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Scarcity Mentality. Declining enrollment numbers aren't just bad news for law schools. For law firms, it's meant a shortage of first-year hires even at a time of profession-wide consolidation and increased demand for trained personnel. The good news is that a number of worthy schools are continuing to get more attention from great firms. Akin Gump relies on SMU. Sullivan & Cromwell romances Ohio State. Duane Morris turns to Franklin Pierce for intellectual property talent. Who says the marketplace doesn't breed diversity? **Page 1**

Advantage, Seller. Lament as ye may, spiraling associate salaries are likely inevitable and non-negotiable. Ward Bower identifies the key numbers underscoring supply/demand inequities that define a seller's market. At least the news is good for lesser-known law schools and lower-ranked students, as firms report being pleasantly surprised by their "experimental" hires **Page 15**

Defining Value. The Oregon State Bar deserves particular credit for actually trying to do something about persistently dismal public perceptions of lawyers. Along with expanded pro bono initiatives, Oregon is the only state with mandatory malpractice insurance, the social import of which it pointedly underscores. Plus, Oregon's Campaign for Equal Justice, which pursues diversity among both practitioners and judges, is a model program for other bar groups to follow . **Page 3**

Level Ground. Lawyers may hesitate to take cases involving corporate-owned life insurance (COLI) to juries, which identify with rank-and-file employees and perceive COLI policies as duplicitous. Yet Dr. Philip Anthony cites research that shows more complex influences at work, including a distrust of the IRS that may exceed public antipathy to corporations. COLI is, in any event, a powerful thermometer by which litigators can take the current temperature of jury pools ... **Page 5**

Gray Matters. Maybe change is so hard to effect at law firms because it is, in fact, brain surgery. Stephanie West Allen and Dr. Jeffrey M. Schwartz take a look at a few basic principles of neuroplasticity applicable to managing and transforming an organization of autonomous, skeptical, and conservative professionals. Emotion, and a heartfelt articulation of visionary ideas, won't just convince resistant partners. It could even alter neurons and create new brain grooves **Page 10**

Red Zones. US law firms are moving, albeit in fits and starts, from marketing infrastructures to practicable business generation initiatives. The arrival of Allan Colman's new consultancy seems a confirmation that more firms are finally ready to focus on the fine art of closing, and to actually train their people in that art. Here, Colman discusses his "Red Zone" sales strategy, his emphasis on "rapid" results, and the research and relational dynamics driving this innovative approach **Back Page**

Seller's Market

Law Firms Extend Their Recruiting Reach to Fill Staffing Needs in Today's Sellers' Market

Every year the recruiting staff at Akin Gump Strauss Hauer & Feld needs about 100 summer associates, many of who the firm will eventually hire. To get those law students in their chairs at the various offices of the 1,000-attorney, Washington-based partnership, Akin Gump conducts some 2,000 on-campus interviews, which produce 500 in-office call-back interviews from which the firm will

offer positions to 350 candidates. Then, some 100 students accept the offers and spend the summer with the firm.

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Law & Business

It's exhausting just to think of all the time, effort, and resources that must go into this endeavor. "It's a numbers game that can be quite daunting," says Akin Gump Chair R. Bruce McLean. "It's a monumental task for our recruiting people."

Over the past few years, that task has grown even more arduous because of a simple fact: When it comes to hiring young associates these days, it's a sellers' market. Because, while the nation's largest law firms continue to grow—at a rate of 2.5 percent, according the *2006-2007 Of Counsel 700 Survey*—law school enrollment is declining. The Law School Admission Counsel found that in 2005 approximately 4.6 percent fewer people applied to law schools in the United States. (Further commentary by consultant Ward Bower on the supply/demand imbalance appears on page 15.)

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Consequently, law-firm partners are extending their recruiting reach, both to so-called second- and third-tier schools and deeper into the academic ranks, even though most big firms insist they haven't lowered their standards and still seek the top-ranked students at the nation's best schools.

"Firms are still looking at students who have good pedigree, those who come from the best law schools," says Marjorie Grossberg, a legal recruiter with New York-based Major, Lindsey & Africa. Of course, among those top national schools are Harvard, Yale, Columbia, Stanford, New York University, the University of Pennsylvania, and Georgetown. "Nonetheless, increasingly more firms are looking at candidates at regional schools. That is, New York firms will look at somebody who has done very well from Fordham University, Brooklyn [Law School], and [Benjamin] Cardozo [Law School]."

At Akin Gump, hiring teams set their recruiting tables at the top schools, but also attract law graduates from such District of Columbia schools as Catholic University, American University, and George Washington University. The firm's California attorneys tend to recruit well at UCLA, USC, and Loyola Law School in Los Angeles. "At these regional schools, we have a great reputation and we see their top people," McLean says.

Is there a lower-tiered school that flies under the radar, where Akin Gump has recruited quality people? "Every firm probably has one of these schools," McLean says. "We have a couple and one is SMU [Southern Methodist University in Dallas]. We see their very best people. Alan Feld, one of our name partners, is an SMU grad, and he's very active with the school."

Smart Is Smart

Even at some of the most traditional, high-profile US firms, partners are increasingly recruiting at schools that don't top the annual *U.S. News & World Report* rankings. At New York's Sullivan & Cromwell, for example, the firm still draws heavily from its top four schools—Harvard, Yale, Columbia, and NYU—and at its other "principal schools," Stanford, the University of Virginia, and Penn, says chair H. Rodgin

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From the Editors

Taylor's Perspective . . .

Oregon Attorney and State Bar Reach Out to Polish the Profession's Public Perception

We've all heard them, or read them in any number of books and on Web sites devoted to them, and maybe we've even told one or two in the company of friends and colleagues: jokes about lawyers. Here's one: What do you call 15 parachuting attorneys? Skeet.

Most of these are harmless, really, but in a larger sense they do contribute to something more pernicious that's far too prevalent in our society: a widespread negative perception of the legal profession.

Dennis Rawlinson and the Oregon State Bar have been trying to do something about that. Rawlinson is an attorney at Portland's Miller Nash law firm and recently completed his one-year term as president of the Oregon bar. This past December, after he read an article in the state's largest newspaper, *The Oregonian*, which took a swipe at the profession, he decided to push back. (The bar's media relations specialist, who, among other things, is charged with tracking publicity about lawyers in the state, brought it to his attention.) The article focused on a colorful IRS investigation and contained this sentence: "What followed was a drama pitting three of the world's most reviled professions—tax collectors, lawyers and used-car salesman—in a dust-up over the dough."

Now, besides the hackneyed prose and the reporter's editorial opinion slipping into what should have been a straight news story, the article took a needless dig at lawyers that's clearly offensive. (Note to used-car salesman and tax collectors: You can fight your own battles.)

Several days later, *The Oregonian*, to its credit, published a letter written by Rawlinson in which

he wrote that the "glib reference to lawyers as one of 'the world's most reviled professions' was a cheap, if easy, shot at a largely noble lot."

