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Practice Area Portrait …

With Regs Up in the Air or on Their Way Out, Environmental Lawyers Stay Busy

One word seems to pop up often when environmental lawyers at law firms across the nation characterize the current and near-future atmosphere within their regulation-heavy practice area: uncertainty. And if the attorneys are feeling unsure about the shape of the regulatory arena, you can bet their clients are *certainly* uncertain. This is generating a lot of inquiries from corporate clients to their lawyers about what rules and repeals are coming out of the Beltway and how they may or may not affect their day-to-day operations and, in the longer term, their strategic business planning.

"Things are inconsistent and uncertain," Lisa Zebowitz, co-chair of the environmental practice group at Chicago's Neal Gerber Eisenberg, says succinctly.

As with many governmental fronts since last November's election, the environmental law landscape seems to see new changes introduced every week, and lawyers are staying busy keeping up with the shifting policies and working hard to advise their clients on

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the paths they should take. It's not an easy task.

"Change during this administration is fast and furious," says Laura Whiting, a partner in the 10-attoney environmental law practice group at Dallas-based Gardere Wynn Sewell, who also has years of experience at the EPA and in-house in the chemical industry. "It's really hard right now to advise clients on how to comply with rules or even whether to comply with the rules. The big picture is that there are a lot of changes or potential changes. We are monitoring many regulations to see what this new administration does with them."

These moves are coming in several different forms. Congress is taking some action on the environmental regulatory framework; Department of Justice and other agencies are issuing executive orders and directives; and of course the courts weigh in as well, sometimes overturning or altering existing laws and rules and other times affirming them. "The executive orders and the DOJ directives contain plenty of ambiguities, so we all have a lot of questions about how the agencies are going to apply these orders and directives," Whiting says.

It's no secret, of course, that deregulation serves as the guiding, overarching political philosophy of the Republican-controlled executive and legislative branches. "With the new administration we're seeing very different perspectives about industry, and how [companies] should be regulated," says Elizabeth Howard, the natural resources industry group leader of Portland, Oregon's Schwabe Williamson & Wyatt. "We're definitely seeing pullbacks and extensions on compliance deadlines."

Regs in "Gyration"

For example, Howard points to one major decision in late June that will likely result in the EPA making modifications to the federal "Waters of the United States" rules within the Clean Water Act. The set of regulations, established under the Obama administration, was designed to protect rivers, streams, and wetlands and was praised by environmental groups. Ranchers, farmers, and developers, on the other hand, opposed WOTUS, as the regs are called, saying they violated their property rights.

"Clients are asking us, 'What does this mean and how does it affect us,'" Howard says. "They also want to know about possible future actions. For that action there's

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Taylor's Perspective …

Hooking Up: Firms Continue to Merge—For Better or Worse

Law firm mergers are up. More and more firms are combining. Consolidation is on the rise.

Say it however you want but any sort of version of this refrain sounds familiar. Increasingly, many law firms are joining forces to make themselves larger, stronger (they hope) and better (their clients hope). Like last year (and the year before when 2015 became known in the profession as the "year of the merger" and the year before and … well, you get the idea), we're on pace for another record year for mergers, according to the Newton Square, PA-based consultancy Altman Weil and its tracking system MergerLine.

Larger, strong, better. This is progress, right? For the most part and for most of the merged partnerships, yes it is. But not everything is "all Cadillacs and smiles" to borrow a phrase from the great writer James McBride (in his excellent, award-winning book *The Color of Water: A Black Man's Tribute to His White Mother*). Let's get to some of the problems that sometimes surface when two firms combine.

But first the numbers and a few details: As of early July, 52 combinations had been announced, a pattern that follows a half-decade merger mania trend. "After the market stabilized a bit in 2012, folks started looking at mergers again," says Eric Seeger, an Altman Weil consultant. "There was a time when they were more focused on right-sizing their firms and making the operations leaner and more productive. But for the past five years, more firms are looking again outside the walls for growth and expansion."

The deal that brings together North Carolina-based, 500-lawyer Womble Carlyle and the UK's 580-lawyer Bond Dickinson was largest merger made public in the second quarter of 2017. It may be one of the more curious engagements as well. While I've spoken with several Womble Carlyle attorneys over the years and agree that they deserve the profession-wide respect they receive, and while I've read that Bond Dickinson is also well-regarded, I think these are two seemingly very different cultures coming together: Winston-Salem meets Plymouth on the south coast of Devon, England. It becomes official with the name Womble Bond Dickinson in October, and many of us will be watching to see how this marriage fares.

That's not the only cross-border merger. Since the start of the year, 11 multinational deals have been announced. "That matches the full-year total for 2016, which is the record high according to MergerLine," as noted in a recent Altman Weil press release. This isn't surprising as the globe continues to shrink, and so too does the demand for legal services. "Firms continue to chase a limited supply of work," Seeger says.

Integration and Beyond

For any combination to stick, so to speak, several things must take place as soon as possible, not the least of which is a plan for integration. "Attention needs to be given to both the legal and the operational integration, upfront, because you don't get a second chance," Seeger says. "Integrating client flow and workflow is imperative, and often law firms do a better job of getting the lawyers to talk to one another than they do of getting the staff and the systems talking to each other; the systems have to support the legal work so both require attention."

That's where things can go wrong and sink a merger—and there are plenty of examples of combined partnerships failing or at least sputtering because the nonlawyers didn't work well together. I asked Seeger if he can pinpoint any recent such head clashes.

"I'm thinking of a merger in particular where the legal integration was going great, but the operational integration was not going well," he says, naming the two firms involved, with the understanding that I wouldn't. "That was because the nonlawyer administrators were not cooperating well. They were protecting their turf. They were highly invested in the systems they had been using. They were not receptive to new ideas, and not making it a priority to get it right for the new combined firm." And that's all on the lawyers, he adds. The partners have to make the two sides of administrators collaborate.

While that combination seems to have straightened itself out, others have not, and sometimes that's because the initial integration may have gone well but it wasn't sustained. "Firms have gotten better with the onset of integration," says an East Coast consultant (not Seeger). "They hire consultants, listen to them and apply the best practices. They've done a lot of the initial getting-to-know you stuff. But no matter how much you shake hands and make kissy-face, you have to wonder: How long is that going to last?"

And then there's the inability to truly understand lawyers who you don't see very often or even meet at all. That can get in the way of breeding trust and camaraderie. "It's hard to have loyalty to a partnership when you don't know a lot of your partners," the consultant says. "You can become disassociated that way."

Going Too Far?

While many factors can unhinge a law firm marriage, most succeed because they're conducted intelligently, patiently, and thoughtfully. But what about the whole idea of consolidation? What impact does it carry across the profession? Some would say, as we heard often years ago, that we lose something when midsize firms combine and become megafirms. Yes, many clients certainly appreciate the size and geographic reach a merger creates; they are drawn to the "attraction of platform," as I recently heard a legal insider say. But some clients, especially those that aren't huge corporations, want to retain the familiarity, responsiveness, and regional culture they find in their 200-lawyer partnership in, say, Detroit or Memphis.

