

# For Sole Practitioners, the Future's Not What It Used to Be\*

By Stephen P. Gallagher and Leonard E. Sienko, Jr.



*We invited Steve Gallagher and Lenny Sienko to update their 2004 article for the Journal, “Yesterday’s Strategies Rarely Answer Tomorrow’s Problems,”<sup>1</sup> about new market challenges facing the legal profession. In the 11 years since, much has changed, especially for solo and small firm practitioners. The co-authors speak with two distinct and complementary voices. Steve discusses current trends and strategies, while Lenny gives practical tips and tricks and talks about the nitty-gritty – and the joys – of being a sole practitioner.*

## 2004 – Competing for the Future

**Steve Gallagher:** At the time we wrote the article “Yesterday’s Strategies,” Lenny was a member of NYSBA’s Electronic Communications Task Force (ECTF) along with current bar president, David Miranda. I was liaison to this task force, so we have been following trends in the profession for quite some time.

**Lenny Sienko:** OMG I feel old. We actually first worked together on the NYLaw Net Committee in 1993. Steve arranged a visit to Cornell Law School to talk to the folks responsible for the Legal Information Institute. We all came back enthused about “value added” to information available in the public domain. Our next meeting was at the NYSBA Bar Center on Elk Street, when we raised the idea of NYSBA posting a web page online. There were some chuckles, but the “powers-that-be” agreed to a trial run. Twenty-two years later, the NYSBA website is an enormous enterprise and the main repository of our member benefits.

**SG:** Back around that same time, Richard Susskind, the highly regarded British legal technology expert, was just beginning to write about the potential of the Internet disrupting legal practice. It was in his book *The Future of Law: Facing the Challenges of Information Technology*<sup>2</sup> that

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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.”

**LS:** Susskind thought “tomorrow’s lawyer” would be forced to drop bespoke work and start treating legal work as a commodity. In my practice I have attempted to satisfy clients by customizing my representation even more – not less. I’d be afraid to call myself a “concierge lawyer,” but that is basically what I do these days (and nights). I am available 24/7 via email and cell phone. The client speaks to me – not a secretary or paralegal. Who can afford staff? Clients have each question answered by “their attorney,” who can make virtual or actual house calls.

For clients from the New York City, New Jersey and Connecticut metro area who want to purchase second or vacation homes along the upper Delaware River, I have appointments on Saturdays, Sundays, or evenings. I can answer their questions by email from home in the evening.

**SG:** Our 2004 article built on Gary Hamel and C.K. Prahalad’s best seller *Competing for the Future*, a 1994 Harvard Business School Press publication that identified two critical choices the profession needed to make: either wait to 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. In the past 11 years, however, the profession in general seems to have taken little action to shape new services, although emerging technologies in the hands of innovative sole practitioners and small firms are being seen as new ways to preserve and even expand ranges of legal services.

During this same period of time, we have gained even greater respect for Richard Susskind’s message, but Lenny and I still have faith in the profession doing more to work with clients who are demanding more creative and proactive lawyering, by coming up with new ways of thinking about legal solutions and focusing on reducing rising legal costs.

**LS:** I guess you could call email an “emerged” technology. Many may think email past its prime, in some ways more of an annoyance than a tool. However, email rules in my work flow. My day is structured around emails received and my responses. The idea of a dictated, typed letter, stamped, metered, and sent through the U.S. Postal Service, makes me shudder at the time and expense involved. I can’t afford the additional costs involved with sending a letter. Even the larger firms I interact with send the bulk of their correspondence via email, having paid a graphic designer to fit their letterhead onto an email message blank or attaching a pdf version of their “letter.”

Continuing with my ode to email, one of my most prudent investments has been a searchable email database program. All emails are automatically saved and searchable, which allows me to confirm requests made by clients, check on advice given by me, and to deny assertions of opposing counsel with faulty memories. The

email database has helped me “remind” other offices that I really did send a digital version of the abstract and prior title policy more than a month ago.

