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Law Firm Culture – Its Importance and How to Overcome It

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In the 1540s, Jesuit missionaries to the Wichita tribe found a ready audience, and the whole group adopted Christianity. But when the missionaries announced they were going on to the next tribe, they were killed. The explanation, “If our enemies had become Christians, it would be a sin to kill and eat them.”

Similarly, the best firm policy or loss prevention program is no match for the wrong firm culture.

“Culture” includes the firm’s stated values, its perceived values, the values it actually rewards as embodied in its boneheaded compensation system, its management system, its problem solving systems, the ability and method of its members and employees to communicate, its methods of dealing with bad news, its ability to recognize good news, the degree to which it recognizes exemptions from its rules, the method, if any, of assuring that new members of the organization know that the organization has a culture and what it is, and a method of adopting changes to the culture when necessary.

HOW CAN A FIRM CULTURE CONFLICT WITH ETHICS OR LOSS PREVENTION PRINCIPALS?

- The dangers of doing business with the client are not effectively emphasized when the largest client of the firm was founded by the grandfather of the senior partner.
- The rule against dabbling in unfamiliar fields of law rings hollow when compensation is based on a formula that rewards the offender more for work he both originates and handles than for work he generates for others.
- The rule that a person should report concerns about a client’s conduct is meaningless where firm culture is such that a lawyer “owns” the client and criticizing the client is seen as a threat to the lawyer, preventing an “our firm, our client” approach to problems.
- Rules against misbehavior toward subordinates make matters worse rather than better if the actions of the rainmaker in the corner office are forgiven because of his contribution to the bottom line.
- Even the basics such as conflicts of interest will more likely be overlooked if a compensation formula rewards generation of matters but takes no notice of ethical violations, or notes them only if they have adverse financial consequences.
- Rules against taking unworthy clients are likely to be winked at in a

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firm where individual compensation depends on generation of “one’s own” clients, rather than a team goal to improve the firm’s client base.

- One of the best firm safeguards - the savvy legal secretary loyal to the firm with a clear means of communicating concerns - is disabled by (a) management viewed as inaccessible; (b) culture where secretaries (generally, or for particular partners) are loyal to, or hired and fired by, the individual lawyer, not the firm.

How does one cope with cultural impediments? How do you bring about a cultural change? This can be a tough problem. The answer will be different depending on the cultural aspect you need to change. Sometimes a needed change occurs by luck, or by an event, or by the problem being appointed to a government position. There is one constant. The change cannot be imposed from outside. Change must come from within. A consultant’s recommendation for change is *never* self-executing.

Here are some of the ways cultures can be changed:

Event-Based Change

Until the late 1840’s, the Pawnee were still annually sacrificing a captured young woman as bride to the Morning Star. Young Petalasharo (or Old Petalasharo when he was young, I never can keep them straight), thinking either, “This is just not right!” or “What a waste!”, jumped onto the platform, knocked the Arrow Priest aside, picked up the girl and rode away, releasing the girl near her own tribe. When he returned, expecting severe punishment, there was none. It developed that pretty much all the Pawnees agreed with him, but were just afraid to rock the bullboat.

Note that, as with most “event” changes, it does not change the entire culture, just a part of it. Pawnees did not lose their reputation as skilled traders, clever raiders, ruthless and cruel enemies, but the human sacrifice aspect of the culture was gone forever.¹

The problem with event-based change as a strategy is that the event is often external and catastrophic. The court ordered forfeiture of a million dollars in fees resulting from a conflict of interest may just be the nudge needed to create or enforce a good program to avoid or resolve conflicts at the outset. The discrimination suit where the evidence includes not only the unbalanced success rate of

1. A similar story is part of the culture of my own firm, Carlton Fields. In 1943, D. Wallace Fields was a 3-year associate of the firm. He returned from lunch to find a named partner (actually one of early Florida’s legal giants) fussing at a secretary in the reception area, for some mistake she had made. The woman was in tears, and Mr. Fields told the senior partner to stop treating her that way and if he did not, he would make him stop. When I asked him about it 25 years later, Wally still remembered the emotion: “Oh, Pete, I was scared to death. Jobs were scarce; I had 2 babies at home. I had just told off my senior partner, and I knew I would be fired. But I just could not let a man talk to a woman that way.” The senior partner gave the firm an ultimatum: “Fields goes or I go.” Fields stayed; the senior partner went. The firm agreed that Wally was right, that such behavior was indeed intolerable, and made Wally Fields a named partner the following year.

female partner candidates but also the boorish behavior of the chief rainmaker may be just what is needed for the firm to quit tolerating the behavior. Such cultural changes are beneficial, but hoping for a catastrophe is a poor strategy, and it is generally cheaper and more fun to learn from the mistakes of organizations other than one's own.

