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THE CLIENT DRIVEN LAW PRACTICE[©]

1. INTRODUCTION

Ninety nine percent of all lawyers give the rest of them a bad name¹

Most of us who traveled the long a difficult road to becoming lawyers did so with the expectation that there would be a payback for all of this effort – that as legal professionals we would end up with a job that we loved, that we would be well paid and that our professional credentials would cause us to be respected as leaders in our communities.

Unfortunately, current indications are that many of us are not doing very well.

Salaries for new lawyers are mostly in the \$40-65k per year range, i.e., not much considering the level of investment in their education.² A few new lawyers are hired by large law firms at large salaries (currently \$160k +/-), but the lawyers who get these jobs are saddled with billable hours budgets or “expectations” that do not give them time to do much of anything other than work.³

The level of public esteem for lawyers is embarrassingly low. A sign hanging above the desk of a local litigator says, only half in jest, “Please don’t tell my mother I am a lawyer. She thinks that I play the piano in a bordello.”

Many small businesses and most families, including some affluent ones who can afford the best of everything, do not use lawyers. Instead, they get their legal advice from self-help books, computer programs, web sites, real estate brokers, insurance agents, title companies, financial planners, accountants, and paralegal document services – indeed, almost any source or anybody who knows anything about the law *other than* a lawyer. An advertisement for a paralegal “document service” proclaims, “No lawyers, save money!”

What is wrong with this picture? How is it possible that well-educated, accomplished attorneys do not have enough to do when the community needs legal services so badly? Why is public trust in lawyers somewhere below the trust level prevailing for telemarketers and used car salesmen? Why is it that clients complain so much about their bills when the lawyers are trying so hard?

The thesis presented here is that most of the trouble is not the result of lack of diligence or low moral character among lawyers. Rather, the problem is that lawyers do not design, market and charge for their services in ways that are responsive to the needs of their clients. In a word, they are not client driven.

So, for example, law firms are organized on the basis of legal specialties (tax, litigation, etc.) rather than client-focused groupings (e.g., property development group or banking

¹ Anonymous

² See National Association for Law Placement, *Class of 2013 Bimodal Salary Curve* (www.nalp.org 2014)

³ E.g., The Truth about the Billable Hour, http://www.law.yale.edu/studentlife/cdoadvice_truthaboutthebillablehour.htm

services group). Legal documents are prepared based on what was done last year or recommended by some committee of the bar rather than after thoughtful analysis of what the documents are supposed to accomplish for the client. Bills are based on time spent, rather than value to the client. The list goes on and on.

The idea that any successful business must be focused on the needs of its customers is hardly new, and it is now widely acknowledged that law practices are businesses which must be managed as such.⁴ What may be new or at least insufficiently discussed is that law practices, like other business enterprises, must also be focused on the needs of their clients, i.e., the customers, to be successful.

It has often been said that the legal profession “is a branch of the administration of justice and not a mere money getting trade.”⁵ Such statements are true in the sense that lawyers have ethical responsibilities to the legal system as well as to their clients. However, practically all businesses and professions have legal and ethical obligations that occasionally limit their ability to do exactly what the customer wants.⁶ The fact that lawyers have responsibilities to the legal system as well as their clients does not make them unique, and the business principles on which successful practices should be organized are not any different than the ones that apply to other businesses.

There is much good news that goes with this analysis. First, if we want to find out how to run law practices efficiently there is no need to reinvent the wheel. Business management has been around as a discipline for more than 100 years.⁷ Many of the core problems of running businesses, including so-called knowledge-based businesses, have already been extensively analyzed by business writers.⁸ Our task is just to apply this large body of knowledge to law practice, subject to appropriate profession-specific modifications.

Second, the fact that so many law practices are not well run means that there are tremendous market opportunities for those that are. If client service were already great, getting more clients would be a challenge because we would have to improve on an already superior level of performance. As it is client service is mediocre, and almost anything we do that is genuinely client-focused will be better than what is already out there. There is in fact a tremendous market for quality legal services that is open to any lawyer who is willing to organize a practice around the needs of prospective clients.

⁴ Denny, Robert W., *Managing the Firm as a Business* (American Bar Association, Law Practice Magazine, Vol. 38, No. 2 March-April 2012)

⁵ American Bar Association Canons of Professional Ethics, Canon 12

⁶ Accountants must follow generally accepted accounting principles even though doing so does not always please their clients. Banks must put tax identification numbers on their accounts and issue statements to the IRS even though this is not always in the best interests of their customers. Contractors cannot use building materials that do not comply with the building code even though customers would like them to do it to save money.

⁷ Drucker, Peter, *The Essential Drucker*, New York: Harper Collins Publishers 2001 pp. 3-13

⁸ See, for example, McFarland, Keith R., *The Breakthrough Company*, New York: Random House 2008; Drucker, Peter, *The Essential Drucker*, New York: Harper Collins Publishers 2001; Belasco, James and Ralph Stayer, *Flight of the Buffalo* New York: Warner Books 1994; Peters, Thomas and Robert Waterman, Jr., *In Search of Excellence*, New York: Warner Books 1984; Townsend, Robert, *Up the Organization*, New York: Alfred A. Knopf 1970.

As noted earlier, the consuming public relies to a very large extent on unlicensed service providers for legal advice, and the quality of the advice they are getting is at best uneven. While this situation is regrettable, it also implies that great opportunities exist for attorneys who are willing to provide better service. There is no need, at least in the author's view, to worry very much about erosion of the bar's legal monopoly on law practice. Lawyers are intelligent, dedicated people, and there is no reason why they cannot compete successfully with non-licensed providers purely on the basis of quality and client value – provided only that they are properly focused on the needs of their clients.

The potential rewards for running a quality, customer-focused practice go far beyond financial returns -- although these will be substantial. The largest return for most of us will be the personal satisfaction that goes with a job we love that is well done. How to get there will be the focus of the sections that follow.

2. CLIENT DRIVEN PRACTICE DEFINED

The business management literature tells us that every business must be focused on the needs of its customers and that the core mission of every business is to create value for the people it serves, i.e., the customers. The business manager needs to think not about what he is selling, but about what the customer is buying. As one writer noted, "What does IBM really sell? Hardware? Software? Solutions? They sell all of these and none of them. An old IBM advertisement says it all. 'At IBM, we sell a good night's sleep.'"⁹

The client driven law practice is simply one that is focused on what the clients are buying, not on what the firm is selling. For example, a client-driven personal injury practitioner focuses on the client's need to recover from his injuries – physically, emotionally and financially, not just on the legal case that may provide him or her with financial compensation. The client-focused estate planner tries to understand what the client wants for her family, not just on how the estate plan is documented or the quality of the tax planning.

Reorienting a law practice in this way sounds easy enough, but in practice requires a thorough rethinking of how the law practice is organized and operated.

At a minimum, the client driven firm needs –

- A clearly defined business mission which focuses on client problems, not internal goals, and which aims for excellence in all of its work.
- A target market of clients which is limited to only those clients where the firm is the best provider (or at least a member of the class of best providers) to solve the problems of those clients.
- Billing policies which base all charges for services on the value of those services to clients rather than cost to the firm.
- Practices and procedures for delivering legal services, such as simple documents and regular communications, which address the client's need to understand what is going on and what the firm is doing for him or her; and

⁹ Belasco, James and Ralph Stayer, *Flight of the Buffalo*, *supra* p. 106.

- Efficient support systems that allow the firm to deliver quality services at a competitive price while compensating attorneys and staff at higher levels than competing firms.

3. FIRM MISSION

If You Don't Know Where You're Going, Any Road Will Get You There. -- The Cheshire Cat, Alice In Wonderland

Every successful business must have a clear vision of what it is about, i.e., a mission. Law firms are no exception to this rule. Thus, a sausage company can define itself as “the maker of the best-tasting sausage in America.” A law firm might aspire to be “the best estate planning firm in California,” or “the best management labor law firm in the world.” Vision is critical because it allows the firm to think beyond what it is now to what it can be in the future, and provides practical guidance on how to get there.

If the firm’s vision is to be “the best personal injury firm in City X,” accepting corporate clients who are frequent defendants in personal injury suits will not be a good strategic move even if the billings will increase the firm’s income in the short run. Corporate clients will question whether it is in their best interest to remain with a firm that represents their adversaries so often, and prospective personal injury clients will see the firm as a corporate defender.

Worse, the firm’s lawyers and other staff will begin to wonder where they are going. The personal injury specialists may conclude that tort cases do not mix well with mergers and acquisitions and that their long-term interests would be better served by moving to a firm where personal injury is the dominant culture. All of this will be hard on morale and will eventually have a negative effect on the firm’s market standing and its profits.

The initial choice about what kind of legal practice to pursue tends to be made in an *ad hoc* manner rather than as the result of any rigorous analysis. A practitioner with a tax or accounting background who wants to locate in a small town might try estate planning or advising small businesses. In a larger city, the same practitioner might join a firm focused on mergers and acquisitions, because the pay and long-term opportunities might be better and the larger city would have enough large firms and public companies to support that kind of practice.

Such preliminary, intuitive judgments are usually right, as far as they go, and in fact are the way most business enterprises are started. It is important, however, to recognize that these preliminary choices will need to be refined and expanded later on to arrive at an adequate strategic vision for the firm.

What then are the components of an adequate strategic vision? There appear to be at least four, namely (i) the vision must be customer driven, (ii) it must be feasible, (iii) it must be simple and easy to communicate, and (iv) it must include excellence in everything the firm does as an explicit goal. Let us now examine these elements in more detail.

3.1 Customer Driven

This simply means that the firm’s mission must be based on a set of customer service goals and not on the internal needs of the firm. For example, a vision which says that the

firm will provide “the best debtor bankruptcy representation in the Southern District of New York” will work because it is based on customer need for that type of service.

On the other hand, goals like “to be the largest law firm in City X” or “achieve ‘AV’ ratings for every lawyer” or “earn \$1 million in profits per partner” do not cut it because they are based on the egos of the lawyers and not on the needs of the clients. Sooner or later, the clients will figure this out and go elsewhere with their business.

3.2 Feasible

An adequate vision statement needs to be aggressive in the sense that it goes beyond, perhaps far beyond, what the firm is or what it does today. However, it also needs to be based on an honest analysis of what the firm is (and is not) good at today and what competencies it can reasonably expect to acquire in the future. One methodology for this assessment is known among business planners as a SWOT analysis, i.e., an analysis of Strengths, Weaknesses, Opportunities and Threats of and to the firm as presently constituted.¹⁰

SWOT analysis of a law firm will start with an inventory and assessment of the strengths of the principal attorneys. If all of the partners are civil litigators, the obvious direction is to focus on some aspect of civil litigation. It is not that it would be impossible for these people to learn tax or corporate skills; it is just that it is more efficient to start where they are already strong.¹¹

Weaknesses of a law firm will most likely be areas in which the skills of the principal attorneys are deficient in areas where the firm needs to be strong to carry out its mission. If no one in the firm has tax or accounting background, the firm may not be best at handling matters that involve corporate fraud or other cases requiring substantial financial analysis. The firm may be able to manage this weakness by aligning itself with an accounting firm that has strong forensic skills – but its strategic planning needs to take these kinds of things into account.

Opportunities may be obvious for some firms but for others will need to be identified by more systematic analysis. If a firm wants to specialize in family law matters, it may be useful to determine how many family law filings there are in the area that the firm serves, whether the trend of these filings is up or down over the last few years, how many married couples there are in the area, what the divorce rate is for various age groups in the area, and how many other firms currently offer family law services.

¹⁰ “SWOT Analysis, is a strategic planning tool used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture. It involves specifying the objective of the business venture or project and identifying the internal and external factors that are favorable and unfavorable to achieving that objective. The technique is credited to Albert Humphrey, who led a research project at Stanford University in the 1960s and 1970s (using data from Fortune 500 companies).” From Wikipedia, the free encyclopedia.

¹¹ Peter Drucker advises us to “waste as little effort as possible on improving areas of low competence...It takes far more energy and far more work to improve from incompetence to low mediocrity than it takes to improve from first-rate performance to excellence.” Peter F. Drucker, *The Essential Drucker* (HarperCollins 2001) p. 220

Similarly, a firm that wants to focus on estate planning may need to get some numbers that are indicative of the potential of that type of practice -- how many seniors live in its service area, what is the trend of that number over the last several years, how many high-net worth households are there, and so forth.

