

Be Dominant Somewhere Rather Than Mediocre Everywhere



In answer to the question "*Upon what basis is your firm truly differentiated from your competitors?*" a firm leader will respond, but only after taking some time for reflection. This pause for reflection is interesting. It doesn't suggest that the question came as a total surprise, as one that had never been asked before; or that this is an issue that this firm leader has not regularly considered. What it does suggest is that despite any previous contemplation, a wholly satisfactory answer has not been found and that a suspicion exists in the mind of this professional that he or she is offering, at best, only a superficial response.

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

The responses I most often elicit to this question are fascinating. Firstly, I find, that it would be highly unusual for you to get the same answer from two partners within the same practice or industry group, and you certainly won't get even a slightly similar response from two partners within the same firm. It is the rare firm or group that has developed a specific "song sheet" of common and difficult (prospect and client) questions and suggested responses for their professionals to consider using.

Secondly, the answers that you do often elicit (in the words of one General Counsel whom I suspect evidenced these responses once too often) are likely enough to “*make me want to puke on your shoes.*”

Now as you might guess, responses usually boil down to a variation on two very familiar and time-worn themes. You will likely 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 I, as the prospective client, am going to get some divine gratification from taking a personal risk with an unknown quantity). Or you will most certainly hear: “*because we offer a broad array of services such that you really can expect to get some depth of expertise from our firm.*” (And I’m often thinking to myself, and how can you truly provide me with any real depth and breadth . . . given your size).

What I have learned those responses indicate to most sophisticated clients is that if you were truly recognized as having the preeminent specialized expertise in any given area, it would not be necessary for you to resort to tactics of “better, faster, and cheaper.” Your expertise would be apparent and therefore speak for itself, or it could be easily demonstrated to the perspective client and present some compelling evidence for consideration. Alternatively, without a preeminent position, proffering a full-service capability is not likely to be viewed as credible unless maybe your firm is from among a handful of the largest in the nation.

And even among some of the largest, you will witness a growing need to become far more focused. I was recently struck by an interview with Sandy Thomas, just reelected for his third term as Global Managing Partner at Reed Smith, when he was asked about the direction of his firm and his *growth priorities*. He responded that Reed Smith will focus on developing capabilities in five **core industries**: financial services; life sciences and health; energy and natural resources; transportation; and entertainment and media.

The interviewer observed, “*That’s a wide net -- but compared to some Big Law leaders who seem loathe to imply any scrap of business is less important, it’s practically a laser-like focus.*”

THE CASE FOR SELECTIVE FOCUS

It is against this backdrop that issues of meaningful differentiation and strategic thinking should be explored. Unfortunately, too many of the firms I speak with engage in strategic planning as a mere extrapolation of the past, a means of forecasting their future five-year budgets, or some “strengths, weaknesses, threats and opportunities” exercise that treats the entire firm as one big homogeneous entity - - when what is really needed is a brutal examination of the viability and profitability of each discrete business unit and office, and whether it is now or has the potential of ever becoming a preeminent player in its respective marketplace.

Take for example the SPAC market, also known as blank-check companies that form a sizable chunk of the IPO pipeline. These alternative funding vehicles took off during the pandemic and one firm in particular, of only 120 lawyers, managed to top Kirkland, Skadden and many other BigLaw names in their record-setting 2020 deal flow.

Douglas Ellenoff was a “first mover” in this particular niche and reported to the media earlier this year that “*Right now, every phone call is new business. And that seems like a high-class problem to have.*” Part of his firm’s fee is dependent upon the deals getting priced and just through the first two months of this year, his firm advised on SPAC IPOs that raised nearly \$10 billion. According to Ellenoff, his secret sauce - **developing practices where bigger firms have little interest**, is how he got involved in SPACs in the first place.

And if SPACs go out of fashion, Ellenoff has chips already down on other niche practices. He’s convinced that equity crowdfunding finance will take off (a potentially lucrative micro-niche I identified and wrote an article about in 2019). As an alternative funding option and launched in May 2016, one of the more intriguing doors that entrepreneurs can now open to access capital is equity crowdfunding. When I last looked, companies in 58 different industries have been successfully funded. Typically, about 80% of the capital committed goes to 17 different industries from application software and consumer packaged goods to biotechnology and personal services. In March 2020 the Securities and Exchange Commission (SEC) proposed sweeping changes to regulate Crowdfunding as well as the other private capital-raising exemptions, one of which was to raise the overall limit to \$5 million. While not as big as some had hoped, this new ceiling allows for larger institutional players to invest alongside retail investors and may witness many midsize companies jumping into the online finance arena. Meanwhile, Ellenoff has invested in a technology offering, iDisclose, that he likened to TurboTax for crowdfunding disclosures.

This is the mathematics of “Selective Focus.” By being highly focused, some firms are able to be far more effective and profitable. The obvious lesson from watching Ellenoff’s firm and that others are learning, 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 their base, they can invariably end up courting trouble, not new clients.

