

# Yesterday's Strategies Rarely Answer Tomorrow's Problems

BY STEPHEN P. GALLAGHER AND LEONARD E. SIENKO JR.

**C**onfronted with new competitive and market challenges, lawyers across the country face a critical choice: either wait and see what happens to demand for traditional legal services, or anticipate the changes certain to affect the future and act now to shape the direction of these new services. The competitiveness problem being faced by so many law firms today is not a problem of "foreign" competition, but rather a problem of "nontraditional" competition.<sup>1</sup>

People throughout the legal community are beginning to realize that clients are demanding creative and pro-active lawyering, driven by new ways of thinking about legal solutions, while focusing on reducing rising legal costs. Lawyers will need to put aside the presuppositions of the old competitive world and compete according to totally new rules of engagement in order to survive in the increasingly turbulent business environment of the future.

Good examples of new market competition and challenges come from many state courts. For instance, look at the Utah State Court, whose mission is "to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law." The Utah State Court's Web site includes an area designed to help the public: Complete Divorce Papers Online, File Landlord-Tenant Disputes, and File Small Claims. The court's mission says nothing about preserving the lawyer's role in any of these transactions.

Richard Susskind, widely regarded as Europe's leading legal technology expert, was one of the first attorneys to write about the potential of the Internet to disrupt legal practice. In his book, *The Future of Law: Facing the Challenges of Information Technology*,<sup>2</sup> Susskind predicted, "Law will be gradually transformed from an advisory service to an information service as lawyers package their conventional work product in electronic form." If consumers can find what they need to know on the Internet, will they still need lawyers? Perhaps lawyers will have to assume an entirely new role. If Susskind is even remotely close to being right, what impact could this have on firm profitability, based upon the billable hour?

Consumers have changed much more than the business organizations upon which they depend, and many of these same consumers believe that today's organizations are failing or ignoring the very people they should be serving. Young people want to "opt in" and make their own choices, controlling their destinies and their cash. They want their voices to be heard, and they want them to matter."<sup>3</sup> Shoshana Zuboff and James Maxmin, authors of *The Support Economy*,<sup>4</sup> claim that we are seeing a new type of consumer with dramatically different buying patterns and interests. These authors cite "the interplay of new technologies, the new structure of consumption, and an enterprise logic capable of connecting these two"<sup>5</sup> as being the driving forces behind today's economic revolutions.

In 1903, Henry Ford recognized a new kind of market arising from the needs of "ordinary" people – farmers and shopkeepers wanted a robust, well-made, inexpen-



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sive automobile.<sup>6</sup> Ford's ability to unite mass production and mass communication was so successful that it helped fuel the shift in manufacturing from proprietary capitalism to a new enterprise logic that allowed the production of affordable products for mass consumption at a profit.<sup>7</sup> Henry Ford said, "People can have a Model T in any color – as long as it's black."

Today, "ordinary" people have, once again, changed. They now prefer to rely on their own judgments and have a deepening sense of self, increasingly internalized values and a growing need for self-authorship. People are willing to pay for brand names and designer labels out of all proportion to their actual "value." Individuals no longer want to rely on group identification and compliance with group norms. Today's young consumers are clearly unlike any the world has ever seen.

Law firms and many of the other professional service providers face the same uncharted challenges in shaping the future of professional services. The medical profession has discovered that more than half of all Americans are not satisfied with the availability of their doctors and the amount of information they receive in an office visit. As a result, 52 million adults now turn to the Internet as their primary source of health-care information.<sup>8</sup> Is there any reason to believe changes in consumer demands will not similarly affect the delivery of legal services in the future? Could the legal profession be immune to the disruptive potential of the Internet?

A friend of ours recently demonstrated how new markets characterized by wholly new approaches to consumption are created. His mother had been diagnosed with Alzheimer's disease, and rather than relying on her family physician to solve this problem, she immediately turned to the Internet. It was not very long before she had gained access to an electronic community and held person-to-person communications with experts throughout the world. The Internet changed her relationship with her family physician. No longer was she relying on the family doctor as her only source of information; she and her physician were now partnering to find the best clinical trials for her needs. Will consumers, like our friend, who can find on the Internet the information they need to know, no longer need doctors or lawyers? Probably not, but perhaps, the role of the professional will need to change.

