I Didn’t Go to Law School to Become a Salesperson—The Development of Marketing in Law Firms

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ABSTRACT

The legal profession has undergone greater transformations during the past few decades than in the last few centuries. Deregulation and liberalization, increasing consumer expectations, new information technology, and a growing global marketplace have resulted in an increasingly competitive marketplace. Services that were once considered highly specialized are treated today more and more like commodities. Most lawyers no longer have the luxury of waiting for business to come to them. “Technical” competence alone does not guarantee success in winning new business or keeping existing clients.

There is general recognition in business and business school academia that marketing answers such challenges and that marketing is not only highly recommended, but necessary to ensure an organization’s long-term survival. Marketing is important since organizations need to be aware of their competition and aim to satisfy their customers in order to be successful. This is particularly true for service industries since service providers interact directly with their customers. While the rationale for marketing might be unquestionable, numerous studies and articles stress that law firms often resist the diffusion of the marketing concept.

This paper examines the underlying reasons for the advent of marketing among law firms. Both barriers and drivers are explored to understand why an industry like the legal profession starts to embrace marketing. While barriers to a market orientation are somewhat poorly understood, the development of marketing is explained with macro-environmental factors—political, economic, technological, societal—and the underlying implications of micro-environmental factors—the legal profession, law firms, and individual fee earners.

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If you asked them, the majority of lawyers would probably answer that they do not “do” marketing—at least until recently. And most law school students would likely say that they did not go to law school to become salespeople. After all, marketing is for toothpaste, cars, or soft drinks, but is inappropriate for the legal profession. While the most recent recession may have influenced some to be more positive about marketing, the legal profession has long resisted the idea of marketing its services. A normal and accepted discipline in the corporate world, only the last three decades have seen the advent of marketing in the profession.

What has happened? The legal sector has undergone greater transformations during the last three decades than in the prior two centuries. Deregulation and liberalization, increasing consumer expectations, new information technology, generational differences, and globalization have resulted in an increasingly competitive marketplace. The recent recession has further intensified the competition among law firms. Many services that were once considered to be highly specialized are being treated today more and more like commodities. A once elite and learned profession is now operating in a competitive, cutthroat business environment, much like any other profession. Lawyers no longer have the luxury of waiting for business to come to them.

Law schools teach students how to think like lawyers, but in today’s highly competitive world, it is imperative to bring more to the table. Technical legal competence alone is not a guarantee of success in winning new business or keeping existing clients. Traditional conduct and approaches no longer ensure success or even survival. Consequently law firms are forced to compete in new ways. It’s more than possible—it’s extremely common—for law students to graduate into the real world in immaculate innocence of any exposure to economics or to how for-profit businesses actually run.

“Given that AmLaw 200 firms are multi-hundred-million dollar per year enterprises, this naïveté can be dangerous to one’s career. . . . After all, the most solid foundation for figuring out what partners really want from you is to understand what you can do for them; they’re the owners and they take home the profits. If you don’t understand the connection between that and what you do as a lawyer, I wish you luck.”

1. See Samantha K. Graff, “Marketing” at Wachtell, Lipton, Rosen & Katz, HARV. BUS. SCH., Case Study No. 9-496-037, Nov. 29, 1995, at 1 (hereinafter Graff, Wachtell) (“When The American Lawyer published the 1995 results of its annual ‘Am Law 100’ survey, Martin Lipton was pleased to see that Wachtell, Lipton, Rosen & Katz had reclaimed the top spot in revenue per lawyer and profit per partner. The survey reported that Wachtell, Lipton, Rosen & Katz had grossed $990,000 per lawyer—over $200,000 more than the second place firm. A few days after the survey was released, two case writers from the Harvard Business School interviewed Lipton about his firm’s marketing practices. Lipton’s initial response to their questions was that the firm did not do any marketing of its services.”).

There is general recognition in academia and practice that marketing addresses the increased need to compete for business. Marketing is important since organizations need to be aware of their competition and aim to satisfy their customers in order to be successful. This is particularly true for service industries due to the direct interaction they have with their customers. While the rationale for marketing might be unquestionable, professional services firms, in particular law firms, traditionally resisted the diffusion of the marketing concept or market(ing) orientation. Little marketing used to occur in the legal profession, and lawyers began to adopt marketing “unenthusiastically” or not at all.

I. ORIENTATION

This article discusses the reasons why law firms started to adopt marketing despite long-held resistance. First, the novelty of and rationale for the research will be explained. The topic will then be examined from both a real-world practice context as well as an academic research context. Forces causing the nascence of marketing in the legal profession will be studied first in regards to the general environment of the profession, the so-called “macro-environment” (see “Research Context”), then in the “micro-environment” of the profession and its participants—law firms and individual lawyers. These elements include competitors, suppliers, customers, and employees as well as other stakeholders.

II. RATIONALE FOR THE RESEARCH

It has been argued that, from a microeconomic point of view, a law firm is essentially a service business like any other: it renders services to clients from whom it receives payment. Like any other business, a law firm combines resources in order to produce services and adheres to the basic principles of

3. See Lloyd C. Harris & Nigel F. Piercy, Barriers to Marketing Development in the Barristers’ Profession, Serv. Indus. J., Oct. 1998, at 19, 20; see also Werner Pepels & Brunhilde Steckler, Anwalts-Marketing [Lawyer Marketing] 2 (2003); Angela Vickerstaff, Legal Sector Marketing: A Contested Case, 38 Mgmt. Decision 354, 356 (2000). “Market orientation” is a strategic worldview whereby a firm focuses on its selected client base (its “market”) in all it does. Serving that market is the focal goal of all functions in the business. The market, i.e., the clients, is the organizing principle for the firm and information about clients is used at all levels across all functions to steer the company in the right direction. “Marketing orientation,” as truly distinct from market orientation, is more tactical: in a marketing oriented firm, the marketing function has the power and drives the company ethos and pecking order. E.g., the firm might have a tradition of hiring leadership from the marketing function.


economics—profitability and financial liquidity, to ensure continuity. The “growth in the size of the profession, the size of firms, and the volume of the market, has led . . . [to] lawyers having to treat the practice of law as a business.”7 Access to justice requires not only that the legal advice given be sound, but also “the presence of the business skills necessary to provide a cost-effective service in a consumer-friendly way.”8 Customers are the lifeblood of any commercial organization. Without them, a business has no revenues, no profits, and therefore no market value. In fact, the basis of a business is its ability to create and keep a customer.9 “[T]he law is a service business, and satisfaction can only be measured by the client.”10 As the satisfaction of customer needs is the main business goal, businesses have only two basic functions, or processes, that are performed to carry out their mission: marketing and innovation.11

The marketing concept simply holds that the way to corporate success lies in continually meeting customers’ needs. Marketing is linked to a number of benefits, including improved business performance, customer perception, and loyalty.12 Marketing is of particular importance in highly competitive environments. Lawyers need to keep in mind that clients are the reason for the existence of the legal profession and not vice versa.13 If one firm cannot or does not supply the services desired, its competition probably will.14 Some have argued that market orientation is necessary to provide an organization with long-term direction.15 Changed circumstances force firms to “learn to compete in a completely different manner. Those that do not, or that cling tooth and nail to the past, will not survive.”16

Nevertheless, lawyers historically have not embraced marketing. Marketing was almost non-existent among lawyers as it was not only “disliked,” but also considered “profoundly unprofessional and inappropriate.”17 While these obser-
vations are now dated, the strong influence of tradition and history in the legal profession, the perception of and the attitude towards marketing were substantial barriers to the advance of marketing in this field. This may be in part due to marketing often having been equated to advertising among lawyers. As this is not an uncommon misconception, the Chartered Institute of Marketing stresses in its definition that:

“Marketing is sometimes wrongly defined within the narrow context of advertising or selling, but this is not the whole story. Marketing is a key management discipline that enables the producers of goods and services to interpret customer wants, needs and desires and match, or exceed them, in delivery to their target customers.”

Marketing authorities acknowledge distinctive challenges or barriers to marketing of professional services but were confident that lawyers would find “that marketing is not inherently unethical or manipulative nor is it defined by the field of advertising.” In fact, they believed that “enlightened” professionals consider market orientation “to be a practical tool for the achievement of competitive advantage.” It was cautioned that there “should be little debate that marketing and quality service plays a central role in legal firms’ operations. . . . [O]f concern is the effectiveness of any marketing undertaken.”

III. CONTEXT

A. PRACTICE CONTEXT

In recent years, the environment in which law firms operate, the collective legal sector, and the self-conception of individual lawyers have drastically changed. Increasing numbers of lawyers, international competition, and new entrants from outside the traditional legal field have challenged the traditional modes of operations of law firms, and the legal sector has become increasingly competitive and market-driven. The legal profession—one driven by the practice itself—today is driven by the clients. With clients becoming more

demanding and less loyal, firms increasingly have to compete to attract and retain clients. Law firms need to be aware that clients seldom feel obligated to inform firms that they have no intention to work with them in the future. “Law firms never get fired, . . . [t]hey just don’t get more work.”

Marketing can potentially help focus attention on service delivery and client satisfaction. In addition, professional services are increasingly bought as commodities. A professional service is considered high or low in importance depending on the relationship of the service to the organization’s core business activity and risks exposure if failure occurs.

