



Legal Process Improvement Through Lean

Bringing the Best of Business To the World of Law

BY LOURDES M. SLATER

In this article, we will examine: 1) the concept of Lean; 2) the business case for using Lean in the practice of law; and, 3) examples of where to use Lean in the practice of law.

A Primer on Lean

Lean management relies on team effort to improve efficiency, speed and performance by systematically removing waste from a process and increasing its flow. While the concepts have been around forever, Mr. Taiichi Ohno codified the Lean management philosophy into the Toyota Production System.¹ Waste

is defined as anything other than that which adds value.² The eight wastes of Lean are Defects, Overproduction, Waiting, Non-Utilized Talent, Transportation, Inventory, Motion, and Extra-Processing (commonly referred to as DOWNTIME). Two significant aspects of Lean to the practice of law are its focus on the “voice of the customer” and its value of defect prevention over defect detection. The goal is to “get it right, the first time around.”

Many thought leaders advocate the implementation of Lean with Six Sigma for law. Six Sigma’s is a statistical-based

methodology and set of tools to reduce and control variations. While Lean focuses on waste reduction in the end-to-end process, Six Sigma tackles areas of sub-optimization within that process to reduce variation. Six Sigma was developed by Motorola in the early 1980’s based on quality management fundamentals and became a popular approach at General Electric in the early 1990’s. Sigma represents the population standard deviation, which is a measure of the variation in a data set collected about the process. If a defect is defined by specification limits separating good from bad outcomes

of a process, then a six-sigma process has a process mean (average) that is six standard deviations from the nearest specification limit. This provides enough buffer between the process natural variation and the specification limits.³ Six Sigma relies heavily on statistical data analysis and design work to reduce variation.

Lean and Six Sigma are an ideal combination. However, lawyers have a negative, and sometimes valid, reaction to reducing their work to a process with little or no variation. We will posit that introducing a combination of Lean and Six Sigma to start innovating traditional legal processes may be too much to tackle in the first instance. Rather, a focus on Lean first will produce significant and measurable improvements to your practice. Best of all, it can be implemented with a few adjustments.⁴

Lean achieves its goals by using simple tools such as Kaizen⁵ events, Kanban⁶ systems, value stream mapping, and DMAIC cycles.⁷

- In a Kaizen event, a cross-functional team gets together for a set amount of time, usually 3 or 5 days, consecutive or not, to solve a problem or improve a process. The cycle of the activity can be defined as: "Plan → Do → Check → Act." This is also known as a Deming cycle or PDCA.
- Kanbans are visual to-do-lists for the team. Every Kanban board must contain several columns that represent the work stages. Cards represent the tasks that every member needs to complete. The team creates three columns: 'To Do,' 'Doing,' 'Done.' With some exceptions, the goal is to finish a task before starting another one. The reason for this is that one of the main goals in Kanban is to constrain the amount of work in progress (WIP). Incidentally, this will have a positive impact on time-keeping by attorneys. At the

end of the project, the team should take time to reflect on the process to uncover waste or bottlenecks that should be fixed for the next time.

- Value-stream mapping is a tool for analyzing the current state of a process and re-designing a future, better, state. Process mapping is an essential component of Lean. A Kaizen event is an appropriate time to draw your current process map and to brainstorm on steps to improve it.
- DMAIC (an acronym for Define, Measure, Analyze, Improve and Control) is an improvement cycle used for improving, optimizing and stabilizing business processes and designs. The DMAIC improvement cycle is the core tool used to drive Six Sigma projects. However, DMAIC is not exclusive to Six Sigma and can be used as one of the Lean tools.

It is important to remember, however, that Lean is not only a set of tools; it is a culture. When a Lean culture exists, improvement will be sustained. How do you start? By training your teams on the concept and value of Lean. Then select a process you want to improve, it could be anything: conflict checks, time entries, invoicing, preparing for an initial 26(f) conference, responding to discovery requests, document review, or any process that has become a pain point. Lean applies anywhere where waste exists. If you are introducing Lean to the organization, it is important that you select the right project to start. It should be narrow in scope but, when improved, it should impact key performance metrics such as resources, costs, and client satisfaction. The next step is to prepare and run a well-executed Kaizen event and start the path to continuous process improvement. Lawyers are familiar with the relentless pursuit of perfection, we only need to improve the way we map that pursuit.

