

# Connecting the Steps on the Yellow Brick Road: Law Firm Branding and Legal Process Offshoring – Two Complementary Approaches to Succession Planning

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Lawyers, no less so than the general population, are living longer. Some attorneys will enjoy their bonus years in pursuits outside the law.<sup>1</sup> Others remain passionate and committed, or have saved little for retirement, or perhaps fall into both categories, and will therefore use the boon of career longevity to enhance their professional satisfaction and financial rewards in the longer sunset of the practice.

These trends challenge the received wisdom in law firm succession planning. Senior lawyers, the thinking goes, ought to stand down graciously and gracefully. The law firm needs continuing infusions of fresh energy and therefore must make room at the top for the rising stars. These demographics have created a work environment where law firm succession planning becomes even more critically important, not only for the continued success of the firm, but also for the pre- and post-retirement financial security of the senior attorneys.

## ***It's Ugly out There: Attorney Blood Sports in the Lawyer's Waning Years***

The traditional goal of law firm succession planning is to secure the firm's future after a senior partner retires.<sup>2</sup> This is typically accomplished by optimizing the use of all productive resources, maximizing work flow, and ensuring the successful transition of clients. Traditional succession planning implicates firm resource management, skills evaluation, client retention, and a coherent long-term strategy.<sup>3</sup> Regrettably, however, with succession planning focused predominantly on the success of the law firm, the retiring partner's personal financial concerns and life goals may at times be neglected.

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<sup>1</sup> Peter Scott, "More Than Ever, a Core Issue for Law Firms," *Of Counsel*. October 2004: 10.

<sup>2</sup> Kristin Eliasberg, "Succession Planning: Who Will Follow the Leader?" *Small Firm Business*. Summer 2005: 41.

<sup>3</sup> Georgina Armytage, "A Talent for Future Talent Spotting," *The Lawyer*. August 2004: 21.

The tension between the remaining lawyers and the outbound partner is especially acute in small to mid-size firms where the partner pondering retirement may have founded the firm and may still serve as its principal rainmaker and mentor for attorneys. The problem becomes more daunting when the departing lawyer expects a costly, unfunded buyout of equity that may undermine the ability of the continuing partners to keep the firm's lights on and the attorneys and clients happy long into the future. Not surprisingly, some firms have imploded over these differences and some retiring lawyers have unduly prolonged their stays solely for financial reasons – even when it is in no one's best interests that they remain.

### ***Can't We All Just Get Along?***

The concerns of the law firm and the retiring senior partner need not be a zero-sum game. Newly emerging economic forces and changing market trends suggest two complementary avenues – law firm branding and legal process offshoring (LPO) – that can harmonize what may seem to be competing interests. When executed adroitly and in tandem, firm branding and a thoughtful LPO strategy can increase the firm's revenue and financial success while rewarding a senior partner before and after retirement.

### ***That's Our Brand, "Pardner!"***

Profitable growth for law firms has historically been sustained by expanding into new practice areas and geographic regions, and by hiring more associates. Growth through traditional strategies is slowing, however, and in the long run is probably not sustainable for many small to mid-size firms. Increased competition has created the need to reconsider traditional methods of marketing and firm growth while developing new strategies to capture greater market share.<sup>4</sup>

Legal branding aims to create in the minds of the target market an articulable awareness of the firm's distinctive qualities. Branding is a powerful tool to publicize the firm's core competencies and unique strengths, increase the firm's market visibility and credibility, and supplement traditional methods of firm growth. Ultimately, the brand should resonate emotionally with the firm's target client base and create a positive association so that the clients implicitly trust the firm.<sup>5</sup> When the clients come to expect consistent performance that reinforces the client's perception of the firm at every encounter or "touchpoint" with the attorneys and staff, then and only then can it be said that the firm has established its brand.

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<sup>4</sup> Charles Toutant, "As Competition Heats Up, So Does Market Research," *National Law Journal*. January 2006.

<sup>5</sup> Seth Grodin, *Permission Marketing: Turning Strangers into Friends and Friends into Customers* (New York: Simon and Schuster), 96.

