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International Review

SPRING 2011

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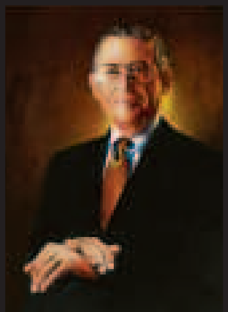

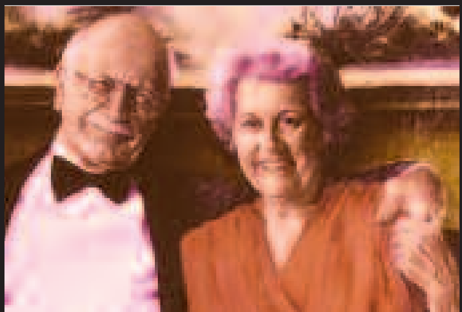


Dear Valued Clients and Friends:

I am pleased to present my new issue of International Review – an issue that I hope contains a balanced blend of contributions covering the subjects of law firm strategy, economics and leadership.

Among the articles contained here, I have included a pragmatic critique of some of the more tedious and futile methodologies that can serve to only frustrate the effectiveness of your strategic planning.

As always, I am delighted to include the insights of my good friend and colleague David Maister as he responds to a question that is likely of interest to any professional when dealing with a high-maintenance client.

Be sure to have a look at the views expressed by managing partners from across the nation (Another Year of Clients Demanding More Value) as they reflected upon what 2011 may have in store for law firms.

And, once again, I am honored to include the thinking of my collaborators at the Managing Partner's Leadership Advisory Board (the LAB) as they address a question from a new managing partner on how to effectively confront partner complacency.

While I am certainly no economist, the subject has always intrigued me, and no article that I've written has inspired more e-mail than the one I wrote in August 2008 entitled "Managing Through A Prolonged Downturn" - included in my Spring 2009 issue and on my web site. For those who share my curiosity with economics, you should find the sequel to that article, contained in this issue, of particular interest.

Today, I am to the best of my knowledge, the only law firm consultant to publish his own regular magazine for firm leaders. It may be indicative of my old-school values, but I still enjoy reading real books and magazines rather than some electronic facsimile. So I sincerely hope that you find some practical ideas, tips and techniques here that you can put to use immediately. Please send me your comments on any of the articles contained here.

Patrick J. McKenna

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International Review

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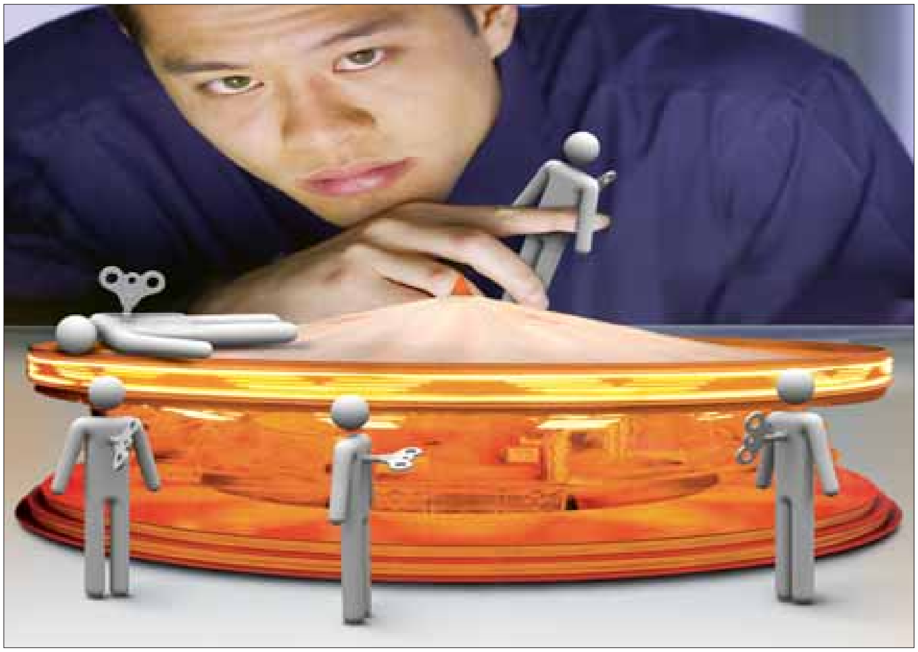
by Patrick J. McKenna, INTERNATIONAL REVIEW

Methodologies That Make Stra



Many firms that have been involved in conventional strategic planning are failing to improve their ability to differentiate themselves, their competitiveness or their relative growth, in spite of the investment of time and effort in the planning exercise. How many firms with a beautifully presented strategic plan have anything meaningful to show from their efforts? One would think that the application of strategic planning methodologies would have achieved more measurable results.

One needs to recognize that the typical strategic planning exercise now conducted and infused with massive quantitative data misses the essence of the concept of strategy and what is necessary for being innovative and differentiated. Indeed the word "strategy" has unfortunately become a devalued term, challenged only in the buzzword hall-of-shame by "synergy" or perhaps "out-of-the-box thinking."

But the problem here for most of us isn't with terminology. When research study after research study now suggests that the only way for your firm to grow is at the expense of competitors, the need for you to craft a truly competitive strategy could not be more acute. The real problem is one of not continuing to utilize shop-worn, tired old approaches, which simply don't work anymore.

If you're interested in learning how those firms who produce above-average results are doing it, it may be instructive to become conversant with what doesn't work. Let's delve into the typical strategic planning process as is so often practiced or proposed by outside consultants, and conduct a quick review of some of the most time-worn methodologies that are still so often employed, and explore why they are so often a waste of time.

Firm Vision

"We will commence our work with you by helping to develop and communicate to the partnership, a guiding vision for where your firm is going into the future."

Remember mission statements? Mission statements were a single-page document filled with more platitudes than you'd find in the average prayer book, spelling out your firm's business mission. No one remembered the darn things, it was business as usual, and the document didn't have the profound impact on the fortunes of firms that their creators had hoped for. The mission statement exercise was quickly forgotten — except at those few firms who chose to have them laminated as cards for every attorney to keep on their desks.

Then came the hype that every firm needed a vision. It was a new name, but quickly became the same old silly exercise. All your skeptical partners exchange winks and knowing glances. The Executive Committee would have to be indulged one more time. And, unfortunately, in 99% of all cases, the results were the same — having a formal written vision statement . . . changed nothing!

Financial Review

"We will review your financial data and convert it into templates that allow us to advise you on how you compare to similar firms."

Some of us are just old enough to remember that in the early days, firms often recruited their first Law Firm Administrator from either the military or the police force. (I guess managing partners needed someone with that kind of background training and clout to help herd the cats!) Today, the Executive Director or COO is a sophisticated administrator with sophisticated financial training and access to reams of comparative statistics. Do we really think that this professional has not been doing the job?

In the course of developing a strategy, we should not forget that financial numbers are an

tegic Planning A Waste of Time

abstraction, and often give the illusion of precision. They are largely historical and can serve to blind leaders to future changes and they rarely get partners too excited. One firm recently related to me how, as part of their strategic plan, they set a numerical target for their RPL performance over the coming three years and then wondered why their fellow partners weren't all that excited or motivated by the goal.

If you have chosen to retain the assistance of a consultant in helping with your strategic planning, then having that individual conduct a financial review, look at your firm's organizational structure, peruse your partnership agreement, and audit past business development achievements may be legitimate steps — in an "orientation process" that any consultant should just naturally take to get to know your firm. But why would you have your strategy process (that implies looking forward) include a formal step that serves to focus internally and look backward?

The top performing firms understand that the task at hand is to look outward, not inward; to craft a competitive strategy, not conduct an operational review — and this course of action doesn't exactly set the tone for a process that should be concerned with creating new revenue streams.

■ Partner Interviews

"We will conduct one-hour, in-person interviews with the appropriate mix of partners and associates."

We trust that everyone can fully understand the critical importance of obtaining "buy-in," especially from our partners, to any strategic planning initiative. I learned many years ago, that no partner willingly supports, gets truly enthusiastic about, or eagerly participates in implementing any plan, that they themselves have not had some part in formulating.

But I am also convinced that there are far more effective (and far less time consuming) ways of getting everyone actively involved, then having a team of consultants running around your firm giving everyone a half-hour to articulate their latest pet peeves.

■ SWOT's Analysis

"We will develop our strategic plan in the context of market realities and the firm's strengths and weaknesses, and offer suggestions."

Almost every firm that goes through the conventional strategic planning process uses some form of SWOT Analysis. To the uninitiated, SWOT is an acronym for "strengths, weaknesses, opportunities, and threats." It means that we will all engage in an exercise to have a look at what are the various internal strengths and weaknesses of the firm, and then look to what particular threats and opportunities there are that could be exploited. Sounds sensible enough. And it is, if you are a boutique practice or smaller firm of perhaps 30 attorneys or less. But the process, as it is currently, most often executed, is a complete waste of time for firms of any significant size. In some cases it has probably done more harm than good.

