Management's 2007 Agenda

by Patrick J. McKenna

Last fall I surveyed managing partners on the burning issues they were facing in their firms - those critical business issue concerning strategy, growth, management, and so forth, occupying leadership agendas. What we received was thoughtful, in some instances inspiring, definitely valuable insight. Much of it revolved around the issues of globalization, marketing, leadership training, effective practice groups, diversity, succession planning – all issues one might just naturally expect proactive firm leaders to be concerned with addressing.

This fall, I posed a variation on my "Burning Issues' theme. I asked about 100 managing partners to address their mind to one question: ***What forces, already at work within our profession, have the greatest potential to profoundly transform (positively or negatively) your firm's future in the next three years?*** This year, we were most interested in observing external trends and looking to the future.

Everybody wants to know about the future as it often feels as though our world is changing so fast that we wonder what's next. Markets shift, technologies shake up old business models, new competitors arrive, and unrecognized trends assume center stage. As Peter Drucker once commented, "the seeds of the future are already growing in the present." Our quest then, was to tap the keen foresight of those in leadership positions within the profession and inquire as to what particular seeds they saw growing.

We gratefully received responses from 47 firm leaders, representing firms from 100 to over 3000 lawyers in size. Those responses came either by way of extensive written commentary or in many cases the opportunity to engage in some interesting and thought-provoking discussions. While perspectives were slightly different depending on what area of the country any particular managing partner resided in and depending on what sized firm he or she managed, we were not surprised to hear some common themes. What follows here is a summary of what we heard and the issues that many managing partners across the country tell us that they are keeping a vigilant eye focused on.

• Patenting of Business Processes

One of the more intriguing forces brought to our attention was a managing partner who informed us, "A highly fragmented patent regime combined with differing interpretations across international boundaries and a relatively new initiative to patent business processes could introduce some potential threats in years to come."

According to this individual, over 8000 applications for business methods are now filed each year. For example, tax strategies are now being patented through the U.S. Patent Office. Tax practitioners could face new liability dangers as a result of the actions of tax shelter promoters who patent their tax reduction strategies. Following from that, if tax professionals are aware that the tax planning methods that they are helping clients to implement are patented, attorneys and accountants may incur patent infringement liability.

For the time being, tax and estate planning is the most likely area that risks patent infringement litigation. However, we are being told that real estate, and corporate M&A

could also become at risk. The firm leader who initially brought this burning issue to our attention asked rhetorically, "As attorneys, should we now begin applying for patents on strategies that we have discovered in solving particularly thorny problems for clients?"

• Changes on the International Stage

We wonder how worried U.S. capital market lawyers are about one particular international trend. A couple of law firm leaders expressed their concern for "the recent drain of international public offerings flowing from New York to London". We were told that where New York once had 59% of global IPO's raising more than $1bn (in 2001), it now has a mere 6.5%

Behind the scenes, we suspect that there are a number of law firms quietly wondering if London could ever possibly displace New York as the world's financial center – at least in the lucrative, high margin practices. While New York remains the center of the hedge fund and private equity worlds, London is increasingly the key center for innovation in important parts of the derivatives and structured finance world.

This has at least two interesting implications: First, if London grows in stature, this could suck more financial business from continental Europe to the UK and move some of those US firms with strong London and European offices into an enviable competitive position.

Second, it may force law firms (and banks such as Citigroup) to start shuffling their key talent across the Atlantic – which will be a truly telling sign of which way the wind is blowing.

• Continuation of Outsourcing

Perhaps fueled by media reports and an article in *Business Week*, a number of managing partners cited their concern over "a growing number of Fortune 1000 companies looking to secure legal services from low-cost providers in India, China, South Korea or other such locations."

While this is not a new trend, the firm leaders we heard from are now suggesting that more companies are investigating, experimenting with, and farming out an increasing amount of their legal services; and enjoying substantial savings. One managing partner told us that in April of this year, "lawyers in India were carrying out the due diligence work for an upcoming corporate acquisition financed by a major UK bank." Apparently, this M&A work was being handled by lawyers in India who are qualified to UK law practice standards and who are paid only $12,200 to $21,000 per year. "Typically this due diligence work is handled by juniors at firms like ours, who have starting salaries of $125,000"he said.

Yet another firm leader confided, "Many firms might prefer to ignore this trend. At our firm, we have a special outsourcing committee considering how we can be involved in developing higher value solutions for our clients."

• Increasing Competition

Competition, in all of it's various forms, was on the minds of many of our respondents. As the buying habits of sophisticated clients evolve, so too has the information available to them from which to measure and assess different law firms. For firms seeking to corner the most lucrative work, league tables and other **rankings** having grown in importance. One firm leader expressed his dismay, "The convergence process is pushing clients' best work to fewer and fewer firms; most of which seem to be chosen based on the particular firm's standing with respect to how many deal they've handled in a particular area over the past year. It is becoming critically important to get our firm onto key deal lists."

