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612-752-6000 thl@hcba.org

Innovation: A Place in Big Law

Big Law strives to serve Big Business.¹ But is the legal industry innovating, adapting, and keeping pace with Big Business? And is that even necessary? This article compares and contrasts the different perspectives and accomplishments between the business world and the legal world in the field of innovation. Parallel, or not?

INNOVATION: A NECESSARY VIRTUE IN THE BUSINESS WORLD

The term “innovation” often conjures up images of companies like Apple,



Sonia Miller-Van Oort
Contributing Author

Ms. Miller-Van Oort is a founding member of Sapientia Law Group, a progressive mid-sized and multi-service law firm in Minneapolis. She specializes in product liability and commercial litigation.

Google, and Amazon.com. Why? Because these companies exude creativity, define new standards, and not only meet customer expectations but also create new expectations and visions for products and services beyond their customers’ imagination. Accordingly, “innovation” is viewed as more than just gradual change or process improvement; it is substantial, impactful, and positive change that charts new territory.

Without question, being a leader in “innovation” is considered a positive and laudable goal in the business world. Since 2005, *Bloomberg Businessweek* has conducted an annual global survey of top executives for purposes of ranking the “50 Most Innovative Companies” in the world. In the most recent survey, Apple ranked first; Google ranked second; and Amazon.com ranked sixth.²

According to *Businessweek*’s 2010 survey of approximately 1,590 global executives, premier business executives don’t just consider innovation a “good thing”; they view innovation as critical to their organization’s sustainability, profitability, and response to the economic downturn over the last few years. Seventy-two percent of companies surveyed identified innovation as a “Top Three” strategic priority, and 61 percent reported a planned increase in innovation-related spending.³ So, much like “necessity is the mother of invention,” economic uncertainties and growing

customer expectations seem to be the “kissing cousins” of innovation.

EXAMPLES OF BUSINESS INNOVATION

There are countless examples of businesses innovating and utilizing creative solutions and ideas to respond to emerging needs, cost-efficiencies, technologies, and productivity.

1. Project Management. In recent years companies have invested in and moved toward mastery of internal workflow and project management—a process that requires detailed front-end planning, resource allocation, staffing, timelines, and budgeting.⁴ These concepts largely echo Six Sigma concepts originally developed by Motorola to improve product quality, and which were later modified and promoted by companies such as Southwest Airlines and Wal-Mart as “Lean Dynamics.”⁵ Through these evolving organizational and project management concepts, companies have improved quality, shortened project and production time, become more cost-efficient, increased profitability, and provided additional value to their customers—both in product development *and* in delivery of services.

2. Alternative Work Schedules and Culture. As technology has evolved and people have become less tied to physical office space, businesses have openly accepted and leveraged available technology

to encourage telecommuting, flex-time, and office-share arrangements.⁶ These progressive practices have become part of an accepted business culture where “face time” is less necessary and work ethic is recognized even without direct visibility.⁷

These concepts were pushed to a new level by Best Buy a few years ago when it rolled out a new corporate strategy referred to as “Results Only Work Environments” (ROWE).⁸ This concept vests complete discretion in employees for when and how to get their jobs done. In a ROWE, there are no specific times when employees have to physically be at work, and no mandatory meetings. Rather, employee performance assessments are based on data and results, not hours or anecdotal perceptions. According to Best Buy executives, and admittedly contrary to many of their own initial perceptions and doubts, ROWE’s implementation resulted in lower employee turnover, higher levels of productivity and quality, and happier teammates.

3. Employee Motivation and Productivity.

Innovative giants like Google have written the book on creating a physical work environment that fosters employee productivity, creative thinking, and long-term company loyalty. For example, much of the wall space in Google’s California-based headquarters is comprised of whiteboards, providing employees a place to capture ideas as they arise. Its dog-friendly headquarters also boasts onsite exercise and recreation space, day care, professional masseurs, and video game areas. Some Google offices feature slides and fire poles to allow for quick (and fun) access between floors. These features serve to reduce job stress and increase employee comfort, theoretically making them more productive. Google also employs a motivation technique that allows employees to award small peer bonuses to one another. And engineers are permit-

ted to fill 20 percent of their workload with projects of their own choosing.

Innovation is sought and rewarded by the business world. Is it given the same treatment by the legal world?

But one needn’t look as far as California for examples of employee-centric environments; the *Minneapolis/St. Paul Business Journal* recently honored 55 Minnesota employers as the state’s 2011 Best Places to Work. The common threads among these recognized businesses were their (i) commitment to step outside the mainstream, (ii) efforts to engage their employees and create supportive team environments, and (iii) confidence in daring to be different. Examples of their workplace innovation included wellness programs, treadmill walking/working stations, and

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INNOVATION: A REBELLIOUS NOTION IN THE LEGAL WORLD

Innovation is sought and rewarded by the business world. Is it given the same treatment by the legal world?

