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Building a Better Mousetrap: A Model for a Lawyer's Business Plan

Steve Nelson

As a legal search consultant, I have often advised lawyers on how to prepare a business plan. For lawyers contemplating a move into a law firm, particularly from government, such a plan is almost *de rigueur*, as firms need to be convinced that this particular attorney has the ability and the desire to develop business in a competitive market. But lawyers contemplating making a move should not be the only ones who should be developing such a plan. Given the increasing emphasis that firms are putting on business development, such plans should be written or revised by all experienced lawyers in private practice, whether they be mid-level associates or partners. Indeed, some firms are including yearly preparation of such plans in their professional development programs.

This article will outline a five-step methodology that can result not only in an effective business plan, but also can offer a head-start for practice articles and presentations that lawyers can use in marketing themselves.

1. Why Will They Buy?

Unfortunately, many of the business plans that we see have a misplaced emphasis. Lawyers tend to begin those plans in a self-directed way: what skills do I have to offer, or what will I do to develop business?

It may be useful to analogize this to the old standby low-tech product, the mousetrap. It would make no sense to market a mousetrap by emphasizing its particular mechanism. Consumers are not likely to be interested in the intricacies of mousetrap technology. Instead, they will buy a mousetrap when they believe that (a) they have a rodent problem and (b) a mousetrap will solve it.

Rather than falling into the trap of trying to sell what they are, lawyers first have to focus on the needs of the consumers of legal services. Therefore, legal business plans should first address the legal issues driving the market, written from a client's perspective. This should be a general outline of the issues that clients in general face, rather than a full analysis of a particular issue. For example, a telecommunications regulatory lawyer might need to talk about the convergence of various technologies and the fact that historical barriers to entry into lines of business have all but broken down.

2. Who Will Buy?

This portion of the business plan focuses further on who (what companies or individuals) are clients or potential clients, and what they care about with respect to the issues raised above. (In other words, who has a rodent problem and what are they looking for in a solution?)

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The plan needs to be specific enough to catch a prospective client's attention. As a result, the abovementioned telecommunications regulatory lawyer may need to analyze the aspects of the Telecommunications Act of 1996 that affect local exchange carriers, a white-collar defense lawyer may need to delve into compliance issues faced by health care companies, and a corporate/securities lawyer may point out issues that private companies may be ignoring when they prepare for an initial public offering.

3. What Will They Buy?

In many ways, this is the toughest part of the business plan. Here we are trying to determine what kind of mousetrap will best solve the customers' rodent problem. Again, putting oneself in the clients' shoes, the lawyer needs to ask: What expertise is the client looking for?

This part of the plan should focus on what attributes the clients should look for when making hiring decisions. This, of course, will be keyed to the individual lawyer's expertise or background, and may emphasize why previous service in the government might be helpful to the client, or why experience on a particular type of deal is critical. But one should not stray into a selling mode yet.

For more junior lawyers, this section might have to focus more on what the client is looking to get from a firm, rather than from an individual. This is advisable not only because many associates have not yet developed the wealth of expertise to fully answer the "why they buy" question, but also for political reasons.

4. Why Will They Buy it From You?

Finally, we get to a recitation of the personal attributes of the lawyer – of how his or her mousetrap matches up perfectly to the customer's requirements. This should be an honest, forthright description of the background and expertise of the lawyer. A few hints here:

- Avoid academic-related accomplishments that might have impressed firms during the hiring process, but which generally do not impress clients.
- Include organizational activities that might be relevant, such as American Bar Association positions or outside networking activities. Clients often find such activities not only relevant, but indicative of stature in the profession. They also are impressed with lawyers' involvement with industry groups.
- Include any involvement with issues of importance to the client base, including former government service.
- Don't mention the competition. This may seem obvious, but we've seen business plans that seek to insert the author into an elite group of attorneys practicing in the field. Not only does this appear arrogant, but it runs the risk of offending someone who feels that some of the members of that elite group don't belong there.

5. How Do You Get Them to Buy It from You?

This step addresses how we get customers' attention and convince them our mousetrap is the ideal solution.

