

AHEAD OF THE CURVE: THREE BIG INNOVATORS IN BIGLAW

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Nashville, TN. It is time to put down the broad brush used to paint BigLaw as inefficient and out of touch. At least for me, that is the big takeaway from the 2014 International Legal Technology Association ([ILTA](#)) conference, which took place this past week at the Gaylord Opryland Hotel in Nashville and included nearly 2,000 lawyers, administrators, staff, and vendors from around the world.

My takeaway is based on what I saw during the presentation session for the ILTA Most Innovative Law Firm Award. The three finalists all qualify as big: [Bryan Cave](#) (985 lawyers), [Seyfarth Shaw](#) (779 lawyers), and [Littler Mendelson](#) (1002 lawyers). Presenters from each firm had 15 minutes to share their innovations followed by 5 minutes of Q&A. Afterwards, ILTA members in attendance casted ballots for first, second, and third place.

Kudos to Bryan Cave, Seyfarth Shaw, and Littler Mendelson for publicly sharing their innovations, as it demonstrates a commitment to the broader legal profession.

In this post, I will describe the salient points of each innovation. I will err on the side of detail because, when it comes to innovation in the legal space, there is a short supply of “guts of the operations” commentary. I will then offer some macro-level observations. As it turns out, BigLaw has on balance a surprisingly good hand to play. Many will thrive, but at the expense of taking market share from the rest.

BRYAN CAVE

Presenter: [John Alber](#), Strategic Technology Partner

Bryan Cave has developed an ingenious and highly efficient way to educate its lawyers on the economics of its business. Prior to the presentation, I was familiar with the firm’s investment in a rigorous cost accounting system to guide the firm’s strategy and operations.

Yet, to get the full benefit out of such a system, the understanding needs to filter down to the individual lawyer-timekeeper level so that each lawyer-timekeeper can use the superior data to allocate time and effort in ways that strengthen the enterprise. Even in the year 2014, many successful and skilled BigLaw lawyers confuse revenues with profit. And the confusion is understandable because portable books of business, which tend to be measured in terms of revenue, drive the valuation of lateral partners. See Henderson & Zorn, [Of Partners and Peacocks, Am. Law.](#), February 2014.

Based on what I saw at ILTA, such confusion appears to have been substantially eliminated at Bryan Cave.

The core Bryan Cave innovation is a simple dashboard that tracks a variety of statistics at the lawyer, practice group, and firm level. What is most striking about the Bryan Cave initiative is the sensitivity shown to the large percentage of lawyers who are not comfortable processing numbers (“arithmophobia” was the term used in the presentation). The Bryan Cave innovation team dealt with this constraint in two ways.

1. The Octagon. The Octagon is a data visualization technique that communicates eight key metrics in an octagon-shaped graphic. Wondering what the term “data visualization” means? It’s finding graphical ways to communicate complex multi-variable data in a format that requires the end user, such as a lawyer, to have very little technical training. The Octagon is a textbook example. It uses colors and distance from the center of the graphic to convey essential information related to origination, client relationships, matter management, days to bill, days to collect, hours billed, leverage, and profit margins. (There may be other octagons containing other metrics--the one we were shown appeared to be geared toward partners.)

Each lawyer each month gets a new updated Octagon; and that graphic communicates, through its shape, the lawyer’s relative contributions to the firm. Specifically, there are distinctive patterns well

known within the firm that tend to signal rainmaker, service partner, project manager, technical specialist, or some blend thereof. The features of the Octagon also communicate how well a lawyer is performing in his or her various roles relative to his or her peers. So, on a monthly basis, self-image confronts hard numbers.

This type of transparency is bound to have a profound effect on behavior. (During another ILTA session I heard, from another Bryan Cave presenter, that since the introduction of the Octagon a couple of years ago, the average days to collect has fallen from 60 to 44.)

2. The Rosetta. Some lawyers are bound to prefer a story rather than a picture. For these lawyers, the firm has created a narrative, referred to as the Rosetta, that translates the numbers into a diagnostic story of strengths, weaknesses, and, most importantly, *specific prescriptive advice on how to improve*.

But there is an interesting catch—the stories are all written with a computer algorithm. How is this possible? It's a technology pioneered by a company called [Narrative Science](#). Note that computers that are fed nothing but a traditional baseball scoring sheet now routinely write sports stories that summarize the game for the local sports page. This narrative summary accompanying the Octagon removes any lingering ambiguity regarding what the diagram means. Further, all report generation, including practice-group level Octagon and Rosetta

reports, has been entirely automated.

