

INVENTORY LESS SALES EQUALS SCRAP: LEGAL EDUCATION'S LARGEST LACUNA¹

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On June 10th, 2016, I had the opportunity and privilege of serving as a panelist at the 5th Biennial Conference on Transactional Law and Skills, sponsored and held by the Emory University School of Law in Atlanta, Georgia. My speaking proposal was “On the Need to Add to the Three-Year Law School Curriculum One, Two or Three Credit Hours on Marketing and Sales Skills, Including an Explanation of Why It Is that Such Skills Are Not Currently Taught in American Law Schools, Why Such Absence is a Mistake, and How One Might Teach and Train Future Lawyers Regarding Marketing and Sales, Including a Rough Syllabus.” Because my small audience³ at Emory Law School consisted largely of law school professors who had both an academic focus on transactional skills, and a significant or even a substantial amount of time in actual law practice, I substantially omitted the polemic portion of my topic and focused instead on teaching and training future lawyers on

¹ Trigger warning to lifelong legal academics: this is not a conventional law review article in the following respects. There are instances of political incorrectness; obvious truths are stated with inadequate sourcing and footnotes; there are general references to and descriptions of members of the legal Academy that might be viewed as somewhat uncomplimentary (though accurate); there are exclamation points but no “safe spaces”; and this article is not devoid of humor.

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³ Our group of attendees was small because our time slot competed directly with that of Tina Stark, founder of Emory's Center for Transactional Law and Practice and a gifted writer and speaker. This article was inspired, in part, by Ms. Stark's presentation and resulting article from the previous Emory Transactional Law and Skills Conference. Tina Stark, *What Cornell Veterinary School Taught Me About Legal Education*, 15 *TRANSACTIONS: TENN. J. BUS. L.* 533 (2014). While the author's interest in marketing and sales education in American law schools has been a constant, conversations with Ms. Stark about her article, which compares American legal education with the education provided to future veterinarians at Cornell, as well as conversations with colleagues at the University of Tennessee College of Law, including Professor George T. Kuney, Lindsay Young Distinguished Professor of Law, prompted this practitioner to argue for skills instruction in this area to members of the Academy.

marketing and sales. This article, however, briefly explains why marketing and sales are not now covered in the law school curriculum, *but why they should be*, and then includes my thoughts on how law professors might approach this topic as a part of the legal curriculum.

BACKGROUND AND PERSONAL NOTE

Marketing and selling are not skills that come naturally to me. I had to work to succeed in this area, and that likely explains my interest in the topic, which is utterly absent from legal education. This is my story. I am a nerd. I love to read books, all kinds of books. I attended Catholic schools growing up (law school was the first time in my life that I attended a “public school”), including eight years of Jesuit education in high school and college.⁴ My undergraduate major was religious studies, my minor was philosophy, and the closest I got to a business course was “Introduction to Accounting,” for which I received a “Withdraw Failing” grade. (My father, a Certified Public Accountant, was not amused.) After graduating from the University of Georgia School of Law, I served an almost three-year clerkship as one of the first two clerks for the Honorable Marvin H. Shoob, United States District Judge for the Northern District of Georgia.⁵ My career plan when I moved into private practice with the Atlanta law firm, Powell, Goldstein, Frazer & Murphy,⁶ was to practice in international law for an appropriate period of time (in the 1980s, three or four years) before moving into a career as

⁴ Regis High School, New York, New York, 1970; LeMoyne College, Syracuse, New York, 1974 (BA, Religious Studies).

⁵ Judge Shoob served on the bench of the United States District Court for the Northern District of Georgia from 1979 until his retirement on February 23, 2016. In a previous article for *Transactions*, in connection with describing the circumstances of my birth and family, I wrote that “I won the lottery at birth.” Kevin Conboy, *Tips for the Practitioner Seeking to Return to the Academy*, 14 TRANSACTIONS: TENN. J. BUS. L. 147, 154 n.16 (2013). My second winning lottery ticket was my marriage and family, and my third winning lottery ticket was the opportunity to clerk for Judge Shoob.

⁶ Powell, Goldstein, Frazer & Murphy, founded in 1909, entered into a merger with Bryan Cave, effective as of January 1, 2009, ending its separate existence. Meredith Hobbs, *Powell Goldstein to Merge with Bryan Cave*, A.B.A J. (Nov. 3, 2008, 12:24 PM), http://www.abajournal.com/news/article/powell_goldstein_to_merge_with_bryan_cave_and_give_up_its_name.

a law school professor. However, during my time in Judge Shoob's chambers, and then afterwards as an associate with Powell Goldstein, I realized that I had the ability to succeed in practice, and as a result, to prosper and provide well for our family (my spouse and three young daughters). This realization came despite the fact that I had aimed to be Atlanta's next great international lawyer (rather than the litigator one would expect after a federal district court clerkship), and that events had moved me from international corporate practice to finance and commercial lending practice.⁷ And so my three or four-year detour into private practice stretched to almost thirty years.

While I was confident in my legal abilities, I learned early on that I had to build a practice, to obtain and retain clients, and to learn how to ask prospects and clients for new business or additional business. These are tasks I hate to perform, and with which I had little or no successful experience. I am naturally introverted, and would prefer to read a book, spend time with family and friends, watch a baseball game, or do virtually anything else, instead of meeting new people, networking, engaging in business-oriented chit-chat, and asking people for things—such as new legal business.⁸ Thankfully, there was some mentoring available to me and other associates, and some senior partner modeling

⁷ In the early 1980s when I began practicing at Powell Goldstein, most international corporate legal work handled by outside law firms in the Southeastern part of the United States consisted of the representation of foreign individuals, companies and banks moving into the Southeast. At one point in the 1980s, there were more than twenty foreign banks with offices in Atlanta. Investors from Japan, Germany, the United Kingdom, the Netherlands, Canada, and elsewhere bought up U.S. farm and timberland, undervalued U.S. companies, sold new products here, and engaged in other investment activities. At the same time, however, newly-elected President Ronald Reagan and Federal Reserve Chairman Paul Volcker were taking steps to deal with the "stagflation" of the late 1970s, steps which were ultimately successful in moving the U.S. economy forward, but which also had the result of strengthening the U.S. dollar against foreign currencies. The strengthening of the dollar made U.S. bargains disappear and turned one future international lawyer into a commercial lending lawyer.

⁸ The author, in connection with earlier contemplation of a career change, underwent a personality inventory and skills test at a cost of several hundred dollars. The results of the test were substantially as anticipated, except that the report concluded by noting that I was in the top 2% of human beings for introversion and then provided ten pages of suggestions for me on how to deal with my career-threatening shyness.

of successful marketing behavior. I was also interested in the industry focus of the finance and commercial lending law practice in which I became experienced: financing for media, communications, and telecommunications companies (cable television, cellular telephone, paging, towers, outdoor advertising, publishing, broadcast radio and television). I read extensively and educated myself on the topic, and also kept my clients up to date on legal and business developments with faxed and emailed articles, telephone calls, etc. This was easy for me and convenient, since the majority of my clients were outside of Atlanta. Thus, I plugged away at it and when I had an opportunity to travel, whether for a closing, a bank meeting, conference or negotiation session, I knew enough about marketing to make sure that I never ate a meal alone.

When I was in high school, my father saw that I was bright but extremely introverted and, for my own good, sent me to a Dale Carnegie course. I hated everything about the course and of course, thanks to my poor attitude, got little out of it. But I do remember a saying my father told me one morning over breakfast: "Inventory less sales equals scrap."⁹ In other words, great products and services are worth nothing if they are not sold and paid for. THE ABILITY TO SELL IS IMPORTANT.

Thankfully, I got the message early in practice and persisted in my own clumsy way, learning how to cultivate clients and prospects and to land new business and new clients. I had to force myself to do it, in ways surely different from those with natural skill in marketing and sales. But I coped, and through effort and persistence, had a successful business law practice. I was never a prodigious rainmaker, never at a top level of compensation for a law firm partner, but at my high-water mark, my law practice was several million dollars in revenue per year for my law firm, and my practice kept me and several associates and other timekeepers busy.

⁹ The quotation is attributed to several different business persons, most frequently Thomas J. Watson (1874-1956), founder of U.S. based technology multinational International Business Machines (IBM).

Since 2008, when I began to teach again as an adjunct professor at my alma mater, The University of Georgia School of Law, and then at Emory University School of Law, I have required most of my students to read Joey Asher's book, *Selling and Communication Skills for Lawyers: A Fresh Approach to Marketing Your Practice*.¹⁰ This easy-to-read paperback introduces practicing attorneys to helpful business development thinking and techniques.

DEFINITIONS

What is meant by "marketing" and "sales"? Here are the definitions I created for use with a two-credit course I taught in the Spring of 2016 at the University of Tennessee College of Law, on marketing, sales and communications for lawyers, taken from my syllabus for the course:

By "marketing", I mean concerted activity by a lawyer or a law firm to make clients, prospective clients and, with respect to consumer or public interest law, the public, aware of your, or your firm's, 'value proposition' in one or more areas of legal services.

By "selling", I mean activities, especially including direct communications, on the part of a lawyer designed to get a client or a prospective client to hire you or your firm for a legal matter which you or your firm is qualified to handle, and for which the client has the ability to pay.

"Value proposition," from the perspective of marketing and selling legal services, means whatever reasons may exist that would drive or cause a client to select one legal service provider over another, whether that is cost, expertise, reputation, personal relationship, experience, style, other factors, or some combination of the above.

¹⁰ JOEY ASHER, *SELLING AND COMMUNICATIONS SKILLS FOR LAWYERS: A FRESH APPROACH TO MARKETING YOUR PRACTICE* (2005). The author and Mr. Asher are collaborating on a second edition of the book designed specifically for law students and new lawyers.

These definitions are adequate for the purpose of this article.

INTRODUCTION

The balance of this article will *first*, explain why, historically and even in the 21st century, marketing and sales skills are not covered in the law school curriculum; *second*, make the case for the coverage of marketing and sales skills to some extent in the typical three-year legal education; and *third*, provide some summary thoughts on how one might approach teaching these skills in law school.

