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International Review

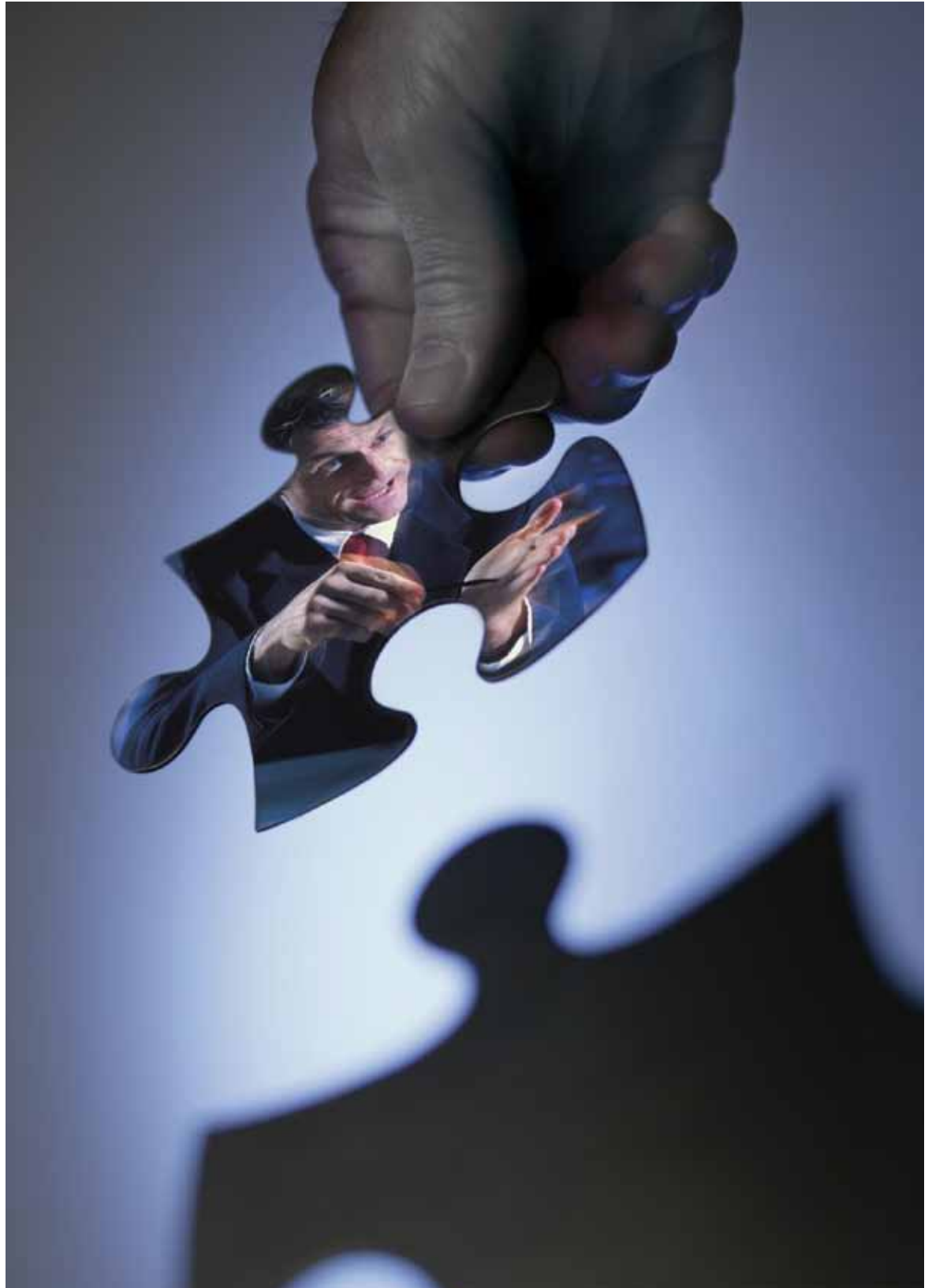
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**YOUR GUIDE TO
CHARTING A
STRATEGIC
DIRECTION FOR
YOUR PRACTICE
GROUPS**

**THE
UNDERPRODUCTIVE
LAWYER:
ADDRESSING
PERFORMANCE
ISSUES**

**EFFECTIVE
LEADERS ARE
NOT NECESSARILY
NICE!**

**SOLVING THE
'COMMITMENT
DRIFT'
FRUSTRATION**



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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 International Bar Association (IBA) sponsored Book entitled: *Recruiting and Retaining Lawyers: Innovative Strategies to Attract, Develop and Retain Legal Talent*; and I'm honored to be included on the Faculty of Leaders Excellence in the conduct of their new MBA Workshop Series.

Meanwhile, our Fall-Winter issue begins with *Your Guide To Charting A Strategic Direction For Your Practice Groups*. You may recall that in my "Bring Your Strategy Process Back To Life" article (see my Spring-Summer 2016 issue) I advocated for making your practice groups the key building blocks for your firm's future direction. I reported on how "there is nothing more exciting than to observe lawyers enthusiastically devoting their limited and precious non-billable time into developing new and potentially lucrative practice niches." This article is intended to serve as your hands-on guide to understanding how to make this happen in your firm.

I was delighted to join some old friends, Vincent Sergi, Chairman Emeritus, Katten Muchin Rosenman; Edwin Reeser, occasional article co-author and former office Managing Partner of an AmLaw 40 firm; and Nick Jarrett-Kerr, Principal with Edge International UK in conducting a Webinar together. *The Underproductive Lawyer: Addressing Performance Issues* is a transcript of some of my remarks in response to the questions posed.

Effective Leaders Are Not Necessarily Nice is a counterintuitive reminder on how, while we may all want to be liked, admired and perceived as loyal to our colleagues, we need to remember that "nice" leaders don't always enforce rules or take on difficult situations which can ultimately contribute to their not producing results.

Finally, Solving *The 'Commitment Drift' Frustration* is some straight-forward guidance on how to prevent the situation wherein well-meaning partners may make promises to you and their fellow group members, but don't always follow through.

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.

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MY INTENT HERE IS TO SHARE MY PERSPECTIVES AND EXPERIENCE IN WORKING WITH NUMEROUS FIRMS ON WHAT I BELIEVE IS MOST IMPORTANT WHEN CRAFTING A PRACTICE OR INDUSTRY GROUP GROWTH STRATEGY.

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THE ONE SINGLE FRUSTRATION THAT I HEAR FROM LEADERS IS TRYING TO DETERMINE HOW TO DEAL WITH "COMMITMENT DRIFT" - HOW TO DEAL WITH THOSE PARTNERS WHO MAKE PROMISES BUT DON'T ALWAYS FOLLOW THROUGH.



Your Guide To Charting A Strategic Direction For Your Practice Groups

From Peter Williams at Deloitte I learned, "we have this target that 30% of revenue must come from stuff that we were NOT doing two years earlier." And from contacts at McKinsey & Company, I hear that they have a very similar revenue goal – focusing on entirely new areas of practice.

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

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

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

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

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

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

Nevertheless, the practice leader, attempting to be responsive, takes home the template and fills in the blanks, confident in knowing that there is little possibility that he or she will ever be held responsible for comparing their results with the plan.

