

FLYING BLIND AT A CRITICAL TIME: DO YOUR PARTNERS KNOW WHAT YOUR STRATEGY IS?

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For years in Chicago – at curfew every night on every broadcast television station – a short public service announcement asked, “*It’s 10 o’clock, do you know where your children are?*” At this critical time for law firms, we would paraphrase that simple question and ask, do your partners know and understand what your firm’s strategy is? If not, now is the time to tell them.

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With the start of a New Year, most firms (and their partners) begin with a clean slate. That is always unnerving on some level – the past goes in the books, profits are paid out, and the hackneyed phrase, “*what have you done for me lately?*” comes into sharp relief.

While 2008 was a downer for some firms (based on their practice mix), it was ok for most business law firms. But, 2009 is opening with a good bit of uncertainty and anxiety. It is particularly disconcerting for corporate lawyers this year. Transactional practices have dramatically slowed across the board and in some quarters have ground to a halt. The credit market freeze and the resulting tentativeness of financial institutions have made any kind of leveraged transaction nearly impossible to achieve. Fortunately for diversified law firms, litigation practices are busy – some very busy. Likewise, bankruptcy related work is up, the defense of intellectual property remains a priority for most clients, and compliance oriented practices continue working at a steady pace.

That said, this first quarter is not likely to create a foundation for record years at the overwhelming majority of firms. And that highlights one downside of the clean slate approach to management. The short term orientation of the clean slate can lead many to forget what the long term strategy (and value) of a firm is and, importantly, merely pursuing a “*hunker down*” approach can lead a firm to not capitalize on the opportunities that can positively impact its future.

In the Short Run – A Very Cautious Environment

Law firms are starting 2009 with a palpable degree of trepidation. That feeling is warranted given the unprecedented market conditions we are experiencing. That trepidation is playing itself out in cautiousness in how firms are approaching the New Year and that cautiousness ranges from increased scrutiny of investments and growth efforts to a full “*hunker down*” mode.

The American Lawyer had an interesting piece in its January 2009 issue noting that banks are putting law firms on a “*shorter leash*.” The article notes that firms reached deeper into their lines of credit and had outstanding balances much later into the year in 2008. Couple that trend with the very visible dissolution of two major law firms and one can see why the banks are tightening the reins a bit.

But, this is clearly a two way street. Law firms are taking steps to protect themselves vis-à-vis their banking relationships. Perhaps the most dramatic and visible steps away from banks was DLA Piper's decision to ask its income partners to contribute capital. However, we are aware of a number of firms that have deliberately diversified their banking relationships – particularly in areas like cash management, capital management, and retirement fund management.

Managing Partners are also reporting that their people – particularly their staffs and associates – are very anxious (waiting for the massive layoffs that have hit other industries to hit them) and that a real morale boost would not only be helpful, but necessary. Lawshucks.com has begun a “*Big Law Layoff Tracker*,” keeping tabs on layoffs (lawyers and staff) at AmLaw 200 firms. It is a perverse parallel to the go-go years represented by web sites like GreedyAssociates.com.

So, the hatches have been battened down. Many firms have frozen salaries. Budgets have been tightened and re-tightened for 2009. That is as it should be in an environment of extraordinary economic uncertainty. But, it does little to assuage the anxiety of people or to reinforce morale. And most importantly, it does little to position a firm or its practices in a competitive environment that has not and will not go away.

What About the Long Term – What Is the Strategy?

The near term focus at most firms is on working hard, making efficient use of resources, and keeping people as busy as client needs allow. We applaud this approach – we are taking it ourselves.

However, as strategy consultants, we are compelled to point out that this attention to operational excellence is necessary, but not sufficient. As Michael Porter pointed out in his landmark Harvard Business Review article *What Is Strategy?*:

“Operational effectiveness and strategy are both essential to superior performance... But they work in very different ways.

A company can outperform rivals only if it can establish a difference it can preserve. It must deliver greater value to customers or create comparable value at lower cost, or do both.

Competitive strategy is about being different. It means deliberately choosing a different set of activities to deliver a unique mix of value.”