In reality there are very few firms (if any) that can truly demonstrate preeminence across a wide range of services and to multiple sectors of the market. Even the largest, supposedly full-service firm tends to be “Tier One” in a very small number of key practices rather than across an entire service range. The majority of firms truly compete in a vast number of substantive practice areas, industry sectors, or through some combination of the two. Such firms may or may not limit their activities to only those areas where they would be considered the most superior.

THE RELEVANCE OF FOCUSING ON CORE STRENGTHS

A new Financial Post report entitled “*The Changing Face of Professional Services*” found that 71% of the respondents reported that they prefer to work with specialist firms rather than a one-stop shop. And two thirds say that some firms are adding too many services and potentially diluting their core competencies. Accordingly, “*this may play to the strengths of firms that focus on specific industries.*”

The report makes clear that the ability to advise clients effectively will in part be shaped by a firm’s understanding of changing sector dynamics. “*Here, those firms that demonstrate a deep understanding of industry convergence and the changing nature of supply chains and consumer demand, should be well placed to benefit.*”

This research concludes with a couple of recommendations most notably: **Do not dilute your strengths.** Some firms are deciding to focus on a smaller number of sectors. Others are establishing new business units to meet a demand for specialization. Many are wary of non-traditional competitors encroaching on their territory. The message from respondents is clear: do not add so many services that distract from what you do best.

No single firm can claim to have expertise in every area and 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 what their “core” market position is and about what “table stakes” are required to play the game.

Consider the example of today’s commercial real estate practice. There are some very high margin areas and some like conventional conveyancing, straightforward secured lending and others that just aren’t so profitable. The higher margin transactions often require of a firm that they develop a strong industry team equipped with multi-disciplinary expertise. That expertise may require involving tax, corporate, banking, capital markets, intellectual property, and licensing professionals, in addition to specialists in urban planning, environmental, construction and joint venture issues. Firms must have a critical level of expertise, practicing together in a well-managed team, to stay in this game. Clients soon get a good idea of which firms have developed preeminent strength to handle the more complex transactions and those that may be best suited to the more routine work.

In this situation, once your firm (or business unit) gets excluded from the high margin transactions, you are left only to fight amongst a large number of rivals to get some slice of the remaining work, usually highly fee sensitive and involving fierce competition. As this continues, you face the stark reality of learning to live with a marginally profitable practice and potentially losing your very 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 those who are the best in their area are drawn toward them, thereby making it extremely difficult for other firms to grow or sustain what may once have been a profitable practice?

*“The Search for the right lateral is not about simply having a book of business anymore, but rather at least a third, and growing, of the inquiries our firm receives are very **industry specific**.”*

My discussion with Jon Lindsey at Major Lindsey & Africa (2020)

FOCUS REQUIRES THE COURAGE TO MAKE CHOICES

From your firm’s perspective, the strategic task that firm management has to determine is 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, or what would the downside be if we were not to provide these services? Indeed, could we somehow fine-tune or reposition this business unit so as to be regarded as the preeminent authorities in some new niche or selective area of client need?

Such was the case with one employment practice group that I worked with. While not considered preeminent in their marketplace and not being favored with some of the more lucrative work, they reflected together as a group upon whether there was some niche within their practice in which they could develop a superior expertise and profile.

Their strategic reflections helped them realize that with the tremendous number of consolidations going on among many of their clients and within selective industries, a different type of expertise was required to blend the various employment policies, personnel redundancies, and benefits issues that were cropping up between and among merging companies. They therefore set about to develop and market their expertise in “Post-Merger Integration” employment issues. By repositioning their employment practice into serving this specific niche, their size which once limited them from being considered as a source for other important employment issues was no longer a disadvantage, as none of their major competitors had any expertise or professionals working in this distinctive area.

What allowed them to reposition their practice was understanding focus and critical mass. Obviously, from any buyer’s perspective, the group with a dozen lawyers focused upon specifically serving a particular (niche) area is likely to be better (more competent), enjoying a greater degree of marketplace recognition (success), and able to offer the benefit of the shared experience of the entire business unit. Competitive firms (perhaps even much larger) having only a couple of professionals practicing in the same area are at a disadvantage.

Today the marketplace wars are being won by the well-focused specialists. As Peter Drucker advised managers many years back: *“Concentration is the key to economic results. Economic results require that (law firm) managers concentrate their efforts on the smallest number of activities (practice or industry groups) that will produce the largest amount of revenue.”*

No other principle is violated as constantly today as this basic principle of concentration. In too many firms the motto seems to be: “*let’s do a little bit of everything.*”

BE SPECIAL OR BE DEAD

As James Jeans the author of a classic text on 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 really come to realize 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 strength. Firms and their business units need to clearly articulate what their selective focus is.

Become obsessed with questions like: “What (industries, practice areas and market niches) are we best at? What are we world class great at? What makes us unique?”

The lessons to be learned from all of this, is that to be among the most profitable and successful you must change your focus from “do everything” to “do what we do well” and “do only what we are best at.” Imagine having as a compelling challenge and managing your firm consistent with a strategy that states: “*We will have as integral to our firm only those business units that are ranked number one, two, or three in every market we serve.*”

Ironically the message here may be to get rid of the 80% of what you do that’s mediocre and get damned good and expand the 20% that really is "special." Because, if you're not special, you're dead.