Threats in the world of business are things, such as competition from manufacturers in low-wage countries or changes in technology, which have the potential to wipe out or severely damage the company's business. Buggy whip manufacturers undoubtedly saw, correctly, that the automobile was a major threat to the viability of their business.

The fortunate thing for lawyers generally is that there are almost no foreseeable developments which would eliminate or severely curtail the market for legal services. Lawyers have been around since at least Roman times, and because their work deals with human relationships, the need for their services is not likely to go away anytime soon.

Such threats as do exist in the market for legal services usually involve firms that are not providing services to their clients in a cost-effective way. One common example is the traditional firm that bills its corporate clients by the hour for routine legal work (e.g., leases, contracts, loan agreements, etc.) that could be done more efficiently by an in-house legal staff.

Such arrangements often persist because the company's general counsel is a former partner of the company's law firm who has a strong personal relationship with the firm and does not view reducing his former partners' billings as a priority. At some point, however, the company may hire house counsel with a more aggressive approach to controlling the company's legal costs, and when that happens the firm may lose a significant portion of its billings.

For the client driven law firm, threats of this kind are also opportunities – if in-house processing would be more efficient for certain tasks, why not tell the client that and help the client set up an in-house legal function? Apart from the firm's ethical duty, which seems clear, this will generate even more billings in the short run, and may also allow the firm to identify other company business that it should handle but currently does not – a win-win for the company and the client.

3.3 Simple

One of the main functions of a mission statement is to motivate staff and provide a compass for organic change. Like a good corporate logo, it must be easy to see, easy to understand and easy to communicate. Thus, a statement that the firm aspires to be “the leading law firm for emerging technology companies in the next millennium” is not adequate because it is not targeted and doesn't tell us much about what the firm really does or what its strengths are. What are we really doing for emerging technology firms? Civil litigation? Mergers and acquisitions? Labor problems? Intellectual property?

By contrast, a statement that the firm is (or aims to be) “the leading mergers and acquisitions firm in California specializing in technology companies” is useful because it tells us what they really do and where exactly they intend to surpass the competition.

We would expect the core expertise of this firm to lie in negotiating and documenting the terms of merger deals and in dealing with the corporate, securities and tax law issues typically involved in merger transactions. We would also expect them to render other

legal services – for example, we would expect them to have enough expertise in labor matters to identify potential labor problems in merger transactions and enough knowledge of intellectual property law to advise on IP issues in the context of merger deals. All of these services, however, would support the firm’s core activity and would not be carried on as stand-alone legal businesses.

3.4 Excellent

The goal of every well-managed firm is to be excellent at everything it does. As one business writer put it many years ago:

If you can’t do it excellently, don’t do it at all.
Because if it’s not excellent it won’t be profitable or fun,
And if you’re not in business for fun or profit, what the
Hell are you doing here?¹²

There are many other reasons why excellence is a necessity. Among these are (1) the firm cannot attract quality clients unless it is the best, and perceived as the best, at whatever services it provides, (2) the firm cannot hire and retain quality attorneys or support staff because they want a piece of excellence, too – not to be just hourly slaves for an also-ran, and (3) the firm cannot price its services at a level that compensates its lawyers and staff well unless it is, and is perceived to be, excellent. “We aren’t very good but we sure are affordable” doesn’t cut it. In short, excellence *really is* a necessity. The only issue worth discussing is how to get there.

The challenges of developing and delivering excellent, cost-effective services are no different in principle for law firms than for other knowledge-based, service businesses. As discussed below, the main strategies for achieving excellence are (1) specializing in a few things and doing those things very well, (2) referring cases that are outside the firm’s competence to other service providers (who may or may not be law firms) who are better equipped to handle them, and (3) collaborating with other service providers where the firm is able to address part, but not all of a client problem.

4. EXECUTING THE MISSION; THE KEY ROLE OF SPECIALIZATION

Cobbler, stick to thy last

Business writers have observed that “providing a product or service that solves important problems for customers is necessary, but it is not sufficient to succeed. The firm must provide that solution in a different way or better than anyone else. In business there’s no place to finish except first.”¹³

It is obvious that none of us is good at everything, and equally so that almost all of us are good at *something*. Therefore, as practice managers our task is to identify the things we are good at and concentrate on those. We also need to figure out how to sell, close, outsource or otherwise get rid of the things we are *not* good at, even at the cost of parting with some revenues from those activities in the short term.

¹² Townsend, Robert, *Up the Organization*, New York: Alfred A. Knopf 1970, p. 58

¹³ Belasco, James and Ralph Stayer, *Flight of the Buffalo*, *supra*, p.169

The successful lawyer does not need to be exceptionally bright, or have a diploma from a prestige law school or have the best political or family connections – these things, while helpful, do not guarantee success. Rather, what the lawyer needs is a single-minded determination to be excellent in some field of practice and to serve clients in that field better than anyone else.

The most powerful strategy for delivering excellent service to clients is specialization, i.e., focusing the efforts of the firm on a few problem sets that reflect the needs of prospective clients in the firm’s practice area. While the degree of specialization may vary by market, specialization to the maximum extent that the relevant market will allow is critical for a host of reasons, the most important of which are:

4.1 Knowledge Base

Limiting the practice of the firm to a few specialties allows it to maintain deeper and better knowledge bases than competitors in those areas. All else being equal, a superior knowledge base means that the firm can deliver higher quality services to clients.

4.2 Efficiency

Specialization allows research and development efforts to be saved and reused for future cases, thereby reducing the research costs for each one of those cases. It also allows work to be delegated to non-legal staff by means of templates, checklists and standardized procedures which can be used for future cases of the same general type.

4.3 Staff Training

Specialization reduces the time and expense of training new staff because new staffers only need to be trained in the firm’s specialties, not the wide range of issues arising in a general practice. This is important in the current environment where most staffers see their jobs as stepping stones to other places – to save money for law school or start a family – rather than as life careers.

4.4 Support Systems

Specialization simplifies and reduces the cost of practice management, research and other systems required to support the practice. This reduces overhead and allows quality services to be delivered to clients at competitive rates while adequately compensating the lawyers who deliver those services.

4.5 Value Billing

Specialty firms can make much greater use of fixed fee, contingent and other forms of non-hourly billing because they have deep experience in their specialty areas and are able to forecast costs more accurately than practitioners who handle many types of assignments. Clients like these arrangements because they know what their costs are up front rather than when the work is done.

4.6 Marketing

Marketing the services of a specialty firm is easier than trying to market the services of a so-called “full service” law firm. First, the firm can develop a public image that is based on what it does for clients, rather than on the number of its lawyers or their legal credentials. A message like “we defend DUI cases,” or “we represent inventors” is far

more meaningful than “we are the oldest/largest firm in county X.” The latter message falls flat because it tells us nothing about what the firm does for clients.

The specialty firm can develop business by referrals from other firms, because it is better at what it does than other firms and, just as importantly, does not compete with them in their areas of expertise. A litigation firm presented with a tax case is going to refer that case to a tax specialist who doesn’t do litigation rather than a “full service” firm if it has that option, especially since it may eventually receive referrals from the tax practitioner.

Specialization allows promotional efforts to be narrowly focused in ways that are likely to develop new business. For example, a firm that handles problems of a particular industry, e.g., real estate development, can run ads in the developers’ trade journals and organize seminars on legal issues peculiar to their industry. Criminal defense attorneys can concentrate on establishing good relationships with bail bond firms, tax lawyers can foster relationships with accountants, and so forth. Knowing exactly who the firm is targeting as clients is critical.

In closing, it should be noted that the optimum *degree* of specialization in a given practice is not an absolute but is rather a function of the market in which the practice is operated. In a small town, it may not be possible to limit a practice to one or two specialty areas because there are not enough potential clients to support such a specialized practice.

The practitioner who seeks excellence just needs to be sure that his or her efforts are focused and specialized to the maximum extent that the relevant market will allow and, at a minimum, to a greater degree than competing practitioners in the same market. The goal is to be the best provider of services of a particular type in that marketplace, and specialization is the most important strategy for getting there.

5. THE TROUBLE WITH FULL SERVICE LAW FIRMS

If the benefits of specialization are so great, what is the business logic behind so-called “full service law firms,” i.e., firms that render services in multiple practice areas? The reference here is to the solo practitioner who claims to specialize in civil litigation, family law, contracts, estate planning, real estate, elder law and bankruptcy, or the typical small-town “large” firm where one or two lawyers do civil litigation, a couple of others do family law, another one or two do corporate work and yet another does real estate or labor law.

The one advantage of such structures is that nearly any warm body that darkens the firm’s door is a potential client. However, such practices tend not to do very well over time for many reasons, among which are the following:

- The firm will have trouble distinguishing itself from competitors in its market because it lacks a clear mission other than its own survival and doesn’t do any one thing especially well. Too often, its lawyers spend their time playing catch-up ball with specialists who do the same thing all of the time.
- The firm rarely gets referrals from other firms because it competes with them. A litigation firm that refers a client for business services is not going to send that client

to another firm that also does litigation if a business specialist who doesn't do litigation is available.

- Delivery of the firm's services is significantly harder to manage than for a specialty firm because staff and system support requirements are very different for, say, civil litigation than they are for estate planning and other transaction-based practices.
- Staffing will be difficult because different areas of the firm's practice require different skill sets that take months or years to acquire.
- No lawyer at the full service firm can count on meaningful backup from the other attorneys since his or her partners do different things and are therefore not competent to substitute for their fellow attorneys in their respective practice areas.
- Each attorney in the firm has a duty of loyalty to the other partners that may conflict with his or her duty of loyalty to the client. The estate planning attorney whose client needs litigation services will refer the client to a partner down the hall even though the lawyer knows that the partner may not be the best litigator to handle the problem. The practitioner in a specialty firm on the other hand can refer the matter to any attorney who he thinks will do a superior job.

The analysis of "full service" is somewhat different for large firms because they can build and maintain multiple knowledge bases that support multiple quality practices. However, even in the case of large firms there are practical limits to how many disparate kinds of law can be efficiently practiced under the same roof.

The key determinant of this is whether the activities of any specific practice group are meaningfully related to the core mission of the firm as a whole. So, for example, if the firm's main practice is mergers and acquisitions, specialists in tax, securities and finance will feel at home there because what they do is an integral part of the mergers and acquisitions business.

On the other hand estate planning and family law specialists will have trouble understanding why being with the large firm makes sense for them because they are really not part of the firm's strategic mission. They are basically a side show, and no one wants to be a side show – they cannot realistically hope for the recognition and career opportunities available to the people who are part of the core business.

Consequently, even a large firm will find that it has problems recruiting quality new attorneys to work in areas which are not part of its core mission. Just as new business school graduates with IT backgrounds would rather work for Microsoft or Google than the systems support department of a bank, lawyers who do personal injury or family law will prefer a firm where they are part of the core culture rather than for a firm whose real focus is somewhere else.

For these reasons, lawyers who are already in large firms where they are not part of the core mission should look elsewhere for career opportunities – and the firm should assist them in this effort. Business firms generally have found that where a given activity is not

related to the core mission of the company, it is usually better to outsource the activity to another company that engages in that activity full-time.¹⁴

In conclusion, “full service” law firms do not make sense because they cannot deliver client value at a price which is competitive with specialty firms in any given area of practice. Full service firms looking for ways to survive and prosper need to figure out what things they want to be good at and what clients they want to serve – and get rid of everything else.

6. KNOWLEDGE BASE ISSUES

Superior representation requires that the firm must view clients holistically, i.e., as people with problems to solve and not just as legal cases.¹⁵

So, for example, a personal injury client must be viewed as a person who needs to recover from a bad event – not only financially, but physically, mentally and spiritually as well. The client of a criminal defense firm needs to be seen not just as someone who needs help defending the charges against him, but as a person who needs help with other issues that need to be dealt with to avoid other problems of the same kind down the road.

Business clients typically seek advice because they are structuring important relationships with other people – partners, customers, suppliers and so forth. The advice given must be based not only on knowledge of contract law but on a careful assessment of the impact of any proposed agreements on these relationships. A long-winded contract that implies that the client distrusts the other party may be counter-productive from the client’s point of view even though perfectly adequate as a legal document.

