

**RAINMAKER: RISE OF THE INNOVATOR
AS THE LAW FIRM'S FUTURE**

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RAINMAKER: RISE OF THE INNOVATOR AS THE LAW FIRM'S FUTURE

*Peter J. Gardner*¹

I. INTRODUCTION

In the rapidly approaching globalized² business tide that will soon be upon the practice of law in the United States, American business law firms which intend to survive must elevate innovation above billable hours as the measure of success. This fundamental reorientation would address a power shift from attorneys to clients³ that will compel business lawyers to produce ever greater client value to remain ahead of competing legal service providers.⁴ To produce such value consistently, firms will have to redefine and reorganize themselves.⁵

¹ Peter J. Gardner is an attorney with Stebbins Bradley Harvey Miller & Brooks, P.A. in Hanover, N.H., and a Research Fellow at the Franklin Pierce Law Center in Concord, N.H. He conducted the research for this paper while a Research Fellow at Vermont Law School and a Visiting Scholar at the Tuck School at Dartmouth College.

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² “‘Globalization,’ [is] a financial, social and cultural phenomenon . . . [that] will unleash upon the legal profession an accelerating pace of change and of competition to serve increasingly sophisticated and cost-conscious clients.” Peter J. Gardner, *A Role for the Business Attorney in the Twenty-First Century: Adding Value to the Client’s Enterprise in the Knowledge Economy*, 7 MARQ. INTELL. PROP. L. REV. 17, 19-20 (2003) (citation omitted).

³ DAVID H. MAISTER, *MANAGING THE PROFESSIONAL SERVICE FIRM* 148 (1993) (power in all professions is moving from professionals to clients).

⁴ Evelyn M. Fenton & Andrew M. Pettigrew, *Theoretical Perspectives on New Forms of Organizing*, in *THE INNOVATING ORGANIZATION* 1, 7 (2000) (citations omitted) (globalization and intense competition have shifted emphasis of organizational goals to adding value). See also MAISTER, *supra* note 3, at 223-24 (firms must become innovative in finding ways to achieve extra value for clients and must “build a competitive advantage through distinctive capabilities . . . [to] make the firm’s services *more valuable to clients* than the services of competing firms . . .”).

Lawyers must now attract and retain clients in an intensely competitive and increasingly unregulated marketplace as domestic banking, consulting and accounting firms fight for a share of the work

The successful business law firm in coming years must be a “crucible of competences”⁶ in which groups of specialized knowledge professionals⁷ produce superior client value by enabling clients to become more self-sufficient⁸ and to make better business decisions.⁹ To this end, and as a foundational component of a broad strategy to offer greater client value than their competitors, law firms and their members will seek to educate clients by providing comprehensive explanations of the reasoning behind legal advice, which will enable clients to use that reasoning subsequently to solve increasingly complex business problems.¹⁰

But lawyers as educators will confront a dilemma. If they routinely transfer to clients their specialized legal knowledge, would there not be some

historically ceded to lawyers. Lawyers must even . . . compete with potential clients themselves, as the Internet has made vast amounts of information easily available and . . . has accelerated “a . . . trend toward . . . disintermediation [whereby clients] are increasingly able to bypass [attorneys]” . . .

Gardner, *supra* note 2 at 21-22 (citations omitted).

⁵ Bertrand Quélin, *Appropriability and the Creation of New Capabilities Through Strategic Alliances*, in STRATEGIC LEARNING AND KNOWLEDGE MANAGEMENT 143 (Ron Sanchez and Aimé Heene eds., 1997) (citations omitted) (discussing development of capabilities); HUBERT SAINT-ONGE & DEBRA WALLACE, LEVERAGING COMMUNITIES OF PRACTICE FOR STRATEGIC ADVANTAGE 6, 22, 60 (2003) (organizations must develop capabilities to respond to marketplace changes and to obtain competitive advantage); MICHAEL J. MARQUARDT, BUILDING THE LEARNING ORGANIZATION 2 (2002) (rapid economic changes will demand “either organizational *adaptation* or organizational *extinction*”) (emphasis added); JAY R. GALBRAITH, DESIGNING ORGANIZATIONS: AN EXECUTIVE BRIEFING ON STRATEGY, STRUCTURE, AND PROCESS 131 (1995) (“continuously changing business environment requires a continuously changeable organization”); B. J. HODGE, WILLIAM P. ANTHONY & LAWRENCE M. GALES, ORGANIZATION THEORY: A STRATEGIC APPROACH 214 (6th ed., 2003) (ability to respond to new environmental conditions is critical to organizational survival); Paul S. Myers, *Knowledge Management and Organizational Design: An Introduction*, in KNOWLEDGE MANAGEMENT AND ORGANIZATIONAL DESIGN 2-3 (Paul S. Myers ed., 1996) (to succeed in knowledge-intensive economy, firms “must leverag[e] organizational design for effective knowledge management”) (citation omitted); ROSS DAWSON, LIVING NETWORKS 157, 206 (2003) (firms must undergo constant process of strategic repositioning or be forced to respond to competitors’ strategic initiatives).

