



# HOW TO MARKET LEGAL SERVICES

ROBERT W. DENNEY

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**Robert W. Denney**



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## **Preface**

This book is designed, quite unabashedly, to be the most comprehensive and authoritative reference work on the new, complex, and often misunderstood subject of marketing legal services.

It is intended for use by the sole practitioner, the specialty or “boutique” firm, the large general practice firm, or the growing category of large national and multinational firms. It covers the subject from both a management point of view—the development and implementation of an organized marketing plan—and from the individual attorney’s point of view—the development of his or her own personal marketing skills.

I have tried to provide a conceptual explanation of the entire marketing process as it applies to a law firm as well as the specific steps needed to develop and implement a marketing plan on any scale for any size firm.

I sincerely hope that this book will provide the reader not only with a complete treatment of a new and rapidly developing field, but also with a simplified, down-to-earth approach to a subject that interests many attorneys, disturbs others, but is of vital importance to all.

Robert W. Denney

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# **PART I**

## **OVERVIEW**





## Marketing for Lawyers

The private practice of law used to be a whole of a lot easier and a lot less complex than it is today.

In the so-called “good old days” a young lawyer graduated from law school and either hung out his own shingle or joined a law firm. If he joined a law firm, he (there were very few “shes” in the legal profession in those days) began the long but generally secure process of working his way up in the firm toward the eventual goal of partner. He did this by working on increasingly complex client matters that were given to him by one of the partners in the firm. He rarely met clients in his early days as an associate, because the partners handled the contacts with clients. He never had to worry about obtaining new clients, because the clients were just always there or were brought in by the efforts of more senior partners who had earned the designation of “rainmakers.” Eventually the young lawyer was admitted to that great inner sanctum of partnership. Soon he began taking over clients that had been handled by older partners who were now retiring. He still didn’t have to worry about obtaining new business because that just flowed in automatically as the result of doing “quality legal work” (whatever that meant) for clients who then referred other clients to the firm. Clients rarely if ever challenged the fees they were charged. The partners and the firm as a whole maintained a low profile to the general public, although they might have been active in the community or in professional groups.

Then all hell broke loose.

In 1977, in one of those cases the legal profession likes to refer to as “landmark” (*Bates v. Osteen*), the Supreme Court handed down a decision that lawyers could not be prohibited from advertising. Suddenly the entire profession, from the American Bar Association down to the sole practitioner in the middle of the farm belt, had to deal with a whole new set of ground rules. Dire forecasts were made as to what would happen to fees, law firms’ profits, and, perhaps most important of all, the quality of law that would henceforth be practiced.

The legal profession just wasn't the same anymore. The practice of law, which previously had been both an honorable and an orderly profession, started to become more and more confusing; some people even called it "chaotic." The Supreme Court, the pinnacle of the legal profession in the United States, was being accused of ruining the profession.

### THE ICEBERG COMETH

In the light of both prior and subsequent events, however, the Bates case was merely the tip of the iceberg that had been affecting the practice of law before then and has continued to do so since. While the vast majority of lawyers still do not advertise, the Bates case did give them the option. At the same time, it opened up a whole new area in the practice of law which has come to be called "marketing." We'll come back to that in a minute. First, let's look at some other parts of the iceberg.

One of the other factors affecting the legal profession is the current oversupply of lawyers, referred to as a "glut" by some people. In 1968 there were 130,000 lawyers in the United States. By 1981 there were more than 600,000 lawyers, and unless something happens to change the trend, it is projected that by 1986 there will be 750,000 lawyers in the United States. Several years ago at an investiture in Minneapolis, the presiding judge stated, "There are now more lawyers than lakes in Minnesota." And there are 10,000 lakes in Minnesota! Despite tighter standards, law schools are still turning out more lawyers than can be absorbed by both corporate and private practice. The amount of legal work has grown dramatically, but it has not kept pace with the growth in the number of lawyers. In other words—the competition for legal work has become intense.

Several other factors have also been affecting the way in which law is practiced today. In 1978 three new legal publications made their debuts—*The American Lawyer*, *The National Law Journal*, and *The Legal Times*. But these were not scholarly journals devoted to the discussion of legal issues and interpretations of the law. They addressed the *business* of practicing law. They even reported in journalistic fashion what was going on in the profession and in particular law firms. They did—and still do—discuss out in the open subjects that lawyers would never have discussed or wished to read in public

even ten years ago. They treat events and trends in the legal profession as newsworthy.

Now there is another publication out of Atlanta, *Attorneys Marketing Report*, which is devoted entirely to business development activities of lawyers and law firms. It is safe to say that, prior to 1977, there would not have been a market for this newsletter.

