work: A project team will be established. The project team will establish the project's scope, objectives and requirements. The team will prepare a plan, with timelines and milestones, and get buy-in from the relevant team members. Those members will communicate project status within the project team and to other interested parties. Project risks will be identified and managed. Once the project is completed, its results and effectiveness will be reviewed and process improvements will be identified. In fact, your company may have its own project management office.

Now, when your legal department undertakes a major project, be it litigation or transactional in nature, do you engage in project management? Do any law firms you use offer to employ project management techniques in providing you legal services? I didn't think so.

Project management is a growing force in the business community. Virtually every Fortune 500 company has a project management office somewhere in its organization. The Project Management Institute (PMI) now boasts more than 160,000 active members. In a recent survey of 250 senior executives conducted by PMI, 94 percent said they considered project management to be a valuable company asset, and 92 percent agreed that "utilizing professional project managers is an effective way to ensure success." Of those

companies with $500 million or more in revenue, 87 percent have used professional project managers. Project management is now a required course in many master of business administration programs. Despite the evident importance of project management for successful companies, law firms and corporate legal departments seem to remain blissfully unaware of project management and its potential to increase the effectiveness and efficiency of legal services.

What is Project Management?

In essence, a project is any temporary or short-term endeavor that entails a team to achieve a particular result or objective. Project management is simply the application of knowledge, skills, tools and techniques to project activities in order to achieve project objectives. The project manager is the person responsible for accomplishing the project objectives.

Managing a project includes:

- establishing project objectives;
- identifying requirements and risks for achieving those objectives;
- identifying stakeholders, team members and responsibilities;
- developing a project plan;
- managing project risks to achieve objectives;
- adapting project plan for changes in circumstances;
- reporting progress to team members and stakeholders; and
- reviewing and analyzing project results.

The Accidental Project Manager

In fact, most lawyers already are project managers. Virtually every legal engagement is a project with a fixed goal and limited duration (although some litigation can feel like a permanent state). And the project does get managed, does it not? After all, a case doesn't try itself, and a transaction didn't close without at least some nudging from the attorneys involved. We have projects and project managers, so why don't we have project management? The short answer is that lawyers rarely embrace their role as project manager. With apologies to novelist Anne Tyler, they are the "accidental project managers."

Most lawyers embrace their responsibility to get a good legal result for the client—a favorable trial or settlement outcome or an acquisition agreement with favorable legal terms. Some of these lawyers also understand the need for a favorable business outcome, perhaps even at the expense of some legal protections. And they do understand that these favorable legal and business outcomes can't be realized until the project is completed.

But that is generally where the interest ends. The process is a necessary evil to achieving the substantive result. Few lawyers will accept readily the notion that a legal engagement is not successful if it is not completed within reasonable time and cost expectations, even if a favorable substantive outcome is achieved.

The Accidental Project Manager in Action

You call your outside legal counsel with a new legal matter—a competitor may be infringing your patent and you need a full analysis and a recommendation on whether to file suit. You first ask, "How much will this cost me?" Your lawyer hems and haws about the cost—there are a lot of unknowns, etcetera, etcetera. You press him, and he finally throws out a range—$15,000 to $30,000. You say, "Try to keep it on the low end of that range." You then add $15,000 to your expense projections for the quarter and move on.

But bear in mind that you are now relying on an estimate the lawyer gave under duress, without any of the relevant facts and with no discussion of likely contingencies. You then drop the other shoe—you have off-site strategy meetings in two weeks, so you'll need the analysis and recommendations by then. "That's an aggressive schedule, but we'll get right on this and do our best," he assures you.

Your lawyer begins work, and you don't hear much in the way of updates. Being diligent, you check in periodically, when you are assured everything is on track. The day before your deadline, your lawyer calls and asks, "What do you really need for your meeting tomorrow?" You explain in no uncertain terms that you need what you had asked for two weeks ago—a full analysis and

recommendations. "We can give you a preliminary analysis, sort of a lay of the land, but it won't be definitive." Why the delay? "We found that your competitor also had patents that we needed to review. We became concerned that you may be infringing on their patents, but after further review we don't think that will be an issue."

You wonder why you weren't informed of these new developments sooner, but you accept the preliminary analysis and move on. Two months later, after considerable back and forth and while taking heat from your business unit, you get the analysis you need. You also get a bill that far exceeds the original estimate. "But the project changed," your lawyer pleads emphatically when you question the bill. "We always knew the unexpected may happen."

Sound familiar?

So could this situation have been avoided through simple diligence on your part? Not necessarily. Diligence that is not properly channeled just means more work for the in-house counsel without results. Every project faces challenges to its success, legal projects more than most. Project management brings a greater understanding of how projects function and the best practices for managing projects so that your efforts will be more effective. In other words, project management offers a greater chance of success without adding to your workload.