Cheap and easy indeed! He went on that "[t]here are about 13,000 active lawyers throughout Oregon who go to work each day for the professed purpose of helping someone out. They may be helping a small business get off the ground, a parent see his child, or an employee keep her job."

Smartly, Rawlinson continued, "Indeed, they may even help out a frustrated reporter gain access to some public record that is being shielded from him." The letter goes on to make a couple of other good points in crisp, clear, well-craft sentences.

To React or Not to React?

Rawlinson says that he had to carefully consider whether to react to the reporter's slight or just let it die. "Frankly, we gave a lot of thought before responding because often by reacting one can simply re-emphasize or bring negative attention for a second time to the profession," he says. "We didn't want to do that, but we saw an opportunity to remind readers and perhaps lawyers themselves that we are proud of our profession and that most of us operate in a way in which we can be proud. We tried to fashion the letter to say something positive about lawyers."

Most likely the letter struck a chord with some readers, and it clearly affected the reporter. He contacted Rawlinson and asked to meet with him. Rawlinson welcomed this peace offering and hopes to develop a relationship with the journalist.

“He apologized in an indirect way,” Rawlinson says. “I sent him back an email that essentially said, ‘These days whenever somebody receives an apology it kind of shocks people. Why don’t we continue to shock people from time to time?’”

We say bravo, Dennis, and encourage other lawyers to fight back to defend their reputation. Even more importantly, lawyers should be proactive, to use an Inside-the-Beltway term, to brighten the often dismal view that the public holds toward the profession.

That’s exactly what the soft-spoken, witty Rawlinson and the Oregon bar have been doing. Rawlinson says that he had a few objectives during his term as bar president. One was to remind lawyers that the best way to address the reputation issue is through example. “My way of asking them to do this was to thank them for being involved in *pro bono* work and otherwise giving back to their community,” he says.

As president, he also encouraged lawyers to return to a time-honored tradition: meeting each other face to face to work out petty differences that often slow down a case or negotiation, add expense to each attorney’s respective clients, and contribute to the public’s negative perception of attorneys. “We are becoming a bar of isolated practitioners who sit in isolated cubicles and send each other voice mails and emails,” he says. “So I encourage lawyers to have one-on-one meetings, particularly between adverse lawyers. Go out to breakfast with them or to their office to pierce through all of the unimportant issues, get to the important ones, and minimize the expense to both sides. Then, if they need to fight like banshees over two or three issues, great, but let’s not take a year on something that should take 90 days.”

What’s more, with the support of Rawlinson and many other active bar members, the Oregon State Bar has had in place for several years two programs that do good to society and, by extension, help enhance public opinion about the profession.

Mandatory Insurance

First, Oregon is the only state in the union that has mandatory insurance coverage for all lawyers. “We protect all the clients in this state from negligence or malpractice by lawyers by reaching into our own pockets to establish a fund,” Rawlinson explains.

Another unique program is the bar’s Campaign for Equal Justice. Over the past 15 years, Oregon lawyers have ponied up more than \$5 million to attract and retain minority lawyers and judges to practice and sit on the bench in the state. The bar just recently renewed the program for another 15 years.

“You’re more apt to get buy-in from folks if they are represented in the legal profession and on the bench,” Rawlinson says. “We’ve made incredible strides in this regard, and it’s making it a little less likely that there is conflict between some of the minority groups in this state because they do have representation.”

We hope that other state bars look at these two programs and consider emulating them in some form or another. They could and should serve as wonderful models.

Rawlinson also made an effort as bar president to get out and speak to business and civic groups to let them know what the Oregon State Bar is doing and how most lawyers operate ethically and truly want to help society. As he wrote in his letter to the editor, “During my year of service as president of the Oregon State Bar, I have had the opportunity to witness the dedication, hard work and commitment of lawyers across this great state. It has reminded me why I wanted to become a lawyer.”

That’s a message that many in the profession, as they work those long hours and take those short vacations, may need to hear more often. The public certainly does. ■

—Steven T. Taylor

Some Uncommon Wisdom . . .

Complex Insurance Cases Provide Significant Lessons on How Juries Make Decisions

Common wisdom tells us that jurors naturally dislike corporations. That was probably true a decade ago. Today, exposed to case after case of corporate malfeasance and irresponsibility, their negative reactions can be well-nigh Pavlovian.

That said, uncommon wisdom advises that the common wisdom is never absolute, especially when we're talking about human beings and how they think and feel. Cases in point involve corporate-owned life insurance, or COLI. Most of these cases are decided in bench trials and few have gone to a jury. However, when COLI cases do go to a jury trial, juries tend to find in favor of corporations.

On the one hand, most jurors do strive to be fair, and that fairness extends to corporate behemoths. Even in the so-called plaintiffs' havens, good case management and lawyering can win for the defense. On the other hand, and almost uniquely, DecisionQuest research shows that jurors tend to rule for corporations in COLI proceedings *although they believe these companies have been involved in shady dealings.*

While familiar with life insurance, few jurors actually understand how term and whole life insurance policies are constructed. Moreover, many are not accustomed to thinking about life insurance as a viable tax deduction. Even apart from their natural suspicion of insurance companies and their executives, jurors therefore tend to think of COLI policies as, by definition, disreputable.

The fact that they would still tend to rule in favor of the corporate entity—a conclusion supported by surrogate jury research conducted by DecisionQuest with thousands of jurors in all venues—is indeed telling, notwithstanding the relatively few instances in which these cases go before juries.

Something significant is going on. Let's take a closer look.

Some History

COLI policies are life insurance policies that companies buy for their employees. Originally known as “key person” insurance, these policies were instituted to help companies deal with the loss of key managers or executives.

However, the tax advantages of COLI policies convinced many companies to cover an ever wider population of workers, including many rank-and-file employees. When these workers die, the company, not the employee's family, is the beneficiary. Because so many companies began to insure lower-level employees, these policies were sarcastically dubbed in the press as “dead peasant” insurance. “Janitor insurance” has been a common and only slightly less deprecatory appellation.

Although many Fortune 500 companies have COLI policies in place, the Internal Revenue Service (IRS) began cracking down on these tax deductions after the enactment of HIPAA in 1996. The IRS was empowered by statute to retroactively investigate COLI policies back as far as 1986.

In general, the IRS regards COLI as a tax loophole that allows corporations to underpay their taxes. For this reason, the IRS has taken several major corporations to court, including Wal-Mart, Camelot Music, and Dow Chemical. The results have been decidedly mixed.

- In 1990, Wal-Mart argued that it would never have bought COLI policies had it understood the risks. Wal-Mart sued its insurance company and insurance brokers for breach of fiduciary duties.
- In 2003, Ohio Public Employees Retirement System, the State Teachers Retirement System, the Ohio Police and Fireman's Disability and Pension Fund, and the Ohio State Retirement Patrol Retirement System all sued their insurance companies for violations of the

Ohio Revenue Code and breach of fiduciary duty.

