

The American Bar Association  
Young Lawyers Division  
2013 Fall Conference  
Phoenix, AZ



**Work Smarter, Not Harder –  
Introduction to Knowledge Strategy  
for Practitioners (CLE)**

Arizona Biltmore  
FLW C, 1<sup>st</sup> Floor  
Friday, October 11, 2013  
10:15 AM – 11:15 AM

September 19, 2013

# Work Smarter, Not Harder - Introduction to Knowledge Strategy for Practitioners

Presented by the  
Knowledge Strategy Interest Group  
of the ABA Law Practice Division  
10:15am-11:15am, Friday, Oct. 11, 2013  
Biltmore Hotel, Phoenix

---

## **Panelists:**

- Chair: Jack Bostelman, President of KM/JD Consulting LLC (former partner of Sullivan & Cromwell LLP), San Francisco, CA. Chair of Knowledge Strategy Interest Group, Law Practice Division.
- Nasym Korloo, Knowledge Management Attorney (former associate in Mergers & Acquisitions and Private Equity Groups), Paul Hastings LLP, Los Angeles, CA. Member of Young Lawyers Division and Law Practice Division.
- Michael Speker, Law Firm of Michael Speker, Esq. (Adjunct Professor of Law, University of Baltimore Law School), Washington, D.C. Chair of Solo/Small Firm Interest Group, Law Practice Division.

## **I. Introduction**

- A. If you are even somewhat interested in this subject, please join the Knowledge Strategy Interest Group in the ABA Law Practice Division.
  1. Go to our home page at: <http://ambar.org/LPMKnowledge>
  2. You can join the Interest Group by following the link under "Join Us." You will be asked to join the ABA or Law Practice Division if not already a member. Joining is free for Law Practice Division members. Joining the Division costs \$50/year for ABA members.
  3. On its web site the Interest Group posts resource documents and web links. It also e-mails its members with notices of programs, both in-person and webinars. The Group also plans on a newsletter.
- B. Or you can e-mail the Group's Chair, Jack Bostelman, at [jack.bostelman@kmjdconsulting.com](mailto:jack.bostelman@kmjdconsulting.com).

## **II. What is Knowledge Strategy and why do we care?**

### **A. What do we mean by Knowledge Strategy?**

1. It's a two-part definition: First, we need to talk about Knowledge Management. That's how lawyers share what they know
  - a. about client work,
  - b. about clients,
  - c. about markets for their services, and
  - d. about their firms as businesses.
2. Definitions are too vague, though. Examples are clearer:
  - a. Quality lawyer training, feedback and mentoring that not only imparts senior lawyer expertise to more junior lawyers, but also shares lawyer expertise among colleagues.
  - b. Effective practice group meetings that discuss current issues, promote group communication and include training.
    - i. So far technology hasn't been mentioned.
  - c. An effective work product search and retrieval system for precedents, internal research and client advice (including e-mail advice). This is actually really hard to achieve.
  - d. System to capture knowledge that's not document-based, such as firm expertise (what steps are involved to complete this type of matter) and lawyer expertise (who is the firm's expert on a particular subject).
  - e. A repository of firm experience for each matter the firm undertakes, which includes factual details about the matter, commentary about context and billing information broken down by sub-parts of the matter.
  - f. Easily accessible knowledge about client needs, current firm work for the client and competitors for the client's work.
3. For the second part of the definition, Knowledge Management becomes Knowledge Strategy when all the elements of knowledge management are considered together as a core function managed by the firm's senior-most leaders to support the firm's strategic goals.
  - a. This is the part that's been absent at many firms, and is part of the explanation for past failures.
  - b. The potential of a knowledge management effort within a firm is limited by the seniority level of the lawyers behind it.
    - i. If it's run by the IT Dept. it will have limited success, relying mostly on firmwide technology solutions that may or may not hit the sweet spot for lawyers.
    - ii. If it's run by mid-level staff, or even a former lawyer, who report to the firm's executive director, it will work better but will not be a game-changer. As a result, it will likely be starved for resources.
    - iii. If it's run by a respected partner who's tied in to senior management's strategy and other objectives, the firm's knowledge-sharing efforts can really go far.

## B. Why do we care about Knowledge Strategy?

1. Aid in identifying comparable matters for purposes of setting alternative fees, finding relevant precedent, preparing pitch books and staffing matters with lawyers having relevant experience.
2. Improve efficiency, which reduces write-downs (before the bill) and write-offs (after the bill) and improves profitability. Efficiency also makes clients happier and improves lawyer morale.
3. Help quickly find the firm's expert on a particular legal issue.
4. Enable junior lawyers to take on more senior work, thereby increasing leverage and profits per partner.
5. Reduce risk by improving the consistency and quality of professional work product.

## C. To illustrate, consider two examples of specific initiatives for improving knowledge-sharing: checklists and e-mail management. These examples apply both to larger firms and small firms.

1. Checklists are a great way to get started
  - a. One kind of checklist describes the key provisions of a document – the anatomy of an agreement.
    - i. This checklist will help the draftsman, probably a junior lawyer, gain an understanding of the finer points. It can include cross-references to explanatory material.
    - ii. The checklist also helps a more senior lawyer reviewing the draft – especially by helping to spot something that's missing, such as the choice of law provision or an alternate provision for something's that's there.
  - b. Another kind of checklist explains the steps for accomplishing a type of matter, either big picture steps for the whole matter or detailed steps for a specific task within the matter.
    - i. These kinds of checklists for internal tasks probably mainly help the junior lawyers.
    - ii. But, like the pilot checklists described in the *Checklist Manifesto*, these checklists can even help prevent more senior lawyers from overlooking important action items.
    - iii. For transactional work, if the checklist is circulated to all parties working on the matter it can be part of deal management by serving as a time and responsibility document.
  - c. Yet another type of checklist for transactional matters can list all the documents needed for the matter, as well as who's responsible for drafting them.
  - d. Checklists have many practical advantages
    - i. They can be fairly easily and quickly created, producing usable work product much sooner than a standard forms project.
    - ii. They can be updated and expanded more nimbly than a standard form. A basic checklist can then be enhanced in bite-size steps each time lawyers return to it for updating. It doesn't have to be created at one time as a single master document, the way standard forms do.

