

FT US INNOVATIVE LAWYERS 2013



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US INNOVATIVE LAWYERS 2013

REVOLUTIONARY TIMES

Welcome to the Financial Times US Innovative Lawyers report for 2013. This is the fourth year we have produced this special report, which incorporates our unique rankings of law firms that have brought original thinking and practices to business issues in the US.

This year the report has been enlarged to rank the top 40 US law firms and include a new table highlighting some of the most innovative work being carried out by US firms in Latin America in the field of finance.

A great deal of research goes into producing our rankings. Law firms first submit entries highlighting their most innovative work during the past year. The submissions are then assessed by our partner, RSG Consulting, which carries out the research for the project.

RSG conducts a series of intensive interviews with clients, partners and experts and uses a bespoke methodology to produce rankings in various areas of expertise – ranging from litigation to intellectual property.

The main focus is on the big US law practices, but we also take a look at the best in-house corporate counsel.

This year we received a record 355 submissions from 59 law firms. RSG also assessed 50 corporate legal teams. The report covers work led from law firms' US offices, which includes transactions carried out within the US as well as Canada, Latin America and other regions.

A significant theme of this year's report is the speed of change facing companies as the information technology revolution puts new

pressures on their operations, and the knock-on effect this is having on law firms and in-house counsel to adapt quickly and flexibly.

The management of legal talent is, for example, undergoing extensive change as corporate clients demand broader skills from their advisers, and practices are required to give extra training in management, accounting and financial issues to their staff.

I would like to thank Reena SenGupta, the head of RSG Consulting and the inspiration behind our Innovative Lawyers rankings, for making this report so comprehensive; and FT colleagues who have ensured the report is such a keenly anticipated annual landmark.

Martin Dickson
US Managing Editor,
Financial Times

Methodology

FT Innovative Lawyers 2013 is a ranking for US-based lawyers.

The FT and its research partner RSG Consulting have devised a unique methodology to rank lawyers on innovation. Law firms and in-house legal teams are invited to submit innovations that are researched through client and third-party interviews. Entries are selected to appear in the FT report based on a comparative analysis and the strength of client or independent reviews. Market experts are also consulted on selected submissions.

This year we received 355 submissions from 59 law firms and researched an additional 40 company in-house legal teams. RSG Consulting conducted 530 interviews with senior lawyers and business executives between August and November 2013 to arrive at the final rankings.

Each entry is scored out of 10 points for originality, rationale and impact to give a maximum score of 30. The assessment is comparative within each category and designed to identify lawyers who have delivered exceptional value to their clients.

The in-house legal team ranking is drawn from nominations as well as submissions. The research process includes internal commercial references for each company's legal team.

FT 40 – 2013

The FT 40 ranking is a pure aggregate of each law firm's performance across the private practice categories of the report. The firm's total score for entries ranked in each of the Business of Law, Corporate, Finance, Litigation and Lawyers to the Innovators categories is also shown.

Research Partner

The RSG Consulting research team has more than 20 years' experience analysing the legal profession. It has a track record of devising ranking methodologies for professional services firms. Chief executive Reena SenGupta helped to launch the FT's Law & Business page in 2001, and has been a regular writer on the legal profession for the FT for the past 13 years.

INTRODUCTION

FIRMS TAKE THE LEAD ON IDEAS

Collaboration and creativity help define the best work of the profession, says **Reena SenGupta**

The FT's innovation rankings for law firms in the US have shifted up a gear this year. With 100 extra submissions and most of the top firms in the Am Law 100 putting their best work forward, to be included has meant more than doing something original and delivering a different order of service. It has also meant being able to inspire eulogies from clients. The FT 40 reflects those firms that have been able to do that consistently and effectively across their businesses.

So what does it take to inspire client eulogy, when quality is a given and the stakes are so high that a positive commercial and legal outcome for any lawyer will result in immense gratitude?

Jamie O'Connell, managing director at Blackstone Group, calls White & Case's work for Roust Trading on its acquisition of CEDC, the spirits manufacturer, "off-the-charts". In creating the world's second-largest vodka company, the firm had to work closely with the financier but took a leadership role throughout, coming up with ideas, creating consensus and delivering a complex but creative solution. Key to success was its global footprint, internal collaborations and the ability to show what the client considered unusual behaviour. Tom Lauria, the White & Case partner on the deal, was described as an "atypical" lawyer.

'The stakes are higher, the problems more intractable but the opportunities are more transformative'

Throughout the FT report, in private practice or in-house, lawyers are noted for their innovation when they display skills or behaviours beyond the ordinary. In early FT Innovative Lawyer reports, atypical behaviour meant anticipating instructions as well as being commercial and intensely committed; in effect, being in the driving seat of the car. But as the bar to entry rises, it has begun to mean having a key role in designing that car.

For in-house lawyers, this shift to becoming an intrinsic part of the creative process is even more pronounced this year. Eric Schmidt, executive chairman of Google, says his lawyers can articulate the detail of their products like engineers. "Every lawyer wants to be a business enabler. The difference in our case is that we are inventing this stuff. So the lawyers have to be doing it, too."

The 10 lawyers profiled in the innovative individuals section personify the traits of legal innovators. They show creativity, leadership and a restless mindset. In many cases, they started their professional lives from a non-legal background. Max Grant, the intellectual property partner at Latham & Watkins, was a Navy SEAL; Erika Rottenberg, the general counsel at LinkedIn, used to be a school-teacher. Both say their early experiences helped them make a wider interpretation of what it means to be a lawyer.