In like fashion, estate planning clients need to be viewed as people who need to organize their affairs in ways that will unite rather than divide their families when they die. A trust that puts an elder child in charge of the other children’s money for an extended period of time may not achieve this even though there is nothing legally wrong with the document.

One consequence of defining the firm’s mission in this holistic, client-based way is that the knowledge base required to be effective goes beyond, and usually far beyond the legal knowledge required to handle the client’s legal case.

A client who has been injured in a car accident may need help with legal proceedings to recover money damages but also typically needs various other kinds of help in order to recover – doctors, physical therapists, vocational rehab specialists and psychologists, to name a few.

While the personal injury practitioner cannot provide all of the services clients need directly, he or she must have an adequate general knowledge of the kinds of services

¹⁴ The author’s *alma mater* Citibank once had various support departments, e.g., a motor pool, premises department and an IT department, which were eventually outsourced because they were inefficient and hard to staff. Bankers were good at making loans but did not know much about how to recruit and train armored car drivers. These functions were better left to a company that ran motor pools as its core business.

¹⁵ The Merriam-Webster dictionary defines “holistic” as “relating to or concerned with wholes or with complete systems rather than with the analysis of, treatment of, or dissection into parts.”

accident victims typically need, and should be capable of making an assessment of the client's needs and directing him or her to other quality providers for the services required to address those needs.

Knowledge of the law of torts and the rules of evidence, while essential for prosecuting the legal case, is obviously insufficient to address the client's whole problem – a trainload of other knowledge is required to be effective, and consequently the size of the knowledge base needed to be an excellent personal injury practitioner is very large.

According to a prominent personal injury practitioner recently interviewed by the author, the knowledge base required of a top-drawer practitioner in that area includes knowledge of all of the following:

- Substantive tort law;
- Procedural rules applicable to the preparation and trial of personal injury matters;
- The rules of evidence;
- Legal rules and procedures relating to subrogation and insurance claims;
- Rules and laws relating to the rights of third party lien claimants, such as insurers, to some of the settlement proceeds;¹⁶
- The local medical service delivery system, including knowledge of what providers will deliver services on a lien basis;
- Laws governing automobile and general liability insurance;
- Experience in negotiating with professional litigants, i.e., insurance companies;
- Detailed personal knowledge of the judges who hear personal injury matters as well as strong relationships with their clerks and legal assistants (knowing the judge as well as the law is critical).
- Knowledge of the art of negotiation, particularly because so many personal injury cases currently end in mediated settlements. The lawyer in his role as negotiator must have a solid understanding of the case from the standpoint of the insurance company and knowledge of the factors which will extract a good settlement from the company.

In addition to an extensive knowledge base, an effective practitioner needs to have a long list of resources which can be deployed to assist clients. These include, by way of example, doctors who will treat the client on a lien basis, psychotherapists, rehab specialists and others who can assist with the client's recovery. Also essential is a roster of expert witnesses who can testify in personal injury cases – accident reconstruction specialists, vocational rehab specialists, diagnosticians and economists, among others.

Similar observations could be made with respect to many other areas of practice – family law, estate planning, business law and criminal defense, to name a few. In each of these fields, knowledge of the applicable law and procedure is only a part and perhaps not the largest part of the knowledge base required to deliver excellent service.

¹⁶ Many types of liens are routinely filed against the potential recovery in a personal injury case including liens for child support, medical services rendered and for other services rendered, particularly by government agencies. The practitioner may be personally liable for payment of the claims represented by these liens unless timely notices are given to the persons or entities entitled to file.

To take one further example, consider the knowledge and resource bases that are required to give top-drawer advice to closely held businesses. The practitioner's legal knowledge must include laws and rules relating to all kinds of business entities – corporations, LLCs, partnerships, the rights of the owners versus one another and as against third parties, and how local laws apply to business entities organized in other jurisdictions. Since clients in this area are closely held, the practitioner should know how to design and document shareholder agreements and prepare estate plans which provide for the orderly transfer and administration of business interests.

The practitioner must also be familiar with laws and regulations relating to the registration and sale of securities and must have enough knowledge of accounting to read and evaluate financial statements. For many businesses, at least basic knowledge is required of laws relating to intellectual property rights – trademarks, copyrights, patents, and trade secrets, as well as laws relating to the ownership and licensing of such rights.

Likewise, the practitioner must have a working knowledge of tax laws applicable to business entities and their owners. A competent practitioner should be able to advise, for example, whether a corporation, LLC, partnership or sole proprietorship is the preferable form of ownership for any given business.

It is helpful for clients in specific industries – contracting or commercial agriculture, for example, for the practitioner to be streetwise about the client's business – to know who the key players in the business are, and to join or associate with trade groups that can educate the lawyer about customs and practices in those industries.

A savvy legal advisor also needs to be familiar with the psychology of business relationships – to know, for instance, that trust is crucial to business partnerships, and that the absence of trust usually means that the only solution to the client's problem is to terminate the relationship. The practitioner who knows this will serve his clients well by not spending much time and money trying to save relationships that are irreparably damaged.

Finally, and on top of all of the above, the effective business practitioner must have a long resource list of people whose specialized skills may be needed by business clients – accountants, financial advisors, real estate brokers, bankers who do SBA loans, insurance specialists and appraisers, among others.

Because such knowledge bases and resource lists require substantial time and effort to develop and maintain, the client driven law practice must necessarily specialize, i.e., limit its services to a few areas where it can maintain the deep, extensive knowledge bases that excellent service requires.

7. EFFICIENCY MANAGING THE COST OF SERVICE DELIVERY

As discussed in a later section, charges for the services of the client driven law firm should be based as far as possible on the value of those services to the client rather than the firm's costs. Since costs are not, or at least may not, be passed on to clients, cost savings are important because every dollar of cost savings flows to the firm's bottom line.

The cost of running a law practice, like any other service business, is mainly a function of headcount and of the compensation paid to lawyers and support staff. Salaries and payroll taxes are typically the biggest expense items, but many other expenses – rent, computers, software licenses, errors and omissions insurance, to name a few, are also a function of how many people are needed to produce the firm’s services. Of course, the cost of the services of each individual will vary depending on the level at which that individual is paid – much more for highly trained lawyers and significantly less for entry-level support staff.

Since salaries and other people-related expenses constitute most of the expense base, effective strategies to control expenses must (1) reduce the amount of time needed to produce any given service, and (2) shift as much of the effort as possible from highly compensated lawyers to less expensive support staff. Some of these strategies are discussed below.

Be the Right Size

There is a tendency in all things American to assume that size matters, and that all else being equal bigger is better than smaller.¹⁷ This however is not true of service firms, including law firms.¹⁸

There is in fact substantial evidence that the costs of providing legal services increase with the size of the firm, and that costs go up with size of firm not only in the aggregate but *per lawyer*.¹⁹ This happens because as the number of staff increases arithmetically, the number of possible interactions between them increases geometrically. The larger the firm is, the more complex and expensive information systems are required to keep everyone “in the loop.”

In a large organization, decision-making must be as decentralized as possible because the best information for making decisions is generally available to lower-level people who are closest to the customers. On the other hand, the activities and decisions of these people need to be reported to higher levels of management so that the efforts of the whole firm can be adequately coordinated. For these reasons, information management becomes increasingly complex and expensive as the size of the organization increases.

In industrial firms, the collateral costs of size (information management and coordination) are offset to some extent by production economies, e.g., the ability to spread the costs of making a stamping die across a greater number of units, or the ability to spread prime time TV advertising costs over a greater number of barrels of beer. In the legal services business, however, there do not appear to be any significant economies of

¹⁷ See Blair, John M., *The Relation Size and Efficiency of Business*, *The Review of Economics and Statistics*, Vol. 24, No. 3 (August 1942), pp. 125-135, arguing that big businesses are more efficient than smaller ones. However, the article is concerned only with industrial and manufacturing companies (cement, iron ore, petroleum, agricultural commodities, etc.), not service businesses.

¹⁸ Bönisch, Haug, Illy and Schreier, “Municipality Size and Efficiency of Local Public Services: Does Size Matter?,” Halle Institute for Economic Research, IWH Discussion Papers, November 2011 No. 18, concluding generally that municipal mergers do not increase the efficiency of delivery of municipal services.

¹⁹ See, e.g., 2012 Survey of Law Firm Economics, ALM Legal Intelligence, p. 5.

scale, at least at this time.²⁰ With current technology, even the smallest firms can afford the best computers and the best libraries, and they pay no more for them than large firms.

The lesson of the above is that an efficient firm should be only the size that it needs to be to serve the clients that compose its target market.²¹ If the firm's practice is, for example, defense of large antitrust cases or multi-state securities practice, the optimum size may be 100 lawyers or more, plus support staff because that may be the minimum number of people needed to do the job. On the other hand, a firm concentrating on auto accident litigation or estate planning is unlikely to get more efficient by growing beyond the 2-10 lawyer range.²²

Similarly, practices with small staffing requirements (e.g., family law or estate planning) will be most efficient with less than 10 lawyers, and should not be combined with practices that have large staffing requirements. The reason is simply that the large headcount will drive up costs for the family lawyers and estate planners without any corresponding benefit to their practices.²³

In summary, the size of the firm should be based on the requirements of its core practices and not on the size of the egos of the senior partners. Here as elsewhere, arrogance can lead to death, or at least to unnecessary financial pain.

Avoid Expensive Learning Curves

Practically every business that produces services, including every law firm, has a "learning curve," which represents in a graphic way how the cost of producing any given service declines with experience. A typical curve looks like this:

²⁰ This was not always the case. In the 1960's and 1970's when computers were big, expensive and hard to maintain, only big firms could afford them. Now, however, the average smart phone has more computing power than the mainframes of that era. The same thing could be said of libraries, which were once an advantage that big firms had over the competition – now, everything is on line and the finest library resources are available even to solo and small practices at reasonable cost.

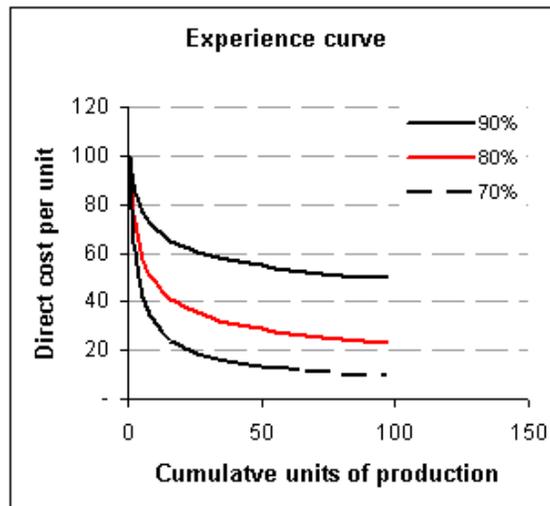
²¹ The noted business management theorist Peter Drucker writes:

The question of the right size for a given task or a given organization will become a central challenge [for information-based businesses]. Greater performance in a mechanical system is obtained by scaling up. Greater power means greater output: bigger is better. But this does not hold for biological systems. There, size follows function.

It would be counterproductive for the cockroach to be big, and equally counterproductive for the elephant to be small. As biologists are fond of saying, the rat knows everything it needs to be successful as a rat. Whether the rat is more intelligent than the human being is a stupid question; in what it takes to be successful as a rat, the rat is way ahead of any other animal, including the human being. In an information-based society, bigness becomes a "function" and a dependent, rather than an independent, variable. *In fact, the characteristics of information imply that the smallest effective size will be best. "Bigger" will be better" only if the task cannot be done otherwise.* P. Drucker, *The Essential Drucker* (HarperCollins Publishers, © 2001), p. 341 [emphasis added].

²² Among litigation firms, there is a "rule of 5," which states that five lawyers is the optimum size. Bigger firms need layers of bureaucracy to coordinate effectively, while smaller ones lack the resources to take on big cases.

²³ Except, perhaps, for client referrals from other practice groups within the firm. Such referrals even if they happen may involve some ethical challenges if, as is likely, in-house practitioners in these areas charge more for services that the client could get somewhere else for less.



Generally speaking, the curve is steep initially and then levels out as more and more units are produced until at some point further learning ceases to cut production cost. At that point, the curve approaches being a flat line.²⁴

The takeaway from this is that producing anything which is completely new is likely to be very expensive, because new services will incur costs at the top of the curve. In the above illustration, the cost of producing the first unit (of product, legal service or whatever) will be \$100x per unit whereas that cost will fall 50-90% when production approaches 100 units depending on the exact shape of the curve.

