



# International Review

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by Gerry Riskin

## LEADERSHIP IN LAW FIRMS: EDGE WELCOMES MAGGIE CALLICRATE



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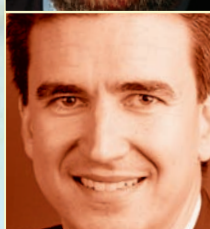
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Dear Friends and Associates:

Our consultancy moves ahead with increasingly big strides. With great pleasure we can communicate now the arrival of our 10th principal - Maggie Callicrate who is based in San Francisco. See page 31 for more details about Maggie!

This issue brings you the familiar mix of strategy and performance, management and leadership, finance and marketing insights that my colleagues are renowned for:

Nick Jarrett-Kerr, Michael Roch and I take you on a tour de force regarding law firm financial issues. You might also be interested in our new book on financial management best-practice, which is featured on page 16.

Ed Wesemann and Robert Millard focus on strategic issues - the former by looking at what the options are for commoditized practices, the latter by taking us through typical, yet serious flaws in the strategic decision making process. The contribution in our new section "In Brief: On Management" complements this by looking at ways of implementing strategies.

Gerry Riskin and Patrick McKenna have advice for when you need a break from the talking. Patrick shows you how compelling testimonials by your clients will do just that for you. Gerry offers you an exemplary managing partner speech to start a change process in the firm.

We are working hard to move our firm and this publication forward. Much good news is waiting to be told - so stay tuned! In the meantime: Enjoy the read and let us know your thoughts and suggestions!

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**I**N RESPONSE TO THE REDUCTION OF CORPORATE TRANSACTIONAL WORK AVAILABLE TO LAW FIRMS DURING THE EARLY 2000s, A NUMBER OF GENERAL PRACTICE FIRMS BECAME PROGRESSIVELY DEPENDENT ON OTHER AREAS OF PRACTICE, PARTICULARLY LITIGATION. BUT, THE SLOW DOWN IN CORPORATE PRACTICE REDUCED THE SPIN-OFF OF COMMERCIAL LITIGATION SO LAWYER PLATES WERE OFTEN FILLED WITH DISCOUNTED WORK THAT FIRMS MIGHT OTHERWISE NOT HAVE PURSUED. IN MANY CASES, THESE INVOLVED HIGHER LEVEL INSURANCE DEFENSE WORK. IN SOME FIRMS IT INCLUDED CONSUMER PRACTICES LIKE CRIMINAL DEFENSE AND DOMESTIC RELATIONS. AT THE SAME TIME, NEW AREAS OF INSURANCE COVERAGE, SUCH AS EMPLOYMENT PRACTICES LIABILITY, CAUSED TRADITIONALLY FULL RATE LABOR AND EMPLOYMENT LITIGATION TO BECOME INCREASINGLY COMMODITIZED. THE RESULT IS THAT FIRMS THAT SPENT A DECADE PURSUING STRATEGIES TO RAISE THEIR LITIGATION PRACTICE TO MORE SOPHISTICATED LEVELS FIND THEMSELVES AGAIN DOING SUBSTANTIAL AMOUNTS OF LOW RATE WORK.

# Strategic OPTIONS for Commodity Practices



**T**he question for both general practice firms and boutiques is whether they can strategically position themselves to provide needed revenue streams from commodity level work while viably competing for more sophisticated higher priced matters.

But, beyond the economic pressures, what makes commodity practices tough is that their characteristics become engrained in a firm's culture and become a significant part of the firm's self-image. While the precise impact may differ from firm to firm, most share several specific characteristics that may be difficult for them to admit to, never mind change.

**HIGH SATISFACTION.** Almost uniformly, partners in commoditized practices seem to possess a high level of "job satisfaction" and satisfaction with their firm.

Indeed, for the litigator who wants to spend his life in the courtroom there is probably no better place than in an insurance defense practice where lawyers differentiate themselves as "trial lawyers" compared to "litigators" who may rarely appear in court other than to argue motions. Those underlying skills and characteristics which are needed to meet the firm's outcomes and goals in the principal areas of performance tend to become (for the law firm at least) part of the sub-text. This makes it all the more important for the individual partner to gain a deep understanding of those attributes which he or she needs to develop in order to attain the firm's objectives.

**POOR CLIENT SERVICE ETHIC.** Lawyers who spend much time in commodity practices may have a difficult time serving com-

mercial clients. When lawyers are hired largely on the basis of price, there is often little value placed on the "bedside manner" and responsiveness so important with clients in other commercial matters.

**LACK OF TEAMWORK.** Commodity level cost consciousness leaves little room for team work. As a result, lawyers performing commodity level work often take pride in lean staffing of cases, citing the Texas, Ranger motto: "One riot, one ranger."

**HIGH VALUE PLACED ON WORKING ATTORNEY PRODUCTION.** Lawyers with commodity practices typically focus on and encourage their firms to highly value the amount of effort put forth by an individual attorney rather than business produced or non-billable activities. This also bolsters the

lack of teamwork because there is no compensation incentive for giving work to someone else that a lawyer could do himself.

**LACK OF BUSINESS DEVELOPMENT SKILLS.** In commodity practices, young lawyers have often been historically discouraged from attempting to attract new business. Emphasis instead was placed on enhancing specific practice skills. Accordingly, upon becoming

## STRATEGIC OPTIONS

Plotting the future can be a difficult task for law firms that have significant commodity practices. Given the frequently high level of satisfaction among their lawyers, a common theme among them is often the desire to “not see things change.” They enjoy and are accustomed to their practice and the manner in which their firm operates. Yet, at the same

price-sensitive practices (particularly insurance defense work) is to grow their full rate practice and develop new practice areas. The hope is that by capping the amount of low rate work performed and growing the firm with other types of clients, they will eventually reduce their dependence on commodity practices. This is a rational and realistic strategy provided that the firm has the ability to attract new non-commodity work and to manage the current level of low priced work.

The attorneys currently with the firm can attract new business. Or, the firm can hire laterals that have clients other than insureds and insurers. These actions may sound easy. “Our firm has a great reputation. We have some of the best standup trial lawyers in the state. Getting commercial litigation should not be hard and laterals should be beating a path to our door.”

But – the firm’s reputation is often based on its lowest common denominator rather than its highest. In today’s legal world, law firms are often judged by how high their billing rates are and how much money their partners earn. Firms with significant commodity practices rarely rank high on either of these criteria. At issue is why a client should take a risk in giving a complex commercial case to a firm with a reputation for doing primarily low rate work. A case in point is the firms to which insurance companies give their major coverage issues, bad faith claims, or large exposure cases. Odds are it is not the firms to which they give their routine claims defense work. Firms that cannot convince their largest clients of their capabilities beyond insurance defense work will have a hard time convincing prospective clients. Telling the marketplace that the firm has great lawyers won’t do it – every good-sized law firm has great lawyers. Attempting to compete on price only solidifies its reputation as a place where routine claims are handled.

It is possible, however, to change a practice and a reputation. Indeed, several AmLaw 100 firms have historically been dependent on insurance

partners, the lawyers have neither the skills nor the interest to develop higher rate work.

**LOW ASSOCIATE TO PARTNER RATIOS.** If lawyers are judged by their production of billable time, then it is appropriate that the standard for partnership would be based on quality as a trial lawyer, history of high hour production and a given number of years of “laboring in the vineyards.” With this relatively liberal screen and, often, a relatively small differentiation between partner and associate bill rates, it is not surprising that associates rise quickly to the partnership.

**LOW HOURLY RATES.** Firms with a mixture of practices often charge lower than market rates for non-commodity matters. Years of having their rates attacked by insurance clients causes exceptional rate sensitivity and some insecurity about a lawyer’s value in the marketplace.

time, they are concerned by the lack of growth of their income in recent years and may be fearful that they have become dependent on work where the rate is difficult to increase.

With an infinite number of variations, there are basically three strategies that a firm with a mixture of full rate and commodity work can pursue. The firm can seek to reduce and eventually eliminate its commodity practices by bringing in other forms of work. It could continue performing the areas of commodity practice by attempting to cordon them off in a separate department or office as an affiliated company. Finally, a firm could use technology and carefully developed practice procedures to make commodity practices highly profitable.

### Strategy 1: Change the Practice

The classic solution of many firms with highly



defense work. Typically, it occurs in one or a combination of three ways

**DILUTION.** Some firms merge or acquire themselves out of commodity work. Essentially, this involves constantly seeking mergers or group lateral acquisitions that do not involve reduced rate work. As the firm grows in new areas of practice, the firm is exposed to clients who may not have known the commodity reputation. At the same time, by bolstering credible practices in other areas, the low rate image is blurred and less dominant in people's minds. Typically, such a strategy requires a long period of time, both to obtain the full rate practice growth to dilute the commodity reputation and because it takes time for the legal market's perceptions to change.

The process of change can be accelerated if the firm is acquired by a larger firm or participates in a merger of equals, provided that the merger partner presents a completely different image to the marketplace. This was certainly the case for many mid-sized firms during the rapid law firm growth years of the middle and late 1980s. In fairness, it must be pointed out that acquisition/merger is a more difficult strategy today because the acquiring firms have become more sophisticated in their selection of merger partners

**LARGE CASE OPPORTUNITIES.** A second tactic (which has primarily been used by firms that have migrated away from an insurance defense practice) is to involve themselves in mass tort and other forms of multi-party litigation. Firms that have been successful in landing clients with major litiga-

tion have been able to provide their insurance defense litigators with other forms of work. For some firms, it was asbestos and other toxic tort matters that gave them the higher rate volume (even though much of it was insured) to move away from their traditional practice. For others, particularly in the Southwest, it was the fail-

**A** firm's reputation is often based on its lowest common denominator rather than its highest.

ing savings and loan work in the late 1980s representing federal agencies (FSLIC, FDIC, RTS, et al). For still others, it was the opportunity to gain work as a national or regional coordinating counsel for products manufacturers. Whatever the opportunity, some firms were able to use large volume cases to convert their practices.

