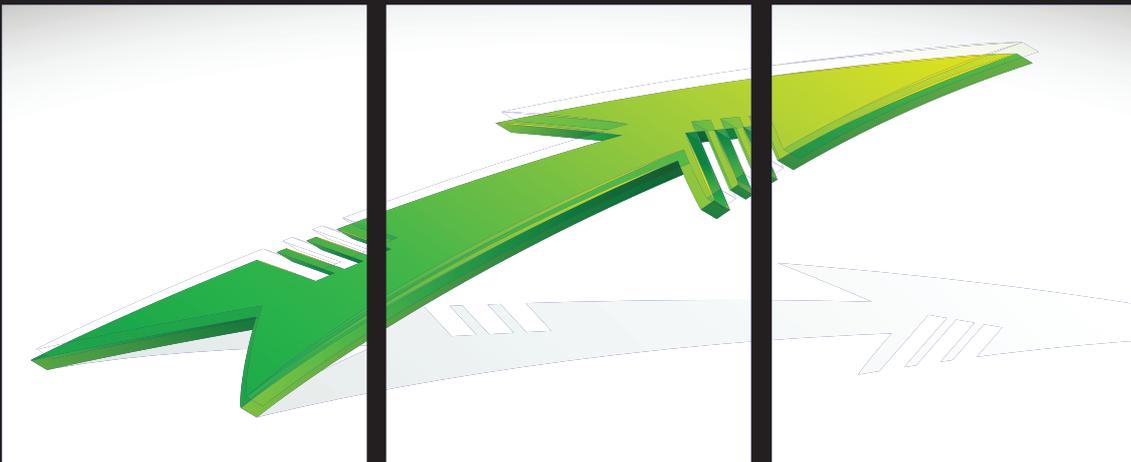


The Legal Process Improvement Toolkit

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Case study 1: Novus Law LLC – Bringing world class process excellence to big ticket litigation

Author's analysis

Novus Law LLC is a global legal services firm that focuses exclusively on reviewing, managing and analysing documents for litigation, investigations, merger and acquisitions, as well as other document-intensive matters. I met Ray Bayley from Novus in Chicago in 2011 and was astounded by the extent to which he and his firm had brought genuine, proven process improvement methodologies right to the heart of the US legal sector.

The Novus approach represents cutting edge process thinking in the legal sector. While not every law firm will want or be able to take this journey, this project is a great example from the most progressive end of the spectrum, and I was delighted that Ray agreed to write this case study.

Novus Law's project does not focus on a low value, high volume, quickly delivered type of legal work. This is big ticket, long running, 'bet the company' litigation. In fact, aspects of this case are still running and we have not named the parties involved for that reason. Litigation and e-discovery specifically are discussed in Part One, but this case is by no means a conventional approach to this type of work.

This project emphasises how seriously Ray and his firm have taken the applicability of these tools to litigation. The regular use of empirical evidence is not so unusual in the e-discovery world, but Novus strives to test and prove how processes are working and to measure how they have been improved.

This case study will make that very clear to readers. Novus has also looked for inspiration beyond one particular tool and been willing to apply elements of Lean and Six Sigma, as well as smart use of social media and crowd sourcing thinking.

What is also refreshing about Novus is that its people are far from a group of nerdish technocrats who do not appreciate the subtle and personal issues right at the heart of this type of legal work. Ray begins by explaining that the firm's philosophy is "at the heart of every matter is a story". Clients, courts, regulators or financiers always ask: "What really happened" or "what's going on here?" Using world-class process management, quality control and disruptive technologies, Novus Law explains that its mission is to "tell stories", with measurable accuracy, speed and cost control that enables clients and its law firms to achieve better results. So, Ray Bayley does not introduce Novus Law as a process business or a Six Sigma law firm. He calls Novus a "story expert firm".

The challenge

The litigation case summary read like a John le Carré novel. The large, highly complex, multi-million dollar financial fraud case* spanned several years and involved more than 20 parties and over 135 witnesses. The case would pose a huge challenge for the lawyers, who had to determine what happened, when, how and who did what. There was an intriguing 'story' to be found

and that story was buried in millions of pages of documents that were central to both civil and criminal matters.

To find the story in this sophisticated global matter, more than 60 lawyers in five law firms on three continents had to carefully but quickly sift through almost four million pages of information in multiple languages, to find the information that could decide the outcome of this important, precedent-setting case. The client had been involved in this litigation for years and without expert support quickly, the mounting costs were making its defence increasingly difficult.

Novus Law joined the legal team for this matter as the story expert, with responsibility for reviewing, analysing and preparing documents for multiple civil and criminal matters. Finding the story had to:

- Be completed quickly (60 days) to meet fast approaching deadlines;
- Be highly accurate and done correctly the first time – The need to work fast, coupled with a fixed budget made it imperative that no time was wasted back-tracking or redoing work; and
- Ensure that all of the lawyers involved could communicate and collaborate in real time by examining documents simultaneously, sharing important information and co-authoring witness and key issue files, chronologies and summaries of game-changing documents.

