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Marketing

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CORNER OFFICE

Uses and Abuses Of the Two-Tier Partnership

By Melchior S. Morrione

Once upon a time, becoming a partner in a law firm meant you became an owner of the business and shared in the profits with the other equity partners. The typical career path for associates joining a firm out of law school was to work hard for about seven years, at which time you would either be admitted to the partnership or be asked to leave the firm.

This so-called up-or-out practice became increasingly difficult for firms to continue due to the explosive growth in demand for legal services. Throwing out seven-year associates, who the firm was not entirely sure were ready to be partners, but who had developed valuable practice skills and experience serving clients, no longer seemed like a good idea.

So by the late 1990s, many law firms adopted a practice that significantly changed the original partnership paradigm. They created a new position, called non-equity, income, or contract partner, into which associates who were not admitted as equity partners could be placed. In effect, they created a two-tier partnership. This permitted them to retain associates longer, with the prospect that equity partnership might still be in their

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Three Skills a Lawyer Needs to Succeed

By Larry Bodine

The top three competencies or strategies a lawyer needs to succeed today are the abilities to generate new business, to learn the business of his or her clients, and to do top-notch networking.

GENERATING NEW BUSINESS

A partner in a law firm is not only someone who *knows* the law and can do the work for clients, but is also an entrepreneur who has to *generate* enough work for himself or herself as well as all the associates. Just like an entrepreneur, you need to build a business around yourself. It's a critical element, today more than ever.

LEARNING THE CLIENTS' BUSINESS

It is essential that lawyers learn the business of their clients. This means going beyond the legal affairs of the client and actually getting to know that client on an extra-legal level where you are really inquiring:

- How does your business make money?
- What are your most profitable lines of services and products?
- What about your competitors? How are they threatening you right now?

You want to start a business conversation with your clients. That's how you get a client for life.

NETWORKING

The ability to network effectively takes more than just going to a room full of people whom you don't know and passing out a bunch of business cards. It's more a relationship-building skill where you can walk into a room of people and, hopefully you have done some homework, and you know some people there already. It's not walking up to strangers and telling them, "I do this and I have these great credentials." Instead, you approach them and ask them questions, like, "Tell me about yourself." It goes right back to Dale Carnegie, when he said that people's most favorite topic is themselves. So why not bring that up in conversation?

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MEDIA & COMMUNICATIONS CORNER**Theresa Jaffe, Chief Marketing Officer, Jenner & Block LLP**

By Jason Milch

When Jenner & Block's Chief Marketing Officer Theresa Jaffe was being recruited for her current job nearly eight years ago, she became intrigued by the marketing challenge that the then-87-year-old powerhouse Firm represented.

"Jenner & Block had a sterling reputation in the marketplace ... great lawyers, great public service commitment, an excellent client base and a history of delivering exceptional results for its clients, be they paying or pro bono," Jaffe says. "The challenge wasn't about building the brand that many law firms at the time were (and still are) facing, but rather identifying the distinct attributes of the firm and truly marketing these. The firm needed to leverage the sizeable success it had experienced over the years and reposition itself in the changing competitive landscape.

"The challenge from a marketing perspective was to creatively leverage the existing reputation by converting it into an organic brand that would resonate with the clients, the marketplace, recruits and within the firm," Jaffe continues. "I felt the opportunity presented by Jenner & Block was a unique one."

With a 30-year career that included experience in the accounting, consulting, technology, health care and nonprofit industries, Jaffe arrived at the firm in 2000 after having spent the previous 2.5 years as National Director of Marketing at Katten Muchin Zavis LLP (now Katten Muchin Rosenman). Upon arrival,

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she conducted a comprehensive marketing assessment, which resulted in a report to firm management, "Current versus Desired State Marketing," that benchmarked the firm for marketing best practices in more than 35 discreet marketing activities along a continuum of processes. From there, priorities and timetables were agreed-upon and staff recruitment began.

HIRING AN EXPERT STAFF

First, Jaffe hired Senior Marketing Manager Murray Coffey, an attorney and former executive with Hubbard One; and Public Relations Manager Darryl Van Duch, also an attorney and former Chicago Bureau Chief of *The National Law Journal*, to serve in key leadership positions in the newly formed Marketing Department — the first in the firm's long history.

"Murray and Darryl shared my understanding of the valuable identity that Jenner & Block had formed, and just as importantly, the wide range of activities that would be necessary to maintain and enhance the brand over the long term in an increasingly competitive environment," Jaffe says. "They understood that the key to successfully marketing Jenner & Block would be in leveraging its substantive legal acumen."

EVERYTHING WITH A PURPOSE

Jaffe and her team have one simple but absolute rule, "Everything that we, as a Marketing Department, do must be tied to the firm's Strategic Plan." Jaffe further explained, "[That plan] was created nearly eight years ago and clearly articulates the values that drive Jenner & Block. It is the framework for every business decision at the firm. As marketers, this plan provides us with the big picture and is the underpinning for everything we do."

While focusing on the Strategic Plan may sound simple in theory, Jaffe notes that with the multitude of marketing opportunities available to law firms across many different mediums, it is, at times, easy to lose sight of the big picture.

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Mid-Market Firms Get Wise to Marketing

By Karen Dean

Slicing, swooping and spinning, the adrenaline-fueled Alpine skier rockets down the snowy slopes, leaning deeply into turns and cutting a sharp path until he crosses the finish line, triumphantly pumping his fists in the air and plowing to a stop. End of commercial. Cue the tag line: "Holland & Hart — The Law Out West."

This 30-second in-flight ad, seen by the nearly 875,000 passengers who fly Frontier Airlines each month, sponsors a four-minute business program on the CEO of Spyder Active Sports Inc., a Holland & Hart client. The commercial and program are not your typical law firm marketing campaign. For Spyder CEO David Jacobs, the program is an opportunity to promote his company to an affluent, regional audience. For the Denver-based Holland & Hart, the ad and Spyder promo are part of an effective in-flight advertising campaign that 40% of passengers remember, according to Frontier's market research.

