the Marcus LETTER

DOES PRESTIGE ALWAYS EQUAL QUALITY?

ARE PRICE OR PRESTIGE A MEASURE A TRUE MEASURE OF CAPABILITY?

There are few times in history -– usually under difficult economic conditions – when the rigid truths and myths of the professions are assaulted. One such myth is that people will always need lawyers and accountants, and that these professions will thrive in times when others fail or falter. That this myth is false may be seen in the currently diminished staffs of some of the most prestigious law firms. As in an old Russian folk tale, the children – the associates – are being thrown to the wolves chasing the sled to appease the beasts. Or to slow the assault of recession.

Another myth is that the size of a professional firm protects it from competition from smaller firms, because, it's implied, the larger firm has the greater expertise. This is a myth belied, as we shall see further on, by the very nature of any profession.

And a third myth is that a firm's prestige, however gained, will protect it from being axed by corporations and others during periods of economic downturn. (See myth one.) Or that prestige always means quality. Or that prestige is always the imprimatur and armor that protects the firm from economic attacks – or even demise.

For those who believe in these myths, there is ultimately disillusion.

This was made clear by not only the events of the current economic downturn, but even more cogently by Jordan Furlong, one of the most effective bloggers – and certainly one of the most astute thinkers – of the legal profession. His blog, Law 21, is fast becoming one of the most popular in the growing number of legal pundits. Here is a recent post (with permission) on the realities of prestige, at a time when prestige would seem to be a safeguard against losing clients.

Deconstructing prestige

Posted: 20 Jan 2009 08:37 AM CST, by Jordan Furlong

*I'm currently taking part in an intriguing conversation at **Legal OnRamp** about the reasons **why GCs hire prestigious, big-name law firms**. A recurring theme in the discussion is that in-house lawyers often default to using big, well-known (and often highly inefficient) firms because of the protection these firms' prestige affords to corporate counsel. Just as no one was ever fired for buying IBM, as the old saying went, no one gets fired for sending important and potentially calamitous work to Famous & Expensive LLP: "I paid top dollar for Top Law Firm, so don't blame me for what happened."*

My contribution thus far has been to ask (a) whether that protection actually materializes in practice, (b) how much outside counsel work is so important that it requires the F&E imprimatur, and (c) if any GC has yet been fired for failing to rein in outside counsel costs. The whole conversation might eventually form the basis of a separate post. But it does lead me to a related and I think pretty important subject: what "law firm prestige" itself actually represents.

*"Prestige" is one of those words, like "professionalism" and "value," that we throw around a lot in the law without establishing exactly what we mean by it. Interestingly, trace its etymology back to Middle French and you'll find it originally referred to **an illusion or a conjuror's trick**, a sleight-of-hand; if you've ever wondered where the old magician's standby "Presto!" comes from, you have your answer. That's something to keep in mind when considering law firms' "prestige" — that we're talking more about the appearance or suggestion of merit than we are about the actual presence of merit itself.*

Let's say an in-house counsel purchases a law firm's services at least in part because he expects that firm's "prestige" will provide effective cover against adverse outcomes. The clear implication, I would think, is that that prestige reflects a higher quality of service and/or results, as compared with less well-known or less "prestigious" firms — otherwise, why would it be relevant to the question of whether the corporate counsel made the right call? This implies that there's a rational, measurable connection between a prestigious, well-known name and better, more reliable results.

But is that actually the case? And if it's not, are clients who rely on "prestige" when making their legal purchasing decisions doing little more than buying smoke and mirrors?

*Let's break this down: what are the elements of "prestige"? Does it involve longevity? Maybe — but Thacher Proffitt & Wood just disappeared in its 160th year. Is it about having a stable of famous clients? Maybe — but Bear Stearns, Merrill Lynch, Northern Rock, Circuit City, Nortel, the Tribune Company and many others, not to mention GM and Chrysler, all retained prestigious firms. Is it about having the "best" lawyers? Maybe — but considering that partner movement is now so frequent among large firms that the AmLaw Daily has a regular section called "**The Churn**," I'm not sure how the fleeting presence of individual lawyers can affect prestige.*

It seems to me that, like the old SCOTUS definition of obscenity, many people believe they know prestige when they see it. I'm dubious. As far as I can tell, among the constituent elements of law firm "prestige" today, along with longevity, name clients and name lawyers, are tony corporate addresses, marble-lined reception areas, old masters on the wall and in the corner office, a collection of long-past accomplishments, massive marketing expenditures, and often, just sheer size (a factor ably assisted by a legal media disproportionately interested in the largest of large law firms). Roll all these together and Presto! You have a prestigious law firm.