Clients increasingly expect to benefit from a firm’s accumulated experience and methodologies—its efficiencies (and therefore cost advantages) that come from dealing with providers who have solved similar problems before.

B. RESEARCH CONTEXT

The presence of professional managers and marketing departments in law firms has become increasingly common. Marketing in law firms, however, is said to be under-researched and therefore warrants further academic investigation. Other studies—which are also now dated and merit re-examination—suggested that marketing of solicitors’ services are in an “embryonic stage” and generally poorly understood.

To understand why an industry such as the law started to embrace marketing, both barriers and drivers need to be explored. These barriers and drivers are typically explained by reference to macro-environmental factors or the underlying implications of micro-environmental factors. The macro-environment consists of forces that originate outside of an organization and generally cannot be altered by actions of the organization. In other words, a law firm may be influenced by changes within this environment, but cannot itself influence that

25. See DAVID H. MAISTER, TRUE PROFESSIONALISM 3 (1997) [hereinafter MAISTER, PROFESSIONALISM].
27. In England and Wales, as well as other jurisdictions, the legal profession is split between solicitors and barristers and a lawyer will usually only hold one title. A solicitor advises clients, represents them before the lower courts, and prepares cases for barristers to try in the higher courts. A barrister is a lawyer who is a member of one of the Inns of Court and who has the privilege of pleading in the higher courts.
28. See, e.g., Harris & Piercy, supra note 3, at 113.
environment. Macro-environmental factors include political-legal, economic, sociocultural, and technological variables. Organizations should understand macro-environmental factors to understand opportunities and threats created by the changes in the factors and thus how they need to adjust their strategies. The micro-environment consists of elements in an organization’s immediate area of operations that affect its performance and decision-making freedom. These elements include competitors, suppliers, customers, and employees as well as other stakeholders.

IV. FORCES IN THE MACRO-ENVIRONMENT

Demographic, economic, social, technological, legal, and political forces create significant change in the fabric of our society. The “open system” school of thought explained the significance of the environment for the advent of marketing with the constant interaction between an organization and its environment. Macro-environmental forces have great influence on the level of competition in a market and can force organizations to adopt a market orientation. Critical shifts in the traditional business environment have driven firms to develop strategic marketing programs. De-regulation and increased competition pressure firms to seriously consider the role that marketing can play. In addition, changing professional standards, such as changes in the advertising regulations or codes of ethics, a downturn in the economy, increased client expectations, new information technology, and a growing global marketplace, together with decreasing client loyalty, make marketing increasingly important. These factors contribute to more competition in the marketplace as they allow new ways to compete with one another.

A. POLITICAL, LEGAL, AND REGULATORY FORCES

Political, legal, and regulatory forces are closely interconnected and affect marketing-related decisions and activities. The legal services sector has a long history of self-regulation that had been largely untouched until recently. Since the
1980s, nations have started to shift towards more open competition. Restrictions against the use of advertising, solicitations, competitive bids, and other promotional tools have essentially disappeared in the last twenty years.\textsuperscript{34}

Pro-competitive legislation is enacted to preserve competition and end practices deemed unacceptable by society. Deregulation advocates argued that removing, reducing, or simplifying restrictions encouraged efficient operation of markets. Their rationale is that fewer and simpler regulations will lead to more competition, higher productivity, greater efficiency, and lower prices overall.\textsuperscript{35} Less regulation may also lead to new competition from outside the traditional law firm world. Such liberalizations blur the boundaries among professionals and other commercial businesses.

While many marketing activities were never forbidden by professional codes and legal restrictions, in the legal services sector, marketing was often confused with advertising or sales.\textsuperscript{36} Advertising, however, constitutes only a fraction of the possible marketing activities of any organization and typically has little to no influence on the buying decision of (corporate) clients. However, allowing advertising eradicated a barrier to marketing in law firms.\textsuperscript{37}

B. ECONOMIC AND COMPETITIVE FORCES

Economic and competitive forces influence decisions and activities on both the demand and supply side. Changes in economic and competitive conditions, such as availability of capital, changes in the cost of resources, or changed demand, have a broad impact on the success of an organization and are considered the main reason for the advent of marketing in an organization.\textsuperscript{38} They affect how easy or difficult it is to be successful and profitable at any time, which is crucial for the probability of marketing activity. Market turbulence, technological turbulence, competitive intensity, and performance of an economy are the factors impacting market orientation. In uncertain environments, a pro-active and innovative marketing conduct is more likely or at least, recommendable.\textsuperscript{39}

\textsuperscript{34} See Kotler et al., supra note 19, at 1.
\textsuperscript{36} See O’Malley & Harris, supra note 4, at 875.
\textsuperscript{37} See Harris & Piercy, supra note 3, at 29. Lawyers in the United States have only been allowed to advertise since 1977, following the Supreme Court’s seminal decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977).
\textsuperscript{39} See Danny Miller, The Structural and Environmental Correlates of Business Strategy, 8 STRATEGIC MGMT. J. 55, 59 (1987).
Competition in an industry is not a matter of coincidence or bad luck, but depends on the collective strength of “5 Forces.” These forces determine the profit potential in an industry and thus the attractiveness of a market, which in turn, contributes to the likelihood of marketing. Changes in any of the forces require an organization to re-assess its position. The forces include (1) rivalry; (2) threat of substitutes; (3) buyer power; (4) supplier power; and (5) barriers to entry. Each of these forces will be discussed individually as they apply to the legal services sector.

1. Force One (Rivalry/Industry Concentration)

The legal services sector has seen a tremendous increase in rivalry within the profession, which goes beyond firms failing to demonstrate their unique value to clients. Oversupply conditions are prevalent due to the increased number of practicing lawyers in most Western countries. The number of newly qualified lawyers in many jurisdictions multiplied during the last thirty years and is fueled by the continuously increasing output of law schools. When supply exceeds demand, there will be more competition for customers. Insufficient demand for their services leads many professionals to intensify their marketing efforts to attract clients.41

At the same time, increased consolidation is taking place in the legal sector.42 Larger firms require their lawyers to treat the practice of law as a business, which is likely to increase the probability of marketing.43 While the growth in firms’ fee income has been impressive for many years, the volume and nature of legal work is increasingly retained in-house.44 Since the downturn in the economy, many firms have seen their fee income decrease.45 In addition, other aspects of concentration are present in the legal services sector, such as high fixed cost, low switching cost (depending on the area of practice), and low levels of service differentiation. Under such circumstances, firms are more likely to embrace marketing as a means to stay profitable.

The continuing trend towards globalization could be seen as a force that increases rivalry. The magnitude of this contributor to competition necessitates a separate discussion. Globalization is described as the increasing interdependence, integration, and interaction among people and corporations around the

41. See Kotler et al., supra note 19, at 3.
43. See generally Mayson, Making Sense, supra note 7, at 12.
44. Badenoch & Clark, Times Demand In-House Legal Renaissance, 9 Connections from Badenoch & Clark 22 (2009).
world.\textsuperscript{46} During the last two decades of the 20th century a global marketplace emerged. By reducing barriers to trade, the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) paved the way for globalization. Although this globalization of world markets has increased opportunities for marketing services internationally, at the same time it significantly increased competition, the legal sector being no exception.\textsuperscript{47}

For law firms, globalization has several consequences. Clients are likely to have new needs for international legal advice, which might result in additional work if the firm is able to provide and communicate such international legal skills. At the same time, these clients might be under additional competition due to globalization (in particular due to the still challenging economies in many countries) and thus need to closely monitor or even cut legal costs. On the other hand, a consequence of globalization is that just as domestic law firms advise companies abroad, new competitors from other countries—foreign law firms—may start advising clients in the domestic market, open offices, and offer services to domestic clients, thus increasing competition for the law firms. The combination of globalization and technology can be the basis of new, possibly more competitive or profitable, models of business, such as online legal services. Finally, globalization may affect the organization of law firms, which also potentially influences a firm’s competitive advantage and profitability. Just like other businesses, law firms can outsource (parts of) their operations abroad. A number of UK and US firms already outsource or offshore IT (information technology) and other back office operations. Further-reaching developments in regards to technology influencing the delivery of legal services have been predicted.\textsuperscript{48} While lawyers have traditionally lagged behind their professional services counterparts in their use of outsourcing in core services, some firms are increasingly moving towards a leaner business model.\textsuperscript{49} Law firms are outsourcing business operation and legal support work to India and other lower-cost countries such as the Philippines. Other firms have established centers in lower-cost locations in the United States, such as Orrick in Wheeling, WV,\textsuperscript{50} and WilmerHale in Dayton, OH.\textsuperscript{51}


\textsuperscript{48} See, e.g., Richard Susskind, \textit{The End of Lawyers?: Rethinking the Nature of Legal Services} 1 (2009) [hereinafter Susskind, \textit{End of Lawyers}].

\textsuperscript{49} Ben Mitchell, \textit{Eversheds Set to Transfer 90 Staff in IT Outsourcing Deal}, \textit{Legal Week}, Aug. 10, 2006, at 1.


