Optimizing Practice Management: Driving Profitability and Market Position

SUSAN RARIDON LAMBRETH AND WENDY BERNERO

PUBLISHED BY ARK GROUP IN ASSOCIATION WITH mp managingpartner

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is published by Ark Group in association with Managing Partner

UK/EUROPE/ASIA OFFICE
Ark Conferences Ltd
6-14 Underwood Street
London N1 7JQ
United Kingdom
Tel +44 (0)207 566 5792
Fax +44 (0)20 7324 2373
publishing@ark-group.com

NORTH AMERICA OFFICE
Ark Group Inc
4408 N. Rockwood Drive
Suite 150
Peoria IL 61614
United States
Tel +1 309 495 2853
Fax +1 309 495 2858
publishingna@ark-group.com

AUSTRALIA/NZ OFFICE
Ark Group Australia Pty Ltd
Main Level
83 Walker Street
North Sydney NSW 2060
Australia
Tel +61 1300 550 662
Fax +61 1300 550 663
aga@arkgroupasia.com

Head of Publishing & Research
Fiona Tucker
fiona.tucker@wilmington.co.uk

Reports Content Manager
Helen Roche
helen.roche@wilmington.co.uk

Assistant Editor
Laura Slater
laura.slater@ark-group.com

UK/Europe/Asia enquiries
Ken Fitzgerald
ken.fitzgerald@ark-group.com

US enquiries
Daniel Smallwood
dsmallwood@ark-group.com

Australia/NZ enquiries
Steve Oesterreich
aga@arkgroupasia.com

ISBN:
978-1-78358-197-9 (hard copy)
978-1-78358-198-6 (PDF)

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MP0018

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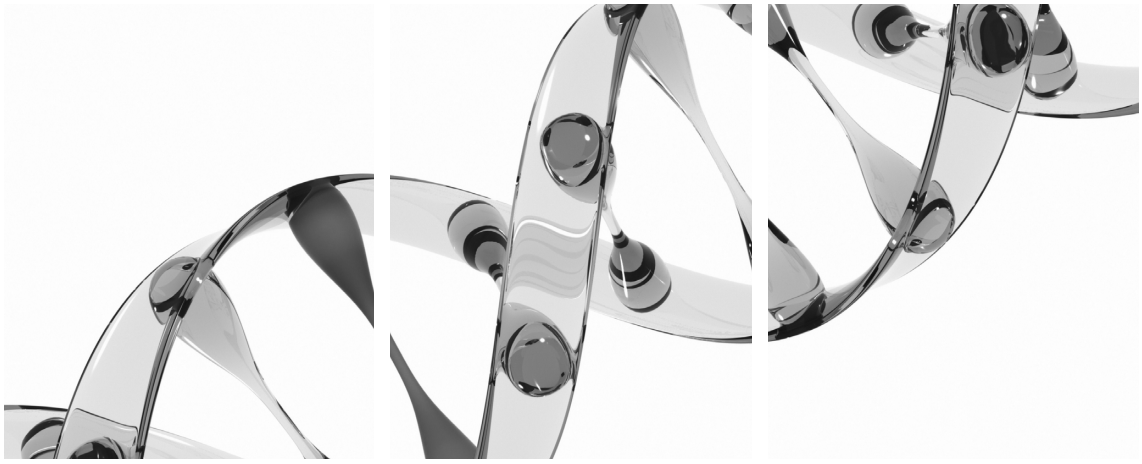

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About the authors

Susan Raridon Lambreth

Susan Lambreth is nationally recognized as one of the top leadership, practice, and project management consultants for law firms, where she has consulted for over 25 years. She works with firm leadership to improve their law firm's profitability and market position through practice management. Susan has helped many of the largest firms in the US to implement empowered and effective practice group management and/or to train their practice group leaders (including over 50 percent of the Am Law 200). She has trained more practice group leaders than any other consultant in the US (over 5,000) and has trained over 3,000 lawyers and other legal professionals in legal project management (the next evolution of practice management). She is known for her high energy and engaging presentations and leadership workshops, which help create motivated and dedicated practice leaders.

Susan has given hundreds of speeches and written dozens of articles. She is co-author or author of five books: *Achieving Peak Performance Through Practice Management: A Practical Handbook*, *The Practice Group Leader's Handbook for Success*, *The Power of Legal Project Management – A Practical Handbook* (published by the ABA in 2014 and the first comprehensive book written on LPM) and *Implementing Legal Project Management – A Legal Professional's Guide to Success* (published in 2015 with co-authors Rueff and Leventon). She chairs the highly successful annual, one-day project management program for the Practising Law Institute, and she is the founder of the LPM Institute, the leading resource for educating law firms and law departments on implementing project management in their organizations (lpminstitute.net). Prior to founding LawVision Group, she was with Hildebrandt International (more recently Hildebrandt Baker Robbins) for 20 years, and with Altman & Weil for almost seven years.