⁶ Quélin, *supra* note 5, at 140.

⁷ JOSEPH L. BADARACCO, JR., LEADING QUIETLY 100 (2002). *See also*, RENÉ TISSEN, DANIEL ANDRIESEN & FRANK LEKANNE DEPREZ, VALUE-BASED KNOWLEDGE MANAGEMENT 144 (1998) (in knowledge economy, knowledge professional is “driving force for innovation and sustainable competitive advantage.”).

⁸ SAINT-ONGE & WALLACE, *supra* note 5, at 8-9 (customers will value firm that enables them to enhance their own capabilities, knowledge and self-sufficiency).

⁹ MAISTER, *supra* note 3, at 149-50 (“[p]rofessionals are more valuable to clients if they not only solve their clients problems . . . but also help the clients understand more.”); Gardner, *supra* note 2, at 51-52 (citations omitted) (as intensely competitive legal market compels firms to distinguish themselves through success with which they add value to client enterprises, “especially significant distinguishing characteristic” will be extent to which firm enables clients “to make better decisions on their own after the firm has completed its work.”).

¹⁰ Gardner, *supra* note 2, at 31-32 (citations omitted).

threshold at which lawyers would have transferred so much knowledge that they would no longer be sufficiently valuable to their clients?

A solution to this dilemma is that business lawyers and their firms must constantly renew capability¹¹ by producing knowledge¹² and innovation¹³ that is of direct value to their clients. To succeed as teaching organizations, firms first must be *learning* organizations¹⁴ that generate intellectual capital¹⁵—imaginative thinking,¹⁶ insight,¹⁷ and creative new solutions to new problems¹⁸—as they develop an agile¹⁹ capability to

¹¹ SAINT-ONGE & WALLACE, *supra* note 5, at 72 (generation and constant renewal of capability are most important sustainable organizational advantages).

¹² Ron Sanchez, *Managing Articulated Knowledge in Competence-Based Competition*, in STRATEGIC LEARNING AND KNOWLEDGE MANAGEMENT 174-75 (Ron Sanchez and Aimé Heene eds., 1997) (citation omitted); MARQUARDT, *supra* note 5, at 13 (discussing challenge to professionals to develop knowledge); SAINT-ONGE & WALLACE, *supra* note 5, at 28-29 (quotation omitted) (only sustainable advantage firm has comes from how efficiently it uses what it knows and how readily it acquires and uses new knowledge).

¹³ RICHARD M. BURTON & BØRGE OBEL, STRATEGIC ORGANIZATIONAL DIAGNOSIS AND DESIGN 259 (1998). MARQUARDT, *supra* note 5, at 140 (citing I. NONAKA & H. TAKEUCHI, THE KNOWLEDGE-CREATING COMPANY (1995)) (company's ability to innovate is crucial to stay ahead of competition); JON SUNDBO, THE STRATEGIC MANAGEMENT OF INNOVATION: A SOCIOLOGICAL AND ECONOMIC THEORY 165 (2001) (firms must innovate constantly to survive in competitive environment); Julie Flaherty, *In Handling Innovation, Patience Is a Virtue*, N. Y. TIMES, Sept. 29, 2003, at C-4. (“[P]ushing the envelope [is] . . . an economic imperative.”) (quoting Jeffrey R. Immelt, chief executive of the General Electric Company); DAWSON, *supra* note 5, at 244 (key factor that will provide differentiation from competition is excellence at innovation); SAINT-ONGE & WALLACE, *supra* note 5, at 31 (ability to innovate is central to firm's success); Kevin Clark & Chris Collins, *Strategic Decision-Making in High Velocity Environments: A Theory Revisited and a Test*, in CREATING VALUE: WINNERS IN THE NEW BUSINESS ENVIRONMENT 219 (Michael A. Hitt, Raphael Amit, Charles E. Lucier & Robert D. Nixon eds., 2002) (citation omitted) (firms must innovate constantly to survive); BURTON & OBEL, *supra* note 13, at 313 (in uncertain competitive environment, firms must innovate to meet emerging needs and opportunities). Beyond development of new products or services, “innovation” can refer to organizational structure and design. HODGE ET AL., *supra* note 5, at 193, 329; *see also*, Fenton & Pettigrew, *supra* note 4, at 3 (citations omitted) (innovation may be novel combination of organizational processes or structures).

¹⁴ *See generally* Fenton & Pettigrew, *supra* note 4, at 22 (citation omitted).

¹⁵ Gardner, *supra* note 2, at 72 (law firms' own intellectual capital will increasingly determine their competitive position).

¹⁶ Sanchez, *supra* note 12, at 180 (a fundamental process of professional firm in competitive environment is to create and leverage knowledge with imaginative thinking).