“*Hunkering down*,” which often is synonymous in an uncertain market for operational excellence, to some degree is essential to ensure and/or preserve operating performance. But, it is not sufficient to enable the Firm to prosper in the near and longer term. Most firms are currently hearing the hue and cry of some of their partners (often those with little knowledge of management and the limited financial impact of cutting operational expenses) to “*cut costs to the bone*.” Symbolic of this business cycle in some firms is the naming of ad-hoc committees of partners to dive into cutting costs in the library, marketing, and technology (the three perennial favorites).

There are four major problems with an over-focus on cutting costs (or the temporary substitution of “*hunkering down*” for a firm’s longer term strategy).

- First, if the focus is only on operational expenses (which it usually is), there is very little room for most firms to cut sufficiently to have a real impact on maintaining or enhancing profitability.
- Second, a laser-like focus on cutting operating costs creates real anxiety among attorneys and staff (“*are we next?*”) that leads directly to the morale issues mentioned earlier.
- Also, such an effort can cut directly into a firm’s ability to meet client commitments, which in turn puts client relationships at risk (the exact opposite of what you want to achieve in a uncertain economy).

- Finally, it takes a firm's eyes clearly "*off the ball*" relative to identifying and responding to legitimate opportunities. For instance, we see some very good (but, less diversified) smaller firms – firms that have resisted being acquired – rethink that decision and position.

Thus, getting back to Michael Porter's points, law firms (and particularly the people in these firms) need to understand, internalize, and act on what makes them special and different. This is especially true in times of great uncertainty. Your people (attorneys and staff) need to be reminded where your firm is heading and what distinguishes it from competing firms in your market(s).

Law firms face a unique challenge with regard to articulating a distinctive and compelling strategy. In most industries, strategy is focused on differentiating the value of a company's products and services in the eyes of its customers. While that is undoubtedly true for law firms (i.e., the strategy needs to focus on attracting interesting work from good clients), there is a further challenge in the current and expected legal marketplace. Namely, firms also need to be differentiated in the eyes of lawyers and other professionals making a choice regarding where to practice.

Thus, law firms compete vigorously on two fronts:

- To differentiate themselves in the eyes of clients and prospective clients – to attract compelling, profitable work from quality clients
- To distinguish themselves in the eyes of talented professionals – to recruit, develop and retain great people in an era of increasing mobility and declining loyalty.

Generic Strategies Losing Their Effectiveness

Generic strategies – as has often been the norm in law firm strategy – will not cut it in the near or long term given the heightened competition and the changed economic environment. For instance, on the people side of the strategy challenge, too many firms pursued a money-centric "*me too*" strategy.

- Partner retention and lateral recruiting relied heavily on merely driving up profits per equity partner.
 - That rise in PPEP was achieved primarily by raising rates and, in the last few of years, by tightening the ranks of equity partnership.
 - However, the environment has changed and a rate driven profit strategy is likely to meet strong resistance from clients today. In fact, we would argue that, for the near term, raising rates – as a means of enhancing profitability – is essentially off the table.
 - Further, laterals attracted primarily by money (rather than a deeper linkage to the firm's unique strategy and qualities) are apt to leave for money as readily as they joined for money (even though opportunities to do that may be becoming more limited).
- At the same time PPEP was being used by some firms as a generic strategy to attract and retain partners, many firms were compelled to chase one another up the associate pay ladder in order to recruit top law school graduates.
 - A few firms were using the associate pay run-up as a competitive weapon to not only attract the best and the brightest, but also weaken their competitors (not terribly dissimilar to an arms race that favors the richer country).
 - Most, however, were simply pursuing a generic strategy – hiring top graduates from top schools (regardless of the cost) because "*that is what this firm has always done – and that is what the other firms are doing.*"

The generic strategies for positioning firms to attract and serve quality clientele are also running out of steam. Most obviously, image advertising (e.g., “*this portion of public radio is being brought to you by the law firm of Big, Bigger & Biggest*”) we believe has had little impact in truly distinguishing and differentiating firms in the legal marketplace. Similarly, firms that have pursued size for its own sake (i.e., to be “*the largest firm in X geography*” and/or in the belief that scale was the end game) are often finding themselves having trouble capitalizing on their increased size.