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The Business Case for Lean in Law

Law firms must adjust to remain competitive in a market where technology, alternative legal service providers (ALSPs), the Big Four, and sophisticated in-house legal operations departments, are all eating into law firm profits. The competition is doing this by listening to the voice of the customer and delivering results. Clients will continue to demand innovation through technology and business approaches. They want quality services delivered faster and at a lower price point. Lean is a tried and tested business methodology that addresses precisely those demands. It increases efficiency by reducing waste in any process. Since wasted time, resources, and money are endemic of so many legal processes, it follows that embracing a Lean management style at the law firm level will help firms stay competitive. To give the business case additional context, let's look at the past and the current state of affairs.

Traditionally, lawyers have profited from the billable hour concept and a steady stream of high-volume work. Both of those avenues for generating revenue are under attack. Clients prefer fixed rates, capped fees, alternative fee arrangements or contingency fee-based engagements. If the firm sticks to the hourly fee structure, clients are often demanding steep discounts or realization rates go down, sometimes both. It has become customary practice for clients to refuse to cover many costs that were traditionally passed through or to pay for first or even second-year associates. Additionally, much of the labor-intensive work at law firms, document review being the main one, is being contracted out to vendors almost 100% of the time. Moreover, if done right, buyers should be seeing document review time drastically reduced given the availability of artificial

intelligence and the analytics tools available in the market. Artificial intelligence will also continue to take away work from lawyers in the areas of legal research, contract drafting and management, and due diligence reviews, to name a few.

At the same time, corporate spending in alternative legal service providers (ALSPs) is increasing fast. This year, about 75% of corporations surveyed say they are using ALSPs in at least one service category.⁸ This trend will continue. In 2018, a second global survey of ALSPs was conducted and found that the ALSP market had grown significantly to about \$10.7 billion in annual revenues or a compound annual growth rate of 12.9 percent.⁹ The 2018 study also concluded that the average growth rate for an ALSP not affiliated with a law firm was about 24 percent per year.¹⁰ Equally significant, the

2018 survey confirmed that the services provided by ALSPs were rapidly moving “upmarket” to include (among others) such sophisticated work as regulatory risk and compliance, project management, legal research, and corporate due diligence.¹¹

The data begs the question: Why have law firms not been quicker to adapt and provide these services in a competitive fashion? To understand the resistance, it is fun - but way too simple - to blame it on the lawyer's pathological resistance to change. The “2018 Report on the State of the Legal Market” issued by the Center for the Study of the Legal Profession at Georgetown University Law Center and Thomson Reuters Legal Executive Institute compares the strategies of many firms to the French strategy of the “Maginot Line” – a seemingly impregnable fortification that provided a false



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sense of security until it was easily defeated in the early stages of World War II.¹² The report theorizes that strategic blind spots, decision-making inertia and unwillingness to adapt strategies to changing conditions can lead decision makers to ignore signs that the world has progressed, and current strategies may not be working.¹³

There are other underlying factors at play that help explain the inertia. A key one is that technology moves exponentially faster than the practice of law. It took ages to get lawyers to use predictive coding even though the technology had been around for a long time. Why? Lack of planning, training, and comfort have a lot to do with it. When you do not know how else to do it, you keep doing what you've always done. Yes, we know, there are many of you out there still reviewing every document hit by a Boolean search. A Lean approach would measurably improve the document review process. It all starts with team formation and collaboration. Without taking into consideration the end-user's needs, as well as the client's and the case's needs, technology innovation is futile.

