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IMPLEMENTATION – THE GUTSY CHALLENGE IN STRATEGIC PLANNING

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The easy part of managing a law firm is knowing what to do. The hard part is having the vision and courage to get it done.

Many solutions to strategic issues are deceptively simple and often appear self-evident on the surface.

- For example, if your traditional markets are maturing and becoming more price-competitive, it is self-evident that you should diversify into new areas and/or locations.
- The challenge, of course, is not in knowing that you should diversify, but in successfully finding an acquisition that affords the right fit, getting the deal done, working tirelessly to integrate "strangers" into an existing culture, and convincing your partners that success in implementing strategy requires patience and diligent leadership.

This simple example illustrates the conundrum of strategic planning – and leads directly to the issue of strategic planning effectiveness.

Strategic planning is not new to law firms. It has been well established for a quarter century or more. Unfortunately, many early efforts at strategic planning achieved little because firm management lacked the vision, patience, perseverance, and courage to *"get the job done."* Often, firm leaders felt they lacked the authority or mandate to make and implement hard decisions, and, thus, were unable or unwilling to take the political risks associated with bold strokes.

Ask any successful business entrepreneur about the key to success and he or she will undoubtedly tell you that it is all about taking and managing risks – calculated risks, admittedly, but risks all the same. In business – and, yes, Ladies and Gentlemen, law firms are indeed businesses – there are no sure bets or certain outcomes. To achieve long-term success, you need the guts to make and implement tough decisions. In law firms, this is a little tricky because of the tradition of *"partnership"*. It's simply harder to get the political mandate to implement significant change in a culture geared to consensus-based decision-making, and in which the owners of the business are accustomed to think narrowly in terms of *"having a good year"* when achieving real results often involves a three-to-five year horizon.

This is not to suggest that strategic planning has been a failure in law firms. In fact, there are countless examples of firms that have transformed themselves through successful strategic planning and have achieved stunning success. And, the incidence of success using this key tool has increased dramatically in the last few years. There are important lessons to be learned from successful strategy implementation. This monograph discusses four of them.

KEEP YOUR FOCUS SHARP

The goal of strategic planning is to provide a business focus that enhances the firm's sustainable competitive advantage in key areas or markets. It is as much about what the firm will not do as it is about what it will do. It forces selectivity in decision-making and, one hopes, cuts down management time devoted to chasing serendipitous opportunities. It also channels the firm's "investment capital" into certain areas and away from others.

By definition, a strategic *"vision"* or *"mission"* needs to be *ex*clusive, not *in*clusive. While it needs to be stated in positive terms (e.g. – *"XYZ is the preeminent regional law firm serving the toxic tort litigation needs of pharmaceutical, tobacco products and firearm manufacturers in the Northeast…"*), it needs to be very clear as to what services the firm does not offer. The previous example makes it clear that XYZ is not doing private bank lending and executive compensation plan design.

It also should be *ex*ternally focused, not *in*ternally focused. Many vision statements drafted in the 1980s, for example, said things like: *"ABC is a large firm of high quality lawyers with offices in Charlotte and Raleigh, North Carolina. We seek to provide a collegial atmosphere in which young lawyers can find rewarding careers and still maintain a healthy balance between work and personal life."* Such a statement totally ignores the most important stakeholder, the CLIENT.

Once strategic priorities are agreed upon, however, the biggest challenge is to have the guts to stay focused on the mission. By formulating a tightly focused vision and strategy, the firm is affirmatively identifying those areas that it will support with marketing funding, recruiting, and partnership opportunities. By inference, therefore, any practice area not specifically addressed by the vision statement will not be as heavily supported as those that are. Some areas may be supported with *"maintenance*" strategies and others may be targeted for limited support while they are still economically viable – but, the important truth is that not all areas are going to be (or can be) supported equally. Strategic planning is about making choices among competing alternatives, and all practices and markets, by definition, are not equal.

Once this reality sinks in, there is a tendency for some groups whose practices are not *"on mission"* to lobby to be included on the *"A-List."* At this stage in the planning process, the easy *"out"* is to water down the plan to be more inclusive in order to *"keep peace in the valley."* Broadening the strategy to make all groups feel that they are being treated equally or to avoid allegations of elitism only serves to weaken the vision and the business purpose of the firm.