What Should Firms Do?

Our point here is not to critique any individual firm’s strategy – unless we have served a firm, we do not really know what its strategy is or what deliberations and issue discussions went in to developing it. Rather, our point is to implore you to have a strategy – one that is focused on articulating what does or can make your firm special and different. Further, it is to prod you to make sure your people know what that strategy is and what their role is in helping the firm implement that strategy.

The benefits of having and communicating your strategy are significant.

- First, knowing that the firm has a clear, logical, distinctive strategy builds and maintains morale. That is acutely vital in today’s legal marketplace – where people are openly and understandably anxious.
- More importantly, knowing how and why the firm’s competitive position is strong (i.e., knowing its strategy), is important glue in unifying your people and in maintaining their loyalty to the firm.
 - In an industry characterized by so-called “*elevator assets*,” ensuring everyone understands the firm’s strategy is a key step in retaining those assets.
 - Furthermore, people (particularly attorneys) need to know “*what’s in it for me?*” Communicating the strategy can help make that very clear.
- In addition, good strategy provides focus and clarity. In an environment in which resources are particularly precious, this clarity of purpose is a strong contributing factor to using those resources efficiently and effectively.
- Ultimately, as Professor Porter noted in his *Harvard Business Review* article, well conceived and executed strategy leads to sustained, superior performance over the long haul – beyond the clean slate of annual operations. In other words, firms with well conceived and executed strategies do considerably and measurably better than those that do not.

How Smock Law Firm Consultants Can Help

Helping clients develop and implement strategy in law firms (75% of our business) and in industry (the other 25%) is our core business. It is what we do and we believe we do it markedly and measurably better than anyone else consulting to law firms in the United States and Canada. We can and do substantively help firms in developing, portraying, and communicating its strategy for firms of all sizes.

Firms today face one of three scenarios:

- First, the current market environment may be creating unique and substantial opportunities (for key practices and/or your firm as a whole). Those opportunities may represent a change in direction for your firm or an unprecedented opportunity to accelerate that strategy. We can help you define the change in strategy and/or assist your firm and practices in capitalizing on the opportunities available to you. And remember, your people need to be kept abreast of what those opportunities are and what their role is in helping the firm seize that opportunity.

- Less optimistically, your strategy may have been eclipsed by events (i.e., the firm is in real trouble if it continues on its current strategic course). In these cases we can tailor an approach to help develop an operative strategy that enjoys broad agreement and understanding across your firm. Our industry leading methodology (FOCUS) combines broad involvement, necessary assessment of management issues, and, very importantly, simplicity and communicability of a creative end product. If your strategy is now dramatically out of sync, the investment in strategy development is extraordinarily modest compared to accepting severe profit erosion or, in the most dire situations, dissolution.
- Most likely, your firm has a strategy that remains logical and on target relative to your firm's competitive position and its future direction. In that scenario, we have developed a tightly organized approach (i.e., quick and effective) to structuring and summarizing a strategy for the purpose of discussing and reinforcing it with key stakeholders around the firm. That process is extremely efficient – both in the use of management time and consulting cost.

Please contact any of our three partners for specifics regarding either overall strategic planning or a highly focused strategy confirmation and communication process.

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Smock Law Firm Consultants is a strategic management consulting firm with broad experience in serving the nation's leading law firms. Founded in 1991, we have grown our reputation and client list to where we are considered one of the leaders in providing high quality, high value strategic management services to the legal profession in five areas (strategic planning, mergers and combinations, practice group management, law firm economics, and strategic management issue resolution). Although 75% of our work is for law firms, the remaining 25% is for top management in a variety of industries, which keeps us grounded in the thought processes of the broader business marketplace. Our three partners (the authors of this monograph) are, unquestionably, the most experienced "*first string*" of any consulting firm serving the legal profession.