In addition to being expensive, new services like new products are likely to experience quality problems until they have been produced for a substantial period of time. Even the most diligent research by a neophyte lawyer may not produce authorities or industry practice known to long-time practitioners in the area which will significantly affect the quality of the lawyer's advice.

Preparation of a contract document for a type of matter that the firm has not previously handled may require substantial expenditures of firm resources, including research on legal issues as well as other matters, e.g., industry custom and practice, and, not infrequently, consultation with specialists in the area. Similarly, litigation involving an unfamiliar subject may require time-consuming, custom-designed pleadings and discovery documents (interrogatories, etc.) instead of the tried and true ones maintained as templates in the firm's litigation library.

The key to avoiding expensive and risky learning curves is to specialize the practice, i.e., limit new cases at least for the most part to cases that are similar to the ones the firm has

²⁴ As management accountant Santosh Puthran puts it, "Learning Curve Theory is concerned with the idea that when a new job, process or activity commences for the first time it is likely that the workforce involved will not achieve maximum efficiency immediately. Repetition of the task is likely to make the people more confident and knowledgeable and will eventually result in a more efficient and rapid operation. Eventually the learning process will stop after continually repeating the job. As a consequence the time to complete a task will initially decline and then stabilize once efficient working is achieved."

handled before.

This is not to say that a firm should never take on matters of a type it has not handled before. What it does say is that decisions to expand the firm's specialties should be very carefully considered in light of the costs and risks of accepting new types of matters. Usually, such decisions will make sense only as part of a long-term strategy which contemplates that the firm will accept additional matters of the same type and will bank its losses on the first few matters against profits on future matters. The reality is that any genuinely new matter is likely (a) to be very unprofitable, and (b) involve significantly higher malpractice risks than matters within the established scope of the firm's practice.²⁵

Bank Research and Development Costs

Most of us have been told at one time or another that clients do not want to pay for our education -- "you should have learned that in law school" is frequently heard. However, the reality is that every assignment involves *some* learning because each case is unique. The key is to reduce the amount of learning required to complete each new assignment by using what has already been learned about the work from prior assignments. This is obviously easiest to do in specialized practices, since by definition they handle many assignments of the same general type and can apply past learning to new cases.

A practice that does business law will have templates for commonly used documents like leases, contracts and shareholder agreements. Drafting a new one requires much less effort than it would otherwise because these templates already have standardized, pre-researched clauses dealing with many of the most common issues. For example, the contract template will have one or more sections dealing with dispute resolution -- arbitration, mediation, court jurisdiction, or whatever -- that have been extensively reviewed before and which do not need to be re-reviewed in each new case. Similarly, pleadings for a debt collection matter can largely be based on templates developed from prior cases with client and case-specific modifications.

If the firm's practice management system has a document merge function (more about this below), these templates can be called up by a staffer and populated with client-specific information, such as names and addresses, and then passed on to the attorney for review. The attorney then need only review the client-specific portions of the document because the rest of it has been vetted and researched before.

Another important tool for banking research and development costs is the checklist -- what exactly do we need to know to write a lease, file a personal injury case or organize an LLC? Having been there and done that, the firm can review files on prior cases and make a list of every item of information that was needed to do that task in prior cases. Systematic use of checklists makes sure that all of the bases are covered, improves the quality and accuracy of the firm's output and also allows much of the work to be delegated to support staff.

²⁵ At the top of the learning curve, it is very unlikely that time spent on the matter will be fully billed, and if it is the client will complain about the bill. In fact, what often happens is that the firm takes a significant haircut on its time and still gets complaints about the bill. This is a no-win situation unless the firm can bank the effort to recover its losses on future matters of the same type.

Collaborate with Others

One consequence of specialization is that there will be many matters presented to the firm which are either partially or completely outside the scope of the firm's expertise. It follows that a well-structured and well-focused firm will refer matters not within its scope of practice to others, and will associate other firms on matters where it has some, but not all, of the required capabilities.

While referrals might seem to involve loss of business to other firms, a disciplined referral process may actually increase business and billings over time. In the first place, sending a prospective client somewhere else or enlisting other resources to help him tells him (or her) much more effectively than any advertisement could do that the firm *cares about the client* and makes its decisions in the client's best interest. The next time that the client has a problem, he or she will come back, or even if this does not happen will remember that the lawyer was there for them and tell their friends.

Second, and just as importantly, referrals build relationships with other firms which, if they are appropriately educated on the firm's capabilities, will generate referrals back to the firm. The surest way to earn the respect of other firms is to let them know that the firm is good at what it does but also respects its boundaries and does not take on matters that it is not clearly qualified to handle.

Structure and Delegate Routine Tasks

A careful review of the services typically performed by a law office will usually conclude that most of the work is clerical – scheduling appointments, collecting information, opening files, etc. which requires structure and organization but not the high-level training of an attorney. Consider, for example, the following task list which identifies the specific tasks involved in preparing a client estate plan:

Schedule appointment	Receptionist
Collect client/family information	Receptionist
Send out pre-meeting questionnaire	Receptionist
Interview client	Lawyer
Prepare intake memo (covering plan design, fees, delivery schedule, etc.)	Lawyer
Prepare initial drafts of documents	Legal Assistant
Review draft documents	Lawyer
Meeting to execute and notarize documents	Legal Assistant
Archive documents and close file	Legal Assistant

The lawyer's time in this well-structured process is focused on only those tasks – client interview, plan design and pricing – that a lawyer needs to do. The rest of it is collecting information and other routine work which well-trained albeit less expensive staffers can handle.

Note well that the degree to which tasks can be structured and delegated to support staff depends to a large extent on how much experience the firm has with prior matters of the same type. In the above example, it is assumed that the firm already has a pre-meeting questionnaire which asks for most of the information required to prepare the estate plan, and that all that needs to be done here is personalize the questionnaire with the new client's information and send it out.

It is also assumed that the firm has pre-formatted trusts and other estate planning documents which can be called up by staff, populated with client-specific information, redlined with any special provisions and only then be sent to the lawyer for review.

In the author's practice, routinely used documents (letters, memos, trusts, wills, etc.) are set up as MS Word documents with embedded fields created within the Goldmine® contact management program. Staffers first enter client information in the various fields and then pull up the relevant template, which is populated with all of the information entered in the fields.

In addition to being time-efficient this improves quality – there is no way that the draftsperson can get the client's name right in the will and wrong in the trust because both documents are populated with information from the same source. As one staffer put it, “we may be 100% right or 100% wrong, but we will never be 50% right.”

Obviously, figuring out what information to ask for and drafting the trust document would be lawyer tasks if the firm had not already developed forms and templates to deal with these matters in prior cases.

Focus Library Resources

Most legal practice areas have specialized reference libraries that make sense for practitioners who use them daily, but are not cost-justified if they are only used a couple of times per year. One example of this would be VerdictSearch®, an online database of verdicts which is extremely useful for litigators but not relevant most of the time to transaction practices.

Most tax lawyers subscribe to CCH Intelliconnect®, an online service which contains not only the tax code and regulations but most court cases involving tax issues and a huge collection of IRS forms and materials. Many tax practitioners also subscribe to other specialized tax resources, all at additional cost.

To a top-drawer practitioner such specialized resources are critical, since the practitioner cannot give the best advice without access to the latest and best information. However, these resources are not cheap – Intelliconnect currently costs nearly \$400 per month for a small firm, and other similar resources also have significant price tags.

The takeaway is that every firm can afford top-of-the-line resources in one or two areas, but not in all or even a large number of areas. Library resources will always be limited and must be planned to support the firm's specialties. Picking a few targets and sticking with them is crucial.

Manage Information Efficiently

Much of the time required to produce and deliver legal services is spent looking for the information – names, addresses and telephone numbers of clients, vendors, government

agencies, information on relationships between clients, other professionals and actual or potential adversaries, and legal information, like statutes and reported court decisions.

The keys to eliminating or reducing time spent searching for information are (1) store all information in such a way that, once it is obtained, it is easily retrievable and never has to be looked for again, and (2) store all information on a common system/platform that is shared by all lawyers and support staff.²⁶

Practice Management Systems

The first component of an efficient system for managing information is a practice management system, either server or cloud-based, which is accessible to all staff and which contains a database with fields for items of information most commonly used.²⁷ There are numerous systems of this kind, some of which are legal-industry specific and some of which are not.²⁸ Practically all of them can be customized to fit the needs of different practices.²⁹

The system should contain basic information about clients such as names, addresses, telephone numbers and email addresses. The system should also track data that is useful for marketing purposes, e.g., who referred the client or the last time there was a contact.

The system may also track other information, the exact nature of which will vary with the type of practice. For example, a transaction practice would want to identify the client's accountant, financial advisors and other professional relationships. A litigation practice would want to track opposing parties in past or pending litigation as well as who represented them and who else may be connected with them in some way, e.g., family members or witnesses.

The system should include a networked calendar which is also available to all lawyers and staff at all times so that their efforts can be efficiently coordinated. For litigation practices, the system should include a rule-based calendar which automatically calendars events which are related by court rules to other events, e.g., trial dates and discovery deadlines.³⁰ Transaction practices can manage with simpler calendar systems, such as those included in the Outlook[®], Act![®] and Goldmine[®] programs.

²⁶ Excluding only sensitive items to which the firm intentionally restricts access for policy reasons.

²⁷ There is a clear trend towards the use of so-called cloud-based systems, which run on internet servers and usually involve a monthly, per-user license fee. However, many PM systems also run on local servers and are accessible to users via a local area network.

The good news about cloud-based systems is that they do not need to be maintained by the firm – all updates and maintenance are included in the fees. The bad news is that there are monthly fees and that they are only as reliable as the firm's internet connection.

²⁸ Legal industry-specific software programs include Abacus Law[®], Clio[®], Amicus Attorney[®], My Case[®], Needles[®] and Legal Files[®], among others. The Law Technology Resource Center of the American Bar Association publishes charts which list and compare various systems. See ltrc@americanbar.org for further listings. Generic contact managers which do many of the same things include Goldmine[®] and Salesforce[®], among others.

²⁹ Most systems feature databases which come with some built-in fields but also allow users to create custom fields to store whatever items of information are tracked by that user.

³⁰ It has been reported that over one-third of all malpractice claims arise from calendaring errors. See Scott, Joseph C., *Avoiding Common Malpractice Risks Associated With Legal Calendaring*, Technology e-Report, ABA Solo, Small Firm and General Practice Division, Vol. 10, No. 2 (July 2011). Current examples of

The practice management system must be set up within the framework of firm policies that mandate storing information in places where it can easily be found by any authorized person in the firm. The use of Rolodexes or local hard drives to store anything tracked by the system should be prohibited.

Likewise, data fields should be set up wherever possible with standard inputs from a drop-down menu, so that users are required to enter data in a consistent way. For example, a field describing the type of a contact record (client, vendor, other professional, etc.) should give the user a list of choices but not allow free-form text entries which could be difficult to search later on.

The practice management system should also allow users to create links between client records and documents relating to those clients – including third-party and other documents that were not generated by the system. When this is implemented, anyone using the system record of John Jones can push one button and be immediately placed in the file directory containing all records pertaining to John Jones.

Finally, the practice management system should include a document assembly function which allows users to create templates with embedded fields which then can be populated with client-specific information (names, addresses, telephone numbers, etc.) by pushing a couple of buttons. Practically all systems currently on the market include this feature.

Electronic Records

Another important strategy for reducing costs is to maintain all records in electronic, rather than paper, form. Maintaining all records in electronic form reduces costs in a variety of ways, including the following:

1. Costs of setting up paper records, i.e., purchasing filing envelopes, typing file labels, organizing and hole-punching documents, etc. are eliminated, except for whatever time and effort are required to run the documents through a scanner. Even this cost is not incurred with respect to documents generated electronically by the firm or received from other sources in electronic form.
2. Costs of transporting and storing documents are largely eliminated, including costs of purchasing and maintaining file cabinets, staff time spent hauling files to and from central files (or worse yet, an off-site storage facility), and lawyer time waiting for the documents to arrive from some other location.
3. Time required to access files is reduced because, in an electronic networked system, all files are available to all lawyers and staff all of the time on their desktops. Note that this is not possible with paper records because a paper file can only handle one user at a time. Access time will be reduced further if, as discussed above, the firm has a practice management system that will allow all client documents to be linked to the client's system record.
4. Time and effort needed to destroy old records and to maintain and update document destruction schedules is eliminated since the documents never need to

such systems are LSSe64[®], Legal Software Systems, Inc.; Deadlines On Demand,[®] Aderant Holdings, Inc. An extensive listing of vendors for this type of software can be found at www.capterra.com.

be destroyed. At most, all that needs to be done is to transfer them to a different directory or disk drive in order to keep current files to a manageable size.³¹

Note well that maintaining files in electronic form does not mean that the office is completely “paperless.” Files can be printed and maintained as needed where a paper file is needed for quick reference or to take to court where paper documents are required. Paper records have their uses and will continue to exist – just not as primary records.

