

Barristers and Marketing

Following the abolition of the Bar's rules relating to advertising, Bar News invited Michael Skinner, who has considerable experience in marketing, to contribute some personal views on how a barrister might respond to the brave new world.

Introduction

Now that the Bar Council has formally abolished all the rules dealing with advertising for barristers this seems a relevant time to make some comments on the way in which members of the Bar may approach the prospect of advertising. Having spent my early years after Oxford in marketing and advertising, I wish to make the point that advertising would need to be one aspect of a co-ordinated programme of marketing. Unless the advertised member of the Bar just wishes to feel good by seeing or hearing an advertisement mentioning his or her name, the purpose of a member of the Bar advertising himself or herself would be as part of an orchestrated activity to market themselves.

Stars and Other Luminaries

Can you really imagine that Sir Edward Carson or Sir Norman Birkett would have advertised themselves even if the then applicable rules would have permitted them to do so? What would they have said? Would Sir Edward Carson have said that he was the man who asked Oscar Wilde "Was that the reason why you did not kiss him?". Or would Sir Norman Birkett have said of himself that he did know the 'co-efficient of the expansion of brass'.

Of course, we cannot imagine them doing it. One reason, I suspect, is because we cannot imagine that they would have had any need to. They were, in modern parlance, stars. They were regarded, no doubt, as two of those people who were the very best in their field. If you are a star, or if you are regarded as one of the leading lights of the Bar, then I would find it extraordinary if you would want to read on about marketing and advertising for other members of the Bar. If you have so many briefs in the kinds of cases in which you enjoy being involved then your cup runneth over and you have no spare capacity and no desire to change the nature of your practice. Take my advice. Do not read any further.

Other Non-marketers

There are three other reasons commonly given to me when I conduct seminars in marketing for law firms (which are always attributed to other partners) for not trying to apply a marketing approach:

(a) There is no need for it

Members of the Bar, in my experience, often find that they are being driven to reach a professional deadline. It may

be, for example, because there is some Limitation Act guillotine. But whatever the reason, there is a struggle to get defined instructions in order to meet some particular Court deadline. This is seen to be a short-term and acute "professional" problem which is felt to be of a higher priority than achieving a long-term goal to affect the nature of one's practice. Because the member constantly has a series of urgent deadlines there is not seen to be any need for marketing.

(b) It is inappropriate

It is commonly said that "My work is good enough" or "My reputation is all I need". The belief is that if you are a professionally competent member of the Bar you will receive your just rewards and in consequence there will be enough of

the right kind of briefs to satisfy you without stooping to the "snake oil" salesman's ruses to drum up business. With such a view, you would not believe it appropriate to be involved in marketing yourself.

(c) Not enough time or money

Marketing is commonly seen as an ancillary or collateral activity to the substantive and main professional activity of practising the law. Consequently, while it is thought appropriate that money and time should be spent on reading the latest law reports or buying legal texts, in the scheme of things such activities will leave insufficient time or money to apply to the activity of marketing.

If you fall into any or all of the above three categories please do not read any more of this article. I have no wish to convert anyone to apply marketing to their professional practice or to encourage anyone to do so. If those views or any of them match your own, you may need read no more.



Marketing and Advertising Individual Members of the Bar

This article is concerned with how individual members of the Bar might consider marketing or advertising themselves and is not concerned with how (say) a number of barristers on a floor might market or promote themselves.

Zen Marketing

I use the expression "Zen Marketing" to describe the act of marketing when the person concerned does not know that he or she is doing it. A synonymous expression is "unconscious marketing". I remember a story of how St Francis of Assisi was said once to have been asked by a junior colleague for a

sermon. St Francis agreed. St Francis and his young colleague walked together in silence around Assisi. His young colleague asked St Francis where was the sermon. St Francis said "That was the sermon". The moral of the story is that in everything we do we are in fact presenting ourselves to the world. Another illustration of "unconscious marketing" is taken from Molière, who wrote:

"Par ma foi?

Il y a de quarante ans que je dis de la prose sans que j'en susse rien."