Susan is a fellow of the College of Law Practice Management and was active in leadership roles in the American Bar Association for over 25 years. She received her JD from the University of Pennsylvania Law School and her MBA from Villanova University. Susan can be reached at slambreth@lawvisiongroup.com or (001)-615-377-3128.

Wendy Bernero

Wendy Bernero has more than 25 years of experience serving in senior-level management roles for major law firms. She has helped lead six Am Law 100 firms through good times and bad. She's run the gamut from the most successful (Paul Weiss)

to the most ambitious (Akin Gump), from the most focused (Proskauer), to the least inhibited (McKee Nelson, may it rest in peace). At these firms, and as a partner in Hildebrandt International, she has helped lawyers expand their businesses, address their most pressing challenges, and cope with crises, large and small. From developing and implementing a strategic vision, to creating and executing a meaningful value proposition, she has a passion for helping firms, practice groups, and industry groups achieve a sustainable competitive advantage.

Earlier this year, Wendy and Aric Press, the former editor-in-chief of *The American Lawyer*, launched Bernero & Press, a consultancy focused on helping firms achieve a competitive advantage through practice differentiation, deep-dive client feedback and engagement, and targeted brand enhancement. (For more information, please visit www.berneropress.com).

Wendy is a regular presenter at strategy, business development, and practice management conferences and roundtable programs, and was a panelist at PLI's 2014 Project Management for Lawyers program, the leading conference on legal project management. In recognition of her contributions to the legal profession, Wendy was inducted into the College of Law Practice Management in 2014, named 2013 'Thought Leader of the Year' by the New York Metropolitan Area Chapter of the Legal Marketing Association (LMA), and inducted into the international LMA Hall of Fame in 2012. She is a contributing author of the New York State Bar Association's recently published book, *Grow Your Practice*. Wendy can be reached at wendy@berneropress.com or (001)-203-984-9788.

Preface

By Aric Press, partner at Bernero & Press LLC, and former editor-in-chief of The American Lawyer

DESPITE THE various overwrought reports of the past few years, Big Law isn't busy dying. Parts are being sorely tested, but the present of large law firms is strong, and so is the future, for at least one undeniable reason: big clients, in all their many and varied forms, need big law firms. They haven't found a substitute yet. And, to be blunt, most haven't looked for one.

However, there is an undeniable sense of unease in the practice and business of law. There is so much focus on the price of the services rendered that the transactional part of the relationship – the hiring and paying – is diluting the more important aspect, namely, the valuable services that law firms provide to their clients.

Much of this unease stems from the economic dislocation that began in 2009. Faced with new demands to cut costs – and, occasionally, corners – law firms and their clients scrambled to adjust. They didn't have a vocabulary to talk about the value of their services or, often, their methods of delivery. Instead, they fell back on simple arithmetic: hours times rates. For all the dollars at stake, this is an impoverished conversation. What's particularly worrisome is that the law business is only at the beginning of a period of change, and already there is a coarsening of communication.

It's important to note that the legal market has hardly suffered a serious disruption. (For examples of that, please consider the entertainment business or publishing or, closer to the practice of law, medicine.) There, the changes have been rapid, broad, unexpected, and deep. By comparison, lawyers and law firms have, for all the concerns expressed, been forced to change far less.

In fact, Big Law is vastly bigger, richer, more ambitious, and more diverse than it was a generation ago. And, the pace of practice has sped up in ways almost unimaginable before the turn of the century. But if you put aside the new instruments that allow lawyers to work 24/7, bounding across time zones and continents, imperiling only their starved-for-attention loved ones, the core of their work would be recognizable to lawyers of earlier eras. Could William Nelson Cromwell or Paul Cravath operate in today's environment more readily than, say, Louis Pasteur or David Sarnoff? Yes – provided you taught them how to type and control their air conditioning units, and (as we already do for lawyers of a certain age) remind them of their log-ons and passwords.

That isn't to say that things aren't different, only that the changes in the law business have mostly been felt on the margins. Yes, there are some new entrants in this space, and some new money has begun to slosh around. But the old regime hasn't been toppled. It's just under stress.