Mike Goodman at Nike shows a different type of innovation. His approach has been to rethink the commercial contracting process, taking it back to basics and re-engineering it. His innovations are bearing fruit for Nike but could also have broader applications. Brett Miller, director of sourcing execution, says, "Mike has the process mindset that sets him apart but he is bumping his head against the cultural norms of the legal profession."

These norms, however, are changing. While in-house lawyers are leading the shift, those in private practice are not immune. Professor Jeffrey E. Garten from



the Yale School of Management said in a recent address to 150 law firm managing partners at an International Bar Association meeting that he believes the US is going through a third industrial revolution. He pointed to levels of industrial collaboration in the US unparalleled anywhere else in the world.

These collaborations underpin many of the examples of innovative lawyering in the 2013 FT report. They represent an opportunity for lawyers but also a challenge as both the law and lawyers have to keep up with the pace of change.

Ninety per cent of ranked entries in the corporate law ranking involved some form of collaboration not only internally among practice groups but externally with clients, opposing law firms and other stake-

holders. More than 50 per cent of entries in corporate and finance law involved cross-border work and the standout entries in corporate are all international.

It is difficult for lawyers working in these multidisciplinary teams for different client combinations and in new jurisdictions to hang on to old silo mindsets or traditional approaches to risk.

The other key driver of change in the profession continues to be the environment. Despite the uptick in the US economy and several firms in the FT 40 reporting 10 per cent growth this year, the US legal market remains challenging. Brad Karp, chairman of Paul Weiss, says, "We had another record-breaking year but we understand that we cannot be complacent in this market. The stakes are higher, the

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problems more intractable but the opportunities are more transformative.”

Most law firm leaders in the FT 40 agree that the changes in the market since the credit crisis are here to stay. Greg Nitzkowski, managing partner of Paul Hastings, says: “Until 2008, we had uninterrupted upward ramping in a statistical sense for 60 years. We saw failures but people tended to attribute them to leadership and management rather than failures of change and innovation.”

Being able to innovate, he believes, will be the only way premium law firms can protect their franchises and garner those all-important client eulogies.

Rather than innovate around pricing, which would be what most clients would welcome, top firms have chosen to focus

on adding value to their services. As the business of law ranking reveals, some US law firms are beginning to make some of their services into standardised products, a process that has been common in the UK legal market for some years.

The majority of US firms, though, are responding by increasing focus on talent management, in an attempt to make their lawyers more relevant to business.

Eric Friedman, chairman of Skadden, the top-scoring firm in the FT 40 this year, says the firm is focused on the development of its attorneys worldwide. He says, “One of the most rewarding changes I have seen this year is the increased interconnectivity of our offices coming to life.”

That underlines how important a multifaceted outlook has become to innovation.

● FT 40: US LAW FIRM INNOVATORS 2013

Rank	Firm	Total score	Business of law	Corporate	Finance	Litigation	Lawyers to the innovators
1	Skadden, Arps, Slate, Meagher & Flom	250	19	71	72	44	44
2	Paul Hastings	192	61	24	46	43	18
3=	Cravath, Swaine & Moore	176	0	43	69	46	18
3=	Latham & Watkins	176	21	66	47	0	42
5	White & Case	159	19	47	46	22	25
6	Morrison & Foerster	144	21	22	45	0	56
7	Weil, Gotshal & Manges	132	44	23	23	21	21
8	Simpson Thacher & Bartlett	109	21	44	23	0	21
9	Orrick, Herrington & Sutcliffe	105	19	0	23	22	41
10	Cleary Gottlieb Steen & Hamilton	91	0	0	46	45	0
11	Kirkland & Ellis	86	0	64	0	22	0
12	Ropes & Gray	82	23	22	0	0	37
13	Debevoise & Plimpton	80	18	22	0	22	18
14	Paul, Weiss, Rifkind, Wharton & Garrison	78	0	0	0	22	56
15	Davis Polk & Wardwell	69	0	21	48	0	0
16=	Jones Day	67	0	24	0	23	20
16=	Mayer Brown	67	0	0	46	21	0
16=	Seyfarth Shaw	67	46	0	0	21	0
19	Crowell & Moring	59	20	0	0	21	18
20	DLA Piper	54	35	0	0	0	19
21	Chadbourne & Parke	45	0	0	45	0	0
22	O'Melveny & Myers	44	0	44	0	0	0
23=	Akin Gump Strauss Hauer & Feld	42	20	22	0	0	0
23=	Dechert	42	19	0	0	23	0
23=	Gibson, Dunn & Crutcher	42	0	0	0	42	0
26=	Shearman & Sterling	23	0	23	0	0	0
26=	WilmerHale	23	0	0	0	23	0
28=	Fried, Frank, Harris, Shriver & Jacobson	22	0	22	0	0	0
28=	McDermott Will & Emery	22	0	22	0	0	0
28=	Pillsbury Winthrop Shaw Pittman	22	0	0	22	0	0
28=	Sullivan & Cromwell	22	0	0	0	22	0
28=	Vinson & Elkins	22	0	22	0	0	0
28=	Wachtell, Lipton, Rosen & Katz	22	0	0	0	22	0
34=	Allen & Overy	21	0	0	21	0	0
34=	Axiom	21	21	0	0	0	0
34=	Covington & Burling	21	0	0	0	21	0
34=	Freshfields Bruckhaus Deringer	21	0	21	0	0	0
34=	Hogan Lovells	21	0	0	0	21	0
34=	K&L Gates	21	21	0	0	0	0
34=	Perkins Coie	21	21	0	0	0	0