¹⁷ Quélin, *supra* note 5, at 145-46 (organizational capability to integrate new ideas is essential to organizational learning); JOE TIDD, JOHN BESSANT & KEITH PAVITT, MANAGING INNOVATION: INTEGRATING TECHNOLOGICAL, MARKET AND ORGANIZATIONAL CHANGE 329 (2001) (citation omitted) (core element in any learning organization will be continual discovery).

¹⁸ MAISTER, *supra* note 3, at 4 (professionals must pioneer creative new solutions to new problems); Gardner, *supra* note 2, at 54 (to remain competitive, law firms must improve knowledge creation capabilities and abilities to develop creative solutions) (citations omitted); SUNDBO, *supra* note 13, at 162-63 (innovative learning consists of finding creative new ways to solve problems); Salvio Vicari & Gabriele Troilo, *Organizational Creativity: A New Perspective from Cognitive Systems Theory*, in KNOWLEDGE CREATION: A SOURCE OF VALUE 67-79 (Georg von Krogh, Ikujiro Nonaka & Toshihiro Nishiguchi eds., 2000)

produce valuable services and skills.²⁰ To accomplish this, firms must make the organizational commitment to innovate and learn²¹ and to attract and retain talented people who will produce yet more learning and success.²²

A. Organizational Culture

Although creating an environment in which innovation can flourish will be challenging,²³ certain organizational attributes and culture²⁴ might best predispose a firm to succeed as an innovative learning organization.

Firms are more likely to succeed if they motivate people to be comfortable with change²⁵ and if they possess the “imagination to conceive and implement new business models”²⁶ that challenge deeply entrenched practices²⁷ that until recently worked well.²⁸ Such firms will provide their members with compelling challenges²⁹ in an environment that emphasizes innovation “as critical to the organization’s future.”³⁰ These firms will

(citations omitted) (creativity enables firms to adopt new organizational structures and processes to find new ideas, solutions and services).

¹⁹ See MARQUARDT, *supra* note 5, at 31-32.

²⁰ MAISTER, *supra* note 3, at 38, 99, 162 (essence of strategic planning for professional service firm is recognizing and developing skills needed to succeed).

²¹ See MARQUARDT, *supra* note 5, at 21 (citation omitted). See also SAINT-ONGE & WALLACE, *supra* note 5, at 131 (organizational learning is directly related to organization’s ability to innovate); SUNDBO, *supra* note 13, at 193-94 (successful innovation and creation of new knowledge demand ability to learn).

²² MARQUARDT, *supra* note 5, at 81, 210-11. MARK LIPTON, GUIDING GROWTH: HOW VISION KEEPS COMPANIES ON COURSE 61 (2003) (citation omitted) (discussing organizational growth as way to attract and keep superior staff).

²³ SAINT-ONGE & WALLACE, *supra* note 5, at 326 (evolution to new organizational structure is challenging). See also Andrew M. Pettigrew & Evelyn M. Fenton, *Complexities and Dualities in Innovative Forms of Organizing*, in THE INNOVATING ORGANIZATION 279, 299 (2000) (Andrew M. Pettigrew & Evelyn M. Fenton eds.) (discussing balancing of order and disorder in organizations).

²⁴ HODGE ET AL., *supra* note 5, at 185 (citation omitted) (organizational culture can be described as the basic philosophy and values of an organization). See also SAINT-ONGE & WALLACE, *supra* note 5, at 5 (organization’s culture is the collectively held assumptions and beliefs of its members); BURTON & OBEL, *supra* note 13, at 113 (organizational culture encompasses organization’s norms, social patterns, symbols and rituals). Intertwined in a firm’s organizational culture is its human capital, “the collective judgment, knowledge, experience, and ability of its members.” MAISTER, *supra* note 3, at 155.

²⁵ LIPTON, *supra* note 22, at 125.

²⁶ DAWSON, *supra* note 5, at 199.

²⁷ MAISTER, *supra* note 3, at 192, 204.

²⁸ SAINT-ONGE & WALLACE, *supra* note 5, at 327.

²⁹ PATRICK J. MCKENNA & DAVID H. MAISTER, FIRST AMONG EQUALS: HOW TO MANAGE A GROUP OF PROFESSIONALS 167 (2002). See also MAISTER, *supra* note 3, at 36, 198, 178 (firms must provide challenge and opportunities for professional development and growth to remain dynamic and to maintain high morale).

³⁰ GLENN M. PARKER, CROSS FUNCTIONAL TEAMS: WORKING WITH ALLIES, ENEMIES, AND OTHER STRANGERS 28 (2003). Members must believe organizational goals embody worthwhile or important results. *Id.* at 88.

demonstrate patience and tenacity,³¹ the courage to redefine problems,³² and “an uncompromising determination to achieve excellence.”³³ Innovating firms will assemble teams of self-motivated, innovative professionals who take intellectual risks and see inherent value in and enjoy what they do, and for whom successful innovation will in part be its own reward and satisfaction.³⁴

