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Messages to Clients ...

Survey Offers Key Communication Points to GCs

Increasingly, it seems, law firms are conducting or hiring outside companies to conduct client feedback surveys. These surveys bring many benefits. First and foremost, of course, they serve as a reliable mechanism for partnerships to discover or affirm what clients really want and need from their outside counsel. Presumably, law firms can then act on those wants and needs and deliver the goods.

The feedback also provides insight into what messages lawyers can and should present to general counsel and other legal-spend decision-makers. To explore what attorneys would most like to tell clients and prospective clients, we conducted a survey of our own, albeit an informal one. We asked this general, open-ended question: "If you were addressing a large audience of general counsel from

diverse companies and industries, what one or two messages regarding the legal marketplace would you most want to give them?"

We also sent this query to some consultants and in-house counsel to see what they'd say. Often they "answered" the question with an interesting but useful twist.

In the replies from attorneys, we received many statements that we expected. They mentioned that they want to convey their "full understanding of today's dynamic legal

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marketplace”; the importance of serving clients’ needs with “experienced, cross-discipline and collaborative legal teams”; that companies should hire law firms that have “vast professional networks” and the ability and willingness to draw on those outside professionals, including lawmakers and other public servants.

Not surprisingly, we also received several responses that noted the importance of “taking the extra steps” to fully understand clients’ businesses and the corollary, “the capacity [to

provide] both legal *and* business solutions.” We also expected and heard from lawyers who felt it important to convey the message that their firm had a “national” or “international platform.” Several others said that prospective clients would be wise to seek out “high-quality, highly regarded” law firms that also “successfully employ efficiency efforts” and deliver “the best bang for the buck.”

What follows are responses that represented the more popular and/or insightful answers.

At Cleveland-based Thompson Hine, Brian Lamb, the firm’s business litigation practice group leader, best expressed a theme that emerged, in various ways, more than a few times. “I’d tell them [meaning the audience of GCs] that law firms are ready, willing and able to handle litigation matters on something other than the billable-hour basis,” Lamb says, adding, as an example of Thompson Hine’s use of alternative fee arrangements, that the firm sometimes offers and sets fixed fees for services during certain stages of litigation, such as early motions to address pleadings.

Lamb also says he would send this candid message to an audience of in-house counsel: “Many clients bemoan the billable hour and say they want some kind of alternative fee arrangement – but when presented with creative fee models in which the law firm shares in both the downside and the upside risk inherent in business disputes, some clients get conservative. They fall back to the familiar, if imperfect, billable hour. I would urge clients to take a chance and partner with their law firms.”

While large, prominent national firms like Thompson Hine participated in our inquiry, we also received input from small firms. Angela Ballanca Klenk owns a trusts and estates boutique, after spending the first five years of her career at an AmLaw 100 firm. As the founding attorney of Beach Cities Estate Law in Torrance, CA, she—wisely and not

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Taylor's Perspective ...

An “Awful & Regrettable” Text: Ramifications & Reflections

Here's a perfect example of sage advice for the digital age: Think before you hit send. Or better yet: Sleep on it before you text that written thought. Otherwise, it might cause someone pain, end up on social media for anyone to see, and rattle your world.

In January, a male attorney failed to heed that guidance and texted a female colleague—now former colleague—an appalling, hurtful message about her maternity leave and her successful pursuit of a position at another law firm. After Jon Dileno, a senior lawyer at the Cleveland office of Zashin & Rich, sent his text, it was then distributed *via* LinkedIn in a screen shot of the text by another Cleveland lawyer, Kelley Barnett, a senior vice president, counsel at AmTrust Financial Services, as has been widely reported, including in *Cleveland Jewish News*.

“Barnett's post did not name Dileno or Zashin & Rich,” according to the *News*, “but both became public once the post went viral, garnering over 13,000 reactions, 2,038 comments and 469 reposts on the social networking website. The screenshot of the text showed it was sent by someone just referred to as ‘Jon in the recipient's contacts.’”

In her LinkedIn post, Barnett called for action from the ABA, among other organizations, writing: “There is no universe in which this kind of behavior (in writing or not) should be acceptable. Law firms, and the

lawyers within law firms, should not be sovereign entities where deplorable behavior like this goes unchallenged.”

The Cleveland chapter of the bar did respond, strongly, denouncing “how women continue to face discrimination... We have said before and again reaffirm today: Bias has no place in our profession or in a society built on the rule of law.”

Doing the Right Thing

Within a couple of days of the text and subsequent social-media buzz, particularly in the legal community, Zashin & Rich did the right thing and showed Dileno the door.

It's important to note that the female associate who was the recipient of Dileno's ire “had apparently been asked to work during maternity leave,” according to a report by Crain's Cleveland Business. If this is true, it raises work policy issues and adds to the well-documented mistreatment that women in law still encounter.

The unfortunate series of incidents demonstrates a few points about the treatment of women in the legal profession—regardless of whether the female associate was expected to work during her leave—the workplace

environment, leadership, and in the broader context, human behavior, and judgment.