Finally, the growth of in-house legal departments has had an increasing effect on law firms in recent years. First of all, these departments, which are frequently the equivalent of law firms in themselves, have taken over the handling of many functions, from routine work to litigation, that previously had been turned over to an outside law firm. Furthermore, companies have grown more selective in giving business to outside counsel. A firm tends to get the nod these days on the basis of knowledge about a particular matter, not because of traditional ties with the company. Moreover, most corporations (even smaller ones) use several law firms, whereas years ago they tended to give all their legal business to one firm. These developments have resulted in a reduction of work going to outside firms.

## MARKETING IS A RESULT, NOT A CAUSE

The Bates case, the oversupply of lawyers, the new journalistic approach to the profession, and the increase and expansion of in-house legal departments have been the major parts of the iceberg that has changed the way law is practiced today in the United States.

And, because these have all tended to dramatically increase competition within the profession, they have led to the need for lawyers and law firms to market their services. This is an extremely important point for the great numbers of lawyers who still oppose the concept of marketing to understand. *It is not marketing which has caused change in the legal profession. It is the changes in the legal profession which have caused the need for marketing.* Furthermore, the impact of these changes—and the subsequent impact of marketing—will be felt for a very long time. They will also require lawyers to learn a whole new set of skills.

New practices, new policies, and even new terminology are becoming part of the practice of law. “Public relations,” “market research,” “market share,” “positioning,” “targeting,” and “marketing strategies” are just some of the terms that have moved from the

giant consumer products companies into the partners' meetings of law firms. Most lawyers are not sure what these terms mean, let alone what they have to do with the practice of law. A few firms have even created a position they call Director or Coordinator of Marketing and, in many cases, have filled that position with a nonlawyer!

What is rapidly happening in the profession was succinctly expressed by the managing partner of one of the country's largest and most prestigious law firms: "While many lawyers still do not realize it, it isn't a question of whether to market or not. It is only a question of how to do it effectively."

### NOT REALLY NEW

The strange thing is that, while the *concept* of marketing is new to the legal profession, the *purpose* of marketing is not. Firms have always had the need to (1) retain their good clients, (2) obtain new clients, and (3) promote the firm's image or reputation. These functions, while not specifically defined, were generally carried out by a small group of partners who were the "rainmakers" for the firm who brought in new business on a regular and seemingly effortless basis. They generally maintained an appropriate visibility in the community. Not surprisingly, the founders of the firms usually had this ability, because, if they hadn't marketed their practice at the beginning, they wouldn't have had any clients to serve. Later additions to firms and the next generation of partners, however, mistakenly assumed that the firms developed solely by the founding partners "doing quality work" without any marketing except for, at worst, some occasional rain-making.

What has happened to most of the old-line firms in recent years is that the founding partners have retired or died. They are no longer around, "filling the pipeline" with new business for the other lawyers to handle. The current generation of senior and middle-level partners in many firms has never had to generate new business—their clients have generally been passed on to them—and they don't know how to obtain new business either. This has provided the opportunity for new firms, and a new generation of founding partners, to open practices and acquire clients from some of the established firms. What it all adds up to is that there are more lawyers and more firms competing with each other for the available legal business. Furthermore, the part-

ners in the leadership positions of many of the firms do not know how to market their services competitively because they have never had to in their ten, twenty, or thirty years of practicing law.

There is a misconception that marketing is just for large firms. Quite the contrary. The need to market exists for *every* firm. Furthermore, the principles and techniques of marketing are essentially the same for the sole practitioner, the small specialty firm, the large general practice firm, and the very large national or multinational firm. Naturally, the larger the firm, the more opportunities there are and the bigger and more complex the marketing program must be. But the need, and the ability, to market exists for every size practice.

## A DEFINITION OF MARKETING

For the most part, only people who have been involved in marketing have a clear understanding of what it encompasses. (Perhaps marketing professionals would prefer to keep it that way!) Most of the rest of the world, and particularly lawyers, think that marketing is just one-dimensional, that it is solely a cost center. But marketing is not just a brochure; it is not just public relations or selling or advertising. It is a coordinated effort that, when applied to law firms, has some very specific aspects. Therefore it is important at the onset to have a clear understanding of what we are talking about when we refer to marketing. The following definition, which I have evolved over a period of time, seems to capture everything involved.

Marketing of legal services is the effective execution of all the activities involved in profitably increasing the level of net business by serving the needs and wants of clients.

There is more to this definition than meets the eye or the mind at first, so we must take it apart and analyze it.

In addition to a whole new series of purely marketing functions, marketing also includes nearly every activity a law firm performs. It is not just lunch with a prospective client or accepting a referral from another lawyer. It also includes telephone procedures, certain office routines, and even the way bills are rendered. Practically everything a law firm does can be looked at with a marketing as well as an operational perspective.

Marketing must be *profitable*; it does not exist for its own sake or to perpetuate the existence of a Business Development Committee. Marketing does not mean, for example, that a firm should spend \$150,000 a year to increase its net billings \$80,000. To be profitable, therefore, marketing must be productive and the marketing program must be so planned that its productivity can be measured.

