Common Sense Project Management for Litigation

by Jane Gennarelli

Magellan's Law Corporation

A Magellan's Law Corporation White Paper

Posted July 20, 2009

I can't tell you how many times I've been asked by a law firm to come in and fix a document-handling project that was "broken". More often than not, here's what I've seen:

- There was no budget.
- There was no schedule.
- There were no written procedures.
- No one had been trained.
- There was no quality control.
- The staff wasn't supervised.
- Task activity was neither monitored or documented.

The results were inevitable. Deadlines were missed. Costs went through the roof. Quality was substandard. And people were surprised by the results. In so many of these cases, the problems could have been avoided -- or at least minimized -- if basic project management principles had been applied.

Project Management is not complicated or difficult. It is simply applying "common sense" principles to the document projects that we handle. In this article, I'm going to describe those "common sense" principles and how they apply to the litigation tasks that you manage.

> "It is unlikely that any project will be successful without planning -- both big picture planning and the planning of specific tasks."

Plan the Project

It is unlikely that any project will be successful without good planning -- both "big picture" planning and the planning of specific tasks.

Big picture planning

Let's walk through a standard litigation task to illustrate a big picture plan. Let's say you are responsible for handling the electronic discovery on a case, starting with the collection of documents and carrying through to production.

First, identify the tasks that are required. Your task list might look like this:

1. Determine where responsive materials may reside.
2. Make forensically sound copies of potentially responsive materials.
3. Process materials for input into a document review tool.
4. Assemble and train a team to review materials for responsiveness and privilege.
5. Manage the team of reviewers.
6. Generate the production set.

For each task, determine by when it needs to be done, who will be responsible, and a general approach (for example, you may determine that collecting and copying materials will be done by a vendor, that the document review team will include contract attorneys and paralegals, and that your staff will generate the production set).

There, you've got a general plan for moving forward.

An edited version of this white paper was published in two consecutive issues of Litigation Support Today in late 2008.

Planning specific project tasks

Next, you need to do detailed planning for each project task. This means calculating a schedule and a budget and determining the resources you will need.

Let's start with the schedule and determining how may people you will need:

1. Determine how may units there are to be processed.
2. Determine how many units can be processed in an hour. (Over time, you'll have a good feel for this based on experience on several projects. Until then, do "time and motion" tests to get a feel for expected throughput, and talk to peers about their experience).
3. Divide the total number of units by the number of units that can be processed in an hour. Now you have an estimate of the total number of project hours.
4. Determine how many available calendar hours you have (for example, if your project needs to be completed in 2 weeks, you have about 80 calendar hours).
5. Divide the total project hours by the calendar hours to determine the number of people you will need.

Here's an example of how this works. Let's say you have 200,000 images to be reviewed, and you've determined that 200 images can be reviewed in an hour. The work will take 1,000 project hours. You need to complete the project in 2 weeks (or in 80 calendar hours). You will need 12.5 people to complete the task by the project due date (and of course, you should pad this number and assign more people than you think you need).

Now you are ready to calculate a budget. For most projects, the most costly part will be people. Multiply the number of total project hours by the billing rate of the project staff. Add in costs for project management and supervision, training, quality control and incidentals like equipment and supplies.

There you go. You've done some simple math and you have a solid, starting-point budget and schedule.

Create Written Procedures

Even for simple tasks, good written procedures are a must. They will:

- Ensure that everyone doing the work understands the task.
- Cut down or eliminate inconsistencies in the work product.
- Cut down or eliminate the need for re-work.
- Foster efficiencies that will help prevent cost over-runs and missed deadlines.

> "If you don't have a complete set of procedures yet, create them whenever you have a task at hand. Over time you'll build a library of procedures."

In a perfect world, your department would have detailed, written procedures for all of the tasks that you do. Unfortunately, most law firms aren't there yet. If you don't have a complete set of procedures yet, create them whenever a task is at hand. Over time, you will build a library of procedures for the tasks you handle.

Let me give you some tips for creating effective procedures:

- When possible, break a task down into its sub-components and draft separate procedures for each sub-component. It's very likely that different parts of a task may be handled by different types of people. Each component should have its own set of procedures.
- Use simple, clear language. Keep sentences short and simple.
- Make them detailed. Assume your reader doesn't know anything about the task.

- Make sure the steps are well-organized.
- Format the procedures so that they are easy to read. Use bullets, numbered points and outline formats.
- Test your procedures before you apply them. Ask someone who knows nothing about the task to apply the procedures to a sample of the work. Holes in the procedures will surface quickly.

Assemble the Right Team

It is essential to assign the right type of people to a task. For most litigation projects, this means determining whether a task should be done by attorneys, paralegals, technical professionals, or clerical staff. Pushing the work up to over-qualified people can be just as problematic as using under-qualified people.