I. SOME HISTORY; THE ACADEMY; WHY MARKETING AND SALES IS STILL NOT COVERED IN AMERICAN LAW SCHOOLS

Other legal scholars have covered the history of marketing and sales (usually in the context of “advertising”) in the legal profession in the United States.¹¹ For purposes of this article, suffice it to say that most states in the United States, in the early decades of the 20th century, through their supreme courts, bar associations, or other organizations for the regulation of the legal profession, prohibited almost all advertising or marketing of legal services, other than modest advertisements within permitted font sizes in telephone books.¹²

¹¹ See, e.g., William E. Hornsby, Jr. & Kurt Schimmel, *Regulating Lawyer Advertising: Public Images and the Irresistible Aristotelian Impulse*, 9 GEO. J. LEGAL ETHICS 325 (1995-1996) (discussing advertising in the legal profession).

¹² In doing so, the states were following the lead of the American Bar Association, founded in 1878, which promulgated its first set of ethical rules for lawyers in 1908, the *ABA Canons of Professional Ethics*. Canon 27, “Advertising, Direct or Indirect,” began as follows: “It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations.” However, “the customary use of simple professional cards is not improper.” ABA CANONS OF PROF’L ETHICS Canon 27 (AM. BAR ASS’N 1943).

A telephone book, or telephone directory, is a paperback “book listing names, addresses and telephone numbers of telephone subscribers.” WEBSTER’S NEW COLLEGIATE DICTIONARY (G. & C. Merriam Company, 1981). Such books were typically for a given geographical area or political subdivision, such as a city, county, state or metropolitan area. The white pages contained personal information and the yellow pages business information. Prior to the widespread use of personal computers and the internet, telephone directories were distributed to virtually all homes and businesses, and were widely used.

(Lawyers were permitted to provide only the sort of information about themselves that one finds in the Martindale Hubbell attorney directory.) In a series of cases from the Supreme Court of the United States in the late 1970s, 1980s, and thereafter, the floodgates were opened.¹³ The

¹³ In *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), appellant Arizona attorneys were found to have violated an Arizona State Supreme Court disciplinary rule, which prohibited attorneys from advertising in newspapers or other media. The advertisement for the appellants' legal clinic said the appellants offered "legal services at very reasonable fees" and listed their fees for certain routine legal services, such as uncontested divorces and personal bankruptcies. *Id.* at 354. Against appellants' claims that such a rule as applied violated U.S. antitrust law and the First Amendment, the Supreme Court held that although the Sherman Antitrust Act was not violated, appellants' advertising was entitled First Amendment protection as commercial speech. *Id.* at 383.

In *In re R.M.J.*, 455 U.S. 191 (1982), the Supreme Court examined an appeal from the Supreme Court of Missouri in which that court had found an attorney's advertising activity to be in violation of three provisions of its Rule 4: it listed the attorney's areas of practice in language different from that prescribed by the Rule; it listed the courts in which appellant was licensed to practice (and that was not one of the identified categories of information available for advertising in Missouri); and the attorney had sent announcement cards to persons other than those permitted by the Rule. The Court, reviewing the record and finding that the appellant's speech was not misleading, held that while states retain the authority to regulate misleading advertising, they must do so with care, "and in a manner no more extensive than reasonably necessary to further substantial interests." *Id.* at 207. The Court struck down the Missouri judgment and upheld appellant's advertising activities as protected commercial speech. *Id.* at 207.

Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626 (1985) demonstrated the limits of determining whether advertising was truthful, in the context of advertising for driving under the influence or driving while intoxicated representation (and the variability of promised outcomes in the plea bargaining context) and contingent fee representation in the personal injury and product liability context.

Shapiro v. Kentucky Bar Ass'n, 486 U.S. 466 (1988), a case involving a lawyer seeking to represent homeowners being foreclosed upon, upheld truthful, nondeceptive letters specifically targeted for particular legal problems as constitutionally protected commercial speech, which could be restricted only for a substantial government interest, in ways that directly advance such interest.

In *Peel v. Attorney Disciplinary Comm'n of Illinois*, 496 U.S. 91 (1990), the Supreme Court reversed a decision by the Supreme Court of Illinois that the appellant's use on his attorney letterhead of his certification (accurate and truthful) as a "Certified Civil Trial Specialist" by the National Board of Trial Advocacy was not permitted. Truthful advertising is protected, and the appellant's letterhead was neither actually nor inherently misleading.

Supreme Court set aside most of these limitations as restrictions on the commercial speech available to lawyers to market their practices, and most limitations on *truthful* marketing and advertising were eliminated. Advertisements by lawyers are now just this side of ubiquitous. Law firm advertisements may be found on television, radio, the internet, billboards, on buses, trains etc. In addition to consumer law firms which advertise to the public in many fora for bankruptcy, wills, divorces, personal injury, product liability, driving under the influence representation, etc., virtually all large law firms have business development units, whatever the unit's particular nomenclature.

American legal education began to take shape in its present form in the 1870s under the leadership of the Dean of the Harvard Law

While, in general, attorney advertising and solicitation that is truthful is now protected commercial speech available to attorneys in pursuit of a livelihood, there are still some limits imposed by legal professionalism concerns. In *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995), the Supreme Court examined two provisions of the Florida Bar Association's proposed amendments to the rules regulating Florida lawyer advertising. These amendments created "a brief 30-day blackout period after an accident during which lawyers may not, directly or indirectly, single out accident victims or their relatives in order to solicit their business." *Id.* at 620. The Court reviewed the evolution of commercial speech protection, and its own evolving analysis of lawyer advertising cases: "[L]awyer advertising is commercial speech and, as such, is accorded a measure of First Amendment protection. . . . Such First Amendment protection, of course, is not absolute. . . . 'Commercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values,' and is subject to 'modes of regulation that might be impermissible in the realm of noncommercial expression.'" *Id.* at 622 (internal citations omitted).

Concluding its review in *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618 (1995), the Supreme Court then engaged in "intermediate' scrutiny of restrictions on commercial speech" referring to the test in *Central Hudson Gas & Electric Corp. v. Public Service Commission*. *Id.* at 623. Under this test, "the government may freely regulate commercial speech that concerns unlawful activity or is misleading. . . . Commercial speech that falls into neither of those categories, like the advertising at issue here, may be regulated if the government satisfies a test consisting of three related prongs: First, the government must assert a substantial interest in support of its regulation; second, the government must demonstrate that the restriction on commercial speech directly and materially advances that interest; and third, the regulation must be 'narrowly drawn.'" *Id.* at 623-24 (citing *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 477 U.S. 557, 564-65 (1980)). Applying that test to the new rules and the Florida record, the Court did not find the issue to be particularly close in upholding the 30-day blackout period. *Id.*

School, Christopher Columbus Langdell.¹⁴ The principal method of instruction, the case method, employed with the Socratic style of seeking the truth through questioning, became used in the hundred plus law schools that formed in the late 19th and early 20th centuries.¹⁵ The role of the American Bar Association in accrediting and regulating American law schools also emerged during this period, during which time strict limitations on advertising were also emerging.¹⁶ As an area of focus for the bar associations at this time was ethics and professional responsibility, part of the legal curriculum at American law schools became the severe limitations on advertising, marketing, and sales. In preparing for my bar examination in the late 1970s, barratry and champerty still were stressed in the ethics and professional responsibility section of the bar review course and materials.¹⁷ Future lawyers learned

¹⁴ Have you ever wondered what the American legal profession and American legal education was like 100 years ago? If so, read the obituary of Dean Langdell. William Schofield, *Christopher Columbus Langdell*, 55 THE AMERICAN LAW REGISTER 273 (1907) (available at https://www.jstor.org/stable/3307175?seq=1#page_scan_tab_contents). His physical appearance is associated with the virtues of a great teacher, and all the students are men. In addition to the case method, Langdell, who came from a modest background and sensed the privilege accorded the students who came from wealthy and prominent families, introduced blind grading.

¹⁵ For readers who are not lawyers and have not had exposure to American legal education, watch an episode of *The Paper Chase*, an American television series (1978-1979) and the 1973 movie of the same name, about Harvard Law School's "1L's," that is, its first year law school students, and their fearsome law professor, Charles Kingsfield, played by John Houseman. The Association of American Law Schools, or AALS, was founded in 1900 as an offshoot of the American Bar Association's section on legal education. During the 19th century, the apprenticeship model for legal education familiar to us as the way President Abraham Lincoln came to be an excellent lawyer gave way to more organized legal education in law schools, most of which were part of existing colleges and universities. The AALS had 32 charter members in 1900 and by 1940 had reached 100 members. Today, 179 of the more than 200 U.S. law schools accredited by the American Bar Association are members of the AALS. THE ASS'N OF AM. LAW SCHOOLS, <http://www.aals.org/> (last visited Sept. 13, 2016).

¹⁶ See CANONS OF PROF'L ETHICS (AM. BAR ASS'N 1908). The American Bar Association began to undertake its current role in the licensing of American law schools in 1923. AM. BAR ASS'N, <http://www.americanbar.org/aba.html> (last visited Sept. 13, 2016).

¹⁷ There are a variety of definitions of barratry, including those in maritime law, but with respect to professional responsibility, barratry pertains to the incitement by an attorney of lawsuits with a view to benefitting from legal fees generated, or to

all the things they could *not* do to obtain clients, but not how to actually obtain clients. As a result, when I was a new associate, and asked a partner what I could do to build the practice of the firm, I was told, “There are two things you need to do to help build the practice of the firm. First, do an excellent job with every legal matter with which you are entrusted by a partner of the firm, no matter what task he gives you. And second, answer the phone!”

When the laws changed regarding legal marketing, the instruction in ethics and professional responsibility in law school changed to conform to the most recent holdings of the Supreme Court, and the various Codes of Professional Responsibility were changed to reflect those holdings. But little effort was made within American law schools to train future lawyers on how they could, within the new limits of the holdings and the revised ethical and disciplinary rules, market and sell and advertise to clients and prospective clients. The question, “Where do clients come from?” remained unanswered in American law schools. To my knowledge, the course I taught in the Spring Semester of 2016 at the University of Tennessee College of Law (a two-credit course) was the second time an American law school has had a course devoted to the topic.¹⁸ But while nothing was going on in the law schools regarding

“officious” conduct instigating or encouraging groundless litigation or groundless criminal prosecution. Champerty, and another common law doctrine, maintenance, refer to acts taken by non-parties (including attorneys) in support (especially including financial support) of litigation. Champerty was recently called into question in connection with the tawdry lawsuit by wrestler Hulk Hogan against Gawker, which resulted in a large judgment against and the ensuing bankruptcy of defendant Gawker. It was revealed that Peter Thiel, a billionaire businessperson who co-founded PayPal, whose status as a gay man was revealed by the defendant, provided financial support for the litigation against Gawker. *See, e.g.,* Andrew Ross Sorkin, *Peter Thiel, Tech Billionaire, Reveals Secret War with Gawker*, N.Y. TIMES, May 25, 2016.

