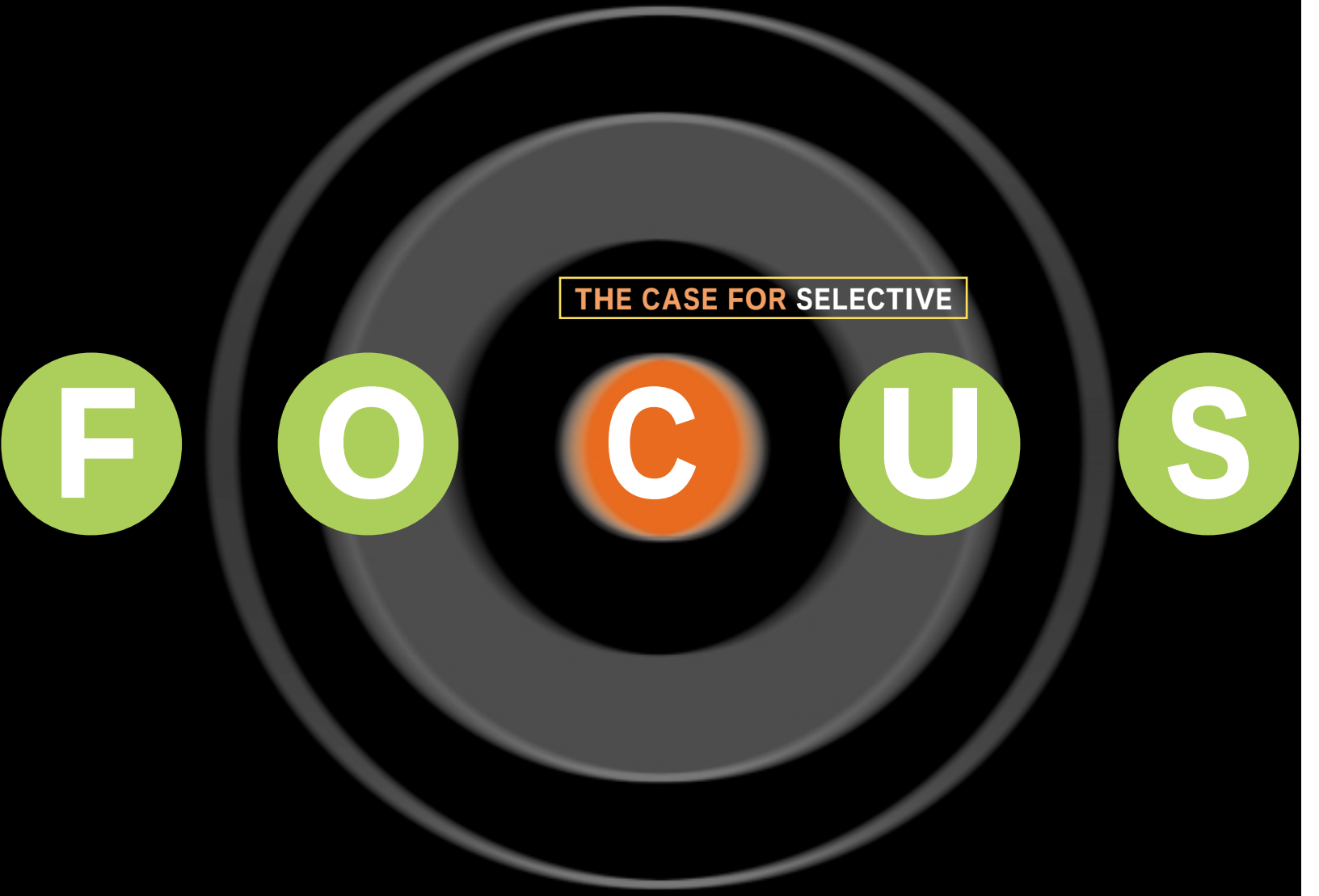
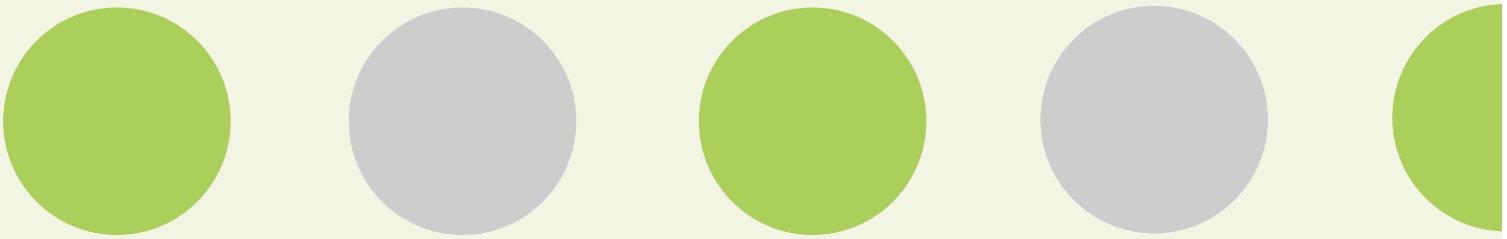