Organizational culture should be premised on a “long-term sense of the future”³⁵ that enables continuous learning³⁶ and exploration.³⁷ It should support and encourage continuous innovation and should value both success and failure³⁸ as learning opportunities. Valuing failure is particularly important because innovation requires “tak[ing intellectual] risks by pursuing answers that may ultimately be wrong.”³⁹ That is, in recognizing knowledge

³¹ BADARACCO, *supra* note 7, at 34, 55. *See also*, TIDD ET AL., *supra* note 17, at 316 (in innovation, returns may not emerge quickly and will demand patience); MICHAEL D. MCMASTER, *THE INTELLIGENCE ADVANTAGE: ORGANIZING FOR COMPLEXITY* 134 (1996) (innovative thinking requires some protected time to prove itself in practical terms); MCKENNA & MAISTER, *supra* note 29, at 127-28 (progress always take longer than planned when attempting something new, and success comes to those who are patient, flexible and persistent); LIPTON, *supra* note 22, at 210 (citation omitted) (long term success rests on culture of persistence and ability to innovate relentlessly); MAISTER, *supra* note 3, at 207 (best firms demonstrate drive, motivation, determination, dedication, and commitment).

³² JEFFREY A. MILLER, *THE ANXIOUS ORGANIZATION* 184 (2002). “Conflict avoidance and the behaviors it spawns—conformity, groupthink, overemphasis on making everyone feel good—[can] threaten[] . . . the survival of an organization . . .” *Id.* at 142.

³³ DAVID H. MAISTER, *PRACTICE WHAT YOU PREACH: WHAT MANAGERS MUST DO TO CREATE A HIGH ACHIEVEMENT CULTURE* 49 (2001). *See also* MAISTER, *supra* note 3, at 257 (“There is a fine line between the good and the excellent. . . . Once [a firm] stop[s] striving for excellence and settle[s] for competence, [it] has entered a period of inevitable decline.”).

³⁴ E-mail from Dr. Thomas R. Cech, president, Howard Hughes Medical Institute, Chevy Chase, MD (Mar. 21, 2004) (on file with the author) (organizations should “select people who are self-motivated” and “prefer a ‘great result’ . . . to getting a promotion or a salary increase”); e-mail from Dr. Peter Goddard, director, Institute for Advanced Study, Princeton, N.J. (Mar. 22, 2004) (on file with the author) (Institute for Advanced Study researchers are self-motivating and rewarded by the satisfaction of their work); letter from Simona Cazzaniga, Esq., Studio Legale Sutti, Milan, Italy, to Peter J. Gardner, Mar. 29, 2004 (on file with the author) (bright, independent, innovative and creative lawyers are intrinsically motivated as they see inherent value in and enjoy what they do).

³⁵ PARKER, *supra* note 30, at 46. *See also* MAISTER, *supra* note 33, at 3 (discussing courage required to take a long-term perspective).

³⁶ MAISTER, *supra* note 33, at 65-66.

³⁷ BURTON & OBEL, *supra* note 13, at 317-18. *See also* PARKER, *supra* note 30, at 148 (learning environment encourages exploration and openness to new ideas).

³⁸ MARQUARDT, *supra* note 5, at 19, 80, 105-06 (citation omitted) (organization should reward actions that contribute to organizational learning through risk taking and new ideas); BURTON & OBEL, *supra* note 13, at 327 (organizations must be understanding of failures as opportunities to learn); TIDD ET AL., *supra* note 17, at 317 (innovation will involve failures and successes, so organization must accept failure as opportunity to learn and develop).

³⁹ E-mail from Dr. Gary William Flake, principal scientist and head of research and development, Yahoo!, Sunnyvale, CA (Apr. 26, 2004) (on file with the author). *See also*,

development, firms should reward people “who attempt new and different things, who try and fail but learn much, . . . [rather than] those who never take [intellectual] risks,”⁴⁰ as learning activities demand “risk taking which necessarily involves failure.”⁴¹

A learning organization is more likely to succeed when individuals work in groups⁴² in which members have diverse, overlapping areas of expertise⁴³ and the intuitive sense that comes with it of how best to search for answers.⁴⁴ As group members raise questions and apply their collective wisdom, skills, and accumulated knowledge,⁴⁵ they will stimulate alternative

Kevin Dunbar, *How scientists think: On-line creativity and conceptual change in science, in CREATIVE THOUGHT: AN INVESTIGATION OF CONCEPTUAL STRUCTURES AND PROCESSES* 489-90 (Thomas B. Ward, Steven M. Smith & Jyotsna Vaid eds., 1997) (scientists who are especially creative and at forefront of their fields share ability to take risks, and this finding is likely generalizable to other domains); LIPTON, *supra* note 22, at 158-59 (as creativity involves risk taking, members must trust that organization values risk taking even when not successful).

⁴⁰ MARQUARDT, *supra* note 5, at 221.

⁴¹ BURTON & OBEL, *supra* note 13, at 335 (citation omitted).

⁴² SAINT-ONGE & WALLACE, *supra* note 5, at 18 (knowledge strategy will work best when individuals work in partnership and interdependence and are convinced their own success is tied to group’s success); MAISTER, *supra* note 3, at 208 (successful organizations assure that talents of individuals are coordinated in teams that learn from and support each other).

