
Lawyers Court New Business

*Marketing is still restrained,
self-conscious, and controversial
in legal circles. It's also
irreversibly part of the profession.*

by Steven A. Meyerowitz

When William H. Roth left a major national law firm earlier this year to open Kelly, Roth & Hazen, a small general practice firm in New York, he began to do something he hadn't done before: market his services.

Because he works with a limited budget, Mr. Roth hasn't yet prepared a glossy, four-color brochure describing his firm. But he's always on the lookout for articles from American newspapers to clip and send to his foreign corporate clients. When he sees an interesting court decision, he photocopies it and explains its significance in a brief cover letter to the businesses he represents.

"I think it's important to communicate with clients," Mr. Roth says. "It makes them realize that I'm conscientious and that, even during my hours of relaxation, I'm thinking about them."

Certainly lawyers have always let clients know about new legal developments. But Mr. Roth's actions and similar steps by lawyers across the country are a radical departure from their traditional conduct.

"They didn't do it as frequently as they do it today, and not with the same awareness of its relation to marketing and client retention," says Donna Greenfield, a vice president of Greenfield/Belser Ltd., a Washington, D.C.-based marketing design firm.

In fact, lawyers are more than just "aware" of marketing. When the national publication of the American Bar Association, the *ABA Journal*, began a monthly marketing column last November, its editor hailed marketing as "the hottest topic among lawyers today."

Lawyers are pouring both dollars and energy into marketing. The largest national law firms, which gross between \$100 million and \$200 million in billings a year, may spend from 1% to 4% of that total on marketing activities, Ms. Greenfield says. One out of every four lawyers advertises on television, radio, billboards or newspapers, according to a recent survey by the American Bar Association. And lawyers spent about \$47 million on televised ads last year alone, according to the Television Bureau of Advertising, a trade association.

NOT USED TO HAWKING'

A 1977 Supreme Court decision, *Bates v. Arizona*, opened the floodgates of promotion. Ten years after that decision, lawyers flock to marketing—but many of them

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tend to be not very good at it. That failure affects businesses more than the mass market consumer: Firms usually pursue full-range marketing programs to find business clients. They generally use advertising techniques to gain individual clients who are looking for cheap deals on wills or divorces.

Experts cite several reasons for lawyers' marketing failures. One problem is that law schools don't teach marketing. New York lawyer Jack Nusbaum, a partner at the firm of Wilkie Farr & Gallagher, admits that his firm's first attempts at marketing were less than sterling. "We had no idea what we were doing. We're just not used to hawking our services."

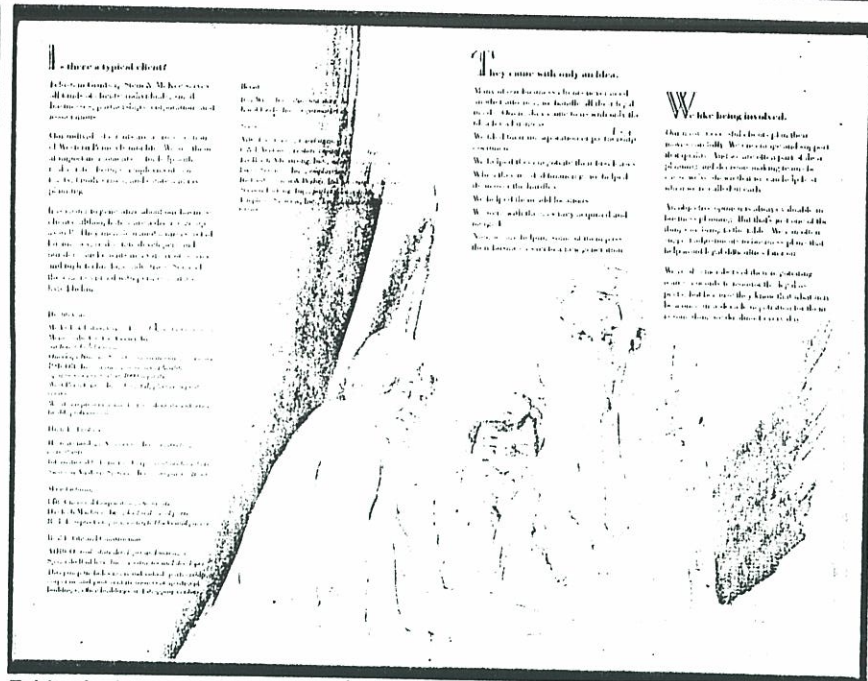
The recent embrace of "hawking" and hardball marketing—a dramatic contrast to traditional "country club selling"—is a change many lawyers have trouble accepting.