I am told that the Octagon and Rosetta programs can handle, and properly incentivize, work that is done on either a billable or alternative fee arrangement basis. If this is true, Bryan Cave has an innovation designed for the legal market of the future.

Some readers may be turned off that the Bryan Cave innovation may seem, on the surface anyway, entirely focused on law firm financial performance. I am not. To my mind, this type of technology is valuable for communicating the fundamentals of the business. This reduces the myths and false narratives that routinely take hold in data-poor environments. This innovation is also timely because it is getting harder to give clients superior value while also delivering a strong return to the firm's owners -- the best of whom could lateral to another firm tomorrow.

The challenge of every BigLaw firm is getting all of the firm's stakeholders to row in the same direction. The combination of the Dashboard, Octagon, and Rosetta is a breakthrough in lawyer communication and, by extension, change management. Bryan Cave attorneys have the information they need to both build their practices while also advancing the broader goals of the enterprise.

SEYFARTH SHAW

Presenters: [Kathy Perrelli](#), Chair of Litigation Practice; [Kim Craig](#), Global Di-

rector of Legal Project Management.

Seyfarth Shaw's innovation is the creation of a true Research & Development Department staffed by lawyers, project managers, technologists, and software developers. The charge of Seyfarth's R&D Department is to build solutions in advance of perceived client needs. As the presenters mentioned, "we are not doing this because our clients are asking for these solutions; we are doing this because our clients *will* ask."

Seyfarth's R&D initiative is best understood within the broader context of the firm's evolution. Among BigLaw firms, Seyfarth probably has the strongest brand for law firm innovation, in part due to the firm's very public commitment to lean process and project management principles. Seyfarth made this commitment nearly a decade ago because its marquee practice area, labor and employment, was becoming much more rate sensitive.

The R&D initiative was launched in 2012, several years after the firm's migration to (and substantial adoption of) lean practice management principles. The initial personnel consisted of seven project managers, ¼ FTE software developers, and zero technologists. The department is now 35 FTEs with job titles such as legal solutions architect, data analyst, legal technologist, legal project manager, and legal product manager. These professionals work in support of specific client projects, but also proactively solve entire clusters of legal problems and reduce bot-

tlenecks that hinder great client service.

Some of the group's output includes:

- Expert systems made directly available to clients, such as a cloud-based tool (powered under the hood by a sophisticated decision tree) that provides clients, or more likely line managers of clients, with answers to Fair Labor Standards Act (FLSA) questions.
- SeyfarthLink, which is a legal management platform that can launch a litany of resources, including a document assembly and automation system with nearly 100 base templates that support 900 document permutations.
- 500 process maps, including some that render workflow analytics in real time. Kim Craig commented, "We needed to bring these maps to life."
- The capture of all client data to facilitate the movement from "descriptive statistics to predictive data." Applications include identification of litigation hot spots and settlement patterns by geography.

To make all of this happen, Seyfarth uses methodologies such as [Agile](#) (for project management) and [Scrum](#) (for software development). Legal education ought to take notice: a law degree plus these technical skills and some personal initiative equals a [JD-Advantaged job](#) with an extremely bright future.

What are the KPIs (key performance indicators) for the R&D group? There is traditional time-based profitability. For cost accounting reasons, the R&D group carefully tracks its time. But the firm also tracks engagements where Seyfarth obtains work because of the unique capabilities of the R&D team. Clients increasingly want to hear from the R&D team during client pitches.

Another relevant KPI is “client delight.” And based on my own firsthand experience, I know the presenters were not kidding. A couple of years ago, a Seyfarth partner with a large national immigration practice told me about the sea change that had occurred within her firm. I remember her saying that “the ability to delight my client” had become the best part of her job and that it made all the transition pain worth it.

Think about the commensurability issues raised by a client delight KPI. Delighted clients are unlikely to fire the firm, put them through a stalking horse RFP, or nickel-and-dime through invoice audits. They are, however, more likely to tell their in-house friends about their wonderful experience and also be more open to cross-selling.

The benefits don’t end there, as Seyfarth lawyers get the pleasure of delivering undisputed value to their clients — i.e., feeling professionally masterful. Client delight makes it hard to reliably track origination credits. It also reduces the reliance on money as the glue that holds

the enterprise together. Ironically, the client delight KPI will probably make all stakeholders wealthier in the future.

Remarkably, all of these positive outcomes flowed initially from reengineering so-called “commodity” labor and employment work—work that other large law firms began shedding several years ago because of the low margins available under the traditional artisan lawyering model. Granted, at the time, few could have conceived of practicing law any other way. Through decisive leadership several years earlier, Seyfarth has turned lemons into lemonade.

