

Dewey & LeBoeuf and The Law Firm Redemption

By Ary Rosenbaum, Esq.

“Get busy living or get busy dying”

While *The Shawshank Redemption* (1994) is not my favorite film of all time, it's the most profound to me. Perhaps it had something to do with the fact that I watched it when I was in law school, which was my form of prison at the time. The film is more than just about a physical prison, but more about a spiritual prison and how the human spirit cannot be broken as long as you have hope. As Andy said it best: “There are places in this world that aren't made out of stone. That there's something inside... that they can't get to, that they can't touch. That's yours....Hope.”

The *Shawshank Redemption* became profound again as I served a 2 years sentence at a semi-prestigious Long Island law firm who at one point was a beacon of politics because sons of two partners in 2008 were political heavyweights. Of course, that's before one, the Nassau County Executive lost re-election by 400 votes with \$2 million in the bank and the other son became the worst New York Governor in a few generations. That experience was probably the most frustrating time of my life, even worse than high school or law school because I thought I had the ability to breakthrough and start a national ERISA practice. It was frustrating because of the bureaucracy put in place by a Managing Attorney more interested in clinging to power than growing the firm and a Country Club atmosphere where associates were to be seen and not heard, a place where partners never wanted to cross sell legal services because they clung to their clients as if they were still sole proprietors. Two years of struggling to build a practice on my own, two years of trying to cultivate relationships with partners who would never give me the time of day except when the meal was free, two years of waiting for the market-

ing department to finish your article after three different levels of partners approved it, it was over. Two years later, I developed my national ERISA practice, using some of the tools that our Advertising Committee of one said I couldn't pursue (Twitter, LinkedIn, JDSupra especially (the best thing that ever happened to my practice)) because it was advertising (of course after discovering they could get clients that way, they just did a 180 on that) because I was able to stop wasting time on developing relationships with the folks who would



never bring me clients (the partners) and devoting the time to those that do (financial advisors and third party administration firms). I guess the problem there was that some associate attorneys like birds “aren't meant to be caged. Their feathers are just too bright. And when they fly away, the part of you that knows it was a sin to lock them up DOES rejoice.”

The problem that this Long Island law firm suffers from is the problem that many larger and medium sized law firms suffer from. Perhaps it's a little arrogance, but mainly it is predicated on a culture that has dominated law firms for generations that is so embedded in their psyche that mere gravity can't let them break through. Some large and medium size law firms have broken through the chains of their bondage by changing the way they do business because “all it takes really... pressure... and time.” In business, there is the quick and the dead. For law firms to survive, they have to be amenable to change.

The case of what happened to Dewey & LeBoeuf should be a jolt to many large and especially mid-sized law firms because the fact is that what can happen to Dewey can happen to them. Many law firms will claim that what happened to Dewey isn't applicable to them because they are not crazy enough to make guaranteed contracts to senior partners and suffer the consequences when billings can no longer justify those outlandish contracts. What happened Dewey is more than just a bad merger and bad contracts, it's about a law firm that wasn't operating a business, but like big government. Unfortunately, law firms can't run huge deficits and expect the Chinese to buy their notes and bonds to prop them up.

The problem with Dewey that affects many large and mid-sized firms is that they operate in antiquated times. While large firms that service the Exxon-Mobils and Microsofts of the world will likely be fine because their clients can afford to pay the bills of the ;largest law firms, many large and medium sized firms don't have the luxury because they have clients that have been cost cutting modes for years. Businesses and even governments have cut back on benefits like ditching a defined benefit plan for a lower costing 401(k) plan or they have delegated the automation of some of the employer functions that they previously paid staff to handle. My belief is that more and more clients will demand lower cost legal services, either through alternative fee arrangements like flat fee billing or depending on their size, decide to handle their legal issues in-house.

The practice of law is a service, just like accounting, medical, and contracting. Let us not pretend it's something more than that, it's not some service of a higher call-

ing. It's a service where the client's legal needs need to be met. It's a relationship driven business and the relationship to the client is paramount. So if the client wants to talk about his son's hockey team, we are going to sit there and enjoy it because it's part of the relationship. Sometimes, law firms forget that their clients whether they are corporate or individual, are people, people who have to pay the lawyer's bills.