"There is still great disagreement in the profession as to whether this should be done," says Jack Agnew, the president of the Boston-based public relations firm of Agnew, Carter, McCarthy Inc. He adds that there is "still a strong feeling among some lawyers that if they do good work, there will be clients for them."

Lawyers who want to market their firm often find that that attitude presents a substantial roadblock to their success as marketers. Deborah J. Addis, a consultant with the Boston marketing consulting firm of Addis & Reed Inc., believes that new business-oriented lawyers often find it is difficult to change their firms' cultures to reflect a marketing emphasis. Other lawyers in the firm don't want to do it, think they're not good at it or prefer just to practice law.

"The problem continues to be with most law firms that there is a feeling among some partners that marketing or business development is unseemly. Others recognize it as appropriate, but there is a difficulty in getting unanimity," PR expert Mr. Agnew says.

The division between lawyers who do and don't want to market created problems for Mr. Agnew when he gave one law firm's lawyers the first draft of a brochure they had asked him to prepare. By the time he incorporated all of the changes that a battery of the firm's lawyers required or recommended, he was on his eighth draft, a watery general statement about the nature of the firm and its practice. Mr. Agnew says that the law firm's managing partner, disappointed



Feldstein Grinberg Stein & McKee takes a low-key, friendly approach in its brochure, asserting that "Our clients should know more about us."

by the product, complained, "You know, any law firm could say this." That brochure was never finished.

Another obstacle is that lawyers do not really understand marketing. They think it's "a machine that can be put on automatic pilot," says Ms. Addis. They don't recognize that the "key to the marketing of professional services lies in the motivation of individual professionals."

Motivation is sometimes difficult to attain. For example, says Ms. Addis, senior partners at law firms may be unwilling to change the compensation system to create incentives for lawyers to spend their time developing new business.

And because lawyers are relatively new to marketing, they do not know the rules or how to define success, Mr. Agnew adds. "They are often disappointed because they have unrealistic expectations—they want a guarantee of a certain number of major stories in the local newspapers or a certain percentage increase in their clients." They frequently demand immediate results, he says, rather than the long-term positioning and growth which are more likely to result from good marketing.

UNIQUE SERVICE NEEDS

Yet another problem derives from the obvious: Lawyers are selling an intangible professional service rather than a product that the buyer can handle and inspect. Once it's rendered,

the service's outcome may be irreversible: Once a suit is lost, it's lost.

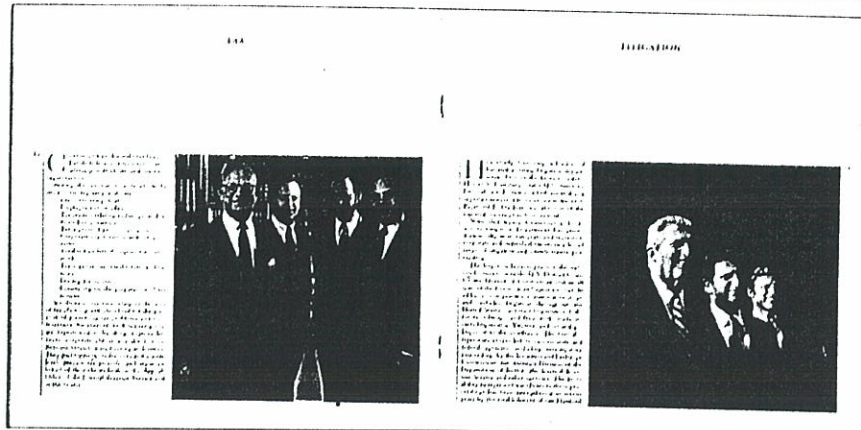
And it's rare that lay buyers are sufficiently qualified to evaluate the quality of a service in advance. Instead, they're asked to put faith in a promise of future performance. Selling something under those conditions, especially by someone new to marketing, is substantially more difficult than selling a product a buyer can see.