In fact, let me press this point by providing you here, with a rigorous analysis of your firm's current strength and weaknesses.

STRENGTHS:

- **Many talented attorneys**
- **High level of client satisfaction**
- **Excellent opportunities for cross-seling**
- **Quality of firm's legal work**
- **Ability to serve most client needs**
- **Strong reputation**
- **Collegial culture**

WEAKNESSES:

- **Insufficient team approach to providing services**
- **Trend toward too much me, not enough we**
- **Insufficient cross-selling**
- **High hourly rates for commodity legal work**
- **Unwillingness to make hard decisions like terminating unprofitable work**
- **Weak differentiation from competitors**
- **Unevenness of marketing efforts among partners**
- **Communication between management and partners**

Does any of this sound familiar? So what is the relevance of all this to strategic planning you might ask. Nothing whatsoever. All too often this turns out to be an exercise in identifying the most trite descriptions of firm strengths and weaknesses.

The real question that you need to explore is: are there any attributes, which signify meaningful differentiation, that clients regard as valuable and distinct to our firm?

The proposition that I would proffer is that a SWOT's Analysis (like marketing) is irrelevant at the firm level — other than to perhaps help assess image, geographic aspirations, culture or governance. Any meaningful assessment of strengths and weaknesses is best left to the practice group level where we can instinctively understand that it is going to be far different for each practice group — which leads nicely into my next point and one of the most critical.

■ Practice Group Contribution

"We will hold meetings with your practice groups to allow members to voice ideas and opinions about the firm's strategic plan."

If the only contribution the practice groups are expected to make is to voice opinions about your firm's strategic plan or sit quietly by, waiting patiently, for their marching orders from on-high, then we have effectively short-circuited the audience that could make the most meaningful contribution to your firm's strategy.

It has been long debated as to whether the most effective strategic planning is a top-down process or bottom-up process. My observations and experience convinces me that it is both. The top-down process needs to be concerned with the growth and direction issues that result from looking to where the profession is evolving and how we might best allocate critical resources to take advantage of the future.

Instead of advocating a top-down approach, strategy should be set in a dialogue involving all levels. The aim is to help firms from the practice group up, create distinctive strategies to keep them ahead of the competition. Staying ahead is easier said than done. It requires a depth of insight that most firms depend on when they are young but lose when they age.

The bottom-up process is simply a recognition that the greatest opportunities for truly differentiating your firm, gaining competitive advantage and generating new revenue emanates from individual practice groups. If we recognize that a firm is comprised of discrete business units, we see that the way in which you market an employment practice is likely to be very different from how you might market a heath care practice. So too your employment group likely competes with a very different collection of firms than your health care group might compete with. What naturally follows is that the "needs" of employment clients and the emerging opportunities for the practice group to explore requires that the group develop their own strategies interdependent of the firm as a whole.

What we have learned from those firms achieving above-average performance is that they have balanced the need to develop an overall top-down strategic plan for the firm — with having multiple bottom-up plans developed by each practice group — where many of the most important growth opportunities exist.

Client Assessments

"We will conduct in-person interviews with a number of your most significant clients. These interviews make it possible to assess the service levels your clients perceive as well as identify areas in which you excel or need improvement."

How do you argue with motherhood? Yes, yes, it seems that in spite of the numerous articles written in law practice management journals, over the years, on the extraordinary merits of assessing client satisfaction, there are still those firms that have not made it an operational habit.

But . . . once again, this is an operational issue. Assessing client satisfaction should be an ongoing process and not merely relegated to being part of your (once every three years) strategic planning.

The strategy issue is not client satisfaction! The strategy issue is client (and prospective client) "needs" — and the highest performing firms clearly understand that.

I have long advocated that partners should make it their business to understand what it is that is keeping their clients awake at nights (forgive what is now a cliché). But when you are seeking to craft strategy, you have to go even beyond what is keeping them awake, to truly understand their much deeper needs.

Understanding what clients need is a whole different process. There are five levels of client needs that should be explored: explicit needs, observable needs, tacit needs, latent needs, and emerging needs. Many are satisfied if they can get a handle on their clients' current needs. But, this is not the total answer. You must also think far ahead of the curve. You must lead the pack by anticipating clients' needs before clients even know those needs exist.

Please don't misunderstand. Improving client satisfaction is a critically important issue. It's just should not be the focus for conducting in-person interviews with clients, when seeking to craft strategy.

Implementation.

"The strategic planning process usually takes six to nine months to complete. We would then be pleased to help you implement your strategic plan."

I understand that it takes nine months to give birth to a baby, but I also believe that everyone instinctively realizes that a lot can happen in nine months. It took less time for an internet service called Facebook to go from a standing start to millions of users, or for residential real estate to lose a large portion of its market value.

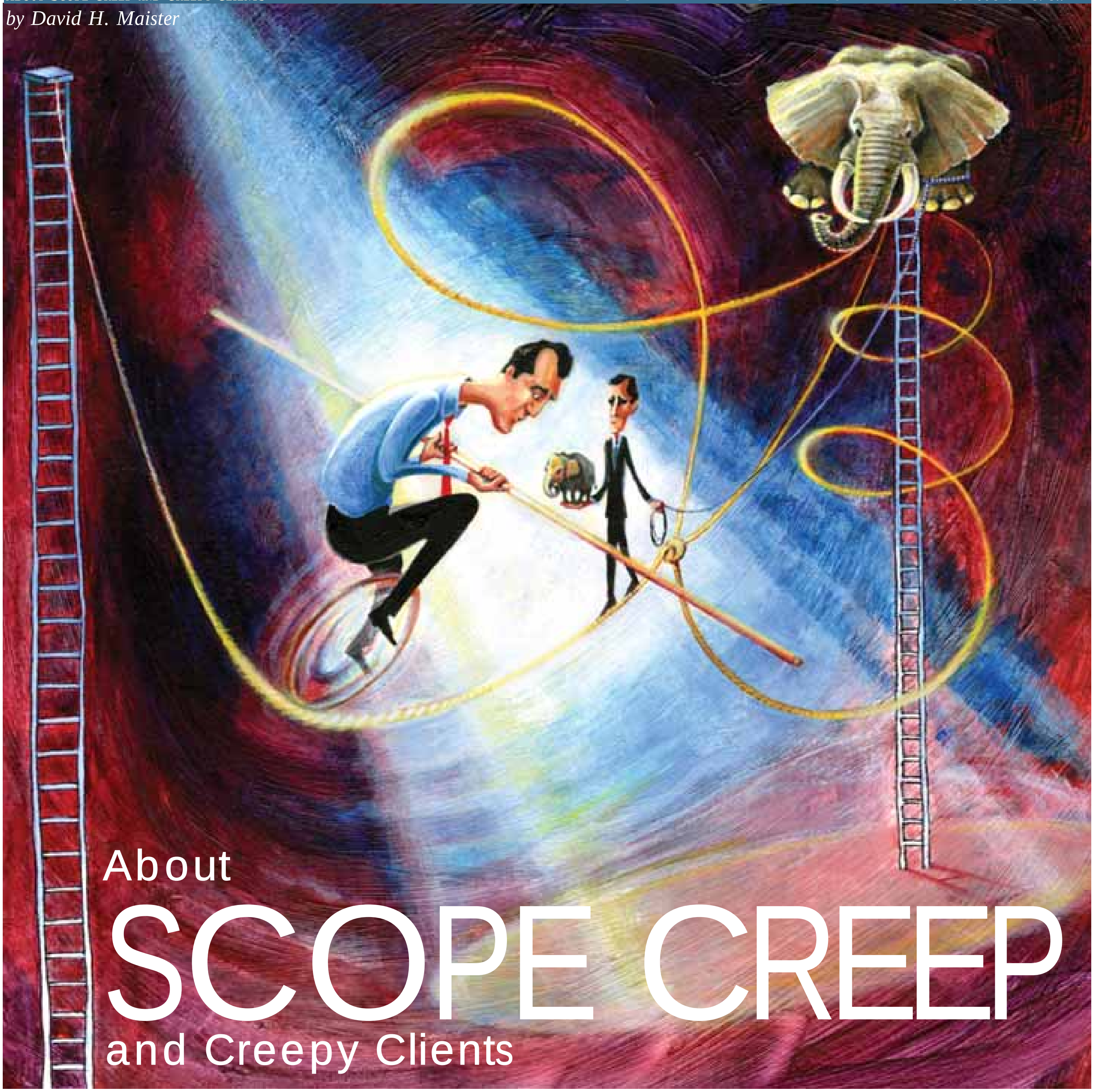
It's a brand new, do-more-faster age. Today's global economic dance is no Strauss waltz. It's break dancing at break-neck speed. Your success in this competitive marketplace is directly proportional to the competitive growth strategies and management sophistication that your firm can bring to bear, and how fast you can do so.