It also underscores the advice mentioned above. Give yourself a cooling-off period before sending incendiary written messages. “Setting aside my personal and professional thoughts on the social media comments, I see this situation as a harsh reminder that words matter, and heat-of-the-moment sentiments should never be put in writing,” says Terilyn Finders, director of communications and legislative affairs at California-based Fagen Friedman & Fulfrost (F3 Law), in an interview with *Of Counsel*.

So what were those words of wrath Dileno conveyed to his colleague, who has not been named in print as far as I know? Well, here it is as reported by cleveland.com, among other outlets:

“What you did—collecting salary from the firm while sitting on your a--, except to find time to interview for another job—says everything one needs to know about your character.” He also wrote that “Karma’s a bitch” and that he would tell anyone who asked that “they will hear the truth from me about what a soulless and morally bankrupt person you are.”

If you’re hearing about this for the first time, you’re likely having a similar reaction to what I had: Whoa!

Dileno did issue a statement of remorse *via* email, according to cleveland.com. In it he said, in part: “I want to apologize to my former colleague regarding the inappropriate and disrespectful text that I sent to her.” But it certainly doesn’t excuse his behavior or judgment.

Stellar Crisis Management

The good news: Law firm leadership acted appropriately and with urgency, as Dileno left the firm very soon after management quickly assessed the situation. Co-managing partner Stephan Zashin clearly and strongly denounced what he called an “awful and regrettable” text.

Zashin also said in a statement: “This has been a sad and challenging time for our firm. I apologize to my former colleague who received the inappropriate text and I am disappointed that this happened on my watch.” In addition, he pointed out that the firm has always been known to have a work-friendly, highly regarded culture. And from what I can tell, that reputation is well-earned.

From a public relations standpoint, the firm seemed to have turned the tables and generated good PR for itself. “Put the whole horrible, moral dimension aside for a minute,” says a national PR expert who has advised many law firms in his career but asked to remain nameless. “The partnership responded excellently. They covered every base, touched every piece of it, and invited people to take a good look at their culture, which they’re proud of. Leadership managed this crisis very well.”

The circumstances should also send a message to law firms and, more generally, to each of us as individuals. We need to constantly take a good look at ourselves. ■

—Steven T. Taylor

Corporate Liability: Best Steps for Avoiding Unwarranted Prosecutions

Many of the alleged crimes perpetrated by U.S. companies are, in the words of the *Economist*, “often obscure and the reasoning behind the punishments opaque.” The specter of public recrimination hangs over any potential trial, which is why so many corporations choose to settle.

“Even with respect to the most culpable companies, the system is a failure, as it allows the companies and their senior officials to evade the scrutiny and censure that would follow ‘an unequivocal criminal conviction,’” notes Kevin M. LaCroix, an attorney and the executive vice president of insurance intermediary RT ProExec.

Jacqueline Arango, the co-chief of Akerman’s white collar practice group argues that, “The convoluted web of rules and regulations to which businesses must comply means that even the most conscientious

of companies encounters compliance issues. Maintaining compliance is an all-consuming job for a corporate general counsel’s office.”

What can U.S. companies do to inoculate themselves from potentially devastating legal and regulatory probes? There are no sure-fire remedies, but smart corporations should consider:

- Establishing a Corporate Compliance Framework that is endorsed by the board and embraced by all senior-level executives and managers; ideally, the framework should outline a corporate code of conduct, investigation protocols, clear punishment for violations of company policies, regulations, and the law, and a crisis mitigation plan
- Developing a Communications Strategy that captures the corporate commitment to good governance, embraces



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transparency, strengthens the company's commitment to corporate social responsibility, cultivates prominent third parties, and encourages "authenticity" at the top

- Devising a Crisis Mitigation Plan including cross-functional participants, outside counsel and advisors, in preparation for any crisis that might arise
- Insisting on Compliance Benchmarks in annual performance reviews for all levels of employees, including managers and executives
- Requiring Quarterly Reporting to the Board regarding compliance and regulatory matters.
- Establishing Relationships with all Regulatory Bodies with oversight responsibility for your company, including providing regular updates to regulators on key issues, and
- Retaining Outside Counsel Specifically for the Board in instances where a legal, regulatory or compliance matter involves a member of senior management, so as not to put the GC in an untenable position.

Even if a company takes these preventative steps, it's still not easy for it to make decisions in the "gray area," where an action may be technically legal, but can be interpreted in different ways, sometimes leading to prosecution. All companies must make decisions in this gray area, but executives tend to underestimate the risk associated with these decisions, sometimes naively believing that a legal or audit opinion will protect them.

Special software now exists that enables companies to proactively identify when seemingly benign risks become dangerous. Companies using KeenCorp software liken it to a "check engine light" for legal, accounting, and social media risk.

Software to Keep Companies Compliant

KeenCorp's software is designed to help companies assess risk (Are you seeing all

the risks across the organization?); facilitate change (Are your people really coming with you?); enhance your culture and engagement (How are your people doing this week?); and strengthen your capacity to evaluate (Are there people issues that impact investment return?).

Founder and CFO Viktor Mirovic points out that KeenCorp's software was recently used to help a global legal team identify the alleged crimes and culprits in a convoluted bankruptcy case. "What normally would have taken months of painstaking work was completed in a week," Mirovic says. "Above all, our software helps companies ensure that their executives are fully compliant with existing laws and regulations. It's a constantly updated scorecard that helps companies stay on the straight and narrow and connect to their employees when and where it matters."