**DEFLECTIONS.** A third common route by which firms have moved away from a commodity emphasis has been the attrition of their lawyers with the least profitable practices. Although counter-intuitive, this sometimes occurs in mixed practice firms because, regardless of the type of compensation system, over time, partners with practices generating higher gross revenues on a per lawyer basis tend to be paid increasingly higher compensation. As a result, a gap in pay occurs between partners with full rate practices and those with commodity practices. Even though this difference may be justified, it becomes both an economic and ego issue for the partners doing lower rate work. Since the barriers to starting a new law firm or moving laterally to a firm

that focuses on a commodity practice are not high, leaving can be an attractive option, particularly if a group of lawyers has the promise of business from a number of clients whose attachment to the lawyers is stronger than the firm. While these departures may have been traumatic for everyone involved, in retrospect they were quite successful, with the departing lawyers being able to operate more profitably with a lower overhead cost, and the remainder of the original firm being able to dramatically increase its average revenue per attorney literally overnight.

It is unlikely that any firm would or could strategically plot a wholesale change away from insurance defense using one of the above scenarios. For most firms, these were historic anomalies. But they do demonstrate that firms can change their image, operations, and profitability.

#### **Strategy 2: Establish a Subsidiary**

**F**or some law firms it is extremely difficult to maintain a mixture of commodity work with other types of law practice. Attempting to operate side-by-side practices with dramatically different forms and levels of profitability constrains both sides of the firm from achieving their objectives. The business lawyers, whose practices spin off commercial litigation, complain that insurance defense and workers compensation litigators don't provide the level of responsiveness that business clients demand. They are concerned that the low priced reputation makes the firm appear less capable of performing complex transactional work. The commodity practice lawyers, on the other hand, complain that the business lawyers don't bill enough



hours and are extravagant in their expenditures for marketing.

A number of law firms have responded to these concerns by splitting the firm. One way of doing this is to make a functional division – an active and visible separation between those involved in insurance defense or consumer litigation work, and those in other practices. This often includes differentiated locations within the firm's office space, offices on different floors, or even locating in a completely separate building. The two divisions may operate differently to reflect the unique needs of each type of practice, with separate recruitment programs, different pay scales for associates, and different levels of office support. One firm went so far as to hire commodity associates as staff attorneys at starting salaries 40 percent below their partnership track counterparts, housed the staff associates in cubicles, and provided only word-processing secretarial support.

The primary difficulty with attempting to operate a firm-within-a-firm – especially if one is in effect a “second class citizen” – is that it is contrary to the culture of most law firms. Whenever one attempts to create a subdivision within a social or business unit, some level of negative results will occur. This is particularly true when the basis of the division is that one practice is seen as being more profitable, sophisticated, or intellectually demanding than the other. The most common deterioration results from commercial litigation partners “borrowing” insurance defense associates to work on a large case, and eventually the line between the two sides of the firm become blurred once again. Experience has indicated that, while a firm-within-a-firm has been tried on numerous occasions over the past 20 years, it simply does not work as a long-term operating strategy.

### Strategy 3: Reorganize as a Specialized Low Priced Firm

Some highly successful firms have embraced commodity practices and made them profitable by strategically positioning themselves in the marketplace. The core of this strategy involves having a clear understanding of the basic actions which must be taken, and iden-

**P**artners in commoditized practices seem to possess a high level of “job satisfaction”

tifying the most efficient means of completing the engagement.

Most of the actions necessary to operate as a specialized low price firm are obvious to any business observer, but they can be summarized in three simple yet powerful objectives:

1. **Specialization.** The more a firm specializes in a single area of practice (e.g., medical malpractice defense, workers compensation, residential real estate closings, slip and fall defense for mass retailers) the greater the focus and efficiency of its operations.

2. **Convergence.** The operation of the firm must, in every detail, match the needs of the practice. Office space must be what is most effective and efficient - open plan offices close to the court house probably make sense. Staffing must be appropriate to needs, including strong reliance on non-lawyers for case intake and preparation, and lawyers recruited from lower wage employers such as the prosecutor's office, insurance companies, and other commodity practice firms.

3. **Management.** Actively manage all aspects of the relationship with clients and the performance of legal work. Let the lawyers do what they like to do: go to court.

### NO EASY ANSWERS

There is a folktale about how to cook a frog. If you try to throw the frog into a pot of boiling water it will hop out and run away. But, if you put it in tepid water and then put the pot on the flame, the frog will sit peacefully in the water until it is too late to escape. For many firms, none of these strategic options may appear attractive. Because the

impact of commodity practices in a full service firm increases incrementally, maintaining status quo is, of course, always the most attractive option. Some firms will address the issues strategically, others will not.

One final issue – many firms attempt to deal with these issues in secret, often without involving the affected lawyers who work in the commodity areas. In every firm that has successfully dealt with a low rate or inconsistent practice, the success has been based on open communication among all of the lawyers involved and a clear recognition and understanding of everyone's objectives and best interests.



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# MANAGING FINANCIAL PERFORMANCE IN LAW FIRMS



## A practical guide to achieving superior performance

Many partners are as uninterested in the day-to-day management of their firm as they are unwilling to be managed by others. While this in turn creates a gap between the managers and those being managed, it is generally true that the more successful a firm is, the narrower the gap has become.





**I**t has been wisely said that the best way of managing people is one at a time; but, however focused, charismatic or financially literate the managing partner might be, he cannot be everywhere at once. In order to achieve performance and manage towards targets, therefore, the task of management must be spread throughout the firm so that all partners have some role and share of responsibility for the people in their teams, groups and departments.

To accomplish this, we suggest that well-managed firms, regardless of size, should follow six general steps:

### Step 1: **ENGAGEMENT OF PARTNERS**

**C**onsiderable effort should be spent to ensure that partners not only understand their roles but actively engage in the management effort, and there are at least four ways in which they can achieve this.

First, they should understand and accept the links between quality of work and practice profitability.

Partners take pride in the quality of their work and are understandably more responsive to issues of technical excellence than to the achievement of financial targets. This consequently helps to explain the widespread reluctance of partners to invoice their clients. One of the probable reasons why partners in law firms seem to hate billing is that they are often far from confident that their bills will be properly understood by the clients. Other reasons can be connected with the lawyers' failure to manage their clients' expectations adequately. As one law firm partner told me recently, "I used to hate

#### BOX 1

### WHY LAWYERS HATE TALKING TO CLIENTS ABOUT MONEY

- The clients may "gag" on the level of estimate
- The invoice may not match previously given estimates
- The lawyer may only have given an hourly rate and is nervous that the number of hours worked on the matter may come as a nasty shock
- The lawyer worries that the client may not feel that value is being added
- The lawyer is concerned whether anything substantive has been achieved by the amount of work done
- The lawyer thinks the client may not be pleased with the quality of the work

talking to my clients about money. But it's something you have to do. Not only does it get easier, the more you do it, but it makes billing and cash collections easier too."

Common problem areas (see Box 1) often involve issues of consistency and perception. The positive lessons here are that careful attention to such issues will reduce the likelihood of

professional indemnity claims and bad debts, and result in happier clients, improved work and greater profitability.

Second, partners should fully accept that progressive personnel practices drive improved business performance. Firms ultimately profit from concentrated and sustained efforts to recruit, develop and retain the best people and one decisive competitive edge depends entirely on the quality of the people in the business.

Third, partners should, regardless of preference or prejudice, try to understand the financial aspects and issues of their firm.

We have found that the better partners understand the financial issues, the better firms will perform. Yet, lawyers often seem scared to admit that they do not understand some of the more basic accounting principles, such as the relationship between working capital controls on the one hand and an expanding fee-base on the other.

I spoke to one managing partner of a large UK law firm which had recently won an award for its successful working capital management. He clearly attributed his success to training and development of partners so that they understood the importance of sound financial management.

**We have found that the better Partners can come to understand the financial issues, the better firms will perform.**

A sense of real financial ownership by partners can only be achieved by assisting them to a greater understanding of the financial foundations of their practice. Financial workshops, training, and team meetings can help a great deal. But our own experience is that the best way of training is on a one-to-one basis. Regular meetings should occur between each partner and the managing partner, the practice area

head and the finance director, with the focus here being on patient coaching and support (see the suggestions in Box 2).

## BOX 2

### SUGGESTIONS FOR COACHING PARTNERS ON FINANCIAL REALITIES

- Patient training and coaching on financial realities (stripped down to an individual level) including break-even, operational margins, and direct overheads
- Dialogue and negotiation to agree on achievable but expanding team and individual financial targets, both long-term and short-term
- Early identification of issues of underperformance
- The constant challenging and removal of excuses for sins of commission and omission
- As a last resort, consider two weapons of last resort
  - “Name and shame” for consistent offenders
  - The withholding of partner current account balances either on an individual or on a team/firm basis

Fourth, emphasise how the balance sheet can be strengthened without the need for extra capital calls.

While most partners realize that the best way to strengthen a balance sheet is

through accelerated profits, many are puzzled to be told, on gaining a material piece of new business that they have just increased the firm’s working capital requirement. Even in the best run law firms, the extra working capital required can be approximately one third of the annual fee revenue of the new work. This is because the work in progress and the bills delivered but unpaid both have to be funded. In poorly managed firms this lock-up of cash can of course be painfully high. This in turn can drive up the firm’s borrowing needs and in growing businesses, the appetite for funding further expands. There is clearly a limit, though, to the extent to which law firms can or should borrow money. However, obviously the only way of keeping borrowings under control in any business is to generate more cash internally.

We suggest therefore that managing partners should focus on the following essential points:

- ☉ **Ensure that the breakeven point rises at a slower rate than the increase in fee income**
- ☉ **Improve fee rates wherever practical**
- ☉ **Dump unprofitable work**
- ☉ **Shorten billing and cash collection cycles where possible (and discounting for early payment?)**
- ☉ **Manage partners’ expectations for cash draw-downs so that sufficient profits remain in the business to improve the gearing**

### Step 2: FIRM-WIDE AGREEMENT ON RULES AND DISCIPLINES

Law firms – with a few notable exceptions – lack rigour and discipline in the way they manage their finances. The partnership model, where equality of ownership can also create an equal confusion about member roles, can be partly to blame for this.