IF YOU'RE NOT SPECIAL, YOU'RE DEAD.

WELL-FOCUSED SPECIALISTS ARE WINNING THE MARKETPLACE WARS. IS IT TIME TO CHANGE YOUR STRATEGY FROM "DO EVERYTHING" TO "DO ONLY WHAT WE DO BEST?" **BY PATRICK J. MCKENNA**

What would you say if you had to answer the question, "How does your firm or practice group differentiate itself from its competitors?" If you are like most managing partners today, you would pause, take time to reflect, then talk about your firm's full breadth of services and extremely high technical proficiency. It's the pause that's interesting. It does not suggest that the question comes as a surprise, or that this is an issue the managing partner has not regularly considered. It does suggest that despite previous contemplation, a wholly



satisfactory answer has not been found and that the managing partner suspects this answer is, at best, superficial.

The Defining Question

In strategy sessions with groups of partners, we are fond of posing the "defining" question—the question that reflects the primary concern in most clients' minds. It goes like this: "Tell me why I should choose your practice group or firm. What makes it distinctive and what added value can you bring to my matters that *I could not get anywhere else?"* (Please do notice those last six words.)

It is highly unusual to get the same answer from two partners in the same practice group. You won't get even a slightly similar response from two partners within the same *firm*. It is the rare firm or practice group that has developed a "song sheet" of common questions and responses for their professionals. What's more, in the words of one general counsel, the answers you do get are likely "to make you want to puke on your shoes."

Responses usually boil down to a variation on two timeworn themes. You may hear, "Because we can do it better, faster and cheaper—so why not give us a try on just one matter so that we can show you what we can do." (As if the prospective client will find divine gratification in taking a personal risk with an unknown quantity.) Or you might hear, "Because we are a full-service firm that offers a broad array and depth of highly expert services." (But how can you provide any real depth and breadth given your size?)

Let's be honest. If your firm was recognized as the preeminent expert in any given area, you would not need to resort to the "better, faster and cheaper" pitch. Your expertise would be apparent or it could be easily demonstrated. In addition, without a preeminent position, clients are unlikely to view your full-service capability as credible unless your firm is among a handful of the largest in the nation.

The Grand Old Rhetoric: Broader, Bigger and Better

It's not surprising that so many firm leaders espouse a full-service strategy. After all, being full service is the grand old rhetoric, the compass of the

modern business-oriented professional firm. It is *the* ultimate strategy. Managing partners, especially those at the average midsize firm, behave as though the pursuit of full services automatically places their firm on a direct route to economic success. "Full speed ahead" (in all directions) seems to be the call from the executive committees. If we build it *(a full-services firm)*, they *(the clients)* will come. In recent years, however, these roads have, for many firms, become mazes riddled with traps, wrong turns and dead ends.

What happened?

To become full service, some firm leaders have concluded that the obvious answer is to grow larger—and the fastest route is to merge with another firm or acquire smaller firms or practice groups. Witness the number of mergers currently taking place among midsize firms. Can two midsize firms, competing in middle-tier markets, merge and miraculously rematerialize as a megafirm with megasize clients? These marriages are destined to create larger, more fossilized entities, without the agility to service the requirements of middle-tier clients.

Proponents of the grand old rhetoric behave as if their firms are immune to market forces, or unaware of the changes in the legal marketplace. Large companies in various industries—as a result of their own mergers or by overt consolidations—are drastically reducing the number of firms they use:

- E.I. du Pont de Nemours and Company reduced its panel of outside law firms from more than 340 to 34 worldwide, because according to associate general counsel Thomas Sager, it was "hemorrhaging" money.
- The EuroBank slashed its legal providers from more than 100 firms to just 8.
- Blue-chip British Petroleum (BP), and its group counsel Peter Bevan, plans to reduce its global group of law firms from 120 to 12. Prior to its merger with Amoco, BP had referred work to 30 or so firms in the U.K. and another 90 more worldwide.