And, often many of the lawyers want their firms to stay the size they are too. They may not admit it, but many steadfastly despise even the idea of a combination because they fear they'll be swallowed up in a bureaucracy. Simply put, they don't want to lose control of their decisionmaking, and they don't want to dilute their influence in terms of voting.

I guess for now we still have plenty of midsize firms that are staying unattached and growing more steadily and organically. Many of us hope that we'll always have enough midsize regional firms to comprise a diverse legal market.

In the meantime, don't blink or you'll miss another announcement of another major combination. The Big Merge is on, and it's on a roll. ■

—Steven T. Taylor

A Tired Proposal:

Should We Worry (Yet Again) About the Future of the UK's Serious Fraud Office?

Few topics have generated more commentary within the UK's white collar criminal defence community than the perceived precarious future of the Serious Fraud Office (SFO). And not without some reason, given the failed attempts in 2011 and 2014 by the then Home Secretary and current Prime Minister, Theresa May, to dismantle the SFO and apportion the constituent parts to the National Crime Agency (NCA) and the Crown Prosecution Service (CPS) respectively.

Published on May 18, 2017, the Conservative Party's general election manifesto breathed new life into an old topic with the inclusion of the following sentence: "We will strengthen Britain's response to white collar crime by incorporating the Serious Fraud Office into the National Crime Agency, improving intelligence sharing and bolstering the investigation of serious fraud, money laundering and financial crime."

Different Beasts

It is important to place this political commitment in context: the SFO and the NCA have little in common. The SFO focuses exclusively on serious or complex cases of fraud, bribery, and corruption. It operates under the integrated "Roskill model," both investigating *and* prosecuting offences. The NCA is restricted to investigating offences, handing prosecution over to the CPS and, unlike the SFO, has a broad remit focusing on serious and organized crime, which includes cybercrime, child sexual exploitation, drug and human trafficking, and the smuggling of illegal firearms.

While the NCA's Economic Crime Command and International Corruption Unit (ICU) handles financial crimes such as money laundering and cross-border bribery, the NCA is a relative newcomer with little record of accomplishment in investigating complex bribery and corruption. As of March 2017, the NCA's ICU had no dedicated foreign bribery investigators and reported only one ongoing investigation with possible foreign bribery implications, according to the OECD's Phase 4 Report on the UK's implementation of the OECD Anti-Bribery Convention.

By contrast, the SFO has 400 permanent staff (including investigators, lawyers, forensic accountants, and digital forensic experts) and around 60 live criminal cases either under investigation or before the courts at any given time.

More Questions than Answers

The recent UK election result has added more questions to the growing list for those seeking to understand what the likely impact of the Conservative Party's manifesto commitment will be, namely:

- Why was the proposal not included in the Queen's Speech? The Queen delivers her speech during the state opening of Parliament. It is written by the government and contains an outline of the government's policies and proposed legislation for the new parliamentary session. Reform of the SFO was conspicuously absent. Does this suggest reforms are off the agenda? Clearly, the Director of the SFO is not sure as he was calling for the future of the SFO to be put beyond doubt in an economic crime conference some weeks later on July 6, 2017.

- What form would the "incorporation" of the SFO into the NCA take? Speaking at the International Bar Association's anti-corruption conference on June 13, the Director of the SFO acknowledged the inherent ambiguity in the proposal, commenting that the proposed "incorporation" could "cover anything from loose association through to full merger." In the short to medium term, however, it would seem highly unlikely, as some commentators have warned, that the SFO would simply be dismantled into its constituent parts with its investigators transferred to the NCA and its prosecutors to the CPS. That way lies almost certain operational paralysis, loss of focus and expertise, and a debilitating impact on current case load. The more realistic prospect is that the SFO would simply sit, largely as is, under the umbrella of the NCA, thereby (hopefully) retaining its staff, its focus, and its integrated approach to investigating and prosecuting offences of serious fraud, bribery, and corruption.
- What legislative amendments would accompany any such incorporation? What would happen to the Criminal Justice Act 1987 and the section 2 powers granted under it to the SFO?
- What of the Cabinet Office's ongoing review (referred to by the Home Secretary in December last year) of the UK's organizational framework, capabilities, powers, and resources to combat economic crime?
- Before any steps are taken to incorporate the SFO into the NCA, and particularly in light of the UK's pending departure from the European Union, would a proper consultation be commissioned that considers the views of all relevant stakeholders and seeks to address the reporting lines, funding levels, and staffing options of the UK's current multiplicity of economic crime fighters? These crime fighters include the SFO, the NCA, the City of London Police (including its Economic Crime Directorate, Action Fraud, and the National Fraud Intelligence Bureau), UK police forces and regional Organised Crime, Asset Recovery and Fraud Teams, HM Revenue & Customs, and the Financial Conduct Authority.
- Even if the political will exists to make these reforms within the Conservative Party, how likely are they to remain high on the agenda of a minority government tasked with negotiating the UK's exit from the European Union?
- Should the incorporation take effect, what measures will be put in place to protect against any improper political influence being exerted on the SFO's decision making? The SFO is currently subject to the superintendence of the Attorney-General's office. The NCA, however, is directly accountable to the Home Secretary, who has a legal duty to assist in determining its strategic priorities.
- Is the proposition of incorporating the SFO into the NCA so indelibly linked to Theresa May MP that the prospects of it taking place will likely mirror her own prospects as Prime Minister?

If recent political events have taught us anything, it is that we should be cautious to draw firm conclusions when facing uncertain outcomes. The future of the SFO under the current Government is one such uncertainty. It is a certain uncertainty. ■

—Alison Geary and Lloyd Firth

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Brand Management:

Practicing Law in an Age of Hyper-Democratic Communications

The accelerated information revolution of the past few decades has presented lawyers with challenges to their fundamental sense of self as professionals. Where once they could think narrowly—*i.e.*, managing risk and limiting liability in procedurally well-ordered tribunals—today the very nature of client service demands constant public vigilance and response in a marketplace where a single social media event can trigger rampant threats to their reputations and bottom-line performance.

In this environment, litigation, real or potential, is only one concomitant factor that C-Suites, Boards of Directors, and law departments must weigh in order to determine a best course of action. Today, those decisionmakers have to manage risk in an exponentially broader context where, for example, a victory in a court of law can be disastrously Pyrrhic if it ignites a social media firestorm that may lead anywhere from adverse regulatory or legislative initiatives to consumer boycotts. As such, any decision regarding high-profile litigation, for example, to settle or not to settle, must be made with a more prescient eye to the business consequence of that decision.

Lawyers can, amid this maelstrom, carefully limit their "proper" roles as advisors on legal liability. They can, if they want, dutifully take themselves out of the larger fray, separating themselves from functions more traditionally associated with "corporate communications," "investor relations," "risk management," "government relations," etc. Alas, those who do so will simply make themselves irrelevant. Today, the wiser corporate leaders eschew silos; they insist instead on seamless corporate teams that bring multidisciplinary skills to bear in order to determine what's coming next and prepare for the alternative contingencies.