Akerman's Jacqueline Arango advises that the instant you suspect that the company may be in the government's crosshairs, you should be consulting with white collar counsel. Too many company executives say and do things that cannot be reversed or mitigated once counsel comes on board. Before executives speak with anyone—internal or external—legal and communications counsel should be retained.

It's not getting any easier for companies. DOJ and other enforcers have become increasingly aggressive by expanding their definitions of criminal liability, diminishing the role of intent in white collar prosecutions while dismissing the utility of voluntary corporate compliance programs, notes Arango's Akerman colleague Scott Marrs.

Even with the change in administrations, the trend toward corporate criminalization shows little sign of slowing down. All of which means companies need to speed up their contingency preparations for the day when a criminal prosecution—fair or unfair, warranted, or unwarranted—could head their way.

Limit Your Social Media Exposure

Sameer Somal, Co-Founder of Blue Ocean Global Technology, believes that potential defendants must limit their exposure on social media or be confronted with dire consequences.

“Our dependence on the Internet for information and communication underpins the paradigm shift in how we approach creating, repairing and monitoring our digital reputations,” he argues.

Social media evidence is discoverable and admissible. What you post online, both prior to and during a legal proceeding, may hurt you in court. Anything you type or is posted about you can be used as evidence. We advise attorneys and their clients that everything shared online is accessible by the plaintiff’s legal team. Expect that you will be asked when your social media accounts were created and if you have posted something directly or indirectly related to the lawsuit, which includes instances labeled “private” or restricted from a public audience.

Do not delete your accounts or past social media posts. Courts have established precedence of admitting social media content in favor or against your case. While controlling who can see your information is acceptable, courts have found erasing content suspicious and may consider it destruction of evidence. Adjust privacy settings, but do not delete social media posts. Even information that is thought to be deleted permanently is often recoverable through forensic and cloud storage methods.

Text messaging and all digital communication are discoverable. Even self-incriminating messages sent privately through direct text or via an app, such as WhatsApp or Facebook Messenger may be requested by the opposing party. Prosecutors can serve dependents with disclosure notices that require them to

reveal private correspondence and password protected devices.

Win by not losing and limit your social media exposure. Recognize that other people in your network may share content that can affect your legal proceeding. Unguarded moments may reveal material information. Where appropriate, notify colleagues, family and close friends. Photos that you publish, or those published by someone else without your consent, are admissible. Comments made by others can adversely impact your case and provide evidence against your direct defense. Ensure that when you are tagged by someone else, your settings do not automatically syndicate the original post to your profile or social media news feed.

Preservation of social media data responsibilities also apply to the plaintiff and opposing legal team. Review of electronically stored information (ESI) applies to the defendants but may also be an opportunity for your legal team to ensure that plaintiffs are held to the same standards. When the plaintiff fails to produce ESI, especially emails, your legal team may seek dismissal of claims and even monetary sanctions.

Tools available for monitoring and researching social media include X1 Social Discovery, Socialware, Socialite, Hanzo Archives, and Page Vault. Recommend that your litigation team search and monitor the internet for anything that can undermine the plaintiff’s credibility or claims. The best defense may benefit from proactively verifying all information and analyzing each social media account, profile, activity and related commentary.” ■

—Richard Levick

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Critical Questions Concerning Industry Specialization (Part One)

Against the most fraught global macroeconomic backdrop in years, law firm leaders are hearing more about how some firms have accomplished incredible prosperity through strategies of being more client industry focused. Questions abound following the release of my latest book last January, entitled *Industry Specialization* and what follows here are some specific questions and my brief responses to each, regarding how this new reality will affect current and prospective marketplace success.

1. What makes focusing on industries so difficult for some lawyers?

Understanding your Client's Industry is the single biggest differentiator among law firms according to 5,000 interviews with top legal decision-makers, reported by the BTI Consulting Group. YET, we still have a problem. Many lawyers just don't get it . . .

Lawyers do NOT understand Industries.

The Legal 500 was seeking submissions for its US Ranking of law firm practice and industry groups *“to help in-house lawyers and legal teams find the right advisors.”* Amongst the list of Industries in which you could enter included “Environmental” and “Native American Law.” Important areas to be sure, but are these really industries, especially when you cannot help but add “**Law**” to the title? Then their categorizations go on to include “Media, Technology and Telecoms” . . . all lumped together as one industry?

Industries that mature are comprised of a number of granular levels.

If you are a player in the Construction Industry, recognize it is comprised of 4 different Sub-Industries (TIER 2) like Special Trade Contractors; and those various Sub-Industries include 51 different Segments (TIER 3); and then there are numerous Micro-Niches (TIER 4) like 3D Printed Prefab Homes. So, listing yourself as an expert in the Construction Industry without going deeper, absolutely guarantees—that prospective clients are shopping elsewhere!

What label you attach to your industry team actually matters.

