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The Four Cardinal Virtues of Law Firm Culture

Jordan Furlong is a partner with the global consulting firm Edge International.

Law firm “culture” isn’t that hard to define. Culture is what people at the law firm actually do every day – or, less sunnily, what people get away with doing.

I’ve worked in organizations that struck committees to study and define the organizational culture, but failed to appreciate that the most accurate definition of culture is what actually happens around here. A law firm’s culture is the daily manifestation of its explicit performance expectations and implicit behavioral norms – what is encouraged and what is tolerated. And the culture that a law firm develops and sustains has an impact on its productivity, retention rates, and morale – positive or negative, as the case might be.

What behaviors does your firm encourage and what behaviors does it tolerate? If your firm is typical of the genre, it encourages:

- individual effort and achievement;
- competitive relationships with colleagues;
- prioritizing financial success above personal well-being; and
- the development of an adversarial subtext to the lawyer-client relationship.

Your firm’s culture, if typical, also tolerates:

- the application of different standards of conduct to high-earning lawyers;
- the differential treatment of lawyers and “non-lawyers”;
- the generous interpretation of “billable hours” assigned to a client file; and
- the emotional or verbal abuse of junior lawyers and staff.

I’m sorry to recite a list of such unpleasant cultural features. But that collection of encouraged and tolerated behaviors is so common within law firms as to virtually constitute a definition of the species.

Whether this accurately describes your firm or not, what is indisputable is that a firm that develops and maintains a culture that prioritizes behavioral norms in polar opposition to these will be an outstanding exception to the general rule and will accordingly reap tremendous benefits in terms of morale, productivity, recruitment and differentiation.

If you want your firm to develop that kind of outstanding culture, you must do everything you can to encourage practical, everyday

behaviors that will bring about these cultural conditions, and apply a zero-tolerance approach to behaviors that will ruin it.

Allow me to suggest four “cardinal virtues” for law firm culture — core cultural values that law firms can and should prioritize and incentivize — along with examples of how they might be exemplified and how they would be violated.

A. Consideration for clients - displaying a genuine interest in, affection for and devotion to the overall welfare of the firm’s clients.

- *Exemplified by:* personal engagement through regular communication; asking about ways to reduce clients’ unnecessary legal spend.
- *Violated by:* failing to keep clients informed and respond promptly to inquiries; issuing an invoice containing unexpected fees with no warning.

B. Respect for colleagues - treating both lawyers and staff members thoughtfully, professionally and in a collegial and kindly manner.

- *Exemplified by:* politeness even in stressful situations; sharing credit for good outcomes and accepting responsibility for poor ones.
- *Violated by:* yelling at employees or junior colleagues; fighting for business origination credits beyond what is reasonable.

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C. Service to community - contributing valuable time and real efforts to the firm's community service commitment.

- *Exemplified by:* donating money to a firm fundraising event proportional to one's means; rolling up one's sleeves to lead a community project.
- *Violated by:* refusing to join a community service committee without good cause; unreasonably withholding consent for charitable donation of some firm profits.

D. Care for oneself - paying close attention to maintaining one's physical, mental and emotional health and seeking assistance when necessary.

- *Exemplified by:* taking every day of allotted vacation time; adopting at least one hobby or outside interest to advance one's well-being.
- *Violated by:* relentlessly working nights and weekends without proper rest and recovery; inflicting undue amounts of criticism on oneself.

Not all of these cultural values are easily measured in practical terms, but many of their associated behaviors can be assessed. Survey clients about whether they are happy with the level of care

they received from each person in the firm. Ask colleagues and employees to anonymously assess that person's conduct towards them and others. Ask the person to file an annual report detailing his or her community service efforts. And retain the services of a counsellor to regularly assess the health and well-being of all lawyers and employees.

Your firm's culture is expressed by what actually happens there every day. Decide up front what kind of culture you want, identify the behaviors that will exemplify and develop that culture and take active steps to encourage and measure those behaviors. That's how to make a real culture and how to make a culture real.

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Fundamental Changes to Rules for Estates and Wills

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Recent amendments to the Income Tax Act have made fundamental changes to the tax rules for estates and wills. Lawyers and trustees should familiarize themselves with these new aspects.

As a general rule, all income from trusts is taxed at the top individual tax rate of about 54 per cent. There are a few exceptions to the top tax rate rules. Currently, the new legislation shifts the tax burden of a spousal trust to the estate of the surviving spouse. Fortunately, however, it appears that these provisions will be cancelled, as discussed further below.

