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When Brahmins Bumble: Dewey Really Care?

By Gary Munneke

The first time I visited Dewey, Ballantine, Bushby, Palmer & Wood was in the 1970s, when I was a young Assistant Dean at the University of Texas School of Law; I could not help but feel awed by the iconic law firm. The firm's offices were elegantly appointed and Dewey's lawyers sat perched high above the fray, perusing their dominion with inscrutable serenity. In the legal caste system, these lawyers were indeed Brahmins. Even the lobby, dominated by an immense oil painting of Governor Dewey himself, proclaimed to the world that this firm was at the summit of the legal profession.

This image of Dewey in its heyday is not meant to suggest there were no other Brahmin firms sharing this rarified atmosphere – Cravath, Milbank and a handful of other top firms could claim comparable pre-eminence. In those days New York was the undisputed hub of world lawyerdom, and these were the undisputed leaders of the New York legal scene. And it seemed to me on that crisp day in March that Dewey was the *crème de la crème*. So the news that Dewey LeBoeuf, successor to the Brahmin institution I visited over almost four decades ago, had filed for bankruptcy following a highly publicized and extended implosion brought a twinge of sadness that this Brahmin bastion had fallen so far.

Dewey LeBoeuf is not the first law firm to collapse in dramatic fashion (nor will it be the last). Pundits quickly

pointed to the Finley Kumble debacle in the 1980s, the dissolution of Silicon Valley firms in the '90s, and the disappearance of other firms in the most recent economic downturn. Some of these have closed shop and shuttered their windows while others have been swallowed bit by bit by scavenger-firms devouring the edible morsels and leaving the bones to dry in the sun. Dewey's collapse is, however, the largest and most dramatic in U.S. history.

The legal press had a field day. Even the *New York Times* and the *Wall Street Journal* got into the act, dissecting Dewey's demise with the same journalistic gusto the tabloids give to unraveling celebrity marriages. There is something about these human train wrecks that will not allow us to look away. There is something disturbingly alluring about watching the mighty fall. For the legal profession, Dewey had celebrity status, and its demise captured the attention of lawyers everywhere.

The remaining question, however, is this: Dewey really care? Is this just a salacious tale for lawyers – “The Case of the Bumbling Brahmins” – or is there something more? Is this just a great summer read, or can we find lessons to be learned from Dewey's demise? Is it as Cole Porter said, “Just one of those things,” or can other firms change their ways and avoid Dewey's mistakes?

As a law professor, I might present the Dewey issue as a multiple-choice question on a law practice management exam, as follows:

From what you know about the collapse of the Dewey LeBoeuf law firm, which of the following statements about Dewey's problems is most accurate?

- (a) Dewey's problems were caused by a national economic downturn, which reduced the amount of legal work available in the legal marketplace, making the firm's economic position untenable.
- (b) Dewey's problems were caused by bad management decisions, which destabilized the firm and took it down.
- (c) Dewey's problems were caused by dramatic changes in the law firm business model, which rendered the firm uncompetitive in the evolving marketplace for legal services.
- (d) All of the above.

The correct answer is (d) "All of the above." To understand why this is so, let's dissect the situation through the alternative answers.

The Economic Downturn

The economic analysis is fairly straightforward. As the national economy declined in 2008 following the collapse of the real estate market, there was a decline in the amount of money that people and institutions spent on legal services. Companies earned less money from their core businesses and sought to cut costs, including legal services. Other companies and many individuals simply became more cautious about spending money generally or postponed using non-essential services. Some companies did not survive the economic downturn, and the work they generated evaporated.

With less money in the market to pay law firms for services, many firms experienced a decline in gross revenues. This was exacerbated by increased economic pressures as more law firms sought to represent the clients who still had the resources to pay for legal services. Not only was there more competition from traditional firms, but the increase in multijurisdictional practice produced competition from firms headquartered in different states. Law firms outside the United States sought to represent the global clients of U.S. law firms, and non-legal professional service providers poached clients traditionally represented by lawyers.