Some law firms combine Health Care and Life Sciences as if they were the same industry. They are two very different groupings. The Health Care Industry is comprised of 4 Sub-Industries (like Hospitals and Health Services) and 89 different Segments; while Life Sciences has 5 Sub-Industries (like Biotechnology and Pharmaceuticals) and 143 different Segments. And there are all kinds of TIER 4 Micro-Niches in both Industries capable of providing lawyers highly lucrative opportunities. Anyone name a firm specializing in Anti-aging and Regenerative Medicine, a multi-Billion-dollar market niche?

Some areas of lucrative opportunity may defy simple industry categorization.

The “Internet of Things” (IoT) is about connecting millions of digital objects, from trucks, refrigerators, and hydro meters to the Internet. Data gleaned from the sensors and systems applied can then be used to monitor, control, or redesign business processes.

There are four expanding segments: makers and installers of physical sensors; connection providers (landline, wireless, telecoms, etc.); storage and security hardware and software (server farms, the cloud) to hold on to and encrypt all the collected data; and data analysis software. Networking titan Cisco Systems Inc. believes IoT represents a \$19-trillion (US) global market and predicted that 50 billion devices would be connected to the Internet by the end of 2022.

2. Is there a mindset to being a good industry focused lawyer?

In-depth expertise in your clients' industry inherently attracts more interest in your advice and counsel, but there are some other things to keep in mind.

It's about Providing Total Business Solutions and NOT just Solving Legal Problems.

The best don't just offer advice on legal questions; they are able to connect their expertise and the counsel of their industry focused colleagues to help the client achieve a total turnkey solution. Clients expect you to know your business, but what really matters to them is how much you know theirs. You should be able to articulate specifically how your solutions can help the client achieve the success they are striving for.

Get to Business Solutions of Value, by Digging Deep.

You should be aware of problems your clients face that you can help them with and get involved EARLY in shaping solutions. This is when you can offer some of your most valuable advice. You cannot be shy or reluctant to explore with your client the tangential issues that go beyond the scope of some current legal matter. That would be like a Physician

who only treats your headache, but neglects to examine any contributing factors. While you may not want to be viewed as fishing for further work, if you stop advising your client because it is not within the expressed scope of their current need, don't be surprised if they look for someone to provide more holistic counsel.

Share Your Thinking.

Lawyers are taught how to devise the best remedy to the legal problem, but don't always see the value of sharing the thought process that goes into formulating a proposed course of action. Yet the evidence is clear that a trusted business advisor is valued for their thinking, not just their answers. What does an industry focused mindset entail? It starts with a deep curiosity that leads to a habit of continuous learning. To complement your strong analytical skills, you recognize the need to appropriately frame the problems or opportunities you're trying to provide counsel on, in a broader context than the limits of your expertise. You are driven to determine not simply what needs to be done from just a legal perspective, but what ultimately needs to be accomplished—with your success defined not by how well you performed, but by the outcomes you help the client achieve.

Give your Clients What They "NEED."

Some mistake client service as giving clients what they want. That's the order-taker mindset. Trusted industry focused advisers are more concerned with giving clients what they need. Sometimes, this may involve some persuasion—but persuasion based on deep industry knowledge. You don't help the client achieve success without being willing to push back at times and argue for a better way. It's hard for clients to learn to trust your point of view if you shrink back from it whenever the client is thinking otherwise.

3. Are more firms crediting industry focus for their financial results?

Entitled “*Leaning Into On-Fire Industries*,” a recent article identified Ropes & Gray as posting double-digit increases in all key financial metrics in 2021, record results that Chair Julie Jones said reflect the firm’s strategic industry focus on private equity, asset management, technology, and health care and life sciences. What struck me was that the firm does work for 9 of the 10 largest Private Equity firms, a group who themselves have become more disciplined in focusing on their client industries.

One Wall Street Journal article identified how industry focused private-equity firms are gathering a larger share of the investor’s wallet, which has become critical in a crowded PE market where differentiation is increasingly important. Funds with “*clear areas of expertise*” have drawn more investor capital that otherwise might have gone into traditional buyout funds, claimed a report from consulting firm Bain & Co.

The Life Sciences industry has witnessed growth in the neighborhood of 30% among biotech companies going public. And this life sciences focus is particularly core to Cooley, a market leader, where the life sciences industry touches a third of the firm’s \$1.5 billion in annual revenue, with 95% of its attorneys serving life sciences clients. “*If you took the life sciences group out of the firm, it would be its own Am Law 100 firm*,” said Christian Plaza, vice chair of the firm’s global life sciences group.

On a similar note, Goodwin Procter attributed its record setting 2021 performance to a decision it made some years previous. According to chair Rob Insolia, “*we decided we could not compete by simply holding ourselves out as the smartest or best M&A or capital markets lawyers. Instead, the firm decided it wanted to be among the top four in a small number of sectors. The premise was*

that if you understood the industry of your client as well as the client did, you could leverage off of that.” And it paid off—the firm handled 10% more deals than its closest competitor.

Meanwhile, AmLaw 200 firm Adams and Reese posted nearly flat revenue last year as the firm’s head count and equity partnership continued to shrink. Nevertheless, the firm still exceeded its financial goals by growing RPL and PEP. HOW? At the direction of managing partner Gif Thornton, the firm “*refined its strategy on the practices we wanted to have - emphasizing leading industry practices such as construction, energy, and financial services, and jettisoning under-performers.*” It consequently met or exceeded all of its financial goals.

