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# Law Firm Economics and Professionalism

Ward Bower\*

## I. Introduction

Both Dean Kronman in *The Lost Lawyer*<sup>1</sup> and Professor Glendon in *A Nation Under Lawyers*<sup>2</sup> attribute some of the problems and challenges facing lawyers today to economic pressures and to a preoccupation with profits and fees. For Kronman, this economic focus interferes with the “moral detachment” necessary for achievement of the “lawyer-statesman” ideal.<sup>3</sup> For Glendon, professional dilemmas caused by the deterioration of the legal economy, competition in the marketplace, lawyer-shopping by clients, early specialization, lack of mentoring and emphasis on the billable hour have created an unhappy generation of ethically challenged practitioners.<sup>4</sup>

Both authors accurately assess the state of the legal profession today. Their insight reveals a profession in a state of dramatic change and, as in most changes of this magnitude (a “sea change,” as it were), confusion reigns. Professor Glendon describes another legal evolution of comparable scale: the movement from the primacy of common law to that of legislation and regulation, with all of its attendant dislocation.<sup>5</sup> As is usually the case, the profession has adapted to those changes, and it will have to adapt to the current changes or risk irrelevancy as clients find other service providers or other ways to deal with their problems.

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\* Ward Bower is a principal of Altman Weil Pensa, Inc., international legal management consultants headquartered in Newtown Square, Pennsylvania. Mr. Bower is a 1975 graduate of the Dickinson School of Law and a member of its Board of Trustees.

1. ANTHONY T. KRONMAN, *THE LOST LAWYER* (1993).
2. MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994).
3. KRONMAN, *supra* note 1, at 296-300.
4. GLENDON, *supra* note 2, at 22-34.
5. *Id.* at 178-98.

The economic pressures in the law firm today are real and the focus on profitability necessary. But these challenges need not cause a lawyer or a firm to compromise detachment, professionalism, ethical practices, or competent lawyering. Effective management and good business practices are *not* inconsistent with traditional "professional" lawyering. To the contrary, they are essential in today's complex economic environment and will be even more essential in the future.

## II. Characteristics of Professionalism

Professor Glendon referenced a classic definition of the term "profession" as articulated many years ago by Dean Roscoe Pound of Harvard Law School. Dean Pound described a "profession" as "a group . . . pursuing a learned art . . . in the spirit of public service — no less a public service because it may incidentally be a means of livelihood."<sup>6</sup>

Justin Stanley attempted to define this concept of a "profession" in his *Commission on Professionalism Report* to the ABA House of Delegates.<sup>7</sup> In this report, Stanley listed the distinguishing elements of a profession, which he described as an occupation whose members have special privileges, such as exclusive licensing.<sup>8</sup> These special privileges are justified by the essential characteristics of a profession, which include that: (1) members of the profession undertake substantial intellectual training in order to render complex, professional judgments;<sup>9</sup> (2) quality in the professional's work be trusted due to the inability of clients to assess this quality;<sup>10</sup> (3) practitioner self-interest be subordinated to serving the client's interest and the public good;<sup>11</sup> (4) the occupation be self-regulating to assure the public that its members are competent, will refrain from violating their client's trust, and will transcend their own self-interest.<sup>12</sup>

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6. GLENDON, *supra* note 2, at 17 (quoting ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953)).

7. JUSTIN A. STANLEY, *AMERICAN BAR ASS'N COMM'N ON PROFESSIONALISM, REPORT TO THE HOUSE OF DELEGATES* 10 (1986).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. STANLEY, *supra* note 7, at 10.

According to these characteristics, lawyers, teachers, accountants, clergy, physicians, and architects are all professionals. Military officers arguably share the characteristics of professionals as well. Businessmen, however, clearly do not possess the characteristics of professionals, and in that context, the common use of the adjective "professional" to describe entertainers and athletes is oxymoronic.

Both Dean Kronman and Professor Glendon lament a decline of lawyer professionalism, due in part to the failure of lawyers and law firms to strike the right balance between conflicting concepts of professionalism. These authors attribute those failures to changing law firm cultures driven by considerations of legal economics.