- iii. At some point, a checklist could even evolve into a standard form, although it's probably more useful to have a robust checklist and a related collection of actual precedents anyway. Updating checklists is much easier because you don't have to go through a big partner committee for approval.
  - e. Checklists can start in paper form but evolve into more automated versions.
    - i. They can be posted on an intranet, with hotlinks to the explanatory material and related precedents.
    - ii. A process checklist on the intranet can be turned into an on-line workflow management system. Each lawyer can update the status of the various steps, making it readily available to the partner in charge for use in managing the matter and updating the client. Conceivably even the client could have access.
- 2. A thornier problem is e-mail – managing it by the individual lawyer and managing it within the firm as an organization.
  - a. Most firms have policies requiring filing of client-related e-mail.
  - b. Most firms also experience a huge gap between that policy and the lawyers' actual practices – and don't even have a way to know how large that gap is.
    - i. Given the central importance of e-mail, unfiled e-mail or non-locatable e-mail (which amounts to the same thing) means
      - (a) inability to know what advice the firm has given – the client says it was told X, the firm remembers saying Y but can't prove it,
      - (b) loss of prior research – the firm reinvents the wheel, and
      - (c) incomplete client files – risks of ethical violations if the client asks for its file.
    - ii. The bottom line – it means important knowledge isn't being shared, leading to inefficiency and inconsistent advice.
  - c. There's no silver bullet. And this isn't really a software problem. It's mostly a human behavior problem.
  - d. This subject could be the topic for its own program, so it won't be addressed fully here. The basic point is that the problem will almost always turn out to be lots of smaller problems. Individual categories of behaviors must be examined, their causes understood, and solutions devised for each. Here are a few examples of possible reasons:
    - i. The software could be too hard to use.
    - ii. Senior lawyers may need more training because they don't know they can link e-mail folders to the electronic filing system to automatically file their e-mail.
    - iii. Lawyers, especially associates, may be avoiding convenient bulk filing of e-mail because they're concerned about their own privacy over what they've said or the way they've said it in some e-mails.
      - (a) The only effective methods are to file at the time of sending or receiving or bulk file all the e-mail in a particular folder periodically or at the end of the matter.
      - (b) If they won't do it either of those ways, it won't get done. Lawyers will likely never individually address a huge pile of e-mail at a later date.

- iv. Lawyers may find it too cumbersome to file e-mail when sending because they can't be bothered with client and matter numbers.
- v. Lawyers may have a hard time filing e-mail from their remote devices and won't bother doing it when they get back to their desks.
- e. The solutions to each of these problems will be different. Some involve technology, but most involve addressing the way lawyers work and behave.
- f. Ultimately, pressure from senior management will also be required in order for the necessary culture changes to take hold.

### **III. Case Study: Knowledge Strategy Initiatives in a Large Law Firm**

#### **A. Profile of Paul Hastings**

1. The firm has nearly 1,000 attorneys, 20 offices, and a very wide range of practices.
2. The firm has grown significantly in the last 10 years, in terms of number of attorneys, lateral partners, number of offices and practice areas.
3. Many of its practice groups are spread across several offices.
4. It is an important part of the firm's strategy to integrate its growing numbers of offices, attorneys and practice areas.
5. Structure of knowledge management within the firm:
  - a. The Firm established a Knowledge Management Dept. two years ago.
  - b. A senior partner is in charge – full-time. He's a former M&A practitioner.
  - c. The firm has five full-time knowledge management attorneys who serve several practice groups. They are all former practitioners in the practice areas they support. The firm plans to add a few more knowledge management attorneys in the coming years.
  - d. The firm's smaller practice groups will have no knowledge management attorneys. If those groups are sufficiently interested and organized, though, they get consultative services from the KM Dept.

#### **B. Two of the firm's major initiatives.**

1. Knowledge bases
  - a. These are based on the concept of filtered search. This is very new to law firms, but fairly well known in the corporate world.
    - i. The concept is encountered all the time when shopping on Amazon.com.
      - (a) Say one is looking for a digital camera. The shopper types that in the search box.
      - (b) More products are returned than the shopper can possibly consider.
      - (c) They key, though is that filters appear on the left, allowing the shopper to check boxes for desired features, price range, manufacturer and other important attributes.
      - (d) Once the shopper applies those filters, the list becomes very manageable.

- (e) Imagine trying to narrow the results sufficiently with a pure keyword search such as that required by the typical law firm document management system search engine.
- ii. The firm created something like the Amazon shopping experience for various practice groups within the firm.
  - (a) For its M&A/Private Equity knowledge base, the firm created filters such as Subject Matter, Document Type, Transaction Type and Industry.
  - (b) Each filter has sub-filters, to allow for granular searching.
  - (c) The user is searching for documents not products, but the firm's filters function the same as the Amazon filters.
- b. Why does filtered search work better than straight law firm word search?
  - i. Law firm word search ranks by frequency of occurrence of search terms – There are far too many hits to wade through. Lawyers don't have the knowledge or patience to construct super-complex Boolean searches to find their documents among the zillions in the firm's system. Even if they did, they'd probably get too many hits.
    - (a) The firm has over 20 million documents in its document management system, not counting e-mails (which triple that figure).
  - ii. There's no way law firm word search can produce a Google-like (in other words, extremely relevant) result set because Google ranks its results based on references to a page by other pages, not by number of word occurrences. It's a completely different concept than word search and isn't applicable within a law firm document environment.
  - iii. Documents are tagged with multiple filter categories. The user narrows the search by selecting filters from as many categories as desired. The result set will be only those documents tagged with all the chosen major filter categories. The categories with many documents also have sub-filters.
  - iv. Users can check and uncheck filters to expand or narrow their first search. They can also try different word search terms. Because the filter categories were developed with lawyers in each practice group specifically for that group's knowledge base, the lawyers are not confused or put off by the many categories available for filtering.
- c. Of course, all this benefit doesn't come easily. There are several challenges in setting up a filtered search tool in a law firm.
  - i. First, filtered search has to be done at the practice group level, not on a firmwide basis. This is because the filters must be defined by reference to the document population and the way the user group thinks about the documents for searching. Both the needed filter categories and the types of documents tend to be very different across practice groups. This means knowledge bases must be set up separately for each practice group.
    - (a) On the plus side, this means one practice group can have a knowledge base that contains the deal documents from every matter they've worked on.

