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The Beauty Pageant

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"It becomes about managing managers! Hire top quality managers. It's about hiring 'A' players. 'A' players make all the difference! Effective leaders hire the 'A.' A's are never too expensive … lesser-level hires are always too expensive, no matter how cheap the cost."

– Jeffrey H. Newman

Just as the glory days of pageantry in Atlantic City have become somewhat a relic of a past age, so, too, has the multi-lawyer presentation to a client as part of a multi-firm interview process conducted by the client to select one of several firms to hire in order to furnish a specific service – perhaps a litigation or a bundle of legal services – the classic "beauty contest."

Often the in-person presentation is preceded either by the participants' preparation and delivery of a brochure describing the entire firm, or a brochure focusing on the particular legal service sought by the client.

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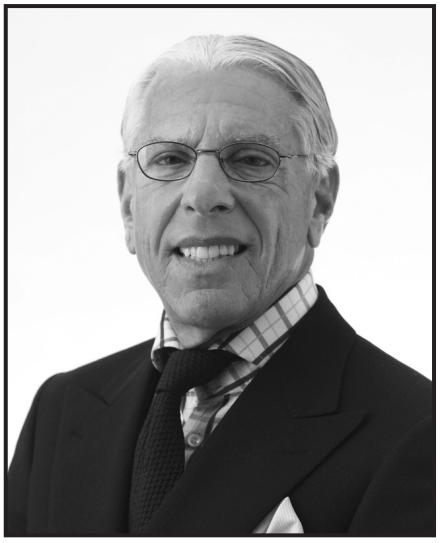

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Yet, that practice, too, has become a relic of the past. It's just that many lawyers have yet to realize the fact.

What's happened? Why? And, what's next? For practitioners of a profession who, similar to doctors, have enjoyed prestige, admiration, a sense of entitlement (oops!) and a belief that quality of product is more important than service and price (oops!), where is the profession heading?

The changing landscape of the legal profession, the so-called new paradigm, is not only difficult to see and understand, it's downright scary.

Beauty contests no longer work. In fact, they haven't worked for a long time. The reason is really pretty simple. The "mechanical matrix" of a beauty contest used to be able to be described as follows:

- Client recognizes client needs help.
- Client interviews firms who explain all their capabilities.
- Client selects firm that seems to offer the capabilities it considers most important.

It changed, and the "mechanical matrix" could now be described, as follows:

- Client understands its problems and seeks solutions.
- Law firm offers solutions.
- Client selects what it perceives to be the best solution provider.

The problem was often that the winner – or, at least, the probable winner – had already been determined. The receipt of the glossy brochures and the multiple interviews was more a function of due diligence and "file-folder building" than an expectation of selecting a firm other than the "pre-contest favorite."

The best marketers recognized these changes and knew that if they didn't consider their firm to be the early favorite, they had to, at the least, develop creative solutions to the client's problem – a theory of the case for a litigation or a strategy for a transactional matter. How did they do it? They followed a few basic principles. What did they do – and what do they still do? (NB: It's not working quite as well as it used to, and we'll see why shortly.)

The principles they followed were the 30-second principle, the 50 percent rule and the golden rule. They knew (and they still know) that if they were speaking more than 50 percent of the time, they were failing. They were failing because they were simply talking too much. Just as large and expanding government debt crowds out private investment as the sovereign's highly rated debt competes for and attracts money otherwise investible elsewhere, speaking by the lawyer crowds out speaking by the client. And, it stands to reason that the more the client speaks, the more the lawyer will learn,

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whether about the litigation, the transaction or the client's company in general. And, of course, the more the lawyer learns, the better he is able to craft creative case theories or transaction strategies.

The 30-second principle is a subset of the 50 percent rule. It simply stands for the proposition that clients should never be cut off. (For that matter, should we cut anyone off? The answer, of course, is no.) The 30-second principle reminds us to let the client speak for at least 30 seconds, even if you want or think you need to cut them off. So, why 30 seconds? Some studies suggest that cutting another off after 30 seconds will not be taken as rude or offensive. The reason? They will have seen you listen to what they are saying and that you have focused on them for what most would consider to be a respectful amount of time.