Top tax rate for trusts

Formerly, testamentary trusts were taxed at graduated rates: the first \$40,000 of income was taxed at about 20 per cent, the next \$30,000 at about 32 per cent, and increasing to about 50 per cent when income exceeded \$220,000. Effective January 1, 2016, all trusts will be taxed at the top rate of about 54 per cent. There are two exceptions: 1) the deceased's estate for the first 36 months (this is called the Graduated Rate Estate, or GRE); and 2) one trust per year for an individual who qualifies for the disability tax credit (this is called the Qualified Disability Trust, or QDT).

Exceptions to top rate QDT rules

The QDT rules are complex. Though the new rules retain a graduated rate for the QDT, the accumulated tax savings produced by the low rate tax over a period of years are subject to a new tax that effectively "claws back" these savings when the disabled individual dies or ceases to qualify for the disability tax credit. In order to realize the savings, the income must be distributed to the disabled beneficiary before the year of death. This will require attentive management by trustees in cases where provincial benefits are received.

GRE rules

A qualifying estate must designate itself as a GRE. If the estate ceases to qualify as a GRE, it loses GRE status. Consequently, charitable donation credits and deductions for losses of the estate may be lost, and the top tax rate will apply. This can have serious consequences for the estate and in some cases can result in double tax, in particular where shares of a private corporation are held by the estate. A GRE can lose its status before 36 months if the estate receives contributions from persons other than the deceased, including certain loans or loan guarantees made by non-arm's length persons.

Dual wills

Dual wills for owners of private corporations are now common. The Canada Revenue Agency has indicated that it intends to treat what are often referred to as primary and secondary estates in these dual wills as one graduated rate estate. As a precaution, it is advisable to address this issue specifically in the will to indicate the intention to direct the estate trustee to designate both estates as being one graduated rate estate. It is also prudent to name the same person(s) as estate trustee(s) of both estates.

Likely cancelation of taxation shifting provision

The Department of Finance introduced draft legislation in January that effectively cancels new provisions shifting the tax burden on the death of a surviving spouse from a spousal trust to the surviving spouse's estate. The prior legislation, which was effective January 1, 2016, leaves the beneficiaries of the spousal trust with

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a windfall, as the tax ordinarily payable on the spousal trust assets became payable by the surviving spouse's estate, to the detriment of the beneficiaries of the surviving spouse's estate. Fortunately, it appears this provision will be eliminated, as it caused major problems, particularly in second-marriage families.

Review of existing wills

There are no "grandfathering" provisions to cushion existing trusts from these changes. Consequently, now is a good time to review client wills and the provisions creating these trusts. Each trust should be examined carefully. In some cases, the trustees are required to continue the trusts. In other cases, the trustees might consider distributions to one or more beneficiaries after having obtained a legal opinion.

Trusts remain useful in many cases. Significant tax savings may remain where trustees have the discretionary power to allocate taxable income to beneficiaries with lower tax rates. A trust might also protect an inheritance from creditor claims and perhaps matrimonial claims. In other cases, a simplification of the will to eliminate the complexity of the trusts will be preferred.

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Hunting in Packs: Group Meetings with Prospective Clients

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If you have decided it will be advantageous for you to visit prospective clients as a pair or a threesome, you need to follow certain steps carefully in order to optimize your effectiveness and minimize mistakes that can cost you a relationship before you even have one.

Selecting the team

Selection of team members who will visit the prospective client should be based on merit and potential value, rather than seniority or entitlement. (I understand that there are situations where politics will dictate that you must do otherwise, but wherever possible, you should avoid the “entitlement syndrome.”)

Meeting-room logistics

If possible and appropriate, ask for permission to get settled in the appointed room a little early (ahead of your hosts) so that the individuals you are visiting need not waste time while you get set up and organized. This gives you an opportunity to do more than take papers or laptops out of your briefcases; it allows you to get settled strategically in the room. If you populate both sides of the table, for example, then you preclude a situation where there will be three hosts on one side and three members of your team on the other. Also, avoid taking the head of the table, as that is likely to make your hosts uncomfortable. It's an easy guess which end of the table the lead person you're visiting will take, and one of you should sit to his or her immediate right. (This is the second most powerful position in the room.) With these logistical matters out of the way, when the people you are visiting arrive you will be relaxed and poised and able to focus on introducing yourselves, shaking hands and making appropriate small talk.

Acceptance of hospitality

When asked by hosts at a meeting if we would like a cup of coffee or a glass of water, most of us decline. We say that we just had

lunch or breakfast, we insist that we are “fine.” Our motive is to avoid imposing unduly on our hosts, but psychologists tell us that this approach is dead wrong. They explain that the host is going through the same subtle subconscious process as a grandmother does when she offers you one of her freshly baked cookies and that, therefore, we should always say “yes” to such invitations. It's okay if you ask to substitute water or tea for the coffee, but never decline altogether.

