



Charles Maddock

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You Can Market a Litigation Practice

By David Jacoby and Charles Maddock

It's a familiar refrain: How can you market a service that individuals and businesses avoid? At the 2003 International Bar Association Committee 12 (Civil Litigation) program “Marketing a Litigation Practice,” a panel of practitioners and experts explored the special issues litigators, whether solo practitioners or members of multi-national, mega-firms, encounter in trying to market their services. The panel included Christine Sartini, Pissoor and Sartini, Brussels, Belgium; John Brown, McCarthy Tétrault, Toronto, Canada; Peter Bartlett, Minter Ellison, Melbourne, Australia; John Rubinstein, Rubinstein Phillips, London, England; Charles A. Maddock, Altman Weil, Inc., Newtown Square, Pennsylvania, U.S.A.; and panel chairman David Jacoby, Vice Chair, Committee 12, Phillips Nizer LLP, New York. The panelists, from firms ranging in size from three to 1,400 lawyers, described the regulation of lawyer marketing in their jurisdictions as well as their own marketing experiences.

The United States

Nothing can alter the cold, indisputable fact that the bar in the United States has embraced marketing in a big way. Many lawyers, however, still find marketing an unfamiliar, even frightening undertaking. It's not what they learned in law school. They may be uncertain about the rules.

Marketing often seems to pose particular difficulties for litigators. Plaintiffs' personal injury counsel aside, some litigators worry that marketing litigation services is akin to telling existing or potential clients, “Gosh, I hope you get sued.”

In the U.S., lawyers spent over \$310 million on television advertising in 2002 and bought more advertising in the Yellow Pages telephone directories than any other group. Large firms have begun to make serious commitments to advertising, too: *The American Lawyer* often has no less than 30 ads for business firms.

Arguably, one of the first firms to become widely known through what now would be considered a marketing channel was Phillips

Nizer in New York. For most of its roughly 75 years, few outside the motion picture world could have told you who Mr. Phillips was, but Louis Nizer was a different story. Louis Nizer, a brilliant trial lawyer, became widely known in the United States during the half-century beginning after World War II, but not simply for his legal skills. He was the author of nationally best-selling books, including, *My Life In Court* and *The Jury Returns*, which recounted some of his famous cases and brought the drama of the courtroom to an audience of millions in an era before Court TV. And yet, Phillips Nizer did not generally have a marketing culture. Louis Nizer often said that the best thing young lawyers could do was to continue to do brilliant work so existing clients would send more work and recommend the firm to others.

Today, Phillips Nizer, with 80 lawyers in three U.S. offices, encourages partners and associates to market, and each lawyer develops an individual, annual marketing plan. The firm's website has a great deal of original content, including the award-winning Internet Law Library. About a third of the attorneys are in litigation fields, with others in fields such as labor/employment, bankruptcy and family law, which can involve litigation.

The firm has a dedicated marketing staff of two, exactly in line with industry averages of 40 lawyers to each in-house marketer (based on Legal Marketing Association surveys). Marketing Director Vikki Grodner prepared an outline of the firm's efforts, “Marketing Our Litigation Practice,” which made these points:

- Market litigation as part of an industry team.
- Use public relations to obtain media coverage.
- Include members of the litigation practice in networking opportunities.
- Create focused newsletters that highlight litigation expertise in niche areas.
- Identify or create speaking opportunities.
- Use the Internet as an integral part of your marketing strategy.
- Create awareness in the legal community of your litigation capabilities.

Canada

McCarthy Tétrault is the first national firm in Canada, with offices in nine domestic and foreign cities and over 200 litigators. The firm has a marketing staff of 20 and spends two percent of its gross revenue on marketing. Marketing efforts are a factor in determining partner compensation.

Television and radio advertising by lawyers is not thought to be in good taste and is not an accepted method for Canadian lawyers. Brochures also are not well received by clients. Although it is important to be listed in directories, this typically will not lead directly to new business. Corporate in-house counsel want to see their lawyers in person.