Finally, there's the problem of lawyers inevitably having to promote themselves. A manufactured product frequently is sold by a sales person whose only purpose is to make the sale. But a great deal of selling of professional services depends on in-person contact. The professional who will do the work is also the one doing the selling; the chemistry between that person and the potential client is critical to successful marketing. Lawyers uncomfortable with marketing, or just new to it, face that problem, too.

To overcome those difficulties, law firms increasingly hire outside public relations and marketing consultants. Dozens of public relations and marketing advisers across the country claim to have expertise in law firm promotion.

Meanwhile, some firms—about 100 at the industry's latest count—hire in-house administrators to run their marketing and communication efforts. And many are developing comprehensive communications programs.

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Cummings & Lockwood, an old-line Connecticut firm founded in 1909, stresses dignified tradition with the look and read of its brochure, reminiscent of a conservative corporate annual report.

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No longer do lawyers merely photocopy pages from "Martindale-Hubbell," the authoritative directory of lawyers, when people ask about the range of services provided by their firms and the qualifications and background of their lawyers. Now, the industry is marked by what consultant Ms. Addis calls "a proliferation of fancy brochures."

Although brochures are the most

frequently used tool for business development, most lawyers still don't use them for "cold-call prospecting," Mr. Agnew says. Rather, brochures are initial selling documents, initial leave-behinds.

Following sound marketing procedure, the best of those brochures focus on benefits to the client rather than on the law firm itself, Ms. Greenfield explains. For example, a firm with offices across the country will tell a

client "Because of all of our offices, we can meet your needs anywhere," rather than emphasize the feature, "We have a multi-state litigation capability."

Lawyers sell service. The labor lawyers at the Michigan law firm of Dickinson, Wright, Moon, Van Dusen & Freeman, for example, claim that "by policy, phone calls to our group are returned within a half day."

Jackson, Lewis, Schnitzler & Krupman, a firm specializing in labor relations with offices across the country, recently published a brochure emphasizing client benefits and service. The firm claims to be "the largest and one of the most respected law firms in the United States engaged exclusively in the practice of labor and employment law." That statement is turned into a benefit in the firm's brochure: "The size of our professional staff and the location of our offices afford our clients prompt and effective service."

But Jackson, Lewis also anticipates a potential client concern—that a large firm may result in its matters being left unattended—with claims typical of other personal service businesses: "Each client receives the full attention

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Controversial Changes

Ten years ago, the U.S. Supreme Court first allowed lawyers to promote their services, despite professional ethics regulations which traditionally prohibited promotion. The court's landmark *Bates v. Arizona* decision subsequently has been applied to accountants and physicians as well as to lawyers, and has been expanded substantially.

In May 1985, for example, the Supreme Court struck down an Ohio regulation barring lawyers from running ads aimed at people with specific legal problems. In that case, the state judiciary charged an attorney with solicitation that violated Ohio's Code of Professional Responsibility. His ads in three dozen newspapers announced willingness to represent women injured by the Dalkon Shield intrauterine device. The Supreme Court ruled that the messages have First Amendment protection.

Those cases created a major change in the way law firms prospect for new clients. They may advertise, distribute brochures, send out newsletters and use narrowly focused

advertising. But the *Bates* case did not go all the way. Personalized, individual solicitation is not permitted by legal authorities, and about 30 states still do not allow personalized mailings—letters specifically tailored to individual prospective clients—because they are presumed to be too intrusive a medium.

In any situation, however, the materials that lawyers do prepare may not be false, misleading or deceptive. Yet that leaves a lot of room for creative expression. As Washington marketing consultant Donna Greenfield explains, "There are fewer and fewer problems with writing copy."

At least there are fewer and fewer legal problems. The propriety and desirability of advertising and marketing is still a controversial issue in legal ranks.

Former Supreme Court Chief Justice Warren E. Burger is one leading lawyer who dislikes professionals who pitch their services. He calls it "sheer shysterism." A couple of years ago he said his "advice to the public is never, never, never,

under any circumstances engage the services of a lawyer who advertises."

Inevitably, some lawyer advertising draws criticism from all sides of the marketing issue, supporters and critics alike. Some time ago, for example, a group of Florida attorneys ran a holiday newspaper advertisement telling readers in folksy phrases to "Get that spouse of yours some'in' he or she's been wantin' for a long time . . . A Deeeevorce . . . \$150 bucks."