Google has organized itself entirely “around the insight that top talent likes to work with other top talent.” Randall Stross, *What Is Google’s Secret Weapon? An Army of Ph.D.’s*, N. Y. TIMES, June 6, 2004, at Section 3, Pg. 3. *See also*, SAINT-ONGE & WALLACE, *supra* note 5, at 28-29 (discussing the value of collaborative environment in which to generate new knowledge and leverage organization’s knowledge capital).

Indeed, architects are now beginning to design spaces to precipitate group interaction:

Frank Gehry’s new MIT laboratory, the Ray and Maria Stata Center, . . . aim[s] to encourage the diverse menagerie of researchers it houses . . . to collaborate as much as possible. . . . [] “The thing that’s really creative in research comes out of people bumping into each other, chance encounters, and conversations,” says William Mitchell, head of MIT’s Media Arts and Sciences program and architectural advisor to the university president. . . . [.] To produce good work, the theory goes, [scientists] need to talk to colleagues.

Peter Dizikes, *Does Innovative Lab Architecture Lead to More Innovative Science?*, BOSTON GLOBE, May 9, 2004, at D1.

⁴³ Kevin Dunbar, *How Scientists Really Reason: Scientific Reasoning in Real-World Laboratories*, in *THE NATURE OF INSIGHT* 391-92 (Robert J. Sternberg and Janet Davidson eds., 1995).

⁴⁴ BADARACCO, *supra* note 7, at 106-07 (footnote omitted). Dr. Thomas R. Cech, president of the Howard Hughes Medical Institute and a Nobel Laureate with a great deal of experience in managing scientists and laboratories, notes that the most challenging management task is “[k]nowing when to encourage [researchers and innovators] to work harder, versus when to tell them to . . . try a completely different approach to a tough problem. . . . [Y]ou just use all your knowledge, experience and intuition to make a best guess.” Cech, *supra* note 34.

⁴⁵ MCKENNA & MAISTER, *supra* note 29, at 132.

approaches,⁴⁶ creativity,⁴⁷ innovative problem solving⁴⁸ and creation of new services.⁴⁹

Successful innovation, then, is tied to the organizational context in which it takes place.⁵⁰ The structures and processes to enable learning and the creation of client value that results must be flexible⁵¹ and must encourage different perspectives⁵² and the cooperation of professionals throughout the firm⁵³ to create and share knowledge.

B. Management

Innovative people drive learning.⁵⁴ A learning law firm's most valuable members, therefore, will be those who create knowledge⁵⁵ that produces innovative services clients will value.⁵⁶ As a firm's future thus will

⁴⁶ LINDA ARGOTE, ORGANIZATIONAL LEARNING: CREATING, RETAINING AND TRANSFERRING KNOWLEDGE 118, 131-32 (1999) (citation omitted). *See also*, TIDD ET AL., *supra* note 17, at 334 ("Innovation is primarily about combining different perspectives in solving problems, and . . . groups have more to offer than individuals in terms of both . . . idea generation and . . . flexibility of solutions developed."); Kevin Dunbar, *Problem Solving, in A COMPANION TO COGNITIVE SCIENCE* 296-97 (William Bechtel & George Graham eds.) (1998) (citation omitted) (groups encourage generation and examination of a number of possible representations of a problem and can decide which solution path appears most promising); SAINT-ONGE & WALLACE, *supra* note 5, at 69 (key source of innovation is close interaction of people engaged in conversations in which assumptions are questioned and people build on one another's ideas); DAWSON, *supra* note 5, at 19-20 (bringing together greatest diversity of perspectives leads to richer, more complex conceptualizations).

⁴⁷ ARGOTE, *supra* note 46 at 114.

⁴⁸ TIDD ET AL., *supra* note 17, at 335-36 (innovative problem solving is the "combined creative endeavour of many individuals").

⁴⁹ LIPTON, *supra* note 22, at 130, 132.

⁵⁰ TIDD ET AL., *supra* note 17, at 311. *Id.* at 317 (even well developed systems for defining and developing innovative processes may not succeed unless surrounding organizational context is favorable); HODGE ET AL., *supra* note 5, at 336 (citations omitted) (appropriate organizational structure is an integral part of successful innovation).

⁵¹ TIDD ET AL., *supra* note 17, at 318-19. MARQUARDT, *supra* note 5, at 93 (learning organization should have unbounded structures to enhance flow of knowledge); BURTON & OBEL, *supra* note 13, at 299-302 (organizational rules should be minimal as innovators need flexibility); LIPTON, *supra* note 22, at 196 (in innovation enterprises, "[s]tructures must promote growth, facilitate creativity, and enable the execution of . . . creative ideas"); MAISTER, *supra* note 3, at 292 (where service is extremely customized or complex, as for example in law firms, organizations should be less hierarchical and bureaucratic).