Electronic records storage requires either a local area network or cloud-based system where all lawyers and staff have access to the records at all times. Also, efficient electronic record storage requires office policies that prescribe how documents are to be labeled and where they are to be filed, and also what sub-directories the file tree for each client should contain.

For example, these policies could provide that each client has a master file with the client’s name (or number) with standard sub-directories, e.g., Correspondence, Notes and Memos, Client Documents, Court Documents, etc. The policies will also prescribe standard labels – L for letters, M for memos, E for emails, and so forth and may also require date and subject codes.

What is important is not so much the specifics of the storage rules but that there *is* a set of rules that is understood and followed by all lawyers and all staff. Their incentive for following the rules is that all records are available to all of them immediately, and whatever records are needed at any given time can be retrieved without the necessity of a time-consuming search.

Eliminate Dictation and Transcription Costs

For many years the state of voice recognition software has been such that it took more time to correct its mistakes than it would have to dictate memos and letters and have them transcribed by a secretary.³² Now, however, the state of the art with respect to this software has progressed to the point that it is extremely accurate – and becomes more so with repeated use since the program is structured to learn from its mistakes.³³

As with any new way of doing things, there will be a learning curve that the lawyer must climb when switching to this technology and away from a dictating machine. Also, the technology requires protocols for document production that differ somewhat from the old routine. Since documents are generated by a single person, a process needs to be put in place whereby the output is proofread by at least one other person to insure quality.

Nevertheless, the time savings that voice recognition software can produce once the learning curve has been conquered are significant enough to more than justify the time

³¹ The cost of disk space required to store electronic documents is minimal and for all practical purposes disk space is unlimited. Disks capable of storing four terabytes of information sell for less than \$250 as of this writing. Each terabyte equals roughly 220 million pages of documents assuming an average of 5,000 characters per page. In this environment record destruction is unwarranted because the cost of doing it (apart from the obvious risk) is not justified by the cost of purchasing additional disk space.

³² The old technology maxim which states “be leading edge, not bleeding edge” applied here.

³³ As of this writing, the most widely used voice recognition software is the Dragon Naturally Speaking program marketed by Nuance Communications. See Nuance.com

and expense involved in purchasing the software and related hardware devices and changing document production protocols.

Staff Management

As noted earlier, staff salaries and other staff-related expenses constitute the bulk of the expense base of most service firms, including just about any law firm. In view of this the firm must deal with staff in ways that produce the most value added from their work at the least possible cost.

The first strategy relating to staff is to have as few of them as possible since, all else being equal, expenses rise with headcount. The various strategies discussed above relating to efficiency work because they reduce staff time needed to produce legal services and therefore reduce the headcount needed to handle any given volume of business.

Nevertheless, good staffers who are effectively utilized should increase, not decrease earnings for the firm since they can handle many routine tasks which would otherwise have to be performed by lawyers. The management problem is how to get the most out of these people in return for the money they are paid. Here are some suggestions:

1. Hire for basics, not credentials. The basic traits and skills that effective staffers must have the day they are hired are relatively simple – honesty, attention to detail, decent command of English, basic computer skills, and ability to relate effectively to clients and co-workers. Most of the rest of what they will need to know to do their jobs they will learn on the job anyway, so it does not usually make sense to pay big premiums for advanced degrees or certificates. If they need certificates for certain work, e.g., to be billed in court-supervised matters, it is easier to have them earn the certificate after employment than to try to reform a person who already has a certificate but is hard to work with or missing any of the other basics.

2. Make staff part of the mission. There is a huge difference between the output of people who are motivated and who like their jobs and people who aren't and don't. Day one orientation for new staff should include not only operational matters (pay schedule, work hours, vacation policy, etc.) but should include a meaningful briefing on what the firm does for its clients.

Staff should be told, among other things, that (1) the firm strives for excellence at what it does and counts on staff to be part of and deliver that excellence, (2) staff members are employed by the firm but they work for the clients. Management's job is to coach them to do that better, not to teach them how to curry favor with supervisors, (3) there are no firm sacred cows – if they see something that does not make sense in terms of client service or firm efficiency, then they should point that out because improving the way the office does things is part of their job.³⁴ (4) Staffers should not be criticized for mistakes -

³⁴ Where errors and problems arise, staff should be trained not just to fix the problem but to think about and hopefully fix the *process* which produced the problem in the first place. For example, where reviews indicate that cross-references in long documents are often wrong, the response should be to use fields in MS Word for all such references so that they are automatically updated to reflect insertions of new material. This approach not only fixes the current problem but dramatically reduces the likelihood that similar problems will arise in future cases.

- everyone makes them -- but they should be asked to learn from them and share that with their co-workers so that the office does a better job for the clients going forward.

3. Be Inclusive. If the firm has any staff policies which start with “We only . . . (hire certified paralegals, full-timers, N years’ experience, etc.),” these should be discarded as soon as possible. Some of the best staff people may come from occupations that are customer-focused (e.g., retail sales) but which have nothing to do with law practice. Given the right training, these people will bring a customer focus to the practice which will be at least as valuable and important in many cases as prior legal experience.³⁵

Also, many talented potential staffers have disabilities or family constraints, e.g., young children, which mean that they can only work a short schedule or only on certain days of the week. In a world where good staffers are hard to find and even harder to keep, these people may be very good support staff and should be considered on their merits rather than rejected on the basis of some arbitrary exclusionary policy.

4. Recruit from within. The best way to recruit new staff is to enlist current staff to find them, either via hiring bounties or other rewards. These people have a vested interest in finding people they can work with and who have the right attitudes and skills. Employment agencies and Craigslist should be used only when all else fails.

5. Be slightly overstaffed. Although it is generally advisable to control headcount, understaffing is not ideal, and in fact having as much as one extra body is usually a good idea. Why? First, because staffers tend to perform better with a manageable workload than under stress of too much to do. Second, overtime is expensive for the firm, and may impinge on staff commitments to their families. If it happens a lot, it will be bad for morale. Third, because people under the stress of too much work will solve problems with one-time fixes rather than thinking about changing the process that produced the problem in the first place.³⁶ Fourth, having an extra person makes it easier to deal with unexpected staff absences or problems with new hires. Taken together, these benefits will almost always cover the cost of an extra person.

6. Pay well, mostly in cash. If the firm has achieved the efficiencies discussed above and has a manageable headcount, the people it does have should be well paid, preferably somewhat more than they would be paid by competing firms. If they are to be part of excellence, then their contribution to that excellence needs to be reflected in their compensation.

Most compensation should be in cash, some in the form of salaries and a significant portion as bonuses that are paid for good performance. Staff should also enjoy liberal vacation allowances/personal time off and be encouraged to attend firm-paid continuing education classes that enhance their professional skills.

Elaborate and non-portable fringe benefits such as pension plans and group health insurance plans are less attractive because their costs are less visible to staff and also

³⁵ Well, not all cases. For firms that do extensive court work, it may be valuable to have people who know the court rules by heart as well as the clerks of the various departments that hear the firm’s cases.

³⁶ See note 34 above.

harder to control over time.³⁷ Worse, such benefit plans often create incentives for staff to stay employed when, all else being equal, they would rather move on. A firm that strives for excellence does not need staffers who are staying just to protect their health insurance.

7. Do not allow destructive office politics. One of the biggest time wasters in any office is staffers complaining about each other to the owners/managers of the firm. Effective management can eliminate most of this by insisting that staffers work out any problems directly with each other – with management assistance if needed but never by telling tales about other staffers to the person in the corner office without the others being present.

This is particularly important in the client driven firm because the efforts of staff need to be focused on serving clients, not on jousting with one other. The best client service requires that all staff and all lawyers be pulling on the same oar, and any staffer who cannot accept this should be shown the door as soon as possible.

8. MARKETING

“True marketing starts out the way Sears starts out – with the customer. . . It does not ask, What do we want to sell? It asks, What does the customer want to buy?”³⁸

CUSTOMER FOCUS

“[T]rying to convince a market segment [i.e., a group of clients or customers] to buy something they don’t want is extremely expensive and seldom successful.³⁹ On the other hand, people don’t need to be sold on something they already want. As business writer Peter Drucker puts it, “. . . the aim of marketing is to make selling superfluous.”⁴⁰

As applied to law firms, this simply means that the first steps towards effective marketing are to figure out what prospective clients want and fashion service offerings that meet their needs. If the services offered are what they really want, there will be no need to sell those services – notifying prospective clients that they are available will be sufficient.

Lawyers traditionally market themselves in terms of professional credentials, i.e., what they can do, not what their clients need. Structuring a practice around client needs rather than lawyer skills will often involve some fundamental attitude shifts.

For example, we all know someone who bills herself a “real estate lawyer.” She was once the chair of the real property section of the bar and holds a specialty certificate in that field. That designation tells us what field of law she practices (we all remember “real property” from law school), but is not very meaningful to clients because it does not say what she does for them. “Real estate law” could mean anything from advising shopping center developers to litigating property purchase disputes to stopping a barking dog from disturbing the neighbors.

³⁷ The cost of group health plans has a way of going up dramatically from one year to the next, putting the firm in the position of either granting a raise to everybody (which business conditions may or may not warrant), or cutting benefits – a losing situation either way. A better approach is usually to provide reimbursement for health insurance costs.

³⁸ Peter F. Drucker, *The Essential Drucker* (New York: HarperCollins Publishers Inc. 2001) p. 21

³⁹ *Wikipedia, the free encyclopedia*, <http://en.wikipedia.org/wiki/Marketing>

⁴⁰ *Ibid.*

If what the lawyer really does is advise developers, then she should market herself as a “property development attorney” and should center her practice and her knowledge base on the needs of property developers.

For example, the property development attorney should offer most of the services that a developer will need to do a shopping center, including land use approvals, landlord-tenant, financing and so forth. That lawyer should know as much as can be known about local zoning and land use regulations, should know all members of the local planning commission and should know at least a few good civil engineers and professional planners on a first-name basis.

The civil litigator who handles real property lawsuits needs to know much less in these areas, but must be up to speed on remedies available in real property actions as well as the procedural rules that apply in the local court and the attitudes and practices of the local judges.

In either case, the required knowledge base and the scope of services offered should be based on the needs of the client rather than on some arbitrarily defined area of law. Once this is done, selling really *will* become superfluous because clients will be delighted to find an attorney who has thought about their needs ahead of time and has assembled appropriate resources to service those needs. Ideally, all of the selling that may be needed from that point will be to publicize the lawyer’s services in a manner appropriate for that kind of practice.

To take another example, what client wants the services of a “contract lawyer?” We all had contracts in law school, but that area of law does not relate to any identifiable set of client problems. We need to define ourselves instead in terms of the problems of the clients we are trying to serve. We can, for example, define ourselves as commercial credit specialists, or IP licensing specialists, or leasing experts serving property management firms – whatever it is, we must identify ourselves with reference to client needs and not with reference to our professional credentials.

COMMUNICATING WITH PROSPECTIVE CLIENTS

Let us now suppose that we have thought through the needs of our prospective clients and have designed our services to meet their needs. Most of our marketing is already done, because we have really thought about the needs of our clients and are confident that they will want to purchase our services.

Our next task is to get the word out there about what we do – to communicate with prospective clients about what we can do for them in a way that is appropriate for a particular practice. It is to that task that we now turn.

Broadly speaking, there are two kinds of communications efforts, namely, (1) relationship marketing and (2) direct marketing.

