

By Ben W. Heineman, Jr.,  
and William F. Lee

# Noblesse Oblige

*Firms must teach the younger generation what it means to be a true professional. Two veteran lawyers explain why.*



**Law firms have been moving** from loosely managed associations of professionals to disciplined business organizations for more than a generation. This shift has caused an erosion of professional values (lawyers' traditional commitment to enhancing society) and has

increased the focus on economic return (firms' relentless quest for escalating profits per partner).

But it is now time for a new paradigm for law firm leaders, as past fissures in firms, caused by relentless business pressures, begin to crack open from the earthquake of the Great Recession.

Put simply, managing partners—working with the partnership—should seek to forge a better, healthier balance between the firm as professional association and the firm as business organization. Doing this will help increase associate and partner loyalty and morale, improve productivity, create new win-win alliances with clients, better serve society, and enhance the firm's reputation in the profession and in the community.

There is, of course, no turning back: Law firms must be run in a businesslike manner. But they should not just be run for the greatest possible economic return. Law firm leaders must emphasize other values as they reorient their firms with respect to their clients, their partners, and their associates. And they should redefine their own

personal responsibilities and commitments. At the end of the day, they and their partners should restate, for the younger generation, the historic concept of what it means to be a legal professional, which has generally meant that private lawyers have public responsibilities beyond their immediate self-interest and beyond the needs of their immediate clients.

We do not underestimate the difficulty of modifying profits per partner relative to other firms as a driving ethos. We do not underestimate the lunar pull of extraordinary absolute compensation in financial services institutions or venture capital firms where envied friends from college earn many multiples of lawyers' pay. We do not underestimate the complex discussion with the star partner about whether she is willing to forgo the free agent draft and give loyalty and community effort to the firm, which provides her with significant compensation, but not necessarily absolute top dollar.

But this new leadership mandate is necessary

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given the secular changes at many firms—a dramatic end to unceasing growth in associate hiring, leverage, revenues, and profits. Additionally, some pillars of practice, such as pyramidal associate structures and the billable hour, are under attack. This new model is necessary even if conditions for economic growth return, because the multiple issues regarding clients, partners, associates, and society stemming from the “business model” law firm have been starkly highlighted in the downturn and need to be addressed.

Here are our priorities for this new model. (We recognize, of course, that some firms are already addressing these issues.)

#### CLIENTS

- Law firms should change their inward-looking economics (more hours, more leverage, more profits, regardless of value) and align their economic incentives with the incentives of their clients (through alternative fees in particular matters, or strategic alliances for a broader book of business). Firms should redefine “productivity” in a fashion that serves their clients (doing more with less), not, as some too often presently do, in “leveraging” more billable resources per matter.
- Law firms should focus rigorously on value and quality and not allow billable hours for mediocre work, which results from huge, poorly managed teams.
- Firms should, at the outset of important engagements, seek a related and reciprocal commitment from the client that the job of the firm is not just to provide astute lawyering (what is “the law”), but also wise counseling (expressing views about what is right for the institution in the particular setting and taking factors beyond technical law into consideration).

#### PARTNERS

- The partnership must regain a sense of common community, with shared values and aspirations, instead of existing as balkanized practitioners, practice groups, or geographies intent on their own narrow self-advancement. Creating a common culture based on professional values of service, collegiality, loyalty, quality, integration, and cooperation is probably the greatest challenge for today’s law firm leader.
- The partnership must, therefore, be more explicit in recognizing the different ways in which lawyers and partners can add value: bringing in business, being expert in client relations, being adept at project management (as firms move to alternative fee arrangements), being a mentor and leader for associates, or

contributing to community or society. Treating older, still productive partners with grace, not harshness, is another challenge.

- The partnership should reinforce, through its compensation system, these collaborative and differentiated values and move away from the mechanistic compensation that proceeds from an “eat-what-you-kill” mentality, which rewards only the top business getters. In many great firms we know (both past and present), the top lawyers have taken out less money than they could have in order to set an example. Individual partners have a reciprocal obligation to assume duties in the community, not just to focus on solo contributions.

#### ASSOCIATES

- Firms should address the striking discontent and disconnection of many starting associates, which historically had led to a dramatic exodus after only a few years as a result of the associates’ not the firms’ choice [“The Lost Generation?” March 2008].
- In good economic times and bad, firms should not hire fodder—but, rather, fewer young lawyers who can be given clear, sequential, systematic, and organized competency training, who can have real responsibility and accountability at an early stage in their careers (through pro bono work, if necessary), and who can be part of the firm community (understanding its financial situation and its broad footprint), rather than being fed a steady diet of nonchallenging work in isolation. That also means leavening the loaf of specialization with broader assignments, too.

