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January 2010



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*On behalf of every single person in  
Edge International,*

A handwritten signature in black ink, reading "Gerry Riskin".

**Gerry Riskin**  
**B. Com, LLB, P. Admin, Founder**







# THE LEAPING TIGER

Current Developments  
in the Indian Legal  
Services Market

Juhi Garg

**The ascent of the tiger is no myth: over the last several years, and especially in 2009, India has become one of the world's most powerful new economic markets.**

The figures speak for themselves. Even in the teeth of a worldwide recession, India's GDP was expected to climb between 6% and 8% in fiscal year 2009. India's stock markets surged by more than 1,800 points in one month, with at least 30 IPOs in the works by the end of September 2009. Foreign direct investment in the country rose by 55% in July 2009 year over year and was forecast to cross the \$30 billion mark by financial year end. India led the world in the number of project finance deals in the first half of 2009.

The impact of these developments on the country's legal marketplace has been profound. The explosion in the domestic sector has created unprecedented scope for deals, transactions and innovation by India's legal profession. The legal sector in India has finally come of age: it can no longer be dismissed simply as a destination for supporting back-end work. Indian law schools are producing upward of 250,000 law school graduates a year, with many of the top graduates being snapped up by

London's "*Magic Circle*" and other premier international firms. Some of these lawyers are staying overseas; others later return home to practice in Indian firms. It is unsurprising then that India's corporate law firms are making waves internationally, with many setting up overseas offices for the first time.

Foreign law firms are also coming to India not just to hire its new law graduates and young lawyers, but also to seek a share of the corporate legal work emerging from this economic giant. International firms such as Shearman & Sterling, Baker Botts, Jones Day, Latham & Watkins, Davis Polk & Wardwell, and Freshfields took almost 32% (according to deal value) of recent Indian M&A work -- but that still left more than two-thirds for domestic lawyers.

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Even in the teeth of a worldwide recession, India's GDP was expected to climb between 6% and 8% in fiscal year 2009... India led the world in the number of project finance deals in the first half of 2009.

In just a couple of years, the face of India's legal market has changed completely. Whether you see Indian law firms as allies and partners with which to tap into this vast market, or potential competitors for your own base of global clients, you need to know what's going on in this remarkable marketplace.

## **BEST IN CLASS**

Perhaps the best way to appreciate what's going on in India is through a case study of one of its heavyweight corporate law firms. Luthra & Luthra Law Office has long been one of India's most highly regarded law firms, in terms of the work it does, the talent it attracts and the brand value it commands. But Luthra came to realize that in the global marketplace, these characteristics weren't enough.

To transform itself into a stronger entity, Luthra underwent a structural overhaul and upgrade: opening new offices, doubling in size by hiring dozens of new lawyers, enhancing its organizational structure, and staying at the forefront of corporate conversation by bringing in large chunks of high-value work from the market. Managing Partner Rajiv Luthra led the firm into a modified lockstep model of partnership, a major cultural change for Indian firms that was viewed as preparation for the inevitable entry of foreign law firms into India.

All this hard work is paying off. During the economic whirlwind of 2009 Luthra quarterbacked six major deals totaling \$6.3 billion, directing global giants like Clifford Chance, White & Case, and DLA Piper. The firm grew by a remarkable 57%. Better again, not just for Luthra but also for India's entire legal sector, is the return of Luthra alumni from places like Allen & Overy, White & Case, Clifford Chance, Shearman & Sterling and Blake Dawson Waldron. They're returning not just because of the recession, but because India is increasingly the site of the world's financial action.

In past years, India may have been synonymous with outsourcing of back office support functions and relatively low value, process-driven legal work. This is certainly no longer the case. Indian firms are increasingly competing toe-to-toe with the world's leading law firms, for some of the most sophisticated legal work.



Foreign law firms eyeing this market and considering their future role in it should note the remarks of Bank of America's India MD & CEO:

*"The scale of infrastructure projects across sectors in India has allowed Indian law firms to showcase best-in-class global standards and intellectual depth, particularly of India's complex regulatory environment."*

## A FRAGMENTING PROFESSION

The stunning rise in corporate activity and the maturity of the legal marketplace has given rise to more start-up firms and big-firm breakouts, with the result that the market now has an interesting mix. Some firms are more than 100 years old, boasting full-service practices, big-ticket deals, numerous offices, hundreds of lawyers, and multiple generations of the same family in the management suite. At the other extreme, there are many more start-up law firms less than six months old that feature only a handful of lawyers, are managed by professionals rather than by family members, and that have started off with only niche practices to sustain themselves.

For example, two well-known partners broke out from Amarchand, Mangaldas & Shroff, widely regarded as India's most prestigious firm, in 2008 and set up shop as Bharucha & Partners. Already, B&P features five partners, 25 associates and 10 trainees. It has already appeared in the Chambers Global and Legal 500 rankings in 2009, and its lawyers worked on India's fourth-largest M&A in 2008. Breakout firms like these compete directly with the traditional heavyweights in the same arena for the same deals. The older firms might avoid them, but they can't ignore them.

## LIBERALIZATION SLOWS

Any discussion of the Indian legal sector, especially when the conversation includes foreign law firms, quickly turns to liberalization. The government has long barred non-Indian law firms from opening offices here; such firms have had to make do with setting up referral agreements or alliances with Indian firms. But for several years now, anticipation has been building that the opening of the legal sector to foreign firms was a matter of "when," not "whether."

With the support of the former minister of law and the active lobbying of the Law Society of England & Wales, things were looking very positive. For example, amendments to the Limited Liability Partnerships Act dropped the restriction on partnerships of more than 20 partners, which would facilitate the entry of foreign firms. Many leading Indian firms actually welcomed the prospect of foreign entry, seeing it as a trigger for growth and expansion and preparing to convert from the traditional complex partnership structure to the new LLP regime.

Lately, however, the drive towards liberalization has slowed. India's Bar Council remains firmly opposed to liberalization unless there is reciprocity in terms of Indian law firms being allowed to practice jurisdictional law on foreign shores.

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Lately, however, the drive towards liberalization has slowed. India's Bar Association remains firmly opposed to liberalization unless there is reciprocity in terms of Indian law firms being allowed to practice jurisdictional law on foreign shores. As Seita Vaidialingam, Advocate in the Supreme Court of India and also an Executive Member of the Bar Association of India recently commented:

*“We must be allowed to do all things in their country that foreign firms wish to do in India.”*

The new law minister also seems less strongly supportive of liberalization without entirely opposing it either.

Resistance to liberalization has been led by litigators, who have long dominated India's domestic legal marketplace; corporate law is a relatively small and recent -- but growing and increasingly lucrative -- piece of the pie. If and when ADR takes hold in India, that resistance can be expected to increase significantly.

The most significant event in this regard has been a new Bombay High Court judgment, released just as this issue went to press, in which three foreign firms (Ashurst, Chadbourne & Parke and White & Case) lost their case against the Lawyers' Collective. The case had been ongoing since 1995, when the firms set up their offices in India. The court ruled that the practice of all law by foreign firms in India was illegal. No one

yet knows exactly what the decision's impact will be. Many clarifications are still to come and gaps are still to be filled, but it certainly will be very significant. However, alliances, "best friends" associations and referral arrangements will still be allowed, and international firms may continue to focus on the Indian marketplace through their own India teams and practices. Chris Seaton, a partner in UK based law firm Burges Salmon commented in an article in the 29 December 2009 edition of Economic Times Delhi, that the judgement has increased the requirement for firms in the UK and the US to have strong relations with firms in India to deal with all aspects of legal advisory work. Firms like Burges Salmon that have a network of independent "best friend" firms will now extend this model, he said. Arianna Carlotti, head of the India services of Italian law firm Pirola Pennuto Zei & Associati commented:

*"I believe in joint cooperation and in sharing engagements for the final benefit of the client. My thoughts are related particularly to cross-border operations in which complexity of issues deserve competence in domestic and foreign laws."*

Other foreign firms that were hoping for a more substantial Indian presence in the short term, however, now find themselves rethinking their strategy.

## **ALLIANCES AND INDEPENDENTS**

The "backdoor entry" method of alliances and "best friends" relationships will undoubtedly continue to grow as foreign and Indian firms create and nurture non-exclusive tie-ups. Examples of such relationships include Allen & Overy and Trilegal, Clifford Chance and AZB & Partners, Linklaters and Talwar & Thakore, and Jones Day with P&A Law Offices.

Not every Indian law firm believes in such partnership, however. Many happily remain independent, most notably Amarchand. This firm maintains solid working relationships with most foreign firms of significance, rather than forming a "best friendship" with a particular firm. Another example is FoxMandal Little, one of India's largest and oldest law firms, which is gearing up to face global competition by opening its own overseas offices. Another domestic Indian firm, Nishith Desai Associates, already has offices in Palo Alto (Silicon Valley) and Singapore. To these need to be added firms specifically formed to capitalize on

opportunities between the west and India, such as NewGalex in the United Kingdom, and Pangea 3 in the United States, to name just two.

Several foreign firms seem to be successfully taken the approach of maintaining good relations with many Indian firms but not diving into an actual alliance with any one. Canadian firm Blake Cassels & Graydon, which has built an impressive India practice through its 12 lawyer India-focused group, is a striking example.

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### THE TIGER LEAPS

These remarkable changes in the legal marketplace to one of the world's most populous and dynamic countries should interest anyone, most especially those with current or future interests in southern Asia. And make no mistake, these changes are irreversible: progress might be fast or it might be slow, but it will not stop and it will not reverse. India will be a driving force in the global economy throughout the 21st century. Nobody can cage the tiger, but if you're quick and determined, you can keep up with him!



*Juhi Garg is a partner with Edge International and is based in New Delhi. She holds a Masters in Business Law degree from National Law School of India, Bangalore. Juhi consults to Indian law firms on their management, strategy, business development and branding and to other clients on their India strategies. Contact her at [juhi.garg@edge-international.com](mailto:juhi.garg@edge-international.com).*

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Thinking about the 21st Century  
and how it will unfold for law firms  
over the coming decade

Robert Millard



# CONVERGENCE

**The year 2010 finds us in the final year of the first decade of the third millennium, in the western calendar at any rate. One thing is abundantly clear: the future is not what it used to be. If there ever was a time when one could rely heavily on forecasts in crafting strategy, then that time is past. Today's leaders of law firms need to be able to simultaneously juggle three seemingly incompatible goals:**

1. To define and execute a strategy in order to sustain and maximize the value that the firm delivers to its owners into the future, based on the capabilities and resources that it has and that it can reasonably achieve or realize; and
2. To ensure that the firm is agile, robust and resilient enough not only to withstand unexpected and unforeseen changes in the market but to capitalize upon them; and
3. To deliver sufficient short-term profitability to be able to meet owner expectations and compete effectively for talent.

