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Chapter 1:

An introduction to Lean and Six Sigma for law (and some project management too)

The primary goal of this book is to introduce legal and business professionals in law to process improvement generally and the two primary process improvement methodologies (Lean and Six Sigma) in particular. We will explore the main concepts behind each, and the specific approaches and frameworks embedded within Legal Lean Sigma. In this way, readers will understand how these tried-and-true approaches that were born in manufacturing can be applied to law in any setting or organization regardless of size, location, or focus.

To begin, let's establish a foundational premise. Improving the way things are done is the key for making any business, process, person, team, or project more efficient.

Our definition of efficiency is something a bit more nuanced and sophisticated than “Do more with less”. While that is one right answer, it is not *the* right answer. Sometimes, to be more efficient, we need to do less with more. Or more with more. Or less with less.

How do we know which is the right answer or approach? Who should decide? How, when, and where should we make the changes needed to successfully implement the improvement so that it produces the benefits we seek? What kind of structure and resources would we need? How can we get people to collaborate so that they can work better together? Can we develop competitive advantages while doing and delivering our work in ways that increase value to the client and our organization? In a nutshell, this is what Lean Six Sigma for Law is all about.

What is process improvement?

Most people can identify when there are “issues” with a process. Far fewer can thoughtfully respond to questions such as:

- Why are those issues occurring?
- How would you decide which problems are the most important to solve?
- Who should be involved and decide?
- How will you know when you have succeeded in improving a process?

Process improvement provides frameworks and tools to answer these critical questions.

In addition to an overview of process improvement, we will explore how to get started and structuring for success. I also hope to make the case for carrying out process improvements opportunistically and, eventually, carrying out process improvement systematically. Naturally, I aim to help the reader to make the case as well.

To begin, then, it is helpful to define what we mean by “process improvement”. It is the systematic practice of first analyzing a process to understand how it is currently carried out, then searching for issues, problems, and opportunities in the process and prioritizing them. Then, tools and techniques are employed to solve priority problems and/or to capture significant opportunities. Finally, the new process must be controlled so that it delivers the anticipated benefits.

Process improvement helps us determine the best way to carry out a certain kind of work to achieve efficiency, excellent quality of work and service, high probability of successful outcomes, and predictability. When we develop the capacity to do process improvement work, we can employ project management skills to select the best processes, tools, and skills to be able to carry out our ideal process every time.

Process basics

W. Edwards Deming, who was known as the Father of the Quality Revolution and responsible for the first application of statistical quality control principles to a non-manufacturing environment, said it best: *“If you can’t describe what you are doing as a process, you don’t know what you are doing.”*

A “process” is a describable, repeatable sequence of activities that generates an outcome. As such, to a process improvement practitioner, nearly everything qualifies as a process. Think of how many things we do that involve “steps” that we take without focusing intently on what we are doing, especially those actions we perform regularly. For example, consider the mundane routines of everyday life, like making coffee or tea. If you enjoy making one of these at home, you probably make it pretty much the same way every single time. This way, you have a consistently, predictably made beverage just the way you like it.

I love a great cup of coffee. I like a certain bean, ground not too coarse, not too fine, and a specific amount of water. I make my coffee in the same sequence nearly every day, almost without thinking. And then, when the

coffee is ready, I add exactly what I want in it, in just the right amounts. Then, I drink it at the right temperature (not too hot or cold), and in my preferred vessel.

That's a process – a series of repeatable, describable steps that generates an outcome. Each time I make that perfect cup of coffee, I follow the same process to manage my project of making a wonderful cup of coffee. Because I am a fallible human who sometimes forgets to place the carafe in the machine, I made mistakes until I got a machine that would not allow the water to pass through the filter without a carafe in place to catch it. Now my process is practically error-proofed.

The incredibly complex processes of law (and, of course business and legal operations) are just like that. Each one involves many steps and tasks. Therefore, they also require good project management, because processes used in law involve a significantly greater scale and, often, much higher stakes. They usually involve multiple operations, people, organizations, and so forth (think everything from a simple will to a class action lawsuit). And if you, as someone working in law, cannot describe this work as a process, clients, teammates, and others may perceive that you don't know what you're doing.

Already, based on my experience, I anticipate that there are readers who are unconvinced (and may be bristling with the notion) that the legal work they do can be considered or distilled to “a process”. One of the things I often hear from clients is that “we don't have a process for that”. However, the reality is that if you are doing a particular kind of work right now, you have a process – albeit one that may not be terribly good or may radically differ from matter to matter, client to client, worker to worker, or office to office. Some organizations seem to think it's fine to let lawyers handle things as they wish. Please pause for a moment here to consider the magnitude and consequences of all that variation.