Incorporation-Based Changes in Culture

Some of the more successful missionaries incorporated existing religious traditions as a device for overcoming cultural differences with those they were trying to convert. This is a partial explanation for the diverse customs in different parts of the world of a supposedly unified religion. For instance, I doubt that anyone would have invented the Christmas tree if there were not tree-worshipping Druids to convert:

Missionary: "Nice Christmas tree."

Druid: "What?"

"Needs a star on top, maybe an angel."

"How come?"

"Man, don't you know anything about trees?"

By assuring that his message incorporates upon the Druid's preconception that trees are special, the missionary has a better chance of overcoming the resistance to his message, or at least getting someone to listen.

A similar approach can be used when promoting a change that not everybody will agree is needed. For example, most people see themselves as reasonable and approachable, and would be astonished to learn that 95% of their employees are scared to death of them. However, people also know that they and others view certain co-workers as unapproachable. That common viewpoint can be used when trying to convince the partner who sees no need for system enabling employees to talk to owners, that a formal Ombuds program is a good idea.

HR Director: "We ought to formalize our Ombuds policy."

"Our what?"

"You have always had an open-door policy, right?"

"I guess."

"All our associates and staff know that they can come to you at any time, right?"

"Well, sure. I have their best interests at heart. I am like a father to them."

"Do they feel the same way about Fred?"

"Not if they have any sense. Fred even scares me."

{The conversation with Fred was virtually identical}

"Then these complaints that people are reluctant to approach us about matters may not be legitimate."

"What complaints? I'm sure they aren't about my department."

"But it cannot hurt to appoint a 2-person Ombuds Committee, to report, but keep confidential, any concerns, just to institutionalize the situation that exists in some departments already."

“Hey, that’s not a bad idea. Fred will hate it.”

Pointing out that an ombudsman policy would avoid the problem of the partner everyone is afraid to approach might convince a firm member to approve such a policy, even if that member thinks that he or she has an “open door.”

Conscious Decision, Education, Willpower, and Hard Work – Generated Culture Change

This is the least fun, but it is worth it.

We recently extensively revised our New Business Intake system. It really is good. As a centerpiece, it requires a sign-off by the Practice Group Leader of the practice area in which the matter falls, *not* the Leader of the originating lawyer’s primary practice group, in four areas:

- Positional conflicts and blocking conflicts – to catch possible conflicts that are not covered by the traditional conflict systems.
- Staffing - to prevent dabbling in unfamiliar areas, to assess the degree of experience appropriate for the matter, and to identify the appropriate persons.
- Billing arrangements – to prevent the trial lawyer from quoting \$500 to set up a corporation when what the client really needs is business and tax planning, advice on choice of entity, and the like.
- Client quality – including a menu of computer searches for the background and history of the client and its principals – to avoid the unworthy clients and those whom we do not wish to represent.

We are very pleased with the system. In a recent audit of our loss prevention programs we determined that it would have caught every recorded “circumstance” in the past ten years, and it paid for itself the first month in preventing a litigator from opening two intellectual property matters that the intellectual property practice group vetoed.

I have been asked about our system as it has gotten some word of mouth publicity. The discussions about it highlight certain assumptions about culture that would prevent the system from working. One loss prevention consultant thought it was “state of the art if you could get anyone to follow it. You will have a compliance problem. This takes a lot of time at the outset of a matter. I know you will have resistance. Do you have any idea what your compliance rate is?” The answer, “Pretty much 100%.”

An ethics partner in another large firm asked me to explain the basics to him, including the centerpiece overview by the practice group leader. “How do you get them to spend the time away from billable work?” His firm has a formula system of compensation that would in effect punish a practice group leader for doing a good job as a gatekeeper improving the client base and avoiding unworthy clients.