Never before has this been more difficult, nor the way forward so uncertain.

Change has always been with us. It is not change but our reaction to it that defines its effect on our firms. As Marcus Aurelius (Emperor of Rome from A.D. 161 to 180) wrote:

*"Universum est change; nostrum vita est quis nostrum sententia planto is."* ("The universe is change; our life is what our thoughts make it.")

This holds as true today as then. Different today, even from the 20<sup>th</sup> Century in which most of us developed our world-view, is the pace and scope and the level of complexity of the change. As we emerge from the worst

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As we emerge from the worst recession in (for most) living memory, the realignments that are taking place in the world seem more akin to an earthquake than the simple economic corrections that we are used to.

recession in (for most) living memory, the realignments taking place in the world seem akin to an earthquake. In its aftermath, assumptions upon which we have based the business models of our firms lie in ruins. Almost as a knee-jerk to drive performance harder, many compensation systems are being radically overhauled. Client relationships are evolving rapidly as client demands reach new heights and fees come under pressure at exactly the time that many kinds of matters become more complex and sophisticated. Other kinds of matters, previously profitable, have become commodities or even disappeared. Alternative fee arrangements are nearing a tipping point that makes the survival of the billable hour as the

This article is intended to provoke law firm leaders into challenging the way that they think about strategy and the future of their firms.

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primary billing model most unlikely over a five to ten year timeframe. Firms that have never before thought of globalization in the context of their own business models are being challenged by this reality too. How will all this unfold over the next few years? What does a prudent law firm managing partner or executive director need to do? What should be discarded? What should be kept unchanged?

In this turbulent 21<sup>st</sup> Century, it is critical for many law firm leaders to radically rethink their role in their firms, and especially how they and their firms approach strategy. A clear sense of direction is imperative. As in the popular CBS TV series Survivor, strategy is a matter of “outplaying” and “outlasting” (and yes, sometimes even “outwitting”) one’s competitors for as long as the firm is in business. It is critical for today’s leaders to get really good at “thinking strategically,” every single day. Strategy is no longer something that can be adequately dealt with as a periodic event. It must become an ongoing process in the firm. It is also everybody’s responsibility, rather than something that can be left to an individual or a committee.

This article is intended to provoke law firm leaders into challenging the way that they think about strategy and the future of their firms, by exploring some of the changes that are taking place in the world and how they might unfold especially in western law firms.

## 1. SHIFTING GLOBAL ECONOMIC AND SOCIO-POLITICAL LANDSCAPES

With hindsight, it is clear that the current global crisis did not emerge solely from the housing bubble that developed in the USA and some European countries. It built up over decades. We need to consider how the world will be different in coming years, once this crisis subsides, before we can begin to think about how our strategies need to adapt.

Decades of wealth transfer from the West to the East have resulted in national debt loads in the West that are unprecedented in history. Cash will continue to flow eastwards in coming decades as this debt is retired. Eastern investments in western businesses will lead to westward flowing capital, but dividends from those assets will flow back to the East. It seems likely that western currencies will devalue in coming years as a result, probably accompanied by a rise in inflation. Simultaneously, the face of investment banking has changed radically and it seems inevitable that the financial services sector in the west will be far more heavily regulated in future. Applying “cause-and-effect,” this will most likely shift competitiveness in this area and hence business to less regulated Eastern markets. It is therefore difficult to conceive of a return to pre-crisis prosperity in the West anytime soon. Financial pressures on many law firms are probably also here for a good few years yet. Financial conservatism is advisable.

It is clear that the global economic and socio-political landscape has changed fundamentally since 2005 when Clifford Chance and Oxford Analytica conducted their groundbreaking scenario planning exercise. This exercise considered a Chinese invasion of Taiwan as one of three key global uncertainties (see Armistead, 2005.) The dynamics that have changed may be relatively subtle and unapparent at present, but are likely to manifest themselves more obviously in coming years, as Chinese investment into and trade with the world grows further.

It therefore seems reasonable to assume that China will also impact fundamentally on legal services across the world over the coming decade, at least in jurisdictions that are significant targets for Chinese investment. The impact will be felt both through the way in which these changes influence clients and also directly. Western law firms need to get to grips with these changes and their implications. For some, this

will involve operating directly in China. For all firms, it means keeping changes induced by China's evolving role in world affairs, on their clients and in their markets generally, firmly on their strategic radar. For many, it will involve courting Chinese corporations as clients themselves. This picture is as much of opportunities as of threats.

## 2. NEW BUSINESS MODELS FOR LAW PRACTICE OWNERSHIP AND MANAGEMENT

Many readers will already know of Slater & Gordon, the Australian law firm that became the first law firm in history to list on a stock exchange. Although Slater & Gordon is known primarily for its plaintiffs' personal injury practice, according to its 2007/08 annual report it is accelerating *"the growth of non-personal injury practices through marketing, recruitment and the acquisition of other practices" and developing "the commercial advisory and transactions practice area."*

Will the *"alternative business structures"* spawned by the Legal Services Act lead to new business models for law firms that are fundamentally more competitive than those currently in place? This question is of seminal importance to law firms anywhere.

Some seemingly attractive initiatives will fail and may even drag firms down with them. If others do yield real advantage, they will evolve and spread through the market. They will then join the other vectors that are causing the way that legal services are delivered to clients to evolve away

The market is as brutal a "natural selector" as the law of the jungle. Only practices that yield sustainable competitive advantage will survive.

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from the business models to which we are used. Whether or not these models spread to other jurisdictions will depend on the degree of competitive advantage that they yield for the companies that use them, in the global market. Pessimists argue that alternative business structures will harm the UK legal profession. I disagree. The market is as brutal a "natural selector" as the law of the jungle. Only practices that yield sustainable competitive advantage will survive. In the long term, therefore, the result should be a more efficient legal



services industry. Of course, this does not detract from the fact that the short-term impacts will be traumatic, especially for firms that lag behind the curve.

Some new business practices that firms are already discussing and in some cases executing include:

- Making “C” level non-lawyer executives into shareholders, so fundamentally altering the relationship between lawyers and “non-lawyers” in most firms. This is already in play in England and Wales, in that from 2009 non-lawyer managers can become owners of law firms so long as at least 75% of ownership remains in the hands of lawyers. This limit will decrease over coming years.
- Development of multi-disciplinary practices to provide a wider range of services to clients.
- Securing equity finance either through listing on a stock exchange or through private equity, to fund growth either geographically or through recruitment incentives to attract talent.
- Exit strategies for existing owners wishing to capitalize their investments, although this will only be able to sensibly be applied to firms where the business is divorced from the persons of the current owners, for instance “process factories.”
- England and Wales is a crucible in the laboratory of law firm strategy and management practice. The rest of the world is watching the “Clementi Experiment” intently.

### 3. EXPONENTIAL ADVANCES IN TECHNOLOGY

There are two schools of thought about the ultimate impact of technology on law firm management. The first holds that technology will never be more than a support tool for lawyers. The second holds that technology will fundamentally displace lawyers from many of the services that they currently provide. The first view is myopic. Technology has moved far

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beyond being just a means of producing documents faster; managing the firm's finances more effectively; storing and improving access to data and better and communicating faster, to actual service delivery (Mayson, 2007.) The trend towards fundamental transformation is inexorable...and exponential.

Limitations cited by those arguing that the impact of technology will be limited include the current inability to transmit large amounts of data quickly and securely across the internet; inability of computers and software to “reason” rather than simply compute; and assumptions that clients will always want to work face-to-face with an actual person.

With proven internet speeds already exceeding the equivalent of 60 DVDs per second (2.56 terabits per second) by the Fraunhofer Gesellschaft across the German countryside, with others subsequently claiming even far higher experimental speeds, bandwidth is not likely to be a limitation for much longer. Data security is also already at a point where advancing this as an unavoidable limitation is a little dubious.

Computers continue to double in power every 18 – 24 months at no increase in cost, a trend that has held for half a century and is described in the so-called Moores Law. This is likely to continue for about another decade until the transistors with which we are familiar as building blocks of computational ability shrink to the molecular level and are replaced by something entirely new, much as transistors replaced vacuum tubes. At point, Moore's Law may accelerate. A computer's performance is measured in what are called FLOPS (“FLOating Point Operations Per Second.”) Presently, computers are able to achieve about 40 teraflops. (40,000,000,000,000 FLOPS.) Scientists predict that supercomputers with the computational ability of the human brain are just a few years away and are already talking about computers with performance that will be measured in zettaflops (1,000,000,000,000,000,000 FLOPS.) That is, computers that are 25 million times more powerful than today. If one adds to this current and likely future advances in artificial intelligence, it becomes utterly facile to assume that computers will never be able to move beyond simple computation.

Enormously increased bandwidth will go a long way to solving the final limitation, namely the preference of clients to deal with humans rather than machines. Holographic video-conferencing tools such as Cisco's 'Telepresence' are early indicators of how this trend might unfold. Automatic translation will give people the ability to communicate in whatever language they choose. Web 2.0 tools such as social networking are making it far easier for people to communicate and platforms like Legal OnRamp are at the cutting edge of this in the legal profession. To quote Richard Susskind in *"The End of Lawyers"* (2008,) technology will *"fundamentally change the face of legal service."* It is already.

The pace of change in legal services has been traditionally (and often proudly) described as "glacial." Technology could radically change that. In the IT industry, "disruptive change" or "killer apps" (Downes & Mui, 2000) are where emerging new technologies or applications render their predecessors obsolete. They are commonplace in IT. Are we on the brink of seeing something similar emerging in legal practice? Governance practices in most law firms are not suited to dealing with disruptive change. Again, this offers as many opportunities as threats for those firms with strategic acuity and the ability to develop the resilience and agility to thrive on such change.