Meanwhile, the partners in the group have not participated in the process. In the end they have no collective knowledge of the group's plan, no buy-in to the group's future direction, and the end result is both a futile exercise and anything but strategic.

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

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

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

(See my article: *Efficiency Is NOT The Competitive Advantage*)

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

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

Most all of the recent studies that have been published attest to our having to cope with a flattened demand for legal services. In the most recent Georgetown Law 2016 Report on the State of The Legal Market, the observation was made that "in the main U.S. law firms continue to experience sluggish growth in demand, coupled with negative growth in productivity and continuing downward pressure on rates and realization. Demand for law firm services as tracked by Thomson Reuters Peer Monitor was essentially flat."

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

McKenna's Evolutionary S-Curve

Let's begin by thinking about legal services from a client's perspective.

If you think about the overall client demand for legal services, demand can actually be graphed across a very broad spectrum of what I have come to call my S-Curve of Legal Demand. That curve looks something like this: (See Figure 1)

At one end of this curve, on the far left-

to use the analogy of brain surgery, then it follows that when in need, you would not be looking for bargain pricing; you would be seeking out the very best, skilled surgeon you can find.

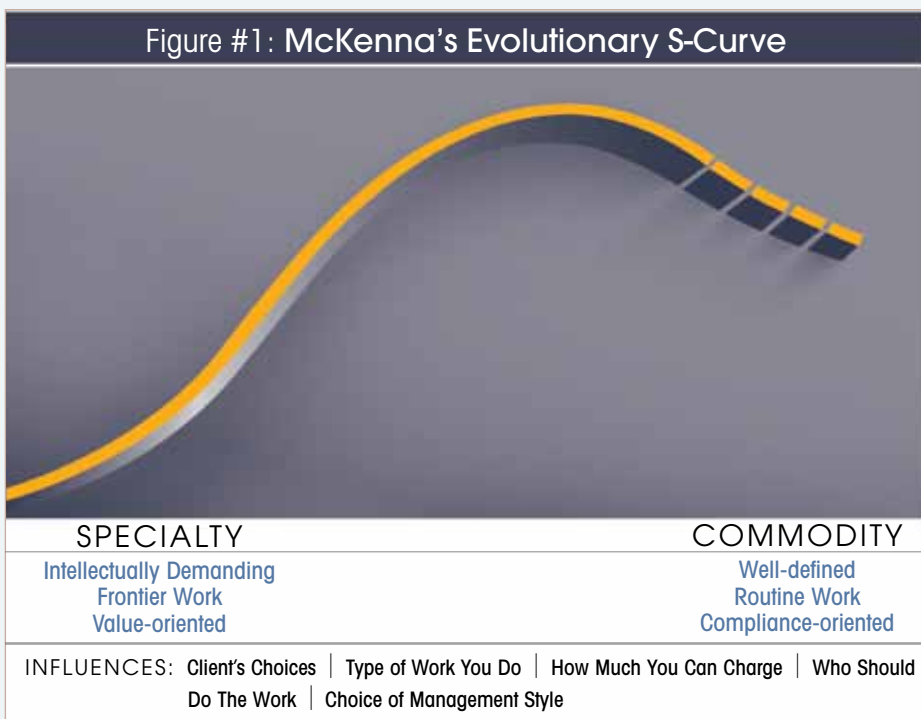
At the other end of this spectrum, on the far right, is that legal work that we have begrudgingly come to accept as so routine as to be a commodity. As a client, there is absolutely no mystique and so we see clients aggressively telling their vendors (and they may use that term pejoratively) *what* specifically they

increasingly important determinant to who gets the work.

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

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

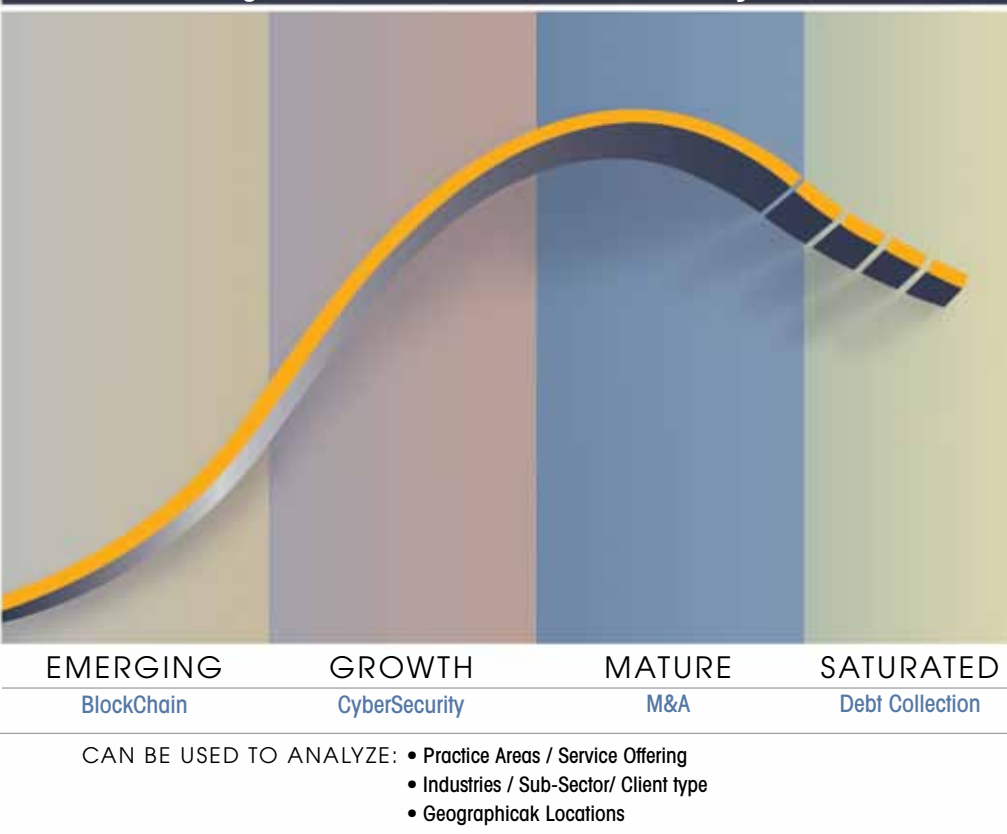
In fact, it allows us to make some specific choices about what kind of a practice we want to have and how we want to chart the future direction of our practice or industry team. Our choices along this same S-Curve will determine what competitors we are going to face; what clients we are most likely to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



hand side, are those things that lawyers do that are highly specialized in nature. This is the frontier work, extremely complex, intellectually demanding, highly valued, and often evidence of new market situations or developments (e.g. a brand new regulation). As a client, when you are confronting this kind of legal situation, while you will always want to know that you are getting value for your fees, fees become far less relevant. If one were

want to see done; *who* in the law firm they will accept doing it ("no first years on my files") and *how* much they are prepared to pay. This is legal work that is well-defined, routine and often highly compliance-oriented. In this space, you are competing with every other professional, in every other firm, in every jurisdiction, everywhere, that professes to have some expertise in this particular area of practice and so fees become an

Figure #2: McKenna's S-Curve Analysis



THE EMERGING PHASE

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

When some legal service (or type of client) is in its emerging phase we tend to hear or read about some lawyer doing something that has us wondering, "What is that all about?" "What are they really doing?" and "How are they making any money at that?"

