

Focusing on Efficiency and Commoditized Work Will Have You Seen as Just Another “Vendor”



Catching up on some reading I happened upon an article concerning a new Law Firm Profitability Survey, wherein the author “*highlights the many projects that firms are working on to address profitability.*” The article went on to list some 16 different projects, from timekeeping practices and inventory management, that were among the favored strategies. What struck me was that if one were to categorize these 16 chosen projects into how many were internal focused versus external focused; and how many were operational versus strategic; you could conclude, as I did, that the participating law firms were all pretty much obsessing over engaging in many various internal cost efficiency tactics at the expense of doing anything about strategic wealth creation – for example, launching a potentially lucrative new practice niche was NOT identified by even one of the firms surveyed.

The very next piece on my pile was entitled, “*Commoditized Work Can be a Gold Mine.*” In this article, rather than treating commoditization as a negative, they attempted to advocate that “*the profitability of commoditized work has never been more important.*” More important? Meanwhile 47% of GCs report that the increasing volume of low value work has impacted morale with many saying: “Is that what I went to law school for?” Combining these two prescriptive articles one might very well conclude that the future, according to these authors, of our legal profession seems to be focused on . . . “*making better buggy whips.*”



Is that really what you want for your career and for your firm?

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

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

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

From my experience and observations, I find that law firms (and the consultants that profess to serve them) are all too often focused on and consumed with being efficient; unfortunately, at doing the wrong things – things like . . .

• **Efficient at Producing Commodity Work**

In an earlier life I was a Vice-President of a public company pioneering the Cable Television Industry and as it happens, had oversight of the company's new Legal Department with its first in-house lawyer. Now back in those days, an in-house lawyer served more like a traffic cop determining which matters would be sent to which outside firms and supervising the overall legal work; while also personally attending to our more routine and contractual needs.

As time has passed, as you well know, these legal departments have become much larger and far more sophisticated. Having had the opportunity of consulting to the legal departments in companies as large as Intel and serving for a couple of years as a special advisor to the GC and entire legal department at John Hancock Financial, I can attest to the fact that these lawyers are not interested in attending to the mundane legal matters, so whenever possible that is the kind of work that is being sent out to law firms and the more sophisticated, unless it is a high risk or bet-the-company matter, is kept in-house.

Consider then: if this is the nature of the work that your firm is prospecting, competing and bidding to do, let's not inflate the importance of how these legal departments view these matters, or your contribution. You are merely another "*Vendor*" looking after their "*Commodity*" junk!

Now I suppose one could rationalize, as this article attempted to do, that if we can just get enough volume of these kinds of matters and can do them cheaply enough, we can meet our budget projections and our billable hour goals. Then I guess the only question that remains is: "*how long do you expect that to continue before automation, advanced technology or Artificial Intelligence systems completely replace you?*"

While it is true that every firm is dealing with clients striving to get more for less, as a leader you can easily get stuck in an efficiency mindset and thereby become totally reactive. Today it is hard to find many firm leaders that aren't encouraging their attorneys to embrace cost-cutting, project management, process improvement and other such initiatives designed to make their

individual practices and their groups more efficient. Indeed, all of these tactics are included in most firm's (supposed) formal strategic plans and can quickly evolve into being your firm's primary focus.

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

This can be a stressful question to answer. It may mean questioning the kinds of work that we are accepting and doing for clients. It may mean questioning why we are discounting our fees, only to fill our shops with more low-margin junk work.

Many of your partners don't want to deal with this issue. In an environment where they are being constantly called upon to improve their revenues, they simply want to put their heads down, keep moving (not necessarily forward) and continue with what they're already doing. For these partners, thinking about effectiveness is too long term.

However, real competitive advantage is built on effectiveness, not efficiency. Consider:

- Have you invested so much time being efficient at doing commodity legal work that you've missed the opportunity to invest some of that time in building your skillset to find and do the higher-value work?
- Have you focused so much attention on achieving incremental gains that you have failed to engage your partners in seeking opportunities to be intrapreneurial or constructively disruptive?

• **Efficient at Being the Low-Priced Provider**

As economic pressures increase, the debates over legal fees will intensify for many years to come. Most firms have reacted to these pressures by attempting to adopt various alternative fee arrangements, usually in those practices where it suits the firm and where the firm could be assured of still making a good profit. But even if you were incredibly efficient at developing AFAs, it would still not provide you with much of a competitive lead, for within a short time other competitors will match or better your position. Cutting costs and reducing prices rarely provides a competitive advantage for long.

But hold on a moment, if we can just execute effectively in perfecting our process improvement, our legal project management, doing more work by way of alternative fee arrangements and other incremental initiatives, surely we can attain an overall cost leadership competitive advantage. We can position ourselves as 'the lower-priced go-to provider.'

Only one small problem. Pursuing a course of striving for cost leadership based on competitive efficiency has now been empirically proven to NOT be a viable strategy.

