

Discounting Sheep: Why Creativity Is Critical for Lawyers and Accountants

By *Phil Hinerman and Jeff Gutsch*

Our professions rarely preach creativity. Sadly, the legal and accounting worlds have built-in disincentives for creativity. We rely on precedent, long, carefully worded regulations, and a plethora of rules as the cornerstones of our practice.

But we argue that creativity is essential in delivering high quality professional services and that taking steps to encourage creativity will lead to marked improvements in both the collective office environment and the individual professional's work experience.

The scientist Linus Pauling once said, "The best way to get a good idea is to have a lot of ideas." That statement hints at both the power and the perplexity of creative thinking in a business atmosphere. A lot of ideas—and a lot of brainstorming with those ideas—can lead to a great solution to a long-standing problem. When a random creative thought provides the answer to a key question or dilemma, it can be almost magical. There is a rush that follows those thoughts that is like a great drive off the tee or a home run.

But, as professionals whose time is billed by the hour, we aren't happy when hours are wasted on random and unhelpful thoughts that can lead to excessive bills for our clients.

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To get past that rigid thinking, and to begin to embrace an office culture that promotes creativity, we must begin with the basics.

What Is Creativity?

The answers to the question "What is creativity?" range from "You know it when you see it" to technical discussions about neurotransmitters and what happens inside the brain to form a thought. We like the succinct definition offered by Ken Robinson, a prominent thinker in the area: "Creativity is having original ideas with value."

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The ideas need to be unique. The ideas need to add something. Without both, it is not a helpful creative idea.

Consider a legal matter—the deposition of a compliance officer employed by former owners of a company. That compliance officer had not reported contamination. She stuck to the script for several hours. She told the former owners that this contamination should have been reported and the potential new buyers told of it. As several million dollars could ride on her testimony, she was well coached.

At one point, the attorney taking her deposition asked, “What did *you* do to report this matter if it was so bad?” The witness was stunned. She took a break, talked to her lawyer, and the case was settled. Just the idea that the compliance officer may have also violated a duty to report an issue was enough to swing the case in a different direction. The line of questioning was unique. It had value. And, those are the kind of questions that are seldom asked by experienced lawyers who follow the script of just getting the facts.

There are also many opportunities to exercise creativity in the accounting profession, particularly as it pertains to income tax. Much of the tax law is open to interpretation of gray areas, rather than absolute black and white.

An example is the application of the research and development (R&D) tax credit. A common view of the R&D credit among tax professionals is that only companies with people working in white lab coats in a “laboratory” setting can benefit from. If you look at the way the Internal Revenue Code and its regulations were written, the credit can actually be applied to companies in many industries that one might not ordinarily think of as doing research and development.

If accounting professionals apply some creative thinking, they would find numerous opportunities to claim the credit for companies

that they might not initially think to claim the credit for.

Why Is Creativity Uncommon in Our Professions?

Two stories from the legal world illustrate why lawyers struggle to be creative. In the 1970s, “The Paper Chase” was both a popular TV show and movie that chronicled a first-year law student’s encounters with a law professor who was particularly gruff and challenging. Professor Kingsfield often said that the new student comes into the school with a “skull full of mush” and that his class teaches you how to think “like a lawyer.”

How do you think like the other lawyers in the profession? You learn “precedent”—decisions of other courts that are now considered to be the law. Don’t be different. Where is the encouragement of creativity?

A more recent experience was a few years ago, when one of the authors of this article took the California bar exam. After 30 years, mostly as a partner in a large national law firm on the east coast, he had to prove he was “minimally competent to practice law” in California. That should not be a problem, right? Well, it was. The *second time* he took that test, he also took a review course. One of the featured instructors frequently offered this creativity-killing notion to his students: “Your job is to be a sheep, following the herd. Difference is not rewarded. Do not be the only one with that answer when the bar exam is graded.” He became a sheep and passed the test.

These pressures are a constant in the legal profession. Think like others. Write like others. Be a sheep. So, what gives us the right to say that you should stray from the path to become creative?