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● CORPORATE & COMMERCIAL

	Score	
Staidout	25	Skadden, Arps, Slate, Meagher & Flom Advised a consortium of private equity firms on a carve-out transaction to acquire 38 rigs and create the \$1bn Shelf Drilling.
	24	Jones Day Created new standards in the use of computer-assisted review of antitrust investigations to allow Goodrich to merge with United Technologies Corporation.
	24	Paul Hastings Employed innovative deal structures and achieved regulatory approval for Shuanghui's \$7.1bn acquisition of Smithfield Foods, the largest ever Chinese takeover of a US company.
Highly commended	24	White & Case Advised Roust Trading Ltd, a holding company of Russian Standard, on a pre-packaged US bankruptcy to assume 100 per cent control of spirits producer Central European Distribution Corporation.
	23	Latham & Watkins Created a novel interloper-friendly tool during Quest's auction giving rival bidders a 19.9 per cent top-up option to help neutralise the chief executive's holding.
	23	O'Melveny & Myers Guided Chinese company BGI-Shenzhen through the financing and regulatory clearance for its acquisition of Complete Genomics.
	23	Shearman & Sterling Advised Liberty Global on its acquisition of Virgin Media, and the re-domestication of the new entity to the UK while maintaining its US stock listing.
	23	Simpson Thacher Bartlett Helped Smithfield Foods to negotiate enforceability and regulatory concerns during its sale to Chinese company Shuanghui.
	23	Skadden, Arps, Slate, Meagher & Flom Oversaw Sprint's sale to SoftBank while simultaneously helping the company acquire Clearwire and fend off rival bids.
	23	Skadden, Arps, Slate, Meagher & Flom Built consensus to guide AMR's creditors committee towards a rare strategy to help the company exit Chapter 11 bankruptcy through its merger with US Airways.
	23	Weil, Gotshal & Manges In a highly unusual deal, advised AMR on a merger agreement with US Airways while still under Chapter 11 bankruptcy protection.
	23	White & Case On behalf of Toyota Industries Corporation, the firm successfully challenged the Department of Justice's new economic modelling for antitrust in vertical mergers.
	22	Akin Gump Strauss Hauer & Feld Advised Vision Capital on a first-of-its-kind transaction allowing a bidder group to acquire a valuable fund at the end of its term, creating a model for future deals.
	22	Cravath, Swaine & Moore Advised AmerisourceBergen during its entry into a three-way strategic relationship with Walgreen Co and Alliance Boots.
	22	Debevoise & Plimpton Helped Dell's special committee explore options ahead of its \$24.9bn go-private transaction using an extended go-shop to encourage rival bids and fight a shareholder challenge.
	22	Fried, Frank, Harris, Shriver & Jacobson Orchestrated a complex, tax-free split-off of Mosaic from Cargill, allowing the parent company to remain private.
	22	Kirkland & Ellis Structured two recent deals that breathe life into the go-shop provision, turning an obligation into a deal technology.
	22	Latham & Watkins Advised Blackstone Energy Partners on its \$1.5bn investment into Cheniere Energy Partners to develop the first liquefied natural gas export facility in continental US.
22	McDermott Will & Emery Represented Constellation Brands during antitrust investigations, creating a framework with the Department of Justice to allow the use of computer-assisted review.	
22	Morrison & Foerster Advised SoftBank on the largest ever Japanese buyout when purchasing Sprint while fighting off a competing bid.	
22	Ropes & Gray Worked with Behrman Capital to develop creative options for the sale of its 'Fund III' portfolio in a deal that increased liquidity and opened up a new market of potential purchasers.	
Commended	22	Vinson Elkins Played a critical role in Pioneer's combined sale and agreement with Sinochem Petroleum USA to form a long-term horizontal drilling development partnership.
	21	Cravath, Swaine & Moore Assisted Crown Castle with its lease and leaseback acquisition of the rights to over 7,000 T-Mobile towers marking an important expansion of the company's US mobile telecoms infrastructure holdings.
	21	Davis Polk & Wardwell Advised Bertelsmann on its combination with a Pearson division to form the world's largest consumer publishing company, Penguin Random House.
	21	Freshfields Bruckhaus Deringer Guided private equity firm EQT through its public tender offer for Westway, requiring a pre-sale carve-out of one of its businesses.
	21	Kirkland & Ellis Represented 3G partners in its joint acquisition of Heinz in a \$28bn all-cash transaction that utilised an innovative deal structure, dubbed 'the ketchup clause'.
	21	Kirkland & Ellis Advised the Clearwire board on a strategy to increase value to its shareholders by encouraging a rival bid into a majority owned company.
	21	Latham & Watkins Helped structure and launch Goldman Sachs's accelerated bookbuilt offering with put options for Hemen Holdings' \$1bn SeaDrill share sale.
	21	O'Melveny & Myers Advised US Airways on a unique agreement between labour unions before the announcement of the American Airlines merger.
	21	Simpson Thacher & Bartlett Represented the Special Committee of the board of directors in the sale of Clearwire to Sprint, achieving a larger-than-expected sale price after using competing bids.