Planning and acting strategically requires **both** a sharply focused business purpose and the will to stick to it. Firms that have successfully transformed themselves have had leaders who recognized the need for sharp focus and had the guts to keep their firms on course. Sharp focus is the key to differentiation. You can't create a *"distinguished"* (i.e. – preeminent) firm without first creating a *"distinguishable"* (i.e. – differentiated) firm.

DO NOT BE AFRAID TO CULL THE HERD

Over the course of many years, most law firms find that they have acquired or accreted practices that no longer fit with the strategic direction of the firm. They may be single-partner practices or multi-lawyer practice groups. They may have been acquired in larger mergers or acquisitions, or they may have been home grown.

As firms evolve and change direction, some practices mature differently and become less relevant to what the firm needs to accomplish to sustain its competitive edge. There are many reasons for this phenomenon. Some hypothetical examples include:

- The mainstream clients of the firm no longer need the particular skill-set of the lawyer(s) or have started to use more price-competitive boutiques to handle their matters. For example, some labor and employment practice groups have seen their clients turn to boutique firms for immigration matters.
- The firm's leading lawyer(s) in the practice area have matured and there has not been effective succession planning. Basically, the practice has become partner-heavy. Sometimes this happens when another firm cherry-picks the second generation and there is insufficient time to rebuild or re-acquire the lost expertise.
- A litigation issue has reached the end of its *"shelf-life"* and the lawyer(s) cannot be retrained to handle other matters. Consider, for example, the example of the end of the life-cycles of asbestos cases or FDIC/RTC work-outs.
- The practice area is no longer in alignment with the firm's newly formulated business strategy, or it no longer complements one or more key elements of the strategy. For example, the firm may have made a conscious decision to focus only on private M&A transactions and no longer needs a fully-staffed SEC practice group.

Whatever the reason, many firms, after successfully undertaking a strategic planning exercise, find themselves with individual practitioners or practice groups that are *"off-mission."* The challenge for firm leaders is how to deal with these anomalies.

Our experience is that firms generally adopt one or more of the following ineffective tactics, usually because they do not want to confront the problem.

- **Benign neglect** – Firm leadership simply ignores the problem, figuring that the individual practice or practice group is too small to make an issue of. Basically, they hope the problem will solve itself if it is ignored long enough. The result is usually a group of *disaffected* equity partners, each of whom still has a vote in firm matters.

- **Compensation cop-out** – Firm management decides to reduce compensation gradually, hoping that the affected lawyers will *"get the message"* and move on. This is a great example of *"management by indirection."* The result is usually a group of *lower paid*, disaffected equity partners, each of whom still has a vote in firm matters.

- **Close the partnership door** – The firm makes a decision to remain loyal to existing equity partners even though there are younger and more effective associates or income partners in the equity partnership pipeline. The result is usually a defection of promising talent, leaving the firm with a group of *less effective*, lower paid, disaffected equity partners, each of whom still has a vote in firm matters.

Choosing not to deal with practices that do not fit, for whatever reason, reduces the chances that the firm will reap full benefit from implementing its business strategy. It is also not fair to the lawyers who are affected. It takes an emotional and financial toll on the firm that tends to grow over time (like a cancer), rather than diminish. It is far more effective to recognize the issues and deal with them affirmatively, sensitively, and expeditiously. This takes guts.

In some cases, lawyers in marginal or mature practices can be retrained and absorbed into mainstream practice groups. For example, work-out lawyers can become effective lending lawyers. But, this is not always possible, however.

Increasingly, law firms are discovering what businesses have been doing for years, namely, the *"discontinued operation."* If your business plan has no place for your Creditors' Rights Group, for example, an effective tactic might be to package the group and spin it off to another firm that specializes in bankruptcy law. We have recently seen several such transactions and believe they can represent a *"win/win"* strategy for all parties involved. The lawyers who are spun off ultimately join up with a firm that understands and welcomes them. The acquiring firm grows its practice in a financially advantageous way. The *"parent"* firm addresses its strategic issue effectively and fairly. The important lesson is that these good things do not happen unless somebody takes charge of and controls the process.