What is difficult to fathom is why implementation cannot be a natural part of any strategic planning process. Why can't you build ongoing implementation into various steps in the process? Rather than spending time interviewing every partner to build buy-in, why can't you engage the partners in an exercise that allows them to participate in assessing the firm's competitive position, identifying growth issues, and setting to work on some initial actions and perhaps, some small limited-risk experiments? Where is it written that you have to wait for the better pat of a year, until your plan is finalized?

In light of these glaring shortcomings is it any wonder that some of the best performing firms have concluded that strategic planning, as currently practiced, is obsolete?

And . . . if you begin to play that out, it leads inevitably to a very different kind of strategy process than you may have experienced thus far.

by David H. Maister



About SCOPE CREEP and Creepy Clients

I received the following from a guy named Jeff. He asked:

One major challenge we have is managing 'scope creep.' Clients are always changing, enhancing, modifying, backtracking, re-hashing, deliverables and we seem less than great at controlling the associated costs. And the client does not want to pay. What do you do? Is it up-front education? A formal contract, detailing the change-order process? We want to be easy to do business with, but we don't want to lose money either.

Well, Jeff, we certainly all know what this feels like. You try to be nice, and the other person just takes advantage of you, never reciprocating the niceness.

I invite you to think about how you would handle it if this were an employee, or a family member, or a friend or acquaintance. How do you deal with this in other walks of life?

You'll find that the key point is that it's all in the timing. If you were mad at your spouse, the time to raise an issue would not be when you were so desperate to solve the issue that you would lose your temper, or be under immediate pressure to get your way. Done then, you are almost certain to get it wrong.

But you also wouldn't raise the issue the first time it happened – you would try to be supportive. What you would probably do, if this were a friend or a spouse, is to say that you don't want to fight about what has just happened, but only want to work out how you want to work together tomorrow.

> ***"The answer doesn't lie in systems. It lies in the verbal and interpersonal ability to raise a criticism, while still being committed to the relationship."***

You would say something like 'I wonder if we could just go for a walk and talk about some things. Everything's really good now, but it would really help if we could work out some issues that are bothering me. Can we talk about the future?' Talking about the future rather than the immediate events really helps defuse the emotions, and allows a more sensible conversation.

In the world of clients, as in personal life, you can't take extreme positions.

On the one hand, you do have to try and be helpful and flexible and be willing to try and accommodate your clients' needs. But you can't keep on just being nice, because then you'll just keep getting exploited.

If you do, it's easy to predict that you'll get madder and madder, stop enjoying the work and then, one day, you are going to explode with fury, really telling that person what you think of them. (That's what happens in bad marriages where people can't raise criticisms about each other without giving offense.)

The answer, Jeff, doesn't lie in systems. It lies in the verbal and interpersonal ability to raise a criticism, while still being committed to the relationship.

Yes, it's wise to get agreements down in writing at the beginning of a business relationship, and also to agree (with as much non-legalistic language as you can) what would constitute a change of scope.

I think it wise to draft a chatty letter to clients saying the following – (this is language I actually do use) – 'just to make sure we are both thinking about the project in the same way, I want to be clear that I will be happy to engage in additional activities such as (telephone calls and preparatory reading) up to XX hours. This represents my investment in our relationship. However, if what you ask me to do exceeds that amount of time, I will contact you to ensure that you still want me to do the extra work, and agree an appropriate fee for it.'

This doesn't stop clients being demanding, but when they are, I then call to discuss things, using the following language (also a real example) – 'I hope you are happy with my work and that you think I am being helpful and client-centric. If you wish me to invest more time in this project, perhaps we can discuss whether or not it would be appropriate me to bill you for more investment time.'

The choice is then theirs. Now, I don't want to pretend that this approach works in 100 percent of all circumstances. There are still going to be clients who will keep trying to get something for nothing, even though I have explained that I have 'reached the limit of my ability to invest in the relationship.' (Exactly the language I use.) If they still want additional work for no additional fee, I do walk away.

Everyone deserves a fair chance to work out a relationship, but I am not so desperate that I continue to work with people I know to be unfair and unjust. Not only is life too short, but I would rather accept the extra stress of developing other new business than be forced into accepting abuse and exploitation.

DAVID H. MAISTER

is the author of Managing the Professional Service Firm (1993), True Professionalism (1997), The Trusted Advisor (2000) (coauthor), Practice What You Preach (2001), First Among Equals (2002) (coauthored with Patrick McKenna), and Strategy and The Fat Smoker (2008). Prior to launching his global consulting practice in 1985, he served as a professor at the Harvard Business School.

by Patrick J. McKenna

MANAGING PARTNER OUTLOOK: Another Year of Clients Demanding More Value

In early January I posed a couple of questions to a group of managing partners representing firms from every corner of the country. The questions: "As you think back over this past year, 2010, what surprised you the most; and what do you anticipate that lawyers should expect to see in 2011?"

I was pleased to receive detailed responses from firm leaders from New York and Chicago to Atlanta and Dallas; and from New Orleans and San Francisco to Seattle and Minneapolis, All in, I heard from lawyers across 20 different States, representing firms from 100 to over 1000 lawyers in size. Those responses came either by way of written feedback or in many cases the opportunity to engage in some interesting and thought-provoking discussions. What follows is a summary of what I heard:

QUESTION: #1.

As you think back over the past year's events, what surprised you the most in 2010?

Irrespective of firm size, the highest-ranking issues that firm leaders identified all centered around five common themes:

The State of Uncertainty

As one leader tactfully expressed it for many of his peers, "We anticipated a year of uneven performance and business growth in fits and starts. And, that is pretty much how it went. Although by scratching and clawing, we were able to exceed our yearly revenue budget . . . a conservative budget."

The same reactions were reinforced by a couple of managing partners who stated, "I also was surprised that demand in the industry did not increase in certain practices over the course of the year," and "I was surprised that there was not more of a comeback in some of our practices — which leads me to believe that perhaps the 2009 blip was not really a blip — but more of a seismic shift." In spite of this decrease in demand, some were thankful that their clients survived, "We did not see the degree of adverse economic impact we expected. While certain clients were stressed, we experienced no failures or defaults."

From a large Mid-Western firm, "At first I was surprised that things did not recover as much as we had anticipated for 2010, especially in the M&A area. Then I was surprised at how aggressively some of the coastal firms began to cut their rates and structure alternative fees to obtain and retain work. From yet another firm in the Mid-West came this comment, "What surprised me the most was the choppiness of the recovery. I think we were all fooled when things picked up earlier in the year, only to see work drop off again, although workflow now seems to be picking up. The choppiness has led to less optimism about the sustainability of the recovery, however. "

One managing partner expressed it in very empathetic terms when he explained, "I continue to be somewhat surprised that the mental state of many attorneys and staff is still quite fragile as to the uncertainly from the financial meltdown of late 2007 through 2008."

"Though I am not necessarily surprised, the noise for alternative fee arrangements has eased in place of a clamor for simply lower fees and costs. I think this will create opportunities for regional mid-sized firms who have shown more discipline and will be able to offer greater value"

Adapting to Change

The strongest subject matter to engage this group of managing partners can be reduced to one word: *change*. It was expressed in different ways and from various perspectives.

From a West Coast firm I heard, "A not-so-pleasant surprise was a stark realization that there are no silver bullets that will spur a rapid recovery, and it's going to be three to four more years of challenges, particularly in some markets and practice areas, before we can see a return to 'normalcy' - - whatever that may then be."

From one firm on the East Coast I heard, "The biggest surprise to me is how slowly lawyers in large firms are heeding the calls from their leaders for transformational changes in how they practice notwithstanding the enormous changes that are occurring in the marketplace." Yet, from another large firm in the Mid-West came this response, "My biggest surprise in 2010 was the acceptance by lawyers of the many changes which have occurred in the past two years and the willingness to adapt to these changes in the profession. "

A number expressed surprise that more firms didn't "bite the dust" and "surprise that more law firms did not fail or dissolve." From a Chicago firm, "I was surprised by the absence of radical change. Instead it was more incremental, and more of a 'right-sizing'."

The Noise Over Alternative Fees

On a related note was the broader issue of legal fees. One firm leader expressed it this way: "It continues to astound me that clients continue to be willing to use major large law firms at extremely high costs, when there are other terrific options available."

And in California the thought expressed was, "I am surprised by the continued reign of billable hours as the primary model for the delivery of legal services. After all the fanfare and hype in the press over the past couple of years, most clients still seem to prefer sticking with billable hours although there certainly has been an up-tick in other types of engagements - - it just hasn't been anywhere as dramatic as predicted."

From two other West Coast firms I heard a similar refrain, "Though I am not necessarily surprised, the noise for alternative fee arrangements has eased in place of a clamor for simply lower fees and costs. I must say in terms of other firms in the broader legal community, some firms' decision to restore entry-level associate salaries to the excessive levels that existed previously, to me, was inexplicable. An economic crisis - - a terrible thing to waste - - appears to have been wasted. I think this will create opportunities for regional mid-sized firms who have shown more discipline and will be able to offer greater value."