With legal services that are truly in their emerging stage, most often we are not even quite sure what this is and how it may develop. On the upside, you are hoping that you have identified a lucrative opportunity with some long-term growth potential. Consider today, how many law firms in your jurisdiction, have now established a practice group engaged in "BlockChain technology." What you

are hoping is that this is going to be the next major area where you may have an opportunity to become a dominant player – to be the go-to provider; the go-to firm.

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

And this is not to be trivialized. In my three decades of working with the profession, I rarely see a promising develop-

ment, source of lucrative new revenue or new practice emerge as the result of an Executive Committee directive. These important initiatives almost always result from some attorney with foresight, looking to do something innovative within their particular practice group.

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

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

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

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

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

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

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

Now, as with any new entrepreneurial venture, and make no mistake that is what this is, there is a downside. Anyone remember Y2K? We can all remember a few major law firms that had established Y2K practices with dozens of lawyers actively engaged full time in serving their clients . . . right up until December 31, 1999. But that said, I never met any lawyer involved in that practice that resented

the time and effort spent pursuing something that ended up having limited shelf-life. It just means that you need to be a bit cautious in limiting your risk exposure should this niche be nothing more than a passing fad.

THE GROWTH PHASE

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

You always know when a particular legal need, industry, or even market location or discrete service is in its growth stage because every major law firm in your local is scrambling to develop a practice around that same area. Note the number of firms trying to develop Drone Law, or currently posturing to offer assistance with the incoming global regulation (effective September 1, 2016) of the \$500 trillion over-the-counter (OTC) derivatives market.

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

Your critical success factor in the growth phase is critical mass.

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

Building upon the specific action you take in the emerging phase, this is where the power of the practice (or industry) group really comes to bear. These are not evolutionary phases where one sole practitioner can do it by themselves, no matter how good a rainmaker. This is also a phase where a committed smaller firm (under 200 attorneys) with a few dedicated lawyers, collaborating together to build a practice niche can outperform a firm five times their size.

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

In an earlier article (*Firm Strategy: Understanding Industry Dynamics*), I rudely claimed that there was no such thing as a Health Care Lawyer. I was making the point that as all industries grow, at some point in their *late growth* phase, they fracture into multiple sub-industries. Health Care has fractured into (over 40) numerous distinct sub-industries, each of which is comprised of companies who believe they are unique. As sellers, we appear to be quite content with telling the marketplace that we are Health Care lawyers with little regard for what our clients are looking to buy. Therefore those law-

yers who develop a specific expertise in micro-niches like personalized DNA-based medicine, mobile health appliances, or e-health information systems and then effectively market that specific expertise will become the go-to providers and achieve a significant strategic advantage over those attorneys who simply claim to be “health care attorneys.”

In fact, to take this a step further, one of the many sub-segments that comprise the Health Care industry today is Biosciences. One could hold themselves out as a specialist in BioSciences . . . except that it too is comprised of numerous micro-niches: genomic editing, stem-cell therapies, molecular biology, bioethics, and so forth.

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

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

smartly, there are riches in the niches.

THE MATURE PHASE

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

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

Now, demand in the growth phase eventually (over years, perhaps over a few decades) flattens into maturity with the confluence of two factors.

Because this is all from the client’s perspective, the first factor is client driven. Sophisticated clients and in particular, in-house counsel, soon realize that an increasing portion of their legal spend is going to outside law firms who do a particular kind of work. And in-house counsel are always looking at where they are spending their budgets on outside law firms. They also notice that there

are now more lawyers in the marketplace who have a decent level of expertise in a particular area and so they decide to bring some of this work in-house by hiring the required expertise. Thus your greatest competition eventually comes from your largest clients.

The second contributing factor is a rather strategically perverse activity that only exists in the legal industry. No other competitive industry that I am aware of does this and it goes by three initials . . . CLE!

Ironically and unique to the legal profession, as soon as some lawyer develops some expertise in some new area of practice, they cannot contain themselves from presenting at CLE Seminars and sharing everything they know with other lawyers - soon managing to create their own competition. (In fact if you sit down with any group of lawyers who are eager to develop a new practice in some area, what is the very first thing they do? They begin to explore what’s available, what courses they can take through the Practicing Law Institute or some other CLE provider to develop their knowledge.)

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

THE SATURATED PHASE

From the mature phase we eventually transition into the final of our four phases. The *saturated phase* is when you are not only competing with every other law firm in town, but you are now competing with self help publications, online resources, non-legal providers and even consulting firms (look at what is going on in environmental practices) – any means that the client may have for get-

ting their deal done or mitigating their problem, often without even needing to consult a lawyer.

Many firms adopt a rationalizing approach at this stage, either withdrawing completely from providing a certain type of legal service (debt collections) to a specific type of client (personal practice) or find alternate ways (a different business model) of providing the service that retains some degree of profitability.

Some large, respected UK law firms have been known to offer these (commodity) services under a different brand name and in a low-cost location outside of their London headquarters. Obviously, stable, long-term relationships with client companies that provide some degree of adequate volume are important at this stage. That said, if you have partner-level people doing this kind of work, then you are likely losing money.

Figure #3: Access Your Practice Maturity

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

The Profitability Implications

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

PPP = Margin x Rates x Utilization x Leverage

Two of these (margin and utilization) have certain thresholds. So if our firm revenue suddenly declines, in order to protect our margin we need to cut costs. But you can only cut costs so far because many of those costs are fixed and cutting too deep may adversely impact our ability to deliver quality services. Meanwhile, utilization is a function of how hard our professionals are prepared to work (sometimes a life style issues within certain firms) and there is an upper threshold known by the sophisticated term of – human endurance. So as long as we don't have partner-level people delivering performance that might indicate that they've retired but haven't yet informed us, we would maintain that we are running a healthy practice.

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

doing our kind of client work far more efficiently (Improve Leverage).

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

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

side is a "Leverage" game (you can't delegate brain surgery) and so you need to find ways to increase your efficiency to be more profitable.

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

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

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

So Where To Start

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

I will usually hear about the need to be attuned to developing trends, new changes in laws and subsequent regulations, and being proactive in talking and listening to your clients. All good responses. But there is even better

news. In each of your firms and in each of your practice groups, as you are reading this, there are numerous unexploited opportunities where you already have some degree of experience and are not required to construct some emerging opportunity out of thin air.

Imagine this scenario. You have a client whom you have served for many years, who trusts you and calls one day with an unusual situation that they are confronting. You have absolutely no experience whatsoever with this situation. But you do have a few brain nodules to rub to-

gether and you tell your client, “Let me look into this for you, I think we can help.”

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

Only one small problem. As one managing partner explained it, “we all operate like busy little race-horses with blinders on, going from one client file to the next, but never bothering to take off our technical hat and put on our commercial hat.” In other words, we don’t take the time to seriously ask ourselves whether what we just learned on this new engagement might be leveragable with other clients. Might there be other companies out there dealing with this very same situation and not knowing where to turn?

