Law Departments and After-Action Reviews: Using lessons learned to improve outcomes

By Aileen R. Leventon

The discipline of project management grounds virtually every activity conducted by a business. In turn, Legal Project Management (LPM) has been shown to be a practice that improves the management and economics of the law department and its responsiveness to its business clients. LPM calls for scoping work, a kick-off meeting, budgeting, planning, monitoring and communicating across the legal team and with the client. Each of these steps is intended to achieve specific outcomes. The last step in the LPM framework, the After-Action Review ("AAR"), reveals how well the legal team achieved those outcomes. *An after-action review of a matter can be conducted regardless of whether the legal project management framework was in place to guide the actual matter.* In fact, it's a good way to "test" the hypothesis that LPM is actually relevant and useful.

Why do an AAR?

The entire legal industry is under pressure to create more cost-effective, knowledgeable, trusting and productive relationships among members of the legal team and with clients. The AAR by a law department focuses on how the countless activities, events, relationships, communications and changes that occur during a matter contribute to these goals. It addresses the pressure on law departments to define, demonstrate and deliver value to their organization. Each group within a legal function — compliance, e-discovery, contracting, M&A, patents prosecution, intellectual property, etc. — has the same mandate. Law firms are engaged in parallel LPM initiatives to improve margins and realization, reduce friction with clients over process and costs, and improve competitiveness by improving matter management.

In the short-term, responding constructively to the findings of an AAR should lead to greater efficiency, cost-effectiveness, responsiveness, professional development, managerial skills and knowledge. In the long run, the continuous improvement from acting on the findings of AARs increases the value of the law department as a result of clearer scoping of work, better understanding of stakeholders, greater accountability for costs and results, and continuous improvement in how work is done, whether by internal resources, outside firms or a combination.

Look inside first

Ultimately, an AAR is a joint undertaking between a legal team, including in-house and outside lawyers, and the business client. When third parties are involved, such as claims administrators, litigation support firms, and other outside advisers, they should be part of the conversation as well. Prior to the joint review, a law department should fine-tune the AAR process on its own and address those elements of performance that are within its sole control. Progress from there to highlevel reviews that integrate the CFO, business unit leaders or other corporate managers: The business side must be effective participants in defining business goals and business risk, identifying stakeholders, determining appropriate investments and communicating change.

Where to begin

Context is important, and that starts with clarifying the role of the law department – or function -in the organization, which varies tremendously across companies. The company may rely on the law department itself for counsel and representation or use in-house lawyers to source, oversee and interact with outside service providers, or some combination of roles. The AAR focuses on how well the law department fulfills the expectations of clients within a particular organization.

To develop proficiency in conducting an AAR, start with a matter or group of matters that arise regularly so that the findings of the AAR process are immediately applicable to other work. Focus on the causes of variation in those cases. This easy start provides the foundation for tackling more complex, individualized matters with more moving parts. The matters chosen should be ones where the law department is solely or primarily responsible; it's too tempting otherwise to blame the outside firm for any missteps.

How to do an After-Action Review

An After-Action Review can be done in a 15-minute call, through email exchanges, over lunch, or in a structured workshop with members of the team. The level of detail and formality of the review should be commensurate with the importance of the matter and the expectations of management. Take the time. This is as important as any other activity to improve the law department's stewardship of corporate resources. The first AAR is the hardest, but over time it may be institutionalized and accepted by following some simple guidelines attached to this paper (See *Appendix 1*).

Can you answer five questions?

The LPM framework calls for legal team members to answer five key questions at the launch and throughout the course of the matter, even in the face of changing circumstances, in a manner commensurate with their roles. The AAR assesses, qualitatively and quantitatively, the presence and effect of alignment, gaps or inconsistencies in the team and client's understanding.

The five questions are:

1. ***WHY*** are we handling this matter for the business—why is it important to the company's strategy and operations?
2. ***WHAT*** work will accomplish the business goal and what work is out of scope?
3. ***WHEN*** and in what sequence must work be done and what are the uncertainties and dependencies regarding timing?
4. ***HOW*** do we manage the work given constraints and requirements such as budget, strategic importance, regulatory and reporting requirements, timing and risk management protocols?
5. ***WHO*** is involved in the work and what is that person's role and responsibility? Do we have

the right people for the work?

The answers to these questions have consequences—positive, negative and neutral—for costs, resource allocation, work plans, scope of work, stakeholders, roles and responsibilities, teamwork, training, choice of vendor and client satisfaction. Not all observations will require action; some may require more detailed analysis.

Do you have all the facts?

An AAR is a fact-based discussion that requires data. The primary source of data should be the information that grounded the initial planning for the matter and updates to it. Data-gathering processes, protocols and report templates should already be in place to permit this kind of look back and comparison to the initial plan and comparables. If the data are unavailable or unreliable or it is difficult to do this kind of analysis, a lesson is learned: action is required to improve data-gathering and reporting protocols, training or other practices.

Analyze the facts

After analyzing the information, address the following issues from an LPM perspective, i.e., efficiency and client relationship. You can do this even if a formal LPM plan was not in place:

1. What did we intend to accomplish at each point in time and why—what were our goals and our strategies?
2. What did we actually do, who did it and how did we implement our strategy?
3. What were the differences between our intended goals, strategies and execution and what we actually did? Why were there differences? What was the root cause of both distress and success?
4. What could we have done to improve our implementation?
5. What were the differences between our approach and the outcome and the client's expectations?
6. What were our successes and how do we repeat or export our successes to other matters?