It became pretty obvious that this particular gatekeeping device works for this firm only because the firm’s culture allows it to do so, and that in turn has involved a series of culture adjustments over the last several years. This new sys-

tem of ours would not have worked a few years ago. Some of these cultural modifications were kind of in place but have recently been reinforced or preached effectively. Some were at least partly event-driven. But some were deliberate. Some changes had been undertaken for reasons other than loss prevention and to set up this program. But together they enable this program, which I think everyone will recognize as designed to anticipate some of the most frequent components of the large lawyer liability claim (lawyers practicing in unfamiliar fields, unworthy clients, conflicts, decisions by individual lawyers acting solo) to provide a safeguard to all the members of the firm.

The cultural features that allow this program to work include:

- Agreed Core Values
- Full Time Management
- Practice Group Organization
- Compensation is Basically Subjective

AGREED CORE VALUES

It is fashionable to announce core values. From observation, it is also fashionable to assign a good writer to come up with some good ones to put on the web site or in the annual report. However, observation also shows that the announced core values may not be the product of a true agreement among the members. To the extent that the owners of the organization do agree on certain basics, however, those basics are useful tools for decision-making. Does a proposal advance one or more of the core values? Does it conflict? A disproportionate number of the complaints that “managing lawyers is like herding cats” come from firms with no agreement on the values they promote. Maybe more importantly, a lawyer should not join a firm, and the firm should not hire a lawyer who does not agree with the firm’s core values. Among other things, this is a foundation requirement of a team approach to the management of the firm. For example, a person who has bought in to core values that include service to the profession will not begrudge the time others devote to it even if he does none of it personally.

FULL TIME MANAGEMENT

“The client’s business comes first” is both true and ethically required for a firm manager who has client duties. One result of this will always be a dramatic delay in the process of adopting new procedures, systems and policies that are needed or will be needed with the growth of a firm. “Everybody knows what our policy is, but it isn’t written down. Our insurer insists we have a written policy on X. Joe will head a committee to produce one.” Three years later, the rough draft prepared after the second meeting is turned over to the new head of the X committee. Nobody is failing to work – to the contrary, everybody is working very hard for the clients. But the results of the delay are several.

- Management by crisis. Crises are resolved rather than avoided. There is no time for that. We do what we can.
- Hobby management. Management is secondary to the practice, policies

vary with the individual, or are changed with little deliberation about consequences or messages sent (E.g. “Our billings are down because our hours are down – if we increase associate billable hour requirements by 200 hours, we will make an additional million dollars – do the math!” This ignores the fact that it is the lack of work to do that is the root problem, and that an order to increase billings without increased business can only be seen as a direction to pad the time). Management concepts are misunderstood: “accountability” does not mean, “blame somebody.”

- Imitative management – similar, but worse. Adopting a policy because the Jones firm adopted one, and everybody knows the grass is greener there. In fact, the Jones policy was adopted for a reason that does not exist at the imitating firm, or alternatively it was adopted without analysis of the consequences. “The Jones firm just adopted a retirement policy. Retire at age 50 with full pay. They make a bunch of money. We need to do that too.” This ignores the fact that the original policy was adopted to get rid of Jones, as part of a deal to avoid publicity concerning his probable disbarment, that the benefits are overstated, and that the policy will be changed before the next person reaches that age, otherwise it will bankrupt the firm.
- Governance as a right, not a responsibility. “I generated more fees than anybody last year. I get to be Chief Partner.” With this, of course, is the assumption that a talented “generator” has any management talent at all, and also that he is willing to give up generating to manage (and thus, if this is the criteria, to risk being nosed out as Chief?)

Basically, it is better if a way can be found to give equal priority to projects improving the firm’s efficiency or safety, rather than relegating them to “spare time” projects after a 2000-hour billable budget is met.

Of course, many firms of good lawyers do all right with part-time leadership. They make enough money doing good legal work to afford the inefficiencies of managing only crises, to be able to afford the occasional fee forfeiture or claim for a mishandled product. There is some benefit to practicing as a firm even if the benefits are not maximized. Nine times out of ten, a foul-up is reparable and nine times out of ten the irreparable harm is not huge. Multiply those probabilities, and your odds are one in a hundred. The firm gets along narrowly missing catastrophes for years. Good ideas may not be followed through for years, but they may eventually be implemented. With luck, the implementation will be communicated to the new lawyers hired next year.