Consider the brand success of the Starbucks franchise. Regardless of store location, the Starbucks' customer knows what to expect – a favorite (not inexpensive) beverage tailored to one's own preference, a comfortable environment, an eclectic collection of music, and a WI-FI enabled place to surf the Web or check emails.<sup>6</sup> By establishing a uniformity of service, atmosphere, physical appearance and merchandizing, Starbucks has successfully created a personal connection with their loyal customers.

Similarly, by developing a brand identity (and a firm culture and mechanisms that promote accountability and consistency with every client touchpoint to reinforce the brand repeatedly), a law firm will stand out from the crowd.<sup>7</sup> Just as in other industries, strong law firm branding creates client loyalty which, in turn, creates conditions for superior profitability and firm longevity.

So how does branding help the departing lawyer? Many successful senior partners, merely by virtue of their many years of profitable legal practice, have already created a brand (whether consciously or unconsciously). The senior lawyer has no doubt developed a loyal client following and a network of professional and personal relationships. This relational capital has served reliably for many years as a feeder system which nourishes and sustains the lawyer and the firm. If a focus group were convened to query a cross section of clients and members of the lawyer's network, the senior lawyer's brand would likely become apparent. Perhaps the brand is the lawyer's faithful practice of returning phone calls promptly, or of listening carefully when the client speaks, or the lawyer's empathy, emotional intelligence and obvious integrity, or her superior writing or courtroom skills, or his expertise in a niche practice area, or some distinctive combination of traits.

The job of the senior lawyer and the firm is to transmit this brand virally, so that its qualities become infectious and that clients recognize that they will consistently observe them in *all* lawyers and staff within the enterprise. There are a number of successful ways to brand a law firm that supplement the standard reliance on logos and buzzwords.<sup>8</sup> Branding strategies demand effective collaboration efforts to capture the intended market segment. For example, actively pursuing media attention and hiring a PR firm can be important in developing a firm's brand consciousness.<sup>9</sup> Speaking at industry conferences and seminars helps to establish a reputation for expertise in a particular practice area.<sup>10</sup> Writing articles for professional and trade journals, or creating successful blogs in specific practice areas, can also enhance a firm's reputation and establish the firm and its lawyers as authoritative thought leaders. A strategic alliance with

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<sup>6</sup> Ann Sherman, "Starbucks and You," *Small Firm Business*. Summer 2005: 24.

<sup>7</sup> Lynne Hagen, "Branding the Law Firm"  
<http://www.interactmarketing.us/interact/freedata/brandingthelawfirm.pdf>

<sup>8</sup> Sarah Balmond, "Study Reveals Strong Case for Law Firm Branding," *Design Week*. December 2004: 7.

<sup>9</sup> Steven Clark, "Using a PR Firm Effectively," *New Jersey Law Journal*. August 2004.

<sup>10</sup> Trey Rider, "How to Build Your Law Practice with Dignity," <http://www.mobar.com/lpmonline/dignity.htm>

clients likewise helps promote the law firm's reputation and establish its brand. Collectively, these techniques allow the firm to carve out a legal niche and client base that might otherwise be unattainable.

Branding can become a self-fulfilling phenomenon. The more a firm succeeds in establishing a distinctive brand, the more probable it is that like-minded attorneys will apply for employment with the firm, and that clients who want or need a particular type of branded legal services will search out the firm for help.

### ***Who's Gonna Do All This New Work?***

In the feast-or-famine lifecycle of many firms, attorneys without business are the first to be let go. These separations are no doubt hard, and probably hurtful, for the lawyers who go and those who stay. As branding efforts begin to bear fruit, firm leaders will inevitably worry that despite today's hearty bounty, the times of drought might return unexpectedly. Management's natural responses might be either to recruit, or, to defer hiring, more lawyers. Both approaches are fraught with peril. If too many lawyers are hired, their payroll expense might absorb money needed for the buyback of a retiring partner's interest; if too few are hired, the brand may be undermined as the firm's overworked lawyers neglect brand-retention strategies in order merely to put out the immediate client fires.

Enter our *deus ex machina*, the LPO strategy, to the rescue! Legal Process Offshoring – a specialized variant of the type of business process offshoring championed by Thomas Friedman in his eye-opening book, *The World is Flat*<sup>11</sup> – is an increasingly popular approach that allows domestic law firms to access legal support from a remote knowledge-processing center abroad.

