Develop a "First Mover" Advantage

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Most law firms go to great lengths to look like every other law firm. The response you most likely 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 that are doing this?"

"Competitive advantage means getting out in front by focusing on some area in which you can be unbeatable," says Rowan Gibson, author and editor of *Rethinking The Future.* "By definition, if you are doing what everyone else is, you don't have an advantage."

Growth is what we are taught to pursue. It creates marketplace recognition and higher profits per partner. It makes it easier to attract better qualified young legal talent and better quality clients. And as one managing partner articulates this classic view: "There are no partnership problems that growth can't solve."

But should growth be simply the result of client demand or the result of carefully planned strategy? Should firms develop distinct practice groups only in direct response to client need (client driven) or, rather, take the initiative to formulate teams of experts and then go looking for the business (strategy-driven)? This is the fundamental practice management and business development question firms have been wrestling with for many years.

Effective practice group strategy often requires being first and being exceptional. How do you obtain a "first mover advantage"? Look for developing business segments within your range of expertise, then take the marketing initiative.

The Importance Of Being First

Leading firms in any endeavor know the key to competitive advantage is to set your sights on being first to market with exceptional ideas and exceptional service offerings. They become obsessed with: "How can we serve clients in a way nobody else can?" "What potential clients are being served adequately now by no one else?" "What services can we offer that will make clients go 'wow'?" "What can we do that will actually lead the market?"

There are distinctive advantages, often difficult for competitors to replicate, in being the first law firm to market—ahead of the curve, ahead of client demand and ahead of the pack:

■ ***It allows you to attract and retain the top talent that yearns to be part of something meaningful.*** "Interestingly, the best retention rates most often are found at firms with the highest growth," says Patricia Milligan, managing director at Towers Perrin, a major U.S. consulting and recruitment firm. "While money matters, it is the quality of the work assignments (challenging client projects and opportunities for professional growth) and the quality of the people at a firm that often tips the balance as to whether a professional stays or goes. The types of professionals you attract have lots of options. What buys loyalty these days? Growth and opportunity. If they 'don't see you at the forefront,' you can forget about the other issues."

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■ ***It provides enhanced visibility and marketplace recognition*** that translates into increased client revenues and profitability. Quick question: What was the first professional services firm known to offer its clients a written guarantee of satisfaction? Most knowledgeable observers immediately would offer the name of Chicago's Coffield Ungaretti & Harris. A survey of Chicago area businesses indicated more than half of the respondents were dissatisfied with their law firms, and more than half said that when choosing between equally qualified firms, they would select the one that could guarantee their satisfaction. "Guaranteed satisfaction" then became the calling card that worked for Coffield Ungaretti & Harris. As a result, the firm's revenues jumped 25 percent and attorney retention increased by 400 percent.

Next obvious question: What was the second professional services firm known to offer its clients a written guarantee of satisfaction? Answer: Who cares? People remember the first easier than those that came later.

Sometimes there isn't a second. The first has preempted the field, because firms do not want to be viewed as copycats, devoid of innovative thinking. Or the first firm manages to reset the bar higher so that later firms find it harder to get over. Such is the case with the Canadian law firm of Prowse & Chowne, recognized as the first professional services firm in North America to attain ISO 9000 certification. Having achieved that distinction in 1997, it went on to help certification authorities redefine the requirements for professional firms. Today, many firms are trying, but none have attained certification.

Of the 10 fastest growing accounting firms, the only one to achieve that distinction without a merger is Atlanta's Hyatt Imler Ott & Blount. This firm was the first to function more as consultants than as accountants doing audits in working exclusively in the health care field, providing operational assessments for hospitals. It first developed its unique service and then "packaged" it in such a way as to offer prospects something that was not seen to be available from any other provider. The firm wins in its markets by developing a specific product that can be used with multiple clients and can leverage the firm's experience to maximize profitability.

■ ***It allows you to progress up the learning curve faster than those that follow.*** Consider the British firm of Watson Farley Williams. With 166 fee earners and no foreign offices, it is only the 49th-largest UK law firm. It is not exactly of the stature, by UK standards, that would make it known or accepted for international expertise. However, this firm ranked number one for the number of privatization deals in Eastern Europe in 1995, according to *Privatization International*, and number two in 1996 behind Baker & McKenzie. Its Eastern Europe Privatization Group, composed of only six lawyers based in London, is the firm's most profitable practice group.