In *Le Bourgeois Gentilhomme*, as you know, the character is saying that for 40 years he has spoken prose without knowing it. These two homely stories are told to explain that in its most general sense members of the Bar may arguably be said to be marketing themselves even though they may not be consciously doing so. What are the kinds of ways in which this may be being done? A marketing consultant could (among others) give these answers:

- . Where you have chambers.
- . The type and style of your furnishings.
- . Your forensic style.
- . The nature of your practice.
- . Whether you lecture, write articles or books.

Planned Marketing Contrasted with Zen Marketing

What I have called "Zen Marketing" is consistent with the view which is commonly held that providing a professional service by itself and with nothing more will bring its own rewards. Planned marketing is based upon the view that you can by your conscious acts make a difference to the kind and size of practice which you have. An essential corollary in a profession where we are all sole practitioners is that, since we are all different and idiosyncratic, what one member of the Bar sees as being successful will not necessarily be seen in that way by another and, similarly, what one member of the Bar may believe is appropriate to promote himself or herself will not be so seen by another member. A further consequence is that it is unlikely that there could be a single blueprint according to which all members of the Bar can promote themselves individually. Of course, the Bar as a whole could as a body promote the profession but that is a different matter. If you believe that you are able to promote yourself so that you can affect the volume of the work which you do, to increase it, and to affect the nature of the work that you do, so that you then practise in the area of your choice, then you need to consider the issue of what can be done.

Restrictions on Marketing and Advertising

In this article I am not concerned with what restrictions are placed on the profession either by statute or by our association. I am approaching the topic from general principles which apply in other walks of life to see whether or not those principles could be applied, if members wish, to their own professional practices.

The Scepticism of the Bar

Perhaps because of our experience and training and, in particular, because we have cross-examined so many so-called "experts", most barristers have a very healthy scepticism of advice given by others, particularly specialists. Their own advice, of course, is always correct. In preparing to cross-examine an expert, or after having cross-examined one, it seems quite common that we believe we know as much as the expert about his or her field of activity and we are surprised at how mundane are the principles upon which he or she operates. When the expert field is not one of the more abstruse sciences but is related to matters of everyday interest (who can forget the problem of the expert on ladders?) the more we find the principles expressed by such an expert to be unenlightening. When applying so-called principles of marketing to our profession, I would expect that most of us would say that we knew such matters already and they are in fact not enlightening. However, even though such is our response to these truisms, it is useful to remember that such marketing truisms seem to apply to everybody else but apparently not to us.

A Model of the Selection Process

Before formulating what should be done by the individual barrister to promote himself or herself, he or she would need to have his or her model of how they will likely be selected to provide their work in the future. Unless they have a totally chaotic non-causative model of how they will be selected, the barrister will at least have an implicit model of how he or she will be selected to provide their services. Without such a model it is impossible to plan how you can improve on what otherwise would be the natural consequence of what you are doing already. Therefore, the first truism is define what is your model of how you will be selected for work in the future.

The "Mickey Rooney" Syndrome

Those of us who are interested in old Mickey Rooney and Judy Garland films will remember that there normally comes a time in their young lives when Mickey Rooney and Judy Garland face what appears to be an insuperable problem of raising funds. To overcome this, one or other of them says "Let's have a concert". In my experience much of what passes for marketing seems to fall into the "let's have a concert" category. That is to say, there is lots of colour and movement, people exert themselves to perform and fairly frequently quite a lot of money is spent.

The natural enthusiasm, which a group endeavour of this kind generates, creates a subjective feeling derived from this worthy effort that there will be a reward commensurate with the activity. But unless, of course, what is being done by this promotion is designed to affect the model which you have of how you are selected, then it is merely a displacement activity and one which, if it has a poor result, will depress the protagonists and inhibit them from further activity.