In this declining marketplace it was inevitable that some providers would be more successful than others. What is intriguing, however, is the question of what separates the winners from the losers. Why do some firms persevere through times of adversity and eventually thrive, while other firms wither, and in some cases – like Dewey LeBoeuf – die? The answers are not easy to discern. The winners by and large stay close to the core business that made them successful in the first place. They grow organically and gradually. They read the tea leaves closely enough to retrench before the economic indicators go south. They use the bad times to retool for the coming good times. The losers expand too far, too fast.

They get out in front of the economic bubble and crash when it pops. They create an infrastructure that cannot be sustained when the availability of legal work evaporates.

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It is worth noting that aggressive expansion can pay off during times of economic growth. Firms that anticipate a boom in the need for legal services may be able to reach these new clients first. By taking risks in order to grow, these firms may reap significant rewards. Conversely, firms that successfully negotiate the bad times may find that their hidebound risk-averse cultures are ill-suited to taking advantage of opportunities produced during periods of economic expansion.

Ideally, a firm would know when to grow and when to go slow. In theory, a firm could be on the winning side during both expansion and decline in the economic cycle. Like the controlled breathing of a distance runner, such a firm would inhale and exhale according to the needs of its clients. In reality, this rarely happens. Most firms struggle to keep up with changes in the marketplace; sometimes they guess right and sometimes they do not. Most firms experience both the positive benefits of growth and the pangs of economic downturns without falling apart.

Dewey LeBoeuf was one of those firms that guessed wrong. They expanded as the economy collapsed. They found themselves in a position where they lacked the revenues or reserves to meet their obligations, not only to creditors but also to their own lawyers. As the situation became apparent to lawyers at the firm, those who

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were able to jump ship began to do so, further undermining Dewey's stability. In the end, the firm simply imploded, as the weight of its unsustainable commitments and dwindling prospects rendered the enterprise unredeemable.

Bad Management

The second possible answer to the Dewey question is that bad management took the firm down. This answer is particularly appealing to other firms that perceive themselves as not having made the mistakes that Dewey did. They survived the recession; they may have made some tough decisions, like laying off lawyers and staff or withdrawing job offers but, unlike Dewey, they are still here. So, the thinking goes, better management got them through the bad times and economic recovery will lead to renewed prosperity.

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What makes the story interesting is that Dewey did expand too aggressively to sustain itself when the economy collapsed in 2008 and the recession ensued. What is even more interesting is that Dewey seems to have made expansionist decisions just as the economic pendulum swung from growth to contraction. Whether Dewey would have survived had the economic boom persisted a while longer is anyone's guess, but many believe that the decisions made by Dewey's leadership destined it to fail.

In 2007, Dewey Ballantine merged with LeBoeuf Lamb. With their merger, the two firms sought to create a legal powerhouse that could compete on the world stage. Both Dewey and LeBoeuf had long histories of representing leading clients in their respective areas of strength: bankruptcy and corporate for Dewey; public utilities, energy and insurance for LeBoeuf. Thinking strategically, the new firm's leadership believed that its past success in these legacy practice areas might not be enough to prevail in the future, so they sought to solidify their existing practice areas and at the same time expand into new areas and markets. Eventually, Dewey LeBoeuf would dominate the evolving marketplace for high-end legal services. To accomplish this goal, the merged firm actively recruited top legal talent away from competitors by promising greater compensation – even guaranteed compensation – to join the new firm. In theory, these superstar lawyers would act like magnets drawing the best clients to Dewey.

Unfortunately, Dewey promised too much to too many rainmakers. Perhaps in an expanding economy the strategy would have worked, but the economy is cyclical, and the collapse of this house of cards was inevitable. Dewey's financial commitments to leading partners hung like the sword of Damocles over the entire firm, and as revenues dried up, the prospects for survival evaporated.

