

To Survive, Firms Will Have to Get Serious About Costs, Get Off the Lockstep Treadmill

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By [Patrick J. Lamb](#)

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The recent reports from Citi and Wells Fargo indicating that law firms are fighting a losing battle in the expense-versus-revenue war can hardly be surprising. The economy continues to sputter, clients look to reduce their own expenses (which means less revenue for law firms), and law firms already have cut to the bone in recent years in efforts to reduce expenses. Citi's Dan DiPietro noted that "[expenses still continued to grow at a faster pace than revenue](#)" in the most recent quarter. There just is no more room to cut expenses. Or is there?

In a recent post on his [Law Firm CFO](#) blog, Mike Marget identified eight ways many law firms could reduce expenses. The eight suggestions are good ones, but the problem is that they do not attack the core of the expense problem. There is an old saying that when there is an 800-pound gorilla in the room, be sure to introduce him. It is only a fool who ignores the obvious, yet that is precisely what most law firms are doing.

The 800-pound gorilla that firms refuse to address in the cost conundrum is their personnel model: The two biggest expenses for law firms are personnel and real estate. While the economic slowdown has reduced the amount of turnover a bit, firms nevertheless continue to hire associates and promote them year over year or force them out of the firm. Consider that the legal industrial complex—a Marget phrase that I just love—has continued to add head count while demand declines. Billable hours, the silly metric most law firms use to judge productivity, is "well below historical levels for all segments [partners, associates, nonequity lawyers]", according to DiPietro, and firms are feeling increasing pressure to discount their fees. Yet firms continue to send partners to law schools and bring in a supply of new lawyers, pushing the previous year's new entrants up a year in seniority (along with everyone else), while the unfortunate are shown the door.

No business leader thinking for the long-term would design a business this way. A leader would find absurd the practice of routinely pushing experienced personnel who have proven themselves capable of performing a set of tasks up to perform a new set of tasks that others already are capably performing. The annual turnover of personnel at so many levels would be an anathema. In the firm designed by a true leader, the firm would define the work to be performed and segment it. The firm would hire cheap labor to do the menial work and pay more talented people more to fill the middle-management positions and reserve higher pay for higher performers. They would never pay someone more simply because they have survived a year and new class of entrants is coming in behind them.

The corollary to this issue is associate compensation. Associates are not paid for their actual value, they are paid for potential. But in the business world, few people are paid for potential, but instead are paid for the value of their category of job. The market values certain jobs less than others. The work that new associates do always needs to be done: law firms simply give this work to new entrants every year. But the work that is actually being done is the same, and could be done by any number of lawyers. Because there are more job-seekers for such positions than there are positions, the wage for such work should be lower than it is. But firms hire graduates they believe are overqualified for such entry-level work because they believe such lawyers will become better senior lawyers and eventually partners. At least that is the theory behind the compensation decisions for young lawyers. But as with nonlegal businesses, people will move in response to opportunities, an outcome most firms have experienced by either gaining or losing associates, or both. In other words, the premise for the need to compensate recent graduates at high levels is suspect.

If firms restructured by employing different approaches to personnel, they could dramatically alter their cost structures. You'll know firms have decided to get serious about reducing costs when they dramatically alter their personnel structure. Until then, they will continue to run slower on a treadmill that is picking up speed and incline.

The New Normal

Eight Qualities of a New Normal Legal Entrepreneur

Posted Sep 4, 2012 2:49 PM CDT

By [Patrick J. Lamb](#)

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Rarely a week goes by that some lawyer doesn't ask me what mindset it takes to leave the comfort of a successful firm and start a new firm. Invariably, I share my own journey and the beliefs and fears I had in 2008 when we launched Valorem. I know that one story is too anecdotal to be much use. I just had the opportunity to spend the past several days at a [Renaissance Weekend](#) in Aspen, Colo. It is, at its core, an idea fest, with conversations involving really smart people and a few others, like me. One panel I really enjoyed was entitled "The Crazy Ones," a discussion of the traits of entrepreneurs. While the weekends are nonpartisan and entirely not for attribution, the traits articulated by the panelists are well worth considering in the New Normal context because I think the insights of the panelists provide a much better answer to that oft-asked question.