## 2014 and 2015 Law Firm Transition Surveys

**SG:** A large majority of law firm leaders who responded to a recently published Altman Weil *Law Firm Transition Survey* agreed that greater price competition, practice efficiency, commoditization of legal work, competition from nontraditional service providers, and non-hourly billing are all permanent changes in the legal landscape. For the most part, these are changes that have been imposed upon the profession from more demanding clients and more competitive newcomers who are challenging the rules of legal service delivery. We can only expect these changes in the landscape to continue.

When asked about the most likely change agent in the legal market over the next 10 years, Altman Weil’s 2014 *Law Firm Transition Survey* found, “34% of their large firm leaders identified corporate law departments as the force most likely to lead change; 32% chose technology innovation; and, 15% selected non-law-firm providers of legal services. Only 10% of respondents believe that law firms will take the lead in reinventing the legal market.” It is important to note that Altman Weil surveys have never attempted to track trends with solo and small firm practitioners. I suspect that sole practitioners throughout the state are much more concerned about keeping up with technology innovation and new threats from non-law-firm providers of legal services as the forces that will have the greatest impact on them. In fact, we believe, your future success is directly tied to your effective use of technology. To believe recent and future advances in information technology can be ignored is increasingly foolish and shortsighted.

**STEPHEN P. GALLAGHER** (sgallagher@leadershipcoach.us) is president of Leadershipcoach.us ([www.leadershipcoach.us](http://www.leadershipcoach.us)), an executive coaching company in the suburban Philadelphia area that services the legal marketplace. Mr. Gallagher conducts strategic planning retreats for law firms and bar associations, and individualized performance and developmental coaching for attorneys. He holds a Master of Science degree in Organizational Dynamics from the University of Pennsylvania. Prior to starting his own business, Mr. Gallagher was Director of Law Practice Management at the New York State Bar Association.

**LEONARD E. SIENKO, JR.** (lennyesq@hancock.net) is a sole practitioner in Hancock, NY. A general practice lawyer for more than 37 years, he is well known for his pioneering use of the Internet for legal research. He graduated from Boston College and received a Master’s in Divinity from Andover-Newton Theological School, and a J.D. from Boston College Law School. Mr. Sienko has worked on the General Practice Section’s Blog and its e-newsletter, wEbrief, since their inception.

*\*This phrase is often attributed to Yankee great Yogi Berra. Yogi, we will miss you.*

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**LS:** I'm still convinced that email is the innovation that we take too much for granted. It has brought about a paradigm shift in dealing with clients economically, efficiently, and effectively. After a few costly lessons, I have decided that I will no longer accept clients who do not have email (at least not without charging a substantial premium for another type of "bespoke" service). It is not cost effective to waste time playing "telephone tag" or sending out hard copies of draft documents. My real estate transactions now consist entirely of digital versions of documents being exchanged, right up to the actual closing, at which the final and only printed-out hard copies are signed and handed over to the title closer for recording.

Draft wills are now sent to clients for review as PDF attachments, electronically watermarked as "Draft." Contracts of all types are handled in a similar fashion, utilizing counterpart execution. (Electronic signatures are taking a bit longer to become the norm.)

Everything on paper is being scanned in, and most of the paper so scanned is marked "scanned" and stored. I can't yet bring myself to discard all such paper, even with multiple cloud back up services. I have BackBlaze and DropBox in the cloud, and a Bankers Box in the storage vault in the basement.

**SG:** What stood out to us most in the Altman Weil surveys was the belief that, "[o]nly 10% of respondents believe that law firms will take the lead in reinventing the legal market." This suggests that these challenges to the rules of legal service delivery will be imposed by forces outside the profession. This left us with a sinking feeling that the profession was still focusing on rearranging the deck chairs on the *Titanic* just prior to striking the iceberg that would ultimately lead to her sinking.