From Chicago, "Yes we were softer on billable hours, and yes we got some fee and fee quote pushback, but we were able to cope and actually to use the scenario as an opportunity to adjust our expense structure, both on the staff and the attorney side, to offset the revenue challenge."

Lateral Movement

One ever-present issue that was also raised by a couple of firms was *partner mobility*. Some firms didn't see as much activity as they would have expected while others were surprised by the number of exits coming from larger firms.

One firm leader from a Chicago-based firm went into more detail: "I was surprised by the lack of movement by quality lateral candidates. If you exclude lateral movement from firms that are in trouble and as a result of people being forced out of their firms, movement was limited. What does that tell us? Are lawyers becoming more loyal? I doubt it. Are they more comfortable with the devil they know? Is there a fear of jumping to a firm that might have poor finances?"

At the other end of the spectrum were the comments of a Kansas City managing partner, "I was surprised by the degree of lateral activity driven by an interest in partners leaving high rate firms."

The Pace of Collections

A number of firms cited collections as an issue that surprised them. "Although 2010 was a good year, the slowdown in accounts receivable was surprising to me. We adjusted and had much better success with our A/R turns in the second half of the year."

From a New York Firm I was told, "I was pleasantly surprised by clients cleaning up past due amounts for legal work performed in 2007, 2008 and early 2009. As lawyers are generally among the last to be paid, this gives us hope that at least our client are experiencing an economic up-tick."

This reaction from another, "Finally, while collections slowed as anticipated during the year, I was shocked at how strongly collections came in at year end, at least in part attributable to redoubled collection follow-up on our part. " And from a similar sized firm in Texas, "I was surprised by the decrease in legal demand in Texas; with very strong collections at year-end."

The Prosperity of Mid-Sized Firms

And, of course, no discussion of 2010 surprises would be complete without some reference to how well the mid-sized law firms performed. From Cleveland, I was told, "Although I have believed it for a good while, I'm pleasantly surprised at how true it is that mid-size firms can compete successfully against mega-firms for very sophisticated work, resulting in very strong performance results for mid-size firms coming out of this recession."

From West Virginia, "We were surprised by the rates we were able to get. Much of what was written indicated that higher rates in 2010 would be hard to attain. We did not see much resistance, but that in part may be due to relatively low mid-market rates." To Los Angeles, "For us, it was a good rebound year after a bad 2009."

Over to Indianapolis, "We experienced both growth in the face of a tough economy, including growth in the number of lawyers, growth in our revenues, and growth in our client base." And even in economically-ravaged Detroit, "While the economy has been experiencing difficulties, 2010 was an excellent bounce back year and we are looking to increase our staff during the first quarter of 2011!"

"I think that many will find that their firms have structural imbalances (read, 'too many underperforming partners') as opposed to simply being victims of the cyclical economy. This will lead to fundamental upheavals that will take a number of forms in the coming years."

QUESTION:#2.

In your view, what should lawyers expect to see in this coming year?

With this second question, perspectives were surprisingly similar, irrespective of what area of the country the particular firm leader resided. That said, I segregated the responses by size of firm to allow a comparison between National versus Mid-sized firms.

FROM THE LARGER NATIONAL FIRMS . .

A Continued Restructuring

Perhaps not surprising, a number of firms predicted "a continued de-equitization of the partner ranks." A Louisville-based managing partner put it diplomatically, "I think that many will find that their firms have structural imbalances (read, 'too many underperforming partners') as opposed to simply being victims of the cyclical economy. This will lead to fundamental upheavals that will take a number of forms in the coming years."

From the managing partner of a 500-lawyer firm I heard, "In 2011, firms that do not merge will shrink in size as leaders rely more heavily on those who 'get it' and tire of trying to force changes on people who refuse to alter their behaviors. The latter will be left behind in law firm environments that no longer tolerate poor performance. In short, a continued 'shake out' but one that many lawyers could probably have avoided."

His comments were reinforced by one participant who stated, "I would expect that, despite continued financial challenges, we will see more lateral movement and merger activity among law firms. There has been a reluctance during the downturn, but pent-up demand for change should begin to overcome financial conservatism, particularly as firms that have weathered the storm well make themselves available to lawyers at firms who have not done so well." And then echoed by this comment, "I expect to see a lot of lateral partner movement as practices pickup and partners begin to leave firms that they believe did not fairly support them during the downturn of their practices. "

A couple of firm leaders commented that they "expect a focus on efficiency and a restructuring of traditional support staff models in favor of something that is more project management oriented."

Even Greater Emphasis On Value

Among the law firms participating, many commented that they expected a greater emphasis on providing value to clients. A number of the managing partners I spoke with related how they had been receiving letters from their clients asking for even further billable hour reductions in 2011.

From a San Francisco-based managing partner, I heard, "I feel that, over the long term, the legal services profession will be under heightened pressure to demonstrate the actual necessity of services rendered rather than defaulting to the 'business as usual' routine of reproducing what's been done in the past."

From yet another firm was this, "I expect large coastal firms will moderate their aggressiveness on price reductions. I expect firms will continue their cost controls, but do not anticipate further cutbacks. And I expect that per partner profits will increase over 2010."

"We will begin to get a feel for whether the extreme cost-sensitivity of corporate law departments and their focus on alternative fees is a temporary recession-driven emphasis or a more permanent feature of the legal market."

Practice Area Predictions

A number of firms offered various predictions for which specific areas of practice may flourish in 2011. One predicted that "demand will increase in the Mergers and Acquisitions practice and to some degree in real estate this year," while a Dallas-based firm leader suggested, "I expect we will see a robust transactional year focused more on corporate and energy work than real estate -- though I think even real estate will awaken from its slumber."

I heard, "I expect to see strong pickup in the M&A and corporate finance (especially public offerings) space." "I expect to see heavy pickup in bankruptcy filings, with a decline in residential foreclosures." "I expect to see a general increase in law firm workloads and revenues, but continued conservative hiring at the entry level."

This reaction from another, "The soft commercial markets (particularly those that are real estate driven) and reluctance to lend that have characterized the recent period are likely to continue. This will drive continued softness in transactional practices until a sustained growth pattern emerges from the fits and starts we are seeing now."

And I received this prediction "I expect natural gas infrastructure and perhaps power generation to be big topics by year-end."

FROM THE MID-SIZED FIRMS . . .

Up and Down the East Coast:

Many firm leaders articulated their largest challenge as being how to handle increasing competition together with more demanding clients. As one firm leader expressed it, "I expect more of the same, in terms of challenges in the economy and challenges facing law firms. I suspect we will continue to discover and adapt to the 'new normal'." From a firm leader in Cleveland, "I think we're going to see more of the same, meaning in particular continued price pressure, with all of its attendant issues, control of overhead, project management, and the like."

On this same theme, I heard, "I expect increased competition primarily from a rate standpoint. I sense some firms will be much more aggressive in 2011." Seconded by another, "I expect fixed fee proposals to be even more prevalent." Yet another commented, "I expect an increased demand for more alternative methods of service delivery and pricing as clients are becoming more sensitive to what they believe to be the need to obtain value from their attorneys."

The issue of containing costs was still prevalent among a number of firms with a New York managing partner commenting on the need to "Tame the costs and problems associated with electronic discovery," and a Florida-based firm commenting that they expect "Less and less need for premier office space as less clients visit their lawyers. The internet has clearly reduced the 'face to face' communication which has taken place over the years between lawyers and their clients."

In the Mid-West the message was similar:

One leader summarized it nicely when he told me, “Lawyers should expect that clients will be more demanding - in structuring fees and staffing assignments for starters. I also believe that the consolidation in the industry will accelerate in 2011.”

As another managing partner expressed it, “I’m having conversations every second day with GCs who want a 15% reduction in their 2011-2012 rates. They are not interested in discussing alternative fee arrangements or discussing efficiencies, they just want discounts. And that’s fine, we will trade volume for fees. Meanwhile, we have gotten out of training young lawyers. Instead we are reallocating resources to lateral hires.”

From A Chicago firm leader I was told, “Creativity in pricing to give clients more certainty in legal spending is here to stay. Be it fixed fees, segment pricing, it is here to stay. While there is some limited movement away from big law by large businesses, business leaders leave scads of money on the table by going to big law for most of their legal needs. Not sure why that trend continues.”

As yet another managing partner framed it, “I fully expect increasing demand from clients, particularly from in-house counsel, for better value from outside counsel. Clients are looking for shorter turn-around times and placing a heavy emphasis on having access to project tracking systems.” And from another, “Rate pressure is not going away, even as the recession ends. I expect increased discussion (but maybe not action) on controlling litigation costs. It doesn't do anyone (plaintiff or defense bar) any good to make litigation so expensive that everyone wants to avoid it.”

