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International Review

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FROM THE
ACCOUNTANTS**

**THE RISE OF
THE MICRO
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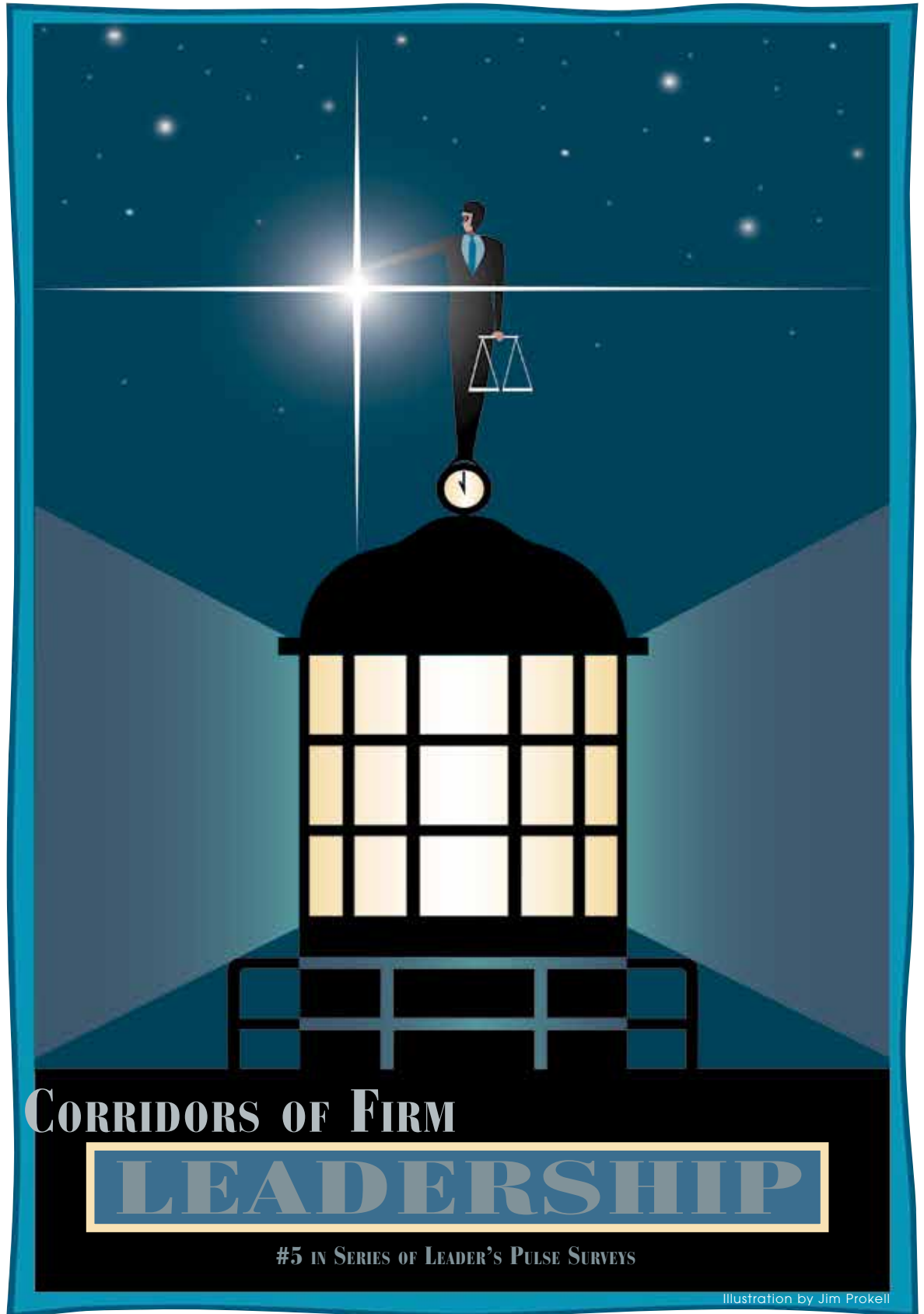
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INSIDE THE CORRIDORS OF FIRM

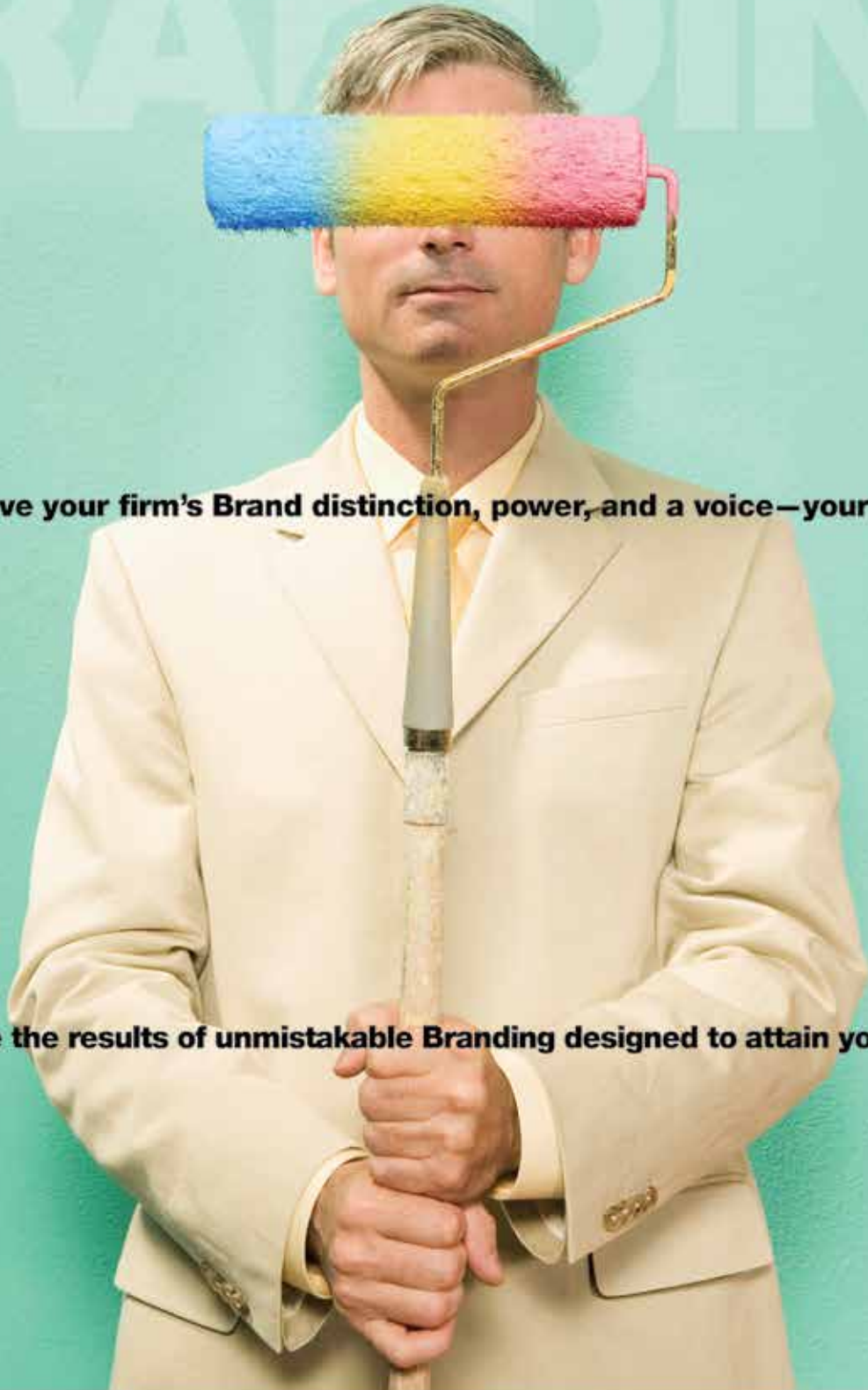
LEADERSHIP

#5 IN SERIES OF LEADER'S PULSE SURVEYS



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Dear Valued Clients and Friends:

I sincerely trust that you have enjoyed a most productive summer with a bit of time devoted to personal R&R. For my part this year has seen my writings being featured in a new e-Book sponsored by Legal Business World entitled, *Leadership Lessons From The Trenches* (see Page 12). I'm honored to be Chairing two Fall legal conferences, Law Practice Management 2.0 held on October 4 at the University of Chicago, and the Law Firm Innovation Summit at the Suffolk Law School in November. Please shoot me a note if you would like more details on these terrific events.

Meanwhile, our Fall-Winter issue begins with *Inside the Corridors of Firm Leadership*. This features the results of the fifth in a series of surveys I've conducted with my highly respected colleague David Parnell. *A Lesson From The Accountants* is a collaboration with an old friend, Neil Gower, and addresses how the major accounting firms exercise good governance practices, perhaps worth emulating.