Two recent watersheds underscore the anger as well as the unprecedented empowerment of diverse stakeholder segments. First, with Donald Trump's election, a "Rule by Tweet" was ushered in. It soon became obvious that any company—large or small, public or private—is potentially implicated in a complex political dynamic and cast as hero or villain, depending on one's point of view, with respect to a potentially infinite number of policy issues, from trade to immigration.

Some months later, the United Airlines scandal further underscored the extent to which major corporations remain woefully ill-equipped to manage crisis in any marketplace where crisis has become the norm. As the stakes get higher, it is painfully obvious that such companies have made little if any perceptible progress in terms of evolving best practices to meet the importunate demands of global communications.

Not just the audience, the Internet itself is also constantly changing to an extent that demands persistent attentiveness to the actual means of communication. The challenge is therefore both strategic and tactical; in other words, companies must have both a game plan and a familiarity with the ever-evolving digital tools by which that plan can be made to succeed. In 2012, for example, Google changed its analytics to give optimization precedence to spoken versus written content; it was precisely the sort of decisive "event" that should inform how corporate communicators go about their business. At a crucial moment during a crisis, or other brand-impacting scenario, global corporations and those who advise them must know,

not just what to communicate, but how to communicate it.

To some extent, the following considerations are not new as these are best practices that were certainly exigent at the dawn of the century during the early stages of Internet influence. Companies and their counselors that, at that early juncture, saw need to fundamentally rethink their priorities are today reaping the benefits. Others must play catch-up, a task all the more daunting in light of the accelerated speed with which the social media are expanding even as regulators, plaintiffs' lawyers, the media, and global consumer groups relentlessly up the ante.

Daunting or not, 21st century businesses have no choice but to play the game. Here are a few essential rules of that game.

Teams. In an age of permanent crisis, crisis teams cannot be ad hoc; businesses must operate on the assumption that deployment isn't a matter of "if" but "when." Initial leadership begins at the top, in the C-Suite. Absent leadership from that quarter, it becomes a fiduciary duty of the Board to demand that crisis teams be selected and trained, and to ensure that the make-up of the crisis team reflects the aforesaid multidisciplinary spectrum, which also includes IT and social media expertise as well as legal, IR, HR, financial, etc. Ideally, though, the team should be a direct arm of the CEO, an elite squad of trusted managers assigned by him or her, and who, when the crisis occurs, will help maximize the CEO's impact as spokesperson and leader.

In this process, in-house counsel is well-positioned to support and inform the team formation. As lawyers with presumably close involvement at multiple operational levels, they have a unique grasp of corporate liability on a day-to-day basis along with a telescopic view of the trending laws, policies, etc. that signal future liabilities or future opportunities in the making. In-house counsel is indeed better positioned than ever to play a leadership role to both support compliance and help create safeguards against the sort of systemic breakdown that, for example, vitiated United's response to its crisis and left CEO Oscar Munoz dangling in the wind for a full 17 hours after the video of a passenger removal went viral.

Formal training should begin immediately upon the formation of the team and should include tabletop exercises, role-plays, and test runs. The larger benefits are manifold as an essential trust is built up among team members. Protocols and lines of intra-team communication are established; new trends are reviewed; new contingencies evaluated; new Internet tools assessed. In most cases, the tabletop exercises are best conducted by outside legal counsel and/or communications counsel who can bring a fresh perspective to the problems themselves, with a judicious eye as to how well the organization is actually prepared to respond.

Privilege. Such an outside perspective is indeed essential; corporations in or out of crisis must, after all, see themselves as others see them. To that end, the most successful risk management successes have typically entailed a close working relationship between law firms and communications firms. In most instances, the law firm thereby plays an additionally needed role by extending privilege to the communications or risk management experts with whom they partner. It's important to remember that in-house corporate communications staffs may have not been tested in the crucibles of crisis management; their work is often more geared toward brand enhancement during peacetime. As a result, they may be ill-equipped to assiduously protect the privilege.

Chronology. In any crisis, and certainly a complex one, the team needs a comprehensive schedule of events, past and upcoming. It is not merely a secretarial tool; it is a template by which to respond to any number of inquiries, from the media or elsewhere, as well as a chart of possible exposures. Once those exposures are prioritized, the focus of team discussions can be prioritized—with, say, the General Counsel or outside counsel

front and center if potential legal outcomes are salient, or the investor relations team member if a shareholder action impends. In some instances, a company's approach to a disastrous crisis bespeaks just such well-advised organizational practice. During the multifaceted Gulf Oil crisis, for example, BP seemed by and large able to respond authoritatively enough to months of grueling interrogation in large part because it was in command of the details of its own story.

Only after such "command" is obtained should companies think about what "messages" they want to communicate or the substantive position they want to take. Messages are really tactics, not strategy; if the goal is to quiet public attention, silence on the part of the defending company may in certain circumstances be the best message of all.

Speed. It is both a strategic and tactical imperative: Communications, to be effective, must occur at Internet speed if the company expects to control the narrative to any extent whatsoever. Johnson & Johnson had five days to publicly respond during the classic Tylenol crisis; in the Internet era, BP's CEO Tony Hayward had absolutely no time.

Primary among United Airlines' salient blunders in its 2017 crisis was the 17-hour delay in responding to a story that was already going viral on the other side of the world (especially in China, a key United growth market). The CEO's initial response was a letter to employees that arrogantly hit all the wrong notes; by the time Munoz issued a more suitable statement, his own failure to do so earlier had itself become a parallel narrative, thus casting the airlines in a doubly negative light.

Again, the early training of a cohesive team, formed ahead of need, is essential. Once a crisis occurs, there's no time to set protocols or decide who among the senior leaders is best suited to consult on next steps.

Tracking. In order to respond ASAP, you must know ASAP what you'll have to respond to. To that end, the team should include or be daily briefed by Internet experts who deploy the most efficient technology to monitor the social media. The software systems are readily available by which every mention of the company anywhere online can be tracked.

With a robust monitoring system in place, decisions can then be made about the importance of any mention, which can be simply ignored, or publicly refuted, or deciphered as an early warning sign of a much larger storm that might be brewing. Certain bloggers are "high-authority," and will usually justify the team's attention. Certain patterns may emerge, when, for example, an outlier, earlier dismissed as a crank, now seems to be gaining attention and credibility among more traditional audiences.

Here too it's apparent when a company has or has not done its homework. It seems likely that in 2016 Mylan ignored or discounted clear signals that its 400 percent Epi-Pen price increase was inciting an online rage that would eventually become a political tool for both Bernie Sanders and Hillary Clinton. The very fact that comparisons of that price increase to exponentially lower cost schedules outside the U.S. were being pictorialized in the social media should have struck an immediate nerve.