- In September of that same year, Senator Jeff Bingaman (D-NM) suggested an amendment to the National Employment Savings and Trust Equity Guarantee Act of 2004 (NESTEG) that attempted to change the status of COLI death benefits from tax-free to taxable.

Lobbyists for the insurance industry inundated the Senate Finance Committee with expert opinions and reports explaining why the law should not be changed. Ultimately, the Finance Committee reached a compromise. To be considered tax-free, the COLI policy must fall into one of these specific categories:

- Employee died within a year of employment, or the policy benefits the employee's family or estate.
- COLI proceeds were used for a buy-sell agreement whereby the employee's estate purchases an equity interest from the company.
- The employee is a "key person," which covers highly compensated individuals under §414Q of the tax code.

In addition, employees must be notified of the COLI policy and consent to it in writing. Finally, companies purchasing COLI insurance must provide year-end reports to the IRS itemizing the number of employees covered by the COLI policies and the amount of such policies.

As of this writing, the compromise legislation is still in committee, so none of these new rules applies to current COLI policies.

Jaundiced Perceptions

Jurors understand and support the use of COLI policies for senior executives and other key personnel. In most cases, it's not their world, and their perceptions are relatively disinterested. However, jurors are less sanguine about COLI policies purchased for rank-and-file employees, with whom many jurors identify and whom they tend to perceive as hapless puppets in someone else's money-grubbing game.

The negative perceptions are based on:

Questionable Motives

Typically, jurors will question a corporation's intention in purchasing COLI policies for lower-level employees, often calling the company's motives "questionable" or "dishonorable." We found that jurors frequently wondered, "When the company borrows the money, what is it used for?" Indeed, the first question asked by most surrogate jurors is, "What was the reasoning for purchasing the COLI insurance?"

Jurors overwhelmingly believe that corporations purchase COLI policies for their rank-and-file workers simply to enjoy the accompanying tax benefits and not to assist the employees. A common juror question is, "What specific benefits did the employees receive?" Some jurors believe that corporations are using their low-level employees as a means of earning interest deductions.

Such perceptions can be bolstered by the fact that some corporations discontinued premium payments once their COLI deductions were disallowed. One common juror complaint is that "COLI is strictly a tax loophole, not a life insurance plan."

Questionable Conduct

Despite the legality of buying COLI policies, some jurors (including many plaintiff-oriented jurors) perceive the COLI corporations to be acting unethically. Jurors wonder, "Would these corporations let me purchase life insurance on their families, naming me as the beneficiary?"

Some jurors believe that the corporate use of COLI policies is "sneaky and underhanded." These sentiments provide jurors, already motivated to find against the companies, with moral high ground to support their instincts.

Letter of the Law

Although COLI policies are legal, some jurors do not equate the letter of the law with the spirit of the law. They tend to believe that corporations that bought COLI policies simply took advantage of a legislative oversight. Jurors often make comments such as: "COLI has no substance. Loans are not real, just a paper trail to pay the premiums. COLI was created to lose money."

Even the few jurors who admire the ingenuity of these corporations do not necessarily agree with the choices that the companies made.

Concern About Employee Consent

Jurors routinely express concern about rank-and-file employee consent. They wonder about the circumstances of employee notification and, specifically, the extent to which management explained the policies and the language in the consent forms to employees.

They are also concerned about repercussions for employees who refuse consent. As some jurors put it, “What would happen to employees if they didn’t want insurance? Would they be terminated?”

Corporate Due Diligence

While the vast majority of jurors are reassured to learn that most corporations engage in an extensive and thorough due diligence process before buying COLI policies, others wonder about the scope of those due diligence measures. Frequently, they want to know the specifics of what corporations queried and examined during due diligence.

For some jurors, the due diligence process appears excessively long, and they tend to speculate that the corporations used that time to concoct ways to circumvent the law.

Flow of Funds

In a number of COLI cases, some jurors were suspicious of funds that seemingly flowed from one account to another. In such instances, many of the jurors agreed that “it’s like going to buy a car with no money and then using the car to get a loan for a car.”

Many jurors tended to search for evidence of a corporation’s inappropriate tactics and felt that company actions were “underhanded.” A constant refrain from jurors was that “the sole purpose of the program was to take unfair advantage of the tax laws.”

These jurors are then surprised to learn that the companies did not violate any laws by purchasing COLI policies.

Countervailing Distrust

At the same time, jurors have very interesting reactions to the adversaries of the companies in COLI cases. In general, the IRS position actually concerned them far more than the fact patterns related to the policies themselves. As one juror quipped, “How can a major corporation get one over on the IRS?”

Here the negative perceptions are:

Vague and Scary

Jurors tend to perceive the IRS arguments about economic substance and acceptable premium levels as vague and overly subjective. Most jurors state frankly that they “do not trust the IRS.”

In many cases, the IRS witnesses only bolster the prevailing wisdom that the government is attempting to enforce morality. Jurors frequently ask, “Is this the only company to buy COLI policies?” Another was, “Are all companies [with COLI insurance] being investigated by the IRS?”

Some jurors are concerned that the IRS is violating the companies’ civil rights, remarking that “retroactive legislating by the IRS is dirty.”

Jurors are puzzled as to why the IRS would “go after” corporations that haven’t done anything illegal. A significant minority even question whether “the IRS is out to get” certain corporations. In fact, some jurors interpret a verdict in favor of the IRS as a loss of individual rights.

Jurors frequently ask, “Does the IRS have the power to make up laws as they go?”

Too Many Statistics and Diagrams

Our research shows that jurors are often confused by the IRS position on the circular flow of funds corporations used to buy COLI policies. They frequently find that the government’s charts are not understandable and that the IRS did not offer written laws for companies to follow.

Jurors become bogged down by dizzying statistics and diagrams. Many complain, “The attorney may understand the process, but I’m not sure that any jurors followed along.”

Jurors are unable to make sense of the hyper-technical explanations, and many tend to disregard this evidence altogether. As one juror put it, “The company only did what other large companies do to save money. They didn’t break any laws. The IRS set up laws and seemed to go back on their word.”

No Proof of Tax or Legal Violations

Jurors note over and over that the IRS’s position does not specify what tax laws the COLI policies had violated. Jurors routinely want to know, “How does COLI differ in substance from other corporate tax deductions or from other acceptable deductions?”

Many jurors agree that “the company broke no law.” This lack of evidence and the many confusing explanations make it all but impossible for jurors to find in favor of the IRS.

Verdict In

Our experience is that jurors will often find in favor of the corporations that buy COLI policies for the following reasons.

COLI Policies Justified

Jurors believe that corporations are justified in their decisions to purchase COLI policies as a means of leveraging catastrophic risks, regardless of the companies’ primary motivation in buying such products. As noted, jurors are generally more in favor of COLI policies when purchased for key executives. Jurors note over and over again that “what is good for the company is good for the employee.”