Law firms have to start running like businesses, they need to cut back on their overhead, and they need to be nimble enough to offer their services to clients. They also need to find a way to market their services in a way to entice business and to me, mentioning how valuable your services are by identifying the price or advertising a flat fee isn't going to damage your law firm as a brand. Years ago when I left a third party administration (TPA) firm, they hired two attorneys and a paralegal to replace me. Like Lou who had the raise the price of Coke in Caddyshack because he was losing money at the track, this TPA had the raise the price of the plan documents they did. So in 2008, there was a required amendment that the TPA was going to charge \$600. Since the amendments could have been run on a mail merge because it was boilerplate, I wanted to let my old TPA clients that I could do it for \$300 (my hourly fee at the time) because if I can get the amendment work then, then I would certainly get the \$2,000 plan document work per client the following year. The problem? The law firm wouldn't let me advertise that I would do the work for \$300, the Advertising Committee and the Managing Attorney said I could advertise that I would do in a cost effective manner. Let's be honest folks, if the TPA says they will do the amendment for \$600 and the law firm says they will do it for a cost effective price, who do you think is cheaper? Well, I sent out 400+ letters and didn't get one client.

When I was leaving the "Shawshank" law firm, I was inquiring about joining another firm in an of-counsel position. I was making about \$150,000 at that firm (I'm certainly not bragging, just proving a point). When I told one of the firm's partners that I think that without the marketing shackles, I could certainly

generate \$150,000 worth of business, I was told that I would actually need to generate \$450,000 of business to justify my \$150,000 salary. Well I certainly know there is overhead and law partners need to wet their beak, but if I have to generate \$450K to justify a \$150K salary (where assuming I was doing that \$450,000 work because I would be adding an ERISA practice to the firm), why did I need them? Why didn't I go out on my own? Why do I need midtown Manhattan offices with a



secretary, a receptionist, people in billing, people in the office services area, when I have a national practice and most of my clients would never see my office? The answer was pretty clear. I think law firms, especially mid-sized law firms trying to pretend they are large law firms because some of their partners were former larger law firm associates and partners have too much overhead, have a too much fancy office that isn't justified based on the clientele they have. Too much overhead puts you in a Dewey like problem because like a drug user, you have to feed the need and the way law firms feed their overhead is through billing.

Former Chief Justice Marshall once said that "the power to tax is the power to destroy". Perhaps Chief Justice Marshall never charged clients by the hour. Aside from litigation, I believe that the billable hour is antiquated and prone to abuse, especially when it is determined as some law firm's measuring stick for reviewing and rewarding partners and associates. The problem in relying on billing as the most important measuring stick is that it leads to abuse. I will never forget when I was asked by a government law firm partner to work on a client referral. I helped the client develop a retirement plan where he could save \$230,000 that year as a retirement plan contribution, rather than the \$49,000 he could have made in his initial plan that he had. I charge \$2,000

for the plan. A month later, I was advised that the ERISA law firm partner I was working on charge an hour of work to the client for coordinating the work between me and that other partner. She did absolutely nothing for that \$450 hour of work and eventually wrote it off when I told her that I quoted the client \$2,000 for the plan. When you let lawyers to bill at the end of the month and they have to meet their billable hour goal of the month, don't tell me that many attorneys don't overbill.

Like police officers who seem to write lots of tickets at the end of the month, attorneys have quotas at the end of the month they need to meet and I believe many law firm clients are being overbilled.

That is why I started a National ERISA law firm that has tried to market myself to plan sponsors and retirement plan service providers across the country; I advertised that I would do most of my work on a flat fee because it provided cost certainty in a business where fees can be unlimited and overbilled. It has worked because when you take out the sticker shock out of the service, then most clients will hire you because they know full well ahead of time how much it will cost them. Since I'm on my own and I have kept by overhead expenses at a minimum, I can afford the life I had at that "Shawshank" law firm and this year, a better life. I got busy living because staying there, I was dying like they are.

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