(1) Relationship Marketing

Purchasers of legal services ordinarily have little in the way of hard information to judge the competence or effectiveness of their lawyers. Legal services are not branded or standardized, and current specialization programs are not rigorous enough to distinguish

outstanding from merely adequate performers.^{41,42} Further, consumers usually do not have sufficient expertise or experience to independently judge the competence of their lawyers. For these reasons, consumers of legal services usually select a lawyer based on a trusting relationship, i.e., the recommendation of someone they trust who has had prior dealings or who knows others who have had prior dealings with the lawyer.⁴³

Since trusting relationships are the key, most marketing efforts should be focused on people who already have a trusting relationship with the lawyer and who are in a position to refer new clients. This means mainly existing clients, followed by professional advisors (accountants, financial planners, other lawyers, bankers, etc.) who are familiar with the lawyer's work and in a position to recommend him or her to their clients.

This does not mean that efforts at developing new relationships should be abandoned completely, but only that the time and money devoted to such activities should be proportionate to the likely return. If clients generated by new relationships are going to contribute at best 10% of next year's revenue, efforts at recruiting them should be proportionate to that likely return, that is, relatively small compared to the effort spent cultivating the existing base.

Existing Relationships

Mining the existing client base for more business is not rocket science and is mostly a matter of being aware of, and responding to, client needs. Here are some modest suggestions on how to proceed:

1. Complete all work already in process in a timely and professional manner. The most important single strategy for getting more business *in* the door is getting the work that is already in the pipeline *out* the door. Since most new clients are referred by old clients, the best chance of getting a new client is to satisfy the ones the firm already has.
2. Return all telephone calls not later than the next business day after they are received. If the lawyer cannot do this personally, then at least a staff member should call the client, acknowledge receipt of the client's call and schedule a follow-up. Failure to timely return telephone calls is consistently the leading source of client dissatisfaction with their attorneys, and clearly isn't helpful in terms of producing new work.⁴⁴
3. Anticipate client needs for work they haven't asked for. If a person comes in for a divorce, it is not unlikely that the same person will need other services

⁴¹ The same could be said of other professional services, e.g., services of medical doctors or engineers.

⁴² The requirements of the various California specialization programs are such that the applicant must have practiced in the relevant area for a substantial period of time (5 years or more) and must demonstrate a reasonable knowledge of the *law* related to the relevant area of practice. However, such programs do not test the knowledge base of the would-be specialist in other areas, e.g., knowledge of service providers in related fields or knowledge of industry structure and practices.

⁴³ The relationship is necessarily one of trust and confidence (see, for example, American Bar Association, Model Rules of Professional Conduct, Rule 1.8, comments [1], [17]; *Beery v. State Bar* (1987) 43 Cal. 3d 802, 739 P.2d 1289, 239 Cal. Rptr. 121.) because consumers have little other than the endorsement of trusted friends to go on.

⁴⁴ See Foonberg, *How to Start and Build a Law Practice* (American Bar Association, 2004) p. 345.

afterwards, e.g., a new estate plan, a good psychologist or a real estate broker to find a new house.

The lawyer may provide these services directly or may refer the client to others for them. In either case, however, the client will remember the lawyer as a problem solver who understood her needs and who was there for her in time of trouble. If there is *anything* she needs which the lawyer can do for her, she will be back. And even if she never comes back, she will spread the word about what the lawyer did for her and her friends and relatives will call you.

4. Make sure that all clients know what *else* the office does besides what it is doing for them on a particular matter. For instance, if the firm advises small businesses and also does estate plans for business owners, it needs to be sure that the client for whom it just formed a limited liability company is aware that the firm also does estate plans. This can be done with a website, with practice brochures in the lobby or in face-to-face discussions with the client. The important thing is to make sure that clients know what services the firm has for sale – they can't buy those services if they don't know they exist.
5. Think about ways to deliver services more efficiently and in a more user-friendly manner. If the task is preparing documents, ask the client whether he would like the drafts delivered by mail or some other way, such as e-mail or fax. If the firm serves clients who work and who cannot make appointments during the workweek, consider closing the office on Monday and scheduling Saturday appointments.
6. Remember that clients need to understand what you are doing but also that they are not lawyers and are not likely to relate well to long lectures about legal matters. For instance, rather than trying to explain how depositions are conducted, a trial lawyer should consider having the client watch a video of an actual deposition – that way, the lawyer's advice on what to do and not do will be easier to understand.
7. Make sure that the bill for whatever work is done, regardless of its size, is in line with the client's expectations (see Billing, *infra*). If it isn't, the client may not be back and certainly won't send friends.⁴⁵ If there is any doubt about what should be charged, call the client to discuss it before the bill is sent out. In most cases, the attention to the client matters at least as much as the money.
8. Keep a database (your practice management system should do this) on all clients that allows you to contact them with information that is of interest to them. For instance, business practitioners should track corporations and partnerships they have formed or counseled so that they can be advised of changes in filing or tax reporting requirements. Estate planning attorneys should track the signing dates, values and other data on estate plans so that they can send out update reminders from time to time. The response rate on such contacts will be significant, and

⁴⁵ As discussed later, most misunderstandings about fees can be avoided by an orderly intake process in which the scope of the work is defined and fees are either quoted or budgeted. See Section 9, below.

- even clients who don't respond will be impressed by the fact that they were remembered.
9. Remember and recognize the people who send you business. If an accounting firm across town consistently sends you quality clients, write them a personal thank-you letter and make sure they get a large gift basket at holiday time.⁴⁶ In addition, you should send them referrals whenever you can consistent with your duty of loyalty to your clients.⁴⁷
 10. Remember clients on birthdays and other special occasions – again, a good practice management system can calendar the dates for these events.
 11. Be conscientious about referrals. Ask yourself, “If I were the client knowing what I know about the problem and the people who could be used to solve it, would I hire me?” If the answer is no, then refer the person to the best provider you know to solve that problem. The client will then understand that you are there for the client, not yourself, and will come back to you with all future problems – you are established as an honest broker, and that is huge.

There are limitless opportunities to get more assignments from the people who already know the firm – its fan club, so to speak. The key to all of them is to be customer driven; to ask what you would want if you were sitting in the chair on the other side of your desk.

New Relationships

For new practitioners with limited contacts, it is important to market not only existing relationships but also to develop new ones. These practitioners do not yet have the luxury of confining their marketing efforts to people they already know.

One time-honored method of doing this is to join a local service club, such as Rotary, Kiwanis or the Exchange Club. Active participation in club activities allows the members to make friends and get to know each other in a non-business setting. It also allows members of the club to get to know the attorney on a personal level and decide that he or she is worthy of their trust.

Service clubs are but one of many opportunities for public service – nonprofit boards of directors, school groups and athletic organizations may also help the lawyer get acquainted in the community and lay the foundations for business relationships that will develop later on.

The most important point to be made about public service activities is that the lawyer should focus on making a contribution and not on selling legal services. If the lawyer/new Rotarian does a really good job at organizing the club's annual fund-raiser or editing the club bulletin, people will notice – and they will conclude that this person is a doer who can be trusted with important things. After that business relationships will follow, and the less said about business on club time the better. Modesty is everything.

⁴⁶ Again, the easiest way to do this is with a practice management system that keeps track of referral information. The system can then produce reports listing where each client came from (professional referral, other client, website, etc.)

⁴⁷ Bear in mind that reciprocating on referrals can never be a reason to violate your primary duty of loyalty to the client. If the accountant who sends the firm many clients is not the best one for this job, the client needs to be sent elsewhere.

Another common way of developing new relationships is to sponsor or participate in seminars. A typical example is the financial planning seminar put on by a financial advisor who wants a lawyer to appear on the program to explain the benefits of insurance or some other financial product.

In the author's experience such seminars usually do not produce immediate new business. They do, however, showcase the attorney's abilities and are also valuable in that they build a relationship and the potential for referrals with the financial firm that sponsored the seminar.

(2) Direct Marketing

Direct marketing refers primarily to communications efforts designed to generate new clients from the public at large, i.e., advertising.

Advertising may have substantial value for certain types of practices, particularly those in which new client relationships arise from one-time emergencies (e.g., personal injury, criminal defense). Clients of these practices typically are in crisis and have little time to find a lawyer. Also, they may not have had much prior experience with lawyers and may rely on mass media to find a practitioner because they do not know another professional they can trust to make a referral.

Prior to the development of the internet, the main media for advertising were the Yellow Pages newspaper ads, TV spots, billboards and (in large cities) subway and bus ads. While these are still commonly seen, the internet is currently the cheapest and best medium for advertising a law practice and is steadily replacing print media as the medium of choice for most advertisers.⁴⁸ The cost of hosting a website is negligible, and with the right technical support a website can reach many more prospective clients than other media.

The development of an effective web presence is a large subject beyond the scope of this paper, but there are some fundamentals worth mentioning here. They are:

1. The website, like everything else the firm does, must be client driven, i.e., focus primarily on what problems the firm can solve for its clients. If the firm specializes in motorcycle accident cases, then that needs to be front and center on the site. The firm's credentials may be presented too, but in smaller type and only to the extent that they help visitors to the site conclude that this firm will be effective in solving its target problems.
2. Links to other websites are usually essential to reach the target audience. For instance, a firm that does estate planning for gay and lesbian clients needs to talk to local gay and lesbian organizations and try to get them to link the site to sites that are already used by their members. The fact that the firm's site is linked to familiar and well-used sites will not only increase traffic at the firm's site but will also add to the firm's credibility. "Yes, we know them" from a trusted source says a lot, even if there are no formal endorsements on the linked sites.

⁴⁸ See, for example, Kevin O'Keefe, Real Lawyers Have Blogs at kevin.lexblog.com (October 19, 2005)

3. The site needs to be properly named and optimized for search terms so that it will come up high on the list of “hits” on popular search engines, e.g., Google. Search engine optimization has recently become a large industry, and expert assistance is required to do this.⁴⁹

In closing, it should be noted that advertising may not work well for practices, e.g., business and estate planning practices, which cater to establishment clients because it may not build trust and confidence -- in fact, it may do the opposite. The full-page, three-color ad on the back of the phone book tells us that Joe Smith is an expert trust lawyer who specializes in big estates. Unfortunately, it also tells us that Joe Smith needs clients. This may create the suspicion at least among some readers that Joe isn't the best trust lawyer in town, because if he were he wouldn't need such a big ad.

Former President Nixon once stated, “I am not a crook,” which led many to suspect that he actually was a crook – and, as history ultimately recorded, they were right. Lawyer advertising for these practices suffers from the same problem. The ad says, “I'm good,” but the readers respond, well, then, why do you need to talk about it, and why should we believe you?⁵⁰

(3) Conclusion

To summarize, the first and most crucial part of marketing is to (1) identify a target market of prospective clients, (2) figure out what it is they want to buy and (3) design a service package that addresses their needs. Even if this effort does not, in Drucker's phrase, “make selling superfluous,” it will make selling much easier because prospective clients will already want the lawyer's services. The only remaining task will be to make prospective clients aware that the services are available.

9. BILLING

Since the core mission of the client driven law practice is to deliver value to its clients, it goes without saying that every bill for its services should be based on the value of those services to the client. Bills for legal services, regardless of the amount or the basis on which they are prepared, must be (1) in line with the client's expectations, and (2) fair in the sense that the charges are comparable to what others would charge for similar work. Any bill which fails to meet either of these tests will damage the relationship with the client and, in the cases where the second test is not met, may involve abuse of the attorney-client relationship.⁵¹

⁴⁹ The earliest known use of the term “search engine optimization” appears to have been in 1997. See Wikipedia, the Free Encyclopedia, http://en.wikipedia.org/wiki/search_engine_optimization.

If the web is an important part of the firm's marketing strategy, it may be advisable to supplement the website with blogs where the firm can post items of current interest on specific practice subjects. These blogs are linked to the website and thereby increase the number of visits to the website. This in turn causes the website to get a higher ranking on search engines because the engines weight rankings by, among many other things, the number of visits each website receives.

⁵⁰ Cf. Shakespeare, *Hamlet*, Queen Gertrude, in act 3, sc. 2, l. 219 (1604) “The lady protests too much, methinks.”

⁵¹ Where the lawyer cannot provide services at rates that are comparable to what others would charge, there would seem to be an ethical duty to refer the client to other providers who can provide the services at lower cost. Cf. State Bar of California, Rules of Professional Conduct, Rule 3-300, Avoiding Interests Adverse to

These value billing standards go well beyond the bar's ethical rule that a lawyer may not charge "an illegal or unconscionable fee." The client who receives a bill for services must believe not only that the fee was legal and ethical, but that he or she has received fair value for the amount of money requested. Otherwise, the relationship with the firm is not likely to last very long.