The reason for its success: The two leading partners exploited a "first mover advantage" by starting work in the area as early as 1985. Now, because of the contacts they've developed, they often are able to win mandates before other firms are even aware of them.

■ ***It lets you meaningfully differentiate what you have to offer.*** Suppose you want to develop a commanding presence in what looks to be a growing, lucrative industry: biotechnology. This was exactly the position accounting giant Ernst & Young found itself in at the beginning of the decade. What to do? Go for a portion of the industry and "relabel" the segment. With more than 800 significant companies and a potential $50 billion (and growing) segment at stake, Ernst launched the first extensive study of the industry, relabeled this industry segment "life sciences," heavily promoted its pioneering efforts and established itself as the initial leader in the area.

■ SIDEBAR/TIPS/STEPS ??

Following upon the Ernst & Young example, two San Francisco-based competitors, Brobeck Phleger and Cooley Godward, by the early 1990s had capitalized on a "first mover advantage" to gain the inside track and establish a reputation in serving this lucrative new field. Cooley Godward had acquired unique experience while serving the litigation needs of a couple of biotech clients; it set about to focus on this market category by forming a life sciences practice group.

Now contrast that example with the experience of one of America's leading high technology firms, Wilson Sonsini Goodrich & Rosati of Palo Alto, CA. This firm became widely known for its dominance in serving the high technology industry—specifically, semiconductor and computer peripheral businesses. Most observers (including the partners at Wilson Sonsini) naturally assumed nobody could be better positioned to serve a new emerging biotechnology industry than Wilson Sonsini.

However, Wilson Sonsini was philosophically opposed to industry specialization. This delayed its partners' understanding of the new industry segment's unique needs and the commitment required to court key biotech players successfully. Finally, despite reservations, in 1992 Wilson Sonsini responded to the competitive challenge by creating its own life sciences practice group—only to have the entire 15-lawyer team leave the fold about six months later to start their own firm.

Conventional wisdom would suggest biotechnology was a field Wilson should have owned. But leaders almost always are toppled from their position when the category they dominate divides beneath them.

If you want 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 an early lead in a new industry sector or technology achieves a big advantage as the sector matures.

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"Catching up is a lot more expensive and labor intensive than being there early," explains Stephan Dolezalek, corporate partner at San Francisco's Brobeck Phleger & Harrison.

The larger any market, the more specialization that takes place and the more specialized a firm must become if it is to prosper. Any market or industry eventually will divide into distinct categories. Each category has its own reason for existence and its own market leader—which is rarely the same as the leader of the original market. The initial market leader is no smarter or dumber than the new entrant, but the pioneer most often is burdened by historical baggage—the psychological comfort of the status quo.

Pursuing New Frontiers

Arthur Andersen. One wonders how a firm like Arthur Andersen has managed to maintain such a dominant position in the accounting profession—dominant in terms of its presence, its profitability and the admiration others in the profession accord it. However, if we examine the historical evolution of Andersen we might discover that this firm has largely succeeded by recognizing that its greatest challenge (and the greatest challenge for any professional services firm) is constant commoditization of its services. According to Terry Neill, former head of the firm's UK offices, "Our success depends on our ability to stay ahead of the commoditization envelope."

In the 1940s, Andersen's expertise lay in designing the complex and manual accounting procedures required for corporations to meet the increased reporting demands of the SEC. By the 1950s, many of those companies were able to do the work internally as efficiently and cost-effectively as Andersen. By then, Andersen had moved on to the next emerging business requirement: payroll systems. These became commonplace by the 1960s, and Andersen proceeded to the development and integration of computerized accounting and payroll systems. With the introduction of personal computers and such, by the 1990s, Andersen was the first to target the emerging business integration market (described as the client's need for an integrated business, information and people strategy). In every instance, over the past 60 years, Arthur Andersen has led the field. Is it any wonder that Andersen was the first to set up an independent law firm network throughout Europe?

We believe today's challenge is to get the practice up, operational and marketing its services without waiting for clients to say they need it—to develop enough expertise ahead of time to respond at once when businesses finally do come forward with problems.

The Y2K Example. Certain firms now are exploiting the potential from having developed practice groups that can respond to the Y2K glitch. Firms attempting to play catch-up are being dwarfed by those who moved early to establish their position.

