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# Keeping Your Practice Afloat

## Legal Marketing in Turbulent Times

By Sharon D. Nelson and John W. Simek

### Introduction

These are wretched times for lawyers and law firms. We've seen the highs and lows of practicing law, but we've never seen the practice of law as battered as it is now. In the month of January 2009, more than 1,500 legal jobs were lost (lawyers and staff). That number doubled in February. In 12 months, more than 21,000 legal jobs were lost, according to the *ABA Journal*. Virtually every day, the legal press reports on the carnage at another law firm – sometimes multiple law firms. Entire law firms have vanished from the landscape, including the once-mighty Heller Ehrman (650 lawyers) and Thelen Reid (400 lawyers). And yet we still react with shock and awe at watching it happen. Firm implosions have caught, and held, our collective attention.

If you like reading obituaries, you're going to love the Layoff List compiled by Law.com,<sup>1</sup> or the Layoff Tracker.<sup>2</sup> According to the latter, as of July 5, 2009, there have been over 10,837 layoffs (4,055 lawyers/6,782 staff) in 2009 and 12,829 layoffs since the beginning of 2008 (4,985 lawyers, 7,844 staff).

If your law firm is still afloat in these violent seas, congratulations. How do you steer your firm toward calmer waters and fair winds? This dilemma affects not only existing firms, but also new firms and solo practices, formed when lawyers suddenly found themselves refu-

gees from BigLaw. The question for all these lawyers and law firms is: How do we survive?

Smart law firms are looking closely at the financial, marketing and technology aspects of the practice to improve their chances at survival; this article focuses exclusively on legal marketing in a down economy. Abandoning your marketing efforts altogether in order to save money is clearly a recipe for disaster, but even those firms that recognize the importance of continuing to market their services in recessionary times may need to rethink and retool their previous marketing strategies in order to address economic realities.

*Turn off your computer. You're actually going to have to turn off your phone and discover all that is human around us.*  
– Google CEO Eric Schmidt at a 2009 graduation ceremony

Some of the best advice is short and sweet. As is often said, business is war, and never more so than in a bad economy. So prepare yourself for battle. Onward.

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## Utilize Your Real-Life Network

In the days of social networking, real-life networking seems so old school, but the truth is that it still works. Whether you are shaking hands at the PTA, the Lions Club or your local bar association, you are creating a network of contacts who know you. Although the authors are creatures of the ether, they also know the value of meeting people outside of the virtual world and make concerted efforts to do so.

That firm handshake, quick smile and keen interest in someone else is memorable in a way nothing else can be. Make sure that you DO in fact remember to ask questions of anyone you meet. No one is less interesting or memorable than people so self-absorbed that they talk only about themselves. And no one is more charming or memorable than people who express a sincere and active interest in the person with whom they are conversing.

Repeat this mantra: do not sell, do not sell, do not sell. Overly aggressive salespeople are anathema in a social setting, and this includes lawyers. However, conversations do meander and talking about the economy is natural enough anywhere these days. It is easy enough to slip in a comment about how you have changed your practice in light of the economy – and then be sure to ask the people you're speaking with how their business has changed.

Go armed with your business cards and always, always bring along a smile, prepared to make new friends. Friends are not only potential clients but an excellent source of referrals.

*In Network Marketing, the  
NETWORKING always comes  
before the MARKETING.  
– Silke Stahl*

## Get Up to Speed on Social Networking

For those who have wondered whether business does come in through social networks, the answer is that it does – but it takes some effort to get there. LinkedIn, Facebook, Twitter, Plaxo: These are the major vehicles of social networking, though there are many others. The joy of these networking tools is that they take time, not money. The downside is that you must get a return on your investment in exchange for your commitment of time, so don't over-participate if you are not seeing results.

Most experts believe that Facebook has won the war as THE social networking site, so perhaps you want to start there. Facebook has more than 160 million active users – an amazing number, considering that it did not exist five years ago. More than half its users are college graduates and professionals. LinkedIn, which often is

seen as more professional than Facebook, now has more than 840,000 lawyers using the site. If the more social world of Facebook doesn't appeal to you, LinkedIn may be a good alternative.

Wherever you choose to network, make yourself a go-to person. Take the time to engineer your image, cultivate friends in your areas of practice to keep abreast of new developments and make friends in other areas of practice in your geographic area who might refer clients to you. Ask questions to get conversations started. Exchange tips and information – and always give more than you get.

