

# SIX ELEMENTS OF MEANINGFUL DIFFERENTIATION



**A**t a time when the demand for legal services is on a decline, the root of all successful strategy lies in being differentiated. Your firm and your individual practice groups must all work at making themselves distinctive and intrinsically more valuable to clients.

The curious irony is that most law firms go to great lengths to look like every other law firm. In fact the common response that you are most likely to elicit from the management of any firm when first presenting a new concept, idea, or potential market opportunity is: “Can you please give us a list of the other firms which are doing this?”

Competitive advantage means getting out in front, by focusing on some area in which you can be distinctive, meaningful and unbeatable. But, rarely have I ever seen information on any law firm’s web site that identifies: “What Differentiates Our Firm.” By definition, if you are doing what everyone else is, you don’t have any advantage. To test this thesis, let’s think for a minute. How different is what you are doing right now — the strategies that you are employing now — from the four or five key competitors in your marketplace?

In strategy sessions with groups of partners I have often posed a simple question to the entire group — a question I believe is reflective of the primary concern that occupies most prospective clients’ minds. It goes like this: “Tell me please — as a prospective client, why should I choose you (your practice group / your firm); what makes you distinctive and what added-value can you bring to my business matters — **that I cannot get anywhere else?**”

The answers that I usually elicit make reference to the firm’s long revered history, the firm size and perhaps the geographic spread of offices, the diversity, community involvement, the firm’s ability to be responsive and cost-effective, and so forth. All very interesting answers; but all less than compelling if you are the prospective client — largely because it is the same thing that you are likely to hear from every good law firm these days . . . we are different in the same ways everyone else is!

The good news is that when you look at differentiation, starting from a practice group perspective, many of your groups have something meaningful to offer. The not-so-good news is that much of it is, either hidden, understated, or (believe it or not) totally unrecognizable from partner to partner within the same practice group. In other words, whenever I have discussed this at length with the members of a particular group, I continue to be amazed at how some partner may be doing something incredibly differentiating, that the other partners in the very same group are totally unaware of.

So, where do you start?

What follows are a number of the elements, in no particular order of importance, that from in-depth discussions with clients, form the basis for meaningful differentiation. No one particular component will provide you a silver bullet. Your practice group’s meaningful differentiation (and ultimately your firm’s differentiation) comes from recognizing that what may make you truly distinctive and valuable emanates from having something to offer across a number of these areas.

## 1. Exceptional Service

**Key Question:** Please identify what it is that you do in the way in which you, as a group, consistently serve your clients that is perceived as rare, valuable and different from what other competitive firms might offer?



Check out a significant firm's web site and you will see how they promote their use of technology, their hiring practices, even their philosophy and principles but aside from the occasional listing of clients served, there is little of any substance to how the firm will work with you as a client. Going even further, some firms call it their client service principles while others label it their 'Client Service Pledge' but irrespective of the specific title, much of it is less than impactful.

Too many firms rely on creatively worded prose to appeal to prospects and clients. Here is but one example from a global firm:

*We pride ourselves on our creative, 'smart' way of thinking - whether it's in how we analyze instructions and set up our legal teams, how we find the optimal solutions to complex business issues, how we approach billing, how we service our clients' on-going needs and how we work with rather than just for them. No matter how challenging or complex the mandate, we are not satisfied until we have delivered the highest quality, most commercially effective legal advice.*

Here is yet another example, from a firm setting out their 'Guiding Principles':

*We are committed to providing consistently world-class legal services, as nothing less will suffice for the challenging matters our clients bring to us. Clients do not come to us with easy questions, simple cases, or routine transactions. Clients come to us because of our well-earned reputation for outstanding service delivered promptly. We pride ourselves on finding innovative solutions to complex problems that require us to draw on our full range of expertise and experience.*

The only problem is that after reading these two client service principles, while they seem to espouse all of the right words, you could not distinguish any one firm from any of the others that champion similar sentiments. Other firms make veiled attempts to draft and display what they must think are compelling arguments to retain their services:

*We understand that delivering the highest level of service means keeping in touch with, and being accessible to, our clients on a timely basis. Where appropriate, we use a senior lawyer/junior lawyer reporting relationship to ensure clients are able to reach a lawyer informed about their particular case and/or needs.*

**“E**very research study conducted with clients shows that providing 'Exceptional Service' is one of the most powerful differentiators. The difficulty comes where it must be consistently delivered by every professional in your practice group – or firm.”

These firms all love to couch their prose in terms like “we will make every effort,” “where appropriate,” “if you wish,” “as quickly as possible,” and “we will endeavor to.”

