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Competing in the Future –The Need for New Thinking on Law Firm Strategic Advantages

If the last few years have made one thing clear in the legal industry, it's that not all firms are built with comparable strategic strength and resilience. Similarly, it is clear that the competitive positioning many firms pursued in the years prior to 2007 is no longer adequate. A "strategy" of growing bigger by geographic or lateral expansion while competing on price and "full service" mantras appeared to work when the demand for legal services exceeded the supply (as was the case prior to the recession) but was exposed as a non-strategy when supply exceeds demand (our post-recession situation). In an interesting twist of fate that transcends law firm size and geography, we now find ourselves in a world of winners and losers. While some firms are consistently performing as leaders and posting year-over-year economic and market share gains, others are falling behind or barely holding on in an overall market that is growing at a snail's pace. While the differences between the success stories and those less fortunate are many and diverse, fundamental strategic strength is one of the differentiating characteristics. But what is "strategic strength"? Is this the same as having a "strategy"?

While we do recommend that all firms have a well-grounded and clear strategic orientation, we believe that strategic strength requires much more than just the type of strategy that emerges from most firms' strategic planning exercises (although those

may be an important step in a much harder process). How can a firm build such a position?

We believe that achieving and sustaining such a position requires achievement of a number of increasingly difficult conditions:

- Mastering the Basics
- Establishing Meaningful Competitive Capabilities
- Implementing a Fully Integrated Strategy
- Building the Foundation for Excellence
- Building Strategic Resilience and Sustainability

While there is no clear-cut recipe or precise roadmap that could be followed by every firm, the overall continuum provides a good way to visualize progress along the path to the achievement of real strategic strength. Progress along this continuum can be likened to the achievement of subsequent “levels” of mastery in a very important game. As in a game, a firm may gain some capabilities relative to the higher levels of strategic strength before reaching that level, but in general the firm will not jump levels. For example, you can’t really build a fully integrated strategy in a firm that has not “mastered the basics”, and you can’t build a foundation for excellence unless the firm has some meaningful competitive capabilities and, at least implicitly, a sound strategy. That does not mean that a good firm can’t develop some aspects of a “foundation for excellence” and even a degree of strategic resilience and sustainability before building a fully integrated strategy.

Mastering each condition is a necessary precondition to achieving those that follow, as illustrated in the following figure –



Mastering the Basics – the Core Requirement for Any Firm

As obvious as it sounds, the idea that a certain level of basic performance is needed if the firm even wants to remain in the game long-term is not fully understood, although most firms would pay lip-service to this concept. So what are the “basics?” While generically describable, their meaning will be different for different types of firms:

- **Technical Expertise.** The firm must have lawyers who have a fundamental mastery of the technical legal aspects of their job – whatever that is. This will be radically different for a firm desiring to compete at, say, the top of the capital markets world than it will be for an insurance defense or foreclosure firm, but the lawyers need to be experts on whatever legal work they are doing, with the consequences for failing to achieve mastery increasing as a firm tries to compete at increasingly sophisticated work-types. While this should be obvious, it still breaks down in firms primarily because many fail to distinguish between having some well-qualified technical lawyers and having all of their lawyers meeting a minimum standard of technical excellence for their area of specialty and seniority level. A chain is only as strong as its weakest link, and a firm with a reputation for inconsistent quality will never be strategically successful.
- **General Service Delivery.** It still surprises us how many lawyers define “service” in terms of returning phone calls on the same day, but there are many basic service standards that must be met by the lawyers of any firm if it is going to stand a chance of survival, including:
 - o Basic availability for the client, meeting deadlines imposed or required, and reasonably good communications;
 - o Clear and reasonable billing and communications protocols that are client-friendly and effective;
 - o Reasonably current and resilient technology and the ability to interface with clients on a technological level; and
 - o Overall ability and willingness to meet the client’s basic expectations for the work type.
- **Reasonable efficiency and work processes** to allow the work to be done at a cost that is consistent with market value. You have to be able to earn a living at a price the client is willing to pay.

Obviously, the basics will vary from firm to firm, but as the legal stakes increase, the client’s expectations concerning what is “basic” will grow proportionately. Meeting them does not in any way guarantee success – it just lets you avoid guaranteed failure and, as a firm, you get to move on to the next level.

Establishing Meaningful Competitive Capabilities – Beginning to Differentiate

“Competitive Capabilities” can be defined broadly as the characteristics of a firm that would make a client consider hiring it. They are not the same thing as a “sustainable competitive advantage” because there are few, if any competitive capabilities that cannot be matched by other firms given time, effort and investment. The establishment of clear competitive capabilities will help pare down the relevant set of competitors for any given opportunity, and will also be critical to building a reputation and supporting the firm’s pricing structure. As such, a set of meaningful competitive

capabilities is a necessary building block of strategic strength, and a particular combination of them might create a reasonably sustainable position for a short to mid-term time frame.