Apart from being fair to clients, value billing is important from a management standpoint because it creates an incentive for the firm to be efficient and minimize costs. Effective cost management means that the firm can charge competitive rates for its services and still earn more than the competition for its owners – a win-win for both the clients and the lawyers.

So, for example, if the value of organizing a new LLC is \$3,000, it does not matter to the client whether the lawyer spent one hour on the assignment or 10 hours. The bill will be the same in either case, which means that the lawyer who did the work in one hour will get a terrific return on his or her time.

Value billing also brings discipline to the firm's process for accepting new cases. It will require a meaningful, up-front review of the economics of each new matter, and the rejection of matters where the value of the probable results to the client is less than the firm's likely costs of achieving those results.

For example, if a prospective client shows up with a complicated business dispute between four owners of a business worth \$100,000, then the firm should advise that person to retain the services of a mediator – or perhaps a priest, because in such a case there is no way that the financial results to the client will justify significant billings for the firm's efforts.

Accepting such a case creates a no-win situation, because the bill for the firm's services will either not cover its costs or make no sense in terms of value added to the client. Ideally the firm's intake process should include some rules of thumb, e.g., that a case should not be accepted unless it is more likely than not that the firm can achieve results for billings equal to or less than 20% of those results.

In the case of contingent fee matters (where the firm is at financial risk of loss), the rule of thumb may be the traditional "rule of five," which states that the expected recovery needs to be at least five times the cost of prosecuting the case to justify the risk of loss.

Determining Value

The determination of what client "value" is in any particular case is more complicated than it might seem, because "value" must take into account not only objective indicators

a Client, which provides that an attorney shall not enter into a business transaction with a client unless it is fair and various other requirements are satisfied. However, this rule does not apply to fee agreements, which must not provide for a fee which is "illegal or unconscionable" [State Bar of California, Rules of Professional Conduct, Rule 4-200]. Here, as elsewhere, the ethical standards set forth in the Bar's rules seem to fall significantly short of requiring the lawyer to act in the client's best interest.

of value (amount collected, penalties imposed, amounts charged by other firms⁵², etc.) but client *perceptions* about the value of the firm's services. "Value" is largely subjective and is manageable at least to some extent by the way in which the firm presents and delivers its services.⁵³

In some areas of practice, such as estate planning, the "value" of the services is almost entirely a function of client perceptions since the services do not have any immediate financial or otherwise quantifiable results. The same could be said of services provided to document business deals, because these deals could have been done on the back of an envelope or on a handshake. In these cases the client is literally buying "a good night's sleep." Client perceptions of the lawyer and the quality of his/her services are the more or less exclusive determinants of "value."⁵⁴ Those perceptions may of course be influenced by factors such as the size and complexity of the estate or the business deal, but ultimately "value" is subjective.

In other areas of practice, objective indicators of value are important but not exclusive determinants of value. In personal injury cases and debt collection cases, for example, the big indicator of value is the amount of money recovered – and clients commonly expect that charges to them will be based on some reasonable share of the amount recovered. However, even in these cases the value of the services is to some extent a function of client perceptions about the quality of the representation that he or she received.

⁵² There are a few services that are common enough that consumers can, or at least believe that they can, shop around to get the best price – estate plans would be a good example of this type of service. It should be added that consumer comparisons between firms are often wrong because the services offered are not comparable, i.e., Firm A charges a higher price but includes more services whereas Firm B charges a lower price but bills various related services as extra work. Nevertheless, "value" in such cases may be based on the perception, even though erroneous, that the firm is providing services at a price which is less than the competition.

⁵³ "Fair market value" is customarily defined as "the price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." [Treas. Reg. §20.2031-1(b)]. See also *United States v. Cartwright*, 411 U. S. 546, 93 S. Ct. 1713, 1716-17, 36 L. Ed. 2d 528. A similar definition is commonly assumed to apply to services. See, e.g., Hayes & Boone LLP, *Fair Market Value in Health Care Transactions*, World Services Group, <http://worldservicesgroup.com/publications> (September 2007). Unfortunately, such definitions are not very helpful in determining the value of legal services because the stated conditions are usually not applicable. Clients rarely have "reasonable knowledge of the relevant facts" because legal services are not branded or standardized, rates are not advertised and there is little or no public information about what the going rate is for similar services.

Further, clients are often under some compulsion to purchase the services because a crisis of some sort – a business dispute or threatened criminal proceedings – is what led them to seek legal help in the first place.

As noted in Wikipedia, "an estimate of fair market value is usually subjective due to the circumstances of place, time, the existence of comparable precedents, and the evaluation principles of each involved person. Opinions on value are always based upon subjective interpretation of available information at the time of assessment."

⁵⁴ Note that estate plans do nothing until the client is either disabled or dead and then mostly benefit others, not the client. Similarly, business agreements typically have no quantifiable results unless there are problems with the relationship they create later on.

For instance, the client in a personal injury matter may perceive the fee charged for even a modest recovery to be fair if he or she believes that the lawyer achieved the best result that could be achieved under the circumstances. Whether the client actually has this perception depends to a large degree on how the lawyer has managed the relationship with the client and expectations regarding the outcome of the case. Without attempting to cover every way in which the lawyer can manage the relationship, here are some samples:

- The lawyer initiates the relationship with a very critical review of the case, a conservative assessment of the likely outcomes and advice on factors that could negatively affect the client's financial results, e.g., income taxes on the recovery and claims of divorcing spouses and/or lien creditors.

If the defendant's liability is unclear or his solvency is questionable, the client needs to be made aware of this on day one or as soon thereafter as that information becomes available. While outcomes can never be guaranteed, the lawyer's objective should be to condition the client's expectations so that the actual outcome is better than the forecast.

- The lawyer educates the client about his experience and qualifications, e.g., that he is a certified trial specialist; that he is been in practice for 20 years; that he specializes in personal injury matters, that he has tried X jury cases to verdict and collected Y dollars for other clients.⁵⁵ The goal here is to assure the client that the lawyer is the best person to handle his problem – that way, the client may well believe that the outcome, even if less than ideal, is the best that could be achieved under the circumstances since he or she hired the best talent available.
- The office setting in which the practice is conducted conveys the impression that the lawyer is established and can afford to make decisions based on the client's interest, not his (or her) own. The office is centrally located and attractively furnished – not extravagantly, because clients may then think they are paying for excess, but nicely and in good taste. Conducting the practice from a home office is a terrible idea because it tells the client that the lawyer is struggling to support herself and is not in a position to be objective about the client's interests.
- The lawyer demonstrates real interest in the client as an individual, not just the legal case. The intake interview should include many questions which express the lawyer's empathy with the client's position and show that the lawyer has an interest in helping to solve the whole problem, not just in legal representation.⁵⁶

Inquiries about the health of the family and references to doctors, rehab specialists, counselors and other professionals are very helpful in this regard.

⁵⁵ The message "I am good" is hard to deliver in person and should be delivered in other ways – e.g., by brochures or websites.

⁵⁶ Busy personal injury and workers' compensation practitioners typically include a description of the client in the case intake memo and a photograph of him or her in the file. Nothing will destroy the lawyer's credibility more quickly than not recognizing him or confusing him with another client.

The goal here is to reassure the client that decisions in the case are made in his best interest and are not based on the interests of the lawyer.

While the specific methods of relationship management will vary with the kind of assignment, the goals will always be the same, i.e., (1) to set the client's expectations regarding the outcome at achievable levels; (2) to convince the client that the lawyer is an expert in whatever it is and is the best person for the job, and (3) to let the client know that the lawyer empathizes with his or her situation, that there is a concern for the client's welfare that goes beyond the legal case, and that decisions in the case will be made on the basis of the client's best interest.

If the relationship is managed in this way then the client's perceptions of the value of the lawyer's services will increase and the likelihood that the client will perceive that billings for those services are fair will increase as well.

None of this, of course, should justify billings for services that are out of line with market conditions – it is taken for granted that the attorney will not charge a fee that is outrageous or, in the immortal words of the bar, “illegal or unconscionable.” It is however entirely legitimate to manage client expectations and perceptions in such a way that reasonable bills will be viewed by the client as fair.

Given the complexity of determining client value, it will not always be possible to bill for services in ways that exactly match client perceptions of value. There are, however, a number of strategies that can be used to hit the mark most of the time. Some of these are discussed below.

Fixed Fees

Fixed fees are a great way to align charges for legal work with client perceptions of value and should be used wherever the firm's costs of performing a service are reasonably predictable. First, a fixed fee that has been discussed with the client in advance meets the client's expectations exactly because those expectations have been set in advance – no surprises.

Second, and just as importantly, the fact that the lawyer is willing to set a fixed fee sends a message that he or she absolutely knows what he/she is doing and will put money on that belief by guaranteeing performance at a fixed price. For this reason fixed fees are particularly desirable where the client is new to the practice because they build a relationship of trust and confidence – a *sine qua non* for further productive dealings with the client.

The easiest matters to bill on a fixed fee basis are relatively simple matters with which the office has had extensive prior experience – e.g., Chapter 7 bankruptcies (flat rate plus filing fee) or DUI defense matters (\$X if settled before trial, \$Y if tried).

Fixed fees may be used even for long, complex assignments by breaking the work down into segments – so much for an initial review, and so much for each piece of further work that is recommended at the completion of the initial review.

For example, an estate planner may propose a flat charge equal to one or two hours for review of the client's documents and preparing a list of recommended changes and updates. When that is done the planner may quote another flat fee for preparing a new

trust and related documents, and further flat fees for specialty items, e.g., irrevocable insurance or charitable trusts.

While there is inherent financial risk in quoting fixed fees, the risk can be managed to reasonable levels by appropriate sizing of the segments of the work to which the fixed fees apply and by limiting fixed fees to matters where the firm has substantial prior experience. The only real limitation on the use of such fees is the willingness of the firm to quote them.⁵⁷

Fee Budgets

There are of course legal assignments that are so open-ended that it is not possible to quote a fixed fee at the beginning – large estate settlements, complex business deals or litigated business disputes would be examples of such matters. Even in such cases, however, it should be possible for a lawyer with substantial experience in the area to create ballpark estimates of what the charges will be.

For example, firms that specialize in trust and estate work often quote estimates of settlement costs that are based on some percentage of what the statutory probate fee would have been for an estate of similar size – adjusted up or down for factors such as whether relationships between the parties are amicable and whether the assets are simple (bank accounts) or complicated (partnerships or real estate).

Similarly, the lawyer who has handled many business disputes can at least provide rough estimates of the cost of filing initial pleadings, the cost of preparing initial discovery requests, deposition costs and so forth. Where there is substantial uncertainty as to the amount of work that will be needed, the lawyer may quote an estimate with an agreement that, if the estimate is exceeded, further charges will be at a discounted hourly rate.

The fact that such estimates will always be wrong to some extent is not critical. What is critical is that the client believes that decisions regarding the case are being made based on the economics of the case and protection of his or her interests and that charges for the lawyer's work are not just the result of mindlessly running an hourly meter. The client's perception of the value of the services is more important than the dollar amount of the bill, and educating the client on exactly what is involved helps to manage that perception so that there is no sticker shock when the bill arrives.

Contingent Fees

In matters where a lawyer is engaged to recover money, the most important objective indicators of value are the amount of money recovered and the relationship between that amount and the fee charged. Although contingent fee billing has its critics, most clients believe that a fee which is based on a percentage of the amount recovered is fair, particularly if the percentage is the same as that charged by other practitioners.⁵⁸

⁵⁷ Those who say that fixed fees are not feasible should remember Henry Ford's famous statement that "whether you think you can, or you think you can't--you're right."

⁵⁸ If the client comes to the office with a nominal offer in hand, one way to further align the charges with client value is to exclude the amount of the offer from the contingent fee base. That way, the lawyer is paid for value added and not for value the client had when he or she arrived at the office.

The same could be said of collection litigation, where fees are based on the amount collected. “If you win, I win” is an attractive formula because the lawyer shares the risk of non-recovery and gets paid according to the quality of the results achieved for the client.