Every research study conducted with clients shows that providing 'Exceptional Service' is one of the most powerful differentiators. The difficulty comes where it must be *consistently* delivered by every professional in your practice group – or firm. In other words, most published client service standards are either hollow rhetoric or aspirational dreams, but they don't become meaningful to clients unless and until you are prepared to make them absolutely **non-negotiable, minimum standards of performance**. And therein lies the great hurdle. It means that every attorney in the group must conduct themselves according to some governing standards and can no longer be autonomous – practicing as they see fit. And of course, where this all falls apart is where lawyers are allowed to claim (and get away with) the assertion that their “clients are different!”

That said, at a time when many firms preach “providing seamless service” there are some progressive practice groups that in striving for excellence, have differentiated themselves by setting out in writing and delivering to their clients, very hard and fast service standards, like the following:

- We will determine with you, a 'Preferred Communications Protocol' and set out under what circumstances you would prefer a face-to-face meeting, versus a telephone conversation, e-mail or other mode of communication. That written protocol, will then be communicated to every professional and support staff member serving your organization.
- We invite your in-house counsel to convene one special session semi-annually at our expense (airfare / hotel included) for the purpose of briefing

us on matters related to better understanding your current business goals and new developments in your industry.

- We will have our IT professionals work directly with your IT professionals to determine how technology can be employed to our mutual advantage. We will institute electronic data links to provide for communications, support, project management, work product retrieval, and on-line research.
- We will, at no cost, debrief at the conclusion of every major case or matter, over \$100K in fees – with those lawyers and corporate executives deemed appropriate, in order to consider the future legal impacts of current business practices; to determine ways to avoid future litigation and liability; and to evaluate opportunities to accelerate the closing of transactions or resolution/avoidance of conflict matters.

These practice groups have delivered these written standards to their clients as a means of both having their clients hold them accountable and to constantly remind their group members of what is expected of everyone.

## 2. Special Alliances / Contacts / Relationships

**Key Question:** *Do you, as a group, have any favored relationships, contacts or alliances that confer a market advantage in that they would be perceived by prospects / clients as special and noteworthy?*

When contemplating this question groups will often mention some attorney who was a former General Counsel, or served as the local Bar President, or reference their firm's membership in some international law firm alliance. In certain instances, any of these might have some interest to clients, but there are not likely to truly differentiate you. There are some other areas that you might consider.

While it used to be fairly common within the profession, there are still some law firms that enjoy the loyalty of a major corporate client. In one particular instance, a premier, super-regional utility company uses one law firm for the vast majority of their legal work. That relationship has allowed the law firm to be exposed to new areas of practice (climate change, solar and bio-mass technology) before many of their competitors and has been influential in attracting other prospective clients to use the firm's services. Do you serve a valued, loyal client that is widely perceived to be among the industry leaders and thereby reflects prestige on your firm?

There are examples where firms have achieved recognition by being acknowledged in a unique way by their peers. For example the Association of Corporate Counsel (Value Challenge initiative) have an internal program whereby they recognize those firms, who by way of nominations, have made great strides in controlling costs and are therefore held out as 'Value Champions.' Being identified by the ACC in such a manner can be a distinguishing credential.

Firms have achieved an advantage from having the endorsement of some critical governmental body, perhaps an academic guru; or have developed close relationships through representing a particular trade organization. Clifford Chance advises regulators around the globe on the regulation of Islamic compliant derivative structures and benefits from being counsel to the International Swaps and Derivatives Association in relation to drafting the ISDA/IIFM Tahawwut Master Agreement launched in March 2010.

Some law firms have pursued obtaining ISO 9000 certification – (or the international standard LAW 9000) a specialized quality management standard for legal practices. Concurrently, those corporations who have obtained their ISO 9000 designation are required to, wherever possible, use the services of other ISO certified

vendors, thus conferring a strategic advantage on any firms who have obtained their credentials.

## 3. Distinctive Expertise / Service Offering

**Key Question:** *Do you offer any particular expertise or service to your clients that is truly distinctive, valuable and not readily available from most other competitive firms?*

These ten words appear in some form on a good number, if not the majority, of AmLaw 100 firm websites:

*Known as the firm of choice for highly complex matters.*

Meanwhile, these days it is difficult to find any firm, who does NOT somewhere on their web site expound on their listings in Super Lawyers, Leading Lawyers Network, Best Lawyers in America, Martindale-Hubbell, or their prestigious fellows and various peer review ratings. A number of firms include quotes taken from Chambers, the Legal 500 or some other ranking:

*This pre-eminent practice is highly regarded for its extensive international footprint and its presence on complex cross-border matters.*

These are all wonderful-sounding accolades, but hardly a convincing differentiator if every other competitor claims to have the same or similar credentials.