Marketing is concerned with increasing the level of *net* business, not just obtaining new business. It focuses as much on current clients, client retention, and client development (i.e., “cross-selling”) as it does on obtaining new clients.

Finally, marketing begins with the needs and wants of clients as *they* perceive them, not the lawyer.

This is probably the hardest point for all professionals, not just lawyers, to grasp. It is what the *client* thinks or perceives that is important in terms of marketing, not what the lawyer or the firm thinks—or feels they know. No matter how high you feel the quality of your work is or how well you feel you serve your clients, if they don’t think so, then you are going to have problems in retaining clients as well as in making the practice grow.

It is also important to understand what we mean by growth. We are not talking about growth that is obtained by just raising fees or hourly rates. That is not marketing, although some amount of sales ability is sometimes needed when you present your bill to the client at the end of a case or matter! What we mean by growth is growing in quality of work, services to clients, billable hours, and client base. Profitable, healthy growth must include all of these.

Finally, we should understand what is meant by “quality work” in a marketing context. Many lawyers define quality work in a technical sense, i.e., work that meets various legal and firm standards. But clients define quality work in a different light. To clients it is work that is timely, understandable, and, most important of all, accomplishes their objectives. Many lawyers still think quality work is drawing up a legally precise agreement of sale or preparing a comprehensive brief. To the client, however, the lawyer did quality work if the sale went through as the client wanted it or if the client won the case. It is often that simple.

Therefore, lawyers must keep both definitions of quality work in mind—theirs and the client’s—and work diligently to live up to both.

## EVERYONE MUST GET INTO THE ACT

One of the pleasant aspects of marketing in law firms is that there are so many things to be done that every lawyer can find something he or she can enjoy doing as part of the marketing effort. And one of the most sobering aspects is that the job is so complicated and so important that everyone *must* participate. Rainmaking isn't enough anymore; business development in a law firm today requires broad-based, firm-wide effort.

For all the reasons discussed above and others, competition in the legal profession has become so fierce—unless you're the only practitioner for a hundred miles—and clients have become so sophisticated and demanding that no single person or small group of rainmakers can do an adequate marketing job for the entire firm. Just like a major piece of litigation, it takes teamwork. Everyone must get into the act, and fortunately everyone can. There is so much involved in legal marketing that even the most insecure lawyer can find something satisfying to do.

And therein lies one of the secrets of successful marketing for a law firm.

Each lawyer must enjoy what he is doing as part of the marketing program. A shy introvert probably won't enjoy making a presentation to the house counsel and top management of a major corporation—and will probably make a mess of it. A person who dislikes classical music would probably hate being told he must join the board of the local symphony orchestra. And the person who regards golf as a waste of time would probably resist being asked to join a country club in order to make contacts.

But the beauty in marketing legal services is that a firm doesn't have to push square pegs into round holes. Such a broad range of activities can aid the marketing program that, with a little thought and effort, people will find things in their "comfort zone" that they enjoy doing and will therefore do well. There is a personal bonus in this too: the lawyer broadens his or her horizon at the same time as the firm is helped to grow.

There is something else that every lawyer should appreciate about marketing. *Marketing is a process*, a process very similar to what is involved in the practice of law. It begins with a period of research or



discovery. This is followed by a period of planning or organization. Finally, you must persuade the client or prospect of the correctness of using you and your firm. The process is much the same; only the application is different.

One final but important point about marketing in the legal profession: there is a big difference between marketing consumer products and marketing legal services. The law is a profession, not a trade or a business. Many marketing techniques that work well for a business may not be appropriate for a law firm. Marketing a general practice law firm is not the same as marketing a line of frozen foods; marketing one's skills in a specialty area of the law is not the same as introducing a new laundry detergent. The principles are the same, but the techniques, and the applications of these techniques, are totally different. Therefore, the development of a marketing plan for a law firm calls for not only a thorough understanding of the marketing process, but also the experience and judgment to know what is appropriate when applying that process to the legal profession.

## **The New Self-Image of the Lawyer Today**

The many changes that have occurred in the legal profession since the late 1970s have not only affected the practice of law and how it is to be marketed, but they have also affected the individual attorney. Until all this turmoil began, most lawyers had a pretty clear self-image, or at least a pretty clear idea of the image they were expected to present to the outside world.

Now, as a result of these changes as well as heightened public interest in the profession and how it operates, many lawyers are groping for their own personal viewpoint regarding these changes and how to adjust to them. In other words, they are trying to develop a new self-image in the midst of all this chaos.

After nearly eight years of working with law firms on marketing programs, I believe that lawyers today see themselves in basically one of five ways.

1. *The Dedicated Lawyer.* This is the contemporary version of the "old-time" lawyer who believed that if you just did quality work