This is a key discovery that came out of the most extensive and thorough study conducted of more than 25,000 U.S. Companies, over a 40-year period. According to this research conducted by Raynor and Ahmed of Deloitte, of the operations in their sample, only a handful of the 25,000 achieved strong and sustainable success pursuing cost efficiency. They concluded that: “*Very rarely is being a cost leader a driver of superior profitability. It could have turned out that price-based competition was systematically more profitable, or that cost leadership took precedence as a driver of superior performance – but it did NOT.*”

• **Efficient in Generating Net Operating Income**

Let’s look at one more example. Another very recent article entitled, “*Spread of Partner Pay Widens*” speaks to the ever increasing spread that exists between the highest and lowest paid equity partners. This may be one of the unintended consequences and more powerful examples of how efficiency is capable, over time, of destroying effectiveness.

In the panic to maintain reported profits, many firms have also become supremely efficient in de-equitizing partners to maintain profits per partner; utilizing accounting gimmicks to overstate income; lateral hiring and mergers/combinations to acquire books of business to demonstrate ‘growth’ in revenues; building a production caste of income partners; coercing partners to make higher capital contributions; using debt to fund distributions; reducing promotions to partner from within; and building the partnership with newcomers from sources outside the firm.

And let’s not overlook how firm cultures are being sacrificed: training and mentoring of young lawyers essentially abandoned; lawyers flogged for higher billable hours quotas; billing rates raised; and compensation systems built more on political power and in some cases outright deception to the partners, rather than rational economics.

Can someone help me understand – how much of that is *effective* at making a better law firm? More importantly, how *effective* is it at making the business a better provider of legal service to clients, and is that not what is most critical to any and every law firm’s medium to long-term survival?

In the final analysis . . . Are you being efficient or being effective; and do you even know?

On average, from my observations and experience, far too many firms devote the vast majority of their time and attention to pursuing these methodologies to improve their efficiencies at the expense of time devoted to focusing on wealth creation. In other words, **your firm’s strategy should be focused on staying one step ahead of the need to be efficient.**

How might one do that? Here one thing to seriously consider:

PROVIDE ENCOURAGEMENT, SUPPORT AND FUNDING FOR POTENTIAL *NEW* REVENUE-PRODUCING INITIATIVES

There needs to be a more concerted, more confident effort to invest early in testing and experimenting with new wealth creation ideas. Where is the individual initiative to launch a new service offering or perhaps find a commercially acceptable way to package and sell commoditized intellectual knowledge as a product, that our clients can utilize without necessarily having to even see one of our lawyers? My years of experience has confirmed multiple times to me that the ideas, amongst your many lawyers, are there. What is missing, largely from our ingrained habit of looking to cost efficiencies, is the wherewithal to provide encouragement (grant some non-billable time to invest in an idea) and the support.

By way of an example, one of my most startling revelations was that the new revenue innovations I see, do not usually come about because of any direction provided by your firm's management committee or your written strategic plan. As Peter Drucker first expressed it, "*they come about most often from having a mono-maniac with a mission!*" In other words, the harsh reality is that the overwhelming number of revenue generating innovations evolve from the efforts of **mono-maniacs** within law firms who pursue ideas that may even initially be regarded as illogical or even impossible.

For my part, I'm reminded of at least a dozen different partner retreats wherein I've had the opportunity of posing a question to the entire group to respond to, via electronic voting (which allows everyone to cast votes anonymously). The question I posed was this one:

"How many of you have thought of some new idea, potential new practice niche or some new initiative, that conceivably could generate entirely new revenues for this firm?"

Now Press 1 if YES and 2 if NO.

The usual affirmative answer that I've received from all of these different partner retreats is somewhere in the range of a low of 69% to high of 83%. So, Terrific News – I've discovered that you have a good number of potential mono-maniacs in your firms – and at least 2 out of every 3 of your partners have ideas to potentially generate new revenues!

Ahh, but there is a follow-up question that I always ask . . . and it goes like this:

"For those of you that answered yes to my first question, how many of you have shared your revenue generating idea with someone on the management committee of your firm?"

Once again Press 1 for YES and 2 if NO.

And anytime I relate this experience, everybody laughs, because you all know the punch line. The answer, unfortunately, is always NO. And the question has to be asked – why is it always NO?

I've often joked with firm leaders . . . "**Why** is it that interesting, seriously "cool" ideas - about new services, new approaches, new methods, new niches, new ways to collaborate **DO NOT** bubble up with great regularity from every nook and cranny of your firm?"

The sad reality is that most firms do not have any formal system to nurture these new ideas, these potential new innovations, these **effective ways** of enhancing wealth creation!

Now, please notice that I did say “most.” Today, I’m aware of a handful of firms – from a Baltimore-based firm of about 120 lawyers to an international 1200+ lawyer firm who have instituted internal Venture Funds – investment monies in excess of \$100,000 made available for lawyers to put forth their ideas and have them encouraged and financed.

THE LESSON HERE

Your Practice and Industry Group Leaders should be beyond agonizing over *efficiency*, and aggressively pursuing *effectiveness*. They should be constantly questioning:

- What potentially lucrative new client needs are emerging in our particular markets?
- How can we get out ahead of the curve to anticipate clients’ needs before clients even fully understand those needs exist?
- What can we do that would allow us to create new wealth and meaningfully differentiate ourselves from competitors?
- Most importantly, how can we build our skills in new and emerging areas that may prove to be highly profitable market niches that we can dominate in the years to come?

You need to understand that constant obsession around improving efficiency has the perverse effect of making competitors more alike, as each one of you will tend to define “betterness” in identical ways. It then becomes totally contradictory to pursuing excellence, innovation, and intrapreneurial endeavors.