Blended Fee Arrangements

Another approach to billing that is usually successful in matching bills for services to client value involves blended fee arrangements, in which the billing is based partly on time spent and partly on outcome. The fee agreement may, for example, provide that services will be billed at a discounted rate designed to cover firm costs and that an additional fee will be payable if there is a recovery which exceeds some defined threshold.

These arrangements preserve the client’s perception that billings are based on value since a significant part of the firm’s compensation depends on achieving a good result. At the same time, discounted hourly billings that at least cover costs minimize the firm’s financial downside of losing the case.

Hourly Billing

There will always be cases in which the only feasible method of billing is on hourly rates, which is often referred to in other industries as cost plus or time and material billing. While there is nothing wrong with this kind of billing *per se*, the challenge of matching what is actually billed to the client’s view of what should have been billed is greater than with any of the other arrangements discussed above.

If billing must be hourly for whatever reason, the client should at least be told that the firm reviews all billings each month to determine whether they make sense in terms of the client’s objectives. It is also helpful to discuss and agree on a target or ballpark budget against which hourly billings will be reviewed. Finally, the client should be given an open invitation to call the firm at no charge to discuss any bill that seems unfair or is otherwise inappropriate for any reason. If these practices are followed consistently, it will build the client’s trust and his or her confidence that the services are worth what is being charged for them.

Timekeeping

Nothing in the above discussion should be seen as a reason for not keeping detailed time records for each attorney and each staff person who performs services for a client. The costs of running any service business, including any law firm, are generally a function of headcount, and so for management purposes it is crucial to know how much time is being spent by each person in the firm on each matter.

Where billing is hourly, then time records are obviously necessary because the bill will be based on those records. However, good time records should be kept on all matters, including matters that are billed on a fixed or contingent fee basis. For one thing, those records allow the firm to compare the fixed or contingent fee with what would have been charged on an hourly basis and help determine appropriate pricing for future fixed or contingent fee matters. For another, time records allow the firm to gauge the productivity of attorneys working on fixed fee matters – if their time charges consistently exceed the

fixed fees by large amounts, then either the fees are too low or the attorneys are not being efficient with their time – a call for remedial action in either case.

There are some contingent and fixed fee matters which require accurate time records because fees are subject to court approval. For example, some probate courts take the position that the firm is not entitled to so-called “extraordinary” fees which exceed the statutory probate schedule unless hourly charges would have exceeded the statutory fee. For another, time records must be kept to obtain court approval of fees charged in matters involving minors or incapacitated clients.

Finally, it is useful to have time records available when clients call to discuss their bills – where the hourly charges would have exceeded the amounts actually charged, that information is obviously useful in discussing the reasonableness of the bill with the client.

In short, there is nothing wrong with keeping good time records, and in fact such records are essential for effective management the firm. The only caution is that these records are a management tool which more often than not should not be shared with clients -- value added, not cost, is what clients should see.

Conclusion

The process of billing for legal services is one of the most important lines of communication between a law firm and its clients and is crucial to maintaining and expanding client relationships. While all bills must be based on client value, this does not mean that bills need to be based on any particular methodology.

Fixed fees are desirable when they can be used, but other alternatives (contingent, blended, hourly, etc.) can be used where circumstances require. *What is critical is that, whatever method of billing is used, the amount of money asked for is both fair in absolute terms and in line with the client’s perceptions of value.*

10. METRICS OF SUCCESS

The client driven law firm not only provides superior service to its clients – it should, if properly managed, yield handsome rewards to the lawyers who own and manage it.

There are many ways in which to measure success in business – revenues, profits, return on investment and so forth. However, for closely held law practices there are only two that really matter, namely (1) job satisfaction and (2) financial return on time spent in the practice. For the reasons discussed below, the client driven law practice is much more likely than most, all else being equal, to score highly on both of these metrics.

Job Satisfaction

This one is simple – does the lawyer/proprietor like getting up in the morning and like what happens when he or she arrives at the office? If the answers to these questions are negative, then the practice is in some sense a failure regardless of its prominence, financial success or what it does for its clients. Life is short, and far too short to spend most of one’s waking hours doing something that is not deeply satisfying.

It has been noted elsewhere that when workers are aware that their work makes a difference to others—even in small ways—their job satisfaction rises, as does

their productivity.⁵⁹ This is surely why top-drawer, excellent practitioners who approach their clients as people and make a difference for them love what they do.

While there is never any guarantee that work will be satisfying, client focused practitioners who take the holistic approach to client problems discussed earlier are very likely to find their work more satisfying than in a practice which simply views each matter as a legal case to be processed at an hourly rate. Mattering to somebody else is critically important, and that is exactly what the client driven practice aims to do.

Return on Time Invested

While the goals of the client driven practice are framed in terms of client service, the success of the practice must ultimately be judged, as in the case of all other for-profit businesses, by the returns it yields to its owners.

Law practices like most other service businesses do not involve significant investments of financial capital – while certain physical assets, such as computers, office furniture, etc. are needed to conduct the practice, the costs of these items are not significant relative to income and cash flow.

Practices do, however, involve significant commitments of that most valuable and finite resource, namely owners' time. In view of this the financial success of any practice must be judged by the return on *this* investment, i.e., by how much income is earned for each hour of owner time spent in the practice. This metric, known as the "Productivity Quotient," may be expressed mathematically as follows:

Dollars Earned/Time Spent

So, for example, if a lawyer spends 150 hours per month (billable or not) in the practice and brings home total compensation of \$20,000 per month, the productivity quotient is \$133.33. The higher this number is, all else being equal, the more successful the practice. This is a useful way to assess the firm's success because it takes into account not only the owner's income but the time required to produce that income. The latter quantity is highly significant because the more time that is devoted to the practice, the less time remains for other activities that make life worthwhile – like vacations and family time.

In this frame of reference, the lawyer who earns \$250,000 per year but works 60-hour weeks plus weekends and holidays is less successful than the lawyer who earns \$250,000 and works a 35-hour week because the second lawyer earns more of that priceless commodity, personal time. Because time is always scarce and limited, management of a practice should focus on how to generate the maximum amount of income with a minimum amount of owner time.

The methods of achieving higher productivity numbers have been discussed in previous sections of this article and need not be repeated in detail here. The basics are (1) specialize the practice to increase the quality and reduce the cost of the firm's services, (2) drive down the cost of delivering services by efficient management of information and other strategies, and (3) bill all services on the basis of client value, not firm cost.

⁵⁹ Morano, Hara Estroff, *Making a Difference at Work*, Psychology Today, (July 22, 2004)

These strategies taken together should and will produce returns on owner time which are better than conventional practices achieve.

11. CONCLUSION

Law firms are service businesses that need to be organized and operated on the same principles as other service businesses. This means that –

1. The firm must have a clear mission, the focus of which is to create value for its clients.
2. The goals of the firm must be to deliver value for its clients in a way which is superior to the value they can get from anyone else. Here as in business generally, there is no place to finish except first.
3. The most important strategy for creating superior client value is specialization, i.e., concentrating on a manageable number of problems and then building knowledge bases and support systems that are better and deeper than the competition.
4. All billings for firm services must be based on value to the client, not cost to the firm even though cost-plus (hourly) billing may be appropriate in some cases. Whatever method of billing is used, the end result must be both fair in absolute terms and in line with the client's perceptions of value.
5. The main metrics of success in the law business are (a) job satisfaction and (b) financial return on time spent. The way to maximize job satisfaction is to make a difference, to view clients as people with problems to be solved, not as legal cases to be processed.
6. The key to maximizing financial returns is to increase the spread between the amounts billed for services and the costs of providing them. This is done by billing based on value and driving down costs by means of specialization, task structuring, efficient staffing and efficient management of information.

While all of this is important, none of it is new. All that is or may be new is the application of tried and true business management techniques to the practice of law. Doing this will be a win-win for the lawyers that do it and the clients that they serve.

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12. POSTSCRIPT – WHAT ABOUT BIG LAW FIRMS?

This article discusses law firm management mostly with reference to small firms that service individuals and small businesses, since that has been the primary experience of the author in recent years.⁶⁰ However, there are good reasons for believing that the conclusions expressed here apply to all law firms – including large ones who serve mainly institutional clients – and that such firms will also have to refocus their efforts on client value to survive in the competitive environment in which they now find themselves.

A recent survey of sizable firms by the management consulting firm Altman Weil, Inc. states that

“Large majorities of law firm leaders responding to the survey agree that greater price competition, practice efficiency, commoditization of legal work, competition from nontraditional service providers, and non-hourly billing are all permanent changes in the legal landscape.”⁶¹

The survey goes on to state, regrettably, that “less than half of the law firms surveyed are responding to the pressures of the current market by significantly changing elements of their traditional business model,⁶² although larger firms (250 plus lawyers) are doing more in the way of strategic change than smaller ones.⁶³ Only 10% of the respondents to the Altman Weil survey believe that law firms will take the lead in reinventing the legal market.⁶⁴

The Altman Weil survey also identifies strategic moves that will be required to address these challenges – value pricing, practice efficiency, reduced staffing and increased focus on client needs – which appear to be substantially the same as the approaches discussed in this article.⁶⁵ Again, the survey concludes that law firms have not been and are currently not very aggressive in pursuing these strategies.⁶⁶ This is unfortunate because opportunities to grow and prosper exist for firms of all sizes, including large ones, if only they have the right leadership.

The specifics of strategic planning for large firms will diverge from planning for smaller ones in ways that relate to the advantages and disadvantages of being large. Because such firms are likely to have cost disadvantages versus smaller firms⁶⁷ they will need to focus at least initially on services which they are qualified to provide *because* of their size and which are not provided by smaller firms. Mergers and acquisitions for publicly held companies, labor representation for large corporations and complex, multi-district,

⁶⁰ Earlier in his career the author was an associate at Donovan Leisure Newton & Irvine, a sizable, now defunct New York City law firm that did antitrust defense, and was later a Vice President of a huge bank (Citibank). Those experiences while not recent only reinforced the basic ideas and approaches to management presented here.

⁶¹ Clay, Thomas S. and Seeger, Eric A., *Law Firms in Transition, An Altman Weil Flash Survey*, Altman Weil, Inc., Newtown Square, PA 2014, p. i.

⁶² Ibid.

⁶³ Ibid, p. ii.

⁶⁴ Ibid, p. i.

⁶⁵ Ibid, pp. ii-viii.

⁶⁶ Ibid, p. i.

⁶⁷ See discussion of size at pp. 17-18, *supra*.

big-ticket litigation, all of which require large body counts and significant legal expertise, would be examples of such services.

Large firms will also need to focus on strengthening relationships with key institutional clients that account for most of their billings. One obvious way to do this is to build and maintain deep, industry-specific knowledge bases for key clients at a level that smaller competitors cannot match.

For instance, if a firm has a key client in the banking business, that firm should make it a goal to know just about everything there is to know about that business -- who the key players are, what lending standards exist for key customer groups, who the significant non-bank competitors are, which companies may be looking for merger partners, what regulatory problems and threats exist for the industry, and so forth. Acquiring and maintaining deep, industry-specific knowledge bases will enhance the quality of the firm's advice to clients in that industry and enable it to compete effectively with smaller, cheaper but less-knowledgeable competitors.

Large firms can also strengthen and maintain relationships with institutional clients by managing, rather than competing with, the activities of their in-house legal staffs. Initially this will involve a review of what legal work is actually done in-house, identifying other work that could be assigned to in-house staff and identifying work that should be referred to outside counsel because of its risk or complexity.

Such reviews will likely surface issues that will create service opportunities for the law firm – e.g., reviewing the terms of key contracts, licensing agreements and other customer and vendor relationships. The goal will be to make the law firm part of the client's management team, not just an outside vendor of pricey services.

Finally, strategic repositioning by large firms will likely involve closing or spinning off departments that do not relate meaningfully to their core practices – e.g., the M & A firm will keep its tax, securities and intellectual property departments but probably not practice groups that do family law or estate planning. For a whole host of reasons, the activities of such non-core departments will be better outsourced to firms who specialize in those areas.⁶⁸

In conclusion, it is likely if not certain that the approaches to law firm management discussed here apply to all law firms regardless of size, and that the main differences relate to kinds of services that firms of different sizes can efficiently provide. As Peter Drucker noted, successful firms will be those customer focused firms which, in their marketplace, are just large enough to get the job done.

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⁶⁸ See discussion of full service law firms at pp. 12-13, *supra*.