San Francisco's Thelen Reid & Priest and New York's LeBoeuf Lamb are identified continually by in-house counsel as the two dominant players. They were the firms that first surfaced when Aspen Law and Business initially studied the terrain in March 1997, and they continue to get most of the attention. "The forerunners are apparently still the frontrunners," says Larry Smith, editor of *Of Counsel.*

These forerunners are usually the firms that, as a reflection of their commitment, have a number of partners working "full-time" on the issues. In latecomer firms, this client work is likely to occupy only about 20 percent of any partner's time.

Clearly, who came first can be important, and market visibility is the key. Timeliness distinguishes practice groups with a longstanding interest in and commitment to the area from those that hop on the bandwagon so they don't miss out. The critical objective is to be ahead of the curve, to be able to see the issues unfolding.

Linklaters and Blue Flag. Staying ahead of the curve was precisely the position London-based Linklaters and its Financial Markets and Derivatives Practice Group took when it launched Blue Flag, the first automated online legal service over the Internet. Blue Flag originated in 1994, when practice leader Paul Nelson sought a more effective way of advising clients on complex national compliance laws. Reportedly the product of two years of R&D, containing the equivalent of 11,000 pages of the firm's collective expertise and requiring constant updates by a team of partners and IT specialists, the system formally was launched in February 1998. Following an interactive question-and-answer format, subscribers can obtain legal advice on selling securities, finding out the rules for a public offering, or any number of securities issues in more than 40 international jurisdictions. Nelson says most global financial institutions have subscribed to Blue Flag.

Clifford Chance and NextLaw. Meanwhile, London-based Clifford Chance and its Media, Computer and Communications Practice Group currently sells its own subscription service providing multijurisdictional legal advice on data protection law. It's located at www.nextlaw.com. Any client subscribing to this service can find out how to comply with data transfer rules in 30 jurisdictions and obtain a customized legal report.

What is most interesting is that these automated systems are not supplanting human lawyers. Rather, they generate more work for lawyers. The NextLaw system has Internet links to regulators, to relevant Web sites and to Clifford Chance's lawyers. Clients, discovering more areas where they are not compliant, come in to alter contracts and initiate new filings.

The firm began developing NextLaw in mid-1997 and launched it in May 1998 with a reported investment of more than a million pounds. "It's just like opening a new office—but in cyberspace," says Christopher Millard, a partner in the firm's Media, Computer and Communications Practice Group.

According to Clifford Chance, a large portion of activity consists of legal advice on tax, property, employment, regulation and securities law—all great candidates for this kind of delivery. The firm aggressively forecasts that online services could account for 20 percent of its business within the next five years. Based on its current status, this would translate to more than 75 million pounds in revenues.

The Lessons

Today's revenues are a direct reflection of yesterday's decisions, while tomorrow's numbers will be a direct reflection of today's decisions.

Aim to be the first to market, the first to organize a new practice group, the first to serve a potentially new client need. To accomplish that objective:

- Someone must perceive a potential need in the marketplace and determine whether an internal "champion" exists to spearhead the effort. Time after time, we have seen that if there is no champion, there is no hope.

- Your firm must determine whether there is long-term market growth potential and an existing experience base to build upon to support the investment. You must be able to overcome persistent economic doubts.

- There must be strong support (a "will") within the firm to invest in "test marketing" a new practice group. A new practice is usually partner-intensive, as the emerging work at this stage requires "senior judgment." Only after significant work comes in are associates likely to be meaningfully involved.

- Members of the pioneering group must be compensated as they spend what otherwise might be billable time researching and learning the field, planning and meeting with other experts within and outside the firm.

- Further time must be spent developing questionnaires, tools, templates and approaches for pricing, marketing and delivering the group's services.

- Resources must be invested in initially educating (with articles and seminars) and counseling prospective clients on the issues, ramifications and benefits of taking remedial action so the group can be in a position to actually sell its services.

- You must decide what critical mass is required to become a "player," whether to expand ahead of client needs, and whether the group should remain local or become geographically diverse. Getting in early but remaining relatively small may cost you the advantage.

It's called the "first mover advantage." Sometimes it is better to be first than it is to be better. The first firms may get the lion's share of the market, while the latecomers divide the rest (if any). ■

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