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president's message

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The Arms Race of Marketing Legal



In 1972 the United States Supreme court told us all that total prohibitions on attorney advertising were a violation of the Freedom of Speech clause of the First Amendment to the United States Constitution. My personal memories of how that decision changed the profession are somewhat nebulous because I was two years old. In the nearly 40 years since, advertising has changed completely, not just for lawyers but for everyone. This case law from 1972 still prevails through to today, but probably nothing else about advertising in 1972 is relevant to marketing your practice today.

The jargon we use for starting a new law practice is "hanging out a shingle." That phrase evokes the image of a 19th century lawyer opening his (and it would have been a "he") retail law practice on the courthouse square. In the closing years of the twentieth century, when I left the St. Louis County Probate Court to start my own practice. I rented office space just blocks from the courthouse, like the classic courthouse square model. Unfortunately, my first office was on the fifth floor of a high rise and the landlord had rules that prohibited me from nailing up a handcrafted shingle in the hall outside my office. Moreover, no one would have seen it. So instead, one of the first things I did in planning my departure was the modern analog of "hanging out a shingle" - I created and published a web page. This was such a high priority that I began work on the page in the evenings before I left my prior employment at the St. Louis County Probate Court.

The lessons to be learned from legal marketing in 1999 were, believe it or not, only slightly more relevant than those from legal marketing in 1972. In the last 11 years,

things have changed radically. In 1999, however we did already have Google and other search engines. I'm kind of a geek, and I had worked with computers, so I had a basic understanding of how the search engines worked. I designed my web page to have large amounts of substantive information to gain the attention of the search-engine index algorithms. In the years that followed, this practice would come to be called "Search Engine Optimization." Search engine optimization has continued to be the crucial concept of legal marketing on the Internet for the last decade, but I believe that will change shortly.

In 1999, I began to get cold calls from people who had seen my web page. That was good news - I could indeed market my services on the Internet. Unfortunately, many of these were from businesses attempting to "upgrade" my site by formatting it as a sort of prefabricated "tombstone" style web page. I thanked them politely and moved on. Within a few years, these sorts of callers began to try to induce me to purchase a listing on their site, because they claimed to "need lawyers like me to take all the referrals they had for my zip code." When I told them my office was in one of a few downtown St. Louis zip codes, they replied by saying they earnestly believed that by purchasing the rights on their list to both the 63101 and 63102 zip codes, I would be substantively enhancing my practice - notwithstanding the fact that at the time, the residential population of downtown was truly minuscule.

These services were not much more than basic lists. At the time, they knew less about Search Engine Optimization than me, and frankly, I was often getting more hits than they were. Moreover, they had little knowledge of legal marketing, and even less about

the Greater St. Louis market. So, again, I politely said no thank you.

Knowledge of search engine optimization soon spread to the cold-callers, sellers, and spammers who eagerly offered to help me optimize my web page to get higher on the search-results lists. They rarely did an actual search before calling, so they usually did not know that I was already listed highly on web search results - a product of work I had done years ago.

Now, I am once again getting solicitations to be listed on various sites. Recently I attended an American Bar Association (ABA) Annual Meeting in San Francisco. San Francisco is a pricey town and I needed gifts for my eight- and five-year-old sons. I knew that I could get a wide variety of overpriced flashlights, pens, notepads, and carrying cases embossed with "San Francisco" or an image of the Golden Gate Bridge by visiting the trinket stores in Chinatown. But instead, I chose to get them similar trinkets embossed with the names of various exhibitors at the "ABA Expo." As you can imagine, the ABA Expo is a large convention hall given over to vendors seeking to sell their law-related and sometimes not-so-law-related services to conventioners. As I entered, I ran into a Missouri judge who bemoaned the fact that convention logistics were intentionally planned so you had to run the gauntlet of exhibitors to get to the registration desk for the conference. But I was there for the sponsors' trinkets so, to my way of thinking, I was obligated to politely listen to their sales pitches.

I left with a bag full of toys for my boys (I know - it was a cheap move, but the kids just ADORED the swag), but I was also struck by the large number of people selling the same

space on their Internet-based lists of lawyers that I had encountered ten years before. The big difference between these lists and the ones that had cold-called me six or seven years before, though, was that the current crop of web-sales people had not merely constructed web pages that I could have done myself and then hired telemarketers to sell them to attorneys throughout the country. These people had spent thousands of dollars to rent a booth from the ABA, fly their personnel across the country, set up a swanky display booth, and offer free trinkets (which would wind up in the hands of my young children). The marketers of legal marketing had discovered that they, too, needed fancier marketing techniques.

There is another big difference between these web pages and the lists of the ancient past, from the time when lawyers had to carry both a mobile telephone and a separate personal digital assistant. (Remember then?) These modern marketers were not twentysomethings making cold calls from their moms' basements about the great new web sites they had just created. Instead, access to these new web lists were being sold by names I recognized, such as West, Lexis, and other

big national companies. These companies have not read a book on search engine optimization to get the alleged inside dope on how the author believed they might attempt to manipulate the Google-bots and crawlers into listing their page. No, these people had paid thousands of additional dollars to advertise with search engines. Unlike the search engine optimization technical trickery believed to achieve high rankings in the past, these corporations have contracts with the search engine companies specifying their precise level of visibility. It's a whole new ball game, and it has been, of course, for some time now.

I have come to feel the same sort of loss of control of the marketing of legal services that a 19th century lawyer, whose only advertising was a hand painted shingle, might have felt if he suddenly was transported to the age of the Yellow Pages. In today's world of Internet marketing, there are well-financed listing services that have spent substantial capital on web-page development to produce better web pages which will get more hits than I anything I could create on my own. And they have won in another way, too: people are increasingly approaching the

turn, help them search for a lawyer.

As these noteworthy changes in Internet marketing happened, my practice has changed as well. I'm now at law firm with 30 lawyers. Unlike my first several days in private practice, I actually have clients to work for (On the rare occasion that BAMSL activities allow time for legal practice. Ahem.), and I no longer maintain my own web page ~ nor feel that intense pressure to make sure it gets noticed.

It's a different story for today's young lawyer in independent practice. The capitol required to gain the necessary training and ad placement makes my own early approach ~ looking back 11 years to that veritable Pleistocene Era of primitive web development ~ untenable for a new lawyer today. In San Francisco I didn't bite on any of these many sales pitches, but it seems increasingly inevitable that the legal profession will become reliant on non-lawyer contractors to market our practice.

Which brings me back to the image of that 19th century lawyer hanging his hand-painted shingle over his door on the courthouse square. You may have heard that several years later another lawyer came and opened his office just down the way on the same square. This second lawyer had a brother-in-law who was a painter, and he got him to make a professional sign painted not on a shingle, but on a fancier piece of finished wood. After that, no lawyer in that town literally ever hung out a shingle again.

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Internet through "filter pages." Now, potential clients recognize that Google results can be manipulated or bought, so instead of using Google to search for a lawyer, they use Google to search for another web site that will, in

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