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Can Law Firms Be Lean?

By **Nina Cunningham**

For those who have had some exposure to *Total Quality Management* , the reference to *Lean* or *Lean Six Sigma* might be familiar. Total Quality Management (TQM), famed for advancing Japanese firms to remarkable achievement in product quality, was also pursued in the service industry. A notable adaptation was in health care. Quality management gave manufacturers a way to detect and measure errors so products could be redesigned to deliver products without defects. We saw similar things happen in hospitals and medical service delivery. In principle, the necessary ingredients to achieve Six Sigma are defined objects, measurable standards and a systematic approach.

In the history of Six Sigma, it was believed that for every one defect a customer found, 10 defects could be caught on the manufacturing floor. Delivering products without defects was far more cost-effective than replacing products that were returned. Returns are costly in tangible and intangible ways. They cost customer satisfaction, consumer loyalty, and market share to name a few. Here it becomes clear that *Lean Six-Sigma* can be applied to services as well. Business processes, like manufacturing processes, can be improved. Fixing problems in financial transactions, for example, may be more costly than the original invoice.

But does *Lean* have real meaning in law firms? And can the IT department help? In an atmosphere of downsizing, right-sizing and cost reduction, *Lean* makes sense. Doing something right is cheaper and better than doing it over or apologizing for mistakes.

In working with a firm to escape excessive auditing of bills by client, creating a *Quality Contract* made apparent that putting a little more time into a case up front could lead to better returns or savings for the client. It did not take much to prove the case.

In the insurance defense environment, the clients wanted to limit the firm's billable hours as well as its hourly rate. We could show this was counterproductive. The effective use of hours turned time into real

value for the client by getting more cases dismissed and giving adequate time to those with high stakes. These resulted in more favorable client rulings and a huge reduction in settlements. This was a win-win for both the firm and the client, as the firm charged its desired rate for cases favorably resolved. But they needed to take the proper steps. It also helped the firm abandon the questionable practice of evaluating a case by counting certain words in a complaint. Eventually, the firm decided and the auditing went away.

Opportunity for Improvement

In a law firm, continuous improvement opportunities are everywhere. Most activities are measurable, so it may be a good idea to begin with costs that appear at the end of the month that have a customer service component. The tools for measurement come from technology. A spreadsheet application may be all that is necessary. Many opportunities for improvement can be visually displayed in a graph or chart.

Advertising, marketing and business development together include a large number of people, projects, clients and charges. With some sound project management and performance measurement techniques, habits can be changed to facilitate savings and win greater support. Most firms want improvement, especially if it produces savings.

There are many pieces to the *Advertising, Marketing and Business Development* puzzle, but if a firm spends 5% of revenue across these areas, small increases in revenue combined with a reduction in costs can return more than 5%. The firm gains a great deal by tracking performance, eliminating waste, and getting a little more accountability. They can then boost resources spent on what matters most. Incentive is important, and seeing dollars work better is a good incentive.

Research

One can start with legal research for business development. Depending on the firm, each individual lawyer may affect the advertising and marketing costs by very little; a practice group may affect it a lot. But we do know that advertising a particularly laudable success may make a great impression, so focus has to be on those results. If the marketing department discovers trends to follow, it should follow trends where competence already resides. Learning new

areas of practice is costly and it is likely an experienced competitor will win out. If the trend is new to most firms and existing clients evidence need, it may be worth engaging the client to explore what can be done for them. Simple cost-benefit analysis will help illustrate. There is a high cost in hiring new expertise and it goes beyond the additional salary and benefits.

If a firm with revenue at $500M spends 5% on advertising, marketing and business development, the budget for those areas may be $25M. *Total* online legal research costs might be 20% of that. If client reimbursement accounts for half the online research costs and charges to the office for the other half, potentially half the online costs can be attributed to advertising, marketing or business development. It may be worth looking at the legal research costs billed to the firm. What is the return of investment in this area?

Most firms review research billed to the firm. It can be divided perhaps into Business Development, Marketing, Special Marketing, Administration, and Other. If these areas can be clearly separated and understood, the firm could track the relationship between resources spent and return on investment. There may not be clear relationships, but there will be trends.

Track Spending

To get a baseline for improvement, the number needs to be further broken down and compared to a year earlier and perhaps a year or two before that. This might take some time, but the IT effort to produce a tracking tool needs only to be done once.

Will it be worth it? If we want to improve the ROI, in this case at least to reduce the overall costs by, say, 20%, it would be worth it. Gathering the numbers should provide some salient features even the first time it is done. The firm can look for patterns and the standard process of seeking new business can be markedly improved or present an area to watch. Does the firm have the right resources to support the new business it seeks? More important, has business been developed from the spending?

The point here is not to make people look bad; it is to get people to join the effort to spend time and money on the right things. This process should result in dialogue and a change in habits to become as effective as possible. Parenthetically, it should also reduce non-billable research. There can be good reasons why business does not flow from

the costs of the effort, but collecting the data and visually displaying the results is the only way to capture a pattern. Opportunity is lost for a variety of reasons: being too slow to respond; having inadequate qualifications; poor pricing; or just not asking for the business. The targeted client may be misjudged or take longer to make a decision. Some behavior change can result.

All of these situations can be changed, once they come to the fore. They have the same effect as errors in manufacturing that cause the loss of a sale or return of a product. Both erode the reputation of the firm, and are therefore demoralizing. They cause work to be redone. There is never enthusiasm for rework that triggers costs in labor and opportunity.

Business Development

After studying the cost of legal research for Business Development, it may turn out on analysis that the same attorneys appear consistently with business development charges, yet there is no complementary business that results. This may be an opportunity to eliminate this category as a *catch-all* for non-billable time, and this would be a real benefit of examination and perhaps a requirement for more documentation in items billed to the firm. The more projects there are of this type, the easier it is to see potential value. Success can make it habit-forming. Since lawyers are knowledge workers, brainstorming for what and how to improve should not be difficult.

In cases of real Business Development charges, it may be that only one in four charges turn into new business. What does this say about the right amount of spending? Certainly more scrutiny is needed by anyone approaching a potential client. Full steam ahead might not be the best approach.

Maybe only some lawyers within a practice group should go after the business; others can focus on identifying potential clients. Perhaps the task of Business Development should be assigned to the marketing department for better results. Their habits may be more attuned to evaluating opportunities where a portion of the effort is at the request of lawyers and the remainder from their own creative imagination. If this is not the case, outsourcing may be the right answer.

Outsourcing can be a champion in this situation, because the well-documented, fixed cost of Business Development may have a better return than the amount billed to the firm for the same purpose. This

keeps the research cost-per-client and/or cost-per-lawyer down. Regardless of the final choice, the methods of continuous improvement reveal answers that mere conjecture and opinion will never display. Data can speak with an authority no personal opinion can achieve.

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