The panelists included several serial entrepreneurs, a business school professor who focuses his studies on entrepreneurs, a business consultant, and a large-company CEO who is trying to create an entrepreneurial culture in his company. So while the panelists were talking about business entrepreneurs, here is the list that seems to apply equally to legal entrepreneurs:

- Entrepreneurs see opportunities, not constraints. Most people look to navigate through the constraints to a fixed end.
- Entrepreneurs are optimistic, positive, tenacious and comfortable with ambiguity.
- Entrepreneurs dislike rules, while most people find the presence of rules comforting.
- Entrepreneurs are comfortable examining crazy ideas and extracting value, where most simply dismiss the ideas as crazy and miss the value.
- Entrepreneurs reject the orthodoxy of the way things have always been done and instead re-examine issues and ideas from multiple and frequently off-the-wall perspectives.

- Entrepreneurs are passionate about their idea or their created mission. Failure is never an option.
- When things go wrong, entrepreneurs are fixers, not blamers.

And here was the interesting one:

- Entrepreneurs do not like risk. They seek to minimize risk in pursuit of their idea.



Almost every successful "Tigger" entrepreneur has his own "Eeyore," a sober realist behind the scenes. [IgorGolovnirov/Shutterstock.com](#).

Another panel, addressing a slightly different issue, reached consensus that almost every successful entrepreneur has his or her own Eeyore, with the entrepreneur being Tigger. As the discussion progressed, it became clear that this panel was not referring to Eeyore as a pessimistic counterpart to Tigger's optimistic entrepreneur, but instead as a sober realist who "[makes] the trains run on time," most often behind the scenes.

From my standpoint, these are all apt descriptions, but they ignore the overlay created by the presence of a client. While an entrepreneur may be all of these things, her client may not be. That means that the entrepreneurial lawyer must be able to operate from a nonentrepreneurial mindset, at least navigate it wisely, when dealing with certain clients. These traits, it seems, may allow some legal entrepreneurs to be both Tigger and Eeyore at the same time, drawing on the competing attributes of both when the situation demands.

The New Normal

Would You Bet Your Career on Your Law Firm's Business Model?

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By [Patrick J. Lamb](#)

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The latest analyses of BigLaw financials is out, and things do not look good. In a [recent article](#), Dan DiPietro and Gretta Rusanow of Citibank reported their midyear findings for a survey group of 176 firms (79 Am Law 100 firms, 47 Am Law 200 firms and 50 additional firms). The opening paragraph tells the story:

"Based on our read of the results for the first half of 2012, we're now concerned that this year the legal industry may be unable to match 2011's low single-digit profit growth. There are three reasons for our concern: demand growth slowed during the second quarter from an already tepid first-quarter level; inventory as of June 30 had grown little from the prior year, not a good omen for future collections; and signs that realization will decline again in 2012, squeezing profit margins even further."

The thing to keep in mind is that when an article discusses averages, the plights of firms below the average—the ones that drag it down—tend to be minimized precisely because the focus is on the average instead of the lower level of performance of these firms.

Based on the figures being reported, Dewey's demise and other recent events included [one firm's highly publicized capital call](#), predicting additional firm failures is no longer provocative. It is only when you try to predict *how many* firms are likely to fail that some pushback occurs. But as one friend commented, "it is a dynamic trend, and it is accelerating."

The financial plights of so many firms, hidden from most of the firm's partners, at some point will cause the partners to wake up and try to control their own destinies rather than running the risk

that they end up like former Dewey partners. In the same private communication, my friend offered this observation:

Every firm is comprised of a unique combination of individuals, and those individuals make decisions (presumably) based on their evaluation of self-interest. (The displays of selfish promotion of self-interest over the good of the whole by leading partners—as revealed in recent law firm failures—ought to set any debate about that presumption firmly to rest.)