At the other extreme, I noted one East Coast, 70-Attorney firm, announcing a reorganization, a new managing partner and a “*rethinking of the tradition of organizing around practice groups*” to building an infrastructure focused around client industries. As a result, their website identifies ... 28 different industries!

Are you kidding me?

4. How might one successfully play to win within an industry?

If there is one industry that has contributed dramatically to the fortunes and record setting profitability of some top tier AmLaw 100 firms, it would have to be the Private Equity Industry, which globally has more than \$2 trillion in capital ready to invest. At Kirkland, outside of its Chicago base, its offices are almost entirely focused on this one industry.

Others seem to be scrambling to compete, some by laterally recruiting high level talent in this area. For example, DLA Piper recently announced that it is adding a group of nearly 30 PE attorneys in a move that’s part of the

firm's push to entrench itself as a premier player in the middle market.

How else could one play to win in this industry?

One thing you always need to be doing is monitoring new developments and disruptions occurring in any client industry. For example, what happens when this same PE industry decides that it needs to become more industry specialized going forward? Will this open up new opportunities for competing with any firms now taking a generalist view to serving Private Equity clients?

My research indicates that SPECIALIST private-equity firms are now gathering a larger share of investor wallets in a crowded PE market where differentiation is becoming increasingly important. Funds with "*clear areas of expertise*" are drawing more investor capital than otherwise might have gone into traditional buyout funds. And what that means is that many PE firms are becoming more focused on specific industries, internally developing more industry expertise, and will be looking for advisory and LEGAL resources who also have that same expertise.

These days, two thirds of PE professionals expect MORE M&A transactions with PE involvement, with certain industries perceived as the most attractive. I would identify the following top ten 'groupings' as the more lucrative target markets: **#1:** Technology, media and software / **#2:** Pharma and health-care / **#3:** Business services and logistics / **#4:** Infrastructure / **#5:** Energy and Utilities / **#6:** Consumer goods and retail / **#7:** Financial services / **#8:** Industrial goods and engineering / **#9:** Building and construction / **#10:** Chemicals

As but one example, it's reported that One Rock Capital Partners' focus on the chemicals and industrial sectors has led to deep deal sourcing as well as relationships with bankers to those sectors and others with knowledge in the evolution of these industries to make finding and evaluating deals a smoother process.

Meanwhile, a BTI report identified 5 tactics driving record breaking profits and growth, telling us that top legal decision makers repeatedly say that a law firm's understanding of their industry is the biggest differentiator in the legal market today and also one of the largest drivers of premium rates.

5. Can billable rates be affected by the kinds of industry clients you serve?

In the typical corporate legal department, matters exceeding \$1 million in outside legal spend account for about 61% of the total sent to outside law firms in any given year. Meanwhile, a Wolters Kluwer report showed notable differences in rates paid by different clients—based on that client's INDUSTRY:

Financial Institutions	\$620/hour
Industrials	566/hour
Consumer Service	523/hour
Health Care	519/hour
Tech and Telecom	513/hour
Consumer Goods	430/hour
Insurance	229/hour

That said, I'm always curious as to how much attention is paid to client fee sensitivity. For example, here are a FEW QUESTIONS to ponder when next contemplating fees with your clients:

- **What is the business purpose of the engagement?**
(if the objective is to correct or remediate a problem, the client may be more price sensitive than if the desired outcome is the realization of a gain)
- **Where does this engagement fall within the corporate hierarchy?**
(engagements that have board of directors or c-suite visibility are less price sensitivity)

- **How important is it for your client to realize a successful result?**
(results that have small impact on a client's profitability tend to be more price sensitive)
- **Who's paying the bill?**
(matters where the client's cost is shared by another company or insurance, or are subject to court or agency review tend to be more price sensitive)
- **How difficult is it for your client to find a competing firm with the expertise to do this work?**
(the more SPECIALIZED the matter, the less fee sensitive)
- **How well does your client know what other law firms charge for the services being sought?**
(clients without a point of reference tend to be less fee sensitive)
- **How much importance does the client place on having a high name recognition firm and are you such a firm?**
(price sensitive clients tend not to care about prestige)
- **Was the client the first to initiate the conversation about fees?**
(if the client initiates fee conversations or offers a fee agreement, it is a sure sign of high price sensitivity)

Your take away: I found these differences in rates paid between Industries quite interesting. Do you know what they are within your firm? ■

—Patrick J. McKenna

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Messaging General Counsel

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surprisingly—would trumpet a hypothetical room full of GCs on the virtues of boutiques and encourage them to consider hiring small firms.

“While a large firm may be the natural choice in certain cases, small firms are more competitive than ever in the current legal marketplace, and bring many benefits to their clients,” Ballanca Klenk says. “With the power of the internet and the speed at which technology changes, small firms have the agility to adopt new technology and systems more quickly than their larger counterparts. You also have the certainty of knowing who will be working on your matters, without the revolving door of associates in the large firms.”