McCarthy Tétrault focuses on existing clients to generate new business, based on the tenet that it costs many times as much to get business from a new client as from an existing one. The lawyer seeking to attract work has to know the client's business and problems well. The firm develops key client teams, with a designated partner as the key contact, to develop a plan to enable cross-selling.

Internal networking is critical in a firm; one needs to build a profile with one's partners, to be regarded as a "go to" person. Mr. Brown made the point that if you can't persuade your own partners to refer work to you, you'll have a hard time succeeding with outsiders.

External networking is essential as well. Conferences are important to develop a profile with foreign companies and their counsel. Keeping existing clients happy is vital, as is specialization, as more clients expect their lawyer to become an authority on a subject or subjects.

It's important to remember that a client looking for litigation assistance is often in trouble and therefore not willing to allow time for a lawyer to get up to speed. Accordingly, the client needs to have trust and confidence in the lawyer even before the crisis arises.

If possible, litigators should try to attract clients in advisory roles, so they can become acquainted, without the pressure of a pending case.

England and Belgium

In Britain, service to clients is critical and the lawyer must give the client what he or she wants. A firm's clientele and its staff are its two most powerful marketing tools. Most firms use brochures to create firm awareness among clients and prospects, although as marketing expenditures increase, a client may have concerns that a portion of its fees is subsidizing the firm's marketing costs.

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A firm's staff can also be powerful marketers. If a fee earner leaves a practice on good terms, she can be an advertisement for the firm long into the future. Alternatively, an unhappy alumna can hurt a firm and also try to rob it of its clients.

In Britain, as elsewhere, there is a concern that lawyers who devote their attention to marketing might not be doing the work of their existing clients. Law firms need to perform a candid analysis of the costs associated with marketing, including hidden costs such as time lost from billable work, as well as out-of-pocket expenses to travel or attend conferences. Time not spent on clients costs the practice. There are many other firms that will try to lowball their fees and take your clients if you don't tend to those clients yourself.

Belgium permits lawyers to have brochures and websites, to issue newsletters, to identify their areas of practice, and to circulate the *curriculae vitae* of partners. Clients and cases cannot be identified, even with client consent, nor may information about results, number of cases, or turnover be provided. Any materials created must be communicated to the bar.

Advertising is much less popular in Belgium than in the United States, due mainly to a widely held belief that clients won't select a lawyer based on advertising, but based on relationships. Ninety-five percent of the Belgian French bar also has no business plan or marketing budget.

Australia

Minter Ellison is the largest law firm based in the Asia-Pacific region with 1,480 lawyers, including nearly 300 litigators.

Marketing efforts at this firm are specific to practice groups. In addition, lawyers are encouraged to join associations, particularly within industries, and to take advantage of speaking opportunities, particularly at industry-specific events. Minter Ellison also encourages contributions to legal and non-legal publications.

Directory publishers often approach Minter Ellison for listings, but the firm cannot recall a single client that came to the firm as the result of a directory listing. The firm stresses providing value for money. The firm will consider ADR as an alternative to litigation, looking to obtain a win-win result where litigation could be very costly.

In Australia, as in other parts of the world, some firms maximize publicity and plant favorable articles because the media is a very powerful tool in the court of public opinion. One example of success: a smaller Australian firm handling plaintiffs' personal injury and worker compensation work decided to move into large claims involving asbestosis. It succeeded in

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getting published a book about asbestos exposure, called *Blue Murder*.

Surveys Say

Over the past ten years, marketing techniques for litigators have become the subject of a number of worldwide studies. One of the findings that is common to most may surprise some litigators: according to a recent survey, very few clients hire based on the lawyer's abilities. Technical legal skills are taken as a given; instead, clients focus on personal chemistry and the ease of doing business with the particular lawyer.

Another study, conducted by Altman Weil principal Dr. Larry Richard, a psychologist and former litigator, found that chemistry doesn't come easily to many lawyers. Richard studied 18 personality traits in lawyers as contrasted to the general population. Lawyers place a far higher value on autonomy than most people — they strongly prefer to work as individuals. They also rank far lower in sociability than most people. Even the best rain-makers ranked in the bottom 20% of the population for sociability, while the best service lawyers ranked in the bottom 11%. The good news is that lawyers do score better than average on abstract reasoning abilities, a measure of their generally higher intelligence.