In the ads, "we're not spending advertising time talking about our firm history," says Holland & Hart marketing director Mark Beese. "We spend that time highlighting some very creative CEOs" who are also Holland & Hart clients.

Welcome to the new era of law firm marketing. It's been a long time coming. The profession didn't even allow formal advertising until the mid-1970s, and now the prospect of selling seems a bit distasteful to some law firm partners.

"I knew people in law school who said they were there because they didn't want to be salesmen," says Larry Bodine, an attorney and legal marketing consultant whose article appears on page 1 of this issue. "Then, after several years, somebody changed the rules." What marketing there was in earlier days was generally left to gregarious senior partners, or rainmakers, and most of their colleagues were

happy to let them generate leads and establish business connections. Formal marketing plans in law firms were virtually nonexistent.

But the number of lawyers competing for business grew steadily. In 1991 there were 805,872 lawyers in state bar associations, according to the American Bar Association. By 2006, the number had risen to 1,116,967. Competition among top firms grew tighter. In 1995, Am Law 100 firms employed 4.4% of practicing lawyers in the United States. By 2004, that figure increased to approximately 6.3%.

Soon, requests for proposals began to replace handshake deals. Long-term attorney-client relationships were subject to stiff reviews. The increasingly competitive field grew larger, making a strong, focused business development program necessary for survival.

NEWCOMERS

But as marketing professionals came into this mix, law firms often had no idea what to do with them. One marketing director recalls being told, "Don't get too creative, or you'll embarrass the firm."

In their inexperience, firm partners too often limited marketing directors to serving merely as tactical planners of seminars, client meetings and conferences, rather than fully utilizing them as strategic partners. "For the first 10 years, the pattern was that law firms hired marketing directors, ignored them for a few years, then fired them," says Bodine. "It wasn't the ideal job."

Soon the revolving doors of legal marketing departments were spinning fast enough to generate a steady breeze. In the 90s, the average tenure of a law firm marketing director was less than two years, according to Elizabeth "Betty" Tursi, Editor-in-Chief of *Marketing The Law Firm*.

But lately there are signs that some law firms are starting to truly understand the value of marketing and are empowering their CMOs.

In the case of Holland & Hart, the marketing director himself can legitimately claim credit for a key initiative. In others, such as Foley Hoag and Thompson Hine (discussed

below), the partners of the firm came up with the initiative and then left it to the marketing director to implement. Whatever the case, some managing partners seem to be recognizing the value that a skilled marketer can bring to a law firm. "Lawyers have a tendency to think marketing is just another thing they could do if they applied themselves," says Larry Wolfe, the managing partner at Holland & Hart. "But marketing managers are trained professionals with skills in areas we don't have. It makes no sense to hire them and then manage them so closely that they become a reflection of risk-averse lawyers."

Have marketing professionals finally proven their value? Or have law firms been driven to take marketing seriously by increased competitive pressure? A combination of the two seems to be the answer. Some fortunate marketing and business development directors are included in executive meetings and are deemed by the partners to be instrumental in strategic planning for the firm.

For others, the battle for credibility and cooperation rages on. Ten years ago, the tenure of the average marketing director was a scant 18 months, says Tursi. Today it's increased to three years, a modest improvement, though not exactly earthshaking.

Today, most law firms are increasing their marketing budgets. A recent survey by BTI Consulting Group Inc. found that marketing expenditures in 2006 rose nearly 30% from the previous year. Am Law 100 firms budgeted an average of \$9 million; Am Law 200 firms allocated almost \$3 million. Staffing levels in marketing departments increased by nearly 15%.

The purse strings may still be tight, but experts think law firms are beginning to strategize their marketing goals more clearly. "What we're seeing now is an increased focus on differentiation," says Silvia L. Coulter, a member of this newsletter's Board of Editors and managing partner of Manchester, MA-based law firm marketing consultants Coulter Cranston

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Wise to Marketing

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"Firms are looking to capitalize on their ability to deliver top-shelf service and realize the need to demonstrate an ability to outperform others."

CREATIVE SPOTLIGHT

When Holland & Hart's Beese suggested television advertising to the firm's management committee in November 2005, they were less than enthusiastic. But Beese persevered. The 350-lawyer firm has 13 offices in seven states. It doesn't claim to be an international firm, or even national, but strives to be considered the "go-to" firm of the Rocky Mountain West.

During his six years with Holland & Hart, Beese has impressed the firm's decision-makers with his marketing strategies. "Mark is quite creative and has shown us in the past that taking different approaches can be successful," says managing partner Wolfe. "So we tend to give him a measure of latitude that we may not have given in other situations."

One of the firm's major clients, Frontier Airlines, is a primary carrier in the Rocky Mountain area. Like many travelers, Beese often finds himself in a Frontier seat headed for meetings in nearby cities, staring at the small television screen in front of him. The demographics are excellent. The airline flies 10 million passengers annually. An estimated 40% of those are business travelers. Ninety percent of passengers watch the in-flight network rather than pay extra for alternate programming, according to Frontier. Beese thought it was a regional advertiser's dream: a captive, affluent audience with little business programming to watch. Holland & Hart had already designed a print ad campaign based around some of its more innovative clients. It wasn't a big leap to bring those same clients to the small screen in front of Frontier's passengers.

"What tipped the scale in favor of the project was the focus on clients," says Beese. "That goes back to our key messages — client focus and service." The firm produced several six-minute profiles, bookended by a 30-second Holland & Hart tag line.

These profiles focus on successful CEOs, ranging from a leading sportswear company founder to a physician who developed a lifesaving device to treat for congestive heart failure, the condition that caused his father's death.