¹⁸ Fordham Law School also offered a two-credit course on marketing and sales in the fall of 2011. The course was co-taught by an Italian marketing academic with, so far as could be discerned, no experience with the American legal system or legal education, and by the non-attorney head of business development with Dewey LeBoeuf, an American law firm then experiencing severe financial difficulties. The firm filed for bankruptcy in May 2012. The author attempted, without success, to contact the instructors in 2011 and 2012. The website of Fordham Law School, as of June 30, 2015, included a description of a two credit course, BUGL-0299, “Law Firm Marketing”, as follows:

marketing and sales, practicing lawyers and law firms were quickly awakening to the new rules, and to the opportunities and challenges posed by the new legal landscape for the marketing and sale of legal services.

In the 1970s and 1980s, law schools began to receive increasing criticism from law firms (which were dealing with their new graduates), corporate legal departments, and others, to the effect that recent Juris Doctor graduates able to pass bar examinations were nonetheless ill-equipped to practice law. The meager practical experiences law students might have had in moot court argument and preparing appellate briefs prepared them poorly for the real work of new attorneys, whether corporate, litigation (civil or criminal), or government and regulatory. Certainly, these new JDs frequently knew nothing about handling clients. In recent years, law firm complaints about recent law school graduates have framed the issue as follows: the newly-minted lawyers are not “practice ready.” And so law schools began to change the legal curriculum to add more focus on legal “skills.” Legal clinics emerged at law schools, frequently aligned with local legal aid organizations. (Larger firms were compelled increasingly to do in-house training for their new associates.) But many tenured law school professors have little experience in practicing law, and thus have little “skill” to impart, and so in many law schools, skills training was passed off to adjunct professors

How can you have a successful career? What makes partners want to work with you? In today's highly competitive market, “technical” legal competence alone is insufficient and no longer a guarantee of success in winning new business or keeping clients. Marketing and business development are important skills for lawyers pursuing the partnership track and those intending to hang out their shingle. How can you do it in a tasteful [sic] and strategic way? Learn what it takes to make you stand out from the crowd, to land a great job, and to build your book of business.

The author's last review of law school curricula generally was in 2012. It is possible that since that time other law schools have added courses dealing with marketing and sales either directly (as at the law schools at Fordham University and the University of Tennessee) or as part of a “Preparing for Private Practice” or similar course.

(typically, practitioners or retired practitioners paid little for their services, with little control or supervision of the adjunct professors by educators or administrators of the law schools),¹⁹ or non-tenure track “skills professors” with heavier teaching loads, lighter publishing requirements, and smaller paychecks. Some skills professors have significant practice experience and thus have skills to impart; others with little experience but impressive academic resumes see skills teaching as a stepping stone to tenure-track “doctrinal” teaching, and while these professors are well-meaning, they may be misplaced and unhelpful to law students seeking authentic skills training.

The fact that tenured law professors in the 21st century rarely have actual practice experience has been noted and received adverse comments.²⁰ As noted above, that has led to skills training being largely

¹⁹ With respect to the supervision of adjunct professors, my experience at Emory University School of Law and the University of Georgia School of Law, where I taught four three-credit courses at each of these top-30 law schools, was that there was none. Over those eight teaching semesters, I was never observed in the classroom; my syllabi were not requested by law school administrators or faculty, or to my knowledge, reviewed; my examinations were not requested by law school administrators or faculty, or to my knowledge, reviewed; and there was no comment, except as mentioned in the following paragraph of this footnote, on the author’s grades or grading. Attention was paid to student reviews of this professor, and some suggestions were made by law school administrators.

At one of these law schools, I taught a doctrinal course with more than fifty students, bringing this course within the ambit of the school’s required 3.3 mean for the grading of the class. I attempted to obtain relief from this mean because the class did not deserve as high as a 3.3 mean and that to give just a couple of students well-deserved failing grades would have required that the rest of the class receive A’s, a ridiculous result. My request was denied.

My three years of full-time teaching at two other American law schools, one as an Associate Professor and two as a Visiting Associate Professor, were not different with respect to law school teaching performance review and oversight on an organized basis. See Kevin Conboy, *Tips for the Practitioner Seeking to Return to the Academy*, 14 TRANSACTIONS: TENN. J. BUS. L. 147, 163 (2013) (discussing the sad conclusion of one year I served as an Associate Professor). Thankfully, at the University of Tennessee College of Law, a more experienced teacher in the Entrepreneurial Law Clinic took an interest in me and provided helpful teaching suggestions.

²⁰ The median number of years of experience in the practice of law, for new faculty hires at America’s top law schools for a recent year, was one. David Segal, *What They Don’t Teach Law Students: Lanyering*, N.Y. TIMES, Nov. 19, 2011.

passed off by tenured faculty to others.²¹ Nonetheless, one can envision law professors without much practice experience competently doing practical teaching and training in contract drafting, working on pleadings and discovery matters in litigation clinics, client interviewing and handling, etc. But marketing and sales as a skill is very substantially the function within a law firm of *partners and experienced practitioners*. Successful marketing and sales activity requires advanced communication skills, excellent people skills, and knowledge of both the *business of law* and the *business of the client or client prospect*, in order to be successful.

More difficult to express, successful marketing and sales of legal services requires a certain physical presence: one's age, experience, physical appearance, voice and manner of expression, attire, all are part of what goes into successful marketing and sales.²² One need not attend more than a single law school faculty meeting to conclude that tenured faculty generally, like your writer, are not naturally apt at marketing and sales. Without belaboring the point at the expense of tenured law professors, virtually all of whom are dedicated educators who want to do an excellent job for their students and make the world a better place, let me just say that attending a law faculty meeting does not remind one of the meeting of a board of directors of a company or even the university itself. I have seen flip-flop sandals, sneakers, bad hats, housecoat-like

²¹ The dominance of tenured, "doctrinal" professors at American law schools is powerful. Evidence of this dominance is illustrated by the evolution of terminology pertaining to the training of skills. Professor Kingsfield in *The Paper Chase* led off each television episode by saying to his students, "You enter law school with brains full of mush, and we teach you to think like a *lawyer*." The criticism of legal education was not that Kingsfield did not succeed, or that his task was unimportant; rather, the criticism was that lawyers do more than think, they need to be able to serve clients, and the rest of the world wants JDs, with three years of legal education under their belts, to be "practice-ready." The term "practice-ready" was the term used by lawyers in private practice to describe the desired product of law schools. "Skills" training had already been relegated to second-class status by tenured doctrinal law professors. Now, the Academy having had its say, the skills training work that law schools now do has been denominated as "experiential learning."

²² While Western philosophy has tended to distinguish and separate our bodies from our "souls" or "spirits," for marketing purposes, particularly for services so personal as legal services, the words of French philosopher Merleau-Ponty ring more true: "I do not 'possess' a body; I *am* my body."

attire, and Kramer-like hairdos at law faculty meetings. The fact is that most tenured law professors have, if possible, less aptitude for marketing than the author does. Given that the ability of a practicing lawyer to obtain and keep clients is the single most important factor in the compensation of most lawyers in private practice, in the author's view, *the blindness of the tenured faculty to this important practice skill is a problem.*

It seems obvious to practicing lawyers²³ that the question "Where do clients come from?" is extremely important. The tenured law faculty in the United States, with relatively few exceptions, is neither particularly interested in the question, nor up to the task of answering it. If I make my case in the following section, American law school administrators and professors will need to determine whether and how this particular skill is to be imparted in law schools to future American lawyers. Unless law schools change their hiring patterns, the answer is likely to involve more than just tenured and tenure track law professors.

II. WHY TEACH MARKETING AND SALES IN AMERICAN LAW SCHOOLS?

Many persons reading this article who are not members of the Academy would find the answer to this question contained in the previous paragraphs: if marketing and sales affects compensation, i.e., *money*, then it is IMPORTANT. But since my audience consists to some extent of legal academics likely to have had little more than a cup of coffee in private practice and having made the career decision to teach in law school rather than to practice law, where incomes of successful practitioners can be dramatically higher, I will elaborate.

On June 10th at my live presentation at Emory University Law School, I used the following anecdote. While in practice at my second firm, Paul, Hastings, Janofsky & Walker LLP, a global law firm with an office in Atlanta, I served for three years on the Partner Evaluation Committee or "PEC." This was a firm-wide committee with representation from several different offices and from each of our five

²³ In law school, the humor that circulated around graduation time each year at my alma mater more than 35 years ago was that "The A students become the law professors, the B students become the judges, and the C students make all the money."

legal practice areas or departments. The committee's role was to sift and sort through the various candidates for partner proposed by the departments, and to evaluate, rank and recommend (or not) the various candidates.

The PEC was asked to evaluate the candidates based on five different criteria: legal excellence, administrative skills and habits, personal qualities (community activities, personality, people skills, and the like), business development potential, and long-term need. During my three years on the committee, the vast majority of our time was spent on the last two criteria, which pertain to a candidate's marketing and sales ability, his or her ability to "grow the practice." Business development potential was seen as addressing directly a candidate's ability to market and sell his or her particular practice as well as other areas of expertise within the firm; and long-term need was a criterion that looked at the prospects for growth of the particular candidate's practice area— but also and always with a view to the candidate's particular ability to promote that practice. Over my three years of service to the PEC, I am confident we spent more than 90% of our time on those last two criteria as applied to the candidates; the first three criteria were typically a given, and if issues arose with respect to one or more of the other criteria, a candidate was typically removed from the list for that year and given a message (either that there were issues to be addressed, or that the candidate's future with the firm was short-term, rather than long-term).

Had I needed a second anecdote, I would have spoken of the finders/minders/grinders paradigm used by law firm managers and legal consultants. These people speak of the segmentation within law firms of lawyers, typically partners, who "find" and land clients (finders or rainmakers); lawyers, typically junior partners or senior associate attorneys, who "mind" existing clients or clients landed by rainmakers—that is, lawyers who make sure that the bulk of the day-to-day legal needs of the firm's regular clients are attended to by lawyers of the firm with the right legal expertise and the right seniority level—minders, sometimes called "responsible" or "matter" attorneys; and finally,

associate attorneys, service partners,²⁴ and other lawyers, paralegals, and timekeepers with the right set of skills and seniority level to get the work done—the “grinders,” who should be responsible for most of the billable hours on a particular matter. The terms themselves are the key to how finders, minders and grinders are respectively compensated within law firm structures.