In addition, jurors believe that these corporations pay real premiums and purchase real insurance with economic benefits that include death benefits, interest deductions, added cash flow, and financial stability for the company. As a number of jurors expressed it, “COLI would be a big help if a manager died and needed to be replaced.”

Name-Brand Insurance Companies Issue COLI Policies

Many jurors question why large insurance companies would offer COLI policies if they were not legal. One common response was, “The IRS did

not mention the two huge insurance companies and tell how they were involved in the scam. Are they also in trouble with the IRS?” Jurors find it inconceivable that reputable name-brand insurance companies would sell illegal policies to nearly half of the top 500 US corporations.

One juror summed up most jurors’ feelings when he said, “The policies were not legal? Those two insurance companies have been around a long time.”

Lawmakers to Blame

In the end, jurors blame the government for giving corporations the opportunity to take advantage of legal loopholes, and they are critical of the IRS for what they perceive as attempts to disallow the deductions based on changed tax policy. Most jurors feel that the “IRS has to live by the rules, too.” Another juror put it more bluntly: “Did the government outlaw COLI because it realized it screwed up and gave companies too many legal and financial loopholes?”

Legal Tax Loophole

As we have shown, some jurors feel that corporations purchasing COLI policies for lower-level employees are involved in “questionable transactions.” However, even jurors who hold this view are able to find in favor of the corporations because the COLI companies did not do anything illegal. As a number of jurors put it, “The company tried to follow what other companies were doing and go with a large, well-known insurance company. They complied with all IRS rules.”

Jurors believe that the COLI companies followed the letter of the law. Thus, jurors can conclude that there is a tax loophole, yet still return a friendly verdict for the companies.

Lessons for Trial Attorneys

At DecisionQuest, we recommend that trial attorneys who work on COLI cases consider the following juror beliefs.

Jurors Accept Benefits of COLI

Though jurors believe that tax deductions are the primary motivation behind a corporation’s purchase of COLI policies, many also acknowledge that the policies benefit employees at a broad

level by ensuring the financial stability of the company. As one juror aptly put it, “Why would it be illegal to find a plan to protect employees and make money in the same process?”

Lesson: Corporate self-interest does not have to be damning in court.

Jurors Concerned About Which Employees Covered by COLI

Jurors frequently express concern about the number of employees covered by corporate COLI policies. They question why insurance is taken out on some of the employees and not on others. Jurors wonder why some companies cover only a percentage of their employees if those companies are truly worried about massive loss of life.

To jurors, the number of employees covered under COLI policies may be random, and they wonder about the selection process at each corporation: “Which employees were selected? How were they selected? What were the criteria for selection?”

Lesson: If there is a valid explanation, present it early and often.

Jurors Want Explanations of COLI Benefits

Jurors ask specifically how the money from the COLI policies was used. To say that benefits were improved is not enough. Jurors want details. However, if the company can paint a compelling picture that COLI will keep the company from going out of business down-road, then jurors can view COLI as a viable business strategy and not merely a tax dodge.

Lesson: The theme of corporate survival, above that of corporate enrichment, is compelling. Remember too, jurors’ distrust of the IRS can be a decisive advantage for the company in court.

Overall, Jurors Not Comfortable with COLI

Defense jurors report that they are “uncomfortable” with the idea of corporate-owned life insurance policies even with employee consent. These jurors are likely to view the corporate beneficiaries as profiting from the death of loyal employees. And they tend to ask: “Were employees completely aware of the policy?”

Some jurors are uncomfortable with the fact that the benefit is paid to the company rather than the family. They frequently ask why the insurance was not paid to the employees. These sentiments are so strong that many defense jurors may not be persuaded by arguments emphasizing the legality of such policies. On the other hand, defense jurors need not accept the notion of COLI policies in order to find in favor of corporations that buy them.

Jurors question the ethics of companies that take advantage of COLI loopholes. Even when the company has innocent reasons for starting the program, jurors wonder why the company did not stop once it realized that the IRS was planning to change the laws. However, conservative jurors who are more pro-business are likely to advocate a company’s right to make money by taking advantage of tax deductions.

Lesson: Consider openly acknowledging jurors’ likely discomfort with COLI. Confront the elephant in the courtroom in order to overcome it.

A Final Lesson

Over and over again, we find that when jurors decide a COLI case, they choose which case story—the plaintiff’s or the defendant’s—makes the most sense. To succeed with jurors, develop a narrative story that will likely resonate most powerfully on the company’s behalf.

Years of DecisionQuest research tells us that jurors create their own stories by matching the following required parts of a narrative to the facts of the case. The five parts of a story are as follows:

1. Act: what was done
2. Actor or Agent: who did it
3. Means: how it was done
4. Purpose/Motive: why it was done
5. Context: the circumstances under which it was done

Of course, the real key is that the story must be consistent with the presentation of the case facts and emerge as the better representation of the facts deemed most relevant by the jurors. The “picture” must be both more credible and more coherent.

If companies can show that they are not exploiting workers and are carefully considering COLI policies before they buy them, it naturally increases the chances that jurors can find in their favor and *feel good about doing so*. If corporations can explain why they bought COLI policies, how they went about the process, and the specific benefits of these policies to the company, they can be more assured of a positive result in a jury trial.

Indeed, once they understand that COLI policies are not illegal, jurors often want to find in favor of the companies that purchase them. Despite initial concerns about corporate motives, jurors can feel good about this decision if the companies asked employees for permission to insure them, used the insurance proceeds in a

responsible fashion, and can provide a logical rationale for covering rank-and-file workers.

More broadly, our ongoing research points to a juror pool with a very positive attitude toward business in general and corporate financial goals in particular. It is a significant contrasting attitude to the negative perceptions engendered post-Enron. The battle between the two goes on and the playing field may be more level than some lawyers and their clients assume. ■

—Dr. Philip K. Anthony

Dr. Philip K. Anthony is CEO of DecisionQuest, one of the leading trial strategy and jury consulting firms in the country. Reach him at panthony@decisionquest.com.

Brain Management ...

Law Firm Leadership on the Neuro Frontier

The practice of law is very cerebral, cognitive, and brain-based. As a lawyer drafts, analyzes, and strategizes, the brain, compared to the rest of the body, is using a disproportionate amount of energy. When working, the brain can use fuel—glucose and oxygen—at 10 times the rate of the whole rest of the body.

This hungry little organ sitting in each lawyer's head holds the key to the mysteries of winning law firm management.

We have learned more about the inner secrets of the brain in the past few years than in all the remaining past of recorded history. Neuroscience is opening up a new frontier, a frontier that most of us cannot see but one that will have as big an impact as the discovery of new lands and continents.

How does this neuro frontier inside our skulls specifically inform law firm management? By peering inside the brain, we can see how its owner takes in information, makes decisions, changes and resists change, remembers and recalls, and responds to people. What we are learning about the brain affects three factors critical to law firms

and to each individual lawyer: control, communication, and competence.