In response, some firms have found that a clear set of partnership rules or definitions leads in turn to greater rigour and accountability and that superior financial performance subsequently follows.


Partnership rules tend to vary enormously from firm to firm. The small firm can, through sheer sense of partner collegiality, achieve its own systems of ad hoc responsibility. The larger firms, however, need some form of corporate discipline in place before implementation and action can happen. The mid-size firms often struggle as a result, proving too big for effective collegiality, but also unwilling to sacrifice partner autonomies on the altar of corporate discipline.

Whatever the firm, the issue of accountability is therefore critical to success and, as with many professional partnerships, there are substantial structural and cultural barriers.

- ☉ **Partners are frequently obstinate and obstruct or ignore attempts to persuade them to manage their people or to accept management disciplines themselves. In extreme cases, they will agree to actions which they never have any intention of carrying out.**
- ☉ **Other partners are arrogant and fail to see why, as proprietors, they should be accountable to anyone.**



 **Partners focus on their chargeable work, and (sometimes vital) non-chargeable activities suffer accordingly.**

 **Partners tend to want to interfere with (or have the right to veto) management decisions.**

In order to overcome these barriers, it is well worth persevering with efforts to agree to some essential disciplines and accountabilities. Real agreement, with heart and head, is needed among partners to establish the right level of management intervention into each others' activities. At the same time, concerted efforts should be made to ratchet up partner ambition and performance. Here, also, a change of management approach is necessary in order to develop a new sense of urgency, responsible ownership, and acceptance of methods and improvements.

Proper accountability simply does not happen unless a clean, new environment has been created. There need to be trade-offs between the freedom of each partner to act on the one hand, and the creation of a set of enforceable rules on the other hand to which he or she will submit. It is vital to foster the entrepreneurial partner spirit without foregoing essential structures and disciplines. More importantly, there has to be an agreement on the amount of time each partner diverts from chargeable work to investment time. Partners need to achieve a healthy balance between profits in the short term and longer term objectives and create an environment where partners feel safe to do that. It is the job of senior management to communicate the firm's strategy and what a particular partner or practice group has agreed to do in order to help this strategy. These ratios between short-term profits and medium- to long-term

investments need to be managed as aggressively and conscientiously as billable time.

### **Step 3: DETERMINE THE CLIENTS' PRICE SENSITIVITY WITH RESPECT TO THE ENGAGEMENT**

**M**onitoring financial performance requires consistent and regular attention and the best managed firms constantly coach and cajole to this end. This – like consuming a salami sausage – is best achieved in small and frequent bites rather than in huge and indigestible gulps. We know from basic time management techniques that frequent and moderate interventions are better than occasional large bursts of effort. Therefore, those charged with the overall financial management of the firm should hold regular meetings with the partners who report to them and this behavior should be cascaded through the firm. The managing partner or finance director might, for instance, meet weekly or monthly with the department heads to review the overall performance of each department. Each head might then have a similar meeting with those partners with team responsibilities who can then meet with team individuals in turn. The structure of each meeting should be – as far as possible – on a one-to-one basis. The focus is on actual performance against the key performance indicators (KPIs) as well as historical data. Most important of all, action lists should be created at each meeting level with objectives, tasks, due dates and activities set out in measurable (S.M.A.R.T.) form.

### **Step 4: PERSISTENT FOLLOW-UP**

**H**aving scheduled regular meetings, managing partners can then activate appropriate follow-ups in between. Since many

partners find it easier to make a promise than to keep it, it is vital to keep an adequate written record of what has been agreed. Similarly, the management of expectations is critical. The manager must take every opportunity to let his people know that he is “on the case” and that their promises have not been forgotten.

By such means, management can occur without anyone really realizing it.

Consequently, extreme measures are rarely needed and should be used only as a final resort – particularly the naming and shaming of consistent recidivists, or even withholding cash drawings from serial rule breakers. (Some very successful firms actually keep their timekeeper honest by “fining” late submissions of time at month end!) For efficient and persistent follow-up, it is important to lighten partners' loads by supplying timely performance data, regular management accounts and user-friendly financial information.

### **Step 5: PROVIDING FINANCIAL INFORMATION IN A WAY THAT IS USEFUL TO PARTNERS**

**W**ell managed firms don't just overload partners with numbers and tables but, like well-designed dashboards, should provide current, not botched month-old information. Properly informed partners should only have to spend minimal time on administration or managing the most critical issues. A list of debtors, for example, which is several weeks old, is worse than useless for a collections review. Timely headline information allows partners to

speedily address problem areas or anticipate issues before they become problems. As each law firm will have slightly different needs in this regard, the responsible partners should also be trained or assisted in interpreting the specific performance data which they are given.

#### Step 6: CONFRONTING UNDERPERFORMANCE EARLY

Providing information in a way that partners understand does away with one more excuse for non-performance. There should then be less room for the serial underperformer in any law firm which prides itself on its quality and standards. Nevertheless, the consistent underperformer should be given the opportunity to reform and develop and should be given all possible assistance and encouragement by way of training, coaching and support. Indeed, we have found that in most

#### BOX 3

#### INTENSIVE CARE FOR UNDERPERFORMERS

- Coaching and individual training/counselling/mentoring
- Concentrated work with the other partners on the immediate team
- Peer pressure
- Skills training in relevant areas
  - Workload and time management
  - Financial management
  - People management
  - Legal skills
  - Marketing and business development

every opportunity has been given for specific improvement to occur. It is vital for a program and timetable to be agreed for and with the underperforming individual, who must feel safe from attack for the period, and must become fully aware of what needs to be done to improve. A partner might be appointed to shepherd the underperformer, and the person who has this responsibility should frequently follow up. Such intensive care programs should be grounded in the firm's partner development criteria and balanced scorecards. All partners need to understand what is expected of them and to identify the standards of behavior and performance below which they must not fall.

Some firms have carefully designed support programs for underperformers which include elements set out in Box 3.

The history of many law firms is littered with failed or incomplete initiatives and with tearaway maverick working practices. These six steps are designed to be practical and to provide a framework for ongoing and effective management and they have helped many managing partners, senior managers and department heads to address the stubborn problems of under-performance and under-management in their firms. But, just as they call for discipline and accountability from partners, the measures that we recommend also need great discipline and determination on the part of the managing partner to introduce them and to see them through to their successful and profitable completion.

*The history of many law firms is just littered with failed or half-way completed initiatives, and maverick working practices which have not been confronted.*

partnerships, there is a deep-rooted reluctance to vote for an expulsion (even in extreme cases). To address this, partners need to be satisfied that



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by Robert Millard, **EDGE** INTERNATIONAL

# DEALING WITH BLIND SPOTS

**B**lind spots are a serious cause of flaws in the process of strategic decision making, caused by bias and misinterpretation. Often, they go completely unnoticed.


Strategic industry and competitive analysis models rely on rational and objective behavior. They almost completely ignore the mental filters through which individuals process information. This often results in the decisions made being flawed, perhaps fatally, without the firm even knowing it.


First highlighted by Michael Porter, blind spots manifest themselves in three ways:

1. The firm may be completely unaware of strategically important developments, in their market or inside the firm itself.
2. The firm may interpret strategically important developments incorrectly.
3. The firm may interpret the strategically important developments correctly, but too slowly to allow for a timely response.


It follows that identifying and removing blind spots is a critical skill in effective strategic decision-making.


## THERE ARE SIX PRIMARY SOURCES OF BLIND SPOTS:

 **Invalid Assumptions**—These are assumptions that the firm assumes to be correct, but are not. They may be beliefs about factual matters that are unchallenged, or they may be less tangible. Examples of the latter are corporate myths and taboos woven into the culture of the firm. These influence decisions and the way things are done, but have no basis in fact or logic. Different professions each view strategy from a perspective that is indelibly colored by assumptions inherent to that profession. Lawyers, for instance, may be highly averse to risk; accountants may try to be overly precise. Some design professionals may err on the other extreme.


 **Winners Curse**—It is a common phenomenon at auctions for people to pay too much. The same often


applies in business acquisitions or other issues of strategy such as geographic expansion, increasing market share or entry to new areas of business. The same “must have” emotion and desire for instant gratification can cause strategists to overestimate the assumed benefits, especially in the long term. This is particularly true where some emotions or irrational competitiveness cloud the true value of something to the firm.

 **Escalating Commitment**—This form of bias appears when something does not meet expectations, but professional pride, fear of accountability or peer esteem prevents its proponents from admitting that it is a mistake. Instead of cutting losses and exiting, or amending the strategy, they escalate resource allocation in the hope that this will solve the problem. Examples might include a new branch office that is proving unprofitable or an IT investment that is not meeting expectations. Another variation on this blind spot is when a deal gets a “life of its own” and the focus shifts inappropriately to finalizing the deal rather than whether it is still in the firm’s best interests. This is a very common problem in business, and is particularly prevalent in mergers and acquisitions where people get so caught up in negotiating the deal and sorting out the problems that inevitably arise, that they either miss or deliberately downplay “deal-killers” that emerge in the belief that all can be sorted out later.

 **Constrained Perspective**—This bias results from irrational behavior towards risk. It explains why people often fixate on risk generally rather than relative to the potential reward, and the tendency to prefer to avoid losses rather than achieve gains. (There is a great deal of research that shows that people are far more likely to accept risk when it involves avoiding something bad, than when it involves a benefit. The intensity of this phenomenon varies from society to society and most certainly from profession to profession too.) Constrained perspectives also arise where

the focus is excessively internal, downplaying the likely reaction of competitors and clients. Often, this is a result of overconfidence (see next bullet) and the lack of accurate competitive intelligence.