### **New Direction, New Focus, New Culture**

If lawyers are to compete in this new market, which is arising from the changing needs of "ordinary" people, they will have to compete according to totally new rules of engagement. Determining exactly what these new rules should look like is a challenge every law firm will struggle with in the coming months and years. Because professionals have so much discretion and autonomy in



**Similar to the Utah State Court's Web site, the UCS Web site includes "click-through" guides for non-attorneys in the areas of family law, civil law and criminal law. It answers frequently asked questions, provides a glossary of legal terminology, discusses which papers to file and in which court, and makes available pdf versions of necessary forms or tells how to acquire them.**

a law firm setting, culture<sup>9</sup> is the dominant force in determining how lawyers of the firm actually behave toward one another and toward their clients. So, one of the greatest leadership challenges that law firms will face in the years ahead will be changing the firm culture to ensure an adequate supply of qualified leaders. Firms that are not able to adjust their cultures to meet these new challenges will struggle to survive.

David H. Maister, considered to be one of the world's leading authorities on the management of professional service firms, was the first widely known academic/practitioner who focused on law firm culture, leadership and the need for a new paradigm for the practice of law. Maister believes that, contrary to popular opinion, culture should not be seen as a given – it both can and must be managed.<sup>10</sup> This is a fundamental change in approach to attorney recruitment, training and management that will help firms prepare for new markets char-

## Generational Classification

For classification purposes, the *Randstad* study cited in the accompanying article divided the employee universe into four generational cohorts – Generation Y, Generation X, Baby Boomer, and Mature – as follows.

- Generation Y: adults between the ages of 18 and 24 (year of birth – 1980 to 1986)
- Generation X: adults between the ages of 25 and 39 (year of birth – 1965 to 1979)
- Baby Boomer: adults between the ages of 40 and 58 (year of birth – 1946 to 1964)
- Mature: adults aged 59 and older (year of birth 1900 to 1945)

acterized by wholly new approaches to the delivery and consumption of legal services.

Two aspects of culture that young people are now demanding include: a strong performance orientation and an open, trusting environment. It logically follows that law firms whose culture supports both a performance orientation (*i.e.*, firms that have an inspiring mission, stretch goals, demand accountability for results, and have tight performance systems) and an open, trusting environment will have a much greater chance of attracting and retaining talented people. Dimensions such as character, work ethic, emotional intelligence, dedication to fulfilling commitments, and values will be of renewed importance in identifying strong leaders for the future.

### Leadership in Managing Talent

In 2001, McKenzie and Company published its *War for Talent* survey,<sup>11</sup> which should prove to be of particular interest to law firms and other professional service firms. The survey was developed to find out how companies build a strong pool of managerial talent – how they attract, develop, and retain key people in their organization and how they build a pipeline of younger talent who might one day move into more senior positions. The survey results showed how dramatically the *recruiting* game has changed and, of particular note to professional service providers, how *development* is so critical to attracting and retaining key people.

In an effort to attract and retain talented young professionals, law firms will need to alter their *recruiting* and *development* strategies. One of the first challenges law firms must face is creating an enterprise logic that brings together the new technology, the changing con-

sumer profile and the interests of talented young professionals. To begin to accomplish this, law firms will need to begin prioritizing people – empowering them, serving them, supporting them in new ways, while at the same time putting systems in place to exceed the expectations of clients and potential clients. The *War for Talent* survey confirmed: “Excellent *talent management* has become a crucial source of competitive advantage. Companies that do a better job of attracting, developing, exciting, and retaining their talent will gain more than their fair share of this critical and scarce resource and will boost their performance dramatically.”<sup>12</sup>

The *War for Talent* survey identified improvements in the frequency and candor of feedback, and enhancements in mentoring and coaching as effective ways for attracting and retaining talent. Another important research finding by the Corporate Leadership Council’s *Voice of the Leaders* study,<sup>13</sup> was that corporations benefit quantitatively when they allocate their resources to help their employees gain the skills needed to become effective managers. Corporations that incorporate mentoring into their corporate culture actually return greater profits than corporations that do not use mentoring. This approach is in stark contrast to the “rank and yank” approach toward career development in which the burden is placed on the employee to “shape up or ship out” – *i.e.*, reach 2500 billable hours a year or forget about being considered for a permanent position.