Let's take a tour of some of what's been learned and see how the new information can be useful.

Moment of Choice

Our brains are plastic. The old belief was that an adult brain was hard-wired and changed very little if at all. Now we know that the brain is changing constantly. Each conversation with a client or colleague changes your brain, composing an email changes your brain, reading this article changes your brain. Knowing about the brain's neuroplasticity can help in making changes in you and in facilitating change in others.

As we take in new information, our brain makes new connections between neurons (the cells of the brain). This rewiring (or strengthening of old wiring) either happens to us *or* we can learn to control how our brains are recreated each hour and each minute. The ability to take control, to manage our brain, is extraordinarily potent.

Let's say that you have decided to listen more to your prospective clients, clients, partners, associates, or staff. Perhaps you have heard, as a result of some business development or management or mentoring training program, all about the benefits of being a good listener. But as you begin a conversation, you feel the need to talk, even pontificate.

Now, you confront the moment of choice. That moment of choice holds the gold in self-directed neuroplasticity, in controlling the rewiring of your brain.

You can choose to talk. If you are accustomed to being more of a talker than a listener, your brain will call to you to follow the old neuron connections, the old and well-worn synapses. These old synapses are habitual and the most comfortable for you. The old paths fit like a pair of used, comfortable slippers or jeans. They are seductive and part of the familiar you.

Or you can choose to listen. If you experience the powerful urge to open your mouth and talk, you are going to need to begin to develop some new brain grooves, some new synapses. Not as easy as going with the old ruts and grooves, but it is doable and the good news is that it gets easier and easier. Each time you choose to listen instead of talk, you will be developing and strengthening new neuron connections, new listening synapses.

The more you choose to listen, the stronger those paths will grow. After a while, listening will feel old slipper comfortable, too. Then, when an interaction occurs, you will have the choice of which brain path to follow depending upon which is appropriate to the situation. In any event, you won't simply be governed by an old habit.

Another tip: The brain does not distinguish between the actual doing of something and the vivid imagining of doing it. Both can create new synapses. Many of you have heard of the study in which a group of basketball players that spent time imagining successful free throws improved as much as the group that actually practiced shooting. Tiger Woods and other golf greats imagine the shot before they take it. Spend some time imagining yourself as a good listener (or participating in whatever new behavior you want to add to your repertoire).

Breaking Barriers

The preference for the old brain connections and paths is a major part of why it is so difficult to create changes in a law firm. New policies, procedures, directions, styles, missions, visions all require new brain grooves and will automatically create resistance to the new, as well as allegiance to and preference for, the old paths. It is asking a lot of the brain to change.

What can be done to make brain change easier? Brain changing is another way of saying "learning." When we change, we learn a new way. When we change, when we learn, we develop new connections between neurons and develop new synapses. Fortunately, neuroscience has gems for us in how people learn, too.

Our brains like patterns. To conserve energy, and protect itself, the brain will look at new information and see how it fits with what it already knows. If the new information is too unlike what it already knows and feels comfortable with, it will simply discard the new information. That reaction, of simply disregarding what is presented, is all too familiar to those in law firm management.

Brains are always paying attention. As a species, we survived by constantly monitoring and surveying the environment. Most of this vigilance is happening out of our awareness, but only a small fraction of what is sensed is allowed into our awareness. One of a few primary drivers of attention and awareness is emotion.

Emotion in a law firm, a place of the rational, reasonable, and reasoned?

Consider this observation from a piece called "Who do you think you are?" in the December 23, 2006-January 5, 2007, edition of *The Economist*: "Rationality has its place. In the end, though, as fans of *Star Trek* will remember, it is Captain Kirk, the emotion-ridden human, not Mr. Spock, the emotionless Vulcan, who ... run[s] the spaceship."

Critical Engagement

We are not suggesting that management conduct pep rallies or take lessons from motivational

speakers. We are suggesting that it is important, when presenting the new, to give brains an opportunity to say, “I like this.”

Memos, directives, and management lectures do not give that opportunity. The brain (especially the brain of a lawyer who by nature or personality has a strong need for autonomy) does not like to be told what to do. Engagement is thus the key. When learning, when changing, the brain needs to arrive at ownership of the new, and it does so through activity.

For example, discussion of the pros and cons of a new procedure can allow engagement. While such discussion may seem to expend the law firm’s coin of the realm, that is, time, it is better than the resistance that will eventually expend even more time. It also prevents another strong emotion from arising: “I don’t like this.”

Another of several ways to promote engagement is to create a clear and pleasing picture of what the results of the new will be for the firm and for the individual lawyer. This picture should be delivered by someone who truly believes in the benefits. In fact, it should be someone who has some degree of passion about it.

The brain has great phoniness-detection ability (about which we will say more in a moment). Dry, obvious, written, or spoken benefit statements rife with stock phrases will not move a brain to say, “I like this.” They will not generate the energy needed to create new synapses and get on board with what is being proposed. (Dry, obvious, and cliché-ridden phrase discourse is not a well-chosen method for dog-and-pony presentations to prospective clients, either.)

The picture should be one that is vivid enough for the brain to see itself participating. Remember Tiger Woods.

Brain to Brain

How does the brain detect phoniness? A recent discovery explains it and much more that’s related to the practice of law and its management.

We have in our brains mirror neurons. Their function is exactly what the name says. They mirror what is going on in another’s brain. They allow

us to actually feel what is happening with another. They are a major component of empathy and the ability to put ourselves into another person’s shoes. When you feel sad, my mirror neurons know sadness. When you feel passion about something you are saying, my mirror neurons detect that passion and can resonate along with it.

When you don’t believe what you are saying, I perceive that lack of integrity, at least at some unconscious level. (Mirror neurons are believed to be what people with autism lack; they cannot look at a face and know the feeling being shown.)

Mirror neurons are in every brain in your firm and are one key component in creating engagement and the desire to begin the energy investments and effort-taking tasks of creating new brain grooves. If management can say with sincerity and honesty that it believes that the new is for the good of the firm and that the individuals, those being asked to change, will have a greater likelihood of at least letting what is being said into their awareness.

Again, mirror neurons are not triggered by memos or emails. The brain needs to see and hear the person with the message. Mirror neurons are what create respect, from the root meaning of respect: *re-spect*: that is, look twice, look again. Allow what is being said into awareness for consideration and reconsideration.

Mirror neurons are also a critical part of learning a new task. Babies see people walk, and their mirror neurons light up as if they are walking. They empathize with walking, and that paves the way for the task ahead. When we watch a person do something, such as take a deposition, our brains actually mirror the actions being seen. It is as if we did it ourselves, and as a result, the deposition-taking grooves begin to form. The associate who has watched depositions will thus find the first one easier to do because the budding synapses are already present.