LPOs may serve only back-office functions, e.g., by enabling the offshore (overnight) transcription of dictation, the scanning and coding of documents, or the streamlining of bookkeeping and accounts payable work, at a fraction of the payroll and overhead costs typically borne by firms the United States. Front-office legal support services – of the type typically performed by paralegals and junior lawyers (including legal research and writing, deposition summaries, patent applications, immigration petitions, trademark services, document review, and other basic legal services) – are becoming more prevalent.<sup>12</sup> Currently, India is the preferred destination for legal outsourcing given its large, well-educated, English-speaking labor pool and the time-zone differences that permit work performed outside the normal U.S. work hours to be delivered to American law firms early the next day.<sup>13</sup> By 2015, legal outsourcing to India

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<sup>11</sup> Thomas Friedman, *The World is Flat: A Brief History of the Twenty-First Century* (New York: Farrar, Straus and Giroux, 2005)

<sup>12</sup> Evalueserve, "Legal Process Outsourcing (LPO): Hype v. Reality," [http://www.evalueserve.com/Media\\_Center/mediacenternew.asp](http://www.evalueserve.com/Media_Center/mediacenternew.asp)

<sup>13</sup> Helen Coster, "Briefed in Bangalore," *The American Lawyer*. November 1, 2004.

alone is expected to create approximately 80,000 legal support jobs and realize almost \$1 billion in annual revenue.<sup>14</sup>

Utilizing an LPO strategy can facilitate succession planning and benefit both the law firm and the retiring partner in several ways. First and perhaps foremost are the substantial cost savings that an LPO will produce. LPOs allow a law firm to cut its labor costs by 50%-60% while holding the line on hiring additional lawyers and office staff.<sup>15</sup> Furthermore, working with an LPO provider gives the law firm's attorneys and paralegals more time to focus on client relationships and brand marketing, as the LPO provider handles much of the back-office drudgery as well as the front-office process work. Because of the substantial time saved, the firm's attorneys are free to develop more work and deepen relationships with clients, clearly more productive use of the firm's time and resources. LPO providers also enable a firm to decrease office cost and rent, since much of the firm's work will be accomplished in a remote, offshore location and a larger share of the firm's documents can be scanned and saved electronically, thus reducing physical storage costs. Cutting operational costs allows the firm to realize a higher profit, which in turn gives the firm the ability to provide an adequate revenue stream to a retiring partner.

Reliance on LPOs may also lessen potential conflicts between the firm's rising stars and its senior attorneys, while facilitating the continuing viability of the firm as an enduring institution. Consider the mid-career attorneys who may want to increase their influence and compensation within the firm at the same time that senior attorneys have finally developed the requisite skills and network of contacts that allow them to reap the harvest of business development. This sets the stage for possible clashes between attorneys on the rise and the senior lawyers. If the firm has developed a solid LPO capability, neither the rising stars nor the senior lawyers would be positioned to bolt the firm quite so readily, because the firm, the "Mother Ship," and no component group of attorneys, controls the offshoring relationship or can readily replicate the firm's specialized LPO arrangement. While attorneys might imagine that pastures are greener elsewhere and might fancy that they enjoy the clients' ultimate loyalty, a successful LPO strategy by the firm – coupled with a finely-tuned and distinctive firm brand – would probably inhibit many if not all lawyer departures.

There are a number of legal and ethical requirements that must be met and incorporated into the outsourcing agreement with the LPO provider before the offshoring work begins. According to Rule 1-310 of the State Bar of California's Rules of Professional Conduct for 2006, a lawyer may not enter into a partnership with a non-lawyer if it involves the practice of law,<sup>16</sup> which would preclude the use of LPOs if they were engaged in the practice of law. LPOs, however, are not designed or structured to engage in the practice of law. LPOs do not have client-attorney relationships, do not represent clients in court, and do

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<sup>14</sup> "India Rides Outsourcing Boom to Capture US Legal Work" *Sify News* [New Delhi] October 15, 2005.