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

1. Identify and leverage your

hidden strategic assets.

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

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

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

Deconstructing past client experiences can provide a means of escaping the myopia and put you in touch with the deeper capabilities that can be brought to bear in other commercial ways. The practice

group must examine every out-of-the-ordinary transaction with the questions:

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

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

In many firms now, managing partners are instructing their practice leaders to identify three (3) areas of opportunity within the emerging / growth areas of your practice and develop your action plan for how you intend to market those in the next three years with the goal of becoming the dominant, go-to player in at least ONE.

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

THE UNDERPRODUCTIVE LAWYER: *Addressing Performance Issues*

The following represents comments I made during a recent Webinar concerning the issues of partner performance and featuring my fellow panelists: Vincent Sergi, Chairman Emeritus, Katten Muchin Rosenman LLP; Edwin Reeser, private practice, California (former office Managing Partner AmLaw 40 firm); and Nick Jarrett-Kerr, Principal with Edge International (UK).

QUESTION 1: HOW WOULD YOU DEFINE UNDERPERFORMANCE?

That is such an interesting question. Every firm has a different name for this – “performance impaired”, “revenue challenged,” or “he who went into retirement without telling us.”

I think in far too many instances we only think of underperformance as a billable production issue and largely because, in many firms, we haven’t really defined what the total performance obligations of being a partner might include. At it’s most basic, there are four roles that every lawyer must play – be a working attorney, generate some business, provide non-billable contributions to support your firm, and make yourself valuable to clients.

Taking that a step further, I recently worked with a client firm on how you might define and then measure lawyer performance and we settled on 10 different performance measures – the metrics for which would be slightly different for an equity partner vs. a salaried partner or of counsel vs. an associate. Anyway, the 10 measures included:

1. Billable hours or collections – and contribution to **profitability**
2. Client origination (must generate minimum of \$x in business)
3. Personal marketing and branding initiatives (papers published, blogs, speeches given, etc.)

So, for example, in this category

- *Equity partner: minimum of three published*

articles, blogs or newsletter contributions and/or two talks, speeches, webinars per year.

- *Salaried partner: minimum of two published articles, blogs or newsletter contributions and/or one talk, speech, webinar per year.*

4. Client satisfaction (major projects managed, client visits made, and so forth)
5. New client development efforts (potential new client calls, pitches made, proposals prepared)
6. Mentoring / training / creation of shared tools and templates
7. Teamwork (collaboration, being a contributor to others, cross-selling)
8. Internal firm management (committee involvement, significant firm or group projects or internal tasks, contributions to legal process improvements, etc.)
9. Professional skills building (entirely new skill enhancement courses attended, professional development completed)
10. Industry Focus (“active” involvement / committee membership in at least one industry or trade groups - not including ABA)

The point here is that I believe firms need to set forth some clear, specific, written, non-negotiable standards of performance that define “what should we be able to expect of one another – especially as partners in this firm.”

QUESTION 2: WHAT MIGHT BE SOME



OF THE COMMON REASONS YOU HAVE WITNESSED FOR WHY PROFESSIONALS MAY BE UNDERPERFORMING?

At a recent workshop session with a group of practice leaders, department heads and office managing partners, they were asked to list the common reasons why their colleagues may underperform. Here was their list:

- Trouble at home or other personal problems (divorce, alcoholism, depression, etc.)
- “Burnout” — no longer finding the work interesting or challenging
- Fear of failure in trying something new and reaching for career progress
- Quality-of-life choices — lack of desire to contribute more energy or time to the practice
- Externally driven reasons such as the loss of a recent client or downturn in their chosen practice area
- Failure to keep up in their field; being less in demand
- Struggling because of poor time management or other inefficiencies
- Lack of knowledge about what they should be doing to succeed
- Being poorly managed
- Insecurity due to things like firm merger discussions, and withdrawing into their shell, pending resolution of unresolved firm issues

As you consider this list, you can add any other possible causes that you think are missing . . .

But then ask yourself: “*which of these reasons are the most common in your real world?*” This particular gathering of leaders selected: burn-out, loss of enthusiasm, quality-of-life choices, personal / family issues, and externally driven market changes – as the major reasons for underperformance in their groups.

Now imagine issues like burnout or loss of enthusiasm. Statistically, out of dozens of professions studied by John Hopkins University,

lawyers topped the list for incidences of major depression. The alcoholism rate among lawyers is twice the general population and male lawyers over 48 years of age are 6 times more likely to commit suicide than non-lawyers.

The important point to keep in mind here is that the reason people are not performing is NOT necessarily because they don’t know what to do. Nor is it that they don’t want to do it. The incentives to do it are probably there. If they aren’t doing what they should, it could very well be due to something deeply personal in their lives. The only way to find out what it is, and to deal with it, is to talk about it.

In other words, in many instances one can view these as periods of temporary underperformance – but given some time and assistance these professionals must join the ranks of the productive, or have the term ‘chronic’ prefixed to their underperformance.

QUESTION 3: WHAT ARE THE REASONS WHY INTELLIGENT AND CAPABLE LEADERS AVOID TAKING ACTION WHEN THEY FIRST DETECT A PROBLEM?

Well, I’ve observed at least a half-dozen reasons:

- **First, there is a very natural propensity to want to give the situation a bit more time, hoping the issue will self-correct.**

Situations in which sufficient data demonstrates that a particular professional is no longer doing the job is not always easy to accept. Some leaders are inclined to hold back, waiting for even more information that a colleague is not performing in the role. Yet other leaders have a high need to be loved, admired and respected by everyone within their group. This is an important part of their personal makeup and what attracted them to take on the position of being a leader in the first place. This need

makes it particularly hard for them to deal with conflict of any kind and the thought of having to confront a colleague and peer is an especially painful situation.

- **Second, the underperformer is rescued by a large client project and becomes productive for a while.**

The excuse you always hear is that “George really is a good lawyer, it’s just that he isn’t busy enough.” I worked with the managing partner of one firm who had put off dealing with an underperforming senior partner for years, continually rationalizing (mostly to himself) how this guy was slowly coming around. You have to ask yourself: What are you seeing that makes you think that things are really going to get better without some intervention? What are the specific signs that this individual is making progress?

- **The third thing I observe is a fear of how the professional involved will be impacted.**

If you are like some leaders you will find it natural to be concerned about how the impact of being told that you are underperforming is going to be accepted. You are well aware that you are dealing with a professional where this may be seen as the first major failure they have experienced in their career. The shock of that failure, combined with any possible peer embarrassment, may be a crushing blow. There is an internal tension and huge reluctance to confront these people.

Yet at some point you do have to ask yourself how long you, and the team afflicted, can reasonably be expected to continue to tolerate underperformance or even disruptive behavior. And in many cases, we are talking about situations where decisions taken or avoided can have measurable economic consequences.

■ **Fourth, there is a concern for how confronting the underperformer will be viewed by others.**

There is also a profound fear that having to confront the underperformance is not only likely to provoke embarrassment on the part of the professional involved, but it could also potentially stimulate others to be concerned about their own personal standing.