Good mentoring thus includes mirroring, not only of actions but also of thought processes themselves. Good mentors will give voice to their reasoning process to foster new reasoning synapses in the mentees.

Some if not much of what we are learning from neuroscience (what is described above and a great

deal more) probably has been known, at least intuitively, to those naturally skilled at client relations, business development, communication, firm management, and mentoring.

But what has in the past been taken on faith, or done intuitively, is now being proven, and those who are not naturally gifted have a greater opportunity for excellence. The information and guidance is available to all who want to improve by learning what the neuro frontier is showing us. ■

—Stephanie West Allen and
Dr. Jeffrey M. Schwartz

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Seller's Market

Continued from page 2

Cohen. It also finds successful candidates at American, Boston College, Cornell, Duke, Fordham, the University of Texas, Bolt Hall at the University of California, and its under-the-radar school, Ohio State.

“To leave out these other schools would be a mistake for us,” Cohen says. “This is an expensive task; you have to spend so much time. We can’t interview at every school, but we try to go to a much broader range of schools than we did before. We make sure that the placement office tells us who the outstanding people are.”

In Chicago, many firms also look regionally at such schools as DePaul, Northwestern, Chicago-Kent College of Law, and the Universities of Chicago, Illinois, Michigan, and Indiana. Some partnerships are particularly attracted to graduates of DePaul and Chicago-Kent for the comprehensive and practical training that students get in legal writing.

Chicago-area-based consultant Ross Fishman counsels his law-firm clients to consider students at these colleges. “I advise law firms to look at some of these practical schools,” he says. “I tell them that the top students at any school are just as smart as each other. Instead of trying to compete

with every other big firm at the top schools, you can turn out terrific lawyers by getting a higher percentage of the best students at these schools. Let’s not compete on the same terrain as the biggest firms that have more law-school recruiting resources.”

In the past, many of the bigger firms that Fishman serves tended to resist this advice because of their focus on high-profile schools. “Part of the pedigree that they sell at big firms is the fact that they have many attorneys from brand-name law schools,” he says, adding that small to midsize firms listen and follow that advice and that these days more of the bigger firms do too.

In Philadelphia, one of the fastest-growing firms in the city in recent years is Duane Morris, due in large part to the efforts of Sheldon Bonovitz. When Bonovitz became the firm Chair in January 1998, Duane Morris had a little more than 200 attorneys who yielded some \$73 million in revenue. Last year, the firm had more than 600 lawyers and \$340 million in revenue.

Bonovitz and other firm leaders have broadened the firm’s list of recruiting markets. While they seek applicants at Harvard, Penn, Georgetown, and Columbia, they also look at Philadelphia schools. “If you take the top 10 or 15 students at Villanova or Temple, you usually end up with very fine attorneys,” Bonovitz says.

Sometimes someone from a lower-tiered school who was ranked in the bottom half of the class

“will surprise you,” he adds, explaining that he hired a friend’s son-in-law who couldn’t find work elsewhere in Philadelphia and was planning to move to another, less competitive city. “I was honest with him and told him, ‘We can give you a job’ (we paid him well below the market rate) ‘and it will be great training, but the likelihood of your staying with us isn’t good. Your grades aren’t good, and you didn’t go to a top-flight law school.’ Well, the kid turned out to be a terrific. He’s a very good associate. So you don’t really know sometimes.”

Like Akin Gump and Sullivan & Cromwell, Duane Morris has established its own out-of-the-way recruiting enclave in of all places Concord, New Hampshire. “We’ve found several patent attorneys from Franklin Pierce [Law Center],” Bonovitz says. “It’s a good school, and they train people who become very good patent attorneys.”

Encumbrance of Entitlement

More law firms are realizing that often a person who couldn’t afford Harvard or Yale right out of undergraduate college but who has real-life experience and works hard to attend law school might just be the best candidate. “Sometimes they make better attorneys in the long term,” says Chicago-based consultant Jonathan Asperger, principal of Asperger Partners and a former marketing director at Mayor, Brown, Rowe and Maw.

“I found that those who had fairly significant work experience after undergraduate school and before law school tend to bring a much more balanced and mature set of skills,” Asperger says. He tells the story of an appellate lawyer he knew at Mayer Brown who demonstrates the virtues of a non-legal-oriented, character-building work ethic. “He worked at the post office for something like 10 years and became a union rep while doing a midnight shift,” he explains. “He went to Northwestern, graduated third in his class, and became an excellent attorney.”

On the other hand, Asperger says, those whose path to a legal career come without obstacles may not necessarily be the best lawyers, at least initially. “A lot of the people who come out of the best schools and have firms vying for their services, and have family connections, sometimes have a sense of entitlement that needs to be driven out

of them the first couple of years,” he says. “You don’t find that in the hard-charger from the second- and third-tier schools. Still, that person has to be the star of that school.”

Although some law firm leaders may not be as blunt about this for fear of insulting some of their attorneys who, perhaps, were first in their class and editors of the law review at Ivy League schools, they tend to agree with Asperger’s candid assessment.

“I’ve heard this a lot from several attorneys at other law firms,” says a managing partner at a large partnership with offices in several cities including New York, Washington, and Los Angeles. “The top-of-the-class kid from a second-tier who killed himself to do well and may be a little older and may have done other things in his life routinely out-performs the kid who was the valedictorian in college and at law school. Why? Because that kid never got his nails dirty, never dealt with the real world, never failed. Failure can teach you to be resilient and flexible. That’s part of being a good lawyer. The [kid who always succeeds] may be a more rigid thinker, may be more in the box. I actually think that they often don’t end up being as creative in the way they interact with clients.”

For obvious reasons, this partner asked for anonymity.

But at LA-based Manatt, Phelps & Phillips, managing partner Paul Irving concurs with this appraisal, in less critical terms, and thinks that someone who may have had to struggle to go to law school often has many of the attributes that good lawyers develop. And they may be able to gain rapport with clients more easily.

“Often, they have the ability to listen and to learn from failure,” he says. “They have empathy, resiliency, an appreciation of and understanding for the range of people they represent. Many clients are the products of self-invention who pull themselves up by their bootstraps. So someone who has driven a cab, built a house, or worked at a gas station has a special appreciation for the challenges facing people who build businesses.” ■

—Steven T. Taylor

Some Daunting Numbers

The War for Talent and Starting Salaries

Starting salaries for new law graduates approach \$150,000 in large firms in some cities, resulting in fully loaded compensation in the range of \$180,000 to \$200,000. Combined with the per-lawyer overhead in large, big city firms, the total cost of a new associate is approximately \$400,000 per year. How can such excess be justified? Quite simply, by the intense competition for top graduates of top law schools.

Consider the numbers.

There are approximately 40,000 new law school graduates annually, as there have been for the past 20 years. That number is not expected to increase dramatically in the near future. But the top 20 law schools average 340 students per 3L class (according to *US News & World Report*, "America's Best Graduate Schools," Mar. 31, 2006).