TAKE TIME TO INTEGRATE ACQUISITIONS

Many law firm strategic plans include growth or diversification strategies involving acquisition of individual or group practices, or entire law firms. A few firms actively seek firm-on-firm mergers, essentially mergers of equals. Implementation plans generally budget financing and management time to cover pre-acquisition or pre-merger due diligence, *"getting-to-know-you"* sessions, post-merger publicity, marketing materials, and the like. Many plans, however, lose sight of the fact that post-merger integration is often the most difficult part of implementation and may last several years. A client of ours estimates that full integration takes somewhere between five and seven years to successfully accomplish – he may be right.

The day the merger/acquisition is announced is really the first day in the life of a new firm, even though the acquisition may be relatively small. A merger/acquisition transaction effects the combination of two or more cultures that are strangers to each other. The pre-transaction process and negotiations often strain the relationship between the parties and not everyone is equally enthusiastic about the transaction. Yet, once the deal is done, there is a tendency to sit back and assume that integration will eventually take care of itself. We have seen a situation, for example, where a firm acquired an intellectual property boutique and, three years after the acquisition, the M&A practice group still had not had a formal planning session to integrate the patent team into its transactions. In fact, the patent group was still functioning largely as a stand-alone boutique.

Mergers and acquisitions are about gaining synergy by combining forces to establish or strengthen a competitive position or positions. If there is not a daily effort, post-transaction, to work on integration, much of that synergy is never achieved. True integration happens when lawyers from different groups combine their expertise and efforts to solve difficult client problems jointly. It is only through this cooperative work effort that lawyers from previously different cultures develop the mutual respect for each other that forms the basis for creating a new culture. True integration is complete when neither group can remember what it was like to operate separately from the other.

For managing partners, executive directors and practice group leaders, integration needs to be a daily focus. It is hard and often unrewarding work. It takes time away from serving clients, marketing, recruiting and many other important activities. Daily communication with the new *"strangers,"* listening to their complaints, addressing their needs, helping them to "fit in," breaking down barriers to communication and cooperation, and often forcing situations to require different groups to work together are all part of management's responsibility. A merger will not be successful unless you do these things.

WORK STEADILY ON INFRASTRUCTURE

When working on strategic planning or when considering a significant acquisition, most law firms rely on a select group of partners, aided by the Executive Director, to drive the process. From time to time other lawyers are brought into the process, as their skills or management positions require. If one is to strike an appropriate balance between working on strategic issues and billing hours, this approach is probably fine. It certainly is efficient from the lawyers' point of view.

Unfortunately, there are a number of key people noticeably absent from the team, namely the law firm's HR Director, the CFO, the Marketing Director, its CIO, the person in charge of records and conflicts, etc. All of these non-lawyers are charged with responsibility for managing the firm's infrastructure on a day-to-day basis. Strategy implementation and merger/acquisition transactions can entail major changes to the firm's infrastructure.

- Acquisitions can require massive efforts to integrate active and inactive files and client records, to harmonize personnel/benefits policies, to coordinate integration of LANs, document management systems, etc.
- Some strategic initiatives may involve creation and staffing of ancillary entities.
- Strategic alliances with other law firms or referral sources may require coordination operating procedures among various entities.
- Finally, one cannot ignore the impact of lateral growth or merger/acquisition activity on space, facilities and office services.

Keeping these key managers sidelined during the planning process generally makes implementation more difficult, because they have not had the benefit of participating in – even if it is only passive participation – the discussions and thought processes leading up to strategy formulation or the decision to seek an acquisition. Once implementation starts, they often have to spend many hours catching up.

They also have valuable contributions to make to the planning process. Non-lawyer managers are professionals in their own right. They understand how the firm's infrastructure presently works and how it will be affected by proposed changes. They can point out obstacles or challenges that the lawyers may not recognize immediately. They also may see opportunities not immediately evident to others. The devil is in the details and they most assuredly understand the details better than many of the lawyers.

A strategic plan is only as good as its implementation. Fuzzy thinking, fuzzy focus, unwillingness to deal directly with difficult issues, lack of attention to integration and follow-up after an acquisition, and not having the right team at the table early in the game are all symptoms of implementation gone awry. Once a plan is in place, implementation may not be a full-time occupation, but it surely should be a full-time *pre*occupation.

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Peter would be happy to discuss these issues and, with his partners John Smock and John Sterling, answer any questions about our experience and services.