The profiles started airing in June 2006, and were each shown for a three-month period, with an identical print ad featured in the in-flight magazine. The firm also features the videos on its Web site. In an online survey of Frontier's frequent fliers, conducted by the airline, more than 40% of 800 respondents remembered the Holland & Hart ads.

The ads also made an impact with Spyder's clients. "I think it positioned both our company and Holland & Hart in a very unique way," says Kathy Carroll, director of marketing for Spyder Active Sports. "And we certainly wouldn't complain about the increased exposure we received."

Frontier recently offered more channel options for passengers, aside from its in-flight programming, so Holland & Hart will soon end the campaign. But the print ads in regional and trade magazines will continue and, in fact, have proven so popular that clients ask to be included.

"When you can get name recognition and also support a client, that's a good return," says Beese.

INVENTIVE PARTNERING

In Boston, bioscience is big business. The city is packed with leading research universities and hospitals. More than 300 biopharmaceutical companies are headquartered in the state, many of them along fabled Route 128. When Boston-based Foley Hoag, with over 240 lawyers, considered opening a satellite office in the technology corridor, the nearby city of Waltham off Route 128 looked like an ideal site.

The result is the Emerging Enterprise Center (EEC), which opened in September 2006. Located on the edge of a wooded parcel overlooking the waters of the 580-acre Hobbs Brooks Reservoir in Waltham, the gleaming glass walls of the center enclose over 11,000 square feet of office and conference space. "From a marketing per-

spective, there's obviously some publicity branding going on," says Foley Hoag Chief Marketing Officer Mark Young. "But we also felt it was a logical next step for the firm in our role as a business leader in Boston." Today, the rooms in the center are frequently brimming with members of Foley Hoag's many collaborative partners: trade associations, such as the Massachusetts Biotechnology Council, The Technology Leadership Council and The Interactive Technology Exchange, as well as venture capitalists and financiers. The center is regularly booked, with nearly 40 events held in the first quarter of 2007.

Planning the center took several years, at a cost that the firm declined to disclose. When Young joined the firm in 2006, he worked to finalize structural and marketing details. "Everything we do as a law firm can't be the introspective 'this is who we are,'" he says. "The shift is to let clients know we understand their business imperatives and industry realities. We felt this center was one way to convey that."

THE CUSTOMER QUOTIENT

When flat revenues led the nearly 400-lawyer Thompson Hine, based in Cleveland, to revise its strategic plan in 2003, the firm chose to focus on client satisfaction in hopes of boosting billings. One essential component of that strategy was suggested by director of business development Alvidas Jasin: client service teams.

"Assuring client satisfaction has different meanings for firms," says Jasin. "For some, the responsibility lies at the partner level; others have the individual attorney manage the client relationship. But since many levels of [our] firm interact with the client organization, from secretaries to partners, everyone needs to play a role in assuring the client's satisfaction."

To get the process started, Thompson Hine hired a consulting firm to conduct detailed client satisfaction surveys. The results were positive overall. "There were only a few relationships that weren't as solid as we thought," Jasin says.

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And Jaffe ensures her team always has that “big picture” in mind. The Department’s mission statement is openly posted throughout the Marketing Department, and a chart shows how the Marketing Department’s mission ultimately supports the Firm’s mission and values. Another flow chart lays out all potential marketing activities and ties them back to the firm’s mission statement and overall objectives.

When it comes to making Jenner & Block attractive to prospects, Jaffe, Coffey and Van Duch agree that marketing is most effective and its benefits maximized, when it integrates a number of activities and functional areas of the Firm. Jenner & Block’s Marketing Department serves the entire Firm including Practice Groups, Legal Recruiting, Pro Bono and Diversity, Human Resources and Professional Development Departments.

“You cannot effectively market a professional services firm in a vacuum,” says Jaffe, “Marketing must be integrated into the fabric of the firm.”

Van Duch adds, “Each individual marketing activity or technique we employ is an important component of our overall strategy because they complement, reinforce and build upon one another.”

“We constantly monitor the correlation between advertising and media placements and visits to our Web site and the bios of our attorneys,” Coffey says. “So while we know that a certain initiative may generate more traffic than another, we also know that for the long-term, there needs to be a balance among all activities.”

This by no means implies that Jenner & Block just does a little bit of everything and hopes that it works out, Jaffe says. “Again, every activity in which we engage must fit with the firm’s overall objectives. If it doesn’t, then we won’t do it.”

PUBLIC RELATIONS: THE GATEWAY TO BUSINESS DEVELOPMENT

While Jenner & Block does use a wide range of marketing activities, Jaffe says that her department focus-

es substantial resources on initiatives that provide relevant, high quality third party credentialing, such as media placements, speaking engagements, surveys, rankings and awards.

“The function of PR is to position the firm so that when attorneys make new business presentations to potential clients, the prospect walks into the meeting already having a positive image of [us],” Van Duch says. “The key to building lasting relationships with the media is to be knowledgeable of what reporters and editors need and provide lawyers who are ready, willing and able to satisfy that need,” he continues.

Jaffe adds, “By always knowing what the media is looking for, we create a win-win situation. Our attorneys win because they are quoted by a reputable media outlet on a topic that relates to their practice, and the reporters win because they get the quotes that they need to round out their stories.”

Van Duch also notes that when it comes to media placements, “the Internet has completely transformed legal PR to the point where information is now so easy to find via key word searches, that a placement in a wider variety of credible media outlets, whether print or online, will do wonders. Given the almost indefinite archive the Web represents, the stories and placements also have much longer lives than ever before.”

Jenner & Block’s public relations efforts also focus heavily on generating bylined article opportunities for its attorneys in leading business and trade publications, something that Jaffe says, plays to their strengths.

“Jenner & Block partners are informed and knowledgeable in a wide array of legal topics, so one of the most effective ways for the firm to credentialize itself is through bylined articles and cutting edge alerts.” Jaffe says, “By helping partners share this knowledge with legal and business audiences, we create potential new business opportunities, while simultaneously promoting the Jenner & Block brand.”