The Changing Business Model for Large Law Firms

In the background, however, is the gnawing question: Could recession and bad management alone bring down a Brahmin behemoth legal powerhouse like Dewey LeBoeuf? Shouldn't this paragon of prosperity in the legal world have had the resources and the wherewithal to retrench and retool, to shift courses and emerge to litigate another day? Shouldn't Dewey have been too big to fail?

At the risk of mixing metaphors, we might look at the fate of two ships – the *Andrea Gale*, portrayed in *The Perfect Storm*, and H.M.S. *Titanic*, the “star” of the movie *Titanic* – to illuminate what happened to the legal aircraft carrier Dewey. The *Andrea Gale* disappeared at sea during the chance convolution of three weather patterns, which created the perfect storm. The carrier Dewey's perfect storm also consisted of three forces: the economy, mismanagement, and a changing business model. But perhaps the *Titanic* story is more apropos. There, nature dropped an iceberg into the liner's path. A series of human errors before and after the ship struck the iceberg led to unspeakable suffering and loss of life. Yet, it took decades to learn that a third factor was involved – the design of the *Titanic* herself. From the moment *Titanic* struck the iceberg in the North Atlantic that evening 100 years ago, her fate was sealed. The ship's design guaranteed that her “water-tight” compartments would fill with water, one after the other, until *Titanic* went down. We know, in retrospect, that the intellectual arrogance involved in creating an “unsinkable” ship was flawed thinking—at best. The passenger Molly Brown may have been unsinkable, but *Titanic* was not.

If there was indeed a perfect storm of conditions involved in the Dewey sinking, comparing the economy to *Titanic*'s iceberg and Dewey's managers to the ship's crew is easy enough. The third force – the design of the vessel – is more problematic. As a part of the NYSBA Task Force on the Future of the Legal Profession, I moderated discussions about whether the basic model of large law firms in the United States is sustainable. Some participants argued that the model had worked for most of the 20th century, and that although the legal marketplace is changing, this change is incremental and BigLaw firms will adapt as necessary. Others believed that a model that had worked at one time (and for a long time) is totally out of sync with the economic realities of the new marketplace for professional services. The large law firm of the future, they concluded, will be radically different from the large law firm of the past.

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Yet, it is not hard to make the case for large law firms staying the course. They have been doing what they do for decades and doing it well. They have a lock on the best clients and, in a sense, only large law firms have the resources to service the legal needs of large organizations. They hire the best talent and winnow that talent to identify the best partners. An up-or-out policy that applies to upwardly mobile partners and partnership-aspiring associates accomplishes this winnowing, so that, in the end, the law firm pyramid is presided over by a meritocracy of experienced lawyer leadership. Armed with an intellectual aristocracy, an army of workers and a network of relationships going back generations, the top firms

placing emphasis on time rather than output or outcome. There has been a significant shift away from hourly billing to alternative fee arrangements (AFAs). Prices for commodity work are driven down by competition from other large firms, regional firms, non-U.S.-based firms, small boutique firms, outsourced services and non-legal service providers. Corporations are also less willing to fund the training of new lawyers in traditional law firms, which let new practitioners cut their teeth on basic client work. All these factors lead to one result: less revenue to sustain the old pyramid.

Law firms have responded by reducing the number of associates who become equity partners. Non-equity partners (or a number of other titles) have produced a new tier in the pyramid, and this phenomenon has in

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are well-positioned to stay on top. The hourly billing system, while not perfect, is an excellent and acceptable measure of effort and value – both to clients who pay the bills and to firms as a metric to assess performance and compensation. These firms have the resources to pay for the best talent, invest in the newest technology and guard against the risks of recession, professional liability and the occasional departure of key lawyers to other firms. The fact that some firms may fail is not an indictment of the economic model but rather an indictment of the lack of competitiveness of the failed firms.