You need to realize that even if the situation ultimately results in the departure of a firm partner, or even a couple of departures within a relatively short period of time, it is not going to destabilize the entire partnership. As you put in place a carefully developed remedial plan for addressing the underperformance, your fellow partners soon realize that you are transmitting a powerful signal about how the firm is enforcing standards and about the level of performance that is required of all lawyers.

■ **Fifth is having to confront your sense of personal failure as a leader.**

It is not unusual for an experienced leader to entertain some feeling of having personally failed at preventing the underperformance. It may be very natural for you to harbor remorse at not knowing how 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 that none of this would have happened.

Your self-imposed guilt ignores a couple of considerations. In most every case I've observed this partner knows full well that they are not performing in accordance with the standards or with the level that they had performed in the past. The truth is that you can only do so much. For you to personally think that you can help make every professional a

'Star', is simply not realistic.

■ **Finally, you can't delegate the responsibility to take action.**

One of the benefits of being a leader is that you can delegate some of the more mundane or distasteful tasks to others. But, unfortunately this is not one of them. The unavoidable fact is that some responsibilities cannot be delegated, and dealing with performance issues is one of the key tasks of any effective leader.

In reality, not taking action is the same as announcing that you will continue accepting unacceptable performance.

QUESTION 4: ARE THERE SOME INEFFECTIVE WAYS IN WHICH YOU HAVE SEEN FIRMS TRY TO SIGNAL THAT THERE IS AN UNDERPERFORMANCE PROBLEM?

I have witnessed this same scenario play itself out, time after time, and we never seem to learn. What I see is a sequence of three ineffective tactics that transpire one right after the other.

Let me share a scenario to explain this.

One of your practice leaders has their attention drawn to the fact that one of our beloved partners is underperforming. In many instances, this practice leader knew that the particular partner was underperforming. It didn't come as a shock. But they were content to let the situation drift without resolution, rather than have to confront the uncomfortable reality of the circumstances. But today this practice leader has the situation, the statistics, the facts thrust before him or her, and now something must be done.

Our devoted leader, unaccustomed / untrained / unexperienced in having to deal with an interpersonal situation of this nature, makes

a case for simply leaving the underperformer alone and instead sending this individual a message via the annual compensation review. The rationale is that by cutting this person's comp, they will quickly come to the realization that they had *"better pick-up-their-game and get with the program."*

Our practice leader's argument reaches sympathetic ears and after some months, the compensation adjustment is finally executed. No effort is ever made to fully explain the comp reduction or to inquire as to why performance has declined. Are they experiencing some personal problems, perhaps afflicted with burnout? Are problems at home creating a distraction? All potentially temporary in nature and capable of being remedied. But no one bothers to ask, *"what's going on here?"*

INEFFECTIVE TACTIC #1 – when a performance problem occurs, management simply abdicates their job under the guise of adjusting the individual's compensation and sending them a message.

Now our underperformer has had their annual comp adjusted downward. But after some months, there is still no change in performance. Did this underperforming partner really know that their performance had declined and was below expectations? Absolutely! I have never seen an instance where the individual was ignorant to the realities of their situation. Did this underperforming partner know what they should do to get their performance back on track? Who knows. Not likely. And, certainly, nobody has bothered to ask thus far.

As one managing partner explained it, *"the reduction in comp only makes an underperforming lawyer a pissed off underperforming lawyer."*

Well, our situation continues to fester for some protracted period of time, definitely for

months (unfortunately), until someone in a leadership position finally (hopefully), decides that maybe they should talk to this partner. So a one-on-one meeting is scheduled.

Now because this situation has been allowed to drag on for a prolonged period of time, it can be far more difficult for our underperformer to take the kind of remedial action that might have delivered results, had the discussion happened when the performance shortcoming was first detected.

INEFFECTIVE TACTIC #2 – difficult personnel, behavioral, or performance issues never, ever get better with age.

Nevertheless, our persistent leader sits down with the underperformer and points out the issue and asks the partner “*what’s going on here?*” The partner now recognizing that they are facing a time of reckoning. And at some point will inquire of the leader (absolutely guaranteed!) the most natural question: “*what do you think I should do to get my performance back on track?*”

Our well-meaning, but naive leader, in an attempt to be of help and offer some genuine guidance, now outlines a number of alternatives that this underperformer might want to think about doing. The underperformer then arbitrarily selects one of these alternatives; the leader is delighted to see that action is being taken; and everyone goes back to their office to let the situation percolate . . . for another six months; or so.

Now a year has gone by, the performance has not improved and so what to do? Schedule another sit-down. Our frustrated leader asks the underperformer what happened. The partner’s response: “*I did exactly what you suggested, but it didn’t seem to work.*”

(Interpretation: It was your idea Mr. Practice Leader and it failed. So, now it is your problem, not mine. I tried what you wanted me to do . . . but it was the wrong course of action.)

INEFFECTIVE TACTIC #3 – recognizing who really owns this problem, or – who’s got the monkey?

It reminds me of an article written in the Harvard Business Review many years ago wherein the author (who was really writing about time management) asked readers to imagine, that every time one of their people has a problem, issue or challenge to deal with, to imagine that problem as a monkey sitting on their shoulder. So, as they enter your office and tell you about the problem, you need to imagine that problem as a little monkey that runs down their arm and positions itself on your desk. His message was to recognize that the next words out of your mouth will quickly determine who *owns* that monkey!

In other words while you may, as a practice leader, want to be of help to your colleague and indeed that is your highest value activity, by taking ownership of your partner’s problem you have actually hindered their development.

QUESTION 5: GIVEN THAT DE-EQUI-TIZING UNDERPERFORMING PARTNERS CAN BE A BLOW TO THE EGO OF THE AFFECTED ATTORNEY AND ALSO ERODE THE MORALE OF OTHERS, HOW SHOULD THIS SITUATION BE APPROACHED?

Assuming that your strong preference is to provide the underperformer with hands-on assistance, coaching, anything to help them succeed, then **diagnosis is the starting point. Attempt to discern the cause.** As I believe I said earlier, before one takes corrective action it is essential to identify where the problem lies and whether there is any rational way

to fix things. Very often we just rush into assumptions about why people are underperforming.

And keep in mind that making a positive change can be difficult, and there may be understandable reasons why your colleague might resist trying new things or accepting your coaching. You are often dealing with very talented, successful professionals, which further feeds their rationale that they don’t need to change because what they’ve been doing has been working. Hopefully the diagnosis will point to areas where having this individual develop a meaningful plan can help get them back on track. Then think through together how that plan might best be implemented.

Secondly, you may need to play a strong managerial role. In addition to continuing to try to coach this individual, you need to tell this person what you, as the leader, expect of them. Some professionals *need* external pressure and expectations to help them succeed.

Finally, don’t overlook talking about gains and consequences. Be frank. Sometimes, the most we can hope for is clarity. Clarity of what the consequences are if the performance or behavior is not improved. “*What happens if you don’t achieve the performance standards that the firm is wanting you to achieve?*” All the while we are trying to create some intrinsic motivation. If the underperformer sees no consequences for their lack of performance, then there is no motivation to get them to perform better and most will not.