The reasons are pretty clear. In constant dollars, spending on legal services by American business, when measured in inflation-adjusted dollars, is off about 25 percent over the last decade. During this period, according to estimates prepared by the legal intelligence staff at American Lawyer Media, the Am Law 200 – the 200 top grossing firms in the land – increased their share of market to roughly 47 cents of every dollar spent by American businesses. It's not clear which of those two numbers is the more astonishing, the fall in demand or the concentration of spending.

But to those who worry for a living, the enormous share of market held by those 200 firms is another reason for concern. For the last three years, according to the estimates, their share has remained flat. Perhaps the Am Law 200 has hit its natural limit. Remember, these firms represent roughly ten percent of the practicing lawyers in the United States. Under what circumstances will they keep capturing a greater share of legal spending year after year?

The picture is not easy on the client side, either. Since Lehman Brothers collapsed and the Great Recession began, clients have been under serious financial and budgetary restraints. More than one general counsel has said that hiring outside counsel is now a luxury, so she better make sure it is also a necessity. But as some clients have brought more work inside – and understand it is only some clients that have – they have been expected to manage it without increasing budgets as fast as their workloads. More is expected of them, the clutter on their desks only grows, and the world in which they operate becomes increasingly complex.

Caught in this vise, two things happened: the legal marketplace took on the hallmarks of a souk (without any exotic charm); and a ferocious segmentation developed. The two are related. For the most difficult, most risky work, customers go to the lawyers they think can save their bacon. When the CEO is invited to meet next Monday morning for an intimate chat with Preet Bharara (US Attorney for the Southern District of New York), his general counsel doesn't ask for a litigation budget. There aren't any atheists or legal market reformers in a foxhole.

These days, the critical, high-priced work is tending to go disproportionately to a select group of firms. Every firm in The Am Law 200 gets a taste of it, but maybe two dozen now dominate that high-end segment.

Then there's the rest of the big firm market, where price is sensitive and clients aren't willing or able to pay premium rates. Think of the post-Lehman times as an age of growing discernment. Clients are simply more careful, more exacting, in deciding which lawyers to hire and at which price points. They expect and frequently receive discounts. This is not an inspiring process, filled as it is with posturing and workarounds. Firms increase their rates; the clients get their discounts. There are winks and nods; everyone is in on the game. It's the hotel room effect: there's a price posted on the back of the door, and then there's the number available on Priceline.

These often-cynical discounts are a testament to the continuing power of the billable hour, at least in the United States. When Acritas, the global brand research company, asked 1,500 clients about their use of the billable hour, this is what they found: outside the US, about 31 percent of the work was billed on some method other than time. In the US, clients put the figure at 13 percent. This is, in my judgment, not the proudest example of American Exceptionalism.

Why does the pattern persist? For one thing, it's what lawyers and clients know. There is comfort in the familiar, if occasionally also contempt. For another, despite too much rhetoric at too many conferences, in practice, both firms and clients prove to be reluctant, even hostile, when offered opportunities to move in new directions. Also, it's hard to estimate costs and risky to be wrong. Think of it this way: veteran professionals can tell their clients nearly everything about the likely outcome of a case, but they're still reluctant to predict how much it might cost. In other words, they are comfortable assuring clients about their substantive risk; they are frequently uncomfortable taking on much of their own commercial risk.

But there's another factor at play here, too, and this one is pernicious: too often there is an absence of trust and fair play. I know that the plural of anecdote isn't data, but sometimes an example can be telling. My current favorite involves a household-brand firm that recently entered into a fixed-price agreement with a large national client. Under the deal, the firm would handle litigation for two divisions. The firm would make the staffing decisions. It would study the business to find remedial actions to prevent new cases. And it would review its progress with the client every quarter. The client would pay a fixed fee that was roughly a 10 percent reduction from the previous year's expenses.

All went well for two quarters, until the client's CFO reviewed the arrangement. The firm was living up to its obligations, disposing of cases quickly and beginning to suggest changes to company operations that would reduce the client's exposure. But the CFO was unhappy with what he found. By looking at the firm's "shadow billing" records, he concluded that he was being overcharged. Had he stuck with the billable hour rather than this newfangled deal, he'd be paying even less. Despite the fact that the firm's remedial efforts likely resulted in reduced costs by way of fewer cases filed, the CFO effectively aborted the deal, insisted on a 10 percent discount off the current year's billing rates, and dispensed with the remedial efforts as largely speculative.

The firm was aghast. This was an important client, so it couldn't just walk away. However, not only had all its effort at crafting a new arrangement just been tossed aside, but also, after agreeing to the newly imposed discount, its realization rate plummeted to roughly 70 percent. The head of the firm was rueful. And having been singed badly, he was unlikely to rush into another elaborate alternative billing arrangement like this one. He'd prefer to take his chances with hours times rates, even discounted rates.