A number of respondents worry about **better marketing**. Said one, “Lawyers must engage in more rainmaking, with a economy that is consolidating businesses, not growing new ones, there will be more competition for clients. I think we'll continue to see some layoffs of lawyers from the large to medium size firms that have tried to be all things to all people. This will put additional talent on the street.”

As one leader bluntly put it, “Competition for business is just going to increase, particularly in relatively stagnant markets. We are all fighting over a shrinking (or at least not growing) pie.” An Indianapolis firm leader added, “I expect that the overall practice of law will get harder, not easier. Starting salaries for associates will inch up only slightly.” Yet another comment reflected the issue of productivity, “I’m concerned for how to handle the non-retiring member whose book of business and contribution has been dropping.”

Then there were those firm leaders who expressed a degree of confidence in what 2011 might bring, “I honestly don’t see why we won’t be in for a great year.” According to one respondent, “The economy, and thus deal flow, is going to improve, regulation and enforcement by the government isn’t going away, our expense structure has been controlled, and we showed we could deal with the recession and in the process honed our management skills. We needed to sharpen our focus and we needed to improve our efficiency, and I think we have.”

And Over on The West Coast:

-A San Francisco firm leader added, “We see a continued slow recovery, with opportunities to carve out more business from larger firms by delivering new service delivery models that have us taking more risk (having more skin in the game) and clients having greater value, cost predictability and better service.”

On a related note another respondent expressed it this way, “In 2011, we will continue to see rate and cost pressure, emphasis on "value" - demand for more value at less cost. To keep some lawyers busy, they will need to be agile and capable of adapting, but resist the temptation to dabble. This will tax their creativity and business sense, and could - - if not well managed - - increase liability exposure. We must be mindful, also, that what we are doing throughout this time will define - - whether we like or intend it or not -- the new normal once the recovery is complete.”

From another, “We expect the economy to continue to be flat and there are a lot of expense holes that have to be filled, such as state and multiemployer pension funding. It gets more difficult for any firm to establish and improve its name recognition in the legal services buying business and other communities. They have so much coming at them and at such speed that there is not good knowledge about who are the best lawyers for their legal issues. We are doing major software upgrades this year, and are working to educate and professionalize or approach to alternative billing methods to the billable hours.”

And finally, from Seattle came, “I think (hope) larger organizations will continue to realize they can hire sophisticated and capable counsel at regional firms who cost less money but are more responsive and equally capable to their large-firm counterparts. The huge glut of new attorneys with weak job prospects will continue to grow as firms remain hesitant to hire those with minimal skills.”

By Managing Partner LAB

CONFRONTING FIRM COMPLACENCY

NOTES: FROM THE LAB

QUESTION:

As of the beginning of January I am slated to become our firm's next managing director. In now looking at what lays ahead, I realize that many firms have begun to confront the challenges of tomorrow – adopting alternative fee arrangements, outsourcing, social media, new IT capabilities and so forth. While our firm has been financially successful, I fear that my colleagues have become somewhat complacent. How would your group suggest I approach this situation with my partners, when I assume leadership of this firm?

RESPONSE:

At the outset, we observe that the challenge identified in your question is one commonly confronted by new leaders. It is less about substance, such as the issues that your question lists--alternative fee arrangements, outsourcing, social media, new IT capabilities—than it is about how best to apply leadership principles within a professional services organization.

We suspect that you already have concluded that "top down" approaches to leadership do not flourish in the law firm environment. You also have determined that the substantive issues listed in your question warrant attention within your firm. The leadership challenge lies in translating your recognition into recognition by your partners and action on their and your parts to address the issues.

As a first step in the process, we suggest that rather than telling your partners what *you* think, you ask them what *they* think are the small number of critical issues that should be highest on the firm's near-term agenda. Face-to-face conversations probably are the best way to elicit your partners' views, and we suggest that you set aside time to meet with all of your partners (if feasible) and that you ask all of them the same questions. Have in mind the substantive issues about which you are concerned and ask your partners for their views on them. Ultimately, this process will enable you to formulate an agenda that you fairly can describe as your partners' agenda, not your agenda. This can be an effective means to channel your partners' concerns and aspirations and to convey your commitment to carrying out their agenda.

As an analog to asking for your partners' views, we suggest that you tap clients' views about what is important. Visiting with the firm's key clients early in your tenure would offer the opportunity to learn their views of your firm and the legal marketplace and their own visions for their businesses, all of which would help to inform the firm's agenda for the future.

In some firms, undertaking strategic planning might be a desirable means to help partners identify the issues that are most important to the firm's future success. However, the new firm leader should be thoughtful about embarking on a full-blown strategic planning exercise early in her or his tenure, because (1) the exercise can be hugely time consuming for the new leader at a time when time is most precious; and (2) if the exercise does not succeed, it will be difficult to resurrect the planning process for some time to come. If the firm already has a strategic plan, undertaking a review and updating of the plan could be a useful means for identifying the issues that are most immediately relevant for the firm, and doing so would not present the same potential risks as a planning initiative that commenced at ground zero.

Your question advises that your firm has been financially successful in the past and expresses concern that past success has contributed to complacency. Because the firm has had past success, we encourage you to try to avoid creating the perception that by asking for views about the substantive issues you are attacking or criticizing your predecessors. Instead, we suggest that your orientation be that of building on the successes of the past.

Complacency presents a more daunting challenge for the new leader. Here are our thoughts about that subject:

FIRST, let your partners share your experiences.

What persuaded you that alternative fee arrangements are an important subject for the firm to address? Consider exposing your partners, or at least some of them, to the same sources that informed your views, such as articles or presentations. Make it a practice to try to inform your partners about trends affecting the profession and consider making these trends an agenda topic for partner meetings. Encouraging your colleagues to be out and about, meeting with professionals from other firms and client organizations, might be another means to acquaint your partners with what other organizations are doing in the areas that you regard to be important to your firm's future. Messages about the need to change coming from clients are particularly credible. Consider having some of the firm's clients talk with your partners about the changes underway within their organizations.

SECOND, consider engaging the opinion leaders in your firm in your effort.

These are the partners who are among the most respected and to whom others in the firm look for guidance. Ask them if they might be willing to assist you in addressing an issue among those in the agenda that has come out of your meetings with your partners. Their investments of time will help them form their own conclusions and later could be helpful in persuading others that action is needed.

THIRD, identify and recognize successes already achieved and challenges already confronted.

"Consider exposing your partners, or at least some of them, to the same sources that informed your views, such as articles or presentations. Make it a practice to try to inform your partners about trends affecting the profession and consider making these trends an agenda topic for partner meetings."

It is likely that some within your firm already realize the importance of one of more of the issues about which you are concerned. Perhaps there have been successful experiments with, for example, alternative fee arrangements. If so, bringing these successes to the attention of all of your partners will help to open their minds about the issue. As with successes, important lessons can be drawn from the challenges or problems that the firm has faced in the past. These lessons go not only to the substantive issue implicated in the challenge or problem, but also to the processes or means by which the firm dealt with them. Sharing these lessons with the firm's partners could provide a useful learning experience and suggest availing approaches to matters that are on the firm's agenda.

FOURTH, encourage healthy competition.

Lawyers have a natural competitive bent, and competition is an effective means to combat complacency. One approach would be to identify an external competitor and to highlight what the competitor is doing that you believe your firm and its partners can do better. Then, look for ways to measure the competitor's and your firm's results and encourage your partners to think about and undertake steps by which they can outperform the competitor.

One last piece of advice—try to avoid overselling. Once persuaded that a particular course of action is necessary, leaders all too often proceed to bombard their colleagues with the data and arguments that the leader expects will persuade. However, this process can have the opposite effect from that intended. And, when others are not sold on the leader's perspective, the leader sometimes escalates efforts to persuade, trying to create a sense of urgency that will compel action. This can make our partners even more resistant, and they are not likely to appreciate the leader's tenacity in advancing the agenda through verbal force.

In summary, we encourage your thoughtful attention to listening to your partners and your firm's clients to develop an agenda for their and the firm's energetic action to promote future success.

by Patrick J. McKenna

NAVIGATING A FEW CONTINUING BUMPS ON THE ROAD TO ECONOMIC RECOVERY

According to many of the reports in the media, our economy is now expanding at an ever-growing pace. Unlike the last 'green shoots' illusion, many believe this "recovery" is real. The economy is getting back in gear. Everything is going to be okay.

Practically everyone believes that the economy is recovering . . . but there are a few continuing bumps that you need to take into account with your firm's strategic planning. I'm not trying to be pessimistic here, but the facts are the facts. Housing and jobs are the twin pillars of household wealth in America. The papers are full of stories about what happens to people when these pillars give way. High unemployment rates have lowered household income and forced people to take jobs at salaries far below their peaks. A record number, 40 million, of Americans now depend on food stamps. Children have been moving back in with their parents – even adult children. And tax receipts are falling. At the local and state level this is causing havoc. The feds can print money. But California, Illinois and New Jersey can't. And between the 50 states there is something like $2 trillion worth of unfunded pension obligations.