 **Overconfidence**—It is natural and obviously desirable for leaders in the firm to be confident in their own abilities and skill. Overconfidence leads to blind spots, though, without such leaders even necessarily being aware of it. It is especially dangerous for a leader who uses shortcuts to keep focus on action in a complex and challenging everyday environment, to make superficial judgments in strategic decision making too. Overconfidence is particularly dangerous in strongly “driver-type” personalities and when coupled with other kinds of blind spots.

 **Information Filtering**—This is the phenomenon where raw data is filtered as it passes through the organization, so that by the time it reaches decision makers it is fundamentally different. The more levels of authority data has to pass through, the more severe this problem. It is particularly important for strategists to get the information on which they base their decision from sources that are untainted. Relying on information from those who have a motive to interpret it in a particular way is a common cause of blind spots.

## REDUCING BLIND SPOTS

By definition, blind spots are difficult to find. There are a few basic tests or questions that can be asked and applied to determine how susceptible the firm is to blind spots, and assess the extent to which these are impacting on competitive intelligence and strategic decision making.



**1. How knowledgeable is the firm REALLY about its environment externally (clients, competitors, market) and internally (capabilities, limitations, potential)?**

**2. Is there an active competitive intelligence program and does the firm benchmark itself regularly?**

**3. Does the firm actively include contingency planning in its strategies, to allow for a range of possible competitor and market reactions?**

**4. Does the firm actively engage in competitor analysis?**

**5. Does the firm have a culture where questioning of assumptions is openly encouraged and supported and mistakes made in good faith are not punished?**

If the answer to most or all of the above is "yes," then there is a good likelihood that the firm's "gut feel" about its environment is relatively accurate. (Ironically, highly successful firms often fail this test because their success encourages the belief that they know everything.)

If there are several "no's," then further digging is required. To do this, a "challenger" needs to be appointed who will have unconditional access to people and strategic processes and has visible and unequivocal top management support. Because of the nature of the task, the person is often an outsider. In any event, it needs to be a person that is capable of thinking highly laterally and having the assertiveness to press a line of questioning that is required, without alienating people.

As a first step, the task of the challenger is to assess the answers to the questions listed above, particularly at top management level.

*In almost all cases, this importance / availability matrix will reveal serious gaps between the competitive intelligence that is available, and what is required.*

Once this has been completed, the second step is to select a specific, significant strategic decision that needs to be made. Then follows the following four step process:

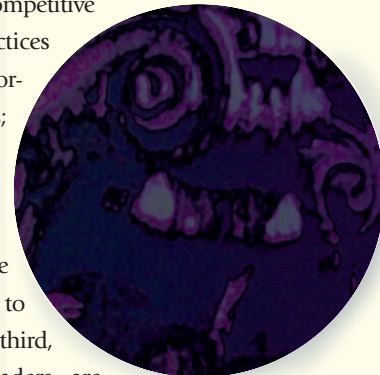
- 1. Interview experts inside and, as appropriate, outside the firm, to identify the information and the analysis that is required to make the best decision possible.**
- 2. Identify the critical decision makers and key implementers of the action that will follow.**
- 3. Ask each identified decision maker and implementer to rank each item of information or analytical requirement on the basis of (a) importance and (b) availability of accurate, relevant and timely intelligence.**
- 4. Average the rankings across the group to determine those items or requirements where competitive intelligence is both important and only marginally available.**

In almost all cases, this importance / availability matrix will reveal serious gaps

between the competitive intelligence that is available, and what is required. Even where the competitive intelligence is adequate, though, decision makers may be flawed in how they translate these insights into action.

Essentially, then, the process of reducing blind spots has three specific facets. First: developing a culture of strategic challenge by pay-

ing attention to competitive intelligence practices and the strategy formulation process; second, by determining where gaps exist and where competitive intelligence needs to be bolstered; and third, ensuring that leaders are aware of the pitfalls so that they can guard against them personally.



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INTELLECTUAL CAPITAL

IC



# MANAGING THE LAW FIRM'S BALANCE SHEET FOR FUTURE PROFIT:

## FINANCIAL MANAGEMENT AND INTELLECTUAL CAPITAL

**M**OST LAW FIRMS ARE RUN BY THE NUMBERS: THIS YEAR'S NUMBERS. AFTER ALL, "AT THE END OF THE YEAR, MY PPP MUST BE BIGGER THAN YOUR PPP." WHILE THIS MEASURE IS FINE FOR REPORTING TO THE LEGAL PRESS, CURRENT YEAR PROFIT PER PARTNER IS A POOR MANAGEMENT TOOL. THIS IS BECAUSE PPP IS NO INDICATION OF WHETHER THE FIRM CAN SUSTAIN ITS PROFITS LONG-TERM, JUST AS CURRENT YEAR EARNINGS PER SHARE ARE NO INDICATION OF FUTURE PROFITABILITY FOR A PUBLICLY-HELD COMPANY. FUTURE PROFITS COME FROM THE MANAGEMENT OF INVESTED RESOURCES, AND THE MOST SIGNIFICANT INVESTED RESOURCE IN A LAW FIRM IS ITS INTELLECTUAL CAPITAL (IC).

**S**ince intellectual capital does not appear on a balance sheet (and profits on it do not clearly appear as a part of PPP), IC is often managed poorly – if at all. Because IC is intangible, finance directors and managing partners view it with suspicion. We suggest that this suspicion is misplaced and outdated. Like it or not, law firms are managed more and more like businesses. In particular in Europe, a firm's ability to manage its intellectual capital effectively will soon be at the top of every managing partner's mind. When the Clementi reforms take effect in the United Kingdom (anticipated in 2008) and eventually across Europe, non-lawyers will be allowed to own or invest in law firms. Law firms will be able to attract venture capital and private equity investments. Invariably, financial investors will be keen to invest first in those firms that manage their resources

best – and a firm's primary resource is its intellectual capital. In the meantime, the wisest firms will seek to increase PPP by managing IC using financial and non-financial indicators. In this article, we explain how to do this.

**The wisest firms will seek to increase PPP in the short-term by managing intellectual capital for the long-term using financial and non-financial indicators.**

## FOCUSING ON CURRENT YEAR PPP ENCOURAGES BAD INVESTMENTS

The short-term focus on PPP has three main reasons. First, partners are interested in the profit draws of the current financial year. Long-term investments are minimized as much as possible to maximize cash draws. Second, most partners have invested little or no financial capital into the firm. Even if there is a significant capital contribution, this amount often is financed and forgotten about; only few partners see their partnership capital account as a retirement vehicle. Third, and perhaps most important, most firms still price services by the hour. This pricing method does not provide any incentive for a firm to manage the effectiveness and efficiency of service delivery: the more efficient it becomes, the fewer chargeable hours it spends and, all other things remaining equal, the lower the firm's profits.

This short-term focus has caused law firms to become fairly good at managing utilization, effective rates, realization, margins and all of the other ways of increasing current year PPP. This short-term orientation works well if the firm always manages to charge by the hour and never has to succumb to market pressure. Unfortunately, every service eventually becomes a commodity; just think of insurance defense and real estate conveyance work. In financial centers, clients and investment banks almost always impose a cap on fees for initial public offerings and private equity due diligence work. As soon as work becomes more commoditized, a law firm realizes that at least some investments are necessary to remain competitive. Knowledge management systems are spawned, formal associate development programs are instituted and blueprints for client service programs are prepared. But still, firms focus on controlling current year's costs and not on wisely implementing these programs in order to strategically secure and increase long-term profitability. When a firm misapplies financial resources and profession-

al time on these investments, it is unable to achieve any visible return, let alone the highest possible return.

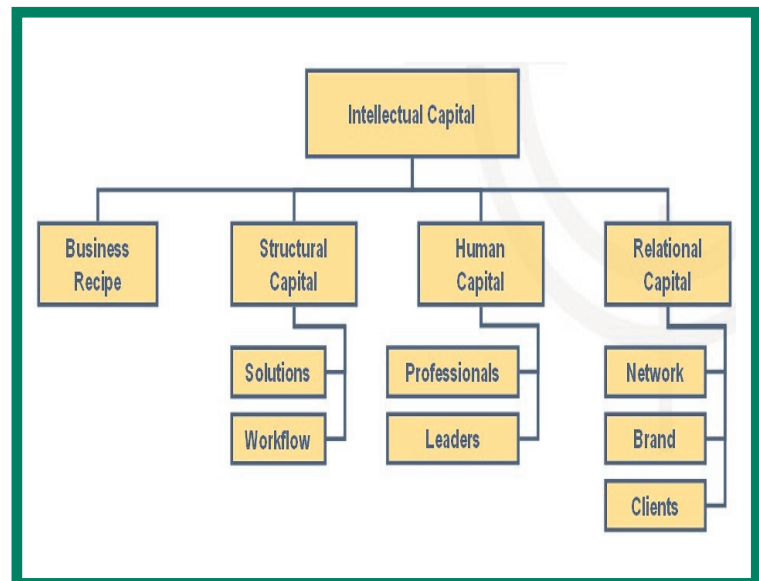
## INTELLECTUAL CAPITAL AS THE SINGLE MOST IMPORTANT SOURCE OF TOMORROW'S PROFITS

The financial markets recognize that only companies that are able to harness and manage innovation and technology can compete in the marketplace long-term. Key ratios used by investors are moving away from comparing market-capitalization-to-tangible-book-value and towards intangible values, recognizing that a company's intellectual assets provide the primary competitive advantage in a knowledge-based economy. The increase in importance of intellectual capital (being equal to market value less tangible book value) is, indeed, extraordinary: in 1929, 70% of a company's market price was made up by its tangible book value, in 1970 it was 50% and today it is around 20%. Businesses are working hard to harness intellectual capital and maximize their return from investments in IC. The long-term success of a law firm – which does not have many hard assets – depends even more on how well it harnesses, creates, maintains and maximizes its single most important source of future profits.

Yet, most law firms manage their intellectual capital only at the most rudimentary levels because it is difficult to manage it by the numbers. Indeed, when looking at any law firm's balance sheet, we see cash, accounts receivable, work in progress, equipment and maybe leasehold improvements as the most significant financial items; the law firm's intellectual capital

does not appear on the firm's financial accounting balance sheet. While one can argue that this is appropriate given the external financial reporting function of the balance sheet, for internal management purposes it is negligent to exclude intellectual capital from financial management just because the firm's IC does not meet certain conditions imposed by accounting principles designed for external reporting purposes.