Processes are how law firms, departments, and offices create and deliver value to their clients. Thus, processes embody the knowledge of the individual, firm or office, department, practice group, or team. Our processes are the way we do and deliver our work. In effect, our processes are the best practices we have developed. As such, a great process can create excellent experiences for employees and clients and other competitive advantages.

Core business processes in law include:

- Intake;
- Conflicts;
- Timekeeping;

- Onboarding;
- Billing; and
- Pricing.

Naturally, various functions, such as management, finance, operations, marketing, business development, IT, HR/talent, knowledge management, etc. each have their own core processes.

Every practice area uses many processes as well. For example, Corporate might handle many mergers and acquisitions. That process involves many stages and tasks, starting with due diligence, followed by investigations, drafting, and negotiating agreements, regulatory compliance, closings, and post-acquisition work, such as integration. Within each of those processes are sub-processes and intersecting processes. All those processes and tasks are performed and operated by people who are typically acquiring and using a lot of knowledge that is not captured anywhere. Moreover, they are usually using information and technology in ways that are most effective for and familiar to them without much thought or understanding of how what they do affects others in the process.

To spark further thinking about what constitutes a process in law, consider all the people and steps involved in doing and delivering work in the following practice areas.

- *Corporate*. Bankruptcy, formation, restructuring, contracts, mergers and acquisitions, employment, finance, regulatory compliance, and many specialty areas, such as securities and tax.
- *Constitutional*. Advancing, protecting, or defending civil liberties, freedom of speech, freedom of religion, due process, equal protection, separation of powers, and the limits of government authority.
- *Employment law*. Compliance, mediation, litigation, drafting and negotiating agreements/contracts, workplace discrimination, wrongful termination, wage and hour disputes.
- *Family law*. Adoption, divorce, prenuptial agreements, alimony, child support, child protection, and guardianship.
- *Immigration law*. Completion and submission of required documents and forms, obtaining proper documentation.
- *Individual*. Bankruptcy, consumer protection, estate planning, trusts, probate, real estate transactions.
- *Intellectual property*. Copyright, patent, and trademark applications, portfolio management, and prosecution.

- *Litigation*. Prosecution or plaintiff work, defense work for every kind of matter involving a court, arbitration, or other authority, such as a tribunal.
- *Municipal law*. Local governance, land use planning, zoning regulations, finance, public contracts, administrative law, drafting ordinances and resolutions, contracts, and compliance work.
- *Military*. Enforcement and defense work related to court martial work, civil offenses, preservation of good order and discipline, legality of orders, and conduct.
- *Personal injury*. Auto/motorcycle/vehicle accidents, worker compensation, slip and fall cases, defective products, medical malpractice, auto accidents, as well as class action lawsuits (asbestos, for example).

In every example, there are high level steps that are taken to progress from start to finish and tasks that must be performed in each stage to complete that step and generate an outcome.

Processes always exist to serve a client. The word “client” has special meaning in law – in our work, we consider the users of the process to be “clients” as well. If the process isn’t working well for the operators, it is not serving them as well as it could. In turn, it becomes more challenging, costly, time consuming, frustrating, and inefficient to serve “the client”. If we are honest, most of us in law would agree this describes most of the processes we use.

Process measurement

To understand how well a process is working, we measure it. We are interested in two areas – “performance” and “efficiency”.

Processes have a characteristic performance level, sometimes called process capability, that describes how well the process meets client expectations. This means, obviously, that we need to understand the client’s expectations and requirements. In law, the client’s requirements are very often not gathered, not specific enough, not documented, and not shared. In other words, most of the time, we have no solid data that tells us how well we are doing. Consider the implications of that statement, especially since most organizations declare themselves to be “client focused” or “client centered”.

How can you say you deliver on this promise or measure how close you came to meeting the client’s expectations if you haven’t even established a

range of what the client would find acceptable? Ronald L. Burdge, a leading “lemon law” attorney, points out the value of measuring client satisfaction:

“The legal profession frequently proclaims it is dedicated to providing legal services in a way that satisfies... But if we do not measure the quality of that service, then can we really say that we are able to provide excellent legal representation? If you don’t know that you are doing good work, can you really be sure you are? If what you value is a satisfied client, then you must determine how to satisfy a client – and you will not really be able to know that until you understand how to gauge client satisfaction in the first place.”