Taking these steps will ultimately involve real mentoring, counseling, and commitment from partners who actually care about the development of young professionals, and who are willing to spend real time evaluating work and discussing, in some detail, strengths and areas for improvement. Meaningful merit-based evaluation, compensation, and promotion of associates—turning away from lockstep treatment—is based on such a commitment.

- Law firms are, importantly, educational institutions with a duty to train outstanding young people for a broad-gauged career in the law, even if not a lifetime in the firm—training in the critical roles of astute lawyer, wise counselor, and lawyer as leader. Personal friendships and mentoring can continue, even if the lawyer goes to a business, the government, or a nonlegal position. Retaining these professional connections has its own value for the firm. There is a corollary: an obligation to treat associates as respected colleagues critical to the advancement of the profession and

not as line items in the annual budget ( $y$  hours times  $z$  rates), as if they were Charlie Chaplin in *Modern Times*.

#### THE UNREPRESENTED

- One of the great failures of American society is the inequality in the provision of legal services—the unequal access to equal justice under law. Firms should address this issue (and many do), even if it means less revenue, through meaningful commitments, in terms of real time devoted to pro bono activities. This mission has to be at the core of professional obligations.
- For the associates, pro bono work, under proper supervision, provides a significant opportunity to lead important matters. But so too senior lawyers, with the most developed skills, should devote a defined, discrete part of their year to providing services for the “un” or “under” represented, especially on matters of precedential consequence.
- Beyond that, law firms have a special obligation to support improvements in the provision of legal services through other organizations: public defenders, legal aid societies, legal services, and public interest firms.

#### PERSONAL RESPONSIBILITY

- By their personal behavior and the allocation of their own time, law firm leaders should demonstrate the necessary rebalancing between the firm as professional partnership and the firm as business organization. Of course, they (or their top managers) must improve technology, firm and client support, financial management, cost discipline, the human resources function, etc.

But the leaders of law firms must show in their own lives the importance of the client, partner, associate, professional, and societal issues described above. Heads of firms should be both professional and business leaders.

#### THE MEANING OF PROFESSIONALISM: COMMUNITY AND SOCIETY

- A positive view of the profession as embodying an ethos of service important to a democratic society—beyond a lawyer’s self-interest and beyond immediate, paying clients—has been articulated throughout our nation’s history: from Alexis de Tocqueville in the nineteenth century to Roscoe Pound and Louis Brandeis in the progressive era to the leaders of great law firms following World War II. As the Carnegie Foundation for the Advancement of Teaching said in its 2007 report on legal education, the “profession of law is fundamental to the flourishing of American democracy. . . .

[There is] an historic community of practitioners . . . carrying on the traditions of craft, judgment, and public responsibility.”

Each generation of lawyers will take these grand concepts and develop their own concept of professionalism, of service beyond firm-paying business. Ultimately, rethinking what it means to be a professional, as opposed to just a mere profit generator, must be a project for firm leaders and the partnership. This should not be a nice “to do,” but a “must do.” Although individual lawyers will make personal choices about professional service, the firm as a whole might agree on a certain theme, such as building institutional infrastructure and rule of law in developing nations for global law firms and their global clients.

A new paradigm for law firm leaders—and a new balance between professional values and business returns—can only happen, of course, if firm leaders, in an extended discussion with firm partners, explicitly address the issue of money. But raising this issue is the beginning, not the end, of the discussion, because firm decision structure—and a new consensus and

an altered culture—ultimately rests on the will of the partnership (however much power may

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be delegated to an executive or management committee). And some partners will certainly view the ideas expressed here as quaint or, worse, a threat to their autonomy or markets, or civilization as we know it.

This task is difficult in a medium-size firm. But the task is especially challenging in the geographically dispersed megafirm where substantially greater effort is necessary to unite far-flung, culturally diverse offices, and where involving the partnership in shaping the culture (rather than its imposition by firm managers) is a very complex task. Nor, as noted above, do we underestimate the difficulty of addressing the profits-per-partner ethos, the

envy of financial sector compensation, and the problems that the star system poses for creation of a firm community.

But we do deeply believe that a new legal model for law firm leaders is vital to address the discontent that is too prevalent in the profession today—among clients, partners, and associates. This discontent stems, in important part, from too many law firms having lost their way as a professional association of lawyers with broader vision and obligations than simply securing their own well-being through the highest possible financial returns for their firm.

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