Look at what caused tension, surprises and re-work. Fertile areas for review are those characterized by duplicative effort, misunderstandings and poor communication and the associated effort to get back on track. Focus on the root cause of variances from plan and the steps taken to recover. Identify better practices for next time.

Look for what worked well and should be replicated as a best practice. "Good work" should result in lessons learned, new action plans, training opportunities and templates for use in other matters. Watch the tendency to be hypercritical—find the positive. Also watch out for regression to the mean; *consensus does not necessarily mean that a common practice is a "best practice."* Strive to raise the bar. Understand how your work product and advice meet a range of client objectives. Ask for candor about what is important to internal constituents—how they define predictability, accountability, risk and value.

Identify, too, the root cause of problems leading to legal expenses or use of corporate resources. Part of the law department's mission is to prevent legal problems from arising in the first place.

What might you find

A recent AAR revealed significantly different staffing utilization and time lines for closing acquisitions of similar properties for a business depending upon which internal lawyer handled the matter. The primary source of the variation resulted from how each lawyer utilized paralegals. The AAR findings raised important questions about perceptions of risk, client expectations, resource allocation, roles and responsibilities, internal training and the law department's view of "best practices" that had not previously been surfaced. This is a representative example: Often differences in processes, time lines and cost arise depending upon which internal lawyer is running a case or which internal business unit is the client. Facts, not impressions, are needed to document and address the causes and implications of variations.

In another after-action review, the discussion turned to time spent on administrative aspects of matter management; several people within the law department were compiling different and incompatible information to produce budgets and forecasts throughout the two-year life of a litigation. The law firms involved did not understand the purpose of the requests and provided too much, too little, or non-responsive information. As a result of an internal AAR and a joint workshop with a key law firm, a work plan and a timeline for the budgeting and reporting process was developed.

Shifting stakeholders can materially change the scope of work and approach to it. In some cases, concern about business reputation or relationships with suppliers and customers emerge to modify the legal team's approach to work and require a dramatic shift in approach. Matters that at one point were mission-critical may recede in importance. This can happen when a business is sold yet legal work is left behind adding cost but no ongoing value to the business.

Progress to joint reviews with external counsel

A predicate of LPM is the existence of a compact between the client and its law department and external counsel: all are committed to common protocols for meeting objectives and an economic arrangement that benefits all. Strive for that compact. Act on the internal evaluation of in-house matter management and take the steps necessary to improve, then consistently require that firms adopt LPM to improve their service. Progressing to joint AARs should result in constructive and candid communications, more predictability, mutual respect and clear standards for future work.

The entire legal industry is under pressure to transform to create more cost-effective, knowledgeable, trusting and productive relationships among the legal team and with clients. In the short-term, responding constructively to the findings of an AAR should lead to greater efficiency, cost-effectiveness, professional development and client satisfaction. In the long run, the continuous improvement from acting on the findings of AARs increases the value of the law department as a result of clearer scoping of work, better understanding of stakeholders, greater accountability for costs and results, and continuous improvement in how work is done, whether by internal resources, outside firms or a combination.

Appendix 1

GUIDELINES FOR CONDUCTING AFTER ACTION REVIEWS

Consistency breeds comfort and acceptance

	DO	*DON'T*	*IMPLICATIONS*
1	Establish clear ground rules for conduct in the AAR Use a timed written agenda – circulated in advance	Conduct AARs without planning	At the outset determine the goals and specific outcome of the AAR Work product? Documentation? Action Items? Culture Change?
2	Schedule AARs shortly after the completion of an activity	Conduct AARs only after a "crisis"	Immediacy and positive perspective must be promoted
3	Make reviews routine	Conduct reviews infrequently or irregularly	Integrate in team and culture – AARs must be routine
4	Collect objective data whenever possible	Proceed without a baseline of what is to be reviewed	Must have clear definition of scope - What is the question presented?
5	Identify critical phases, milestones, documentation and stakeholders for the matter	Allow debates to bog down when establishing facts	
6	Use trained facilitators	Allow dominating leaders to run AARs	Leader's role is critical in setting the tone Leaders may facilitate AARs if they have the right style
7	Encourage candor and openness Focus on things that can be fixed	Base performance evaluations or promotions on mistakes raised by AARs	"Admissions against interest" Manage documentation Confidentiality is critical
8	Involve all participants in discussions – contribution is mandatory	Allow senior managers or facilitators to dominate discussions.	
9	Proceed systematically: What did we set out to do? What actually happened? Why did it happen? What are we going to do next time?	Permit unstructured, meandering, disorganized discussions.	Approach AAR as a knowledge management endeavor
10	Probe for underlying cause-and-effect relationships.	Criticize or fault individual behavior or performance.	Must have next steps for individuals; team; client relationship
11	Identify activities to be sustained	Conclude without a list of learnings to be applied in the future	Accountability for professional development and client service

Adapted from: David A Garvin, "Learning In Action, A Guide to Putting the Learning Organization to Work" (Boston: Harvard Business School Press, 2000), 106-116.