And although full time management is a good idea, it is not easy. A number of things have to come together in a law firm in order to implement it. Among them:

- A lawyer with the talent to manage. Just as a talented basketball player may not be very good at swimming, lawyer and manager require differ-

ent skill sets, sometimes found in one person but not always.

- That prospective manager has the respect of his colleagues as a lawyer, and is willing to give up his work with clients for a management career.
- Both manager and firm must be willing to take a risk. There are risks for everyone. The potential manager must have enough trust in his firm, and vice versa, to allow him to give up his practice to others, confident that he will be fairly compensated for non-traditional contributions to the firm, which are difficult of objective measurement. The firm knows the manager, but not solely as a manager until he has had the job for a while.
- Of course, the firm must be large enough to support a senior lawyer with no billable budget.

The benefits, however, can be great. The full-time manager can assure that a needed project is delivered timely to the board, managing committee or other governing body of the firm, and can thereafter see to its implementation. He can engage in strategic planning, in the study of the interrelationship between policies and programs, and in the necessary education associated with new programs. He can assure that prospective lateral hires buy in to the core values of the firm, or set up processes for that purpose. He can supervise the development of meaningful budgets. He can oversee change. He can identify behavior inconsistent with core values, take steps to stop it, and adopt procedures to prevent it. He can see to a process of educating new lawyers. Very importantly, he can assure that the necessary business aspects of the firm are not neglected. The point here is not to examine the benefit of full-time management exhaustively, but to point out that it substantially enables a firm to deliberately change its culture.

What Size Justifies Full-Time Management?

I don't know. My own firm has two persons in that category – the President and CEO, and the General Counsel (who handles conflicts, ethics, loss prevention, and education regarding these matters, among other things). We are a 230-lawyer firm. Having lived with the benefits of full-time management for some years now, I think the size requirement is closer to 20 than to 200.

To be perfectly accurate, our business intake system described above could work without full-time management, but I doubt we could have effected the other prerequisite culture changes without it, particularly including the next one.

PRACTICE GROUP ORGANIZATION

Most firms grow from an office in a single town, adding an office in another town by a combination with existing lawyers, then in another town, etc. Each location has its own personality or culture. At least in the early days, it is expected that locations will imitate each other, and generate business for each other. Frequently, just as had been done before the firms combined, the first thing a lawyer does if she needs help is consult with someone with expertise in the office, and if there is no one, discuss with someone without expertise, but with good instincts, within the office. Trying to consult with someone in another office

involves overcoming impediments, such as the necessity of introductions, a reluctance to ask stupid questions to strangers, and complicated office telephone procedures. The Knoxville office does not have an estate planning department, so the real estate lawyers do it.

Of course, most recognize this as an unacceptable situation. The usual first response is to adopt policy or issue directives:

“We practice as a single firm. All our clients are entitled to the expertise available. Every lawyer should be familiar with the expertise available in the firm, and should never hesitate to take advantage of it. For example, the trial lawyers in our Chattanooga office should always consult on business issues with the corporate lawyers in Memphis, and the Memphis trial lawyers should take advantage of the experience of the senior Chattanooga trial lawyers.”

Good ideas, but practical, enforceable, consistently observed? Probably not. Of course some people will develop networks between offices, and on matters so important that a lawyer will actually admit to needing help, it will be requested, but probably not with such regularity as to approach an homogenized observance.

Some firms are divided into practice groups only in the sense that they say so, and people who practice in certain areas of the law meet once a year at a retreat, or there is a list so that they know whom to refer business to or to ask to cover a deposition. But they do not rise to the level of a functioning organization within the firm. The firm remains organized mainly by office.

Please understand that I do not claim we originated the idea. The point is, that we determined to change our culture sufficiently to implement it. In our firm, our full-time CEO determined that the firm would operate more efficiently if the primary organization of the firm was through practice groups across offices, and persuaded the governing board to agree. Being full-time, he was able to devote sufficient time to study the issue, to draw up the preliminary plan, to take the time to educate the firm about it, to persuade the firm to implement it, to persuade appropriate people to accept responsibility, and to then require performance from the practice group leaders. Meetings of practice group leaders occur very frequently, and regular meetings of practice groups are required. Budgeting is accomplished and administered largely through practice groups, as are most functions required for the successful operation of the firm.