> "Pushing the work up to over-qualified people can be just as problematic as using under-qualified people."

I have seen first hand the huge difference this can make. I once worked on two environmental cases simultaneously where millions of documents had to be screened by my clients. In one case, I was able to convince the client that we could break the task into pieces and that legal assistants could be trusted with ninety percent of the hours that would go into the task. In the other case, the client insisted that only lawyers could do the work.

I don't have to tell you how much more the second client paid for that work. However, you may be surprised by the quality comparison. Each of these screening projects involved multiple law firms, and one law firm was involved in both projects. This firm did quality control checking of the work in both cases, and found that there was significantly less re-work required in the case where legal assistants did ninety percent of the work.

Why? Because on one hand, the legal assistants were far more attentive to sub-parts of the task that made the lawyers' eyes glaze over, and on the other hand, lawyers who were able to do lawyer work all day were more attentive and alert.

This is where breaking a task down into sub-components comes into play. Let's take a privilege screening project as an example.

Everyone knows that making a privilege decision is an attorney task, but that doesn't mean that only attorneys can work on the project.

In every collection, there are certain types of documents that can never be privileged unless they bear privileged annotations. Published materials such as newspaper articles, advertisements and corporate annual reports are good examples. Other case-specific examples may be routine manufacturing and quality control reports. A trained paralegal using good criteria can do an initial review to identify only potentially privileged documents for attorney review.

A project handled like this will certainly cost less, and will probably result in more consistent, higher quality work.

Train the Team

As critical as procedures are, they aren't enough. People need to be trained in applying those procedures. If possible, they should be trained as a group so that different interpretations of the rules surface, and group members can benefit from the questions of others.

> "Training the staff will get your project off to a good start."

Here's a simple agenda for training project staff:

1. Start with an overview of the project and how the task fits into the case.
2. Review and explain the procedures for doing the work.
3. If there's a subjective component to the task, review the subject matter outline or criteria.
4. Have project staff do sample work, review it on a break, and go over it as a group.

Training the staff will get your project off to a good start.

Resolve Questions Quickly

Even with the best procedures and thorough training, there will be questions. Nuances in the collection and unexpected documents will surface that don't fit into your rules. Those exceptions and questions should be dealt with quickly and rules need to be expanded and modified. Don't delay handling these issues. Even a day's delay can mean that lots of documents must be re-reviewed for the application of new rules. A manager who can answer questions about the work and an attorney who can answer questions about the case (and make on the spot decisions) should be on-hand to deal with the unexpected.

Review the Work

Even with the best staff, mistakes happen. There are two types of errors you can expect:

1. Errors that are made because someone doesn't properly understand the task.
2. Errors that are made simply because it is inevitable. People have bad days. They get tired. Knowing how to do something doesn't mean you will do it right every time.

The first type of error is easy to identify and fix. I always distribute small batches of initial work at the beginning of a task -- work that an individual can finish quickly. Then I have that first initial batch for each person checked thoroughly and right away. Misunderstandings are evident and can be dealt with right away, before a lot of work has been done.

> "Knowing how to do something doesn't mean you'll do it right every time."

Catching the second type of error is a little more difficult unless your schedule and budget permit you to check 100% of the work. With a good staff, that's probably overkill. But, it's important that work is spot-checked throughout the life of the project, and that an intelligent approach is used to isolate problems. For example, if you find a few careless errors made by a staff member, see if you can isolate all of the work that person did on that day and check it completely. Or perhaps you'll identify a particular type of document that caused problems and you can take steps to isolate just those documents. Very often you can apply a systematic approach to finding and fixing errors.

Monitor the Work

It's critical to know where you are so you can compare your progress against your budget and schedule, and make adjustments if they are needed. Sometimes "the unexpected" will cause you to fall behind. In some cases you may be able to take steps to fix the problem -- for example, you may be able to simplify the task without sacrificing quality or utility.

> "It's critical to know where you are so you can … make adjustments if they are needed."

Let me give you and example. I once managed a coding project that was going south fast. The rate at which the staff moved through the collection was much slower than I had estimated. At that slow rate, the deadline was going to be missed and the costs were going to skyrocket. I met with the staff to find out why the work was taking so much time. We determined that there was one field of information that was causing trouble: coders were required to code the country in which certain types of activity occurred. It was easy enough to record "United States" when something happened in New York. It wasn't so easy for the staff to record "Bostwana" when something happened in Ghanzi. I talked about the problem with an attorney responsible for the case. He decided that all they really needed to know was whether an activity occurred in the US, in England, or somewhere else. We simplified the coding rule and got back on track quickly.