And one Wisconsin lawyer aired a television commercial promising a 10-speed bicycle to any drunk driving defendant for whom he could not win an acquittal.

It is unlikely that bar associations could challenge either of those unseemly ads, given the Supreme Court's rulings on the subject.

—Steven A. Meyerowitz

Cases cited:

Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 105 S.Ct. 2265 (1985)

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of a senior attorney who is principally responsible for that client's affairs. Other attorneys with particular expertise provide assistance as needed," the firm's brochure asserts.

Jackson, Lewis also says it has a preventive practice that results in direct benefits to its clients: "We counsel our clients to resolve employee relations problems before they result in grievances, union organizing, agency proceedings or litigation." That approach, the firm claims, "is more likely to avoid the costly defense of employment-related complaints and the diversion of executive time. A preventive program often results in enhanced employee morale and increased productivity."

DIFFERENT STROKES

Jackson, Lewis now does more than simply represent clients in lawsuits. Its brochure says the firm conducts "management and supervisory training workshops concerning the legal requirements of employment laws" for its clients, and counsels clients "in establishing employment policies and practices which are both lawful and effective."

While Jackson, Lewis' promotion plays off the firm's large size, the brochure published by the Pittsburgh law firm of Feldstein Grinberg Stein & McKee tries to score points with its small size. "For one thing, clients know exactly who is handling their work. Responsibility doesn't get lost, blurred or duplicated," the firm says.

It continues, "Client phone calls are returned promptly. Client deadlines are met. When papers are supposed to be delivered, they *are*." The artwork, line art of friendly looking lawyers informally conferring, and a studious effort to avoid stuffy copy, are designed to appeal to clients wary of impersonal firms with legions of pinstriped, faceless professionals.

The Washington, D.C.-based law firm of Kirkpatrick & Lockhart sells experience in its brochure: "Attorneys in the firm include a former member of Congress, a counsel to the Vice President, a director of a Presidential study, a general counsel of a White House office, executive assistants to Presidential appointees, an adviser to international delegations, . . ." etc. That firepower "provides our firm with practical insights into what is achievable and how best to achieve it."

Smith & Schnacke, an Ohio firm, tries to take the mystery out of work-

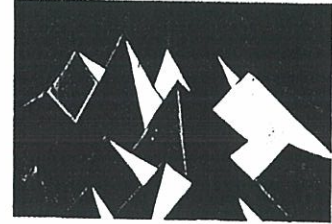
Taxation

Smith & Schnacke states the firm's expertise in the area of taxation and estate planning. It lists several services, including:

- Income tax planning
- Estate tax planning
- Gift tax planning
- Charitable contribution planning
- Trusts and fiduciary matters

The firm's expertise in the area of taxation and estate planning is further demonstrated by its list of services, which includes:

- Income tax planning
- Estate tax planning
- Gift tax planning
- Charitable contribution planning
- Trusts and fiduciary matters



Graphic design by Smith & Schnacke, Inc., Columbus, Ohio.

Modern art graces the pages of Ohio-based Smith & Schnacke's brochure.



Dallas trial lawyers at Windle Turley, P.C. use a commercial art approach to adorn the cover of their firm's litigation capabilities brochure. Aimed at potential tort claims plaintiffs, copy asserts a dedication to "diminish human suffering and injustice."

ing with a lawyer. Its promotion tells the reader about the firm, how it works, and what it does. The Smith & Schnacke brochure also reports how the firm's lawyers keep up-to-date: "Corporate and other business lawyers, real estate lawyers and tax lawyers meet frequently to keep each other current on the latest legal developments in their respective areas of practice." It emphasizes cost containment in litigation, a very important issue to businesses today. And it says that the firm is committed to keeping clients "informed on significant legal trends and developments."

Not all brochures focus on a complete firm. Employing niche marketing strategies, some describe the capabilities of a department within a firm, such as litigation or the corporate finance, tax, trusts or estates areas.

Others cross several different traditional practice areas. For instance, a brochure describing abilities in leasing law might also describe the firm's tax, corporate, real estate, and bankruptcy expertise—all of which are needed in heavy equipment and machinery lease transactions.

