



# Strategy Innovation

Getting to the  
Future **First**

Patrick J. McKenna

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## Also by McKenna

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# INTRODUCTION

## What Are You Paying Attention To?

As your firm's leader, what you pay attention to determines what your colleagues perceive to be most important. It therefore follows that if you do not track what is going on outside of the walls of your firm, you may soon be caught dealing with a priority that seems urgent but is less important than the one you should be dealing with. Determining what you will pay attention to is your first priority in effectively thinking strategically, leading your firm and getting to the future first. Here are a few strategic challenges that you should not lose sight of:

***Don't get caught with your attention firmly fixed . . . in your rear-view mirror.***

Many firm leaders get so caught up in the busyness of business, that they don't take a good long look at the world outside their firms. Concurrently, the executive committee members also become consumed by these immediate issues, and firmly enmeshed in the fierce urgency of now. Yet, the uncertainty and potential impact of the future demands that we reallocate our attention - because disruptions in the client environment can disrupt our business models with lightning speed.

Ever changing client demands, encroaching and new competitors, and disruptive technologies can be anticipated and managed only by routinely tracking them, even if (and especially IF) they don't have any immediate impact on your firm's performance. Executive committee members MUST now spend some portion of their time reading, listening, and thinking about their external environments. Even your senior administrative professionals should allocate some amount of their precious meeting time to looking out rather than in.

Jim Collins described the highest performers, as those leaders who were always looking out the window to identify where success comes from and looking in the mirror to find the source of failure. This trait is especially valuable when developing your strategy and dealing with an uncertain future.

***Don't fail to challenge your most closely-held assumptions . . . until they bleed.***

Many of us often don't question our beliefs when it comes to dealing with uncertainty. We continue to assume that people will always read newspapers, buy music in stores and pay legal fees based on a billable hour model. We assume that our firms will work best with a practice group structure based on lawyer competencies. We assume that the United States will continue to be the global economic powerhouse and that the US dollar will continue to be the global currency.

These could be right or wrong assumptions, but for every firm, whatever is assumed is usually based on the past and likely to be wrong for the future. As comfortable as it is to determine your priorities based on your past experience—and as much as it saves time and effort—it is today, a deadly practice.

***Don't allow hubris to cloud your view of your future.***

By definition, arrogance makes you vulnerable to surprises. When you convince yourself that you have the answer—that you have a winning formula that will triumph in all circumstances — then something in the future is bound to get you. As Murphy's Law postulates, "*If something can go wrong, it will.*" Intel's Andy Grove once insightfully suggested that "*sooner or later, something fundamental in your business world will change.*"

The future humbles us all. The challenge for everyone is to look into an uncertain future with a learner's mindset and maintain flexibility.

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*The future is no longer a timeframe  
The future is a mindset!*

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## APPENDIX A

### Survey Results On The State of Firm's Strategic Planning Efforts

World-class motivational expert and author of *Natural Born Winners*, Robin Sieger, once said, "*planning is as natural to the process of success as its absence is to the process of failure.*" That said he forgot to add that planning doesn't mean a heck of a lot if nobody bothers to oversee or implement those meticulously formulated aspirations. Such is the world of law firms and their strategic planning efforts as exposed in a survey we conducted in preparation for presenting at a recent Chief Strategy Officer's Summit in New York City.

We canvassed and received detailed feedback from 68 firm leaders, mostly from AmLaw ranked firms, on their approach to strategic planning and their specific responses to 18 questions covering everything from who was involved in developing their current strategic plan and how long it took, to how satisfied they were and the one thing they would change with respect to their efforts in the future.

We found that overall, there is no lack of formal strategic planning going on within today's law firms. Only 2.9% of our responding firms reported that rather than have a written plan they "*preferred to remain flexible and opportunistic.*"

Among firms of every size we concluded based on our findings, that 70.4% of all firms invest on average, **at least three months in the development** of a formal written strategic plan. That investment usually involves the members of firm leadership, involvement of the executive committee or board, and often times those participating on a specially constituted planning committee – in other words, some of the most senior and expensive talent in the firm in a series of lengthy meetings over a number of months, with hours of preparation and homework in between each meeting.

When we examined this time investment we noticed that the larger firms invested the most time. Specifically, for those spending more than 6 months at developing their plans, 44% were in the 301-500 attorney category, followed by 33% in the over 500 attorney grouping. By our estimates we believe that law firms, especially these larger ones, easily invest about a quarter of a million dollars in partner time.

We asked firms how they might describe their final strategic planning document as to whether it was "*brief and targeted to a few priorities*" or "*lengthy and comprehensive*." The majority, 57.6% of all respondents told us that it was brief and targeted to a few priorities, but interestingly that percentage decreased as the size of firms increased. In the category of over 500 attorneys the few priorities response dropped to 43%. One might conclude that **as firms get bigger so too does the volume contained in their final planning documents.**

We then inquired as to what techniques were used in the creation of the firm's plan and amongst the options we put forth were things like surveying your partners, engaging in formal market research, having a consultant facilitate the process, gathering input from the firm's practice groups, interviewing/surveying clients and so forth. Across the board the most popular techniques were 62.5% of firms gathering input from their practice groups and 53% surveying their partners, followed by 50% employing the resources of a facilitating consultant. Here again there was a noticeable difference in the responses based on firm size. From the largest firms we saw a noticeable drop in efforts to involve the partnership – 27% among the 301 to 500 attorney grouping which dropped to 20% among the over 500 attorney firms.

Another interesting result came from those firms who involved clients in their strategic planning process. On average 45.3% reported that they interviewed and / or surveyed some clients in the development of their final plan (although we did not discover how many clients these firms might have involved). What was striking was that only 18% in the 301 to 500 attorney category did that, but 53% of the over 500 attorney grouping reported involving their clients. We did hear from one firm who told us that they had "*conducted interviews with business leaders (who may or may not be clients) in the various markets we serve.*"

One of the more intriguing questions we posed was how these firms

might categorize their plans between being “*heavily internal*” versus “*heavily externally focused*.” And to help respondents differentiate between these two variations we explained that “*Internal would include website, human resources, pricing, billing and collection policies, and similar activities, while External would involve differentiation efforts, emerging areas of practice, new client service practices, merger possibilities, etc.*” It is a strongly held view that a heavily internally focused plan is really operational in nature while being externally focused defines true strategic intent. That all said, the responses we received evidenced **only 19.7% of these law firms having a heavily external focus** to their final plans. That result was 18% for the 301 to 500 attorney firms, and 27% for the over 500 attorney grouping.

Developing a formal strategic plan that was over 3 months in the making, with the majority (57.6%) “*brief and targeted to a few priorities*,” and heavily weighted toward internal issues, the obvious next question might be . . . so “*how much of your last strategic plan has been implemented?*”

Now in asking this kind of question we know that it is best to provide a broad range of responses such that a firm leader is not unduly embarrassed to have to provide an honest answer, as being the firm's Chief Cheerleader, there is a natural tendency to exaggerate. In this question the best response was not identified as “*ALL of the plan*” but rather “*ALMOST all of the plan*,” which still allowed for some puffery in that the term “**almost**” might represent 80% of the plan or even 60% of

the plan, depending upon how the individual respondent cares to view it. Nevertheless, the “almost all” was identified as the most accurate response by a whopping . . . **3.2% of our firms** – ranging from 0% in the 301 to 500 attorney category to 7% among the over 500 attorney firms.

We regrettably had to inform the room full of attendees at the New York Summit that it would appear from our research that far too many law firm leaders suffer an infliction that goes by the sophisticated technical term: **seeing SPOTS**. SPOTS being an acronym for Strategic Plan On The Shelf!

Digging ever so deeper we canvassed our firms on “*how often had their current strategic plan been reviewed and if necessary revised?*” Again we offered a broad range of responses from “*several times a year*” (without defining what several means or suggesting that the ideal might be monthly) to “*not until the plan is no longer relevant*” (which could be interpreted as code for ‘Never’). Not surprisingly, the average was **12.7% responses for the “several times a year”** option while 36.4% responding “*rarely*” or never; with another 36.4% telling us that it was an annual activity (the politically correct answer for the Chief Cheerleader to offer).

One of the final but lengthier questions we posed involved listing 13 different strategic planning elements and asking these firms to assess their level of satisfaction with each – from the overall planning

process to whether they achieved meaningful differentiation; from whether there was partner buy-in to their implementation efforts.

The three elements that were rated by all firms as being areas of Highest Satisfaction were: "*the overall process for creating their final strategic plan*", followed by "*attracting lateral talent and complete practices*" and "*improvements to firm profitability.*" These responses varied slightly by firm size with "*expansion of geographic footprint*" rating highly among all firms over 300 attorneys in size. If one were skeptical, one might add that first, it is good that these firms were satisfied with the process as it was expensive and outrageously so, given the lack of implementation success; and secondly, isn't almost every firm focused on attracting laterals or exploring merger opportunities and did you really need to invest time in putting that one into your formal plan?

The areas that invoked the strongest dissatisfaction and were consistently expressed by firms of all sizes were "*implementation with designated responsibility and time lines*" followed by "*efforts to develop entirely new practice areas*" and "*practice group involvement.*"

The one question that invoked some interesting reflections on the part of every firm we polled was this one: "*What one thing would you change with respect to your strategic planning efforts in the future?*" What we heard were some common themes especially when viewed by firm size.

From Firms of Under 300 Attorneys:

- *“gather more external information, make it more externally focused, especially when considering the impact of new competitors;”*
- *“we need more frequent reviews, routine updating, a constant assessing of the need for tweaks and resets, and adherence to the plan”*
- *“more partner involvement at different levels within our firm, and buy-in from key shareholders”*
- *“we need to focus more on clients and should conduct client interviews.”*

From Firms of 301 to 500 Attorneys:

- *“we need far more flexibility to adapt and revise when necessary;”*
- *“take less time in the planning but make it an ongoing process;”*
- *“there needs to be greater education and awareness of market changes and new developments;”*
- *“we need to include more additional external perspectives in our planning process.”*

From Firms of Over 500 Attorneys:

- *“better action / implementation items with specific timelines, deadlines and accountability;”*
- *“less internal and more focused external strategies;”*
- *“far more time invested in looking to the future and consideration of industry disruptors”*

## **SOME SURVEY OBSERVATIONS**

In conducting this survey we attempted to cross-correlate the various responses by firm size and results in an effort to ascertain some helpful findings and conclusions. Here are a few that jumped out at us:

- Those firms that found some way to **involve a majority of their partners** or the entire partnership also claimed to have actually implemented more of their formal plan.
- Only two of the firms that participated in our study employed a Chief Strategy Officer (CSO) and both of those firms also involved an outside consultant in the development of their last strategic plan.
- While 50% of the respondents reported having utilized an outside consultant as a facilitator in some manner, there was no correlation between using a consultant and successful implementation.
- Those firms who claimed to have reviewed their plan several times a year also claimed to have implemented more of their plan.
- Ironically, the majority of those firms who experienced the highest level of satisfaction with their planning process also had the most internally focused plans and implemented the least.
- Those firms, 81% reporting that they were very satisfied with “partner buy-in” were also highly dissatisfied with their implementation efforts.



## **SOME SURVEY CONCLUSIONS**

What does it take to build a successful strategic plan that has a hope of being implemented and won't simply languish on some firm leader's shelf? Here are a few of the key suggestions that seemed to radiate from our survey findings:

### **1. Too many firms are focusing too much of their attention on internal issues.**

Internal focused plans center on making improvements; things like how does the firm enhance morale and efficiencies. They do not focus on how do we win in a competitive market. Will predictive analytics, artificial intelligence, robotics and automation replace many of the things that lawyers traditionally were paid to do? To remain competitive in tomorrow's marketplace law firms may need to embrace external and disruptive innovations. From a number of the survey respondents we heard things like:

*"We need to more effectively think about the upcoming changes in the legal practice and innovation techniques to enable us to continue to hit above our weight."*

Think of it as tackling opportunities rather than simply problem solving – focusing on the future versus the present.

### **2. More firms need to find a method of drawing the client's voice into the development of their firm's strategy.**

We were especially pleased to see that simply by posing the question of whether your planning process involved listening to clients, we

stimulated numerous firms to share comments like this one:

*"We need to go back to using client surveys. We had done this with previous strategic plans but not in the most recent, which was a mistake."*

Your strategic plan is all about determining the firm's direction, making choices about where you are going to invest your limited resources, and what you are going to become in the future. We believe your clients may have some important insights to share that would assist you in developing the most relevant plan.

**3. If the planning process could involve more of the partnership there may be better implementation success.**

One firm leader told us about how he would prefer to make the strategy process less democratic with the executive committee developing the plan and obtaining buy-in by the entire partnership. While that might sound ideal and certainly at first blush appear to be less time consuming, the reality from our in-depth discussions with many firms over the years, is that it rarely works. If anything, the time is then not spent on developing the strategy but in trying to sell it to your partners.

Think back to the last time you might have purchased a little piece of supposedly easily-assembled furniture from IKEA and the hours you spent trying to put the bloody thing together. Your final result could be the wobbliest little end table in your residence but damned if you

will ever part with it. Why? Because you created it; it's your baby. And that is the natural way we all feel about something we helped create.

So too with any new idea, initiative, project or formal plan. If your partners can't see their fingerprint somewhere on the final product, it becomes unlikely that you will be able to easily sell it to them.

**4. The implementation of strategic plans requires far more rigorous management attention and personal accountability.**

We heard it said that once your plan is developed, implantation may not be a full-time occupation, but should be a full-time preoccupation. The lifeblood of implementation is accountability. And accountability involves clarity on "*who is on the hook for doing what.*"

One firm we heard from told us about their monthly implementation meetings and their quarterly 'recalibration' sessions. The monthly implementation meetings were where the initial Strategic Planning Committee, now reformatted as the Strategic Implementation Committee reviewed the various actions, timelines, responsibilities and ensured that progress was continuing to be made. The quarterly recalibration session was intended to review the plan's next quarter's priorities, the external changing reality and make modifications or course corrections where and if needed. Thus their implementation process was an ongoing work in progress. (See: **When Your Strategic Plan Needs To Get Implemented**).

These suggestions should help any firm avoid “benign neglect” and help everyone on the firm understand where the firm is going.

***Thanks to David J. Parnell for his assistance with this survey.***



# Part 1 | Firm Strategy

Imagine  
The  
Future

The background of the slide is a solid blue color. Overlaid on this background are several elements: on the left, the silhouettes of three business professionals (two men and one woman) in business attire; in the center, a faint, blue-tinted city skyline; and on the right, a large, stylized blue arrow pointing upwards and to the right, with a smaller, similar arrow below it.

# CHAPTER 1

## Schedule Time For Strategic Thinking

I don't know if you have consciously noticed but we are all becoming far more reactive than at any other time in history. For example, it would seem that you can no longer hide behind voicemail or email because both colleagues and clients will now simply send you a text and then look for an immediate response – we are becoming the text-messaging generation.

Today, if you are like many law firm leaders, you are caught in a tidal wave of 24/7 communications from your partners and direct reports for quick responses to their requests. At the same time, other lawyers, staffers and, of course, clients want your input, require your approval, or request your participation in meetings or discussions.

For most any law firm leader, keeping busy and focusing on the urgent is seductive. Many confide to me that they continue to find themselves more and more distracted. So is it any wonder that you are not being as strategic or thoughtful as perhaps you would prefer to be? Yes, you may be busier than ever before, but perhaps far less effective.

I recently met with a couple of firm leaders and discussed the demands on their attention as well as some of the timely issues that were important to them, and it reminded me of something I learned awhile back about where many leaders invest (or don't) their precious and limited management time . . .

When meeting with firm leaders, I have often asked a couple of questions that usually serve to illuminate precisely where they spend their time. My first question is:

*"What proportion of your management time is spent solving problems versus what proportion is spent on exploring new opportunities?"*

*(Think about what your percentage breakout might be)*

After what can often be a rather awkward reflection period, the answer I will usually elicit is about 80% on solving problems and 20% on exploring opportunities.

From knowing and spending time with many of them, I suspect that it is really more like 95% on problem-solving and 5% on opportunity-seeking, but let's analyze what this division of time infers. This means that as a firm leader, you are spending 80% of your time and energy (by your own admission) looking backwards and fixing things, while only 20% looking forward and creating things. It's not too far a stretch

to see that firms operating in this mode may be constrained in their attempts to take the lead in their competitive marketplace.

### **So why does this happen?**

Well, it should be obvious that most professionals are veteran problem-solvers. We are trained to resolve the issues, put out the fires, correct the underperformance, and generally “fix” any and all problems. No matter what your title and task, there is a powerful gravitational pull that unconsciously moves us toward fixing things instead of innovating, toward restoring instead of increasing, and toward reacting rather than being proactive.

The truth is, we secretly love the urgency of problems to be addressed. **The urgent makes us feel valued.** We get an adrenalin rush from urgent matters. With problems to be fixed we can be the hero that saves the day. Some of us are even pros at waiting until the last minute to rush in with a solution. If we're honest with ourselves, we can admit that we feel more secure when we are busy doing something, even if it isn't the most important task on our plate. Indeed, that urgent little problem can sometimes actually become a convenient excuse to ignore or put off the important tasks. But firm leaders need to realize they need to focus their energies on where they will have the greatest impact.

For that to happen, they need to understand that fixing things, however noble, simply restores the prior performance or condition—and



that may be comfortable, but it limits value. However, if your focus is on improving the condition, on inspiring entrepreneurial endeavors, on being innovative; then your intent is not on restoring the *status quo*, but on developing a level of performance that exceeds any previous standards.

Now comes my second question, a follow-up I tend to pose which goes like this: "Of the time you spend on exploring opportunities, (remember it was reported to be 20% of the total) how much of that time is directed toward pursuing billable production, winning the next big transaction or responding to a competitor, [i.e., the present] versus pursuing the development of entirely new skills, new technologies or new niche services [i.e., the future]?"

Again, if I were generous in reporting what I have learned from this question, the average managing partner spends about 60% of his or her time exploring present opportunities and 40% on pursuing future opportunities. This, albeit unscientific research does drive home a point worth scrutiny: **What kind of a future is likely to be created by a firm leader spending only about 8% of his or her *total* management time and energy focused on the future?**

That question might be tougher to answer than my first two!

Finally, to make matters worse, I find that many firm leaders have developed a technique of rapid-response to issues, becoming more re-

active and losing vital perspective regarding the strategic impact and the potential unintended consequences from snap judgments. They are moving so fast, in so many directions, doing so much multi-tasking that the quality of their thinking, their relationships and their leadership is suffering.

Some will commit the time to develop detailed strategic plans but then not make the time to execute or consistently follow through in order to track progress on initiatives or maintain critical momentum. Others struggle with far too many "top priorities" when in fact, they should be narrowing their leadership focus, not expanding the number of initiatives on their agenda.

It may sound trite but I have discovered that the most successful firm leaders have learned to narrow their scope and limit their top priorities to those critical few with the greatest strategic impact. Where I see firm leaders getting into trouble is when they are trying to do and manage *far too many* initiatives at the same time.

I strongly advise firm leaders to purposefully **schedule white space into your calendar** – time for quiet thinking and reflection.

And if you cannot get that uninterrupted time at the office then go off-site and literally unplug for a few hours to engage in thoughtful reflection about your most strategic and important issues. This is not a lux-

ury. Give the amount of change the profession is going through these days, it is a TOP business imperative to improve your effectiveness.



## **APPENDIX B**

### **32 Strategic Innovation Questions | Basic Building Blocks To Prompt Innovative Action**

The innovative mind is a questioning mind. The key to powerful thinking is powerful questioning. Questions define the agenda of our thinking.

The quality of the questions asked drives the quality of the conversations you are likely to have about the future of your firm. Any firm leader can greatly influence their partner's innovative instincts by asking good questions and then turning your colleagues loose to try to find some imaginative answers.

What follows is a list of thirty-two (32) unusual, quirky, provocative and bizarre questions to clear out the cobwebs at your next partner's meeting. These are intended to jump start your creative thinking; launch your colleagues minds moving in innovative spaces; pop some new ideas out of your intellectual toaster; and get energized to take action.

Change the way you think about your practice. Open eyes, open minds and open your next meeting with one of these questions . . .

1. What are the unrealized aspirations partners have for our firm?
2. In this age of market disruption, what do we, as a firm, stand for and strongly advocate that makes us special?
3. What crazy ideas, if acted upon, could result in our being able to double our per partner profitability in three years?
4. Are there certain parts of the business that provide disproportionately greater innovation opportunities?
5. Where does our firm move the slowest, and what steps can we take to dramatically speed things up, by next week at the latest?
6. If we're trying to inject new thinking into our firm, what can the senior leader be doing to morph our status-quo oldsters into new thinkers?
7. What do we have to do to increase our number of partner-generated innovative ideas by 100x?
8. What things that made us successful in the past do we need to forget, unlearn, or discard to be successful now and into the future?

9. If our most demanding clients ran this firm, what experiments or pilot projects concerning with doing something totally new, would they have underway?
10. What has our industry known about and ignored for years that could deliver incredible value to clients that no one has every pursued?
11. How can we get into our client's heads, see through their eyes and gain breakthrough ideas?
12. What are new ways to put our clients together with each other, so they can help us identify and solve bigger challenges?
13. In what ways are we figuring out what we need to deliver to clients in the future beyond asking them – when they may not know what they are going to need?
14. How can we do something so big and challenging in a new market that our current competitors will have to follow us, thereby bolstering our innovation efforts?
15. How would an incredibly successful accounting or consulting firm rework our business model into something new?
16. What would our firm look like if we deliberately tried to break every rule that has defined our industry until now?

17. What could we do to digitize some component of our service offering?
18. What feature can we create that's unique and missing in most every other competitor's service to clients?
19. What are our plans for developing new skills and learning as fast as the world is changing, such that we can develop the kinds of skills that will make us indispensable to clients?
20. If our firm is trying to be a leader in some area of our market, what could we do completely differently instead of simply following our competitors?
21. How can we boost our speed, expertise, and strategic thinking by an order of magnitude to disrupt our industry?
22. If our firm were an organized religion, what would our beliefs be and what would constitute having committed a sin?
23. How can we prototype the change we need to start making right away?
24. How can we reduce the barriers to starting new initiatives for our people who are most likely to do great things and deliver incredible value?

25. How can we enable our talented but junior professionals to get the backing for new initiatives early in their work histories before they've had a chance to imagine their ideas won't work?
26. What steps do we need to take today to allow somebody (or multiple somebodies) within our firm to TEST new disruptive ideas without ANY constraints?
27. What will it take to blow up every excuse our firm has traditionally offered to not start tackling some important challenge – and get to work?
28. If we ruled out the belief that ANYTHING is impossible to accomplish, what would we start trying to accomplish RIGHT NOW?
29. What are all the little pieces we need to break a “too big to start or even imagine how to start” project up to finally get it started?
30. What steps could we take to better incorporate the creative genius of students, still in school, to help us develop new ideas?
31. What ways can we track the things our colleagues originally hated about some new change, that they now love – so that we can use it to better sell the NEXT big change.
32. If we considered everything we have accomplished in our innovation efforts as “Chapter One,” where should we be, by the end of “Chapter Two”?



And finally, since procrastination is the graveyard of broken dreams, let's ask ourselves: "*what are the key reasons why our best innovative ideas fall apart during implementation?*" – and "*how are we going to ensure that we STOP allowing that to happen?*"

**BECAUSE**, if we think about it . . . only the mediocre and always at their best!



Make Innovation a key component of your strategy and purpose



Desire to be the leader in your market and industry



Embrace change while constantly challenge the status quo

## **CHAPTER 2**

### **How *Conventional* Strategizing Can Be a Waste of Time**

Many firms that have been involved in conventional strategic planning are failing to improve their ability to differentiate themselves, their competitiveness or their relative growth, in spite of the investment of time and effort in the planning exercise. How many of you, with a beautifully presented strategic plan have anything meaningful to show from your efforts? One would think that the application of strategic planning methodologies would have achieved more measurable results.

One needs to recognize that the typical strategic planning exercise now conducted and infused with massive quantitative data misses the essence of the concept of strategy and what is necessary for being innovative and differentiated. Indeed the word "strategy" has unfortunately become a devalued term, challenged only in the buzzword hall-of-shame by "synergy" or perhaps "out-of-the-box thinking."

But the problem here for most of us isn't with terminology. When research study after research study now suggests that the only way for your firm to grow is at the expense of competitors, the need for you to craft a truly competitive strategy could not be more acute. The real problem is one of continuing to utilize shop-worn, tired old approaches, which simply don't work anymore.

If you're interested in learning how those firms who produce above-average results are doing it, it may be instructive to become conversant with what doesn't work. So, let's delve into the typical strategic planning process as is so often practiced or proposed by outside consultants, and conduct a quick review of some of the most time-worn methodologies that are still so often employed, and explore why they are so often **a waste of time**.

- **Firm Vision**

*"We will commence our work with you by helping to develop and communicate to the partnership, a guiding vision for where your firm is going into the future."*

Remember mission statements? Mission statements were a single-page document filled with more platitudes than you'd find in the average prayer book, spelling out your firm's business mission. No one remembered the darn things, it was business as usual, and the document didn't have the profound impact on the fortunes of firms that

their creators had hoped for. The mission statement exercise was quickly forgotten — except at those few firms who chose to have them laminated as cards for every attorney to keep on their desks.

Then came the hype that every firm needed a vision. It was a new name, but quickly became the same old silly exercise. All your skeptical partners exchange winks and knowing glances. The Executive Committee would have to be indulged one more time. And, unfortunately, in 99% of all cases, the results were the same — having a formal written vision statement . . . changed nothing!

- **Financial Review**

*"We will review your financial data and convert it into templates that allow us to advise you on how you compare to similar firms."*

Some of us are just old enough to remember that in the early days, firms often recruited their first Law Firm Administrator / COO from either the military or the police force. (I guess managing partners needed someone with that kind of background training and clout to help herd the cats!) Today, your typical COO or CFO is a refined administrator with sophisticated financial training and access to reams of comparative statistics. Do we really think that this professional has not been doing their job?

In the course of developing a strategy, we should not forget that financial numbers are an abstraction, and often give the illusion of pre-

cision. They are largely historical and can serve to blind leaders to future changes and they rarely get partners too excited. One firm recently related to me how, as part of their strategic plan, they set a numerical target for their RPL performance over the coming three years and then wondered why their fellow partners weren't all that excited or motivated by the goal.

If you have chosen to retain the assistance of a consultant in helping with your strategic planning, then having that individual conduct a financial review, look at your firm's organizational structure, peruse your partnership agreement, and audit past business development achievements may be legitimate steps — in an "orientation process" that any consultant should just naturally take to get to know your firm. But why would you have your strategy process (that implies looking forward) include a formal step that serves only to focus internally and look backward?

The top performing firms understand that the task at hand is to look outward, not inward; to craft a competitive strategy, not conduct an operational review — and this course of action doesn't exactly set the tone for a process that should be concerned with creating new revenue streams.

- **Partner Interviews**

*"We will conduct one-hour, in-person interviews with the appropriate mix of partners and associates."*

We trust that everyone can fully understand the critical importance of obtaining “buy-in,” especially from our partners, to any strategic planning initiative. I learned many years ago, that no partner willingly supports, gets truly enthusiastic about, or eagerly participates in implementing any plan, that they themselves have not had some part in formulating.

But I am also convinced that there are far more effective (and far less time consuming and **far less expensive** if you are utilizing consulting time)) ways of getting everyone actively involved, then having a team of consultants running around your firm giving everyone a half-hour to articulate their latest pet peeves.

- **SWOT's Analysis**

*“We will develop our strategic plan in the context of market realities and the firm's strengths and weaknesses, and offer suggestions.”*

Almost every firm that goes through the conventional strategic planning process uses some form of SWOT Analysis. To the uninitiated, SWOT is an acronym for “strengths, weaknesses, opportunities, and threats.” It means that we will all engage in an exercise to have a look at what are the various internal strengths and weaknesses of the firm, and then look to what particular threats and opportunities there are that could be exploited. Sounds sensible enough. But the process, as it is currently, most often executed, is a complete waste of time for most firms. In some cases, I suspect it has probably done more harm

than good. In fact, let me press this point by providing you here, with a rigorous analysis of your firm's current strength and weaknesses.

Strengths:

- Many talented attorneys
- High level of client satisfaction
- Excellent opportunities for cross-selling
- Quality of firm's legal work
- Ability to serve most client needs
- Strong reputation
- Collegial culture

Weaknesses:

- Insufficient team approach to providing services
- Trend toward too much me, not enough we
- Insufficient cross-selling
- High hourly rates for commodity legal work
- Unwillingness to make hard decisions like terminating unprofitable work
- Weak differentiation from competitors
- Unevenness of marketing efforts among partners
- Communication between management and partners

Does any of this sound familiar? So what is the relevance of all this to strategic planning you might ask. NOTHING whatsoever. All too often this turns out to be an exercise in identifying the most trite descrip-

tions of firm strengths and weaknesses. The real question that you need to explore is: "*are there any attributes, which signify meaningful differentiation, that clients regard as valuable and distinct to our firm?*"

The proposition that I would proffer is that a SWOT's Analysis (like marketing) is irrelevant at the firm level — other than to perhaps help assess image, geographic aspirations, culture or governance. Any meaningful assessment of strengths and weaknesses is best left to the practice and/or industry group level where we can instinctively understand that it is going to be far different for each group — which leads nicely into my next point and one of the most critical.

- **Practice Group Contribution**

*"We will hold meetings with your practice groups to allow members to voice ideas and opinions about the firm's strategic plan."*

If the only contribution the practice and/or industry groups are expected to make is to voice opinions about your firm's strategic plan or sit quietly by, waiting patiently, for their marching orders from on-high, then we have effectively short-circuited the audience that could make the most meaningful contribution to your firm's strategy.