- (b) While another practice group can have a different kind of knowledge base with a mixture of (i) good examples of the main deal documents, (ii) articles and other explanatory material about relevant topics, and (iii) samples of ancillary documents such as resolutions and closing certificates.
  - (c) The firm has both types.
  - (d) Fortunately, the same underlying software can be used for all the knowledge bases. The separate knowledge base requirement applies more to the way the knowledge bases are managed and used than to the technology platform.
- ii. A second challenge is that someone has to manually tag each document with the relevant filter categories. This is both the power of the database and a challenge to getting it done.
  - (a) In groups supported by a Knowledge Management Attorney, that Attorney does the tagging. The Attorney is familiar with the subject matter and can assign the various tags fairly efficiently.
  - (b) In practice groups having no dedicated knowledge management attorney, and which may be smaller, a small number of partner-associate teams in a group must undertake to do the tagging, each covering a different part of their group's knowledge base.
  - (c) Software can make the administrative part of tagging an easy on-line process, but an attorney knowledgeable about the subject matter must still decide on the tags.
- iii. The third challenge is that there needs to be a system to collect the documents, both initially and on an ongoing basis.
  - (a) The Knowledge Management Attorney for a group must network with individual attorneys on a regular basis to identify and gather relevant documents. This can work if the Attorney is very pro-active.
  - (b) For deal papers, one practice group has developed a standardized semi-automated system to create e-closing sets that makes it easy for its attorneys to make an electronic archive of the important deal documents both for clients and the firm's files. It makes the attorneys' lives easier and gives the Knowledge Management Attorney a set of final documents for the knowledge base.
  - (c) Another inducement the firm offers is a filter in each knowledge base called "Contributor," which identifies who contributed the documents. The Knowledge Management Attorney can tell an attorney who is known to maintain a good collection that he or she can simulate a private filtered knowledge base by clicking on his or her own name as Contributor.
- d. There are two software platforms already used by law firms that can do filtered search.
  - i. The existing enterprise search software used by perhaps the majority of large firms – Recommind – can be configured to perform filtered search.



- ii. Also, the existing enterprise search offered by Autonomy iManage (called IUS) also comes with a module for filtered search. That's what my firm uses.
  - iii. For either platform, a fair amount of technology effort will still be required to configure the software properly.
- e. As discussed later under "IV. Case Study: A Solo Practitioner's Approach to Knowledge Strategy, and Some Observations about Small Firms," even firms that don't use one of the large enterprise search platforms can obtain similar results by creating thoughtful subject matter folder structures and adopting a naming convention for documents that contains relevant data that can be found using a keyword search.
  - i. While the full functionality won't exist in the flat taxonomy of a folder structure (*vs.* the multi-dimensional filtering of a large firm's knowledge base), this approach can greatly improve results.
  - ii. This system works better in a small firm if it can identify an individual who can collect documents and reliably and consistently tag them.
- 2. Practice group intranet home pages with relevant and fresh content. The overall idea isn't so new or revolutionary. What is different is how the firm has made it work with relevant and fresh content at the practice group level.
  - a. This was the firm's problem:
    - i. Attorneys in many of its practice groups are spread across many offices, have lateraled from many different firms and in some cases tend to work in silos.
    - ii. They didn't always know who to turn to outside their immediate colleagues for precedent and guidance. They didn't have a consistent system for staying abreast of current developments. E-mails to the group or part of the group were the predominant way of seeking information from others.
    - iii. While regular group meetings (via phone and video) certainly helped, the firm decided it needed a virtual reference room and a single platform to distribute group news and updates.
  - b. The firm's solution:
    - i. Establish intranet sites at the practice group level. This involves both
      - (a) creating the web site framework – the technology part – and
      - (b) deciding on content categories and continually feeding fresh content – the hardest part.
    - ii. By designing at the practice group level, the firm is able to focus on the content the attorneys wanted, making it more likely they'd use the site.
    - iii. How the firm did it
      - (a) Start with informal interviews of practitioners in a pilot practice group. Develop a basic layout for the home page and major sub-pages.
      - (b) Have individual meetings with a handful of practitioners regarding their view of the importance of various possible content types – specific external resources, documents and internal resources, blogs, forms, etc. Rank their prominence on the site by their popularity from these meetings.

- (c) Find someone to manage the content – if there’s no full-time knowledge management attorney, then the practice group chair (or his/her designee) and a rotating associate assistant will need to do it.
- (d) Emphasize content that will change and be relevant
  - (i) The firm’s practice group intranets can include RSS feeds of specialized news sources relevant to the practice, an internal blog for new developments, internal expertise locators, a stock price and public company SEC filings tracker, commonly used forms and other documents, and listings of the group’s internal educational programs and regular group meetings with materials and recordings where available.
  - (ii) Some of this content updates automatically, such as the RSS feeds, but a Knowledge Management Attorney or practitioner in the group must also stay on top of things.
- (e) Engage a professional design firm to make the site user-friendly and to give it an up-to-date appearance.
- (f) Support from the practice group leadership is important both to getting the project accomplished and in engaging the attorneys to use it.
- iv. The firm has tried to use the same overall web framework and functional modules for all interested practice groups. Not all groups use all modules.