In college, accounting tends to be taught in a way that there is one “correct” solution to most problems. Many of those who are attracted to the accounting profession tend to be the type

of people who prefer using the analytical side of their brain rather than the creative side. It becomes very comfortable for many of these professionals to take the SALY (same as last year) approach to doing things when they join the public accounting profession, but the fact of the matter is that there are numerous occasions when there is more than one “correct” solution, and in many cases, varying degrees of “correct.”

These types of pressures are present in the legal and accounting profession. Think like others. Write like others. Be a sheep. So, what gives us the right to say that you should stray from the path to become creative?

Should We Discourage Creativity?

Why should we encourage creativity? Creativity can be a time-waster. Often, thoughts are fruitless. Do we bill the client for time spent in fruitless thoughts?

Creativity takes the attention of others to help develop it. You can't just say to an employee, “Get creative.” Instead, you must actively foster it with rewards for creative thoughts rather than group think. This takes effort of management and others.

Additionally, we have to ensure that the questions we ask encourage creativity, avoiding questions that predetermine the answer. It takes an effort to ask the correct question. Mathematics gives us the best example. If we ask the answer to $5 + 5 = \underline{\quad}$ we get a far less creative answer than if we ask $\underline{\quad} + \underline{\quad} = 10$.

Many of our workspaces are now designed to avoid interaction and idea exchange. There is a good chance that people in your workspace do not even need to leave their desks to get their work done. And computers help us avoid even discussions by providing us with faceless emails that do little to encourage interactions in person.

There are many forces acting against creativity. It requires work and tolerance from

management to get that occasional brilliant thought. We live in a society with a multitude of distractions, including cell phones, texts, videos on demand, and all forms of social media. In a fast-moving culture, there is little time to spend creating something new. If what you need is a creative staff and your employees have multiple distractions, you can't expect a lot of time of creative thought.

Creativity Is a Good Idea at the Office

Why don't we just accept that the deck is stacked against creativity? As professionals who use time to create a “value” (or a bill for the client), it is our natural tendency to not encourage our staff to massage issues and to develop potential new approaches if we have to charge for it. If our staff members do more work, it translates to more fees—certainly more than the essentials required to meet the minimum.

On the other hand, today's society actively searches for new ideas. Clients want to see creative solutions, instead of the old, tired approach. On the occasion of a new and different approach that came from group discussion or solo time, most times people react enthusiastically if the creative accountants or lawyers take the time to develop and explain the new solution. If they can't explain it or it isn't a great idea, the “lead balloon” falls fast and embarrasses people. Given that sometimes those creative solutions never come, but professionals charge for the time to explore them, does it make sense to encourage a creative environment at the office?

1. Creativity Is Good for the Office

The days are long gone when companies or firms could get by on name only. We must learn to differentiate ourselves and to stand above the competition. As such, it is important to foster an environment in which people are not penalized for taking the extra time to creatively approach a problem.

Sometimes, what worked before will work again. There are often routine issues that don't require creativity. In the legal world, often this shows up in the form contract or agreement. It takes little creativity to respond to the question of whether you have a form for that type of agreement. If your employee doesn't like having to think much, the "form provider" job is perfectly suitable.

But what happens when someone wants to change the form? For those people, they may thrive and see that they actually can make a difference by thinking through possible solutions. You cannot always predict the instances in which the creative response will come quickly, but you can often identify the need for creativity.

Clients are willing to pay their accountant or lawyer to interpret complex accounting standards and tax laws, but where the accounting professionals can stand out and add value to their client relationships is through the creative application of standards and laws to a specific client's facts in a way that saves money for the client or adds value to their business. Creative thinking leads to better results for the client, as well as better, deeper client relationships. Clients recognize the difference between the routine answer and the thoughtful one.

Clients reward the firms that come up with the "winning approach" and advocate for that client with new thoughts. The creative approach has to promote that. If there is a creative response that is true and helpful to the client, you are creating a bond with that client.

2. What Does Creativity Do for Your Employees?

As managers of professional staff, we recognize the need to create a client bond often more than our staff does. We are the ones with the most direct contact with those clients. We encourage people to think outside the box but we don't often recognize that it actually benefits

our staff. Creativity can benefit people in a number of ways.