The Rise of the Micro-Niche provides a further look into how the explosion of data today is forcing professionals to be far more specialized if they hope to develop a "go-to" personal brand; and *What Firms Need To Do To Prepare For The Future* is an excerpt from the mid-year discussions of LIFT, our international think-tank group collaboration.

Finally, *When You Need to Replace a Practice Leader* offers some straightforward guidance on how to handle the difficult situation when you have to remove a colleague who is just not doing the job.

As always, I sincerely hope that you find practical ideas, tips and techniques here that you can put to use immediately. Please send me your candid observations, critiques, comments and suggestions with respect to any of these articles.

Patrick J. McKenna

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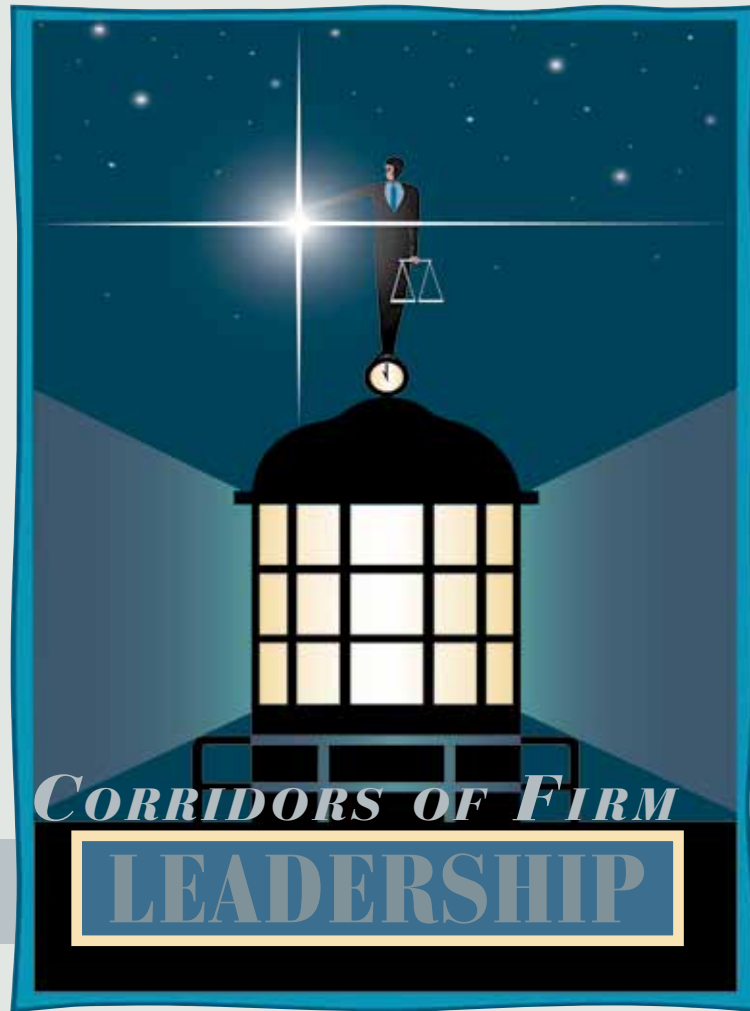
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INSIDE THE CORRIDORS OF FIRM LEADERSHIP

#5 In Series of

In June and July we distributed a survey containing 30 questions to a group of about 300 law firm leaders, many among the Am Law 100 and 200 ranked firms. In this, our fifth survey, we set out to identify some key issues related to the role of being firm chair or managing partner.

Our data uncovered some surprising and potentially valuable findings. On the surprising side, for example, we found that many leaders of America's largest firms who are managing multi-million-dollar businesses are too often thrust into the role with minimal planning time and no clear job description. They're given next to no formal preparatory training and are expected to either sink or swim. Further, they're expected to approach the end of their career with no precise parachute or exit agreement in place when they decide to step down or retire.

What's more, we found that the majority of today's firm leaders, irrespective of firm size, perceive the challenges they face as being far more complex than a few years back. Indeed, one in five

leaders reported the challenges feeling "almost overwhelming at times."

These leaders find themselves working with partners that may not view their leadership role positively. Survey respondents said that at least one-fourth of their partners hold the view that leadership is either a "necessary annoyance" or something "we really don't need." Not surprisingly, this prevailing attitude has firm leaders citing a reluctance to change and complacency at the top of their agenda as among the key hurdles faced in exercising their leadership.

One other surprising – but hopefully valuable – learning for firm leaders to reflect upon was the disconnect between what leaders said they would like to spend their time doing and what ultimately consumes their working hours. Looking at the responses from all firms, one can conclude that while setting strategic direction is seen as a top priority, it is not something many find the time for – because they are being exhausted by

administrative minutiae, thorny people issues, and constant travel.

Of course, leaders of large firms have always been on the road – this is not a new development. However, today the stakes are higher. With so many offices and markets demanding attention, it is becoming more challenging to check the pulse of the partners, gauge the effectiveness of local offices, and know when to intervene. Perhaps, not surprisingly, nearly 75% of firm leaders admitted to the feeling of that old adage, “It’s lonely at the top.”

One further item of interest was revealed when we asked leaders how they would categorize the way in which their performance is evaluated? *Just 9%* claimed to have a formal, annual written evaluation process in place.

close examination has this as their “leadership profile”? What would you advise this client who is now looking to you for a recommendation on what action they might take to improve their overall organizational governance?

2018 Survey Results

Approximately what percentage of your time do you dedicate to your role as firm leader?

Across the board, with firms of all sizes, 56% of these respondents reported that their leadership role as a full-time commitment, with another 28% telling us that they invested over 50% of their time. This was one of the more surprising results of this year’s survey, largely because this finding changed dramatically from 2010 when only 9% of the respondents claim that their

with another 19% freely admitting that they are “almost overwhelming at times” with more than half of those coming from the leaders of firms of over 800 attorneys in size. There was a definite correlation between the size of the firm and the level of complexity that leadership faces. None of the firms reported that they were encountering “less complexity” than five years previous.

As the firm’s leader, do you have a formal “written” job description?

In 2010, a total of 72% of firm leaders reported that they were operating **without** a formal job description, with many of those who did claim to have a job description being quick to point out that the description was “rather broad” or really “just a part of the firm’s partnership agreement.” This percentage was almost identical

Leader's Pulse Surveys

While we will leave it to the reader to determine whether that makes sense to them, what we do know for certain is that any leader attempting to improve their firm by asking that partners stretch – to build their skills, improve their business development acumen, and make themselves more valuable to clients – would be wise to lead by example.

These leaders should take the initiative to set in place an evaluation process whereby specific (and transparent) goals might be determined annually. They should also implement some form of feedback loop that might be solicited from the entire partnership. And we are delighted to report that there are a few firm leaders that do precisely that and do it very well.

While you may think that some of our findings sound unduly harsh, it does beg an interesting question: What might your professional counsel be, to the Board of a client company, which upon

leadership roles were full-time – which may have been the direct result of the prolonged recessionary conditions of the time, and firm leaders needing to display some billable contribution.

Meanwhile, back in 2004, we learned that approximately 24% of firm leaders reported that their role was a full-time endeavor. So we have evolved from 24 to 9 and back to a high of 56% over the course of the past 14 years.

At the other end of the spectrum, 16% of firm leaders claimed to be spending less than 50% of their time leading their firms and not surprisingly those responses all came from the smaller firms.

Compared with 5 years ago, how complex would you say the challenges are that firm leaders now face?

Perhaps to be expected, some 61% of these firms felt that the challenges were “more complex”

to the results from 2004 and consistent among firms of all sizes.

We were pleased to see that this percentage has now improved . . . slightly, such that only 67% are still operating without a job description, with a couple of our respondents commenting that “*their formal job description was probably 8 years old and largely irrelevant*” or “*so old it does not describe what I do.*”

We recall an assignment some years back with a 350-plus lawyer firm going through the process of selecting a new Managing Director. Upon learning that there were likely going to be over a half dozen candidates interested in the position, we set about creating the first job description. From an activity-based analysis, we were able to identify over 50 different and important activities that represented what the current firm leader was held responsible for executing. Our subsequent presentation of the formal job description persuaded a number of the candidates to withdraw

their names. We have since seen much evidence repeatedly confirming that many partners at many law firms haven't the foggiest idea of the enormity of the leader's job.

Is there an 'elected' Board / Executive Committee that you report to in your firm?

Some 77% of our respondents told us that there was indeed such a Board, and that it ranged in size from a smallest of about 5 to, at its largest, some 30 partners with an average size of about 10 elected individuals.

How long have you served as the firm leader?

- 1 – 5 years:** 56% today / 47% in 2010
- 6 – 10 years:** 18% today / 11% in 2010
- 11 – 15 years:** 15% today / 27% in 2010
- Over 15 years:** 12% today / 15% in 2010

In the 2004 survey, the average firm leader had been in the position for 7.4 years. The average today is about the same at 7.2 years

Are there term limits as to how long anyone may serve as firm leader?