There's no accounting for knavery, and this episode may just be an example of that. However, the pre-deal discussions focused mostly on the pricing arrangements. A pricing consultant advised the firm on the matter. Ten years ago there weren't any pricing officers in the Am Law 200. Today there are more than 100. And that's a good

development, for they are forcing lawyers and clients to look more carefully at their actual costs of doing business. But the discussion can't begin and end with incurred costs and projected savings. What's missing in that sort of regimen is an explicit talk about the value of these matters to the client. That was certainly the case with the unhappy example I cited. The negotiators at the table didn't know how to talk about the value of the matter in any other way than what it might cost. The other half of the equation, benefit and worth, just wasn't on the agenda.

After all this time, the legal market lacks a language to describe, and a method to calculate, value. Knowing it when they see it isn't a very satisfying legal principle for defining pornography, and it is even less useful as the basis of a complex lawyer-client relationship. But without such an inquiry, parties to these arrangements invite disappointment, misunderstanding, and another generation of heartache that will badly serve both sides – especially outside lawyers.

The zeitgeist of corporate America is metrics. And the result is that, in my view, too many executives and their boards now believe that the only things that matter are those that can be measured. That is not true, of course, but it is the conventional wisdom of the moment. If that is the case, how should the performance of lawyers be measured? By:

- Their results?
- Their responsiveness?
- Their risk-avoidance?
- Their work product?
- Their bedside manner?
- … or, as they are now, by their bills?

As I suggested earlier, hours times rates is an impoverished measure and forms the basis of an impoverished dialogue. When I talk with general counsel and ask how they are assessed internally, they say it's by whether they've hit their budget goals. For most, that's a matter of cost control as few are profit centers. Really? A decade and a half into the new century the best measure of a lawyer is his or her bill and ability to make budget? I hope not.

Change in this area is likely to be incremental, which in our space is a polite word for slow. The sooner you start addressing it, the sooner your conversations with clients and colleagues can break the tyranny of thinking of yourselves as sellers of time, and you can begin to think of yourselves as what you are: purveyors of judgment, care, and courage. I suggest to you that practice management, as outlined in this book, forms the beginning of the answer. For most other businesses, there is a strong focus on product/service development and delivery. Law firms need to be in the business of developing and delivering complex solutions that maximize value and minimize risk. It's time for law firms to begin competing on value, instead of price. You have the skills, talent, ideas, knowledge, and capabilities. Now is the time to act on them – to utilize your practice groups to add clear value to your clients and profits to your firm.

Foreword and acknowledgments

THE IDEA for this book grew out of our collective experience working with the legal profession over the past 20 years. The competitive landscape and pace of innovation in the legal industry has firmly established practice management as an important component of firm leadership. We wrote this book to provide firms with a guide to what are fast-becoming best practices in major law firms today.

We are grateful for the contributions of the many law firm partners, practice group professionals, and others who have contributed their knowledge and insight and shared their experiences to help make this book a comprehensive practical guide. In addition, a number of our friends and colleagues gave generously of their time to contribute success stories and editorial input and we thank them for their invaluable assistance. In particular, we would like to thank the following:

Eva E. Booth has been the roundtable and program director with LawVision Group LLC for the last three and a half years. Prior to joining LawVision Group, she worked as a consultant with Hildebrandt International and Altman Weil. She has over 15 years of experience consulting in the legal industry. In addition, Eva has a JD and MBA, and is licensed to practice law in Pennsylvania and New Jersey. Eva contributed to the editing of the book.

Mary Ellen DeWinter has enjoyed a progressive career of 20 years in the professional services industry. She's held strategic roles in large financial institutions and Am Law 100 firms in regional and global management capacities. Her experience includes strategic planning, practice management, operations and project management, marketing and business development, and leading complex processes and integration efforts through mergers and acquisitions. As a consultant, she advises partners, law firms, and other professional service organizations on strategic growth initiatives, enhancing operational efficiencies, strengthening client relationships, and increasing market share and revenue. She is active in industry associations and has spoken at programs at Harvard Law School, Suffolk Law School, the International Bar Association, and other business forums. Mary Ellen contributed to the copy editing of the book.

Jennifer Korff is a management and legal executive with a unique blend of legal and business experience at top-tier law firms and corporations. Jennifer practiced law for a decade prior to transitioning to helping law firm leaders run successful businesses.