Again, the use of visuals in any digital context should at least suggest the imminent possibility of a viral event. Similarly, United either did not know about the video of the passenger removal or inexplicably chose to discount its importance. Such corporate obtuseness is inexcusable in either case.

Conversely, Domino's Pizza's use of social media to effectively defuse a crisis that started in 2009, when video of rogue employees went viral, has become a textbook example of effective public communications in the Internet Age. But that salutary response could not have been possible had the company not known and fully assessed the threat early on—and had the resources, human and otherwise, in place to respond at once.

Importantly, though, the team must be equally vigilant in tracking less dramatic warning signs that often appear in far less conspicuous forums. A most painful example is Penn State's sex abuse scandal, which first surfaced on a campus intranet. Those were then just rumors, not evidenced or actionable, yet a sure enough sign the story might not be containable despite the wall of official silence. For the school, the first order of business was to have known that those conversations were happening in public.

Such tracking is as key to larger issues management as it is to crisis management. Fracking, GMOs, energy policy (*e.g.*, Keystone)—the staunch and effective opposition on these fronts was invariably traceable to the first fetal movements of online advocacy. Far from limited to Google searches or tomorrow's *New York Times*, there are numerous opportunities for industry vigilance; simply counting hashtags tells a story, at least preliminarily. Monitoring retweets will then disclose, not only the source of an opinion, but, more crucially, who's reading and possibly sharing the opinion.

For the natural gas industry, for example, the significance of the oppositional HBO film *Gasland* was less the film itself than its extended life online, especially as the site invited viewers to provide identifying information, which is one good way to start a grassroots movement. Yet the surveillance failures of the energy industry allowed a dominant public narrative over which they had dramatically reduced control, so much so that the industry has, perforce, even acceded to the use of the name "fracking," an invention of its enemies.

Naturally, all online activity by adversaries—past, current, and foreseeable—should be especially targeted for monitoring. Plaintiffs' bar is another obvious and formidable example. Obvious, because plaintiffs' counsel do a significant share of fact-finding and client recruitment online. Formidable, because not all their digital activities are direct solicitations as surrogates (NGOs, independent bloggers, etc.) typically front their informational campaigns. In any event, persistent attention to the online activities of the plaintiff's bar is warranted for reasons that go beyond litigation; if any matter is of interest to trial lawyers, there may well be consequences outside the courtroom in terms of reputation management or marketing.

Dissent. Full team preparedness doesn't mean that, given the specifics of a breaking crisis, there won't, at the moment of impact, be opposing views of how best to proceed. To the contrary; one of the first actions by the team leader should be to invite the other members to fully air their views. For lawyers in particular, it's a challenging role as lawyers are trained to see their own priorities dominate any discussion of a situation where the client faces significant risk.

At one team meeting during the BP crisis, lead outside counsel presented his views and ended by asking, "Now tell me why I'm stupid." By asking that, he proved how smart he was.

Culture. Effective communicators know that one size never fits all, and that different audiences will demand different reassurances. In a global context (the commonest context in today's marketplace), the differences are both fundamental and nuanced; it is often useful to bear in mind certain overall cultural traits that can guide the communications team in any sort of situation, whether they're parrying negative perceptions, going on the offense, or advocating policy changes. In China, there may be an overriding need for order that should inform public responses; in Japan, a social shaming mechanism; on Wall Street, a sense that the control of events is paramount.

In turn, different stakeholder groups within any one culture may be variously influenced based on self-interest. Employees have an interest in job security; they want to be confident that, whatever the situation, management is on top it. Consumers want to know they won't be poisoned or injured by buying products from a company during a

recall, or they will simply want to know why they should continue to buy from a company that seems to be behaving badly, versus a competitor that seems to be a more responsible corporate citizen. The "messages" to these distinct groups may be different but they cannot conflict: United employees may need to be told that they're working for a great company, but not in a way that minimizes the distress that company has caused its customers, especially since no "internal" communication to 85,000 or so employees is ever really internal.

Sacrifice. Irrespective of whether an attack on a company is justified, or whether a critical situation is or is not anyone's fault, the team must be ready to pacify the gods via a sacrifice of some sort. Such sacrifice may be as simple as an apology, which is indeed a form of sacrifice. Here, lawyers must be particularly open to rethinking their instincts. An apology acknowledges culpability and culpability equals exposure, which lawyers are trained to avoid. But if the brand is at risk, the brand comes first, even if it means a wholly disadvantaged position at the settlement table.

On the other extreme, sacrifice often takes the form of a personnel change; CEOs themselves are frequently the sacrificial goats. The option to discuss any sacrifice, involving anyone, is something the team must feel empowered to exercise at any point during a crisis.

Sacrifice often entails goal-switching. When Sully Sullenberger had his close encounter with the Hudson River, he wisely did just that. At a critical moment, saving the airplane was no longer the priority; saving the passengers was. Sullenberger's airplane was just one company asset among many; likewise, there are often much more important considerations than a lawsuit.

Third Parties. The most convincing spokespersons for a company in any communications scenario are often those who seem (and often are) most disinterested. For lawyers, such third parties are especially useful when counsel cannot comment on a case but does actually want to. In that situation, an academic or industry spokesperson or public official can function as a surrogate. Here again, the race is to the proactive; such third parties should always be identified and recruited ahead of need.

Third parties provide an opportunity for a variety of strategic options. It may, for example, be wise to coopt the adversary's position with spokespersons normally associated with that position. Get a leftist on your side if the attacks are coming from that direction; the more to the left, the better. Do the same on the right if the converse is true.

Prescience. Brand protection in the digital age is by no means a strictly defensive maneuver. The multifaceted prophylaxis that we have discussed is also anticipatory, not just of legal and reputational liabilities, but of larger trends along a broader socio-cultural spectrum as well. The possible benefits of such prescience redound across the board. Early clairvoyance might, for example, prompt you to local, federal, or trans-national legislative outreach, or help generate ideas for new products and services, or pioneer new avenues by which to protect or acquire intellectual property.

It's become a cliché, that crisis spells opportunity. But such opportunity is only there for those poised to seize it soonest. ■

—Larry Smith

Cultures of Cooperation:

Leaders Get the Behavior They Tolerate

Cooperation in the workplace is a valuable commodity. While it can be challenging to achieve anywhere, your garden variety corporate enterprise is armed with a whole host of tools to facilitate it: a well-articulated and expansive growth structure; strictly defined roles among the workforce, management, and leadership; highly differentiated and flexible compensation structures; and profit sharing, stock ownership, pensions, and other long-term enticements.

Law firms, on the other hand, are a different animal. Their structure is fairly flat and efforts to corral the more senior attorneys into a single or two-tiered pool—a "partnership"—can create ambiguity. Responsibilities are often loosely articulated, creating confusion about priorities, client intake, time management, etc. There are no full-stop long-term incentives. Compensation models, while focused on incentivizing cooperation, among many other things, are challenged by the intense competition for clients and the tension created by the billable hour. The list goes on.