<sup>15</sup> Daniel Brook, "Made in India," [http://www.legalaffairs.org/issues/May-June-2005/scene\\_brook\\_mayjun05.msp](http://www.legalaffairs.org/issues/May-June-2005/scene_brook_mayjun05.msp)

<sup>16</sup> [http://www.calbar.ca.gov/calbar/pdfs/ethics/2006\\_Rules-Prof-Conduct.pdf](http://www.calbar.ca.gov/calbar/pdfs/ethics/2006_Rules-Prof-Conduct.pdf)

not give counsel regarding legal rights. LPOs are exclusively in the enterprise of legal support and operate in the same capacity as other non-lawyer support staff found in virtually every U.S. law firm, such as librarians, paralegals, law students, foreign lawyers, and law graduates who have not yet taken or passed the bar examination. Although LPOs are not engaged in the practice of law, it remains the law firm's responsibility to (a) conscientiously outsource only work that clearly does not implicate the practice of law so as to not violate the codes of professional responsibility adopted by the various State Bar Associations; and (b) take ultimate responsibility for legal advice, representation and work product that issues from the firm.

The law firm should also memorialize within the outsourcing agreement the procedures governing the relationship between the law firm and the LPO.<sup>17</sup> The law firm should exclusively interface with the LPO, and there should never be any interaction between the LPO and the law firm's clients. It is also necessary for the firm to disclose to the client the fact that the firm is receiving back-office and process support from an LPO and to secure client consent in advance. Given all the relevant information, many clients will probably consent to the LPO operation because of the benefits that client will receive – quicker turnaround time, the freeing-up of the U.S.-based lawyers to be more responsive to clients legal needs, and in some instances, lower legal fees.

As the industry develops, LPOs are increasingly resolving many concerns associated with offshoring. The biggest concern has been client confidentiality,<sup>18</sup> but pioneering efforts in Virtual Private Network (VPN) technology and "secure paperless work floors" have enabled legal outsourcing centers to safeguard client confidentiality. The outsourcing industry has also grappled with high rates of attrition.<sup>19</sup> LPOs now offer more competitive salaries (though still nowhere near those in the U.S.) and a congenial workplace, dramatically decreasing rates of attrition.

Another potential firm and client concern with the LPO approach is whether the quality of the work produced offshore will satisfy the firm's and clients' exacting requirements. To be sure, not all legal work can be sent offshore. As long as precautions are taken, however, such as a careful delineation of work suitable and unsuitable for offshoring, proper training and a step-by-step initial pilot program, a law firm can proactively tailor the outsourced legal work to fit the firm's and clients' predetermined standards. A pilot program is a relatively inexpensive way to explore the benefits of legal offshoring while diminishing the risk and potential liability. Through an offshore pilot program, the law firm can customize its outsourcing work, transfer the "low hanging fruit" abroad, and ensure in a test environment that the quality of legal work is acceptable before implementation with clients. The pilot program can also assist in minimizing inefficiencies in a law firm's U.S.-based work flow.

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<sup>17</sup> LawWave, "Outsourcing Contracts Insights," <http://www.lawwave.com/whitepaper.htm>

<sup>18</sup> Tom Ramstack, "Law Firms Send Case Work Overseas to Boost Efficiency," *Washington Times*, September 26, 2005.

<sup>19</sup> <http://www.bpoindia.org/research/attrition-rate-big-challenge.shtml>

When working in conjunction with an LPO provider, the law firm will benefit from the involvement of specialized process engineers who develop training methodologies based on the component parts of the legal processes dispatched offshore. Creating a more efficient work flow and building an intelligent knowledge-management system will allow a law firm to accept more work, and by outsourcing portions of the newly acquired work and scaling its operations, to develop a larger legal practice. The probable increases in profit and productivity resulting from the leveraged use of an LPO strategy thereby more likely strengthen the law firm's continued viability, and place it in stronger fiscal shape to fund a senior attorney's post-retirement buyout.

### ***The Circle is Unbroken***

Not only can outsourcing reduce overall law firm costs, alleviate tensions between mid-level and more senior attorneys, and minimize workflow inefficiency, it can also be utilized for brand enhancement. The law firm may easily offshore many project-based components of legal marketing, such as web maintenance, software development, newsletters and client alerts, and ghost-writing of trade journal articles. By offshoring these processes, the firm can enhance its branding efforts in a more cost efficient manner.

Here then lies a fruitful marriage between law firm branding and LPO strategies. By pursuing both approaches in tandem, the marriage succeeds in increasing the law firm's revenue, visibility, and client loyalty, and the firm remains a vibrant business even after a senior partner's financially assured retirement and the successful transition to a new generation of law firm leaders.