The *Randstad 2004 Employee Review*<sup>14</sup> provides a comprehensive study of workplace issues and trends. From the first *Randstad* study in 2000, *trust* has been the single most important concern for employees. Two years later, when corporate scandals left thousands out of work and retirement plans evaporated, *ethics* and *integrity* joined *trust* as the key aspects of employee loyalty. In the early years of the *Randstad* study, employee needs were essentially the same – money, advancement, incentives and rewards. By the year 2002, the balance between work life and family life became an issue. Today, employee needs are even more dynamic and fluid. Quality of life, being in control, stability, personal career solutions, better benefits and a feeling of value to society have all become higher priorities,<sup>15</sup> along with cutting down on hours, billable or otherwise, spent working.

### New Market Challenges and Finding New Talent

The American Productivity and Quality Center (APQC) is a consortium that focuses on identifying business best practices and innovative methods of transferring those practices. In 2001, it explored links between succession management and the leadership development process in companies. The APQC study pointed out that if economic growth continues at a mod-

est 2% for the next decade and a half, this would create the need for a third more senior leaders than there are today.

Yet the supply of the age cohort that has traditionally entered into the executive rankings (35 to 44 year olds) is actually declining in the United States and will drop by 15% between 2000 and 2015, because of the difference between the size of the Baby Boom generation and the much smaller Generation X. So, law firm strategists have to wonder, where will this endless reserve of talent be found?

Today, there are 40 million people aged 65 and over (14% of the population); in 2030 it will be a whopping 70 million people (20% of the population). People over the age of 85 are in the fastest-growing age group. The average retirement age has declined from around 65 some 15 years ago to around 58 today. At the same time, people are living longer. Males can expect to live an average of 72 1/2 years, while females will live almost five years beyond that.

Another important finding of the *Randstad 2004 Employee Review* was that even though 60% of employees are satisfied with their hours, there are noticeable differences between the generations. The study found that more experienced employees are far more comfortable than their younger co-workers. Only half of Generation X and Generation Y employees were satisfied with the hours they are asked to put in each week, as opposed to 72% of Matures.<sup>16</sup> Not only will it be more difficult to find and retain talented professionals in the years ahead, those you do attract will be less interested in working extended hours. These new individuals – your future employees – want tangible support in leading the lives they choose.<sup>17</sup>

### **Coaching as a Part Of the New Law Firm Culture**

In the book *Practice What You Preach*,<sup>18</sup> David Maister showed (statistically) that success in professional businesses can come from stricter adherence (“discipline”) to a set of standards that other groups may also advocate, but do not enforce. Maister proved that having a skilled manager, team leader, or coach, one whose job is to manage the team and coach the individual players, will result in profits that are greater than those achieved by firms that provide no coaching or mentoring. David Maister has long challenged senior attorneys to become skilled managers who should be able to coach teams and individuals in setting higher standards for clients

and for the firm. Firms that can bring about such a change in firm culture will create new economic value for these firms.

Today’s intense competition dictates that cultural change needs to be performance-driven, and coaching for performance is a way of obtaining optimum performance. This can require a fundamental change in attitude in dealing with training and supervision of attorneys. Coaching is becoming one of the leading development interventions in the corporate world and, according to Maister, the most financially successful

businesses do better than the rest in virtually every measurement of employee attitudes, and those that do best on employee attitudes are demonstrably more profitable.

Probably the single most important draw for young recruits is a trusting, collaborative

working relationship among firm members and among suppliers, other business partners, clients and community members. Young professionals will also be looking for law firms that have made a significant commitment in technology to promote rapid communication and information-sharing to make their work lives easier and to better serve clients. The best leadership development programs are structured around action learning: solving real and important business problems. These programs can *only* be delivered face-to-face. Collaboration is becoming more and more an imperative; it is no longer a matter of choice.

An increasing number of attorneys, from sole practitioners to managing partners of some of the nation’s largest law firms, are turning to professional coaches to assist them in growing or changing their business or professional practice. Many of the managing partners who are working with professional coaches expect more than personal growth in attaining goals. Frequently, they are looking toward the long-term goal of a fundamental transformation of management style and culture. Whether you call it “coaching,” “advising,” “counseling,” or “mentoring,” done well it can help firms harness the potential within each of their people.

Law firms that think they can ignore the impact the Internet is having on the profession are sadly mistaken. Firms that continue to throw money at new recruits, while demanding 2,000 to 2,500 billable hours per year and providing them with limited feedback regarding their career advancement, may find their talent moving to firms more closely aligned to the core values of young professionals.