Lastly, they used the golden rule – silence. Successful negotiators, leaders, journalists – all successful people – know that silence creates a deafening vacuum. A vacuum created by the absence of words. And, since nature abhors a vacuum, its inherent physical force tends to draw in the client, draw in the person being interviewed, draw in the criminal suspect – draw in everyone, including us! It's so hard to remain silent during those uncomfortable periods of silence. Silence acts like a poultice. Just as a healing salve of antibiotic poultice draws out infection from a wound, so too silence can often draw out unintended gestures or remarks, in many cases, the ones that provide true meaning. The "tells." Use silence to your advantage. It just requires use of the "30 second rule," and can be put into action at the end of 30 seconds or sooner if the other person stops speaking in less than 30 seconds.

Yet, even using these techniques, these beauty contests are almost always nothing more than a tree-killing exercise (if paper brochures are employed), coupled with the expenditure of an enormous amount of unproductive attorney preparation and presentation time.

Then, what is the new paradigm? What's happening? More and more clients truly understand their problems and their solutions and no longer need to lean heavily on their outside legal source providers. Rather, with their understanding of both their problems and the solutions, together with their understanding of the delivery and economics of outside legal services, many clients seek merely to obtain a quality, cost-effective delivery of legal services.

The message is loud and clear. It can be defined as follows:

If a) clients understand their problems, b) clients understand the solutions, and c) clients understand the qualitative and quantitative elements of the provision of legal services, then all that is left to calculate is the cost ("x").

And, when cost becomes the "x" factor, it commoditizes – or, if you prefer, it begins to "widgetize" – the delivery of legal services. This, my legal colleagues, is the new paradigm. It just isn't that new. It started with the behemoth clients, such as DuPont and others operating at that super-corporate-developed level. But, since then, it has been bleeding down (trickling down, if you prefer that phrase) from the large capitalization clients or their privately held analogs to the mid-capitalization and small-capitalization companies, even to micro- and mini-capitalization companies.

There's good news for law firms that understand this, and bad news for those that do not.

So, what's the good news? Large veins of gold still exist. It's just a little harder to find them. While competitive bidding still works – at least for the winner who has its cost structure in sync with the revenue stream the bid creates – it has lost its high-margin luster. Unless … unless the costs and expenses of delivery can properly match the revenue generated. How else to generate a reasonable profit? But, I leave that "matching" concept to the firm's finance department and executive suite "cost adjusters," as they strive to increase productivity and reduce the costs of labor and ancillary expenses. That analysis is not the gold to which I refer. That's the blocking and tackling of keeping costs and expenses in line with revenues.

Rather, the gold I am speaking about is the "high-profit-margin, quality-and-service-at-a-premium-type work." The good stuff that supports full-rate billing. Where did it go? It disappeared, to a large extent, as companies developed – as they better understood their business model, stabilized their operations and consequently could focus on the purchase of legal services. That focus was aided and abetted by the transparency of the Internet, together with a never-ending supply of newly minted lawyers recently graduating from the prolific number of law schools with their growing class sizes.

So, what are originators prospecting for to attract higher-margin legal work? They seek clients who are not stable. They are not stable for one of several reasons. They may be

- in a growth phase, i.e., enhancing a division, subsidiary or line of business or creating something new;
- defending their turf (which never works as well as going on the offense);
- developing a new idea – a creatively destructive new business model; or
- otherwise attacking the competition in an attempt to increase market share.

These periods of growth create corporate stress. In the case of a developed and seasoned company such as, say, DuPont, consider a new subsidiary and overpass the main corporate entity. Or perhaps, create a two-tiered delivery system: a cost-conscious, cost-effective delivery for classic corporate legal needs, and a higher-service, creative/ innovative delivery system for the hyper-growth-curve subsidiary.

The new paradigm is here to stay: "vendorization" is upon the noble profession. The practice and business of law will likely never revert to "the way things used to be." Efficient case management is essential to profitably monetize the work that is often perceived by the client as commoditized. To get to the gold – the premium work – lawyers need to stay abreast of trends (better yet spot them as they develop); focus on clients and potential clients who are less stable and/or create disruption; and, above all, be creative. As to the behemoths, lawyers must walk in the shoes of the decision makers and try to understand what is keeping them up at night, and what they either are doing or what they want to do about it. It all comes down to problem solving and tactical thinking. Beauty doesn't work anymore. Where's Bert Parks when you need him!

This excerpt will be found in Mr. Newman's forthcoming fourth book to be published by Aspen Publishers, Inc. Reprinted with permission of Aspen Publishers, Inc.