Much of the firm’s good news relating to its attorneys’ courtroom victories, successfully closed deals and public service are summarized

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http://www.jdsupra.com/post/documentViewer.aspx?fid=2751afcc-6b3c-40ad-962a-33f50b99
on its content-rich news site, www.jenner.com, making it a destination not only for those looking for information about the firm, but for legal news in general.

“Our goal in creating the Web site was for it to be an informational hub,” Coffey says. “We wanted to take the content being generated by our partners and create an easy-to-use tool that could benefit clients, potential recruits, the media and the Bar.” A great example of this are the Resource Centers found on the Jenner.com homepage, which give users access to in-depth legal information in areas as wide ranging as amicus briefs filed in the Guantanamo Bay cases before the U.S. Supreme Court, to up-to-the-minute information on climate change law and legislation. We closely monitor traffic to our site and know that Jenner.com generates exceptional traffic because people know it as a site where they can find the legal information they need.”

ALLIANCES AND ADVERTISING: ANOTHER CORNERSTONE

Jenner & Block’s approach to advertising is not what one might expect from a 470-lawyer firm. The firm does not undertake any large-scale advertising campaigns, as many firms its size do.

“We use advertising to further publicize our good news and as a vehicle to promote and reinforce our brand,” Jaffe says. “Because we already have an established brand, large-scale image campaigns provide limited benefit.”

Jenner & Block instead prefers to spend its advertising dollars more strategically, forming alliances with trade organizations and sponsoring industry events like *InsideCounsel* magazine’s SuperConference, for which the Firm has been the exclusive presenting sponsor for the last six years. Jaffe notes that many of these sponsorships also include advertising, with the added benefit of knowing that the Firm is reaching a highly targeted audience.

“We find that these types of advertising opportunities provide great value,” she says.

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PROMOTING THE BRAND: MEASURING THE IMPACT

Jenner & Block's Marketing Department is steadfastly dedicated to managing and maintaining the brand of the Firm. As evidenced by the Firm's content-rich Web site and

targeted approach to advertising, Jenner & Block has focused its marketing investment. Additionally, the Department measures the results of its activities and uses a set of defined metrics to report monthly impact.

"The rapidity of change in legal marketing is unprecedented in any other industry and if you don't adapt to change, you will fall behind the

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curve." Jaffe says, "At the same time, everything that we do must be tied to the firm's overall strategy, with an eye toward how it will satisfy our overall Firm objectives."

This type of thinking has helped Jaffe and her team to take an 87-year-old brand and, over the last eight years, make it stronger than ever.



Corner Office

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futures. But it was seldom made clear just how far into their futures.

WHAT IS A TWO-TIER PARTNERSHIP?

Simply, it's a partnership composed of two classes of partners. The equity partners have an equity interest in the firm and its assets, they contribute capital, are responsible for its liabilities, share in its profits and are responsible for its losses.

Nonequity partners are classified and held out to the public as partners. But they have no interest in the firm's assets, put in no capital, are not responsible for its liabilities, and do not share in its losses. Their compensation is fixed annually, they can earn bonuses, and when profits are particularly good, some firms permit them to share in excess profits.

According to the 2006 *The American Lawyer's* AmLaw 100 survey, 80 of the 100 firms were two-tier partnerships.

CONVERGING FORCES

Many forces converged to give rise to the use of the two-tier partnership.

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Client demands forced firms to increase their capacity to deliver services. At the same time, increased competition among firms, together with clients becoming smarter buyers, forced firms to focus on improving their efficiency and productivity. Since associates became most productive between their fifth and seventh years, it no longer made sense to have them leave the firm in their seventh year, just because they were not clear candidates for partnership — not to mention that the firm was earning significant profits on their efforts.

Firms began to find it increasingly difficult to determine in so short a time-frame whether a candidate had all the qualities to function as an equity partner in what had become a much more challenging and competitive legal marketplace. So firms stretched the normal partnership track from seven years to nine, ten and more.

Firms also started to reexamine the role and functions of an equity partner, and came to realize that some of their existing equity partners, examined in the more critical light of a more competitive marketplace, did not have the entrepreneurial qualities that had been taken for granted at the time they were admitted. They were good lawyers, but had not developed the entrepreneurial skills required of the owners of today's professional services firms.

At the same time, new associates coming out of law school began to exude an attitude that becoming a partner may not be all it was cracked-up-to-be. Based upon their own observation of the intensive pressure on partners, and extensive hours they saw them working, they began to doubt their willingness to put in the effort to be a partner. Yet

they wished to practice law at a high level — but at a pace that provided a different lifestyle.

In addition, as firms struggled to increase their core skills and expand their practices to become full-service firms in an effort to meet what they perceived to be client needs, they also became enamored with the idea of expanding into regional and international firms. To accomplish this, many sought lateral acquisitions of senior associates from other firms, as well as lateral partners and groups from other firms.

FLEXIBILITY OF THE NEW PARADIGM

The nonequity partner category of the two-tier partnership provided a new position that could accommodate all of these situations, and more. In this capacity, associates could spend the time to develop marketing and entrepreneurship skills. Good lawyers who would never become equity partners could settle in to a new career path. Existing non-entrepreneurial partners could become a resource and be relieved of the pressure to bring in new business. Lifestyle associates could fill the need for additional resources. Senior associates brought in laterally could be evaluated to see if they had the qualities for equity partner. Lateral partners and groups could be observed from within the firm to determine whether they could mesh into the firm's culture. And it could also be used to accommodate senior partners who wanted to continue working beyond retirement. So, many firms rethought the old partnership paradigm, and concluded that the two-tier partnership was the new paradigm for today's world.