#### **4. CHINESE AND OTHER NON-WESTERN MODELS OF JURISPRUDENCE**

English common law and the Magna Carta, the Code Napoléon and other western systems of jurisprudence are historically irrelevant in the East. In the Middle East, Sharia Law and Fiqh (Islamic jurisprudence) are based on the tenets of Islam. In China and several other Far eastern nations, the roots are even further back in history, in Confucianism. Other parts of the world also have regional flavours that differ from the West. The ramifications of an "east meets west" collision in law at its most fundamental, philosophical level should not be underestimated. This too could impact how law firms are governed and legal services are delivered to clients.

For the past few decades, the western approach to Eastern jurisprudence and the practice of law insofar as it pertains to international trade and investment has been to seek to "westernize" it. Following the shift in the

balance of influence between east and west, though, we can expect the Chinese influence in particular to increase in coming years.

Chinese jurisprudence itself has also been evolving quite fundamentally. Under Deng Xiaoping, China moved away from Mao's instrumentalist view of law and also eradicated the "rule of persons." Law replaced political policy as the basic framework for government (Lo, 1995.)

China's accession to the WTO in 2001 triggered further evolution, this time with a strong globalization imperative and three major goals (Killion, 2004) :

1. Bringing China's legislation in line with its obligations under the WTO;
2. Enhancing the competitive power of Chinese enterprises in international markets;
3. Protecting domestic enterprises and ensuring industrial safety.

Understanding both the likely impact of Chinese influence on international business and finance and also the likely Chinese influence on the law that will be associated with it, is the first stage of addressing this issue. The second is to consider what strategic changes are required in order to compete in a world where these changes are in effect. Traditionally, western law has not been good at this:

*"The tendency in the West too often is to pay little tribute to the existence of other legal traditions, largely because [the other legal traditions] do not have the hallmarks of the Rule of Law approach that developed in the West."* (Hager, 2000.)

## **5. EMERGENCE OF A GLOBAL MARKET FOR LEGAL SERVICES**

Frankly, it would be surprising if a single global market for a wide range of legal services did not develop over the coming five to ten years at most. Protectionist jurisdictional barriers may stubbornly persist in some markets, but for the most part they will have been inexorably eroded away by the market's ability to source goods and services anywhere in the world through the Internet. Markets abhor artificial barriers. They

circumvent them whenever this is of economic benefit and achievable. Legal services are not immune from this.

India in particular has an enormous talent pool in legal services. Extrapolating a 2005 Wall Street Journal article, Indian law schools now produce approximately 250,000 graduates each year. The number of firms providing “front office” functions in western countries with “back office” functions in India is increasing. As the demand for legal services in relatively under-lawyered eastern countries increases, western firms may find themselves at a disadvantage in attracting this work over firms in India and other cheaper emerging markets. A separate article by my colleague Juhi Garg on the current status of this topic appears elsewhere in this edition of Edge International Review.

World Trade Organization initiatives against unfair trade practices and trade barriers in services are also a pressure that has hardly even begun to exert itself. We have seen over the past decades how trade barriers in products have been steadily eroded. Why not too in services, including legal services? International standardization of legal terminology and commercial legislation, too, will accelerate this.

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Frankly, it would be surprising if a single global market for most legal services did not develop over the coming five to ten years at most.

## CONVERGENCE

The point, when considering these vectors impacting the legal profession, is that they cannot be viewed in isolation of each other. In order to even begin to understand their implications for law firm strategy and management in the next few years, one has to consider what their combined impact is likely to be, acting in concert with each other.

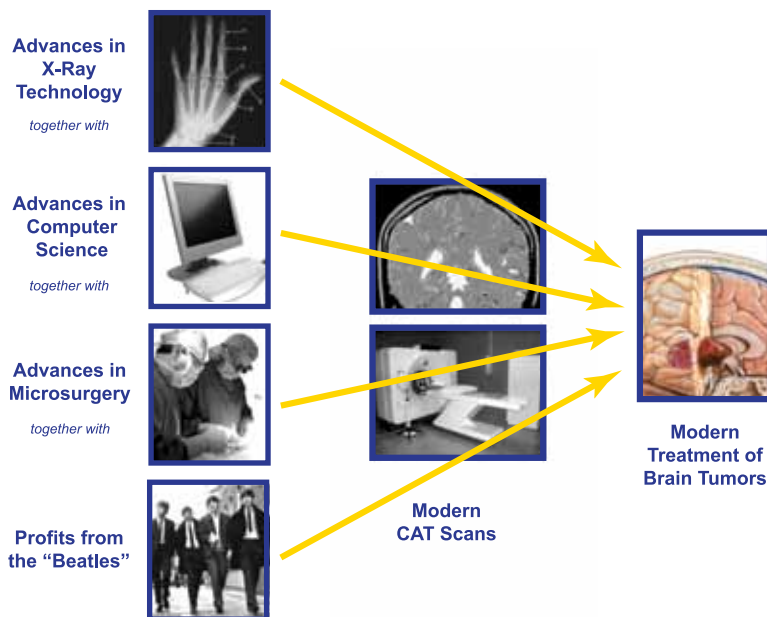
This practice, called “convergence,” is an essential element of making strategic sense of the future. Yet legal practitioners often ignore it because it is, in practice, so difficult and imprecise to apply. The result is that strategy is crafted on the basis of superficial and often incorrect deductions. An example: Stanley Schmidt describes in his book *“The Coming Convergence – the surprising ways diverse technologies interact to*



*shape our world and change the future*" (Prometheus, 2008,) how it took a convergence of advances in computers, X-ray technology, microsurgery and the success of the Beatles to produce the modern CAT scans that revolutionized brain surgery.

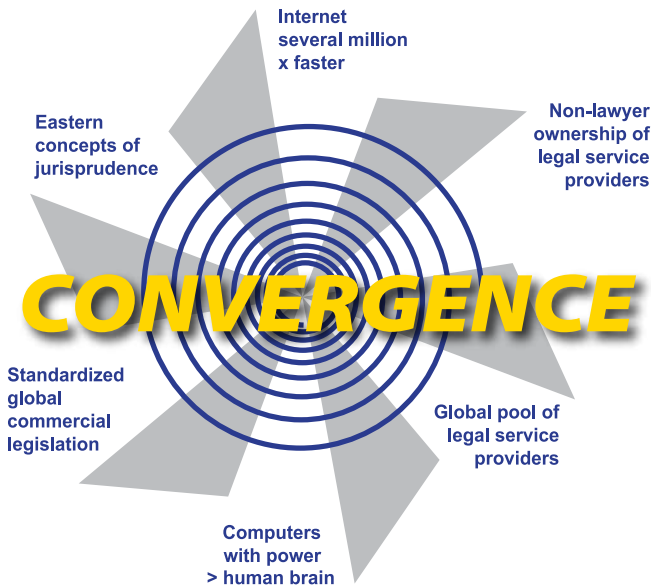
If one had asked a neurosurgeon in the early 1970s what impact computers would have on his practice, the response would have been very limited. The 1971 prototype CAT scan (called an "EMI-scanner" and funded largely with profits from the sale of Beatles records) took many hours to execute the scans and process the results. Mobile phones with greater computing power than computers of his day would have been unforeseeable.

If you had asked the surgeon what impact X-rays might have, then again he would probably have thought about the experimental CAT scan equipment, but the pictures were very low resolution and the equipment so specialized and expensive as to be limited to research laboratories.



**Figure 1:** *It was the convergence of advances in X-Ray technology and computer science, with funding from sale of music by the "Beatles" that led to the development of CAT scanning equipment, and simultaneous advances in anesthesiology and microsurgery, that revolutionized brain surgery. Considering the impact of each of these drivers on neurosurgery is nonsensical ... it took the simultaneous convergence of ALL of them.*

It was the combination of advances in X-ray scanning, and computers, and microsurgery and anesthesiology, all acting in concert, that led to modern neurosurgery as we know it.



**Figure 2:** *The full impact of changes that will be wrought on the practice of law and the strategic direction of western law firms is to be found also not by considering the separate impacts of different change drivers acting independently, but at the convergence of the impacts of those drivers acting in concert with each other.*

The same applies with legal services. It is senseless to ask what the impact of alternative business structures in England and Wales might have on law firm management practices, without asking what their impact might be when considered together with exponential growth in technology, emergence of a global market in legal services and the changes in the global economic and socio-political landscape, all acting simultaneously and in concert. This leads to a far more complex discussion but, almost inevitably, to a different set of conclusions to when the issues are considered in isolation of each other.

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Balancing all these long-term issues with the intense demands of challenging economic priorities is perhaps the most difficult balancing act for law firm leaders today.

## CONCLUSION

The purpose of this article has been not so much as to try to provide a forecast of what the future legal profession will be like, as to discuss a few key drivers and provide a framework for how law firm leaders need to think about them and, more importantly, how they impact their strategy. I hope that the point is made that it is dangerous to think too simplistically about these drivers, or (especially) to try to think about them in isolation of their interrelated impacts on each other. Most importantly, I hope the point has been driven home that these are issues that firms ignore at their peril.

Balancing all these long-term issues with the intense demands of challenging economic priorities is perhaps the most difficult balancing act for law firm leaders today. In my experience, the only way is to create a culture where strategic conversations are a constant undercurrent, and where important information is readily communicated within the firm, to those that need to know it. As always, I'd welcome the opportunity to discuss any aspect of this article with anybody interested in exploring the issues further.



*Rob Millard is a partner with Edge International and a business strategist, specializing in law firms. In 2009, he served law firm clients in ten countries on four continents. He is an acknowledged thought-leader in how emerging global trends are impacting the practice of law and law firm strategy. Contact him at [rob.millard@edge-international.com](mailto:rob.millard@edge-international.com).*

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We have some of  
the best brains in  
the business to  
help you find your  
way...







Finding **NEW, WORKABLE FEE MODELS** that  
**MEET CLIENT DEMANDS** while at the same time  
maintain or even **ENHANCE PROFITABILITY**  
is one of the **MOST SERIOUS CHALLENGES**  
facing law firms today.