Some of the more ubiquitous competitive capabilities in the industry include:

- **Type of Law Expertise.** Being the, or a, “go to firm” for a particular type of work can be an important differentiator in any area of practice. The requirements of such a position will vary greatly depending on the type of work involved – being at the top of international mergers and acquisitions, for example, will require deep concentration of very sophisticated deal lawyers and related specialty practitioners, where being the best in, say, immigration law might require well trained lawyers with strong process management and technology investment.
- **Industry Expertise.** For an increasing number of firms and practices, deep expertise in an industry is marketable and potentially sustainable, particularly when the relevant industry is large, complex, regulated, and in need of a wide range of key services. These industries – including such key examples as health care, energy and financial services – will often look to firms with recognized expertise in their industry assuming they have also built good depth in the types of services the clients actually need.
- **Geography.** As a competitive capability, geography is often thought of as having a wide range of offices. For some practices, such as labor and employment, well-built geographic footprints do have value for some clients seeking to deal with these issues on a “one-stop” basis. Geography can also be less complex – and more serendipitous – such as having the best collection of lawyers in Bismarck, ND in the midst of the oil shale boom. There is bound to be business flowing from this “position”, and it is difficult for competitors to replicate. Likewise, establishing a well-known elder law practice in a small town is likely to position a small firm or solo practice for a reasonable degree of competitive success (based on the combination of a “type of law” expertise in a narrow geographic market where it may not make sense for another competitor to challenge).
- **Client Experience.** While it’s hard to be unique, a firm can create some differentiation around the experience it provides to the client. Firms that act as their clients’ business partners, actively interfacing with the client to help them mitigate risk, stay ahead of their competition, or create business opportunities for the client on a regular basis may generate a very loyal client base. While not impossible to copy, not all firms are focused in this way.
- **Efficiency.** This is not the same as being the lowest cost provider, and it is certainly not the same as having the lowest rate. Efficiency is about

combining all of the different components of work process, price, overhead and skills to deliver services with a relatively high ratio of value/price for the particular services involved. Especially in relatively routine areas of service, such a combination can be very attractive to clients.

As noted, though, none of these competitive capabilities are immune from replication by determined competitors and will not, by themselves, assure long-term success in an attractive market niche. They will, however, provide any law firm a base upon which to build more permanent strategic strength. For many firms, this is about as far as strategic thinking has consciously evolved, though some have gone substantially farther in achieving strategic strength, even in the absence of a conscious focus.

Fully Integrated Strategy – Clarity of Direction

Until recently, strategic thinking for most law firms has been limited almost entirely to what might be called “Positioning Strategy.” This essential but incomplete approach to firm strategy has largely been focused on 1) what type of clients the firm seeks to represent, 2) what it wants to do for them and 3) where it needs to be to do these things. This assessment, with some added thought to the competitive capabilities the firm might need to succeed, has constituted the core of many firms’ strategic thinking. This approach has, and will, work well for many law firms at this level. There is, however, a next step that is more holistic.

A fully developed firm strategy must go well beyond simply focusing on market position to include dimensions of firm performance that might be called “Delivery Strategy” and “Talent Strategy,” as shown in the following diagram –



“Delivery Strategy” refers to the entire manner in which the firm produces and delivers its services to the client, which begins with how the firm secures and relates to the client, how it prices the work, how it gets the work done (processes, technology, quality control and assurance, etc.) and how the work is managed. This will, of course, vary depending on the type of work involved, which suggests that within a firm the

delivery strategy may need to be customized for different parts of the practice, but for overall coherence should have a degree of commonality across the practices.

“Talent Strategy” is the final leg of the stool, and is focused on the firm’s people - not just the lawyers, and among the lawyers, not just “partners” and “associates”. The focus here is on issues such as: What types of skills do they need? Where they will come from? How they will be developed, compensated and retained? The talent strategy must be fully integrated with the firm’s delivery strategy (which will set the types of work needed to be done) but will also encompass independent issues such as diversity and other core firm values.

Many firms today have begun to consider various aspects of this integrated strategic approach, but few have yet moved toward full integration of all of these components.

It should also be noted here that by “strategy” we do not mean the same thing as is usually implied by a “strategic plan.” The “plan” may be necessary to manage and guide implementing actions (as implementation is a critical component of achieving anything in the long run) and as such should be fluid and changing as actions are taken or tried. This strategy is more fundamental and conceptual. It provides context and guidance for decision making across the organization, rather than defining specific tasks and objectives.

Building the Foundation for Excellence - Breakout

Building a foundation for excellence is about putting the firm in a position to compete with the best firms of its type and focus, whoever those might be. In today’s legal world this is often about redefining a firm’s “culture” and breaking old habits - frequently those of the most productive and successful people. There are a variety of components, including:

- Building teamwork and team-based approaches into all client services. While intuitively obvious, this is often one of the most challenging hurdles for many firms to leap. Firms are held back by a combination of skeptical lawyer personalities and cultures/compensation systems that are built around the importance of an individual’s performance.
- Practice level strategy and performance management. Similar to the team issue, the focus on individual performance built into so many firms’ approach, combined with a dearth of true leadership make it hard to generate significant success with practice level performance. Those who do demonstrate that the rewards for success are significant, in terms of enhanced prestige, morale, client attractiveness and ultimately, economic performance. To accomplish this, leadership will need to move beyond lip-service support for practice-based efforts toward putting their full weight behind them.
- Sophisticated business development models. What does the client really need, care about, and value most? Do you even know? Can you identify

these points and react to them with finely tuned business development approaches and, more importantly, services?