In addition, she echoed what we read from other respondents about the importance of lawyer–client relationships and collaboration. “Even in this world of internet marketing,” she adds, “many hiring decisions come down to chemistry and interpersonal relationships. (And what is better than a referral from a trusted colleague?)”

It’s All about Trust

Naturally, a key component driving those relationships is trust, and Noel Elfant suggests one way to build trust revolves around hiring. The principal attorney of General Counsel Practice in Northbrook, IL who also serves as of counsel for Milwaukee-based Foley & Lardner, Elfant says law firms may want to place more emphasis on hiring former in-house attorneys. These lawyers “can relate

as much to the sales and marketing organizations as to the C-Suite,” he says, “who know how to navigate a client’s appetite for risk to capitalize on opportunities, and who appreciate the need for fast, efficient work.”

“Firms that put former GCs and other former in-house counsel to work,” Elfant adds, “often with creative compensation structures that do not include partnership or partnership track, can earn the trust and confidence of their clients on the routine and business-oriented counseling they require on a daily basis.”

Some legal profession insiders consider trust and mutual respect the lynchpins to successful relations between law firms and clients—and help ease the often contentious push-and-pull negotiations over attorney fees. “Trust and respect dominate billing rates,” says Rees Morrison, who for more than 30 years has advised law departments and law firms—earlier in his career as an in-house lawyer but for longer as an outside consultant for more than two decades at Altman Weil and also on his own from his Princeton, NJ office.

“If I were a general counsel,” Morrison says, “I’d rather have a law firm working for me that I trusted and respected than any law firm that makes a big deal about the economics of the arrangement. Because if you trust and respect them—one hopes it would be mutual—you can work it out so it’s fair for both sides.”

Artificial intelligence is all the rage across nearly every industry, including many corners of the legal marketplace, as lawyers increasingly apply the technology to enhance client service delivery, and also as a selling point to attract clients. Recently David Scheidemantle, president of Scheidemantle Law Group, a Pasadena, CA firm comprising senior lawyers who formerly practiced at large firms, was introduced to the popular writing app ChatGPT by his son. The elder Scheidemantle says he was “floored ... at the

speed and quality” of this prose-generating technology.

He recalls testing ChatGPT: “I asked the app, ‘Construct an argument why an attack by a single dog against two victims in the same location at the same time constitutes two occurrences under a landlord’s liability insurance policy,’” he says. “The response? I’ve gotten worse from a first-year associate.”

Scheidemantle sees a bright future for attorneys who augment their legal services through this AI product. And for those who don’t ... well “The potential seems enormous,” he says. “With all ethical considerations well in mind, I suspect that lawyers who aren’t at the forefront of using this technology will be left in the dust. I am hopeful that in-house legal departments will demand the cost-savings resulting from this technology and be the driving force towards an AI revolution in the legal profession.”

But others say while the use of such AI applications will likely improve efficiencies of the legal service, the human element still matters most when it comes to the interaction between attorneys and clients. “Wetware, or the human brain, dominates software.” Morrison says, and this is coming from a man who holds the highest respect and was an early adopter of using high-tech solutions in his capacity as a consultancy. “There is no software that will transform the law firm-law department relationship. Brains make the difference—not how much the firm has invested in technology.”

DEI and Succession Plans

We also received replies extolling the growth of diversity, equity and inclusion efforts. Some say a strong message lawyers could send to in-house attorneys involves their important influence on private practitioners in building their DEI programs. Timothy Daniels, the president of Irwin

Fritchie Urquhart Moore & Daniels, which has offices in New Orleans and Baton Rouge, says his message to GCs would acknowledge their strong support in this crucial area. He’d also ask that they keep the pressure on law firms to do more by choosing to hire those partnerships that successfully diversify their lawyer ranks.

“I encourage you to take advantage of the power and influence that you possess to continue in your influence and reinforcement of diversity and inclusion within the legal marketplace and beyond,” Daniels says. “Whether your focus is the office or in the courtroom, your support of diversity, without the need to compromise talent or skill, will ultimately serve the best interests of your businesses, the legal marketplace, and your customers, as we are all in this together.”

Finally, covering a topic like this would not be complete without including the insightful comments of Michael Rynowecer, president and founder of The BTI Consulting Group in Wellesley, MA. Rynowecer offers the following messages to clients:

“Today’s law firms are widely divergent in the level of commitment they make to clients—and ensuring continuity if a key attorney leaves. I would ask for a succession plan in case of staff turnover. In large matters, I would ask to meet the backup attorneys.

“Interview law firm partners instead of watching a pitch. Only interview the partners who would work on your matter. GCs will get a whole different view of the attorneys and how they will work with you.

“For large current matters—ask your law firm for a completely new assessment of the matter, Ask them what they would do differently knowing what they know now. How can they change? Also, ask for a new estimate to complete for budget and time.” ■

—Steven T. Taylor

Of Counsel Profile

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Lyman Thai: Even back in high school I was an avid computer gamer. I built my own computers. I always wanted to be out in Silicon Valley. When I applied to colleges, I was actually a computer science and engineering person and got into all of my colleges on that basis.