Remember also that social manners matter in cyberspace just as they do in the physical world. Get back to people promptly if they contact you. Try not to be rude or dismissive. If people are helpful to you – perhaps introducing you to someone in their network or agreeing to talk to you for 10 to 15 minutes about the services you provide – make sure to write and thank them.

It is critical to have a polished and comprehensive profile. This is the first thing that people will check out when they connect with you. At the same time, a good profile is not enough if you remain a passive presence on networking sites. Look to join or to start networks or groups, post content that demonstrates your expertise, interact with others (essential) and, most important, once you've started a relationship within Facebook, take it outside of the virtual world and make it real if geography permits. There is a Facebook page just for blogging lawyers: <http://www.facebook.com/group.php?gid=2375454341> will help get you started.

Many lawyers remain unfamiliar with Twitter (<http://twitter.com>). Twitter is a free platform that allows users to post "tweets" (online messages of up to 140 characters) visible to those who choose to follow them. The brevity of the messages has led some observers to refer to Twitter as a micro-blog. If you use Twitter and your reserves of posts grow, you will find that if you post useful content people will find you and follow you. Of course, you can follow others as well, though it is wise to be wary of that time investment too. The site itself is very easy to understand and use, so take a look. This is not the place to indicate what kind of pizza you had at lunch or what clever thing your toddler said. If that is your approach, people will soon stop following you. If, however, you are a California divorce lawyer and you constantly post tweets about developments in family law, current cases, new statutes, etc., in California, pretty soon folks who have an interest in that sort of information will follow you.

If you are thinking of joining Twitter, find a few reputable people you know who are on Twitter and watch how they use it. You will get the hang of it very quickly. The best users are those who share information, posting a brief message such as "Congress passes anti-terrorism bill by slim margin: (insert link)." This allows others to

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scan for the stories that interest them among the postings of people they are following. The best users also ask questions and begin conversations, which sometimes move offline. Can you actually get business this way? Absolutely – requests from reporters for interviews as well. From a marketing perspective, this is all good.

For a beginner's guide, see [http://online.wsj.com/public/article/SB122826572677574415-rXaM5BTzeRQMfvAuP3\\_4gjVJm\\_A\\_20091203.html?mod=rss\\_personal\\_technology](http://online.wsj.com/public/article/SB122826572677574415-rXaM5BTzeRQMfvAuP3_4gjVJm_A_20091203.html?mod=rss_personal_technology). On <http://www.law.com>, look for two excellent articles by noted legal commentator Bob Ambrogi: "Sixteen Reasons to Tweet on Twitter" and "Tools on the Web to Let Twitter Sing." Do not, however, allow yourself to become obsessed with social networking, which can be a huge, counterproductive time drain. It is always important to find a balance between electronic networking and the real thing. Nothing replaces a friendly smile and a warm handshake.

*This here's Miss Bonnie Parker.  
I'm Clyde Barrow. We rob banks.  
– from the movie Bonnie and Clyde*

### **Be Careful What You Do and Say on Social Networking Sites**

Some things just do not need to be said online, where their lifetime is, approximately, forever. Even if you have a restricted Facebook page, you have no control over what your "friends" do with what is posted there. It is, of course, a good idea to restrict access to your social networking sites, but do not think that simply restricting access necessarily solves all problems. Likewise, if you use Twitter, you can be sure your "tweets" will live on. As far as experts can tell, Twitter keeps them indefinitely.

*Hear the meaning within the words.  
– William Shakespeare*

### **Perfect Your Elevator Speech**

A good elevator speech and e-mail are pivotal to making an initial impression. This is often the first step toward securing a client. For those of you who missed Marketing 101, your elevator speech is a 15- to 30-second rendition (the time span for a typical elevator ride, hence the name) of who you are and what you do. Tailored to this economy, it can be a brief but memorable advertisement for your services. Reduce it to e-mail, too – and remember where you saved it! You will find yourself trotting it out again and again.

For example: "Hi, I'm Jill Smith. I practice family law in Oshkosh. My practice has really changed recently in light of the economy. I'm doing a lot collaborative divorce and arbitration these days to help clients save money at a time when they need it most." Maybe, if the conversation continues, this lawyer will get to mention that she is working a lot with clients who have negative equity in their homes, and how she handles those cases. The key is to make the opening short, although in these times, make sure you get the economy in there somehow. "It's the economy stupid" really is the key component for legal marketing these days.

