

## *Knowledge Management in the Law Firm*

### **Firms must be creative to find and capture elusive information.**

FORMAL knowledge management programs are built on the process of finding, and capturing, knowledge--in a form that allows it to be shared and re-used by others, to create new work.

Inherent in this process is the challenge of making tacit knowledge explicit, so that it can be captured and shared. Tacit knowledge is the holy grail of knowledge management: the intangible, generally unspoken, "experience" that lies in the mind of an expert. This experience is the magic ingredient that allows the expert, (a lawyer) to perform the alchemy of transforming information (i.e., facts, research, etc.) into legal work product (i.e., advice and counsel, a successfully negotiated deal, or a solid legal document) that is delivered to a client.

The challenge, of course, is to get this tacit knowledge out of the mind of an expert and capture it in a form that can be used by others--traditionally, in the form of the written word. Unfortunately, this approach is labor-intensive and tedious. In its most basic form, the expert is charged with writing down his or her tacit knowledge in the form of a book, article, methodology, checklist, or a model document with annotations. In some cases, another staff member will be assigned to facilitate this capture process, by acting as a ghost writer, interviewing the expert and then (jointly) creating written materials.

This second approach is less tedious and time consuming for the expert, but still requires significant effort on the part of both the expert and the staff member. The vast majority of US law firms continue to rely on the first approach, in most case with disappointing results because the lawyer is already very busy with billable work, and most lawyers do not regard such an assignment as challenging or professionally and financially rewarding.

The second approach is used by some U.S.-based firms, and is more widely used by European-based firms. For those willing to allocate the appropriate resources, it is more successful than the basic approach, although it still has drawbacks. In order to be successful, the interviewer must have enough substantive legal experience to economize on the time required of the expert. And he or she must also be fully linked into the culture of a firm, in order to write in a style and at a quality level that is respected by all.

Conventional wisdom in knowledge management circles holds that these approaches are the best and most thorough way to capture and transfer the knowledge of experts. However, they are the most costly and least nimble approaches, as a result of the time-consuming capture process. Therefore, they are best reserved for "big game," i.e., knowledge that represents a core competency of a firm and critical to its on-going success. For most firms, that will be about 20 to 30 percent of its institutional knowledge.

### **Sobering Prospect**

Thinking about knowledge management (KM) in these terms alone is a sobering prospect. However, this estimate raises an interesting corollary question: Are there opportunities to capture the remaining 70 to 80 percent of a firm's knowledge in less labor-intensive ways?

One place to look is in collaborative systems. Collaborative systems, almost by definition, make tacit knowledge explicit. In the natural course of exchanging e-mails, participating in electronic discussion threads, or contributing to electronic team rooms, individuals are spurred to express their tacit knowledge in the written word. Better yet, they do so as a by-product of their natural work process, rather than as a separately assigned work task. Those who participate in the exchanges benefit by acquiring the explicitly expressed knowledge. Unfortunately, those who don't participate remain unaware of the knowledge that is being captured and transferred. Are there ways to harvest this knowledge and make it available to all?

Fortunately, yes.

One approach is to commission appropriate staff to monitor collaborative systems, looking for "knowledge nuggets" and capturing them into other KM systems in use throughout the organization. For example, a staff member might monitor a virtual closing room and observe a discussion thread about the interpretation of a new governmental regulation in relation to a specific aspect of the deal being handled in the closing room.

At the end of the discussion thread, the participants might arrive at an interpretation of the regulation that could be captured and published in another KM forum--perhaps a "best practice" system that contains the model language for a document that is part of the deal.

While this approach has value, it is still, unfortunately, labor intensive. It becomes much less so when a firm decides to use "intelligent agents"--software that can skim through collaborative systems seeking certain patterns of words or concepts -- and bring these to the firm's attention as possible subject for capture. Tools to support these processes are just recently appearing in commercial software products, and are only now being embraced by early adopters. However, they no doubt will become more widespread as these technologies prove themselves in the legal marketplace.

## Second Approach

A second approach is to consider e-mail as a knowledge resource. In the natural course of e-mail communication, individuals make tacit knowledge explicit. They talk about subjects in which they have expertise and they reveal names of individuals and organizations with whom they communicate. Imagine what a rich repository this is to help answer one of the basic knowledge management questions faced by an organization: "Who knows who and who knows what?" There are tools emerging now that will automatically scan an individual's e-mail, identify his or her expertise and contacts, and make this information available to an organization through ad-hoc search queries.

Is such an approach going to be comprehensive in terms of the information revealed? Not likely. Is it going to capture important and current information about expertise with less human intervention? Most decidedly. Several leading firms are beginning to recognize this opportunity and are exploring new technologies as they become available. Is it legal and ethical to consider using e-mail and other collaborative systems as potential knowledge resources in the automated ways described above? That is an important question for each organization to consider individually. Many law firms have a formal policy stating that e-mail contents are the property of the organization, not the individual--although clearly there is some dispute relative to privacy issues, predominately in the E.U.

Some organizations have extended this policy on e-mail to other collaborative systems as well. And, if a firm is to charter knowledge management workers to monitor discussion threads or team rooms, this must be done in a way that does not compromise client confidentiality or attorney client privilege.

If a firm elects to pursue this avenue of knowledge capture, it is important to make this approach open and public to all affected. It is imperative that individuals know what is being monitored, why, and the uses to which harvested knowledge will be put. Ideally they would have a chance to review and approve "knowledge nuggets" before they make their way into other systems. Hopefully, they will be recognized and rewarded for their contributions to the organization's knowledge assets through these indirect capture systems. As with all KM initiatives, they are most successful when participants understand that they individually derive value through both contribution and use of the systems.

***Interested in Learning More About Legal Hiring? Read the Definitive Guide:***

[\*How to Hire a Legal Recruiter for Your Law Firm: How Law Firms Recruit Attorneys Using Legal Recruiters\*](#)