One prominent firm even mentions their partnership philosophy:

*As of October 1, 2012, the firm had 193 partners. More than one-third of our partners have served in two or more of the firm's offices, and 88 partners are currently based in our offices outside the United States. The firm remains dedicated to strengthening our practice primarily through internal growth – approximately 90% of our current partners joined the firm as associates.*

And again, this may be very interesting in terms of what is happening within the profession, but

what does this really mean and where is the tangible benefit for clients? One also wonders how crowing about your Legal Marketing Association awards or your Silver Inkwell website design resonates favorably with clients.

So, with everybody professing to have the same expertise, how do you stand out in a crowded marketplace? Here are a few notable examples of firms that have differentiated their expertise and service offerings:

• **Distinctive Expertise:**

*In a survey of more than 240 general counsel and in-house chief litigation officers and for the second consecutive time, Skadden was named a member of the "Fearsome Foursome" — the four elite law firm litigation practices that "corporate counsel would most like to have by their side in head-to-head competition.*

• **Industry Niche:**

*Balch & Bingham represents virtually all aspects of the solid waste industry. Our clients include public and private owners and operators of landfills, transfer stations, recycling facilities, waste to energy facilities, land-fill gas to energy facilities and composting facilities.*

• **Online Service:**

*The Clifford Chance Global M&A Toolkit comprises a growing collection of web-based transaction tools and in-depth analysis of the most important market and regulatory developments in M&A regimes across the globe. It aims to bring clarity to the increasingly complex world of cross-border M&A and features special access to our leading cross-border M&A databases, informative videos, and access to a library of specialist publications covering the key issues in global M&A.*

• **Ancillary Service:**

*Procopio Cory's incubator program, LaunchPad, assists entrepreneurs and start-ups in the formation, early funding, and growth of their companies. The incubator, housed in Procopio's new Del Mar Heights office, provide a basic legal start-up package, collaborative workspace, specialized mentoring, counseling*

*and contacts for entrepreneurs to grow their company and secure funding so they can take their endeavor to the next level within six to twelve months.*

• **Emergency Management Team:**

*Federal regulators now recover \$17 for every \$1 they invest\* in fighting health care fraud and abuse. So, it's no wonder that this industry is at the forefront of U.S. enforcement activity. Many providers live in fear that one day the FBI, OIG, or other investigators will show up at their door unannounced, demanding access to patient information and computer records, while insisting on immediately interviewing key employees. When an emergency situation arises, having the right legal and publicity response immediately available is crucial to protecting your people, your reputation, and your bottom line. We've got you covered. Our Health Law Emergency Management Team combines our health care compliance knowledge with the media crisis management expertise of Padilla Speer Beardsley, a leading communications firm based in Minneapolis. Whenever trouble strikes, an expert crisis management team will protect you from a legal standpoint, and prepare you to convey your situation to the media, shareholders, employees, and/or government officials in the most favorable light.*

The larger any market, the more specialization that takes place and the more specialized a firm must become if it is going to prosper. For many, to be highly profitable today, you have to narrow your focus in order to stand for something in the prospective client's mind. The firm that captures a lead in a new industry sector or legal services niche early can achieve a big advantage as that sector matures.

One other related approach that a few firms have been using to differentiate themselves is by way of the concept of "thought leadership".

*Skadden tells their clients and prospects: We are pleased to provide our annual collection of commentaries (Skadden Insights) on the critical legal issues our clients may face in the year ahead. Many of these issues relate to the responses by governments, markets*

*and business entities to the economic conditions and market instability of the past several years.*

*Latham offers a 'Knowledge Library' which includes a number of Blogs, a bog of Jargon® for the financial community, various events, podcasts and webcasts, and some 2000 articles and briefings that you can sort through by industry, practice or geography.*

#### 4. 'Proprietary' Processes / Software

**Key Question:** *Do you provide your clients with any tangible and proprietary process, checklist, template, procedure or software program for effectively and efficiently handling their legal matters?*

When one thinks of what might be described as a proprietary process, perhaps the best example might be 'the poison pill' — invented in 1982 by famed corporate lawyer Martin Lipton of Wachtell Lipton, and a practice that came into widespread use after the Delaware Supreme Court affirmed its legality in a landmark 1985 case. Literally thousands of companies have adopted poison pill plans in the years since then, either as a general policy or in response to takeover threats.