Thus, the top 10 percent to 20 percent of the graduating classes of the top 20 law schools equates to 700 to 1,400 students. On the buyer's side, the top 20 law firms on the *AmLaw 100* average 105 new hires per firm (National Association for Law Placement, *Directory of Law Schools*, 2006-2007 edition) for a total of 2,100 new hires. This number is 1.5 to two times the cohort of graduates in the targeted range.

The supply/demand imbalance is clearly a problem.

On a larger scale, we can compute that the 216 law schools in the United States producing the 40,000 new graduates average just under 200 graduates per class. If the *AmLaw 200* firms each average 50 new grads (half the class size of the top 20 firms), they are hiring 10,000 new lawyers, which is 25 percent of the total pool.

Thus, even if the targeted law schools are expanded to include the top 100 schools, *AmLaw*

200 firms will hire approximately 50 percent of their graduates, hardly the level of selectivity that good firms profess to seek. So there, in a nutshell, is the inexorable reason why starting salaries have escalated: to attract the better credentialed of that group.

Even without growth in the size of top law firm recruiting classes, starting salary increases can be expected in an attempt to deal with the supply deficiency. The dramatic growth in the size of large law firms, however, driven by the current rate of 50 law firm mergers a year is likely to increase the size of recruiting classes, exacerbating the supply/demand imbalance and adding upward pressures on salaries.

The beneficiaries of this phenomenon are clearly law students at top schools who rank lower in their classes, as well as top graduates of law schools not currently ranked in the top dozen or two national schools. Better ranked regional and local schools also can be expected to benefit. Anecdotally, some law firms have been pleasantly surprised by the performance of these "experimental" new hires from the top of their class at lower-ranked law schools.

What will the long term effect of this phenomenon be? Creation of new law schools? Expansion of class sizes in existing institutions?

Or, will the law firms continue to react to the pricing implications of the supply/demand equation by pushing starting salaries even higher? Currently there may be no other choice. ■

—Ward Bower

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Of Counsel Profile

Continued from page 20

Colman's tenure at Howrey didn't last long, however, as he left and soon started his own consultancy called The Closers Group under the umbrage of The Help Center, based in Vista, CA. Colman promotes his business by citing his 20-year experience of listening to general counsel and corporate executives make decisions on which outside law firms to hire.

In a recent conversation with Colman, *Of Counsel* asked him about his career and his new company with its focus on "rapid business development," "invisible marketing," and the "red zone strategy" that helps lawyers generate work by knowing how to close the deal. The following is that excerpted interview.

Of Counsel: What led you to the legal profession, and what led you to DecisionQuest?

Allan Colman: One of the very first jury research firms in the country was a firm called Litigation Sciences, and I joined it in 1986. The way that started was that my younger daughter and the younger son of [one of the founders of the] company went to school together. We got to know each other and started to socialize. He had three offices, wanted to grow the company, and asked me to join, initially to take on the management responsibilities of growing a firm.

From that, I grew into the responsibilities for all of our marketing, business development, advertising, public relations, and so on. The seven of us who were partners there started DecisionQuest in 1991, and I kept the responsibility for driving business, where I spent a lot of time with clients—both with law firms and corporate counsel—discussing strategy and what they wanted to achieve. What came out of that, and my work at Howrey, is that I've actually generated millions of dollars worth of business for clients.

OC: In May 2005, Howrey announced that they had hired you. Why did you decide to go into a private practice law firm, and why was your tenure there as short as it was?

AC: Those are both reasonable questions. By the way, the Howrey position was a newly created position, and what appealed to me was that, instead of performing mass marketing to law firms and corporations, I could concentrate for a firm on corporate clients. It was a focus. Plus, I'd been with DecisionQuest a long time, and as much as I appreciated it and enjoyed it, this was an opportunity to apply the skills that I'd learned in a different marketplace, with a different approach.

What happened at Howrey is pretty simple. Their expectations and mine turned out to be different. When we discussed my leaving, in fact it was very amicable, I was credited with generating the equivalent of about \$5 million worth of business.

In the Red Zone

OC: What did you learn about the private-practice world, working inside a law firm, that's helped you generate business with The Closers Group and maintain relationships with law firm clients?

AC: I think what it did was confirm a lot of the experiences that I had, with a different perspective. For example, a lot of lawyers either don't like to market, don't want to market, believe it's unprofessional to market, or don't know how to market. So where I was finding success was working with small groups, either an office group or a practice group. At any one time, I had about 80 projects underway, many of them were just supporting individual attorneys by providing strategic advice or talking through different approaches or finding ways for them to generate business without appearing to be marketing.

In fact, one of the seminars that I'm conducting now is called "Invisible Marketing Tactics." There are a lot of things that can be done without appearing to be marketing that make it more comfortable for folks.

So to answer your question, my experience [at Howrey] reinforced what I had seen from another side by working directly with those folks and maximizing what they wanted to do even if they were originally opposed to it or felt uncomfortable doing it.

OC: When many marketing directors talk about generating new business, they often talk

about what might be called “the front end,” or to use the football analogy, when you’ve gotten the kickoff and it’s first and 10. You, however, work on the tail end of marketing, the closing end, or the red zone strategy. Why did you decide to focus on this end of marketing and could you talk about what’s most important about closing the deal?

AC: My best experience and the thing that I like to do personally is closing business, after the effort to bring it in, the closing part to then get started with an engagement. I think it’s worth defining the difference between marketing and business development: Marketing is getting found; business development is getting selected. What I’m doing is even beyond what has become business development at most firms, and is business generation, which is the final 20 yards—that’s how we came up with the red zone concept.

A lot of what marketing does, and continues to need to do, is to get the firm noticed and into the competition, into the selection process. At many firms, business development has been added, but often what it’s become is a very sophisticated strategic way to prepare proposals and pitches and conduct research-gathering on companies.

Very few firms have gone to the step of training their people to actively close. One of the major differentiators between what I do and what others do is that I have that experience of personally generating millions of dollars and I understand the preparation part, which is critical, but can also take it to the next step and close the deal.

The other major factor is that I’ve been listening for years to in-house counsel, as well as CEOs, describe how they make decisions in hiring outside firms. I’ve got some insight that I don’t think others have.

I’m focused on rapid development. So, for example, if you take a firm that wants to bring in revenue rapidly, we can do work with them. We have this concept called “Fire, Aim, Ready.” Fire means quick hits. And we work with groups of people to show them how to bring [business] in first and then back up and say, “OK what do we need to do internally to sustain this kind of activity in the future? Are there things in our marketing and business

development programs that we can improve to focus on the closing.”

The three major themes that we focus on are: generating revenue rapidly, which is important to many. The second is building a pipeline, which means that there should be an expansion of interest among attorneys who want to participate. The third thing is to develop personnel.

OC: How is your rapid business generation service different from competitors?