In contrast to Big Business, the term “innovation” seems to be used cautiously by and about the legal industry. While being cast as an “innovator” in the business segment draws accolades, the same descriptor in the legal industry is more likely to draw skepticism.¹⁰

The disparity in innovation perceptions by the business and legal communities is exemplified by industry awards in those respective communities. While business publications like *Businessweek* and *Forbes* create and publish “Most Innovative Companies” lists,¹¹ the American Bar Association’s *ABA Journal* recognizes legal innovators as “Legal Rebels.”¹² So, although both sectors recognize innovation within their respective industries, the connotation associated with each is quite different.

EXAMPLES OF LEGAL BUSINESS INNOVATION

There are mixed views on if and how legal businesses have responded to market demands, opened themselves up to change, and/or innovated in the way that other business entrepreneurs have. Some opine that the delivery of legal services to private and business sectors has been, is, and always will be “business as usual” and that there is no reason for substantial change or innovation in the legal business model. Others maintain that the practice of law has changed considerably over the decades and therefore demonstrates innovation at work. And still others argue that innovation is not even possible in the legal market, because true entrepreneurs, through self-selection, are screened out of the legal industry long before they could enter the world of private

law practice, thereby eliminating the potential pool of innovators in the legal industry.

Perhaps a good place to assess the current innovative measures being advanced in the legal world is the 2011 crop of “Legal Rebels,” as recognized by the ABA.

1. Employee Training. New York City law firm Millbank, Tweed, Hadley & McCloy (500+ attorneys) began a new training program for its associates this fall. This training program involves sending all associates, in groups of 30 to 40, to Harvard Law School for its eight-day executive program for intensive training in leadership, personal professional development, business and finance, and law. According to the *ABA Journal* report, this is the first time an Am Law 200 law firm “has committed to an onsite multi-year initiative” for all firm associates, not just select partners and associates.¹³

2. Recruiting Talent. Another large law firm, Pepper Hamilton, has shown its “rebel” colors by adopting a new recruiting process for greater insight into talented candidates who will contribute to a collaborative working environment: during summer-associate call-back interviews and lateral-hire interviews, candidates are presented with legal fact patterns and asked to engage in “interactive” discussions about the legal issues with the interviewers.¹⁴

3. Target Marketing. Along the lines of loss-leader marketing concepts, Boston-based firm Foley Hoag advertised a special \$250 “startup incorporation package” on an Internet discount platform this past spring. This special package of legal services was limited to ten clients; package purchasers could also purchase accounting services for \$150 and meet with a venture capitalist for \$1. This marketing strategy envisioned long-term business value in taking a short-term loss on the ten projects. As a result, Foley Hoag gained new emerging company clients who have also provided additional referral work to the firm.¹⁵

4. Global Resources. Demonstrating significant entrepreneurial spirit, attorney David Perla and friend Sanjay Karlani joined forces a few years ago to develop Pangea3,

a legal process outsourcer in India.¹⁶ Armed with experience working in Big Law and in corporate legal affairs for the large online career service company Monster, the duo saw opportunity in creating and providing a competent, but less expensive, legal workforce to do due diligence work and document reviews abroad. These innovators understood the need to develop quickly and found investors to back the company with more than \$5 million. The legal process outsourcer experimented with different practice areas and, according to Perla, benefitted from hiring junior attorneys unconstrained with pre-conceptions of traditional law firm processes. Pangea3 became so successful (especially in the area of intellectual property matters) that it expanded operations in the United States and was subsequently purchased by Thomson Reuter in November 2010, reportedly for more than \$35 million.¹⁷

Similar to Foley Hoag’s targeted marketing strategies, Goodwin Procter (another Boston-based firm) has embraced the appeal of online client resources and social media in marketing to startup entrepreneurs and venture capitalists. Goodwin Procter created a website called “Founder’s Workbench” and a companion blog, “Founder’s Toolbox.” These platforms provide potential clients with free documents and tips on best practices.¹⁸

And although not highlighted specifically in any of the ABA 2011 Legal Rebel profiles, another area of blossoming innovation in the legal industry is pricing strategies and models. Resistance to change has been a significant hurdle to development and implementation of alternative fee arrangements (AFA’s).¹⁹ But because businesses—through general counsel and chief legal officers—have increasingly demanded that law firms reassess their pricing models and develop creative AFAs that meet client business demands and economic realities, some law firms have begun to do so.²⁰

HOW DOES INNOVATION STACK UP BETWEEN BIG BUSINESS AND BIG LAW?

If innovation is measured by creativity, heightened efficiency and profitability,

improved product or service offerings, and significant change in process management, how do current innovation initiatives in the legal industry stack up against those in the business world?