Which means that as the perception by partners grows that the cost of investing in the existing entity compared to its potential rewards is outweighed by going elsewhere or even starting over ... the entities will be abandoned. This is not necessarily going to be a "survival of the fittest" contest as so many pundits have commented. Because a) many of the apparent fittest do not present a compelling case for being a place to go to ([ask Henry Bunsow](#)); and b) the opportunities to survive and thrive in alternative firm models will evolve quickly to capture talent. Rather, it shall become a movement of talent into different models. They may be boutiques, superregionals, virtual firms, alternative provider structures ... but it won't be 'more of the same'. That business model as a model is in rapid decline in all but a few special circumstances ... (Remember, many of the perceived "winners" in the lateral talent grab game have accumulated insupportable cost burdens, and their apparent advantage only defers the date of reckoning by a year, at most two, before they encounter the same dynamic problem and individual partners decide to leave, and leave in numbers that lead to the demise of the firm.)

Most partners at most large firms should be wondering if they will wake up one day and find some negative financial information about their firm splashed on the pages of the Wall Street Journal. This is particularly true for firms that have hired big-name laterals with big books of business: These lawyers are like the secured creditors of the partnership—they get theirs before everybody else.

The situation obviously begs this question for most partners: Are you so confident in your firm that you are willing to be your career on it? For those who answer "no," the only other question is how soon you will make your orderly departure. For those who believe their firm is so secure they are willing to wager their careers on it, ask yourselves how many Dewey partners would have made the same wager even a year ago.

The New Normal

A Trusted Adviser in the New Normal Must Be Like a Symphony Conductor

Posted May 8, 2012 10:24 AM CDT

By [Patrick J. Lamb](#)

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When I started practicing law in 1982, a good lawyer was one who possessed superior substantive knowledge of an area of the law. Those lawyers read cases and law review articles. Their ability to advise clients on what the law was made them masters of their craft.

Things have changed. A lot, as it turns out.

At a recent program offered by the Association of Corporate Counsel, [Nancy Jessen](#) of Huron Consulting shared this graphic, which she kindly allowed me to use here:



Nancy had perfectly captured the evolution of the top-flight lawyer, the trusted adviser. It was not a surprise to many (though it clearly was to some) that it was no longer enough to simply know the law. One had to know his or her client's business and had to be a business adviser. This evolution required lawyers to use a skill set—business judgment, business acumen—that few had ever developed. For most of the last 15 years, superior legal skills and business judgment made for an elite lawyer.

But these days, still more is required. Skilled judgment must be delivered efficiently. Clients care what service costs—even skilled service. Clients want service to be delivered predictably. They do not want work to be at X for one matter and 3X for another, similar matter.

The "consistent delivery" ring may be different than the "efficiency and predictability" ring. But the difference wasn't explained, nor can I discern any material difference.

On occasion, I have espoused the notion that elite lawyers are those who act as general contractors for their clients. These lawyers assemble the necessary labor talent and manage it, just like a contractor leads the various trades in the construction of a building. I think a better visual is actually the elite lawyer acting as a symphony conductor—finding and developing individual talent, helping those talented individuals learn to play in harmony, and together producing music that none could produce alone.

Whichever comparison is more apt, the essential elements are the same. The elite lawyer is causing other lawyers and third parties to work efficiently and effectively together to produce results at a cost known to and approved by the client.

The profession has never grappled with the need to teach business skills to lawyers to help more develop into the elite role of trusted adviser. It seems unlikely that the profession will any more effectively grapple with the issues relevant to lawyers acting as general contractors or symphony conductors.

In the absence of law school training and meaningful mentoring of these skills, it falls to the individual to find opportunities to learn and implement these skills. It also would be a wise general counsel who would invest in training, not only for herself and her team, but also for her team of outside counsel. The return on this investment would generate savings sustained over time. So what skills should a lawyer learn?

- Learn how to read a financial statement. Understand the economics of your client's business.
- Learn management risk analysis. Your client does not operate in a risk free-world. All decisions involve risk and are based on less than certain information. Learn how those decisions are made.
- Learn project management and process-mapping skills. Your client has learned these skills, directly or indirectly, and if nothing else, using these tools improves communication.