● LITIGATION & DISPUTE RESOLUTION

	Score	
Staidout	25	Cravath, Swaine & Moore Acting for Vivendi, the firm rebutted a fraud-on-the-market presumption in a securities fraud case, creating an important precedent.
	23	Cleary Gottlieb Steen & Hamilton Defended HSBC bank against \$6.6bn of Madoff claims by helping to establish that the trustees lacked standing.
	23	Dechert Acted for the noteholders of Mexican manufacturer Vitro to obtain an important fifth-circuit ruling that suggests how foreign insolvencies might be handled by US courts.
	23	Jones Day Developed a novel strategy to prove a big business-to-business website was knowingly participating in the sale of counterfeit goods, allowing trademark owners more protection against infringement.
	23	Skadden, Arps, Slate, Meagher & Flom Secured the dismissal of \$60bn in damages for UniCredit in common law claims arising from the Madoff case.
	23	WilmerHale Represented Monsanto in the Supreme Court defence of its intellectual property for genetically modified soybeans, clarifying IP law in the sector.
	22	Cleary Gottlieb Steen & Hamilton In a judgment against the US Securities and Exchange Commission in the Supreme Court, the firm clarified the time period that government agencies have to complete investigations.
	22	Debevoise & Plimpton Acting for Occidental Petroleum Corporation, the firm secured the largest ever arbitration award by applying a new damages calculation that can be replicated in the future.
	22	Kirkland & Ellis Reinterpreted ancient statute to appeal an infringement decision in a patent dispute before calculating damages in the lower courts.
	22	Orrick, Herrington & Sutcliffe Worked with lawyer Sam Israel to bring the Kirtsang case to the Supreme Court, winning an important ruling on whether the principle of first sale should apply to foreign manufactured goods.
	22	Paul Hastings Protected Align Technology's intellectual property from infringement by ClearCorrect by proving digital files fall under the jurisdiction of the International Trade Commission.
	22	Paul, Weiss, Rifkind, Wharton & Garrison Represented MasterCard in a class action settlement with US merchants, that could end decades of litigation in the payments industry.
	22	Sullivan & Cromwell Used a novel interpretation of the Morrison case to move a securities fraud litigation case to a German court for its client, Porsche SE.
	22	Wachtell, Lipton, Rosen & Katz Representing Bank of America, the firm negotiated the national mortgage settlement, the largest joint state-federal settlement in history.
	22	White & Case Used a novel interpretation of environmental law to argue for the removal of lights containing a harmful chemical from New York schools.
Commended	21	Covington & Burling Helped former chief executive of IndyMac settle SEC and FDIC cases resulting from the bank's collapse without admitting wrongdoing.
	21	Cravath, Swaine & Moore Defended JPMorgan from class action proceedings relating to residential mortgage-backed securities claims where the plaintiffs are not the original purchasers of the securities at issue.
	21	Crowell & Moring Challenged an environmental settlement agreement in the Marcellus Shale drilling dispute by establishing "irreparable harm" on behalf of the Pennsylvania Oil and Gas Association.
	21	Gibson, Dunn & Crutcher Achieved two Supreme Court decisions that help companies to challenge class action strategies of plaintiffs, including a win for Standard Fire Insurance Company alongside Robinson & Cole.
	21	Gibson, Dunn & Crutcher Continued the impressive record of Gibson lawyer Eugene Scalia in challenging the SEC's responsibilities and authorities, through recent arguments against Dodd-Frank reform.
	21	Hogan Lovells Successfully challenged the "good cause" exemption granted by the US Environmental Protection Agency to one of Daimler's competitors.
	21	Mayer Brown Acted for the government of Indonesia in its clove cigarette trade dispute with the US, establishing important principles for World Trade Organisation cases.
	21	Paul Hastings Negotiated an unprecedented pre-merger labour agreement to move forward American Airlines' merger with US Airways.
	21	Seyfarth Shaw Using economic experts and a new government estoppel argument, the firm protected Kaplan's right to continue to use credit history as part of its hiring criteria.
	21	Skadden, Arps, Slate, Meagher & Flom Created a unique hybrid settlement agreement and M&A deal to allow PokerStars to simultaneously end Department of Justice investigations and acquire the assets of a close rival.
21	Weil, Gotshal & Manges Successfully defended the board of directors of Satyam from litigation after its chief executive had admitted major fraud.	

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BUSINESS OF LAW

ON THE PAPER TRAIL

By streamlining their own processes, firms have been creating value for clients, reports **Caroline Binham**

Dewey & LeBoeuf continues to cast a shadow, nearly 18 months after its demise. The biggest law firm failure in history had many causes; perhaps one was its opaqueness over its financial position, not only with the outside world but also with its own partners.

That it misstated its financial health to closely watched annual rankings compiled by the American Lawyer magazine was one shocking detail of the tragedy, but one

that revealed a wider truth about how unaccountable firms' financial reporting is, particularly in the US, where if figures are released at all they can consist solely of revenue and profit per partner.

In that context, K&L Gates' decision to publish detailed annual reports of its finances to a US Securities and Exchange Commission reporting standard – from bank debt to overheads and partner capital – was groundbreaking among its peers.