Let's take the example of our actively attempting to create a culture of creativity by rewarding our staff for spending the time to create. Although we don't want to send a mixed message by penalizing staff for wasting time, if effort is being made, it should be rewarded. Our staff can directly benefit if there are financial implications. We should consider bonuses or raise considerations that directly require a review of creative performance.

Industry studies have shown that management also tends to favor the employee who shows that they have considered and come up with new ideas when it is time to promote staff. In fact, creativity often translates to leadership positions for creative staff. In a recent poll of chief executive officers (CEO) s of major companies, creativity was named by 60 percent of the CEOs as the most important factor in promoting leadership for the company.¹

When promotions are made for those with creative thoughts, we should let everyone know. This way, we can emphasize that creativity has a direct reward for the individual. Also, we have to be aware that, in order for people to articulate their views, they need to have little fear that they will either be wrong or be penalized.

Scientists also believe that creativity may help people live longer. What some scientists believe is that openness to new ideas promotes a more stress-free life. People who have used creative thinking tend to be less stressed by a new problem because they have experience in the past of coming up with new solutions.²

The researchers Ebersole and Hess have written extensively about aging and the effects of creativity. They have concluded that creativity can have major effects such as:

- (1) Creating balance and order,

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- (2) Giving a sense of control over the external world,
 - (3) Making something positive out of loss, bad experience or depression,
 - (4) Maintaining your sense of integrity,
 - (5) Helping resolve conflicts in life,
 - (6) Making thoughts and feelings clearer, and
 - (7) Providing a greater sense of well-being and personal growth

It may not be easy to persuade people that they are helping themselves when they create; however, science tells us that they are receiving significant benefits while advancing the quality of the work.

6 Tips to Help Your Creativity

- (1) Take a walk.
- (2) Think up three possible solutions. Then think up a fourth.
- (3) Write a 100-word description of the problem.
- (4) Role play.
- (5) Ask friends what they would do.
- (6) Doodle.

What Else Must We Do To Encourage Creativity?

Creativity must spring from the seeds we plant as managers. Unquestionably, staff understands the rewards of raises and promotions, but we can do more. Companies need to encourage the creation of an atmosphere in which new ideas are encouraged from all areas, not just certain departments or positions. We need to let our employees know when others have creative solutions, and we need to

underscore the importance to the company of those solutions.

Modern day social media has changed the way we relate to each other. However, some of the best discussions still occur in face-to-face groups. Remember those days when you could have a thought, share it with a team mate, and bounce ideas off each other? Those days are not gone. But, we have to be sure the company is making interaction opportunities available for our staff. In fact, some companies have scheduled work-group times for this interaction.

The interpersonal relationships with the managers also matter. The creative minded employees need to be sure that their ideas won't be shot down and will be actually considered—even if they are embryonic and need to be developed. This can come from assurances and encouragement from upper management.

Although ideas should be encouraged, it is important to remember that there are some basic boundaries. First, the staff should be sure to realize that creative thoughts need to be helpful to the customer and need to be consistent with the thinking and the direction of the organization. Second, the creativity needs to relate to a core business issue that the client or company has and needs to address.

Let us not forget that some of our best professional experiences occur when we are challenged emotionally or physically. The fact that things may be hard to do also makes them all the more rewarding. When you are reviewing or evaluating new employees or existing employees, you need to look for the people that have the spirit that calls for hard work to achieve rewarding results.

Finally, avoid the situation in which the structure of your organization requires the creative person to report through many layers before the creative thought is evaluated and used. Look for people who have actively sought creative solutions to problems in the

past to work with those encouraging creativity. They most likely understand the rewarding feeling when the creative problem solution shows the results that were desired.

Although our world is guided by precedents, codes and regulations, we encourage the development of an “outside the box” atmosphere at our companies. We understand it takes two groups: a company that fosters creativity and a staff that wants it and sees the benefits

it can bring to the company, to the client, and even to the staff. The two, together, can lead to the best result for the key party—the client.

Notes

1. <https://www.fastcompany.com/1648943/most-important-leadership-quality-ceos-creativity>, last accessed Oct. 4, 2016.
2. www.scientificamerican.com/article/open-mind-longer-life, last accessed Oct. 4, 2016.