Let's take a closer look at some of the conditions that may very well make the road to recovery rather bumpy and protracted:

- **Looking At Some Scary Consumer Statistics**

Right now, in early 2011, one in five Americans is unemployed, underemployed or just plain out of work; and one in nine can't make the minimum payment on their credit cards.

That said, the officially reported employment numbers are out-of-whack. In 2010, for example, a total of about 1.1 million new jobs were created. That sounds nice, until you realize that the economy needs to add about 120,000 jobs per month - or 1.4 million - just to stay even with population growth.

Right now, there are 130 million people with jobs. According to the Feds, there are 15 million more who would like to have jobs but can't find work. That puts the total workforce at 145 million.

But wait; ten years ago the portion of the population that wanted to be employed was just over 50%. That would be about 160 million today. What happened? Do fewer people want to work today? Or are there actually fewer jobs, and more people unemployed, than the official figures tell us? Based on these numbers, the real tally of the jobless is probably about 30 million, or about 18.7%.

> ***"Companies with revenues in excess of $5 billion are expected to take over 350,000 jobs offshore in 2011 and 2012. Some are forecasting a total of 3.4 million service jobs moving offshore by 2015 in a range of fairly well paid white-collar occupations. Accenture now employs more people in India than in America."***

Meanwhile according to Arianna Huffington in her new book *Third World America*, companies with revenues in excess of $5 billion are expected to take over 350,000 jobs offshore in 2011 and 2012. Some are forecasting a total of 3.4 million service jobs moving offshore by 2015 in a range of fairly well paid white-collar occupations. Accenture now employs more people in India than in America. And a recent Harvard Business School study found that 42% of US jobs – more than 50 million, are vulnerable to being sent offshore.

If that weren't bad enough, in 2006, there were 26.5 million people who received **food stamps**. In 2007, there were 26.2 million people in the program. So, the "normal" level of food stamp participation was around 26 million people. Things changed in 2008. The number of participants increased by 1.9 million. We were still in a recession during the first half of 2009. Food stamp participants increased by another 5.2 million people that year. There were then a total 33.4 million people receiving food stamps. The recession officially ended by July 2009, and one would expect the worsening to stop. But millions more who weren't officially "poor" in 2009 became poor in 2010. 6.8 million more joined the ranks of food stamp participants. These people aren't your "average" food stamp participants - these are hardworking Americans who have fallen on hard times. Now, there are more than 40 million people receiving food stamps, though to remove the stigma they don't call it the "food stamp program" anymore. Now, they use debit cards to distribute the handouts and they call it the Supplemental Nutrition Assistance Program (SNAP). Oh Snap!

Meanwhile, U.S. consumers have withdrawn a total of $311 billion from their savings and investment accounts during 2009 and 2010. Americans have reached deeper into their savings than at any point in the past six decades. And to make matters even worse, consumer debt has been on the rise again over the past few months. As of this writing, it is now at an annual rate of $2.4 trillion. That's just below the all time high point of $2.58 trillion reached in July 2008. Or put slightly differently, the average family's debt-to-income ratio is 150%, meaning that for every $1000 in after-tax income they make, American families owe $1500.

■ Looking At What's Really Going On In Residential Real Estate

The bleakest year in US foreclosures has just begun. Lenders are poised to take back more homes in 2011 than in any other year since the meltdown began. And, the peak in foreclosures is not expected until March of 2012 – five years after the crisis began.

Fourteen percent of America's 56 million mortgages are already delinquent or in foreclosure. So if you multiply 56 million by 14%, that means that 7.8 million people right now are not paying their mortgages. 7.8 million homeowners have been delinquent for 30, 60 or 90 days . . . or are in foreclosure already.

And the real story is even worse. Because of loan modification programs, the banks have been slowing down the foreclosure pipeline and not taking properties onto their books. That means that the rate of NON-foreclosure on delinquent borrowers is climbing sharply. 24% of the people who have not made a mortgage payment during the last two years have still not been foreclosed on. That's how clogged the foreclosure pipeline is.

So what's going on? Well, there are a lot of modifications going on, but they don't really work. It turns out that even when you cut someone's mortgage payment by 50% or more, half of them still default within 12 months. Why is that? Because the real driver is people being under water, people who have no 'skin in the game.' So, when the value of the property falls below their debt, they're walking away. As it turns out, the unemployment rate isn't really much of a driver of default rates. Instead, it's all about home equity . . . or the lack thereof.

What does the future hold? Today about 17.2% of homeowners are underwater. But if home prices drop 10% from here, 27% of homeowners would go underwater. In other words, a 10% drop in home prices would cause a 56% increase in the number of people underwater . . . which would almost certainly lead to another surge in defaults.

One big problem in all of this is second liens. You have $842 billion in second liens outstanding and the majority of them are owned by the Big 4 banks. And you have this bizarre situation where American consumers are not making the $1,200 monthly payment on their first lien, but maybe just to prevent harassing phone calls from debt lenders, they are paying the $150 second lien. That means that the banks are looking at this and they're holding all of these second liens at par, even if the first lien has already gone bad.

This situation makes the banks very reluctant to approve a short sale, since that would completely wipe out the second lien - because if you write down the first lien, the second lien is a zero. Of course, banks just don't want to do that because it's a huge amount of money that would wipe out the equity of these Big 4 banks, if they were to mark these second liens to zero. This is a big problem.

Net-net, there's more pain to come in the real estate market.

[A portion of this was excerpted from a presentation delivered by Whitney Tilson, the Managing Partner of T2 Partners.]

■ Delaying and Praying Over Commercial Real Estate

Then there's commercial real estate. With the majority of commercial real estate loans that are coming due, nothing is happening on them. They don't get refinanced, but they don't get foreclosed on either. It's "extend and pretend" or "delay and pray." Banks have avoided writing down billions of dollars in soured commercial loans by extending their maturity dates. There are now $1.5 trillion of commercial real estate loans coming due over the next four years – half with mortgages in excess of current property values. The 100 largest banks, by assets, have an average of one-quarter of their loan portfolios tied up in commercial real estate and that percentage is even more concentrated for the smaller community banks. Banks are not making as many new loans because they have all these old bad loans on their books. These bad loans are likely to be the trigger behind a flurry of coming M&A activity in the financial sector throughout 2011.

■ Looking At Bank Failures In Slow Motion

Every Friday evening a few more banks are closed - seized by the various state banking regulators and handed over to the Federal Deposit Insurance Corporation (FDIC) for liquidation. This all happens rather quietly, barely making the news. We're told these bank failures are no big deal. The names of the banks change over the weekend and many customers don't notice the difference. We've only had 294 failures as of this writing. Adjusted to current dollars, the Depression banking crisis was $100 billion, the S&L crisis was $923 billion, and the current crisis . . . is nearly $8 *trillion!*

So while an FDIC spokesperson, Sheila Bair, said the current crisis would be "nothing compared with previous cycles, such as the savings-and-loan days," it's actually much bigger, because the financial sector had grown to be nearly half the economy by 2006 - as measured by the earnings of the S&P 500. But the question is; why haven't there been more bank failures? In 2008, there were 25 failures, in 2009 there were 140, and in 2010 about 129 have been seized on Friday nights. The greatest real-estate bubble in history popped - first residential and then commercial - and we only have 294 failures?

It takes easy credit to make a real-estate bubble and it was America's commercial banks that provided most of it. It's estimated that "half the community banks in America remain over-leveraged to commercial real estate, and the possible losses that remain are about $1.5 trillion," according to bank-stock analyst Richard Suttmeier.

Almost 3,000 of the 7,830 banks in the United States are loaded with real-estate loans where the collateral value has fallen over 40 percent, and yet less than 300 banks have failed?

We all know what's happened to the residential-property market, but to illustrate how bad the situation is for the commercial market, over 8 percent of commercial mortgages that have been packaged into bonds are delinquent; more than $51.5 billion of such loans are at least 60 days late on payments compared with $22 billion a year ago.

If anything the commercial property market would seem to be getting worse. Losses on loans packaged into US commercial-mortgage-backed securities totaled $501 million in August 2010 - more than double the $245 million in April 2010, and over 10 times the $41 million in losses of 2009. Past-due loans and leases at the nation's banks and S&Ls increased 16.2 percent from second quarter 2009 to the second quarter of 2010. Restructured loans and leases increased nearly 54 percent.

"Since the recession began states have seen an unprecedented collapse in revenues. At least 44 states and the District of Columbia are projecting budget shortfalls totaling $125 billion for fiscal 2012 (which begins on July 1, 2011 for most states) according to a survey from the Center on Budget and Policy Priorities."

The delinquency numbers are bad anyway you look at it. So, they must be reflected in bank's profit numbers, right? Well, no. Second-quarter 2010 earnings by the nation's banks were the highest in 3 years - nearly $22 billion. Based on these numbers, FDIC chair Sheila Bair claims, "The banking sector is gaining strength. Earnings have grown, and most asset quality indicators are moving in the right direction, putting banks in a stronger position to lend."