There are more skills one could learn, but these certainly would be a strong foundation from which to work.

The New Normal

A 'Valorem Dozen': The Ingredients for One New Normal Firm

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By [Patrick J. Lamb](#)

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Several recent posts by Paul Lippe have highlighted the problems currently being encountered by Dewey & LeBeouf. Already this year, more than 45 partners have abandoned the firm, and [American Lawyer recently restated](#), rather dramatically, Dewey's revenue and profits per equity partner for 2010 and 2011.

Comparisons to Howrey abound: The slow drip, drip, drip of the "run on the bank" surely seems to have started. While the focus for the moment is on Dewey and its remaining partners, the truth is that most BigLaw partners must at least secretly wonder what they would design if they were required to start a new firm to survive.

Some start new firms because they have no alternative. But for me and my colleagues who founded Valorem in 2008, the decision to start from scratch was a deliberate choice, not one forced on us by our firms or the marketplace. It was a decision we gravitated to because we believed the BigLaw model that then monopolized the legal marketplace was not sustainable. We spent considerable time debating the principles of the firm that came to be Valorem.

Looking back on our "Valorem dozen" principles in light of [Paul's recent articles on Dewey](#), here's the recipe we followed:

1) **Sell what is valuable to your clients.** No client has ever gone to a law firm looking simply to buy time. They go to lawyers to solve business problems that involve some legal issue. So if clients don't really care about time, why do lawyers sell time? Sell results, and then learn how to

provide them faster and cheaper than your competitors. That's how businesses do it. Our tag line is "results, not hours," and that is what we sell.

2) **Do one thing, and do it better than anyone else.** Firms that try to be miniature big firms fail because there is not cross-pollination. A company that hires a small firm for its great litigation practice is not likely to hire the same firm for its mergers and acquisitions or general corporate work, or its tax work or its real estate work. Several years ago, Mike Dillon, then the general counsel of Sun Microsystems, captured our view of this in a [blog post about big firms going the way of the mastodon](#). His thesis was that companies used to need big firms because it was hard to find all the legal pieces the company needed. Now, with the Internet, it is easy to find precisely the resources the company needs, and not just capable resources, the best resources. It is hard for a small firm to be "the best" in multiple areas and harder still to convince others of that fact.

3) **Embrace the \$60-per-hour-lawyer.** [Paul Lippe just wrote about the impact \\$60-per-hour-lawyers](#) are having (actually, you can get great lawyers at a much lower price). You don't need to have these lawyers as employees, you just need to have access to them when you need them, for as long as you need them. We chose to think of a law firm as an accordion, growing by joint venturing, partnering with a legal process outsourcer or other law firm or hiring contract lawyers as needed. In each instance where size was needed, we would obtain, on a temporary basis, the very best resources for the specific need of our client rather than maintain a supply of available resources and try to tell the client that these resources were the best for every circumstance the client encountered.

4) **Embrace experience.** If you stop selling your time and start selling your achievement for the client, you find yourself not wanting anything to do with young lawyers because they don't add value. They don't help you achieve your desired outcomes faster and cheaper. When you do hire a young lawyer, the level of training they receive is far greater than young lawyers receive at large firms. That's because having young lawyers get better faster is in the economic interest of the New Normal firm. Pyramids are out as a business model. Fred Bartlit, perhaps the dean of the New Normal firms, often says "diamonds are a lawyer's best friend," referring to a model with small numbers of elite trial lawyers at the top, a cadre of great partners capable of doing work-up and second-chair work, and a few young lawyers "in development." We bought into that notion immediately. We are partner-heavy, senior associate-heavy and junior associate-light by design.

5) **Cut the fat.** A huge amount of work in most litigation is unnecessary, meaning it doesn't change the outcome. If a project doesn't change the outcome, it doesn't need to be done. Efficiency actually improves outcomes because it helps you focus. I keep a handwritten sign on my whiteboard that I look at several times a day: "What difference does it make?" The "it" refers to whatever work I plan to do at a given moment. If I don't have a good answer, I put it aside.