### III. Lawyer Professionalism

The ABA *Model Rules of Professional Conduct*,<sup>13</sup> adopted in most jurisdictions in the United States with some variation, purport to regulate the conduct and behavior of lawyers. Fundamental principles of lawyer professionalism are embodied in the *Model Rules*. For example, the *Model Rules* govern lawyer independence, the avoidance of conflicts of interest, and the placement of client interests ahead of the interests of the lawyer.<sup>14</sup> The *Model Rules* discuss fiduciary duties, loyalty and trust,<sup>15</sup> public service and *pro bono publico* activity,<sup>16</sup> and the reasonableness of attorney's fees.<sup>17</sup> Moreover, the *Model Rules* require that attorneys diligently and promptly represent their clients,<sup>18</sup> and that attorneys serve as officers of the court for the preservation of the integrity of the legal system.<sup>19</sup> Each of these fundamental principles of lawyer professionalism are influenced by law firm economics.

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13. MODEL RULES OF PROFESSIONAL CONDUCT (1995).

14. *See id.* Rules 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 5.4.

15. *Id.* Rules 1.8, 1.15.

16. *Id.* Rule 6.1.

17. *Id.* Rule 1.5.

18. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.3. Rule 1.3 is the *Model Rules* equivalent to Canon 7 of the *Code of Professional Responsibility*, which requires that lawyers represent their clients "zealously within the bounds of the law." MODEL CODE OF PROFESSIONAL RESPONSIBILITY Canon 7 (1983). The *Code* was largely replaced by the *Model Rules* in 1983, although the *Model Rules* retained much of the same meaning as the *Code*. *See* GEOFFREY C. HAZARD & WILLIAM W. HODES, *THE LAW OF LAWYERING* 17-20 (1985).

19. MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.3.

Lawyers have encountered professional liability, criminal prosecution, professional discipline, or public, press, and client censure for violations of each of these principles of lawyer professionalism in recent years. Law firms have been disqualified for representing clients in situations in which clear conflicts of interest with other or former clients existed.<sup>20</sup> Lawyers have been cited for overworking files, overstaffing projects, and operating inefficiently to the point that clients are hiring independent bill auditing services to scrutinize invoices.<sup>21</sup> Lawyers have been jailed for income tax and mail fraud connected with overcharging for time actually spent in timebilling arrangements.<sup>22</sup> Lawyers have been charged with embezzlement from their own firms and for overbilling clients.<sup>23</sup> The business press has documented these transgressions and has even published articles on ways lawyers purportedly overcharge their clients.<sup>24</sup>

In addition to these obvious violations, lawyers have contributed to a decline in professionalism by failing to abide by important tenants embodied in the *Model Rules*. For instance, some law firms have diminished their commitment to *pro bono publico* activity as billable hours picked up following the recession.<sup>25</sup> Moreover, a recent survey indicated that one-third of 30,000 clients surveyed were not highly satisfied with the legal service they received, complaining primarily of being ignored by attorneys who failed to return phone calls or pay enough attention to their clients' cases.<sup>26</sup>

#### IV. The New Legal Economy

Both Kronman and Glendon recognize the intense pressures on lawyers in private practice today. Glendon is particularly effective in describing the marketplace in Chapter 2, "When Just

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20. Christi Harlan, *Law Firm Is Barred from Taking Case Against Former Client* AMR, WALL ST. J., Sept. 9, 1992, at 8.

21. Ellen Joan Pollock, *Auditors of Corporate Legal Bills Thrive*, WALL ST. J., Feb. 13, 1991, at 1.

22. See Christi Harlan, *Legal Beat; Attorney Myerson*, WALL ST. J., July 31, 1992, at 6; Jonathan M. Moses, *Myerson Sentenced for Tax Fraud*, WALL ST. J., Nov. 16, 1992, at 10; Richard B. Schmitt, *Lawyer Convicted*, WALL ST. J., Oct. 11, 1993, at 2.

23. See Ellen Joan Pollock, *Hubbell Receives 21-month Prison Term for Bilking His Law Firm and Clients*, WALL ST. J., June 21, 1995, at B4; Amy Stevens, *Chicago Sees New Accusation of Overbilling*, WALL ST. J., Oct. 14, 1994, at B3.