### **C. Examples of more modest initiatives**

1. Establishing document and folder naming conventions at the practice group level
  - a. The firm found it a challenge to establish standard document folders for each matter within the document management system.
    - i. This is a pretty common issue among all firms.
    - ii. Due to lack of firmwide agreement about how many folders should be required and what they should be, the firm established only two: documents and e-mail.
    - iii. The firm didn’t try to establish a standard document naming convention. It’s not really practical at the firm-wide level. Individual attorneys adopt their own naming convention and the junior lawyers working under them tend to follow suit.
  - b. Yet if the firm had both of these, lawyers would have an easier time finding documents, both the team working on a given matter and other lawyers searching for something from a matter they didn’t work on.
  - c. The problem was trying to do this at the firm-wide level.
  - d. Instead, the firm decided to tackle it at the practice group level. It’s been working.
    - i. There are still lively discussions about what folders to establish even within a single practice group, but they resolve pretty quickly.
    - ii. The firm is setting up folders manually, so it requires training and reminding. But it’s been favorably received and compliance is reasonable. Each participating practice group has its own convention regarding number and names of main folders and whether subfolders are permitted.

- iii. Each practice group also has its own policy on naming documents and what other information to include, such as parties, transaction type or other key data.
  - iv. Some practice groups are more conscientious than others in following the policies.
  - e. As with the firm's other knowledge initiatives, support and pressure from the practice group leadership is important in getting this accomplished.
2. Collecting matter metadata at the practice group level
- a. If a practice group has *accurate and complete* basic data about all the matters it has worked on, it can leverage that information in many ways.
    - i. "Metadata" in this context refers to perhaps a dozen pieces of information, such as the parties, the amount involved, the industry, the date, the type of transaction or dispute, the key firm lawyers, and so on.
    - ii. For example:
      - (a) The league table information that's reported would be more complete.
      - (b) The metadata could be coupled to the document management system so that lawyers could filter their word searches by industry, type of matter, etc.
      - (c) Lawyers could more quickly identify comparable matters for purposes of giving fee estimates, assembling pitch books, finding internal experts or finding attorneys with relevant experience for staffing purposes.
  - b. The key phrase is "accurate and complete" basic data. The firm currently has various manual systems to gather this information – generally spearheaded by its Business Development Dept. The effort can be inefficient and misses information, though.
  - c. In a few pilot transactional practice groups, the firm is – or soon will be – starting to collect this information by having the attorneys fill out forms at the end of each matter.
    - i. The pilot groups were picked because their leaders strongly support this effort and they are supported by Knowledge Management Attorneys who can help oversee the collection effort.
    - ii. An important principle has been that it require no more than 15 minutes for a relatively junior associate who worked on the matter to compile the information.
    - iii. Ultimately the firm will automate the input process. For now the data from the paper forms is typed in a spreadsheet, but that will evolve as well if the firm is successful.
  - d. The firm will consider expanding this effort to other practice groups based on the success – and good word-of-mouth – of the pilots.
3. Both of these smaller initiatives require less technology and are instead more focused on changing habits and creating consistency, which can be achieved at firms of all sizes.

#### **IV. Case Study: A Solo Practitioner's Approach to Knowledge Strategy, and Some Observations about Small Firms**

##### **A. Although solos and small firms apply different solutions, they are addressing essentially the same issues as large firms:**

1. Quality
  - a. Consistency of work product,
  - b. Accuracy of work product (such as reflecting current law), and
  - c. Effectiveness of work product (such as reflecting latest practice and current developments).
2. Efficiency
  - a. Ease in locating documents and other information,
  - b. Avoiding reinventing the wheel,
  - c. Quick responses to clients.
  - d. Managing matters better
3. Managing the firm as a business
  - a. Matter experience
  - b. Referral network

##### **B. This case study focuses on the Law Firm of Michael Specter, Esq.**

1. Solo practitioner
2. His practice focuses on representing federal and private sector employees in adverse employment actions in Washington, D.C. and Maryland.

##### **C. Locating prior work product in a solo practice – for consistency and efficiency**

1. Like probably most solos, his firm does not have specialized document management software, but it does have a document management system.
  - a. It relies on standardized folders in the Windows file system and a document naming convention.
  - b. How elaborate this system needs to be, and how much time must be spent making it work, depends on the number of active cases the firm is handling at any one time.
    - i. For a variety of reasons, his firm seeks to limit itself to a maximum of 50 active cases, which allows for relatively straightforward use of the standardized folder system and document naming convention.
2. In addition to folders for the firm's active clients, it keeps a set of folders with samples and templates, organized by a standardized subject index (also called a "taxonomy") customized for the firm's practice. The subjects may also include layers of sub-folders.
  - a. For example, the highest level in the subject index may be the administrative forum (Equal Employment Opportunity Commission, Merit Systems Protection Board, etc.)
    - i. The second level may be type of case
      - (a) EEOC: discrimination, race, sex, national origin, religion, etc.

- (b) MSPB: misconduct (third level: various types of misconduct), performance-related (third level: various types of performance-related cases)
- b. When he finalizes a new document for a client, he frequently puts a copy in the subject matter folder system. He also does this for documents received from others.
- c. Depending on the nature of a solo's practice, he or she may want to put every document in the subject folder system or only selected documents.
- d. Because the subject folder system contains duplicate copies of client documents, there's no automated way to synchronize them with the originals in the client folders. So he tries to file only final versions in the subject folder system, unless he's intentionally trying to preserve a draft for some reason.
- e. He also keeps templates – standard forms – in the subject folder system.
- 3. In addition to the firm's folder system, it seeks to standardize document names, so they include basic information that can be used for a keyword search, such as client name, type of document, administrative or other forum and so on.
  - a. The types of information used for the document name will vary depending on the type of document – letter, administrative pleading, etc.
  - b. When exchanging documents with clients, he asks them to use his document naming convention, which requires client name first.
    - i. That way the document isn't called merely "Interrogatory Responses – First Version" but instead is called "Smith, John – Interrogatory Responses – First Version."
- 4. It would also be possible for a firm to create a set of folders that function as a reference section, where the lawyer can store materials from conferences and bar association meetings, organized in whatever way the lawyer will find useful for finding them.