6) **Save the politics and intrigue for elected officials.** How much real work is being done inside Dewey at the moment? How many closed-door meetings are going on where partners rehash the latest rumors or associates try to figure out whether they will have a job in a few months? The answer is, a lot. Enormous amounts of time and goodwill are lost in firms while partners debate compensation and other political matters. We took compensation off the table—all partners earn the same amount—and you have the difficult conversations immediately in small firms because any distraction is immediately obvious.

7) **Use the lessons of business.** Lawyers like to think that our profession is special, somehow immune from the rules that govern every other business. We're not. We've been focusing on project management, on pricing issues, on cost of producing results and similar "business issues" since before we opened our door, just as other New Normal firms do.

8) **Focus on what matters to your clients.** In a recent post on [Above the Law](#), Miami lawyer Brian Tannebaum poked fun at lawyers who do their work at local Starbucks and claim that as their office. If a client gets the result it wants, does anyone think the client cares where the lawyer sat while preparing the winning brief? Everything should be geared to providing your client an unparalleled experience. We have no dress code, let people work from home when they need to and keep "rules" to a bare minimum because those things can get in the way of producing the best work.

9) **Collaboration is key.** Most large firms, indeed most firms of any size, are a collection of silos—Bob and his team, Mary and hers. There may be some overlap at the bottom, maybe even in the middle as some associates and junior partners juggle multiple team assignments. But Bob and Mary never work together. But the greatest experience and achievement is at the most senior level. We believed that if our senior people brainstormed and collaborated together, great things would happen and we would produce work and results better than any of us would do alone. Because we have an economic stake in every outcome, it was critical to achieve the benefits of collaboration. Hindsight shows that we were right on the money on this issue.

10) **Overhead matters and cheap is chic.** In days of yore, clients came to their lawyer's office and sat in the partner's office smoking expensive cigars. Today, not so much. Actually, not at all. We designed our offices after studying companies like Apple, and other Silicon Valley icons. Tiny offices, lots of whiteboards and lots of collaborative space to encourage the exchange of ideas.

11) **"Let guards play guard and forwards play forward."** This is a tribute to [Fred Bartlit](#), and an extra trait for successful New Normal firms to embrace. Fred is a basketball player and frequently uses the game as a source for lessons. By this, he means that each person should not be expected to do everything. To mix sports metaphors, not everyone is a five-tool player. Find what people do best, and have them do it. Don't expect a lawyer who hasn't tried cases to be a trial lawyer. A lawyer who is a brilliant writer should write. He or she might not be partner material in a big law firm, but there is a place for this person.

12) **Brand matters.** You can be a great grain of sand, maybe even the best. If you happen to find yourself on a beach, though, being the best grain of sand won't help you get noticed or hired. Successful firms have a brand. More people recognize Valorem and know what it stands for than most other start-up firms.

13) **It is always about the clients.** They have to love you and what you do for them. Without their commitment, you will not succeed. With everything you do, from office design to how you bill, always ask what your clients think about the issue, the idea.

Valorem has had its bumps in the road, and we've learned a lot since we started, but these 13 factors have served us well. I am sure that others in successful New Normal firms have still

more and likely better ideas about the recipe for the secret sauce. I hope some of them share their ideas as comments below.

It is unlikely a firm confronting what Paul described in his “Dewey Dozen” piece can save the ship and find success. But conversely, a committed group who embrace the “Valorem Dozen” can create success for themselves.

My client, DSW, is a great New Normal company. Its goal is not to be the best shoe store in the country, but to provide the best shopping experience anywhere. The company's values are carved into the wall so that everyone who enters its headquarters sees them: Accountability. Collaboration. Humility. Passion. Those four values may well be the recipe of the successful New Normal firm.

Patrick Lamb is a founding member of [Valorem Law Group](#), a litigation firm representing business interests. Valorem helps clients solve their business disputes and coping with pressures to reduce legal spend using nontraditional approaches, including use of nonhourly fee structures, coordination with LPOs or contract lawyers, joint-venturing with other firms and implementation of project management tools to handle lawsuits or portfolios of litigation.

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