The most popular term length seems to be two 4-year terms. Only 23% of the responding firms reported having term limits, which has remained pretty consistent right back to 2004 when 21% of the reporting law firms claimed to have term limits in place.

How many candidates were there for the position when you accepted the job?

In our 2018 survey, 37% reported that they were the "only candidate" which suggests that there is now far more internal competition for the position since 2010, when 58% reported that they were the only candidate.

One of the other surprising results from this

survey was our learning that in spite of 63% of the leadership selection situations being a contested process, within at least 19% of the cases with at least one other candidate, there was very few instances where any kind of formal interviewing of the various candidates took place.

Reflecting back to when you first took on the job, what was of greatest concern to you?

The top four responses we elicited were:

- 58%** – *satisfying my partner's expectations*
- 53%** – *having a meaningful impact on the fortunes of the firm*
- 48%** – *having the strengths and competencies necessary to do a good job*
- 35%** – *taking over from someone with a different personality, style and agenda*

We also heard from a number of firm leaders about issues like, "following someone who held the job for 26 years, knowing that change management in a time of market disruption was critical," and "giving up my legal practice" or on a slightly different note: "making it clear to my clients that I still practiced law"

How long was the transition period between when your predecessor formally stepped down and when you actually took the reins?

- 33%** – *happened immediately*
- 9%** – *only a few weeks*
- 12%** – *one to three months*
- 37%** – *longer than three months*

While 64% claimed that the timing was "just right" irrespective of whether the timing was one to three months or longer than three months, those who did experience an immediate transition or had only a few weeks did respond that it was "too short a transition period." We heard numerous comments about how it was such a "difficult transition," that it was "poorly planned for the time allowed" and how "essentially there was no transition and a very poor way to do it."

How would you categorize the guidance provided when you first took on the job?

The good news here is that some 42% reported receiving extensive counsel from their predecessor and/or having received guidance from some member of the firm's elected Board or Executive Committee. This was another of those statistical results that has fluctuated over the years in that in 2004 we witnessed 47% of firm leaders reporting that they were mentored by their predecessors and others in the firm, which then dropped to only 18% telling us that in 2010.

The not-so-good news here is that for 30% of our new firm leaders taking on this role it is reported to be a "pretty much sink or swim" exercise, which does not speak well for the outcome of this important leadership transition – especially given the enormity of the formal job description and the increasing complexity of the awaiting challenges.

This is supported by a meager 7% of these respondents looking back on their tenures and telling us that they were "pretty much prepared for everything they encountered" with many from firms of all sizes reporting that they had to confront "a few surprises that they had not anticipated" and that "there were a number of things that they would have done differently knowing what they know now."

How is the whole notion of leadership regarded by most lawyers in your firm?

When we asked about how important these firm leaders felt that the idea of being led was in their firms we discovered that one in four responded that it was regarded as either a "necessary annoyance" (19%) or as something "we really don't need any of" (5%). And one reading those stats might imagine that the firms claiming that their lawyers thought it a necessary annoyance would probably all come from the smallest of responding firms. But it was striking to note that 50% of those responding in that manner were from

firms in the 200-500 attorney size range.

What would you say are the key hurdles to exercising leadership in your firm?

The top four responses we elicited were:

- #1 – *Reluctance to change*
- #2 – *Complacency*
- #3 – *Some of the lawyer personalities*
- #4 – *Risk aversion*

Interestingly with this question, responding firm leaders did not rate highly as key hurdles some of the things we often hear, issues like “lawyers need to exercise personal autonomy”, a “reluctance to be led,” or an “aversion to accepting rules.”

As you reflect on the role of being firm leader what do you like doing the most?

The top three responses we elicited were:

- #1 – *Determining strategic direction and implementation*
- #2 – *Initiating change necessary to ensure long-term success*
- #3 – *Having responsibility for the overall firm performance*

As you reflect on the role of being firm leader what do you find the most time-consuming?

The top three responses we elicited were:

- #1 – *Day-to-day administrative responsibilities*
- #2 – *Lawyer counseling and thorny people issues*
- #3 – *Traveling to spend time with my partners in various offices*

Here is where the reality of the job and where you are most likely to be spending the vast majority of your leadership time clashed dramatically with what you wished you were doing. 85% of the firm leaders from firms of all sizes wanted to focus on strategic direction as their primary area of responsibility only to have to admit that what really occupied their agendas

were administrative minutiae and sorting out the strong egos of their fellow professionals.

And since these firm leaders relished “having responsibility for the overall firm performance” when we then asked about how their performance was evaluated, we discovered another disconnect . . .

How would you categorize the way in which your performance is evaluated?

Yet another area of some surprise was in discerning that only 9% of the respondents claimed to have a formal, annual evaluation conducted of the leader’s performance.

40% reported that any evaluation happened informally, 35% admitted that there was no real evaluation of performance, while another 5% did not believe they needed any evaluation as their performance was a reflection of the performance of the firm.

Back in 2010, 24% of firm leaders report that there was some formal mechanism for garnering performance evaluations. Some told us about how their firms employed a 360-degree feedback system while others talked about how they meet with the Board to set performance targets at the beginning of each year followed by some form of formal review process at various times during the year.

We have all heard that old adage that “it is lonely at the top.” How would you rate the feelings of isolation that you think most firm leaders experience in this job?

There was no particular size correlation to the

answers we received to this question. 65% of the firm leaders responding admitted some degree of loneliness with 7% telling us that the job was “*extremely lonely.*”

One told us “*It is always lonely in the sense that, at the end of the day, you have to own the decisions, but I have a terrific leadership team and we support one another in a way that is restorative.*” While from another leader we heard, “*I’m surrounded by people but given I decide what people get paid every relationship is different than it was before, despite my not wanting it to be like that. But I have some folks who are pretty honest with me, which I appreciate.*”

A meager 7% of respondents looking back on their tenures told us that they were “*pretty much prepared for everything they encountered*” with many from firms of all sizes reporting that they had to confront “*a few surprises that they had not anticipated.*”

Is there any understanding covering your role and compensation when you relinquish your firm leadership responsibilities?

- 28%** – *have a formal written agreement covering their compensation for a few years after they step down*
- 9%** – *have no formal agreement, but there is a precedent based on how their predecessors had been treated*
- 53.5%** – *reported no formal agreement and that they will have to trust their partners to be fair*

Another 9% of the respondents answered that they would hope that their partners would be fair but weren’t really too optimistic. A couple of firm leaders explained that it is primarily a

"huge trust issue." In other words, you trust that your partners will help look out for your interests when you step down.

These numbers have not changed much from previous surveys and we would respectfully contend that this is an issue that should be formally addressed in every firm, especially those where the leader is serving full time and has likely given up their personal practice. This should be an action item for the current leadership to initiate the change to a more formal understanding – starting with the next generation of firm leaders.

Assuming there are no limits to how long one might serve, what one reason triggers a firm leader to begin thinking about stepping down?

The top three responses we elicited were:

#1 – Enthusiasm is dwindling

#2 – The job now needs someone with different talents

#3 – No longer learning and growing in the position

One of our respondents told us it was "decision fatigue and growing tired of having so many people having such high expectations of you 24/7 every day of the year."

The #3 response of no longer growing tied with those who told us that it was "simply time to retire." Interestingly, while many of these leaders recognized that the job now needed different talents, when we posed the next question, we discovered yet another disconnect . . .

Are there specific qualifications required to be the next firm leader?

With this question 74% told us that there was "nothing specifically defined" while another 21% claimed "a particular skill set" but could not get very specific on "what" particular skill set, other than to cite general attributes like "trusted, honest,

not self-interested, steady and optimistic."

It's possible that this represents a market-wide gap between the speed with which (i) leadership responsibilities have expanded and become more complex, and (ii) firms' leadership processes have matured to meet that demand. Many of the firms that responded have commensurate revenue and complexity to 9 and 10 figure corporations, which use extremely detailed plans, strategies, responsibilities and criteria for the purpose of acquiring a new CEO. Why should law firms of the same ilk do anything less?

What one issue would be most important to you when you relinquish your position?

The two primary responses we received from firm leaders were, "agreeing on a plan to manage the transition period" (51%) and "determining how to let go, how to move on and how to say goodbye" (34%).

When you correlate these responses with the previous question regarding incoming leadership's satisfaction with the guidance provided upon taking up their role – 30% said it was sink or swim – it may be instructive on how firms should tackle this process. There are other knowledge-based and psychological (and therefore challenging) aspects to grapple with for the incoming and outgoing leaders. Allowing more room for vacating and incoming leadership to more effectively negotiate, plan, time and ultimately execute the transition process may not only offer practical benefits, but also offer cathartic benefits as well.

From your observations and experience, what actions/steps are required in executing a graceful and smooth exit strategy?