24. See Amy Stevens, *Ten Ways (Some) Lawyers (Sometimes) Fudge Bills*, WALL ST. J., Jan. 13, 1995, at B1.

25. See Karen Dillon, *Doing Less Good?*, AM. LAW., July-Aug. 1995, at 27.

26. See *When You Need a Lawyer*, CONSUMER REP., Feb. 1996, at 34-39.

Being A Good Lawyer Isn't Enough."<sup>27</sup> With good reason, partners in U.S. law firms are anxious about their economic prospects. Over the past ten years, law firm overhead has increased faster than revenue, partner earnings in real terms are almost flat, and billable hours are up eight percent.<sup>28</sup> The effect is that lawyers in private practice today are working harder than ever just to maintain the earnings of the previous year. The factors giving rise to these problems are not abating. Support staff overhead costs continue to rise as demand for English language-skilled, technology-oriented support staff increases with the growth of law firms and other "knowledge businesses," which developed out of our shift from a manufacturing to service economy. At the same time, intense fee competition has leveled billing rates and, in some cases, has even reduced or discounted them.

Although many lawyers attribute these changes to lingering, detrimental effects of the 1990-1991 recession, this simply is not the case. The newly competitive, mature marketplace of the legal profession of the 1990s was totally predictable for years before its emergence; the recession served only to accelerate its arrival.<sup>29</sup> Other professions and service industries, such as the accounting and brokerage industries, have previously undergone this process of maturation, characterized by a shift from excess demand to oversupply. The experiences of these industries in a maturing marketplace can be instructive to the legal profession in predicting its own future.

One aspect of a maturing marketplace is industry consolidation, which is driven by merger, and characterized by the increasing size of service providers. Through consolidation, the Big Eight accounting firms became the Big Six, and today's large brokerage houses emerged. This process converted the smaller firms of the 1970s to the mega firms of the 1990s, which currently employ 400 or more lawyers. Lateral acquisitions and mergers fueled the growth of major U.S. law firms in the 1980s.<sup>30</sup>

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27. GLENDON, *supra* note 2, at 17-39.

28. Compare ALTMAN WEIL PENZA PUBLICATIONS, ALTMAN WEIL PENZA, INC., SURVEY OF LAW FIRM ECONOMICS (1985) with ALTMAN WEIL PENZA PUBLICATIONS, ALTMAN WEIL PENZA, INC., SURVEY OF LAW FIRM ECONOMICS (1995) (hereinafter 1995 SURVEY).

29. See WARD BOWER, ALTMAN WEIL PENZA PUBLICATIONS, ALTMAN WEIL PENZA, INC., THE BIG PICTURE, REPORT TO LEGAL MANAGEMENT 1 (1986).

30. See generally MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS (1991).

Industry consolidation contributes to brand name recognition, which often accompanies increasing size and frequently commands premium fees.<sup>31</sup> Today, the Big Six accounting firms enjoy this brand name recognition, as do the major brokerage houses. Although major law firms do not yet enjoy this public recognition, they are achieving it in sophisticated business circles due to the disproportionate focus of both the legal and business press on developments within large law firms.

Another characteristic of a maturing professional industry is client sophistication, which results in smarter shopping for and use of professionals. In the legal profession, client sophistication has contributed to the growth of in-house law departments, which have considerably changed the relationship between lawyers and clients. In addition, price competition, a predictable result of a marketplace in which client sophistication is rising, has had a tremendous effect on the auditing side of public accounting and is evidenced by the success of the discount brokerage houses. Price competition similarly has affected the legal profession through the emergence of legal clinics, the comparatively low hourly rates in insurance defense practice, and competitive bidding in business-oriented legal services.

The maturing marketplace has also resulted in an increase in expenditures for marketing and business development. Law firms spend only about 1.5% of revenues on marketing, advertising, promotion, and business development.<sup>32</sup> That percentage can be expected to increase in the future. Yet, if marketing expenditures do not result in increased revenues, those expenditures will simply intensify the squeeze on profits.

Finally, business failure is a predictable result for those firms that are unable to compete in the new marketplace. Laventhol & Horvath and Drexel Burnham Lambert are examples of accounting and brokerage casualties of marketplace maturation. The list of those law firms that dissolved because they were unable to compete in the new marketplace is too long to recount but includes such venerable firms and legal giants as Gaston & Snow (Boston), Mudge Rose (New York), Lord Day & Lord (New York), Shea & Gould (New York), Frank, Bernstein (Baltimore), Isham, Lincoln

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31. See David Haigh, *The Power of the Brand in Professional Services*, INT'L L. FIRM MGMT., Mar. 1995, at 16-18.