● BUSINESS OF LAW

	Score	
Standout	Seyfarth Shaw 25	The Transaction Solutions Center manages workflow, resourcing and the disaggregation of legal services while providing transparency and real-time analytics to in-house counsel.
	Weil, Gotshal & Manges 24	Proactively monitoring shareholder activism to provide assessments of company structural defences and strategic vulnerabilities.
	Ropes & Gray 23	Its interactive Risk Matrix tool allows companies to map and evaluate real-time corruption risks across international operations.
	Paul Hastings 22	Conducting a scientific experiment to provide evidence for the speed and accuracy of predictive coding over standard technology-assisted document review.
Highly commended	Axiom 21	Managing the full contract lifecycle for clients by treating contracts as a single discipline cutting across multiple legal practice areas.
	K&L Gates 21	Moving towards greater financial transparency, the firm disclosed a rare level of detail in its year-end financial report.
	Morrison & Foerster 21	A unique partnership with California Institute of Technology develops the firm's associates while attracting new business and talent.
	Perkins Coie 21	Created a Patent Analysis tool to provide clients with a strategic analysis and valuation of their patent portfolios.
	Seyfarth Shaw 21	Developed a Portfolio Tracker for Prudential to manage a litigation portfolio and analyse and report on case metrics.
Commended	Simpson Thacher & Bartlett 21	A new technology service marries legal informatics and advice to help clients make strategic intellectual property decisions.
	Akin Gump Strauss Hauer & Feld 20	Developed agfundinformation.com, a website that formalises and standardises forming hedge funds.
	Cadwalader, Wickersham & Taft 20	Its Cadwalader Cabinet is an extensive online resource combining financial regulation know-how, references and tools.
	Crowell & Moring 20	Designed and implemented the gross margin tool to compensate partner efficiency and incentivise a fundamental change in behaviour.
	Weil, Gotshal & Manges 20	Expanding services to private equity clients with analysis, toolkits and risk assessment for sponsors and their portfolio companies.
	Littler Mendelson 19	Expanding client service platform, Littler CaseSmart, to new service areas and creating Littler GPS, an online tool for employment law.
	Skadden, Arps, Slate, Meagher & Flom 19	Developed legal project management tools to facilitate accurate scoping and pricing of transactions in response to changing client demand.
	White & Case 19	Forming the Innovation and Efficiency Council to implement new ideas and engage lawyers and staff from across the firm.
Womble Carlyle Sandridge & Rice 19	Its Case Management Facility uses predictive analytics in its legal knowledge management to forecast and improve outcomes in complex litigation.	

While it is true that UK-headquartered firms have long published their results with a similar level of detail, particularly those that are structured as limited liability partnerships with certain reporting obligations, this culture has not permeated the US. Perhaps the bold move by K&L Gates will help change that.

The paper trail, meanwhile, has been a key theme for US law firms over the past year for other reasons. Contracts are the bread and butter of commercial lawyers everywhere. They also form the bulk of an in-house legal department's costs, according to Axiom, which calculated that general counsel around the world are spending about \$200bn on creating and administering contracts.

Axiom's mission has been to make the contract process more efficient: a day shaved off could result in massive savings for the company in question.

For example, banks' International Swaps and Derivatives Association contracts – the master agreements that underpin derivatives contracts with investment banks' counterparties – sometimes take more than 100 days to enter into.

Axiom is trying to reduce that by as much as 30 per cent – the savings of the profit being booked earlier far outweigh the cost of administering the contract in the first place.

Like Axiom, Seyfarth Shaw – which is no stranger to streamlining its own processes and costs – has attempted to make contracts, procurement and transactions more manageable for its clients by centralising routine legal work on a web portal: Seyfarth can then select one of its attorneys for work that may carry a higher risk, or outsource less risky work to lawyers in lower-cost centres of the US or overseas who are vetted by the firm.

Contracts can also be the repository of the "smoking gun" in big-ticket litigation. Finding that smoking gun among millions of documents that can be disclosed in such lawsuits, however, is another matter.

Document-review technology has been deployed by the legal market for several years to assist in such searches. Some systems work better than others. Paul Hastings decided to challenge the supremacy of technology by instituting a "man

versus machine" test, pitting a team of young attorneys in a traditional linear review against the more modern system of using algorithms to spot key words in documents. An interesting conclusion was drawn: that for optimal efficiency, it is when man and machine are combined that the best value can be extracted.

It is not only commercial litigators who are keen to find the smoking gun. The financial crisis has awakened public and political interest in business crime as never before. This scrutiny, coupled with ever more aggressive enforcement action by authorities around the world, is increasing companies' risk.

Sweeping overseas anti-graft legislation, such as the US Foreign Corrupt Practices Act and the UK Bribery Act, means the law extends to far-flung parts of the world. Ropes & Gray attempted to map that liability for clients in its Risk Matrix, flagging sectors and jurisdictions to which companies should pay particular heed, as a way of helping them understand where they need to invest in compliance.

A similar concept of using the web to compare and contrast varying legislation was devised by Littler Mendelson, this time in the area of employment law. The firm designed a tool that enables clients to scan state law at the click of a mouse.

Another area of increasing costs for business in the information age is patents. The so-called monetisation of patents – generating revenue by selling or licensing patents – has been rapid, with the industry's value spiking to \$450bn in 2012 from \$19bn the previous year. That arguably has had negative consequences, with "patent trolls" – who aggressively enforce patents often as their main line of business, rather than inventing and making goods that underpin a patent in the first place – an increasing feature of the US courts.

Perkins Coie devised a patent-analysis tool, deployed by its patent paralegals and attorneys, that can quickly cut through vast amounts of information to target the truly valuable patent hiding in a particular portfolio – invaluable information in the context of a merger, sale or litigation.

Given the rising monetisation of patents, such innovations are likely to prove their worth time and time again.

LEARN FROM EXPERIENCE

The need for firms to develop and refresh the skills of junior and senior associates is becoming intense, but has its costs, writes **Sarah Murray**

With the market for legal services shrinking and clients demanding more from their lawyers, US firms are under increasing pressure to develop individuals who have a broader range of skills than in the past, with abilities ranging from accounting and financial analysis to project management.