Changing the rules might not always be an option, and sometimes you'll just have to live with an extended schedule and higher costs. Knowing that sooner rather than later is always better. If you can't adjust the rules, you can at least adjust the expectations of those for whom you are doing the work.

Put a mechanism in place for monitoring status. Look at production rates and throughput every day and see how the numbers compare to your schedule and budget.

Document Project Activity

Project documentation is a weakness I've seen time and again in most of the firms I've helped. And, I've seen it cause problems over and over again.

I've worked with attorneys who have done a great job of collecting and producing documents, but nonetheless have trouble successfully resolving discovery disputes. Why? Because they didn't keep records of what they did and how they did it.

I've seen litigation teams work on cases that came back to life after being dormant for five years. No one knew what had already been done. They had to start from scratch.

I've worked with litigation teams that lost team members, and in doing so lost the only person who had knowledge of specific case activities.

It is critical to keep thorough project records. You should create and maintain a case book for every case. That case book should include overview information on the case including names and contact information for team members. It should include descriptions of every task that was done identifying who was responsible for each, who worked on each, the schedule and budget for each, and status logs and forms for work that was done.

Report Project Activity

Require regular status reports from those doing work for you. Submit regular status report to those for whom you are doing work. Status reports should include this information:

- A description of the activity
- What's been accomplished
- What's remaining
- Variances from schedule and budget
- Notes on unexpected situations or activity
- Descriptions of anything you need (information or additional resources) for moving forward.

"Require regular status reports."

Put everything in writing. Request all directives in writing, or if that's not possible, document your understanding of directives and verify that they are correct.

Keep all case documentation in your case book in a well-organized fashion. This resource can be invaluable when you need to look back on case activity, or when you are planning future projects and want to benefit from your prior experience.

Effectively Manage Your Staff

An important part of effectively managing a project is effectively managing the staff and keeping them motivated. Volumes have been written on this topic, and it may be worth your while to do some reading on management skills. Let me, however, list a few basic management principals that have served me well.

> "Know your people."

- Know your people and make assignments that are in sync with their skills, strengths and preferences. You will always get better results if you give people work at which they are likely to shine.Get people on board with the assignment. Make sure they understand the bigger picture, where their work fits in, and why its important to the case.
- Give them clear instructions.
- Be available to them. Make sure your staff knows how to reach you and how they should communicate with you.
- Regardless of what you are faced with, stay calm. Panic on your part will instill panic in those doing work for you. This never works out well.

> "Stay calm."

- Ask for input, suggestions and opinions. This has two benefits: you are likely to get good ideas that you'll want to implement, and your staff will feel appreciated. Note, if you don't implement a suggestion made by a staff member, make sure they know why and that you appreciate their input.
- Don't micro-manage your staff. Monitor them enough to catch problems, but give them room to do their jobs.
- Give lots of feedback. Make sure they know when they are doing a good job, and make sure they know when you want them to change the way they are doing something.
- Recognize and acknowledge good work. When someone does a good job on a project I'm managing, I write a memo telling them so. I describe the assignment, what they did, and how their efforts contributed to the overall goals of the project. And I always copy senior people on that memo. I have yet to find a better way to keep morale high for people doing good work.

> "Recognize and acknowledge good work."

Effectively Manage External Resources

Some of the tasks for which you are responsible may be better handled by litigation support vendors. I suspect that for many of you, the thought of using a vendor brings on anxiety. Almost every law firm person I know can report a bad experience with a vendor -- a situation where there were cost overruns, missed deadlines, or work quality that didn't meet expectations. There are steps you can take to minimize -- or eliminate -- these problems.

> "Good communication needs to start up front… and continue through the life of the project."

First and foremost, recognize the absolute need for good, two-way communication. Poor communication is the source of most of the problems I know about. Good communication needs to start up front, during the vendor selection process, and continue through the life of the project.

It is, of course, important to do a thorough vendor evaluation and make an intelligent selection. That's not something I can go into within the scope of this article. But, I can walk you through some vendor management and communication techniques that can be helpful in working with the vendors you select.

Before the Project Starts

- Most vendors will provide you with unit pricing for the work they do. In addition, require that they provide an estimate of total project costs based on solid assumptions that you provide. Require that they include line items with estimates for all incidental costs like media and shipping. This will minimize surprises on invoices.
- Ask for a sample invoice and make sure you understand it. Most likely you'll be responsible for verifying invoices so make sure that you understand them and that they include the information you need.
- Make the vendor agree to submitting regular status reports and ask them for a sample of one. If the information isn't sufficient, ask them to adjust it to include the information you need. I want a status report that tells me what was estimated for the week, what was done for the week, what was estimated to date, what's been done to date, and what's the variation.
- Make them agree to notifying you in advance and in writing if they are going to miss a deadline.
- Require contact information for vendor staff at various levels and positions so you can quickly get to the right person if a problem arises.