# FIXED FEES

The thin edge of law firm transformation

Jordan Furlong

**Large law firms are switching from the billable hour to fixed fees. As a measure of just how much has changed in the legal services marketplace over the past year, it's hard to top that.**

In September 2009, O'Melveny Myers distributed an internal memo (quickly leaked to an online legal tabloid) setting out its intention to provide services on flat and fixed-fee bases. The firm plans to “*adopt a single rate card by FY2012, with volume and ‘investment’ discounts and appropriate alternative fee arrangements ... becoming the leader in providing high-end legal services on a fixed-fee basis, reducing costs to clients, and achieving superior economic performance through practice management oriented toward cost-effective client service.*” If you'd predicted, at the height of the bubble, that O'Melveny management would soon circulate a memo with these contents, most lawyers would have been incredulous.

Also in September 2009, top management lawyers at Reed Smith and Mayer Brown told the legal press that their firms were thinking of going the fixed-fee route for certain types of services. “*Most clients want certainty of cost and value for money,*” said Reed Smith Global Financial Industry Chair Paul Johnston. “*Our prime focus is to provide that.*” Rest assured that if their leaders are talking to the media about fixed fees, these firms have gone a lot farther down the road than “thinking about it.” And for every AmLaw 100 firm willing to be publicly quoted about fee certainty, dozens more are quietly examining the subject. At a College of Law Practice Management conference in September, one panelist observed that “*there's not a single big firm that's not at least thinking about fixed fees.*”

Fixed fees are in, and the reasons are clear enough. Clients, reeling from the recession and anticipating a slow and painful recovery, have shifted gears. They're no longer wishing for lower and more predictable costs; they're requiring them. General counsel have heard their CEOs muttering about legal costs that continuously rise while every other department cuts back, and wondering darkly about just whose side Legal is on. That sort of thing puts the fear of God in GCs, and those GCs are determined to spread that fear around.

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There's not a single big firm that's not at least thinking about fixed fees.



Law firms, of course, are newly vulnerable to client pressure themselves. Profits per partner were down sharply in 2008, and hardly anyone expected them to seriously rebound in 2009. Partners in major firms had become accustomed to year-over-year double-digit increases in income, and many lawyers are still dealing with the shock that those days are gone. The rate-reduction card has already been played, but clients have trumped it by asking not for discounted rates, but for lower costs, period. Worse again, there are few easy cost-cutting levers left to pull. Secretaries have been fired, associate salaries have been frozen or reduced, first-years have been taken off the clock, and leverage has been slashed -- yet PEP continues to fall.

Implementing fixed fees the right way also happens to be a remarkably effective way to start transforming your firm.

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And so we come to fixed fees. With cost certainty the new holy grail for GCs, and fixed-fee arrangements still (for the moment) relatively scarce among law firms, they offer a rare opportunity to actually get the client's attention, in a good way. But they have to be done right. Averaging out your last ten bills, say, and padding the result by 10% won't work particularly well, since clients know

exactly how much they've paid you for legal work over the past several years. Going the fixed-fee route will require more effort than that.

But as it turns out, implementing fixed fees the right way also happens to be a remarkably effective way to start transforming your firm. Fixed fees, in fact, promise to be the thin edge of a wedge of creative disruption - one that could end up permanently transforming a firm's practices, systems and culture and turning it into a virtual paragon of innovation.

Now, we think that would be a very good result. We think it's the key to surviving not just this economic trough, but also the entirely new set of rules by which legal services will be delivered over the next few decades. We think that fixed fees, even just in small doses and in specific parts of your firm, can make for happier clients, more satisfied lawyers, and better-run and more profitable enterprises. But fixed fees come at a cost -- one that not every firm will have the ability or courage to pay. If your firm is one of them, read on.

For fixed fees to work, they need to represent the end result of a real change process. In particular, there are three things that a firm needs to change -- and that will change the firm -- in order to seriously engage with fixed fees.

### 1. REALIGN RISK.

The beauty of the billable-hour system (from the lawyer's perspective, anyway) is that it places 100% of the risk of the engagement on the client. If a task takes longer or becomes more complex than expected, all the better: just add more hours to the tab. Billing by the hour shifts all the risk of complication to the purchaser -- and as every lawyer knows, there are always complications.

At the heart of the fixed-fee philosophy, however, is the notion of shared risk. The firm and its client regard themselves as partners in the joint venture of a legal task, each committed to the task's efficient and effective completion because each has a financial stake in that goal. By setting the fee in advance, the firm commits itself to an internal goal of "*beating the price*" -- streamlining its costs and fine-tuning its systems to ensure it comes in under budget. If the internal costs exceed the external price, the firm has to swallow the difference.

That doesn't necessarily mean the firm now bears 100% of the risk -- a dismal prospect, especially in litigation. Many clients are still willing to accept risk (indeed, they've done nothing but accept risk for decades now), up to a point. They'll talk about limited exceptions to the fixed price, mostly surrounding the truly unforeseen or unmanageable, and likely will agree to variations clearly arising from those causes (again, especially in litigation). But the lawyer will be asked to cover variations arising from the ordinary, established capriciousness of legal affairs. That's part of the expertise clients expect when hiring a large firm -- the ability to anticipate and roll with complications. In Rumsfeldian terms, fixed fees are expected to cover the "known unknowns" -- it's the "unknown unknowns" that can (but not necessarily will) give rise to acceptable budget overruns.

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Fixed fees, even just in small doses and in specific parts of your firm, can make for happier clients, more satisfied lawyers, and better-run and more profitable enterprises.

Taking a measure of risk on a project isn't asking a lot of professional service providers in other fields. But for most law firms, it's a pretty radical move. It requires an overhaul of work practices that were designed for profitable inefficiency. The traditional law firm gives work to the most expensive lawyers available and encourages them to take as long as they need. Risk-sensitive law firms, conversely, look for ways to download work to the cheapest competent performer, flowchart or mechanize predictable or repetitive tasks, and monitor costs against budget at defined stages of the process. Essentially, they think and act like clients.

Very few law firms behave this way, and the challenge of getting from here to there should not be underestimated. It requires a recalibration of the internal systems of large, complex organizations that are difficult to manage at the best of times. And it means helping lawyers, risk-averse by nature and training, realize that, to paraphrase Gordon Gekko: "*Risk is good.*"

## 2. REWIRE SYSTEMS.

The decision to sell work on a fixed-fee basis will require a firm to re-engineer its internal processes -- or, in some cases, to install such processes in the first place. This re-engineering doesn't need to start off as a full-scale, firm-wide metamorphosis from billable-hour shop to efficiency machine; in fact, going about the process that way virtually guarantees failure. Choose a practice group or practice area that seems amenable -- for reasons of lawyer personality, group leadership, or client tasks with predictable elements -- to innovation of this kind. But once you've chosen your construction site, be ferociously detailed about designing your blueprints and supervising the builders.

A fixed fee is nothing more than a project budget, and hitting a budget target requires business process and project management. This is not as easy as it sounds. Legal author and visionary Richard Susskind likes to cite the example of lawyers who tell him they're "project managers" because they've taken project management courses. He asks them how they'd like it if their project managers said they could practice law because they once took some legal courses. Project management is a professional undertaking and should not be attempted by well-meaning amateurs. There are as many different approaches to it as there are projects, and



this article won't delve into this complex topic. Suffice to say that the key features of any project management system will include task schedules, costs monitored against budget, and quality control standards.

Against the backdrop of a given project management system, you'll need to add the personalized details of just what it is your firm or practice group does, how long it takes to do these things, and what it has cost in the past to accomplish them. Mining your historical billing data for a given type of project is a good place to start, but you can't end there. You also have to identify the key elements of these projects in order to design standards against which the quality and timeliness of their accomplishment can be measured. You need to figure out which of the most repetitive tasks are susceptible to automation, and which parts of the most basic work can be accomplished by contract or outsourced talent rather than high-priced associates. That sounds like a lot of work, and it can be -- but there are business process and project management experts galore who can show you how it's done.

The idea behind business process management is to find ways in which tasks can be broken down into their component parts, analyzed to map out consistent and measurable procedures, and accomplished in the most cost-effective high-quality ways. This goes against almost every instinct that traditional law firms have developed over the decades: maximize time spent (and therefore costs billed) on a project, reinvent wheels wherever feasible, and substitute precedents and anecdotes for systems, metrics and data.

But do you really have any doubt, deep down, about which approach is likelier to yield better results and more value? Do you really have any doubt that a firm internally transformed along rational business lines like these wouldn't be a more effective and professionally satisfying place to work?

### **3. RETHINK PRODUCTIVITY.**

It's a unique feature of law firms that efficiency and productivity, which in the business world directly correlate, usually line up in inverse proportion. Law firms routinely measure lawyer productivity in number of hours billed, a metric that self-evidently serves the supplier's interests

over those of the consumer. The first associates to be laid off at law firms this past year were described as the “least productive” because they had the lightest dockets -- and nobody at these firms seemed to find the equivalence of these two terms the slightest bit strange.

Fixed-fee billing systems, of course, attach a premium to efficient, systematized workflow -- you won't profit unless you can do the job for less than the client has agreed to pay, which means running a very tight ship internally. So moving to fixed fees means completely reversing the long-held definition of productivity -- which in turn will affect all the ways in which you evaluate, compensate, promote and value your lawyers.

A funny thing happens when you stop billing clients by the hour: you find yourself wondering why you compensate lawyers by the hour. The ability to reach or exceed annual hourly billing targets has long been an easy and convenient way to determine a lawyer's worth -- but in a fixed-fee system, it becomes close to useless. When revenue is no longer generated according to how much time is spent on a matter, then continuing to measure, reward and promote lawyers on the basis of expended time becomes an unaffordable irrationality.

So firms that invest in fixed fees will need to start finding new ways to figure out how valuable their fee earners really are. The project management systems that firms will institute in order to manage fixed-price work can also be used to gauge the effectiveness of the lawyers working within those systems. Over time, lawyers will become valuable not for their ability to maximize the hours billed to a client, but for their ability to minimize the number of hours they can bill to a file and still get the job done right. Continued employment and suitability for attaining or maintaining partnership will come to depend in no small part on how well a lawyer manages a project, controls costs and keeps to the system. This in turn will affect lawyer compensation and incentive structures, not to mention lawyer training and competence assessment.

If you're going to fix your fees, you need to be prepared for an internal redefinition of productivity -- an outcome that will have implications for everything from deciding who is and isn't an effective lawyer to making partner compensation even more of a headache than it already is. Be ready to reconsider everything about how you motivate, assess and reward your

lawyers under a fixed-fee system -- but also be ready to find out how positive the results can be for lawyer morale and firm-wide profitability.