Another word about marketing and sales is the fact that lawyers may now promote their practice of law more competitively. In 1979, Steven Brill founded a monthly magazine called *The American Lawyer*.²⁵ That magazine, along with the Supreme Court cases noted in footnote 13, changed everything in the business and practice of law, particularly for the largest firms in the United States. Brill and his reporters badgered, cajoled, tricked and duped the partners, managing partners and finance professionals at large law firms for their confidential information on revenues, profits, etc. (Prior to this time, law firms would disclose headcount information including numbers of partners, associates, counsel, etc., and perhaps some billing rate information, but no meaningful financial information, particularly any such information that might be distilled to indicate how much money the partners at the firms were making.) Over time, and largely to make sure that *The American Lawyer* got the firms’ stories straight, virtually all large law firms cooperated with Brill and company. This led to rankings of American law firms and annual announcements of the “AmLaw 100” and the “AmLaw 200” (the latter being firms 101 through 200). While these headline rankings are on the basis of gross revenues, the most important metric by which law firms measure their performance against that of their peers is “profits per equity partner” or “PPP.”

²⁴ Service partners are technically proficient or even superior attorneys who practice, generally speaking, in highly specialized areas that are in significant demand. They are relied upon to fill important client needs that are highly valued by clients and law firms. Again, generally speaking, people known as service partners are not expected to generate substantial amounts of legal business, and frequently, their “clients” are other partners in their firm.

²⁵ *The American Lawyer*, WIKIPEDIA, https://en.wikipedia.org/wiki/The_American_Lawyer (last visited Sept. 12, 2016).

There are a variety of rules for counting timekeepers and measuring both revenues and profits; over the years, firms have generally conformed their practices to guidelines and understandings articulated by *The American Lawyer*. Large firms *and their partners* want to know how well they are doing on an “apples-to-apples” basis against the competition. For your information, in the 2016 AmLaw 100, an American law firm, Wachtell, Lipton, Rosen & Katz, reported for the first time a PPP number over \$6 million per year, at \$6.6 million.²⁶ Equity partners at the top 100 law firms in this survey for the 2016 survey year had an average income of \$1.61 million.²⁷ In addition, these top 100 law firms accounted for approximately \$83 billion in revenues for the reported year.²⁸ While the United States has tens of thousands of sole practitioners and small and medium sized firms, the top 200 US law firms account for a very substantial portion of revenues for the legal sector of the American economy. According to the American Bar Association’s one-page sheet on Lawyer Demographics (Year 2016),²⁹ there were in that year over 1.315 million licensed lawyers; in 2005, 75% of licensed lawyers were in private practice; there were a total (again, as of 2005) of 47,562 law firms in the United States (including sole practitioners); and the percentage of practitioners who were with firms of more than 100 lawyers (2005) was 16%. Given the growth of the largest law firms in the US (known as “Big Law”), that 16% number has surely increased.³⁰

III. A MARKETING AND SALES SYLLABUS FOR LAW STUDENTS

My unvarying experience with law students in the four law schools in which I have taught is that most American law students know

²⁶ *The 2016 Am Law 100: Growth Slows for Big Law*, *THE AMERICAN LAWYER*, Apr. 25, 2016.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Lawyer Demographics: Year 2016*, AM. BAR ASS’N, http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf (last visited Oct. 6, 2016).

³⁰ *THE AMERICAN LAWYER*, *supra* note 26.

little or nothing about marketing and sales. Perhaps ten to fifteen percent of law students have had undergraduate majors or concentrations in business, management, accounting, marketing, economics, or other business-oriented programs of study, and thus are generally familiar with marketing and sales and the importance of those skills. A similar percentage of law students (substantially overlapping with the first group) are interested in and focused on careers in business or corporate law. A much slimmer percentage will have an interest in tax law. Schools that offer joint JD/MBA programs will, of course, have a few students in each class involved in strong business law programs. But whereas business students, MBA students, etc. will invariably know about “elevator speeches” and LinkedIn, and are likely to have business cards at the ready, law students are likely to be clueless about such elementary marketing and self-promotion matters.³¹ Law professors of whatever stripe who have an opportunity to spend some time (likely not a full course, but rather a portion of a course on preparing for private practice) with law students, teaching or training marketing and sales, should assume that the law students know little or nothing about such matters. In a way, that makes education in this area easier.

In putting together an appropriate syllabus for this topic (whether the instructor is delivering a two-credit or three-credit course on the topic, or covering marketing and sales as a substantial portion of a course on preparing for private practice), I reviewed the existing

³¹ Law students thus begin, typically, at square one. Of course, for practicing lawyers, the questions, “Where do clients come from?” and “How do I get some?” are paramount. Against the possibility that law students will resist marketing and sales education and training (for whatever reason), three other points should be kept in mind regarding the value of marketing and sales training for law students. First, these skills are highly useful for virtually every lawyer, whether in private practice or not, with the possible exception of members of the Academy and the judiciary. Lawyers in corporate legal departments, lawyers who have graduated to the status of clients as business people, lawyers in politics—all of them benefit from having marketing and sales abilities. Second, many lawyers who do not initially practice will have a period or periods in their careers when they do enter private practice, and those skills will be valuable then. Finally, and with all due respect to those in marketing and sales and those with a gift for it, marketing and sales is neither complicated nor overly difficult; it does require thought and planning, and some work and practice, and for the introverted, a change of ways.

literature on the topic. It is obvious that the amount of literature on marketing and sales for lawyers and law students is growing very rapidly. (Recall that as recently as 1970 there was virtually nothing on the topic, other than writings on legal ethics and professionalism regarding the limitations on advertising and solicitation.) In reviewing the available material, I have focused on books specific to marketing and sales for lawyers generally, and have omitted from review books designed for specific audiences (women, minorities, the timid), specific legal practices (product liability, driving under the influence, criminal defense work, etc.), or specific marketing techniques (online, cross-selling within a single law firm, blogging, etc.). A number of books also focus on opening your own law firm, clearly devoting substantial coverage to the question, “Where do clients come from?” But such a source would also clearly devote many pages to administrative and other business matters not germane to marketing and sales.

In my review of the literature, I found about a half-dozen serious books really directed at marketing for lawyers.³² Most of these books are directed at lawyers in practice, who wish to build their practices. Of this group, I found only two that are satisfactory and appropriate for law students: Asher (referred to above), and *The Law Firm Associate’s Guide to Personal Marketing and Selling Skills* by Catherine Alman MacDonough and Beth Marie Cuzzone, from the ABA Law Practice Management

³² Omitting Asher and MacDonough & Cuzzone, the others in chronological order of publication date are as follows: *The Lawyer’s Guide to Marketing Your Practice* (2d edition, 2004), by James A. Durham and Deborah McMurray (Co-Editors), American Bar Association, ISBN-13: 978-1590313558; *How to Capture and Keep Clients: Marketing Strategies for Lawyers* (2d edition, 2005), by Jennifer J. Rose (Editor), American Bar Association, ISBN-13: 978-1634252140; *Flannery on Business Development, Marketing and Sales for Lawyers* (2011), by William J. Flannery, CreateSpace Independent Publishing, ISBN-13: 978-1463610456; *Great Legal Marketing: How Smart Lawyers Think, Behave and Market to Get More Clients, Make More Money, and Still Get Home in Time for Dinner* (2012), by Benjamin W. Glass, Glazer Kennedy Pub, ISBN-13: 978-0983712503; *Marketing the Legal Mind: A Search for Leadership* (Revised ed. 2014), by Hery Dahut, LMG Press, ISBN-13: 978-0974512600; and *The Rainmaking Mindset for Attorneys: Attracting Clients, Winning Business and Increasing Profits* (2016), by Liz Windling, Insight Business Consultants, ISBN-13: 978-0984676699. None of the authors receives a prize for the concise title contest.

Section.³³ While Asher's book is not directed specifically at law students, or new law firm associates, Asher would agree with my suggestion that law professors who teach marketing and sales to law students should assume no prior knowledge or experience.³⁴ His book assumes no prior marketing or sales knowledge and is written in a casual and conversational, readable style. The MacDonough/Cuzzone book is more tightly organized, and contains material susceptible of being used for training, exercises, etc. It also contains helpful lists and summaries. However, it does assume the reader is already a law firm associate (which for today's law students may be only a result devoutly to be desired).

Appendix I is the Syllabus I prepared for my remarks at the Emory Conference, to which I draw your attention.

A. The Person in the Mirror

I believe it is necessary to start at Ground Zero with law students with respect to conversations, instruction, and training regarding marketing and sales. My Syllabus begins with the topic "Starting with the person in the mirror." Law students need to be reminded (or told for the first time) that serving as a client's lawyer is a personal service business. Clients pay their lawyers for the time and expertise of the lawyer. Clients have the ability to select lawyers they "like." Clients may like lawyers for all sorts of reasons, some good and some bad. I like to open up this topic with a summary from Asher's text. One researcher

³³ CATHERINE MACDONAGH & BETH CUZZONE, *THE LAW FIRM ASSOCIATE'S GUIDE TO PERSONAL MARKETING AND SELLING SKILLS* (2007).

³⁴ Author Joey Asher is a neighbor and friend of the author. We are collaborating on a second edition of his book that will be specifically for law students and will contain a variety of exercises such as those described in this article. Asher is an Emory Law School graduate and worked primarily in the real estate department of Troutman Sanders in its Atlanta office for five years, before leaving to start his firm, Speechworks. According to its website, "Speechworks is a communications and selling skills coaching firm. We teach professionals how to craft and deliver complex messages in a simple, persuasive manner. Since 1986, through workshops and one-on-one instruction, we have helped countless individuals become better presenters and communicators." [SPEECHWORKS](https://www.speechworks.net), <https://www.speechworks.net> (last visited Aug. 14, 2016).

who studied how human beings communicate, and how best to communicate effectively, included the following statistics:

- Fifty-five percent (55%) of the impression we make when we communicate is based on how we look. Included in this percentage is how we stand, our gestures, eye contact, facial expression, and overall body language.
- Thirty-eight percent (38%) of the impression we make when we communicate is based on how we sound. When we speak, do our voices convey passion and excitement? Or do we sound like we are bored?
- Seven percent (7%) (yes, it's true) of the impression we make when we communicate is based on the actual content of what we say.