**LS:** "ICEBERG SIGHTED!" I know we make fun of lawyers – for example, some of us are still using quill pens. However, no solo or small firm can long survive these days without dealing with technology. Solos, especially, are confronted with a kind of legal "social Darwinism." If we don't use the best technology available, the other lawyer will – to our disadvantage. The question is whether we will be reactive and thus off balance or proactive, trying to anticipate the "next big thing." Do you still have a fax machine? That's my personal litmus test for determining lawyerly tech levels. Never had one in the office. Never needed it! I have used eFax for nearly 20 years. Voicemail? Does your voicemail turn your message into an email attachment and send it to you? It can, easily. How often do you update your office desktop computers? Do you still even use desktops? I just replaced my main iMac. It lasted six years. That's about twice the average useful life for a personal computer. One of the reasons I have always used Macs in the office is their longer life. They cost more, but they can be in service twice as long. If you don't take the time to keep up with office tech, you will feel it in your bottom line.

## 2015 Report on the State of the Legal Market

**SG:** Another trends survey that hit home with us recently was the Georgetown University Law Center's *2015 Report on the State of the Legal Market*.<sup>3</sup> According to this survey, over the past 10 years business spending on legal services fell from \$159.4 billion to \$118.3 billion, a precipitous drop of 25.8%.<sup>4</sup> This survey seemed to express equal concern over non-law-firm providers of legal services. "While the overall impact of such expanded competition remains fairly modest today, it is growing at a steady pace and, over time promises to be even more disruptive to the near monopoly previously enjoyed by law firms in the legal services market."<sup>5</sup> The sole practitioners agree that we now see competition from non-law-firm providers as a much more immediate threat.

**LS:** I, for one, welcome our new non-law-firm overlords. Ten years ago I was afraid that automated, online services would entice my clients away. Now I say, let them have the "time wasters," the C and D level clients, while I concentrate on the A and B clients. The DIY clients who buy their wills online should not be my intended client base. For the first 35 years of my practice, I suffered from the "be all things to all clients" syndrome common among solos. I thought I'd fall behind, that I'd fail if I didn't try to take everyone who came through the door. Client selection was in nice theory, something I had heard about in my first NYSBA CLE on starting my own practice back in 1978, but I had never really believed in it until recently. Now I see clients "by appointment" and mean it. Family responsibilities, as caregiver for my parents before they passed away, forced me to change my schedule. I dropped morning appointments and came in at noon. I found that I could work more efficiently and quickly, in a shorter period of time at the office and later at home. I just needed the courage to say "No" to clients, who would be more economically served by those online companies or lawyers who believed in law as a commodity.

**SG:** Georgetown's findings also showed that law firm leaders identified "an 'astonishing lack of urgency' on behalf of partners in moving on vital issues like client demands for improved practice efficiency and changing the way firms deliver and price legal work." That supports Altman Weil's findings that law firm leadership knows that legal work will continue to slip away, and there is nothing that can be done to change this erosion in market share. With this type of thinking, the legal profession can become its own worst enemy!

**LS:** As a solo, I am not as threatened by these client demands as the larger firms might be. Over the years, I have been through "boom and bust" cycles, especially in real estate practice. I started out in 1978 typing my own letters and pleadings, using carbon paper. I couldn't afford a secretary. When I hired my first wonderful legal secretary, I thought I'd made it. Over the years, I employed a handful of extraordinary people who made practice and life easier in some ways, more complicated



in others. When I reduced my hours after a heart attack and, subsequently, caring for my parents, I didn't have work for a secretary. Now that I'm back full time, I type my own letters, use my voicemail/email setup, and scan in every piece of paper. I've come full circle, survived. That's better than many large firms I can think of.

laser printer I bought for under \$200. That's less than I paid for a single box of the old letterhead.