It has been long debated as to whether the most effective strategic planning is a top-down process or bottom-up process. My observations and experience convinces me **that it is both**. The top-down process needs to be concerned with the growth and direction issues



that result from looking to where the profession is evolving and how we might best allocate critical resources to take advantage of the future.

Instead of advocating a top-down approach, strategy should be set in a dialogue involving all levels. The aim is to help firms from the practice group up, create distinctive strategies to keep them ahead of the competition. Staying ahead is easier said than done. It requires a depth of insight that most firms depend on when they are young and entrepreneurial – but lose when they age!

The bottom-up process is simply a recognition that the greatest opportunities for truly differentiating your firm, gaining competitive advantage and generating new revenue **emanates from individual practice groups**. If we recognize that a firm is comprised of discrete business units, we see that the way in which you market an employment practice is likely to be very different from how you might market a health care practice. So too your employment group likely competes with a very different collection of firms than your health care group might compete with. What naturally follows is that the “needs” of employment clients and the emerging opportunities for the practice group to explore requires that the group develop their own strategies interdependent of the firm as a whole.

What we have learned from those firms achieving above-average performance is that they have balanced the need to develop an

overall top-down strategic plan for the firm — with having multiple bottom-up plans developed by each practice and industry group — where many of the most important growth opportunities exist.

• **Client Assessments**

*"We will conduct in-person interviews with a number of your most significant clients. These interviews make it possible to assess the service levels your clients perceive as well as identify areas in which you excel or need improvement."*

How do you argue with motherhood? YES, yes, it seems that in spite of the numerous articles written in law practice management journals, over decades, on the extraordinary merits of assessing client satisfaction, there are still those firms that have not made it an operational habit.

But . . . once again, this is an **operational** issue. Assessing client satisfaction should be an ongoing process and not merely relegated to being part of your (periodic) strategic planning.

AND, most importantly, the strategy issue is not about client satisfaction! The strategy issue is client (and prospective client) "needs" — and the highest performing firms clearly understand that.

I have long advocated that partners should make it their business to understand what it is that is keeping their clients awake at nights

(forgive what is now a cliché). But when you are seeking to craft strategy, you have to go even beyond what is keeping them awake, to truly understand their much deeper needs.

Understanding what clients need is a whole different process. There are FIVE levels of client needs that should be explored: explicit needs, observable needs, tacit needs, latent needs, and emerging needs. Many are satisfied if they can get a handle on their clients' current needs. But, this is not the total answer. You must also think far ahead of the curve. (See: **Developing Your Growth Strategy**). You must lead the pack by anticipating clients' needs before clients even know those needs exist.

Please don't misunderstand. Improving client satisfaction is a critically important issue. It's just should not be the focus for conducting in-person interviews with clients, when seeking to craft strategy.

• **Implementation.**

*"The strategic planning process usually takes six to nine months to complete. We would then be pleased to help you implement your strategic plan."*

I understand that it takes nine months to give birth to a baby, but I also believe that everyone instinctively realizes that a lot can happen in nine months. It took less time for an internet service called Facebook to go from a standing start to millions of users. It's a brand new,

do-more-faster age. Today's global economic dance is no Strauss waltz. It's break dancing at break-neck speed. Your success in this competitive marketplace is directly proportional to the competitive growth strategies and management sophistication that your firm can bring to bear, and how **fast** you can do so.

What is difficult to fathom is why implementation cannot be a natural part of any strategic planning process. Why can't you build ongoing implementation into various steps in the process? Rather than spending time interviewing every partner to build buy-in, why can't you engage the partners in an exercise that allows them to participate in assessing the firm's competitive position, identifying growth issues, and setting to work on some initial actions and perhaps, some small limited-risk experiments? Where is it written that you have to wait for the better part of a year, until your plan is finalized?

In light of these glaring shortcomings is it any wonder that some of the best performing firms have concluded that strategic planning, as currently practiced, is obsolete?

And . . . if you begin to play that out, it leads inevitably to a very different kind of strategy process than you may have experienced thus far.



## **APPENDIX C**

### **Conducting A Strategic Review Versus A Strategic Plan**

A "Strategic Review" is a formal process whereby your firm is conducting a clear fact-based analysis to examine performance or attempt to address specific opportunities or problems within your business operations. I will most often see a firm initiating a strategic review following the completion of a significant merger or the election of a new firm leader.

A strategic review is usually internally focused, resulting in a clear set of recommendations to enable increased and sustained performance. These analyses should show clear trends throughout the firm and provide answers to core business questions. A sample of these questions might include:

- What clients, practices, and books of business are the most profitable?

Has that profitability been consistent over the years?

How has profitability been maintained?

- Where do we see upward trends in volume?  
What types of clients or matter types are they?  
Which industries are providing the most work?

- What is the makeup of our group of administrative professionals?
  - Do we have gaps in skill-sets?
  - Has succession planning been established in core areas?
- How is our hours hygiene and inventory turnover?
  - Are we turning work into cash in an expedited manner?
  - Where do we see slow-downs and why?
- What practices are being cross sold?
  - How has cross-selling taken place?
  - Are there specific areas of opportunity that are being ignored?
- Are we still generating a significant amount of new work while growing our institutional base?
- Are there practices, clients, personnel, or books of business that are not performing well?
  - Why and what steps have been taken to change that?

Conducting a thorough strategic review requires the coordination of a range of analytical and financial assessment activities.

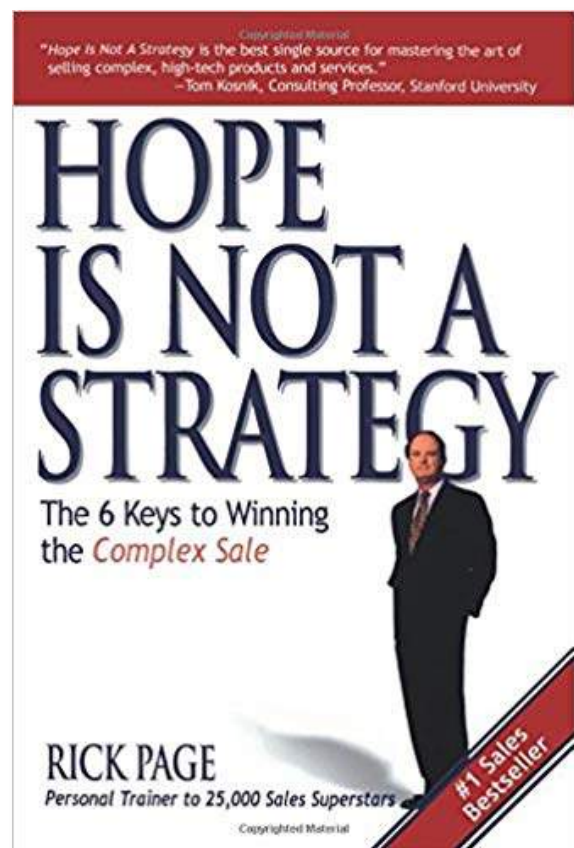
I raise this because I believe that instigating a strategic review is very different from initiating a strategic plan, but the two often get confused. I see many firms thinking that they are developing a strategic plan when they are really investing their time in conducting a strategic review.

## How is a strategic plan different?

Quite simply, your strategic plan should focus on the future, not obsess about the present; look to exploit opportunities, not concern itself with solving problems; assess the external environment; and build on strengths rather than just fixing weaknesses. That said, my most recent survey research from nearly 100 firms revealed that only 19% reported that here strategy was largely external. And in today's highly volatile and fast changing environment, I'm reminded of something Jack Welch once said, "*When the rate of change outside exceeds the rate of change inside, the end is in sight!*"

One of the acid tests you might reflect upon is – “does our current strategic plan have our firm differentiating itself in some meaningful way, show us doing anything different from the three or four significant competitors in our marketplace; and cause other competitors to see us as a ‘leader’ in some particular niche areas?”

If your answer is, “well, not really” then just keep in mind the title of one provocative book I came across . . . “*Hope Is Not A Strategy*”



# CHAPTER 3

## Bring Your Strategy Process To Life

Given the need in today's competitive environment to examine carefully our directions for the future, I submit that the state of most law firm's formal strategic planning tends to be too structured (read: boiler plated). It is too unimaginative, too backward looking, too conformist (to precedent and what has gone before), too data and numbers oriented (a budget is not a strategy), too analytical, and far too similar (to plans developed by competitive firms).

In fact, in a recent discussion with the management committee members of a firm that had just completed a rather lengthy strategic planning process, I asserted, *"Let me see if I can guess the six primary elements that comprise your strategic plan. I'll bet your plan includes the following"*:

- we will engage in more lateral hiring of good candidates with portable books;
- we will enhance the level of value and service we provide our clients;
- we will find more ways to improve the efficiency of the services we deliver;



- we will become more proficient in making our AFA arrangements profitable;
- we will organize our efforts to get more work from our key clients; and
- we will have our practice groups work at implementing the firm's strategies."

The committee members all laughed and asked which individual leaked a copy of their plan for me to review. In the final analysis far too many strategic plans appear to result only in massive paper, solemnly clad in three ring binders, gathering dust - their specific prognostications long forgotten. They have been of little help to firms in developing truly innovative and differentiated strategies, or achieving above-average Revenue-Per-Lawyer results.

I often joke with firm leaders when we talk about strategy and ask them if they suffer the affliction of seeing '**S.P.O.T.S.**' – **S**trategic **P**lan **O**n **T**he **S**helf.

With a declining demand for legal services, you must be able to challenge conventional thinking in order to grow. Conventional thinking only leads to mediocrity, being stuck in the middle of the pack. To grow you have to be willing to break the rules. You can't grow by following in the footsteps of competitors. You have to break away from the pack. Unfortunately, some firms tend to drift along with everyone else, reacting to changes in the tide, hoping that maybe things will

start coming their way. From these firms, I continue to hear that *"strategy is the easy part, it's the implementation that is hard."* Implementation is indeed challenging, but the notion that strategy is easy, rests on the mistaken assumption that conventional strategic planning has anything to do with strategy-making. Of course strategy appears easy when the conventional planning process narrowly limits the scope of discovery, the breadth of involvement, and the amount of intellectual effort expended, and when the goal is something far short of growth, differentiation, and revenue generation. Little wonder, that in many firms, the whole notion of strategic planning has been so devalued. **How often has it produced any real strategic innovation?**

What is your measure of success in the development of strategy — a lengthy written document that finds its eventual resting-place on the shelf of your bookcase or, a process that leads to competitive differentiation and wealth creation?

What I've learned is that the best performers are taking an entirely divergent tact. The recipe they are utilizing to approach the strategy process is based on some fundamentally different ingredients.

### **Ingredient #1 Get to the future first**

Forget focusing time and attention on having your partners develop some elusive firm mission or exotic vision statement. Your partner's time would be far better spent in doing some deep thinking about the

trends that are currently shaping the profession. Have we even thought about how the future of our profession may unfold over the foreseeable next few years assuming a prolonged decline in demand for legal services; assuming the continuing emergence of legaltech companies attacking every segment of the market; or assuming how the advent of artificial intelligence and big data are going to impact your practice. Now, what would be required of us as a firm to get to the future first?

Consider: What has been the most profound change in the profession over the last three years? (How long did it take your firm to figure it out and adapt accordingly?)

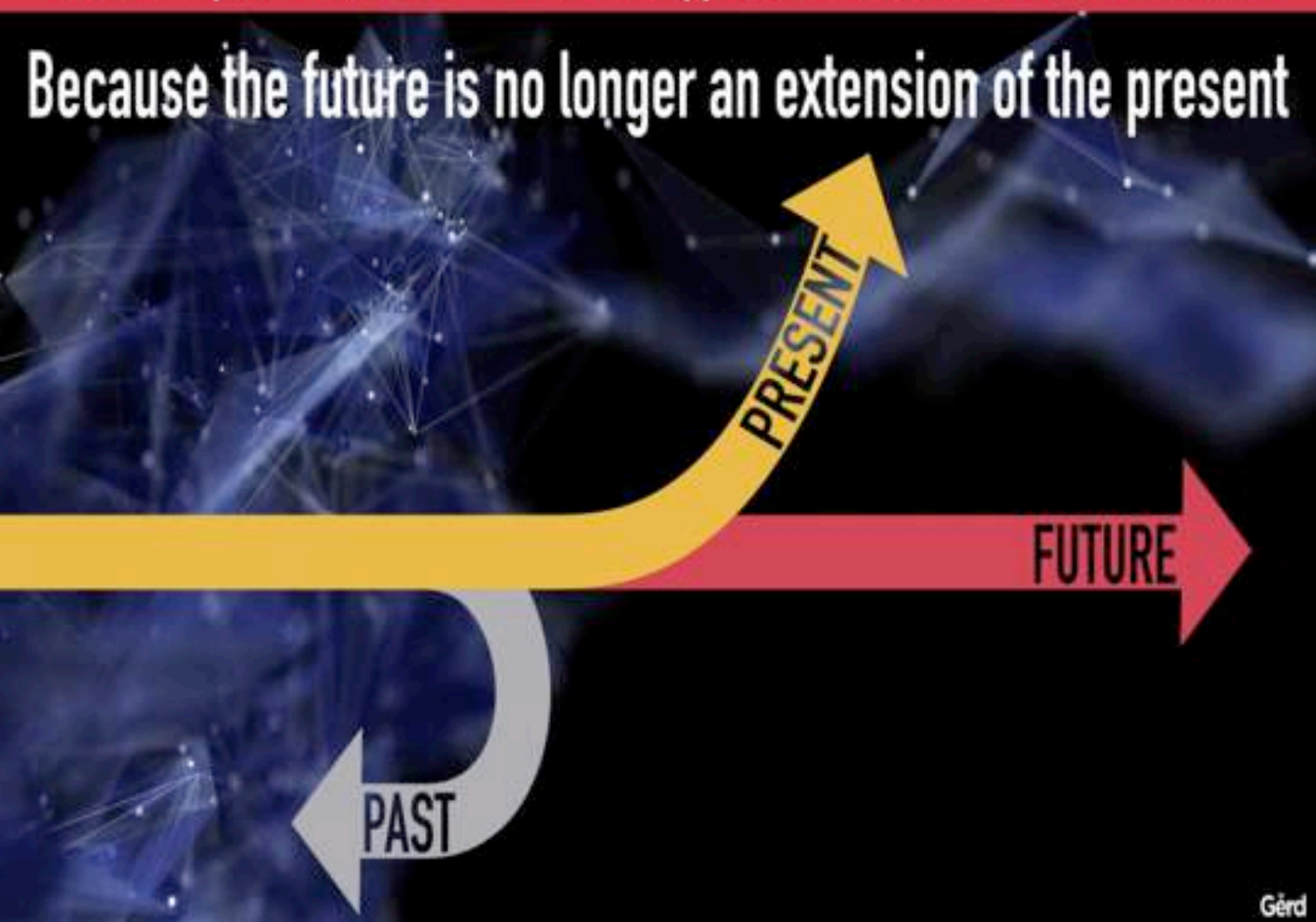
Now, taking that forward, if we knew today what we will know at the dawn of 2022, (only a few foreseeable years into the future) **how would we change** our attitudes, actions and the way in which we practiced law — the services we offered, the clients we targeted, and the ways in which we chose to deliver our services?

The greatest handicap with the conventional planning process is that it works from today forward and implicitly assumes, whatever the assertions to the contrary, that the future will be more or less like the present. The leading minds know that the future will not be an echo of the present.

Getting to the future first requires that you be deliberately farsighted.

Your ability to think 'from the future' as opposed to 'about the future' is crucial

Because the future is no longer an extension of the present



Make no mistake, I'm not talking about navel gazing or trying to predict the future. Rather, what I have learned is that crafting effective strategy is really more a question of identifying the portent of changes which are already occurring — either in other markets, **or in other professions**, or in other industries. Some of the best rule-breaking ideas are out there already, in someone else's profession or industry. Look at what they have done and see how it might be applied to our own situation. Seeing the future has nothing to do with speculating about what might happen. Rather, you must understand the potential of what is already happening. My fundamental belief is that if we want to see the future, **80 percent** of what you are going to have to learn will be from outside our profession, or at least at the margins.

How many of you, as you are reading this, understand the potential influence of Synthetic Biology, or Graphene, or CRISPR Genomics, or Biometrics, or IoT and how any one of these will profoundly affect many of your largest client companies?

**Work from the future back.** Make your aim-point the future you want to create not the future you're forced to accept. Then work backwards to the present to build the glide path to get there.

### **Ingredient #2 Identify innovation as your top strategic initiative**

The elected boards and management committees of most law firms just naturally focus their attention on that which is presented to them. What is presented to them is most often internal problems – partner

performance that falls below standard, laterals that are not achieving according to promised expectation, and perhaps clients that are not being fully serviced. Firm leaders are usually given written reports on many of these issues. They will often receive computer-generated data giving quantitative evidence of the performance shortfall. Then at meetings of the management committee everyone sets to work on reviewing and suggesting remedial action steps to address the problems. While these problems may consume the agenda time of firm boards and management committee meetings (but I hope not too much of the time), they should not be on the agenda of any session concerned with crafting strategy. Your strategy sessions should only be concerned with looking externally, looking to the future, and looking for growth opportunities. To do anything less allows growth opportunities to slowly die from neglect.

It is not sufficient for you to simply say, *"Okay, I think it is time that we developed a (new) strategic plan for our firm."* Your firm must be made receptive to the concept of strategy, innovation, and made comfortable with perceiving change as an opportunity, rather than a threat.

*"But, how can we overcome the resistance of certain of our partners to the idea of innovation?"* is a question that is commonly asked. Even if I knew the correct answer for your unique culture, it would still be the wrong question.

The better question to be considered is, *"How can we make our firm*

*more receptive such that individual partners embrace innovation and are prepared to devote some of their precious non-billable time to working for it?"*

When strategic innovation is perceived by partners as the flavor of the month, the very concept goes against the grain and there will be no innovation. Innovation must be part and parcel of the ordinary, the norm, the routine. The concept must be communicated in such a way as to be made attractive and beneficial to partners.

Leading performers will use every opportunity to **create a "sense of urgency"** from which to direct their partner's attentions to taking advantage of change. (See my ebook: **When It Comes Time To Instigate Change**). The management of these firms are telling their partners, *"we see some potential trends on the horizon that may either present an opportunity for us, or if left unattended could have an adverse effect on our collective, personal fortunes. Here is what we are seeing . . . What do you think we should do and what actions might we initiate that could have the potential to transform these changes in our favor?"*

Still some partners may say, *"Why should we do anything? Things are going sufficiently well without our messing around."* High performers recognize this as the opening for them to educate their partners as to what those competitors who are a little more alert might do, if we wait and miss the opportunity window. These firms work to create a clear understanding throughout the firm that innovation is the best means

to preserve and perpetuate the firm's wealth and individual partner's continued personal success.

Turn innovation into Job One — identify and articulate, with a sense of urgency, all of the various reasons why your professionals need to come up with new ways to:

- go outside the confines of their current practices into new areas;
- offer clients entirely new services that provide unexpected value;
- apply new technologies in ways to deliver services that clients have not yet asked for;
- target new market segments and dominate niches; and
- develop new-to-the-firm ideas and new-to-the-profession innovations.

My fundamental question to any firm leader is, *"How much of your last strategic planning effort was spent in actually creating new-to-the-firm and new-to-the-profession competitive strategy options?"*

One managing partner expressed it this way: *"I used to spend most of my time worrying about the HOW — how we did things, how we operated, how efficient we were (the internal). Now I've learned to spend more of my time worrying about the WHAT — what opportunities to pursue, what alliances to form, what technologies to back, what experiments to start (the external)."*



### **Ingredient #3 Ascertain the “Needs” of both clients and prospects**

When we are looking to the future, many tend ONLY to think in terms of improving what we currently do. As lawyers, we tend to look at our current ways of doing things and how we can improve our methodologies, rather than taking a step back and thinking about what it is that our clients may actually want. If we are concerned for our future profitability we have to increasingly think about what is it that we do as lawyers that adds value or better manages the risks that our clients face.

That sounds like a line from a screed on “*getting close to your clients*,” doesn't it?

The sermon on knowing thy client is a good and worthy one. And it has been delivered so loudly and so often for the past several decades that many firms have taken it to heart. Those firms — who are the stellar performers — know quite a bit about their clients. But I'm talking about something else that they do.

Creating new wealth requires more than simply responding to market demand. I'm talking about crafting a competitive strategy based on being innovative in recognizing client needs, preferably even before the client may know that they have the need.

When we say we need to be client-focused, what we are trying to do

is to better understand the articulated needs of existing clients. Your future-oriented challenge is to **understand the unarticulated needs** (the "*what could be*"), especially of new kinds of clients. Seeing the future first is very seldom about responding to articulated needs. It's about understanding deep-down frustrations and anxieties that people have, and creating new alternatives for them. I call this finding the "opportunity space" in which you have no competitors! Or as one firm leader recently confided, "*with our strategy we are shifting from dramatic expansion to pockets of greatness.*"

Thus, the question is not, "*how might we better serve our clients?*" That is an example of working from what is. To work from what could be, the central question becomes, "***What service might we provide that clients are not yet asking for?***" Your challenge is to encourage your people to continually ask: Whom do we serve? How do we do it? What emerging service offering that clients haven't even thought to ask for yet, can we surprise and delight them with?

Some partners may think that this is the proper role of your marketing department. Unfortunately, the marketing function is about the worst possible conduit for bringing insight into this process, because marketing, particularly through the use of market research, tends to be a prisoner of existing concepts. The only solution here is to put your partners right up against current and prospective clients, to live with them, breathe their air, understand their frustrations. Only then, might

you have the chance of developing deeper insights. You have to take off the blinders, as it were.

The problem with most of us in the profession is that we are all, too often, blind. The deepest reason for this is our inability to look outside of current experiences. If we think about it, most firms converge around how they perceive what business they're in and what clients they want to serve.

Think about the effects of everyone going to the same legal seminars and conferences, hearing from the same pundits, reading the same gossip blogs, and trading lateral partners back and forth. As a result, is it any wonder that firms obsess and spend their time focused on what every other firm is doing, watching to see what Skadden Arps or Lathams is up to — rather than sharpening their own views of the world? Dealing with this blindness involves looking deeply within the client to find hidden knowledge.

#### **Ingredient #4 Obsess about your state of differentiation**

Let's think for a minute. How different is what you are doing right now, the strategies that you are employing now, from the four or five key competitors in your marketplace?

If your answer is "*not much*," then how are you ever expecting to surpass their performance? We all know instinctively that doing the

same thing and expecting different results is futile. But that is pretty much the result that conventional strategic planning has provided.

Have you ever noticed how firms of all sizes continue to proffer themselves as a “*leading full service law firm*.” If you take a moment and Google that term you will get no fewer than 295,000 results. Does any firm really think that using this phrase has any strategic meaning?

In my strategy sessions with groups of partners I have often posed a simple question to the entire group — a question I believe is reflective of the primary concern that occupies most prospective clients' minds, what I have come to think of as the “defining” question. It goes like this: “*Tell me please — as a prospective client, why should I choose you (your practice group / your firm); what makes you distinctive and what added-value can you bring to my business matters . . . that I cannot get anywhere else?*” (Please, do notice those last six words).

Simply continuing to improve utilization (working a bit harder) or thinking that you can ratchet-up your hourly rates every year, may have been most law firms' primary strategy in the past. But I submit that it is long past being a hopeful recipe for future success. And here's a provocative **shocker** – simply focusing efforts on operating efficiencies (like learning how to project manage . . . 'commodity' legal work), offering fee discounts, and improving your ability to deliver alternative fee arrangements will NOT do it for you either! (See: **Efficiency Is NOT The Competitive Advantage**). That has now become expected be-

havior – table stakes for getting to play, if you will. The root of all successful strategy, going forward, lies in being differentiated. Your firm, your individual practice groups must all work at making themselves “meaningfully” distinctive and intrinsically more valuable to their preferred clients.

A firm simply cannot be all things to all people and do a very good job of it. Strategy requires choices. It’s not good enough just to be different. You’ve got to be different in ways that involves a trade-off with other ways of being different. In other words, if you want to serve a particular target group with a particular definition of value, this must be inconsistent with delivering other types of value to other clients. Firms that end up competing for the same set of clients using the same set of inducements will find that it is a loser’s game.

The trouble is that firms hate making choices, because doing so always looks dangerous and limiting. They always want the best of all worlds. It is psychologically risky to narrow your range of services, to narrow the range of prospects you are targeting. And this unwillingness to make choices is one of the biggest obstacles to creating an effective strategy.

### **Ingredient #5 Articulate “stretch” targets**

*“Make no small goals,”* the old saw goes, “for they lack the power to stir our souls.”

Subscribe to radical goals. Imagine what might occur if you were to

declare to your partners that you **wanted to achieve a 30% growth in firm revenue coming from services you were not doing just two years ago**, and then ask them to come forward with ideas as to how each of the practice groups could contribute to making that happen.

Sound ridiculous? After all, didn't somebody recently author a book entitled, *Growth Is Dead: Law Firms On The Brink?*

Well, here's some outrageous news from the accounting profession – you might remember those folks who are slowly working their way back in to competing intensely with law firms across numerous countries. From Peter Williams at Deloitte, *"we have the target that 30% of revenue comes from stuff that we weren't doing two years before, and that is a hefty target. But right now we are running somewhere between 24 and 28%. That is a real innovation machine!"* And I've been told that McKinsey & Company, the international management consultants have a similar stated goal that they are working to achieve.

For my part, I had an interesting experience in one firm where the Firm Chair decided that he wanted to survey every member of the elected executive committee prior to an important meeting. Using a questionnaire, he asked each of them as to their views of what might constitute a reasonable expectation for the firm's future growth prospects. In the questionnaire that he distributed, he told these partners that *"our profits-per-partner have increased during the past three years at an average rate of around 3.5% per year. What do you*

*think would be an acceptable annual rate of growth in profitability over the next two years?"*

Now what he did not disclose was that 3.5% was not the real number, nor did he inform them the degree to which it was less what the firm had been averaging. Quite predictably, based on the information this managing partner provided, nearly all of his partners responded that it would be reasonable to achieve a level of 3.5% growth over the next two years.

The lesson here is very clear. No organization ever outperforms its aspirations. Our beliefs set the upper limit on what is possible.

### **Ingredient #6 Make your practice groups the key building blocks for the firm's future direction**

One of the most disastrous developments happens when firm leaders or a select committee of power partners takes it upon themselves to develop the firm's plan and then make their pitch to 'sell' the plan to the rest of the partnership.

That lesson became evident to me again, when observing the strategic planning process unfolding at a prominent Washington DC firm. This particular firm decided that they desperately needed to develop a new direction and as a result, the firm leader, COO and a retired McKinsey & Company partner decided to develop the firm's new strategic plan. The plan was completed and the general partnership

meeting was convened. That all transpired nearly two years ago, and to this date the firm still does not have an agreed-upon strategic plan.

There are a number of inherent problems with developing a strategy from a top-down perspective.

First, it assumes that all wisdom reposes within the firm leadership. Now that is not meant to be a disparaging comment. Centering the process around the thinking of the firm's elected executive may certainly involve some of your best and brightest, but unfortunately it serves to harness only a portion of the firm's creative potential. Look at any emerging development, being undertaken by any law firm, anywhere, and ask yourself this question: Did that initiative develop at the executive committee? Or, did some mono-maniac, in some practice group, perceive an unmet client need, and then make it his or her personal mission to initiate an innovative course of action? I can report, hand-on-heart, that in most every case, my observation is the later.

I find that in the best performing firms, management is looking to the practice groups to make a meaningful contribution from their particular vantage point. They are especially looking to practice groups that are doing things better and doing things differently. They single them out, celebrate their achievements, and consistently ask, *"What are you doing or not doing, that the rest of us could learn from?"*



They are also asking individual professionals for their personal ideas on how things could be done better and differently. They tell these professionals, *"I want to hear from you as to what your personal career aspirations are. I want to hear where you see the greatest opportunities for our group and for the firm. And, I want your ideas on what you would like to see us try **that is new**, that would develop new service offerings, and provide new ways of reaching clients."*

I can honestly report that there is nothing more exciting than to observe lawyers enthusiastically devoting their limited and precious non-billable time into developing new and potentially lucrative practice niches like: mobile wallet & crypto-currency; genetically altered agricultural produce; additive manufacturing & 3D printing; e-sports; personalized DNA-based medicine; biometric recognition; shale play resturcturings; and a myriad of other exciting new legal micro-niches. I can assure you that 'Growth Is Dead' ONLY for those with no imagination or ambition!

Secondly, if one of your goals is to differentiate your firm in a meaningful way that attracts clients — and it should be, you will find it difficult to project a differentiated position for the entire firm, unless you are a boutique practice. Most clients will talk about the dominant strengths of a particular practice group, but rarely about the entire firm, no matter how much we invest in these silly-ass "branding" programs. Therefore, any attempt to develop strategy without looking to

the practice group as the primary building block is likely to very seriously miss the mark.

### **Ingredient #7 Develop strategy in action**

When it comes to executing a strategy, the end target may be clearly visible — "*I want to climb that mountain over there*" — but much of the route may be invisible from the starting point. The only way you're going to see the path ahead is to start moving. Thus while your strategy starts with foresight, it evolves through experimentation.

The most successful strategies start as small, inexpensive, limited-risk field trials. It is often far more effective than protracted analysis or market research, and always more reliable. Your market will tell you when you get it right. Craft strategy as you go along, mixing thought and implementation into the process. True partner commitment can only be expressed in actions.