“A. Meridian, *Silent Messages* (Belmont, CA: Wadsworth, 1981).”³⁵

Even if one assumes that these statistics are exaggerated and that appearance and sound account for lower percentages of what an audience takes away from a person communicating than those stated in the quoted passage above, this summary demands that law students and lawyers pay attention to their appearance and to how they speak. It is difficult and in many cases politically incorrect to address these topics head on, but in a course that speaks to marketing and sales, the task must be addressed. I separate what is within the law student's control from what is not, and employ self-effacing humor (I have a lot to work with in this area)³⁶ to defuse discomfort and anxiety over the personal appearance topic.

We are not going to change our race, age, height, gender³⁷ or very much about our physical appearance; but there is much we can do to remove potential hiring obstacles from our appearance. I am

³⁵ ASHER, *supra* note 10, at 196.

³⁶ Self-effacing humor is humor in which the speaker makes fun of himself or herself before anyone else in the room has a chance to do so.

³⁷ But see Adam Liptak, *Supreme Court to Rule in Transgender Access Case*, N. Y. TIMES, Oct. 28, 2016, at A1 (regarding a transgender high school student who wishes to use the bathrooms appropriate for the student's new gender rather than birth gender).

confident there are many very good lawyers with beer guts or a weight problem in general, but many human beings assume from such characteristics (whether correctly in an individual case or not) that a person does drink too much beer, or has a self-control issue when it comes to eating and drinking. Why not acknowledge that being overweight is almost never a good thing, and address the health and appearance issue now, while in law school? Law students may be under the impression that they are busy; most practitioners look back with fondness on their (by comparison) relaxed law school schedules. I ask my students to trust me on this point, it does not get *easier* to lose weight when you are older. Perhaps you have a rugged complexion, or bad hair (greasy, stringy, wild, unkempt), a gap in your teeth or a visible chip, a mole or scar or some other visible characteristic that attracts unfavorable attention—is there a better time than when you are young to deal with it? If drugs or alcohol are even a slight issue for the law student, take it on now! And hit the gym while you are at it! There is no time like the present, and why would you not want to maximize your chances of success in practice?

The foregoing speaks to the body itself. Clothing is also important. Depending upon an individual lawyer's practice, it is likely not necessary to be in business attire every day. But it is necessary to be dressed appropriately for your law firm and your practice every day. Any law firm of size will have clothing guidelines, ranging from business attire Monday through Thursday, and business casual on Friday, to business casual all year round for a consumer law firm. The new lawyer should be dressing in a way that makes his or her clients comfortable; usually, that will mean somewhat more formally dressed than the client. You do not want to attend an affair with a client who is in his or her suit or pantsuit, and you in your khakis and golf shirt. New attorneys should also understand clothing convention, the difference between "black tie optional", "business casual", "resort attire", "dressy casual", business attire", etc. You don't need to budget \$5,000 for clothing in your first year of practice, nor purchase a dozen dress shirts with "French cuffs"; but you do need to dress appropriately for your practice.

Typically, I leave topics primarily dealing with behavior during presentations, such as eye contact, handouts and PowerPoints, what to do with one's hands and arms, posture, standing versus sitting, and motionless versus strolling, for later in the course.

Unfortunately, it is necessary to address olfactory issues, since though human we are also members of the animal kingdom. Daily or highly regular showers or bathing, deodorant, regular brushing of teeth (I have known many lawyers who would return from lunch and if onions were involved, would brush, and occasionally, floss), and etc., are all necessary in our personal service business, working closely with clients in the practice of law.

I am going to leave tattoos and piercings for a subsequent article. Such fashion accessories are no doubt perfectly appropriate for some entertainment lawyers; but they would be poorly received in a bond finance practice. Some future lawyers feel strongly about their rights with respect to such personal adornment. But some clients feel strongly about their right to choose lawyers whose appearance is, in the client's personal judgment, "professional."

There are several points to be made with respect to a person's sound, one's voice. First, "vocalized pauses"—um, ahh, you know, like—and time-wasters while the speaker is thinking about what to say next, need to go, forever, if one wishes to be an effective communicator. Second, there is the question? At the end of each sentence? Instead of a period? If you are asserting a fact, or even just a point of view, don't end your sentences as if you are asking the listener whether the listener agrees with you. Similarly, this speaking problem, which is extremely common in the Academy (including at law school faculty meetings), must go altogether.³⁸

Finally, there is the voice itself. Occasionally, a person will have a weak voice or a squeaky voice or a high-pitched voice or a voice that is too loud for the circumstances, or another voice characteristic that is unusual or unpleasant or makes it difficult for the audience to understand the speaker. Certainly pronunciation issues and issues of accent should be addressed and reduced or eliminated. When the vocal chords themselves are the issue (I had an excellent student who was a wonderful public speaker, but this student had a thin and "reedy" voice), I encourage the student to work with a voice coach or other professional

³⁸ Trigger Warning Alert! The author has observed, even in class, the practice of ending a sentence with an articulated question mark is more common among women than men. It is also a more common speech mannerism in the Southern United States than elsewhere. To be even-handed about it, my wife is right that when I am lost while driving, like most other men I wait too long to consult a map or ask for directions.

to ameliorate the problem. Low volume alone can typically be addressed by microphone or other amplification device.

Each of the topics covered above deserves substantially more coverage during a marketing and sales course or segment of a law school course, but consistent with my Ground Zero approach, I start with this difficult topic, using self-effacing humor to deflect or reduce the likely negative reaction from students who may feel uncomfortable with this “person in the mirror” topic.

B. Preparing for Your Legal Career: Preliminary Marketing and Sales Activities.

These are activities that can and should be undertaken by virtually all law students during law school, and the earlier in the three-year period the better. Every person I’ve met with a Masters in Business Administration, or other strong business background, knows to do each of these easy tasks.

- Business Card. Most law schools in my experience will provide their students with business cards. (If one’s law school does not provide them, they are quite cheap and can be created and printed at UPS and Federal Express and printing stores around the country.) While there has been much discussion (especially in IT and technology circles) about the replacement of paper business cards with electronic equivalents, paper business cards are still the coin of the realm in business and legal circles. If you are planning on patent, trademark or software work, or other IT or technology as your legal specialty, I would go with an electronic equivalent but still carry paper business cards as well. Make them fancy if you wish, so long as your name, address, cellphone and email address are on the card; and while in school, indicate whether you are first, second, or third year. (Most students accomplish this by indicating: “Graduation Expected May 2017” or the like.) Reflecting a significant activity or a prestigious class ranking is also appropriate (for example, “Notes Editor, Law Review; Top 15% of Class as of Spring Semester, 2016”). I usually suggest the student reflect (on the card and on the resume) a single address, rather than a law school address and a permanent address. The “permanent address” may reflect the student’s desired practice location but it also suggests a parental attachment that

may diminish in the mind of the reader the impression of the law student as an independent adult.

- Resumes. Unless a law student is focused on a position right out of law school as a judicial clerk, another government position, or a position in academia, the law student's resume should still be on a single page, with reasonable margins and font sizes. That is recommended primarily because prospective employers are more likely to read them if they are short and sweet. Law students who are not able to fit their resumes on a single page are likely not prepared for the far more substantial challenge of practicing law for clients.

Photographs on resumes come and go; they are now gone. Law school placement offices should be of substantial assistance in the resume process, particularly with respect to current law firm (and other prospective employer) patterns and practices. If the law student finds that his or her placement office is weak, it is appropriate to compare notes with students from other law schools. I advise law students to keep their resumes current at all times, and if there are different areas of interest for the law student,³⁹ it may be appropriate to have a second version of the resume. A student should be ready to send his or her resume out on short notice at any time to take advantage of scarce employment opportunities.

For law students making clerkship applications, teaching applications, government applications, or other applications to positions where completeness is required, the student may still want to have a one-page resume, but to keep up, along with the resume, a lengthy and complete "curriculum vitae" ("CV"), which provides ALL employment information, ALL educational information, ALL items published, etc. Most law school professors maintain their CVs in a meticulous way, tracking all items published (including blogs), any substantial travel for scholarship, and all speaking engagements.

- LinkedIn⁴⁰ Launched in 2003, "LinkedIn... is a business and employment-oriented social networking service. . . [that] is used mainly

³⁹ One of my students, for example, had a strong interest in technology and intellectual property law. He was seeking opportunities in two different areas, for which he prepared and maintained different résumés: one geared towards law firms that did patent prosecution work, and the other geared towards intellectual property litigation firms. This is a wise approach.

⁴⁰ LINKEDIN, <https://www.linkedin.com> (last visited Sept. 12, 2016).

for professional networking.”⁴¹ As of March 2016, LinkedIn has 106 million active accounts.⁴² On June 13, 2016, Microsoft announced an agreement to purchase LinkedIn for all cash for \$26.2 billion in a deal expected to close by the end of 2016.⁴³ LinkedIn has become THE professional networking site in the United States; most of its revenues come from recruiters and from sales professionals using the network to ply their trades.⁴⁴ If you are reading this article and do not have a LinkedIn entry, and you are NOT in your final professional position, and you have hopes or real prospects of further gainful employment, you should create your entry on LinkedIn today. While LinkedIn has not replaced the resume, such a change *could* occur, particularly under new ownership by Microsoft. I am aware of two close family members who have changed jobs within the past two years because of unsolicited approaches by prospective employers who were led to make the approach by the LinkedIn entries of those relatives. One of the assignments in any marketing and sales course I teach to law students has been and will be to create and polish one’s LinkedIn entry.⁴⁵

In spending time with law students on LinkedIn, I spend time as well on other social media and focus, primarily, on what NOT to do. The First Commandment: You should post nothing on any social media site that you would not like your mother to see. If anything bad is on there now, clean it up. No bikini shots, no beer pong, no redneck jokes etc. The Second Commandment (and I do not care if there is pushback on this; the author is correct): Avoid Sex, Politics, and Religion on Facebook, Instagram, Snap Chat, and all other social media. If you have a need to communicate your views on these subjects, do so in private form. You may think no one could possibly disagree with a funny cartoon (not at all vicious or tasteless) about something Donald Trump or Hillary Clinton has said or done that is clearly in error and humorous, but that will be no consolation when you learn that the hiring partner of

⁴¹ WIKIPEDIA, <https://en.wikipedia.org/wiki/LinkedIn> (last visited Sept. 12, 2016).