- Leadership. Do you have it? Real leadership is surprisingly lacking in many firms, and even those with a strong leader in the Managing Partner or Chair role often do not have much leadership behind that individual and rarely have enough to go around to the myriad practice groups, industry teams, and offices. Does the firm have leaders who can drive real change? Or are they more likely to be “leading from behind” – hoping that their people pursue the right goals and behaviors but have little inclination to interfere if they don’t?
- People development and performance management systems. Do your compensation systems support the firm’s goals (including teamwork goals?) Do you have the ability to identify, hire, train and develop the people you will need for future success? Are you prepared to make investments in people to assure the firm’s future talent pool?

We could add to this list but the key point is that achieving excellence goes well beyond strategizing to be “excellent.” (Yes, we see that regularly!) It requires hard work, difficult choices and investments to build a foundation for excellence, often in direct contradiction to the perceived best interests of the firm’s long time “star” performers and those following in their footsteps. How you face this question will be key to whether your firm truly gets to the top.

Building Strategic Resilience and Sustainability – Bringing it All Together

Finally, for the firm to truly build a sustainable position at the top of its chosen market segment, it will need to develop a high degree of flexibility and adaptability that allows leadership (broadly defined, not just “management”) to recognize opportunities and/or the need to change direction -- and actually get that done quickly. This is not as simple as just being aware of the law’s “next big thing” and jumping into that space. To a far greater degree, it is about recognizing when a firm’s core business models, culture and structures are not going to work much longer – well before your competitors or even your own partners can see it – and getting out ahead of the needed change.

To a large degree, this is a cultural issue. Have you built a culture of adaptability such that the partners (in particular) are ready and able to give up on riding a dead horse long before most realize it’s sick? Or do most in your firm subscribe to the view that if “it’s not broke, don’t fix it”? Do you have an ongoing strategic process that is continuously feeding new insights to the firm’s leaders, making the firm’s strategy an evolving component of success? Or is strategic planning an “every 10-year event” whether it’s needed or not? Are your partners, even those close to retirement, oriented toward continual investment? Or are they more focused on getting the last dollars they can before they pack up and head out the door?

Almost four years ago, the Chair of a large, successful international law firm (one of those recognized and admired by most of the profession) told us that “if we (his firm) have not changed how we do absolutely everything in five years, we won’t survive.” At the time, few were yet ready to make such a bold statement, much less to put the full weight of their leadership behind it. Most still thought we were simply dealing with a recession. We are confident that his firm will remain a leader for many years to come.

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Joe has been a leader in advancing law firm strategic and management development, and a strong advocate of fundamental business model change in response to significant change in the economic conditions of the industry. He has consulted with hundreds of law firms on improving their strategic focus and business management on both a firm and practice level. Joe concentrates his practice on helping firms clearly define and subsequently achieve their strategic objectives, including alignment of firm governance, management and compensation systems with firm strategy, mergers, and other areas. In addition, he advises firms in crisis situations, helping them reestablish economic and practice stability, and long-term strategic integrity. He is a frequent author and speaker on topics related to law firm strategy, governance, compensation, and economic performance.

Michael D. Short is a founding principal of LawVision Group. He counsels law firms around the world on strategic, management, financial, and operational issues. His client base ranges from small, “local” firms in many countries to large, multi-national operations.

Over the course of his nearly three-decade long career as a consultant to the legal industry, Michael has worked with well over 600 law firms. The focus of his current client work is related to the **development and implementation of strategies** for firms, practices, and client or industry teams. Much of the remainder is related to strategy implementation issues, such as partner compensation systems, including LawVision Group’s Survey on Partner Compensation Systems; law firm governance structures; client and leadership succession planning; profitability analyses, including the development or improvement of the basic reporting function and the training of Partners on the appropriate use of profitability reports; innovation and innovative thinking as it applies to any law firm’s work processes; law firm mergers and acquisitions, including the development of “target lists, financial analyses and modeling, merger negotiations, and integration at all levels across a combined firm; and personal consulting to Managing Partners/Law Firm Leaders on a monthly basis.

Michael also has significant experience with assisting law firms that come to LawVision Group during a crisis or future-threatening situation.

Michael strives to establish long-term relationships with each client, based on his ongoing role as a trusted confidant and counselor across all levels of the firm.

When not working on client projects, Michael is a regular blog contributor to the LawVision *INSIGHTS* blog, a frequent speaker on leadership and management topics, and a constant researcher and analyst on the ever-evolving business of law.

Prior to co-founding LawVision Group, Michael has practiced with Hildebrandt Baker Robbins (at Thomson Reuters), Hildebrandt International, and the Law Firm Services Group at PriceWaterhouseCoopers.

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