In many law firms, the quest to follow precedent and achieve perfection drives out experimentation. One question I often ask firm leaders: "*Can you point to a few small experiments going on right now that you believe could fundamentally remake your firm?*" In most cases, the answer is NO, there is *nothing* to point to.

The more experimentation, the faster a firm can understand precisely which strategies are likely to work. The goal is not to develop "perfect" strategies, but to develop strategies that take us in the right di-

rection, and then progressively refine them through rapid experimentation and adjustment.

### ***“THE TIME TO ACT IS LONG BEFORE YOUR HORSE STUMBLES”***

For far too long, many firms have been busy following conventional practices. They have been wringing every penny they can out of annual billable-hour rate increases and de-equitizing underproductive partners to increase their profitability. What first began in the gut of firm leaders as a legitimate means to improve their firm's profitability, then became an obsession and most firm's primary strategy, ultimately now resulting in firms "hitting the wall" in terms of how many more, across-the-board billing rate increases and equity cuts they can achieve. So what does that leave you with as a viable means for increasing your firm's growth and profitability into the future?

Strategy innovation is about rethinking the basis of competition. Strategy innovation does not depend on past success or established ways of practicing, deep pockets, or having certain types of practice. A strategy steeped in innovation should make every decision a consequence of imagination, not precedent.

I once heard an entertaining speaker describe the situation in this way: *“Dakota tribal wisdom says that when you discover you're on a dead horse, the best strategy is to dismount. Of course, there are other strate-*

*gies. You can change riders (hire a lateral). You can get a committee to study the dead horse. You can benchmark (copy) how other firms ride dead horses. You can declare that it's cheaper to feed a dead horse. You can harness several dead horses together and project manage their movement. But after you've tried all these things, you're still going to have to dismount.*

*The temptation to stay on a dead horse can be overwhelming, but, the time to begin searching for new strategies is long before your horse stumbles."*



# CHAPTER 4

## Efficiency Is Not *The* Competitive Advantage

Efficiency in any firm, in and of itself, is not the competitive advantage. There is a big difference between being efficient and being *effective*. It's not that becoming more efficient lacks importance, but far too many firms only seem to be investing significant time and resources about being more efficient – at the expense of being effective.

Management thinker Peter Drucker addressed this topic decades ago. Here's what Drucker wrote in his book entitled *People and Performance*

*"Efficiency means focus on costs. But the optimizing approach should focus on effectiveness. Effectiveness focuses on opportunities to produce revenue, to create markets, and to change the economic characteristics of existing products and markets. It asks not, how do we do this or that better? It asks, which of the products really produce extraordinary economic results or are capable of producing them? Even the most efficient business cannot survive, let alone succeed, if it is efficient in doing the wrong things, that is, if it lacks effectiveness. No amount of*

*efficiency would have enabled the manufacturer of buggy whips to survive."*

Law firms are all too often focused on being efficient at doing the wrong things.

- **Efficiency At Producing Commodity Work**

Every firm is dealing with clients striving to get more for less. As a leader you can easily get stuck in an efficiency mindset and become totally reactive. Today it is hard to find many firm leaders that aren't encouraging their attorneys to embrace cost-cutting, project management, process improvement and other such initiatives designed to make their individual practices and their groups more efficient. Indeed, all of these tactics are included in most firm's (supposed) formal strategic plans and can quickly evolve into being your firm's primary focus.

Thinking about efficiencies is easier than developing effectiveness. You simply focus on the way you do things now – like the kinds of matters and engagements you are already doing for clients – and make doing them a little bit better. It is relatively safe, measurable, and satisfying. Alternatively, effectiveness requires that we transition from an operational (internal) lens (are we doing things the right way, a managerial imperative) to the strategic (external) lens and requires that we consider the leadership imperative – are we even doing the right things in the first place?

This can be a stressful question to answer. It may mean questioning the kinds of work that we are accepting and doing for clients. It may mean questioning why we are discounting our fees, only to fill our shops with more low-margin (commodity) work. Many of your partners don't want to deal with this issue. In a difficult environment where they are being called upon to improve their revenues, they simply want to put their heads down, keep moving (not necessarily forward) and continue with what they're already doing. For these partners, thinking about effectiveness is too long term.

However, real competitive advantage is built on effectiveness, not efficiency. Consider – have you invested so much time being efficient at doing commodity legal work that you've missed the opportunity to invest some of that time in building your skill-set to find and do the higher-value work? In your firm, have you focused so much attention on project management and incremental gains that you've failed to engage your partners in seeking opportunities to be entrepreneurial or constructively disruptive?

Take general litigation, for example. While the prospects for truly exceptional trial lawyers will continue to burn bright, there is no lack of advice on how your firm can improve its efficiencies in handling litigation matters. But is that all there is to it? At a time when in-house law departments will willingly pay bonuses to avoid litigation, where is your firm's investment in developing sophisticated tools and systematic techniques to rigorously help clients manage risk and avoid dis-

putes? At a time when most lawyers are unfamiliar with online dispute resolution, in spite of the European Commission having already formulated a draft regulation on ODR and the Canadians pioneering their innovative system, have you thought of investing to build your litigators skills in this emerging and potentially important market space?

Firm leaders should be beyond agonizing over *efficiency*, and aggressively pursuing *effectiveness*. Firm leaders should be constantly questioning: **What needs are emerging in our particular markets?** How can we get out ahead of the curve to anticipate clients' needs before clients even know those needs exist? Most importantly, how can we build our skills in new and emerging areas that may prove to be highly profitable market niches in the years to come and allow us to meaningfully differentiate ourselves from competitors?

Constant obsession around improving efficiency becomes contradictory to pursuing excellence, innovation, and dynamism.

#### • **Efficiency At Pricing Services**

As economic pressures increase, the debates over legal fees will intensify for many years to come.

Most firms have reacted to these pressures by attempting to adopt various alternative fee arrangements, usually in those practices where it suited the firm and where the firm could be assured of still making a good profit. But even if you were incredibly efficient at developing



AFAs, it would still not provide you with much of a competitive lead, for within a short time other competitors have or will match or better your position. Cutting costs and reducing prices rarely provides a competitive advantage . . . for long!

In this case, unfortunately, AFAs seem to be failing to deliver significant savings for clients. What we hear most often from in-house lawyers is that their requests for discounts are largely being driven by their not seeing much of an overall reduction in costs from employing AFAs. Law firms have not succeeded with their efforts to make price efficiency work. Indeed they have built AFA proposals on billable hour metrics, thus making them “a rose by any other name is still a rose”.

Alternatively, those who are more focused on effectiveness have gravitated from obsessing over how to price differently to exploring how to do the client's work differently. These firms are examining both litigation and transactional work by breaking them into their different component pieces and then determining how each of those pieces, from legal research through to legal strategy might be effectively handled – which could mean utilizing new technology tools to even utilizing alternative providers outside of the firm to execute certain components of the client's matter.

Indeed it is even leading to finding ways to solve the problem in the most client advantageous matter as the foremost priority.

- **Efficiency in Generating Net Operating Income**

This may be one of the more powerful examples of efficiency destroying effectiveness.

In the panic to maintain reported profits, law firms have become **supremely efficient** in de-equitizing partners to maintain profits per partner, accounting gimmicks to overstate income, lateral hiring and mergers/combinations to buy books of business to show 'growth' in revenues, building a production caste of income partners, installing wide compensation spread systems for equity partners, coercing partners to make higher capital contributions, using debt to fund distributions, reducing promotions to partner from within and building the partnership with newcomers from sources outside the firm.

Firm cultures are sacrificed, training and mentoring of young lawyers essentially abandoned, lawyers are flogged for higher billable hours quotas, billing rates raised, and compensation systems built more on political power, and in some cases outright deception to the partners, rather than rational economics.

How much of that is *effective* at making a better law firm? More importantly, how *effective* is it at making the business a better provider of legal service to clients, which is critical to its medium to long-term survival?

- **Efficiency In Satisfying Clients**

Let's look at one more example. Take the case of client satisfaction.

Let's say you conduct a survey and discover that some clients are disgruntled about something your firm is or isn't doing. Perhaps some client didn't think that their lawyer is as responsive as they might wish. The lawyer in question isn't returning the client's calls fast enough. What would most leaders do? They would start investing time and resources focusing on how to make this situation better. They might explore wait times for answering the phone, returning calls and whether the firm needed to introduce some kind of formal procedures to enhance efficiencies.

An effective leader, in contrast, might want to know how this satisfaction rating correlates to importance. If a client is dissatisfied about something, how important is that to them. In other words, if you are trying to understand the value drivers, you need to know how clients rate such things as your fees, responsiveness and quality in terms of satisfaction *and importance*. It is the combination of satisfaction ratings and importance ratings that really matter – but leaders don't always think about the second part.

But for the purposes of our illustration, let's say that the client's dissatisfaction is combined with high importance. Now we do really have a red flag on the play! Again, an effective leader might look beyond this one expression of dissatisfaction to see how he or she might restructure the entire game rather than just fine tune. Remember, efficiency in any firm, in and of itself, is *not* a competitive advantage. In one firm

we're familiar with, the expressed dissatisfaction caused the leadership to dig deeper into whether there were any particular kinds of calls that were not being returned quickly enough. They discovered that indeed, a good number of these calls were stimulated by clients wanting to know where their particular matters were at, having not heard from the lawyer over a period of a few weeks – even though the lawyer usually really had nothing new to report. This insight stimulated the firm to develop a technological-based, completely transparent system that would allow clients to easily access the real-time status on any and all of their matters without necessarily even having to speak with their lawyer.

In the final analysis . . . Are you being efficient or being effective, or **do you even know?**

Is your efficiency directed to the operation of the business and generating net revenue gains, or the consumption of your human resources for redistribution of a stagnant income pool, and thus hastening the demise of your firm? It isn't enough to be efficient on the right things, it is critical not to be efficient at doing the wrong things.

Back to Drucker once more: "Effectiveness is the foundation of success—efficiency is a minimum condition for survival after success has been achieved."

Things don't always have to boil down to either/or types of decisions. Balancing entirely different things is one of the critical success factors for good leadership. With the proper perspective and focus on the right things to be doing it is quite possible to be both efficient and effective. The two concepts can co-exist so long as the focus remains on more than just short-term results.

***Thanks to my good friend Edwin Reeser for co-authoring this piece.***



# CHAPTER 5

## Beware of Being Afflicted By Strategy Viruses

Over the years I've been busy with facilitating the strategic planning process for a number of major firms. In every instance the firm has selected a number of well-intentioned partners to serve on their Strategic Planning Committee. And in nearly every instance I have witnessed these Committees, at some point in the process, being inflicted with one of a number of disabling symptoms of what I have come to label as 'strategy viruses.'

Here are five of the most common:

### **1. Inside In.**

This is the tendency to focus on 'what we do' and not on 'what the client wants'.

We structure our firms based on law school subjects and not on the industry focus of our clients. We look forward . . . to our past . . . with foresight firmly stuck in the rearview mirror. We are so afraid of losing our heritage that we don't dare change our culture; we are locked into

our habits. Internally obsessed firms, who turn a blind eye to the emerging needs of their clients, emerging developments in technology, the future trends in the profession, and the advancing moves of new competitors rarely develop winning strategies.

## **2. Not Invented Here.**

This is a genetic mutant of the 'Inside In' virus, often diagnosed as the "*let's kill the messenger*" syndrome.

It can present itself in a number of different ways:

- 1) not listening to or learning from others on the committee, quickly discounting their point of view;
- 2) dismissing what other competitive firms are doing as not meaningful or valuable; and
- 3) strongly believing that we have to have the perfect answer before we do anything – perfectionism before action.

AND, everything requires the same, usual glacial response of: "*We need to form a committee to study this idea.*"

## **3. False Positives.**

The may be the most insidious virus of all. We engage in "*nice-talk*," being overly gracious to each other even if we disagree.

We quietly and subtly defend our own personal turf often to the detriment of the overall firm's best interests. We think that everyone

has to agree before we act, so partners say they agree when they don't. Thus, partners participate in the strategy discussions, in the strategy formulation process, nod 'yes' in the meetings and then leave the boardroom not fully committed - or worse. This is an example of classic passive/aggressive behavior, which is like acid on the skin of your firm's culture and inevitably makes collaboration and implementation very challenging.

#### **4. All Things To All.**

I see this a lot. We like to be busy; our badge of honor is full calendars, even if it excludes thinking and results. We **hide behind our "busy-ness."** We subsequently get engaged in doing lot's of 'stuff' and thinking it's a strategy.

We have a host of priorities; each gets energy and attention; we can't ever say no; and we are not focused on the critical few. There is nothing we love more than the latest 'flavor of the month.'

Our strategy is that we jump from program to program; without having any integrated initiatives; even though the partners all have a bone-deep cynicism about any "new" program.

#### **5. Marking Territory**

My favorite, this virus presents itself in the form of each partner needing their own personal fire hydrant – they insist on being allowed to



micromanage some little change (wordsmithing various documents), all in an effort to 'mark' the final work product as his or her own.

It is one thing to customize the strategy output to your firm's culture, it is quite another to get continually bogged down with partners needing to mark every step or initiative before it is allowed to move forward.



# CHAPTER 6

## On Having A Strategic Focus

This commentary has its origins in a particular incident that later compelled me to share some candid thoughts with a client firm's leader.

Dear Managing Partner:

In our strategic planning committee discussions of earlier this week, we heard from one senior partner about the importance of capitalizing on an opportunity to open a new office in another State. He informed us about this lawyer he knew who could bring in a \$4 million book of business. I asked how that would augment or support your firm's core area of industry strength. We learned that it had nothing to do with the firm's area of strength. At the time, rather than stimulate a protracted debate, I abstained from commenting any further on the issue. Upon reflection, while that was still the proper action to take at the time, I should offer my thinking to you on this subject – as I believe it is critical to your firm's strategy going forward . . .

As counterintuitive as it may sound, the very best growth strategy (in both good economic times and bad) is to decide what

NOT to do. If some partners hold to a view that the firm should “*keep our options open and not limit ourselves*” than you, in essence, will not have a strategy. By definition, having a strategy means that you decide to do one thing and not another. If we attempt to draft a strategy that has us doing a lot of things, inevitably it will end up with the firm actually doing nothing really well. When you try to do everything (full service) for everybody, the only leverage you have is to do more of it faster, better and cheaper.

The best way to expand is by narrowing. Consider: clients don't hire you for what you do, they hire you for what you know. And what your firm knows better than any other firm is this particular industry. I am reminded that Bain & Company's Chris Zook (author of *Profit From The Core*) studied the principles of focus exclusively and concluded that “narrower focus and concentration of resources on a single core business provide the best road to sustained profitable growth.

Many lawyers fear focus for numerous reasons. A leading concern is their view that if they focus their efforts on solving a particular problem or serving a particular segment of the market, they won't get to address other problems or other segments, and therefore be less appealing to everyone. Nothing could be further from the truth. It is in being highly recognized for some specific ‘world-class expertise’ that opens the door to

developing relationships that allow you to then be called upon for your counsel and subsequently develop skills and competencies in other issues that the client needs you to help them solve.

These same lawyers also make the mistake of assuming that narrow is the same thing as small; that if you are focused in on any one area you somehow limit your growth potential. While seemingly logical, this is simply not true as evidenced by firms as diverse as Intel to Wachtel. A narrow target doesn't mean narrow profits. A focused market almost always provides higher returns than a mass market because you meet a very specific set of needs. The old adage of "*better to be a big fish in a small pond*" is very true in a highly competitive market.

The only growth that really matters is growth in profitability. It typically costs much more to serve the needs of a broad, mass market of clients than it does a narrow focused market. Too many lawyers have the attitude that every dollar they bring in is a good dollar. But some dollars actually have a negative value.

In today's market, you have to be lean, simplified and incredibly focused. Resources are limited and clients are discriminating. Be vigilant about how the marketplace is evolving and how you'll stay ahead of it. It's not about building for size. It's

about building for dominating selective niche practices. Dominate or leave. There's no such thing as a "fast follower."

The simple fact is that the specialist earns more than any generalist. A highly focused firm, as you are in one specific industry, allows you to draw clients from all over the globe (as some of your partners evidence with clients from Beijing to Brussels), to offer a higher level of value, to differentiate your offerings, and is the easiest way to narrow your competition. Instead of being concerned about being too focused, we need to be concerned about being mediocre – with opening some kiosk operation with a few lawyers serving a few clients that do nothing to enhance your position or reputation.



Some may view the idea of being highly focused as potentially risky. My experience convinces me (and I do practice what I preach in being highly focused with my own career) that in today's hyper-competitive, zero-sum game, where increasingly the way to secure a new client is to take that client from someone else – unfortunately, there is little room for being risk-adverse.

If you, or your firm, are going to be successful you need to find a way to make yourself special. To be special in the eyes of your client, you need to be known for SOMETHING in particular.

My message to the managing partner of this 400-lawyer firm was that the essence of having a strategy was in being selective in choosing those few, NARROW areas in which you will strive to be excellent and then being disciplined in designing an operation to deliver in those specific areas. Please note: Nowhere do I say that focus requires betting all your chips on ONLY one number. And nowhere am I suggesting that if you have developed a practice in serving a particular client-type, say the Life Sciences Industry, that you shouldn't narrow your focus even further to dominate a number of the lucrative micro-niches within Life Sciences.

Too many law firms have made revenue (“*we’ll do anything for a client if there’s a dollar in it*”) or size; and trying to be all things to all people (“*look at us, we’re full service*”) their priority . . . rather than meaningful differentiation. But, as I was telling this managing partner, the acid test for whether you truly have a strategy that distinguishes you in some meaningful way is: **“Do you have the courage and discipline to turn away business that does not fit with your focus?”**

As Steve Jobs once said:

*“People think focus means saying yes to the thing you’ve got to focus on. But that’s not what it means at all. It means saying NO to the 100 other good ideas that there are. You have to pick carefully. I’m actually as proud of the many things we at Apple haven’t done, as the things we have done.”*

# Part 2 | Business Unit Strategy

Create  
Your  
Future

# CHAPTER 7

## Developing Your Growth Strategy: Seeking Clear Blue Water

In a recent interview with W. Chan Kim, notable co-author of Blue Ocean Strategy and just released Blue Ocean Shift, I was struck by this comment: *“What we found fairly early on in our research is that companies focused on beating the competition were not the ones seizing new growth. They were the ones stuck in the trap of competing, making incremental improvements over one another and duking it out, while the ones who were opening up new market spaces and seizing new growth paid little heed to what the competition was doing. Their focus instead was on offering buyers a quantum leap in value that would make the competition irrelevant.”* I believe that this statement could not be more applicable to the situation facing today's law firms.

Meanwhile, from contacts at Deloitte I recently learned, *“we have this target that 30% of revenue must come from stuff that we were NOT doing two years earlier.”* And from contacts at McKinsey & Company, I hear that they have a very similar revenue goal – focusing on entirely



new areas of practice. So how are you doing at growing your firm's revenues and . . . do you even know where to start?

One of the fundamental challenges of being a firm leader lies in owning the responsibility of developing a strategic plan for your firm, whether you get personally involved or have a specially constituted Strategic Planning Committee doing the work. One of the little ironies I've observed over the years is firm-wide strategic plans that get drafted and finalized without any allowance for input from the various business units that comprise your firm. In other words, what I'm proposing here is that what you, as firm leader, are managing is NOT one homogeneous firm but rather a portfolio of very different business units – such that what may be required to develop, market and grow a very successful and profitable Health Care Group will be very different from that required for a highly successful Labor and Employment practice.

Like many clichés, this one turns out to be true – a successful firm strategy is largely built around having strong practice groups, positioned in growing market (micro) niches, developing a distinctive presence, doing higher value work.

That said, before you can even begin, there are a few hurdles you need to overcome.

**Hurdle #1: Believing that the typical template distributed by your Marketing Department will produce a strategy.**

All too often, when I observe how firms tackle developing a plan for their business units or practice groups, the common process is for the marketing department to develop some form of planning template and deliver it to every practice group leader with instructions and a specific deadline for completion. These all-too-common templates usually require that each practice group provide some assessment of its strengths, weaknesses, threats and opportunities (the old but largely ineffective SWOT's analysis); determine and list the likely prospects that it will be focusing on for the coming year (aspirational at best); identify which of the group's clients it will seek to cross-sell, determine what promotional activities the group will be initiating; and so forth. This template produces a hopeful inventory of possible activities, with little detail as to how any actions will actually get implemented. I've come to call this "wet dream marketing."

Nevertheless, the practice leader, attempting to be responsive, takes home the template and fills in the blanks, confident in knowing that there is little possibility that he or she will ever be held responsible for comparing their results with the plan. Meanwhile, the partners in the group have not participated in the process. In the end they have no collective knowledge of the group's plan, no buy-in to the group's future direction, and the end result is both a futile exercise and anything but strategic.

And if that is the state of your strategic initiative, good luck, God bless, some competitor is likely eating your lunch as you are consoling yourself reading some book entitled *Growth Is Dead*.

**Hurdle #2:Subscribing to the theory that only “bet the company” work is high value.**

For some time now, various pundits and consultants have been telling firm leaders (and all of us) that the model that best exemplifies the legal market is a triangle – with only about 15% of the client's legal work sitting at the apex which is of highest value and labelled “Bet-The-Company” while the remainder falls into the categories of being rather routine and highly price sensitive. So unless you have been fortunate enough to get a taste of some of this rare Bet-The-Company work, the ONLY effective strategy for your various practice groups is to concentrate your efforts on cutting costs, learning how to do your legal work far more efficiently, incorporating principles of project management and process improvement in a profession-wide race to better price and deliver commodity work. The theory is that you will be rewarded by pricing yourself in ways that your competitors can't readily match. And that theory is, in my view a theory, and will likely help you only . . . “create a better buggy whip!”

What I'm going to argue is that this triangle is NOT the only model that exemplifies work of high value and that there is a different model that can help each of your various practice groups identify areas of lucrative opportunity.

**Hurdle #3: Accepting that the “demand” for legal services is essentially flat and that your future need not be in just doing commodity work.**

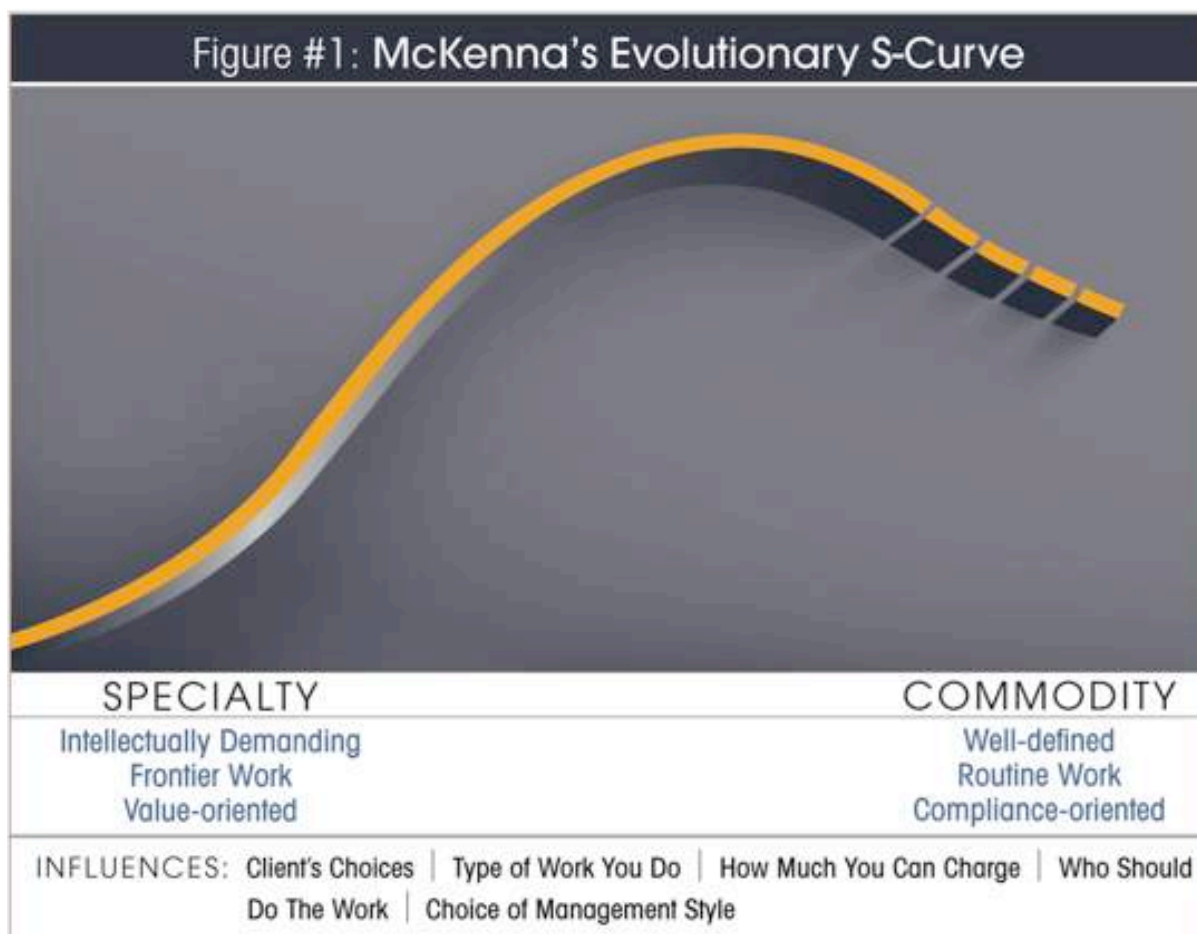
Most all of the recent studies that have been published attest to our having to cope with a flattened demand for legal services. In the last three consecutive Reports on the State of The Legal Market, the observation has been made that *“in the main U.S. law firms continue to experience sluggish growth in demand, coupled with negative growth in productivity and continuing downward pressure on rates and realization. Demand for law firm services as tracked by Thomson Reuters Peer Monitor was essentially flat.”*

What that suggests, according to these studies, is that the only way for firms or practices to grow is to basically steal the work from competitors. If that is true, and the statistics seem to support this notion, then one needs to really understand the economics of demand and what it suggests with respect to crafting a successful strategy. Therefore my intent here is to share my perspectives and experience in working with numerous firms on what I believe is most important when crafting a practice or industry group growth strategy.

**McKENNA'S EVOLUTIONARY S-CURVE**

Let's begin by thinking about legal services from a client's perspective. If you think about the overall client demand for legal services, demand can actually be graphed across a very broad spectrum of

what I have come to call my S-Curve of Legal Demand. That curve looks something like this: (See Figure 1)



At one end of this curve, on the far left-hand side, are those things that lawyers do that are highly specialized in nature. This is the frontier work, extremely complex, intellectually demanding, highly valued, and often evidence of new market situations or developments (e.g. a brand new regulation). As a client, when you are confronting this kind

of legal situation, while you will always want to know that you are getting value for your fees, fees become far less relevant. If one were to use the analogy of brain surgery, then it follows that when in need, you would not be looking for bargain pricing; you would be seeking out the very best, skilled surgeon you can find.

At the other end of this spectrum, on the far right, is that legal work that we have begrudgingly come to accept as so routine as to be a commodity. As a client, there is absolutely no mystique and so we see clients aggressively telling their vendors (and they may use that term pejoratively) **what** specifically they want to see done; **who** in the law firm they will accept doing it (“no first or second years on my files”) and **how** much they are prepared to pay. This is legal work that is well-defined, routine and often highly compliance-oriented. In this space, you are competing with every other professional, in every other firm, in every jurisdiction, everywhere, that professes to have some expertise in this particular area of practice and so fees become an increasingly important determinant to who gets the work.

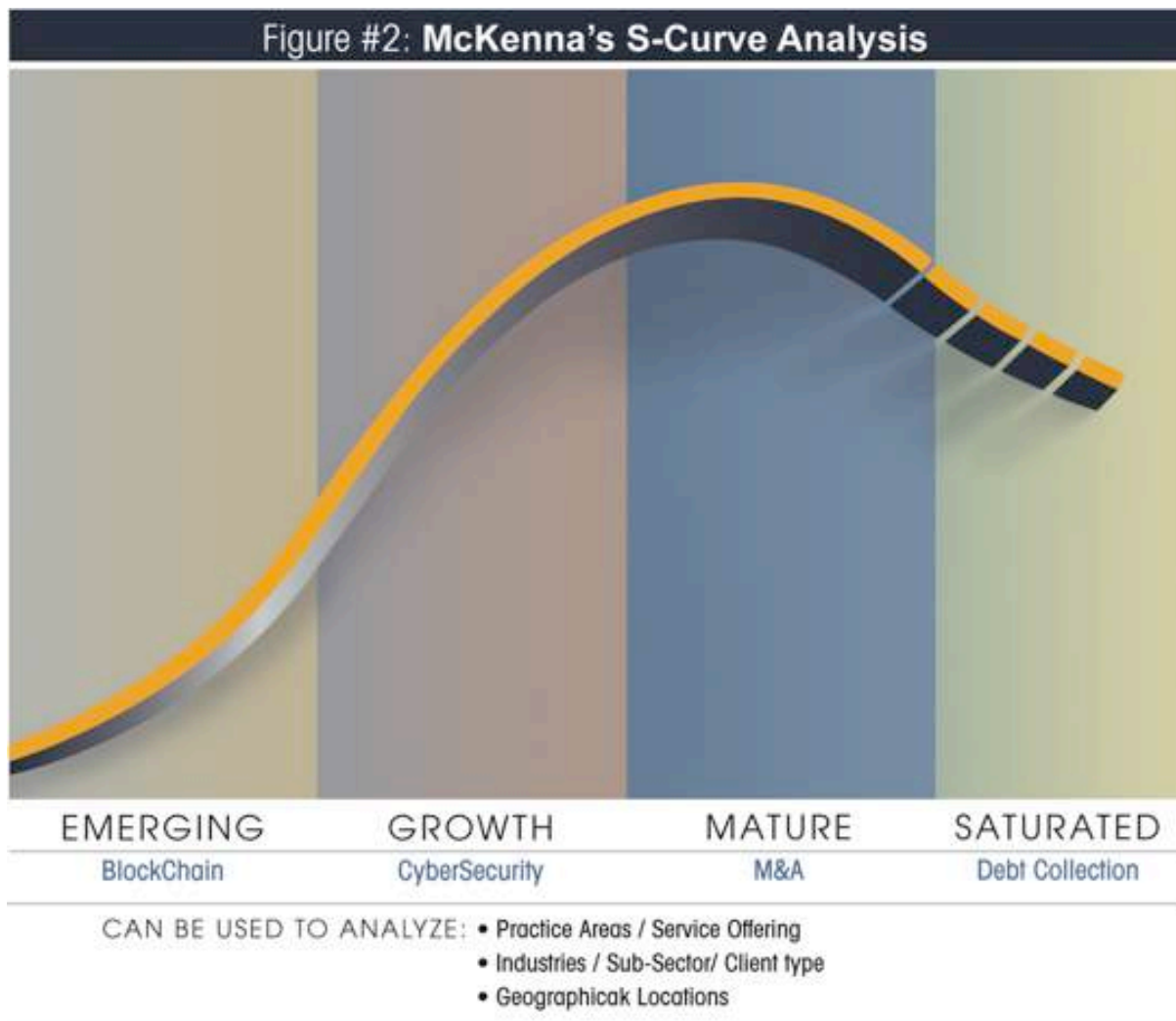
When you look across this spectrum of market demand you could actually position each of your different business units or practice groups along my S-Curve in terms of whether the unit was more specialized or commoditized in nature. But sadly, that would be of little realistic use.

