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Practice Area Snapshot, Part Two ...

Elder Law: Skill Sets, Hiring, & Medical Cannabis

The following is the second of a two-installment feature as Of Counsel examines the dynamic and growing elder law area. The first part served as the lead story for the April issue.

Earlier in her career as an elder law attorney, Jennifer Cona was appointed guardian of a woman named Lena who had no family, was living in a nursing home, and had dementia. A wide range of responsibilities came with that guardianship. Cona, the founder and managing partner of Cona Elder Law in Melville, NY, managed Lena's finances, paid her bills, make medical decisions, met with her care plan team, filed annual reports with the court, and performed other duties.

While Cona found it rewarding to help Lena—and no doubt sometimes challenging

as well—she encountered logistical problems. The nursing home where Lena lived was a 45-minute drive away and Cona was trying to build her law firm and raise young children. “It was very difficult for me to give up time in the office or time with my children to visit Lena,” Cona recalls.

One day, mercifully, an epiphany struck. “I had a light-bulb moment: I’ll take the kids with me to visit Lena,” Cona says. “I brought crayons and drawing paper. I stored them in

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the bottom drawer in Lena's dresser, and the kids drew pictures for and of Lena at every visit. My son played piano for her in the common room. We celebrated her 90th birthday with a big party and cake for all of the residents on her floor."

Of course, Lena benefitted from the kids' energy, creativity, love, and compassion but Cona and her children gained a lot out of this arrangement as well. And it wasn't just because she had resolved the challenging transportation and time logistics.



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The guardianship "became so much more personal and gratifying when it also became an opportunity to involve my children," Cona says, adding that the visits with Lena enhanced her kids' lives and left a lifelong impression. "They've never been uncomfortable speaking with people in wheelchairs since."

Unique Hiring Challenges

Clearly, that's not the type of story you'll get from an M&A lawyer, nor virtually any other attorney. While elder law requires solid legal training and an extensive base of technical knowledge, it also demands certain attributes and skill sets that most practice areas don't.

"Patience and empathy are key to being an effective elder law attorney," says Kimberlie Fiero, a partner at New Jersey-based Timothy Rice Estate and Elder Law Firm. "Clients often reveal personal things about themselves and their family so they need to feel like their concerns are being heard and that you really care."

Because of the different strengths required for the job, as well as the lure of other legal practices, hiring in this area of the law can be difficult. "It's hard to hire young attorneys in this field," says Laura Jeltma, a partner at Michigan-based Warner Norcross + Judd who works in the elder law-related trust & estates area. "At law school, students seem to be drawn to the excitement of litigation."

At Warner, Jeltma says, the partners place an emphasis on giving their new young attorneys on-the-job, practice-area sampling, if you will, which helps match them with the right area and ultimately improves retention. "After receiving and accepting an offer, new hires get a year to get to know the attorneys and practices in the firm to see what fits best for them," she says.

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The Golden Hours

Reputation Management and Risk Communications for Lawyers

“But in all my experience, I have never been in any accident... of any sort worth speaking about. I have seen but one vessel in distress in all my years at sea. I never saw a wreck and never have been wrecked nor was I ever in any predicament that threatened to end in disaster of any sort.”—J. Smith, Captain of the RMS Titanic.

The Conflict

There is a natural conflict between the lawyers working on litigation and crises that are likely to garner public attention and the communications professionals working with the media. Lawyers need and want time to determine all of the critical facts, potential liability, and necessary information, while the communications side of the house is working to meet reporter deadlines before the story—and likely a premature, negative narrative—goes viral.

The History

When the White Star Lines was preparing to launch its unsinkable cruise liner, the Titanic, it recruited its greatest captain, E.J. Smith, on the brink of retirement, to stay on for one more transatlantic crossing so he could skipper the new pride of the White

Star fleet from Southampton to New York. He was chosen due to his unblemished history. So smart and experienced a captain, he had never so much as experienced a near accident. He was the perfect choice for the maiden voyage.