In North American corporate law departments (and probably European ones as well), spending is up 20%, with the most active areas being litigation, commercial contracts, labor and employment, and intellectual property. When it comes to selecting outside counsel, the most significant factor — cited by 35% of corporate counsel — is the firm's specialties — that is, the work for which they are known. The next most important factor is responsiveness, followed by a history with the company. The cost of legal services is a distant fourth.

One mistake law firms make is to over-lawyer matters, adding hours but not value. Many in-house lawyers

used to be at firms and they easily recognize this. Training associates on client time is another sin, although clients are willing to work with associates if it is cost-effective. A quarter of all law departments now track lawyer and paralegal time, up from 15% previously. Electronic billing by outside

— between seven and eight percent. By contrast, a manufacturer of a consumer product such as the Lexus automobile spends 14% of the purchase price on marketing. The highest hourly rates for litigators are for antitrust (an average of \$415 in the U.S.) and intellectual property (\$370)

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firms has accelerated this trend. Right now, 7% of U.S. corporations use electronic billing, but according to a study conducted for Altman Weil for the Association of Corporate Counsel (ACC), 25% intend to do so in the next two or three years.

Only 20% of clients have received a formal satisfaction survey from their lawyers, although fully 70% regard it as critical to the relationship. Altman Weil client surveys for law firms show that 62% say they are completely satisfied and 95% say they are completely or mostly satisfied with the firm conducting the survey. Plainly, one should market to such satisfied clients.

Although clients say non-responsiveness is the main reason they fire law firms, lawyers score 4.8 of a possible 5 on surveys rating responsiveness. Attorneys have gotten the message — responsiveness can only distinguish them from others if they are regarded as less responsive than other firms. Most clients expect to have a call returned by the end of the day. For litigators, the window is 24 hours; for lawyers in bond markets, the expectation is a call back within 15 to 30 minutes.

Worldwide average spending on marketing by law firms is 2% of gross revenue. For plaintiffs' personal injury firms, the figure is much higher

work; the lowest rates are for workers' compensation (\$150) and medical malpractice defense (\$165).

Best Practices

In sum, here are a number of ideas for litigators:

- Focus on your current clients, but fire some of them. Most firms find about 5% of their clients are unprofitable, unproductive and unpleasant. Refer them to someone else.
- Make an early and candid assessment of the client's position in the case.
- Consider risk-sharing and innovative ways to structure pricing.
- Maintain continuous communication with clients. Tell them what is going on every 30 days even if nothing is happening.
- Learn about their business. This flatters clients.
- Provide electronic alerts.
- Do free in-house training for clients.
- Prepare an inventory of cases you have won. Clients hire on the basis of reputation and success.
- Join trade and civic groups — but focus on smaller ones.
- Be known for something — a practice area or providing superb client service. Martindale-Hubbell

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practice area or providing superb client service. Martindale-Hubbell reports that 99.5% of clients find a lawyer through referrals. Get someone to refer cases to you. Keep in mind that 60% of clients say they haven't referred a case to their lawyer because they think he or she is too busy already.

- Ask for the business. Most lawyers don't. Attorneys have surprisingly low resilience and don't like to be criticized. Most clients, however, are flattered by such a request.
- Get client feedback. For example, at the end of the matter, ask if they would consider referring another matter to you.
- Reward lawyers for marketing efforts. Too many firms try to do this in inefficient ways. If only marketing successes are rewarded, a firm risks creating "success" and "worker" classes among its lawyers.
- Develop a message — simple, direct and reflecting what your firm

stands for. Without it, the firm is fungible. Make your firm different.

Conclusion

Given the staggering variety of law firms and practice areas in the world, there is a surprising degree of consensus about how lawyers, and litigators in particular, can market effectively. For attorneys, marketing is like spinach: it may not taste good, but done properly, it can be very good for you. ♦

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