However, what I have found to be of pragmatic benefit is to think of

any one of your practices, be it Health Care or Labor and Employment (as mentioned earlier) as being comprised of numerous different services and clients, many of which could logically be positioned at either end and at various points along this demand curve. In other words, there are some **services** you provide as a Health Care lawyer that are more cutting edge and some things that are far more routine. Meanwhile, at the same time, there are some **clients** that you serve that hail from newly developing sub-industries and some that are in well-established sectors. All of this is evolving over time and presents any practice or industry group with many different market opportunities.

In fact, it allows us to make some specific choices about what kind of a practice we want to have and how we want to chart the future direction of our practice or industry team. Our choices along this same S-Curve will determine what competitors we are going to face; what clients we are most likely to attract; what fees we will be allowed to charge; and what kind of profitability we might enjoy. To advance this model, we need to divide my curve into four discrete phases which represent the natural evolution of market demand, from left to right, over time. (See Figure 2 - next page).

In other words, all legal services begin being highly specialized in nature and eventually gravitate to being commoditized, and in order for us to be truly strategic, we need to understand what that means at each of these four evolutionary phases.



• **THE EMERGING PHASE**

Way over on the far left-hand side are those legal services that are very much in their *emerging phase*.

When some legal service (or type of client) is in its emerging phase we tend to hear or read about some lawyer doing something that has



us wondering, “*What is that all about?*” “*What are they really doing?*” and “*How are they making any money at that?*”

With legal services that are truly in their emerging stage, most often we are not even quite sure what this is and how it may develop. On the upside, you are hoping that you have identified a lucrative opportunity with some long-term growth potential. Consider today, are there any law firms in your jurisdiction that have established a practice group engaged in “Augmented Reality.” If there are, what they are hoping is that this is going to be the next major area where they may have an opportunity to become a dominant player – to be the go-to provider; the go-to firm.

The critical success factor in this emerging phase is two-fold. The first is finding within your firm, what Peter Drucker (the late father of modern management) often called “*a mono-maniac with a mission.*” Your mono-maniac is some lawyer who gets really excited, obsessed with, and passionate about creating a practice in some area like . . . helping companies deal with the potentially devastating effects of a cybersecurity attack. The proper role of firm management in this instance is to try to encourage, nurture and say, “*Go for it, let's see where this takes us; what can we do to support your efforts?*”

And this is not to be trivialized. In my three decades of working with the profession, I rarely see a promising development, source of lucrative new revenue or new practice emerge as the result of an Execu-

tive Committee directive. These important initiatives almost always result from some attorney with foresight, looking to do something innovative within their particular practice.

The second critical success factor is something that had its origins in the tech industry of Silicon Valley and known as exploiting a "**first mover advantage**." Cognitive psychologists tell us that as consumers we have limited brainwidth – which is to suggest that we compartmentalize information; and have very limited shelf space! If you happen to be among the first law firms to enter the consumer's conscience with respect to some area like Personalized DNA-based Medicine, then when the consumer hears about a legal issue in that space, they naturally think of you and your firm. In the consumer's mind there is no competition, you are the go-to player. You are first to occupy the market-space and first to occupy the mind-space.

First mover advantage offers numerous competitive advantages. Where a firm successfully offers a new service or enters into serving a specific industry, it is thereafter perceived by the client as having specialized knowledge in their unique business and legal matters. It can then develop a name recognition that becomes difficult for others to match.

Second, in any market with a steep learning curve, being first can confer the advantage of having a head start. That head start allows your firm to position itself as a primary source for media commentary,

for seminar presentations, for having articles published and other such positioning tactics. First movers, who also act as “*smart* movers” in that they exploit their early positioning, thereby have the chance to gain a dominant market standing and to define the standard for other firms that follow.

Third, in some situations, key resources are scarce. So for example, the first law firm to become active in a new industry association (say the Photonics Industry) could lock out others. There is also the ability to develop primary relationships with key members of some industry cluster. Clusters are a magnet for attracting world-class talent that often then move between companies within that particular industry cluster. Thus, when a key player moves from one company to another or to even start a new venture, that attorney who has the personal relationship has the inside track.

A first mover also has the opportunity to draw clients into their web, creating “switching costs” that curtail those clients from any notion of later moving their work to other fast follower firms.

Finally, Tom Kinnear, a professor at Michigan Business School reports that first movers gain 2.5 times as much market share as later entrants into new markets.

Now, as with any new entrepreneurial venture, and make no mistake that is what this is, there is a downside. Anyone remember Y2K? We

can all remember a few major law firms that had established Y2K practices with dozens of lawyers actively engaged full time in serving their clients . . . right up until December 31, 1999. But that said, I never met any lawyer involved in that practice that resented the time and effort spent pursuing something that ended up having limited shelf-life. It just means that you need to be a bit cautious in limiting your risk exposure should this niche be nothing more than a passing fad.



• **THE GROWTH PHASE**

The legal profession often appears to operate in a manner similar to the television industry. Because it is difficult to know in advance which shows will be hits, as soon as one idea looks promising, everyone rushes to pile in (witness the number of reality-type shows hosted by every network over the past decade). In a similar fashion as soon as demand takes off, we enter what is known as the *growth phase*.

You always know when a particular legal need, industry, or even market location or discrete service is in its growth stage because every major law firm in your local is scrambling to develop a practice around that same area. Note the number of firms trying to develop Drone Law, or attempting to understand just how Blockchain may affect the clients that they have been serving.

The growth stage is characterized by more and sophisticated clients discovering that they have a need for legal services in a particular area. Attracted by market growth and lucrative fees, competitive firms invest in doing the necessary research, developing internal skills and competencies, increasing their marketing efforts and searching for potential laterals.

Your critical success factor in this growth phase is critical mass. In other words, your ability to position a group with say a handful of lawyers all practicing pretty much full time in serving the multi-billion dollar Genomics market – when most other competitors might have a couple of attorneys with their toes in the water, can send out a clear and definite signal that you are “a player” in this area. This is also a time when those firms who may not be fully committed to investing in this new practice could lose key talent to firms who are serious about making their mark.

Building upon the specific action you take in the emerging phase, this is where the power of the practice (or industry) group really comes to

bear. These are not evolutionary phases where one sole practitioner can do it by themselves, no matter how good a rainmaker. This is also a phase where a committed smaller firm (say under 200 attorneys) with a few dedicated lawyers, collaborating together to build a practice niche can outperform a firm five times their size.

This largely comes about because we are now practicing in an age of **micro-niches**.

In *Unlocking The Mystique of Understanding Industry Clients*, I rudely claim that there was no such thing as a Health Care Lawyer. I was making the point that as all industries grow and at some point in their **late growth** phase, they fracture into multiple sub-industries. Health Care has fractured into (over 40) numerous distinct sub-industries, each of which is comprised of companies who believe they are unique. As sellers, we appear to be quite content with telling the marketplace that we are Health Care lawyers with little regard for what our clients are looking to buy. Therefore those lawyers who develop a specific expertise in micro-niches like personalized DNA-based medicine, mobile health appliances, or e-health information systems and then effectively market that specific expertise will become the go-to providers and achieve a significant strategic advantage over those attorneys who simply claim to be . . . "health care attorneys."

In fact, to take this a step further, one of the many sub-segments that comprise the Health Care industry today is BioSciences.

One could hold themselves out as a specialist in BioSciences . . . except that it too is comprised of numerous micro-niches: genomic editing, stem-cell therapies, molecular biology, bioethics, and so forth.

And to really belabor this point, Artificial Intelligence (AI) is the topic of the day, which is more of a **Hybrid** – in that it could be seen as a service that is infiltrating every industry and also as an industry in itself. AI can be divided into 13 different categories from Machine Learning (applications) and Natural Language Processing (speech recognition) to Virtual Personal Assistants and Smart Robotics. The U.S. ranks as the top country with over 500 major AI companies. In just the Machine Learning niche there are over 260 companies, with an average age of 13 years, each receiving about \$17 million in funding last year, all likely needing legal services as of this writing. So which law firm are you familiar with, that has an active practice in serving AI companies?

My strategic counsel is to make no mistake in that with most industries you need to be very specific about the sub-industry or micro-niche, that you are targeting to serve. And for those who play the game smartly, there are riches in the niches.

#### • **THE MATURE PHASE**

When that growth curve and the demand for the particular legal service finally does begin to flatten, we are now entering the **mature phase**.

You always know when a practice is in its mature phase because in any of your given markets, with any given legal service, you can count on one hand, usually three fingers, those firms that are doing all of the biggest transactions, the most profitable client work. There is another grouping of a handful of "second-tier" firms that are doing the conflict work or the slightly more price sensitive deals. And below that you can find dozens upon dozens of firms fighting for the scraps. To make this ranking even more visible we now have Chambers, American Lawyer and other published sources all grading different firms on their performance in different categories. And those categories are usually only recognizable after the service or industry has reached it's mature phase.

Now, demand in the growth phase eventually (over years, perhaps over a few decades) flattens into maturity with the confluence of two factors. Because this is all from the client's perspective, the first factor is client driven. Sophisticated clients and in particular, in-house counsel, soon realize that an increasing portion of their legal spend is going to outside law firms who do a particular kind of work. And in-house counsel are always looking at where they are spending their budgets on outside law firms. They also notice that there are now more lawyers in the marketplace who have a decent level of expertise in a particular area and so they decide to bring some of this work in-house by hiring the required expertise. Thus your greatest competition eventually comes from your largest clients.



The second contributing factor is a rather strategically perverse activity that only exists in the legal industry. No other competitive industry that I am aware of does this and it goes by three initials . . . CLE! Ironically and unique to the legal profession, as soon as some lawyer develops some expertise in some new area of practice, they cannot contain themselves from presenting at CLE Seminars and sharing everything they know with other lawyers – soon managing to create their own competition. (In fact if you sit down with any group of lawyers who are eager to develop a new practice in some area, what is the very first thing they do? They begin to explore what's available, what courses they can take through the Practising Law Institute or some other CLE provider to develop their knowledge.)

Now, if your firm follows averages, then a large portion (likely as much as 85%) of your revenues, of the things that most lawyers do (your various services) and who they do them for (your clients and the industries those clients are in) are all in this mature phase. That is not meant to be pejorative. This is the work that generate the income that feeds the baby. The only strategic issue is that this mature work represents the world of Today. And so what are you (and each practice group) doing to plan for your world of Tomorrow?

#### • **THE SATURATED PHASE**

From the mature phase we eventually transition into the final of our four phases. The ***saturated phase*** is when you are not only compet-

ing with every other law firm in town, but you are now competing with self help publications, online resources, non-legal providers and even consulting firms (look at what is going on in environmental practices) – any means that the client may have for getting their deal done or mitigating their problem, often without even needing to consult a lawyer.

**Figure #3: Access Your Practice Maturity**

	EMERGING	GROWTH	MATURE	SATURATED
<b>GROWTH POTENTIAL</b>	Initially potential is hard to define accurately and client expectations are uncertain.	As clients learn about and have need for the service, growth increases and rival firms are attracted.	Growth slows; potential is well understood, and pressure from competitive firms is intense.	Growth is limited to low fees – high volume. Almost all firms offer same services.
<b>COMPETITION</b>	There are few competitors, if any, and no one firm dominates.	Many competing firms are attracted by perceived growth, client demand, and high margins.	There is a proliferation of firms offering the service. Corporate clients start to bring work in-house.	High billing rates makes it unattractive for serious effort.
<b>BARRIERS TO ENTRY</b>	The legal knowledge of the firm is the only restriction to entry	The key becomes demonstrating the firm's previous experience in handling similar matters.	Entrenched competition and slower growth requires capturing clients from other firms.	High billing rates makes it unattractive for serious effort.
<b>BARGAINING POWER OF CLIENTS</b>	Limited	Growing	Great	Substantial
<b>CLIENT STABILITY</b>	New clients are likely to initially be found from among firm's existing base.	Clients are likely to be attracted and will switch firms to obtain service if need exists.	Clients have preferred relationships. Rivals understand dynamics and find it difficult to dislodge others' clients.	Clients perceive minimal difference among firms, seek best fee arrangements and show little loyalty.

Many firms adopt a rationalizing approach at this stage, either withdrawing completely from providing a certain type of legal service (debt collections) to a specific type of client (personal practice) or find alternate ways (a different business model) of providing the service that retains some degree of profitability. Some large, respected UK law firms have been known to offer these (commodity) services under a different brand name and in a low-cost location outside of their London base. Obviously, stable, long-term relationships with client companies that provide some degree of adequate volume are important at this stage. That said, if you have partner-level people doing this kind of work, then you are likely losing money.

## **THE PROFITABILITY IMPLICATIONS**

If we think about it, every professional services firm has a fairly simple business model. Our profitability or profit per partner (PPP) is a function of four manageable factors:

$$PPP = \text{Margin} \times \text{Rates} \times \text{Utilization} \times \text{Leverage}$$

Two of these (margin and utilization) have certain thresholds. So if our firm revenue suddenly declines, in order to protect our margin we need to cut costs. But you can only cut costs so far because many of those costs are fixed and cutting too deep may adversely impact our ability to deliver quality service. Meanwhile, utilization is a function of how hard our professionals are prepared to work (sometimes a life style issues within certain firms) and there is an upper threshold

known by the sophisticated term of – human endurance. So as long as we don't have partner-level people delivering performance that might indicate that they've retired but haven't yet informed us, we would maintain that we are running a healthy practice.

Given that both margin and utilization are properly managed and we aren't spending money like crazy and our people are meaningfully productive, that then leaves only two ways to improve profit, and allow us to put more money in our jeans at the end of the year. We need to find some way to get our clients to willingly pay us more for what we do (Increase Rates) or find the means of doing our kind of client work far more efficiently (Improve Leverage).

If you were now to draw a line down the middle of my S-Curve, dividing the phases of Emerging and Growth from those of Mature and Saturated, I believe you would agree that the left-hand side is a “Rates” game in that you need to provide something unique and of special value in order to justify charging more (scarcity is a powerful strategy) and that the right side is a “Leverage” game and so you need to find ways to increase your efficiency to be more profitable.

I firmly believe that the firms that will outperform the others will be those that successfully pursue dual strategies of growth (in emerging and growth phases) and operational efficiency (in mature and saturated phases) while at all times staying attuned to the trends and changing needs of their clients. I would further assert that the over abun-

dance of articles, advice and materials advocating operational efficiencies (project management and process improvement) while necessary, has come at the expense of firms developing a balanced investment in both sides of my S-Curve. In other words, if you are NOT investing seriously in the services and industries of tomorrow, playing catch up will eventually prove to be very painful.

Talking about this concept to an audience of firm leaders recently I was informed of how this model has a similarity to the Blue Ocean Strategy work authored by W. Chan Kim and Renee Mauborgne, a text that I confessed I had not yet read. This individual explained how my emerging and growth phases were the Blue Ocean versus Red; market creation versus market competition; and what "could be" versus "what is" – relating how professional service firms and corporations are both **needing to strategize around how to create uncontested market spaces and make head-to-head competition irrelevant.**

Remember: All legal services and markets gravitate from left (emerging) to right (saturated) over some period of time and it's called "eventually become obsolete!"

### **SO WHERE TO START**

When working with a group of lawyers, I often ask: "*So where do you think these emerging and growth opportunities come from?*"

I will usually hear about the need to be attuned to developing trends, new changes in laws and subsequent regulations, and being

proactive in talking and listening to your clients. All good responses. But there is even better news. In each of your firms and in each of your practice groups, as you are reading this, there are numerous unexploited opportunities where you already have some degree of experience and are not required to construct some emerging opportunity out of thin air.

Imagine this scenario. You have a client whom you have served for many years, who trusts you and calls one day with an unusual situation that they are confronting. You have absolutely no experience whatsoever with this situation. But you do have a few brain nodules to rub together and you tell your client, *"Let me look into this for you, I think we can help."*

You dig in, you invest a pile of time, you collaborate with others (inside your firm and across your personal network) and you figure out a viable course of action for your client. A good portion of your time you don't even bother to record and much of the time you do record is then written off, because after all, you justifiably rationalize that you were in a learning mode and that this work was done for a loyal firm client. AND, isn't that how most of us learn something new in our particular practice?

Only one small problem. As one managing partner explained it, "we all operate like busy little race-horses with blinders on, going from one client file to the next, but never bothering to take off our technical

hat and put on our commercial hat.” In other words, we don't take the time to seriously ask ourselves whether what we just learned on this new engagement might be leveragable with other clients. Might there be other companies out there dealing with this very same situation and not knowing where to turn?

The good news is that you already have experience throughout your various practice and industry groups in handling various emerging and growth issues, you just haven't invested the time to identify them. Here are a few preliminary steps to take:

**1. Identify and leverage your hidden strategic assets.**

In many firms there already exists “hidden diamonds” within some of the “out-of-the-ordinary” client matters that have been successfully handled by professionals in the past. To exploit the potential that lies hidden requires a bit of analysis. You need to purposefully “**deconstruct past client experiences.**”

For example, within one firm, I began the strategy process by having the practice leader interview each partner, to construct a written profile of their recent, out-of-the-ordinary client transactions. We asked each partner to please tell us about those particular matters that they had handled over the past eighteen to twenty-four months that presented a new and inspiring challenge. We asked who the particular client was and what might have made the client's situation rather unique. We then explored with the practice group whether the

lessons learned from any of these transactions might suggest new client, new market and new revenue opportunities.

**2. Select 3 of your best emerging / growth opportunities and begin to develop your action plan for becoming a dominant player.**

Deconstructing past client experiences can provide a means of escaping the myopia and put you in touch with the deeper capabilities that can be brought to bear in other commercial ways. The practice group must examine every out-of-the-ordinary transaction with the questions:

- What would it mean for us if we exploited our success with this?
- Where could it lead us?
- What would we have to do to convert it into a business opportunity?
- How do we go about it?

It is precisely because these hidden diamonds jolt us out of our preconceived notions, our assumptions, our certainties, that they provide such a fertile source for strategic innovation. From my personal experience in working with almost any kind of practice or industry group you might imagine, having the partners get together and identify potential emerging / growth opportunities in their particular group, has resulted in our focusing on no less than three good areas to exploit – to a list of more than 13 to select from.

In many firms now, managing partners are instructing their practice and/or industry leaders to identify three (3) areas of opportunity within



the emerging / growth areas of your practice and develop your action plan for how you intend to market those in the next three years with the goal of becoming the dominant, go-to player in at least ONE.

Remember where I started this paper – both Deloitte, McKinsey (and others) are working to have 30% of their revenues, every few years, coming from entirely new areas.

**So can you!**



# CHAPTER 8

## Understanding Industry Dynamics

Let's look at what is now happening in advanced education and specifically with the long revered MBA degree as an example of what is happening within our own profession.

Recently about 87,000 Americans wrote their Graduate Management Admission Test (or GMAT), an aptitude exam generally required as part of an application to MBA programs. That compares with 127,000 in 2010. Applications from students have been in a decline following the economic crisis and competition for a smaller pool of students has been raging among the hundreds of MBA schools across the continent. This rampant marketing and competition for students has raised questions about what a sustainable model for MBA programs might look like.

The generalist MBA, wherein students select a specific discipline, be it finance, operations or marketing in which to specialize, is being seen to be outdated such that schools are finding that they increasingly have to differentiate themselves. And finding ways to meaningful differentiate usually means asking the client – in this case those who hire the end product of graduate education mills, to find out from them

what they need. The response? Increasingly corporations are expecting their MBA graduates to indeed specialize, but not so much in traditional disciplines but in specific industry sectors – like mining, retail, health, real estate and so forth.

The world of management education is changing. General programs are not good enough. As one business dean expressed it, *"this shift will mean an end to the conventional 'cookie cutter' MBA, where all students learned the same basic business skills. The two-year MBA with some opportunity for industry-specific specialization is becoming the gold standard."*

Let's compare what is going on in management education with what is going on in the legal profession. Today many firms would assert they have embraced having a smattering of industry groups in their firms. Nevertheless, it is interesting and informative to look at what some of these groups may actually signal to clients about the firm's industry knowledge and competence.

For example:

**1. It is not what *you* call the industry, it is what the client calls itself that is most important.**

When you think about the various options available for stimulating revenue growth, one of those options is driven by the preponderance of various industries that are located in your particular market foot-

print. That said, I am always surprised by the lack of knowledge some professionals display in understanding which industries often have a prevailing influence in their particular locale. In fact, in a number of recent meetings (after having done the required homework myself), I've asked partners to tell me, "*What particular industry concentration or 'industry cluster' is your city, region or state focusing attention and fiscal resources on developing?*" A short period of stunned silence is then often punctuated with some wild guesses and sometimes a few manage to guess correctly.

When we think about industry clusters we naturally imagine the car manufacturers of Detroit, computer makers of Silicon Valley, aircraft manufacturers of Seattle, financial services in New York, and the movie makers of Hollywood; but industry clusters are more than just a collection of companies in the same industry. Industry clusters are actually a geographical proximate group of interconnected companies with associated institutions in a particular specialization – all linked by networks.

In other words, while some locality can have an industry group, for example the Napa Valley vineyards, what would make this group a cluster would be the presence of upstream and downstream specialists. Using the example of the Napa Valley vineyards, this would include upstream manufacturers and suppliers of herbicides, pesticides, and irrigation, harvesting and processing equipment – while downstream would include manufacturers and suppliers of winemaking equip-

ment, bottles, labels and corks. The associated institutions would then include government departments (including export), educational and research organizations, plus other related industries like tourism and hospitality.

The challenge that arises from all of this can often manifest itself in fully understanding what specific industry you are really working in and how you are communicating your expertise to the market.

For example, in one particular firm I was recently engaged in working with, as I examined the various clusters in their market, I noticed that one of the top three industry clusters was "Photonics" which included data transmission technologies, laser processing and spectroscopy analysis. When one examined the firm's web site you could not find a single mention of anyone having done work in the "Photonics" industry. When I raised this point later in our strategy sessions, I was informed that the firm had a long history of serving a number of major companies in the . . . "Optics" industry.

Now, you're welcome to call it the Optics industry, but if I, as the client, call it the Photonics industry and am proud of being an active member of the New York Photonics Industry Association – you might see how you and your firm could be perceived to be irrelevant!

Meanwhile, by not focusing your attention on the right industry "label" you may have just missed opportunities for marketing your compe-

tence into other states like Michigan, Colorado, Arizona, Florida and the Carolinas where there are other active Photonics industry clusters. But then I suppose you could explore prospects in New Mexico, the only state that I could identify that had an active "Optics" Industry cluster.

If you think this is a inconsequential point, I can assure you that it is not. For my part I learned my lesson being in a meeting with a group of litigators when I made the mistake of calling them . . . "*litigators*." In very short order I was informed that they were not litigators and not to be referred to as such. They were "*trial attorneys*."

MAKE NO MISTAKE: what label you attach to your industry group matters.

**2. As all industries eventually mature, they naturally fracture into multiple sub-industries.**

Some years back I had the opportunity of working with a Technology Practice Group to help the partners develop a strategic plan and direction for growth. Not too far into what had been scheduled to be a four-hour working session, I discerned that five of the partners served software developers; three others focused much of their attention on cable television companies; four were developing expertise with companies in the digital publishing space; and the remaining five spent their professional time working with telecommunications operations. Each of these were operating under the same marketing um-

rella (Technology) but were actually sub-groups in entirely different industries.

News Flash: You cannot develop a strategic plan for an industry group if you don't all serve the same kind of clients.

Today, this same situation **is true with numerous of your internally identified industry groups**. Just have a good look at your website. In fact to be provocative – I would strongly advocate that there is no such thing as a Health Care lawyer!

A blog post that got a fair bit of attention recently announced: "*Want to Expand? 5 Hot Legal Practice Areas to Consider.*" It advised lawyers that: "*Changing technology, government policies, and legal environments mean that there are more opportunities than ever to expand your practice into new areas. Here are just a few ideas to get you started.*" And number one amongst it's hot areas to consider was . . . Health Care.

The way some firms define and describe their industry groups is really quite interesting. If you look at Health Care by way of example, and examine various law firm websites, you are likely see a description that reads something like this:

- *We offer clients the advantages of both a concentrated practice in health care law and a business firm with broad and varied areas of experience. Our Health Care practice enjoys an outstanding reputa-*

*tion for its knowledge in health law and its leadership in the health law community. Our strength lies in the ability to understand and keep pace with the numerous changes in the health care industry and to work creatively with clients to achieve workable solutions. We offer a comprehensive approach with many inherent advantages. Because we are familiar with how health care is delivered and financed, we can respond quickly to the business and financial needs of our health care clients and to the practical realities they face.*

- Our experience encompasses a wide range of matters of concern to the health care industry, including:*
- Business Transactions*
- Integrated Delivery Systems*
- Contracts*
- Managed Care Relationships*
- Health Care Provider Financing*
- Restructuring and Reorganization*
- Tax Advice for Tax-Exempt and For-Profit Entities*
- Antitrust*
- Fraud and Abuse*
- Medicare, Medicaid, and Third Party Reimbursement*
- Employment Issues*
- Credentialing and Accreditation*
- Certificate of Need*
- Patient Care and Operational Issues*
- Medical Malpractice*



It sounds both comprehensive and convincing. The only small problem is that Health Care, as an industry, has fractured into numerous (well over 30 that I have recorded) distinct and separate sub-industries (witness my earlier example with technology) as it has grown and matured, each of which is comprised of companies who believe they are unique.

Take for example the industry of professional services and the sub-industry known as the legal profession. If some service provider held themselves out to be the renowned expert in professional service firms, your first question would be, "Yes, that's fine, but what do you specifically know about law firms?" Then if that same renowned expert began to tell you about how they employed their smarts in marketing to the advantage of some major accounting firm, even though you might admit that the tactics were equally applicable, you would still inquire as to what experience they have had serving a law firm like yours. You reject any notion that being an expert in an industry as broad as professional services, or even marketing leadership in the accounting sector, is sufficient.

Isn't it fascinating how the mindset we bring to the table as purchasers of professional services is so completely different from the mindset we exhibit as sellers of professional services?

As sellers, we appear to be quite content with telling the marketplace that we are Health Care lawyers with little regard for what our clients

are looking to buy. And in this instance the Health Care industry is fragmented into dozens of sub-industries and/or micro-niches. Therefore those lawyers who develop a specific expertise in areas like personalized DNA-based medicine, mobile health appliances, stem-cell bio ethics, e-health information systems, or lithotripsy services and then effectively market that specific expertise will become the go-to providers and achieve a significant strategic advantage over those attorneys who simply claim to be . . . health care lawyers.

MAKE NO MISTAKE: in most industries you need to be very specific about the sub-industry that you are experienced in serving and targeting to be the go-to expert.

### **3. There are some areas of opportunity that initially defy simple industry categorization**

One particular area of emerging opportunity is in what is being categorized as the "Internet of Things" or IoT.

Most often, we hear about IoT in the context of wearable devices: things like the Fitbit that promise to improve health and wellness, or more fully featured devices like the Apple Watch that also extend such smartphone functions as messaging or Web searching. But while consumer technology is a hot area, IoT will likely have a far greater impact in: manufacturing, resources and energy, utilities and civic services.

Simply defined, IoT is about connecting objects, from trucks to refrigerators and hydro meters, to the Internet. Data gleaned from the sensors and systems applied to these objects can then be used to monitor, control or redesign business processes.

Meanwhile, a number of IoT focused venture funds have been launched and one analyst claims that knowing how many IoT companies there are at any given moment is tracking a moving target. Globally, every three weeks there's either an acquisition or a new company starting up. And according to Accenture, roughly three quarters of large companies are investing 20% of their research and development spending on big data and analytics, which IoT is driving.

My research into this area of opportunity indicates that there are four expanding segments: makers and installers of physical sensors; connection providers (landline, wireless, telecoms, etc.); storage and security hardware and software (server farms, the cloud) to hold on to and encrypt all the collected data; and finally the data analysis software. Some companies do all that in one solution; others focus on one piece of the spectrum.