Another misperception that we see in legal business plans is an overemphasis on networking. Networking is only an initial stage in the marketing process. So becoming active in a local technology committee may pay off down the road, but really should only constitute a minor aspect of a business development plan. Instead, this section of the business plan should focus on a plan to communicate with prospective clients so they can learn more about why they need to buy "your mousetrap," and why they need to buy it from you. Speaking and writing engagements are of course central to this strategy, but one has to determine where to speak and where to write. This is where the "Who Will Buy" analysis can be helpful.

But formal speaking and writing assignments are just part of the equation. One can get as much value by being quoted in newspaper and magazine articles as writing them. A business plan should include a strategy on how to be helpful to reporters writing articles (suggesting angles for stories, etc.).

In addition, in this era of e-mail and the internet, there are now more ways to get a message across to prospective clients. The business plan should address such vehicles as direct mail, newsletters, e-mail listserves, and internet postings as methods to communicate with clients.

As a complement to this section, a prospect list should be prepared. While this should include client contacts where there is an existing personal or business relationship, the list should also include other individuals/companies that have a significant interest in the issues that have been outlined in the business plan.

A business plan is not just a recitation of where someone will speak, or what articles they will write. It is an integrated document that serves as The State of the Union for someone's practice area. If done properly, it can provide some guidance as to where to focus marketing efforts both for the individual, and for the firm involved. Moreover, a good business plan can make the job of preparing substantive articles or presentations much easier, because much of the work will already be done.

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Professional and Career Development in the Federal Government

Linda Cinciotta

One Person's Story

Following years of intensive effort and endless striving in law school, and then as an associate in a major law firm, I finally "made it" and became a partner. But I didn't find "living happily ever after" there. As much as I liked my firm (and I did, mightily), I slowly had to face the fact that my "fit" with law firm life was about as compatible as a square peg is with a round hole.

I spent one solid year in introspection before I started looking for an appropriate next chapter in my career. After all, I was where everyone wanted to be – it seemed crazy to contemplate leaving that pinnacle that I had sought so avidly. My family and close friends thought I had taken leave of my senses. But the self-assessment told me differently.

I considered a lot of possibilities, but one attracted me more than any other – the United States Department of Justice. Working at DOJ first as a typist and then as a personnel technician, I had worked my way through both college and law school. A return "home" to DOJ was a comfortable fit – made even better for me by leaving the practice of law entirely and taking a management position there. I've been DOJ's Director of Attorney Personnel Management for seventeen years, and have never looked back.

In my DOJ position, I am responsible for the agency's legal recruitment programs, among other things, and have had the opportunity to view many attorneys' various career transitions and hear their musings. I am often queried about working for the Federal government, or DOJ, as an attorney and offer you some information and thoughts about doing so.

Where Does Federal Service Fit in a Career Path?

Even for the same person, the "right" position varies over time because we tend to live our life in chapters. What was right at one stage may not be right five or ten years later. Federal service can fit into a career path in a variety of ways, at different times, depending on your individual needs and desired direction.

The attorneys of DOJ illustrate the point. They come with different motivations, and at different stages. Some of the newly-minted attorneys hired under our entry-level program (the Attorney General's Honor Program) are what we might call "the true believers" – they know from Day One that they want to spend their careers with DOJ ... and they do. Those "lifers" are well-represented at the upper management levels throughout DOJ. Other Honor Program entrants plan to spend only the first several years of their career at DOJ, and then leave for private practice or another endeavor. Those short-timers acquire exceptional experience at DOJ during this opening chapter of their careers – many of them get litigation experience of a quantity and quality that they could not reasonably expect in private practice until much later, if ever. Other attorneys join DOJ at mid-career, planning to stay for a finite period and then to return to the private arena. Still others join DOJ at a much later stage of their careers – many of them, like me, have "been there, done that" in private practice. They are ready to leave the business of law behind, and wish instead to represent and serve the people of the United States.

No matter when it occurs, a period of Federal employment can serve as a very effective career development tool. As the Government administers, interprets, and enforces the Federal laws and regulations, it has a legal practice in virtually every substantive area of law. In many of those areas, the Federal agencies are dealing with programs and policies that have national significance, affect huge numbers of people, and involve enormous resources. Their attorneys are exercising significant responsibilities in high-stakes areas. Knowledge and experience, "from the inside," of the Government's policies and practices cannot help but make you more marketable if you move to the other side.