That all said, I believe that we have not created the necessary **alarm bells** within our firms. While there are those situations where a lawyer’s performance can decline almost overnight, it’s a relatively rare occurrence. Typically performance declines are gradual and happen over some prolonged period. We have to stop allowing some professional to get themselves

into a position of becoming underproductive. Identifying declining performance and one-on-one coaching needs to be a primary job responsibility of every practice leader.

But then what am I saying . . . silly me . . . most practice group leaders in most firms don't even have a written job description, so why should we be surprised that we have unaddressed performance issues? I wonder if anyone sees a correlation between lack of proper management and underperformance issues.

QUESTION 6: CAN YOU RECOMMEND SOME PRESCRIPTIVE STEPS FOR ANY LEADER TO USE TO DEAL WITH THESE THORNY ISSUES AND TO HANDLE SENSITIVE DISCUSSIONS?

I have a number of prescriptive steps to recommend, all of which have come from observing and working with highly effective practice leaders. So let me review these with you:

STEP ONE: Practice how you are going to handle this discussion.

I'm a big believer in role-playing. So, at some point you need to try doing a dry run on how you will actually explain to your colleague why it is necessary for them to step up their performance. It often helps to sit down and write out the specific reasons you would give. The resulting insight can be powerful. "When I looked at this list, "one leader confided to me, "I could not believe I had closed my eyes to this situation for such a prolonged period."

Take some time and have a trusted colleague work with you in allowing you to practice how your discussion with this individual might

unfold. Very often practicing how you are going to handle the interaction helps you think through all of the optional ways in which this individual may react to your message and how you then need to respond. Whenever I have done this with a leader, invariably there is a sense of surprise at how "right" the discussion feels. In other words, this is a discussion that needs to happen.

"Do not volunteer your ideas of what you think your partner needs to do. Instead, inquire of this professional, what specifically they are going to do, and by what dates, to turn around their situation."

STEP TWO: Confront the underperformance problem.

Have a one-on-one discussion with the individual to identify the underperformance. Ask first. Start responding later. Do not let the situation fester. Your leadership task is to figure out for each professional, as an individual, why the underperformance exists. You must accomplish that before you can both work together to formulate any appropriate corrective action plan. You've got to have a discussion and try to find out what's going on. I would say something like:

I don't want to get things wrong here, but I get the sense that you're not fully engaged with your work like you used to be. You don't seem to be showing the normal levels of enthusiasm you've shown in the past. Something is going on. I would love to help you if I can.

It is important to remember that the goal is to convey a genuine concern: "How can I help you?" while leaving the responsibility for improvement with the individuals themselves.

Deal with this situation now. It will be far harder to deal with a few months down the road and far more difficult to resolve in a satisfactory manner.

STEP THREE: Listen persuasively and express confidence.

Listening persuasively is the ability to ask questions to help your colleague come to his or her own conclusions. Ask lots of questions, try to understand what's going on, and help your partner think through their various options. The key question you need to pose is: "So what do you think YOU need to do to resolve this issue?"

You need to reassure your colleague of your confidence in them. This is important to the individual's dignity and self-esteem. We all want to feel like we have someone on the sidelines pulling for us.

Jennifer, I know there are times when work dries up a little for all of us. You're a competent professional; I just know you can turn this around.

The proper role of an effective leader, when dealing with thorny performance issues, is to serve as coach, catalyst, and cheerleader. The coach cannot win if the team loses. You have a vested interest in the individual performance of each and every member of your group.

STEP FOUR: Invite your colleague to identify a sequential plan of action

As I mentioned earlier, do not volunteer your ideas of what you think your partner needs to do. Instead, inquire of this professional, what specifically they are going to do, and by what dates, to turn around their situation. You need to say something like:

"I need you to understand that this performance is not acceptable to the partnership. You need to take responsibility for coming up with a remedial plan of action to get your performance back on track. I'll here to help you in any way I can, but this needs to be your plan. You need to own this situation."

And if they don't know what they should do?

"In that case, I think you might want to give this situation some considered thought, perhaps confer with some trusted colleagues. I'll let you take some time to do that and let's get back together at this same time next week. And when we get back together, I want your detailed outline of what specific action you are planning to take, together with some review dates whereby we can meet to see how things are progressing."

In other words, you need to invite them to think about whom within the firm (or outside of the firm) they might want to confer with to get some ideas. But leave the ownership for developing a remedial course of action with the professional affected.

As mentioned earlier, in most instances you may have a number of constructive ideas that you believe, if acted upon, would help resolve the situation. However, you need to allow your colleague to own the monkey – allow them to come up with their remedial ideas first. It is important to remember that the underperformance issue and whatever action must be taken are the responsibility of that individual. If you shape their remedial action plan for them, you allow them the convenient excuse that this wasn't really their plan, it was yours.

STEP FIVE: Offer your assistance by scheduling frequent follow-up meetings.

Help your colleague by determining with them what they are expecting to do and accomplish, by what dates. It might be useful at this stage to take notes, put your mutual understanding in writing and ensure that your colleague gets a copy following the meeting. Set frequent follow-up sessions, at least every second month, to check in on their progress.

STEP SIX: Encourage them to maintain their focus and help celebrate small successes.

Acknowledge any achievement, no matter how small, during your follow-up meetings, as soon as possible following any achievements. As one accomplished managing partner articulated it to the practice leaders: "Your role is to praise achievements back to acceptable levels of performance."

QUESTION 7: WHAT DO YOU DO IF YOU SENSE YOU ARE DEALING WITH A 'LOST CAUSE?'

Eventually you will be faced with two critical questions.

First, does your diagnosis indicate that this professional's performance shortcoming lies in a coachable area?

Second, what results can reasonably be expected from you (or someone) coaching this individual and over what period of time . . . AND is the result worth the expenditure of the professional time and effort to get there?

Those are very tough questions.

Raise your hand if you have ever encountered someone who seemed to be a **lost cause**. And, how do you detect a lost cause? Posing that question to a group of leaders, together we

developed the following list.

- A lost cause is some professional who . . .
- blames others or uncontrollable circumstances for their unacceptable performance or behavior
- rarely executes on those promises made to the group
- is usually defensive and never accepts personal responsibility
- is constantly disruptive, uncommunicative or disrespects colleagues
- is combative and creates conflict and tension within the team
- may ask for others' opinions but regularly rejects those views when given
- acts as though he or she were a victim

There are times when your diagnosis may reveal a more pervasive problem – for example, this particular individual is just not prepared to invest any of their non-billable time in building their skills to make themselves more valuable to clients; or to proactively engage in some serious business development efforts.

Sometimes your choice is clear – the individual's fundamental performance may simply be un-coachable and therefore more extreme action may be warranted. It is exceedingly difficult to coach attitude, work ethic, honesty or intelligence. Perhaps this individual was an incorrect hire to begin with; perhaps they were promoted to partnership well before they demonstrated the appropriate skill-set; perhaps they simply do not want to do the heavy lifting that is required. These are situations you are not likely to ever win. If there is one thing I've learned, it's: **KNOW WHEN TO STOP.**

So, if all else fails, you may have to ask your colleague to leave the firm. Underperformers promote mediocrity, which is cancerous to a firm's culture.

Effective Leaders Are Not Necessarily Nice!