When a general counsel tells the board of directors that he protected the company's interests by hiring a prestigious law firm, those directors assume that a law firm's prestige is rationally and demonstrably connected to a higher quality of service and results. I don't know that that's a safe assumption. I don't know if there's a direct correlation between a firm's prestige and its excellence or reliability. And since that assumed connection is actually the fundamental premise upon which is based many general counsels' hiring rationales, I'd say this is something worth exploring in some more detail.

Because if that premise is flawed — if prestige, however we define it, isn't rationally connected to quality *of service, results or satisfaction — then that's a pretty major obstacle to the efficient operation of the legal services marketplace.*

The growth of the practice of professional services marketing is too often predicated on the notion that building prestige, as well as name recognition, is the key to practice growth. But truth told, marketers too often *manufacture* prestige and name recognition, but ignore experience and genuine quality. It's one of the great myths of marketing that prestige alone sells services, which depends more on performance than on mere utility. As Jordan Furlong points out, it's not a mathematical given.

Well, maybe it works for products. The prestige of Tiffany, for example, is a guarantee of the purity of the metals, the design, and the gems. It's tangible. You can see for yourself the quality behind the prestige.

But a major difference between a product and a professional service is that there may be a hundred people behind the product – designers, manufacturers, etc. – but the interface between manufacturer and the consumer is the product. The interface between the law or accounting firm and the client is the partner in charge of the account. And with the variety of matters and client needs, quality of service may be inconsistent. It changes from one lawyer to the next. Quality, then, can't always match firm reputation or performance. In fact, as we've seen too often, performance doesn't always match a firm's reputation or prestige.

It may be presumed that the larger (and more experienced) firms hire smarter and more skillful individuals. But experience tends to disprove that in a vast number of cases. There may be more valuable experience in some matters in the larger firm – a corporation needing an IPO would certainly want experienced lawyers and accountants who've done a lot of them. But even there, quality is a function of individual ability, not firm prestige. In the current economic environment, how many prestigious firms have fallen, or at least, taken a hit, for everything from poor judgment or even fraudulent behavior?

All of this is why Jordan Furlong is right. And in view of this, what's the message to the firm's clients, particularly in an era where missteps are so costly?

For the corporation, the message is that prestige doesn't always equal quality. That the practice of professional services – law and accounting – are not often a function of firms, but of the talent and skills of individuals. That not all matters demand high priced services.

Remember, too, that the tradition of one firm for everything is long since gone, and that very few firms are strong in every area. Shop carefully.

For lawyers and accountants, the message is to sell experience and capability, focusing on individual expertise in your firm. Shun such clichés as branding, which is at best a false doctrine and a distraction. Be less concerned with differentiation and more concerned with demonstrating expertise . If you can project your experience and skill, differentiation will take care of itself.

We live, they say, in parlous times. Law firms, and, to a lesser extent, accounting firms, are being diminished by staff reductions. But firing people with professional skills is not quite the same as cutting workers on assembly lines. The skills of the professional are what you sell – not the prestige of the firm. In the professions, the needs for professional services shift with the times, a firm's perceived quality shifts with the ability of individuals.

Individuals and corporations come to lawyers and accountants not as optional choices, but out of urgent need. Nobody wakes up in the morning and says, "What a great day to sue somebody," or "What I really need today is a great audit."

In these times of economic urgency, you will find prospective clients questioning the level of urgency of their problems in a kind of triage. The successful firms, in these dismal times, will be the ones that focus on helping clients define needs, and the return on the clients' investment. That, I contend, beats branding, prestige, and all the other false gods of marketing.

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