LITTLER MENDELSON

Presenters: [Scott Rechtschaffen](#), Chief Knowledge Officer; [Scott Forman](#), Litigation Partner.

Littler Mendelson is part of a distinctive subset of BigLaw that focuses almost exclusively on management-side labor & employment ([Ogletree Deakins](#) and [Jackson Lewis](#) also fit this profile; in contrast, Seyfarth is a general service law firm with a marquee labor & employment practice). Littler’s innovations are really natural outgrowths of its focused business model. Before describing the substance of Littler’s ILTA submission, let me first sketch out the basic features of the national L&E boutique model.

Firms in this niche have extremely deep penetration in the Fortune 500. Based on data we have analyzed at [Lawyer Met-](#)

[rics](#), in a ranking of Fortune 500 client relationships from 2008 to 2013, the national L&E boutiques are ranked #2, #3, and #4. The #1 spot is held by a 1000+ lawyer general service firm with a marquee national L&E practice.

The reason for this dominance is simple: every large corporation has significant labor & employment issues by virtue of the fact that they have thousands of employees. The resulting legal issues are a cost of doing business—an unwanted cost that every corporation wants to lower if not eliminate. Although this is price-sensitive work, quality remains an important consideration, as labor & employment cases have the potential to fester into class actions and ugly public relations problems. Thus, the value proposition is clear — “Give me quality legal work at a reasonable and predictable price point. If you can deliver, your firm might get our entire L&E portfolio.” See generally Friedmann and Brown, [“Bet the Farm” Versus “Law Factory”: Which One Works?](#), 3 Geeks and a Law Blog, March 22, 2011.

The national L&E boutique model is designed to meet this challenge on several fronts:

1. The large size and focused practice facilitates economies of scope and scale that can be used to deliver more value to clients;
2. Partners expectations are in alignment — partners and lawyers might,

on average, make less, but the institutionalization of clients builds an ark that can weather virtually any economic storm;

3. The lawyers are located where the clients are — everywhere. Littler is a 1,000-lawyer firm with no office comprising even 10% of the firm’s lawyers. Jackson Lewis and Ogletree Deakins have similar profiles.
4. In contrast to the conflicts issues endemic to general service law firms, conflicts are reduced in the national L&E boutique because the opposing side tends to be an individual or a labor union.

Littler presented two sets of innovations at ILTA that flow from its distinctive business model: one pertaining to the workflow design of substantive legal work; and the other related to knowledge management solutions used by the firm’s lawyers and also made directly available to clients.

1. Littler CaseSmart. This initiative is about workflow and staffing design, albeit for a special tranche of cases. Littler has applied the rigor of systems engineering to single-plaintiff employment law cases. The result is a remarkably sophisticated bundling of technology, process, and specialized human capital that can improve case outcome while driving down costs across a broad portfolio of cases.

One of the most distinctive features of CaseSmart is that it conceptualizes the

client's legal work as a portfolio. And this is important because it's the aggregation of wins and loses and settlement costs that impact the client's bottom-line. And that is the pay dirt needed to institutionalize a large corporate client.

With CaseSmart, the client is given a dashboard to visualize either a single matter or metrics across a set of matters, including geography. The cases are priced flat fee by phase. Further, the system is set up to reward high quality early case assessment and matter resolution. To ensure high quality and a fair profit at this lower price point, much of the actual legal work is done by specialized non-partner attorneys (research attorney, early case evaluation attorney, discovery attorney, brief writer attorney).

Arguably, CaseSmart signals a return to a high leverage model, albeit one with lower revenue-per-lawyer (RPL) time-keepers. Yet, this new model can be quite stable and profitable. Major perks for these non-partner lawyers include flexible schedules (workflow process applied to a large portfolio of cases make a lawyer's work schedule much more predictable) and the ability to work from home-based offices. These are perks that fit the preferences of many Gen Y and Millennial generation lawyers.

Scott Forman, the Littler shareholder who presented CaseSmart, stated that the firm believed that its approach "was the future of labor and employment litigation." I agree, though I think the innovations could easily be scaled to other

practice areas. Arguably, the CaseSmart methodology would be even more valuable in a general service firm where price sensitivity is growing in many transactional, litigation, and regulatory practices.

2. Knowledge Management Innovations. Littler's big innovation here is giving its Chief Knowledge Officer, Scott Rechtschaffen, the budget and authority to innovate on behalf of the firm. At ILTA, Scott ran us quickly through several client-facing innovations:

- ***Expert Systems.*** What is an expert system? The automation of repetitive aspects of legal work, thus driving down costs, reducing mistakes, and increasing speed of delivery. Littler has partnered with KM Standards and Neota Logic to build self-serve client facing tools. An example discussed by Scott was an expert system that provides guidance on the (remarkably byzantine) Affordable Care Act.
- ***Arbitrator and Mediator database.*** Littler probably interfaces with as many arbitrators and mediators as any law firm in the nation. Why not systematically capture and organize that knowledge in a firm-level database? The firm has ended the inefficient practice of firm-wide queries via email. Further, this accumulated experience is made available to clients, which is another reason to use Littler as outside counsel for employment matters.