Too many firms have not truly comprehended the full extent of the changes in the marketplace. When major companies rationalize the selection of outside counsel, the final choice comes down to splitting candidates into two camps. One camp for the big-ticket corporate work (which usually goes to a handful of large name-brand firms) and another for the niche area specialty work (which, regardless of size, usually goes to firms that have developed notoriety for their specialized expertise).

The future is slightly more secure for firms that make it through these cuts. After all, they not only have some guarantee of future work, but they are also likely to receive resumes from those talented professionals at competitive firms who have had prior experience serving the client.

Where does your firm fit in?

Brutal Examination: Applying the Math of Selective Focus

It is against this backdrop that issues of meaningful differentiation and strategic thinking should be explored. Unfortunately, strategic planning for most firms is a mere extrapolation of the past. They use it to forecast five-year budgets or engage in a "strengths, weaknesses, threats and opportunities" exercise that treats the entire firm as one big homogeneous entity.

What is really needed is a brutal examination of the viability and profitability of each discrete practice group—whether it is now or has the potential of becoming a preeminent player in its respective marketplace. Firms and practice groups need to understand and apply the math of selective focus and become obsessed with questions like, "What are we best at? What are we world-class great at? What makes us unique? In which of these areas can we be most efficient and profitable?"

How critical is this examination? Consider the experience of firms that took the turn toward becoming full service only to discover that what once made them distinctive evaporated and what once made them highly profitable declined in importance.

Skadden Arps Slate Meagher & Flom, for example, is categorized as a premier mergers and acquisitions player. Led by Joe Flom, the senior partner known for his expertise in handling the largest takeovers of the 1980s, this New York firm had a profit-per-partner reaching $1.2 million in 1989. But that wasn't enough of an achievement. According to Flom, he had always wanted to have the firm become full service: "I could be crazy, but that was my dream," he has said. In pursuit of that dream, Skadden Arps moved into 20 new cities and dozens of different practice areas, expanding its professional count from 526 lawyers in 1985 to 1,074 in 1998. As Skadden grew in size, its profits suffered—from $1.2 million per partner in 1989 to just $690,000 in 1993, then $885,000 in 1995 and finally returning to $1.29 million per partner nine years later.

What is most interesting is that in the mid-1980s, Skadden had about 500 lawyers and about 35 percent of the merger business. In the early 1990s, the firm had almost twice as many lawyers but only somewhere between 20 to 22 percent of that business.

Meanwhile, longtime rival Wachtell Lipton Rosen & Katz kept its focus directed on M&A, remained small

An Employee Relations Niche

SEIZING THE OPPORTUNITY

In the mid 1990s, partners at the Wright, Robinson, McCammon, Osthimer & Tatum, a Richmond, Virginia-based firm known for its successful commercial litigation practice, saw an opening in the regional market. The firm managers concluded that too few firms had the depth and experience to handle the rapidly growing demand for employment law practice.

So the firm made the first of two moves to seize this opportunity. First, it laterally hired labor and employment lawyer Bruin Richardson from Richmond megafirm Hunton & Williams. Then, the firm backed the techno-innovative efforts of Richardson and a colleague.

Wright, Robinson had already demonstrated that it was not afraid to explore and deploy technology to better serve clients and market itself outside its regular client base. The firm had recently launched TrialNet, a unique Internet-based litigation management tool, to considerable fanfare. This system creates secure, customized networks designed to improve each client's relationship with outside counsel and enhance the team-oriented relationships of the lawyers themselves.

TRIALNET AND WORKNETT: DEPLOYING TECHNOLOGY TO CORNER THE NICHE

Shortly after Richardson's arrival, the partner who had created TrialNet, Michael Curreri, paid Richardson a visit. "Mike knew that I was developing some training programs for employers to prevent sexual harassment and racial discrimination in the workplace," Richardson recalls. "So he poked his head in my office and said, 'What if we do this over the Internet?' It made a lot of sense to me."

WorkNETT (Networked Employee Training and Tracking) was born, an Internet program using video and interactive question-and-answer formats to teach employees about harassment and discrimination issues. This training is critical for employers to protect themselves against lawsuits, particularly in light of recent Supreme Court decisions that recommend such education and recordkeeping.