32. 1995 SURVEY, *supra* note 28, at 1-14.

and Beale (Chicago), Pettit and Martin (San Francisco), and Johnson & Wortley (formerly Johnson & Gibbs) (Dallas). This "shakeout" fuels consolidation, completing the circle as groups of lawyers from dissolved firms join larger firms, thereby accelerating their growth.<sup>33</sup>

In addition to the traditional effects of a maturing marketplace on a service industry, two additional factors are particularly significant to the legal profession. The first is the relative "free agency" of lawyers, occasioned by Rule 5.6(a) of the *Model Rules*,<sup>34</sup> which is generally construed by the courts of most jurisdictions to prevent the enforceability of covenants not to compete against lawyers.<sup>35</sup> These covenants are part of partnership agreements in many accounting firms and of stockbrokers' employment agreements. They are arguably enforceable in those businesses to the extent local law will allow.

The second factor especially relevant to the legal profession is the significant incursion of the traditional legal services marketplace by "non-traditional" service providers. Foremost among the ranks of these invaders are accounting firms, particularly the Big Six. Not only do accounting firms practice more tax law than do law firms, they are entering other areas of business-related legal practice and hiring lawyers to assist them in these efforts. Through their litigation support capabilities, large accounting firms are apparently attempting to pre-empt big ticket litigation in the United States.<sup>36</sup>

Other "non-traditional" service providers include labor, environmental, and employee benefits consulting firms, which hire lawyers with those specialties to serve consulting clients. Banks and insurance companies hire lawyers for estate planning and

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33. This phenomenon occurred with Morgan, Lewis & Bockius's acquisition of a large group of the Lord, Day lawyers in its New York office in 1994. See Karen Dillon, *Last Days at Lord Day*, AM. LAW., Oct. 1994, at 13; Thom Weidlich & Harvey Berkman, *Philly Firm Leaps in N.Y., D.C.*, NAT'L L.J., Oct. 3, 1994, at A4.

34. Rule 5.6(a) provides:

A lawyer shall not participate in offering or making:

- (a) A partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement . . . .

MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.6(a).

35. See ALTMAN WEIL PENZA PUBLICATIONS, ALTMAN WEIL PENZA, INC., COHEN VS. LORD DAY, REPORT TO LEGAL MANAGEMENT (1990).

36. See ALTMAN WEIL PENZA PUBLICATIONS, ALTMAN WEIL PENZA, INC., NEW COMPETITIVE THREATS FOR LAW FIRMS, REPORT TO LEGAL MANAGEMENT 1 (1995).

administration, and independent paralegal firms, practicing in Florida, actually serve public clients directly without ownership or supervision by lawyers. Finally, foreign law firms are hiring U.S. lawyers to handle matters within the United States, which historically and traditionally have been referred out to U.S. law firms.<sup>37</sup>

## V. Law Firm Response

Law firm response to the new marketplace of the 1990s has been varied as the legal profession attempts to navigate the "sea change." Some law firms "hunker down," continuing operations as usual and hoping for the good times to return, yet earning less money each year. Eventually, the pain becomes so intense that these firms either dissolve, or those lawyers capable of making more money elsewhere (that is, those "net exporters" of business within the firm with portable clients) depart for firms offering greater earnings opportunities, thereby intensifying the economic problems for those remaining.

Other firms overreact to the new legal marketplace by undertaking drastic cost-cutting measures focused on associate lawyers, paralegals, and staff. These firms fail to recognize the real problem, however, which usually is that they retain too many underproductive partners. Paring partners who do not control clients almost invariably results in increased profitability (average income of remaining partners) for the firm. Much of the work performed by partners in U.S. firms is capable of delegation to associates, which increases profits for those partners generating the work and reduces fees paid by clients due to the lower billing rates of associates.

It is in these two categories of firms — those "hunkered down" and those "overreacting" — that the abuses cited by the press most often occur: embezzlement, padding of hours, overstaffing, overbilling, overcharging disbursements, and otherwise putting the firm's (or lawyer's) interests ahead of those of clients and the public.

Other firms have taken a more considered, long-term view. These firms accept a degree of immediate economic sacrifice, thus avoiding some of the short-term pressure on hours and billings, while also conceiving a strategy to improve profitability in the future. Improving profitability is accomplished by planning for

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37. *Id.*

growth, targeted marketing, geographic expansion, cultural adaptation to the new economic realities of law practice, image-based differentiation, and identification of other possible sources of competitive advantage. A law firm can be economically successful while fulfilling its professional responsibilities. To do so requires that law firms encourage their individual lawyers to be ethically responsible and to adhere to the fundamental tenets of professionalism.