The Pluses and Minuses in a Nutshell

The advantages of an attorney position with the Federal government include:

- the opportunity to do challenging, often cutting-edge, work
- the collegiality and sense of teamwork in the work environment
- autonomy, responsibility, and the opportunity to use your judgment
- more manageable hours, at least usually (and no billable hours)
- pride of service, patriotism, the feeling of doing something worthwhile
- sense of security and good fringe benefits

The disadvantages (we have to be fair!) include:

- the money. Most Federal line attorneys are somewhere within the GS-11 through GS-15 range ($42,724 to $110,028 in the Washington, D.C./Baltimore metropolitan area for this year). For particulars and locality pay charts for other areas, see the Office of Personnel Management's web site: http://www.opm.gov.
- lack of perquisites
- very limited support staff services
- need for a thick skin (you're the subject of political/public "bureaucrat bashing")
- the bureaucracy

How Does the Federal Hiring Process Operate?

Federal employment has two basic classifications: the competitive service, and the excepted service. Jobs in the competitive service are subject to some fairly bureaucratic rules that govern applying, and being considered, for Federal positions. Fortunately, attorney positions are part of the "excepted" service (or "Schedule A"), which does not have those same requirements and instead affords wide discretion to individual agencies. Each agency is free to formulate its own recruitment and hiring programs for attorneys, and enjoys virtually unlimited latitude in doing so.

The majority of Federal attorney positions are in the "career" civil service, which means they are nonpartisan in nature, and the attorney's tenure is not tied to that of their agency head, or the Presidency. Hiring of the career attorneys is based on their credentials, not their political involvement. There are also attorneys in "noncareer" (or "Schedule C") appointments throughout the government. Their appointments are politically based, often in policy-making or upper-level management positions, and they implement the policies of the Administration then in power. Their tenure is usually defined by the term of the President or agency head.

Some Specifics About the United States Department of Justice

The Department of Justice is the biggest law office in the world, with over 9,200 attorneys throughout the nation. At DOJ, we have two hiring programs for attorneys. First, the Attorney General's Honor Program is the only way DOJ hires attorneys directly out of law school. Judicial law clerks are also hired under the Honor Program. The Honor Program is, we believe, the largest legal recruitment program in the country, and perhaps the most competitive as well. The exceptional attorneys hired under the Honor Program have been a source of great pride to DOJ since the Program was established in 1953. The Honor Program is conducted in the autumn – the application deadline date is always in late September – and this year the deadline is September 25. In a typical year, DOJ receives thousands of applications and hires about 150 new attorneys under the Honor Program.

Second, the Lateral Attorney Recruitment Program is DOJ's process for hiring "experienced" attorneys. The minimum requirements for consideration are that the attorney must have graduated from law school at least one year previously, and must be an active member of the bar (any jurisdiction). Some of the DOJ offices (for example, many of the United States Attorneys' offices) require more experience than this minimum. Other offices may require particular substantive experience for specific jobs. The number of laterals hired each year varies depending on budget and turnover factors, but on average approximately 1,200 experienced attorneys are hired by DOJ annually.

Linda Cinciotta *is the Director, Office of Attorney Personnel Management, United States Department of Justice. She was a partner (the first woman partner) at Arent, Fox, Kintner, Plotkin & Kahn in Washington, D.C. She has served as President of the Federal Communications Bar Association (FCBA); President of the Washington, D.C. Chapter of American Women in Radio and Television; National Director of the National Association for Law Placement (NALP); FCBA Delegate to the American Bar Association (ABA) House of Delegates; and NALP's Liaison to the ABA Commission on Women in the Profession.*

Want to know more? Check out the Office of Attorney Personnel Management's web page – http://www.usdoj.gov/oapm – which tells you more about DOJ and its legal hiring programs, lists some current openings, and shows you how to apply directly to any DOJ office in which you have an interest. (By early summer, the web page will also feature our new applicant-friendly recruitment booklet, "Do Your Legal Career Justice .... Opportunities for Lateral Attorneys at the U.S. Department of Justice," which includes a legal practice directory to make it easier for you to apply to the organization(s) that feature the practice area you want.)