⁵² TIDD ET AL., *supra* note 17, at 313. *See also* Quélin, *supra* note 5, at 145 (discussing need for coordination of capabilities).

⁵³ Fenton & Pettigrew, *supra* note 4, at 25 (citation omitted) (flexible organizational design requires cooperation).

⁵⁴ SAINT-ONGE & WALLACE, *supra* note 5, at 10.

⁵⁵ MARQUARDT, *supra* note 5, at 9.

⁵⁶ Sanchez, *supra* note 12, at 183 (citation omitted). *See also* Ron Sanchez, *Strategic Flexibility in Product Competition*, 16 STRATEGIC MANAGEMENT J. 135-59 (1995) (in dynamic competitive environments, most valuable knowledge may be that which identifies

depend on wise management⁵⁷ of its professionals,⁵⁸ and managers consequently will seek as a priority to attract and retain top innovation talent⁵⁹ through motivation and reward,⁶⁰ which sort of reward system might motivate innovators most effectively?

A reward and recognition system should clearly communicate the achievements that constitute “success”⁶¹ and should reward the development of knowledge⁶² even though knowledge is difficult to measure⁶³ and its value may not become apparent for some time.⁶⁴ Beyond that, professionals are motivated by the freedom, support, resources and time to learn and reflect,⁶⁵

viable new service concepts or opportunities and which allows development to advance quickly).

⁵⁷ MAISTER, *supra* note 3, at 359.

⁵⁸ MCKENNA & MAISTER, *supra* note 29, at 5.

⁵⁹ JAY GALBRAITH, DIANE DOWNEY & AMY KATES, *DESIGNING DYNAMIC ORGANIZATIONS* 227 (2002) (dynamic organizations must attract, develop and retain talented people); TIDD ET AL., *supra* note 17, at 316 (citation omitted) (successful innovative organizations must retain individuals with good ideas).

⁶⁰ E-mail from Dr. Paul M. Horn, Senior Vice President and Director, IBM Research, Yorktown, N.Y. (Mar. 16, 2004) (on file with the author). *See also* Pettigrew & Fenton, *supra* note 23, at 286 (motivating talent is a crucial business success factor).

Traditional sources of motivation may no longer be effective as “the odds of making partner are lengthening in most firms . . . [and the] satisfaction of being a partner . . . [may not be] as great as once it was” A firm must now attract top talent by making it “worth having been at the firm even if one doesn’t make partner.” MAISTER, *supra* note 3, at 159, 163-64, 311. *See also* Alison Frankel, *Veil of Tiers*, AM. LAWYER, July 2004 (“equity partnership . . . is an increasingly elusive prize [and] . . . partners fac[e] difficult decisions about the historic divisions of law firm structure.”). As a consequence, learning and the opportunity to develop skills and knowledge “that will be valued . . . in the external talent marketplace” have begun to replace a promise of job security. GALBRAITH ET AL., *supra* note 59, at 229.

⁶¹ GALBRAITH ET AL., *supra* note 59, at 212 (reward and recognition program should communicate employee’s importance to organization and should build sense of belonging and pride).

⁶² *Id.* at 189-91, 207-08 (footnote omitted) (compensation that values skills and knowledge contributes to organizations that reward learning and versatility and is particularly applicable where product is knowledge and building knowledge is source of competitive advantage). *See also* MARQUARDT, *supra* note 5, at 76-77 (acquisition of new knowledge should be recognized at award ceremonies and in compensation plans).

⁶³ SAINT-ONGE & WALLACE, *supra* note 5, at 212. *See also* GALBRAITH ET AL., *supra* note 59, at 208 (discussing difficulty in measuring acquisition of skills).

⁶⁴ ARGOTE, *supra* note 46, at 101 (difficult to assess implications of new knowledge that may not manifest themselves for some time); MAISTER, *supra* note 3, at 267 (in professions, superior performance is evident only over an extended period of time and should be so appraised). IBM measures performance over a three-year time frame, with the most recent year weighted somewhat more heavily. Telephone interview with Dr. Bernice E. Rogowitz, manager, IBM Thomas J. Watson Research Center, Yorktown, N.Y. (Mar. 30, 2004). *See also* MARQUARDT, *supra* note 5, at 114 (value of knowledge in professional firms increasingly will be measured by contribution to organizational capabilities).