#### **D. Locating work product in smaller firms**

1. Many smaller firms operate as a collection of solo practitioners. Those firms will do fine with a folder and document naming convention and subject matter filing system like the solo practitioner system previously described.
  - a. They don't really need the expense and support complications of a document management system.
  - b. In a collection of solos, they don't even need to coordinate their respective folder and document naming conventions or subject matter categories.
2. The key question is: To what extent do the lawyers in the firm collaborate? The more they collaborate, the more they need a common system.
  - a. That common system can still be based on a file folder and document naming convention and subject matter folders containing duplicates of final documents.
    - i. They just all have to agree on and use the same system. It's worth it in the long term to take some time up front to really hammer down the folder names and subject matter folders.
    - ii. The folders need to be on a shared server drive, not on individual PCs.

- (a) Lawyers need to be reminded not to save documents locally.
- (b) Access will be simplest if all users have at least Read-only access to all documents. Applying higher security to documents impedes access by other users and should be done only for special reasons.
- iii. Secretaries need to be trained.
- iv. Reference cards need to be handed out.
- b. In a small firm, it will quickly become apparent who's not following the system. How that's handled depends on the individual firm and could range from just living with the problem to applying enough pressure on the individual so the person falls more into line.
- 3. If the firm has specialized document management software, which can be found even in some firms of a dozen lawyers, there are some advantages.
  - a. The system can force users to save all documents in its special database. No more worries about locally saved documents that other lawyers can't reach.
  - b. The system can include version control, so that successive versions are sequentially numbered and stored together.
  - c. The system can force users to include some additional data about the document in a profile window.
    - i. Client and matter number and/or name should certainly be among the required data.
    - ii. This feature could be used to tag subject matter so the documents don't have to be duplicated into a set of subject matter folders. That would have the further advantage of automatic synchronization between client files and subject matter files, because the same document is being searched.
      - (a) In theory, a full subject matter index with multiple levels could be represented as tags
      - (b) Users would select the appropriate tags from a fixed list (to force all users to use the same taxonomy).
    - iii. The profile could also be used to tag for document type and matter type (and matter sub-type).
    - iv. Documents can be searched using any of the data in the profile.
    - v. The data fields to include should therefore take into account how users will want to search for documents.
    - vi. The ability to have these data fields allows the firm to set up multiple ways to find a document – by client and matter, by document type, by date, by matter type, by subject matter or any combination of these.
      - (a) That aspect may be very useful for reference materials from conferences and bar association meetings that the firm may wish to index in multiple ways.
    - vii. There will be an inverse relationship between the complexity of the required profile tagging and the consistency of user compliance. The compliance gap will also increase with the number of users.
  - d. Specialized document management software is not plug and play.

- i. The firm must work out a document naming convention.
- ii. The firm must also decide which mandatory and optional fields to include in the document profile and the categories of information permitted for those fields, such as the list of subjects or document types.
- iii. The firm also must train and push for compliance with these requirements. Garbage in, garbage out.

#### **E. Remote access to documents**

1. File sharing in the “cloud”
  - a. Various services exist that integrate with the folders on a user’s PC and automatically store copies of documents on the service’s remote server. The user can access and edit the documents from multiple devices – PCs, iPhones, iPads and other mobile devices. The key value of these services is a synchronization feature that ensures the copy stored on all devices is the same as the one on the server.
  - b. Some services are free – such as Dropbox. Others require subscription.
  - c. The subscription-based services can offer higher security (such as encryption) than the free services.
2. Another service – Evernote – adds document management features to the above.
  - a. A user can organize notes, documents, web pages, photos, voice recordings and other materials in a virtual notebook.
  - b. There are free and subscription versions.
3. Ongoing issues for all lawyers storing client and other documents in the “cloud” (in other words, with an off-site service) are the continuing reliability of access to the data (for example, if the service provider has technical problems or goes out of business) and whether security is sufficient (such as through encryption) to retain attorney-client privilege on data stored with the service provider. These are issues for firms of all sizes.

#### **F. Tracking matter experience for solos/small firms - Finding comparable matters for purposes of giving fee estimates or finding relevant documents**

1. Many solo practitioners carry this information in their heads. Some may wish to use a more external system similar to what a small firm may use.
2. For firms with two or more lawyers the need for an external system depends on the extent to which they collaborate. If they don’t collaborate, then they may be fine relying on memory.
3. If they do collaborate, they’ll need some kind of system for listing all their matters and some basic information about the matter, such as the type of matter, date, client and possible a brief description. Categories for fee arrangement could also be included. Actual fees charged don’t need to be in the system. They can be looked up separately in the financial system after the relevant matters are identified for a particular purpose.
  - a. Whether the firm does this in a spreadsheet or a more elaborate database depends on how many lawyers will be using the system and the technical resources available to the firm. Excel can do a lot.

- b. The key is developing a system to record the information that people will follow. The required information should be simple enough that compliance will be consistent. It's much better to have a complete matter list with fewer data fields about the matter than an incomplete one that has more fields.
- c. Another consideration is what point in time the data will be collected.
  - i. It may be more convenient to collect the data at the outset of the matter, but some data may not be available then or may be subject to change.
  - ii. Recording the data at the end of the matter may work fine for short time-frame matters, but for multi-year litigation work waiting until the end is probably a bad idea.
  - iii. The system that works will depend on the nature of the firm's practice and the uses to which it will put the information.