The technology enables companies to train their employees on their workplace behavior policies more effectively, says Richardson, because WorkNETT tests workers on what they've learned and does it cheaper than hiring employment lawyers to perform the training in person.

The program also serves as a marketing tool for the practice area niche the firm is trying to grow. "Our firm is a litigation firm," Richardson explains. "We didn't have a reputation for doing a lot of labor and employment law. So WorkNETT helps get our name out there, meet potential clients and build our practice."

(139 lawyers in 1998) and kept its profits at 70 percent higher levels than Skadden—$2.2 million profit-per-partner in 1998. And it was Wachtell, with its one office in New York, that ranked among the top 10 European deal makers in 1998 for its M&A work. Skadden—with more than 20 offices, many of them throughout Europe—didn't make the list.

This is the mathematics of *selective focus.*

By being focused, some firms are able to be far more efficient and profitable. Robert Dell, chairman of Los Angeles' Latham & Watkins, understands the mathematics. He has acknowledged that in 1997, his firm rejected some $60 million in business because accepting the work did not make economic sense for the firm.

Simmons & Simmons, one of the U.K.'s top 10 firms, also knows the mathematics. In early 2000, it decided to shed certain practices that did not "compliment their core businesses." Simmons even arranged to relocate one practice group of seven lawyers with another firm more suited to making that practice profitable.

Another U.K. firm, Davies Arnold Cooper, with more than 240 fee earners, declared it was making 14 lawyers in its London office redundant and closed its corporate department in Manchester as part of the firm's plan to focus on its strengths. According to managing partner David Hertzell, the firm asked itself two questions: "What do we do in the top quartile?" and "Where will we struggle?"

The obvious lesson is that when you expand to appeal to a larger number of markets and clients, you lose focus in your core strengths. Market power and competitive distinctiveness lies in being a specialist. When a specialist tries to broaden its base, it can invariably end up courting trouble, not new clients.

In reality, few firms, if any, can truly demonstrate preeminence across a wide range of services and to multiple sectors of the market. Even the largest full-service firm tends to be "best available" in a relatively small number of key practice areas. The vast majority of firms compete in a limited number of substantive practice areas or industry sectors, or through some combination of the two. Such firms may practice in other areas as well, but it is in these core areas that they are truly distinctive.

Today well-focused specialists are winning the marketplace wars. As Peter Drucker advised managers many years ago:

> *Concentration is the key to economic results. Economic results require that (law firm) managers concentrate their efforts on the smallest number of activities (practice groups) that will produce the largest amount of revenue. … No other principle is violated as constantly today as this basic principle of concentration. … Our motto seems to be: let's do a little bit of everything.*

The market demand for those with specialized expertise has now set the stage for a more focused approach.

The Strength of Core Strengths

Trying to be all things to all people is never a good strategy. Promoting a full-service capability can only lead to a lack of reputation in anything distinctive and a decline in the quality of the client work you ultimately generate.

Consider the example of today's commercial real estate practice. There are some high-margin areas and some, like conventional conveyancing and straightforward secured lending, that are not so profitable. High-margin transactions work often requires developing a strong practice team equipped with multidisciplinary expertise. That expertise may require tax, corporate, banking, capital markets, intellectual property and estates professionals, in addition to specialists in urban planning and environmental, construction and joint venture issues. Firms must have a critical level of expertise, practicing together in a well-managed group, to stay in this game. Clients soon get a good idea of which firms can handle the more complex transactions and which firms are best suited to more routine work.

What happens once your firm or practice group is excluded from the high-margin transactions? You are left to fight a large number of rivals for some slice of the remaining work, usually highly fee sensitive and involving fierce competition. You face the stark reality of learning to live with a marginally profitable practice. What's more, you face the potential loss of your best talent to the market leaders. After all, is it not possible that a few firms will command a significant advantage in the talent market as the best lawyers are drawn to them? Wouldn't this make it extremely difficult for other firms to grow or sustain what may once have been a profitable practice? This is precisely what is happening now across a broad range of practices and markets.

Employment law, like commercial real estate, is considered mature because a number of good firms of all sizes offer some expertise in this area. A client may give some mundane employment matters to the outside counsel handling most of its corporate work. However, when confronting a significant threat, potential liability, corporate acquisition or important long-term decision regarding some employment issue, most clients will shop for a firm that is perceived to have the most sophisticated expertise. Clients find and hire these specialists based on factors such as the number of lawyers practicing together in the area, the size of the practice group and its relative visibility in the marketplace.