The projections for growth are huge: Networking equipment titan Cisco Systems Inc. believes IoT represents a \$19-trillion (U.S.) global market and predicts that 50 billion devices will be connected to the Internet by 2020.

MAKE NO MISTAKE: in spite of what some pundits might suggest – growth is not dead; it is merely hiding amongst area of opportunity not easily categorized within traditional legal departmental structures (See: **Chapter 8 - The Tech-Driven Hybrid Practice**).

#### **4. Industry sector expertise is THE differentiator.**

For those who missed one particular development that emerged a couple of years ago, 600-attorney Husch Blackwell, a St. Louis based firm, completely dispensed with its traditional practice group structure in favor of organizing itself into a configuration of six industry groups.

In a recent interview with Chairman Emeritus, Maurice Watson, he explained:

*"We were aware that the competition, especially in our segment of the market, was intensifying, that there were too many talented lawyers and talented firms and too little great work to be had. As a consequence, there's much greater pressure and focus on the need for law firms to be able to differentiate themselves as well as establish, for clients, that they can offer some kind of additional value that other comparable firms could not provide."*

Back in 1989 I authored what was probably the first internationally distributed book on the marketing of legal services (for Butterworths), wherein I confidently predicted that within ten years every significant

law firm would be structured based on industry groups – so much for the folly of making predictions.

Fast forward 30 years and it is still staggering for me to understand why, in spite of decades of witnessing other professions, like our brethren in the accounting and management consulting fields, focus on seeing client need through an industry lens, that so many law firms still miss this opportunity. It gets even crazier when we consider that one of the primary reasons for corporate counsel to either select (or deselect) any firm is increasingly based on the degree to which that firm clearly “demonstrates” an understanding of the client’s business, their industry, their terminology (“*do you speak my language?*” and what issues are of paramount importance.

### **What makes industry sector expertise a meaningful differentiator?**

**FIRST**, where you enter into serving a specific industry segment and are eventually perceived by the sub-industry members as having specialized knowledge in their unique business and legal matters, you can develop a name recognition that becomes hard for others to match.

**SECOND**, in any market with a steep learning curve, being first to target and develop a presence in some specific industry segment (think: personalized DNA-based medicine) can confer the advantage of having a head start. That head start allows you to position yourself as a

primary source for media commentary, for seminar presentations, for having articles published and other such positioning tactics.

**FINALLY**, by being early and effective in targeting some lucrative sub-industry, you have the opportunity to draw clients into your web, creating “switching costs” that curtail those clients from any notion of later, moving their work to other copy-cat firms.

MAKE NO MISTAKE: To take advantage of the opportunity professionals must participate actively within their chosen industry segment and work to establish a significant presence.



# CHAPTER 9

## The Tech-Driven Hybrid Practice

A few years back, while speaking at a couple of legal conferences (one on Client Growth Strategies) to audiences of firm leaders and CMOs, I would ask, “*Show of hands, how many of you have heard of blockchain?*” only to confront an audience that had no idea what I was talking about.

Fortunately, I would speculate that most of these same folks have now heard of blockchain and have some notion of what the label refers to . . . but do they really?

Blockchain is but one example of a new area of legal opportunity that can create confusion arising from having us trying to discern whether it is an area of substantive legal discipline, a specific industry, or perhaps, both. In a recent article, I suggested that “many law firms are recognizing the tremendous growth opportunities available to them in targeting and serving what I have come to call “**Tech-Driven Hybrids.**”

These are not purely substantive legal practices, nor are they correctly categorized as being industry practices. Rather a hybrid can be both – in that as a partner or law firm you may choose to specialize in

serving Artificial Intelligence companies, perhaps one that specializes in the sub-industry known as “Deep Learning.”

Alternatively your expertise may be in serving the Financial Services Industry wherein certain sub-segments (e.g. FinTech) may be dramatically impacted and disrupted by AI.

With respect to Blockchain, I thought it might be interesting to highlight a few of your existing clients (industries) out there that are likely to be impacted, or even disrupted by this technology while concurrently identifying a few of the blockchain “industry” players involved in creating this disruption.

At its most basic level, any legal work which involves the transfer of ownership, say either intellectual property or real estate deeds, will be made enormously more efficient through the application of blockchain and its system of distributed ledgers and “smart contracts.” The concept behind smart contracts is that once agreed-upon conditions are met, the contract will execute automatically when conditions are filled – meaning payments will be forthcoming, deliveries dispatched, or anything else executed as defined by the contract.

Here are but a few of the industries and industry players where blockchain is beginning to have an impact:



**Entertainment:** Founded by a singer-songwriter, Ujomusic tracks musician royalties as well as allowing them to create evidence of ownership of their work.

**Insurance:** AIG is piloting a smart contract system to oversee the creation of complex policies requiring international cooperation.

**Real Estate:** A relatively new company, Ubiquity, is creating a blockchain driven system for tracking the process that creates friction and expenses when legally transferring real estate.

**CyberSecurity:** GuardTime is a company creating "keyless" signature systems to secure the health records of one million citizens, using blockchain

**Health Care:** SimplyVital Health has reported two different health-related blockchain products in development. ConnectingCare tracks the progress of patients after leaving the hospital while Health Nexus provides decentralized patient records.

**Recruitment:** Blockchain CVs have now been developed which will streamline the selection process by verifying candidates' qualifications and relevant experience.

**Media:** Kodak recently announced that it is developing a blockchain system for tracking intellectual property rights and payments to photographers.

**Manufacturing:** BlockVerify is a special blockchain platform focusing on anti-counterfeit measures for diamond, pharmaceutical and luxury good producers.

**Non-Profits:** A business-led community project called Transactivgrid based on Brooklyn allows members to locally produce and sell energy with a goal of reducing costs involved in distribution.

**Retail:** OpenBazaar is an attempt to build a decentralized market where goods and services can be traded – with no intermediary or middle-man.

**Travel:** An online travel portal, Webject developed a track and trade solution to fill last-minute vacancies of empty hotel rooms.

And finally, according to one report I read, **Global Banking** is currently a \$134 trillion industry. Banks help intermediate payments, make loans, and provide credit. Blockchain as a trustless, disintermediated technology may disrupt all of that, including:

- **Payments:** By eliminating the need to rely on intermediaries to approve transactions between consumers, blockchain could facilitate faster payments at lower fees than banks.
- **Clearance and Settlement Systems:** Blockchain and distributed ledgers can reduce costs and bring us closer to real-time transactions between financial institutions.

- Securities: By tokenizing traditional securities such as stocks, bonds, and alternative assets, the blockchain is upending the structure of capital markets.
- Loans and Credit: By removing the need for gatekeepers in the loan and credit industry, blockchain can make it more secure to borrow money and provide lower interest rates.

These should serve to evidence just a few of the vast potential of opportunities that blockchain technology can offer, how your clients may be affected, and the need to enhance your legal knowledge of this tech-driven hybrid.



# CHAPTER 10

## Importance of The Micro Niche

I have a new word that I share with lawyers whenever I'm speaking at conferences – “Infobesity.” It is meant to help them try to conceptualize that we now live in a time where we all suffer from an information epidemic, wherein we are exposed to the digital equivalent of over 176 newspapers worth of data . . . a day!

Meanwhile about 570 new websites come into existence, 204 million emails are sent and 100 hours of video are uploaded to YouTube by users . . . every minute. In fact, the amount of data being produced is truly mind-boggling and impacts every lawyer's personal practice. And to add one more complication, according to the latest factual findings from the Brain Research Institute, the average attention span of most intelligent humans is – ONLY 8 seconds!

There was a time when we simply organized our law firms **vertically**, by the same subject matter we studied in law school. So we might have had a corporate practice, a litigation practice, a labor and employment practice and so forth. And today, we tend to think of the typical Labor and Employment practice as highly commoditized with practitioners doing low-value work for highly discounted fees. But

that is not the real world for those looking at the trends, monitoring the pace of change and exploring where new client needs may be emerging in highly-specialized micro-niches.

Let's look at "Workplace Surveillance" as an example. Today, there are companies, like Three Square Market in Wisconsin, "chipping" their employees and inserting implants under their skin (with a syringe between the thumb and index finger). This chip is then used to access the building, log into your computer, and so forth. Over in Sweden, roughly 3500 people have had microchips implanted in them to function as contactless credit cards, key cards and even rail passes. If chipping isn't your thing, then there are all kinds of surveillance software programs to consider, from WorkSmart, an employee monitoring tool that takes photos of your workers every 10 minutes; to InterGuard, a digital panopticon that monitors email and phone activity, tracks web-browsing patterns, text messages, social media posts, private messaging apps, and face-to-face interactions with co-workers. Workplace Surveillance is just **one** of about a dozen highly specialized micro-niches in today's Labor and Employment practice arena.

More recently some forward-thinking law firms started organizing **horizontally**, with practice groups specifically constructed to serve industry clients, recognizing that there was significant research to show that clients actually chose their legal providers based on that firm's demonstrated industry knowledge. Now again, the total amount of data being captured and stored by industry is now DOUBLING every

1.2 years – which means it is not good enough to simply call yourself an Energy lawyer, a Real Estate lawyer, or a Health Care lawyer. In health care there are now over 8000 'peer-reviewed' medical journal articles published . . . daily. So, how in the world would you ever hope to stay current by trying to serve an entire industry. It cannot be done.

For example, we might see some firm with a team set up to serve the Agricultural industry – and I've purposely cited an industry example that most would think was mid-western rural, boring, low value and highly commoditized. But once again, if you were to examine where the lucrative micro-niches might exist, you might just stumble across "Vertical Farming."

The Vertical Farming micro-niche represents a market space that saw 22,000 patents filed globally between 2014 and 2016, and attracted \$350 million in venture capital last year alone. Vertical Farming, not at the mercy of nature, produces crops using 95% less water, no soil (seeds take root inside growth plugs made of moss), uses 30% less energy and can grow in 12 to 16 days what ordinarily takes crops 30 to 45 days to grow in a field. Every hectare under vertical cultivation is the equivalent of 9 hectares of conventional outdoor farmlands and saves 200 tons of water per day! One side effect of this new era of farming is its impact on real estate. Growing urban populations paired with a desire to eat local is spurring farms to settle in cities and industrial areas. Now incorporate advanced robotics, machine vision and AI and the Vertical Farm can ensure temperature, humidity, nutrients and

lighting are all balanced. Want to grow strawberries . . . just press "strawberry" mode.

Today, firms are facing yet another structural and marketing challenge, that which I have come to call, "Tech-Driven Hybrids." These are practices that are not simply conventional in that they require a level of expertise that goes beyond any one vertical (e.g. may require regulatory plus tax, plus IP) and they are practices that extend beyond impacting just one industry in that their effect will likely be felt in a good number of different industries.

Let's examine "Augmented Reality" (AR) as just one example of a tech-driven hybrid. AR enjoyed a global market of \$11.4 Billion in revenues last year and is expected to grow to \$215 Billion by 2021. It represents a technology whereby the overlay of new digital information can be effectively utilized with a user's existing environment, and is impacting a good number of different industries. Here are but a few examples:

- EDUCATION & TRAINING: *Medical Realities* is building the world's first interactive VR training module for surgeons. Dr. Shafi Ahmed reached 14,000 surgeons across 100 countries using Google Glass to stream a training session.
- PROFESSIONAL SERVICES: Advanced collaboration tools make it possible for engineers and designers to work remotely on 3D models

and lawyers to recreate an accident scene in the courtroom before a jury.

- RETAIL: Try your outfit in a fitting room, apply makeup to see if it suits you, see if a sofa will fit under the window – without physically trying anything on.
- HEALTHCARE: *Vijpar* is a video platform, that allows a surgeon in one location, to project hands onto the display of another surgeon's Google Glass to guide surgery.
- REAL ESTATE: Enables prospective home buyers to view properties as finished products even while under construction through 360 degree, 3-D videos. *Spantium* has developed a platform to create precise 3D models of skyscrapers before they are built.

Among these various hybrids are micro-niches in areas like AI, blockchain, 3D printing, quantum computing, robotics, bigdata, synthetic biology, material science, wearables, platform businesses, predictive analytics and so forth. In these arenas we see law firms making the mistake of lumping a number of hybrids all together into a large, generic "Technology" practice group expecting that that should appeal to or impress perspective clients. Unfortunately what too many firms are slow to understand is that if I as a prospective client need specific assistance with a workplace surveillance issue, I'm not



interested in conferring with just any law firm that has an L&E group and if I want to explore a privacy issue with respect to the use of virtual technology in hospital operating room, I'm not interested in spending time with your typical Health Care attorneys. These are all the kinds of issues that require very specialized expertise.

But wait, there is still another micro-niche, something that I have simply labeled "Unrealized Segments." These are simply client groupings that many law firms may already serve, but that are not sequestered as a specific area of expertise. In other words, if I were a prospective client looking for a law firm to help me because of how I have labeled my business, it could be very hard to find a firm.

A couple of quick examples. Identify for me a law firm, anywhere, that has a practice group specializing in serving "Women Entrepreneurs?" And I'm not referring to small owner-operated corner stores. There are some 8.6 million US businesses owned by a woman, representing \$1.6 trillion in revenues (2016). You can find accounting firms, financial service firms and others that specialize in this micro-niche, but law firms . . . not so much.

Or how about naming a firm that specializes in Venture Philanthropy? There are only 76,000 philanthropic foundations operating throughout the US. It seems to be that this could be quite the lucrative market. On the other side of that coin, there is an 11-lawyer firm in New York City that specializes in "Social Finance and Impact Investment Trans-

actions" and I'm not even really sure what that all involves, but I know that they own that market space. And that is the power of focusing on a micro-niche.

What has always been fascinating to me are those situations where I get called into meet with some law firm interested in retaining a consultant to help them develop their firm's strategic plan, as happened recently in Atlanta. The common questions include my general experience with law firms, with law firms looking to develop a strategic plan, with firms of a specific size, and in this instance whether I had any experience with firms "from the deep south." (no kidding!)

The irony is that the kinds of questions we ask when we are buyers of professional services seem to be very different how we conduct ourselves when we are the sellers of professional services. Make no mistake. Today's clients are looking for the go-to specialist in their area of need and there are riches in those niches.

I have always been impressed by and thought that the very best marketer that I ever witnessed was none other than the guy who started the rock band, The Grateful Dead. And some of you may remember the late Jerry Garcia. What stands out in my mind is him once being quoted as saying, "*It ain't good enough to be the best of the best. I want to be the only cat who does what I do!*" Amen.

## APPENDIX D

### Some Lucrative Micro-Niche Practise

Here are six different examples of micro-niches I've identified - slivers of potentially lucrative opportunity for those attorneys and practice groups that care to invest the non-billable time in building the necessary skills to develop their knowledge and position themselves as the "go-to" experts:

#### 1. Digital Transformation

*"Digital disruption is the main reason just over half the companies among the Fortune 500 have disappeared since the Year 2000."*

Pierre Nanterme, CEO of Accenture.

Today successful companies realize the costs of failing to innovate in a business landscape that is seeing incumbents displaced at an increasingly rapid speed. Intel, which has more than 100,000 employees, holds quarterly innovation days where employees can report the digital threats and opportunities they see in the distance.

Meanwhile many CEOs recount a new mantra: *"data is the new oil."* It's true that both generate wealth, power the cogs of economies and corporations globally, but the similarities stop there. The fact is, oil is a finite fossil fuel, while data is infinite. In the next two years, 40

zettabytes of new information will be created. And to help those of us who don't understand what that means, it is the equivalent of four million years of HD video.

While the analogue economy has quickly given way to the digital one with increasing buy-in from industry chiefs, the biggest challenge in corporate boardrooms is unifying the strengths of the 'old' with the opportunities of 'new' and faced with this challenge, anyone reading anything about digital transformation may conclude that many have different definitions of what this topic is all about.

Most organizations seem to use the term to describe significant changes they are attempting to make in their business that are enabled by digital technologies – thus utilizing digital tools and new technologies. Digital transformation involves using digital technologies to remake a process to become more efficient or effective. The idea is to use technology not just to replicate an existing service in a digital form, but to use technology to transform that service into something significantly better. But it's not just about the technology: changing business processes and corporate culture are just as vital to the success of these initiatives.

Digital transformation initiatives are often a way for large and established organizations to compete with nimbler, digital-only rivals. These projects tend to be large in scope and ambition, but are not

without risks. In general terms, it can be defined as the integration of digital technologies into all areas of a business, resulting in fundamental changes to how that business operates and how it delivers value to its customers. Digital transformation will therefore require organizations to examine all areas of their business, including supply chains and workflow, employee skill sets, board-level discussions and customer interactions.

Last summer, Crowell & Moring became the first law firm to announce the launch of a Digital Transformation practice looking to serve clients in a “broad” array of privacy and cybersecurity; artificial intelligence and robotics; the Internet of Things (IoT); blockchain; drones; and autonomous vehicles. This new practice claims to encompass a cross-disciplinary team of internal lawyers with external technologists and consultants. Apparently a focus of the group's efforts will be “speed to market” in helping corporate clients quickly launch new innovative products and internal processes. To help clients reach their goals, the practice group will strive to increase the client's awareness of new technologies and of regulatory trends that may be shaping the technology sector.

On average, many companies believe that half of their revenues, by next year, will come from digital channels. Furthermore, the World Economic Forum has estimated that the overall economic value of digital transformation to business and society will top \$100 trillion

within the next six years. Any way you look at it, the largest growth opportunities that most organizations can access now is to better seize the white space in these rapidly expanding digital markets. But simply introducing digital isn't really transformative; it needs to be genuinely transformative to the way the business works.

Here is what some in the C-Suite are saying:

*"Digital transformation continues to be a strong trend and driver for growth. More companies are starting to execute their digital strategies and experiment with proof of concept around IoT, robotics and analytics. We are seeing an uptick in cloud adoption and the use of cloud platforms."*

*"In financial services there is a big focus on growth and the customer experience. Banks are looking to change the legacy system and infrastructure – and so we are seeing big transformation programs around IT replacement and putting in new digital solutions. "*

The US market, the largest and most mature, is also one of the fastest growing and was the first to go all out on digital transformation. And while law firms have been slow to identify this micro-niche as a lucrative area of focus, the consulting profession has not. In the general consulting market, digital transformation by the end of 2017, the last full year for which there is data, reached a value of \$26 billion in consulting revenues. Digital transformation work makes up 40% of all US consulting revenues.

Ongoing disruption across multiple industries driven by new competitors is the key driver behind this with incumbent players recognizing the need to invest in digitally transformed models in order to stay one step ahead of these aggressive new entrants. Even those companies who were slow to invest are now taking steps to change. A fear of being left behind combined with a strong economy and the tax windfall provides companies with the means to invest.

The financial services sector participants represent the largest buyers of digital transformation work accounting for 28% of the digital transformation spend. These companies focused on customer experience transformation initially but are now also looking at end-to-end digitization initiatives, using automation to reengineer entire processes and starting to experiment with artificial intelligence (AI) to drive up efficiency.

Manufacturing is the second largest market at 15% followed by Energy and Resources at 12%. Digital transformation means different things to different sectors. In consumer products it is about themes like cost reduction and better supply chain integration. Telecoms are focused on new service offerings and infrastructure. While Mining, which has operated with the same business model for decades, is now planning how to innovate using digital.

Some developments to watch during the year:

- According to the latest data from the MIT Sloan Management

Review, the clear leadership role in digital transformation is now being assumed by the CEO, in 41% of companies – largely because it is now one of the top three priorities of many corporate Boards. Expect to see more CEOs committing their attention and resources and becoming actively involved in the selection of external support resources.

- Labor and employment support will become more critical as the people-side of the changes required for digital transformation often go under-addressed, yet arguably are the key success factors. Human resources in these companies have to carry out the digital transformation, yet are often inadequately equipped to do so from a skill, culture, mindset, inclination, and talent perspective. Many organizations have had their digital change initiatives crash upon the shoals of insufficient human capability to carry them out or an inadequately enabling environment.
- New digital regulations (like GDPR) are adding complexity to many digital transformation efforts. While some organizations may decide simply to ignore or abandon for now those regions with expensive and/or cumbersome regulations, it's not possible for larger organizations with commitment to customers and partners around the world. Expect more focus on digital regulation in 2019 and to be ready to deal with it proactively to head off slowing down of digital projects and initiatives.



- New technologies will emerge during the year to augment the vast and growing list of technologies that companies must absorb to stay relevant. Companies will be required to learn how to experiment quickly, often with partners and startups, to begin promising pilots to enhance the business and will require legal guidance in their efforts.

As digital transformation grows in importance, clients are looking for legal and business solutions guidance in developing digital strategies, including how to harness new technology to upgrade their customers' experience. Incumbents need to determine how best to deal with market encroachment from new digitally enabled competition. Efforts to digitize the back office through the use of tools such as robotic process automation has raised numerous operational improvement legal issues. Labor and employment, HR and change management is being reshaped as clients start to grapple with the implications that digitization work has for their workforces. And, there remains a continuing interest in cybersecurity risk assessment and regulatory.

## **2. Esports**

Esports has become a specialized area of opportunity over the last few years. The stunning rise in the popularity of particular teams of video gamers competing against one another in front of a live and broadcast audience is becoming big business and another potentially lucrative micro-niche for innovative law firms. In February 2015, Roger

Quiles, head of Quiles Law, an esports and sports law firm in New York City, launched the first Esports blog. Then in July 2016, he published "The Little Legal Handbook for Esports Teams - an online publication designed to help out players and organization owners on matters that include: how to draft a player contract, how to draft a sponsorship agreement and how to protect intellectual property.

In January of 2017, Seattle based lawyer Bryce Blum launched his esports-only law firm, Electronic Sports and Gaming Law. Blum, an ESPN contributor, first began to make his name in esports in early 2015 by posting legal opinions and articles on the subject.

Last summer a young associate, practicing employment and labor law, inspired the leadership at the McNeese Wallace firm to announce the launch of their esports practice group. Then a few weeks back, Sheppard Mullin announced they were launching a similar group with about 20 attorneys.

For the uninformed, esports law is an amalgamation of multiple disciplines – labor and employment, contracts, endorsements, sponsorships, gaming, intellectual property and all the things that come with those arrangements. Potential clients are likely to include individual gamers, but also the game publishers, organizations building potential leagues, sports competition venues, media, entertainment, and advertising companies, and let's not forget potential investors and private equities.

Not to be late to the party, we now even have a few Universities introducing an e-sports program for their 2019 fall semester that includes courses about coaching esports teams, marketing video games and managing the business side of gaming. Ohio State University will offer a new major: a bachelor of sciences in game design and esports, while the University of California at Irvine and Lambton College in Sarnia, Ontario are introducing esports certificate programs.

According to those familiar with this area, what makes this robust, rapidly emerging esports niche especially complicated and intriguing is that it is still very much a 'Wild West' system without any established norms and patterns. The structure of teams and leagues, the formation of partnerships, and any kind of 'best practices' for those interested in the business are all still being created.

The esports industry brought in \$865.1 million in revenue in 2018, according to Newzoo (market researchers), and expected to reach \$1.1 billion this year, based on their projections. With a growth rate of 22.3 percent year over year, Newzoo predicts that the industry will rake in \$1.79 billion in revenue by 2022.

### **People pay big bucks to see esports.**

The industry can already boast of having a passionate, global, highly engaged audience. What is especially amazing is the way esports are moving into stadiums built for popular sports like the NHL or NBA. Over 20,000 people shelled out at least \$60 apiece to see the two-

day Overwatch League Final event at the Barclays Center last July. On Stubhub, a ticket resale portal, demand for tickets was high enough that a single ticket would set you back at least \$195. These are ticket prices that are more often associated with major musical acts or major sporting events, not for those *watching* video games. Citigroup analysts cite studies indicating that 143 million people watch esports at least once a month. Their study estimated a 15% compounded annual growth rate in viewers for the foreseeable future. Deloitte is forecasting an estimated audience of 600 million globally by next year.

Meanwhile CNBC reported that the finals of the *League of Legends* tournament, held in South Korea in November, attracted an audience of 100 million – only 3 million fewer than US viewers of the 2018 Super Bowl.

**The teams are encouraging big investors.**

In October, Cloud9 became the world's most valuable esports team after raising \$50 million in funding. Meanwhile, a report in Forbes estimated that a total of nine esports teams worldwide are worth at least \$100 million. As one might naturally expect, those numbers have attracted the attention of some big-time investors, like Mark Cuban and traditional sports mogul Robert Kraft, who owns the New England Patriots, and paid \$20 million to own the Boston-based team in Activision Blizzard's Overwatch League prior to its launch last year. Even

basketball legend Michael Jordan, joined in with an equity involvement in a group owning Team Liquid.

### **The biggest advertisers want a piece of this action.**

The industry is generating approximately \$1.5 billion annually from sponsorships and advertising. By way of example, in early February, the Overwatch League announced that it has added Coca-Cola as its official beverage partner ahead of the 2019 season. Coca-Cola joins Toyota, T-Mobile, HP and Intel as some of the major brands that this particular league has signed. While terms haven't been disclosed, the multiyear deal will give the beverage powerhouse exclusivity with all 20 teams in the league and events across the collegiate and amateur levels as well.

### **And big media wants in**

Like traditional sports, esports is premium content, and media companies and advertisers are both willing to pay for the ability to tap into these markets. For the media, Esports offers partners and sponsors access to an extremely valuable and otherwise difficult-to-reach millennial demographic; a group not nearly as impacted by traditional television and advertising.

Twitch, a video game streaming service owned by **Amazon**, was the first to see the value of the Overwatch League, offering \$90 million for digital rights to the first two seasons. Big media companies were a bit

late to the game. Then Disney saw the dollar signs being thrown around in esports and wanted a part of the action. By last July, Disney and ESPN announced that the Overwatch League playoffs and finals would be carried on channels from Disney XD to ABC. This was a big validation for esports, which have always operated on fringe media platforms.

ESPN has reported that **HP paid \$17 million and Intel paid \$10 million** for sponsorship deals with Overwatch League. Sour Patch Kids, **T-Mobile**, and **Toyota** have also signed undisclosed sponsorship deals. If these companies are willing to spend money on advertising with leagues, they'll certainly be willing to pay a premium for advertising during esports events on TV. And of course that is what Disney sees as the upside of their deal with Overwatch League.

### **Esports may just be getting traction**

The future of esports may just be getting started. Overwatch League has demonstrated how big the business can be, and now Activision Blizzard will be the first company to see how big it can make esports grow. Management has said it wants to expand the league beyond the current 12 teams and potentially into international markets, which could bring in \$60 million per team in expansion fees, although a final plan has yet to be announced.

Venues will also be built to house esports events. In Los Angeles, Activision Blizzard built an esports stadium for Overwatch League this

year, and we'll see more purpose-built spaces in the coming years, particularly if expansion goes overseas. And we may just be scratching the surface of the esports advertising business. Esports fans represent a valuable under-30 crowd, and we should see advertising to them go mainstream now that Overwatch League has built critical mass.

Esports is here to stay, and given the size of the business this early there's no telling how big it will get -- which is great news for the industry's leader, Activision Blizzard.

### **3. Climate Change**

In 2016, the nations of the world created the Paris Agreement, an international call to action in the battle against a rapidly changing climate. It outlined limits to greenhouse gas emissions and other major changes to economies and infrastructure—the kinds of things that might be inconvenient but worth doing when the alternative is widespread climate catastrophe. Nearly every country in the world signed the agreement. But today, nearly every country in the world is falling short of its commitments—and the science behind those commitments is getting scarier.

in a related development, some of the largest oil and gas companies now find themselves defending legal suits over their industry's role in this same climate threat. This wave of legal challenges washing over the industry, demanding accountability for climate change, started as

a ripple after revelations that ExxonMobil had long recognized the threat fossil fuels pose to the world. Now at least 14 US cities, five counties, one state and a group of children are suing some of these companies for selling products that contribute to global warming while misleading the public (reminiscent of tobacco litigation) about their harms. Most of these cases are still undergoing pretrial legal motions; while lawsuits brought by the cities of Oakland and San Francisco had been dismissed, but are currently being appealed. The "group of children" consisted of 21 young people, including two University of Oregon students all between the ages of 8 and 19, seeking to compel the government to take more aggressive steps to reduce carbon dioxide emissions. They are arguing, in this high profile climate rights case, that their constitutional rights have been violated because federal agencies have failed to protect "essential public trust resources." They allege that the government created a national energy system that is doing long-term damage to the environment, imperiling their futures. According to Paul Sabin, a professor at Yale, "this is only the beginning."

With a flurry of lawsuits starting to be filed across so many jurisdictions, the likelihood of climate cases getting to a trial grows. According to Rhode Island Attorney General Peter Kilmartin, "Big oil knew for decades that greenhouse gas pollution from their operations and their products were having a significant and detrimental impact on the earth's climate. Instead of working to reduce that harm, these companies chose to conceal the dangers, undermine public support for



greenhouse gas regulation, and engage in massive campaigns to promote the ever-increasing use of their products and ever-increasing revenues in their pockets." Kilmartin has announced that his state is suing companies like Exxon Mobil, Chevron, BP, and Royal Dutch Shell.

The argument in most of these cases is that these oil and gas companies have known for decades that their products release greenhouse gases that warm the planet (but hid the information), which in turn harms the public with rising seas encroaching on shoreline properties and drier weather increasing wildfire risks for homes. At the same time, the plaintiffs say, coal miners and oil drillers obfuscated their products' impact on the environment despite their own internal research showing that carbon dioxide from burning fossil fuels is warming the planet. The bottom line: 'You made this product. You knew while making this product that it was going to cause these horrific problems. And you did not tell anyone,' according to an interview with David Bookbinder, chief counsel at the Niskanen Center. And ironically, oil companies have even requested government funding to build sea walls to protect their own coastal refineries from these same climate change impacts!