Another reason why firms have been slow to adopt business innovation into the practice of law is because they do not believe the traditional law firm model is dead. After all, the 2019 Citi Hildebrandt Client Advisory Report, an annual survey of law firm fiscal performance, showed robust growth at U.S. law firms. When you scratch the surface, however, you see that the growth is centered around Am Law 100 and Am Law 50 in particular; that is, only those few firms that are still able to sell their "bespoke services" to GCs with bet the company litigation are performing well. Other data sources indicate a widening fiscal separation between the cadre of "elite" firms and the rest of the pack.¹⁴ A Forbes report points out that the 6.3% revenue growth of the firms surveyed is offset by a 5.9% increase in costs, yielding a minuscule 0.4% increase in profits. "Longer collection cycles, declining realization, and



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'dispersion'— the near-even split between firms that see demand increase and firms that see demand decline year-to-year— tell a different story than the Report's bullish headline."¹⁵ Also, "equity partner headcount declined by 0.3%, a continuation of a seven-year trend where equity partner numbers have remained flat, but leverage (non-equity billers) has increased. That's a good way to prop up profit-per-partner but not a long-term winning strategy."¹⁶

Law firms should act proactively and examine their processes for delivering services. "Plan, Do, Check and Act." Using Lean in legal processes is the right step to remain competitive and retain market share because by applying Lean you will increase efficiencies and optimize your resources. Lean requires little investment, it tells the client that you are listening, it increases lawyer satisfaction and it promotes team work. Best of all, it is simple to implement.

Applying Lean to Legal Processes

One of our virtues as lawyers is our skepticism. If you bring Lean into the conversation, expect the following reaction: "Do we need it? Will it make a difference?" And, my personal favorite, "Why can't you just let me get back to doing real work?"

To show how Lean can make an impact, let's consider examples of the types of DOWNTIME we see every day and consider the costs to your client:

- **Defects:** unstructured data is misfiled and cannot be located; data entry mistakes; production of privileged or nonresponsive documents; budgets are not met.
- **Overproduction:** lawyers operating in silos, researching or drafting memoranda on the same issue; lawyers turning every stone when they already found controlling case



EPISODE 2:

Welcome to the Spring edition of the ILTA podcast “Hops-cast”. Our guest today is Joshua Wulf. Josh is a Litigation Technology Analyst at Voys, Sater, Seymour and Pease LLP, and is based out of Cincinnati. He’s joining us today to talk about changing job roles, tackling new challenges head-on, innovation, ILTA, sports and how they relate to life, and assorted other fun facts.

Before listening to the podcast, let’s run through Josh’s stats:

JOSHUA WULF

LITIGATION TECHNOLOGY
ANALYST



HOMETOWN: CINCINNATI

**FAVORITE
SPORTS TEAM:** BENGALS HAVE GIVEN
ME ENOUGH REASON TO
QUIT ON THEM – SO FC
CINCINNATI

**FAVORITE
HOP:** COLD BREW COFFEE

LITTLE KNOWN FUN-FACT: I came 6 places away
from going to the National Spelling Bee as a fifth
grader.

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law and the time spent is disproportionate to the case or the budget; printing everything, sometimes multiple times.

- **Waiting:** staff or lawyers waiting for assignments or instructions; waiting for conflicts to clear; waiting for files to arrive; waiting for client approvals.
- **Non-utilized talent:** the same associates doing all the work, while others do not have enough to do; giving associates work that can be done by paralegals; lack of training.
- **Transportation:** unnecessary travel of people or files.
- **Inventory:** too many attorneys or staff; supplies you do not use; reference books or memberships you do not use; unused office space; unused software licenses.
- **Motion:** using snail mail, being late to meetings, sending emails to groups of people when to one person is enough; transporting physical files.
- **Extra processing:** lack of templates; not saving files in your document management system resulting in extra processing of files and storage; people doing the same task, working in silos; lack of Knowledge Management; multiple proofreaders; your draft control process is inexistent or inefficient; reviewing the same document multiple times.

These inefficiencies can be tackled with Lean. In a recent case, a client was facing a deadline for document production. After 6 months of work and with 4 months to go before the deadline, the team had gone through about 30% of the review. The client wanted the production out on time and within budget. A Kaizen event was planned and executed with a cross-functional team of key members from the e-Discovery vendor, the contract attorney vendor, and the litigation team. When we mapped the current process, we quickly identified, and were able to fix, the following types of waste:

- **Waiting:** contract attorneys sat waiting for documents to be batched for review, for

guidance on coding calls, and for large files and spreadsheets to be loaded.