At the Start of the Project

- If possible, and if the nature of the project warrants it, be at the vendor's facility at the start of the project. Most questions will come up in the beginning, and this will get your project off to a good start.

> "It's always better to catch problems early."

- Just like with your own staff, carefully check vendor work early to ensure they understand your requirements, and give immediate feedback. It's always better to catch problems early when they can be fixed before they become big problems.
- Make sure you have good lines of communication in place to resolve issues and answer questions. Make sure the vendor knows how to reach you and your preferred method of communication.

Throughout the Project

- Review status reports and talk to the vendor if it looks like they are getting off track with schedule and costs. Ask them to adjust staff levels or see if you can simplify the project.
- Do regular spot checks of the work.

These techniques work well for most projects. There will be times when you've got a small, rush job that needs to be done overnight or within a couple of days. That's not the time to try a vendor with whom you have not worked. Even if it costs a little more, pick a vendor that you know and that you trust.

Effectively Manage Your Clients

For most of you, your clients are in-house; they're the litigation teams in your own firm. It's important that you maintain good lines of communication with them throughout a project and that you have a mutual understanding, from the start, of what's expected. That, of course, starts with setting expectations:

1. As a first step, gather the information you need. You'll probably need to know the schedule for the case, the expected size of the document collection, locations of the documents, contact information for litigation team members, and case management order requirements. If you can, schedule a meeting to collect this information. If that won't work, make it easy for your clients to give you this information (you might use an easy-to-answer email questionnaire).

2. Next, prepare and distribute a memo summarizing your understanding of the requirements. Include a description of the deliverables, schedule and budget information, and a description of your approach.

> "Don't agree to the impossible or the unreasonable."

3. Don't agree to the impossible or the unreasonable. Try to talk them out of bad decisions. If you can't, prepare a memo that describes what potential problems may occur.

Throughout the life of the project make sure to submit regular status reports that tell them where you are with regard to budget and schedule and that highlight project points of interest. Don't wait to pass along important project information in a regular status report. If there's a problem that needs their attention, give them a call and put it in a memo. Keep them current on what you are doing and on where things stand.

Effectively Manage Your Time

Of all of the techniques and activities discussed in this article, this is the one that gives many people the most trouble. There is no set of rules I can list that's going to work well for everyone. I can, however, give you some tips to consider that may improve your time management skills:

- Be organized. Use tools like calendars, to-do lists, email alarms, and project management software to keep you on top of all of the balls you need to keep up in the air.

> "Follow a routine and work from a plan."

- When possible, follow a routine and work from a plan. Start each day with your door closed for 15 minutes to plan your day. Set reasonable goals for the day and include time to respond to emails, return phone calls, review status reports, and to deal with the inevitable, unexpected situations that arise.

- Delegate whatever you can. For every thing you have to do, determine if it can be delegated, to whom, and if that person can take it on. If you delegate a task, define it well, give clear instructions, get agreement, make due-dates clear, and define authority levels (for example, let them know if they can add staff on their own or if they need to run that by you).

- Keep track of what you are doing. I always maintain a project diary where I document my activity.

- Effectively facilitate meetings. Don't let meetings for which you are responsible run over the scheduled time. Prepare an agenda and distribute it. Start the meeting on time. Up front, state the purpose of the meeting and describe the goals. Don't let the discussion get off track.

- Use standard materials and templates, such as project planning meeting agendas and reports, questionnaires to collect case information, technology surveys, requests for proposals, and status reports.

Managing your time effectively is critical, and it will set a good example for your staff. When I feel overwhelmed, I find that stepping back, prioritizing tasks and adjusting my to-do list helps. Always keep the big picture in mind when you get caught up in chaos, and don't sweat the small stuff.

In conclusion

I have seen projects managed by very bright litigation support professionals that have failed miserably. I have also seen hugely successful projects that were managed by people with much less knowledge and experience. The difference has always been project management. Try applying the easy techniques I've described in this article to your next project. And let me know how it goes.

About the author

Jane Gennarelli is a principal of Magellan's Law Corporation -- a product and consulting firm that assists litigators with effectively handling discovery materials. The firm's flagship offering -- the Litigation Best Practices in a Box™ product -- is a tool used by firms across the country to develop and implement best practices for handling discovery materials, and to ensure that effective project management techniques are applied to all of their cases. The product is in use today by about one third of the NLJ 50 firms.

Note: An edited version of this white paper appeared in two consecutive issues of Litigation Support Today in late 2008.

FOR MORE INFORMATION CONTACT:

Jane Gennarelli
Magellan's Law Corporation
jane@litigationbestpractices.com
210-561-5626
www.litigationbestpractices.com