Other Federal Agencies

Want to know more about the legal hiring programs at other Federal agencies? DOJ will provide you with a five-page list of the 25+ Federal agencies that employ more than 100 attorneys, and their web sites. Send a self-addressed, stamped (for 2 ounces, to be safe) envelope and a request for the "List of Federal Agencies (with Number of Attorneys, Web Sites, Contacts)" to:

Box LARP
Office of Attorney Personnel Management
Room 3525 Main Building
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

(See also *Washington Online: How to Access the Federal Government on the Internet,* Bruce Maxwell, Congressional Quarterly, 1998; telephone 1-800-638-1710; Web http://books.CO.com.)

☯ The Learning Lab: Tips & Tools for Creative Lawyer Training

(**Editor's Note:** *This column highlights best practices and new approaches to common challenges of in-house training managers. We invite your comments, and your suggestions for future articles. You can reach us at (703) 719-7030 or maraeg@profdev.com.)*

Tying New Associate Training to Work

The latest round of associate raises has brought increased billable hours pressure. We can expect that to impact heavily on training. First and foremost, it will raise expectations for new lawyers to become competent and productive earlier than ever. Intensified training is the obvious response to that need.

At the same time, we can expect raised expectations for training itself – increased demands (a) to justify the time and dollar investment in training by demonstrating its effectiveness at improving performance, and (b) to deliver training as efficiently as possible, so as to leave the maximum amount of time available for billable work.

The best way to raise associates' productivity while also increasing the effectiveness and efficiency of training is to tie training as closely as possible to work -- by training new associates both *for* work and *at* work.

Training *for* Work. In addition to teaching new associates core principles, skills, and substantive knowledge (all of which can be hard for them to see how to apply on the job), we should:

- **Teach best practices.** Many experienced associates have developed for themselves especially effective and/or efficient ways to perform tasks commonly faced by new associates – things like research techniques, computer shortcuts, clarifying assignments, organizing writing projects. Identify your top performers and find out how they do it. Then teach it, or have them teach it, to new associates.

- **Use firm experiences or materials, or hypotheticals closely resembling them, in all in-house training programs.** Realistic scenarios, in addition to bringing training alive, best prepare new associates for what they will be facing on the job: supervisor and client idiosyncrasies, factual twists, ethical dilemmas, legal complexities. The best outside trainers also seek to incorporate firm content in their training when they come in house. Help them do it.

- **Provide plentiful opportunities for practice and feedback on key skills.** Skills are learned by doing them, not by talking or thinking about them, and by doing them *a lot*. Any skills-training program worth its salt builds in plenty of skills practice and individual critiquing to establish a basic level of competence. That foundation then needs to be reinforced and expanded by continuing practice and feedback – the more critical the skill, the more practice is needed. For example, firms can solidify associates' oral skills after a training program by assigning regular presentations at practice group meetings, with followup feedback from experienced lawyers.

Training *at* Work. Work itself provides the richest learning opportunities. To make the most of them:

- **Manage new associate assignments to support competency development.** Some firms manage their new associates like summer associates for anywhere from 6 months to 2 years, by putting them in a centrally-managed assignment pool to ensure that the best assignments are fairly allocated and that all assignments represent good learning value (and reasonable requests). Some organize per-project feedback to new associates in the early months or years. New associate availability can also be restricted to those supervisors known to be effective at developing junior lawyers.

- **Capture the learning from work.** At key points in a case, the team should not only plan ahead, but look back and discuss what they have learned from it. One partner has adopted the elegantly simple strategy of holding a team meeting at which three flip charts, each headed with one of the following questions, are filled out: (1) "What worked?" (2) "What didn't work?" and (3) "What could we have done better?" Case post-mortems can also make for excellent practice group seminars. Both kinds of discussions, while instructive for everyone, are real eye-openers for new lawyers.

- **Strengthen lawyers' supervision skills.** Some lawyers are adept at structuring coherent assignments and communicating them to new associates; others are skilled at recognizing up front what new associates need to know and how best to provide it, or at monitoring and coaching their on-going performance, or at accurately analyzing and critiquing their performance after the fact. Most lack skills in at least some of these areas and probably will not develop them without a push from the firm. Supervision skills training, private executive coaching, and upward appraisal feedback can all contribute to more effective supervision and development of new associates. They also build partners' capabilities and satisfaction.

It's clear that the restructuring of compensation and billable expectations poses some real challenges for training. Tying training more closely to work is one way to meet those challenges head on.

– Gaye Mara