When I went to Harvard I ran up against a particularly difficult multivariable calculus class for scientists and engineers. As with many people who go through weeder courses, I got weeded out from my original career plan. But I've always loved technology. I took a detour and ended up becoming a government and East Asian studies major, which basically allowed me to take any courses that I wanted to, was very interested in, and have it all counted towards my major. So that was my secret of graduating college.

I graduated into the Great Recession, but found a job that was interesting at that time in a hot field, which was renewable energy. This was in 2009, right after the Obama administration took office, and they were working on national cap-and-trade legislation, renewable energy, and portfolio standards across the US.

So I found a firm in Houston that was focused on renewable energy product development and emissions and carbon credit trading. I spent a few years there, and then I decided that if I wanted to continue in business as a profession, especially in something that was highly regulated like renewable energy, maybe I should get a law degree. When I went to Michigan, they had just hired a former EPA administrator, one of their energy and environment professors. I went there thinking I would come out and work in something to do with renewable energy.

I went to law school and did the second-year summer [as an intern], as many people do, and I was looking at places in DC, back in Houston where I was from, and out in the Bay Area. Wilson Sonsini at that time had a very strong clean energy practice, and I decided to take the offer out here in the Silicon Valley.

As timing would have it, I came out to Silicon Valley during the first wave of all of the battery company bankruptcies, like A123 and Solyndra. But, what else is hot at Wilson Sonsini in Silicon Valley but startups? I spent my summer working with startups and decided that I really enjoyed doing that, working with founders on the earliest stages, and just being out in Silicon Valley and around my original love of technology.

Riding the Waves

OC: You've said you always wanted to work in Silicon Valley because of your love of computers when you were much younger. What do you like about your work with founders and startups? What do you really enjoy as an attorney?

LT: One of the things that has been very interesting over my career is that I get to see all of the waves of new technology. I help people, in whatever the hot technology is, form companies for that wave. As you might imagine, this year it's generated AI. [He mentions other recent techno-trends.] I really enjoy being able to see the new waves and being positioned at the edge of working with the people who are dealing with new and interesting technologies and issues.

OC: I would imagine that it's very fascinating to be around creative entrepreneurs.

LT: Yes, absolutely. And I also think that as a young lawyer, working in Silicon Valley with founders who are just out of college or just out of their grad programs really lends itself to making deep and personal connections. So a lot of my clients end up being my

friends. If they have a successful exit, they go work at a large company for a while, and then the entrepreneurial itch bites them again, and then I work with them again. And, that's how the relationships grow.

OC: What are one or two matters you've handled that you've enjoyed or found intellectually stimulating and stand out for you?

LT: I worked with a very early-stage cybersecurity company through multiple rounds of financing. They were probably some of the most organized people I knew at that time. I had an inkling that they were going to do very cool things. They ended up going public and now they're probably one of the most prominent security companies out there. They have sponsorships on sports events and other events. Working with a now-public, very successful cybersecurity company from an early stage was pretty fascinating.

OC: And it must be rewarding knowing that you were part of the team that helped make them successful.

LT: Yes, exactly.

Another one that stands out is a little bit more fun. I worked with a lifestyle delivery company.... It was fun because, again, I worked with them from the very early stages through this phase where they had a lot of celebrity endorsements. You see them on TV. They have a lot of people in Hollywood mentioning how often they would use it. So it's rewarding being involved in that and seeing the results of the work that we do for the clients in the media.

OC: And then you moved over to Foley & Lardner. What attracted you to Foley?

LT: Really, the impetus was being able to help build out the Silicon Valley startups/venture capital practice. In my career I've always had a bit of an entrepreneurial streak. When I was at my prior firm, I actually left four years in, to go to another law firm and legal tech company. I went from Wilson Sonsini

to a company called Atrium, where we were trying to build legal technology and improve the client experience for startups and venture capital investors. We were taking care of the low-hanging fruit, doing a lot of document automation, applying artificial intelligence to due diligence, a lot of process improvements, and even alternative fee arrangements. We were doing all these things, and hoping they'd stick.

I spent two and a half years there and ended up as general counsel because there were a lot of rules that governed the side-by-side relationships of the law firms and the legal tech company that we were running.

With that under my belt, I came back to Wilson when Atrium, unfortunately, wound down, but after a couple of years I got the entrepreneurial itch again and decided that Foley had a great opportunity. They hired a very strong team. It has a lot of space to go in and improve processes and build the practice, not quite from the ground up, but there is a lot of room to run.

Dislikes and Likes

OC: What are things you dislike about the legal profession, which you wish would change?

LT: One of the earliest things I identified is that as a whole I think the profession is slow to adopt new technology. I saw one of the clearest illustrations of that when I started practicing full-time in 2013. Then, there were already tools for [online e-signatures], like DocuSign. My first few years, I was still doing manual signatures, for hand-signed, ink-signed pages, to close these deals, and we were in conference rooms stacking up folders of 200 pages. We would have closing meetings where everybody would come in and sign everything and we would manually collate things.

So I experienced the disconnect between how everybody can sign things online versus

spending all this time doing things manually. That was the first issue that I thought, *Hey, this could be quite easily solved if people just adopted new technology.* All our clients were already adopting internal technology, and it was quite easy to adopt it for those as well.