In the law firm context, intellectual capital can be broken down into three categories: Human Capital, Structural Capital and Relational Capital. How each is nurtured and combined for the success of the firm is the firm's Business Recipe, as follows:



We believe that it is the task of the law firm's finance director to help the managing partner devise financial and non-financial performance indicators that allow the firm to manage its intellectual capital along these three categories. With effort, the managing partner and the firm can maximize and utilize the IC needed to execute the firm's strategy.

## FINANCIAL MANAGEMENT OF STRUCTURAL CAPITAL

Structural Capital consists of work flow and processes on the one hand, and solutions and innovation on the other. Investment in



Structural Capital has three measurable benefits: First, on the asset side of the equation, these initiatives are a significant differentiating factor to the clients and are powerful tools to implement the firm's strategy. Second, on the PPP side of the equation, streamlined solutions enable day-to-day engagements to become less dependent on individuals, reducing partner fear of delegation and increasing utilization. Third, and perhaps most important, innovative solutions, especially those co-developed with clients, generally allow the highest margins – not only because no one else will have this particular solution but also because the client's financial and non-financial costs of switching to another firm have just skyrocketed. This understanding of Structural Capital reaches far beyond most firms' understanding of know-how management.

Key performance indicators for Structural Capital often will be non-financial in nature; some very simple financial indicators include the following:

***Cost value of time expended on new solutions and return on new solutions.***

Tracking cost value of time expended on new solutions allows the firm to track how these costs develop over time (i.e. if sufficient time is spent on such initiatives) and to measure a return on those costs in terms of both time saved and profits derived from new matters that make use of these new solutions.

***Ongoing training costs, expressed as cost per existing partners, associates and staff.***

Many firms distinguish among training costs in nonsense ways that only satisfy the curiosity of a misguided head of professional development (one example accounts by "books, DVDs, external trainers, continuing legal education, dues and memberships, travel and other"); more useful would be tracking costs by groups of fee earners, practice groups and even client programs. In addition, the benefit of managing costs of time is clear: a decreased

cost per class of fee earner or per practice group highlights potential underdevelopment.

***Financial management of Human Capital***

Any firm will argue that its most important assets are its people, thinking about the capacity of partners, associates and paralegals to produce billable time. However, it is equally important for partners and professionals to be capable of managing engagements, people, teams, departments and other groups (at varying levels of degree). The firms that have understood this look beyond the fee-earning capabilities and see management staff not as overhead but as one resource of a productive enterprise.

Human capital often is managed by non-financial indicators, such as average absenteeism, number of applicants for lateral partnership or employment with the firm, employee satisfaction, average number of engagements led per senior associate and the like. Managing partners for whom these indicators appear too soft may consider the financial indicators that view Human Capital as an asset first and an expense second.

***Partner and employee turnover by headcount and by cost.***

Turnover costs include at least recruiting costs, termination expenses, costs of client retention efforts; some firms also include the costs of initial under-productivity associated with lateral hires (both at the partner and associate level). Measuring turn-over costs by qualification and practice area allows the firm to view the developing demographics of the firm and facilitates intelligent hiring decisions that match trends in the market by practice area.

***Days in recovering recruiting costs.***

Recruiting costs can be measured in terms of days required to recover a fee earner's recruiting costs. The shorter the number of days, the better the firm's processes for training laterals and

business case procedures for hiring laterals. Our informal research across the clients we have worked with shows that an associate on average requires as much as eleven months before his recruiting and direct costs are recovered in cash terms by fee earning activities, i.e. before a lateral becomes profitable on a net cash basis.

***Cost data by demographics.***

Most US firms generally keep demographic data. Collection of cost data related to hiring, retention and turnover across age, gender, law schools and other aspects of people's backgrounds can yield helpful insights about where the firm may wish to focus its future human development efforts. Of course, the benefit of maintaining these data should be balanced against potential litigation risk associated with managing based on these data.

**FINANCIAL MANAGEMENT OF RELATIONAL CAPITAL**

Relational Capital is made up of a number of factors, but the most important are the firm's client base, its brand and its network. A client's willingness to retain a law firm (or individuals who practice as part of the firm) is at the heart of every firm today, and retaining clients in an age where partners are willing to leave the firm for better PPP elsewhere is at the top of the mind of most managing partners.

Client loyalty indexes, average time spent on client relations, number of visits to clients and brand awareness are all valid non-financial key performance indicators by which a firm could manage its Relational Capital. The most advanced firms will find a way to estimate market share (i.e. the total legal spending in their market and their slice of it). These firms are few and far between, in part because they do not want to expend the effort of benchmarking themselves against their competitors.

Key financial performance indicators for

the management of Relational Capital in a law firm include:

***Return on client relations costs per existing client, per potential client, per industry and per practice area.***

Most firms have just one gigantic line item for Relational Capital: "marketing expense," broken down by useless categories, such as "printing & advertising, website management, promotional materials, sponsorships, outside consulting and other." While these are nice-to-knows for cost control, they are not very useful for managing Relational Capital. The trick here is not just to focus on costs incurred: what matters is the effect that these investments have on long-term client potential. For management purposes, a firm might capitalize all client relations costs and amortize them over a three year period; the balance represents the denominator, and the numerator represents profits earned from that client.

#### ***Cost of client turn-over.***

Client turnover is a non-financial measure and is fairly easy to measure (number of clients that have not used the firm's services during the year divided by total number of clients). However, the costs of client turnover are somewhat more difficult to measure, simply because the opportunity cost (the amount of revenue this client would have generated) is difficult to ascertain. For the largest clients, competitive and market share information helps: How many deals did they do with us last year compared to the total number of deals they did, and how many deals did they do this year?

#### **FINANCIAL MANAGEMENT RELATED TO THE FIRM'S INTELLECTUAL CAPITAL**

In order to maximize their competitiveness, law firms must manage their intellectual capital as rigorously as their PPP by

***The long-term success of a law firm – which does not have many hard assets – depends even more on how well it harnesses, creates, maintains and maximizes its single most importance source of future profits.***

(a) investing in the firm's IC in a way that supports the firm's strategy and (b) using financial and non-financial indicators to manage that intellectual capital. Yet, all of the above seems somewhat distant from the traditional view of financial management in a law firm. What we have described above is a methodology for managing the balance sheet side of the business which should be firmly tied into the firm's other management systems. If the balance sheet is managed well through the firm's intellectual capital, PPP will reflect the results of that management in the short-term as well as in the long-term.

This will require firm management to look beyond the firm's traditional financial statements and will require the financial management function to be refocused so that it can manage the law firm's intangibles as well as its tangibles. In order to do that, financial directors and managing partners alike must leave behind their old accounting and controlling legacy and anticipate how the firm's strategy translates into requirements for Structural, Human and Relational Capital. They must look beyond the yearly cycle of satisfying profit-hungry partners and build an institution that works irrespective of its current partnership composition. They must manage and unite the functions of professional, knowledge and business development (or training, know-how and marketing) in a constant effort to optimize the firm's business recipe.

One key to success will be to institutionalize Human and Relational Capital – those types of intellectual capital over which law firms have the least control – into Structural Capital and develop key performance indicators, both financial and non-financial, that are right for a particular firm against

the background of the strategic goals of the firm. This can occur only if data related to the firm's investments in intellectual capital are captured and measured in the right way and are tied to the partners' performance as well as their compensation.



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**Friedrich Blase**

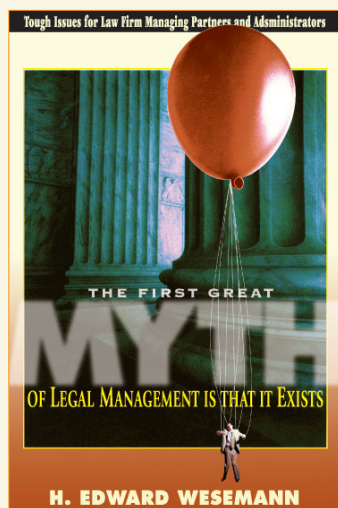
*is also a Principal with EDGE INTERNATIONAL and works from both Toronto, Canada and Frankfurt, Germany. His core competencies are transformation and change processes in law firm governance and management.*