2. FORCE TWO (THREAT OF SUBSTITUTES)

The legal sector has seen increasing competition from outside its immediate core. A further intensification is due to the addition of paraprofessionals into the fields (e.g., paralegals) who are able to provide services that in the past were only provided by licensed professionals. Modern technology and recent regulatory changes also further blur boundaries among professionals and other commercial businesses. Susskind emphasized the “disintermediation” of legal services, where for a number of legal services, lawyers are no longer needed. While in the past consumers had relatively little choice in where to obtain legal services, the Internet today makes available legal information and forms (e.g. for wills & trusts, forming a business etc.) that make working with a lawyer a choice, but no longer a necessity. In addition, not only do law firms compete heavily with each other, they are also facing new sources of competition from other professions, such as accounting firms. Lawyers have been blamed for accountants having taken much company work away from lawyers as they are more client-centric in their approach, a characteristic of marketing: “[Accountants] are accustomed to the smooth management of company meetings, submission of forms and so on, which are unfamiliar to some solicitors.” New competitors to traditional law firms are law firm franchises, national chains providing low cost legal services for an annual fee, other professions, such as tax advisors and chartered accountants, which market themselves as “one-stop-shops” to clients, and new competitors from outside the legal sector’s traditional boundaries, such as banks, insurance companies, consumer interest associations, and online legal services. In recent years, a number of non-traditional law firms such as Axiom and Riverview Law as well as legal process outsourcing (LPO) companies also offer legal services or particular tasks or phases to clients at typically significantly less expensive prices. As will be discussed in Force Three, rising cost pressure in companies has increased the inclination of many clients to accept such substitutes and to shop for price (e.g., some clients even use e-tendering). Again, the increased competition necessitates a more market-oriented approach from law firms.

3. FORCE THREE (BUYER POWER)

Ever-increasing cost pressure in companies has shifted the power from the law firms to the clients. Lawyers today no longer receive cases from their former

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52. See O’Malley & Harris, supra note 4, at 875.
53. See SUSKIND, END OF LAWYERS, supra note 48, at 6.
college-friends and often no longer have “cozy” relationships, as they used to: “Senior corporate managers and senior partners belonged to the same country clubs, and the legal bills that the firms submitted were seldom subjected to close scrutiny.” Clients today “shop around” and want more value for their legal budget and demand greater financial accountability from the law firms they hire. Long-term relationships marked by mutual loyalty between lawyers and clients have broken down. Clients have become customers, expecting and demanding quality service delivered on time. Their main driver is price. Since clients are dynamic and do not stand still, it is essential for law firms to understand the clients’ business and help them with the challenges they face.

Relationship marketing emphasizes the importance and rationale of close collaboration and key client teams. While some practitioners see the return of strong lawyer-client relationships, others doubt it and in fact, argue that the lawyer-client relationship is breaking down as more clients are treating outside professionals as “vendors.” Some see the rising influence of procurement among larger companies, to negotiate billing rates as contradictory to clients wanting law firms as partners.

“We’ve moved from a model where . . . the law firm was housed in the building of its major corporate client and the senior partner’s daughter was married to the CEO’s son, all the way to a new ethos that says, ‘We hire lawyers, not law firms’, and where companies assemble virtual teams from various law firms.”

In addition, clients have become more sophisticated buyers who clearly understand their own needs. This is due to widely available comprehensive legal information on the Internet, as well as companies increasingly employing former private practice lawyers. Over the past twenty-five years, the legal market has matured from a relatively inefficient market with great asymmetry of information, little information regarding price or quality or efficiency of service to an increasingly robust and efficient market with lots of information and sophisticated clients, which results in diminished client loyalty, increasing use of formal competitive processes, and changed expectations in terms of service. With clients becoming more demanding and less loyal, firms increasingly have to

56. Dahl, supra note 24, at 1.
57. Elaine McArdle, Harvard Launches Ambitious Study of Legal Services Purchasing, 4 MIDWEST IN-HOUSE 6, 6 (2006)
60. McArdle, supra note 57, at 6.
compete to attract and retain clients. Marketing can help focus attention on service delivery and offerings in chosen market segments.

Other elements of demand, and therefore buyer power, include government interventions as well as the stage of economic development that may drive or hinder the development of marketing in a given industry. A school of thought among marketing scholars holds that only the most economically developed industries are market-orientated. They draw a parallel to the economic development of a country, based on the assumption that market orientation develops through certain phases of orientation, that is, production, sales, and market orientation.\textsuperscript{63} Similarly, market orientation has also been linked to the maturity of an industrialization process. Only when a society reaches the phase of having satisfied production and sales needs does it pass into a market-oriented stage. The focus shifts from a general desire to buy goods to a desire for variety and volume. New market segments develop, tastes become more varied, and marketing appears. Although plausible, these theories have been criticized as “evolutionary” approaches lacking empirical proof and being based solely on logical reasoning.\textsuperscript{64}

Economic forces also concern the level of employment, average income, and incorporation of businesses, as they might influence the size of the market for legal services.\textsuperscript{65} Such economic conditions affect whether and how participants in the marketplace will market their products and services. The strength of buying power and spending behavior are two economic factors related to the economic cycle concept that may drive or hinder marketing in organizations. The special nature of legal services causes different legal services to be affected differently by the economy.\textsuperscript{66} Some legal services such as transactional M&A work or employment contracts generally move with the economic cycle, in other words, they are in higher demand during a phase of positive economic development. Other legal services like insolvency law and redundancies tend to be counter-cyclical; they are required more during a recession or depression—even though this was not necessarily the case in the most recent recession. In addition, there are legal services that demonstrate a relatively constant pattern of demand, such as trusts and estates. Consequently, the phase of the economy combined with the type of legal service might act as a driver or barrier for marketing in law firms.

However, legal services are different from “normal” consumer products in the sense that demand for legal services cannot easily be stimulated by increased marketing activity during adverse economic times as today. Law firms have limited ability to motivate their current clients to buy more legal services of a

\textsuperscript{63} See Dalgic, \textit{Evaluation}, supra note 31, at 47.
\textsuperscript{64} See id.
\textsuperscript{65} See \textit{Mayson, Making Sense}, \textit{supra} note 7, at 17.
certain kind to capture a larger market share. This has been disagreed with due to the notion of latent legal markets. A latent market for legal services is commercial clients who could benefit from legal services, but are not presently being served. A second latent legal market is consumers of moderate-to-low income who could benefit from legal services but presently avoid lawyers for a variety of reasons, including high fees and fear of high fees.

4. FORCE FOUR (SUPPLIER POWER)

Due to the nature of services, supplier power, i.e., the influence of the suppliers of resources or raw materials, does not play the same role in the legal sector as it would in other industries, such as manufacturing. However, since the primary resource in legal services is human talent, supplier power may be seen as the market for legal talent for which firms are competing. While there seem to be too many qualified lawyers for the volume and value of work available, law firms traditionally found it difficult to attract and retain “good” people. Despite the increasing numbers of law school graduates, “good” lawyers were spread among too many law firms and were often out of the price range for many firms. This resulted in a “war for talent” that may be seen as a driver for marketing among firms competing for new hires. In addition, there was also competition for talent from outside the legal market that intensified the competitive situation. This vested significant power in the suppliers of legal talent. The reverse is true now in the current economic climate, in particular since the vast majority of law firms have significantly reduced the number of incoming talent.

5. FORCE FIVE (BARRIERS TO ENTRY)

Recent regulatory changes such as the Legal Services Act 2007 in the UK significantly intensified the competitive situation for legal services providers. For example, the Act allows lawyers to practice with non-lawyer professionals and non-lawyers are allowed to own law firms. Such changes are likely to be a driver for marketing as the competition will intensify. In addition, business practices of other professions, such as accounting, will more likely be adopted. In highly competitive markets, building mutually beneficial relationships “(i.e., win/win situations)” need to be the objective as they may erect barriers to entry for potential competitors and help maintain long-term profitability and customer retention. While some believe that the relationships between law firms and their clients are disintegrating—for example, a relatively higher turnover among

68. See MAYSON, MAKING SENSE, supra note 7, at 12.
69. See id. at 11.
in-house counsel is seen as presenting a challenge to the building of long-term relationships between firm and client—others feel that relationships have become closer, increasingly emphasizing teamwork.72 Partnering with a client is the key to a successful service relationship.73 Switching costs can also act as a barrier to entry as clients may face a number of barriers that make it difficult to leave one legal services provider and begin a relationship with another.74 Switching costs include investments of time, money, or effort, such as setup costs, search costs, learning costs, and contractual costs.

C. SOCIETAL FORCES

Societal forces can significantly impact not only the need for legal services and thus potentially drive marketing, but also impact clients’ expectations regarding the delivery of the services. Law firms must be aware of changes in society to be able to adapt, react, and anticipate new needs and expectations. These forces encompass non-economic criteria and demographics, such as structures and dynamics of individuals and groups, the issues that engage them, their priorities, the long-term interests of a society, as well as living standards and quality of life. Changing demographics typically affect the demand for services in consumer markets.75 Population numbers give a rough idea of the size and development trend of a market, thus indicating its attractiveness.