⁶⁵ MARQUARDT, *supra* note 5, at 87, 92, 108. It may be challenging for managers to balance the tension between the freedom necessary to think and act independently and boundaries and control (e-mail from Prof. Mark Lipton, New School University, N.Y. (Mar. 18, 2004) (on file with the author)), between demands for continuous improvement and

“by opportunities for self-expression and career development,”⁶⁶ by mentally and emotionally challenging work,⁶⁷ and with freedom to pursue new ideas,⁶⁸ “intellectual elbow room” in which to conduct research,⁶⁹ and opportunities for academic pursuits.⁷⁰

Innovators will, of course, appreciate financial and other tangible rewards.⁷¹ Yet for innovators, the most important reward may be recognition—to know they are valued⁷² and that their contributions to the firm are appreciated.⁷³ Recognition can come when an innovator is asked to take on more challenging work as an extension of his or her interests⁷⁴ or to tackle significant and entirely new challenges.⁷⁵ IBM, for example, continually seeks ways to let innovators be recognized throughout the IBM community with “accomplishment events,” with the prestige attached to being named an IBM Fellow, or by seeking an innovator’s advice or opinion

disciplined execution (Gardner, *supra* note 2, at 54-56 (citations omitted)), “between the demands of the client marketplace, the realities of the people marketplace (the market for staff), and the firm’s economic ambitions” (MAISTER, *supra* note 3, at 3), and between inevitable tensions over conflicting objectives (Gardner, *supra* note 2, at 71 (citations and quotation marks omitted)). To achieve this delicate balance, managers must “translate executive goals into . . . priorities and . . . [innovation] results into tangible value for the company . . .” (Flake, *supra* note 39), all the while motivating innovators and “try[ing] to deflect bureaucratic nonsense” (e-mail from Dr. Hervé J. Gallaire, president, Xerox Innovation Group, and senior vice-president and chief technology officer, Xerox, Stamford, CT, (Mar. 17, 2004) (on file with the author)).

⁶⁶ TISSEN ET AL., *supra* note 7, at 156 (footnote omitted).

⁶⁷ MCKENNA & MAISTER, *supra* note 29, at 166.

⁶⁸ Rogowitz, *supra* note 64.

⁶⁹ Virginia Campbell, *How RAND Invented the Postwar World*, 20 INVENTION & TECH. 50 (Summer 2004) (“intellectual elbow room in which to carry out advanced research can be a greater lure than money, power or prestige”).

⁷⁰ Flake, *supra* note 39.

⁷¹ *Id.* (bonuses for exceptional work); Cazzaniga, *supra* note 34 (financial rewards); Cech, *supra* note 34 (rewarding most successful innovators with somewhat higher salaries); Rogowitz, *supra* note 64 (higher salaries).

⁷² Flake, *supra* note 39. “Whenever a scientist on our team produces a great result, I will promote the scientist and the idea so that others know that (1) a very difficult problem has been solved, (2) the skills required to have solved the problem are exceedingly rare, and (3) the solution to the problem is going to serve the company in a significant way.” *Id.* See also Gallaire, *supra* note 65 (much of the reward is making innovators feel appreciated and providing visibility internally or externally).

⁷³ TISSEN ET AL., *supra* note 7, at 168. “[P]ay and the way in which a smart professional is compensated for his knowledge creation and sharing on behalf of the company] must be a fundamental part of any reward system.” *Id.* at 164. See also GALBRAITH ET AL., *supra* note 59, at 189 (employee work and interaction influenced by measures and rewards organization uses to communicate what behaviors and results are most important); Rogowitz, *supra* note 64 (IBM’s most significant challenge in managing innovators is to encourage interaction by letting people see how their contribution is important and fits into group’s innovation efforts); Flake, *supra* note 39 (managers should create transparent organizational structure and process to enable innovators to understand how they can effect change in firm).

⁷⁴ Lipton, *supra* note 65.

⁷⁵ Gallaire, *supra* note 65.

on a project.⁷⁶ Similarly, Xerox's Fellow and Senior Fellow appointments are prestigious reflections of accomplishment which command broad respect.⁷⁷

Knowledge professionals should be compensated for increased knowledge and skill⁷⁸ rather than for time.⁷⁹ Yet most law firms place such emphasis on personal billable hours⁸⁰ that professionals will not devote time to the longer term benefit of the firm, for example to project development and mentoring, for fear of losing compensation for not having produced more revenue.⁸¹

The shortcomings of a billable-hour-based compensation system may be especially evident when rewarding a group leader. As group leaders' skills will increasingly drive success⁸² as work is done in groups, firms should reward leaders who share their expertise and challenge their groups to do better.⁸³ Rather than being measured on their individual revenue production, "[g]roup leaders should be measured and appraised predominantly by how well their group . . . perform[s]."⁸⁴ Firms must assure

⁷⁶ Rogowitz, *supra* note 64.

⁷⁷ Gallaire, *supra* note 65.

⁷⁸ TISSEN, ET AL., *supra* note 7, at 166 (professionals "will have to be paid at a rate which is dictated by the repertory of jobs they are expected to do and the competencies they need to carry this out.").

⁷⁹ GALBRAITH ET AL., *supra* note 59, at 206. *See also* MAISTER, *supra* note 3, at 259 (as professions become more competitive, new specialties must be developed at the expense of today's billable hours, and recognition and reward must be given to workers who develop new practice areas that will add to firm profits in the future).

⁸⁰ MAISTER, *supra* note 3, at 37, 195.

⁸¹ MCKENNA & MAISTER, *supra* note 29, at 15. *See also* Pettigrew & Fenton, *supra* note 23, at 296 (organizational incentive systems are "often remarkably misaligned" with corporate goals).