First, with companies increasingly reluctant to pay high fees for inexperienced lawyers, the need to develop the skills of junior associates is particularly intense.

“The challenge is to make them client-ready as soon as you can,” says Mary Sullivan, chief human resources officer at Paul Hastings. “And that’s about having well-rounded, business-savvy associates and people who have knowledge and skills that aren’t taught in law school.”

To fill these gaps in law school teaching, since 2003 DLA Piper has been working with a number of US universities – including the American University Washington College of Law,

University of Virginia, Stanford and Berkeley – to promote transactional law training.

Meanwhile, firms are developing their own business-focused training programmes, many of which cover topics that once would only have been found on an MBA.

When designing the curriculum for its business training programme, for example, Debevoise worked with faculty from Training the Street (used by Wall Street institutions) and Columbia Business School.

The three-week programme covers everything from basic accounting principles to financial analysis, modelling and valuation. And the fact that Debevoise turned to organisations that train bankers and corporate executives reflects the drive among firms to develop deeper knowledge of their clients’ business.

“Fully understanding what your clients actually do, as opposed to merely being familiar with the matter directly in front of you, is critical to being an effective lawyer,” says Steven Slutzky, a corporate partner at Debevoise who led the development of the programme.

Nor are firms restricting this kind of training to their junior lawyers. The seven-day programme Orrick runs with the Fullbridge Program, a business boot camp, is targeted at senior associates.

For the firm, seven days of senior associate time represents a significant opportunity cost in terms of lost billable hours. Yet, with a changing market calling for senior lawyers to gain a better grasp of their clients’ business environment, Orrick believes

		Score	
Highly commended	Paul Hastings	22	Developed a firm-specific partner profile competency framework to manage performance and evaluate partner promotions and lateral hires.
	Latham & Watkins	21	The intellectual property litigation practice employs military decision-making frameworks, empowering junior lawyers to take greater responsibility during trials.
	Dechert	19	Exceptional Teacher Awards recognise top teachers and mentors, while delivering an insight into effective training methods.
Commended	Orrick, Herrington & Sutcliffe	19	The firm has made a substantial commitment to training senior associates to become effective partners.
	Debevoise & Plimpton	18	A financial training programme designed for investment bankers is given to incoming lawyers in addition to a mini MBA.
	DLA Piper	18	Supported and expanded a course developed by Prof Daniel Bradlow that focuses on the practical skills needed to become a transactional lawyer and is now taught at nine top-level schools.
	DLA Piper	17	Created Break Into Law, an initiative bringing existing programmes under one umbrella to improve equality, diversity and inclusion in the legal profession.
	Paul Hastings	17	Designed a scorecard to track performance and cultivate a culture of action and accountability within the firm.

it is an investment that will pay off.

“We want to ensure that our up-and-coming junior partners have a deep understanding of our clients’ commercial issues so that they can be not only trusted legal advisers, but also commercial and strategic advisers,” says Siobhan Handley, managing partner for talent at Orrick.

But while sending staff on training programmes is one way of equipping them with skills, much of what lawyers need to know can only be learned on the job, with guidance from more senior colleagues.

This is something Dechert has recognised. To reward its best teachers and identify the most effective training techniques and mentoring styles, the firm has established an Exceptional Teachers Awards programme. Winners receive a commemorative plaque as well as \$10,000.

Of course, the cost of in-house training goes beyond cash prizes.

“Mentoring takes a fair amount of partner involvement because complex legal work draws a lot on experience,” says Mitt Regan, co-director of the Center for the Study of the Legal Profession at Georgetown Law.

“And for every hour a partner spends on that, that’s an hour that could have been billed out or used to develop business.”

Moreover, the organisational structure of the legal industry means making this kind of investment can be difficult.

With law firms operating as collections of practices run by individual partners, incentives to invest in the success of the enterprise

have traditionally been weaker than in other industries.

“Firms are only going to do that if they can create a culture in which there is a sense of commitment to the firm as a whole,” says Prof Regan.

To address this, Paul Hastings has developed a talent management strategy targeting senior lawyers.

The Partner Profile defines the characteristics of what the firm sees as superior performance and outlines expectations for partners.

It is now being used to evaluate both potential incoming partners and the performance of existing partners.

Ms Sullivan believes that this kind of initiative helps create a coherent corporate culture.

“We all know it’s more powerful to have a team working together,” she says. “But there was no mandate for change before.” Today, with clients demanding more from their lawyers, this mandate for change has pushed training up the agenda – and not only as a way for firms to distinguish themselves from competitors but also to increase their ability to attract and retain high-performing lawyers.

“We’re in a moment where it makes a lot of sense for firms to move in this direction,” says Prof Regan.

“But it will depend on the extent to which they can wean themselves from being focused on short-term profits.”

‘For every hour a partner spends on that, that’s an hour that could have been billed out or used to develop business’

CREATIVE AND PROACTIVE

One of the top 10 agents for change



Michael Fitzgerald

**Partner, corporate department,
head of the Latin America
practice group, Paul Hastings**

**An innovator
from his
early days**

Michael Fitzgerald, an innovator from his early days as underwriter to Merrill Lynch, decided to pursue a career in Latin American emerging markets at a time when few firms had expertise in the field. As part of the corporate, securities and Latin America practice group that left Dewey LeBoeuf following its collapse in 2011, Mr Fitzgerald helped a Mexican client complete a hostile tender offer as the coffee machines were being repossessed from the Dewey offices.