Over the last few decades, the United States population has been continuously increasing, which is likely to translate into more transactions, litigation, clients, and ultimately, more business for law firms, as more people mean more potential issues, potential conflicts, and potential commercial activity. Consequently, one would expect the market for legal services to gradually increase. A larger market typically means a reduced level of competition. However, although not a barrier to marketing activity, such a situation most certainly would not drive marketing.

Perhaps a less important factor in the current economic climate, affluence as a societal factor affects what people do. For example, the ability to move home more often, to acquire second homes, to take more (expensive) holidays, or to spend money on consumer goods, affects potential needs for legal services.76 Affluent activity can directly lead to the need for legal services (e.g. international real estate transactions) or to a new need for legal services (e.g. traffic or vacation related litigation). In addition, if only incrementally, increased affluence also influences the expectance towards the way services are provided, i.e. the level of

76. See MAYSON, MAKING SENSE, supra note 7, at 4.
service. Marketing might help law firms find ways to reach such a clientele, understanding and anticipating their needs to best cater to this group.

Services require that cultural influences and variations are well understood. In terms of cultural values, the United States is classified as a culture with low power distance, prevalence of individualism and masculinity, and it ranks relatively low on uncertainty avoidance and high on short-term orientation. This means its citizens assume equality between people, have a preference for accessibility of others, generally welcome innovation, and expect quick results. Wanting to be “best” is considered normal. Expressing disagreement and criticism is not unusual. Tasks usually prevail over personal relationships and relationships of trust should be established with a business. Translating this cultural framework into a lawyer-client relationship context suggests that clients demand an open and steady flow of communication and close involvement in the legal decision-making. Trust may be embodied in the professional who links the client to the firm (a personal relationship between lawyer and client), while in other situations trust is embodied in the organization itself. Law firm brands can only be established if clients develop trust in organizations. An individual professional does not necessarily receive respect owing to her position, but must earn the client’s respect by demonstrating expertise, and knowing and admitting limits when not possessing the requested knowledge. In achievement-oriented societies, people accept competitiveness and a certain aggression (albeit not openly emotional) when promoting one’s services as normal. Business contracts in individualist cultures tend to be longer than in collectivist cultures as people have a strong preference for spelling out in detail rules between businesses and individuals. This suggests a high demand for legal services. The masculine tendency to “fight things out” might suggest a predisposition towards litigation.

77. See Naveen Donthu & Boonghee Yoo, Cultural Influences on Service Quality Expectations, 1 J. Serv. Research 178, 178 (1998).

78. See Geert Hofstede, Culture and Organizations: Software of the Mind, Intercultural Cooperation and Its Importance for Survival 26 (1991). Power distance is the extent to which the less powerful members of organizations and institutions accept and expect that power is distributed unequally. Cultures with low power distance expect and accept power relations that are more consultative or democratic. People relate to one another more as equals regardless of formal positions. Subordinates are more comfortable with and demand the right to contribute to and critique the decision making of those in power. Individualism is the degree to which individuals are integrated into groups. Individualistic societies value personal achievements and individual rights. People are expected to stand up for themselves and to choose their own affiliations. Masculinity describes the distribution of emotional roles between the genders. Masculine cultures value competitiveness, assertiveness, materialism, ambition and power. In masculine cultures, the differences between gender roles are distinct. Uncertainty avoidance is a society’s tolerance for uncertainty and ambiguity. It reflects the extent to which individuals attempt to cope with anxiety by minimizing uncertainty. People in cultures with low uncertainty avoidance accept and feel comfortable in unstructured situations or changeable environments and try to have as few rules as possible. People in these cultures tend to be more pragmatic, they are more tolerant of change. Short-term orientation describes a society’s time horizon. Short term oriented societies value the past and the present and expect efforts to produce quick results.

79. See id.
which again can translate into relatively high demand for legal services.

A higher level of education in society is likely to influence the expectations clients have of the delivery of legal services. In the past clients tended to look to the learned professions for help and assistance in an unquestioning way.\footnote{See Mayson, Making Sense, supra note 7, at 4.} The barriers created by years of training made the public dependent and unquestioning.\footnote{See Laurie Young, Marketing the Professional Services Firm: Applying the Principles and the Science of Marketing to the Professions 20 (2005).} Clients appear to have become less tolerant of the air of mystery with which professional advisers historically sought to “cloak their craft.”\footnote{See Mayson, Making Sense, supra note 7, at 4.} Their new expectancy of open communications drives the need for marketing as a means of communication with existing and prospective clients. In particular, corporate clients have become more sophisticated buyers and consumers during the last decades, often having received the same training as external legal services providers. Such clients increasingly question and challenge the views of outside providers. They want to be involved in the process, understand what is going on and why, be kept informed of their options, stay up-to-date on the progress, and tend to be relatively less loyal.\footnote{See Dean E. Headley & Bob Choi, Achieving Service Quality Through Gap Analysis and a Basic Statistical Approach, 6 J. Serv. Mktg. 5, 8 (1992); see also Mangos et al., supra note 26, at 77.} Since firms need to pro-actively address this new situation, once they are aware of the issue, it is likely that it will have to be addressed through marketing.

The rise of the knowledge society on the back of the information revolution has impacted the consumption and provision of knowledge-based services.\footnote{See Angus Laing, Terry Newholm, & Gillian Hogg, Crises of Confidence: Re-Narrating the Consumer-Professional Discourse, 32 Advances in Consumer Research 514, 514 (2005).} It has also impacted the behavior and role of consumers/clients and changed the nature of the consumer/client-professional relationship by having created a more sophisticated and “empowered,” as well as less loyal clientele. The knowledge gap has started to decline as would be expected in modern societies that are increasingly knowledge-based and value is created by productivity, innovation, and application of knowledge to work.\footnote{See Keith M. Macdonald, The Sociology of the Professions 157 (1995); Cynthia J. Bean & Leroy Robinson Jr., Marketing’s Role in the Knowledge Economy, 17 J. Bus. & Indus. Mktg. 204, 205 (2002); W. Chan Kim & Renee Mauborgne, Strategy, Value Innovation and the Knowledge Economy, Sloan Mgmt. Rev., Spring 1999, at 41.} Such “professionalization” of clients has contributed to fewer services being bought as if they were unique, suggesting an increasing commoditization of legal knowledge. This has led to the creation of volume businesses. Procurement departments are increasingly in charge of buying legal services and ask firms to participate in formal (or even electronic) tendering. At the same time, firms manage legal work in bulk though IT systems where the work is carried out by paralegals, legal executives, and chartered insurers and only overseen by qualified lawyers. Such structural change moves
legal services towards becoming “service businesses” run by business principles, therefore would be more likely to embrace marketing.

D. TECHNOLOGICAL FORCES

Technology is argued to be at the root of market orientation since it enabled efficient production, shifted the focus away from manufacturing and paved the way for marketing. The Internet-driven information revolution is widely perceived as having transformed the way businesses and consumers operate. Therefore, some law firms have already started modifying their traditional approach to legal advice. It is likely that it has not reached its full potential in the legal services sector. However, advances in information technology can so profoundly affect the practice of law as to cause a “shift in paradigm”, transforming both supply and demand side. Technology has revolutionized lawyer’s communication and information-seeking habits and created greater efficiency and lower costs. “[I]f you took away a firm’s accounting, knowledge management, billing and word processing systems, the firm ‘would die within a day.’”

In professional services, and legal services in particular, the Internet was viewed primarily as an information resource rather than a distribution channel. Websites allow law firms to provide information online and promote their services and can grant clients the opportunity for immediate access to the firms’ resources. The widespread use of the Internet fundamentally changed the way in which clients interact and communicate with their legal services providers through emailing, instant messaging, and other wireless communication. While in 1987 two-thirds of the profession did not use computers, less than forty percent had Word processors and just over four percent a fax, by the turn of the millennium, the Internet had firmly established itself as the main form of communication between lawyers and their clients, and by 2004, every partner and large firm associate had a BlackBerry to ensure availability. Today, constant availability is the norm for most rather than the exception. “You’re never off-duty now, never off-call.” Technology therefore provides lawyers with new ways to better serve their clients and has driven marketing into firms.

88. Id.
89. Id.
90. Id.
Technology also potentially enhances client relationship management through sophisticated systems\textsuperscript{91} that enable lawyers to leverage relationships held by other lawyers in the firm and to monitor the satisfaction of key accounts and leverage the firm’s knowledge about its client relationships. However, changing lawyer attitudes about sharing contact information is critical. Given that a law firm’s business is essentially concerned with the retrieval and dissemination of information, technology offers an opportunity to improve service delivery. A number of large firms have launched extranets for their clients with online “deal rooms,” where lawyers from both sides of a deal can exchange and manage documents and conduct secure, private conferences, in particular, in major merger and acquisition and corporate finance matters. Most large U.S. law firms, such as Davis Polk & Wardwell LLP, and all U.K. Magic Circle firms have established such extranets.\textsuperscript{92}

“Virtual lawyers” or legal advice systems of modern websites claim to contain the knowledge of lawyers that enable clients to receive legal information without consulting a lawyer directly. Larger firms typically are more advanced in integrating new technologies and working methods than smaller firms.\textsuperscript{93} An example is UK Magic Circle firm Linklaters that utilizes the Internet by offering standardized legal services. The firm introduced a second brand, Blue Flag\textsuperscript{94}, to avoid confusion with the main brand. The firm promotes scope, quality, consistency, low(er) costs, and efficiency. Such offers are likely to be attractive to companies as well and pose significant competition to other law firms and may therefore drive marketing.