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CLIENT SPEAK

Client Co-Marketing

By Allan Colman

Client co-marketing builds relationships and sends an unmistakable message. Imagine you're Senior Intellectual Property Counsel of a Fortune 100 company. Every law firm within two continents of your main office has begun posting commentary, sending communiqués, and publishing articles about the latest milestone ruling — as of this writing, that would be *KSR v. Teleflex*. There's an article in a national journal by someone at the Smith firm. Someone at the Jones firm has a piece in the local legal newspaper. Another publication, however, has an article co-written by the general counsel of a major manufacturer and a partner at the Thomas firm about the possible effects of *KSR* on business and legal management.

There's a very good chance that the general counsel's article will be the first that you as an in-house lawyer will read. There's an equally good chance that you'll assume the Thomas firm represents that company. And, there's an awfully good chance that you'll also assume the GC thinks the world of the Thomas firm to let his good name run on the same byline.

Seem obvious? Then why don't we see more such co-written articles? Are clients resistant? One shouldn't think so inasmuch as it's simply good marketing for them as well. And, if you offer to do the first draft of the article, the added advantage for the client is that it's good marketing with relatively little effort.

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Here's another example that approximates a recent situation I observed. A law firm partner was being profiled in a legal trade publication. Among her major achievements is a stellar litigation record on behalf of the XYZ Company. During and after the interview, the partner (and her PR firm) urged the reporter to call the AGC at XYZ, not just for a quotable endorsement, but to learn more about the astonishing things the client has done in-house to deter lawsuits and reduce in-house costs. When the article was finally published, it was as much about the client as the law firm, and both profited equally.

GREATNESS BY ASSOCIATION

To be sure, marketing the law firm is not an "us or them" proposition. You can recruit inside counsel and even CEOs as parties to your own marketing and business development efforts. They will typically appreciate the request because they want to be marketed too.

Perhaps the in-house lawyer is looking for another job and a little notoriety won't hurt. Or perhaps more public prominence is politically beneficial in terms of his or her internal career track. Maybe the client wants to highlight the fact that, as in our example above, his is the last company in its industry that a smart plaintiff's lawyer should want to target.

Periodically, certain in-house legal managers emerge as spokespersons for the in-house sector. In the past, such spokespersons (my own memory stretches back as far as Robert Banks at Xerox in the 1980s) give speeches, write articles, and spearhead programmatic efforts to enunciate what they as inside counsel expect from outside counsel, and how, in general, in-house services ought to evolve.

Right now there seems to be available space for another such in-house market leader to emerge. Could that leader be one of your clients? Imagine the marketing benefits that would accrue to your firm if you

helped him or her fill that space, especially if your "partnership" were widely known via joint conference appearances, for example, or a few of those aforesaid co-bylined articles.

The relationship benefits are obvious. Even more important in some ways, by being an identifiable part of the client's efforts to define and implement new professional standards, you become *a part of the solution* to whatever problem is under discussion. You're now part of a collective campaign — a close-knit community of buyers and sellers — to improve law firm billing practices or discourage frivolous law suits or enhance diversity in the legal profession or in the client's own industry. The relationship that ensues with the client is very nice. The message you're sending to untold numbers of other legal service buyers and decision-makers is very, *very* nice.

A WEALTH OF OPPORTUNITIES

Remember all the favors that clients have asked of you: "Take a table" ... Donate a silent auction item ... Sponsor a hole in a charity golf tournament ... Offer a summer associate position to the CFO's daughter at Cornell Law ... Donate to the GC's law school alumni fund drive.

These requests all more or less help clients' own marketing with little direct benefit to you, but they're not shy about asking. So don't you be shy with them — especially with requests that, as we've seen, benefit them at least as much as you.

We've mentioned professional events and publishing as two obviously salient examples of how to co-market. But there are other venues that will likewise enhance your relationship as well as send a valuable message about both the company and you to the broader market. Two in particular deserve mention.

Community Service Projects

First, community service projects offer a number of opportunities, particularly welcome to clients if their companies happen to sell stuff to

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Client Speak

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that community. Some community service projects provide a bigger, more national bang for the PR buck: Habitat for Humanity comes to mind. If there are pro bono award events, invite the client to sit at your table.

Diversity

Second, diversity initiatives are near and dear to many legal service buyers. Explore ways for you and your client to jointly contribute to or support non-profit organizations fostering diversity (the Minority Corporate Counsel Association, for instance). Don't be deterred if your firm's own diversity numbers are disappointing. There's nothing wrong with acknowledging that one reason

for your increased involvement is to improve the firm's diversity recruitment efforts.

The examples above remind us that conjoint marketing with clients is — like all marketing — ultimately based on the delivery of value. As we like to emphasize, the person to whom you are marketing should be better off as a result of your doing so, regardless of whether or not they invest in your services as an immediate result. By co-marketing with clients, this “value proposition” operates in a uniquely multifaceted way.

VALUE

“Value” is delivered to the marketplace via the content of a speech or article — here's an issue bedeviling our industry, and here's how a corporate expert and outside counsel size it up.

“Value” is simply the usefulness to the community and the profession as a result of specific actions, such as pro bono efforts and diversity initiatives.

“Value” is delivered to your clients because they have serious marketing agendas of their own. By joining with you in efforts to be helpful to the profession, to their own industry, and to the community at large, they directly advance those agendas.

For the law firm, the leverage is powerful: You build tangible credibility in front of unseen corporate decision-makers even as you take a single important client relationship to a wholly new and collaborative level. It's a no-brainer. Call a client today and brainstorm projects.



Wise to Marketing

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Before the reorganization, business development for Thompson Hine was primarily handled by the marketing director and managing partner of each office. Restructuring centralized the business development effort under Jasin's direction. As a result, the firm now places an equal focus on new business and client retention. One associate director focuses on sales; the other on the client service initiatives. The firm also implemented the client service team concept. Each team shares the same formal structure:

Teams are led by a single team leader and composed of attorneys and staff instrumental in serving the client in question. Teams choose to meet monthly or quarterly. All client service team leaders attend a quarterly videoconference to share problems, methods and solutions.