*The voyage of discovery lies not in finding  
new landscapes but in having new eyes.  
– Marcel Proust*

### **Contemplate Alternative Billing (and How to Use It in ALL Your Marketing Efforts)**

"Kill the Billable Hour" was the title of an article published in *Forbes* magazine in January 2009. The author, Evan R. Chesler, a presiding partner at Cravath, Swaine & Moore LLP, a prestigious New York City law firm, states, "Clients have long hated the billable hour, and I understand why. The hours seem to pile up to fill the available space. The clients feel they have no control, that there is no correlation between cost and quality. . . . In truth, most of the lawyers I know don't like the billable hour either." He adds, "The billable hour makes no sense, not even for lawyers. If you are successful and win a case early on, you put yourself out of work. If you get bogged down in a land war in Asia, you make more money. That is frankly nuts."

Yet, no matter how many times its imminent demise is predicted, the billable hour still holds a firm place in the U.S. legal landscape. It may well be that the current economic crisis will finally be the "tipping point" that causes a true re-examination of this pervasive practice.

In an increasingly competitive business environment, businesses are trying to cut costs and limit risks. A proposal for alternative billing on legal work may seem like the proverbial music to the potential client's ears. Perhaps there are elements of your practice that you can flat fee. You might consider task-based billing, using a case plan so that a client can see what costs will be, depending on what happens in the case. You may choose to bill on a contingency basis. If the client changes the scope of work, you could document what the change will cost. Perhaps you offer task-based billing in combination with an additional fee if there is a successful result. Law firms have become very innovative in approaching the subject of billing.

Advertising that your firm offers alternative billing may also yield significant results. Displaying your alternative billing methodologies on your Web site is a great way to let potential clients know what they all want to know: "What will this cost me?"

For more information on this topic, you might want to read *Winning Alternatives to the Billable Hour: Strategies That Work* (3rd edition 2008) by Mark A. Robertson and James A. Calloway, which is available from the American Bar Association Law Practice Management Section, at <http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5110660>.

*Keep your friendships in repair.*  
– Ralph Waldo Emerson

### Take Good Care of Current Clients

Clients are hard to get and expensive to replace. And current clients are among your best sources of referrals.

Have meetings with clients, especially the important ones. Assure them that you will not raise rates. If you have determined to change your billing structure, let them know. Give them useful advice for their business, given the current economic climate. How can you collaborate with them to help them and to save them money? Do they have any suggestions for you? Are they happy with your services? If not, address their concerns. It is critical in a bad economy that you are perceived as providing exceptional client service. Think long and hard about how to create that perception.

This is a very good time for a modest outing, some bonding time and the forging or reinforcement of the relationship between you and your client. This is not the time for swanky parties and retreats. Clients, even if they are invited, are apt to see large social expenses through the prism of the economy – and let's face it, they know that they are ultimately paying. In a small firm or solo practice, a couple of beers and pub grub at a local establishment may be all that is needed to cement a relationship or nurture a friendship. Taking care of current clients may not be what you think of as marketing, but indeed it is. Current clients are the most likely to bring you new matters – and to refer others to you. Find a way to touch them often enough so that you will immediately come to mind should they hear of someone who might need your services.

### Your Web Site Is Probably Your Most Powerful Marketing Vehicle

If you have limited funds to spend on marketing, your Web site is the first place to spend them. These days, more

*Make it simple. Make it memorable.  
Make it inviting to look at.  
Make it fun to read.*  
– Leo Burnett

than 65% of people begin their search for a lawyer on the Internet. Not only should you be there, but you should look good in comparison to your competitors' Web sites. Prospective clients can and will compare, so make sure you keep that in mind as you work on your site.

If you want to improve the value of your marketing efforts, put money and time into your Web site and search engine optimization. As long as you are not squandering your resources by doing foolish things, work on your Web site is going to have more return on investment (ROI) than almost anything you can do. If your site is tired and you have not been updating it, this is a good time for a redesign. Concentrate on deepening and broadening your site, and commit to making this an ongoing project. Content is still king.

Resist the temptation to let your nephew (or cousin or uncle) design your site unless he or she is a professional Web site designer. Make sure your site is engaging, with graphics that "speak" to your potential client and some kind of tag line that brands you. For instance, a criminal lawyer's site might show someone being handcuffed (which certainly speaks to someone looking for a criminal lawyer), with the tag line: "In trouble? We can help."

Search engine optimization (SEO) is a complicated subject. Most Web site designers are not SEO experts. Look at the sites a company has optimized and see how they place on Google. Without any question, design and optimize for Google. What does well on Google will generally do well on the other search engines as well.