Also e-commerce or “e-lawyering” has the potential to fundamentally change the way in which lawyers operate and compete, and how they deliver their services. The information available online, like articles, “do-it-yourself” books, and “legal kits” as well as the scope for interaction (e.g. virtual discussion forums and consumer communities) have impacted former informational asymmetries, and empowered clients by increasing their knowledge.\textsuperscript{95} Online legal advice such as LegalZoom\textsuperscript{96} or Rocket Lawyer\textsuperscript{97} target the same clients as small private practice firms and reduce or even eliminate the client’s need to pay for the same

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\textsuperscript{91} Client relationship management (CRM) systems manage a firm’s interactions with its clients and prospects. It involves using technology to organize, automate, and synchronize business processes—principally sales activities, but also those for marketing and client service.
\textsuperscript{93} Id.
\textsuperscript{94} LINKLATERS BLUE FLAG, http://www.linklaters.com/OnlineServices/Pages/Index.aspx (last visited Nov. 13, 2012).
\textsuperscript{95} See Angus Laing et al., \textit{Predicting a Diverse Future: Directions and Issues in the Marketing of Services}, 36 EUR. J. MKTG. 479, 484 (2002).
\end{flushleft}
information or services from a law firm. Online technology is therefore likely to drive marketing activity by law firms, perhaps through emphasizing the added value of tailor-made solutions and individual care.

Technology that enables firms to export their services has had divergent effects on law firms. While some firms send aspects of their legal work (e.g. due diligence) to lawyers overseas, large companies also increasingly outsource legal services to low-cost providers in India, the Philippines, or similar locations. Mayson hence cautioned that lawyers should reflect on how much of their work is or could be conducted through a screen and a telephone, as technology has the potential to substitute for people and places. The increased use of technology can also lead to a substitution of capital for labor, thus potentially increasing the output of each lawyer, which again might raise the level of competition. On the other hand, IT platforms might bring efficiencies to firms that could enable these new players to significantly out-perform the market as transactions now run at unimaginable speeds and complexity compared with twenty years ago.

V. FORCES IN THE MICRO-ENVIRONMENT

The “outside-in” approach of macro-environmental factors has been criticized for being based on historical observation and the experience of marketing practitioners instead of rigorous empirical research. Researchers disagree; some have found no direct relationship between macro-environmental factors and marketing practices, while others discovered evidence that the market orientation of an organization did not necessarily only depend on macro-environmental factors, but also on organizational factors. Studies in the legal sector came to similar conclusions, identifying micro-environmental factors as barriers or drivers for marketing.

Barriers to the development of a market orientation are not isolated problems that can be tackled individually. They are by nature complex and interrelated and need to be dealt with concurrently to increase support for marketing. To ensure a more complete theoretical discussion, micro-environmental drivers and barriers

98. See MAYSON, MAKING SENSE, supra note 7, at 6.
99. See id. at 8.
100. See Dalgic, Evaluation, supra note 31, at 48. But see Greenley, Forms of Market Orientation, supra note 5, at 49; Greenley, Empirical Evidence, supra note 5, at 3.
102. See Neil A. Morgan, Corporate Legal Advice and Client Quality Perceptions, 8 MKTG. INTELLIGENCE & PLAN., no. 6, 1990, at 33, 33; Harris & Piercy, supra note 3, at 25; Vickerstaff, supra note 3, at 356.
in the legal sector will be examined on three levels: the legal profession, the firms as organizations, and individual lawyers. On the organizational level, McKinsey’s 7S model serves as the framework, which identifies a range of factors that influence cultural and behavioral change within an organization. Since many law firms have started to embrace marketing in the last decades, it appears safe to say that most barriers eventually do not act as complete impediments to marketing, but rather delay the market orientation in a firm or hinder effective, strategic marketing once a firm has decided to embrace marketing.

A. FORCES SPECIFIC TO THE LEGAL PROFESSION

The professional culture of lawyers may create a barrier to the acceptance of marketing: lawyers are said to have always been eager to defend their position by developing and promoting attributes that they felt set them apart. Some lawyers see a conflict between lawyers as professionals and lawyers as business people. It was often argued that the legal sector was dissimilar from conventional businesses due to the fact of being one of the three “historic professions” (the other two being medicine and the clergy), therefore it was one of the few occupations socially acceptable by the aristocracy. Lawyers traditionally did not see themselves as “vendors” of legal services.

The notion of marketing professional services used to be seen as unacceptable—in fact, lawyers used to deny that marketing occurred. A number of practitioners have been critical of the legal profession for rejecting marketing due to a lack of understanding of what marketing is and what it entails. In the legal profession, “advertising” is a synonym for marketing and responsible for many lawyers equating the practice of law to the selling of cars and toothpaste.

A marketing challenge specific to the legal profession is the tendency to apply legal practice standards to marketing. An example is the treatment of complaints. In marketing theory, complaints are an opportunity to learn from mistakes in order to improve the service offering and to show clients how much a firm cares. It therefore has the potential to strengthen relationships. The legal profession, however, typically does not attempt to provide redress for complainants.

104. See TOM PETERS & ROBERT H. WATERMAN, IN SEARCH OF EXCELLENCE 9 (1982).
105. See KOTLER ET AL., supra note 19, at 2.
106. See CLEMENTI, REVIEW, supra note 8, at 1.
108. See Graff, Wachtell, supra note 1, at 1; see also O’Malley & Harris, supra note 4, at 874.
109. See Mark Diamond, Be Careful in Marketing, 72 ABA J. 45, 45 (1986).
110. Id.
111. See CLEMENTI, REVIEW, supra note 8, at 1.
There also appears to be a cultural difference leading to a clash between the careful precedent-driven nature of the profession and the “we should be the first to do this”, “let’s try it out” drive of marketers.\(^\text{112}\) The legal profession seems to be driven by the fear of being left behind instead of embracing marketing out of conviction.\(^\text{113}\) In fact, the legal profession is known for its mimetic approach, i.e. firms tend to mimic one another in organization and management practice.\(^\text{114}\) Not knowing how to market legal services, lawyers presumed that their competitors did, so they copied the competition.

Other factors that might drive marketing in the legal profession include the transparency of lawyers’ salaries. With the advent of legal publications, lawyer salaries were published and lawyers migrated to the money, which increased competition among and within the firms. Firms understood that they needed an advantage, a way to connect to clients and attract more prospects, typical applications of marketing.

A decline in the public esteem of lawyers that has taken place in recent years is also likely to have impacted the competitive situation and the demand for legal services.\(^\text{115}\) Clients have become more aggressive in challenging lawyers through negligence claims.\(^\text{116}\) In such a comparatively hostile environment, marketing is more likely to commence as it can help create more understanding and goodwill.

B. FORCES SPECIFIC TO LAW FIRMS

Literature suggests marketing as the logical step or strategic option when former business practices are no longer possible to rely on to sustain prosperity. It can also emerge as a business philosophy out of the realization of the inadequacies of alternative approaches.\(^\text{117}\) Whether marketing is driven or hindered by an organization depends on top management’s emphasis on market orientation; calculated risk taking; inter-departmental dynamics, connectedness, and conflicts; market-based rewards system and centralization; and formalization and departmentalization within the organization.\(^\text{118}\)

Rather than being good at change, most law firms are resistant to it.\(^\text{119}\) A literature review identified a number of barriers to the diffusion of marketing

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113. See Vickerstaff, supra note 3, at 359.
116. See Mayson, Making Sense, supra note 7, at 4.
118. See Jaworski & Kohli, supra note 101, at 56.
119. See Maister, Professionalism, supra note 25, at 157.
within firms. Previous research, however, could not discern a single common denominator to explain market orientation in law firms. To analyze firms in their entirety, this paper applies McKinsey’s “7S” framework to law firms. The model describes organizations in three “hard” S’s: strategy (direction and scope of the firm over the long term); structure (basic organization of the firm, its departments, reporting lines, areas of expertise, and responsibility); systems (formal and informal procedures that govern everyday activity), in addition to four less tangible, “cultural, soft” S’s: skills; shared values; staff (how people are developed, trained, and motivated); style (leadership and operating approach). The “7S” framework can be used to explore the extent to which an organization is working coherently towards a distinctive place in the mind of clients. In other words, to what extent it encourages effective marketing.

1. Strategy

To be effective, marketing needs to be based on an organization’s business strategy. Law firms appeared to have trouble embracing strategic marketing planning even after realizing that strategic change was necessary. While strategic planning is the logical approach to defining appropriate business actions, law firms are said to believe that strategic planning requires an onerous effort and substantial written documents, and therefore do not conduct effective marketing planning.