Small talk, or the smart question

Small talk should not be generic, but rather should be customized to your hosts. Avoid complimenting the artwork. It might look amazing to you, but the people you are talking to might not have been on the selection committee and they might hate it. Instead, ask a smart question about the corporation and the individuals you are meeting, something only thorough advance research on your part would allow you to ask. You might say, for example, “You've opened more locations in Europe in the last three years than in the previous ten. What drove that decision?” Perhaps supplement this question with another, such as, “What unexpected challenges has that presented for you?” A quick Google search in advance of the meeting may reveal relevant late-breaking news. “I noticed your chairman's announcement yesterday that the company will be divided in two. What can you comfortably tell me about how that impacts your division and your responsibilities?”

The presentation

We all know the joke about the presenter who apologizes that the presentation will take an hour because he did not have time

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to prepare one that was ten minutes long. That joke is not funny and the result will not be appreciated by the folks you are visiting. Instead, the information you were there to impart should be presented in only a few moments, possibly with a brief executive summary or outline as a “leave behind.” Unless you’re doing some sort of educational program, no one needs a whole lot of detail, they just need to get the essence. They do not want to sit there and listen to you talk. If they want more information, they will ask questions.

Answering questions

Three common sins should be avoided when answering questions.

Sin #1 involves a person answering a question who is not the person to whom the question was posed. The motive may be innocent enough: maybe the responder thought they actually had particular knowledge or information that was relevant to the question. Even then, it is a horrible practice and should be avoided like the plague. If the question is put to the wrong person in your group, then that wrong person can defer it to the correct person. (E.g.: “That’s a great question.” Turns to colleague Anne. “Anne, you’re the person in our group who has had the most experience dealing with this kind of situation. What is your view?”)

Sin #2 involves a second member of your team answering the same question that has just been answered, supplementing the first answer. On rare occasions, if the supplement is very brief and very valuable, an exception can be made. But for the most part, piling on to the answers of your colleagues simply bores your hosts and extends the meeting unnecessarily.

Sin #3 involves one of your colleagues disagreeing with another. If your colleague says the sky is pink, then the sky is pink. If you feel compelled to say that it is actually blue with a pink hue, then you are simply demonstrating to your hosts that you are not team players

and do not know how to collaborate effectively; in other words, you don’t play nicely together. This is a tremendous turn-off to your hosts.

Show respect to your hosts and to each other

Be careful that 90 per cent of your eye contact does not go to the power person among your hosts. Pay attention to the other individuals they brought into the meeting with them as well. That subordinate that you are tempted to ignore may have a lot more influence over decisions than you think. In terms of your own team, your senior people need to avoid behaving in a patronizing way toward more junior people. Back in the office, one of you may be a senior partner and another a junior associate, but in the meeting the senior partner should treat the junior associate like the find of the century who is brilliant, ahead of the times, gifted beyond description, and a great asset to the firm and its clients. (I know this sounds over the top, but you get the idea.)

The close, or “What’s next?”

You should know before the meeting begins how you want to end it. In some cases, it may be unrealistic to expect a buying decision at the end of that first meeting. You may have thought through the first incremental step that you might want permission to take – even if that first step is still without fee, but rather includes further analysis of the needs of the prospective client. One member of your team should be prepared to ask for a decision on that incremental step. “So, based on what you’ve heard, would you be comfortable with our proceeding to do that preliminary analysis that we described?” This question should be followed by silence from all the members of your team; the next person who speaks should be one of your hosts. You may not get a “yes,” and you may have to moderate your expectations, but it is paramount that you give the client the opportunity to say “yes.”

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The team should rehearse

The presentation will not be short and precise if it is not well-crafted and rehearsed. It should sound extemporaneous, but should be built on a foundation of solid preparation. In addition, your group should brainstorm the kind of resistance that might occur in the meeting. Be prepared to respond to such statements as “We already have a firm helping us in that area,” or “We are not ready to make a decision this year because we will not find a place in the budget until next year,” or “We know your firm, but we don’t think of it in the context of a reputation for this particular area.” None of these statements is insurmountable, but they can be devastating if they are not anticipated. Difficult questions tend to get long, rambling answers, as your colleague thinks on his or her feet. It is better to have anticipated the question and have a more precise and focused answer at the ready.

Every meeting is a one-off

Prepare accordingly. This does not mean that you need to invest an enormous amount of preparation time, but it does mean focusing on the specific prospective client. You should be able to demonstrate that you’ve done your homework, and that you have a solid reason for wanting to serve the people with whom you are meeting.

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Why Your Law Firm Needs a War Room for Business Development

Joi Scardo is Senior Strategist, Marketing and Business Development at Jaffe.