⁸² MAISTER, *supra* note 33, at 2.

⁸³ PARKER, *supra* note 30, at 50-51.

⁸⁴ MCKENNA & MAISTER, *supra* note 29, at 19. *See also* MILLER, *supra* note 32, at 11-12 (organizations should not evaluate and reward employees solely on basis of individual performance).

members that activities conducted with non-billable time will be rewarded⁸⁵ and that total contribution to the firm will be recognized.⁸⁶

To be rewarded, innovation must be evaluated and measured in some manner—few professional organizations can hope to model their innovation measurement systems on those of the Institute for Advanced Study in Princeton, which produces research “on the deepest questions [without] . . . regard to the practical utility of what results or the timescale.”⁸⁷ Measuring innovative success even when it produces added revenue or accomplishment of a goal⁸⁸ often is not simple to do,⁸⁹ and a rigidly fixed formula for measuring success may actually become an obstacle to innovation.⁹⁰ For expert innovation managers, the principal measure of success may be “an intuitive one that is best described as a gut instinct”⁹¹—managers “know what is . . . simpl[y an] extension of what we know, . . . what type of innovation is necessary [and how hard it is,] . . . [and] when someone has been instrumental in a . . . success.”⁹²

Innovation in a professional firm might be measured by the extent to which it “can be coupled to a business process”⁹³ or helps move a firm ahead of its competitors.⁹⁴ For attorneys, professional initiatives that may lead to innovative solutions to client problems might be measured by papers

⁸⁵ MCKENNA & MAISTER, *supra* note 29, at 21. A law firm management trend of engaging a general counsel may provide an example of how to restructure compensation schemes:

[M]ore and more law firms are hiring a general counsel or naming someone to the position. . . . In explaining the trend, lawyers . . . emphasize that firms have grown very large, making it harder to rely on traditional, more informal ways of managing At many law firms, partners take home bigger salaries if they bring in more business. Because general counsels are often senior partners with extensive experience and a store of prestige, firms need to restructure their pay so that the partners are not penalized because they no longer represent outside clients.

Jonathan D. Glater, *In a Complex World, Even Lawyers Need Lawyers*, N.Y. TIMES, Feb. 3, 2004, at C1.

⁸⁶ MAISTER, *supra* note 3, at 313, 362.

⁸⁷ Goddard, *supra* note 34 (Institute determines innovation success in longer term by whether work of highest impact on science and scholarship has been produced).

⁸⁸ Flake, *supra* note 39.

⁸⁹ Gallaire, *supra* note 65 (there is no clear measure of successful innovation).

⁹⁰ Flake, *supra* note 39. However, a manager should employ flexible success metrics that provide a consistent set of expectations for innovators. *Id.*

⁹¹ *Id.*

⁹² Gallaire, *supra* note 65.

⁹³ Flake, *supra* note 39 (to distinguish between relatively more and less important innovations, “look for attributes that seem empirically or analytically to . . . offer a solution to a problem . . . that can be coupled to a business process.”).

⁹⁴ Rogowitz, *supra* note 64 (IBM measures success by the extent to which an innovator’s contributions to IBM itself or to the larger community are novel or set IBM apart from competitors).

published and seminars presented.⁹⁵ As examples, the Howard Hughes Medical Institute measures innovation success “[l]argely by the quality and impact” of published papers, the best being those that “change[] the direction of a field or slice[] through a tough but important problem”;⁹⁶ Xerox evaluates published papers by their impact and influence within the company and the outside community;⁹⁷ IBM considers where papers are published, with whom they are co-authored, and whether they are recognized and respected by the author’s peers.⁹⁸

II. CONCLUSION

To survive in a fiercely competitive legal services market, law firms must become consistent producers of superior client value. For business law firms, such superior value should include enabling clients to become more self-sufficient, which can be accomplished in part by educating clients on ways to use legal reasoning to solve complex business problems. But lawyers providing such education will face a dilemma: the more legal knowledge they transfer, the relatively less valuable they become to their clients. To solve this dilemma, firms must become learning organizations which continuously generate creative new solutions to new problems and produce knowledge and innovation of direct value to clients.

To succeed as learning organizations, firms must develop an environment of innovation and excellence and must encourage teams of professionals to take intellectual risks to stimulate alternative approaches, innovative problem solving and creation of new services. As firms’ most valuable members thus will be those who create knowledge that produces services clients will value, firms must attract and retain top talent with a compensation system that rewards the development of knowledge and skill rather than time and must assure that activities which contribute to long term success at the expense of current revenues will be rewarded.

⁹⁵ Cazzaniga, *supra* note 34 (the Sutti law firm also considers completed additional academic course work).

⁹⁶ Cech, *supra* note 34.

⁹⁷ Gallaire, *supra* note 65.

⁹⁸ Rogowitz, *supra* note 64. Beyond published papers, IBM also evaluates mentoring and managerial capabilities and, at a group level, external awards and fellowships received from major outside institutions. *Id.*