If you are not blogging and you have time enough to do it, consider whether you can deliver useful content that may be picked up by reporters (most of whom say they quote a blogger at least once a week). Blogs can solidify your reputation as the "go-to" attorney in an area of practice – and many folks are using Google Alerts or something similar specifically to keep abreast of the area of law in which they practice. One of the best known experts on lawyers and blogging is Kevin O'Keefe. To learn more about lawyers and blogging, visit <http://kevin.lexblog.com>, and explore.

More technical expertise is needed to become a podcaster, but podcasts (which you can post for free on iTunes) are an economical way to get your name out there. If "podcasting" is a foreign term, you might start by checking out a panel discussion among podcasters at <http://www.abanet.org/lpm/lpt/articles/tch09071.shtml>.

*Reach out and touch someone.*  
– AT&T ad

### **Don't Stop Marketing in Bad Times, But Look at HOW You Are Marketing**

As difficult financial times force law firms to focus on their budget, particularly expenses that can be reduced or eliminated, it is often tempting to look at the marketing budget. In fact, some firms take a Sherman-like “slash-and-burn” approach to marketing, which is nearly always a mistake.

Your ongoing marketing efforts, whether robust or modest, are an investment in the future of your law practice. It is dangerous to stop ongoing marketing efforts merely for budget reasons, as they are difficult to restart and the results of these efforts often lag the outreach by a significant amount of time.

However, it certainly may be appropriate to review all your marketing efforts and make strategic changes. When there are fewer dollars to spend, the dollars you do spend need to be smart dollars.

This might be the time to pull your print, radio, TV and any other generalized forms of marketing. If you have not already disposed of your Yellow Pages ad, this may be the time to do so. At the very least, it may be time to make it much smaller. As most searches for lawyers begin online, you need to adjust your marketing budget (which has probably already shrunk) and focus on electronic marketing and targeted marketing.

Send useful information to present and former clients via e-mail or mail. Write an article and post it on your

*Show me the money!*  
– from the movie *Jerry Maguire*

Web site. Speak to community groups. Teach CLEs. Get creative. Try guerrilla marketing to save money. (If you're not familiar with that form of marketing, just look on Amazon.com for books on the subject.)

### **Demonstrate Value**

If there is anything you need to focus on in your marketing, it is the economy and demonstrating value to your clients. Retool any print or online advertising to address the economy. Even putting the words “A value-based law firm” on your Web site can call to the tightened wallets of corporate America. And the phrase “In bad times, you need a good lawyer” gives you the opening to explain why and what a good lawyer can do to save a client money. Brainstorm with your colleagues to find the right avenues of appeal. The way to a client's heart, these days, is directly through his or her wallet.

*It is not the strongest of the species that survives, not the most intelligent that survives. It is the one that is most adaptable to change.*  
– Charles Darwin

### **Keep Sniffing the Air**

Competitors are weak, clients are restless. BigLaw will have to focus on their major clients. Smaller clients may be tempted to leave if they feel less valued. Clients may be amenable to an approach that indicates that they can get high-quality work done at lower costs. Write and introduce yourself. Go to bar meetings and other functions where you can talk to folks. You do not need to do the hard sell. Just socialize – but get their card. Write and remind them that you had recently met, say something personal based on your conversation and then introduce your services and prices.

Never wait for the phone to ring. The people who are in the worst trouble are those paralyzed by fear, and they seem to be legion in number. You cannot watch your revenues fall precipitously and just wring your hands. You need to go into what animal behaviorists call the “flight or fight” mode. If you truly focus on what is going on and explore each and every avenue of action open to you, your brain becomes far more acute, and you are far more likely to home in on the plans of action that may work for your practice.

Thinking innovatively is central to surviving a bad economy. Can you create more value for clients? Is alternative billing a partial solution? Can you, at this time, appeal to different clients? What can you do to set yourself apart from the crowd of other lawyers and law firms?

We now have a bailout package, and the prediction of a Son of Bailout and a Grandson of Bailout. Make sure you read the details – some of the provisions of the bailout may create work – certainly in the banking and financial services industries, as well as the health care industry. Read the papers and watch the news on- and offline; absorb the information; and consider new options afforded by the volatile economy.

### **Final Words**

No marketing is going to work miracles overnight. But if you market for several hours a week, over time you'll certainly see results. The important thing is to start and then to keep your efforts going. In the words of the Marines, innovate, adapt and overcome. Good advice in a bad economy. ■

1. <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202425647706>.
2. <http://lawshucks.com/layoff-tracker>.