Most of us are not in a position to individually influence great shifts in the practice of our profession, if it still can be called that. We can only attempt to surf on the wave and try to keep our heads above water. If I need a

**No solo or small firm can long survive these days without dealing with technology. If you don't take the time to keep up with office tech, you will feel it in your bottom line.**

It says volumes about what we used to refer to as a "learned profession" that, at least in my case, my measure of success is not money, awards, or other recognition, but the fact that I have survived 37 years as a sole practitioner in rural, upstate New York.

### Reimagining the Future of the Legal Profession

**SG:** *The Relevant Lawyer: Reimagining the Future of the Legal Profession*<sup>6</sup> is a new book published by the ABA Standing Committee on Professional Responsibility. This book is by a powerful collection of independent voices who share an abiding concern about the future path of the legal profession. Frederic S. Ury, chair of the standing committee writes, "The time is now for leaders in the legal profession to join the dialogue on – and thus be able to influence – how legal services will be delivered over the next 5 to 10 years, and what roles lawyers, judges, and the courts will play in the delivery of those legal services. All signs point to a need for bold action by the bar and its members to stake a claim in the new global economy of fading borders where technology equals power."<sup>7</sup>

Fred Ury goes on to say, "The legal profession's unwillingness to engage in a discussion about difficult and controversial subjects, such as nonlawyer ownership, the inability of much of the population to afford legal representation, and the rapidly changing landscape, has resulted in other legal service providers filling the void."<sup>8</sup>

**LS:** Mr. Ury's on the right track, but the time for discussion is waning. Lawyers can't spend too much time sitting around discussing disruptive technology. The changes will come. We cannot stop them. We have to adapt or die.

When I first opened my office, one of the first people through my door was my legal supply salesperson. John told me what I needed for forms, "bluebackers," legal pads, stationery, everything I had to have to practice. John also offered easy credit terms. I could open an account with him and take more than 30 days to pay. I appreciated John's confidence in me and bought everything I needed from him for the next 10 years, until John retired. I still have boxes of engraved stationery and pads of forms I'll never use up. Today I create my own stationery using a

New York real estate form, I can download it for free from JudicialTitle.com. They have a discrete logo on every form. Somebody at that firm is a marketing genius. I can find other forms through Google.

**SG:** What excites us about *Reimagining the Future of the Legal Profession* is the recognition of three latent markets that are severely underserved by the legal profession today: (1) low- and moderate-income clients who go without the representation they need in civil matters approximately 80% of the time (note that moderate-income families are not the working poor – they are a family of four making \$94,000); (2) middle-income clients, 50% of whom, it is estimated, go without the representation they need; and (3) people who did not realize they have a *legal* problem and who sought assistance through nonlegal agencies or resources.<sup>9</sup> When a person can only afford to pay a few hundred dollars for legal services and not several thousand, the lawyer will have few options – primarily, to either cease doing that kind of work or figure out a way of doing it profitably at a reduced rate.

**LS:** I agree with both the analysis here and the conclusion. Those lawyers who come after my generation will have to decide if they are going to serve these underserved groups and if they can make a living doing so. I have neither the inclination nor the energy to serve these groups in volume. I'm a custom woodworker doing one beautiful oak cabinet a week – not an assembly line turning out 100 particle board nightstands.

### Sole Practitioners and New Market Strategies

**SG:** The legal services gap has been identified in a growing number of studies as one in which only about 15% to 20% of potential legal service opportunities are met by lawyers, with the other 80% to 85% going either unmet or unrecognized altogether. It is this latter 80% to 85% of the total market that new providers seek to tap. This is the same group that will present new opportunities to lawyers willing to break out of these comfort zones to explore new personal and professional networks in creative ways. I wanted to make one last reference, this time to the theory of "disruptive innovation," a phrase first coined by Harvard professor Clayton M. Christensen in his book *The Innovator's Dilemma*, published back

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in 1997. The theory explains the phenomenon by which an innovation transforms an existing market or sector by introducing simplicity, convenience, accessibility, and affordability where complication and high cost are the status quo. Disruptive innovations are not breakthrough technologies that make good products better; rather they are innovations that make products and services more accessible and affordable, thereby making them available to a much larger population.