## VI. Case in Point: Holland & Knight

Holland & Knight has long been Florida's largest law firm. In recent years, the firm has expanded rapidly in size and geographic presence. Through mergers, acquisitions, and lateral additions, Holland & Knight has become not only Florida's but the Southeast's largest firm, with almost 500 lawyers in nine Florida cities, Washington, D.C., and Atlanta. In 1994 the firm ranked seventy-seventh in the *American Lawyer* list of top 100 revenue-producing U.S. law firms in profits per partner.<sup>38</sup> Although nowhere nearly as profitable as the top New York-based firms in the "Am Law 100,"<sup>39</sup> only one Florida firm, Greenberg, Traurig, did better.<sup>40</sup> Average partner incomes at Holland & Knight have risen steadily since the firm reorganized, after a period of malaise, in 1992.<sup>41</sup>

Despite its size and success, Holland & Knight is not typical of the large, highly-leveraged, economics-driven law firms that dominate the Am Law 100. Consider, for example, the firm's chairman, Chesterfield Smith, who is an American legal legend. A former outspoken President of the ABA, Smith is closely connected to political, community, and business leaders both regionally and nationally. He is the architect of Holland & Knight's unique culture, and unlike his counter-parts in many large firms, Smith clearly qualifies as Dean Kronman's lawyer-statesman.

William McBride, managing partner of Holland & Knight, was elected in 1992 and is a Chesterfield Smith protege. McBride's strategic vision for the growth of Holland & Knight has driven the

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38. *American Lawyer* 100, AM. LAW., July-Aug. 1995 (Supp.), at 34, 58. Holland & Knight's profits per partner was listed at \$305,000, on a revenue base of \$98.5 million. *Id.*

39. For example, the per partner profits of the New York firm Wachtell Lipton were \$1.4 million in 1994. *Id.* at 55.

40. *Id.* at 56.

41. See generally Rosalind Resnick, *A Florida Giant Expands Its Base*, NAT'L L.J., Dec. 13, 1993, at 1-36.

firm's expansion in Washington, D.C., its move to Atlanta, and its affiliation with a bankruptcy firm in New York. McBride's vision also spurred further development of the Florida Law Network of leading firms in Florida cities not sites of Holland & Knight offices, and Holland & Knight's international initiatives in Latin America and Europe. All of this was accomplished while maintaining and nurturing the cultural values of "doing the right thing," contributing to the community and the profession. Holland & Knight is actively reinvesting in the long-term best interests of the firm and in all of its stakeholders — employees, clients, referral sources, and suppliers. By preserving and nurturing this culture, McBride is well on his way to fulfilling Dean Kronman's lawyer-statesman ideal in Smith's footsteps.

The exemplary leadership of Holland & Knight does not end there. Each Holland & Knight office, practice area, and business function is led by individuals of integrity and commitment to the firm and its ideals. Collectively, the partners of Holland & Knight exhibit an institutional commitment to professionalism not found in many other law firms. The culture is client-driven, humane, committed to the highest professional and ethical standards, and community-oriented. A deep and abiding view pervades that it is a privilege to be a member of Holland & Knight and to serve its clients, the community, and the profession. This commitment is reflected in the firm's active investment of both money and time in community and professional activities in every office location. In addition, Holland & Knight's commitment to the profession is exhibited by its active participation in professional associations at the local, statewide, regional, national, and international levels. Martha Barnett, a partner in the Tallahassee office of Holland & Knight, currently serves as the first female Chair of the ABA House of Delegates. In many respects, the culture of Holland & Knight is representative of the "political fraternity" that Dean Kronman describes as the environment in which the lawyer-statesman can emerge.