Money

I would only make one recommendation about the amount of money which may be spent on marketing and advertising. I used it years ago and I have never found it bettered. It has an acronym. The acronym is FOTT. This stands for "Foot on the till". Do not spend one cent until you are sure that you have some conscious rationale of how that one cent spent will return to you more than one cent. FOTT normally prevents "let's have a concert". It is always disappointing to be a kill-joy, but if you really think that spending money on fancy stationery, brochures and paid advertising will provide a better return than you would otherwise have, then you ought to have some method by which you can judge if this expenditure of time, effort and money has been worthwhile and a rationale why this will be so.

TQM: A Mystery Explained

For some years now, people who promote themselves as marketers have been promoting TQM. TQM stands for Total Quality Management. TQM is said to have been an approach generated by the work of Dr W Edwards Deming, an American, who in 1950 went to Japan at the request of the Japanese Union of Scientists and Engineers. In one sentence (and the literature is immense on this topic today) his philosophy was constant and continual improvement. In fact, customarily, commentators make 14 points to describe what this means. Save yourself the money and do not go to any discussion of or seminar on TQM. For present purposes a useful summary of the writing on the topic is reduced to the following:

- (a) constant and continual improvement;
- (b) improve in small steps;
- (c) satisfy the needs of the situation (as barristers we have additional criteria to meet than merely being effective); and
- (d) see if the improvement works and improve again, and so start back at (a).

Good advertising kills lousy products. If the person who is marketing his or her services cannot perform them, having promoted himself or herself suggesting that he or she can perform satisfactorily, such a member will find his or her marketing efforts counter-productive. It is common for people who advise in the advertising industry to advise their clients to improve their products. Although none of us, naturally, could possibly need improvement, a third party consultant marketer would generally encourage us to look at the quality of our performance before any step is taken to market it.

Eighteenth Century English Philosophers

The classical English philosophers of the eighteenth century were empiricists. Empiricism is the touchstone of good advertising and marketing. You have a model of how you think you would be selected in the future. You take some activity to affect that model. You evaluate whether it worked or did not. You then adapt what you did or take some totally new step in the future, based upon the empirical results of what you have done. As I have said, you could take a purely happenstance view that things happen randomly or that (put shortly) virtue is its own reward. On the other hand, you could take the view that you can consciously affect the nature and

amount of work which you will be asked to do. If you take this latter, radical view then you will need to judge what you have done and then have the intellectual toughness to change it if it does not work.

Rudyard Kipling and the Bar

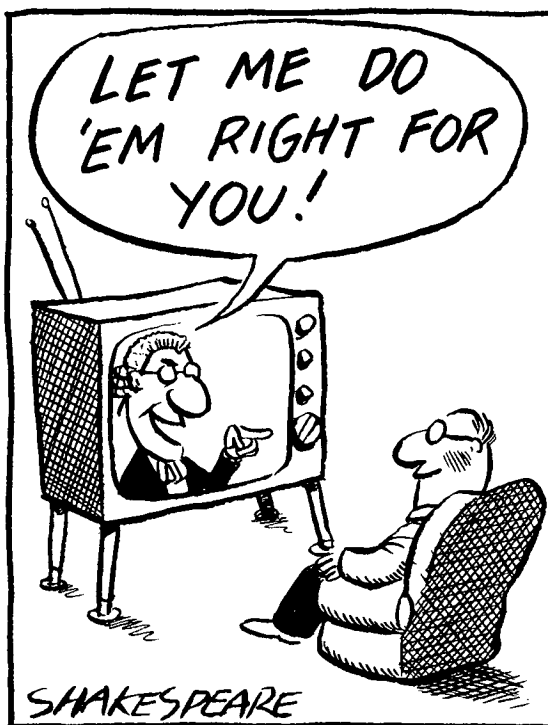
Rudyard Kipling is no longer fashionable, but he did provide one model which is translatable to our profession. In *The Elephant's Child* he wrote: "I keep six honest serving men. They taught me all I know; their names are What and Why and When and How and When and Who."

If you ask these six simple questions of your marketing and advertising activity you will accomplish, in my opinion, as much by yourself as you will by

any other professional help. They are directed to the six fundamental activities for your self-promotion. The questions will no doubt be answered in a different way by different members of the Bar. It is therefore quite unhelpful to suggest to intelligent and creative professionals what the answers may be.