### **G. Managing e-mail**

1. The case study firm doesn't delete client e-mail.
  - a. During the matter the practitioner keeps folders for each active client matter and is conscientious about moving client e-mail to those folders, both sent and received.
  - b. He deletes junk e-mail.
  - c. Non-client substantive e-mail is kept in folders named for each year.
2. For firms using Outlook, periodic archiving is essential to prevent crashing due to Outlook's storage limits.
3. Some practitioners may also seek to be disciplined at constructing a subject line for their e-mail that will make it easier to find in a search, and retitling the subject line when an e-mail thread changes subjects.
4. A similar system should also serve lawyers in a small firm.
  - a. The missing ingredient, available only with specialized e-mail management software that small firms may find too costly or too complicated to maintain, is a system that allows filed e-mail to be searched and viewed by all lawyers in the firm.
  - b. For small firms that have specialized document management software, there is usually a way to save e-mail in that system, which would make it searchable by all lawyers in the firm.
    - i. How it's done depends on the particular software.
    - ii. In some cases hitting Send in Outlook can invoke the save feature in the document management system, asking the user to assign a client-matter number to the e-mail for storage with the firm's other documents.

### **H. Managing contacts**

1. In the case study firm, the practitioner puts information in the Outlook notes field that can be used for future searches. He doesn't use categories because Outlook's category feature is too simplistic.
2. This system is also used by many small firms. It's a contact system that operates at an individual level without any sharing mechanism. Even many large firms do it that way.



3. Some small firms do set up a central contacts database, especially for client mailings. This is usually separate from individual lawyers' Outlook contacts. They have to establish a manual process with their lawyers to keep the central database current.
4. Use in a solo or small firm of full-fledged contact relationship management software (CRM) could produce powerful results through its filtering and sorting features.
  - a. CRM software is probably not widely used, however, because of the training required to learn these relatively complex systems and the extra time it requires for users to input the many types of information tracked in the systems.
  - b. A system like this will work only as well as its weakest link. The larger the firm, the greater the potential benefits but also the greater the challenge in getting lawyers and their assistants to use it properly.

### **I. Staying current in one's practice area**

1. For solo practitioners:
  - a. Attend local bar group meetings and larger conferences.
  - b. Attend local brown bag lunches on current topics.
  - c. Talk to a personal network of other lawyers in the same field.
  - d. Subscribe to newsletters, both paper and e-mail.
2. Practitioners in small firms will likely take the same approach. They, of course, have the additional issue of how they share current events learning within the firm.
  - a. Regular internal meetings is one way.
  - b. E-mail updates to each other is another.
  - c. The more the internal exchange, the better. That's mostly a question of firm culture. It can't be automated.

## **V. People and Process**

### **A. Why have firms had many failures in past efforts at Knowledge Management?**

1. It starts with who's in charge of the initiative
  - a. Driven by IT Dept.
    - i. The IT people don't know how lawyers work.
    - ii. They do their best but necessarily focus on technology and at a firm-wide level. They can't really get meaningful lawyer input or cooperation.
    - iii. This leads to big projects that
      - (a) may or may not address lawyer needs and
      - (b) emphasize technology over content.
    - iv. One example of a frequent failure is enterprise search.
      - (a) Even with fancy automation, such as Reconnind's attempts at automatic document categorization, enterprise search is often not a good experience. Contrast the typical law firm search with the knowledge base filtered search case study previously described in this outline.
    - v. These disconnects are because knowledge strategy is not about technology. It's about engaging with the lawyers. Sometimes knowledge strategy uses technology tools, but they come second.

- (a) For example, Apple took the early lead in smartphones not so much because it had technology that no one else had (although it did have some of that). The real reason for its success was the way the technology worked so well and intuitively. That took effort to understand how users behave and what users want – minimizing clicks and having all the features talk to each other and share their information with each other. The technology was agnostics to those issues.
- b. Another approach that works a little better but still has its share of failures occurs where the knowledge management function is driven by middle management.
  - i. The firm hires one or more former lawyers and doesn't give them senior management support.
  - ii. These lawyers chip away but can't move the dial on lawyer behavior to assist in knowledge projects or change firm culture about sharing knowledge.
  - iii. When the downturns hit, these groups are the first to feel the cuts, because management doesn't see enough value added.
  - iv. It's kind of a vicious circle: Management doesn't treat knowledge management as a senior-level function; without senior support, knowledge management doesn't perform well. This bad performance confirms management's view that knowledge management isn't worth significant expenditures.
- 2. The second reason for failure are the lawyer personalities that have to be reckoned with.
  - a. Lawyers are skeptical, autonomous, work badly in teams and do client work to the exclusion of all internal jobs – even to the exclusion of doing their time entries and sending out bills.
  - b. This type of personality is probably just what the client wants for getting the work done well, but it makes lawyers difficult to manage and makes them bad at helping with knowledge projects.
  - c. Understanding this important human element allows a firm to concentrate on developing strategies to overcome these personality traits.
- 3. The approach that can overcome these causes of failure is to have the involvement and backing of senior management and to apply strategies for overcoming the lawyer personality issues.

**B. Strategies for addressing lawyer personality issues.**

- 1. Strategies fall into several broad categories, all based on psychological and organizational management research.
  - a. Use of motivational techniques, such as framing the request in terms of the unique things that motivate the particular lawyer. “If you visibly help on this project, you'll gain the respect of your colleagues” may work for some lawyers. For others it might be, “Helping with this project will gain so-and-so as an ally, which we know is important to you for your other interests.”
  - b. Envisioning steps. In other words, describing the individual steps required to complete the assignment. If the person can envision what needs to be done, it is more likely he or she will do it.