Holland & Knight's overriding management philosophy is a "one firm" concept, whereby all offices and practice groups are equally important. For example, there is no official office headquarters. Client service is emphasized every day in every location, in pursuit of "consistent value" — the delivery of consistently high-quality legal services to all clients, everywhere, every day. Its high-quality service is further illustrated by the firm's pro bono commit-

ment. While fewer hours per lawyer are spent on pro bono work than by some other large firms, Holland & Knight's pro bono efforts are more efficient and effective than most.<sup>42</sup> In 1994 a front page *Wall Street Journal* article lauded the success of Holland & Knight's pro bono department in recovering \$2 million for survivors and descendants of residents of a Florida town reduced to ashes by racial violence allegedly condoned by earlier generations in that state.<sup>43</sup> The pro bono department of Holland & Knight is one of only two in the United States and enables pro bono efforts of attorneys to be channeled into significant cases at greater efficiency than pro bono efforts of other firms.<sup>44</sup> The pro bono department marshals the resources of the lawyers at Holland & Knight to handle major cases that other firms could never undertake.<sup>45</sup>

Holland & Knight creates a working environment in which everyone, including associates, staff, and partners, is equally important. For example, in developing its strategic plan in 1993, the firm individually solicited secretaries, staff, and messengers regarding their views of the firm and its future, at great cost and effort. In addition, the firm recognizes the value of diversity at all levels, as exemplified by the multicultural mix of lawyers and the number of female lawyers, even (and most particularly) at the partner level.

With great effort and investment, leadership of the firm in 1993 developed a comprehensive, institutional strategic plan to serve as a management blueprint for the future of Holland & Knight. The plan is qualitatively driven by the values of the firm, geared to image-based differentiation and rooted in professionalism and community activity, client service, communications, mutual respect, and understanding. The strategic plan incorporates the firm's economic goals, which include continuing improvement in partner incomes, but significantly, exclude profit maximization. Hence, Holland & Knight's economic success is primarily a by-product of "doing the right things."<sup>46</sup>

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42. See *American Lawyer Pro Bono Survey*, AM. LAW., July-Aug. 1994, at 38-39.

43. Eric Morgenthauer, *For the Public Good — Big Law Firm Works Free To Seek Justice in 71-Year-Old Case*, WALL ST. J., Apr. 18, 1994, at 1.

44. Resnick, *supra* note 41, at 37.

45. *Id.*

46. See generally Sherrie F. Nachman, *Holland & Knight Takes on the World*, AM. LAW., Nov. 1994, at 65.

Holland & Knight is committed to reinvestment in its future through effective marketing and public relations. The firm's marketing plan is designed to emphasize points of meaningful, positive differentiation of Holland & Knight versus its competitors. Moreover, its implementation of state-of-the-art technology for the benefit of internal communications and integration with clients provides another example of the firm's reinvestment in its future.

Finally, Holland & Knight's success is attributable in part to its engaging outside consultants and experts, in some cases on a continuing basis, to supplement its internal resources in a relationship that assists the firm in helping its clients do better in their own businesses. For example, this author's consulting firm has been engaged by Holland & Knight to share its expertise both with general counsel clients of the firm and with members of the Florida Law Network.

Thus, in its commitment to professionalism, Holland & Knight carefully screens conflicts of interest and exerts great effort and expense to deliver services with "consistent value" in a "one firm" model, despite its far flung geographic presence. The firm serves the profession and its local communities through active involvement of people at all levels in the firm, from top to bottom. It manages its pro bono activity to provide the greatest positive return, at considerable sacrifice and expense. It serves local legal communities through its Florida Law Network, which provides education and consultation in specialized areas to smaller firms in smaller Florida communities, without threatening to steal clients. In addition, Holland & Knight provides outbound referrals to members of the network in those Florida communities. Holland & Knight accomplishes all of this while continually investing in its future by increasing the size of its offices, expanding to new locations, and marketing communications that extend to international legal markets. Moreover, despite these significant and varied activities, Holland & Knight generates a level of income and earnings for everyone in the firm that is competitive in each of their legal markets, including relatively higher priced legal communities such as Washington, D.C., Miami, and Atlanta.

Holland & Knight is a contemporary example of the ability of a major firm to compete in the new legal marketplace of the 1990s, while maintaining the highest professional and ethical standards. In many respects, Holland & Knight represents a law firm that has evolved from a "raider" mentality to the more economically-

advanced, "trader" culture described by Professor Glendon,<sup>47</sup> by providing valued, balanced counsel to clients without sacrificing effectiveness in advocacy.

The Holland & Knight experience is instructive, but is not unique to that firm. Many other successful law firms have maintained standards of professionalism despite the economic pressures of the marketplace. Holland & Knight is simply more visible, due to its size and recent favorable publicity that it has received for its growth, sense of community, professional service, and pro bono activities. Many smaller firms, especially those that have "spun off" from large firms in recent years, are similarly committed to professional values in an economically rewarding environment.