**LS:** With apologies to Professor Christensen, a “disruptive” technology is one which affects me and my business/profession adversely, at least at the outset. Non-disruptive technology happens to other folks.

For the first 15 years of my practice I was visited monthly by my legal bookseller’s representative. He often told me that my estate would make the last payment. He was wrong. After spending nearly six figures to maintain a complete law library because I was some 40 miles from the Supreme Court Law Library at the county seat, I bought my last set, my last pocket part, my last citator. These were all unaffordable. There was a long hiatus when I had a part-time position with the court system so I used a distant library; but these last few years, I have full-text cases and up-to-the-minute citations through Google Scholar. Google is disruptive to the legal booksellers. To me it saves the thousands of dollars I spent annually with them.

**SG:** It is estimated that approximately 6% of solos and small law firms use a secure client portal to communicate and collaborate with their clients and deliver other legal services online. “Virtual law practice” is still in its early stages of adoption by the legal profession. The public is already beginning to see virtual law practices where a third party provides a website that connects clients with law firms. The third-party creates a website that is market-facing and attracts consumers who can become clients of the law firms linked to that company’s website. These consumer-facing websites often target specific legal needs, such as estate planning, start-up companies, or divorce law. Could this type of innovation make products and services more accessible and affordable, thereby making them available to a much larger population? Is there any reason that bar associations should not be building their own “branded networks”? An example of this type of hybrid service is DirectLawConnect, which promotes itself as a marketplace of online law firms that offer fixed-fee legal services over the Internet at reasonable and affordable fees.

**LS:** Despite my fascination with technology over the years, I have not yet participated in this ingenious hybrid. Even if they do their level best to comply with rules of professional conduct, I have difficulty accepting the concept of “unbundled services.” I want to offer complete representation – not leaving anything undone. I want to supply a finished cabinet without any “assembly required.” Perhaps this is an opportunity for the independently licensed paralegal?

## Bar Associations in Transition

**SG:** The first time I heard about “approaching the practice of law differently” was years ago from David H. Maister, one of the first widely known academic/practitioners who focused on law firm culture, leadership and the need for a new paradigm for the practice of law.<sup>10</sup>

We believe that few law firms will be able to create the future single-handedly. Bar associations hold the key to forming coalitions and alliances to help shape the future. If it is true that only about 15% to 20% of potential legal service opportunities are met by lawyers, with the other 80% to 85% going either unmet or unrecognized altogether, bar associations, with a shared vision of the future, need to help members understand and respond to what’s happening now, so lawyers can learn to be better, faster learners from what just happened. That is the only way bar associations will be able to have an impact on these permanent changes in the legal landscape.

Should bar associations be in the business of providing legal information websites offering direct-to-consumer, low-cost legal solutions to compete with such vendors as [www.completecase.com](http://www.completecase.com), [www.LegalZoom.com](http://www.LegalZoom.com), and [www.selfdivorce.com](http://www.selfdivorce.com); or should bar associations and their sections get involved in developing “branded networks” that can offer individual members an efficient way to market their services through the company or bar association’s website?

Could bar associations do more to introduce young law graduates to my friend Lenny Sienko and his community of seasoned lawyers who have been serving the public over the past 30-plus years? I suspect that many senior lawyers are not looking to fade away. At the same time, young lawyers need to find their own safe harbors to prepare for their own career and life transitions. The need for more flexible and accommodating work options affects not only those who are approaching traditional retirement, but younger women and men who don’t fit inside the box or want to work within the traditional partnership pyramid.