Two days prior to hitting an iceberg, he told his assistant telegraphist Harold Bride, who had been receiving messages of potential danger ahead, that he understood the warnings of icebergs and would adjust. He also told Bride that the new technology, the telegraph—the 1912 version of Twitter—should no longer accept incoming messages but instead be used exclusively for the many wealthy passengers who wanted to send ship-to-shore messages about being on the “Wonder Ship.”

To be forewarned is to be forearmed.

When the Titanic did strike the iceberg, Captain Smith maintained his confidence in the guarantee of an unsinkable ship combined with his lifetime of sailing experience. The sinking of the vessel was beyond his comprehension.

Over the next two and a half critical hours, unpracticed crew and passengers tried desperately but tragically ineffectively to load the lifeboats. Two ships fairly nearby—the RMS Carpathia and the SS California—replied too late. The California, six miles away, mistook the Titanic’s desperate flares as “company

rockets.” Its telegraph officer had shut down for the night and as a result there was no one to receive the frantic message: “SOS Titanic calling. We have struck ice and require immediate assistance.”

Dreadfully, through misfortune and misunderstanding—two traits common in crises—the California would take no action to save any passengers. They too could not comprehend what was happening because of the unsinkable narrative they believed to be true. The Carpathia, fortunately, would navigate the ice flows and arrive in two hours, saving 705 passengers.

The golden hours are the opening hours of a crisis—when danger is rushing in and information is sparse. It is where history is made.

In high-profile litigation and crisis matters, it is defined as the time between when we learn of the matter and when legacy and social media control the narrative. That means if we do not act with consideration to the public, others get to define the hero and the villain, influence future jurists, and set the foundation for liability. No matter how independent justices and juries might be, by the time a matter goes to trial, as citizens, they have read the newspapers.

Truth is a race. It is not what we know, but what we believe first. Once we assume our perception is accurate, we become believers, and shaking us from this viewpoint is exceptionally difficult. Just ask Captain Smith. He knew the ship could not sink.

In many areas of litigation—food, pharmaceuticals, labor and employment, etc.; the list is too numerous to mention—the plaintiffs’ bar has already optimized the web so that when a matter occurs they already have influential content at the top of the major search engines. As the old joke goes, if you want to keep a secret, put it on the second page of Google. Nearly no one looks past the first few links on a web search.

The plaintiffs’ bar is busily controlling search engines right now, which are designed not only to harvest plaintiffs but also encourage journalists and the public narrative. Control the search, control the story.

The result? The defense bar is often already behind on the public narrative before the first client meeting.

The Lesson

At 1:22 am on June 21, 2021, when the Champlain Towers South collapsed in Surfside, Florida, tragically killing 98 people, the initial media reports over the first three days—thousands worldwide—inferred that the volunteer condo board had been negligent in its oversight. It goes without saying that media on high-profile matters is viral. Reporters have to quickly post stories and go on air. Social media follows and codifies the earliest reports. However careful the journalists are, theories are presumed to be facts or certainly interpreted by the public to be so. Imagine the difference if we got to describe the wolf in Little Red Riding Hood first: ‘He’s sensitive and endearing—and maybe a vegetarian’ rather than “Big and bad.”

In an environment where we see 5,000 to 10,000 advertisements a day, not to mention the other messages demanding our attention, all we can do is categorize. Good, bad; guilty, innocent. There is no time for analysis or processing. No one parses the media the way defendants and lawyers do. For everyone else, they just decide who deserves their empathy.

Once these initial impressions are made, audiences move on to the next news cycle. The only thing that remains is our categorization. In this case, early media reports made it appear that the board members—one of whom was killed; others who lost their homes, friends, and fortunes—had been previously negligent.

Over the next 72 hours, hundreds of conversations were had with journalists globally to set the record straight, which changed the global narrative and the course of the litigation.