In 2004, he worked with the Mexican tortilla manufacturer Gruma to issue the first perpetual bond sold by a corporation. In 2011, Mr Fitzgerald was instrumental in the creation of Mexico's Fibra, the first investment vehicle on the Latin American market comparable to a US real estate investment trust.

While he identified the potential of Mexico before it became "the place to invest", he has retained a commitment to innovation. Clients praise his deep understanding of Mexican law and ability to offer advice.

● LAWYERS TO THE INNOVATORS

		Score	
Standout	White & Case	25	Created a new infrastructure co-operation agreement for Best Buy to govern the relationship between suppliers in a multi-sourcing arrangement, promoting co-operation and co-ordination.
	Skadden, Arps, Slate, Meagher & Flom	24	Played a pivotal role in a unique patent carve-out plus mergers and acquisitions deal to monetise MIPS Technologies' intellectual property portfolio.
	Latham & Watkins	23	Helped ViaSat overcome regulatory hurdles with an original argument to prove that in-flight internet broadband connections met the definition of "fixed" connections.
Highly commended	Orrick Herrington & Sutcliffe	22	Defended EMC against Oasis in a high-stakes patent infringement case that has far-reaching implications for patent troll defences.
	Paul, Weiss, Rifkind, Wharton & Garrison	21	Helped Emmis Communications monetise its local programming and marketing agreement with ESPN, allowing ESPN access to the FM band and Emmis to refinance.
	Simpson Thacher & Bartlett	21	Developed new payment mechanisms to allow Tesla Motors to repay its \$465m Department of Energy loan nine years early.
	Weil, Gotshal & Manges	21	Successfully appealed a court ruling against online ticket sales agent StubHub, protecting internet businesses' immunity under the Communications Decency Act.
	Jones Day	20	Played a leading role in social entrepreneurship and impact investing, including on the development of flexible purpose corporations in California.
Commended	Katten Muchin Rosenman	20	Worked with Winklevoss Capital Management to create the first exchange traded fund for a digital asset, which will allow wider investment in Bitcoins.
	Morrison & Foerster	20	Co-chaired the group that defined the flexible purpose corporation, a new model allowing companies to include social and environmental goals as a purpose.
	Skadden, Arps, Slate, Meagher & Flom	20	Advised SurveyMonkey in a combined transaction that allowed the company to stay private longer through an \$800m debt and equity recapitalisation.
	DLA Piper	19	A formal collaboration with a range of professional services firms to support client innovation through corporate ventures.
	Latham & Watkins	19	Helped NET Power secure finance and support for a pilot plant project for a new energy technology that has zero carbon emissions.
	Orrick Herrington & Sutcliffe	19	Successfully obtained a court order allowing Microsoft to take over cybercriminal Citadel Botnet's control infrastructure and remove malware from more than 2m computers.
	Ropes & Gray	19	Successfully defended ProShares in a class action brought against the company's exchange trade funds and in a patent troll attack.
	Cravath, Swaine & Moore	18	Represented Barnes & Noble in several strategic investment deals, ensuring the client maintained flexibility to form new partnerships and adapt to changing market conditions.
	Crowell & Moring	18	Formed a practice group to service companies expecting to capture new opportunities created by the introduction of new top-level domain names.
	Debevoise & Plimpton	18	Represented Kate Spade in trademark litigation against Saturdays Surf NYC, obtaining complete victory in a highly expedited trial.
	Morrison & Foerster	18	A plant IP group that works to protect companies through patenting new seed varieties and providing strategic IP and litigation advice.
	Morrison & Foerster	18	Helped numerous biopharmaceutical companies navigate the process of obtaining patents, enabling the development of "blockbuster" drugs.
	Paul Hastings	18	Represented PayPal in its strategic partnership with Discover that allowed for a new development in payment methods.
	Paul, Weiss, Rifkind, Wharton & Garrison	18	Continues to defend Genetech and Biogen against numerous attacks on patent rights for high-profile therapies, ensuring the companies' ability to continue to innovate.
	Ropes & Gray	18	Representing Genesco in litigation challenging payment card company fines after a data breach.
Cooley	17	The firm defers 100 per cent of legal fees until capital is raised to support start-up companies to establish in the industry.	
Paul, Weiss, Rifkind, Wharton & Garrison	17	Represented Ericsson in several strategic acquisitions and licensing deals, helping the company to become a leading internet protocol TV middleware provider.	

US INNOVATIVE LAWYERS 2013

LATIN AMERICA FINANCE



PIONEER SPIRIT ACROSS BORDERS

Several imaginative corporate finance deals in Latin America have been a chance for law firms to showcase their range of skills, reports **Jude Webber**

Structuring deals in Latin America has never been so complex. Some of the region's recent standout operations – including a \$6bn capital increase, the largest ever in Chile; Colombia's first foreign initial public offering; and an \$11bn debt offering in Brazil, the biggest by an emerging solutions that were remarkable, even from seasoned cross-border lawyers.

Hurdles have included incorporating a US Chapter 11 bankruptcy into a Mexican telecoms restructuring; winning over conservative private-sector lenders in a Brazilian polyolefin project in Mexico; and overcoming a cap on revenues in the first privatisation of a big US airport, in Puerto Rico.

Trailblazing operations like these have seen the novel application of US project financing techniques and New York securities expertise to sophisticated operations in a region where New York law dominates.