Having spent a good number of years studying and working with leaders that I have come to admire, I have concluded that the greatest challenge for any of us in leading others is the way in which we are hard-wired; our natural instincts to preserve our sense of pride and our need to be nice. Let me give you some basic examples:

■ As individuals we desperately need to be ADMIRED by our colleagues.

For many, the degree of admiration we feel is congruent with our personal sense of self-worth. The reality is that few of us would be willing to confront just how much we need to feel admired. And what unfortunately flows from that need is how readily we might waffle on being straightforward and completely honest in any situation where doing so, might threaten us with a loss of esteem. In other words, for those of us mere mortals, we will do almost anything to avoid the loss of our colleagues' approval and admiration. We will stretch the truth; we will manipulate the facts; we will hide what might be embarrassing or unpleasant; and we will, where or when required, engaged in overt deception.

"We all typically follow strong leaders who are effective in attaining their goals and who offer us a meaningful direction to pursue, conviction that we can all work together to attain our goals and supported by good values."

As leaders then, this intense need to be admired also manifests itself in our propensity to reward those who display their admiration for us, contribute to our ego, over those who produce results.

■ As individuals we want to be viewed by our colleagues, as being staunchly LOYAL.

For many, we will vigorously attest to how loyalty is such a critical virtue. We want our colleagues to always perceive us as being loyal, even in those situations where the truth is that we may be acting loyal, but not in the best interests of the individual involved. And in such situations, how ready we are to sacrifice our personal authenticity and act only in our own best interests, to maintain the pretense of being loyal . . . again, largely to avoid any loss of our colleagues' approval.

As leaders our needing to be loyal has us often being unable to take action with close friends who are clearly underperforming or to let people go who are not pulling their weight.

■ As individuals we have a high need to do everything just PERFECTLY.

Many of us have never learned to recognize when we have crossed over into the dangerous zone of "perfection obsession." And our constant quest for perfection can cause us to procrastinate. We become fixated on the perfect end-result

such that we don't move forward until we are 100 percent sure that everything is going to work according to plan. We lose sight of the fact that life is messy and unpredictable, and that very little ever goes exactly as we would have hoped.

As leaders our tendency to be perfect then has us paralyzed as a result of never seeming to have all of the pertinent information available and consequently not being decisive for fear of being incorrect in the choices we make.

■ **As individuals, we harbor a pathetic need to always want to LOOK GOOD.**

Finally, few of us would be willing to confront just how much we really do care about looking good. Our desire to appear knowledgeable, to have all of the answers, to avoid conflict and achieve consensus often has us sacrificing results for the sake of appearances.

As leaders this can manifest itself in our pretending to have followed or understood something. We pretend to understand, we pretend to know, when we clearly haven't the foggiest notion of what is really going on.

Meanwhile, many of us may have been stunned to learn that people like Apple's genius, Steve Jobs, ruled with an iron fist, was actually egotistical and moody, demanded loyalty while lacking patience in dealing with others, and even reneged on promises he made to his colleagues. We just naturally assume that these kinds of high performers are nice people.

But, we all too often seek leaders with qualities and behaviors quite different from what we claim we want.

As Todd Ordal, a former CEO in multiple industries explained, the most successful leaders are NOT nice.

"There is a substantial difference between being nice and being kind. Nice is born out of fear and kind is born out of love. The fear of not being liked or fear of conflict prevents us from speaking the truth. But, most of the time you are willing to tell someone you love that they are making a big mistake, even at the risk of offending them or hurting their feelings."

Vivek Wadhwa, director of research at Duke University's Center for Entrepreneurship claims that the best companies are run by what he calls, "enlightened dictators." His view is that we all typically follow strong leaders who are effective in attaining their goals and who offer us a meaningful direction to pursue, conviction that we can all work together to attain our goals and supported by good values. Wadhwa says, "I know that dictatorship doesn't sound nice, but it is what business leadership entails."

Professors Steve Kaplan and three University of Chicago business school academics analyzed the detailed personal assessments of 313 CEOs and found that those whose primary strengths were in being decisive and driving performance, significantly outperformed CEOs known for their building consensus and listening skills. They claimed that they were profoundly surprised to find that the 'soft' skills centering on teamwork weren't as paramount as the 'hard' skills that were all about getting things done. Professor Kaplan cautions against "dismissing entirely" the soft skills, but he and his colleagues clearly found that leaders displaying tough-minded traits like following through on commitments, displaying persistence, attention to detail, and setting high standards matched most closely with success on the job.

The truth is, most of us would rather have the rock-star surgeon available if we needed a coronary bypass operation irrespective of the individual's bedside manner. Having a great bedside manner would be a definite plus, but our critical requirement would be to work with a medical technician with the best possible expertise and track-record for delivering results.

I believe that nice leaders don't want anybody feeling bad and so will always find something to compliment. Effective leaders will tell you what you need to know to be a high performer, even when the message is that your current activities or behavior are screwing things up.

Nice leaders will often stretch their teams across multiple priorities attempting to do all things to satisfy their constituents; while effective leaders have learned the importance to saying . . . "No!"

Nice leaders don't enforce the rules if there is any danger of someone getting upset. Effective leaders know that leaving weak people on a team means that the results will be detrimental to the entire group.

Nice leaders don't engage in difficult conversations intended to change unacceptable behavior. Effective leaders know that pushing people to be their best, honestly pointing out their strengths and their weaknesses, and confronting issues as soon as they surface makes for colleagues that are far happier in the long run.

To be the best you can be as a leader, you need always act and behave in a manner that is not centered around a desire to be admired or look good, but is in the best interests of helping your people succeed – even when it is not easy and **especially when it is not nice.**

Solving The 'Commitment Drift' Frustration



IF THERE IS ONE SINGLE FRUSTRATION THAT I HEAR FROM FIRM AND PRACTICE LEADERS ON A CONTINUAL BASIS IT IS TRYING TO DETERMINE HOW TO DEAL WITH "COMMITMENT DRIFT" – HOW TO DEAL WITH THOSE PARTNERS WHO MAKE PROMISES BUT DON'T ALWAYS FOLLOW THROUGH. IN OTHER WORDS, HOW DO YOU ENSURE TASK COMPLETION WHEN IMPORTANT PROJECTS NEED TO GET IMPLEMENTED, AND YOUR PARTNERS SEEM TO AGREE TO DO SOMETHING, BUT WHEN YOU ARE NOT REALLY CERTAIN THAT YOU ARE GOING TO GET COMMITTED FOLLOW THROUGH?

WHETHER IT IS IN A PRACTICE GROUP SETTING, AROUND THE TABLE WITH THE MEMBERS OF YOUR STRATEGIC PLANNING COMMITTEE OR WHEREVER YOU HAPPENED TO BE WORKING WITH YOUR COLLEAGUES, THIS SEEMS TO BE ONE OF THE MOST FRUSTRATING CHALLENGES. THAT SAID, THERE ARE SEVEN IMPORTANT STEPS YOU CAN TAKE TO ENSURE RESULTS (IN MOST CASES):

1. Ensure that the undertaking is voluntary.

Far too often the group leader (in their wisdom) thinks that George is the best person to do a given task and so assigns the task, publicly arm-twists, or subtly embarrasses George into taking on that task. Now ask yourself: just how motivated is George really going to be with an assignment that was delegated to him under those circumstances? And of course, with the title of leader comes the assumption that I am allowed to assign stuff (the 'Boss Syndrome'). Just listen for how often you hear that word "assign" being used by your various leaders.

