Technology Corner:
Knowledge Management in the Law Firm

"Knowledge management" is a phrase that has been liberally bandied about by certain writers, but in the hands of many commentators it often seems to have more style than substance. I hesitated to use the phrase in the title of this article because it has all the trappings of a management theory buzzword. Many of the articles on the subject of knowledge management do not do much to dispel this impression. Most are long on conceptualization and abstraction, and noticeably short on practical usefulness.

KM, as it is known to its familiars, essentially aims at directing the efforts of a company or an organization at developing systems and methods of recording "knowledge" and communicating it to others. Knowledge as they see it is not limited to information or data; it also incorporates the practical skills that have been used to accumulate and record information, process it, and then make it available in useable form to others in an organization, and to ensure that others who need it know that it is there and are able to gain access to it. Essentially, it is intended to make use of the efforts of one individual or group which has solved a particular problem and apply them the next time another encounters the same problem.

A book with the intriguing title "If Only We Knew What We Know", by Carla O'Dell and Jackson Grayson, describes the efforts of large corporations with numerous locations across the globe to use KM techniques. As one example, the book notes that Chevron Oil, with 37,000 employees in 100 countries, adopted a program to identify and provide access to its "best practices" across the company. As one manager said,

> "We had all this good stuff inside. All this stuff is within our control. It is
> under our roof. If we could just get it spread around."

Chevron approached the challenge by naming 13 different teams to analyze various parts of its operations and to identify those operations and practices which worked best, and then to apply them to other units. As a result, Chevron was able to increase its profits by 18% in the first year under the new regimen.

It is readily apparent that an approach like this will not work overnight, or without some difficulty. It requires that people change their way of working, sometimes dramatically. Legal consultants in the field of knowledge management have noted that applying its concepts to the law firm environment likewise requires that lawyers adopt changes in their methods of practice and in their work habits. Lawyers have to learn to do things in a different way in order to make KM techniques work, yet lawyers are notoriously resistant to doing things in a different way. Lawyers develop their practices, preferences, and work habits over time, and then tend to use those habitual patterns without much variation from that point forward. Inertia in the form of institutional resistance to change is a factor in any organization, but is particularly strong in the law firm environment.

More recently, some contrarian commentators have suggested that their efforts may be better aimed at encouraging individual lawyers to develop the skills needed for the management of their own information and knowledge. Rather than imposing an organization-wide policy and practice, they posit, having individuals develop their own skill sets would be more effective. See, for example, Martin Roell's "Knowledge Management does not exist. Personal Knowledge Management does." <http://tinyurl.com/55gbb> and David Gurteen's "The nonsense of 'knowledge management'" <http://informationr.net/ir/8-1/paper144.html> Gurteen's critique is particularly cogent:

> "There is, of course, a problem with a quantitative analysis of this kind - we
> do not know whether all of the [articles we have found] actually deal with

the same subject. Given the fuzziness of the term, authors may be using it to cover a very diverse range of topics."

After a detailed review of the use of the term in articles, by consultants, and by business schools, he concluded:

> *"The inescapable conclusion of this analysis of the 'knowledge management' idea is that it is, in large part, a management fad, promulgated mainly by certain consultancy companies, and the probability is that it will fade away like previous fads. It rests on two foundations: the management of information - where a large part of the fad exists (and where the 'search and replace marketing' phenomenon is found), and the effective management of work practices. However, these latter practices are predicated upon a Utopian idea of organizational culture in which the benefits of information exchange are shared by all, where individuals are given autonomy in the development of their expertise, and where 'communities' within the organization can determine how that expertise will be used. Sadly, we are a long way removed from that Utopia: whatever businesses claim about people being their most important resource, they are never reluctant to rid themselves of that resource (and the knowledge it possesses) when market conditions decline. . .*

> *"This is not to say that enabling people to contribute effectively to the management of organizations is impossible and that sharing knowledge and enabling people to use their creativity in innovative ways in organizations is impossible - simply that it is very difficult, and that it does not reduce to some simplistic concept of 'knowledge management'! It demands a change in business culture, from the macho Harvard Business School model, to something more thoughtful and understanding of what motivates human beings. Organizations need to learn to think about problems, rather than grab at proffered 'solutions' - which often turn out to be expensive side-tracks away from the main issues."*

If it is to be accepted as a concept, though, KM must extend beyond the individual practitioner. After all, KM is defined as the sharing of skill sets among separate people, separate offices, or separate departments. If a single person (doctor, lawyer, or rocket scientist) works to improve his organizational and record-keeping skills, he will become more productive and effective, but he will still not have done anything to share either information or knowledge with others. Yet it may be more effective to start with receptive individuals and then work from there to effect wider organizational changes.

A personal KM strategy might focus on some of the following observations and considerations.