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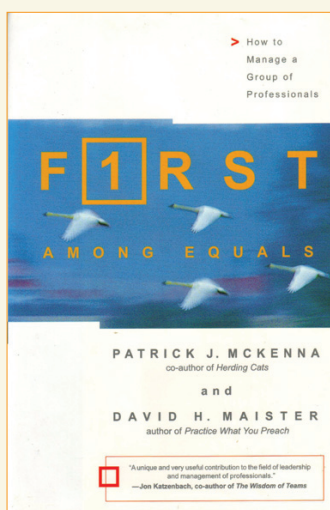
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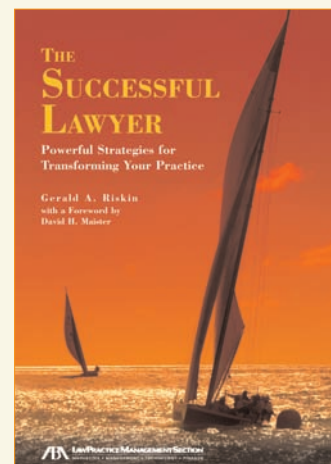
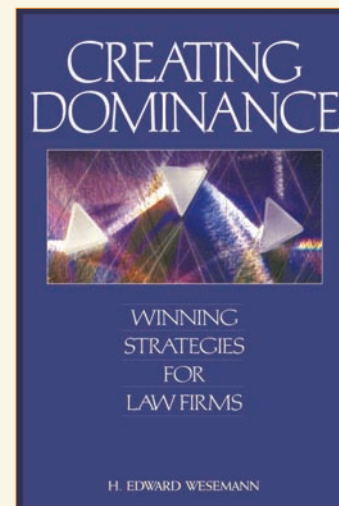
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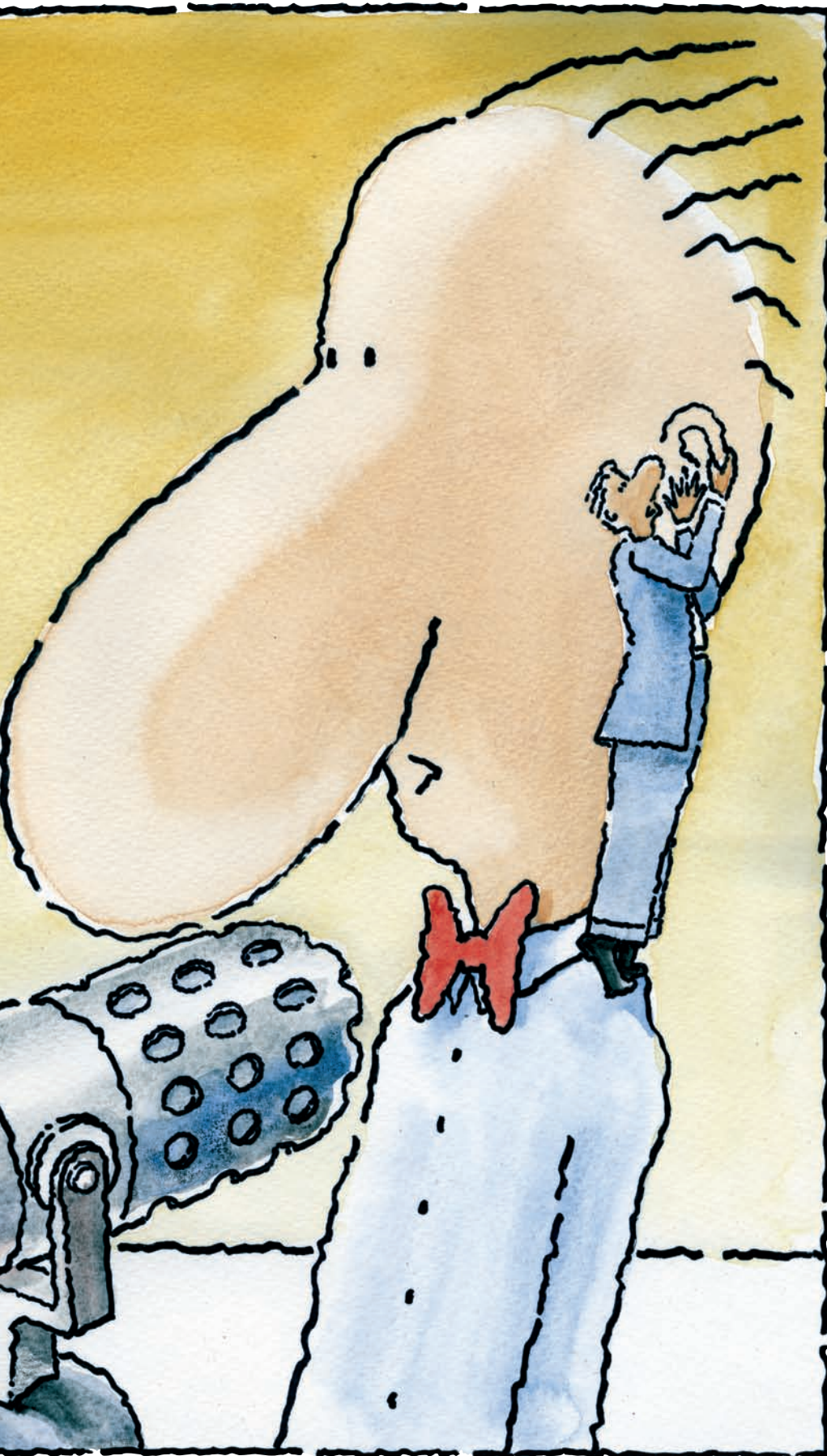
**GET YOUR  
CLIENTS TO  
DO YOUR  
TALKING**

# COMPELLING TESTIMONIALS

It's hard to deny: clients today are particularly skeptical. So, one of the most difficult challenges that each of us as professionals face, is coming up with a convincing response to one critical question: "As a prospective client, tell me please, why should I choose you (your firm or your practice group); what makes you distinctive and what added-value do you bring to my business matters . . . that I cannot get anywhere else?"







**N**ow, you might be able to answer that question with a bold assertion, and making a bold claim may be important to get your audience's attention. However, supporting that claim is even more critical if you want to convert attention into action. To support any assertion, proof speaks the loudest. So, when you say something about yourself, it's bragging. When other people say it about you, it's providing proof. That is the essence of any testimonial. One of the ways to prove that you have something meaningful to offer and evidence that you are better than your competition is to produce a few forceful and persuasive testimonials.

A testimonial is usually a written communication from a client that talks about what is special about you and your firm. Preferably a testimonial should describe the work undertaken, highlighting the success achieved, and include a comment that the client is happy to recommend you. The power of a testimonial or of someone endorsing your service can be the key that unlocks the doors of the subconscious mind. It is tangible evidence that allows you to showcase the specific ways you are meaningfully differentiated from competitors.

Testimonials can be used to say things about your firm and your services that you could never say yourself; but most importantly they should:

**EVIDENCE SUCCESS** — Clients want to work with those firms who have a track-record for producing results — "Smart & Smarter guided us through all of the pitfalls involved in outsourcing our manufacturing operations and helped us save over \$7 million in operating costs in the first year." Ask yourself: Do any of your current client testimonials make you want to do business with your firm?

**BUILD TRUST** — When a prospective client reads a testimonial about how you and your firm are a leader in their particular industry niche or always go the extra mile to provide exceptional service, the commentary is more likely to be seen as objective feedback, and oftentimes viewed as more trustworthy. Do you think that your current client testimonials resonate with prospects and give them the confidence to trust you?

**PROVIDE CREDIBILITY** — Your potential clients, especially the Fortune 500, want reassurance that you have served companies of their stature, or in their industry, or with their particular problem and therefore understand their mission-critical issues. Third-party objective endorsements are usually much more believable and credible than paid advertising. So, how much does your firm spend on paid advertising each year and what are your plans for obtaining compelling client testimonials?

How do you get great testimonials? Perhaps not surprisingly, the answer is the same as it is for referrals — first you have to ensure that you have earned them!

### UNDERSTAND YOUR CLIENT'S EXPECTATIONS.

**T**o have any hope of obtaining winning testimonials you must be known as a professional who performs in accordance with your client's expectations, which means that you need to invest the time to ensure that you clearly understand those expectations.

### KEEP YOUR PROMISES.

**C**lients expect a lot and they expect it when they need it. You need to be the professional who delivers everything you promised and more, on time or sooner.

### BE PROACTIVELY REMARKABLE.

**W**hen you stand out from other professionals you will be talked about. Being remarkable means going the extra mile and making service the forefront of your offering, not an add-on. Help your clients learn and grow. Don't just solve their current problem, help them anticipate and avoid future problems.

**A**sk yourself: *Do any of your current client testimonials make you want to do business with your firm?*

### PROVIDE ENORMOUS BENEFIT.

**H**elp your client save money, time or anything else of value to them. Help them increase or improve efficiency, throughput, or control. That is how a benefit is described. Benefits help people save, reduce, control and decrease costs or expenses. Benefits help people increase, improve, enhance or gain money, efficiency or time.

### GET BUSINESS FOR THEM.

**W**hile not always possible, this is the most valuable thing you can do to secure loyal relationships and testimonials. Figure out a way introduce your client to important contacts, find them networking opportunities, or find some way to being the conduit to helping them get new business.

Once feeling like you truly have earned the

testimonial, you may still have to ask for them.

Before you ask, I would be willing to bet that you are already getting spontaneous testimonials. It is always amusing to see firms make a big deal out of identifying certain testimonials as "unsolicited." Unsolicited testimonials are those that arrive via email, ordinary mail, seminar feedback forms, or simply from random conversations, without any effort on your part. Think back to the last time someone sent an e-mail to thank you for some recommendation that you provided, commented on the intellectual brilliance of your latest article, or perhaps commended you for responding to their question so quickly and thoroughly.

These are testimonials in the making. If you were to simply respond—the same day – thanking them for their generous comments, and ask permission to use what they wrote, you have an unsolicited testimonial.

Have you ever been a speaker, perhaps on a panel, when someone in the audience later approached and commented to you about how much they enjoyed your insightful presentation? When someone says something you like, let him or her know you're flattered, and that what they have said would be perfect for a testimonial. Ask them if it would be okay for you to write up what they said, and send it to them for approval in the morning. And you know the old adage: strike while the iron is hot. Waiting more than a couple of days after an incident occurs significantly lowers your chances of taking advantage of this opportunity.

*Solicited* testimonials are those you consciously pursue. You might start by listing ten clients you consider your most important, high profile, or influential. In order to possess a testimonial that is powerfully persua-



sive and becomes part of your market positioning, you should try to get a testimonial from a recognized / influential commentator or expert on how you have helped address and solved a problem that is a representative of the problems experienced by your targeted client group. A persuasive testimonial will help you to tell your story and show that you know something about a specific problem, issue, market, or business.

If you want great testimonials, you have to ask for them. Most often, your clients being smart business people understand the nature of your request. Call them, tell them what you need, treat them to breakfast or lunch; and also give some thought to what you can provide them of value (an idea or lead) at the same time, to help earn your testimonial. That said, generally you won't experience difficulty in obtaining a testimonial, as you

will only be asking those clients who are deliriously happy with your work. If you feel in any way awkward about asking any client for this favor, it should be a clear signal that your relationship with them may be at risk.

You might want to consider inserting a clause in your retainer agreement that makes obtaining a testimonial a standard part of doing business with your firm: "After completing this transaction and obtaining your financing (our firm) would like to feature our work together in a testimonial." A clause like that can set an expectation, at the very beginning of a specific matter, that a testimonial will be furnished right after the project is completed.