A library resource person is assigned to keep the team abreast of new developments involving the client or its business. A manager from the business development department works with each team on strategies. Managers specialize in one or more practice groups, giving them better familiarity with those industries. An executive committee liaison acts as a conduit between each team leader and the firm's management.

Each year, teams present formal plans to the executive committee outlining their strategy for managing each client relationship.

The firm now has 50 client service teams, and the process appears to be working well. In a 2006 survey conducted by BTI Consulting, clients served by Thompson teams showed nearly twice the level of satisfaction as Thompson clients not served by client teams. In addition, fees billed by Thompson client teams grew significantly faster — at 5% — than fees billed for non-team-serviced clients, which came in at 20%. This helped boost overall revenue for the 2003-2006 period to a respectable 32.3%.

“It's one of our strongest programs, and the clients respond well. It really makes an impact on getting to know our clients' businesses better and understanding their goals, and helps us figure out how to meet those,” Jasin says.

Thompson Hine attorneys can now use the concept with any client. The focus is not only on current client matters, but also on identifying new sources of revenue within the client's organization. For example, Thompson Hine lawyers doing routine corporate work for Cleveland-based American Greetings Corp. spotted an import/export issue they felt needed addressing and suggested that company representatives speak with someone in

Thompson's Washington, DC, office with that expertise.

“They were right on, because those issues were on the horizon for us, but we were able to address them ahead of time,” says Cathy Kilbane, senior vice president, general counsel, and secretary for American Greetings Corp. “They are providing more creative options for problem solving. They get the big picture.”

CONCLUSION

As corporate America discovered years ago, the good news about marketing is that it can make a huge, positive difference in revenue growth. The bad news is that once you start, you must never stop. “An occasional top-notch design or innovative campaign is good, but not all there is,” says Silvia Coulter. “Firms need to be continually supportive of the marketing process and proposed initiatives in order for them to be truly successful. That's the point that you can truly start to see a difference.” At some law firms, at least, one can already see that difference.



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Building the Ideal Business Development Plan

One Size Does Not Fit All

By Evan Polin and Chuck Polin

Many attorneys ask us, "What is the ideal prospecting plan for attorneys? Can't my associates and younger partners just follow our top rainmakers for a few days and then just do what they do?" These are two of the initial questions that we hear when we begin working with law firms. Many attorneys assume that there is an easy magic formula for developing new clients, and if they can just get their hands on this secret formula their business development problems will be solved forever. Unfortunately, our experience tells us that a "one-size-fits-all" magic formula for success does not exist.

There are many reasons why there is not one magical sales and marketing plan that works for everyone. The first area to explore when building your business plan is, as a firm, what types of clients do you want to target. For example, a boutique law firm with a very specific specialty will need to be more targeted in its approach to business development. These firms may need to decide on what types of clients they want to target, and how to get in front of the decision-makers in those companies. They may write white papers to demonstrate expertise in their particular area of the law, attend industry-specific conferences and seminars, or provide talks and programs to develop their clientele. If a firm is widely

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known in a specific area, it may be successful asking for and receiving referrals.

A law firm with a number of different practice groups can target a variety of business development opportunities. In most cases, these firms may begin with business development activities within their own firm. We call this practice cross-marketing. Often, law firms don't take advantage of cross-marketing opportunities. Many times there are opportunities for attorneys to introduce their clients to other practice areas within the firm, which gives the firm the opportunity to do more business with the same client.

MINI PEER GROUPS

One of the suggestions that we make to law firms with multiple practice areas is to set up mini peer groups, or mini networking groups, within the firm. This allows attorneys to learn more about the different practice groups in the firm, and to become more comfortable with each other, so that they are more likely to refer business to one another. Attorneys who practice in law firms with multiple practice areas do not need to be as targeted as attorneys working in a boutique firm. Attorneys from larger firms, if they have a good grasp of its different practice areas, can go to broader, more general events, and sell the entire firm. Most firms give credit to attorneys who bring in work, even if the one who brings in the work is not the one who actually works on the file.

Experience and time in the industry is another factor to consider when building a business development plan. A less experienced attorney cannot just watch a rainmaker and mimic what he or she does, because the less experienced attorney does not have access to the same resources that experienced attorneys do. Most established rainmakers develop business by acquiring more work from current clients, asking for referrals from current clients and contacts, and from networking rela-

tionships that they have developed over the years. Attorneys who are new to business development do not have these resources, thereby, making it impossible to follow an established rainmaker and copy that rainmaker's business development activities. Less experienced attorneys must spend time cultivating contacts with friends from their personal life and from law school. They need to spend some time networking, so that they can meet and cultivate new contacts. Less experienced attorneys may also need to focus on work that is outside of a particular specialty, so that they can gain experience and exposure.

STRENGTHS AND WEAKNESSES

When we begin working with an attorney, a major factor that goes into building his or her business development plan is to evaluate his or her strengths and weaknesses. Our experience tells us that not every attorney, even attorneys within the same firm, have the same strengths and weaknesses. We administer an assessment to each attorney, before we begin working with him or her, to determine their strengths, so we can tailor their business development plan to take advantage of those strengths. We have found that attorneys who, on paper, look the same (*i.e.*, same law firm, same amount of experience, same practice area) may have very different strengths and weaknesses and may need to develop very different business development strategies.

We find that some attorneys are very outgoing and are comfortable meeting new people. These extroverted attorneys may be comfortable attending conferences and seminars since they enjoy meeting new people. Sometimes extroverts thrive when they are in front of a group of people, and they may be well-suited to deliver talks and seminars. An attorney who is extroverted may want to build networking events, seminars, talks, and trade shows into his or her prospecting plan.