The benefits to the client of using the poison pill soon became obvious and "benefits to the client" are (once again) the key differentiating factor. For example, one AmLaw 100 firm promotes their award-winning technologically advanced system:

*In order to take maximum advantage of the collective experience of our lawyers, we have developed a number of important knowledge management systems and tools. These systems improve our efficiency. AnswerBase is our award-winning enterprise search engine. The search engine enables us to access the firm's best and most pertinent practice materials, internal research, attorney experience, client and matter information and other important firm information. AnswerBase has won a number of awards, including an award from Law Technology News ("Best Collaboration in Implementing Enterprise Search") and Citytech Global Tech*

Leaders Top 100 (“Law Firm Project of the Year”).

That is the total of the information available and leaves us only to ponder – what it means to me as a client?

Alternatively, Baker Donelson sets out very clearly the benefits from their offering:

*Baker Donelson’s BakerConnect Online Client Services are collaborative, web-based tools that allow our clients to manage corporate and litigation matters more efficiently through real-time information. BakerCorp Connect and BakerLit Connect and related online services deliver cutting-edge legal support to our clients, reducing costs and improving results through innovative knowledge management. Through an extranet site, clients can choose from an extensive menu of online services, store and share documents, communicate with our legal team members and view current industry data. Baker Donelson develops and maintains all tools and content based on the individual client’s needs, in addition to providing system training and support, and is responsible for software updates. All services are secure and access-controlled by the client, and are accessible from all electronic devices, including mobile devices. No client investment is required; all that is needed to access these tools is access to the Internet.*

Another great example of a differentiating proprietary process is Seyfarth Shaw’s Lean Legal system.

*At Seyfarth, we are continuously looking for better ways to meet our clients’ needs for value and efficiency, while maintaining high quality with our legal services. Based on that goal, we have become the only large law firm to build a distinctive client service model—called SeyfarthLean—that combines the core principles of Lean Six Sigma with robust technology, knowledge management, process management techniques, alternative fee structures and practical tools. The broad, systemic use of such*

*“I can just hear some prospective clients thinking to themselves . . . ‘that all sounds nice but, as evidenced by what?’ We need to remember that it is not what we assert that helps differentiate us – What helps differentiate us is what we can prove.”*

*a model across multiple practice areas is unique to the legal profession and reflects a fundamentally different approach to delivering legal services. This approach manifests itself with tangible processes and special tools, as well as the more intangible and fundamentally different way of thinking about how to deliver legal services.*

## 5. Cumulative Experience

**Key Question:** *When you think of your group’s total experience, what tangible, statistical, factual compilation of data would accurately capture and reflect what you have accomplished?*

In discussions with members of practice groups, as we explore what may differentiate them by way of their vast experience, I will hear things like:

- We have relationships with many of the leading players in the health care industry.
- Our team has extensive technology transfer and licensing experience.
- We have served numerous Fortune 500 companies.

I can just hear some prospective clients thinking to themselves . . . “that all sounds nice but, as evidenced by what?”

The compilation of who you are and/or what you, as a group, have accomplished (think: specific number of Fortune 500 companies represented)

can be very powerfully presented if made tangible, quantifiable, and proffered in a statistical framework.

We need to remember that it is not what we assert that helps differentiate us – “Our group’s high level of industry experience is consistently recognized as among the best.” What helps differentiate us is what we can prove – “During the past 5 years we have had the honor of representing six of the ten largest hospitals in our State.”

In fact, some firms do a good job of listing their “Representative Work” or “Key Representations” by practice or industry area with some substantive specifics:

**Distressed assets** – *We recently represented MAHLE GmbH, one of Europe’s largest automotive parts manufacturers, in a USD156 million acquisition of distressed assets in 13 different jurisdictions from the engine parts group of Dana Corporation. The transaction involved the shutdown, cleanup and sale of underperforming manufacturing locations and the strategic consolidation of production capabilities within the United States and Latin America. (Baker & McKenzie)*

The point here, is that any firm can do a decent job of differentiating themselves if they begin to look at their cumulative experience over some period of time. In other words, if your “individual” key representations aren’t that significant (as compared to the example above), then perhaps presenting the total value of all the distressed asset sales that your group has handled over the past five years – now looks like a significant number!