Our firm leaders identified a number of actions including, in order of priority:

- Engage people to keep the focus on what is best for the firm;

- Involve the firm's practice group leaders and others in the transition;
- Set out expectations with the Board / Executive Committee in writing;
- Determine what you can reasonably complete before the leadership handover; and
- Don't start initiatives that require someone else to continue them.

In addition, a few leaders mentioned things like, "help your successor get his or her sea legs" but also keep in mind that you need to "accept that your successor may not want all of your advice!"

What is it that you are likely to do next after having completed your term as firm leader?

Responses to this final question included:
33% – Take on a reduced workload, perhaps an 'Of Counsel' role
28% – Look for an alternative career challenge
19% – Retire completely from the practice of law
12% – Return to practicing on a full-time basis

The remaining few admitted to really having no idea as to what was next with one telling us "I will without question stay here for a couple of years and help in all ways needed. After that I'm not totally clear. I would like to go back to practicing but it has been 9 years now with limited time devoted to client work - so I will need to see on how that goes. I wouldn't mind a final chapter of my work life that is completely different, but I will never work at another law firm."

Beyond the thirty questions we posed we asked our participants for any overall comments or observations and this one, from the leader of one of the larger responding firms, pretty much summed it up for us – "Being a law firm leader today, is not for the faint of heart or for the sensitive!"

Excerpted from a Thomson Reuters published White Paper.

ACCOUNTANTS

A LESSON FROM THE



WHAT DO

ACCOUNTANTS

Last year, accounting and consultancy firm PriceWaterhouseCoopers ("PwC") announced the appointment of two 'outsiders' to its Board. According to PwC Governance Insights Center Leader and partner Paula Loop, "Good corporate governance is critical to enhancing public trust in institutions" and "we believe that adding outside directors and adopting some corporate governance best practices help maintain greater independence and objectivity."

KNOW THAT

Diversity and addressing the risk of 'group think' were also prominent in the PwC decision. Meanwhile, Grant Thornton LLP, another leading accounting and advisory firm, reports that for the past 5 years, it has included two independent (external) directors on their partnership board. Grant Thornton believes that they are the first major accounting firm to do this with its international board. Currently, external directors serve up to two, three-year terms.

LAWYERS

DO NOT?

Even Deloitte announced, in late 2017, that they too had appointed external directors to their management board.

WHY DON'T LAW FIRMS ADOPT THIS THINKING?

Are the rules about governance and good management not applicable to law firms? Do the advances in governance,

which lawyers often develop for clients, get short shrift in the legal sector? It appears so, at least in North America.

The irony is that lawyers are likely quick to point out the benefits of competent, independent and diverse boards, with advanced selection tools like director qualification matrices, but seem slow to adopt the same thinking in their own firms.

One of the notable differences between the top UK law firms and top US firms is that almost one in four (24%) of the UK firms now employ one or more outside, often called Non-Executive Directors (NEDs) in the UK, on their boards. Even more interesting, in one impartial study, those law firms with at least one NED have seen revenues grow by one-third more than those without. And in another research study commissioned by BDO, nearly a third of global firms had at least one NED on their board.

UK law firms often draw NEDs from a pool of retired law firm leaders, accountants and management consultants. US lawyers continue to be sceptical about the value an outside expert might bring.

Information gathered about the Grant Thornton experience, suggests pros, and some cons, to be considered. That information and our own thinking, show, we suggest, that

external board (or management committee) members can provide any law firm with benefits, including:

- a dispassionate external view of the firm, and the business climate;
- business expertise and ideas;
- a contribution to the firm's strategy and market performance;
- a vital sounding board and an outside voice to challenge current thinking and practices;
- a strengthening and widening of a firm's management viewpoint and resources;
- open thinking around new concepts, ideas, methods, technologies, standards, risks and opportunities, for example, of emerging issues, technology advances, or new revenue streams; and
- an objective assessment of the firm's performance and problem areas, and recommendations for improvement.

Thus, by being a respected, and presumably a respectful, voice from outside, an external director can speak when others may not.

Sandra Peitzyk, a CPA experienced in public company work, and a partner in Grant Thornton, is a member of their national management board. She says the Grant Thornton experience suggests other benefits, which she listed as follows:

External directors can (and should) bring different backgrounds and views, to counteract the similar thinking patterns ("cut from the same cloth") that may seep into professional firms, especially those with much home-grown talent. The different skills of the external director can (and should) round out the board's skills matrix; they can also focus attention on what skills are actually needed at the management or board table. This can ease the disappointment sometimes felt by "rejected" candidates and provide comfort for those

worried about favoritism in the appointment process. Properly done, the use of external directors helps avoid the sense of "rubber stamping" and provides an outlet from the circular governance often found in our firms – by which we mean, the sort of anomaly of partners reporting to the firm management, who then reports to the firm partners.

In Grant Thornton's case, the appointment is made from candidates provided by an Executive search firm that specializes in Board appointments, after shortlisting, extensive vetting and interviews by a nominating committee. They see that such candidates, who are strong, and independent, in their own right, can constructively challenge the thinking of the committee, the biases of a managing partner, or the result of 'group think'. The external person should be respectful, and effective, in itself a worthwhile model for management committee members to learn from and emulate.

Externals often have been through the search for and selection of new leaders. Thus, they are not faced with, and can help manage, the potential conflicts of interest, or other personal issues which can arise in selecting a new CEO or managing partner. These issues are often inherent in succession planning, when the prospective candidate(s) for leadership already serve on the management committee.

It is important that the "externals" bring focus on matters at the Executive Committee or Board level, not the day-to-day operations of the firm. It is also important that the external understand the culture of the firm, and the nature of partnerships, (as a group of owner/operators) different from the traditional top down corporate structure. Some learning time might be necessary.

The potential disadvantage of the external, the time taken, the incurred cost (recruiters, travel, compensation) would likely be

covered by the benefits driven by the external as fan, and supporter of, and networker for the firm, let alone for the value of his or her advice and perspective.

The mandate of an external can (and should) be defined, and documented, and the exclusions or restrictions understood. For example, the question of compensation of partners may be an area where the external has no vote.

SO WHY DON'T MORE LAW FIRMS, LARGE AND SMALL, PRACTICE WHAT THEY PREACH?

It is often claimed that only partners really understand the business or enjoy the necessary respect. Yet external directors are perfectly capable, in the corporate and not for profit worlds, of commanding respect and of calling management to account on behalf of stakeholders. They can also use their outside experience to question the sacred cows which tend to develop in any inwardly-focused organization. And they can help the board to see things from a different perspective, without the "baggage" of personalized decision-making (it is sometimes quite evident whose ox is being gored).

Clearly, client confidentiality must be maintained. This seems easy enough, with non-disclosure agreements, and a clear commitment to transparency. Just as there is no hesitation in having outside consultants review lists of clients and other firm information, and no reluctance to deliver firm records to external accountants, so, aside from client specific information, the qualified board appointee, properly vetted, should create no concerns.

Is the objection around risk? And if so, whose risk?

The director's risk can be dealt with by insur-

ance, indemnities, waivers, and the like. The risk to the law firm is presumably improper disclosure, or perhaps a too ready acceptance of the outsider's point of view . . . but the reality, for most lawyers, is their propensity to challenge other's points of view. And besides, haven't we all experienced law firm management being insistent . . . and wrong?

Law firms need the fresh, unbiased and unfiltered perspective, the ideas, the intelligence, (market and otherwise) and the challenge that an independent director can bring.

Why then are law firms reluctant to take this step?

We have heard some cynics say that, law firms inherently don't want to open their doors, their books, their methods, their compensation and costs, or their dirty laundry to outsiders. Is that a valid fear?

The paramount point should be, we submit, the "good of the firm." Good ideas should be sought out and adopted – for the good of the firm. Yet, often, we hear, firm management doesn't want to entertain new, or different ideas and concepts that might shake the existing culture. Don't get us wrong; firm culture is a very important component of firm life and success. However, it can also get in the way of dealing with problems, facing facts in a business-like, impartial way. This is what kills firms, in our experience, this inability to overcome the habits, preconceived approaches, individual independence, so-called collegiality, (or simple avoidance of conflict), power groupings, hidden (or not so hidden) agendas, personal greed and poor partner business practices; often firms grew-up to be that way, without any conscious decision. The outside director should, in a way that is constructive, be able to point out these issues

"Law firms need the fresh, unbiased and unfiltered perspective, the ideas, the intelligence, (market and otherwise) and the challenge that an independent director can bring."

or question comments like . . . "oh, that's just Dwayne being Dwayne" or "Well, you know, Cheryl is one of our biggest billers."

Each firm has secrets. Each firm has problem children and sometimes a reluctance to deal with them. Each firm likely thinks it has a strategic plan, but chooses, often, to fit that plan around the realities of who works there, and what practices they, or it, has. Each firm is also made up of partners with particularly personal agendas, or perks, or comfort levels that, deep down, no one wants to confront. It takes a perceptive, strong, trusted and all-seeing managing partner or executive committee to see, and then be able to deal effectively with those challenges. And knowing lawyers, not everyone will agree.