1. Who?

At present the Bar is having its own internal debate about who should have access to it. Before you can decide what your marketing and advertising approach should be, you need to decide who will be both the clients and also the specifiers. By a specifier I mean someone who says to his or her client that they should use your services. At present, using this terminology, solicitors are specifiers. Until it has been finally resolved who will be our "clients" in the future it is impossible to decide what would be the appropriate and most effective way to market your services.



2. What?

Having decided what kind of practice you wish to have and what services you wish to offer you need to decide what it is that you wish to tell the decision-makers who will decide whether or not you are selected for future work. Generally, you cannot tell everything about yourself that you believe will attract the appropriate kind and level of work which you wish to do. You have to select which qualities you wish to promote, bearing in mind whatever restrictions there are or will be placed upon your advertising and marketing.

3. Where?

We tend to think in terms of paid advertising in the press and on television as the way in which advertisers approach their target market. But, of course, the medium through which you promote your services not only could include these two media, but also direct mail, sponsorship, telephone contacts, the radio and (vide *Chapelton v Barry Urban District Council* [1940] 1 KB 532) deck chairs on a beach. Your criterion of where you should promote yourself should be decided by your model.

4. How?

How is it best to contact the people who you believe will be most helpful to you? Is it by some face-to-face conversation, is it by correspondence, is it by paid advertising or is it by some form of public relations?

5. Why?

This is always a difficult question, but why should the prospective client select you? Barristers are, of course, naturally diffident about their qualities, but in this line of activity it is necessary to be able to express why you should be selected for work so that that proposition can be put to your defined target audience.

6. When?

You have to decide when is the most appropriate time that you should promote yourself. For example, does the tax adviser promote himself close to the end of the financial year because he or she believes that that is when the selection of a barrister is made? Should that marketing approach be made at the beginning of a new financial year, giving the idea time to grow and flourish so that when the work is required that particular barrister is more likely to be selected?

The answers to Rudyard Kipling's six questions are clearly very personal and, I would imagine, very different between members of our profession. The fact that such answers are so likely to be very different from each other reinforces my view that a Procrustean approach, whereby there is only one answer to the problem no matter what the problem is, is likely to have no chance of success.

Conclusion

If marketing is the conscious act of self-promotion, then providing members of the Bar are permitted to do so, conscious self-promotion should bring no less success to barristers than it does to other professions. Whether or not such conscious self-promotion is acceptable or appropriate for members of our profession is a question that raises a fair degree of heat on both sides and, for the avoidance of doubt, I do not wish to be taken as expressing any view on this question. A personal frank self-assessment using the questions I have posed should provide members of the Bar who wish to promote themselves with a practical and inexpensive start. □

Observations to (Recently-admitted) Counsel

- . Your life as a Barrister will revolve around two things and two things only - briefs and cheques.
- . If 10% of the Solicitors who promise to brief you do so you will probably succeed at the Bar.
- . There is no such thing as a "simple" matter - otherwise you wouldn't be briefed.
- . The importance of the "principle" increases in inverse proportion to the quantum.
- . Do not worry - the evidence will be right on the day.
- . The sweetest words to your ears will become "I don't wish to hear from you Mr Millard". Resist the temptation to do a John Fahey leap when it's said.
- . If your client wins - it's as a result of your eloquent brilliance.
- . If your client loses - the witnesses let you down or the magistrate/judge is an imbecile.
- . On average, the positive/optimistic Barrister wins 50% of his cases.
- . On average, the negative/pessimistic Barrister loses 50% of his cases.
- . Never, ever, engage in punter's post mortems; but you will!
- . The amount in the Solicitor's cheque never seems as much when you finally get it as when you originally sent the memorandum of fees.
- . Everybody you meet will know more about being a Barrister than you do - especially if they do not have a law degree and have never seen the inside of a court.
- . You should put \$1 in a moneybox every time someone asks "how can you represent someone when you know they're guilty?" - you'll be able to retire by the time you're 40.
- . If all else fails - read the brief.

□ Philip Gerber