There are some attorneys who are very detail oriented and very sensitive to their clients' needs. They

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Building Skills

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avoid conflict at all costs and present outstanding work to their clients. Many of the attorneys who assess this way would be very uncomfortable attending networking events and meeting new people. They are often introverted and would rather bill 100 extra hours than go to a networking event or give a seminar. These attorneys do, however, typically have excellent relationships with their clients. Because of their attention to detail and their conflict avoidance, their clients are very comfort-

able working with them and are usually very happy with the work they do. For these reasons, asking for referrals and getting personal introductions is a very effective method for these attorneys to use to develop new business. These detail-oriented attorneys are also typically trusted by other attorneys within their firm and often get many internal referrals from their co-workers. These attorneys may develop business through writing articles and white papers that they distribute to their clients.

CONCLUSION

There are many factors to take into consideration when building your

business, development plan, and two plans look the same. It is important to look at what type of business you would like to develop, who you are targeting, your level of experience, and your personal style. Each individual attorney must develop and track his own plan. There is not a simple answer to the question, "how do I develop business?" However, there is a tried and proven process that can be used and skills that can be developed over time. If you don't currently have these vital skills, find someone who can help you develop them.



Corner Office

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THE RELEVANCE OF PROFITABILITY

Like it or not, today, profitability is the yardstick by which law firms are measured. While the internal operations and finances of law partnerships were once well-kept secrets, Steven Brill, when he ran *The American Lawyer*, poked his head under the tent and managed to lift the veil of secrecy. He created a transparency in reporting the operations of law firms, which today has made profitability a key factor in the perception of a law firm's success.

Just as free agency has inexorably changed professional baseball — where players once spent the better part of their careers with one team — today, players with no team-allegiance move from team to team in pursuit of the best compensation package. So too, equity partners in law firms have become subject to equivalent pressures. The arrival of merit-based compensation has made maintaining high profitability a major responsibility of managing partners. They must ensure that partners feel that their earnings are comparable to those of their peers at peer firms.

Because many equity partners would have little difficulty boosting their compensation by moving to another firm, managing partners must focus on retaining their talented partners. This requires that they:

- Keep profits high enough so that partners do not feel they are making a financial sacrifice to spend their careers with the firm;
- Position the firm for steady growth and keep it in a leadership position,
- Provide the resources for partners to fulfill their professional potential; and
- Maintain an atmosphere of collegiality that makes staying with the firm more attractive than seeking more money in an environment that may not be as nurturing and cordial.

Maintaining profitability is also necessary to make the firm attractive to laterals, and to project success for recruiting purposes on campus.

MANAGING THE DENOMINATOR

Usually, any increase in profits attributable to a new partner's efforts may not materialize for some time. So, admitting a new equity partner will decrease the profits shared by the others. Obviously, the easiest way to keep the profit pool up is by managing the denominator, or limiting the number of equity partners. That's where making nonequity partners makes good economic sense. In effect, it costs little to make an associate a nonequity partner.

SOME HAVE ABUSED

THE CONCEPT

Unfortunately, some firms have created two-tier partnerships solely to retain associates longer, without developing a sound long-term strategy that responds positively to the needs of

both classes of partners, and associates too. All too often, it has functioned as a crutch for managements that were not able to make the hard decisions on admitting equity partners. It provided a convenient excuse for deferring action, instead of biting the bullet and being honest with associates about their prospects for partnership. Some firms have also used it to de-equitize underperforming partners and partners who never developed into entrepreneurs. Using nonequity partner status as a repository for underperformers and management's inability to deal effectively with difficult situations demeans the viability of the concept.

MAKING IT WORK

The two-tier partnership can be a very positive strategy and effective structure that can facilitate a firm's ability to grow and expand. But to be implemented effectively, the firm, and all its equity partners, must subscribe to the following principles:

- Firm profits must be maintained at a high-enough level to dissuade equity partners from leaving and to attract needed laterals;
- Adequate depth of core skills must be maintained in all practice areas;
- Not all good lawyers can, or want to, be equity partners; and
- Nonequity partnership is an alternate long-term career path

Successfully implementing a two-tier partnership should start with clearly defining and distinguishing the roles and characteristics of the two classes of partners, and the criteria for

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admission to each. And these should be communicated to all equity partners, current and potential nonequity partners, and senior associates.

EVALUATING PARTNERSHIP

CANDIDATES

While six or seven years may well be enough time to determine whether an associate has the technical skills to be a partner, associates usually spend all their time working on client matters and precious little time developing marketing and entrepreneurial skills. Promotion to nonequity partner status enhances their stature and should provide them with the opportunity and time to develop these skills.

Within three years, the firm should decide whether the candidate has developed the skills to be admitted as an equity partner. If not, then the firm is faced with a different, and perhaps more difficult decision. Because if the firm decides to continue the nonequity partner status, the candidate should be forthrightly encouraged to make a career choice to either leave the firm, or stay on permanently as a nonequity partner. Unless the firm is committed to nonequity status being a long-term

career path, the candidate would be ill-served by being encouraged to stay. Keeping people in the firm too long ultimately prices them out of the market and increases the difficulty of them making a lateral move to another firm in the future.

DOWNSIDE RISKS

The creation of the nonequity partner category can have downside risks. It can shield associates from direct contact with and access to equity partners. It can de-motivate associates, if all the good work is directed to nonequity partners who act as a buffer between them and the equity partners. It can be abused by equity partners who use nonequity partners as senior associates to get their client work done with less personal effort and supervision. Partners can also distance themselves from and become complacent about mentoring young associates.

It is important to recognize too, that unless nonequity partners continue to grow and develop as lawyers, a firm can build an inventory of mediocre performers. This is why it is imperative that performance criteria be established and communicated. Guidelines should also be adopted that would provide an exit strategy for nonequity partners who become underperformers.