This type of environment creates stress, particularly where human interactions are concerned. As consultants to the profession, we have often observed that those seeking lateral opportunities are decisively affected by the toxic environments created by colleagues. As such cultures represent a primary challenge for law firm leadership, we recently conducted a survey of major law firms regarding detrimental behavior and how they handle it (or don't, as the case may be).

We polled firms ranging in size from 100 to multiple thousands of attorneys and explored the following issues: how firms define and articulate "detrimental behavior;" the characteristics of detrimental actors; reporting policies and procedures; the governing of detrimental behavior; and behavioral modification processes. Our results were compiled from 124 responding firms, approximately half from AmLaw 100 and 200 firms.

Sobering Results

Some of the more interesting things we learned from this cross-section of data included:

Values and Detrimental Behavior

Among the AmLaw 100 firms responding, 87 percent claimed to have written value statements but only 20 percent have clear and tough sanctions for behavior that does not comply with their values. When queried as to whether compliance with firm values is given weight in the firm's appraisal process equal to other areas such as technical competence and billable contribution, only 11 percent said "yes."

Behavioral Modification

Fifty-nine percent of respondents have "used 'detrimental behavior' as a reason to reduce a partner's compensation in the past five years," while 52 percent have asked partners to leave in the last five years for "behavior that offended their values."

Types of Detrimental Behavior

The top five most common detrimental behaviors that firm leaders cited were:

- Bullying behavior and lack of respect (89 percent of respondents)
- Not being a team player, having a "me-first" personal agenda (84 percent)
- Poor matter management habits; for example, submitting hours on time, etc. (80 percent)

- Failure to achieve work quality standards (76 percent)
- Negative attitude infecting others (69 percent)

Some of the other behaviors offered up included blocking the advancement of others and acting out; failing to share credit; failing to treat staff with respect; not managing files to a budget; big egos engaged in internal empire building; failing to address and support diversity; and general poor behavior, that is, "the a–hole factor."

Processes for Handling Detrimental Behavior

Sixty-six percent of the firms told us that they have a confidential path for complaints, but only 33 percent of all firms have a "formal complaint process, written clearly and in plain language," and only 54 percent have any kind of "formal follow-up process with the complainant."

Psychological Challenges

Perhaps most interesting was the resistance that firm leaders lamented when confronting the detrimental actors. Forty-one percent of the firms said that discomfort among leadership in challenging detrimental actors has been strong enough to delay addressing the problem, while 22 percent admitted that the discomfort was strong enough to altogether prevent leaders from addressing the problem.

Now, bearing in mind that 70 percent of responding firms claimed that the primary responsibility of confronting the bad actors falls to the managing partner (or whatever other title is given to their alpha), most firms burden a *single* person with the unsavory task of confronting a difficult topic with an actor who has a propensity toward belligerence. In that context, remember that 89 percent of respondents noted bullying as the most detrimental behavior. We can't imagine that anyone would be rushing to confront such a situation. While we *are* speaking about those leading from the top of a pyramid of top-of-the-food-chain attorneys, they are still people.

Let us not also forget the potential for preexisting relationships. Ed Reeser, the former Office Managing Partner of an AmLaw 50 firm, had this to say:

> It would be rare that the MP did not owe some significant support, if not the defining percentage necessary to have themselves elected, removed, or marginalized, to a majority of these partners who display bully behavior. Take one bully on and win, and you become more a threat and less an ally to others—unless they themselves appear to be concerned about it impacting themselves—not to mention making an outright adversary of the now openly challenged bully who will never forget what you have done and will now be ever watchful for an opportunity to return the bullying focus upon the MP. Ultimately, you will have to outlast them at the firm, or push them out, all with the clear and hopefully consensual support of the other bullies. It is not a casual confrontation or education, and actually changing them is quite unlikely.

Structural Challenges

Taking it a bit further, we asked about compensation as it relates to detrimental behavior. We found that 75 percent of detrimental actors had compensation equal to or higher than the firm's averaged PPP. We also explored how (client) book size and internal clout affected the handling of detrimental actors, finding that 38 percent of firms have allowed detrimental behavior to continue because of the size of someone's book, while 36 percent have allowed detrimental behavior to continue because of a partner's overall clout.

The importance of client development is a commonplace truism and not unique to the

legal industry. Robert J. Lees, co-author of *When Professionals Have to Lead*, says this about the accounting industry:

> My experience from working in large accounting firms around the world is that the absolute drive for sales and the over-reliance on big client partners gave these partners absolute power over anyone else. They … are, in way too many cases, absolute gods, with delivery—actually doing the work—well down on the list of importance … Every MP I have known has struggled. After all, when there's no job description and little or no development, what chance have you got?

The uniqueness of a law firm's DNA can only amplify a firm's vulnerability. As partners at the firm, law firm leaders do have a degree of discrete influence but their leadership still effectually resides on the same plane as those they are technically supposed to lead. The actual reality precludes true separation of power and interests, and can leave a somewhat declawed leadership vulnerable, in some ways impotent to modify the bad behavior.

It is not a reflection on these leaders. It is an observation on the realities of law firm governance.

Further, professional rules make it impossible (for all intents and purposes) to lock attorneys into a firm with a noncompete clause. Clients increasingly want to do business with star attorneys, not necessarily with a branded law firm, which naturally creates a free-agent market. As a result, disgruntled lawyers with big books of business can go mobile in a relative instant. Combine this dynamic with a shrinking and consolidating market, and we find that many if not most firms cannot afford to risk upsetting their gorillas in the mist.

What Can Be Done?

While firms can just grin and bear it, we think our survey results underscore the need for firm leadership to take decisive action. The only way to change bad behavior is to change your behavior toward it. In other words, leaders need to strongly signal that bad behavior will not get the bad boys what they want, and that there will be consequences if they persist.

It is illuminating to look at the link between bad actors and the paltry 11 percent of respondents who told us that compliance with firm values is given equal weight with billable contribution in the firm's appraisal process. Establishing your firm's values and corresponding behaviors requires a continuing effort throughout every office in the firm, with ever constant reminders, explicit references to the firm's cultural values, and overt praise for good examples.

We heard a great example of how one managing partner reinforces the firm's values by having all associates nominate those partners who, based on their experience, did the best job of mentoring. At the firm's annual retreat, the managing partner then called upon those who received the highest scores from each practice group to come up to the front of the auditorium to accept a small token of the firm's appreciation. "I did not need to point fingers at those who weren't doing their part," he told us. "Never underestimate the power of peer embarrassment to help shape the behaviors you want."

We are also reminded of Netflix CEO Reed Hastings who in 2009 released a 124-page PowerPoint entitled, "Netflix Culture: Freedom and Responsibility." Not unlike the written value statements that populate so many law firm's Web sites, this document emphasized the importance of decent behavior as well as professional competence. But Netflix goes further, with swift termination of those who break the rules. The result has been a firm culture renowned for being positive, supportive, and efficient.