In some situations it pays to help people write your testimonial. Perhaps they're extremely busy, perhaps a bit uncomfortable about how


to actually write a testimonial, or sensitive to not wanting to disappoint you. In these cases, you might offer to write the testimonial for them. Simply interview them about their experience with your firm; write up your notes – including all the main points they made, and use as much of their actual terminology as possible. Write two different versions to allow them to choose which they prefer. After you've drafted the two testimonials, include another section titled "I Can Do Better Than That" and leave some blank space for your client to write an original statement. If they do make any changes, it inevitably ends up being much better than what you originally wrote.

**You might want to consider inserting a clause in your retainer agreement that makes obtaining a testimonial a standard part of doing business with your firm.**

#### WHAT SHOULD YOUR TESTIMONIAL SAY?

**T**ake a moment and look at any of the written testimonials you currently have. Ask yourself objectively if they would prompt you to pick up the phone, or whether they merely communicate the same old trite message: "These are wonderful folks to work with and I have been doing business with them for years." That sounds nice but doesn't have any compelling power.

To be truly powerful and convincing, your testimonials need to articulate as many of these attributes as possible:

 **Be phrased in a way that removes a risk or neutralizes a fear.**


*"I was extremely concerned that our company would be vulnerable to significant punitive damages, but with your expert guidance we were able to take effective preventative action."*

 **Overcomes a prospect's potential objection.**

*"Initially, I thought your firm's fee quote was rather steep, but now in retrospect I have come to realize that what would have been extremely expensive is if we had retained a firm who had only limited experience with these kinds of financing deals, and wasted our precious time with us helping them learn the ropes. Your firm definitely provided us with the best value."*

 **Defines a benefit.**

*"Helping our company license our intellectual property allowed us to expand our market reach, develop three important strategic alliances, and improve our profitability by 64 percent last year."*

 **Focuses on the specifics of the professional.**

*"Jerry Ward was not only responsive to returning every call within the hour, but he managed to get his team of attorneys to work non-stop, through an entire weekend to close our deal within the tight time frames it required."*

 **Has an "act now" impact.**

*"Up until last summer we used the ABC firm for all of our tax work, but having now switched to your firm we find that we get far more proactive tax counsel and believe that every company in our industry would benefit from similar advice."*

## Reinforce your claim.

*"The extra effort put forward by members of your client team has resulted in our legal department being far more knowledgeable and able to draft the required privacy protocols for our various business units."*

Which of these testimonials engages you? "Wow, was I surprised. When we first contemplated the complexities of our first share issue, I never thought I could get my securities questions answered so quickly." or "We got our securities questions answered quickly." Wouldn't you agree that the first testimonial, because of the underlying emotion in it, actually draws the reader in more? Don't lose the 'flavor' or the emotion of your endorser. Very often, some intense feelings or the slightly quirky phrases that someone uses in writing the testimonial are the very words that will make a special connection with the reader. Don't be tempted to edit them out. Keep the testimonial in the writer's own words.

Always include a name at the bottom. When a testimonial has a name attached it's more believable. And, if it is not fabulous, don't use it. It's better to have no testimonials at all, than to use weak or unbelievable testimonials. Only use testimonials that truly support your practice objectives.

## STRATEGIC VARIATIONS

**Endorsement Letters** – This is a variation on the testimonial that deserves special mention. In this process, Firm A (the host and let's say this is an accounting firm) agrees to let your firm (the beneficiary) deliver a promotional message to Firm A's clients. You might even write the endorsement letter introducing and recommending your services to their clients. Firm A simply approves your writing and "signs" the letter. This is a very powerful and cost-effective technique, as the cost of sending an offer to each of Firm A's clients is

minimal. The beauty of this technique is that the clients of Firm A are more susceptible to hear from you since Firm A, which they already know and trust, is implicitly recommending you. To make this work, you need to look for firms that target the same type of client you seek and are not competing directly with you. Think about the various aspects of your practice and the firms that you could approach to start a profitable relationship with.

**Launching A New Practice Area** – If you're launching a new practice area or dramatically changing the focus of your existing practice, you might think about using testimonials to support your new endeavor. Perhaps to help launch your new practice you've done some substantive research and decided to present a workshop or seminar to existing and prospective clients. You can often get pre-event testimonials by forwarding your seminar notes or outline to business contacts or colleagues for review. Tap your network, ask your friends, look to your past clients. With a bit of persistence, you should be able to get several credible testimonials well in advance of presenting your seminar. Now use those testimonials to give credibility to your actual seminar offering and build trust in your presentation expertise. At the seminar itself, ensure that participants are allowed to provide written commentary at the end, especially to identify what they liked about your seminar content (what was the most valuable to them). Now use the seminar testimonials to evidence your knowledge and expertise as it impacts the new practice area.

## USING YOUR TESTIMONIALS

**B**efore you purchased your last book, did you flip to the back cover to read what other people had to say about it? As an author I learned from some of my more experienced brethren that one good way to promote your

newest work was to get well-respected peers to write favorable advance praise and then include that commentary all over the front and back covers of the book jacket. When you admire the person who provided the quote, it adds instant credibility to the book.

While testimonials must be used in the proper manner, don't limit your creativity. You can include them among your materials for use in RFP proposal presentations; in client newsletters; post them on your website, on different pages and in borders so they remain in view; and you might even include a testimonial in your e-mail signature (ideal to rotate them). One firm we know compiled a promotional brochure made up completely of only client testimonials.

Most often, we use testimonials to get in the door. Obviously, if that is the only way to initiate contact with the prospect, do it. But the real power of a testimonial is in the proof it offers when the potential client is ready to decide. Testimonials should be used at the end of the selling process to dispel any doubt, eliminate risk, substantiate value and pave the way to your engagement proceeding.



**Patrick J. McKenna** is a leading law firm strategist and seasoned management advisor. Since 1983 he has worked with the top management of premier firms to discuss, challenge, and escalate their thinking on how to compete. In 2005, the book *Management Skills* (John Wiley / Jossey-Bass) named him among one of the leading thinkers in the field of business management.



**IN BRIEF: ON MANAGEMENT**

# HOW DO YOU PRACTICE STRATEGY?

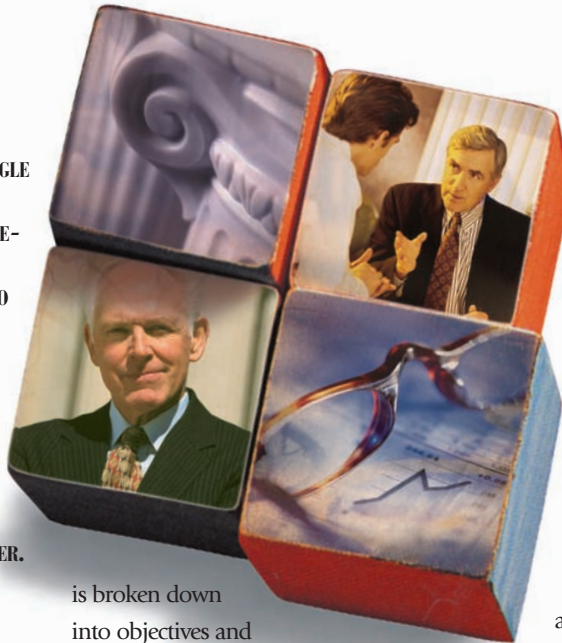
## USING THE BALANCED SCORECARD TO ALIGN ACTIVITIES IN THE FIRM

**M**ANAGEMENT IN LAW FIRMS OFTEN STRUGGLE WITH THE IMPLEMENTATION OF AGREED STRATEGIES. AFTER AN ELABORATE REVIEW THAT LED TO A MUCH CELEBRATED DECLARATION OF THE FIRM'S FUTURE DIRECTION, THE DEMANDS OF EVERYDAY BUSINESS ON MOST PROFESSIONALS PUT THE NEW STRATEGIES ON THE BACK BURNER.





IT IS BACK TO BUSINESS AS USUAL.

Arguably the most successful approach to aligning a business's activities to its strategy and vision is the Balanced Scorecard (BSC), developed by Robert Kaplan and David Norton in the 1990's. More than 75% of multinational businesses are said to be employing the BSC in some form. The large auditing and accounting firms were among the first PSFs in the late 90's to employ the BSC; a good number of law firms followed since then and a number of learnings can be derived from their experience.

Using the BSC, the firm looks at its own performance from four perspectives, namely Financial, Clients, Internal Processes and People Learning & Growth. This balanced view of the firm safeguards against attempts to overemphasise short-term financial results at the expense of longer term improvements in market position, operational excellence and staff competence. The firm's vision and strategy



is broken down into objectives and related measures that are commonly derived by answering questions such as these (based on Paul Niven, *Balanced Scorecard: Step-by-Step*, 2002):

-  **FINANCIAL PERSPECTIVE:** What financial steps are necessary to ensure the execution of our strategy?
-  **CLIENT PERSPECTIVE:** Who are our targeted clients, and what is our value proposition in serving them?
-  **INTERNAL PROCESS PERSPECTIVE:** To satisfy our clients, at what process must we excel?
-  **LEARNING & GROWTH PERSPECTIVE:** What capabilities and tools do our professionals require to help them execute our strategy?

The key is to find objectives and measures that reinforce each other through a cause-and-effect relationship. The empirical studies tailored to PSF environments, such as the one undertaken by David Maister

in *Practice What You Preach* (2001), are a valuable guideline and rich source of ideas. The result is a firm-wide BSC that typically looks at a total of 15–30 interactive measures.

BSCs are first developed by firm-wide management for the firm as a whole. Following that, each practice and industry group, client team, department or office develops its own BSC that aligns to the firm-wide Scorecard. Ultimately, each professional who is a member of one or more groups can then focus his or her activities and priorities to the group's objectives and measures of success. At this point, the BSC promotes meaningful partner and associate development processes which holds them accountable to furthering the firm as well as themselves.