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When the supply of talented young people seemed endless, law firms rarely placed great weight on character attributes and leadership skills, relying almost exclusively on class rank, educational background, practical skills, specialized knowledge, or work experience. As you sit down with your partners in the coming weeks to discuss the emerging market challenges, keep in mind that young professionals, your future employees, and today's consumers and your future clients, no longer want to rely on group identification or comply with group norms. They want to be treated as unique individuals. They prefer to rely on their own judgment, and you will need to find a way to accommodate them. Let us suggest you start by exploring the following possibilities.

- Could it be that clients will seek pro-active advice that will not be completely customized but will be targeted enough to meet their needs at a price far cheaper than one-on-one legal advice?

- Could it be that firms will be able to reduce billable-hour requirements, while improving firm profitability?

- Could it be that young professionals will be looking for firms with a greater sense of social responsibility, such as improving the global environment or improving business ethics?

- Could it be that the same senior partners many firms are now looking to "sunset" may be the untapped resources firms will need to lead the talent pool of the future?

- Could the new role for lawyers be more that of "coach," insofar as it complements the client's newly "Googled"<sup>19</sup> knowledge, who will use the experience, judgment and expertise of the lawyers to put the knowledge into context?

As you work your way through these challenging questions, the only thing we can assure you is this: "Squeezing another penny out of costs, getting a product to market a few weeks earlier, responding to customer inquiries a little bit faster, ratcheting quality up one more notch, capturing another point of market share, tweaking the organization one additional time – these are the obsessions of managers today. But pursuing incremental advantage while rivals are fundamentally reinventing the industrial landscape is akin to fiddling while Rome burns."<sup>20</sup> Rest assured that yesterday's strategies just will not work in answering tomorrow's problems.

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1. Gary Hamel & C.K. Prahalad, *Competing for the Future* 18 (Harvard Business School Press 1994).
2. Richard E. Susskind, *The Future of Law: Facing the Challenges of Information Technology* 46 (Clarendon Press 1996).

3. Shoshana Zuboff & James Maxmin, *The Support Economy: Why Corporations are Failing Individuals and the Next Episode of Capitalism* 10 (Penguin Putnam Inc. 2002).
4. *See id.*
5. *Id.* at 33.
6. Allan Nevis, with Frank Ernest Hill, Ford: *The Times, The Man, The Company* 567–77 (Scriber 1954).
7. Zuboff & Maxmin, *supra* note 3, at 53.
8. Susannah Fox, et al., *The Online Health Care Revolution*, Pew Internet & American Life Project, Nov. 26, 2001.
9. *Culture* in any organization is the system of beliefs that members share about the goals and values that are important to them and about the behavior that is appropriate to attain those goals and live those values.
10. Jay W. Lorsch & Thomas J. Tierney, *Aligning the Stars: How to Succeed when Professionals Drive Results* (Harvard Business School Press 2002).
11. *See* Ed Michaels, Helen Handfield-Jones & Beth Axelrod, *The War for Talent* (Harvard Business School Press 2001).
12. *Id.* at 7.
13. Corporate Leadership Council, *Voice of the Leader: A Qualitative Analysis of Leadership Bench Strength and Development Strategy* (Corporate Executive Board 2001).
14. Randstad North America is a wholly owned subsidiary of Randstad Holding nv, the fourth largest professional employment service provider in the world. *Randstad's 2004 Employee Review* marks the fifth year in Randstad's continuing exploration of real workplace issues and trends.
15. *Randstad 2004 Employee Review: What You Should Know Now About Your Workforce – A comprehensive study conducted in partnership with Roper Public Affairs & Media of NOP World 6 (hereinafter "Randstad 2004"). See* <<http://www.us.randstad.com>>.
16. *Randstad 2004, supra* note 15, at 15.
17. Zuboff & Maxmin, *supra* note 3, at 4.
18. David H. Maister, *Practice What You Preach* (The Free Press 2001) *See* <<http://www.davidmaister.com>>.
19. Google is a global technology leader focused on improving the way people connect with information. Google's innovations in web search and advertising have made its website a top Internet destination and its brand one of the most recognized in the world. Google maintains the world's largest online index of websites and other content, and Google makes this information freely available to anyone with an Internet connection.
20. Hamel & Prahalad, *supra* note 1, at x.