We also measure process resource requirements, sometimes called process efficiency. This metric refers to the resources – time, people, equipment, money – required to carry out the process. There are many dimensions along which a process may be measured. Moreover, a process may perform quite well in some dimensions and poorly in others.

Who would not agree that nearly every process can be improved? This is why we will explore how we surface, select, prioritize, resource, plan, and support this work. We cannot work on everything at once, after all. We must plan for people’s capacity to engage in this kind of thinking and work.

What are Lean and Six Sigma?

Now that we have process basics covered, we can delve into Lean and Six Sigma, two of the most commonly used process improvement methodologies.

In short, the two disciplines are about establishing the right things to do (Lean) and how to do things the right way (Six Sigma). Lean is about simplifying processes. With Lean, we focus on doing the right things and eliminating what is known as “waste” in a process. In this way, we ensure that we maximize resource efficiency. Six Sigma is focused on reducing errors and controlling undesirable variation.

While it used to be the case that practitioners might have argued that theirs was “the way”, now the two disciplines are considered complementary and are used together. Some use the term Lean Six Sigma, others use Lean Sigma, which is actually an example of Lean in action, since it eliminates “six” as a superfluous word. That said, both terms are correct and are used interchangeably.

Lean

Lean concepts have been applied for centuries, but a major development in this line of thinking occurred in the Japanese automobile industry in the middle of the 20th century:

“As Kiichiro Toyoda, Taiichi Ohno, and others at Toyota looked at this situation [of the automobile manufacturing process] in the 1930s, and more intensely just after World War II, it occurred to them that a series of simple innovations might make it more possible to provide both continuity in process flow and a wide variety in product offerings... and invented the Toyota Production System.

“This system in essence shifted the focus of the manufacturing engineer from individual machines and their utilization to the flow of the product through the total process. Pause for a moment and consider how those of us in law might benefit from a similar shift in focusing on the flow of the product through the total process rather than the individual workers and things like staffing.

“Toyota concluded that by right-sizing machines for the actual volume needed, introducing self-monitoring machines to ensure quality, lining the machines up in process sequence, pioneering quick setups so each machine could make small volumes of many part numbers, and having each process step notify the previous step of its current needs for materials, it would be possible to obtain low cost, high variety, high quality, and very rapid throughput times to respond to changing customer desires. Also, information management could be made much simpler and more accurate.”¹

I saw such a huge need in the law to make processes simpler and faster and committed to tackling the challenge of translating the concepts of process improvement so that they make sense in a legal context. It is not self-evident. After all, we are not manufacturing automobiles, medical devices, or silicon wafers.

This translation of these concepts from the manufacturing world to the legal space is why Legal Lean Sigma was created. The use of Lean and Six Sigma in law may be a simple concept, but that does not necessarily mean they are always easy to apply. Each law department or firm, practice group, legal or business professional, client, jurisdiction, matter or case, facts, judge, opposing counsel, and so on, is different and some are different every time.

So, one of our many challenges is ensuring that the desire to eliminate or change something in a process does not replace the exercise of good judgment or constrain our ability to do something that is in the best interests of the firm and its client for that particular engagement.

This is one of the reasons that Yellow and White Belt candidates in our certification courses find it easier to understand how to use process improvement in relation to business processes. Initially, it can be more of a stretch to think about how these concepts might be applied to legal work, since, in addition to all the differences between cases, matters, and the work itself, there can often be quite a bit of variation in terms of how lawyers like to do and deliver their work.

Once we start to focus on how we are working and the impact of all that freedom, we begin to realize there are so many reasons to change. For example, during a process mapping workshop, two partners were struggling to agree on one “best way” to handle an employment law matter. That is because each took a very different path to end up in the same place. The reality is that most legal professionals have no proscribed way of doing something on a more global basis, so it is mostly left up to the individual. And nearly everyone does something different. The partners turned to the paralegal who supported them, as well as three other lawyers, and asked how in the world the paralegal was able to keep track of all their preferences, saying this way of working was just not sustainable, it was wildly efficient, and so forth. The paralegal exclaimed, “*This is what I’ve been trying to tell you!*”

If we consider that every service offered in any area of practice contains a series of repeatable, describable steps – even if (and maybe especially because) there is variation in each one – we appreciate that each one is a process. Litigation is a process. Every transaction is a process. Every legal work product, every service delivered, is the outcome of a process. Accordingly, in each offering, there are abundant opportunities to apply Lean Sigma concepts and tools to make the process simpler and faster.

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