Another approach focuses on a firm's ability to represent companies in particular businesses, such as nuclear power or computer software.

For example, the national law firm of Gaston Snow & Ely Bartlett has a specific capabilities brochure dealing with computer law issues. A design suggesting microchip circuitry adorns the cover, and the copy says that the firm can help clients in areas as disparate as contracting for products and services, patents, copyrights and trademarks, financing, international licensing and the like.

The firm wrote the brochure in a "case study" format to highlight its experience in computer law. In one recent project, "A major software supplier suspected that a competitor may have misappropriated one of its proprietary programs. Gaston Snow represented the supplier in a federal court action in Tennessee based on copyright infringement," the brochure reports.

Once lawyers get a foot in the door, they have a host of other communica-

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'The message is no different from the one corporations want to get across: The firm is prospering and can meet client needs.'

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tions materials that they can send to prospects and existing clients.

They may distribute copies of articles that they have written for trade publications, documenting their expertise on the particular subject of the article. Jackson, Lewis regularly distributes reprints of articles written by members of the firm. And a Harrisburg, Penn.-based lawyer, Robert W. Waeger, wrote an article on arson that was turned into a pamphlet. It produced new insurance clients for his firm, he says.

Davis Wright & Jones, a law firm based in Washington state, prepares an "annual report" (without financial data) for clients "to share some of the significant developments that took place during the past year." Its 1985 report publicized, among other events, the opening of a new office, the naming of new partners and the selection of one of its lawyers for the American Bar Association's main legislative body. The message to clients is no different from the one corporations want to get across with their annual reports: The firm is growing and prospering and can meet client needs.

MARKETING AND ANALYSIS

Sending newsletters to clients and potential clients that discuss current legal developments is another common tactic. The publications permit a lawyer to have frequent contact with a client even if he or she is doing relatively little for that particular client at the moment. Newsletters are favored by lawyers because they are seen less as "hard marketing" and more as providing professional analysis of legal developments. Recent newsletters published by Smith & Schnacke, for instance, covered topics ranging from "Department of Justice Antitrust Vertical Restraint Guidelines" to "Preventive Measures in Avoiding Wrongful Discharge Litigation" and "Access to Personnel Files by Employees."

A recent newsletter on computer

law by the Boston firm of Warner & Stackpole discussed the effects of the new tax law and changes made by the national copyright office for computer programs that contain trade secrets. New York's Stroock & Stroock & Lavan has a quarterly labor relations and employment law newsletter, which recently examined workplace drug testing and pregnancy leaves.

One of the most ambitiously produced newsletters is "WorldNet," a newsletter that analyzes current international legal issues. Typeset, it is jointly published three times a year by Nutter, McClenen & Fish, Boston; Payne Hicks Beach, a British firm; Law Offices of Samuel Pizar, from France; Houthoff c.s. advocaten, The Netherlands; and Inasawa & Kojima, in Japan. Topics in the Spring 1987 issue include changes in the Japanese financial markets; the crackdown on insider trading in The Netherlands; and new developments at the London Stock Exchange.

Lawyers also produce long-range promotional publications. For example, many large firms prepare directories to distribute to clients and keep their firm in front of prospects. The directories may include short biographies and photos of each lawyer in the firm.

Desk top reference tools are popular giveaways. Accounting firms rushed to publish materials on last year's Tax Reform Act; lawyers are sending out similar reference books on subjects ranging from "How to set up your shop to minimize risks of litigation" to "How to get involved in international trade." And Gail Koff, a founding partner of the Jacoby & Meyers chain of offices, a heavy consumer-oriented television advertiser, wrote "The Jacoby & Meyers Practical Guide to Everyday Law."

Lawyers also have come far from the days when authorities issued sanctions against several partners of a New York firm who helped a magazine write an article about the firm. Today, the old stigma about being mentioned in the media is gone, and lawyers can respond to—and even seek—press inquiries, so long as they do not compromise a client's case.

When it comes to communications and the other staples of marketing that management consultants and other service firms use to promote their practices, lawyers increasingly have no choice. Competition to obtain new clients and retain existing ones creates a "buyer's market," says Ms. Addis. Now more than ever, lawyers must offer and sell customer-oriented service. ■