OC: The slow technological adoption was one thing you noticed early on, and frankly as far as I can see there's still a lot of room for law firms to grow in that area.

LT: I think there have definitely been a lot of improvements in private practice, and I think many new legal tech things have come out and forced law firms to catch up. But I don't think law firms are leading in that area. I think that practitioners like myself and my peers who do have technological experience are leading the change.

Something else that's improved a lot since I've been practicing is I've seen a shift to training lawyers with more practical skills from an early stage. A lot of law schools have really doubled down on clinical experiences. That's given a lot of new lawyers a sense of the actual practice of law when they graduate and land a job.

And, my experience has been that law firms throw you right into it. It's practical experience from day one. But I do think law schools up until recently have been very theoretical, very litigation focused. You would probably develop very good litigation skills, but maybe not the practical expertise.

OC: Okay let's look at the bright side of the profession. When you look out across the legal landscape, what's positive that you enjoy?

LT: From a very broad perspective, we have a nation of laws. I think lawyers play a very important role in not only enforcing them but also questioning them and pushing the boundaries and shaping that landscape. And, actually, that affects people's day-to-day lives. In not so much my practice but I think it's a

foundational profession and there are people who are carrying that torch.

As far as what I enjoy ... what I'm able to offer my clients is help with anything they're going through. In my role as a corporate, venture capital attorney I see the entire picture. I work with hundreds of clients and I see hundreds of deals and I can be that advisor and say, "Hey, these are all of the potential outcomes of what you're thinking of doing," and help them avoid the mistakes of others. Again, I like to set them up to achieve their goals with a minimum of unnecessary hurdles.

Increasing Diversity

OC: Law firms are still slower than many of their clients in hiring and promoting diverse attorneys. I want to ask you if that's something you've seen improve much, and what can the profession do better to encourage diversity?

LT: I think I come from a position of privilege and I've been a little bit fortunate to start my career out on the West Coast where at least I have been able to see other attorneys in partnership roles and management roles who look like me. I think that that's been very important in terms of my belief that I can also attain those heights of the profession.

I don't have the solution. My firm has a very strong diversity and inclusion team. I would say that for me representation did matter. And so do continuing to provide those opportunities, providing career development, professional development. It's important that people understand that for a lot of people, myself included, who are first-generation professionals, first-generation lawyers, we didn't have a lot of role models to guide us through our careers. So, I'm learning as I go. I think affirmatively providing those experiences and the training would go a long way to increasing diverse and women attorneys in the law firm ranks.

OC: I think you're absolutely right that in general the West Coast law firms are doing a good job with the diversity issue in law firms. And then there are other places that aren't doing it so much.

Finally, Lyman, what do you see in the future in terms of what you're going to be busy doing and what the growth sectors will be?

LT: I actually talk about this fairly often. Again, I'm very fortunate to be in my practice. I work with the earliest-stage technology companies. And even though the headlines are kind of gloom and doom about layoffs and large tech restructuring and reallocating resources, what I've seen in my practice is that entrepreneurs are still forming companies. They're still doing that on a regular basis. I think there's still a lot of dry powder out there in the venture capital space and they still need to deploy it. The companies that I'm helping to form are raising million-dollar seed rounds—I wouldn't say easily, but it's happening with

more frequency than the headlines might suggest.

Even if we are in a downturn, I think history, especially from 2008, has shown that this is when it's the best time to build a new company. You have nothing to lose. You might try for a year and then you have nowhere to go but up, if we're in the bottom of the economy now.

I think the trend right now is in AI. The more successful companies have led their pitches to investors with how they're integrating AI, so that's what we're seeing.

The silver lining of some of the larger tech companies downsizing is there are entrepreneurs among those people, and I've been working with some of them to start the companies. I think what this next phase of entrepreneurship is going to bring is very exciting. ■

—Steven T. Taylor

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Of Counsel Interview ...

Long-Time High-Tech Enthusiast Guides Cutting-Edge Clients

Sometimes a lateral candidate and a law firm simply seem like the perfect fit. That appears to be the case with Lyman Thai and Foley & Lardner, a Milwaukee-based, national firm.

In late 2021/early 2022, Foley made it a point to hire strong, proven attorneys to beef up its corporate bench power, particularly the firm's Northern California presence, and demonstrate its commitment to delivering effective business solutions to clients in the region's emerging companies and venture capital spaces. The partnership did just that over the course of last year and hired Thai this past November, and he's already been smoothly integrated in the firm's venture and growth capital team. And, his new colleagues say his high-tech experience and knowledge base will enhance their client service.

"Lyman's understanding of the region's startup space," says Michael Okaty, co-chair of Foley's transactions practice group, "and

his proven success delivering practical solutions to high-growth technology companies adds significant value to our team and enhances the depth of our offerings for innovative technology companies, an important strategic emphasis for the firm."

Recently, *Of Counsel* talked with Thai about the arc of his career, some of his favorite client matters, his likes and dislikes and other topics. What follows is that edited interview.

A Career Shift

Of Counsel: Lyman, you earned an undergraduate degree from Harvard and then your law degree at the University of Michigan. What influenced your decision to attend law school? Why the legal profession?

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