However, the countervailing position holds that everything has changed. Technology has provided tools that allow many legal services to be commoditized and permit knowledge-management systems to leverage information the way the pyramid system leveraged people. In the new process/knowledge-based model, it is possible to deliver many services more efficiently, more profitably, and more quickly, using fewer people than the old model. More subtly, whereas in the past all legal work was considered unique, and thus subject to the highest billing rates, routine work tends to be more price sensitive and subject to the market forces of supply and demand. Corporations, reinventing their own business models to become more efficient, are sophisticated consumers. They understand that they do not have to pay top dollar for routine work, although they are willing to pay more for unique or value-added services. For much legal work, however, they want discount rates for basic services, and they are willing to shop around for deals. For many clients, hourly billing represents an impediment to getting the best deal, because it masks value by

turn reduced the need to hire as many new associates to fuel the up-or-out system. Firms have increasingly turned to lateral hiring of experienced associates to allay client concerns about paying for the training of new associates, without considering the fact that if everyone hired experienced associates, where would new lawyers learn to practice law? Firms have outsourced work to both legal and non-legal contractors as far away as India. In short, the shape of the emerging firm is becoming more like a diamond, small at the top and bottom, and fatter in the middle. The total head count appears to be declining as well, as highly paid associates and junior partners increasingly become luxury purchases that do not make economic sense. Many firms are exploring AFAs in order to serve their clients and retain business, but these firms have had to examine both the human costs and the process costs of providing services using a flat-fee model. All these changes point to a very different business model for law firms in the future – at least for the largest legacy practices in the United States.

All of the Above

In the end, the correct answer is “All of the above.” The recession undermined the legal marketplace as the general slowdown of economic activity produced a decline in the amount of legal work available for law firms to handle. One of the costs that companies often cut was outside counsel fees, which translated directly to less income for law firms. Dewey LeBoeuf made a series of unfortunate decisions, most significantly the commitment of guaranteed compensation to top partners which it ultimately could not meet, triggering an exodus from

the firm. However, bad judgment and the economy alone may not have brought Dewey down. Both Dewey and LeBoeuf were strong organizations, which might have survived the crisis except for the impact of the changing law firm business model.

If law firm leaders could write off the fall of Dewey LeBoeuf as a combination of a particularly nasty economic downturn and mismanagement at the top, then they could go back to business as usual, assured that they will survive the next recession like they did this one, because they will not make the mistakes that Dewey did. What this mindset ignores is that the game has changed. Clients have more power and they will hire new outside counsel at the drop of a hat. They will turn to law firms outside the United States and even non-legal service providers to get the best representation at the best price. They are actively exploring less expensive, less time-consuming and less uncertain dispute resolution systems to replace an expensive, inefficient and unpredictable adversarial litigation system. They want a different billing model based on predictable fees, rather than hourly rates. They do not want the next generation of practitioners to be trained at their expense. They understand that much of the work that lawyers do is routine and therefore, it is commoditized and price sensitive. Law firms will have to re-invent themselves in order to meet the demands of this new marketplace.

The new law firm model will have a much smaller ownership base. Firms will hire fewer lawyers but keep more as permanent employees, although most will not become equity partners. The size of support staff will also diminish as legal process and knowledge management become automated. Many functions, including basic legal tasks, will be outsourced to individuals and organizations that can provide these functions at lower cost than the firm could if it handled them itself. The physical footprint of the law office will be dramatically smaller as fewer people will actually work at a desk in a traditional office building. A handful of global mega-firms will dominate the international legal business, and specialized boutiques will replace regional generalist firms in most metropolitan legal markets. In 10 years, most of the AmLaw 200 will no longer exist in their present form.

If you believe that the Dewey collapse was just a blip on the radar screen, destined to join Finley Kumble as another footnote in the history of American law, then you can go back to your desk, look out the window with self-satisfaction (like the Dewey lawyers of the '70s), and return to billing your hours. But if you think that what happened to Dewey might be a harbinger of what is yet to come, then you know that the answer to the question, "Dewey really care?" is this: "We Dew." ■

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