In addition, strategy execution is different in law firms compared to corporations. Top-down delegation works in the hierarchical structures of corporations. Law firms, however, are typically organized as partnerships; the subordinates of practice leaders are also the owners, whose approval is necessary before leaders can make strategic decisions. For strategy to be effective in such firms it must be understood by the professionals, and they must be prepared to execute it. The necessary process however, takes time, and creates tension, as lawyers have to “produce” as well as manage. The result is that firm leaders often find it difficult to either push through strategic action or get professionals in their firm to focus on developing and executing strategy. However, with the increasing possibility of new ownership models in some jurisdictions such as the UK, Australia, or
South Africa, “there has been greater acceptance of the need to manage law firms professionally, and to adopt accepted business techniques,” including effective management of marketing.  

2. Structure

Structural aspects, such as high levels of interdepartmental connectedness, appear to have a positive effect on market orientation, and the gathering of market intelligence has been identified as the basis for any marketing activity. Other research suggested that it is not the existence and availability of information, but the diffusion of such information. Successful marketing in law firms is often impeded by a lack of inter-departmental cooperation. It necessitates a team approach and partners having trust in other partners. Law firms are said to have antiquated structures that impede marketing, including fee structures and the partnership form itself. Marketing depends on the firm’s general structural framework, such as whether it is a professional partnership or a managed professional business. Managed professional businesses are likely to drive marketing to increase profitability while partnerships frequently resist marketing.

Law firms are traditionally not governed like normal businesses in terms of management power and authority. This is due to the ownership structure of a firm. At the most basic level, the need of publicly traded firms to report results to the financial markets means that leaders must be more disciplined about forecasting and reporting revenues than those operating in private partnership. These public companies tend to use more systematic marketing than professional partnerships. Once a course of action has been identified, the CEO can make it happen. Most other professional organization today have adopted the “corporate,” more hierarchical style. Decision making in law firms, however, is comparable to the consensus decision-making in ancient Grecian (Athenian) democracies. Law firms tend to be federal structures where partners are their own masters. As mentioned above, a corporate, hierarchical approach is uncommon in law firms.

126. MAYSON, LAW FIRM STRATEGY, supra note 22, at 8.
131. See YOUNG, supra note 81, at 12.
and individual partners can be barriers to or drivers of marketing. “Law firms are loosely-tied groups of over-achievers. All want to speak and be heard. Sarcastic, critical commentary about anything and everything is second nature and entertainment.”

In many law firms marketers have a great deal of responsibility with limited authority, which makes it hard for them to succeed. Due to decisions and revisions being made in large committees, in which every lawyer has complete veto power over every plan, proposal, and period, “[t]he lowest common denominator prevailed, as the most conservative lawyers volunteered to marketing committee duties, to make sure the image and integrity of the firm wasn’t sullied and nothing was tried that might actually work.” The situation would be vastly improved if the law firms were run more like ordinary corporations, with a vertical, top-down management structure, instead of a horizontal, multi-headed one. Marketers have too many very demanding “masters” in a law firm. “You have to be able to juggle the egos and personalities and produce ideas that are pretty darn near perfect.” Each partner wanting to make his/her voice heard and making changes to marketing material independent of everyone else’s changes, is an “exasperatingly inefficient” way to get out the news and therefore hinder effective marketing.

However, while this might be true in some firms, it has to be taken into consideration that some firms might be managed less top-down than others. Market orientation and firm size have been found to be positively correlated: there is a connection between the larger size of law firms and the presence of a marketing department. This may be due to the professionalization or institutionalization of law firms that increase in size. Large firms generally not only generate more total fee income, but also significantly more fee income per fee-earner, which impacts available resources that can be used for marketing. Similarly, marketing is likely to become more sophisticated due to increased corporate decision-making and centralization of management within firms, which has been a recent trend. However, while firm size does play some role in regards to marketing, previous research did not identify a significant relationship

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137. See MAYSON, MAKING SENSE, supra note 7, at 12.

138. See PROFESSIONAL SERVICES MARKETING GROUP, PERCEIVING AND DEMONSTRATING VALUE 5 (2005) [hereinafter PSMG].
between the level of market orientation, firm size and the age of the firm; it is suggested that other variables may be influencing the level of market orientation.  

3. **Systems**

Legal services are delivered to clients through systems, i.e. formal and informal procedures that govern everyday activity. A system has been defined as an organized method of completing a recurring set of tasks that helps to solve problems by providing a method for resolving the problem the same way every time. Systems give life to institutional memory and can be communicated to others, replicated for others to use, taught, reviewed, analyzed, and modified. A good system builds quality into the process, eliminates redundancy by leveraging knowledge and reducing error costs, and identifies critical dates and times. Systems are therefore able to contribute to the marketing aspect of service delivery.

Systems have three components: forms, instructions, and information. The process of creating a system begins with the recognition that the firm is handling repetitive tasks. Once a system is in place, it needs to be adopted and implemented. If a firm does not have a system for marketing, it might examine what other firms do, refer to books and articles on the subject, or simply brainstorm about what they need to do. However, people are often fearful of and resistant to change. Modifications to “the way we have always done things,” such as not having marketed the firm’s services in a strategic manner, is likely to be met with some resistance. Resistance to change is hence a barrier to the development of marketing.

To gain commitment to change and buy-in at every level of the organization, it is critical that firms give professionals and staff an opportunity to provide input during the planning. Firm leadership “should introduce the new system in a positive way. Schedule meetings to explain how the system, or at least the changes, will work. Explain the rationale for system changes; describe how the system will make people’s lives better, not more difficult.”

4. **Skills**

Marketing has been called the management function that causes professionals more problems than any other. Misconceptions about what marketing in-

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139. See Vickerstaff, supra note 3, at 359.
140. See GARY A. MUNNEKE, LAW PRACTICE MANAGEMENT: MATERIALS AND CASES 286 (3d ed. 2007).
141. See ROBERTA C. RAMO, HOW TO CREATE A SYSTEM FOR THE LAW OFFICE 6 (Kline D. Strong et al., eds., 1st ed. 1975).
142. Munneke, supra note 140, at 289.
143. See MORGAN, supra note 26, at 5.
volves—as it is typically equated with advertising and selling—have resulted in
the formation of significant barriers to the development of marketing. A lack of
marketing skills, capabilities, and competencies, in particular at the structural
level, are likely to impede marketing in law firms. Future business is often taken
for granted. As Marcus notes, firms count on their

“rainmakers—the partner who could go into a telephone booth alone and come
out arm in arm with a new client—but in today’s competitive marketplace, one
or two rainmakers are not enough. The firms themselves must be turned into
marketing machines—to have a culture that understands and supports a
marketing effort. . . . For people in professional firms, the relationship between
what they do and the outreach to the marketplace is rarely understood, and is
tenuous at best”. 144

Without the understanding and active participation of the lawyers, marketing
will not be able to progress to a shared organizational culture in law firms.
However, the majority of firms have problems in understanding and handling
their marketing activities. 145 While businesses typically understand that the
purpose of a company is to create a customer and that they are involved in
marketing even though it may not be their specific job, there is no comparable
attitude in traditional law firms. Without a better understanding of marketing and
a more supportive culture, it is unlikely that there would be any increase in the
resources directed to marketing activities. Law firms traditionally do not apply
crucial business reasoning: What is our business?, Who is the customer?, What
does the customer value? 146 Rather, most lawyers apply their own version of the
early manufacturing mindset, defining their products as “hours of advice,”
“relationships,” or “studies,” however, this is not what (corporate) clients value.
This attitude has been changing in recent years. It is more common today that
firm leadership takes a more long-term view of the firm’s business and its clients.

The effective implementation of the marketing concept throughout the
organization requires an understanding of and concern for delivering customer
satisfaction, which is shared by all partners and employees and informed by
market and competitor awareness, with a view toward generating long term
profitability. Even after law firms have started “marketing,” the level and quality
of the marketing professionals brought in to advise law firms, influences the

144. Bruce W. Marcus, Do Real Professional Really Do Marketing? Building a Marketing Culture for Fun
culture.htm.

145. See Nigel F. Piercy & Neil A. Morgan, Marketing Organisation in the UK Financial Services Industry,
7 Int’l. J. Bank Mktg. 11, 11, 13 (1989); see also Vickerstaff, supra note 3, at 359.

146. See Drucker, supra note 9, at 24.
implementation of effective marketing. Some criticize that law firms “must be the only large-scale business sector in the world run by untrained managers.”\textsuperscript{147} In the past, many firms promoted secretaries, who had no training in marketing disciplines, or recruited marketers from industries so different that consultant and marketer and lawyer simply could not understand one another.\textsuperscript{148} Such bad experiences have hindered marketing, as law firms experienced marketers who understood neither the business of law, nor the unusual management and partnership structure of law firms.