The underlying principal of project management is effective communication. Properly managing a project first and foremost requires a clear, honest line of communication. Diligently trying to ask the right questions periodically may elicit the necessary information at times, but it will not do so consistently, particularly since information logjams tend to happen at two points in the process: with inside counsel and outside counsel.

Inside counsel generally possess information regarding project requirements, cost constraints and time constraints, which are often not communicated to outside counsel timely, if at all. At the same time, outside counsel have the most current information regarding project status, costs and new developments, which are typically communicated to the client sporadically at best.

Effective communication requires procedures to establish what needs to be communicated and when, particularly the bad news. No lawyer wants to pick up the phone and tell his client he is over budget or behind schedule. Weekly status calls are a step in the right direction, but it takes time and effort that could be spent on other more productive pursuits than looking over the shoulders of outside counsel.

Project Management Principles for Legal Matters

So just how does one apply project management principles to the practice of law? Let's go back to the elements of project management.

- Establish project objectives. For a transaction, this is generally simple—close the transaction by a specified date. For litigation it could be to settle as quickly as possible, win at all costs or something in between. To put it another way, define up front what you would consider to be a win.
- Identify requirements and risks for achieving those objectives. Once you have defined a win or possible alternative winning scenarios, determine what it will take to reach them. For instance, discovery strategies may differ drastically between settling quickly and cheaply versus winning at all costs. The legal fees may differ drastically as well. Also, clearly identify the project risks—those known contingencies that may negatively impact either the ultimate outcome or the time or resources necessary to complete the project.
- Identify stakeholders, team members and responsibilities. Identify those persons, internal and external, who will have an integral role in completing the project. This is your project team. Clearly identify the roles and responsibilities of each team member. Then identify those who will have a vested interest in the project's success, even if they are not part of the project team, such as a business unit leader. These stakeholders need to receive status updates on the project.
- Develop a project plan. Outline the necessary steps to complete the matter with responsible parties and an accompanying timeline. A good project plan will go beyond the traditional closing checklist and may include:
  - an executive summary outlining the project scope, objectives and risks;

- a task list identifying each critical task and the parties responsible; and
- a timeline, possibly in the form of a Gantt chart, which identifies not only the projected timing of the tasks but also the interdependencies among the tasks.

Once prepared, distribute the project plan to all team members and stakeholders. Solicit their input now rather than waiting for their complaints later.

- Manage project risks to achieve the objectives. Having identified the project risks, begin to plan around them. For instance, if you are concerned that the target in an acquisition is unsophisticated and will not have the resources to keep pace with your aggressive schedule, consider simplifying the transactions documents and streamlining the due diligence process.
- Adapt project plan for changes in circumstances. No project plan will accurately capture how any project will actually progress, much less a legal matter with opposing counsel who may have no interest in accommodating your objectives. Develop a system for changing the project plan as necessary.
- Report progress to team members and stakeholders. As the project progresses and circumstances change, you'll need a reporting system to communicate changes to the team regularly. These reports will allow you to analyze the effects of these changes and adapt your objectives and strategies.
- Review and analyze project results. Upon completion of the matter, schedule a meeting with your legal counsel to review what went well and what went poorly. This isn't a time to point fingers or negotiate the bill. Rather, identify where the process could be improved for the next matter. Solicit input from outside counsel on what you could do to help them be more effective.

First Steps

If this all seems cumbersome and impractical, it need not. Start your next legal project with these simple steps. First, write out all the relevant information for your legal counsel. Summarize the facts, your ultimate objectives and your desired timeline. Be forthright about the facts and your expectations. Then ask your attorney to respond in kind. Ask for a summary of the process he or she determines will be necessary to meet your expectations and a reasonably detailed fee estimate based on facts and expectations you will have provided. Then ask her to list all the contingencies that could result in either a substantive setback, delays or cost overruns. Trust me, your attorney will love this part. Then state that you expect a weekly e-mail summarizing the progress and notifying you of any adverse events. The two of you should work out now the scope and format of the e-mail reports. Be sure to distribute these reports to anyone in your organization with a vested interest in the status or results of the matter.

Although your company's project management office may not recognize these simple steps as project management, you are now applying project management techniques to your legal matters. More importantly, you have begun the process of retraining your outside counsel and yourself in how to manage legal matters. By just scratching the surface of the project management discipline, you will begin to see immediate benefits through increased transparency of, and control over, the legal matters handled by your outside counsel.

The Bottom Line

The ultimate question is this: Is your legal department measured by results? All other business units are using project management to enhance their results. If your legal department is expected to act as a productive unit of your company, maximizing opportunities and minimizing costs at every turn, then you can no longer afford to ignore project management.

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