**LS:** When I opened my office in 1978, in the days before the individual assignment system, we answered calendar call on Monday mornings, and I was fortunate to have a colleague invite me to “Monday lunch” at the county seat. It was an education to sit in the courtroom and hear other, more experienced lawyers argue their cases. After your case was called, many remained to visit the County Clerk’s office to search titles; I’d visit the DA’s office to plea bargain cases. Lunch would see us all assembled in one small restaurant with the tables pushed together. It was our version of “The Inns of Court.” Questions were freely asked and answered by young and old. Legal news and gossip was flowing. Political arguments broke out. More cases were bargained and settled. The DA, County Attorney, Social Services Attorney were all there. The members of this group were my mentors. As years passed, I invited new lawyers to lunch. Those who

came seemed to do better than those who stood aside. We closed half a dozen different restaurants, but kept going. Of late, death, disability, and the loss of the “calendar call” on Mondays have done in our group, but I see vestiges of its essence in the popularity of NYSBA’s listservs.

The listservs have been around since the mid 1990s, but now I see them taking on the role that was previously served by functions such as my Monday lunch group. Referrals get made, forms are exchanged, mentoring is rampant, we are snarky and prickly, confident and insecure. Many of the discussions sound familiar.

I was recently reminded of how important even this virtual interaction can be when NYSBA staff announced that the listservs would be migrated to a new “Communities” function. The old listserv software had been “orphaned,” and the staffer who kludged it along had retired. The General Practice Section’s 2,000 listserv members were advised of the changeover. Their rapid reaction with many questions and complaints illustrated to me the importance of what happens on the listserv. It was clear that no one wanted to see this service and the interactions it made possible diminished or limited in any way. It was/is an important link for its users.

**SG:** As Boomers like Lenny and me move closer to retirement, we often seek a greater sense of fulfillment, our own sense of purpose and meaning. The idea of a more flexible retirement option would allow not only partial retirement, so that senior lawyers can enjoy other pursuits, but also active retirement, wherein seniors can remain productively and socially engaged in the workplace, while helping young lawyers gain skills and knowledge in serving clients in new ways.

**LS:** I think we need some thinking “outside the box” when it comes to recruiting new solos. It’s very difficult to sell a solo law practice because it’s so hard to put a valuation on it. It’s easy enough to value the real estate and office furnishings; but what is the practice worth? Who’s going to pay to haul those worthless, old law books away?

If a young lawyer would like to buy my practice, my building, I’d be glad to sell; but how do they finance the purchase? Perhaps NYSBA could pick up an Affinity partner to provide such finance at favorable rates as it does now with professional liability insurance? It’s worth asking the newer, younger members if such financing would be a member benefit they would use.

**SG:** According to NYSBA member data, Baby Boomers are approximately 55% of the New York State Bar, and over the next 10 or 20 years, most will be exiting the profession. If the “*astonishing lack of urgency*” on behalf of partners is allowed to continue, the current law firm business model will surely continue to lose ground to even more nontraditional service providers.

We closed our 2004 article with a statement from Hamel and Prahalad’s *Competing for the Future*. It seems just as appropriate today:

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. ■

1. Stephen P. Gallagher & Leonard E. Sienko, Jr., *Yesterday’s Strategies Rarely Answer Tomorrow’s Problems*, N.Y. St. B.J. (Sept. 2004) p. 40. (LS: Oh no, not another Bar Journal article with footnotes! Footnotes don’t pay the rent for the solo practitioner or small firm. Let’s see if we can, together, offer some practical observations.)
2. Richard E. Susskind, *The Future of Law: Facing the Challenges of Information Technology* 46 (Clarendon Press 1996).
3. Georgetown University Law Center, Center for the Study of the Legal Profession, *2015 Report on the State of the Legal Market*.
4. *Id.*, p. 7; Aric Press, *Big Law’s Reality Check*, Am. Law. (Nov. 2014), p. 41.
5. *2015 Report on the State of the Legal Market*, *supra* note 3, p. 10.
6. Paul A. Haskins, Editor, *The Relevant Lawyer: Reimagining the Future of the Legal Profession* 27 (American Bar Ass’n 2015).
7. *Id.*, p. 5.
8. *Id.*, p. 6.
9. *Id.*, p. 26.
10. 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.

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