⁴² *Id.*

⁴³ Jay Greene, *Microsoft to Acquire LinkedIn for \$26.2 Billion*, WALL ST. J., June 14, 2016. The purchase price for LinkedIn was \$196 per share. *Id.* The transaction is expected to close by the end of 2016. *Id.*

⁴⁴ See *supra* note 41.

⁴⁵ The author invites you to inspect the LinkedIn sites of the author, as well as former colleague Prof. George T. Kuney.

the firm you are most interested in is on your home state's Trump or Clinton steering committee.⁴⁶ Adhering to this rule still leaves room on Facebook for talk and photos of sports, education and business success, family, birds, flowers, books, pets and travel!

Your LinkedIn site contains room for the following items: a Tagline (more below); Summary; Experience; Honors and Awards; Organizations; Skills and Endorsements; Education; Additional Information; Languages; Volunteer; and Groups. Some LinkedIn users fill out their sites quite completely, providing much of the information to the LinkedIn world that one would provide on one's resume. Most users prefer a more subdued, "best of" approach, that provides the reader with the broad outlines of one's education and professional life, some further information regarding one's recent accomplishments and interests, and particularly any noteworthy business successes, deals closed, business awards, etc.

There is also room on the LinkedIn page for the new lawyer to include a "tagline." A clever tagline can be a great assist in name and brand recognition; and a bad tagline can get you in the press in a bad way. The largest and most successful firms appear to be moving away from taglines (typically fewer than ten words) in favor of a sentence or two that describes the way the firm views itself in the market. A few taglines from a scan of various law firm websites include examples like: "We are dedicated to our clients' successes." "Navigating New Paths to Growth." "Building Business Success." "One Firm Worldwide." "Standing Out from the Crowd." "How Can We Help You?" Brief and more specific taglines may work well with sole practitioners in smaller practice areas and markets.

It is understood that by using the LinkedIn site, the user is serious about his or her career, takes some pride in his or her position, status, accomplishments, etc., but is also open to change. It is not necessary—it is unhelpful—to indicate one's status as "unemployed" or "looking for a better position" or "looking to make a move" or language

⁴⁶ For example, the author applied for an attractive teaching position at a religiously affiliated law school whose faculty was religious and, unusual for a law school faculty, generally quite conservative both socially and politically. The author's LinkedIn page included a reference to the author's involvement in a humorous and fictitious organization, the "Trebor Hclew Can Flub." This represents the mangling of the name of one of my college roommates. One of my interviewers asked me if I was aware that Robert Welch was the founder of the John Birch Society. I did not get the job.

of that sort. Such information should be conveyed in more personal communications with headhunters, human resources professionals, and prospective employers.

- Elevator Speeches. In my eight or nine years of teaching at least twenty classes worth of law students, I have questioned at least fifteen of those classes as to whether the students know what an “elevator speech” or an “elevator talk” is. Less than ten percent of these several hundred law students recognized the term, and most of those who did were JD/MBA students or students whose undergraduate major was business administration or a related business field. An “elevator speech” refers to a brief (30 seconds to two minutes) speech about oneself, as if (to move this reference to the legal field) a first or second year law student has the opportunity to have a ride in an elevator with the managing partner or the hiring partner of a law firm in which the law student has a keen interest. (Once a law student has moved to private practice, the target would change from an important prospective employer to an attractive potential client.) The talk has to be pithy, fluid, engaging, unique, memorable, smooth if not effortless, somehow neither bragging nor over the top, designed to initiate a conversation and to have the recipient quickly develop an interest in keeping the conversation going. This is your commercial, your brand, so use some energy, and practice until you get it right. Eschew legal jargon or getting bogged down in details of any kind. The best outcome? An exchange of business cards and an invitation to follow up.

It is difficult to prepare and smoothly deliver an engaging elevator speech that really hits the mark. That is why, in my courses, which have had a significant marketing component, I have had my law students *practice*. Typically, I will ask students to prepare a draft, polish it, and then read it in class. After comments from me, the students are asked to deliver their elevator speeches in front of the class, with or without notes. After a further round of comments, the students will do their pitches or elevator speeches without notes, sometimes in a scenario of their choosing (having myself or another student stand in as a hiring partner, human resources director for a corporate employer, etc.), with a focus on the delivery being smooth (no halting or stumbling), brief (one minute or less), and with a successful close, handshake, exchange of cards, good eye contact throughout, etc. Whether a student is going directly to a United States Supreme Court clerkship, associate position with Watchell Lipton, or hanging up a shingle in a town of 10,000 persons, this is an important skill that ought not be overlooked. And if a

person can speak smoothly and without stumbling about oneself, the person is likely to be smooth on his or her feet in a variety of other circumstances.

C. Developing Lifelong Marketing and Sales Habits

Prologue. The next section of this paper and presentation deals with lifelong marketing habits, but before beginning this topic an additional point must be made. Marketing and sales activities are useful only if you are already an excellent attorney. If for whatever reason the new attorney is struggling to master the craft, he or she should put off any serious marketing and sales activities (other than keeping up the resume and LinkedIn entry, and having a business card) until the person is confident in his or her legal abilities and skills for the appropriate level of experience, and others around the junior lawyer (lawyers inside and outside the firm, and the junior lawyer's clients) perceive the junior lawyer to be (for his or her level of experience) an excellent lawyer. "Being a Great Lawyer is a "Table Stake"", says Joey Asher; you are not even in the game unless you are an excellent lawyer.⁴⁷

The foregoing items and skills are pertinent to marketing and sales for the law student personally, and should be acquired by all law students prior to graduation as both initial marketing steps, and as steps materially helpful to finding a job. The next set of skills are habits more pertinent to the post-law school career, and are useful to advancement throughout one's career.

• Building on Past Work. We now assume that you, the newly-minted Juris Doctor, are engaged in private practice in some capacity, whether with a law firm, a business, or a government agency. You should at all times have a current business card, a great resume (and, if applicable, curriculum vitae), a satisfactory and appropriate LinkedIn entry telling the world of your position and law school successes in getting there, and a compelling elevator speech which will be highly attractive to prospective clients or take you to the next rung on your career ladder. It is incumbent on the legal professional interested in continuing professional development to maintain these on a current basis. There are two general caveats in this area: first, with respect to detailed resumes and LinkedIn, one must be careful not to disclose client confidences. Certain information about relationships with clients may be

⁴⁷ ASHER, *supra* note 10, at xviii.

disclosed, some information may not or should not be disclosed. Keep in mind as well that there is a thin line between a clinical description of solid achievements and annoying bragging. Second, with respect to LinkedIn, sometimes less is better. An entry that shows the outlines of your career, where you are now, and some recent, real accomplishments, has a better impact than an entry of great length, which includes the information that you were one of the youngest managers ever at your local Ruby Tuesday.⁴⁸

In addition to building on tasks and skills that should be undertaken in law school, and continually maintaining your resume (CV), business card, LinkedIn entry, and elevator speech, there are at least four additional skills that can be introduced and successfully practiced in law school: capturing and managing useful contact information; networking and how to do it, both in and out of a cocktail party or other social setting; creating a marketing, or business development plan for oneself; and marketing and sales *persistence*.

• Contact Information. It is important to get and maintain contact information. Remembering that a woman you met in Albuquerque at a golf tournament and spent much of a day with socially had spent her entire career with NCR is not useful if you don't remember her name and cannot retrieve it through your poorly organized contacts when you have an opportunity to do great work in the ERISA field with that great American company. When I retired I had about 1,500 contacts, but these were not especially up to date, nor had I really captured all that I should have. Please, do what I say, don't do what I did. Capture contact information. Keep it up to date. In the "other" field, capture pertinent information that is helpful to networking opportunities. This "other" information field should include appropriate family and friend information; alma mater information; significant interests and hobbies; and other useful information. Such information can be extremely helpful. While secretaries and administrative assistants are a dwindling resource in the legal profession, this is a perfect task for such a person, so long as that person has time on a basis no less regularly than weekly to keep your contacts for you. In order to keep your contacts fresh and up-to-date, I would also recommend that on a regular basis your assistant provide you with a current list of contacts, perhaps one letter at a time, so that you remain current.

⁴⁸ Ruby Tuesday is a wonderful restaurant chain.

- Networking. One does not network in order to meet new people. (Remember, the author is extremely introverted.) One networks in order to meet, directly or indirectly, prospective clients. Undoubtedly there are lawyers in practice whose lawyering skills are so awesome, and whose people skills are at such a high level, that without effort, they need to beat prospective clients away from themselves and their law firms with a stick. That is not the case for most mortal attorneys, and in our competitive market for legal services, most lawyers need to market, and one way to do that is networking. Before I speak of event networking specifically, I wish to speak about networking generally.

Our species is social. We (most of us) like to meet people, get to know people, make new friends, participate in groups and communities, help others, etc. As a new attorney, we all have opportunities to tell our family, our friends, acquaintances in the community, church members, tennis team members, etc., about our careers. We SHOULD do that; that is effective networking. Networking does not consist of simply networking and meeting people for direct business opportunities; sometimes neighbors, family, and friends will ask you about local schools, good plumbers, how to get tickets to a sporting event, or a million other requests that give you the opportunity to network and solidify a relationship that may—not today, but someday—provide the opportunity for you and your law firm to provide legal services. And sometimes, friends will need a lawyer to handle a legal matter that your firm does not handle. That gives you the opportunity to refer the friend to a friendly lawyer, who then when similarly situated will (one hopes) reciprocate. So take the call, make the introduction, do the unlikely speaking engagement for the PTA, give a good referral—one never knows where the next client will come from! Networking works indirectly, as well as directly.

Event networking can be done well, or badly. Bad networking consists of rushing into an event without preparation, hitting the food and beverage hard, looking for friends and lawyers from your own firm to chat with, seeing what happens, and then leaving early to beat traffic. I know this is bad networking; I have done it on occasion. But effective event networking involves thought, preparation, and some do's and don'ts.

Do—Prepare. If you can, find out from the organizers who will be there, and who from among the list would be useful to meet. If you cannot get the list ahead of time, come to the event early when the list of

attendees will be available at the greeting table with the name tags. If a colleague from your firm will be there, coordinate so you can “divide and conquer,” or so that you work in tandem on the same prospect or prospects, as appropriate.