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UNDER THE SIDLEY MICROSCOPE

There is yet another risk that a firm runs in creating nonequity partners. With no equity interest in the partnership could they really be considered partners for age discrimination purposes? In the Sidley Austin case, the EEOC is challenging the status of partners who had been equity partners, on the basis of their having lacked involvement in the management of the firm. How might partners be viewed who have no equity interest in the firm at all? If they were deemed to be employees subject to the Federal age discrimination rules, they could be entitled to lifetime careers. Now that's a sobering thought.

DEALING WITH THE EMOTIONAL ASPECTS

Converting to a two-tier partnership, or redefining an existing one, can be a traumatic experience. It requires reconciling the views of all the partners, which in some cases are driven more by emotion than logic. That's where bringing in an outsider who understands lawyers and law firms, who can present an objective viewpoint in addressing the needs of both the partners and the firm, can be invaluable in facilitating the process.



Three Skills

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MOST COMMON BUSINESS DEVELOPMENT PROBLEMS

The three most common reasons people call me are:

- "Our firm just lost a major client."
- "All of our senior rainmakers are in their 70s."
- "None of the junior partners has ever originated a file."

They've discovered late in the game that they should have been working on business development all along during the fat years and when there was plenty of work to go around. Now that the lean years are upon them or threatening them, they call and say, "What should we do? Should we buy some ads? Do you think we should do some marketing?"

My response is, "No. I would recommend instead that you need business development training. You need to have someone come into your firm and spend a day with the attorneys away from the office, away from the telephones and interruptions, and basically spell out what are the different business development techniques."

The good news is that business development is a learnable set of skills. I started out as one of the most introverted, shy, tubby little boys that you could ever possibly imagine. Today, I've gotten to the point where I just love going out on a sales call. When I was a kid if you told me that I would turn out this way, I would have been astounded. The point is that business development can be learned, although it needs to be taught. Anybody who is smart

enough to get through the bar exam and survive in a law firm has all the mental ability that is required to learn a learnable set of skills.

The key to this is to hold a training session. In this session, you spell out the techniques, so that not only do the attorneys know what to do, because I find that in most law firms business development gets hung up on tactics, they want to know: "What do I say? How do I make them like me? What do I do when I'm at a trade association meeting?" If you can explain all those steps, then all of a sudden business development becomes a lot easier.

PERSONAL BUSINESS DEVELOPMENT PLAN

Part two is the attorneys need to sit down and write down a personal

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business development plan. It needs to be written down, just as you would write down an entry in your calendar, or it won't get done. If you don't write something down, you're just not going to do it. It's not real until you write it down. Focus on things in the following order.

Focus first on your current clients. That's the low-hanging fruit. These are people who like you and trust you and are sending you checks. And you just need to see if you can serve them and help them in additional ways.

Focus on referral sources. These are people who are just as good as clients; they love you, they trust you, they send you business. The only thing missing is they don't send you a check, but otherwise they are just as good as a client.

Find an organization to get active in. The point is to join an organization of clients. Not just to be a mere member of the organization. You don't want to be a face in the crowd. You want to be on the board of directors; you want to be the program director; you want to be the newsletter editor; you want to have some position that's visible so that you will become known to everyone in the organization.

No Cold Calls

You need to generate some new business and you need some education on what the techniques are and then it becomes so much less scary. You don't need to make any cold calls; you don't need to put yourself in any uncomfortable situations. I hate cold calls. My first job was sell-

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ing encyclopedias and it was all cold calls. I just loathed the job and I remember swearing to myself, "I'm going to find a way to make a living that does not involve cold calls." The wonderful thing about business development is, as everyone mentioned earlier, it's all about building relationships. Start with the people that you already know. You probably have a huge network and you'll never have to make the cold call.

You just need to see the menu of techniques you can choose from, so you can pick the ones you like. But then you've got to write them down your plans and there's got to be a date attached to each activity. Then when you actually start, it's like the Nike slogan: "Just do it." And then when you do it, amazingly enough new business comes in.

ASKING QUESTIONS, NOT SELF PROMOTION

One lawyer asked me, "I realize that the reason I haven't gotten enough clients is that I am afraid of promoting myself. There is a conflict going on inside of me. Promoting 'me' feels like I'm not being authentic and true to the profession and myself. I am trying to portray an extremely valuable service and yet my feelings tell me I am not valuing myself highly and to believe my own words when trying to get clients. How do you deal with fear of self promotion?"

Let me make clear that *good business development is not self promotion*. In fact, what you should not do is go out and hype yourself or brag or really push yourself on people or take advantage of people. That's not how you generate new business. Think of the last time you went to buy a new car and one of the sales people came over and started selling you and pushing something on you and asking you how big a monthly payment you could afford. That was totally repellent. I would encourage you not to promote yourself. That's going to drive people away. You're right, it doesn't serve the profession.

Rather, the attitude that I can recommend you adopt is: You want to get to know people, get to know your clients and potential clients, and ask them what is going on in their business. You want to start a business conversation. You want to find out, "Where are they making their money? What do they like about their business? Do they have any new products coming out?"

Get executives to talk about their business and then along the way what you want to probe for is what we in sales call "pain." You want to probe for business issues that they're facing — problems that they need to overcome, editors who are nipping at their heels. The old saying is "what keeps them up at night." You're not pushing anything. You're asking questions. You want to draw out of them what their business pain is. Find out what their business problems are and then all you need to do is listen for an opportunity to say, "I can help you with that." And that's how you open a file.

CONCLUSION

You really have to remember that legal services are not *sold*. Nobody is every really able to sell legal services. Legal services are *bought*. They are bought by business people and individuals who have some kind of need or problem that they needed to have fixed, and they found a lawyer to do that for them. What you want to do is put yourself in a position where you're constantly inquiring and you're looking for that person who has a need. The only way that you can find out about that need is to ask questions. It may turn out they have no needs. In any event you've accomplished something by developing a relationship or deepening a relationship; and at the very best, you found out that they really have something that's troubling them and you can help them. I think that's the highest calling of this profession.



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