By the way, of the $21.6 billion in second-quarter 2010 profits, $19.9 billion was earned by the 105 largest banks in the country. The other $1.7 billion in profits was spread between the other 7,725 banks.

Interestingly, in 2010, Elizabeth Warren and her Congressional Oversight Panel did a report that indicated 2,988 banks were in trouble because of real-estate concentration in their loan portfolios. Ms. Warren noted that office vacancies had increased 25 percent since 2006-2007, apartment vacancy was up 35 percent, industrial was up 45 percent, and retail vacancy had increased 70 percent since 2006-2007.

[A portion of this was excerpted from a presentation given by Douglas French to an Economic Summit in October 2010.]

Looking At State and Municipal Debt

Though vast and complicated, the root of American municipalities is like any business or household: money goes in, money goes out. Done right, a municipality takes in more money than it pays out. Money comes in mostly from taxes and revenue streams such as utilities and tolls. Money goes out to finance municipal government payrolls and public works programs. Cities and states sell bonds when they can't pay upfront for such needs. No big deal . . . at least, it wasn't a big deal until recently.

In this era of high unemployment and shrinking economies, state and municipal revenues are hurting. Tax revenue tends to be lower with millions of Americans out of work. Just the same, they use less power, drive through fewer tolls. Pay that parking ticket? I don't think so . . . not this year.

Since the recession began states have seen an unprecedented collapse in revenues. At least 44 states and the District of Columbia are projecting budget shortfalls totaling $125 billion for fiscal 2012 (which begins on July 1, 2011 for most states) according to a survey from the Center on Budget and Policy Priorities. With the exception of Vermont, every U.S. state has laws guaranteeing that they must pass balanced budgets.

States have struggled during the past few years, but 2012 may be the most difficult year yet. Easy cuts have already been made. The federal stimulus has given states nearly $200 billion over the past two years – and by the end of this fiscal year, aid will all but dry up. And many states are already tapped out on their rainy-day reserves.

Governments are desperate to cut spending. But their biggest expense of all is untouchable - pension plans. California offers a telling example. A recent Stanford study concluded that the state pension fund program is under-funded by roughly $500 billion. The researchers urged the Governor to inject $360 billion into its public benefit systems - right now - to have an 80% chance of meeting 80% of obligations over the next 16 years. But, facing a $20 billion state budget gap, what could he possibly do?

It's precisely this pickle that undid Vallejo. That San Francisco suburb declared bankruptcy in 2008. Tax revenue had collapsed, a major shipyard closed and all of a sudden the city found itself paying 90%

of its annual budget to retired public employee pensions. 90%!

How deep in the hole are the state and local governments? Truth is, nobody knows. The states report their liabilities in strange ways, often ignoring accounting conventions. California faces a $19 billion shortfall. New Jersey's public pension system is $100 billion in the hole. New York's system may lack almost twice that much. Illinois spends twice as much as it gets in taxes.

So municipalities kick the can down the road. New employees buy into the funds. Fund managers maintain their projections of endless 8% annual returns. Retirees keep taking out the funds they were promised . . . and no one pays the tab. Orin Cramer, chairman of New Jersey's pension program, estimates a national funding gap around $2 trillion. The municipal bond market is roughly $2.7 trillion. If Cramer is on target, that's a total liability about the size of France and Britain's annual GDP - combined.

Therefore, in yet another sub-prime redux, Wall Street has found a way to make the muni bond problem even worse. Like the mortgage market, the municipal bond market has morphed into its own new era of highflying finance, adjustable-rate loans and complex securities. Meredith Whitney, the "genius" that called the banking crash of 2008, went on *60 Minutes* a few months back, claiming that the muni-market will see more defaults than anyone can imagine. She called for "hundreds of billions" in losses.

Looking At a U.S. Debt That's Tough To Even Calculate

Boston University economist Laurence Kotlikoff says U.S. government debt is not $13.5-trillion (US), which is 60 per cent of current gross domestic product, as global investors and American taxpayers think, but rather 14-fold higher: $200-trillion - 840 per cent of current GDP. "Let's get real," Professor Kotlikoff says. "The U.S. is bankrupt." Professor Kotlikoff is a noted economist, a research associate at the US National Bureau of Economic Research and a former senior economist with then-president Ronald Reagan's Council of Economic Advisers.

Writing in the September 2010 issue of *Finance and Development*, a journal of the International Monetary Fund, Professor Kotlikoff says the IMF itself has quietly confirmed that the US is in terrible fiscal trouble - far worse than the Washington-based lender of last resort has previously acknowledged. "The U.S. fiscal gap is huge," the IMF asserted in a June 2010 report. "Closing the fiscal gap requires a permanent annual fiscal adjustment equal to about 14 per cent of U.S. GDP."

Professor Kotlikoff says: "The IMF is saying that, to close this fiscal gap [by taxation], would require an immediate and permanent **doubling** of our personal income taxes, our corporate taxes and all other federal taxes.

One way or another, the fiscal gap must be closed. If not, the country's spending will forever exceed its revenue growth, and no one's real debt can increase faster than his real income forever. Professor Kotlikoff uses "fiscal gap," not the accumulation of deficits, to define public debt. The fiscal gap is the difference between a government's projected revenue (expressed in today's dollar value) and its projected spending (also expressed in today's dollar value). By this measure, the United States is in worse shape than Greece.

Looking At 'The Great Correction'

In August 2008, I authored an article entitled, *Managing Through A Prolonged Downturn* in which I asserted *"that for the next five years, every time you think it's safe to get up and dust yourself off from this downturn, every time you feel like you've endured the worst of it, another piece of news is going to come along to freshly bludgeon you. This time the economic slowdown is going to be a lot different and, in many ways, a hell of a lot tougher."* An economist friend of mine calls this the 'Great Correction.' He tells me that his Great Correction is very different from an economic slowdown or recession. It is not a pause in an otherwise healthy economy. Instead, it is a change of direction . . . an adjustment to new circumstances.

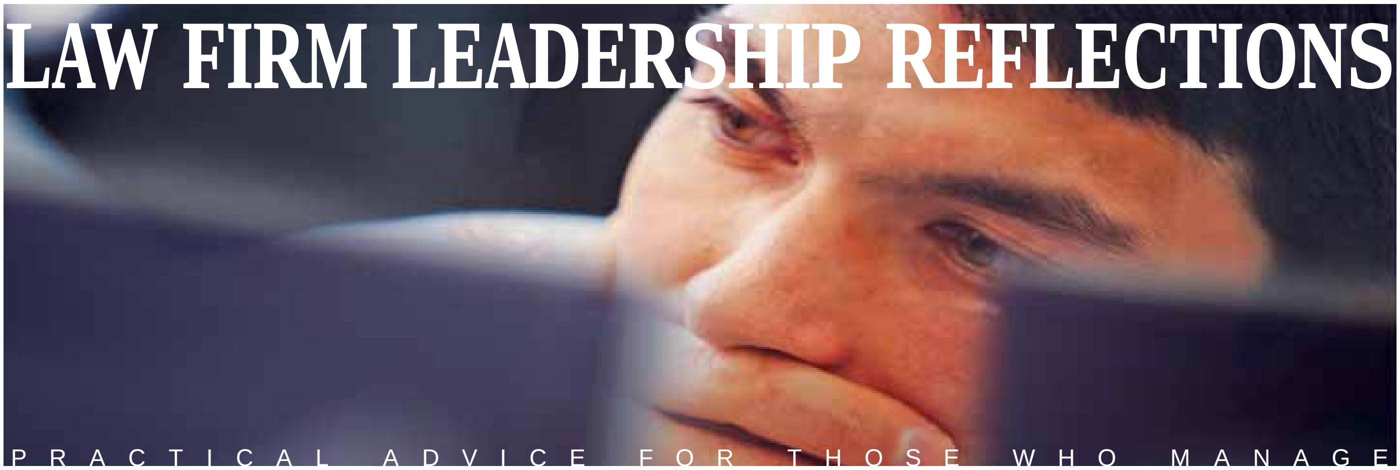
To give you one small indication of the kind of adjustment that is taking place, he points to some good news. U.S. manufacturing is finally picking up. For the first time in 10 years, more people are now joining the manufacturing labor force than leaving it. Of course, this is just what you'd expect. Labor costs are going down. At the margin, America's competitive position is improving.

But, he tells me, this is not, as the media has advertised, "proof" the economy is recovering. Far from it. It is proof that the economy is going in a different direction . . . and responding to a different set of circumstances. Much of the last 10 years was spent in bubble territory. During that time the economy was losing manufacturing jobs, not gaining them. The economy is not now "recovering" to the bubble conditions of 2005-2006. It is moving on.