Meanwhile, this is also fast becoming a global issue. It is estimated that over 1400 climate change litigation cases have been filed to date around the world, covering 25 countries and a variety of issues, claimants and defendants.

The key drivers for this kind of litigation include:

- compensation for the costs of adaptation to climate change;
- challenging climate change-related legislation and policies, or their application;
- preventing future emissions and contributions to climate change;
- requiring governments or regulators to take action to meet national or international commitments; and
- raising awareness and exerting pressure on corporate actors, regulators or investors.

This current wave of litigation is raising new legal questions in the context of climate change for the first time. For local governments suing oil and gas companies, the fight is over who's on the hook for paying for the damages stemming from rising average temperatures. In the children's lawsuits, the key issue is whether a stable climate is a civil right.

Oil companies are taking these cases very seriously. Exxon Mobil, the world's largest, launched a million-dollar push in 2018 for carbon tax legislation that includes immunity from climate change-related lawsuits. Exxon is also facing lawsuits for allegedly misleading investors about the risks of climate change to its business as well as the risks of future climate regulations.

Claimants are beginning to use probabilistic arguments and combine individual emitters' climate impacts with event attribution – example; rising sea levels in one geographic area causing damage in some way to another area. The courts are being asked to deal with arguments and facts related to climate change and climate science that were previously not presented with cases arising in the context of constitutional and administrative law, human rights, shareholder activism and consumer protection.

There are a number of complicating factor in all of this. One is that every tier of government has pursued policies that have encouraged the use of fossil fuels, from building highways to subsidizing airports to constructing greenhouse gas-emitting power plants. So if an oil and gas company can be held liable for carbon dioxide emissions, so too perhaps can city governments, power companies, and automakers.

Another complicating factor may occur where a plaintiff may have difficulty demonstrating a particular injury since climate change is something that affects the whole world in intricate ways . . . unless perhaps you are a fisherman or farmer. In one case launched by a group of Oregon and California fishermen against 30 fossil fuel companies these fishermen can point to direct monetary harm that has already occurred from warming.

From the legal community, most plaintiff attorneys (like firm Sher Edling acting on behalf of the state of Rhode Island and suing 26 companies for Baltimore, and Hagens Berman in the NorthWest) are operating under contracts that award them 20% or more of any judgment or settlement; the type of contingency-fee agreement that yielded billions of dollars in fees in tobacco litigation and hundreds of millions more in lawsuits by government entities against drug companies and polluters.

Meanwhile, Baker McKenzie were recognized as the only Band 1 ranked lawyers in the 2019 Chambers Global Guide for their work in Climate Change, with other BigLaw firms like Lathams and Reed Smith scoring high praise; while Jones Day claims to be a pioneer (dating back to Chambers Europe 2009) "in the climate change field." Arnold & Porter has been innovative in partnering with Columbia Law School's 'Sabin Center for Climate Change Law' to provide a US database on Climate Change Litigation. [<http://climatecasechart.com/us-climate-change-litigation/?cn-reloaded=1>]

#### ON A SEPARATE NOTE

As climate disruption continues, insightful attorneys might also expect to see (and serve) a huge groundswell of startups aiming to help save the planet while making a little profit for themselves. In March a firm called Jupiter Intelligence raised \$23 million in funding and is headed by an impressive team that includes a Nobel Prize recipient and two

members of the C-suite with ties to Google. Jupiter is a provider of AI-powered weather prediction data designed to help its clients — such as insurance companies and governments — know when and where climate disasters might strike. Hurricanes and massive floods can cause billions in damage, and Jupiter offers a chance to mitigate some of that risk.

Until now, the focus of many efforts has been on storing carbon dioxide. Three companies—Switzerland's Climeworks, Canada's Carbon Engineering, and the US's Global Thermostat—are building machines that, at reasonable costs, can capture CO<sub>2</sub> directly from the air. And some are pursuing ideas for how to both capture and transform CO<sub>2</sub> into everyday products. For example, as strange as it might sound, the University of Michigan is backing new technology that captures carbon dioxide emissions from the air and turns them into beer, lipstick and concrete!

Yet other climate-focused startups are continuing to raise cash to pursue novel ideas for creating negative emissions, or other ways of dialing back our current rate of warming. If there's one thing worth investing in, it's the literal future of our planet.

#### **4. Additive Manufacturing / 3D Printing**

Hints of new emerging areas of opportunity are usually discernable years before they enter the mainstream. For example, The Center for Internet and Society at Stanford Law School hosted one of the first

seminars on 3D Printing, entitled "*Is The Law Ready For The Future?*" That event occurred back in May of 2013. Fast forward six years and one can only identify a few law firms that have targeted this area of opportunity. Robins Kaplan lists two attorneys in their 3D Printing Practice mainly focused on IP and business disputes; while Ice Miller identifies seven in their Additive Manufacturing/3D Printing group who "*serve as advisors and counselors to 3D printing think-tanks*" and claim to "*also own and use 3D printers.*"

When one hears the term 3D printing, it is just natural to think of it as a way to produce a small plastic desk accessory or toy you might pick up in a gift shop. But 3D printing is instead, part of a broader range of revolutionary technologies known as additive manufacturing (AM). 3D printing is a process where a physical object is created from a digital blueprint of something that's "sliced" into thin horizontal layers and uploaded to a printer. This mode of printing refers to any kind of production in which materials are *built up* to create a product rather than cut, ground, drilled or otherwise *reduced* into shape. Initially 3D printing was merely 2D printing of layers of material, repeated over and over until a object came to fruition. Today, new methods are being developed that are far more sophisticated and powerful.

AM is now being adapted to a stunning array of different materials that will dramatically disrupt the future of manufacturing and at least 25 other different industries that I've been monitoring. AM is currently impacting architecture and construction; pharmaceuticals; automo-

tive; packaging; firearms; drones; space tech; agriculture; consumer electronics; and the entertainment industry among others. Current 3D printers can produce functional part- and full-color objects from over 250 different materials, including metals, plastics, ceramics, glass, rubber, leather, stem cells, and even chocolate. And the next time you visit London, do check out Food Ink (<http://foodink.io> - which is called the most futuristic gourmet experience in the known universe), a restaurant where they have 3D printed the tables, the chairs, the eating utensils and even the food!

3D is one more example of what I have come to call a “tech-driven hybrid” in that it does not simply represent a substantive area of law (like intellectual property) or a specific industry (like manufacturing) but rather has potential applications across a wide range of the kinds of clients you are serving. So to simply say that you aspire to be your client’s “trusted advisor” rings hollow, should they ask you what you know about additive manufacturing and all you can muster is a shrug of your shoulders. Alternatively for those who care to explore this as a micro-niche to specialize in, the opportunities are beyond description.

3D printing has emerged from a hobby to an industrial-scale technology that is beginning an exponential growth curve. In 2015, the additive manufacturing industry grew to about \$5.2 billion according to Forbes and by 2021, IDC analysts expect 3D printing’s global spend to be about \$20 Billion. With newly accessible design software, we can customize anatomy-conforming stents, personalized dentistry prod-

ucts, adapted airplane and auto parts, or micro-scale fabrication products such as sensors, drug delivery technologies, and lab-on-a-chip applications.

**Here are a few more different examples:**

- 3D printing has expanded rapidly with one of its most notable areas of application being the health and medical industry. Research firm *Markets and Markets* are projecting that the use of 3D printing applications within healthcare will have a value of \$2.1 billion by next year. Innovations include printing everything from medications to human organs, but perhaps the most commercially successful so far has been prosthetics. Stryker Orthopaedics, a Kalamazoo-based company, is potentially important to the hundreds of thousands of Americans seeking a knee or hip replacement. With annual revenues of \$10 billion it is responsible for building titanium components for joint implants designed to precisely fit the bone structure and musculature of any individual. And many of these orthopedic implants are custom-manufactured by Stryker using 3D printers. The company is now planning specially programmed 3D printers that will create its custom implants right on the premises while the surgeons and patients wait, saving time and money.
- It has been reported that Lockheed Martin is applying 3D printing to aviation, having produced a new composite material that can be used to produce ultra-light, ultra-strong bodies for its F-35 fighter jets. While the F-35 is over 50 feet long and weights over 12 tons,



Lockheed builds the jet's body and interior panels via an array of printers mounted and moving up and down, and sideways on scaffolds of metal tubes. According to Lawrence Gasman, president of Charlottesville, VA-based industry analyst SmartTech Publishing, "there are no big aerospace companies that do not use 3D printing for major parts in their aircrafts."

- U.K.-based startup Orbex recently produced what they believe is the world's largest 3D printed rocket engine, standing at 56 feet (17 meters) tall; roughly one-fourth the size of SpaceX's Falcon 9. The engine is manufactured in a single piece without joints, creating a rocket that is up to 30% lighter and 20% more efficient and better able to withstand extreme temperature and pressure fluctuations. Orbex is working with engineers from NASA and the ESA, and also partnered with Swiss satellite startup Astrocast to launch 64 nanosatellites to build a global Internet of Things network.
- One company that made headlines at the 2014 International Manufacturing Technology Show in Chicago was Local Motors, when in front of a live audience they produced the world's first 3D-printed car – the Strati. I should note that about 75% of the Strati's components were 3D printed. Items such as the rubber tires, brakes, battery and electric engine were manufactured using conventional methods. The Strati took about 44 hours to fully print and consisted of 50 individual parts – compared to some 30,000 in a traditionally built car.

Depending on the features one might select your new 3D printed vehicle retails for between \$18 and 30K.

- Recently, Austin-based ICON unveiled its new “Vulcan II” 3D printer that can print up to a 2,000 square foot house quickly at half the cost. ICON has created proprietary concrete/mortar material which it calls “Lavacrete” that has passed every structural test; is safe for people and resilient to the varieties of conditions it may encounter. The company aims to make homes at a cost of up to \$125 a square foot. Their 3D printing has the ability to cut costs of homebuilding by 30-50 percent compared to traditional construction methods. Time Magazine named ICON one of the best inventions of 2018, while Popular Science named ICON one of the 100 Greatest Innovations of 2018. Meanwhile, the tools and processes are progressing rapidly. Dubai is aiming for a quarter of its new buildings to be based on 3D-printing technology by 2030.
- Personalized footwear is an excellent test case for the production capabilities of 3D printing. A good shoe must be tough and durable, yet flexible and lightweight, and meet your expectations for support and comfort. Imagine shoes custom-fitted to each of your feet, with the style tailored exactly to your taste. Adidas is showcasing a glimpse of the future of personalized footwear at its pop-up Speedfactory Lab Experience in Brooklyn, NY. The Speedfactory has a souped-up treadmill with data acquisition equipment to provide real-time analysis of a customer’s running strides. At the store, Adi-

As employees acquire information about how you run that would generally be used to help select your optimal running shoe style. Adidas can then use this data to design the perfect running shoe for you.

- Consider the new 4G smartphones. In order to transmit signals at the higher frequency bands manufacturers will likely require a shift from aluminum bodies to stainless steel. Because it's stronger than aluminum, less is needed. And that means less interference and more room for the battery. But here's the challenge. Switching the material from aluminum to steel takes 10 times as long to machine, because the steel is so much stronger than aluminum, it's hard to cut. Enter Desktop Metal with a 3D metal-printing system that could be competitive with traditional manufacturing in this situation. The Burlington-based company uses a jet of metal powder and an oven to fuse the printed metal. The system boasts what the company is billing as the fastest metal 3D printer in the world, at 12,000 cubic centimeters of printed output per hour—100 times as fast as older, laser-based 3D metal-printing techniques.
- And finally, there is Jabil Inc. Jabil is a Florida-based company with over 100 production facilities in 28 different countries. Jabil, now the third largest contract manufacturer prints thousands of machined parts for companies in industries from consumer electronics to aerospace; pharmaceuticals to home appliances.

3D printing has seen impressive adoption rates across the manufacturing industry, but suffered slow printing speeds. However, earlier this year, researchers at the University of Michigan developed a new 3D printing method that can produce complex shapes at up to *100 times* the speed of traditional 3D printers. And using synthetic liquid resin and CT-like scanning technologies, scientists at the University of California, Berkeley have developed a 3D printer that can produce replicas of nearly any scanned object in record time. Both innovations, capable of printing with a number of new resins, prove the technology has tremendous potential to commercialize high-speed and high-resolution additive manufacturing.

Additive Manufacturing is poised to revolutionize the global economy in ways that most experts are failing to grasp. What makes AM so revolutionary is that:

- it builds a product in a precise shape as dictated by a sophisticated software program;
- is easy to make the item fully customized to the needs of any particular user;
- dramatically reduces material waste, energy consumption, and market inefficiencies;
- it can mass-produce goods with quality and speed; and
- any future 3D manufacturing “factory” no longer needs to be a giant plant built over some protracted period of time, at a cost of hundreds of millions of dollars, but rather a small warehouse containing

a few printing systems quick to set up, and easy to disassemble and move if and when needed.

An innovation once considered a gimmick is proving itself to be a formidable giant. One of the leading experts in AM is Avi Reichental, former CEO of 3D Systems, the largest publicly traded 3D printing company in the world and part of the core faculty at Singularity University, where I am a member of their online global network. Within the next five years Avi predicts that:

- 50% of all manufacturing companies will have 3D printing operations in production;
- 40% of all medical surgeons will practice with 3D models; and
- 50% of all consumer businesses will have revenue-bearing 3D printing operations.

AM represents the complete digital transformation of the manufacturing process (you may want to access an earlier article I wrote on Digital Transformation) giving traditional manufacturers vastly greater flexibility, speed, efficiency and responsiveness – and AM developments can be found all across America. For example, General Electric's former CEO Jeff Immelt was determined for the company to be a major player. Today, in Westchester Ohio, GE has 130k square-foot facility with 70 industrial additive printers producing a steady white-noise hum; while in Pittsburgh, 50 engineers clad in a strange mix of steel-toed boots and protective suits work intently producing state-of-the-art components. It seems rather ironic that a company like GE is

building their billion dollar business in old steel towns like Cincinnati and Pittsburgh – the very cities AM is most poised to disrupt.

From helping companies open additive manufacturing facilities, protect their intellectual property, forge partnerships with AM companies, invest in start-ups that own promising new technologies, defend potential product liability issues, understand and comply with government regulations (e.g. FAA and FDA), to hiring and retaining talent with a deep understanding of these new methodologies, there are lots of opportunities for those attorneys who choose to focus on this micro-niche.

For those looking for even more information, you might check out the Association of 3D Printing (<http://associationof3dprinting.com/about-us>) a “conglomeration of executives who saw the need for the industry to have its own voice” where, as of the last time I checked, there were a grand total of **NO lawyers** listed amongst their over 150 member firms.

## **5. Synthetic Biology Practice**

What is “synthetic biology?”

At its most rudimentary level, Synthetic biology is the engineering of biology: the synthesis of complex, biologically based systems, which display functions that do not exist in nature. That said, the technology is evolving so quickly that there are multiple definitions for the field. If you were to interview a few notable academics you might find (as I

did) these answers: *"The main issue is separating synthetic biology from existing fields like genetic engineering or cellular engineering. It's treating biology the way you would treat large-scale integrated circuits. We've been dealing with one part at a time or a small number of parts. Synthetic biology is engineering of new systems using parts that we trust. It's applying the best analyses from systems biology to fabricating and testing complex biological machines."*

- *George Church, professor, Harvard Medical School and Director of the Center for Computational Genetics*
- *"Let me ask my funding agency . . . I'll get back to you." - Frederick Blattner, professor, University of Wisconsin, Madison*

So, for a more insightful perspective one has to travel to Australia to hear from Dr. Alison McLennan whose PhD (awarded in 2014) involved an investigation of the legal issues in regulating emerging technologies, especially biotechnologies. Author of ***Regulation of Synthetic Biology***, just released in December, Alison explores the interplay between regulation and emerging technologies in the context of synthetic biology, a developing field that she believes promises great benefits, and has already yielded biofuels and medicines made with designer micro-organisms.

For law firms this field offers opportunities to help clients in intellectual property; environmental; regulatory; risk assessment; biosafety and biosecurity among other areas. Alison says, "I think the field of synthetic biology is hard to describe because it is really a collection of

different approaches to engineering biology, and it includes a variety of enabling technology, tools, processes and applications."

### **More companies turn to synthetic biology for innovation**

*"Biology is already changing the way we live, eat, manufacture, and treat human health. In the next few years, synthetic biology – a **\$40 billion industry** will be the premier technology of the 21st century that will be used to solve real-world problems facing millions."*

- Meagan Lizarazo, EVP at iGEM, a non-profit foundation advancing synthetic biology innovation

Synthetic Biology represents what I have come to label a **tech-driven hybrid** in that it can be a technology disruptor to many conventional industries such that if you are serving clients in a particular industry, you do not want to be the attorney who is asked "*What do you know about Synthetic Biology?*" and not have some kind of reasonable answer. Here are some brief examples where the application of engineering principles to biology via manipulation of DNA are already having an impact:

- HealthCare – discovery of new pharmaceuticals, treatment diagnostics
- Industrial Chemicals – engineering bacteria to produce paints / adhesives / cleaners
- BioFuels – new renewable energy sources from microbes



- Software – more efficiently designed DNA sequencing (e.g. CRISPR editing)
- AgriBusiness – enzymes to improve crop yields / pest resistance
- Consumer Products – bacteria capable of producing collagen which is then bundled to produce a leather hide
- Food and Drink – production of synthetic wine without grapes

Meanwhile today, we can also view synthetic biology as it's own emerging industry wherein innovative entrepreneurs are exploring how new cell-produced products might replace traditional industrial and chemical processes. Here are but a FEW examples of the kinds of companies you could be working with if you were developing a practice in this particular micro-niche.

#### *ALTERNATIVES TO PLASTIC*

**Ambercycle** is working on cell-based alternatives to many of our polluting petroleum products including plastics. Ambercycle focuses on making plastic recycling profitable and sustainable by using synthetic biology to engineer custom-tailored organisms that can degrade plastics into its chemical components. The new technology harnesses engineered enzymes to degrade plastic bottles, such as PET soda bottles, and transform them into PTA. The process lowers the cost of recycling PET plastics utilizing organic processes with no carbon footprint to generate PTA. Plastic producers will be able to make high quality plastic from renewable feedstocks with Ambercycle's prod-

ucts, thereby removing it from landfills and away from petroleum, all at a cheaper cost than current methods.

### *BIOFUELS & OILS*

A bacteria found in the gut of a rabbit can now help cars run in a more eco-friendly way. The bacteria, identified by biotech start-up **LanzaTech**, helps turn factory carbon emissions, a.k.a. pollution, into ethanol, an alcohol that is blended with gasoline to reduce the amount of fuel used by cars. Meanwhile, **C16 BioSciences**, based in Boston, is a YC-backed company makes a lab-grown alternative to palm oil, which it claims is 20% cheaper and isn't destructive. The environmentally-devastating palm oil that is a common ingredient in many consumer products.

### *COSMETICS*

**Geltor**, is a US start-up using synthetic biology techniques to engineer micro-organisms to produce animal-free collagen for the cosmetics industry. And, last March, a German company, **AMSilk** introduced a liquid-silk coating (made from modified E. coli bacteria), used for medical and cosmetic implants, that scientists believe could be a safer alternative to silicone. AMSilk also created the first breathable nail polish.

### *MULTI-PRODUCT: LAB-GROWN MEAT & LEATHER*

**Zymergen** in San Francisco Zymergen researches, develops, and manufactures microbes for Fortune 500 companies. It develops mol-

ecules for agriculture, chemicals, materials, pharmaceuticals, electronics, personal care, and more applications. **Ecovative Design** is a biomaterials company in New York that provides sustainable alternatives to plastics and polystyrene foams for packaging, building materials and other applications by using mushroom technology. Ecovative is working to use mycelia, the hair-like network of cells that grows in mushrooms, to help build everything from lab-grown meat to 3D-printed organs to biofabricated leather.

#### *NUTRITION*

**Calysta** is a multinational biotechnology firm based in Menlo Park, California. The company is chiefly involved in the development of industrial processes that utilize microorganisms to convert methane into protein for seafood and livestock feed and other useful products like fuel and plastics. The global demand for seafood is rapidly outpacing the industry's capacity. Aquaculture is still highly dependent on fishmeal, which is sourced from commercial fisheries. Calysta's proprietary technology provides a proven, scalable solution, using gas-fed fermentation to produce feed-quality protein with high nutritional value. The company claims to be creating Future Fit Food - high value fish, livestock, and pet nutritional products to improve global food sustainability and security

#### *TEXTILES*

**Bolt Threads** focuses on harnessing proteins found in nature to engineer renewable fibers and fabrics with both practical and revolution-

ary uses, and works in developing spider silk. Because spider silk's strength is comparable to steel – scientists believe it actually can stop trains – synthetic spider silk has long been the ultimate goal of textile research. Bolt Threads is growing artificial spider silk, something that scientists around the world have been trying to do for decades. Spider silk is known for being extremely soft and strong, and it could make long-lasting, lightweight and desirable clothes. The global fashion industry, at roughly \$2.5 trillion, is giant and terrible for the environment: Low-cost synthetic fibers like polyester are polluting the oceans, and even natural fabrics like cotton require large tracts of land and chemicals to produce. Spider silk, by contrast, as a bio-material, is sustainable.

Now if you are interested in exploring this particular micro-niche, you may want to consider attending the next **SynBiTech** event, an international forum taking place this June in London (the second major event of its kind) for experts engaged in synthetic biology research, commercialization, investment and policymaking. SynBiTech 2019 will focus on the key opportunities and challenges for building a **multibillion-dollar** synthetic biology industry that will contribute to the fast-growing bio-economy.

It offers two days of intense presentations, even featuring a few presenters from the investment community, but not a single lawyer at the podium . . . the true sign of a still “Emerging” niche.

## **6. AgTech**

Imagine: driverless tractors tilling acres of crops, produce growing in massive climate-controlled warehouses, and seeds genetically altered to require less water are among the high-tech innovations changing, or about to change, agriculture. Today's technology is rushing into one of the last traditional industries: agriculture; creating another potentially lucrative micro-niche: the AgTech Practice in a market sector that until recently was largely unaffected by the technological revolution.

There are numerous law firms that hold themselves out as having both *global* food and agribusiness practices (like, Norton Rose Fulbright and Sidley Austin) and *national* practices (like Mayer Brown and Faegre Baker Daniels). Only a few, most notably, California based Royse Law Firm is widely recognized for its expertise in the agriculture technology (AgTech) micro-niche. "Throughout the years, our team has worked with countless agricultural producers, investors, and tech companies on projects related to artificial intelligence, big data, biotech, communications, drones, farm management, IoT, and satellites."

The other noteworthy player that has identified AgTech as a niche practice, is Husch Blackwell with a 5-lawyer team (and perhaps that is because of their intense industry-centric approach) that " helps businesses capitalize on the opportunities presented by today's agricul-

tural revolution – big data, gene editing, nanotechnology, unmanned aircraft systems and other advances.”

Just a few years back, no one seemed to talk about AgTech or know what it meant, but today it is one of the hot new areas in investor circles. In 2017, total investment was over \$1.5 billion and on the verge of explosive growth largely fueled by a growing population that needs to eat. This is not about developing new, synthetic chemicals to apply to fields, or building ever larger corporate farms. At its core, AgTech is about using advanced monitoring and data analysis to do more with less – to find ways to increase yields without burdening already over-taxed resources such as our land and water.

Right now, a cross-section of technologies and disciplines – from sensors, artificial intelligence and big data to biotech and robotics – are being used by entrepreneurial startups to boost food supplies.

For example:

- **Hortau Systems** is increasing watering efficiency through smart monitoring, which in turn increases plant yield; and Israel-based **CropX** uses hardware and software to measure soil moisture, conductivity and temperature, allowing farmers to save water;

- **Phytech** is optimizing crop production with its “Plant Internet of Things” – smart devices in fields that send simple color-coded alerts to smartphones with recommendations and warnings;

- **Cainthus**, an AI facial recognition software for cows, allows farmers to maintain larger herds and track the health of individual animals, right down to how much they've eaten each day and how much milk they've given;
- **aWhere** is a next-gen Farmers' Almanac, monitoring and forecasting the weather with pinpoint accuracy thanks to a global network of 1.4 million weather stations;
- To trace food **Ripe.IO** technology maps its journey from field to shop shelves, so that retailers, chefs and consumers know their purchases are truly sustainable; and
- Even BigFarm conglomerate, Deere & Company, is building their **AgTech division** with an Intelligent Solutions Group focused on "precision agriculture and employing over 300 software developers, engineers, and testers.

### **Let's Not Overlook The Use of Robotics**

We tend to think of Robots as they exist in industrial factories, performing the same task repeatedly, in exactly the same way. But with AgTech, we see drones and robots from companies like **Farmbot** helping fill the farm labor gap, with drag-and-drop interfaces that allow farmers to build sequences of actions for hardware or set repeating growing schedules. Another example is a robot developed in a Cambridge University lab can remove unwanted outer layers from freshly picked heads of lettuce, a task farm workers generally do by

hand. And, in Europe they have a creepy-cute robot called **Sweeper** that can autonomously roam a greenhouse, eyeballing peppers to determine if they're mature enough before sawing them off the plant and placing the produce in a basket.

America's first autonomous robot farm officially launched last October with hopes that artificial intelligence (AI) can remake an industry facing a serious labor shortage and pressured to produce more crops. Claiming an ability to "grow 30 times more produce than traditional farms" on the strength of AI software, year-round, soilless hydroponic processes, and moving plants as they grow in a 2000 sq. ft. grow space, the San Carlos, California-based company **Iron Ox** aims to address some of the agricultural industry's biggest challenges.

Meanwhile, cows don't normally get a say in how they spend their days. The first milking often comes at dawn, where they form a cow conga line to their milking stations. Then comes feeding, resting, and more milking. On one dairy farm in Iceland the owners rebuilt their barns from the ground up with technologies such as milking robots, an automatic feeding system and cleaning robots. Within a year, their 80 cows were producing 30% more milk by cows that decide when they want to be milked and the rate of infections plummeted, dramatically reducing the farm's veterinarian costs.

The next time you shop for cherry tomatoes at your favorite grocery retailer, you may end up buying some grown in an indoor, controlled environment outfitted with the latest robotic technology. Ohio will get the first fully automated indoor farm in the United States. **80 Acres**



**Farms** plans to build one in a suburb of Cincinnati, by the end of the year. The farm will have grow centers for greens, such as herbs and kale, and will supply produce to multiple retailers and distributors.

### **The Investment Community is Very Interested**

Mega funding rounds from companies like **Farmers Business Network**, **Ginkgo Bioworks**, **Indigo AG** and **Plenty** are redefining the AgTech investment landscape.

As this wave of AgTech startups mature, companies are looking to scale in a sector that has around \$3 trillion value at the farm gate, and multiples of that downstream. In turn, a more diverse universe of investors supporting these companies is signaling a sea change in AgTech investing. The total investment in 2017 was reported to have exceeded \$1.5 billion which set a new record.

In a recent academic paper, entitled *Technology in Agribusiness*, four Stanford GSB professors highlight areas that are increasingly attracting startups and investors, including:

Product innovations (\$4.36 billion in investment):

New technologies such as gene editing or cellular agriculture are designing entirely new kinds of foods. **Impossible Foods** and **Memphis Meat** are bringing labgrown meat to the local burger joint.

Digital marketplaces (\$682 million in investment):

Allow farmers to lease equipment, pool together for better insurance, or connect to local customers. **Full Harvest**, for example, helps farm-

ers sell imperfect but edible produce that wouldn't find a market at the local supermarket, while **Ricult** helps rural farmers find loans. Operations software (\$129 million in investment): Helps farmers make better operations decisions, track resources or productivity, and save money.

Skills-building tools (minor investment):

Includes videos, hotline voice services, and mobile apps that help farmers share experiences. **AgriFind** is a social networking platform for farmers to ask questions and offer advice.

Resources (\$755 million in investment):

New irrigation systems deploy highly targeted water and fertilizer, using less of each, while vertical and urban farms use less land and reduce pesticides.

There's one difference between this AgTech revolution and other tech disruptions that have preceded it: most of us, lawyers included, won't actually notice it's happening.

The "digital transformation" of agriculture is necessary if we want to continue filling our baskets with healthy, affordable food. To make the most of what we have for a growing population, a radical shift is needed as we rethink how we do agriculture.

***My thanks to Legal Executive Institute for having published  
a few of these micro-niche practices for their readers.***



# CHAPTER 11

## Six Elements of Meaningful Differentiation

At a time when the demand for legal services is on a decline, the root of all successful strategy lies in being differentiated. Your firm and your individual practice groups must all work at making themselves distinctive and intrinsically more valuable to clients.

The curious irony is that most law firms go to great lengths to look like every other law firm. In fact the common response that you are most likely to elicit from the management of any firm when first presenting a new concept, idea, or potential market opportunity is: *"Can you please give us a list of the other firms which are doing this?"*

Competitive advantage means getting out in front, by focusing on some area in which you can be distinctive, meaningful and unbeatable. But, rarely have I ever seen information on any law firm's web site that identifies: *"What Differentiates Our Firm."* By definition, if you are doing what everyone else is, you don't have any advantage. To test this thesis, let's think for a minute. How different is what you are

doing right now — the strategies that you are employing now — from the four or five key competitors in your market footprint?