- c. Solidifying commitment, such as through having the lawyer publicly agreeing to take the action in front of the lawyer's peers, or having the lawyer partner with another lawyer who the first lawyer will not wish to disappoint.
  - d. Removing obstacles, such as lack of administrative support or resources. This could be as simple as bringing someone on the team who can schedule and organize meetings, circulate notes of what people agreed to do and follow up with them in between meetings.
  - e. Leveraging competitive instincts, such as establishing friendly competition among peer lawyers or pointing out comparable actions taken by competing law firms.
  - f. Applying leadership principles, such as through visible completion of the requested action by firm management and thought leaders.
  - g. A lot of these ideas have been applied to various law firm internal initiatives by Dr. Larry Richard, a former trial lawyer who became a psychologist and for many years has been a management consultant to law firms. His current writings may be found at: <http://www.lawyerbrainblog.com>.
2. There's a lot more to talk about in this important area, but that also could be the subject of a future program. For knowledge strategy initiatives, these behavioral considerations lead to involving a cross-section of the practice group in periodic meetings about the project. Meetings should be often enough that the practice group members feel involved, give useful feedback and take on a sense of ownership of the project. If they receive the same result without effort or involvement, they won't use it because they didn't help create it and are naturally skeptical of anyone else's work.
  3. It's also important, though, to minimize dependence on the lawyers for getting the project done. Finding the right non-lawyer within the firm to keep things going is a key step. Sometimes this requires bringing in a consultant to help.

### **C. How can practitioners promote knowledge strategy within their firms?**

1. Large firms
  - a. Volunteer to your practice group leadership that you'd like to help on a knowledge project within the group. You can do this whether you're a partner or an associate. If you're a partner, you may well be put in charge of the initiative. If you're an associate, you'll probably be asked to help. These are good things!
    - i. You may have an existing firm infrastructure to bring in, or your group may be doing this all by yourselves.
    - ii. Suggest that a handful of group members talk about what they really need. This could also be a discussion topic at a regular practice group meeting.
    - iii. Find something to start with that doesn't require IT Dept. resources or other help outside the group. You may find helpful allies in the Library or other firm departments.
      - (a) Establishing a document and folder naming convention would be a good start.
      - (b) Creating checklists would be another.
    - iv. Early successes with these projects will give your group credibility when it asks for more resources.

- b. Try to find out who's responsible for thinking about knowledge management at your firm and learn what they're doing. They love to talk to interested practitioners to bounce around ideas.
  - i. This will be easy if the firm has a designated chief knowledge officer. If the role is more informal, it may take some sleuthing. There may well be someone in the IT Dept., but hopefully there will be others who think in a less technology-centric way.
  - ii. For example, check with the head librarian. They are often *de facto* knowledge officers. Check also with the head of professional development and lawyer training.
  - iii. Talk to the Chief Marketing Officer. They may have specific initiatives of interest, such as those relating to matter experience. But the main reason is that they are among the few within the firm who look outwardly to what's going on in the law firm world. They know a lot about what other firms are doing. They also talk strategy with the firm's chairman and managing partner and tend to know what's going on within the firm. The CMO may be a good source of who's doing what on knowledge initiatives within the firm.
- 2. Solo/small firms
  - a. If you're a solo, think about whether any of the ideas from today seem worth implementing. Talk to your network of fellow solos about what they do in these areas. Hopefully you'll like some of these ideas enough to implement them.
  - b. If you're at a smaller firm, you probably already know what's happening – or not happening – regarding knowledge management in your firm.
    - i. Try to engage your colleagues in a discussion of the issues you heard about today. Find out what the firm needs.
    - ii. In a small firm, one person with personal initiative can make a huge difference. You could be that person. Try to start with a small project that's likely to succeed, in order to build support.
    - iii. If your firm is fortunate enough to be far along on these kinds of initiatives, you can become involved with the people spearheading the work.

## **VI. A Knowledge Management Initiative in Its Early Days - After-Action Reviews**

- A. After-action reviews focus on lessons learned.
  - 1. What were our goals?
  - 2. What actually happened?
  - 3. Why did it happen?
  - 4. What have we learned?

- B. Other professional services firms have made after-action reviews routine. Law firms are only now starting.
- C. These reviews lead to greater efficiency, better financial results, higher client satisfaction and improved morale.
- D. The concept can apply at large or small firms. Even solo practitioners can benefit. How the review is conducted will vary depending on the size of the firm.
- E. The review is a quick meeting of all the key members of the team that worked on the matter to go over a checklist of questions. The meeting is held soon after the matter is completed, or after each major phase for matters that extend for years. The results are memorialized and shared in some format, such as at quarterly meetings, with the rest of the practice group. The purpose is to institutionalize the learning from each matter.
  - 1. Clients love to know that a firm does this. Some clients like to be involved or get summaries of the review.
  - 2. The meeting is also a unique chance to collect other valuable information in a matter of minutes that may otherwise be lost:
    - a. A list of key substantive legal issues addressed in the matter, which can be put in a database for reference by others who are seeking internal experts on these issues.
    - b. The main factors affecting the fee – how many revision turns occurred on the main deal agreement, how many depositions were taken, whether specialized due diligence was required.
    - c. Confirm basic data about the matter that's in the firm's matter experience system – parameters such as dollar amount involved, type of matter, industry, etc., as well as the narrative description of the matter for use in pitch materials.
- F. Like most of the ideas proposed in this program, it is best to start with a pilot of interested lawyers.

## **VII. Conclusion**

- A. If you join the Knowledge Strategy Interest Group, you'll have access to white papers it prepares on knowledge strategy.
- B. A white paper for larger firms will be available by the time of this program. It's 57 pages that describe the Top 10 Knowledge Strategies for larger firms, including many of those described in this outline. Joining is free for Law Practice Division members. Joining the Division costs \$50/year for ABA members.
- C. The larger firm white paper includes:
  - 1. More on how to build a knowledge base like the one described in this outline,
  - 2. How to interconnect matter experience data to make it easier to find precedents for comparable matters, locate firm experts, staff matters with lawyers having relevant experience and compile historical fee data for comparable matters in giving fee estimates and proposing fixed fees,
  - 3. More on how checklists can succeed instead of standard forms,
  - 4. More detail about how to build a content-rich and dynamic practice group intranet,

5. More about closing the gap between e-mail filing policies and actual practices,
  6. Further details about after-action review meetings, and
  7. Strategies to actually get these kinds of things accomplished despite the difficult lawyer personalities described in this outline.
- D. A white paper for solo/ small firms is also planned.

