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LEGAL MARKETING

Have We Really Come a Long Way Baby Since *Bates*?

BY STACY WEST CLARK

Special to the Legal

Virtual law firms; the U.S. Supreme Court on YouTube; lawyer rankings! Thirty years ago — when *Bates v. Arizona*, the landmark case on attorney advertising was decided — no one could have guessed that we would be where we are today in marketing our practices. Millions of dollars and non-billable hours are being spent by firms across the country on marketing activities. In-house marketing staffs are commonplace, as are the use of outside specialty consultants for Web sites, PR, graphic design and more.

But much more is happening.

On Nov. 8, the American Bar Association will hold its first-ever two-day conference in Washington, D.C., examining all of the changes and innovations that have occurred since *Bates v. Arizona* was decided.

At a recent meeting of the Delaware Valley Law Firm Marketing Group, ABA Law Practice Management Section vice chairman Micah Buchdahl gave an overview of some of the problems and opportunities that exist for law firms today. The following are a few snippets:

- The AmLaw 100 firm's average marketing budget is \$9 million. The AmLaw 200 firm's average marketing budget is \$3 million.
- Law firm mergers abound nationwide and are considered "news" by the media.
- De-equitization is a fact of life for lawyers who are not bringing in business. Lawyers who relied on just being good



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lawyers and not being rainmakers are losing their equity positions in their firms. The moral of the story is you have to have a book of business.

- Corporate clients are downsizing the number of outside firms they are using and asking for volume discounts from their smaller number of "chosen" firms.
- Alternative law firms are cropping up as a response to clients' desire to stay away from law firms they perceive as "fat." Check out Axion Legal, the country's first virtual law firm, which states on its Web site that "they are replacing mahogany with technology." The firm's list of clients is extremely impressive, boasting some of the country's best-known companies.
- Web sites that rank law firms and lawyers now exist. In some cases, we know the criteria for being listed, and in others we do not. Case in point: www.AVVO.com, a site that Buchdahl described as a combination trip adviser/Martindale — that ranks

and rates lawyers in nine states — it says from a variety of sources. Disciplinary "dings" are on a lawyer's profile on the site, and there is no way for a lawyer to have those marks taken down or to change his/her ranking.

- Lawyers are being "honored" by directories and publications, almost to the point that such distinctions have become totally worthless. As Buchdahl explained, because the "honor of being honored" is tantalizing to attorneys, a savvy group of publishers have created scores of top lawyer lists, books, Web sites and more. Some firms have hired dedicated staff persons to insure the firm is ranked highly in all possible directories and "best lawyer" lists.

- "Super Lawyers" is 20 years old and exists in 47 states. As Buchdahl explained, in Pennsylvania 5,000 lawyers have been named "Super Lawyers" — a number he feels is too huge to be relevant. The problem is using this moniker or others like it to solicit work from uneducated consumers. How can Joe Q. Citizen discern whether being AV rated in Martindale is better than being named a Super Lawyer?

- YouTube and lawyers? Yes, you read right. In a recent U.S. Supreme Court decision, *Scott v. Harris*, the court proceedings were actually linked to a video on YouTube. In addition, law firm seminars have found their way onto YouTube, some to the detriment of the firms. Case in point: Cohen and Grisby's immigration law seminar.

- Mediation entities are everywhere, requiring lawyers to compete with non-lawyers for business. An example is

“Divorce Done Right.” Are these mediation firms practicing law? They are certainly competing with matrimonial firms for work, and yet they are not subject to the ethics rules related to marketing. How do lawyers market themselves against these businesses?

- Pit bulls vs. panthers. The Florida Supreme Court told the firm of Pape & Chandler that it could not have a pit bull image on its Web site. Today, a steel-eating monster graphic has replaced the pit bull. The Florida Bar allowed an image of a panther to stay on the Web site of Panter Panter & Sampredo. Buchdahl queried how sophisticated we have come in law firm marketing if we are worrying about pit bulls as opposed to panthers. But these controversies are out there, and they highlight the continuing question lawyers face: What can they and can’t they do to market themselves?

In terms of the ethics rules affecting law firm marketing, states are all going in their own direction. There are no model rules for all 50 states. Florida is extremely vigilant about enforcing its ethics rules. It backs up its “ethics bite” with dollars and staff actively go after offenders. Other states are much more lax. Usually, it is lawyers who alert the disciplinary board in their state to the improper actions of their competition.

Look at the firm of Bracewell & Giuliani. Former New York City mayor and current presidential candidate Rudi Giuliani became a name partner of this firm in 2005. How does the firm use Giuliani to bring in new business? What is the value of bringing in marquee names on the letterhead to generate business? What is the difference of a firm hir-

ing a star like Giuliani and hiring an “actor” to be in its commercials? These are all questions worth considering.

In the last five or six years, Buchdahl explained, one of the best marketing activities law firms are spending dollars on is public relations. Firms are and should be developing a media strategy for handling crises and growing their businesses. From an era of “no comment” to one now of “no problem,” Buchdahl urged firms to allocate more dollars on PR and less on advertising.

A great example of how PR can pay off for a firm is Perkins Coie. Buchdahl recounted how the firm sent one of its lawyers from its small new Chicago office to sit in the audience of a major criminal fraud trial that the firm had nothing to do with at all. The firm then positioned that attorney as an expert on the subject of the case to the media, and he got tons of coverage in newspapers and wire services around the world. Smart marketing — even though the lawyer sat at the trial and didn’t bill anyone for weeks. But the office was now on the map.

Diversity has become a marketing issue! The lack of diversity at some firms can adversely affect their ability to bring in business. Law firms have to show they are diverse to get work from some clients, but the problem is that they are largely not diverse. To solve this dilemma, some law firms are partnering with other firms who meet the necessary diversity numbers. Buchdahl stressed that those involved with diversity and pro bono efforts in their firms must talk to the marketing people in the firm.

Many firms are wasting their time and dol-

lars on unproductive marketing activities. The *Bates* decision was the first to tell lawyers it was OK to advertise their services. The lawyer who argued the case now says that the last place he would tell lawyers to spend their marketing dollars is the yellow pages.

Blogs are here, for now. Known as lawyer Web diaries, they raise a host of ethics, defamation and IP issues. Yes, they get a lawyer’s name onto the Internet — promoting his or her practice area to a huge audience that search engines can more easily find — but they can be huge liabilities if the lawyer takes a position unknowingly adverse to someone else in his or her firm.

An anonymous blogger has even started a Web site called the “Skadden Insider Blogspot” laden with gossip about Skadden Arps Slate Meagher & Flom, its lawyers and even summer associates. How can these be monitored? What affect do they have on the firm’s image and reputation? Buchdahl says the jury is still deliberating on whether they are effective marketing tools, and we will not know for five to 10 years.

It still remains difficult for law firms to blend the virtual world and technology into marketing efforts.

Many more topics will be discussed by the all-lawyer panel in Washington, D.C., next month. Now that you know some of what’s new in law firm marketing, as I like to say, get up, get out and get going. For information on the upcoming ABA program, go to www.law-practice.org/marketingconference. •