While speed, triage, and instantaneous decision making is required in crisis matters, our training as lawyers is to gather all the facts and be certain before making any public statements, if any. While this training makes perfect sense it also creates a vacuum filled by others, few if any with your client's sympathies in mind.

While every situation is different, the Champlain tragedy identified four key strategic steps:

1. **Communications discovery:** Immediately identify the facts as best as can be determined. Limit your public statement to these incontrovertible facts and only update your statement if and when more known facts become evident.
2. **Stop playing Whac-A-Mole:** It is human nature to answer the ceaselessly ringing phone, texts, and emails but this is usually a fool's errand. It is tsunami-like and virtually impossible to handle. It also makes you defensive and empowers the narrative of journalists, not your client's. Instead, draft a brief holding statement which stays within the lines of what the lawyers approve and reply with this to almost every inquiry. It will immediately slow down the clock and start to allow you to be proactive rather than reactive.
3. **Be Selective:** Identify a trusted journalist(s) or the most influential—the ones other journalists are reading, such as *The New York Times*, *Financial Times*, *Wall Street Journal*, *Washington Post*, *Politico*, or others and give them exclusive information which begins the process of introducing your narrative and influencing other journalists.

4. **Employ one-on-one communications:** In the case of national and global stories, there are hundreds of media who want information, almost all at once. In the case of Surfside, many hundreds of conversations were had with journalists over three days, one on one and off the record, to provide them with facts which they could independently verify and to help save them time and point them in the right direction. It changed everything,

Every matter is different and requires sui generis strategies developed in concert with the lawyers and communications. The critical question for all matters is how we use the “golden hours.”

While this was not true in Surfside, it is best for the lawyers and crisis communications professionals to have a relationship in peacetime. There are too many judgment calls required not to have developed a trusted relationship ahead of time when no one is watching.

Lawyers are among the best educated and trained professionals in the world. But just like with Captain Smith, there are limits to that expertise.

As Neal Shusterman has said, “Sometimes, though, you make a pact with yourself. I’ll pretend there’s nothing wrong if you pretend there’s nothing wrong. It’s called denial, and it’s one of the strongest pacts in the world. Just ask all those people who were still drinking champagne while the Titanic went down.” ■

—Richard Levick

Richard Levick is chairman and CEO of LEVICK, a global advisory firm providing a full range of strategic communications consulting services to companies and nations involved in critical high-stakes issues.

The Power of Client Endorsements

It's hard to deny, clients today are particularly skeptical. So, one of the most difficult challenges that each of us as professionals face, is coming up with a convincing response to this one critical question: "*As a prospective client, tell me please, why should I choose you (or your firm); what makes you distinctive and what added-value do you bring to my business matters . . . that I cannot get anywhere else?*" (and please do notice those last six words!)

Now you might be able to answer that question with a bold assertion and making a bold claim may be important to get your audience's attention. However, **supporting** that claim is even more critical if you want to convert attention into action. To support any assertion, proof speaks the loudest. So, when you say something about yourself, it's bragging. BUT, when other people say it about you, it's providing proof. That is the essence of any public endorsement. One of the ways to prove that you have something meaningful to offer and evidence that you

are better than your competition, is to produce a few forceful and persuasive client endorsements.

An endorsement is usually a written communication from a client that talks about what is special about you, your actions, your efforts, or your results. Preferably that endorsement should describe the work undertaken, highlighting the success achieved, and include a comment that reinforces that this client is happy to recommend you. The power of having someone, especially if they are credible, endorsing your service can be the key that unlocks the doors of the subconscious mind. It is tangible evidence that allows you to showcase the specific ways you are meaningfully differentiated from competitors.

Endorsements can be used to say things about your firm and your services that you could never say yourself; but most importantly they should:



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Evidence success—Clients want to work with those firms who have a track record for producing results—“*Smart & Smarter guided us through all of the pitfalls involved in outsourcing our manufacturing operations and helped us save over \$7 million in operating costs in the first year.*” Ask yourself; do any of your current client testimonials make you want to do business with your firm?