Take the Maxcom telecoms deal in Mexico, which involved a simultaneous debt restructuring and equity tender offer, plus the Chapter 11 filing, in order for Ventura Capital Privado to be able to take over a company otherwise headed for default.

"Here you have a Mexican venture capital fund using tools from the US to

take over a Mexican company," says Mike Fitzgerald, chair of the Latin America practice at Paul Hastings, which designed the formula. The clincher proved to be incorporating the US bankruptcy filing into the mix.

White & Case had to draw on US, English and Mexican law, and mobilise 45 lawyers from seven offices for 30 months, for what it calls "the most complex and innovative project development and financing ever undertaken in Latin America" – the \$4.5bn Brazilian-financed Etileno XXI polyolefin project in Mexico. National development banks, international export credit agencies, multilateral lending agencies and 10 commercial banks also had to be kept onside.

"Taking eight governmental lenders, which tend to be the most conservative lenders in the market, and making them comfortable writing cheques for between \$300m and \$800m to sponsors and a stateowned feedstock provider doing a joint true limited-recourse international project financing – that was the most significant challenge," says Carlos Viana, White & Case partner.

An IPO of the Spanish holding company through which Mexico's Cemex holds part of its Latin American operations was a lifeline for the indebted cement company – but only

after Skadden, Arps, Slate, Meagher & Flom essentially wrote the rule book for a foreign company seeking to list in Colombia. Cemex also needed to win over creditors to participate in its second debt restructuring in three years, so the lawyers incorporated an "early bird" priority allocation plan rarely used for bank debt restructurings. One party involved in that transaction also notes: "Colombia is a 'hot' market and this will open the door for foreign issuers to do something similar."

Petrobras's \$11bn debt issue in May is unlikely to be replicated in terms of size, but showing the market it is possible to tailor a six-tranche offering spanning both fixed and floating-rate notes and maturities from three to 30 years, and to open the deal on a Friday and close the following Monday, teaches valuable lessons.

"One limitation in emerging markets used to be the inability to access the capital markets quickly. Now that large issuers can overcome that, accessing the capital markets can be a very useful tool for financing energy and infrastructure projects, as well as development more generally," says Francesca Odell, partner at Cleary Gottlieb Steen & Hamilton, which structured the operation.

The \$6bn capital increase by Chile's



White & Case mobilised 45 lawyers from seven offices for 30 months for the Etileno XXI project

Energis, represented by Chadbourne & Parke, was unprecedented in that the majority shareholder was contributing assets while minority shareholders paid cash. In another novel touch, the company tapped the American Depository Share market by allowing ADS holders to trade rights on the New York Stock Exchange.

The Puerto Rico airport sale to Aerostar Airport Holdings, advised by Cleary Gottlieb Steen & Hamilton and Pillsbury Winthrop Shaw Pitman, could be a test case for other US airport sales. As well as securing \$410m financing, Aerostar had to find a way to maximise profits other than by increasing airline fees, which are capped. Cleary structured the deal not as typical project financing but so Aerostar's revenues would go into a pledged account, giving it flexibility and discretion to fund its operations.

Debt financing was another area of innovation. Paul Hastings represented Credit Suisse and Citigroup on the first international issue of Mexican peso-denominated secured dollar-indexed notes in Axtel, the telecoms company, allowing it to refinance within weeks, rather than the months usually needed, and avoid bankruptcy.

But cross-border legal teams, fluent in Spanish and Portuguese, with the imagination to apply US tools to Latin American deals are only part of the new environment. One person who asked not to be named says: "If you have a lawyer working with a client that is plain vanilla, they won't develop innovative skills. Law firms need to aim for those complicated clients so that they can develop . . . their skills. There is also a cost involved with innovation, but that is something clients are willing to pay."

● FINANCE – LATIN AMERICA

	Score	
Standout	25	Skadden, Arps, Slate, Meagher & Flom Took Cemex through restructuring and helped create laws and regulations to allow the first listing of a foreign company on the Colombian stock exchange.
	23	Cleary Gottlieb Steen & Hamilton Helped Petrobras launch a \$11bn floating-fixed rate notes offering with six tranches in one weekend.
Highly commended	23	Cleary Gottlieb Steen & Hamilton Acted for Puerto Rico airport operator Aerostar on the lease agreement and a unique financing, leading to the first privatisation of a major US airport.
	23	Paul Hastings Represented Citigroup and Credit Suisse in the first capital markets restructuring of Mexican company debt, including innovative peso-denominated, secured dollar-indexed notes.
	23	Paul Hastings Achieved simultaneous US Securities and Exchange Commission-registered tender offer, Chapter 11 filing and Mexican equity and bond tenders to allow Venture Capital to takeover Maxcom.
Commended	22	Chadbourne & Parke Raised \$6bn for Energis, the largest capital increase in Chile, through a global rights offering and registration of ADSs in the US.
	22	Mayer Brown Represented BNP Paribas as lender to the Via Parque Rimac toll road project, the largest ever Peruvian currency financing for a non-sovereign issuer.
	22	Pillsbury Winthrop Shaw Pittman Advised Aerostar on the public-private partnership of a Puerto Rican airport, setting an example for future US airport PPP deals.
	22	White & Case Advised Braskem from development through project financing of the first Mexican-Brazilian cross-national greenfields plastics project.
	21	Allen & Overy Advised the Royal Bank of Canada on private placements for the pioneering Puerto Rico airport privatisation.

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INNOVATION

**Anticipating our clients' needs.
Creating innovative solutions.
Moving business forward.
Every day.**

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