This article is not meant to be a fixed-fee how-to guide -- there are plenty of those available, and as client demands for price certainty continue to grow in the coming months, more of these models will appear. Instead, this article is intended to warn you -- and to encourage you -- that turning towards fixed fees inevitably requires more than short-term commitments, and produces more than one-dimensional results. Don't take this step lightly, but don't be reluctant to try, either. The potential rewards are tremendous for your clients, but even more so for you.



*Jordan Furlong is a partner with Edge International and specializes in analyzing the extraordinary changes now underway in the legal profession worldwide. An award-winning legal magazine editor and blogger, he is an Honorary Fellow of the College of Law Practice Management and Chair of the College's InnovAction Awards. Contact him at [jordan.furlong@edge-international.com](mailto:jordan.furlong@edge-international.com).*

# TEN COMPELLING REASONS TO IMPROVE YOUR SPEAKING SKILLS

John Plank



**Is speaking simply an obligation for you?**

**What if speaking could transform your career - and your life?**

**Your academic and professional success is built on a foundation of excellent analytical and writing skills. Without those skills you could not have achieved your present position. How well you speak will increasingly become the determining factor in your success.**

You may already be a good speaker. If speaking has not been a requirement in your work – you may feel that you’re not a good speaker. In either case, I’d like to encourage you to look at speaking from a fresh perspective.

Here are 10 compelling reasons to improve your speaking ability right away!

## **1. BECOMING A LEADER.**

Leaders speak. It’s that simple. But there is a priceless secret. Leadership does not teach us speaking skills; speaking teaches us the essential leadership skills! When you speak you add an emotional component to your ideas; your listeners understand you at a deeper level.

By speaking, leaders share their values, ideas and their enthusiasm. It is only when you speak that we truly know what you care about and we are moved to action.

## **2. A NEW KIND OF LEARNING.**

Most of my clients have a passion for learning. The classical method of study, the “Trivium” requires us to first understand, second to analyze, and third to translate the information into our own words so that we have “ownership” of the concepts and ideas. Speaking takes the value of this method to its highest level; by speaking about your areas of expertise in the context of a wide range of listeners, you have the opportunity – indeed the necessity – of considering your best thoughts in even greater depth, and from many more points of view than you would have from simply writing.

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It is only when you speak that we truly know what you care about and we are moved to action.

I have the privilege of working with some of North America's finest speakers; almost all of them acknowledge that as soon as they began to speak regularly they experienced a huge improvement in their knowledge and understanding of their subjects.

If you are passionate about your topic and want to become an acknowledged expert – there is no better way to achieve this than to speak regularly.

### **3. CONTRIBUTING TO YOUR ORGANIZATION.**

When we have achieved a measure of security in our own careers, we have the opportunity to shift our focus to adding value to our organization. This contribution requires continuous and effective discussions with people at every level, both inside and outside of our organization. Your ability to eloquently and persuasively present your ideas and to encourage and inspire your colleagues will distinguish your unique contribution.

### **4. HELPING OTHERS.**

Mentoring and encouraging your team members and your colleagues is rewarding for everyone, as well as for your organization. Mentoring requires exceptional listening skills, and the ability to communicate our understanding of our colleague's challenges and opportunities. We write to communicate what we know – we speak to communicate what we understand and what we care about.

### **5. IMPROVING KEY RELATIONSHIPS.**

Your success at work, perhaps even your enjoyment of your work, may depend on one or two key relationships. One bad relationship can take all the joy out of our work. Relationships that are not working will only worsen, unless one party takes the initiative to improve them. There are many strategies which have been proven to be effective, but they all have one thing in common – they all require an advanced level of verbal communication skills.

### **6. ACHIEVING YOUR FINANCIAL GOALS EARLIER.**

To rise through the ranks of your profession you must have a track record of successful projects and other accomplishments. To build on these



achievements you must also be able to speak eloquently and persuasively to your colleagues, and potential clients. By focusing on speaking skills early in your career, you can change the entire trajectory of your progress towards success, and meet your career and financial goals five, or even ten years ahead of time.

## 7. BRINGING ENJOYMENT BACK INTO YOUR WORK.

Four years ago, I began work with a new private client. “Jim” was 48 at the time, and a well known and successful litigator. Only a few people knew that Jim had always dreaded speaking. Jim suffered for days before speaking, and he always refused requests to speak at his association meetings, which caused some colleagues to think he might be arrogant.

After only three months of working on his communication skills, Jim was able to address his colleagues at a trial lawyer’s convention for the first time. His presentation was a huge success. It was truly a joyous experience for Jim, for his staff and his wife who attended the speech. The next day, Jim came to my office to thank me; he said, *“Now, for the first time I know I can be the kind of lawyer that I dreamed about being when I was in law school!”*

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When you master a few basic skills, speaking can be an exhilarating experience – and you can bring the joy back into your work.

There are thousands of “Jim’s” in your profession. When you master a few basic skills, speaking can be an exhilarating experience – and you can bring the joy back into your work.

## 8. BUILDING YOUR SELF-CONFIDENCE.

Speaking is no different to most other skills – when we practice the basics, we get better. But speaking feels like such an intimate reflection of who we are. Sometimes we would rather not speak, than look and sound less intelligent and less confident than we are. Many people judge themselves harshly. We measure our ability by our worst performance.

So, here’s a little “*tough love coaching*” from me to you – you simply don’t know enough about speaking to know beyond a doubt that you cannot be an excellent speaker. Regardless of genetics, or culture, or personality type, if you want to be a really good speaker, then that is exactly what

you can be. Read a little about it, listen to good speakers, and get some coaching. Just do it! Enjoy the benefits you deserve and enjoy continuous improvement in your self-confidence.

## 9. BEING REMEMBERED.

In many cultures there are traditions which inhibit speaking. *“Children should be seen and not heard”*; *“women are not supposed to speak in public”*; *“be silent in the presence of your superiors”*; *“nice people don’t speak like that”*. In any case, whatever the cause, the tragedy is that many people are unable to freely share their thoughts and feelings, even with those people that

The custom of conversation is in decline. Family gatherings and family meals are no longer opportunities to learn more about one and another, as we focus away from our family and friends and towards television, iPods, and electronic games.

“

love them. The custom of conversation is in decline. Family gatherings and family meals are no longer opportunities to learn more about one and another, as we focus away from our family and friends and towards television, iPods, and electronic games. I try to encourage everyone to nurture speaking and conversation in their daily lives in every way they can. It takes real commitment, and continuous and determined application, but the rewards are forever and our children’s children will thank us.

## 10. BUILDING YOUR ORGANIZATION’S REPUTATION.

Your record of success may be amongst the best. Your firm name alone may command respect. But right now, today, and for the future, your organization’s success depends on the quality of each of the daily communications that your clients, colleagues, and potential clients have with each and every member of your organization.

Only a few organizations make the development of personal communication skills a top priority. Those who do, reap the rewards. There is a huge return on investment. Internally, you benefit from improved relationships, better briefings and brainstorming for important new ideas. There are better meetings, shorter meetings and fewer

meetings. Externally, your excellent communicators are bringing in new business, nurturing existing business and establishing your organization's unique reputation.

## YOUR TURN.

If you care to comment, or would like to share some of your personal experiences on speaking, we would love to hear from you.



*John Plank is one of the world's most respected communications coaches. He helps national leaders, lawyers, senior executives and others to dramatically improve their speaking skills. Formerly director of actor training at the Stratford Shakespearean Festival and currently performance coach for CBC Television, John created the internationally acclaimed Commanding Presence™ programs. Contact him at [john@commandingpresence.com](mailto:john@commandingpresence.com).*



Since 1983,  
Edge International  
has counseled  
law firms through  
several major  
recessions and  
recoveries...

We can help  
you through  
this one too.