The key learning from the BSCs in operation at law firms and other PSFs are that you have to amend your profit distributions, bonuses and promotions to the BSC. One of the big audit firms established its BSC as its "four cornerstones," but rewarded contributions to financial performance; the BSC quickly became known as "the three pebbles and one boulder." Used right, however, the BSC can actually put your strategy into daily practice and drive your firm towards its strategic objectives.

# Managing Our Firm, one

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**Y**OU ARE GREAT LAWYERS. IN ORDER TO BE SO, YOU MUST HAVE A NUMBER OF PROPENSITIES: TO BE FEROCIOUSLY INDEPENDENT, CRITICAL AND ANALYTICAL AND EVEN TENSE SOMETIMES. I WILL NOT ASK YOU TO GIVE UP THOSE PROPENSITIES IN THE CONTEXT OF YOUR SUBSTANTIVE PRACTICE.

Because we are now a firm of some size we need to capitalize upon the things we can achieve together that we cannot achieve alone. The rewards for doing so will be to gain competitive advantage. The punishment for not doing so will be to fade into mediocrity, perhaps even oblivion.

Therefore, the behavioral propensities you bring to your substantive work should continue but I am asking that you change your interactions with the firm in relation to its management. We cannot afford to debate every paper clip any longer.

If John F. Kennedy were a Managing Partner, he might have said, "Ask not what your firm can do for you but what you can do for your firm."

And as successful entrepreneur Larry

## A PRESENTATION TO A FIRM

Anderson said, "Commitment does not require the absence of doubt; often commitment means acting despite your doubt." As a firm we want your commitment to the decisions we make, the strategy we adopt and the informal requests that we may make of you — whether you have doubts or not.

Robust disagreements are quite appropriate among those charged with making decisions, be they the partnership or board or executive. But in the execution phase, while constructive suggestions will be encouraged, disagreements and lack of support will no longer be tolerated... adherence to our values and decisions is essential for our ongoing success. We must insist on democracy over anarchy.

Allow me to assist in offering what I believe you could do to enhance your own satisfaction in the practice of law, enhance the satisfaction level of our clients, and contribute to the strength, viability and competitive resilience of our firm.

Become the Chief Executive Officer (CEO) of your own professional and personal development — create a vision for the very best personal practice you can that fits with the firm's



overall strategic objectives. Balance your life by contributing some of your time to your health and family. Ponder these questions as a way to create your vision:

- What kind of work do I enjoy most?
- Which clients do I prefer serving?
- In what ways could I enhance the value of the work I like doing so that clients I prefer would get more



# One Lawyer at a Time

# one

Y

## BY ITS MANAGING PARTNER



value from us than our competitors?

- ☉ What am I learning (to enable me to do more a year from now than I can do today)?
- ☉ Consistent with my preferences for work and clients, what practice areas can I explore or develop that will enhance the firm's competitive position in the market place?

- ☉ Whom do I respect and admire outside the practice of law to recruit as my informal personal advisor; someone who would be a worthy mentor and who would have a different perspective than my law firm vantage point?

Become the Chief Financial Officer (CFO) of your practice – keep an eye on your quantitative stats from hours to billings to receipts to receivables. If your personal discipline is not perfect, encourage the firm to exercise financial discipline for optimum performance and fully cooperate with firm initiatives. Consider these questions:

- ☉ What are my numbers like: billings relative to others in the firm and others in my practice area in the profession?
- ☉ Am I capturing all my effort by time recording (or robbing myself through lack of discipline)?
- ☉ Do I understand what alternate billing really means in light of the nature of clients I serve?
- ☉ Is my WIP being billed effectively

and quickly when analyzed by age and percent of billings?

- ☉ How do my write-downs and write-offs compare to others?
- ☉ Am I asking for retainers where appropriate?
- ☉ Am I influencing the early collection of receivables by picking up the phone when necessary and sending frequent reminders?

You can get considerable help from the firm's CFO in this connection. Let the CFO know what your objectives are and ask for help generating supplementary data that will serve as your dashboard as you drive your practice.

Become the Chief Information Officer (CIO) of your professional life – cooperate fully with the firm's efforts to incorporate technology for effectiveness and efficiency. Ask yourself:

- ☉ Am I staying current in my understanding of the spectrum of technological tools from basic word processing to document generation to knowledge management?

☉ **Am I exploring client access to data from databases to file status to deal rooms?**

☉ **Do I understand what the web can offer to enhance communications with clients?**

☉ **Am I encouraging members of my team to explore technology options?**

☉ **Do I encourage or require that my people take some time for technology training?**

The firm's real CIO can help – ask for a briefing on what our profession is doing in this area globally.

Become the V.P. of Marketing for your personal and group practice. Participate in training (either internally or externally) to learn how to project the effort you are already expending and the caring you already feel for the clients you serve. The greatest rewards will go to those who continually reinvent themselves and redefine how they will attract preferred work.

☉ **Do I effectively determine client needs by engaging existing and prospective clients in discussions on the topic?**

☉ **Similarly, do I explore how prospective clients choose attorneys?**

☉ **Do I explore what clients would like that no one is currently providing?**

☉ **Do I consider the lag time between aggressively marketing new clients and actually opening files and therefore begin the process even when my plate is full?**

☉ **Am I identifying those favored clients whom I would like to protect from competitors by investing a little extra time in enhancing their satisfaction levels and keeping them aware of**

**the unique offerings that are not available from competitors?**

☉ **Do I allow the marketing professional(s) within the firm to help me in creative ways or do I default to managing my marketing effort the same way I practice law: tolerating nothing less than perfection and discouraging experimentation?**

☉ **Do I care more about what my peers think about marketing options than whether they will be effective?**

☉ **Do I have a supply of thank you cards within arm's reach so that I can take a few seconds to create an expression of appreciation whenever appropriate (especially when I am the recipient of a referral)?**

Become the V.P. of Production for your personal and group practice. Spend some of your time thinking about ways to deliver unmatched legal work product both personally and as a team. Ask yourself:

☉ **Do I plan the creation of my work as well as my team's work?**

☉ **Does my team (including support staff) harmonize work schedules for optimum results?**

☉ **Do I apply time management principals (including saying "no") to avoid overworking (inefficiently) and under-producing?**

Become the V.P. of Human Resources (HR) for the people you encounter in the firm. Supervise and develop the personnel around you to peak performance, appreciate them whenever they give you the slightest reason, and speak about the firm with respect avoiding the temptation to complain or disagree in inappropriate forums. Ask yourself:

☉ **Do I take a bit of time to learn the work and client preferences of the members of my team?**

☉ **Do I find out what they aspire to and then coach them and follow up?**

☉ **Do I allow some training time for all of my team, including substantive, client relations, technology application and firm systems?**

☉ **Do I think of my people as a team so that I can identify gaps and holes to fill?**

Your senior management will take responsibility for training and deploying leaders of our practice groups and industry groups. We will coordinate and harmonize the firm. But our strength is in you — the individual — we need you to be operating at peak performance — we need you to be the best you can be. We want you to feel so appreciated and satisfied that you will want to spend your entire practicing lifetime right here with us.

Thank you.

[Note to Reader: You might have hoped to find particulars here as to the identity of the managing partner and firm from whence this speech comes. Alas, the speech has never been given. I created this as an amalgam of what I believe the best managing partners I have observed would include in an address of this nature. It is offered to members of senior management of law firms as a catalyst for thought.]



**Gerry Riskin** has

*Business and Law degrees; is a former Managing Partner; served the Conference Board of Canada; is a Visiting Fellow of The College of Law in London and a Visiting Professor to the Gordon Institute of Business Science at the University of Pretoria in South Africa; and resides in Anguilla, B.W.I.*



# Announcement

The principals of Edge International are pleased to announce that Maggie Callicrate has joined as a principal effective July 1, 2006.

Maggie's expertise in law firm management has been developed over the course of twenty years in the field, operating at senior executive levels in large US-based and international law firms. Prior to accepting the invitation to join Edge International, Maggie was the Chief Executive of a leading, 250 lawyer New Zealand law firm.



Maggie delivers customized solutions in the areas of leadership development, partner assessment and development, client relationship management, strategic planning, implementation methodologies and practice group management. She also provides advice on governance structures, organizational change and the alignment of firm, practice area and individual business objectives.

Maggie holds an MBA from Pepperdine University and a bachelor's degree in Business Administration from the

University of Colorado. She is a Fellow and Trustee of the College of Law



Practice Management and a member of the Law Practice Management section of the American Bar Association. A Founding Trustee of the New Zealand Leadership Institute, Maggie is passionate about the development of leaders, both in business and in the community.

Maggie is a frequent speaker on topics such as client relationship development, partner assessment, strategic planning, implementation methodologies and networking.

Maggie can be reached at [Callicrate@edge.ai](mailto:Callicrate@edge.ai) and by calling 650.654.8804 or on her mobile at 650.766.4296.



# The trick to running a law firm is getting all the pieces to **FIT TOGETHER**

## **CULTURE**

is what defines a law firm. In a business where all of the assets ride up and down the elevator every day, the glue that makes a law firm work is its culture. In fact, research has demonstrated an indisputable direct correlation between profitability and culture.

But, ask a law firm managing partner to describe the firm culture and you'll hear euphemisms like "collegial" or "democratic."

The fact is that most firms really don't know what their culture is and can't describe it. Yet, a recent survey of large law firms showed that one of their partners' greatest fears was "losing their culture." How can a law firm preserve what it can't describe, doesn't recognize and won't communicate?

The Edge International Cultural Inventory is based on 15 years of research by Dr. Daniel Denison of the University of Michigan School of Business, involving more than 44,000 respondents from over 1,800 businesses, including over 100 law firms. The database allows the identification of the specific traits that determine an organization's culture.

It's a simple choice. A firm can continue to grow, take in laterals, merge and hope that its culture won't change. Or it can devote a partner meeting or retreat to understanding and protecting its culture.

Of course, all firms are collegial and democratic...aren't they?

**BECAUSE TODAY'S COMPETITIVE CHALLENGES DEMAND A HIGHER LEVEL OF PERFORMANCE**



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