Others ruminated about the increasing **rivalry amongst firms**. "Getting on the short list these days is not easy. Even if you have the expertise, you may not get on the list unless you also have size and depth. That is our biggest challenge going forward."

For some, this rivalry would continue to drive the trend toward even **more mergers** in the coming years. From a Chicago-based firm leader: "The trend which concerns me more than anything else is what I see as the business strategy being carried out by most of the mid- to large-sized law firms in the US. The strategy seems to be based on two premises: that a firm can enter the top ranks of law firms only by attracting high-end business from multinational clients and that a firm can only attract such business if it is of mega-size and present in numerous markets. While this might be a viable strategy if pursued by a handful of law firms, if virtually all the mid- to large-size firms pursue it, it will become self-defeating."

The managing partner of one firm expressed his frustration with attempting to 'truly' **provide seamless service** to large corporate clients as his firm has expanded with more than a half-dozen offices. "As the marketplace demands high levels of quality, consistency and a sense that any given upper echelon firm has a discernible way of practicing and servicing clients, strategies to create uniformity, particularly at the practice group level, become critical. The challenge is to in fact offer one firm to the marketplace, notwithstanding the presence of numerous offices and hundreds or thousands of lawyers."

As firms grow bigger and clients reduce the number of outside firms they employ, some see a **breakdown in the lawyer-client relationship**. "More and more clients, especially large companies, are treating outside professionals as vendors. Another managing partner commented, "the advent of the Corporate Procurement Department entering into the picture, in an active way, to negotiate billings rates is absolutely counter the lip-service that had been given by GC's to wanting to 'partner' with their outside law firms!"

Yet **client demands** continue to intensify. One managing partner noted, "Lawyers are expected to respond nearly instantly to client issues. The demands on us are an extension of the pace at which our clients conduct business. The stresses on the profession, however, are profound. We have less time for reflection, and so our advice from time to time is less thoughtful. Likewise, we have less time to train developing professionals properly. The longer term consequences of this condition won't be known for some time."

Many also talked about the **competition for talent**. The Chair of one firm reported, "Law firms are facing increasing competition to get the best work. To get the best work, we need the best talent. The competition for the best talent is fiercer than ever. The number of top students is static and the demand is growing every year. So this is a really tough business right now. It's not that hard to stand still, but very challenging to grow PPP every year, at least if the firm is being honest in what it reports."

For another leader this issue was expressed as, "I see far more movement of good people because either the firm's platform in their practice area is not growing or keeping up, or the culture becomes inadequate in bonding them to the firm."

From the Managing Partner of a 700-lawyer firm we heard, "The segmentation of the legal market into a group of firms with PPEP hovering north of $1.2 million (over 30 firms), many of whom have aggressive plans to expand their national footprint into markets where they have not traditionally practiced, and the financial wherewithal to cherry-pick lawyers and groups of lawyers with guaranteed compensation packages, at a time when the traditional bonds of partnership are under increasing stress, has substantial destabilizing potential."

Then, from the managing partner of an even larger firm: "Among the critical issues of the future I would include the ongoing challenge of retaining and keeping the best talent, as law firms are growing much more rapidly than the pool of top talent."

• Generational Differences

Research conducted for the Future Law Office project shows the presence of four generations -- Traditionalists, Baby Boomers, Generation X and Generation Y -- in the workforce for perhaps the first time ever. And a number of our survey respondents expressed some concern for how that was impacting the future of their firms.

As one managing partner framed it, "the next generation of lawyers finds much about our profession that they do not like. Massive firms, with summer programs in excess of 200 attorneys and multiple offices consisting of unconnected people, become impersonal and are viewed as increasingly unsatisfying career tracks."

Yet another countered that this was more one of having uninspired and unmotivated young lawyers, "Things aren't like they were in the 'old days.' Young lawyers don't seem to have the same work ethic and aren't always interested in the partner career track. Yet firms are caught up in the salary spiral, increasing the costs of hiring and training the junior lawyers. I'm not at all sure what the answer to this is. It may be that the law firm of the future will have many fewer partners than we see today, with many more contract lawyers, working for a good but not exorbitant salary, where quality is uneven and partners oversee dozens of staff. Could this be the coming of the Big Accounting Firm model?"

The Chairman of a national firm with over a dozen offices summarized everything we were hearing far better than we could, when he said, "The founder and retired Chairman of INTEL Corporation Andy Grove's comment 'if you are not paranoid you just don't understand the situation' comes to mind these days. It is hard to think of an issue facing law firms that is not in a sense 'more burning' than it was last year or the year before."

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