Build trust—When a prospective client reads a written endorsement about how you and your firm are a leader in their particular industry niche, as someone who always goes the extra mile to provide exceptional service, the commentary is more likely to be seen as objective feedback and oftentimes viewed as more trustworthy. Do you think that your current client endorsements resonate with prospects and give them the confidence to trust you?

Provide credibility—Your potential clients, especially the *Fortune* 500, want reassurance that you have served companies of their stature, or in their industry, or with their particular problem and therefore understand their mission-critical issues. Third-party objective successful experiences are usually much more believable and credible than paid advertising. So how much does your firm spend on paid advertising each year and what are your plans for obtaining compelling client endorsements?

Now, how do you go about getting great endorsements? Perhaps not surprisingly, the answer is the same as it is for receiving unsolicited referrals; first, you have to ensure that you have earned them! So, you need to:

- **Understand your client’s expectations.**

To have any hope of obtaining winning endorsements you must be known as a professional who performs in accordance with and hopefully exceeds your client’s expectations, which means that you need to invest the time to ensure that you clearly understand those expectations.

- **Keep your promises.**

Clients expect a lot, and they expect it when they need it. You need to be the professional who delivers everything you promised and more, on time or sooner.

- **Be proactively remarkable.**

When you stand out from other professionals you will be talked about. Being remarkable means going the extra mile and making service the forefront of your offering not an add-on. Help your clients learn and grow. Don’t just solve their current problem, help them anticipate and avoid future problems.

- **Provide enormous benefit.**

Help your client save money, time, or anything else of value to them. Help them increase or improve efficiency, throughput, or control. That is how a benefit is described. Benefits help people save, reduce, control, and decrease costs or expenses. Benefits help people increase, improve, enhance or gain money, efficiency, or time.

- **Get business for them.**

While not always possible, this is the most valuable thing you can do to secure loyal relationships and endorsements. Figure out a way to introduce your client to important contacts, find them networking opportunities, or find some way to being the conduit to helping them get new business.

Once feeling like you truly have earned the endorsement, you may still have to ask for them.

Before you ask, I would be willing to bet that you are already getting spontaneous endorsements. It is always amusing to see firms make a big deal out of identifying certain endorsements as “*unsolicited.*” *Unsolicited* endorsements are those that arrive via email, ordinary mail, seminar feedback forms, or simply from random conversations, without any effort on your part. Think

back to the last time someone sent an e-mail to thank you for some recommendation that you provided, commented on the intellectual brilliance of your latest article, or perhaps commended you for responding to their question so quickly and thoroughly. These are endorsements in the making. If you were to simply respond—the same day—thanking them for their generous comments, and ask permission to use what they wrote, you have an unsolicited commendation.

Have you ever been a speaker, perhaps on a panel, when someone in the audience later approached and commented to you about how much they enjoyed your insightful presentation? When someone says something you like, let him or her know you're flattered and that what they have said would be perfect for an endorsement. Ask them if it would be okay for you to write up what they said and send it to them for approval in the morning. And you know the old adage: strike while the iron is hot. Waiting more than a couple of days after an incident occurs, significantly lowers your chances of taking advantage of this opportunity.

Now, *solicited* endorsements are those you consciously pursue. You might start by listing ten clients you consider your most important, high profile, or influential. In order to obtain an endorsement that is powerfully persuasive and becomes part of your market positioning, you should try to get a testimonial from a recognized / influential commentator or expert on how you have helped address and solved a problem that is a representative of the problems experienced by your targeted client group. A persuasive written example will help you to tell your story and show that you know something about a specific problem, issue, market, or business.

If you want great endorsements, you have to ask for them. Most often, your clients being smart businesspeople understand the nature of your request. Call them, tell them what you need, treat them to breakfast or lunch; and also give some thought to what you can provide them of value (an idea or lead) at the

same time, to help earn your endorsement. That said, generally you won't experience difficulty in obtaining a reference, as you will only be asking those clients who are deliriously happy with your work. If you feel in any way awkward about asking any client for this favor, it should be a clear signal that your relationship with them may be at risk.