Graph:  
Dow Jones  
Industrial Index  
1980 - 2009

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1985

1990





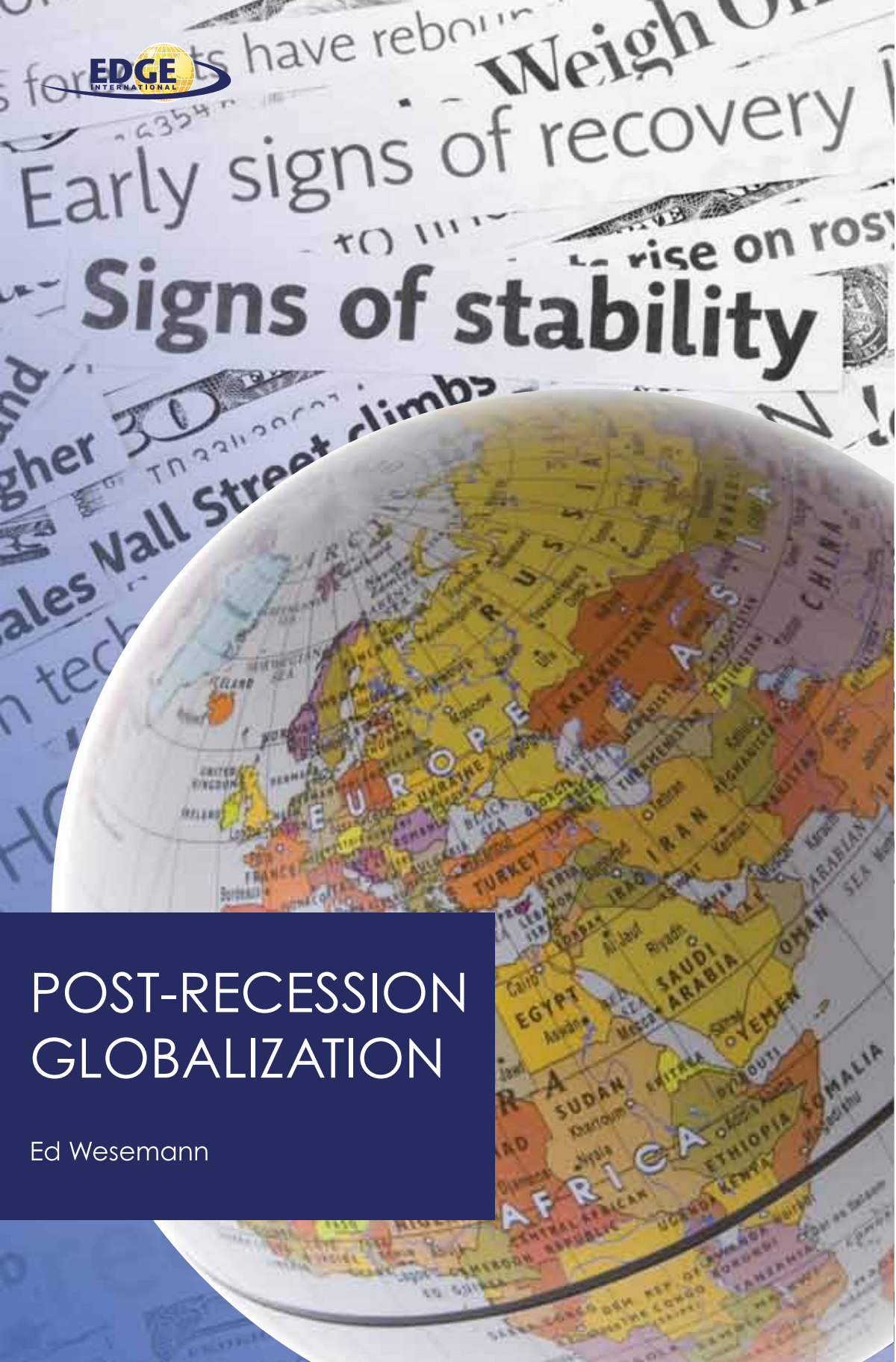


1995

2000

2005

2010



# POST-RECESSION GLOBALIZATION

Ed Wesemann



To the extent that there is anything good about an international economic meltdown, it can be credited with having forced a lot of law firms to reconsider their globalization plans. As the recession drove red ink for the international investments of many firms, more than a few of them are looking at their international offices and saying to themselves, “*What were we thinking?*” The post recession global expansion for at least U.S. law firms may hinge on what they have learned from their international experiences. And, those experiences may be equally instructive to U.K. law firms as they consider their potential expansion to the Americas.

It is always risky putting a label on something before it is completed but, at least as of now, it would be hard for law firms to call the current decade anything but the age of international expansion. For many U.S. firms, globalization rapidly went from being a seminar topic ten years ago to an underpinning of business strategy today. In fact, of the top 200 law firms in America, 70 have an office in the United Kingdom and 66 have an office in China. Of course, those numbers are chump change compared to the number of countries where large U.K. law firms have planted their flags. But, for a country where only about 20 percent of its citizens hold passports, U.S. law firms can rightfully view themselves as being in the vanguard of American global expansion. On the other hand, for British law firms, the U.S. has to be viewed as the land of opportunity. With a legal market approaching a quarter of a trillion dollars, the value of legal services in the U.S. is larger than the rest of the world combined and almost six times bigger than the U.K., the next largest legal market. With the financing opportunities presented through the Clementi reforms, the U.K. Top 50 was busily preparing their U.S. growth plans.

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However, most of this expansion took place before the economic meltdown. Traditionally, economic downturns drive isolationism. When there is large scale unemployment and a lack of demand for goods and services worldwide, it is politically difficult for any government to advocate



active international trade and foreign investment. This is nothing new. In fact, restraints on international trade and economic cooperation are frequently cited as primary factors exacerbating the severity and length of the Great Depression. So it should not come as a great surprise that, in what some have labeled the second great depression, we are currently seeing large-scale concern about any portions of governments' economic stimulus programs being used to benefit non-domestic workers and companies.

The result has been a culling of the herd of law firms seeking to become international players. As the availability of legal work, particularly in Europe and China, declines for law firms that do not have an active client base and/or a strong local practice, about half of overseas offices (at least for U.S. firms) can be expected to bleed cash at a time when the money is much needed for internal purposes. Accordingly, a lot of law firms put a halt on their plans for international expansion in response to the recession. They found it hard to convince their partners that any significant expenditures make sense during a period when the primary strategy has been to restrain spending. It's even more difficult to justify any form of growth strategy after having laid off some of their brightest and best associates, delayed or completely deferred the start date of new lawyers, fired non-equity partners and demoted under-performing equity partners.

A natural assumption is that law firms will resume pursuing their global growth strategies when the recession ends. For many law firms, however, the recession has provided a time out -- a chance to catch their breath

Strategy is a function of understanding and coming to a consensus on where a firm is going.

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and look at their international strategies outside the fever-pitched, bullish optimism that fueled the business decisions of the past decade. At issue for law firms is not whether globalization is good or bad or even if the increased international growth of businesses will continue. The globe has shrunk and will continue to get smaller despite the support for isolationism that

invariably appears in response to economic vicissitudes. Instead, the issue is, in a world where it is hard to find a location that is underserved by lawyers, is there an international business strategy that makes sense

for law firms? And, if there is one that a firm can identify, does it fit with the overall practice of the firm and the amount of capital the firm's partners are willing to put at risk?

## DEVELOPING AN INTERNATIONAL STRATEGY

As Alice learned in Lewis Carroll's *Wonderland*, "*If you don't know where you are going, any road will get you there.*" Strategy is a function of understanding and coming to a consensus on where a firm is going. For many firms, new offices have traditionally been created on the initiative of one partner -- what management theorist Peter Drucker called, a "*monomaniac on a mission.*" Firm leaders give in to the nagging of a new office's proponent more because they are worn down than actually supporting the concept. As a result, it is difficult to measure the success or failure of an office because it was never the product of a specific strategy.

If firms want to get serious about the capital they are investing in international expansion it makes sense to start with a vision of what they mean to create. The process is not complex but involves dealing with some basic questions like "*what does the firm expect to get out of the office?*" For many firms the answer is simply to be able to list an office in London or New York on their web page. Such an objective points towards a minimalist office, perhaps even an office suite or an affiliation with a local firm. But if the firm expects to actually perform work for their clients and, perhaps, attract local clients with interests in other countries where the firm has offices, the vision becomes more complex.

A key to the vision is the makeup of the office's client base. For example, a U.K. firm seeking to open an office in the U.S. has four basic types of clients:

- clients whose relationship with the firm is U.K. based, who seek representation on U.S. issues;
- clients who are U.S. based or whose relationship with the firm is U.S. based, who seek representation on U.S. issues;
- U.S. clients seeking representation on U.K. issues (or issues in other countries where the U.K. firm has offices); and

- network clients with network issues, e.g., a Canadian company seeking representation on an EU matter.

UK clients with US issues	US clients with US issues
Network clients with network issues	US clients with UK / other country issues

The natural reaction of most firms would be to respond that they want all of these kinds of clients. Yet the clearer the vision as to what kind of clients the firm expects to build the office on, the easier it is to recruit and compensate talent.

**Representative Office**

For example, if a U.K. firm believes there is sufficient demand from existing clients for work in the U.S., it would staff a new office with highly competent U.S. lawyers who do not have a substantial portfolio of their own business. Under U.S. meritocracy based compensation systems, such lawyers would be far less costly than partners with large practices and they would be able to devote the appropriate time and attention to the firm’s clients. In addition, the availability of known work makes the venture less risky for the firm and permits them to be more aggressive in their expansion.

Representative offices can be very profitable. However, if the vision is restricted to this type of client and issue, the office becomes merely a service arm of the home office and is likely to result in what my friend Alan Hodgart calls, “a *Noah’s Ark office*” -- two corporate lawyers, two real estate lawyers, two litigators, etc. Moreover, there are some significant locational questions in opening a representative office, especially in the U.S. For a U.K. firm with a strong client base of manufacturing companies in Manchester, an office in Minneapolis may be of far greater value to their clients than New York City.

**Local Office**

On the other hand, the firm may see itself primarily serving U.S. clients on U.S. matters and using those representations to promote the firm’s

global capabilities to the clients. This is the typical result of offices opened through a merger with the value of the acquired firm being its local reputation and client base. It is also the result that firms pursue when they build an office through the serial acquisition of laterally hired partners bringing their client bases.

The difficulty with local offices is that they produce little positive cash flow back to headquarters. After the partners who control the business are paid (usually at a premium necessary to attract them to the merger or the office), there is little profit left to send home.

### **Business Development Office**

For some firms, the preferred approach to a foreign market is with a small office designed to facilitate their business development efforts in attracting local clients who have business interests in the firm's home country. This is the approach that a number of U.S. firms have attempted in London as a base of operation from which they can have their lawyers present the firms' capabilities in the U.S. On a slightly larger scale, some British firms have opened New York offices to attract public offerings to the London exchange.

Business development offices are typically staffed by expatriate partners who are not licensed to practice law locally. This makes for an expensive operation in terms of providing living expenses and dealing with currency swings for compensation purposes. Worse, there are no natural means of applying revenues to a business development office so profitability calculations can be highly politicized in some firms. Recognizing the U.S. businesses with significant U.K. interests that are regularly on the ground in England (and vice versa for U.K. businesses in the U.S.), the jury is still out on the value of business development offices.

### **Network Offices**

The final type of client is the global company where geographic location is reasonably irrelevant. Such clients hire large international law firms with the expectation that the firms will be able to serve their interests around the world. In such circumstances, the client of a U.K. based firm's New York office may be a South African company with a matter in Brazil. The client could hire local counsel in Brazil but prefers the consistency and continuity of using a limited number of global firms.

In the back of their minds, most firms probably go into international expansion with the objective of creating network offices. But it sounds presumptuous for all but a few global giants to enunciate such a vision. It is the end state of global success and the likely business model for the global economy. But if a firm even has an inkling of creating an international network, it impacts on the strategy of even opening its first foreign office.

## THE BOTTOM LINE

Client base is but a single component of a vision. There are also issues of the envisioned size of the office, the areas of practice to be offered, non-legal expertise such as industry experience, pricing and billing strategies, and competitive positioning. In addition, there is the entire value proposition as to why clients should use a firm, especially in a country where that firm is not a branded name.

The simple process of defining objectives and setting out the means of accomplishing them has great value in law firm decision making. With the competitiveness of law firms and the fragility of client relationships,

law firm expansion cannot be left to the whim of monomaniacs on a mission.

The recession has provided a timely bucket of water thrown on some over-exuberant law firm expansionism.

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The recession has provided a timely bucket of water thrown on some over-exuberant law firm expansionism. The most successful firms will learn from some of the more expensive experiences of the past.