Lawyers, for all their vaunted Type A drive and self-confidence, are often insecure human beings. Is an outside director too threatening? Is the concern that the outsider will see the secrets, the partner compensation, the real costs, or how problems are dealt with? Is there a concern the outsider will question why things that seem illogical (or just contrary to the firm's strategic plan), are allowed to continue?

Or, perhaps, law firms - despite the mantra of the 'business of law' and 'the best interests of the firm' - do pay more heed than admitted, to the force of history, the fear of conflict, or the strength (or aggressiveness) of individual practitioners, and there is a reluctance to face that fact.

As the world becomes more complex, and technological, and as trends and issues emerge, so it seems the need for outside directors grows. Currently, we see entities of all sorts, private and public, (not just law firms) faced with sexual harassment claims, social media concerns, staff and other HR matters going public, compensation and fairness disputes,

and other challenges. There will be others in the future. An outside director can provide perspective, not only on what others are doing, in real time, about these areas of concern, but what perceptions of the firm may well result. Just recently, firm reputational risk seemed to have outweighed "presumed innocence" involving a partner in a major international firm.

Significantly, the outsider can often ask the "why do you do that?" kind of questions that insiders are either blind to, or afraid to raise.

SO, WHAT DO YOU THINK?

Is it time for your law firm to adopt a similar strategy to what most of your corporate clients have been doing for decades?

L. Neil Gower, QC, is a lawyer, writer and advisor. He is a governance consultant and a director of a number of not-for-profit organizations, primarily focused on affordable and seniors housing, literacy, poverty and culture. Neil has chaired various Canadian Bar Association subsections, including Law Office Management, has been a course writer, developer and long-time lecturer in the Alberta Bar Admission and Canadian Centre for Professional Legal Education programs and a speaker to a variety of legal and management groups. He practiced law for over forty years, much of that time in leadership positions, with both local and regional firms.

Leadership

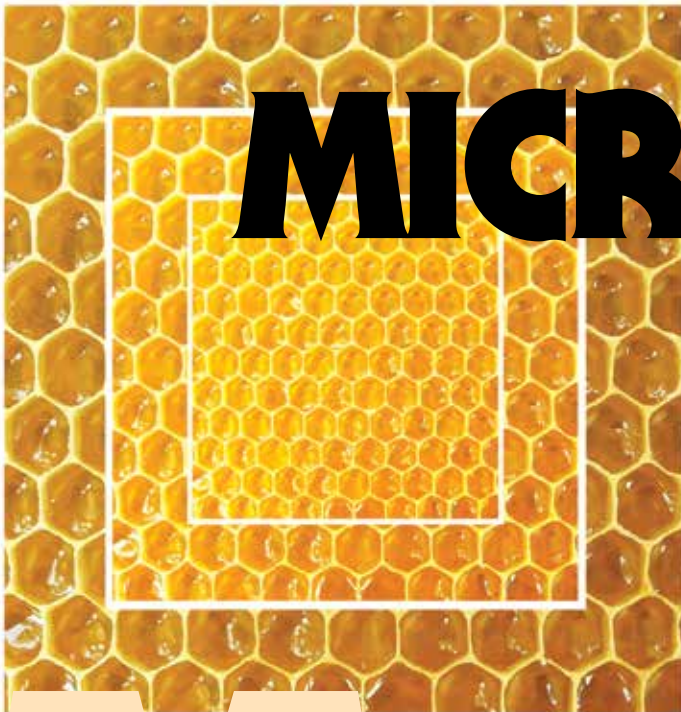
What's Next?

Lessons From The Trenches

By Patrick J. McKenna

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The Rise of the MICRO NICHE

I have a new word that I share with lawyers when-

ever 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 informa-

tion 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 prospective 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 Transactions” 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.

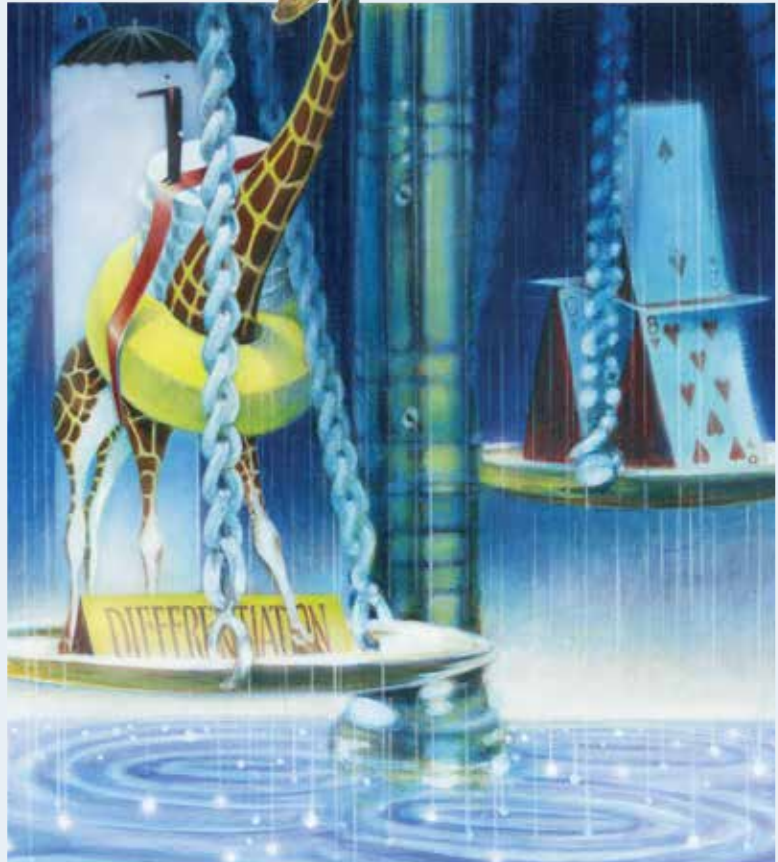
What has always been fascinating to me are those situations where I get called into meet with some law firm interested in retaining a consultant to help them develop their firm’s strategic plan, as happened recently in Atlanta. The common questions include my general experience with law firms, with law 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.

WHAT FIRMS NEED TO DO TO PREPARE FOR THE FUTURE

On June 21, the Legal Institute of Forward Thinking convened for a mid-year discussion on trends in the legal market. Following are some of the primary points of the discussion. As always, our meetings follow the Chatham House Rule, so accreditations will not be made.



United Lex And Leclair Ryan Engagement.

First on our agenda was the discussion of the UnitedLex/LeClair Ryan engagement; specifically, whether or not this would be the beginning of a large shift in the market. And in saving you the suspense, it doesn't seem likely.

Specifically, there are 5 boxes that need to be ticked for an engagement like this to be diffusion-friendly: (i) provide distinct advantage, (ii) cultural compatibility, (iii) (relative) simplicity, (iv) trialability and (v) observability. The advantage of something like this is quite relative; many firm cultures are not innately predisposed to such a dramatic shift; this type of commitment is very complex; it is very difficult to run on a trial basis; and lastly, it will be difficult for the market to "observe" the outcome of the relationship. In a vacuum, these factors will make it challenging for an engagement like this to really get steam behind it's diffusion into the market. But moving outside of a vacuum and into the right environment, it may become fruitful. This bringing us to LeClair Ryan (LR):

LR represents, for lack of a better term, the perfect storm of necessary attributes and criteria to make something like this adoptable,

acceptable to the partnership, and otherwise effective (which, ultimately only time will tell).

Firm: As far as major law firms go, LR is relatively young (established in 1988) and is unabashedly middle market – it knows, embraces, and plans its strategy around, this understanding. It also offers a full-service practice portfolio; is operationally focused; does its fair share of commodity-related legal work; and, while profitable in its own right, is lesser so than some of its larger peers.

Leadership: Further, hailing from the venture capital arena, (the eponymous) Gary LeClair is known for being exceptionally innovative and strategically-minded and driven. The firm's culture has followed that disposition from its origins and is known for having a very thorough, well-articulated and ultimately executed, strategy. And though LeClair left the firm's chairman role in 2015, he still carries significant weight and influence in the partnership's ranks.

Trust: Lastly, LR had an existing relationship of trust in place with UnitedLex – they had opened a "legal solutions center" in 2013 with it.

The combination of the firm's attributes, stature and market-oriented pressures that arise from servicing the middle-market have created a very facilitative environment for the engagement of these two providers. Many firms are not in this boat. And for a firm to be receptive to this type of relationship, it will need to check off a number of the same boxes that LR has: it will be in

Law? The answer is . . . it depends.

No one in the discussion was of the mind that there is no threat at all. Focused on operationally-focused, commodifiable work that can be performed without offending rule 5.4, B4 is currently taking away, and will continue to vie for more, legal work. However, there was some disagreement about how high they would be able to climb in the legal food chain.