Think of the old Bob Dylan song "Watching the River Flow". Documents flow through the law office like a river. Filing documents in their proper place and in a particular format is no more than directing the flow. The flow should be directed in such a way that the flow will be most useful. Using a document and integrating it into a personal goal-oriented system, whether it be developing knowledge about a particular client or a particular file, developing one's own personal expertise, or learning a new area of practice is like taking a drink. You may not be ready to drink when you are handling the flow, and the flow may not be there when you are ready to drink. Bringing the two together is what any system is intended to do. In this fashion, we can

think of a personal KM strategy as one's own personal irrigation system. (If we wanted to take the analogy further, we could go on to talk about fertilization techniques, but we will stop here.)

Practical strategies to improve one's ability to manage the flow may include:

- Ordering copies of depositions on disk and maintaining a centralized depository of the electronic deposition transcripts as they are received, rather than simply keeping them on individual disks in deposition transcripts.
- Scanning incoming documents (selected documents or all documents) so that they can be stored and used electronically.
- Developing a document exchange plan with other counsel so that the electronic versions of documents may be used instead of or in addition to paper versions.
- Ordering medical records through a service which provides them on CD rather than on paper.
- Using court reporters who are capable of providing deposition exhibits on CD or in an electronic repository rather than on paper.
- Reviewing and making a note of articles in professional journals, and keeping them in an electronic library for quick access, instead of simply reading them and then storing them in vertical file boxes on a bookshelf.

The other primary issue involves retrieval techniques. Storing information away somewhere is only one part of the plan. Getting it out again when and where it is needed (taking a drink when you are thirsty) is the second part. Retrieval can be handled in one of two ways, but in truth many plans share some elements of both. The information may be stored, using a hierarchical topical subject listing, so that all items falling within that listing may be found when needed or browsed when you are just interested. It may be searched by keyword, so that it may be quickly found when needed. Each of these has its own benefits and drawbacks.

Since it may be impossible to change the behavior of all professionals within a given law firm, one alternative may be to designate certain individuals to take on the responsibility of certain discrete tasks on the side of adding knowledge to the system so that it can be populated and then made available to all. Thus, for example, a paralegal could be given the responsibility of collecting the disks containing electronic deposition transcripts, adding them to the network, organizing them by using a document management program that can add key tags such as date, names of attorneys and deponents, and topic, and adding them to a cumulative search regimen so that they can be indexed and searched by keywords or by topic. Instead of teaching all lawyers in the firm to take these steps, consider having this done by a single individual, and then all you need to teach the lawyers to do is to get the disk to that individual's inbox. The other discrete tasks that go into creating a KM system can likewise be delegated to certain individuals or groups, making the reorientation and "re-education" function much simpler.

The same approach can be taken to the other tasks described above.

KM as a collaborative effort often consists of addressing and solving a problem and then taking a little time to write up a roadmap, providing the shortcuts that you have encountered, in order to guide the next traveler to the same destination. By definition, the first to travel will take the longest time, and the trip will be much shorter for those who follow.

Why would anyone do this? Sharing knowledge is usually (but not always) something that is done gratuitously, without payment or expectation of reward. Why would we do it if someone is not paying us to do it? The answer lies in human nature, although there is a particular quirk in the particular nature of lawyers.

The general principle that applies is that humans, by nature, want to share knowledge and information with others. This probably goes back to prehistoric times, when men hunted in packs and had to share knowledge and expertise with their fellow tribesmen in order to

survive and prosper. Perhaps one of the most basic of primitive human instincts, when something new is encountered, is to call out, "Hey, guys, come over here and take a look at this."

There is, however, another instinct at work in the specialized archetype of the modern American lawyer: a second, contrary impulse among lawyers to hoard knowledge. Just as a dog will grab a chunk of meat and then separate himself from the pack to feast on it himself, the modern American lawyer often tends to keep his secrets, his methods, and his knowledge to himself, to use it just for himself and for his clients, in order to provide himself with a competitive advantage over others.

A KM strategy, whether it starts with a few receptive individuals and then is expanded to cover the entire organization, or is built from the top down, has to recognize and accommodate this second impulse. One way of doing so is to provide for sharing of some of the general tools and techiques, observations and insights, but keep some of the details for one's own use or for the use of a smaller group of like practitioners.

Indeed, that is what any of the lawyers who have contributed articles to this publication and others like it over the years have done. The authors of the articles in a publication such as this will share what they have learned about a given topic, but in many cases will keep the best nuggets for themselves and members of their own firms.

There is another, very basic consideration at work. In a real sense, the entire internet - not just web pages, but also closed internet communities, e-mail, mailing lists, etc. - has developed as a highly-evolved system for the sharing of information and knowledge. A very large part of the internet, though not all of course, consists of information that has been posted by people who have donated their time and effort to making available to the rest of us, without charge and without any hope or expectation of monetary compensation, in the interest of the widespread diffusion of information and knowledge. That is one of the important reasons that intranets, which are essentially private networks built upon the same architecture, and closed internet communities, work quite well in the diffusion of private information. Lawyers can be given the same tools and techniques, but when their use is limited to members of their own law firms or professional organizations, they may be more willing to be forthcoming in sharing their insights and knowledge.