*Over the past five years, we have participated in more than 250 public offerings and Rule 144A placements raising over \$100 billion. In the past five years, we have served as company counsel in more than 800 venture financings raising over \$12 billion. We are counsel to more venture-backed companies in the eastern half of the U.S. than any other law firm. (Wilmer Hale)*

*Since 2004, we have represented life sciences clients in more than 100 venture capital financings valued in total at over \$1 billion and completed more than 100 public finance and M&A transactions in the life sciences sector. (Morrison Foerster)*

The interesting aspect of cumulative experience as a differentiator is that it takes some work to go back and examine your group's client matters and begin to statistically compile the results and so – few groups ever bother to do it. But those that do can present some impressive data for prospective clients to consider. As one managing partner expressed it to me:

*We kept track of our deals in Los Angeles, to the point where it looked like we had bought / sold more than half the prestige properties downtown – and we had! Every time we closed a prestige deal we gave a custom commissioned framed picture to the client as a closing gift. And kept one for ourselves to put in the hall way for our department. Every time a client, or agent / broker / title officer / lender / prospect / opposing counsel . . . anybody . . . walked through our space they passed trophy after trophy. We weren't competing to be in a field, we were confirming that we were already there. Boy did that work!*

## 6. Social Evidence

**Key Question:** *What is it that satisfied clients are saying about you that they would be prepared to codify and allow you to visibly disclose to others?*

There is an old adage that still rings true – “You are known by the company you keep.” People follow the lead of others – especially those who are similar to them and/or those whom they respect.

I remember reading a study about how a group of researchers went door-to-door soliciting donations for a charitable cause. On their second attempt they displayed a list of local residents who had already donated to the cause. As time went by, the researchers found that the longer the donor list became the more likely those solicited would be to donate as well. This supports what most sales

professionals already know. Testimonials or endorsements from satisfied clients work! And they are especially powerful when the satisfied client and the prospective client share similar circumstances – location, industry, status, and so forth.

While many firms will list their “Representative Clients” and many of those lists are very impressive, the typical sophisticated prospect knows full well that having a particular company name on the website does not guarantee that the firm did groundbreaking work for that company. They may in fact be one of just a number of law firms across the country that purports to represent this particular Fortune 500 entity, when in fact most of the work done is pretty routine in nature.

One prominent New York-based firm makes this claim:

*Our clients, many of them industry and global leaders, rely on the exceptional, collaborative service we deliver through our 10 offices worldwide. Their success is our core focus. Following is a sampling of feedback from our clients about our work with them.*

This is then followed by numerous quotes – BUT without ever mentioning a single client by name – so we are expected to take these at face value.

Alternatively Reinhart Boerner posts over 20 impressive client testimonials on their website, mainly from company Chairman, presidents and CEOs, complete with pictures of the originators of the commentary:

*When looking to further solidify Badger Meter's dominance in the meter industry through an acquisition, we knew the M&A attorneys at Reinhart would be the right choice to help us get the deal done. They impressed me and my team with their responsiveness and diligence throughout the entire process. Reinhart's negotiating acumen and attention to detail were key to helping us acquire additional technologies that will give us the potential to increase our sales, production, and workforce.*

Rich Meeusen, Chairman, President & CEO - Badger Meter, Inc.

Gibson Dunn is another firm that features selected testimonials on their site:

*Gibson, Dunn & Crutcher is staffed with highly competent lawyers who are understanding of Evergreen's objectives and who work hand in hand with me to develop strategies to meet my company's objectives, while being sensitive to legal fees. Litigators in the firm's New York office were extremely helpful in developing a clever and unique approach to achieve success for the Company in several complicated securities matters vital to the Company's future success.*

Bill Laughlin, VP, GC, & Corporate Secretary  
- Evergreen Energy Inc.

## CONCLUSION

Perhaps it helps to know, but should not provide justification, that those in the legal profession are not alone in this struggle to adequately differentiate themselves. Deloitte Consulting's CEO, leader of the \$7 billion in revenues professional services firm, when asked “what do you view as Deloitte's main differentiators from your competitors?” responded in a recent interview:

*We are not affirmed or defined by comparing ourselves to someone else. There are a lot of firms out there that are wonderful at what they do, and that is wonderful for them. We are unique. We produce insights that produce results. We are a firm that has world-class insight on various topics, whether it's a large merger, transformation, a large human capital issue or finance . . . we have insights, but we also have the ability to take the insights and help our clients execute on them. This is a unique capability that we have.*

All of this should provoke your firm to really search what it is, and recognize what it is not; what it can do, and what remains aspirational and not a true definition today of what it wants to be. Cut out the aspirational delusion. Build on the strength of what you are, in accurately defining your advantages. Then get to work laying the bricks for all the other things you want to be, the things you should be.