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Ed Wesemann is a consultant and advisor to law firms in the areas of growth strategy and mergers. He has worked with a large number of U.S. and U.K. law firms in crafting their international strategies and seeking merger and affiliation opportunities. Contact him at [ed@edwesemann.com](mailto:ed@edwesemann.com).

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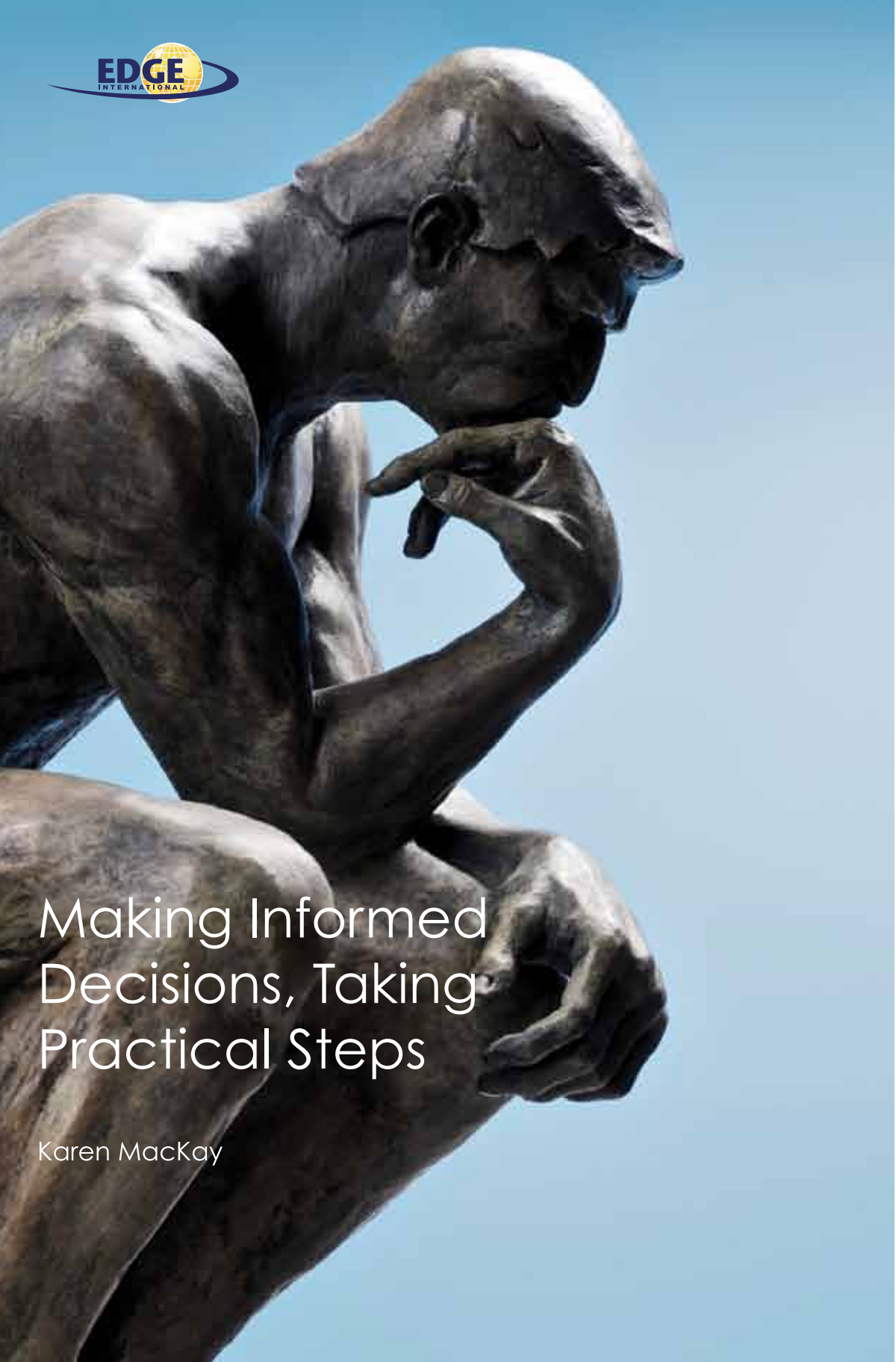
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# Making Informed Decisions, Taking Practical Steps

Karen MacKay



**How do you plan for the firm's future? What process will achieve greatest results? What resources do you need to make informed decisions? How do you create change? How do you get buy-in within the partnership? And, how do you get all aspects of the firm aligned so that you can move the firm towards success in achieving its goals?**

## **PLANNING**

In the twenty years this author spent in senior management roles within law firms, the planning process varied from non-existent to a critical part of the firm's culture. The planning process has a greater chance of success if it fits the leadership model.

In a strong-leader model a top-down approach fits the culture. In this model the chair and the executive takes on the task, charts the firm's course and then communicates the vision, the strategic goals and the plans underway to execute on those goals.

In firms that have a strong consensus model, buy-in is critical. These firms may have more success with a bottom-up planning process. This planning process begins at the grass roots with practice groups, industry groups and offices working through a planning process that involves a much wider group of partners. Leadership provides a framework so that the work of all groups will ultimately fit into a plan for the firm. This may fit a consensus culture and have a better chance of success where partners have a hand in mapping out their future.

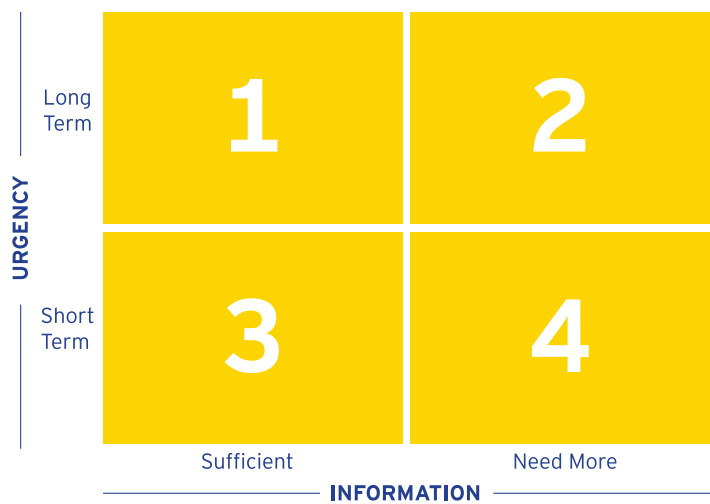
Individual plans are inspired by the firm's planning process. Individual plans should focus on specific efforts individuals plan to make towards the firm's goals and have to be measurable. For example:

- What specific steps will you take towards achieving our target of 10% revenue growth in the coming year?
- What specific behaviours will you foster in order to help the firm to be recognized as one of the top 50 places to work in your city?
- What specific steps will you take to get to know your colleagues better? Identify three other lawyers in the firm (perhaps in another office or group) – get to know them as people, get to know more about their expertise, find ways to collaborate.

Individual plans without follow-up and collaboration within groups in the firm are simply busy work – an item that simply needs to be checked off the list. Collaboration can happen at many levels. First, within practice groups, industry groups and/or client teams so that everyone is pulling in the same direction and so that individuals understand how their actions fit into the bigger picture. Secondly, collaboration amongst peer groups can be extremely helpful. For example – facilitated meetings of a group of sixth-year associates across all practice groups can help them to learn from each other, share ideas and solve problems common to the group. Problems like having the boardroom presence necessary to take on client relationship responsibility or asking senior partners for matter responsibility credit.

APPROACH AND RESOURCES

Making informed decisions requires good information. A good place to start may be to understand the issues facing the firm – prioritize them in terms of urgency and understand the information currently available.



*Many firms will focus on interviewing all of the partners and while this is a critical step, the process risks being too internally focused.*

Analyzing the firm’s client base is important as it can highlight client growth and retention over a given period and identify client attrition.

What you may not learn is the reason for attrition. Rarely will you understand the reasons behind the attrition and without clarity you cannot take steps to either earn the client's confidence and the opportunity for future work. Clients rarely confront law firms with whom they are displeased, they will simply stop sending new work and quietly disappear.

Analyzing the firm's client base does not provide information from prospective clients – those that you have not served but where there might be opportunities. External research that enables you to understand what clients and prospective clients think of your firm and its competitors allows you to see where you stack up against the competition; what image clients have of your firm and where you are positioned in their view.



Making informed decisions requires good information.

A collaborative approach to planning that involves both internal and external resources achieves the highest and best results. For example:

External resources can glean information from clients that they would never share with members of the firm. Clients who receive a personal invitation from the partner most closely connected to the client will share more because the firm and the partner clearly value the relationship enough to want their opinion.

Planning can create exciting opportunities for professionals in all areas of the firm or it can be viewed as threatening. Internal professionals can and should be involved in gathering information but firm leaders must be sensitive to both staff and attorneys having a vested interest in the status quo.

## CREATING CHANGE

A change in leadership almost always impacts partner profits – positively or negatively – it rarely stays constant when there is a new leader. A leader who has a high requirement of acceptance may make decisions based on what colleagues will think – revenue likely will go down and the firm is likely to flounder. A leader who sees himself as a strong leader who makes decisions, runs the risk of disengaging colleagues – again

Planning can create exciting opportunities for professionals in all areas of the firm or it can be viewed as threatening.

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negatively impacting productivity, revenue and profit. A leader who can establish direction, align people and motivate them to achieve results may produce positive change and have a similar impact on revenue and profit. It's all about creating change.

One of the much quoted articles on the topic is entitled What Leaders Really Do, by John Kotter and was published in the Harvard Business Review in December of 2001. Kotter answers four key questions about leadership, as follows:

#### **What is the leader setting out to do?**

- Establish the direction
- Develop a vision and strategies to achieve the vision
- Set high standards and stretch goals.

#### **How does a leader deliver results?**

- By aligning people
- By communicating in ways that engage people emotionally and intellectually
- By influencing behaviour

#### **How does the leader actually make it happen?**

- By inspiring and motivating
- By engaging people in meaningful ways
- By holding people accountable

#### **What are the outcomes?**

- Change
- Opportunity
- Results

## THE IMPORTANCE OF ALIGNMENT

A planning process is designed to identify strategies in terms of the firm's positioning against its competitors; in terms of the services it will provide; the profile of the clients it can best serve and the talent that will thrive within the firm in the future. Who are your clients? What talent do you need to attract? What is your value proposition to both?