In strategy sessions with groups of partners I have often posed a simple question to the entire group — a question I believe is reflective of the primary concern that occupies most prospective clients' minds. It goes like this: *"Tell me please — as a prospective client, why should I choose you (your practice group / your firm); what makes you distinctive and what added-value can you bring to my business matters — that I cannot get anywhere else?"*

The answers that I usually elicit make reference to the firm's long revered history, the firm size and perhaps the geographic spread of offices, the diversity, community involvement, the firm's ability to be responsive and cost-effective, and so forth. All very interesting answers; but all less than compelling if you are the prospective client — largely because it is the same thing that you are likely to hear from every good law firm these days . . . we are different, but largely in the same ways everyone else is!

The good news is that when you look at differentiation, **starting from a practice group perspective**, many of your groups have something meaningful to offer. The not-so-good news is that much of it is either hidden, understated, or (believe it or not) totally unrecognizable from partner to partner within the same practice group. In other words, whenever I have discussed this at length with the members of a par-

ticular group, I continue to be amazed at how some partner may be doing something incredibly differentiating, that the other partners in the very same group are totally unaware of.

So, where do you start?

What follows are a number of the elements, in no particular order of importance, that from in-depth discussions with clients, form the basis for meaningful differentiation. No one particular component will provide you a silver bullet. Your practice group's meaningful differentiation (and ultimately your firm's differentiation) comes from recognizing that what may make you truly distinctive and valuable emanates from having something to offer across a number of these areas.

### **1. Exceptional Service**

Key Question:

*Please identify what it is that you do in the way in which you, as a group, consistently serve your clients that is perceived as rare, valuable and different from what other competitive firms might offer?*

Check out a significant firm's web site and you will see how they promote their use of technology, their hiring practices, even their philosophy and principles but aside from the occasional listing of clients served, there is little of any substance to how the firm will work with you as a client. Going even further, some firms call it their client ser-

vice principles while others label it their 'Client Service Pledge' but irrespective of the specific title, much of it is less than impactful.

Too many firms rely on creatively worded prose to appeal to prospects and clients. Here is but one example from a global firm:

*"We pride ourselves on our creative, 'smart' way of thinking - whether it's in how we analyze instructions and set up our legal teams, how we find the optimal solutions to complex business issues, how we approach billing, how we service our clients' on-going needs and how we work with rather than just for them. No matter how challenging or complex the mandate, we are not satisfied until we have delivered the highest quality, most commercially effective legal advice."*

Here is yet another example, from a firm setting out their 'Guiding Principles':

*"We are committed to providing consistently world-class legal services, as nothing less will suffice for the challenging matters our clients bring to us. Clients do not come to us with easy questions, simple cases, or routine transactions. Clients come to us because of our well-earned reputation for outstanding service delivered promptly. We pride ourselves on finding innovative solutions to complex problems that require us to draw on our full range of expertise and experience."*

The only problem is that after reading these two client service

principles, while they seem to espouse all of the right words, I dare you to distinguish any one firm from any of the others that champion very similar sentiments using very similar words. Yet other firms make veiled attempts to draft and display what they must think are compelling arguments to retain their services:

*We understand that delivering the highest level of service means keeping in touch with, and being accessible to, our clients on a timely basis. Where appropriate, we use a senior lawyer / junior lawyer reporting relationship to ensure clients are able to reach a lawyer informed about their particular case and/or needs.*

These firms all love to couch their prose in terms like “*we will make every effort,*” “*where appropriate,*” “*if you wish,*” “*as quickly as possible,*” and “*we will endeavor to.*”

Every research study conducted with clients shows that providing ‘Exceptional Service’ is one of the most powerful differentiators. The difficulty comes where it must be consistently delivered by every single professional in your practice group – or firm. In other words, most published client service standards are either hollow rhetoric or aspirational dreams, but they don’t become meaningful to clients unless and until you are prepared to make them absolutely **non-negotiable, minimum standards of performance.**

And therein lies the great hurdle! It means that every attorney in the group must conduct themselves according to some governing stan-



dards and can no longer be autonomous – practicing as they see fit. And of course, where this all falls apart is where lawyers are allowed to claim (and get away with) the assertion that their “clients are different!”

That said, at a time when many firms preach “*providing seamless service*” there are some progressive practice groups that in striving for excellence, have differentiated themselves by setting out in writing and delivering to their clients, very hard and fast service standards, like the following:

- *We will determine with you, a 'Preferred Communications Protocol' and set out under what circumstances you would prefer a face-to-face meeting, versus a telephone conversation, e-mail or other mode of communication. That written protocol, will then be communicated to every professional and support staff member serving your organization.*
- *We invite your in-house counsel to convene one special session semi-annually at our expense (airfare / hotel included) for the purpose of briefing us on matters related to better understanding your current business goals and new developments in your industry.*
- *We will have our IT professionals work directly with your IT professionals to determine how technology can be employed to our mutual advantage. We will institute electronic data links to provide for commu-*

*nications, support, project management, work product retrieval, and on-line research.*

- We will, at no cost, debrief at the conclusion of every major case or matter, over \$50K in fees -- with those lawyers and corporate executives deemed appropriate, in order to consider the future legal impacts of current business practices; to determine ways to avoid future litigation and liability; and to evaluate opportunities to accelerate the closing of transactions or resolution / avoidance of conflict matters.*

These practice groups have delivered these written standards to their clients as a means of both having their clients hold them accountable and to constantly remind their group members of what is expected of everyone. Incredibly powerful . . . but do you have the will to act?

## **2. Special Alliances/Contacts/Relationships**

Key Question:

*Do you, as a group, have any favored relationships, contacts or alliances that confer a market advantage in that they would be perceived by prospects / clients as special and noteworthy?*

When contemplating this question groups will often mention some attorney who was a former General Counsel, or served as the local Bar President, or reference their firm's membership in some international law firm alliance. In certain instances, any of these might

have some interest to clients, but there are not likely to truly differentiate you or provide any unique value.

*There are some other areas that you might consider.*

While it used to be fairly common within the profession, there are still some law firms that enjoy the loyalty of a major corporate client. In one particular instance, a premier, super-regional utility company uses one law firm for the vast majority of their legal work. That relationship has allowed the law firm to be exposed to new areas of practice (climate change, solar and biomass technology) before many of their competitors and has been influential in attracting other prospective clients to use the firm's services. Are you the primary provider of service to a valued, loyal client that is widely perceived to be among the industry leaders and thereby reflects prestige on your firm?

There are examples where firms have achieved recognition by being acknowledged in a unique way by their peers. For example the Association of Corporate Counsel (Value Challenge initiative) have an internal program whereby they recognize those firms, who by way of nominations, have made great strides in controlling costs and are therefore held out as 'Value Champions.' Being identified by the ACC in such a manner can be a distinguishing credential.

Firms have achieved an advantage from having the endorsement of some critical governmental body, perhaps an academic guru; or have

developed close relationships through representing a particular trade organization. Clifford Chance advises regulators around the globe on the regulation of Islamic compliant derivative structures and benefits from being counsel to the International Swaps and Derivatives Association in relation to drafting the ISDA/IIFM Tahawwut Master Agreement, initially launched back in March 2010.

Some law firms have even pursued obtaining ISO 9000 certification – (or the international standard LAW 9000) a specialized quality management standard for legal practices. Concurrently, those corporations who have obtained their ISO 9000 designation are required to, wherever possible, use the services of other ISO certified vendors, thus conferring a strategic advantage on any firms who have obtained those ISO credentials.

### **3. Distinctive Expertise / Service Offering**

Key Question:

*Do you offer any particular expertise or service to your clients that is truly distinctive, valuable and not readily available from most other competitive firms?*

These ten words appear in some form on a good number, if not the majority, of AmLaw 100 and 200 firm websites:

*Known as the firm of choice for highly complex matters.*

Meanwhile, these days it is difficult to find any firm, who does NOT somewhere on their web site expound on their listings in Super Lawyers, Leading Lawyers Network, Best Lawyers in America, Martindale-Hubbell, or their prestigious fellows and various peer review ratings. A number of firms include quotes taken from Chambers, the Legal 500 or some other ranking:

*This pre-eminent practice is highly regarded for its extensive international footprint and its presence on complex cross-border matters. These are all wonderful-sounding accolades, but hardly a convincing differentiator if every other competitor also claims to have the same or similar credentials.*

One prominent firm even mentions their partnership philosophy:

*As of October 1, the firm had 193 partners. More than one-third of our partners have served in two or more of the firm's offices, and 88 partners are currently based in our offices outside the United States. The firm remains dedicated to strengthening our practice primarily through internal growth – approximately 90% of our current partners joined the firm as associates.*

And again, this may be very interesting in terms of what is happening within the profession, but what does this really mean and where is the tangible benefit for clients? One also wonders how crowing about your Legal Marketing Association awards or your Silver Inkwell web-

site design resonates favorably with clients. So, with everybody professing to have the same expertise, how do you stand out in a crowded marketplace?

Here are a few notable examples of firms that have differentiated their expertise and service offerings:

- **Third-Party Acknowledged Expertise:**

In a survey of more than 300 general counsel and in-house chief litigation officer Jones Day was named once again, as a member of the *"2018 Fearsome Foursome"* – *the four elite law firm litigation practices that "corporate counsel would most like to have by their side in head-to-head competition.*

- **Industry Expertise:**

Husch Blackwell is a 600-lawyer firm that publically declared – *"Understanding our client's industry is at the core of how we function, starting with a transformation of our entire operation into industry teams."*

- **Online Service:**

*The Clifford Chance Global M&A Toolkit comprises a growing collection of web-based transaction tools and in-depth analysis of the most important market and regulatory developments in M&A regimes across the globe. It aims to bring clarity to the increasingly complex world of cross-border M&A and features special access to our leading*

*cross-border M&A databases, informative videos, and access to a library of specialist publications covering the key issues in global M&A.*

- **Ancillary Business:**

San Diego based Procopio Cory's incubator program, LaunchPad, assists entrepreneurs and start-ups in the formation, early funding, and growth of their companies. The incubator, housed in Procopio's new Del Mar Heights office, provides a basic legal start-up package, collaborative workspace, specialized mentoring, counseling and contacts for entrepreneurs to grow their company and secure funding so they can take their endeavor to the next level within six to twelve months.

- **Value-Added:**

*Federal regulators now recover \$17 for every \$1 they invest in fighting health care fraud and abuse. So, it's no wonder that this industry is at the forefront of U.S. enforcement activity. Many providers live in fear that one day the FBI, OIG, or other investigators will show up at their door unannounced, demanding access to patient information and computer records, while insisting on immediately interviewing key employees. When an emergency situation arises, having the right legal and publicity response immediately available is crucial to protecting your people, your reputation, and your bottom line. We've got you covered. Our Health Law Emergency Management Team combines our health care compliance knowledge with the media crisis management expertise of a leading communications firm. Whenever trou-*

*ble strikes, an expert crisis management team will protect you from a legal standpoint, and prepare you to convey your situation to the media, shareholders, employees, and/or government officials in the most favorable light.*

The larger any market, the more specialization that takes place and the more specialized a firm must become if it is going to prosper. For many, to be highly profitable today, you have to narrow your focus in order to stand for something in the prospective client's mind. The firm that captures a lead in a new industry sector or legal services niche early can achieve a big advantage as that sector matures.

One other related approach that a few firms have been using to differentiate themselves is by way of the concept of "thought leadership:"

*At Jackson Lewis, we wrote the book "Winning NLRB Elections," which is nationally renowned, and are regularly retained to advise and represent companies during NLRB "R" cases. Our representation of employers in thousands of NLRB representation cases and unit clarification proceedings has run the full gamut, including stipulations, significant contested hearings (including new "micro-unit" and joint employer cases), post-election objections and appeals.*

*Skadden's 2017 Insights.* The firm tells their clients and prospects: "We are pleased to provide our annual insights on the critical legal issues our clients may face in the year ahead. Many of these issues relate



*to the responses by governments, markets and business entities to the economic conditions and market instability of the past several years."*

Latham offers a 'Knowledge Library' which includes a number of Blogs, the book of Jargon® for the financial community, various events, podcasts and webcasts, and some 2000 articles and briefings that you can sort through by industry, practice or geography.

#### **4. 'Proprietary' Processes/Software**

Key Question:

*Do you provide your clients with any tangible and proprietary process, checklist, template, procedure or software program for effectively and efficiently handling their legal matters?*

When one thinks of what might be described as a proprietary process, perhaps the best example might be 'the poison pill' — invented in 1982 by famed corporate lawyer Martin Lipton of Wachtell Lipton, and a practice that came into widespread use after the Delaware Supreme Court affirmed its legality in a landmark 1985 case. Literally thousands of companies have adopted poison pill plans in the years since then, either as a general policy or in response to takeover threats. The benefits to the client of using the poison pill soon became obvious and "benefits to the client" are (once again) the key differentiating factor.

For example, Baker Donelson is one firm that sets out very clearly

identify the benefits from one of their offerings: LegalShift, LLC - *Legal project management (LPM) involves a systematic planning approach to the practice of law in order to clarify client expectations and establish budget accountability. LegalShift helps law departments better manage work through introduction of formal LPM concepts and solutions. LegalShift's affiliation with Baker Donelson - one of the first of only a few law firms internationally to invest in development of its own LPM program and supporting automation - allows LegalShift to make use of the BakerManage™ solution set, inclusive of strategy, best practice processes, organizational refinement and tools.*

BakerManage LPM Program Development & Training can help your law department establish and enforce an effective program for better managing legal matters/projects.

Another great example of a differentiating proprietary process is Seyfarth Shaw's pioneering Lean Legal system.

*'At Seyfarth, we are continuously looking for ways to meet our clients' needs for value and efficiency while maintaining the high quality of our services. That's why we created SeyfarthLean®, our proprietary, value-driven client service model, which combines the core principles of Lean Six Sigma process improvement with project management and tailored technology solutions'. For almost ten years, SeyfarthLean has been unique to the legal profession and a contemporary approach to providing, delivering and managing client and legal services. For clients, Sey-*

*farthLean creates tangible results, including: More consistent, high-quality legal services; increased efficiency; improved communication and collaboration; right-sized staffing approaches; committed and transparent pricing; and reduction in overall cost of services.*

## **5. Cumulative Experience**

Key Question:

*When you think of your group's total experience, what tangible, statistical, factual compilation of data would accurately capture and reflect what you have accomplished?*

In discussions with members of practice groups, as we explore what may differentiate them by way of their vast experience, I will hear things like:

- *We have relationships with many of the leading players in the health care industry.*
- *Our team has extensive technology transfer and licensing experience.*
- *We have served numerous Fortune 500 companies.*

I can just hear some prospective clients thinking to themselves, "*that all sounds very nice but . . . as evidenced by what?*"

The compilation of who you are and/or what you, as a group, have accomplished (think: specific number of Fortune 500 companies represented) can be very powerfully presented if made tangible, quantifi-

able, and proffered in a statistical framework. We need to remember that it is not what we assert that helps differentiate us – *“Our group’s high level of industry experience is consistently recognized as among the best.”*

What helps differentiate us is what we can prove – *“During the past 5 years we have had the honor of representing six of the ten largest hospitals in our State.”*

In fact, some firms do a good job of listing their “Representative Work” or “Key Representations” by practice or industry area with some substantive specifics. The point here, is that any firm or group can do a descent job of differentiating themselves if they begin to look at their cumulative experience over some period of time.

In other words, if your “individual” key representations aren’t that significant (as compared to the example above), then perhaps presenting the total value of all the distressed asset sales that your group has handled over the past five years – now looks like a significant number!

*In 2015, we handled nearly 50 public offerings and Rule 144A placements raising approximately \$20 billion, for leading companies in life sciences, technology, financial services, communications and other industries. Since 2004, we have served as counsel in more than 500 public offerings and Rule 144A placements raising a total of approximately \$200 billion. (Wilmer Hale)*

In the last five years, we have assisted our clients in raising more than \$17 billion of venture capital and in closing over 40 initial public offerings, as well as hundreds of mergers and acquisitions with an aggregate transactional value in excess of \$600 billion.

*(Morrison Foerster)*

The interesting aspect of cumulative experience as a differentiator is that it takes some work to go back and examine your group's client matters and begin to statistically compile the results, and so – few groups ever bother to do it. But those that do can present some impressive data for prospective clients to consider.

As one managing partner expressed it to me:

*'We kept track of our deals in Los Angeles, to the point where it looked like we had bought / sold more than half the prestige properties downtown – and we had! Every time we closed a prestige deal we gave a custom commissioned framed picture to the client as a closing gift. And kept one for ourselves to put in the hall way for our department. Every time a client, or agent / broker / title officer / lender / prospect / opposing counsel . . . anybody . . . walked through our space they passed trophy after trophy. We weren't competing to be in a field, we were confirming that we were already there. Boy did that work!'*

## **6. Social Evidence**

Key Question:

*What is it that satisfied clients are saying about you that they would be*

*prepared to codify and allow you to visibly disclose to others?*

There is an old adage that still rings true – “*You are known by the company you keep.*” People follow the lead of others – especially those who are similar to them and/or those whom they respect.

I remember reading a study about how a group of researchers went door-to-door soliciting donations for a charitable cause. On their second attempt they displayed a list of local residents who had already donated to the cause. As time went by, the researchers found that the longer the donor list became the more likely those solicited would be to donate as well. This supports what most sales professionals already know. Testimonials or endorsements from satisfied clients work! And they are especially powerful when the satisfied client and the prospective client share similar circumstances – location, industry, status, and so forth.

While many firms will list their “Representative Clients” and many of those lists are very impressive, the typical sophisticated prospect knows full well that having a particular company's name on the website does not guarantee that the firm did groundbreaking work for that company. They may in fact be one of just a number of law firms across the country that purports to represent this particular Fortune 500 entity, when in fact most of the work done was pretty routine in nature.

One prominent New York-based firm makes this claim:

*"Our clients, many of them industry and global leaders, rely on the exceptional, collaborative service we deliver through our 10 offices worldwide. Their success is our core focus. Following is a sampling of feedback from our clients about our work with them."*

This is then followed by numerous quotes – BUT without ever mentioning a single client by name – so we are expected to take these at face value. **Nice try!**

Alternatively 300 lawyer Reinhart Boemer Van Deuren is but one firm that posts numerous impressive client testimonials on their website, mainly from company Chairman, presidents and CEOs:

*"Reinhart attorneys not only understand our board dynamics, they understand what the issues are. They help us develop unique solutions that are a good fit for our institution. That comes from time – understanding, listening and developing this mutual respect." Kevin Poorten, President and CEO – KishHealth System.*

## **CONCLUSION**

Perhaps it helps to know, but should not provide justification, that those in the legal profession are not alone in this struggle to adequately differentiate themselves. A former Deloitte Consulting's CEO,

when asked “*what do you view as Deloitte’s main differentiators from your competitors?*” responded:

“We are unique. We produce insights that produce results. We are a firm that has world-class insight on various topics, whether it’s a large merger, transformation, a large human capital issue or finance . . . we have insights, but we also have the ability to take the insights and help our clients execute on them. This is a unique capability that we have.”

All of this should causes any firm to really soul search what it is, and recognize what it is not; what it can do, and what remains aspirational and not a true definition today of what it wants to be. Cut out the aspirational delusion. Build on the strength of what you are, in accurately defining your advantages. Then get to work laying the bricks for all the other things you want to be, the things you should be.

**EXERCISE:**

**Questions For Your Group Members To Discuss**

**1. Exceptional Service**

Please identify what it is that you do in the way in which you, as a group, consistently serve your clients that is perceived as rare, valuable and different from what other competitive firms might offer?



**2. Special Alliances / Contacts / Relationships**

Do you, as a group, have any favored relationships, contacts or alliances that confer a market advantage in that they would be perceived by prospects / clients as special and noteworthy?

**3. Distinctive Expertise / Service Offering**

Do you offer any particular expertise or service to your clients that is truly distinctive, valuable and not readily available from most other competitive firms?

**4. 'Proprietary' Processes / Software**

Do you provide your clients with any tangible and proprietary process, checklist, template, procedure or software program for effectively and efficiently handling their legal matters?

**5. Cumulative Experience**

When you think of your group's total experience, what tangible, statistical, factual compilation of data would accurately capture and reflect what you have accomplished?

**6. Social Evidence**

What is it that satisfied clients are saying about you that they would be prepared to codify and allow you to visibly disclose to others?



# CHAPTER 12

## Perspectives On Strategizing

In my work with firms helping them with strategic issues and strategic planning I am often asked specific questions about strategy. What follows is inspired by those questions and my experience and reflections – all intended to stimulate your own thinking.

### 1. NURTURE YOUR MAVERICKS

I was struck by an observation in a new book concerning how firms achieve innovation. The author explained: *“Management textbooks might suggest that innovations will flow elegantly from lengthy strategy documents and lateral thinking. The reality is that the overwhelming number of innovations evolve from the efforts of **mavericks** within law firms who pursue ideas that are initially regarded as peripheral, irrelevant, and even wasteful.”*

I not only **strongly agree**, but I’m reminded of a number of partner retreats wherein I had the opportunity of posing this question: *“How many of you have thought of some new idea, potential new practice or initiative, that has the potential to generate new revenues for the firm?”* The usual answer is somewhere in the range of 69 to 83 percent to the affirmative.

So, what happens to these ideas?

Aside from the usual critical responses that one would expect to elicit, the reality is that most firms do not have any formal system to nurture new ideas. If mavericks are the research and development departments of high-performing law firms – then we need to find the way to commercialize their new ideas. Unfortunately there are only a small number of firms that have actually initiated an internal Venture Fund, available for lawyers to put forth their ideas and have them encouraged and financed.

Now that might have seemed frivolous during the boom times, but I think that it is just what a lot of firms need today to encourage enthusiasm, entrepreneurial spirit and innovation amidst the current obsession with AFAs, project management and process improvements!

## **2. THE SECRET SAUCE: BEING DISTINCT IS BETTER**

Strategic wisdom has it that you need to identify what you can do really well if you're going to best the competition. This is important advice, but it's NOT sufficient.

Often your core competency is the **same one** your competitor has. So unless your competency is seen as markedly better in your clients' eyes, you have no meaningful differentiation, zip advantage, nada uniqueness.

The key to marketplace uniqueness is having some distinct capability or attribute that makes you clearly superior to competitors in something that clients care about. Distinct competencies are the very heart of strategy.

Here are a few questions you need to think through:

- Is there one market niche or micro-niche that we can dominate?  
Be the expert our prospects and clients want. Choose one niche that you can serve extremely well and stick with it.
- Do we know our clients better than they know themselves?  
You must dig deep to uncover clients' current desires, fears and aspirations—and know what they will need tomorrow.
- Do our clients receive a level of service beyond anything provided by any competitor?  
World-class service means delivering a memorable experience to each client in a way that your clients find unforgettable and your competitors find difficult to match. The “trusted advisor” is the one thing that can never be commoditized – or automated!
- Can we offer a compelling value proposition?  
Whether you achieve it by providing important complimentary services or reusing existing work product in cost-effective ways, clients are looking for an advisor who delivers value.

Your distinct competency is the secret sauce, the get-out-of-jail-free card, the force field that yields more and better business. It may be difficult to achieve, but I can think of no other objective more worthy.

– Can you?

### 3. ELIMINATE BARRIERS TO SWITCHING

When you are trying to get prospects to change from their existing law firm to yours, you need to consider a concept called “*barriers to switching*.” Eliminating the barriers is generally key in getting people to move their legal work to your firm. So for each new prospect, ask yourself: “***What keeps this individual or company from becoming our client tomorrow?***”

Quite simply, you need to identify some motivating rationale for why this particular prospect should *even try* your services. And no, I’m sorry, assertions that you can “*do it better, faster and cheaper*” are rarely perceived as even being believable. They are possibly even insulting of the prospect’s ability to choose a provider — so don’t go there!

You are refreshingly strategic if you’ve targeted a particular client niche that other competitive firms have not. If you have a service offering that is unique in some way (“*We have a specialized team that serves the needs of women-owned businesses in this region*”), then you have a much better chance of getting your target prospects to consider giving you a try.

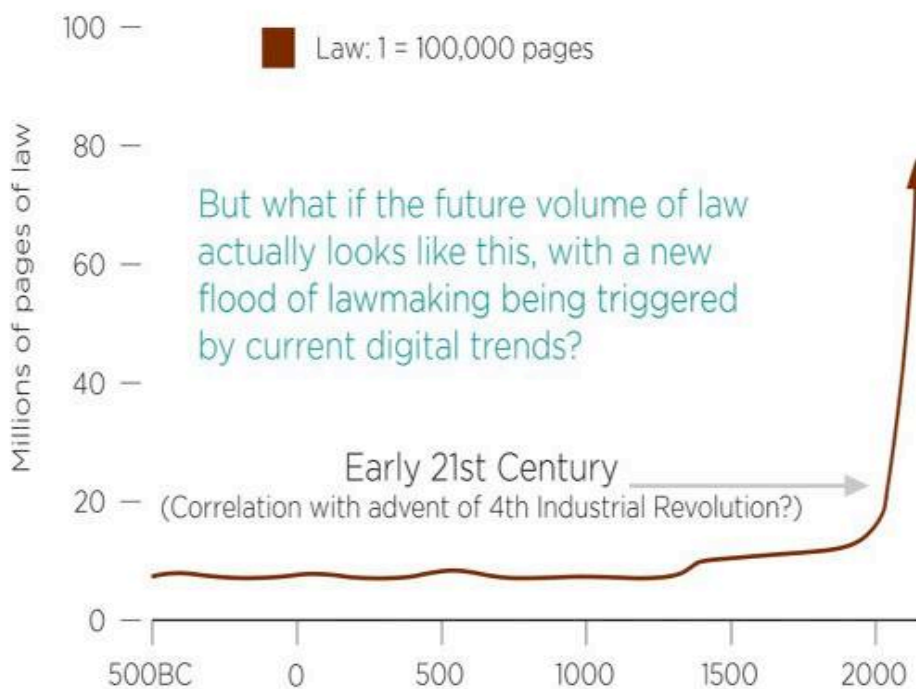
If you’re not differentiated . . . then perhaps this prospect is worried about how costly it will be for you to get up-to-speed on their matters. Devote some specific non-billable time up-front to learn about their

business or situation, and inform them that you are prepared to make that investment.

Perhaps this prospect doesn't perceive you offering any real added-value. Think through (or ask) what would constitute value for this kind of client. Perhaps it's inviting them to an educational program, offering them preventative counsel, or helping them meet with influential contacts.

To dominate in your chosen market, you have to identify the most complete list of barriers and work diligently to eliminate them.

#### 4. BE OBSESSED WITH BUILDING YOUR SKILLS



In today's world with the ever increasing amount of data that is being generated across every industry, you have to continually assess your skills and adapt them to match up to your target markets. Arm yourself with the following information to keep pace:

**Skills are more specialized.**

Rapid knowledge growth means it is increasingly difficult for lawyers to keep on top of everything they need to know. You need to specialize; knowledge niches are the reality for most professional careers.

**Skills are degradable.**

The half-life of knowledge is decreasing at a furious pace. Firms are painfully discovering that many of their legal skill offerings are becoming commoditized at an ever-increasing rate.

**Skills can be transferred.**

The boomer retirement issue is real. Smart firms are spending serious money to ensure that the important knowledge of senior practitioners is being captured, retained and archived.

**Skills are increasingly portable.**

That's the thing we've learned with globalization. With clients sensing that certain skills are readily available, they've learned about outsourcing their legal requirements. It doesn't really matter to them where the skills are, as long as they can procure them when needed. Not exactly good news for you.

### **Skills are renewable.**

Fortunately, the expiry date on your skills can be extended. If you can develop a mind-set toward constant improvement and invest some portion of your non-billable time in developing new skills, you can adapt and evolve.

So, here is your personal and career building ACID-TEST:

*What is it that you know today, that you did NOT know one year ago? Or, put slightly differently, what is it that you can actually do for your clients today, that you could NOT do at this time last year?*

If your answer is not much, then bless you, but you may quickly be on your way . . . to becoming obsolete!

### **5. DETERMINE REAL NEEDS**

Your prospects may know what they *want*, but they don't always know what they *need*. And, your "Job 1" is to identify client need.

The more profound a need you identify, moving away from merely the "want," the more valuable you are and the more you can charge, because your prospect's return on their investment is so dramatically higher. Unfortunately, too many attorneys never even try to discern a prospect's need.



The way to discern your prospect's true need is to ask very different questions. A trivial example: if you're an employment lawyer and your prospect says, "*We want better employment contracts,*" don't rush to show them some PowerPoint that demonstrates your system for developing contracts. Instead, try asking, "*Why do you think you need better contracts?*" Your prospect may very well reply that they have to respond to competitors stealing their most talented people. There may be a much larger and more efficacious project here, aimed not at the "want" of some written contract, but rather at the "need" to enhance morale, reduce attrition or improve competitiveness.

This requires confidence to believe that you have value to offer and the diagnostic skills to determine what the actual needs are. Too often we act as order takers, submissive beggars, hat-in-hand, hoping we'll be selected. Instead position yourself as the objective expert and someone who can provoke ideas and novel perspectives.

If you're not adept at helping prospects determine the real needs behind their wants, you'll never be successful in securing larger matters, higher fees, and enduring relationships. Satisfying a "want" is non-differentiated; satisfying a "need" is a rainmaking triumph!

## **6. QUANTIFY AND COMMUNICATE REAL VALUE**

Clients need and want you to identify what adds value (to them), deliver that value, and demonstrate that you have done so. Your mission

is to communicate to your client what has been accomplished or achieved as a direct result of their retaining you, and how the outcome more than offsets the cost of the services.

Wherever possible, **quantify your outcome** in a meaningful framework such as potential revenue generated; better terms obtained; value of brand image or intellectual property protected; investigations, fines or litigation avoided; quicker speed in closing transactions; time or money saved; importance toward helping the company achieve its corporate goals; etc.