\* \* \*

Michael L. Speker  
1828 L Street NW Suite 600  
Washington DC 20036  
(202) 223-8112  
[mspeker@spekterlaw.com](mailto:mspeker@spekterlaw.com)  
[www.spekterlaw.com](http://www.spekterlaw.com)



Michael Speker is a solo practitioner in Washington DC specializing in representing federal employees in work related matters. He often practices before the U.S. Merit Systems Protection Board and the Equal Employment Opportunity Commission, the administrative forum for federal employment issues, as well as both the local and federal Courts of the District of Columbia and the Court of Appeals for the Federal Circuit.

Mr. Speker has successfully represented federal employee whistleblowers as well as federal employees facing disciplinary and adverse employment actions. Recent cases before the Federal Circuit have expanded the rights of federal retirees. He is a member of the Metropolitan Washington Employment Lawyers Association as well and speaks regularly on employment related issues.

Prior to entering private practice, Mr. Speker was the lead litigation attorney for the U.S. Office of Special Counsel, which prosecutes federal whistleblower retaliation cases.

Currently, in addition to his practice, Mr. Speker is an adjunct professor at both the University of Baltimore School of Law and American University Washington College of Law where he teaches courses on Law Practice Management, and coaches the annual ABA employment law team from Baltimore .

Mr. Speker began his legal career in Arizona as a Pima County Public Defender, in Tucson Arizona. He is a member of the bars of Arizona, Maryland and the District of Columbia.

# Jack Bostelman

---

## About Jack

Jack Bostelman is the president and principal consultant of KM/JD Consulting LLC.

He advises leaders of AmLaw 200 firms on practice management, including knowledge strategy – a management-led function to improve how lawyers share what they know about client work, about clients, about markets for their services, and about their firms as businesses. The result is improved efficiency and quality.

Before founding KM/JD Consulting, Jack practiced law in New York for 30 years as a partner of pre-eminent AmLaw 20 firm Sullivan & Cromwell.

Jack knows how law firms are managed and how knowledge strategy works. During his tenure at Sullivan & Cromwell, Jack coordinated the firm's extensive securities practice worldwide, managed a practice group, was a member of the firm's opinion committee and its administrative committee, oversaw the IT department and was on the faculty of the lawyer training program.

Jack also supervised the firm's knowledge strategy initiatives for two decades – using existing workflow and designing new lawyer processes to capture and make available relevant knowledge, selecting and implementing supporting software, and marketing the systems within the firm.

Jack is chair of the knowledge strategy interest group of the American Bar Association's Law Practice Division.

A nationally recognized transactional securities lawyer, Jack is past chair of the American Bar Association's securities registration committee. No stranger to complex projects, Jack also authored *The Sarbanes-Oxley Deskbook*, a 3-volume legal treatise on corporate governance and securities reforms.

Jack received his B.A. from Yale University (1975) and his J.D. from Columbia University (1979).

## About KM/JD Consulting

KM/JD Consulting LLC renders impartial practice management advice to law firms on improving efficiency, increasing profits and reducing risk, emphasizing knowledge strategy. The firm is different than other consulting firms that advise law firms on practice management and knowledge management:

- **We take a top-down approach.** The project must tie to a firm strategy, such as increasing efficiency, improving profits or reducing risk.
- **We speak the managing partner's language.** As a partner with management responsibility for decades at a pre-eminent New York law firm, Jack Bostelman, our president, understands the concerns of managing partners.
- **We understand each law firm is different.** Each law firm has its own combination of size, practice, geography, culture, business model and other attributes. We propose customized solutions only after considering the individual situation of the firm.
- **We understand practicing lawyers.** As a practicing securities lawyer for 30 years, our president knows the needs of the busy lawyers who rely on the firm's organization, workflow processes and knowledge systems.
- **We start with people and process.** Practice management is about how people work together, including how they share knowledge. Technology has its place, but cultural and process change must be considered first.
- **We know the real world.** Practice management systems and procedures cannot be artificial. They must integrate with the way lawyers actually practice.





**Nasym Korloo** is the Knowledge Management Attorney for the Mergers and Acquisitions and Private Equity Practice Groups. In this role, she is responsible for drafting, updating and managing standard forms and internal memoranda on practice-related legal issues and identifying exemplar work product precedents. She is also involved in contributing content to internal and external Firm publications, presentations and trainings and in the development and maintenance of practice group websites and knowledge bases.

Prior to this role, Ms. Korloo was an associate in the corporate practice of the Firm's Los Angeles office. She represents various business entities in all aspects of corporate and business law, including domestic and cross-border mergers and acquisitions, venture capital financing, private placements of securities, joint venture transactions and general representation. As part of her practice, Ms. Korloo represented companies in the structuring, negotiating and drafting of merger, stock and asset acquisitions and dispositions and in the drafting and negotiating of venture capital financing agreements. Ms. Korloo has experience in various business sectors including automotive, telecom, manufacturing, engineering, information technology, healthcare, energy and nutrition.

Ms. Korloo earned a dual B.A. degree in Economics and Psychology from the University of California at Berkeley in 2004 and her J.D. degree from the University of California at Los Angeles in 2007.

Ms. Korloo is admitted to the California Bar. She is also a member of the Corporate Section of the State Bar of California, the Los Angeles County Bar Association, and the American Bar Association. Ms. Korloo formerly served as co-chair of the firm's Los Angeles Women's Network.

**Nasym Korloo**



Knowledge Management Attorney,  
Mergers & Acquisitions and Private  
Equity Practice Groups  
515 South Flower Street  
Twenty-Fifth Floor  
Los Angeles, CA 90071  
T: 1(213) 683-6166  
F: 1(213) 996-3166  
nasymkorloo@paulhastings.com