The most profitable work is bet-the-farm; of course, the B4 cannot lay claim to that work at the moment. But some participants are bullish on the consulting firms ultimately arriving at the big boy's table, stating that either the rule will be willingly overturned by the ABA – it has already received some **serious consideration** – or

that there is the possibility of lobbying congress to forcibly overturn the rule. It is difficult to predict with certainty, but if either comes to fruition, it won't happen in the near-to-midterm future. The bar is many-faceted, making it difficult to wrangle, and it "protects" (quite heavily) many important interests of a class that is influential in the rule's future. Where lobbying is concerned, it is expensive, challenging and truly a time-consuming endeavor.

It is (quite) reasonable to assume, however, that the B4 is playing the long game.

As of this moment, accounting firms are focused on more commoditized, "legally-oriented" work in limited and specific areas. And while we don't see any attempts to handle any huge M&A deals, they are taking away material amounts of regional, lower-level work, in particular.

Considering the GE/PWC deal, it seems as though the plan may be to ultimately take more sizeable market share by way of embedding themselves within in-house legal departments. They are broadening and cementing relationships within the corporate legal departments by providing middle- and lower-level work, understanding the clients very thoroughly and ONLY giving them what they need. In essence, they are playing "nice" for the moment. If you read between the lines of Deloitte's write up on its legal consulting endeavor, we think you'll find that there is an endgame that moves higher up the ladder.

Differentiation

So how does a firm combat the continued uptick in competition? Well, "differentiate", of course. This concept ate up its fair share of the conversation and in the opinion of the group, remains one of the key challenges for law firms as they forge ahead.

Per the Altman Weil survey Law Firms in Transition (2018), 50% of law firms "do not believe that they project a distinct, compelling value that differentiations them from competitors." This number was surprising to most of the group; we thought that it should be higher. Certainly, less than 50% of law firms are *actually* differentiated from their peers (at the firm-level). A key follow-up question might be "How, specifically, are you differentiated"? No doubt that is where things would get interesting.

Mind you, this is not to disparage law firms. While true differentiation is hard to accomplish in any setting, it can be force-multiplied in the legal market. Per Merriam-Webster: Differentiation: to mark or show a difference in; constitute a contrasting element that distinguishes. Reading a bit deeper, it is apparent that to differentiate requires a focusing of efforts

The Big 4 are broadening and cementing relationships within the corporate legal department. If you read between the lines of Deloitte's write up on its legal consulting endeavor, we think you'll find that there is an endgame that moves higher up the ladder."

the NLJ 100 – 300 range, disciplined, un-specialized, operationally-focused, harbor a culture that is either predisposed to change or is flexible enough to support change, etc. This is a relatively rare bird and combined with the challenges this type of relationship poses from a market diffusion standpoint, it is likely to be, at best, a slow bake.

Big Four Embedding Themselves into Inhouse Legal Departments.

What discussion about legal trends would be complete without touching on the Big Four (B4)? It would be difficult to deny that they are looking squarely at legal work for future cashflow. Audits are challenging, high commitment, have high overhead, and even with really loyal clients, after 5 years or so, they move onto other providers – a corporation can't have the same auditor in perpetuity. So, are they a threat to Big

and resources into a certain practice and group of people. Going even deeper, this “focusing” will inherently move resources and capital from one area – i.e., group of people – to another. In layman’s terms, it takes money out of one lawyer’s pocket to put it into another’s. You can use the term “win-win” or “bigger pie” all you want, but on a shorter-term time continuum, law firm profits are, indeed, zero-sum.

Even the slightest understanding of human nature, and certainly any understanding of law firm economics, tells us that when you start to take money out of someone’s pockets, they get uncomfortable. And if opportunities present themselves to those disenfranchised souls, departures occur.

Unless you happen to invent something like the client takeover – Skadden – or the poison pill – Wachtell – achieving true firm-level differentiation at this point in the history of Big Law is highly implausible. But, it is possible at more concrete/specific levels, such as geography and/or practice (in particular). Unfortunately, however, 8 out of 10 firms currently lean on “client service” as their differentiating factor. But when pressed to define what “client service” actually means, they often a struggle. And if everyone is providing good “client service” to get above the noise, they are only creating more noise.

While differentiation initiatives are certainly in the minds of (at least) leadership, the bulk of a firm’s “differentiation” still sits at the hyper-specific level of rainmaker. 7% of all partners in the NLJ350 are rainmakers, booking 5-6 times what everyone else does. They are ever-intimate with their client’s business; they study it; they key in on one or two insights that they *know* are relevant to their clients; they are branded; they are diligent; and most importantly, these partners provide ~35-45% of billings at their firms.

In an industry that provides credence goods (the nature of legal services), it is very difficult for even the savviest consumers to effectively *evaluate* work product under normal circumstances, and therefore, evaluate the firms from which that product came. This makes these rainmakers the most visible, tangible version of reputational capital to the consumer, ultimately causing them to rely on those relationships when making purchasing decisions.

Compensation - Paying Rainmakers Appropriately

The above is likely not news to you. In many-to-most cases, these rainmakers *are* the firm’s differentiation, rendering them more valuable than ever in this perpetually pressurized market. And in firms that aren’t compensating competitively – particularly firms that sit very close to, or on, the lock-step polarity – they run the risk of losing their best people (see Cravath’s loss of [Scott Barshay](#) and [Sandra Goldstein](#)).

But at its highest abstraction, the prevailing legal culture can make it difficult for firm leadership to compensate those people effectively. There is “equality” baked into law firm cultures at the most fundamental levels. They are, after all, partnerships – or at least they are still called “partnerships”, the accuracy of the term varying on a spectrum – so their DNA has strands of beliefs and values that tend to (or at least want to) place their partners within economic earshot of each other.

But in this day and age, everyone *isn’t* equal. And in some cases, they are dramatically *unequal*. And if firms don’t find ways to effectively compensate their most important assets, they will take some gut punches. We are reminded of the warning in preflight: “Secure your own mask first before helping others.” Firms seeking differentiation need

to ensure that their current platform of differentiation – i.e., their rainmakers – are secure, first, and then focus on group-level differentiation, second. If they don’t, we will see more dramatic lateral acquisitions, and in some cases, more holes being poked in what was once bullet proof firm brands.

The Repeal of Jewel V. Boxer

Speaking of lateral movement, one of the most influential decisions in the lateral acquisition market has been that of Jewel V. Boxer – the “unfinished business” doctrine. The short version from the ABA’s (38th) *National Conference on Professional Responsibility*:

“Partnership cases or matters that are still pending at the time a partnership dissolves are the ‘unfinished business’ of the partnership, and thus are a partnership asset. Importantly, this reasons that because the UPA requires that former partners not be separately compensated for completing the firm’s “unfinished business,” any profits earned from those cases belong exclusively to the dissolving firm, even profits earned by former firm partners completing the cases or matters at their successor firms. Thus, the former partners, and their new firms, get nothing for the work they contributed to bringing the case or matter to a close. This rule has been applied to both contingent and hourly matters, and allows former partners who did no work on the matters post-dissolution to profit from the efforts of those who did, all at the expense of the successor firms.”

This rule has caused firms to take a really hard look at the state of the firms from which lateral partners are moving, lest they acquire a partner or partners from a firm that dissolves, opening them up to claw backs. There have also been cases where wholly intact firms that lost lateral/s have

gone after “unfinished work” that was carried over to the fleeing attorney’s new firm. Of course, these dynamics have caused firms to critically assess – as much as possible – the unfinished work of potential laterals because no firm wants their newly minted partners working for their previous firm, for free. Nevertheless, there have been a number of due diligence errors in the last 15 years or so that have resulted in firms taking a real hit because of it.

Recently, however, the **California Supreme Court** has (very quietly) decided that “A dissolved law firm has no property interest in profits derived from work performed by its former partners, now employed by new firms, on hourly fee matters previously handled by the dissolved firm. In so ruling, the California Supreme Court confirmed that clients, not law firms, own legal matters.”

This decision overturns the previously held decision and now leaves very little, if any, responsibility at the feet of partners that are fleeing from a sinking ship and the firms that welcome them because if the firm ultimately goes bankrupt, there will be no claw backs to fear. Further, it will be challenging for an intact firm to justify claw backs on work that is performed at a new firm.

This may not sound like a bad thing – and in some cases it may not be – but it is easy to see where this will facilitate, in particular, the predatory poaching of partner-based assets from struggling firms that may otherwise have been able to court a merger partner. “Why buy the liabilities when we can just buy the assets?”