Considering the successful history of the legal war room and the comfort level attorneys have with them, it is curious that more lawyers haven't adopted the use of law firm business development (sales) war rooms. It seems a natural fit, but – as in other aspects of marketing – our industry lags behind.

If we were to call on our industry's version of HGTV's "The Property Brothers" to convert one of these rooms into a business development war room, what would that look like and how would it function?

The build-out

The first step to redeveloping a piece of property is the build-out. Here's what your space needs to be a proper business development war room.

Provide as much security for the room as possible. As with any war room, confidential information will be out in the open, so you'll want the room secured. Your business development war room should be a dedicated room with a door that locks. It also should be located out of the general flow of firm and external traffic.

Configure the room for productivity. The war room should be large enough to comfortably accommodate the business development team and should be configured for optimum productivity, with white boards, easels, Internet access, a computer and a printer. Provide a means to display visual aids that bring the team together around goals, assignments and progress.

The crew

You can't remodel without the right talent in place. Here's whom you'll need to get the job done.

Gather the right people. The best strategies today are designed collaboratively. This helps achieve better results and builds broader

commitment. The ideal group size will vary, depending on the strategy and individual tactics being addressed. Strategy sessions targeting new clients likely will involve different attorney members from those targeting the expansion of existing clients. The attorney members should be those who have relationships with the clients or prospects, solid knowledge of the target's industry, relevant practice area information and a commitment to being active in implementing the necessary legal marketing tactics. Round out the team with marketing and business development staff members who have access to critical data, with particular effort to include the following specialists:

- **Business development** – This should be a member of the business development or marketing staff who is knowledgeable about the team's practice area and clients. This person will take the lead on developing the strategy, recommending tactics and following up with attorneys to support them.
- **CRM/database** – You will need access to the firm's customer relationship management system to understand who in the firm has relationships with targeted prospects and clients, what types of services the firm has provided (if any) and what marketing tactics are currently being employed with respect to those targets. Depending on the connectivity of the billing, time and CRM systems your firm uses, you may also need someone skilled in producing reports from the billing system.
- **Researcher** – As you develop your targeted list of prospects and implement the marketing strategy for pursuing them, you

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need to understand what is happening in the industry and business of each targeted company, as well as any news about the individual contacts you are targeting. Be sure your team includes a staff member skilled in finding and analyzing this data, be that a marketing research analyst, a member of the firm's library staff or a paralegal.

The interior

With your room makeover completed and the team in place, it's time to turn your focus to what goes on inside the room: the planning, implementation and tracking.

Set realistic goals. The key to good business development strategy is to undergo a reality check. A business development plan that sets out excessively lofty goals will only gather dust on the table in the war room. Base your initial goals on getting your business development activities into a systematic process so they do not fall to the bottom of everyone's task list. You might start with group or attorney goals, such as:

- Contact five prospective clients per month.
- Follow up with ten existing clients per month.
- Add ten new contacts to the firm's newsletter mailing list each quarter.

Give tactical implementation assignments to the team.

Recognizing that attorneys occasionally and shortsightedly view legal marketing as a "non-billable, administrative task," give members of the team simple, straightforward task assignments, such as "Attorney Joe will call contact Jane and extend a lunch invitation. Targeted date for call: March 4." Have the business development staff member working with the team add the assignments to the attorneys' calendars and include reminders.

He or she also should make the attorney aware of other marketing efforts targeting the contact or the contact's company. Ask the research specialist on the team to create a short dossier that includes recent news on the contact, their company and the relevant industry (e.g. a Dun & Bradstreet or Hoover's report) and any historical firm representation information.

Get results through incentives. We all know that we get the behavior we want by tracking and rewarding that behavior. Include incentives for task completion and goal achievement as part of your war room strategy. While a business development bonus would be great (base it on achieving the tasks, not just on bringing in the new work), the incentives do not have to be significant enough to require approval by the board or compensation committee. Rewards can be something as small as a coveted firm-branded item, such as one of the nice golf shirts typically reserved for clients, a coffee shop gift card or a bottle of wine.

Another motivational tool is a regular meeting with a member or members of firm management to make them aware of the progress being achieved by the team and individual attorneys.

Track and report on progress. A member of the team, such as the CRM specialist, should be tapped to track progress. A progress report should be part of each war room meeting. Peer pressure often results in as much performance as tangible rewards.

Joi Scardo is Senior Strategist Marketing and Business Development at Jaffe, a full-service PR and marketing agency for the legal industry. "Why Your Law Firm Needs a War Room for Business Development" appeared as a post in the Jaffe blog at jaffepr.com on February 10, 2016.

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