In order to meet this daunting challenge, Novus Law had to radically improve the typical process of finding the story. To accomplish this, Novus Law employed proven process management techniques used in other industries, advanced quality control programmes and sophisticated disruptive technologies.

Efficiency through Lean principles

Lean is a production practice that categorises as wasteful the expenditure of resources on anything other than that which creates value for clients, and is therefore a target for elimination.

To find the story in large, complex litigation, the process used by lawyers today is unruly, expensive and inefficient. Often, the story does not even begin to come into focus until untold numbers of hours are spent repeatedly reviewing thousands if not millions of electronic documents. Time often runs out, the client's budget is depleted and any hope for an early settlement, gone. All that remains are the documents themselves, bundled and sorted then clustered and tagged in electronic silos, awaiting a thorough content and contextual analysis that often occurs too late to be of any real value.

Through extensive research, Novus Law learned that in the typical batch and queue review process (i.e. complete one batch of work and pass it on to the next stage of processing), documents are 'touched' 14 times on average, for one reason or another as they make their way from custodians' computers, through production and depositions, and into a trial notebook. Most of these touches are redundant and unnecessary. In Lean manufacturing this is called over-production, which is a primary cause of process failure in any industry or profession. By eliminating over-production, it is possible to measurably improve quality, work faster and reduce costs.

With this Lean principle as a guide, Novus Law created Novus One-Touch™, which is the only UL DQS, Inc. (formerly Underwriters Laboratories) certified work process in the legal profession. Novus Law lawyers use fewer, more focused steps and fully process individual documents in a single touch, hence eliminating the mistakes, time

and costs associated with the redundancies inherent in the typical process. From the moment a document is opened, Novus lawyers assess it not just for rudimentary determinations (whether it is privileged or responsive), but also for content (where does it fit in the story line), thus completing a thorough review and analysis of each document in a single step.

Novus One-Touch also allows lawyers to find and tell stories approximately five times faster than is typical, because the development of the story begins when a lawyer looks at a document for the first, rather than the fifth, eighth or tenth time. For example, when a Novus Law lawyer looks at a document for the first time and determines it is privileged, they add it to a privilege log rather than putting it into a queue to be read on average three more times before it is recorded on a privilege log. Similarly, when a document is determined to be an important part of the story, it is added directly to a witness or key issue file rather than being placed into a queue to be read on average six more times before it ends up in a trial notebook.

The Novus One-Touch process eliminated unnecessary work, significantly improved the efficiency and speed of finding the story, and provided an early case assessment so the client could make preemptive strategic decisions about how to hone its defense before its budget was depleted and time ran out.

Quality through Six Sigma management

Six Sigma is a scientific, statistically-based quality management tool that improves processes by identifying and removing the causes of defects (mistakes or errors). A Six Sigma process is one in which 99.99966 per cent of the work product is free of

defects (meaning there are no more than 3.4 mistakes or errors in every one million decision points).

While it is easy to understand how reducing the number of times a document is touched can reduce costs and save time, it might seem counterintuitive that it can improve quality, but it does. Every time a document is touched, it creates an opportunity for an error to occur and when a document is touched several times those errors compound to reduce the overall accuracy of the work product. For example, if each time a document is touched by a lawyer, the lawyer is 99 per cent accurate in whatever decisions they make, the accuracy of the final work product will decrease in proportion to the number of times a document is touched, so if it is touched twice, accuracy will be 98 per cent (.99²) and if it is touched 14 times, accuracy will be 87 per cent (.99¹⁴). Hence eliminating over-production by reducing the number of times a document is touched, increases quality. It also makes the process go faster and cost less since each document is touched only once.

A highly accurate work product also decreases costs since less time is spent redoing work that should have been done correctly in the first place. Work process studies reveal that for each one per cent decrease in accuracy, there is at least a two to three per cent increase in overall costs. Increased accuracy also reduces the risk that important documents will be missed, privileged documents will be inadvertently produced, or adverse rulings or sanctions will occur.

To ensure a highly accurate work product, Novus Law created Novus Q; one of the very few ISO 9001:2008 certified quality management programmes in the legal profession. ISO 9001:2008 stands alone

globally as the gold standard certification in quality management. Novus Q consistently results in work product accuracy greater than 99.96 per cent, according to several statistically-based quality review audits of Novus Law's work product, conducted by a variety of Am Law 100 firms. This near Six Sigma performance is world-class quality in virtually every industry or profession. (To put this in perspective, the average work product accuracy of several Am Law 100 firms is 86.2 per cent, according to five scientific, statistically-based quality review audits conducted by Novus Law).