Do—Bring Business Cards. Keep these in the same pocket all the time. I kept mine in my shirt pocket along with a pen. When I RECEIVED a card, I put it in my right outside jacket pocket, with my pen available to make a note about something that I wanted to capture in the “other” field in contacts. When I emptied my pockets in the evening I tried to find a minute before the end of the day to go through the cards received to make sure I had captured on the card all useful information. Sometimes I would fire off a message that day or evening. A friend brings to networking events a pad of stiff 3” x 5” note cards with nothing on them but his name.⁴⁹

Don’t—Chow Down. Have a beverage. Have a snack. Don’t have both at the same time; that makes you useless for networking. You can’t shake hands, write anything down, exchange cards, or do much of anything else, regarding the reason you are there. You are not there for sustenance and if it helps, remember that most Americans, and most American lawyers, can easily afford to skip a meal.

Don’t—Spend Time with People You Already Know. On occasion when I was a law firm partner attending a cocktail party with more junior attorneys from my firm, I would see a gaggle or clump of them chatting with each other. I would make a beeline for the group and tell them to knock it off and go mingle if they expected to be reimbursed by the firm for their expenses. I would say it, of course, in a nice but firm way.

Do—Follow a Script if You Are (Like the Author) Shy or Socially Awkward. I am indebted to Joey Asher⁵⁰ for this mnemonic, which while goofy and perhaps embarrassing will help those who need help to continue a normal, networking conversation. [See Appendix II, a clumsy personal version of the mnemonic based on the Asher text and prepared by the author.] Welcome, hello! Where are you from? Where do you live? Do you have family, friends? What do you do for a living? What do you do for fun? Do you travel much, or have you

⁴⁹ His name is Ronnie Foreman, Foreman Consultants, Belfast, Northern Ireland.

⁵⁰ ASHER, *supra* note 10, at 27-9.

travelled recently? Just ask the questions, listen to the answers carefully, and see where they take you. Most people like to be the center of attention and to talk about themselves. Such a series of questions makes your conversation partner feel good about your obvious interest in him or her, and may give you a marketing or networking idea to pursue. One would hope there is a marketing and sales idea in there somewhere. Perhaps there is an immediate business opportunity; perhaps there is an opportunity to help, or to network, which leads to something, which leads to something else.

Do—Retain Names! Some people seem to have a total gift for the retention of people's names. They hear a new acquaintance's name, and it is there forever. Some politicians have this gift. I do not. However, early in my work career, I had a job for a period of six months as an orderly in a psychiatric ward full of depressed and bipolar patients (26 such patients, with some daily turnover). It was important for these patients and their already low self-esteem that all of the medical staff know their names. And so, I made the effort to learn and retain all their names. It is possible to learn this skill, and use it in your legal career. It is particularly helpful in a networking event. Have you ever been networking and, after a five-minute chat, a newcomer arrives? And one of the existing group's number then captures that newcomer's name, and introduces the newcomer to each of the group by name, together with a sentence about each person's employer and why he or she is there? That is not a cheap parlor trick; that is impressive, highly effective networking.

Do—Consider the Five-Foot Rule. I am indebted again to Joey Asher for this suggestion.⁵¹ At networking events, it is not unusual for there to be a number of persons in attendance who have few acquaintances, and who know few other people there. These people meander to the bar, use one of their two drink coupons to obtain a small pour of inexpensive red wine in a plastic cup, or a cold beer in a bottle, and then slowly meander around, looking for a person or group he or she knows, or a welcoming group with which to link up. Asher suggests that if such a person comes within five feet of your group, that you stick your hand out, welcome the person, and become the impressive networker described in the previous paragraph. You'll have made a friend, and impressed your group, at the same time.

⁵¹ ASHER, *supra* note 10, at 29.

Do—Cut Your Losses. On occasion at a networking event, you will find you have fallen into a group that is highly unlikely to do you any good, directly or indirectly. Perhaps a group of old-friend/fraternity brothers who want to rehash the previous weekend's college football games and scores; or persons dedicated to politics, of a stripe which is of no interest to you; or fans of the Kardashian family; or some other group such that you can see no way that anyone there can be of assistance in the long or short term. The event only lasts an hour or two. Cut your losses, let the group know that "I need to say hello to another person; it's been nice meeting you," and take your leave.

Marketing or Business Development Plan. Large law firms and smaller but sophisticated law firms require their partners, and frequently their senior associates, to prepare on an annual basis a business development or marketing plan. (This may be combined with a self-evaluation by the attorney of the prior year's performance.) The largest firms may require this from all of their attorneys, including new associates.⁵²

At this point in our discussion, I note that the task of putting together a business development plan for an individual attorney depends upon an accurate assessment by the lawyer of where he or she is in the legal industry. To prepare a sensible marketing plan requires a significant level of knowledge on the part of the attorney to understand his or her geographic market; to understand his or her practice, and the overall practice abilities of his or her law firm; and to understand the overall business environment, in the United States, in the area of practice, and for the firm's clients and prospective clients. In addition to understanding the skills and capable practice areas of one's own firm, one needs to know the extent of the firm's support of one's marketing efforts, in both financial terms (what is the *budget*?) and in terms of time (if the firm's billable hours' budget is 1800 hours per year, but the attorney is at a stage in his or her career where the attorney is expected to be building a practice, what relief, if any, from the budgeted billable hours is provided?). Also, in preparing such a plan, one should be aware of the role of teamwork in the firm's efforts. Is the firm an "eat what you kill" firm, where the firm is essentially a group of somewhat collaborative sole practitioners, or does the firm encourage real

⁵² MACDONAGH & CUZZONE, *supra* note 33, at 18-22 (containing a form for law firm associate called "Business Plan Worksheet.").

cooperation and teamwork to build the practice of the firm? To the extent possible, even though speculative, business plans should include projections of numbers of clients, revenues, expenses, billable hours generated, realization rate,⁵³ associates or paralegals employed, specific client targets (if possible), specific events to attend or to plan for client development, etc. The level of detail appropriate will vary from firm to firm.

Persistence and Daily Activity. Once the new lawyer has a well-thought out marketing plan, persistence and daily activity are required. Asher's formula is:

$$(P + V)/T = \$$$

where P = prospecting, V = value, T = time, and \$ means new clients, or new business from existing clients.⁵⁴ (Value will be discussed below.) Asher focuses some attention on the notion of prospecting, that is, targeting the right kind of client or prospective client for you and your firm. Your plan should focus on appropriate prospects. For example, if you are an associate with Cravath, Swaine & Moore in New York, landing your favorite one-location Thai restaurant as a client is not working in your firm's sweet spot or playing to its strengths. Similarly, if you are with a five-person personal injury litigation firm, your sights ought not be set on Fortune 500 companies located in the area (at least, not initially). All of us have limits to our time, energy, talent, and money, and executing a solid, appropriately focused marketing plan will usually be more effective than scattershot approaches, or employing the hard

⁵³ "Realization Rate" in its simplest form means, for a particular file or matter, taking the number of hours charged to the file, multiplying each hour by the appropriate timekeeper's usual hourly billing rate, and adding all such dollars together, and then dividing that sum into the amount ultimately collected for the file or matter. Even firms that do largely project or fixed billing, or plaintiff's contingent fee litigation, will try to determine what their realization rate would have been on the matter, had the time expended been billed at standard hourly rates. Significant variables affecting realization rates are agreed-upon discounts (agreed to up-front before the work begins), after-the-fact discounts, also known as write-offs, the time value of money (a dollar collected on an invoice 30 days after the invoice is mailed is worth more than a dollar collected 335 days later), and the increasingly elusive "premium" billing (though not elusive to Wachtell Lipton) for outstanding results in a file or a matter meriting an amount higher than the usual hourly rates. Law firms aspire to have firm-wide realization rates as close as possible to 100%; a good overall realization rate for a large law firm would be in the low to mid 90% range.

⁵⁴ ASHER, *supra* note 10, at 8.

sell on anyone with a wallet and a pulse. By persistence and time, this author means that you should think about expanding your practice in some respect every day. Here is what I mean.

A partner and friend with whom this author practiced for most of 25 years had a daily, unshakeable habit. (This person had a stronger background than the author in business, with an undergraduate degree in accounting and a focus on business and business law courses.) Before he left the office each day, off the top of his head, he did a brief (no more than 10-15 items) "To Do" list for the following day. No matter how busy he was, whether billing eight hours a day or, in preparation for a closing, 15 hours a day, the list would include at least several marketing activities: "Call Rick about new deal with petro co." "Set up lunch with XYZ [new bank in town]." "Call Marlene about joint golf outing [with law firm and her company] in October." "Set up new banker training conference with [Bank of US] for 2nd week of January." "Dinner with Bob to discuss perf. on recent transaction." "Lunch soon with Ray at ST." No one actually *finishes* to do lists, but they signify the action priority of the items on the list. Your author, a Religious Studies major with minimal natural organizational skills, followed a different path but over time made sure that, for the most part, the work pipeline was either full or at least steady for most of an almost thirty-year career. To summarize: make marketing and sales a priority by doing some of it every day. There is no need to expect a plan to work out perfectly, but keeping at it on a regular basis will ensure ultimate long-term success.

To complete the Asher business development formula above, value is what you show a client or a prospect to initiate or further a business relationship. You are unlikely to be able to show a client or prospect all the benefits of your firm all at once. What you can do is bit by bit demonstrate to the client or prospect your expertise, reliability, powerful contacts and friends, knowledge of his or her business, ability to solve business problems, ways to save money for the client or to increase revenues, and other items of interest and value to the client or prospect. Over time those things will build a reputation and reservoir of positive thoughts that will ultimately mature the relationship into a real lawyer-client relationship. And remember, the single most important factor from the client's perspective in a successful attorney-client relationship is the *extent to which the lawyer understands the client's business*. The more complete the understanding, the better the relationship. The pinnacle of legal success in private practice is to serve as a true

counsellor to a business client; a person who is consulted even before important business decisions are taken or made.⁵⁵

Executing the Plan. The variables of the plans of junior practicing attorneys undoubtedly exceed the commonalities. A significant portion of the new graduates of US law schools will go to large metropolitan areas and work for large firms with sophisticated practices and step into positions where their first year billing rates will astonish their families and friends. What those new attorneys need to do to develop their careers and their practices will vary dramatically from the sort of activities in which small-town lawyers will need to engage. Further, different practices have very different sorts of appropriate marketing activities. Criminal defense attorneys may need to hang around courthouses, police stations, and bail bondsmen; small business lawyers will join the local chambers of commerce and Rotary; and consumer lawyers will need to find groups of non-lawyers to address, to educate, and to sell. Thankfully for all of us, whether you are a sole practitioner, or a new associate with Wachtell Lipton, you will have the internet at your fingertips with all the information available there to identify your best client prospects, along with contact information.