And it's a good thing. Would we want to go back to an economy that destroyed real jobs in manufacturing while creating only jobs in finance and housing? Now the economy is simply doing what it should do: it's adjusting to new conditions. Unfortunately, it will take time. You don't shift the world's largest economy overnight. So, the rate of joblessness and uncertainty is likely to remain high for some years as this transition takes place.

by Patrick J. McKenna

LAW FIRM LEADERSHIP REFLECTIONS



PRACTICAL ADVICE FOR THOSE WHO MANAGE

What The Next Generation Law Firm Might Look Like

A number of journalists and sages have been contemplating what the next generation of law firm might look like . . .

Imagine This Scenario: *You begin your work day with a short (20 yard) commute to your home office. As you get comfortable at your desk, you enter through the secure web portal, and your digital workspace unfolds before you. The presence and availability of your colleagues is indicated to you, as yours is to them. You may begin your workday with a scan of your customized news feed for updates on your clients, practice areas, and colleagues. You follow this up by checking the real-time status of your active matters and inviting team members for a strategy session via an online video chat.*

Your home office is fully supported by hub offices that provide comprehensive administrative and operational support. Such support includes full time reception and call routing services, mail service, and large scale copying and document preparation. Your fellow attorneys can access a variety of other administrative links from the portal. They can order office supplies and access external reference and research sites.

During the course of your workday client data, research, prior work product, and matter management tools are literally at your fingertips. Detailed profiles of each attorney's experience, prior work history, current matters, team members with whom you have worked, education, publications, client successes, bar admissions and language abilities are searchable at any time. A "workload" gauge gives you and your colleagues appropriate information regarding any attorney's availability and suitability for a particular assignment. The gauge includes factors that might play a role in the assignment, including the time zone in which the attorney lives, or whether they are full-time or part-time. Your fellow attorneys frame their work/life style electronically, through detailed use of calendars, so that their presence and availability is easily accessible to others.

By the end of the day, you have assembled research and knowledge assets from the database systems, updated documents, and facilitated an online client meeting with screen-sharing. Before logging out, you post a question to another practice group, update your workload status, and "walk" down the virtual hallway interface to tap one of your colleagues for advice on a new client matter. Your workday ended early today, due to a scheduled personal engagement, and you have set an alert to automatically send you a text message if the status of your active matters changes or a client message is received.

Your law firm charges clients much less than any other AmLaw 200 firm—probably about 50% less. This cost reduction is supported by the elimination of the partner profit model and all non-productive overhead. Additional major efficiencies come from some of the most advanced process engineering, information technology and Knowledge Management systems that have ever been applied to legal practice. The lawyers working with you on your client matters are senior-level attorneys drawn primarily from the ranks of the AmLaw 200 and from in-house legal departments of leading corporations. They are rewarded for their efficiency and client satisfaction, not according to a high billable hour quota. All of this results in a higher level of excellence at a much lower cost – a cost that has been budgeted with the client in advance.

This information has been drawn from documents that appear on the website of a different kind of law firm – www.clearspire.com Rather fascinating! Have a look for yourself at what your new competition might NOW look like.

Lack of Interest In Change?

I was reading a piece the other day wherein the author lamented that lawyers have a lack of interest in change. While I won't take issue with the validity of that statement, I do find it fascinating how we continue to subscribe to a model for leading change that simply doesn't work.

What model? Well it goes something like this . . .

> **"Major efficiencies come from some of the most advanced process engineering, information technology and Knowledge Management systems that have ever been applied to legal practice."**

We begin by (unconsciously) trying to overwhelm our partners with data – facts, statistics, figures, flowcharts in amongst our rousing speeches to let them know why we must, as a successful firm, adapt to new market changes. We like to think that the facts (as we perceive them) will convince our partners to change – that our colleagues are essentially rational if given accurate information. We believe that if we provide relevant data about the issue, make a sound business case for what needs to be done and present our recommendations, our colleagues will act quickly and forcefully.

If partners have doubts or disagree (and you can be assured that they will), we take that as a clear sign that we haven't yet done a good job of presenting the evidence. So, when partners don't immediately get on-board with any suggested course of action, we push the idea. We try harder to persuade them. We try to give them stronger data. We keep doing the same thing only more of it. And, we TURN UP the volume. We explain it over and over again. (After all, the communications consultants tell us that you can never over-communicate your message!)

In escalating our efforts, we take more and more ownership of the problem. To get people on-board, we are told that we need to "create a burning platform" – a sense of urgency, so that our partners will take the need to change seriously. We therefore, present our facts with an emphasis on the dire consequences for our partners in not doing what we want them to do.

"If we don't develop project management skills, we are definitely going to lose clients . . . we may even go out of business"

While fear may occasionally serve as a short-term motivator, at an emotional level, urgency and fear are close cousins. Our partners may react to our fervor by becoming even more resistant. They rarely (if ever) respond with appreciation for our tenacity. Instead, we find that a number of them are either getting angry or simply tuning out whenever we talk. As we continue to push, partner resistance increases in direct proportion to our actions.

The problem is that this commonly-used approach seldom works. If you think about it, it is build upon the assumption that you are right and those of your partners who "don't see the light" are wrong. Unfortunately, this approach all too often turns the exchange into a contest over whose idea or beliefs will win.

COMMENT RECEIVED:

Oh so right Patrick. From the perspective of one who has done so for so long, repeatedly hitting one's head against stout walls fortified by resolute defense of the status quo is at best masochistic and more likely downright insane. Perhaps the answer is leadership by leaving -- by building the new delivery systems and exploiting the disruptive technologies others only talk about without regard to the detractors. Simply disengage from the mainstream and create your own path. In other words, leadership by deed and action as opposed to advocacy and white paper.

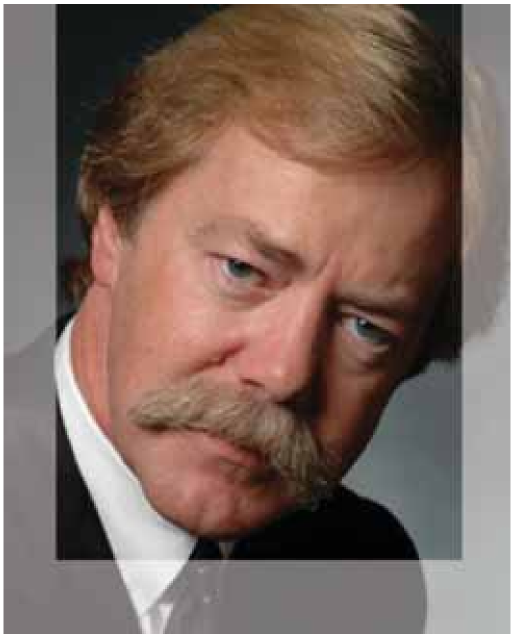
Such leaders, while few in number, are Increasing in diversity. Just to name a few, take a look at Valorem, PLC, Summit, Seyfarth, Eversheds, Legal Zoom, Cisco, Wolverine, and many others and the seeds of innovation and creative disequilibrium are apparent and widespread. Firms, LPO's, in-house groups and fellow travelers are seeking out bold new models and platforms. In many respects, they are neither coordinated in their approach nor in agreement on their direction. Will all prosper and prevail while all of the status quo withers and dies? Of course not -- but that's the beautiful thing about change. It's messy, inconsistent, and uneven -- and while inevitable, it often goes unrecognized by those in its midst before what could be a trend becomes the new normal.

So I have two pieces of advice to all of you: first, go read *"Oh The Places You'll Go"* by Dr. Seuss -- the wonderfully inspirational adult self-help manual masquerading as a children's book; and second, don't worry about leading and focus instead on going.

Jeffrey Carr, General Counsel, FMC Technologies Inc.

The above was excerpted from www.patrickmckenna.com/blog

PATRICK J. MCKENNA



PROFESSIONAL PROFILE

An internationally recognized authority on law practice management, Patrick McKenna serves as co-Chairman of the Managing Partner Leadership Advisory Board, a forum for new firm leaders to pose questions about their burning issues. Since 1983 he has worked with the top management of premier law firms around the globe 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 works include *Herding Cats: A Handbook for Managing Partners and Practice Leaders* (IBMP, 1995); and *Beyond Knowing: 16 Cage-Rattling Questions To Jump-Start Your Practice Team* (IBMP, 2000), both of which were Top 10 Management bestsellers.

One of the profession's foremost experts on 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; has been 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 in 2006, his e-book *First 100 Days: Transitioning A New Managing Partner* (NXTBook) earned glowing reviews and has been read by leaders in 63 countries. The book *Management Skills* (John Wiley, 2005) named McKenna among the "leading thinkers in the field" together with Peter Drucker and Warren Bennis; and in 2008, the book *In The Company of Leaders* included his work amongst other notable luminaries like Dr. Marshall Goldsmith and Brian Tracy.

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* 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 both accounting and 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 at least 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 has led to his being the subject of a Harvard Law School Case Study entitled: *Innovations In Legal Consulting* (2011).

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