Perhaps a committee should be formed to address the problem rather than leave it to a single person. A dilution of the bad actor's

focus would inevitably occur, and broaching bad news is always better in groups.

Robert Sutton, the noted Stanford professor and author of *The No Asshole Rule* (2010) makes the case for also adjusting hiring practices. The best firms spend an inordinate amount of time, sometimes even using psychometric testing, to ensure that a candidate is socially competent. If they obtain evidence to the contrary, they don't try to fix the problem. They just don't hire the problem. For law firms, this best practice should be in force no matter how big the corresponding book of business involved.

It may be easier said than done, but the collective sanity depends on it. ■

—David J. Parnell
and Patrick J. McKenna

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Life After Trump

Continued from page 2

long-term uncertainty, particularly until we see if there's a statutory change."

As for Whiting, she's dealing with another example of shifting policy, in this case one that has already made several twists and turns and will probably take more, leaving her clients in a state of—to use that term again—uncertainty. Emanating from another Obama-era environmental protection regulation, this one involves a rule that would require the oil and gas industry to take steps to monitor and control methane emissions more diligently by installing and using expensive infrared technology; it's a rule that industry considers onerous. Since the Trump-appointed EPA administrator Scott Pruitt took the helm of the agency, the regulation has been embroiled in litigation (*The Clean Air Council vs. Scott Pruitt*) as well as requests for congressional reviews in attempts to nullify it and compliance deadline delays and "mandatory reconsiderations" and Washington DC Court of Appeals and other court rulings. Essentially, the regulation is taking about as much of a bureaucratic roller coaster ride as any policy can experience.

> *"The executive orders and the DOJ directives contain plenty of ambiguities so we all have a lot of questions about how the agencies are going to apply these orders and directives."*
>
> *Laura Whiting, partner, Gardere Wynn Sewell*

"This rule is a perfect example of a particular EPA regulation going through all kinds of gyrations under the new administration," says Whiting, who, in service of her clients, has had the challenge of tracking all the movement on the rule. "I had clients who this spring had been developing [high-tech] monitoring plans. They already spent money with consultants. I told them that I'm sure this is what the EPA intends to do, but I'm not sure if it's legal under the Clean Air Act and the Administrative Procedures Act. The court said that it wasn't legal." So at least for now, the methane rule stays on the books, and her oil and gas clients are back to work looking at how they'll be able to comply with the regulation—if, indeed, it sticks.

But the regulatory and judicial activity keeping environmental lawyers busy isn't confined to that coming from the corridors of our nation's capital. Policy moves in the states are keeping lawyers' phones ringing as well.

States Stepping In

While the EPA and other agencies change or repeal rules, weakening environmental protections, several state governments are increasing their regulatory activity, especially those with agencies that serve as the primary enforcement mechanisms. States like New York, Oregon, Washington, and particularly California are working to step in where the federal government has stepped aside.

"In many states federal enforcement is the primary enforcement," says Jon Welner, a partner in the 12-attorney government, land use, energy, and environmental group of Los Angeles-based Jeffer Mangels Butler & Mitchell. "In California, it's quite the opposite. In a very public way the governor has taken action and said, 'We are the antidote to what is happening at the federal level regarding environmental backtracking.' I have noticed some increase in the level of environmental focus and enforcement in the state. For individuals and companies operating in California, everything is continuing full speed ahead."

Welner has seen an increase in air emission matters, which is helping to keep his

workload full as are meeting clients' needs while they work to comply with clean water regulations at the local level. "Regional water boards," he says, "are very independent actors in California and are charged with protecting groundwater from hazardous substances. They continue to enforce in a very vigorous fashion and clients are regularly approaching us for help in dealing with cleanups and moving forward in that way."

Some environmental attorneys are seeing rule repeals at the EPA slowing down their client matters, but as deregulation continues, they expect a possible uptick in litigation brought on by nonprofit environmental watchdog organizations, according to Derek Seal chair of the seven-lawyer environmental group at Dallas-based Winstead.

"Some of the work seems to have diminished a little because of less regulatory pressure," Seal says. "But it hasn't slowed down enough to cause a sea change in what the law firm does. And with the decrease in activity there's talk that there might be a shift from regulatory activity to more litigation from environmental groups. We don't know that's what's going to happen, but there's a lot of speculation about it. Everybody is trying to be prepared for what might happen next."

Tempted to Non-comply

Here's another potential factor that environmental lawyers might need to think about: It's very likely that, even if EPA officials aren't successful in repealing all of the regulations they would like to, they'll go light on enforcement. If this does happen, and many believe it will, some say a complex and environmentally and legally risky trend might emerge. With companies constantly looking to cut costs and deliver higher profits to their shareholders, corporate leaders might see this as an opening simply to direct their operations manager to purposely not comply with existing rules that often cost a lot of time, effort, and money and shrink the bottom line.

That is, a C-suite leader might essentially say, "The EPA isn't coming after us no matter what so let's just look the other way and ignore the regulation." Some sources think this is a real possibility. "I'm 100 percent certain that there are those conversations going on right now in industry," says one insider who asked not to be named and added that clients aren't going to ask their attorneys if they think it's okay to disregard a regulation.

But usually Corporate America falls into compliance with environmental statutes and directives. "Most companies in an industry that has an environmental component to it, especially those in California, are very aware that they need to comply and build it into their business plans," Welner says. "The smartest companies come to us early and work as closely as possible to make sure that everything goes smoothly in terms of compliance."

> *"The smartest companies come to us early and work as closely as possible to make sure that everything goes smoothly in terms of compliance."*
>
> *Jon Welner, partner, Jeffer Mangels Butler & Mitchell*

Sometimes, Welner adds, even well-meaning companies have trouble complying because the rules are so complex and, consequently, they violate environmental laws and become entangled in an investigation. "It's easy to proceed with all good intentions and then find yourself in a situation where you need help with regard to some sort of enforcement action," he says.

Of course, it's the attorney's job to encourage full compliance no matter how much

clients think a regulation is too onerous, expensive, and unnecessary. Companies have to be sure to communicate the right message to all of their employees.

"Companies are uncomfortable if they think they might be sending a message to disregard the regulations," Gardere's Whiting says. "While a senior manager may be very troubled and not like a regulation thinking it's too expensive and too hard to implement and doesn't achieve a valid goal, they still can't send a message of complacency and disregard for the regulations to someone in the plant who is responsible for turning valves, keeping the chemicals in the pipe, and keeping people safe. It could hurt people and get the company in legal trouble."

Clearly, this is not the first time the EPA has shifted into a more laissez faire approach to regulations. The Reagan administration was famous for pulling back environmental protections in favor of business concerns. Reagan's first EPA administrator, Anne Gorsuch Burford, and the assistant EPA administrator, Rita Lavelle, led the agency with a hands-off-industry philosophy. While many regulations were rolled back and enforcement slowed to a crawl, most environmental attorneys continued to encourage their corporate clients to comply with natural resource protections and most did. And of course, the agency lived on.