AC: I am confident enough in working with clients to enable us to offer a unique performance fee structure. If the client groups we work with generate new engagements in the agreed-upon time frame, there is an incentive for the Closers Group. It only requires a commitment on the client’s part to provide active support from senior management. On the other hand, if the objectives are not met in time, our fees are limited.

Understand Needs, Ask Questions

OC: What sorts of mistakes do you see lawyers or a team of lawyers, perhaps with the marketing director, make when talking with a potential client?

AC: What I hear from general counsel is that [members of] the law firm don’t really understand what the potential client needs. What are the pressures going on inside the corporation? It may not appear to directly impact the kind of litigation or the contract work or the real estate negotiations or the labor negotiations or whatever it is, but they may not understand what’s going on with the board of directors.

What you may want to tell them based on your assessment of their needs is very often what they really want and need. So part of the key of this closing process is to get into enough conversation with them to understand that. The best thing lawyers are trained to do is to question. Asking intelligent questions based on what you’ve already studied is also a good marketing tool.

Because, if you’re talking to an in-house counsel—whether that’s in preparing a proposal or in meeting them at a conference or any other many opportunities you might have to talk with

them—you have find out what’s on their minds. You do that through very careful questioning. Then when you respond, you respond to their true needs.

One of the things that I hear so often from in-house counsel is, “I know about the damned number of attorneys that the law firm has, and about their expertise, and big wins. I want to hear them talk strategy. I want to see how they think. I would much rather they ask questions like, ‘Here’s an approach we’ve tried. Would this fit with your situation? And let’s strategize why it would or would not fit.’”

Invisible Marketing

OC: Let’s talk about something you mentioned earlier—invisible marketing. What are a couple examples of this?

AC: Complaints are one of the very best tools you have. If a client calls with a complaint, you’ve got to make an assumption that they want to keep you on doing the work. If they didn’t, they’d just terminate the work most likely and never tell you why.

When a client calls with a complaint, you not only have the chance to fix it, you also have the opportunity to tell them, often, that you really appreciated them bringing this to your attention. You [call back later] and ask if it’s fixed, or is it still fixed, and then you can talk to them about other things that your firm is doing and offer to help them with other things in the future. Responding to complaints ought to be viewed as a really good marketing tool. It’s invisible and client-initiated.

Another thing: How often do you hear people say to you when you run into them, “What’s new?” It’s common. Now, if a client you know pretty well says to you, “What’s new?” A good answer might be, “I ought to tell you about a big win one of my colleagues just had.” Or, “We just opened three new offices, and I can’t tell you how exciting that is. We’ve brought in some great laterals.” Again, it’s client-initiated. It’s considered permission marketing, where they are giving you permission to market, and as long as you don’t take advantage of it by spending 20 minutes talking, it can really be effective.

Here’s another one. If a firm sponsors a seminar, all too often the attorneys from that firm congregate together. They have lunch together, sit at the same table. They don’t understand that the seminar attendees are there to learn, yes of course, but they’re also there knowing that they’re going to be marketed to. Some firms have a rule: Do not talk to your partner. They make sure that you mingle and get names of some people, their spouses, their hobbies, and if you don’t, you’re not doing your job. Again, this is an invisible marketing opportunity.

OC: So Allan, what’s new?

AC: [laughs] What’s new here is that we just brought in a new major engagement for a client who has three very specific practice areas and wants help building those practices. It’s a firm in the Northwest, one that hasn’t done a lot with marketing.

OC: Why are they isolating three practice areas instead of the entire firm?

AC: I think that it’s because these areas have people who are willing to get in and get their hands dirty. They want to market. One of the keys to a firm that works with me is that they must have a commitment and encourage the attorneys who are going to be involved to stick with it. My commitment is this: When a group spends five or six weeks, there will be identifiable new business that comes out the other end.

“Go for Business Now”

OC: If you were sitting at an airport bar waiting out a lay-over and the guy next to you starts telling you a story about his work, what story might you, in turn, tell him to illustrate what you do for a living?

AC: One of the most challenging things that worked out well was this: I was asked to work with a practice group within a very large firm. They created a business development committee. They wanted to generate business, and they wanted to do it rapidly. They started developing a long-term strategic plan. They were going to spend months to design something to assign responsibility to different people and develop materials to help with the plan.

Well, I was able to change their focus to say, "That's the second step. Here's the first step: Everybody sitting on this committee has clients that they should be developing more business with. Or, there are companies that you want to go after and you just haven't taken the time. Let's do that first. Go for business now."

They were able, in short period of time, to turn their approach around, identify targets, and then the excitement for me was working with them to make sure that the timing worked, that they were prepared to talk to the folks they identified on both the legal issues and other concerns about the company. That is, they needed to know whether the company had any new products that they'd launched. What's the financial approach for the year? And have they acquired any new companies

or started new divisions? Had they won awards for advertising? What's their community participation and service? These are things that show [to the prospective new client] a real interest.

OC: That's the sort of information gathering that you talked about that avoids the mistakes many attorneys make, right?

AC: Yes, and what happens is that the attorneys are so much more confident going in to generate business, because they really have a feel for the company. The more they know, the more successful they are. And, they might find they actually have fun generating that new business. ■

—Steven T. Taylor

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Of Counsel Interview . . .

Allan Colman Trains Attorneys in the Fine Art of Closing the Deal

Among the many things that made the late billionaire and chairman of Chase Manhattan Bank, David Rockefeller, famous was his ability to network like no one else in the world. His Rolodex was legendary. *Forbes* magazine once described the place where Rockefeller kept it in his Room 5600 of Rockefeller Center as “an alcove that encloses a massive Ferris wheel of a Rolodex. This four-foot-by-five-foot contraption is the fulcrum of Rockefeller’s globe-trotting life . . . it has 150,000 names . . . everyone he has met since the 1940s.”

Dr. Philip Anthony, founder and CEO of the Los Angeles-based jury consultancy DecisionQuest, says former colleague and long-time friend Allan Colman is also well-connected. “Allan doesn’t have a Rolodex as large as Rockefeller’s, but he’s working on it,” Anthony says. “Allan’s built a great following of folks around the country. He’s got a great network and really follows through with people. That’s one thing that makes him successful. He’s also extremely organized and gets all 54 things

he might have on his to-do list done.” (Dr. Anthony’s analysis of COLI litigation appears on page 5 of this issue.)

Colman’s people skills helped drive DecisionQuest’s growth, as he was chiefly responsible for the firm’s marketing and business development from 1991 until 2005. And the consultancy has indeed grown. With some 170 employees, the 16-year-old company has sent teams to work on more than 12,000 cases in all 50 states, gaining itself a stellar reputation in the legal profession.

But two years ago, Colman wanted to try something different and accepted a job with the Washington firm Howrey as its first chief business development officer. At the time, Howrey managing partner Robert Ruyak praised Colman’s extensive experience in the legal profession, including his numerous publications and speaking engagements.

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