- ***Little GPS.*** This resource is a 52-jurisdiction survey of employment law that is enabled by technology to ensure that it is 100% current. This is a textbook example of the economies of scale and scope available to national L&E boutiques. This tool makes every lawyer in the firm more knowledgeable and efficient.
- ***New Client Filing Alerts.*** A plaintiff files an employment law complaint in state or federal court against one of your clients. Wouldn't you like to know this before your client gets served the complaint? This is a highly reliable system that updates daily and requires zero human touch. Littler lawyers know about cases before their clients — and that is how it should be.

Littler's KM innovations reflect a point repeatedly made by Richard Susskind yet commonly ignored by fearful lawyers—the application of technology to law requires a tremendous amount of legal expertise. Indeed, Scott Rechtschaffen may be the firm's Chief Knowledge Officer, but he is also a graduate of Cornell Law School and has 30 years of practice experience, including 23 as a shareholder at Littler Mendelson.

What are the implications of all of this? As the legal market undergoes a major paradigm shift, BigLaw has tremendous natural advantages. Not only does BigLaw have thousands of clients who need better, faster, cheaper legal solutions; BigLaw

also has the deepest bench of domain experts to actually make the switch. What is missing at some firms, but clearly not all, is the will, courage, and leadership to seize the opportunity.

THE BIGGER PICTURE

The innovations described above are true innovations that are designed to create a competitive advantage and take market share. All of these ILTA entrants tapped into the “Big Three” drivers of successful law firm innovation:

1. Substantial investments of money and time
2. Substantial expertise from non-lawyer professionals
3. Skillful and determined leadership to communicate and support the change initiative

Competitors are free to imitate the innovations shared at the ILTA conference. However, the ILTA entrant's true competitive advantage may be less the specific innovations described above than the creation of a firm culture that has learned how to learn. As a result, future innovations will likely come easier to them. And remember, all of this has occurred within the four corners of supposedly slow, monolithic, lumbering BigLaw. Clearly the commentary on BigLaw needs a more nuanced headline.

Over the last several years, I have spent a lot of time on the road doing shoe leather

research. In my hundreds of conversations with lawyers, I am constantly listening for legal service organizations that are being singled out as better, different, or special. I keep a running list of law firms that get mentioned two, three, or four times. Over the last couple of years, I had already detected a positive buzz for Bryan Cave, Seyfarth Shaw, and Littler Mendelson. Yet, until this week, I lacked access to specific details that were shared in a live, open industry event.

In the year 2014, I would estimate that 10% to 15% of the large law firm universe (150 lawyers or more) is two or more years into strategic initiatives that reflect the business conditions of the [New Normal](#). Almost all law firm leaders are thinking about it.

I admit that I initially underestimated the BigLaw sector. When law firms were wrestling with the complexity of the task (organizational rather than conceptual complexity), I erroneously concluded that the lack of rapid progress was due to a lack of understanding or a fundamental inability to change. I also overestimated the ability of in-house lawyers to effectively use their purchasing power in their own long-term interests. My misreading of BigLaw and in-house lawyers flowed from the same source — a large, knotty, sprawling ball of legal, logistical, and organizational complexity that hindered both supplier and buyer.

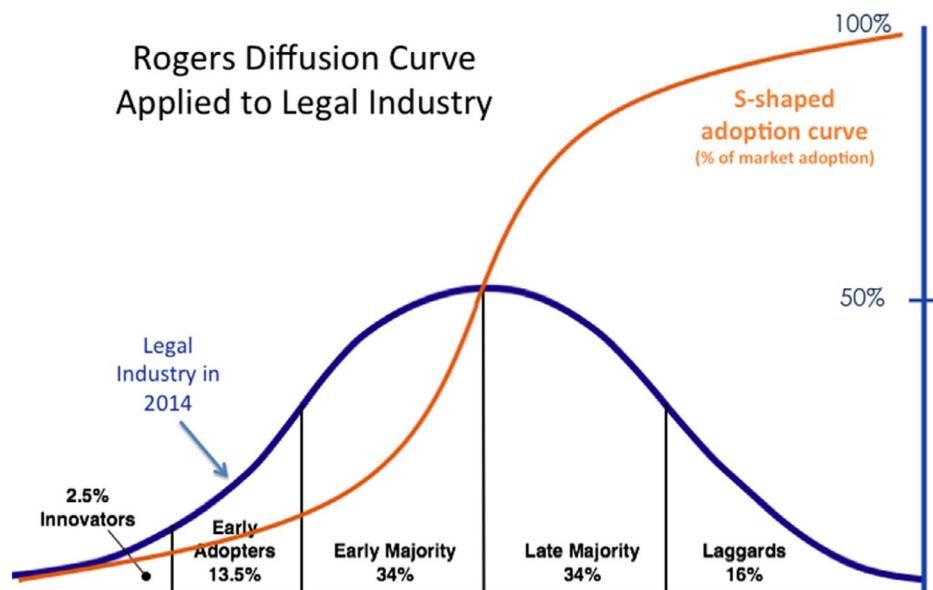
Stated another way, change looks easier from far away. The pace of change has