"During the Reagan administration, Anne Gorsuch and Rita Lavelle came in and directed us to stop enforcing the law, and we survived," says Neal Gerber Eisenberg partner Zebowitz, a former environmental attorney with the EPA. "We persevered. The EPA will survive and the regulations will survive. I do think some of the environmental regulations are vulnerable. Unfortunately, there is a possibility that they could completely reshape the environmental regulations in America. But my clients are going to do the right thing. Companies are committed and they're sending the right message to their stakeholders. As attorneys, we're here to help them." ■

—Steven T. Taylor

Of Counsel Profile

Continued from page 24

other Web site I've ever seen a law firm have. Although it would differentiate us, the other two would be fine and you guys wouldn't have to take any grief with people asking why we have these pictures with so few words.'"

Well, the chairman took a few days to think about it and then decided to take the differentiating design, McMurray's favorite, to the board for consideration. "They voted nearly unanimously for the leading-edge design," Fuqua says. "That's the one we have because Deborah took the chance. I didn't have the courage to do it."

Like many of Content Pilot's clients—and people throughout the legal profession—Fuqua holds a lot of respect for McMurray and her marketing and strategy skills as well as her upbeat personality. "Deborah is extremely positive and has faith in the people she's around," he says. "You get that for free. You don't have to deserve it, and you don't have to earn it. Deborah was one of the original marketing professionals in the industry, and she's known for the width and depth of her expertise and experience. She and her group understand website technology and the website experience and value for law firms like nobody else. That understanding and experience is a huge asset for us."

Recently *Of Counsel* spoke with McMurray about her unique career, her business, the legal profession, what constitutes a very good law firm website, and other topics. The following is that edited interview.

"Circuitous" Career Path

Of Counsel: Deborah, you earned a masters degree in music at the University of Michigan where you played the flute. Why did you decide to go a different route with your career and get into the legal profession, and how did you go down that career path?

Deborah McMurray: Well, it was a very circuitous path. I became a professional musician, playing classical music and also teaching music. I had a nice career but I realized, after a couple of years, that I was a morning person not a night person. When you're musician, your recitals and performances are always at night and then you go out and have dinner afterwards. It was a very interesting and provocative lifestyle for a young person, but ultimately I realized I just never felt that I was at my best.

I was really interested in marketing and thought it was the perfect blend of business and creativity. So I worked for the March of Dimes, and as a marketing director for a couple of oil and gas companies and then at an advertising agency. Soon I started a marketing and PR consultancy in Denver in the mid-80s and worked with the director of marketing at Arthur Andersen. We worked together for three years and created a lot of very creative advertising campaigns.

I went on to get additional education and was contacted by a big headhunter firm which was doing the first search for a marketing director for the largest law firm in Dallas, Johnson & Swanson. Now I'm a good Norwegian and I thought, "With names like that these must be my people." [laughter] They hired me, and it was a really hard environment because they didn't know what marketing should do. They pretty much wanted to stay away from me and out of my way. Consequently, I was able to do some very creative things, including things that other law firms were taking a look at and wanted to emulate.

I stayed there five years and then went to Hughes & Luce across the street, where I worked for six years. I designed my first website in 1996, but the managing partner at the time pooh-poohed the idea of the entire Internet and said, "It's not going to last." [laughter] So I didn't get a lot of internal support for that, but it was important that we had a website.

Then I started [another] consultancy and did a lot of positioning and branding in the late 90s and early 2000s and that's when content management systems were introduced. That made it more interesting because the law firm could have a snappy new website and make content changes themselves as opposed to having to go back to the developer for changes. All of a sudden the technology was interesting enough and advanced enough that it was clear that websites were going to become a critical part of a law firm brand. That's when I fell in love.

OC: You started Content Pilot in 2006. What we were the goals for the company?

DM: I didn't want to be the biggest, but I wanted to be the best and the most creative. That was the position I was seeking.

Frustrating/Satisfying

OC: What's frustrating about working with law firms? And then I'll ask you what you really like about it.

DM: I have to start by saying that I really love working with lawyers. I love their exacting, demanding, intelligent nature. I love their DNA. One frustration though—and I saw this at the second law firm I worked at—is that law firms hire smart management professionals, chief marketing officers, chief information officers, chief strategy officers, chief pricing officers and their teams. They hire them and pay them a lot of money, but some firms don't listen to them as often as they should.

I'm affected by this as I try to work with those teams and we're not getting support from the lawyers so I feel some of this frustration too. I wish the lawyers would have more trust in the teams of the really brilliant and terrific people they hire.

OC: I think that's a fair assessment and I've run into that as well. Let's flip it around now. What satisfying about working with law firms?

DM: I think it's really exciting to walk into a room that has a firm's management committee or board of directors and have a discussion about who they are, where they want to go, what issues their clients face, and what they see on the horizon in a particular area. I like getting them to talk about these things and then synthesize all of that, distilling it, and coming up with a new strategy for them, either a broad positioning strategy and the messaging that goes along with that or a new website strategy or a new technology strategy for business development. I think it's so much fun to hear them describe—in passionate ways—who their clients are and what they do. A strategy is born from that conversation, as well as from additional research, and then we present it to them in a way that often results with them saying, "Wow, that really is us. You really get us." That's an exhilarating moment.

OC: I'm guessing it's a little like playing classical music on your flute. You read the sheet music and hear it in your head, distill it, and then perform it. You have to synthesize it all first. Maybe I'm stretching it, but does that music analogy work?

"I think it's really exciting to walk into a room that has a firm's management committee or board of directors and have a discussion about who they are, where they want to go, what issues their clients face and what they see on the horizon in a particular area."

Deborah McMurray, CEO, Content Pilot

DM: It works really well. It's a great analogy because when you have a difficult piece of music you spend hours and hours by yourself in a practice room focusing on the most elemental thing, literally one note, and trying to play that note the way the composer intended and

then you put the notes together. You need to have the facility and accomplishment, and then you layer your musicianship on top of that.

So when I see and hear the lawyers in the room talking about their subject-matter expertise and what their clients are doing, I consider that to be the composition, and then I bring the musicianship to it. I sometimes hear people describe themselves as an orchestra conductor. It's not that at all. I don't see myself that way at all. I see it much more as a way of taking the composition the lawyers have, which is complex and riveting on paper, and then finding a way to make it more than notes on a page.

> *"When you look at [law firms] you can see that many of them are doing pretty much the same thing. So you need to find out what makes them different because they are different, in various ways. I feel like it's my job to understand that."*
>
> *Deborah McMurray, CEO, Content Pilot*

When you look at law firm A, law firm B, all the way down to law firms X, Y and Z, you can see that many of them are doing pretty much the same thing. So you need to find out what makes them different because they *are* different, in various ways. I feel like it's my job to understand that.

OC: Deborah, thanks to creative people like you in the legal profession, law firm websites have gotten a lot better. Although some sites still do a disservice to their firms because of boring designs and poorly written content, many of us have seen a great improvement just in the last few years. You've been a pioneer on this front. When you see a website that needs to be revamped what are some of the typical things that need changing?