In 2007 she became the deputy executive director at McKee Nelson. More recently she held the post of chief of staff to the managing partner team after three years of managing the 315-attorney corporate area at Bingham McCutchen. Jennifer has an MBA from Columbia Business School, a JD from NYU School of Law, and a BA from Brandeis University. Jennifer contributed to the copy editing of the book.

James Pagliaro is a partner in Morgan Lewis and regularly counsels companies in the defense of serial product liability and mass tort cases involving novel and unique scientific and medical issues. He was lead trial counsel for the defense in two product liability cases featured by the National Law Journal as "Top Ten Defense Verdicts" of the year. From 1999 to 2009, as the leader of the firm's Global Litigation Practice Group, Jim led firm expansion in California, Houston, Chicago, Boston, and Philadelphia, and enhanced the firm's class action, securities, white collar, and complex commercial litigation capacities. As a firm managing partner for Client Relations from 2009 to 2014, Jim had primary responsibility for Morgan Lewis's relationships with its clients and substantially grew the firm's marketing, public relations, client outreach, and business development endeavors. Jim is a fellow of the American College of Trial Lawyers and the dean of The Morgan Lewis Trial Academy. He currently leads the firm's Product Liability & Mass Tort Group and heads up the Morgan Lewis Technology Industry Initiative. Jim contributed his personal experience implementing practice management, detailing the significant impact it has had on the growth and success of his firm and its litigation practice.

Executive summary

LAW FIRMS are confronting significant internal and external challenges as they work to improve their profitability and market position in a highly competitive business environment. At the same time, the opportunity for firms to gain a competitive advantage by innovating new ways to deliver value to clients has never been greater. The primary opportunities to innovate involve either re-engineering the delivery of services or designing new solutions, both of which begin at the practice/industry/client group ("practice management") level. As a result, firms are finding that high-functioning practice management is an essential component of success.

In particular, practice management establishes a platform that enables firms to:

- Develop a competitive advantage at the practice, industry, or client level;
- Customize and differentiate their services;
- Design and negotiate pricing strategies that benefit the client and the firm;
- Provide leadership growth opportunities for partners;
- Facilitate teamwork and collaboration;
- Enhance knowledge sharing and management;
- Set goals and ensure accountability for implementation;
- Make better marketing and business development investment decisions; and
- Create the "glue" that ties partners to the firm.

Whether your law firm is seeking to enhance or overhaul its practice management structure, this book provides the "best practices" and insight you need to design and implement the right structure and system for your firm.

Practice management systems are not a "one-size-fits-all" solution; in order to be effective, they must be customized for your firm according to its history, culture, organizational model, market position, and strategy. Among the questions the book answers are:

- How do we organize our firm to be more responsive to client and market needs?
- What do we need to put in place to increase our lawyers' level of engagement?
- How do we facilitate greater collaboration and teamwork? What impediments might exist in our firm?

- What does it take to create a new generation of leaders for our firm?

The book is divided into six main sections, which together provide firm leadership with a guide to all the critical aspects of structuring and implementing an effective practice management program:

- An overview of practice management;
- Building a foundation for practice management;
- Identifying and capitalizing upon the firm's organizational model;
- Developing the practice management structure;
- Implementing practice management successfully; and
- The role of the practice leader.

Chapter 1 sets forth the business case for practice management, outlining its evolution and the benefits it offers to the firm, the lawyers, and – most importantly – the clients. Chapter 2 describes the five essential foundational elements of a well-functioning practice management system: firm strategy, an appropriate governance and management structure, leadership support, partner buy-in, and alignment of partner compensation with firm objectives. Chapter 3 details the three basic law firm organization models and provides insight into the complexities of implementing practice management in each. Chapter 4 addresses the four possible dimensions around which a firm can organize its practice management structure – substantive practice areas, geography, client teams, and industry groups – and the pros and cons of each. Chapter 5 includes an interview with Morgan Lewis, senior partner James Pagliaro, who was formerly the head of the firm's litigation practice. It also provides advice on key issues that firms face in implementing changes in their practice management structure. Chapter 6 discusses the essential role of the business unit/practice leader and covers the characteristics of successful practice leaders, typical roles and responsibilities, and practice leader training.

The appendices include resource materials to help your firm implement the ideas outlined in this book. The first Appendix contains the results of the current Law Firm Practice Management Survey conducted by LawVision Group and offers insight into the practice management structures, policies, and approaches of a group of Am Law 200 firms. These results will help you to benchmark your progress against a set of peer firms. Appendix 2 comprises job descriptions for the primary roles in a well-functioning practice management system, including practice group and department leaders, office managing partners, industry team leaders, and practice group professionals, as well as an outline of how these roles interrelate.