Making Clients Sticky

The unsteadiness that arises from lateral movement (and therefore the loss of clients) is enough to upset the stomachs of even the most seaworthy leadership. And

one antidote might be the institutionalization of clients – something much easier said than done. Along these lines, the group considered whether it might be possible to create an environment that could “lock-in” client relationships. For example:

- Can we truly partner with this client, and is so doing develop some agreed upon service standards for how we will operate together to fulfill their needs?
- How can we position our technical expertise in such a way as to discourage clients from defecting?
- How do we become so easy to do business with, so comfortable a provider of legal services, that familiarity with our operating style breeds client retention?
- How do we become an inseparable part of the client’s day-to-day business operation?
- How do we create a psychological connection with this client company such that we are perceived to be affiliated with something of enormous value?
- How can we create significant transfer costs associated with this client company ever moving their legal matters to some other firm?
- How do we provide the client company with an economic incentive to use our firm more often?
- How do we make ourselves the safer choice for this client company?

Feedback was clear: achieving most of these in a legal setting is a *difficult* task and are therefore unlikely to manifest in the market in a material way. The needs of clients are often incredibly dynamic and shift quickly, making it difficult to systematize and “bottle” products and services that tackle highly impactful client problems that might cause a client to effectively lock itself into a firm.

The only effective “on the ground” solutions that have been observed (by the group) were

(i) the carving out of contractually-based alternative fee agreements – “*We are going to do all of your work for 5 of years at this rate.*” – and (ii) formal client teams, with the latter seeming to work the best.

There are myriad advantages. A good client team does all of the diligence necessary to truly understand the client’s industry and business, and the most important *practical* issues that affect both. The structure exposes the client to multiple disciplines and skill sets in a much more controlled and systematic way. The client knows that cross-border and cross-practice management is someone’s *formal* responsibility at the firm; and perhaps of most importance is the resulting OTC factor: “*I’ve got one throat to choke if something goes wrong.*”

A fair number of firms have formal “client teams”, but there is no real structure and resources behind them. Some firms have client teams that arise organically, despite the lack of a formal structure. But to create a functional “client team” program that can effectively carry out its duties and be marketed to clients, there needs to be:

- (i) a budget that can support the necessary activity,
- (ii) openly espouse and formally articulated support by management,
- (iii) articulated and assigned responsibility and accountability,
- (iv) some kind of activity-based methodology that will define the impact of losing that client, and
- (v) a compensation model that rewards (or disciplines) in a material way based on the satisfaction, and continued patronage, of the client.

Anything short of this is generally a house of cards and can add more work without the desired payoff.

LEGAL INSTITUTE FOR FORWARD THINKING MEMBERS

(in alphabetical order)

LIFT is an international Think-Tank and coalition of recognized thought-leaders that meets to brainstorm, debate and analyze top issues and future trends impacting the legal industry with an objective of “raising the awareness of market disruption.” ■ With the intent of keeping the group quaint and efficient, we brought together complementary practices that do not overlap, covering areas such as leadership, knowledge management, technology, branding, academia, innovation, firm finance, procurement and employment. The distinguished group includes:

RONALD FRIEDMANN

Partner and consultant with Fireman & Co., a legal industry-focused management consulting firm. Ron focuses on optimizing law practice and legal business operations with technology, knowledge management and alternative resourcing. One of the first non-practicing lawyers hired by a large law firm, Wilmer, Culter & Pickering (now WilmerHale) to manage practice support.

EDWIN REESER

A lawyer specializing in structuring, negotiating and documenting complex real estate and business transactions, Ed is also the former managing partner of Sonnenschein Nath & Rosenthal LLP's Los Angeles office and an expert on the subject of law firm finances – particularly those that lead to law firm bankruptcy or dissolution.

PROFESSOR WILLIAM HENDERSON

Professor of law at Indiana University's Maurer School of Law, a former principal in Lawyer Metrics - a consulting firm that uses evidence-based methods to assist firms with hiring – and business-of-law luminary whose research and writings focus on the diffusion of innovation in the legal industry.

MICHAEL B. RYNOWECER

President and founder of client research firm BIT Consulting Group, which conducts independent research on how clients acquire, manage and evaluate their professional service providers, benchmarking how Fortune 1000 companies buy, how professional services firms sell and how to manage service provider performance.

PATRICK J. MCKENNA

Principal at McKenna Associates Inc. focusing on law firm leadership and strategy consulting; author of eight books, most notably his international bestseller, *First Among Equals*; identified by LawDragon as one of “the most trusted names in legal consulting; and recipient of an “Honorary Fellowship” from Leaders Excellence of Harvard Square.

DR. SILVIA HODGES SILVERSTEIN

Executive director of the Buying Legal Council, the international trade organization for professionals tasked with sourcing legal services, author / editor of the Legal Procurement Handbook, adjunct professor of law at Fordham School of Law and lecturer at Columbia Law School.

DAVID J. PARNELL

Founder and principal of True North Partner Search, a Manhattan NY-based legal recruitment and coaching firm; ABA published author of *In-House: Lawyer's Guide to Getting A Corporate Legal Position* and *The Failing Law Firm: Symptoms and Remedies*; speaker, and columnist for Forbes & American Lawyer Media.

PROFESSOR RICHARD SUSSKIND, OBE

Professor, author, speaker and independent adviser to major professional firms and to national governments. His main area of expertise is the future of professional service and, in particular, the way in which the IT and the Internet are changing the work of lawyers. (*Due to scheduling, Richard was unable to personally attend this meeting.)

Excerpted from an Amlaw.com article

When You Need To Replace A Pr

FOR ANY FIRM LEADER, THERE CAN BE NO MORE DIFFICULT DUTY THAN TO CONFRONT AND POSSIBLY REMOVE SOMEONE – OFTEN A LONG-TIME COLLEAGUE AND FRIEND – FROM THE POSITION OF DEPARTMENT CHAIR, OFFICE MANAGING PARTNER, OR PRACTICE GROUP LEADER.

The first decision-making challenge is to identify both how and when to take corrective action. Before one does anything drastic, it is essential to identify where the problem lies and whether there is any rational way to fix things. Assuming that your strong preference is to provide the ineffective practice leaders with coaching and remediation to help them succeed, then diagnosis is the starting point.

The diagnosis may point to areas where coaching might indeed be highly productive – helping the individual work with the members of his or her group to develop a meaningful business plan and then, together, thinking through how that plan can best be implemented. Other times, the diagnosis may reveal a more pervasive problem – for example, this particular individual is just not prepared to invest any non-billable time in conducting meetings, working with younger partners, or supporting the marketing initiatives of their teammates.

Sometimes the choice, however painful, is clear. No amount of coaching will improve the individual's fundamental performance as a leader. A replacement must therefore be made.

At the end of the day, you can coach technique and you can coach certain behavioral patterns, with triggering mechanisms to change how people deal with each other, or how they operate within teams. However, you cannot coach character, basic intellectual capacity, or a fundamental change in personality. And you certainly cannot coach some partner out of what might even be tantamount to an inherent pathology.

The two initial critical questions therefore follow on one another: First, does your diagnosis indicate that this practice leader's ineffectiveness lies in a coachable area? Second, what results can be expected from your coaching this individual and over what period of time? Even if there is a likelihood of improvement through coaching, is the result worth the expenditure of your time and effort to get there?

Tough questions, to be sure. Over the years I have counseled a number of firm leaders on how they might deal with the challenge

of either coaching or removing some practice leader. I certainly don't want to underestimate the complexity or the intense emotional investment involved in making a decision to take action. But I do make sure that managing partners realize how relatively few limitations there are on their capacity to remove ineffective and uncoachable partners.

Indeed, any constraints on taking action are usually self-imposed and will ultimately have adverse firm-wide effects.

FIVE CARDINAL SINS

When you are faced with this challenge – and you definitely will be at some point in your tenure as managing partner – you will need to understand that the consequences of decisive action are rarely as dire as they seem at first glance. Even so, there are typically numerous reasons why intelligent and capable firm leaders will go to great lengths to avoid removing an ineffective or troublesome colleague.

You need to recognize all of these as traps and you need to know what must be done about them...

1. *Wanting to give the situation a bit more time*

Some firm leaders have a high need to be liked, admired, and respected by everyone within their firms. It is an important part of their personal makeup and it's what attracted them to the leadership position in the first place. Such a need makes it particularly hard for them to confront conflict of any kind, and having to fire a colleague and peer is an especially painful prospect.

Exacerbating the psychic dilemma, it is not always easy to produce sufficient data to demonstrate that particular practice leaders are either incompetent or simply not doing their jobs. Meanwhile, managing partners are most often



Practice Leader

inclined to hold back, waiting for more information that an incumbent is indeed not performing in the role. By the time enough information finally does surface, the office or practice group is often totally demoralized and extensive efforts are required to revive partner commitments.

I worked with the firm leader at one firm who had put off dealing with a dysfunctional practice leader for over a year, continually rationalizing (mostly to himself) how this guy was slowly coming around. Finally, I got his attention by offering to place a significant wager that this lawyer would not, in fact, prove to be successful within the following six months. You have to ask yourself: What are you seeing that makes you think that things are really going to get better? What are the specific signs that this individual is making progress?