been slower than some might expect—including, initially, me—because we are only now building the organizational structures that will enable lawyers to work collaboratively and creatively with other professionals. Seyfarth’s R&D unit is likely the future: lawyers working with technologists, software developers, data analysts, project managers, and systems and process design specialists. The importance of the allied professionals is evidenced by [the outcry](#) that occurred following the Texas Supreme Court’s [recent ruling](#) that non-lawyers cannot hold C-level positions in law firms.

At least among law firm partners, many have been waiting for proofs of concept from peers. Based on what I observed at ILTA, that time is rapidly approaching.

Once it’s clear that a handful of law firms are making greater headway with clients, the pace of change in BigLaw is going to accelerate dramatically. This is because the diffusion of innovations in all industries, including law, is driven less by logic than experience. And the experience here is observation and imitation: market player B observes the success of market Player A and copies A’s methods. See Analysis of Rogers Diffusion Curve in Henderson, [Living Through a Paradigm Shift](#), NALP Bulletin, August 2014.

What will it be like to work in BigLaw during a period of rapid change and innovation? It all depends upon the opportunities. Who are you working for? What are you working on? Who you are work-



ing with?

The professionals who cut their teeth on the innovative projects at Bryan Cave, Seyfarth Shaw, Littler Mendelson and several other innovative shops could probably make more money, at least in the short to medium-term, at a law firm that feels that it has fallen behind. But is it worth it? Here are two factors that will likely weigh on the minds of the experienced allied professionals.

1. Ability to Get Organizational Buy-in. Law firms coming later to the innovation game are going to experience some serious organizational challenges. Yes, these firms need and want first-tier specialists in data, process, and technology. And yes, they can throw money at the problem. However, obtaining partner

buy-in remains a Herculean task. Not every leader will be successful in getting this done. In contrast, the “early adopter” firms, where the experienced specialized talent currently works, have already crossed the buy-in threshold with their partners. Their innovations are not being sold to partners; they are being adopted and used.

2. Ability to Do Cutting Edge Work. I have talked with several lawyers and allied professionals in both the US and UK who are running Skunkworks-type innovation efforts. I have even made some on-site visits. These shops feel less like a law firm and more like a laboratory during a period of breakthrough. Fun, special, creative, and challenging. It is also exhausting. Why? Because the internal and external markets are now starting to tip.

Great athletes sometimes take less money to play on championship teams. The same dynamic applies here.

Because of the phenomenal financial success of BigLaw over the last two decades, there is a risk that law firm managers will under-weigh this second factor. Yes, the innovations shared at ILTA were compelling and cutting edge. But the one overriding commonality that threaded together all three firms was the presenter's unbridled passion for the work they were doing. They were proud, yes, but also joyful. It was both striking and contagious.

I have seen this type and level of passion in only one other legal context. Over the last two years, [Dan Katz](#) and I have taped about 35 hours of digital footage of what might best be described as the new legal

entrepreneurs -- [Mark Harris](#) at Axiom, [David Perla](#) at Pangea3 (now running Bloomberg-BNA Law), [Kingsley Martin](#) at KM Standards, [Paul Lippe](#) at Legal OnRamp, [Alma Asay](#) at Allegory Law, [Sylvia Hodges Silverstein](#) at Sky Analytics, and [Jason Mendelson](#) at Modria and Foundry Partners.

Without a doubt, the common thread in all of that footage is passion for creating something new in law that advances the state of the art. And alas, now I have seen this same passion in BigLaw. I congratulate the three firms for crossing the chasm in their respective organizations. And I congratulate this year's [ILTA winner](#), Bryan Cave, and John Alber, Bryan Cave's Strategic Technology Partner, who made the presentation on behalf of his firm.