Novus Q uses scientific, statistically-based and auditable methods for measuring and analysing work product accuracy more than 100 times a day on each matter and at several defined milestones throughout an engagement. This data is then subject to trend, distribution and relationship analyses using several Six Sigma analytic tools, for example, Pareto diagrams, histograms, box plots, root-cause analysis, ANOVA gauge repeatability and reproducibility analyses, etc., that provide the information necessary to continuously improve the process of finding the story.

On this highly complex financial fraud case, Novus Law analysed hundreds of measurements every day and more than 30,000 measurements in total. The result was a work product that was more than 99.98 per cent accurate, based on independent analyses by the supervising law firm. As a result, there was virtually no need to redo work, and the process was substantially more efficient and less expensive than the typical process.

Collaboration through disruptive technology

Research has shown that harnessing the collective intelligence of a group markedly

improves performance, particularly when it comes to problem solving. Lawyers working on anything other than very small matters almost always become "islands of knowledge". Each lawyer knows many facts about some aspects of a matter, but not much about others. And, in the typical process they have no efficient way to share or leverage what they know for the benefit of others on the legal team. This challenge is exacerbated when lawyers work in multiple locations or time zones.

To enable the collaboration necessary to find the story efficiently, Novus created Novus C³TM, which is a disruptive technology that eliminates all paper and e-mail. Using Novus C³, all members of the trial team saw, shared and prepared information collectively in real-time – there was no point-to-point, i.e. person-to-person communication. Absolutely everything was collaborative.

Novus C³ is a matter-specific, internet-based technology application, available 24/7, that uses social media to make finding the story easier, faster and less expensive. It is the command centre for all of the communication, collaboration and control that takes place across the entire legal team. Novus C³ allowed those involved with the complex fraud case to gather and share important case information from the very first day of the engagement, including details about witnesses, answers to questions about ambiguous or confusing documents, deposition information, key developments in the case, chronologies, and, the ever-evolving specifications and instructions needed to guide the development of this complex case.

Members of the legal team co-authored detailed witness and key issue files, including chronologies of events, written summaries of all hot documents and data tables to track what happened to the money involved. They did so in real time, around the globe, using discussion boards, blogs and wiki

technologies. All of the knowledge, formerly held by individual lawyers, was categorised and organised in a multitude of ways and was fully text searchable. Therefore, finding information was quick and easy, saving each member of the legal team countless hours.

Using Novus C³ and Novus One-Touch together allowed the legal team to find the story far faster than they would have using the typical process. In the typical process the story usually emerges when more than 70 per cent to 80 per cent of the time and budget allotted for the case is already spent, and cut off dates for discovery or court dates are looming. In such a scenario, it is often too late to make any meaningful decisions about pursuing a better strategy or a settlement. In this matter a clear picture of the story emerged when only 20 per cent to 30 per cent of the schedule and budget had been expended, so the client had ample time to pursue an early settlement and the law firm could make better strategic decisions for the client.

The final analysis

To find the story and prepare for the various settlement talks and trials on this case, the legal team was able to work faster and more efficiently than they had ever done before. They achieved quality levels unmatched in the legal industry, and collaborated without paper or e-mail to learn the details of what happened in a deeper and more thorough way than they ever thought possible on such a large, complex global matter.

By using efficient work processes, quality management programmes and disruptive technologies, Novus Law created remarkable results for the client and legal team:

- Based on independent analysis, the work product for this engagement was independently determined to be 99.98 per cent accurate.

- Key deadlines were met 14.3 per cent ahead of schedule.
- The client saved \$5.5m overall and knew the cost for Novus Law's work product prior to the start of the engagement because it was provided for a fixed fee.
- Some aspects of this matter have been decided; others are still winding their way through the US federal courts and still others are the subject of pending settlement talks. Had the client not had a better, faster and less expensive way to defend itself, it may have been financially unable to continue in this years-long litigation matter.

As electronically stored information grows uncontrollably at more than 60 per cent per year, the current process of reviewing and re-reviewing documents over and over again is no longer sustainable. Although litigants in the US suffer the most, the global civil justice system is also crumbling under the weight of the inefficient and expensive process of finding stories that are often buried in millions of documents. A better, faster and less expensive process is needed if the civil justice system is going to survive.

Using Lean processes, Six Sigma quality programmes and disruptive technologies can transform the way clients and their law firms handle litigation, investigations, mergers and acquisitions, and other document-intensive matters. The cost of disposing of a matter can be substantially reduced while the quality and speed of decision making, which favourably alters the indemnity profile, can be increased. Implementing these processes can make civil litigation and other document-intensive matters affordable again so all clients, whether they are large or small, have higher quality and more affordable access to civil justice.

Raymond E. Bayley

Ray Bayley is CEO and co-founder of Novus Law, LLC. He is the former managing partner of North American business process outsourcing at PricewaterhouseCoopers and was a member of the US management committee of the firm.

For more information about Novus Law LLC visit: www.NovusLaw.com or contact Ray Bayley at RBayley@NovusLaw.com.

* Company names have been omitted because many aspects of this matter are still pending.