Many lawyers, when busy, neglect marketing, for example, and while they literally do not know where their next case is coming from, for the time being they do not care. This is typical of the person who likes the lawyering part of the practice, while the necessary rest of it is a burden. This person also is invaluable to a firm with long-range focus because representing clients well is essential. As a solo practitioner, this person is a feast or famine person, but as her reputation increases, she will do well. As a member of a firm of persons doing the same kind of work, she can do better because each member can take up the other's overflow,

and the famines will tend to moderate. With management, however, they can do much better, by requiring attention to marketing, anticipating the needs for additional lawyers, etc. A practice group can effectively function as a smaller firm in this and similar regards, especially when required to report on those aspects to higher (full-time) management. The overall mid-term and long-term health of the firm and the practice group improves, often dramatically.

The above is illustrative. Similar benefits extend in cross-marketing, budgeting, teamwork, intelligence, and planning.

From the loss prevention standpoint, the new business intake system serves its gatekeeping function because the machinery is in place to allow us to require practice group leader approval at the outset. The practice group leader or a deputy is in the best position to decide at the beginning of the matter whether this is a client and matter we wish to represent and whether there is a positional conflict (since he has knowledge of all or most firm matters involving this area of the law), to decide upon the individuals best suited to staff the matter, and to assure that the fee arrangements are appropriate. The reorganization has enabled us to achieve strict observance of the proposition that the practice group leader approve those elements. The overall teamwork of the firm is enhanced and is at work. The firm's quality control and loss prevention is enhanced. And, extremely important, we have added to our culture an appreciation of the value added by practice group leaders' management performance. In turn, this contributes positively to the following feature.

COMPENSATION

I don't actually know a perfect compensation system, but I can describe it:

- It does not reward activity damaging to or endangering the firm, such as hoarding work or clients, or dabbling in unfamiliar areas of the law.
- It includes a negative for a violation of policy and behavior that endangers the firm (e.g., bypassing the conflicts system), whether or not the particular incident has adverse economic effects.
- It recognizes all contributions that benefit the firm and contribute to the firm core values, whether these contributions are directly income producing in the near term or not. Caveat: the firm must agree in advance that activities other than law work do indeed efficiently advance the firm's objectives and values.
- It provides or allows several paths to financial success in the firm. Maybe this is a corollary to the others, but it is important that the members understand the result. The compensation system must recognize that the firm will achieve its potential in all its core values only as a team, not with each member competing in all the same skills. The rainmaker is valuable, as is the 'lawyer's lawyer', as is the skilled hands-on practitioner, as are (with approval of the firm) the persons involved in community service and bar organizations, as is the skilled manager who

optimizes the contribution of each.

- It must be fair, and it must be perceived as being so. Some firms entrust compensation to a small committee, and swear not to compare compensation. The members of those firms buy in to that system, and they like it. Other firms have an open system and a broader participation in the compensation process. Whatever, the process must be seen as fair.

A failure in any one of these aspects tends to make compensation interests operate at cross-purposes with aspirational goals, teamwork, and core values. If a lawyer has an approach to the practice fundamentally different from that of the firm, both he and the firm will be benefited by the lawyer departing the firm to join a practice with an approach fitting his own.

CONCLUSION

A pickup team of skilled quarterbacks will be no match for a team including specialists on offense and defense, linemen and backfield. Even more so if the team has a playbook. More still if the players have read it, and most if they agree with it. Similarly, a law firm culture that essentially expects each member to generate his own clients and do his own work and be paid accordingly will suffer negative consequences, in addition to being generally inefficient. As the culture approaches true teamwork, the firm will benefit both as an institution and in the welfare of its members. Agreed core values, recognition of the value of management, appropriate organization across practice areas, and a compensation system recognizing different measures of and paths to success and not rewarding negative conduct are important elements in such a desirable law firm culture. With hard work, desirable changes can be made to different aspects of the firm's culture.