5. \textbf{Shared Values}

The distinctive culture of law firms, defined in terms of shared values appears to be a barrier to marketing. Previous research identified six key barriers which operate both at the organizational and the individual lawyer level: (i) culture, comprising financial orientation, attitudes and lack of financial incentives, general insecurities and lack of team culture; (ii) time; (iii) resources; (iv) internal communication; (v) awareness and understanding; and (vi) expertise and skills.\textsuperscript{149}

Market orientation appears to be dependent on managerial choice and resource allocation—影响ing individual lawyer’s behavior by setting expectations and providing support with compensation and evaluation tools.\textsuperscript{150} Remuneration systems of partnerships have often been cited as a barrier to the development of marketing as the desired marketing behavior will only be accomplished with the right reward systems.\textsuperscript{151} Reward mechanisms reflect a firm’s priorities and in turn influence behaviors to affect change. A strict focus on a certain amount of billable hours hinders marketing as fee earners see billing hours and developing business as two opposing activities. Other professional services that do not use billable hours as their primary measure do not seem to be hindered by the same barriers to remuneration and “marketing” to clients as law firms have. The lack of procedures to track involvement in marketing or business development projects imply a lack of tracking marketing expenditure and effectiveness, which are likely to impede the implementation of more sophisticated marketing.\textsuperscript{152}

There is a difference between what \textit{ought} to happen in a firm (culture) and

\begin{itemize}
\item \textsuperscript{147} John Malpas, \textit{No Ads Please, We’re Lawyers}, \textit{LEGAL WEEK} (June, 12 2003), www.legalweek.com/legal-week/news/1173489/comment-no-ads-lawyers (internal quotation marks omitted).
\item \textsuperscript{148} C. Emm, \textit{Plan to Win}, \textit{WORLD LAW BUS.}, (Nov. 2000), at 30.
\item \textsuperscript{149} See Vickerstaff, supra note 3, at 358.
\item \textsuperscript{151} See Ben Maiden, \textit{Marketing Moves on from First Principles}, Bus., (Mar. 1999), at 151, at 29–31; MAISTER, \textit{MANAGING}, supra note 22, at 268.
\item \textsuperscript{152} See PSMG, supra note 138, at 11.
\end{itemize}
what actually does happen (climate). “[A]cceptable (or at least tolerated) attitudes and behavior are the result of many influences, and how people actually behave will not necessarily be consistent with how they are expected to behave.”\textsuperscript{153} Therefore, the climate, will always be more influential than culture. It can be concluded that rather than culture, climate will determine whether there will be obstacles or drivers for the development of marketing in a firm.

This may also be influenced by the purpose for which lawyers are in business together. Mayson describes the reasons as the 3C’s:\textsuperscript{154} If partners are together for (i) “convenience,” they are not “together to do anything, but because it suits them to have a common home and name, and shared resources.”\textsuperscript{155} There is no role for business strategy or management in a “convenience firm”, which would hence be a barrier for the development of marketing. If their intention is to (ii) “complement” each other, “partners recognize that their clients have different legal needs that they cannot satisfy by practicing on their own.”\textsuperscript{156} In a “complementing firm,” management provides infrastructure support. However, normative and corporate strategies are more often accidental, which is unlikely to drive a (planned and intentional) market orientation. If partners have the intention to (iii) “combine,” the partners are in business “to build a lasting institution, capable of serving a wide variety of client needs.”\textsuperscript{157} In “combination firms,” investments are made in and benefits are realized from people and practice areas, new offices, training, etc. The role of management is to provide leadership and direction as well as ensuring effective use of infrastructure.\textsuperscript{158} The paper did not explicitly mention that a combination firm drives the development of marketing, however, the combined purpose is likely to provide the necessary preconditions for the development of marketing in a firm.

6. \textsc{Staff and Style}

The development, training, and motivation of lawyers and staff to market are closely related to the culture of a firm and depend on the resources made available by management. Often seen as a cost rather than an investment with limited financial support available, a lack of resources to plan and carry out marketing is a significant barrier to marketing.\textsuperscript{159}

Instead of appointing the person most capable of managing a practice group (or

\begin{itemize}
\item \textsuperscript{153} Mayson, Law Firm Strategy, supra note 22, at 61.
\item \textsuperscript{154} Id. at 65.
\item \textsuperscript{155} Id. at 66.
\item \textsuperscript{156} Id.
\item \textsuperscript{157} Id. at 67.
\item \textsuperscript{158} Id.
the whole firm), firms tend to see such appointments as a reward for the most eminent, most senior partner, who might not necessarily be the most able to manage.\textsuperscript{160} However, management and leadership should be seen as a role or a responsibility, not a title, a promotion, or a reward. The leader of a firm or practice must be a good professional, but not necessarily the best player in order to coach well. Most firms might have put in place the right management structures but are criticized for failing to provide the necessary leadership to empower, encourage, and enable people to adopt marketing’s client-focused view. At the same time, being in charge of marketing (as a partner) is almost seen as punishment. Marketing partners appear to sometimes be chosen “simply because he was the only one to miss the meeting that was discussing the issue” and was therefore unable to “wriggle out” of it.\textsuperscript{161}

C. FORCES SPECIFIC TO INDIVIDUAL FEE EARNERS

Values and beliefs embedded in the lawyer mindset hinder the implementation of market orientation.\textsuperscript{162} Many lawyers resist change and try to find excuses why they cannot or should not do marketing.

“Lawyers by their very nature are predisposed to being skeptics and most, if not all, try to be logical and conform to a traditional modus operandi. It is then easy to understand the anxiety and apprehension that many lawyers face when confronted with a new, untraditional, business concept that risks taking them beyond their comfort zones.”\textsuperscript{163}

Lawyers traditionally viewed marketing as unprofessional, unethical, an offence and incompatible with the dignity of the profession, as well as not able to add value to the profession.\textsuperscript{164} Lawyers have described marketing as “a zero-sum game, adding no value to humans or society” and working “against the public interest.”\textsuperscript{165} It was deemed appropriate for consumer goods, but not for lawyers: “We don’t need to attract people—they need us.”\textsuperscript{166} Some lawyers were convinced that marketing a firm would downgrade it and not enhance a good reputation. A

\textsuperscript{160} See Marcus, supra note 129.
\textsuperscript{161} Nick Ellis, A Disco(urse) Inferno: The Pitfalls of Professionalism, 17 MKTG. INTELLIGENCE & PLANNING 333, 339 (1999).
\textsuperscript{162} See Harris & Piercy, supra note 3, at 26; Nexhmi Rexha, Tamara Kirk-Burnnand, & B. Ramaseshan, The Impact of Technically Focused Values or Market Orientation of Professional Service Firms, 21 J. PROF’L SERV. MKTG. 45, 46 (2000).
\textsuperscript{164} See Burnham et al., supra note 74, at 104; Harris & Piercy, supra note 3, at 27.
\textsuperscript{165} Vickerstaff, supra note 3, at 359.
\textsuperscript{166} Harris & Piercy, supra note 3, at 28.
disdain for commercialism and the equating of marketing was identified with selling as barriers to the adoption of market orientation among professionals.167 Some lawyers were uncomfortable with marketing’s intrusive and at times commercializing aspects.168 “I didn’t go to law school to become a salesperson” appeared to be a typical statement among lawyers.169 “[F]or some lawyers, selling their services simply isn’t a part of their self-image as a learned professional.”170

Unclear perception and historic (mis)understanding of the marketing concept are a barrier preventing lawyers from marketing.171 The frequent misperception that marketing equals advertising or cold-calling sales leads lawyers to reject it as something too commercial and hence unacceptable. Traditionally, lawyers believed that their knowledge and expertise spoke for itself and it would be a sign of defeat to start marketing. Few lawyers have yet to grasp the concept that the purpose of a company is to create a customer and that general business acumen applies to law firms as well. Some lawyers see the client calling them with “all sorts of queries” as a “nuisance”, and “the price one has to pay for doing this kind of work.”172 These are strange remarks considering that clients are the business, and that without them, there is no business. Viewing clients and their questions as a nuisance seems to miss the point of why lawyers do their work.

Due to the lack of a marketing tradition in the professions and marketing not being a part of their traditional university curriculum, lawyers mature in their professions without marketing training and therefore are often ill-prepared to handle both the business and the professional part of their profession simultaneously. Consequently, they must be taught to be marketers. Before marketing programs can be successful, there must be a behavior modification of sorts, and a marketing culture must be engendered. Charles O’Donnell, COO of Duane Morris confirmed:

> One of the biggest issues in a law firm is that most of the professionals are not formally trained business people. Most partners were not business majors in college and don’t have advanced degrees other than law degrees. And one day they become partners because they do a good job of practicing law and being bright, but they really don’t know what’s involved running the business of law.173

167. See Kotler & Connor, supra note 33, at 71.
169. See Weisemann, supra note 168, at 69.
170. Margaret Daisley, Sales—Firms Move Beyond Marketing and Build Their Own Sales Forces, 3 SUPPLEMENT TO LAW FIRM INC. 2 (2005).
171. See Harris & Piercy, supra note 3, at 28; see also Kotler et al., supra note 19, at 5; Vickerstaff, supra note 3, at 359.
172. Bird, supra note 54, at 120.
While lawyers are consummate professionals in their chosen field, business skills are not always directly linked to those abilities. Due to their “marketing disorientation,” lawyers also consistently underrate the importance of clients’ selection cues and criteria.\textsuperscript{174} Although lawyers often stress the personal nature of the lawyer-client relationship, lawyers are said to not understand how consumers select law firms.\textsuperscript{175} The lack of congruence between lawyers and consumers in evaluating the importance of the cues and criteria indicates that lawyers cannot be marketing efficiently as they do not place the same importance on the criteria that consumers utilize.