Here are a couple of examples:

- Filing for both permits now, before deciding on the project specifications enables you to be operational months sooner. An early opening could generate about \$500,000 in additional revenue and certainly justify the cost of the two applications.
- This settlement will save you up to \$1 million in protracted litigation expenses and preserve your company's character by keeping you out of the press.
- We have reorganized the transaction to ensure that the royalty rights remain in your hands. This change should yield up to \$75,000 in licensing fees, annually.
- Selling these assets will reduce your onerous debt. While seemingly drastic, the improvement in cash flow should protect you from potential insolvency.

At the end of every matter and to truly satisfy clients, your job involves identifying a specific value outcome for each legal service you deliver.

## **7. SHATTER THE MOLD**

Your firm can outperform rivals only if you can establish a difference that clients actually value. Strategy is about making choices: Sorry, but you can't be all things to all people. It is about deliberately choosing to be different. So if you have a really great strategy, people are fired up: *"We're not just another law firm. We're claiming a territory in which we can be unique and contribute something important to the profession."*

If all you are trying to do is essentially the same thing as competitive firms, then it is unlikely that you will be very successful. Malcolm McLaren, manager of the notorious rock group the Sex Pistols, once said, *"There are two ways to lead your life: karaoke (copying) or authenticity."*

Copy or break the mold. That's the choice we face every day.





# Part 2 | Implementing your plan

If your dreams don't scare you,

**they're not  
big enough**

# CHAPTER 13

## When Your Strategic Plan Needs To Get Implemented

Whenever I think about the effort that is required to go into implementing your firm's strategic plan, I'm reminded of a particular business book title that grabbed my attention when I first saw it . . . Hope Is Not A Strategy!

To effectively transform your best intentions into tangible action, there are several common hurdles that you may need to overcome. Thinking through the following will help you make the leap.

### **1. Move seamlessly from strategizing to implementing.**

This is, from my experience, the most significant hurdle. Planning is not doing. Unfortunately, some partners believe that implementing the strategy and "getting their hands dirty" is beneath them. They act as if implementation is something best left to the non-legal professionals in the firm. This view holds that one group does the innovative strategizing work ("the thinkers"), and then hands the ball off to lower

levels. If things go awry, the problem is placed squarely at the feet of the “doers,” who somehow couldn't implement a “perfectly sound” plan.

Strategy and execution should be mutually dependent and cyclical in nature – the results of developing your strategic plan then drive your implementation efforts, which then requires that you think through the strategic implications. This is why execution needs the active engagement of those very same partners that came together to work on developing your strategy in the first place.

In other words, it should be absolutely mandatory, when you first begin your strategic planning, to have those who agree to serve on your Strategic Planning Committee understand that they will also be required to serve when your Planning Committee transforms into your Implementation Committee. I have discovered repeatedly, that if the partners who formulated the strategy have no responsibility for executing the strategy, it threatens knowledge transfer, commitment to sought-after outcomes, and the entire implementation process.

## **2. Have a single point of ownership.**

You need to make sure that you clarify specific accountabilities for each strategy and initiative.

Each and every member of your Strategic Implementation Committee (formerly your Strategic Planning Committee) needs to voluntarily take ownership for being the liaison on some action element and take

responsibility for ensuring that they pull together the right partners and people throughout the firm to execute that task. This doesn't necessarily mean that they have to roll-up-their-sleeves and do it (that can be their choice), but it does mean that they are accountable for seeing that specific actions get done.

### **3. Do away with "should"**

For many firms, a pervasive problem in executing strategy is the existence of ambiguous wording, measurements and tracking mechanisms. Whenever I review some firm's prior strategic plan, I am always taken back by reading goal statements like: "*We intend to clearly distinguish ourselves and rise above the pack.*" Or, how about this for a meaningful strategy statement: "*We should create a highly visible positive image in the markets in which we are determined to be a first choice*" or "*We should systematize cross-selling of practice areas by facilitating identification of client opportunities.*" All of these are perhaps very noble in principle, but without any hint of HOW it's going to get done.

Without clarity, strategic execution becomes directionless work. Morale and support quickly erode. Alternatively, with clarity, you can create tasks and routines that keep incremental actions moving forward with holistic purpose and accountability.

### **4. Involve as many of your partners as possible.**

Effective implementation involves many hands. Implementation

always involves more people than the initial planning did, so communication throughout the firm or across different practice groups becomes an important ingredient. And linking strategic objectives with the day-to-day objectives at different offices and practice groups can become a demanding task. The complexity of execution increases as more people are involved – but that involvement is exactly what is needed for you to achieve any sense of alignment and success.

### **5. Think through the sequencing of your action plans.**

Sometimes you need to focus your execution efforts by thinking about the timing and pacing. When might it be best to move forward on implementing certain elements? Are you going too fast? Are the action plans you want to move forward in the correct sequence?

Think about how you might eat a good gourmet meal. Dessert doesn't come first; in fact, the same dishes served in the wrong order, will disrupt your entire dining experience. To make your strategy work, you have to observe the right sequence of actions, the right timing and the right pacing."

### **6. Meet on a regular monthly basis.**

Implementation requires enormous time. Overall, successfully executing a plan takes even more time than the hours and weeks invested in developing the plan. It can be extraordinarily taxing to the billable-time expectations and client obligations of the partners and oth-



ers involved. It takes stamina to stay the course—but if you can prepare for what lies ahead, you might just reach your goal.

Execution isn't a short burst of activity on a quarterly basis; it is a continuous and ongoing exercise. Execution requires persistence in taking small incremental steps; it can't easily be delegated. The challenge for the members of your implementation committee will be balancing the urgency of day-to-day client obligations and activities, versus the importance of working on the future.

There is an old witticism that goes, if you give a lawyer a project to work on and ask that they report to the group by this Friday, they will definitely start working on their project . . . sometime on Thursday. Taking that behavior into account, it makes no sense to do anything but meet as an implementation group on a regular monthly basis with short turnaround times.

## **7. Get help when specialist expertise is required**

While some firm may get their strategic planning right, they can then struggle with how to specifically transform some element of their plan into executable activities. For example, having a strategy that calls for developing Client Teams to provide enhanced value and service to a select group of your largest corporate clients is a sound approach. However, determining how best to get your Client Teams working effectively may require expertise that does not currently reside in your

firm. In those situations you need to retain the best resource you can find to educate or supplement your internal professionals.

### **8. Constantly measure your progress.**

Assign resources and budgets to each initiative. Develop a means (such as a balanced scorecard) to measure results; focus on leading indicators; make the number of metrics small but significant in terms of impacting future goals. Continually monitor implementation to ensure the expected benefits are being realized.

Let's face it. If there was some secret or shortcut to effectively executing your firm's strategy – we would all be doing it. Unfortunately, there isn't. It requires a great deal of dedicated persistent effort and a lot of unbillable time.

If there is any good news to this situation, it is that most of your competitors will not be able to pull it off. So can you be the exception and thereby reap the rewards?



## APPENDIX E

### Consider a Strategic Plan Premortem

You are now at the stage of having worked with the members of your Strategic Planning Committee (now Strategic Implementation Committee) for a number of months to finally come to the point where you have a draft strategic plan that has been approved by the partners and now needs some attention directed toward how certain components will actually be implemented. There are a number of actions contemplated that your fellow Committee members feel are critical and definitely need to be properly executed in order to make a significant difference. As an example, one such action item states:

*Develop and codify in writing, a set of 'Client Service Standards' that are accepted and consistently used by all attorneys in every practice area.*

There is some discussion and concern amongst the members of your Committee as to how this is going to be effectively implemented. The concern emanates from a sense within the group that it has traditionally been very difficult to get lawyers to perform consistently, even so far as getting in their time-sheets on a regular basis is concerned.

What to do? As everyone knows it is common practice to conduct a "postmortem" or lessons learned session upon completion of any major undertaking. If your endeavor achieved its goal, the questions typically focus on what went right, what we did well, and how we might

sustain our success. If your initiative fell short or failed to meet expectations, your postmortem efforts tend to focus on what went wrong and how we got off track.

That said, this may be a time to think about conducting a 'Premortem.' A Premortem is a process to aid in identifying the potential roadblocks, **before** they have a chance of derailing your implementation efforts.

In a spirit of full disclosure, I confess to borrowing the term "pre-mortem" from a *McKinsey* article entitled "*Strategic Decisions: When Can You Trust Your Gut?*" Not only is the article a fascinating read, it supports my belief that a good way to help ensure effective execution of your strategic planning specifics is to ask postmortem-type questions before, rather than after, the fact.

Here is how a strategic planning premortem could be preformed.

- Ask the members of your Committee to assume that their draft strategic plan or some critical but contentious component of the plan (like the action item identified above) has either failed in it's efforts to be executed or has been totally rejected by the partnership.

Your instructions to the group might be: "Everyone take two minutes and write down all the reasons why you think the undertaking failed." This exercise asks the members of your group to be self-critical, be-

fore they prepare to move forward in implementation, and gets people to voluntarily engage in devil's advocate thinking before the specific action item even gets started.

The team members can then be given a few minutes to individually write down all the reasons they can think of regarding why the plan has failed. Your role as a facilitator would be to have each member announce what is on his / her list.

In some instances, your fellow Committee members may lack the foresight to spot shortcomings. They may be so confident that they don't see the need for a critique. In those situations you may benefit from bringing in some objective, trusted partners to read, review and serve as devils advocates to help identify any areas of the plan that may spark contentious debates.

- Now have your members determine different ways and actions they could proactively take to prevent the implementation of the specific action item from failing or being rejected.

Ask every member of the Strategic Planning Committee to suggest at least one action that they believe could help to reduce the likelihood of the plan being rejected – including possible revisions to the plan.

You may likely hear, as I did when conducting this exercise, a number of creative ideas like:

*We could enlist a group of our more senior partners who are well-respected throughout the firm for their gifted client service abilities, as our 'blue-ribbon panel,' to help construct the client service standards based on the kinds of actions that they take on a regular basis.*

*We could gather together a group of our very best, key clients to provide input into what our client service standards might include.*

*We could publish the service standards on our web site and in engagement letters such that every client was made aware of the standards and knew what to expect from the lawyer serving them. This would serve as a catalyst for ensuring consistent behavior from amongst our lawyers.*

Conducting a premortem can help you identify potential problems that otherwise would not have surfaced until they caused major damage to the strategic implementation efforts. This process is intended to heighten your Committee's sensitivity to potential areas of contention and then prepare to either counteract or address those areas in a proactive manner. The goal is to **prevent** potential problems from occurring in order to increase the likelihood of success. For the amount of time invested, a strategic planning premortem can be a low-cost, high-payoff activity.

# CHAPTER 14

## Getting Committee Members To Follow-Through on Their Commitments

If there is one single frustration that I hear from firm and committee leaders, on a continual basis, it is trying to determine how to deal with “commitment drift” – how to deal with those partners who make promises but don't always follow through. In other words, how do you ensure task completion when strategic projects need to get implemented, and your colleagues seem to agree to do something, but when you are not really certain that you are going to get committed follow through?

Whether it is with the members of your Strategic Implementation Committee or wherever you happened to be working with other colleagues in implementing projects, this seems to be one of the most frustrating challenges. That said, there are seven important steps you can take to ensure results (in most cases):

### **1. Ensure that the undertaking is voluntary.**

Far too often the Committee Chair (in their wisdom) thinks that George

is the best person to do a given task and so assigns the task, publicly arm-twists, or subtly embarrasses George into taking on that task. Now ask yourself: just how motivated is George really going to be with an assignment that was delegated to him under those circumstances? And of course, with the title of leader comes the assumption that I am allowed to assign stuff (the 'Boss Syndrome'). Just listen for how often you hear that word "assign" being used by your various leaders.

Even worse, I often see those instances where one particular committee member was absent from a meeting and the others debated about what project "*to stick Jennifer with responsibility for completing.*" Now, once again, should we really be surprised when people don't follow through?

Keep in mind that when someone voluntarily takes on a task they are far more committed to ensure the completion of that project. Your role as the Implementation Committee Chair is to seek out voluntary undertakings from each of your fellow members, even though you might strongly feel that someone else is better equipped to do a specific project.

Of course this all assumes that those who chose (again, hopefully voluntarily) to become members of the implementation committee understood that part of their obligation is actually to **do something** that advances the goals of the group. If that is not the case, then



don't waste your time pretending that you have a real Strategic Implementation Committee – and you needn't bother reading any further!

**2. Where necessary, break the project into smaller steps.**

Some of the tasks that need to get done may be fairly huge in that to complete the total undertaking will take more than two or three hours of some partner's time over the next month. When that happens get the partners to break the task down into its logical and sequential phases and estimate a time frame for doing each phase. Even if you think you know how long each step should take, you want buy-in from the individual doing the work. Then when someone is taking on this task we can examine which steps of the task to start with and ensure that they are not unrealistically taking on too much and thereby setting themselves up to fail.

And make sure that you have explained to everyone that having some committee member take on a task only to then delegate it to some junior, offends the principle of their personally contributing to the group.

**3. Ask each committee member, specifically, what he or she will deliver back to your next meeting.**

It is quite conceivable that even an enthusiastic partner might go off and tackle some project only to ultimately deliver a result that was not anywhere near what everyone on the committee was

anticipating. Therefore, it is helpful for everyone to think about any particular task in terms of the desired outcome or deliverable - what they expect to bring back to the next meeting; whether it is simply a written report or evidence of what action was undertaken. Ideally it is something tangible to show that progress has been made.

As the Chair, you need to ask each partner to briefly summarize (for the group) what they understand the work is that needs to be done, how they might approach the task, and whether they anticipate needing help from anyone else in the group. Doing this will put them in the right mindset to owning the task and ensure that both they and you understand exactly what the outcome or deliverable will be. You might say something like, *"I want to ensure you and I both understand how this will unfold. Could you describe to me what you will do and when?"*

How many of us have attended some committee meeting wherein the Chair looks to one of the partners and said, *"George, you were going to develop a list of. . ."* only to hear George respond, *"No, I don't remember committing to do that at our last meeting"* or, *"No, I think you misunderstood what I was saying."* When that happens, your done!

#### **4. Ask for a personal commitment.**

When you have finally determined the parameters or scope of the undertaking, you then need to look your partner in the eye and say, *"Now George, you understand that what is required here should take*

*about three hours to accomplish. Given your current and anticipated client obligations, are you comfortable that you can invest three hours and get us this report by our next meeting?"*

When people give their word, especially in front of their peers, that generates an even deeper level of personal commitment.

### **5. Determine an acceptable completion deadline.**

Ideally you want to have tasks accomplished before your next meeting such that any status reports might be circulated to everyone to review a few days ahead and not waste the time of everyone at the meeting. For some strange reason, I've noticed that we often will pick a Friday as our deadline. Where possible, a Monday may make for a better deadline, as most people don't really jump on their individual project until the last minute anyway; and a Monday then allows a weekend for more reflective thought.

### **6. Produce a written summary of the commitment as meeting minutes.**

When working through the various tasks that need to be undertaken during a meeting, it is advisable to write them all down on either a whiteboard or paper flip chart – for all to see who is going to do what and by when. To help people remember their individual commitment, you can then transcribe those flip chart sheets into meeting minutes and circulate (within 24 hours) to all attendees. Most organized people agree that there is something about the physical act of writing

down a commitment that makes it easier to remember and more likely to be acted on.

### **7. Follow-up with each partner one-on-one.**

One of the most valuable ways in which you can spend your leadership time is following up with your partners, between meetings – to *offer your help* in ensuring that they complete their task. You know that your star performers don't need to be managed. They absolutely do what they say they will do, which usually means being really careful about what they say they will do. Others on your committee may well need someone with the patience to prod them a bit and offer their assistance, so that best intentions actually do get implemented.



## **APPENDIX F**

### **The Dangers of Competitive Plagiarism**

Ask most firm leaders to identify those business CEOs that they most admire and they would probably list a small group of highly entrepreneurial names that would include Jack Welch, Steve Jobs, Richard Branson and/or Warren Buffet. Ask why they admired these particular individuals and you would probably hear about the individual's self-confidence, decisive boldness, the originality of their strategic direction, and contrarian beliefs. However, if you now inquire into what strategies these leaders were themselves advocating in their own firms, the answers you would receive would be depressingly unlike those of the leaders they admire.

To make this point even stronger, imagine the following scenario. All of your peer competitors are invited to share and read each other's strategic plans. As firm leaders mull over and examine each competitor's future strategies they put a check mark next to the actions that their firm is also following and an x next to those that are drastically different. What is the likelihood that there will be exceedingly more check marks than crosses on all plans? (And if my thesis is valid, the implication is that confidentiality of strategic plans is a waste of effort)

Many firm leaders view other competitors, their strategies, performance and experience as the benchmark from which to set standards

for their own firm. That kind of competitive comparison makes sense, especially as your firm's performance is often defined by what your peer firms are doing. Where this approach becomes an obstruction is when the logic behind what works for some other firm, why it works and what might work for you is not assiduously examined and thereby results in firms engaging in mindless imitation.

Some actions can render your casual imitation not only ineffective, but in some cases, downright dangerous. Consider these three common examples of what I have come to label as "competitive plagiarism":

- **You adopt the forms or practices some new lateral brings along from their prior firm.**

At its most innocent . . . *"How many of you are using some written job description, practice group business planning template or some other form or procedure brought to your firm by some recruit from a competitive firm?"*

There is nothing wrong with learning from experience, as long as we're learning from our own unique experience. Blindly copying some other firm's tools, templates, practices, perspectives and procedures assumes that those documents and precedents were developed with precision and can be easily applied in your firm's unique culture. After all, **your culture is unique, isn't it?** Then why would you be perverting it with some other firm's hand-me-downs!

Numerous firms have gotten into trouble by importing, without sufficient examination and thought, another firm's rancid practices.

• **You duplicate the most visible action you see competitors initiating.**

Current demand for high-end legal services is proven to be flat. Many firm leaders dangle huge compensation packages to attract rainmakers. Buying revenue by acquiring partners with portable books of business has thrown the majority of the Am Law 200 firms into a lateral hiring frenzy. In fact, nearly every law firm of any significant size, has selected "lateral hiring" as one of their top three strategic projects. So, how is it working for them?

The research results from Mark Brandon at Motive Legal in the United Kingdom, shows that nearly a third of lateral hires into London law offices had failed within five years. That attrition rate represents only the out-and-out failures; behind the figures lurk a raft of other hires who have failed to meet expectations, but that have not performed poorly enough to warrant dismissal.

Meanwhile, the research of Harvard Business School's Boris Groysberg (*Chasing Stars: The Myth of Talent and the Portability of Performance*) shows that too many top performers quickly fade when they change firms and often underestimate the degree to which their past success depended upon such firm-specific factors as long-term

working relationships; quality of resources and support; and informal systems through which professionals obtain information and get work accomplished.

Ironically — and about 40 percent of law firm leaders will admit — lateral hiring usually is not profitable for the firms that do it. Yet this strategy remains pervasive.

Why do more and more firms persist in this unprofitable strategy? Because they do see clearly how it has worked for *some* of their competitors. Why has it worked for those select firms? My experience suggests, it is NOT the strategy you see that works (in this example, lateral recruitment) but the strategy that you do NOT see (exceptional efforts and a huge amount of support time devoted to methodical integration) that makes the difference.

**• You believe and subsequently copy things you read and hear other firm leaders doing.**

It's not what you don't know that will kill you—it's what you know that ain't really so, quipped Will Rogers.

Many years back I attended a meeting of managing partners that all belonged to the same network. These leaders came from different regions, did not compete with each other and gathered together twice yearly to openly share experiences and challenges. I was slated



to speak to the group, but before proceeding to the podium, I had the opportunity to listen to one firm leader tell the assembled gathering about his firm's experience with initiating and operating ancillary businesses. He told his colleagues how he launched three different enterprises, how they served to get the legal practice closer to clients; how they even acted as a conduit to getting new clients into the door; and how profitable these subsidiaries were performing.

Now by the sheerest of coincidences, fast forward eight months and I'm called in to work with this same firm on some internal conflicts that threaten to cause this firm to implode. After conducting a number of candid and confidential interviews with partners around the firm I quickly discern that the level of dissatisfaction couldn't be more extreme and that the substance of partner discontent was in the huge amount of money being squandered on three disastrously unprofitable ancillary business operations!

Did this managing partner knowingly fabricate a false picture to deceive his fellow leaders? Did he feel an overwhelming need to be admired and make himself look good to his colleagues? Or was he in some state of sociopathic denial? I'm frankly not certain, as I have now witnessed this same situation unfold numerous times.

Perhaps most notorious is the legal press where firm leaders are interviewed and asked specific questions about what they are doing in their firms. From thirty years of working in the profession, I can attest,

hand-on-heart, that far too much of what is conveyed and then published is fictional! From leadership development efforts to the results achieved from a particular marketing or technology initiative, to some firm's actions to encourage innovation, the precise representations made are way too frequently aspirational, at best. There, frequently, is no factual basis to what is being reported; and yet I will subsequently hear from other firms who are using some firm's anecdotal evidence as the justification for **following** in the same footsteps as their competitor.



## Conclusion

The fundamental shortcoming to imitating some competitor's "perceived" action or strategy is that in your urge to copy, an urge often stimulated by some consultants who take concepts from one firm to the infect next, you don't conduct the necessary due diligence to determine whether a specific course of action would really work in your firm. *"I'll have what she's having,"* as a diner in the movie *Sleepless in Seattle* said to her waitress while watching Meg Ryan fake an orgasm to prove a different point.

You are not going to get ahead by imitating what your competitors are doing. At best you are just going to maintain parity, and it may be parity of decline rather than advance. When every firm chases the same strategies, they all slide inexorably into sameness and mediocrity. The essence of developing an effective competitive strategy is daring to think for yourself, instead of following the herd . . . quite possibly over a cliff.



# About The Author

## Patrick J. McKenna

An internationally recognized author, lecturer, strategist and seasoned advisor to the leaders of premier law firms, Patrick has had the honor of working with at least one of the largest firms in over a dozen different countries.

The *Financial Post* labeled McKenna "a professional firm management and marketing guru, with a client base stretching from Britain to the United States." Jim Kouzes, Chairman Emeritus, Tompeters! company described him as "a highly seasoned and extraordinarily credible professional." And his consulting expertise was acknowledged when he was identified through independent research compiled and published by Lawdragon as "one of the most trusted names in legal consulting" and by American Lawyer magazine as "a long time succession consultant and coach to new firm leaders."

Patrick authored a pioneering text on law firm marketing, *Practice Development: Creating a Marketing Mindset* (Butterworths, 1989) recognized by an international journal as being “among the top ten books that any professional services marketer should have.” His subsequent works include *Herding Cats: A Handbook for Managing Partners and Practice Leaders* (IBMP, 1995); and *Beyond Knowing: 16 Cage-Rattling Questions To Jump-Start Your Practice Team* (IBMP, 2000).

A prolific writer on the challenges of firm leadership, his book (co-authored with David Maister), *First Among Equals: How to Manage a Group of Professionals*, (The Free Press, 2002) topped business best-seller lists in the United States, Canada and Australia; was translated into nine languages; is currently in its seventh printing; and received a best business books of 2002 award. Leaders across various professions like Kenneth LeStrange, Chairman of Aon Risk Services; Douglas McCracken, CEO of Deloitte Consulting; Claudio Fernandez Aroz, Executive with Egon Zehnder Partners; and Allan Koltin, President of the Practice Development Institute described the book as ‘*the essential guide to practice leadership*.’

Obsessed with innovation, Patrick was instrumental in introducing the first global (**InnovAction**) awards initiative in 2003, in conjunction with

the College of Law Practice Management, to identify and celebrate global law firm innovation.

In 2006, McKenna's e-book *First 100 Days: Transitioning A New Managing Partner* (NXTBook) earned glowing reviews being read by leaders in 63 countries. This publication culminated in Patrick being asked to conduct a one-day masterclass for new firm leaders, usually held at the University of Chicago. Over 80 leaders from AmLaw 100, AmLaw 200, accounting and consulting firms, hailing from four countries have graduated from the program.

According to Hugh Verrier, Chairman of White & Case,  
*"I was struck by the synthesis of the issues you presented. It was amazingly clear and comprehensive, given the breadth of the topic and the short time available. I was delighted to attend the event and I learned a lot from it."*

The book *Management Skills* (John Wiley) named Patrick among the "leading thinkers in the field" together with Warren Bennis; and in 2008, *In The Company of Leaders* included his work amongst other notable luminaries like Dr. Marshall Goldsmith. His book, *Serving At The Pleasure of My Partners* (Thomson Reuters) was released in 2011.

McKenna's published articles have appeared in over 50 leading professional journals, newsletters, and online sources; and his work has been featured in *Fast Company*, *Harvard Business Review*, *Forbes*,

*Business Week, The Globe and Mail, The Economist, Investor's Business Daily and The Financial Times.* He currently serves as Contributing Editor to *Of Counsel: The Legal Practice and Management Report* (New York) and writes a periodic column for the Legal Executive Institute.

Patrick has lectured on professional service management and strategy for the Canadian, American and International Bar Associations; the Canadian Tax Foundation, the International Union of Lawyers, the Institute For Law Firm Management, The Institute For International Research, the Society for Marketing Professional Services, The Managing Partner's Forum, Centaur Conferences Europe and the Financial Times Of London. He is a frequently requested speaker, having appeared in London, Geneva, Vienna, Munich, Marrakech, Istanbul, Singapore, Hong Kong, New York, Boston, Chicago, San Francisco, and Toronto for professional conferences and seminars.

Patrick did his MBA graduate work at the Canadian School of Management and is among the first alumni from Harvard's Leadership in Professional Service Firms programme.

McKenna's decades of experience led to his being the subject of a Harvard Law School Case Study entitled: *Innovations In Legal Consulting* (2011). He was the first "expert" in professional service firms admitted to the Association of Corporate Executive Coaches, the #1 US group for senior-level CEO coaches; was the recipient of an Honorary Fellowship from Leaders Excellence of Harvard Square (2015); and

voted by the readers of *Legal Business World* as one of only seven international Thought Leaders (2017).

Most recently McKenna helped launch the first International Legal Think-Tank (LIFT: Legal Institute For Forward Thinking) comprised of academics, researchers and consultants from three countries.

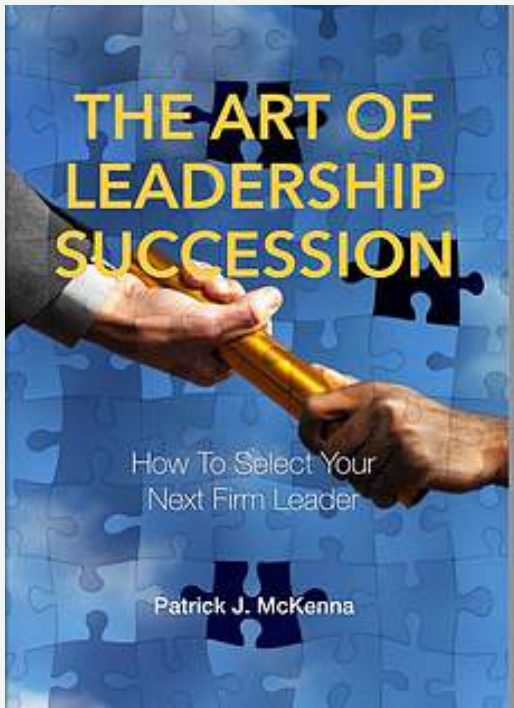
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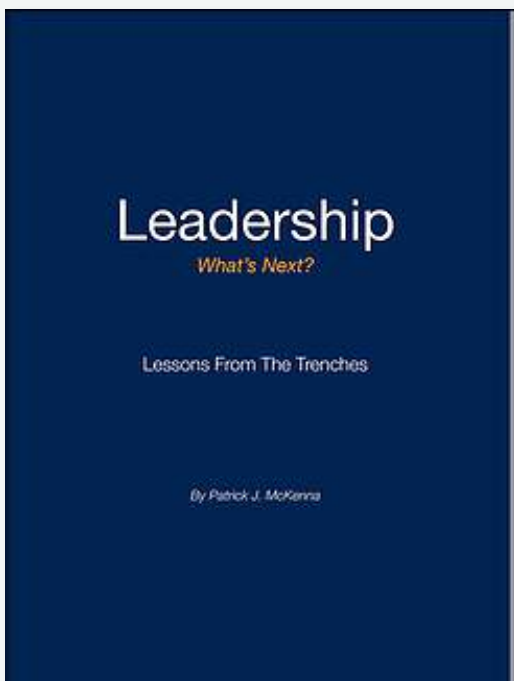
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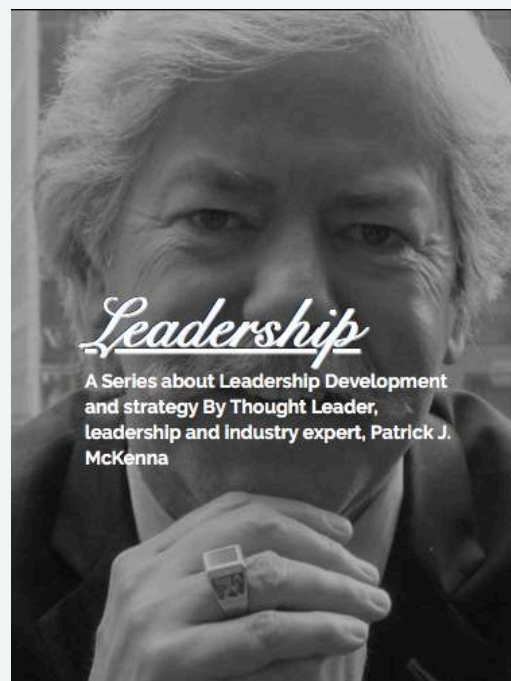
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