While your firm may have a practice group that offers employment law services, the question becomes, "Do we have the depth of resources (or are we capable of building them) to provide the most profitable work, and are we capable of attracting the best talent and the best clients for that specialized expertise?"

In what practice area does your firm truly possess the critical mass and high level of expertise necessary for sophisticated clients to regard that practice group as a significant player?

Becoming the Preeminent Authority: Fine-Tune and Reposition

Attempting to develop a competitive capability in a large range of services can actually make your firm less competitive in *all* of them. Competitive markets create a strong need for firms to be very clear about their core market position and about what stakes are required to play the game.

Firm management's strategic task is to determine whether you are satisfied with the situation as it currently exists. Is each practice truly profitable? Is the practice worth committing further resources toward developing? What is the downside if we were not to provide these services? Indeed, could we somehow fine tune or reposition this practice so that it is regarded as the preeminent authority in some new niche or selective area of client need?

You *can* make this work. Such was the case with one employment practice group. While not considered preeminent in their marketplace and not being favored with some of the most lucrative work, the group reflected together on whether there was some niche within the practice in which they could develop a superior expertise and profile. Their strategic reflections helped them realize that with the tremendous number of consolidations among many of their clients, a different type of expertise was required to blend the various employment policies, personnel redundancies and benefits issues among merging companies.

The group developed and marketed an expertise in "post-merger" employment issues. By repositioning their employment practice to serve this

An Incorporation Niche

SEIZING THE FUTURE

When Dianna Kempe was in attendance at the ABA Law Practice Management Section "Seize the Future" conference a few years ago, she remembers thinking confidently that her law firm had already taken steps to do just that.

"I remember one of the conference speakers saying that if you are going to survive in the legal business in the future, you'd better hire yourself a young computer nerd," says this partner at Bermuda-based Appleby Spurling & Kempe. "And, you'd better listen to him or her, put aside the way you do business now and move forward with whatever he or she says will work. I sat there and said to myself quite smugly, 'I have one of those people and he's one of my partners and we've already been listening to him.'"

Soon, the firm rolled out Just AS&K [Inc.], a Web-based system that, among other things, guides companies through the procedures necessary to incorporate within Bermuda, which has become an increasingly high-tech locale. The Internet program also submits incorporation documents to Bermuda authorities and tracks the status of the incorporation process. Appleby Spurling's partners saw this innovation as a way to position itself as the firm for incorporation matters or other corporate work generated on, or via, the island.

The lawyers at Appleby Spurling, who must have a working knowledge of e-commerce issues, see this innovation as the wave of the legal profession's future and also as an eye-catching means of generating new business. Kempe says that she and her colleagues are often asked to speak about the program from companies who are simply intrigued by the technology, Bermuda and the firm.

"We may be talking with a person or group who may have never thought about going offshore to Bermuda," Kempe says. "But in the course of hearing about Just AS&K [Inc.], the company [representative] might say, 'Hey, why can't I be in Bermuda?' And they can. You cannot underestimate this kind of marketing tool."

NOTE: For details on Appleby Spurling's knowledge management agenda and management focus, see the July/August 2000 issue of *Law Practice Management*. Also, the book *Seize the Future: Forecasting and Influencing the Future of the Legal Profession* is available from the ABA at (800) 285-2221.

specific niche, size was no longer a disadvantage. None of the larger competitors had any expertise or professionals working in this distinctive area.

The group's understanding of focus and critical mass allowed it to successfully reposition the practice. Obviously, from any buyer's perspective, the group with a dozen lawyers focused on specifically serving a particular niche is likely to be more competent, enjoying a greater degree of marketplace recognition, and able to offer the benefit of the shared experience of the entire practice group. Competitive firms—even much larger firms—that have only a couple of professionals practicing in the niche are at a disadvantage.

Focusing Means Finding the Courage to Make Choices

For most firms, a significant investment is required to build the expertise and critical mass necessary to become a market leader in more than three to five core practice areas. A firm of 150 lawyers might have about 60 partners. To develop three core practices with any significant level of critical mass may require the efforts of the majority of those partners. Thus, it becomes nearly impossible for most midsize firms to build the expertise to become a market leader in more than a small number of discrete areas. If a firm's areas of focus are selected carefully, however, they can become a source of strength to the firm now and will offer the potential for profitability gains if exploited further.