While differences exceed commonalities, there are some common goals for most new attorneys in executing the business development plan. Keeping in mind that one needs to have a real, thought-out, written business development plan; to understand the time, money, and other resources available to marketing and sales; and to work at it in some respects on a daily basis, here are some other common factors to consider:

Traditional versus Client-Focused Business Development Activities. Prior to the Supreme Court decisions referred to in footnote 13, above, the traditional methods of building a law practice were to engage in activities of the organized bar, including attending continuing legal education seminars and providing such seminars for other lawyers, writing law review articles and articles for state and city bar association publications, and speaking on legal topics at public gatherings such as

⁵⁵ Some lawyers suffer from arithmophobia—an irrational fear of numbers, financial matters, and arithmetic. Some of these arithmophobic lawyers believe they can be truly successful without coping with this phobia. They are mistaken. An attorney cannot truly understand a client's business, of any sophistication, in the 21st century without some understanding of the client's financial statements. The foregoing is an example of an "ipse dixit" statement, which is nevertheless entirely true.

chambers of commerce, church meetings, Rotary meetings, neighborhood meetings, etc. In recent years however, an increasing number and percentage of lawyers have moved to business development directly with their clients and prospective clients. For example, during my years doing media and telecommunications finance for large banks and financial institutions, and sometimes for the large media firms on the receiving end of large loans, I regularly attended the annual conventions of the National Cable Television Association (NCTA), the National Association of Broadcasters (NAB), and conventions of various wireless communications providers, tower companies, and etc. Why? Virtually ALL of my clients (and many prospective clients) were there. I remember being at a great restaurant in New Orleans with clients and prospects during the 1990s. One of my clients, whom I had not yet seen at the conference, came in to the restaurant rather late with the CEO and CFO of a substantial cellular telephone company. He spotted me, came over to the table and said, "Good! I'm glad you're here. Can you work on a term sheet for me tonight?" (This represented a new, very substantial deal for this deal lawyer.) I put my knife and fork down, said "That's what I'm here for!", excused myself, and got to work.

Rather than spend one's continuing legal education hours preparing to lecture at seminars that share with other lawyers your own, hard-earned, special expertise, why not (at least occasionally, if not on a regular basis) educate your clients on legal, and mixed business and legal, matters that are of interest to them? The firms with which I practiced on an annual basis would provide a seminar, *gratis*, to lenders whether clients of the firm or just friends, on recent developments in lending law. This was typically very much appreciated by our lender clients and friends, and was of material benefit to the more junior lenders in attendance. And our two-hour or so seminar would typically conclude with a social hour with cocktails and hors d'oeuvres for an opportunity to let the traffic die down and for us at the firm to do more networking.

Most if not all trade and industry associations have publications distributed to their members on a weekly, monthly or other basis, and many of these publications have a regular column or feature on legal developments. Why not submit an article you believe will be of interest to your clients or prospective clients? If one is not sufficiently specialized to pursue this avenue, volunteer (if you are with a firm) to do a general "client alert" for the firm on an important legal case or piece of legislation.

The foregoing is not meant to discourage bar activities, the writing of scholarly law review articles, or providing continuing legal education seminars and programs. It is however meant to draw the attention of junior lawyers to consider the reasons one is participating in such activities. If one is interested in bar activities for the sake of the good of the organized bar, that is a worthy and even virtuous use of time. If one is using these activities in whole or in important part to develop legal business, the author recommends that you more carefully consider your priorities and your allocation of time.

Similarly, in allocating time for networking, it is good to consider the cost and the benefit of the various groups with which one might associate. Alumni associations, church organizations, ski clubs, travel groups, book clubs—all provide networking opportunities, but each has a differing value in building your practice. Consider as you move forward whether the time you spend with other Civil War reenactors is effective practice-building networking time, or really just a hobby. That can go for any group, and I fell prey to this mistake myself with respect to one particular area of interest.

Communications. As noted earlier, being an excellent lawyer is a “table stake.” Your client assumes you are an excellent lawyer and that you are fully capable of practicing law. That does not mean that you unload your full legal vocabulary on your clients every time you speak with them. After a period of time, you will know how your client likes to communicate and, law practice being a service profession, you will communicate with the client as the client wishes. You may prefer to use email, but if the client likes to talk things out, you will need to spend time on the telephone. Perhaps some of your clients really do enjoy hearing you say “hereinafter,” “eschew,” “The Rule in Shelley’s Case,” and other legal incantations. In my experience however, most of my clients wanted me to be brief, to the point, and use bullet points to identify items of most significance; and if what I had to say exceeded a page, a summary, upfront, please.

One other point worth making regarding communications goes in the other direction; not that lawyers should communicate with clients in the style which the clients prefer, but that lawyers need to remember that a particularly effective way to communicate an important point—a lesson—is to use a good story. People enjoy good stories, and the best lawyers—frequently, the best trial attorneys—are wonderful storytellers. Of course, half the battle is choosing the story that sends the right

message. But storytelling is an art, and those of us who are not naturals at it can nonetheless practice and improve, and thus improve our lawyering skills.

Low-Hanging Fruit. Honestly, there is not much “low-hanging fruit,” that is, easy marketing targets, for lawyers any more. But if you are with a firm you should know that, generally speaking, it is easier to get additional business from an existing, satisfied client, than it is to get business from an entirely new client.

Further. Additional topics in executing one’s business development plan that can be expanded upon in a course (or portion thereof) on marketing and sales for law students include how to prepare an organized “pitch” or response to a “Request for Proposal” (RFP), an activity common with larger firms and for firms that do work for governments and quasi-government agencies; preparing and delivering a PowerPoint presentation for a business or consumer (i.e., non-attorney) group on a legal topic; and how to polish your skills when speaking in public (touching on eye contact, pacing of speech, inflections and volume, what to do with hands, whether to use a podium and remain still or roam around, use of stories, whether to lecture or to make a few points and conduct an interactive presentation, how to think about organizing a message for a presentation, and how to make sure that the three or four “takeaways” that one anticipates an audience taking away from your presentation are the correct ones).

CONCLUSION

Legal education in the United States is in a period of change, and that is good. The model of US legal education that sufficed for the first 100 years or so, beginning with Dean Langdell, served its purpose, but the law, the economy, and life in the United States have all changed so rapidly and so dramatically, that Professor Kingsfield and *The Paper Chase* are no longer getting the job done. Similarly, the old nostrum on building your client base, “Do a good job and answer the phone!” is necessary, but woefully insufficient. The American Bar Association and most law schools, law school administrators, and faculties acknowledge that they need to do a better job training future American lawyers to practice law. For this author, that means a better balance between doctrinal courses and skills courses, an acknowledgement that some

organized specialization for future lawyers is required in law schools, and that the law professors who inculcate practice skills in future lawyers are as important to legal education as are doctrinal law professors. Whether, in particular, marketing and sales merits its own three-credit course on a regular basis as a part of the law school curriculum for future private practitioners, remains to be seen. My surmise is that law schools will increasingly use a “Preparing for Private Practice” course in the third year as a catch-all for marketing and sales, timesheets, billing and collections, legal “administration”, file opening and closing, dealing with legal conflicts through waivers, opinion practice, and the general business of practicing law. Even that would be better than the status quo, in which many law schools ignore or diminish marketing and sales—the success of which is only the single most important factor in determining how good a living most lawyers make.

APPENDIX

APPENDIX I

Syllabus

- Starting with the person in the mirror
- Preparing for your legal career: preliminary marketing and sales activities
 - Resume and Business Card
 - LinkedIn
 - Your Elevator Speech
- Developing Lifelong Marketing and Sales Habits
 - Keeping your Resume, curriculum vitae, LinkedIn page and elevator speech up to date
 - Capturing contact information and maintaining your contacts
 - Networking (in and out of the office); the cocktail party or other social event – planning; names; capturing prospects and cutting your losses; dealing with food and beverage and the “five-foot rule”
 - Daily activity – building your practice with some activity every day
 - Creating and sticking to a marketing or business development plan
 - $(\text{Prospecting} + \text{Value}) / \text{Time} = \text{Clients}$
- Understanding where the new lawyer is in the legal profession in early years of practice, and planning accordingly
- Executing the Plan
 - How much time will you devote to this activity?
 - Do you have a budget and if so, how much is it (per month, per year) and for what may it be spent?
 - Will you engage in traditional lawyer marketing activities (law review articles, involvement in national, state, and local bar associations, and involvement [preferably in a leadership role!] in civic activities), or activities more

directly focused on business development, such as involvement in trade organizations important to your clients and client prospects, writing for useful trade publications, speaking to trade groups, etc.?

- Communicating effectively with clients: how do clients WANT to communicate with you, their lawyer? Eschew legal jargon! For letters and emails, use bullet points for brevity and emphasis of what is important to the client
- Do not confuse your hobbies, interests, and avocations (i.e., alumni associations, church leadership positions, Civil War reenactment activities, etc.) with your marketing/business development plan
- Cross-selling existing clients is easier than landing new clients
- Planning for a client ‘pitch’ or formal client development meeting
- THE MOST IMPORTANT SINGLE FACTOR IN CLIENT SATISFACTION WITH THEIR LAWYERS IS THE EXTENT TO WHICH THE LAWYER UNDERSTANDS THE BUSINESS OF THE CLIENT. THAT WOULD INCLUDE ALL ASPECTS OF THAT BUSINESS FROM OPERATION TO HR TO FINANCIAL STATEMENTS (Get over your Arithmophobia!)
- Effective Public Speaking
 - Preparation for the event, and rehearsal
 - Attire; eye contact; where are your hands?; using your voice effectively and eliminating ‘vocalized pauses’, unintended question marks and other, you know, problems
 - Proper use of PowerPoint
 - An interactive presentation
 - Your INTENDED takeaways for the audience
 - Messages and taglines

APPENDIX II

Networking