DM: The first thing I see is a lack of courage and fear of differentiation. Lawyers always say that they want to differentiate themselves, but many of them are fundamentally afraid of being different. In a recent study [she and her team conducted], of the global 50 firms that we looked at, 21 of them had no visible strategy.

So what happens is that without any overarching message and strategy many of them start looking alike. Firms need a strategy that is going to guide the lawyers. The overall strategy needs to filter down to the individual practices to help the lawyers who are walking and talking about these things and are trying to convince clients that they and their global law firm are better than the practitioners down the street.

Adding Humanity

OC: Let's talk about the writing in the websites, the bios, the practice group descriptions. What are a couple elements that make for strong writing in this content?

DM: I'm going to add a little introduction to my answer to your question. I think the people at law firms instinctively know what I'm about to say but often they don't behave like they do. Based on 25 years of research and thousands of interviews with corporate counsel and senior executives of corporations, I see that the buyers of legal services make their buying decision on two levels. When they're making their shortlist [of prospective law firms] they're identifying things that are important to them that they can check off a list, for example, an office in, say, Tunisia, another one in Chicago, experience with multiple currencies, alternative billing rates that include hybrid arrangements, lawyers who have 25 years experience—all of these different types of things. Check, check, check, check.

They're making a technical or intellectual evaluation of the lawyers and they're focusing heavily on experience: What have you done? For whom have you done it? And then ultimately, what can you do for me? They do this in a very specific way. So the lawyers have to sell first at this intellectual level.

Then, when the buyer is making the buying decision in choosing the one lawyer or law firm they want to hire, they're making an emotional decision. And it's all about the heart. Do I trust this person? Do I like this person? Do I feel this person will have my back? If you sell very well at that first, intellectual level but you're not making a personal connection, you're just not going to get hired. With all things being perceived as being equal on the first level, the client will choose someone who is more likable. They will hire the other lawyer or law firm.

Many lawyers really don't like to acknowledge this. People who live in their head don't like to admit that this takes place. But it absolutely happens.

So when you get to the writing of the bios, we have created what we call the three-dimensional bio. It's a nice cheat sheet for lawyers who need to review their bios because it gives them a framework of the content they should include. The first of the three dimensions is to demonstrate expertise, which is what I was talking about in terms of selling on that shortlist level. The second one is to prove relevancy, and the third one is to show humanity.

The very best bios are doing all of those things. Now, some might think that proving relevancy is the same as demonstrating expertise, but it's different because demonstrating expertise is about what you've done that's in line with what they are seeking. Proving relevancy is being the person that they need at that moment to give them something in the future. [McMurray goes on to talk about ways this can be done; one, for example, is to include early in a bio important and relevant keywords that come up in a Google search.]

Often where lawyers really fall short is in the show humanity piece, and that's where we're trying to shortcut the pathway to trust and likability by proving that the lawyer is a nice person and a well-rounded person with discipline and interest in other parts of his or her life, like an interest in historical fiction or classical music. The client might like historical fiction or classical music and say, "All right, that's interesting. We have something in common." People want to do business with people they like, and that after-hours component adds a dimension to the personality that makes you more interesting as a person.

OC: As you know Deborah, I've written bios for law firm websites and a lot of times I found that some, perhaps many, lawyers don't want to do that.

DM: Right, often they don't want to do that.

OC: They seem to think that it's not professional. While they want to be perceived as well-rounded people with other interests, they often feel they shouldn't express this in writing on the website. I think it's unfortunate.

DM: It is unfortunate. I'm talking and writing about this a lot. I feel very strongly about it and believe that law firms just can't keep doing the same thing and expect to get hired over and over again. The marketplace is just too competitive. More and more we're seeing nontraditional providers, contract lawyer services, and outsourcing to India and other places. There are just so many different ways to get work done that is outside the law firm structure. So they have to work hard to get the same amount of work in the door.

OC: You're helping them find that pathway as you position them via their website and in other marketing efforts.

DM: That's our goal. We do as much as we possibly can do to set the stage for them to be more effective from a business development

standpoint, and then it's really up to them to have courage and get out there.

OC: Is there anything you would like to add about what you do or your company?

DM: One thing I'd like to share is something I believe makes Content Pilot unique. There are several excellent development companies and excellent design firms, but I think what really makes us different and makes us stand out is that we are equally a strategy, design, content, and technology company. We describe ourselves as a four-legged stool with equal balance. It's very unusual to find all four disciplines under one umbrella, but we do this without being a huge organization. We have 25 employees and we have a very terrific and enviable client list that we are very proud of, ranging in size from the largest law firm in the world, Dentons, to an 11-lawyer boutique in Denver. We are proud of every single one of our clients.

Because I spent 11 years inside law firms, in the marketing department, and other colleagues of mine have also been in the marketing or IT departments at law firms, we know the environment and how to get things done. It's just different than the approach other companies take. Law firms are unique places and because we really understand law firms and how things get done and what buyers of legal services are looking for in the law firms, I think it gives us a leg up.

OC: You just proved that you practice what you preach. That is, you are able to talk about what differentiates your company, which is what you advise law firms to do: differentiate themselves from their competitors. Nicely done.

DM: Thank you. ■

—Steven T. Taylor

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Of Counsel *Interview* …

With Decades of Law Firm Service, Marketing Pioneer Continues to Impress

In the spring of 2013, chief marketing officer Allen Fuqua of Texas-based Winstead and Deborah McMurray, the outside Web site and marketing expert he had hired to revamp the law firm's site, were presenting two designs to the partnership's chairman of the board and its executive director. The law firm leaders were trying to decide which design they liked the best and then they'd recommend that one to the entire board.

Initially, however, McMurray and her team at Content Pilot—a national company out of Dallas that she founded and for which she serves as its CEO and strategy architect—had created three designs. But Fuqua had rejected the third one. "That one was very leading edge graphically and emphasized the visuals over the words," Fuqua says. "It was kind of counter-intuitive to a law firm, but it was very beautiful and carried a lot visual impact."

Fuqua says he liked the design and thought the other two were dynamic and creative as well. "All three of them were pushing it but that one was very leading edge," he says. "I told Deborah that I didn't want to put that one in front of the partners. It would give the lawyers too much grief because people would think, 'This doesn't look like what all the old-line law firms look like.'"

Later during the meeting with the chairman and executive director, the chair asked McMurray which of the designs was her favorite. "Well," Fuqua recalls, "Deborah says, 'It's not here,' and I immediately wanted to reach across the table and strangle her. I'm thinking, 'What the hell are you doing?' And then Deborah says, 'There was another design.' The chairman says, 'Can we see it?'"

McMurray presented the rejected cutting-edge design, and the two leaders asked Fuqua what he thought of it. He explained that he liked it but that it might not go over well with the partners, clients, and potential clients: "I said, 'My concern is that it's unlike any

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