It appears that profound cultural differences between lawyers and marketers form a barrier to marketing. Lawyers take pride in their formal education, professional qualifications and certifications, and see being a lawyer as a virtue unto itself. In marketing, however, “a B.A. is often sufficient, and the ease of entry, particularly when you’re likely to be hired by someone to whom marketing is opaque, is astonishing.”\textsuperscript{176} Consequently, lawyers tend to think of marketing as a “lightweight” activity anybody can do and lawyers resist being consulted by non-lawyer marketers that they do not perceive as peers.\textsuperscript{177} It is little surprise that a common complaint among marketers in law firms is that they are not given sufficient authority and respect.\textsuperscript{178} In fact, firms frequently employ professional marketers, and then elect not to take their advice. Partners believe they know best when it comes to marketing and pull rank on their marketing advisers. They instruct the marketers to do what they assume is best, even when the marketer recommends otherwise. This is akin to consulting your doctor and then telling your doctor both what the diagnosis of your illness is and what the treatment should be.

Perhaps the difference in the thinking and reasoning between successful marketers and successful lawyers may be too different. The discrepancy between the qualities necessary for marketing and for the delivery of legal services appears to be one of the biggest challenges. Effective marketing is about identifying assets, not liabilities. However, lawyers are trained to find what is wrong with something, not what is right. The type of thinking that makes lawyers highly effective at practicing law can make them ineffective at marketing.\textsuperscript{179} In addition, while client satisfaction is of utmost importance in marketing, instead of making a sincere effort to satisfy the clients, lawyers have trouble apologizing for mistakes they might have made, get defensive, patronizing, and often deny


\textsuperscript{175} Id.


\textsuperscript{177} Id.

\textsuperscript{178} See Maiden, supra note 151, at 29.

\textsuperscript{179} HENRY DAHUT, MARKETING THE LEGAL MIND: TURNING NEW PERSPECTIVES INTO POWERFUL OPPORTUNITIES 75 (2004).
that they are in the wrong.\textsuperscript{180}

In addition, there appear to be discrepancies between the nature of professional services and the professionals. When a company sells a product to a customer, the product remains with the customer. The company, however, is no longer directly in touch with the customer. When a lawyer sells her services, lawyer and client inevitably stay in contact. Products are manufactured and distributed by people who normally stay anonymous. The product thus is the interface between the customer and its producers. The interface between the law firm and the client is the lawyer herself who performs the service. Marketing for companies involves a marketing department. While marketers in law firms can build and run programs, few legal marketing programs can be run without the active participation of the lawyers involved.

Another characteristic is lawyers’ fear of having to move outside their “comfort zones,” i.e. having to embrace new behaviors. Lawyers typically preferred practicing their trade to undertaking marketing. Many lawyers hoped that glossy brochures and seminars would do the marketing for them.\textsuperscript{181} Some lawyers appeared to perceive a personality mismatch for marketing, claiming to be too introverted to market in a face-to-face manner.\textsuperscript{182} This often results in lawyers spending their time on more remote marketing activities that they are most comfortable with, such as speaking at conferences, issuing press releases, and participating in/hosting in-house events. But to bring in new business, firms must focus on getting lawyers to leave the office, meet with prospects, and advance their relationships.

A lack of time acts as a barrier to marketing among lawyers.\textsuperscript{183} As marketing is typically not embedded in the fee earner’s daily work, marketing is perceived as an option, that due to a lack of time cannot be committed to on a regular basis. The need to bill time and market their practice creates time-management problems. However, this may be a widespread avoidance reaction and used as an excuse rather than a real reason. Asking lawyers what they would do if the biggest client gave them another project, typically, they would make time for the project. Lawyers often state, “if I get paid for doing other things, I’m not going to give much attention to these new [marketing] topics.”\textsuperscript{184}

On a similar note, lawyers were found to lack a long-term perspective and patience for marketing to produce results: “[M]arketing is about positioning. You’ll get work, but it may be three years down the road. Lawyers don’t understand that.”\textsuperscript{185} This impatience also shows with regard to the tenure of the heads of marketing in law firms. Since crucial relationships take time to develop, the often relatively short tenure keeps marketing officers from obtaining a critical

\textsuperscript{180} Bedlow, supra note 115.
\textsuperscript{181} See Ferguson, supra note 168, at 20.
\textsuperscript{182} See WESERMANN, supra note 168, at 69.
\textsuperscript{183} See KOTLER ET AL., supra note 19, at 18; Vickerstaff, supra note 3, at 358; Wesemann, supra note 168, at 69.
\textsuperscript{184} MAISTER, MANAGING, supra note 22, at 256.
\textsuperscript{185} Cohen, supra note 112, at 21.
mass of trust and buy-in from partners.\textsuperscript{186}

While individual fee earners’ characteristics more often than not appear to act as barriers to marketing, this seems to be changing. An arrogant, passive approach is unlikely to produce results. “The arrogant partner waiting for deferential client to dutifully hand over work is a thing of the past, according to research that shows that more than nine out of 10 lawyers back the need for formal business development.”\textsuperscript{187} Previous research found that the adoption of marketing was cited as a particular problem for older professionals, most likely reflecting historical attitudes towards marketing within the profession, and possibly suggesting age as a barrier.\textsuperscript{188} Similarly, other research identified age as a barrier to marketing development.\textsuperscript{189} Once a lawyer has reached senior partner, mentor, or ambassador position in his or her professional life cycle, there is likely to be more incentive to maintain the status quo. Fresh approaches to marketing get stopped by: “We have never done that before/it will not work with our clients/it is different in law/I know what my clients like.” Younger lawyers see growth and attracting new clients as the key to the future and a benefit to jump start their careers with the help of marketing. They consider marketing as a critical component of the firm and are driven to marketing by the very real fear that clients will disappear with retiring seniors. Young lawyers are aware that clients always have a choice of lawyer “they don’t have to come back to you—and don’t have to recommend you. It is part of your job, however, to ensure that they do.”\textsuperscript{190} Previous research empirically confirmed the threat of job loss to be a possible driver for marketing.\textsuperscript{191}

Some argue that lawyers’ vanity might propel marketing in law firms. Once law firms started to hire publicists to get their names in the paper, they wanted to be in “any paper, on any subject. It wasn’t strategic, but PR firms discovered that lawyers loved seeing their names in print.”\textsuperscript{192} The success of law firm directories and rankings and the legal press may as well be an indicator for this phenomenon.

\section*{VI. Conclusions}

Lawyers used to practice the law without having to worry about a steady flow of business. Typically, a lawyer or two who were known in the marketplace brought in enough business for the entire firm. Dramatic changes in the

\begin{thebibliography}{99}
\bibitem{188} See Vickerstaff, \textit{supra} note 3, at 359.
\bibitem{189} See Harris & Piercy, \textit{supra} note 3, at 27.
\bibitem{190} Hill, \textit{supra} note 13, at 12.
\bibitem{191} See Vickerstaff, \textit{supra} note 3, at 359.
\bibitem{192} Fishman, \textit{supra} note 134, at 5.
\end{thebibliography}
macro-environment have significantly influenced the legal services sector, both on the demand as well as the supply side. Few legal services providers have the luxury to ignore the changes.

While many marketing instruments were never forbidden, an increasing number of lawyers see the market as very competitive and do not hesitate to compete with one another and pursue each other’s clients. Clients today have many choices, and they know it. Lawyers’ advice is critically questioned, fees are under close scrutiny. The lawyer who thinks that marketing is a waste of time for her practice has not understood what marketing means. Assuming that clients will return and that new clients will walk through the door is naïve and dangerous. While personal contacts still have an important role to play, there is no question that proactive marketing offers more opportunities than the limited “old school tie” network that has hindered innovative marketing ideas, and has prevented many firms from establishing a dedicated marketing person at all.

There are many signs that law firms are increasingly accepting marketing as a fundamental cultural change worthy of serious investment and capable of impacting positively on the bottom line. While most law firms in the United States today have embraced some sort of marketing, drivers of legal marketing appear to typically stem from outside forces, rather than a proactive choice. Lawyers, however, are beginning to accept marketing. A basic notion of marketing, which would be unwise to ignore, is that perceptions drive choices, and perceptions can be influenced. A failure to be able to articulate why one’s services are better means that one will end up competing primarily on price.

There appears to be a paradox that merits investigation, namely that professionals appeared to be better marketers when not intending to market, but poorer marketers when consciously deciding to use marketing as a way to operate in increasingly competitive markets.\textsuperscript{193} However, in order to market effectively, firms need to aspire to have marketing embedded in their firm culture, independent of whether the firm is a professional partnership or a managed professional business. This requires top management support, good marketing professionals, education, and a marketing structure within the firm. In addition, it also requires a measure of behavior modification: for marketing to succeed in a professional firm, every professional must participate and understand the competitive advantages of participating. Effective measurement processes need to be in place to help drive behavioral change. “What gets measured gets done” and “what gets measured and rewarded gets done even more,” particularly when the measures are directly related to the firm’s strategy. A challenge for the years to come is to link specific outcomes to specific marketing activity and demonstrate the return on investment of marketing.

\textsuperscript{193} Silvia Hodges & Laurie Young, \textit{Unconsciously Competent: Academia’s Neglect of Marketing Success in the Professions}, \textit{8 J. RELATIONSHIP MKTG.} 36, 46 (2009).