Innovative developments in the business sector (i.e., project management, alternative work schedules and cultures, and employee motivation and productivity) focus on changing the way businesses generate work product, structure their work environments, and increase productivity. Interestingly, each of those examples of creativity has been largely unaccepted in the legal industry. For example, Big Law has improved internal resource allocation and staffing of complex matters by incorporating some project management concepts, but it has not, for the most part, dealt with budgeting requirements and cost-containment elements also typically part of project management processes. Flexible work schedules and results-based working environments are completely inconsistent with billable hour norms and therefore still largely incompatible with the traditional law firm model. And although workplace amenities have been adopted by some legal industry employers, those amenities (e.g., late night amenities such as delivered dinners and taxicab service, and lactation rooms for new mothers) appear aimed at prolonging lawyers' work days, not making lawyers more efficient, productive, or happy.

Still, the legal business innovations above include notable developments in both outsourcing certain legal functions and in pricing and alternative fee initiatives. These changes mark a significant attempt to meet clients' needs, develop efficiencies, and change clients' expectations going forward. Notably, just as the CEOs observed in the recent *Businessweek* survey cited above, these significant changes in the legal industry have also been born out of the serious economic recession clients have faced and the expectations that have evolved as a result.²¹

Use of Internet marketing and social media to connect with clients in ways that meet and exceed clients' expectations and expand on traditional methods of communication mark substantial changes in

the way some law firms are doing business. These developments in the use of technology for marketing and communication are being adopted by many in the legal industry—possibly to the point that they are becoming more commonly expected than viewed as innovative.

In comparing innovation trends, if Big Business and Big Law ran an innovation race, it appears that Big Business would “lap” Big Law. The business world sees value in innovation, covets it like the Holy Grail, and continues to chase after it. “Legal Rebels” have taken strides to propel the legal industry forward. But the legal industry as a whole, still wary about the benefits and achievability of innovation, will need to clear those hurdles if it wants to keep Big Business in its sights. 

- ¹ “Big Law” refers to *National Law Journal* 250 firms.
- ² M. Arndt & B. Einhorn, “50 Most Innovative Companies 2010,” *Bloomberg Businessweek* (April 15, 2010).
- ³ J. Andrew, “What Executives Make of Innovation,” *Bloomberg Businessweek* (April 15, 2010).
- ⁴ Cf. B. Henderson, “Are Law Firms Really Ready for Project Management?” *The Bottom Line* (July 2010).
- ⁵ See S. Ruffa, *Going Lean: How the Best Companies Apply Lean Manufacturing Principles to Shatter Uncertainty, Drive Innovation, and Maximize Profits* (New York: AMACOM, 2008).
- ⁶ See 2011 “100 Best Companies to Work For,” *FORTUNE* (Feb. 7, 2011).
- ⁷ Cf. M. Coppins, “The Vanishing 9-to-5 Job,” *Newsweek's The Daily Beast* (June 24, 2010).
- ⁸ M. Conlin, “Smashing the Clock,” *Businessweek* (December 11, 2006).
- ⁹ See *Minneapolis/St. Paul Business Journal* “2011 Best Places to Work” edition, featuring The Nerdy at A17 and Salo, Oberon, Numberworks at A20.
- ¹⁰ See R. Friedmann, “Why Do Law Firms Resist Innovation?” *Law Practice*, (December 2006).
- ¹¹ *Supra* note 2. and “The World's Most Innovative Companies,” <http://www.forbes.com/special-features/innovative-companies.html>.
- ¹² R. Zahorsky & S.F. Ward, “Legal Rebels 2011: Big Change in Big Law,” *ABA Journal* (posted Sept. 1, 2011).
- ¹³ *Supra* note 12; see also R. Zahorsky, “Back-to-School Boss: Mel Immergut, Milbank Tweed Hadley & McCloy,” *ABA Journal* (posted Sept. 14, 2011).
- ¹⁴ See S.F. Ward, “Career Conversations: Michael Subak, Pepper Hamilton,” *ABA Journal* (posted Sept. 7, 2011).
- ¹⁵ *Supra* note 12.

¹⁶ *Supra* note 12.

¹⁷ R. Zahorsky, “The Disrupter: David Perla, Pangea3,” *ABA Journal* (posted Sept. 12, 2011).

¹⁸ R. Zahorsky, “2.0 Toolbox: Nithya Das, Goodwin Procter,” *ABA Journal* (posted Sept. 6, 2011).

¹⁹ Cf. W. Henderson & R. Zahorsky, “Paradigm Shift,”

Flexible work schedules and results-based working environments are completely inconsistent with billable hour norms and therefore still largely incompatible with the traditional law firm model.

ABA Journal (July 2011).

²⁰ See “Can You Hear the Ice Melting?” *The American Lawyer* (Dec. 1, 2009); citing The Association of Corporate Counsel/The American Lawyer 2010 Joint Survey Results.

²¹ *Supra* Note 19 at 45 (quoting G. Jordan, managing partner and chairman at Reed Smith (“There is no question that a serious recession caused a heightened sense of awareness for law firms and consumers. As the recession starts to reverse itself, there will be some movement away from that super-heightened awareness of cost, but this recession gave buyers of legal services enough time to really appreciate that they could get the same quality of service for less than before the recession.”)).