- **Defects:** metrics showed certain reviewers were either too slow or frequently made mistakes; the coding panel was too long and complicated; the documents in the review set had not been properly culled.
- **Non-utilized talent:** associates were not training contract reviewers or QC'ing their work; high performing contract attorneys had not been asked to work fulltime; the full analytics function of the review tool had been purchased but was not being used. Getting the team comfortable with, and tackling how to apply, predictive coding was key in speeding the review.
- **Extra-processing:** documents were being reviewed multiple times because the review had not been properly structured, and the protocol was subpar. The QC process was multilayered and *ad hoc*. By making a

By making a few tweaks, such as applying a near-duplication QC approach, the QC was streamlined, and it became easy to locate coding inconsistencies.

few tweaks, such as applying a near-duplication QC approach, the QC was streamlined, and it became easy to locate coding inconsistencies. Also, the documents were being batched

by custodian. In an email heavy review this meant the same email thread was being reviewed sometimes by 4 or 5 attorneys, which also lead to coding defects. We changed the process to batch by email thread, each entire thread to be reviewed by one lawyer.

After Kaizen, the team had an improved process plan that made it possible to meet the deadline. Waste in a process is easy to identify. Start with a well-designed scooping document and a Kaizen event and

then create a process map that optimizes performance.

To sum up

There is fierce competition in the market. Law firms need to embrace process improvement to optimize their services and demonstrate to their clients measurable cost savings and efficiencies. By bringing Lean into your practice, you will make a big step towards embracing the new world order. **ILTA**

¹ Ohno, T. (1988) Toyota Production System: Beyond Large Scale Production. Productivity Press, New York.

² Summers, Donna C.S (2011). Lean Six Sigma: Process Improvement Tools and Techniques. One Lake St, Upper Saddle River, New Jersey: Prentice Hall. ISBN 978-0-13-512510-6, p. 135.

³ Six Sigma (n.d.). Lean Manufacturing and Six sigma definitions Retrieve from <http://leansix-sigmadefinition.com/glossary/six-sigma/>

⁴ In practice, Lean should be combined with Agile Project Management to optimize legal processes. Agile is an approach for delivering project requirements iteratively and in waves throughout the cycle of any legal project. By now, all law firms should have some form of project management program in place, meaning the practice of initiating, planning, executing, controlling and closing a specific project to achieve specific goals and meet the success criteria and deadline.

⁵ Kaizen means "change for the better."

⁶ Kanban means a visible record (such as a billboard, card, label, or sign).

⁷ Examples of other tools used in Lean are the 5Ss, 5 Whys, A3 reports, Cause-and-Effect Diagram, and Mistake Proofing.

⁸ Thomson Reuters (n. D) Alternative Legal Service Providers 2019. Retrieve from <https://legal.thomsonreuters.com/content/dam/ewp-m/documents/legal/en/pdf/reports/alsp-report-final.pdf?cid=9008178&sfddcam-paignid=7011B0000020F6AQAW&chl=pr>

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Thomson Reuters (January 10, 2018). Too Many law firms are still fighting the last war." 2018 Report on the State of the Legal Market", Georgetown Law and Thomson Reuters Legal Executive Institute. Retrieve from <https://www.thomsonreuters.com/en/press-releases/2018/january/2018-report-on-the-state-of-the-legal-market-from-georgetown-law-and-thomson-reuters-legal-executive-institute.html>

¹³ Id.

¹⁴ Cohen, Mark. (January 7, 2019). A banner year for law firms? A different take on the 2019 Citi report. Forbes.com Retrieve from <https://www.forbes.com/sites/markcohen1/2019/01/07/a-banner-year-for-law-firms-a-different-take-on-the-2019-citi-report/#23268ff81b8e>

¹⁵ Id.

¹⁶ Id.



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