Even worse, I often see those instances where one particular practice group or committee member was absent from a meeting and the others debated about what project "to stick Jennifer with responsibility for completing." Now, once again, should we really be surprised when people don't follow through?

Keep in mind that when someone voluntarily takes on a task they are far more committed to ensure the completion of that project. Your role as the leader is to seek out voluntary undertakings from each of your fellow partners, even though you might strongly feel that someone else is better equipped to do a specific project.

Of course this all assumes that those who chose (again, hopefully voluntarily) to become members of a practice group or some firm committee understand that part of their obligation is actually to *do something* that advances the goals of the group. If that is not the case, then don't waste your time pretending that you have real practice groups or firm committees – and you needn't bother reading any further!

2. Where necessary, break the project into smaller steps.

Some of the tasks that need to get done may be fairly huge in that to complete the total undertaking will take more than two or three hours of some partner's time over the next month. When that happens get the partners to break the task down into its logical and sequential phases

to the next meeting; whether it is simply a written report or evidence of what action was undertaken. Ideally it is something tangible to show that progress has been made.

As the leader, you need to ask each partner to briefly summarize (for the group) what they understand the work is that needs to be done, how they might approach the task, and whether they anticipate needing help from anyone else in the group. Doing this will put them in the right mindset to owning the task and ensure that both they and you understand exactly what the outcome or deliverable will be. You might say something like, "I want to ensure you and I both understand how this will unfold. Could you describe to me what you will do and when?"

How many of us have attended some meeting wherein the Chair looks to one of the partners and said, "George, you were going to develop a list of..." only to hear George respond, "No, I don't remember committing to do that at our last meeting" or, "No, I think you misunderstood what I was saying." When that happens, your done!

4. Ask for a personal commitment.

When you have finally determined the parameters or scope of the undertaking, you then need to look your partner in the eye and say, "Now George, you understand that what is required here should take about three hours to accomplish. Given your current and anticipated client obligations, are you comfortable that you can invest three hours and get us this report by our next meeting?" When people give their word, especially in front of their peers, that generates an even deeper level of personal commitment.

5. Determine an acceptable completion deadline.

Ideally you want to have tasks accomplished

before your next meeting such that any status reports might be circulated to everyone to review a few days ahead and not waste the time of everyone at the meeting. For some strange reason, I've noticed that we often will pick a Friday as our deadline. Where possible, a Monday may make for a better deadline, as most people don't really jump on their individual project until the last minute anyway; and a Monday then allows a weekend for more reflective thought.

6. Produce a written summary of the commitment as meeting minutes.

When working through the various tasks that need to be undertaken during a meeting, it is advisable to write them all down on either a whiteboard or paper flip chart – for all to see who is going to do what and by when. To help people remember their individual commitment, you can then transcribe those flip chart sheets into meeting minutes and circulate (within 24 hours) to all attendees. Most organized people agree that there is something about the physical act of writing down a commitment that makes it easier to remember and more likely to be acted on.

7. Follow-up with each partner one-on-one.

One of the most valuable ways in which you can spend your leadership time is following up with your partners, between meetings – to *offer your help* in ensuring that they complete their task. You know that your star performers don't need to be managed. They absolutely do what they say they will do, which usually means being really careful about what they say they will do. Others in your group may well need someone with the patience to prod them a bit and offer their assistance, so that best intentions actually do get implemented.

This article originally appeared as one of my regular Thomson Reuters columns for the Legal Executive Institute.

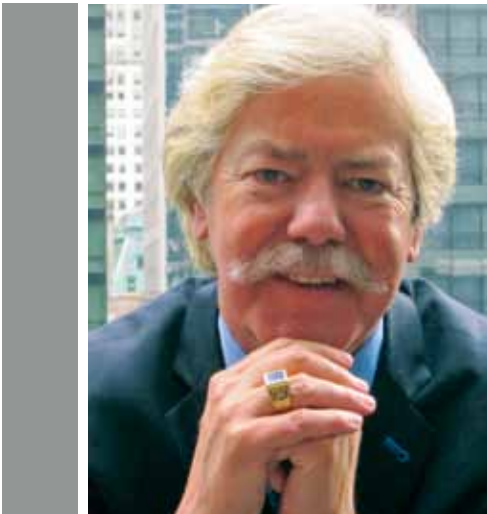
Most organized people agree that there is something about the physical act of writing down a commitment that makes it easier to remember and more likely to be acted on."

and estimate a time frame for doing each phase. Even if you think you know how long each step should take, you want buy-in from the individual doing the work. Then when someone is taking on this task we can examine which steps of the task to start with and ensure that they are not unrealistically taking on too much and thereby setting themselves up to fail.

And once again, having some partner take on a task only to then delegate it to a junior offends the principle of their personally contributing to the group.

3. Ask each partner, specifically, what he or she will deliver back to your next meeting.

It is quite conceivable that even an enthusiastic partner might go off and tackle some project only to ultimately deliver a result that was not anywhere near what everyone in the group was anticipating. Therefore, it is helpful for everyone to think about any particular task in terms of the desired outcome or deliverable - what they expect to bring back



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 authority on practice management, McKenna has, since 1983, worked with leaders of premier firms globally to discuss, challenge and escalate their thinking on how to manage and compete effectively.

He is author of a pioneering text on law firm marketing, *Practice Development: Creating a Marketing Mindset* (Butterworths, 1989), recognized by an international journal as being “among the top ten books that any professional services marketer should have.” His subsequent work includes *Herd-ing 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 sixth printing; and received an award for being one of the best business books of 2002; while his most recent work, *The Changing of the Guard* (Ark Group, 2015), provides in-depth guidance on the leadership selection process in professional firms.

In 2006, McKenna’s e-book *First 100 Days: Transitioning A New Managing Partner* (NXT-Book) earned glowing reviews and has been read by leaders in 63 countries. This publication culminated in Patrick being asked to conduct a one-day master class for new managing partners, usually held at the

University of Chicago. Thus far over 70 new firm leaders from legal, accounting and consulting firms have graduated from the program.

His published articles have appeared in over 50 leading professional journals, newsletters, and online sources; and his work has been featured in *Fast Company*, *Business Week*, *The Globe and Mail*, *The Economist*, *Investor’s Business Daily*, *Forbes*, and *The Financial Times*.

McKenna did his MBA graduate work at the Canadian School of Management, is among the first alumni at Harvard’s Leadership in Professional Service Firms program, and holds professional certifications in management. He has served at least one of the top ten largest law firms in each of over a dozen different countries and his work with North American law firms has evidenced him serving 62 of the largest NLJ 250 firms.

His expertise was acknowledged in 2008 when he was identified through independent research compiled and published by Lawdragon as “one of the most trusted names in legal consulting” and his three decades of experience in consulting 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; and was the recipient of an honorary fellowship from Leaders Excellence of Harvard Square (2015).



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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.