If you can't be specific, you are shirking a major responsibility. Indeed, not making a decision is the same as simply announcing that you will continue to accept an unacceptable situation or tolerate unproductive behavior. Inevitably, you'll have to appoint a replacement anyway, but how much damage will be done in the meantime?

2. Concern for how removal will be viewed

There is always a pronounced fear of embarrassing a prominent office head or practice leader who is asked to step down, absent some reasonable pretext or effectively sensitive announcement. Efforts to cloak the whole process often only exacerbate the overall discomfort – and, if anything, incite protracted firm-wide speculation about a festering discord within leadership ranks.

You need to realize that a single departure, or even a couple of departures within a relatively short period of time, will not destabilize your entire firm. As you put in place a carefully chosen replacement, with credible internal communications to ease the transition, your partners soon realize that life will go on and business will soon get back to normal – or more likely, to a state of higher performance!

The good news, moreover, is that you have also sent a powerful signal about how the firm is changing and about the style of behavior and level of performance that will now be required of all practice leaders.

3. Fear of possible ramifications

If you are like many firm leaders, you will naturally be concerned about how the dismissal of a practice group leader will affect that individual. You are well aware that you are dealing with a highly successful lawyer, and that he or she could perceive it as their first major career failure. The shock of that failure combined with any embarrassment could indeed have a crushing effect.

Fear of backlash – the partner deciding to leave the firm being just one example – has prevented more than one firm leader I have known from replacing problematic practice leaders. It is not unusual for me to hear things like, *"I know that I need to get rid of George as the group leader, but he originates a huge book and claims that his perceived status contributes to helping him keep a number of our partners and associates busy."*

There is an internal tension and huge reluctance to replace these people. Some partners are in-

deed very adept at generating the perception that clients retain them solely based on their practice leadership title.

To be sure, the concern is not without justification in some instances. I have long speculated that perhaps we should just rid ourselves of titles that sound too much like 'leader.' Everyone wants to be a leader, everyone wants the status, but they don't necessarily want to do the work required.

One of the options that you have, as managing partner, is to restructure the titles used within your firm. Taking a page from British law firms, we might award acknowledged rainmakers or luminaries of other stripe with the title "Senior Partner." At the same time, we might look for people who are actually capable of leading the group and give them the title of Practice or Business Unit "Coordinator."

Sounds trivial, but I've seen it work nicely at a couple of firms that needed to find a new role for ineffective practice leaders.

4. Not having a replacement candidate available

The all-too-common reaction of many firm leaders is that, as much as they would like to replace an ineffective leader, there is no obvious replacement in sight. Given the potential embarrassment involved in putting the wrong partner in the position, there is a tendency to rationalize continuing with the "devil you know."

Yet at some point you do have to ask yourself how long the firm, and especially the team afflicted, can be reasonably expected to continue



tolerating ineffective leadership or disruptive behavior. Remember that, in many cases, and even with a smaller practice group, we are talking about the management of a \$3 million dollar business!

Decisions taken or avoided can have measurable economic consequences. Does it make sense to keep playing high-stakes poker with a weak hand that will eventually be called?

5. *Your sense of personal failure*

Finally, it is not unusual for an experienced managing partner to entertain some feeling of having personally failed at saving a colleague. It may be very natural for you to harbor remorse at not being able to turn this individual around or fix the situation. You believe that, if you had only given this lawyer more guidance, clearer direction, or spent more time in providing personal coaching, none of this would have happened.

Not just failures on the coaching front, it may well be a situation where you selected this individual to be a practice leader and now blame yourself for poor judgment. You think that somehow you should have known that this partner would not work out.

But your self-lacerations obscure a couple of critical factors. First, this partner knew in advance that the leadership position was a job, not an award, and required some serious effort. Second, your remorse presupposes that every leadership appointment ought to be a sure bet – which has just never been the case anywhere.

The truth is that you can only do so much. Your colleague is the product of years of training and conditioning, the result of which may be that he or she is not really all that interested in wanting to spend the time required to be an effective leader, while others simply don't possess the aptitude and never will. It is simply not realistic to think that you can personally reverse a lifetime of conditioning or help make every practice leader effective in a short time.

PULLING THE TRIGGER

One of the benefits of being the firm leader is that you can delegate some of the more distasteful tasks to others. Unfortunately, firing or replacing practice group or office heads is not one of them. The unavoidable reality is that some responsibilities cannot be delegated, and dealing with dysfunction within your management team (department heads, practice group leaders, office managing partners) is a case in point. It is, in fact, one of the key tasks of an effective law firm leader.

As you perform this particularly distasteful task...

- **Don't underestimate the fact that these individuals already recognize that they are failing.**

I remember asking one Firm Chair, *"What evidence exists that this practice leader is not doing the job?"* In this case, the individual was able to immediately articulate a number of observable failings – no regular monthly practice group meetings, minimal implementation of the group's business plan, etc.

I then asked, *"Do you think for one moment that, with such specific evidence at hand, this practice leader does not know that he is failing to perform what is expected of practice leaders in this firm?"*

You need to keep in mind that many of those who fail at being an effective practice leader are probably feeling frustrated and perhaps even perplexed that they accepted an appointment they really didn't have the time or disposition to fulfill. Although it might not be the first reaction, they are actually relieved when you make the decision for them.

- **Practice how you are going to handle the discussion.**

At some point you need to do a dry run on how you will actually explain to your colleague why it is necessary for him or her to step down from the position of responsibility. It often helps to write out the specific reasons you plan to offer. The resulting insight can be powerful. When I looked at the list that one firm leader shared with me, I remember

her then saying, *"I could not believe I had kept my eyes closed to the situation for this period of time."*

Take some time and have a trusted colleague work with you on a role-play to assess how the discussion might finally unfold. Very often, by rehearsing the interaction, you can think through all of the alternative reactions and the best response in each instance. In every such practice session I have conducted with a managing partner, invariably there is a sense of surprise at how "right" the discussion feels.

In other words, it is a discussion that needs to happen... right away!

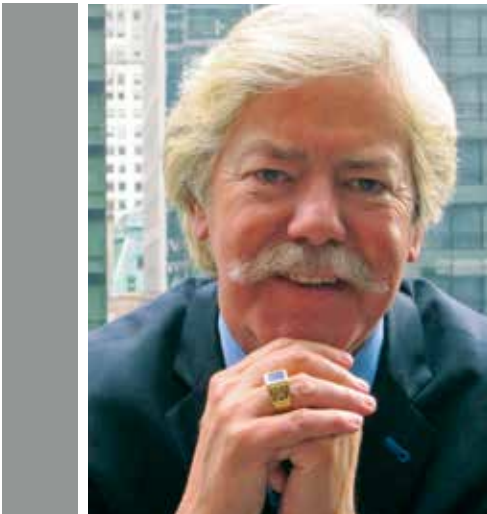
- **Carefully manage follow-up communications.**

Give your 'retiring' practice leader ample time to clear their head, and then ask the individual to think about how they want to work with you to carefully manage the communications surrounding their stepping down. This situation should not necessarily cause embarrassment or harm to reputation or be perceived to limit future opportunities.

Keep in mind that, in the absence of reasonable information, we all tend to create our own stories – sometimes involving dark conspiracies and shadow motives – and eventually reach our own misguided conclusions as to what really happened. You certainly don't need that kind of collective scenario to unfold on your watch.

There are always reasons to put off the decision to take decisive action... you need just a little more information; you want to provide the individual with a little more time to turn things around; you're working on recruiting a lateral replacement. A number of firm leaders have, in hindsight, admitted to me that they came up with just such rationalizations to postpone a painful decision that they knew was inevitable.

In the end, all they succeeded in doing was hurting both the team and limiting its potential in a marketplace that is now far too competitive for weak-willed excuses.



PATRICK J. MCKENNA

P R O F E S S I O N A L P R O F I L E

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.

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 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 bestseller 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. In 2006, his e-book *First 100 Days: Transitioning A New Managing Partner* (NXTBook) earned glowing reviews being read by leaders in 63 countries and culminated in Patrick being asked to conduct a one-day masterclass for new firm leaders. 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."

Patrick's most recent book, *The Changing of the Guard, Second Revised Edition* (Ark Group, 2017), provides in-depth guidance on the leadership selection process in professional firms and resulted in his being acknowledged in *American Lawyer* as "a long time succession consultant and coach to new firm leaders."

Always 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.

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 Patrick helped launch the first International Legal Think-Tank (LIFT: Legal Institute For Forward Thinking) comprised of distinguished thought leaders from three countries.



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Hugh Verrier, Chairman
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The First 100 Days Masterclass was concise and insightful. I quickly learned the difference between being a practitioner and a Firm Leader. I was thoroughly impressed with the scope of the topics discussed.

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YOUR MASTERCLASS FACULTY:

Patrick J. McKenna is an internationally recognized authority on law practice management; and

Brian K. Burke is the former Chair Emeritus at Baker & Daniels with over 20 years in law firm leadership positions.