1. Identify core practice areas or markets with the greatest potential. Focusing on a small number of core practices will succeed only if the growth and profitability available in those core areas provides sufficient forward momentum for the whole firm. A firm's primary strategic challenge is to identify those core areas that have the potential for attaining a significant leadership and revenue position to drive the rest of the firm. That means partners must find the courage to make choices.

If your firm wants to become more distinctive, but members feel it is unrealistic to become the preeminent provider in some substantive area, selectively focus on a particular market or industry segment. Aim to develop a leading position based on your experience and knowledge of that industry niche. Research studies indicate that clients favor those firms that understand their client's business, have a sense of what drives their industry and what "keeps them awake at nights."

Interestingly, in the case of the BP-Amoco consolidation of law firms, Morgan Cole, one of London's smaller firms, managed to get consideration because of its specialized track record in downstream oil and gas matters. Many firms develop a leading and highly profitable industry expertise in everything from franchising (how about a practice group that specializes in serving only the interests of McDonald's franchisees), to Miami-based

A Red Hot Start-Up Niche

WHAT'S IN A NAME?

An outside observer might find this small firm's relative dearth of high technology more than a little ironic—but it's no surprise to Evelyn Ashley. After all, the small Atlanta-based firm that she founded in 1998 practices high-tech law for high-tech clients in a city known increasingly as a high-tech hub.

"We really haven't utilized technology that much in our practice or to market ourselves—our name does our marketing for us—which sounds ridiculous because all of our clients are high-tech," she says. "Even our Web site is completely out of date because we've been too busy to pay attention to it."

So what's in a name? Apparently, big-time success, particularly if that name is The Red Hot Law Group. When Ashley came up with this moniker for her firm, she knew it would probably appeal to young entrepreneurs, but she couldn't have guessed it would attract as many clients as it has.

Incidentally, the official name of the firm is Red Hot Law Group of Ashley LLC. Georgia bar rules, as well as those in many other states, require that at least one of the principal's name appear in the title of any law firm. Still, very few refer to the firm by its formal name.

Of course, the catchy name is not the only thing that has Atlanta's high-tech community, as well as its legal profession, abuzz. Located in a trendy building in the middle of the city's thriving technology district, the firm offers its clients 14 top-shelf lawyers steeped in start-up experience, lawyers who provide as much business consulting as they do legal advice.

INCUBATOR FOR LUCKY START-UPS

And then there's the side business, which is just as innovative as the firm's name. Within the building is Red Hot Accelerator, a consulting firm run by Ashley's husband, Alan McKeon, that in exchange for cash or equity or a combination of the two, provides office space, marketing advice and legal services to a select few lucky start-up companies. The idea is to help these young companies survive past their early, vulnerable days. The companies leave the nest and "graduate" in six months.

"The accelerator concept is very attractive to many of these companies," Ashley says. "And, I do believe that the philosophy, the environment and the knowledge base that we have here are also very appealing."

Akerman Senterfitt & Eidson's unusual but high-profile practice in prison management—handling contracts for big-league prison privatizers.

2. Give noncore practice areas the backseat. Focusing on a few well-defined core practices does not mean that your firm has to exclude all other work or other practice groups. It does not invalidate the concept of selective focus to retain a broader range of work outside the core areas. Until the core practice areas establish a leadership position, however, it is critical that the noncore areas—and the partners involved—be prepared to take a backseat. When it comes to receiving support or funding for recruiting or marketing, for example, the core areas must come first.

3. Clearly articulate your focus. You cannot survive if you continue along the "all-things-to-all-people" route. It is clear that to be among the most profitable and successful firms you must change your focus from "do everything" *(be full service)* to "do what we do well" *(why should a client choose us?)* and "do only what we are best at" *(selective focus)*.

Would You Rather Be Mediocre Everywhere or Dominant Somewhere?

As James W. Jeans, Sr., the author of the classic text *Trial Advocacy,* once stated:

> "We travel the path first broken, and over the years that path, through continuing affirmation of use, becomes a rut that directs our travel without the need for thought as to direction or destination. We become experts at mimicking mediocrity."

While many firms engage in some form of strategic planning, only a few are realizing that having three to five truly strong practices is preferable to having a good number of mediocre practices that serve only to consume resources, dilute profits and diffuse strategic focus.

Imagine directing your firm with a strategy that states, "We will only support those practice groups that are clearly number one, two or three in every market we serve." The message here may be to get rid of the 80 percent of what you do that's mediocre and get damned good at and expand the 20 percent that really is special.

Because if you're not special, you're dead. ■

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