## VII. A Model for the Profession

Consideration of common characteristics of firms like Holland & Knight, which appear to have achieved economic success without sacrificing professionalism, may provide a framework for the future success of law firm practice. One such characteristic is that the firm is driven by a long-term vision. Pursuit of short-term profits is a problem common to American businessmen and lawyers. Short-term profit maximization frequently requires a compromise of professional values, placing the interests of the firm above those of clients or the public. The economic goal of firms like Holland & Knight is profit improvement, not profit maximization. In the long term, most law firms can achieve profit improvement without sacrificing professionalism. Short-term profit maximization almost always requires a sacrifice of professional values.

In addition, these firms emphasize the importance of shared values, other than profitability, within the firm community. Client service, mutual respect, work and service quality, efficiency, continuous improvement, and provision of value should be identified and articulated as firm goals. Crucial to the implementation of these goals is effective leadership. The leaders of these firms never compromise professionalism and integrity. Leaders need to reiterate continuously commitments to professional values and never sacrifice professionalism for profit. Violations of professional ideals must be identified and rectified immediately, with the client's best interests always in mind. Demonstrated

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47. GLENDON, *supra* note 2, at 63-69.

commitment to professionalism by leaders will induce others in the firm to think and act similarly and will attract lawyers and staff committed to those same values.

Firms like Holland & Knight maintain a true client focus through continual communication with clients, making the firm "easy to do business with." This client focus can be demonstrated to the point of meaningful differentiation from other firms through "partnering" initiatives geared toward integrating the firm into the client's business in a meaningful and valuable way. This enables lawyers to reassume the counseling role, which is an important part of Dean Kronman's lawyer-statesman ideal.<sup>48</sup>

Continual reinvestment in training, technology, and other means of enabling the firm to serve clients better is another shared characteristic of this type of firm. Training is important because the only difference between law firms is in the people they employ. Training in substantive skills or management techniques should encompass an element of legal ethics and professionalism. Acquiring better technology should increase efficiency and reduce costs to the firm and fees to the clients. "Win/win" pricing scenarios should be pursued.

In this modern framework, everyone is accountable both to each other and to the firm for quality, professionalism, economic performance, client satisfaction, sharing of resources, and communications. Teamwork replaces individual effort and autonomous performance as the standard by which success is measured. These firms should adopt a coherent strategy which everyone understands and which is a source of future competitive advantage. Management must conceive, communicate, and help to implement differentiation strategies to assure future success that are sufficiently appealing to invite active participation in their implementation at all levels within the firm. Strategies should focus on practice mix, targeted market segments, geographic "reach," and an image or culture that will make the firm a likely choice for desirable clients in the future.

Moreover, within this model, economic expectations are realistic. After decades of double-digit growth in lawyer incomes in many law firms, the 1990s were especially disappointing to lawyers who expected those increases to continue indefinitely into the future. Management must communicate the fundamentals of

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48. KRONMAN, *supra* note 1, at 121-22.

firm economics broadly, ensuring that everyone understands the fundamental economic dynamics of the practice and what reasonable earnings can be expected. The reinforced message that profit maximization is not an institutional goal facilitates effective adjustment of unrealistic expectations.

Finally, this framework requires a focus on core competencies or specialties. Firms must foster relationships with referral sources, suppliers, and even other law firms to meet client needs that lie outside the firm's area of expertise. In other words, the successful firm does not overextend itself in the self-interested pursuit of short-term profit.

### VIII. Conclusion

The new legal economy has resulted in the business failure of a significant number of major U.S. law firms, as well as numerous smaller firms. Economic survival requires effective management and good business practices. Properly conceived and implemented, these practices need not interfere with professionalism; arguably, they are essential to it. In many respects, the greatest threat to professionalism is the lawyer or firm with an unprofitable practice, which is operating under increasing economic duress. It is in that situation when temptations to compromise independence (creating conflicts of interest), breaches of client loyalty (including preservation of client property or trust accounts), or overreaching in pricing legal services (gouging) are likely to occur. Clients, lawyers, and the public all benefit when law firms are operated profitably with the application of management values and principles that enhance the ability of the lawyer to serve the client competently and efficiently, maintaining the highest standards of professionalism.