Without alignment the firm is not likely to achieve its goals and lawyers are not likely to thrive and more importantly the resources (time and money) spent on a planning process will be for naught.

Strategy is about setting direction. Alignment is about creating the structures, processes, resources and the discipline to achieve the direction that's been set. Alignment is also about matching words with deeds. If you talk team but reward individual performance you are not aligned. If you talk client focus but never visit your client's place of business you are not aligned. If you claim to work at the very high end of the market ("*we're expensive but worth it*") but don't deliver the level of service and quality of work that is expected at that level you are not aligned.

As a leader, the choice is yours. Begin with good information, make decisions that are right for your firm, align the firm to support the direction and create meaningful change.

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If you talk team but reward individual performance you are not aligned.



*Karen MacKay is a legal industry expert who is focused on the execution of strategy through professional talent and organizational transformation. In 2009, she was elected to be a Fellow in the College of Law Practice Management in recognition of her contribution to the law practice management profession. Contact her at [kmackay@phoenix-legal.com](mailto:kmackay@phoenix-legal.com).*



# DRIVING 2010 REVENUE

...through rainmakers first!

Gerry Riskin





**The key to driving significant revenue increases, in spite of the current volatility, is to bend your efforts toward maximizing your rainmakers' effectiveness.**

In 37 years of practicing law and consulting to law firms, I have never witnessed anything that approaches our now-commonplace economic volatility. As I write this, there is breaking news of another global law firm suffering the impact of major economic reversals in one part of their world.

That “*Doom and Gloom*” image below is the headline from a post at my “*Amazing Firms, Amazing Practices*” blog, dated August 3, 2007. As you may recall, the legal economy at that time was robust, with no end to continuing success in sight. I was nonetheless deeply concerned for the future, for the reasons I set out in that article, and felt compelled to sound a warning.

This article is not about “*doom and gloom*,” or about the pessimism that naturally flows from these economic times. No doubt, the news is depressing -- legions of staff and associates have been laid off, to be followed by salaried partners and even by equity partners in many firms. Profits will be down for some time to come, and the profession overall faces tremendous uncertainty. Some firms are panicking, while others are ready to give up hope.

This article is about being the exception to that rule -- about having the marketplace refer to your firm as one of the few that flourished while others suffered. This article is about driving significant revenue increases for your firm, despite these catastrophic conditions.

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This article is about driving significant revenue increases for your firm, despite these catastrophic conditions.

## THE FEW, THE PROUD, THE RAINMAKERS

Every single person in your firm is important to its success, provided that each one understands his or her role and performs accordingly. But for present purposes, your quest for revenue will require special efforts from only a tiny portion of your firm. You need to get peak performance from

your rainmakers -- both those who are recognized and established and those who are up and coming. Your job is to do everything possible to maximize the effectiveness of these lawyers — by constructing a special program to do exactly that.

This program is not going to be open to every one of your rainmakers, however — only a few. How will they be selected? They need to apply.

You heard me -- nobody gets into the special program without applying to the most senior leaders in the firm. The application must spell out why the applicant believes she or he is an excellent investment worthy of admittance to the program. This will exclude the worst egotists and disruptive forces, the ones who can't bear to acknowledge that they could improve, and the ones who would participate against their will. You will end up with only the most dedicated people, who will move heaven and earth to improve, perform, and prove that the firm invested well.

## TRAINING RAINMAKERS IN EXCELLENCE

...your quest for revenue will require special efforts from only a tiny portion of your firm.

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There's a time and a place for basic client-relations skills training for your rank-and-file lawyers — ideally, it should be conducted regularly and effectively. But when the building is on fire, you stop dusting the stairwells and start grabbing buckets of water. Your rainmakers, both established and emerging, must hone

their advanced skills in order to protect the firm's crown-jewel clients and attract the very best prospective clients. They also need ongoing mentoring and support.

This training and support is critical to both the established and the emerging rainmakers. Your recognized rainmakers have acquired respect though a history of achievement, but it does not necessarily follow that they are performing at their peak. The good news is that the best always want to get better, provided you protect their self-esteem in the process — if they can enhance their performance without embarrassment, they will respond. As for your “up-and-comers,” they will drool at the prospect of getting meaningful rainmaking assistance.

### **Lists and their obstacles**

Once you have selected those few lawyers who will drive your firm's increased revenue, they need to begin with a single task: making lists. They are to draw up four columns of lists: (1) their clients, (2) their referral sources, (3) prospective clients whom they ought to be targeting, and (4) significant members of their network who do not fall into the preceding categories.

Be warned, however: in my experience, fewer than 5% of lawyers can show you any kind of list at all, and most of those are just collections of names. It is the rare rainmaker, usually a top performer, who can pull up a file and show you complete client data sets. This isn't because of a lack of discipline, energy, or desire — it's because of the perfectionism that most lawyers import from their substantive practices into their business development. If they can't do something perfectly, they won't do it at all.

You need to encourage them to make partial or draft lists, on the understanding that yes, they are imperfect, but they are the start of the process and will form the foundation for ongoing focused efforts.

### **Prioritizing: identify the essentials**

Most people believe that prioritizing a list means segmenting it into “most important,” “less important” and “not important at all” -- oftentimes, the “A,” “B” and “C” groups. I suggest that rainmakers prioritizing their lists of clients, referral sources and networks ask themselves this question: *“Is this a person who, if I allowed the relationship to languish without contact for a lengthy period, the result would be potential harm to the future of my practice?”* Or, more colloquially: *“Who would I be an absolute idiot to lose contact with?”* These people are your “A”s, and they matter. Once the lists are created and related to action plans, the number of “A”s inform us as to the frequency of contact and perhaps the best means of contact.

AT THE OPPOSITE END OF THE SPECTRUM FROM THE “A” CONTACTS ARE THE PEOPLE WHO BELONG ON YOUR RAINMAKERS' “STOP DOING” LIST. THIS IS A WONDERFUL CONCEPT BORROWED FROM ONE OF THE BRIGHTEST AND MOST EFFECTIVE RAINMAKERS I KNOW. HE MADE IT A PILLAR OF HIS BUSINESS DEVELOPMENT PLANNING TO REGULARLY ADD APPROPRIATE ITEMS TO A “STOP DOING” LIST. HIS

REASONING WAS THAT ONE HAS TO LOOK AT ALL ONE'S ACTIVITIES WITH A GLOBAL PERSPECTIVE AND THEN DECIDE ON AN ONGOING BASIS WHAT NO LONGER DESERVES TO BE ON THE LIST. BY STOPPING THE LESS IMPORTANT ACTIVITIES, HE MADE TIME FOR MORE IMPORTANT ONES THAT PAID OFF ROYALLY FOR HIM.

### **GET THOSE RAINMAKERS OUT THERE!**

Every lawyer with rainmaking capabilities knows that they ought to be out and about with clients and prospective clients. They ought to be meeting with potential referral sources as often as possible, increasing their “share of wallet” from existing clients, and target-marketing their most important prospective clients. Even the best rainmakers, when reminded, will agree without hesitation that this is true and that they spend too much time at their desks and too little time in these endeavors. These lawyers rationalize their rainmaking inactivity by making the excellent service of existing clients their top priority.

The secret here is to build systems that create opportunities in which those rainmakers feel comfortable involving themselves. Some firms, for instance, hire people who assist rainmakers by setting up meetings for them. They draft letters of invitation with the rainmaker’s approval and make phone calls on their behalf; all the rainmaker has to do in such instances is provide the parameters, e.g.: *“I’ll be free for lunch any Wednesday or Friday that you care to book me.”*

### **IT’S ALL ABOUT ACTION**

How is it possible to move from theory to accomplishment? The secret to success lies not in the strategy itself, or even in the ideas I’ve expressed in this article. The key lies in the degree to which individuals take action -- and it is your responsibility to guarantee that result, by creating a process that keeps shining the light squarely upon your rainmakers and measuring their actions.

Over the years, I have found that while the planning process is normally done in the light, the participants quickly fade into the dark. People come around in a few weeks and ask how a project is going. The answer is

usually defensive, fraught with excuses and references to key clients and important matters. Successful leaders leave the light shining relentlessly on the tasks at hand, keeping a tally on rainmakers' progress at least weekly.

The key to getting your people to accept this scrutiny is to assure them that on those occasions where there is little or no progress, they will not be punished, but assisted. Competing obligations will be examined to see where they can be reduced. Parts of the rainmaking effort might be delegated in whole or in part, or even changed altogether into more productive tasks that require less time. The critical factor is that the rainmaker understands he or she will not be criticized or outed for struggling with their action plans, but rather assisted.

IBM has a phrase that I'm fond of using: *"Remove the excuses."* Many people fail to accomplish their objectives because they have too many excuses. Their objectives were far too substantial, no one kept the lights on, and no one helped. Remove your rainmakers' excuses. Remember, we're not talking about the whole firm. We're talking about the chosen few – those whose applications to be part of this special effort you accepted.

“

I've witnessed first-hand increases per participant ranging from hundreds of thousands of dollars to millions of dollars.

## THE PAYOFFS

The obvious prize for this effort is substantially greater revenue for your law firm. I've witnessed first-hand increases per participant ranging from hundreds of thousands of dollars to millions of dollars. The less obvious prizes include building your team's confidence and infusing them with winners' attitudes that will become contagious throughout the firm.

While your competitors are still holding meetings about why the world is delivering such hardship, whose fault it really is and whether the legal profession is going to survive, I suggest you get busy and start generating some serious revenue. The key is to convert something that's uncomfortable for most lawyers into something very comfortable — turn

a liability into a strength. Identify your champions and help them win. The rewards, even in a difficult economy, will stagger your imagination.

Most people respond to crises with paralysis. I suggest you respond with action.

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*Gerry Riskin B. Com, LLB, P. Admin is a founding partner of Edge International, a former managing partner, best selling author, Fellow of The College of Law in London and a Visiting Professor at the University of Pretoria in South Africa, serving law firms on 6 continents. Contact: [riskin@edge-international.com](mailto:riskin@edge-international.com)*



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Savannah, GA 31411

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**Patrick J. Lamb, Founder of The Valorem Law Group and author of In Search of Perfect Client Service**

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