IF You Think Being a Lawyer is Tough Today, Try Legal Consulting

The basic consultant strategy sold to BigLaw over the past decade focused on growing high-margin practices while abandoning the low-margin areas; easing out historically underproductive partners while focusing on lateral recruitment to bring in more profitable talent; moving from a location-based to a practice-based structure; increasing the firm's presence in the New York market; expansion into new markets and practices; and so forth.

This strategy was replicated and resold countless times by many consultants. Not because the strategy was universally correct, but because they could sell it. Fancy power point presentations, lots of "market segmentation" graphs, and the inevitable "peer group" comparison lists supported the immediate urgency to implement this change, or be left behind to wither and die. The consultants would latch on for a lucrative ride-along for continuing fees in the implementation phase that invariably took more than one year after the plan was adopted. Such plans were aggressively sold well into 2006 and 2007.

How do the results shake out a few years later?

Firms wish they had retained, and now scramble for the lower margin practices, as many of them were and are practices that deliver unspectacular but steady returns in both good and bad economic times.

"Historically underproductive" mutated into a euphemism for partners that could not squeeze from their clients ever more astronomical hourly rates, but had nothing to do with their professional talent, commitment to work or loyalty to the firm. It was also applied to force out partners who politically opposed the new strategies, or questioned the potential negative impact to historical firm culture. Strategic plans were also co-opted by some partners to shift, consolidate and apply power within the organization for themselves.

High margin practices were trendy but volatile, and that was not adequately factored in the analyses. Many acquisitions or developments of such practices wound up costing the firms far more money than they delivered, resulting in net losses to the organization, sometimes in the millions of dollars per firm.

Lateral recruitment turned out to be expensive, problematic with respect to long term retention, and disruptive in the process of inclusion and cultural stresses.

Practice based organization became a massive organizational and operational nightmare, with few effective means of tracking true performance, or assigning accountability for results. "Silo" practice, work hoarding and breaking down the "one firm" goal became a virus, creating warring fiefdoms and a senior warlord class of partners, with an exploitation mentality towards associates, of counsel, income partners, and eventually junior equity level partners.

Increasing presence in New York for those without one was, and remains for most firms, as intelligent a move as flossing teeth with a Bowie knife. Reciprocally, there are very good reasons why New York based firm incursions into other markets have so often become abject failures, even in "good times." The reasons can be explored in another article, but just do the math on how depressingly few expansion offices reach firmwide "average" profits within five years; if ever.

Immense increases in administrative and third party costs associated with "global" practice were not appreciated, even though there was a track record with this challenge from a review of the recently collapsed former paragons of international practice (Coudert Brothers and Graham & James), and many UK firms (whose presence in Commonwealth countries created a licensing and tax advantages available only to themselves and not to U.S. competitors), as well as operational challenges that do not exist even with large multi office national firms.

There are good consultants, with strong understanding of the markets, and firms, who can be of great help to law firms. There just are not many of them.

Law firms might be one of the most difficult client types for any consultant to service well, while at the same time being one of the types of enterprise most needing competent strategic and operational advice, which most of us will acknowledge. Law firms also had lots of money and were a good target to sell anything.

The colossal error of the strategies enumerated above is so clear that it is embarrassingly impossible to reconcile new recovery strategies with the recent advice that helped put law firms in their current positions. (So much so that many consultants feed the denial by numerous leaders in BigLaw that any of these strategies could possibly be wrong.) How can one follow the advice of somebody who got it so incredibly wrong in the first place? "Oh, we were wrong then, but trust me, we have it right now" is not compelling. When law firms give advice later determined to be wrong...say for example terrible tax opinions...the firms may be forced to close their doors. There are not second chances.

Law firms have a challenge with the value proposition of what they deliver. Law firms have a problem with their operations costs, their internal workings as partnerships, fragility to their financial structure from hollowing out their business and capital in the race to deliver more income to partners, the dilution or abandonment of their cultures, a rapidly evolving lack of trust and confidence in the capability and motivations of their leadership, and that is just for starters. But law firms in our current economic crisis do not have it “wrong” based on the correctness or caliber of the legal advice they give, the core of their service. This is what distinguishes the crisis that law firms and law consultants face today.

One may debate the significance of any single challenge facing law firms, but one cannot effectively challenge that the advice and service of legal consultants to big law firms contributed materially to the deterioration of law firm stability, and was fundamentally wrong with respect to almost every major strategic piece of advice outlined above. As a consultant one cannot say, "Oh, gee, the economic situation changed so who could have known? We get a free pass because there was a global recession. " It is crystal clear that the advice was wrong in the context of any economic model other than a rapidly and constantly expanding one (which has never occurred), and all the recession did was hasten the end date. More importantly the advice was given to... lawyers, who have the memories of elephants, and the incentive to blame these ills on somebody, indeed anybody, other than themselves. (This may not distinguish lawyers from other folks, but they are better at it than most!)

Consultants are not to blame for the ills of BigLaw. Lawyers did this to themselves. Consultants may have helped us along by mixing up the Kool-Aid the law firms wanted to drink, but they did not make the decisions. Consultants did not implement the strategies. Consultants did not fail to think through the consequences as they would translate to the unique real world dynamics of our law firms, and more importantly, did not fail to recognize the ensuing damage, deterioration and dysfunctionality as manifested thereafter, at times dramatically. Only the lawyers can take responsibility for that.

But... remember the adage that applies to these situations..."We are not saying it is your fault. We are saying that we are holding you accountable for it."

The two professions, law and legal consulting, are thus distinguished. Few of the consulting lampreys will be given the chance for another "bite and ride". Because whether deserved or not, the "accountability for results" question looms front and center. Just as it does for law firm leadership that adopted these failed strategies. Having the right answer <I>***eventually*** is not enough. <I>*You have to have it at the right time.*<I> In time to make a difference for the client. To have a successful surviving client as a reference to attest that at the time everybody else was going the road most traveled and counseled, and over a cliff, your consultant convincingly and correctly directed you down a path that was different, and you are harvesting rewards as a result while others are working in barren fields.

Identify (anybody out there, please!) the major law firm consultancies that did so, and any firm client of theirs in the NLJ 250 who followed such an alternative strategy. Any major law firm. Any major consulting firm. Name one that did so, for their sake now is the time and this is the place.

The outcome from this recession and financial crisis in BigLaw will be much worse for the field of law firm consultancy than it will be for the law firms. The few consultants who have the track record of bold correct advice against the misdirected trend have the one chit to play that will get them future work, credibility from results and accuracy. The rest do not and will struggle to escape from being “thrown under the bus”.

There are some situations in which there just is not another chance. In this instance, we have many consultant-based decisions, analyses and advice given over a long period of time on very fundamental issues. There is no escape from the review and replay of that advice memorialized in strategic plans assembled, bound...and saved... within law firms, and the transport of that counsel around the profession as lawyers exercise their mobility from damaged and sinking platforms, sharing that experience in their new home. There aren't many current experiences that are the foundation for recommendations for consulting advice based on... "Call these folks, they really got it right for my prior firm."