You might want to consider inserting a clause in your retainer agreement that makes obtaining an endorsement, a standard part of doing business with your firm: "*After completing this transaction and obtaining your financing (our firm) would like to feature our work together in a formal written example of the services we are proud to provide.*" A clause like that can set an expectation, at the very beginning of a specific matter, that an endorsement will be furnished right after the project is completed.

In some situations, it pays to help people write your endorsement. Perhaps they're extremely busy, perhaps a bit uncomfortable about how to actually write an endorsement, or sensitive to not wanting to disappoint you. In these cases, you might offer to write the confirmation statement for them. Simply interview them about their experience with your firm; write up your notes—including all the main points they made and use as much of their actual terminology as possible. Write two different versions to allow them to choose which they prefer. After you've drafted the two endorsements, include another section titled "*I Can Do Better Than That*" and leave some blank space for your client to write an original statement. If they do make any changes, it inevitably ends up being *much* better than what you originally wrote.

What Should Your Endorsement Say?

Take a moment and look at any of the written references you currently have. Ask yourself objectively if they would prompt you to pick up the phone. Or do they merely

communicate the same old trite message: “These are wonderful folks to work with and I have been doing business with them for years.” That sounds nice but doesn’t have any compelling power.

To be truly powerful and convincing, your endorsements need to articulate as many of these attributes as possible:

- **be phrased in a way that removes a risk or neutralizes a fear.**

“I was extremely concerned that our company would be vulnerable to significant punitive damages, but with your expert guidance we were able to take effective preventative action.”

- **overcomes a prospect’s potential objection.**

“Initially, I thought your firm’s fee quote was rather steep, but now in retrospect I have come to realize they what would have been extremely expensive, is if we had retained a firm who had only limited experience with these kinds of financing deals and wasted our precious time with us helping them learn the ropes. Your firm definitely provided us with the best value.”

- **defines a benefit**

“Helping our company license our intellectual property allowed us to expand our market reach, develop three important strategic alliances, and improve our profitability by 64 percent last year.”

- **focuses on the specifics of the professional.**

“Jerry Ward was not only responsive to returning every call within the hour, but he managed to get his team of lawyers to work non-stop, through an entire weekend to close our deal within the tight time-frames it required.”

- **has an “act now” impact.**

“Up until last summer we used a different firm for all of our tax work but having now switched to your firm we find that we get far

more proactive tax counsel and believe that every company in our industry would benefit from similar advice.”

- **reinforce your claim.**

“The extra effort put forward by members of your client team has resulted in our legal department being far more knowledgeable and able to draft the required privacy protocols for our various business units.”

Here’s a Test Questions: Which of these endorsements engages you?

“Wow was I surprised. When we first contemplated the complexities of our first share issue, I never thought I could get my securities questions answered so quickly.” **OR** *“We got our securities questions answered quickly.”*

Wouldn’t you agree on the first, because the underlying emotion in it, actually draws the reader in more? Don’t lose the ‘flavor’ or the emotion of your endorser. Very often, some intense feelings or the slightly quirky phrases that someone uses in writing the testimonial are the very words that will make a special connection with the reader. Don’t be tempted to edit them out. Keep the endorsement in the writer’s own words.

Always include a name at the bottom. Unless an endorsement has a name attached it’s NOT believable. And, if it is not fabulous, don’t use it. It’s better to have no endorsements at all, than to use weak or unbelievable references. Only use those that truly support your practice objectives.

Strategic Variations

Endorsement Letters—There is a variation known as an endorsement letter, that deserves special mention. In this process, Firm A (the host and let’s say this is an accounting firm) agrees to let your firm (the beneficiary) deliver a promotional message to Firm A’s clients. You might even write the endorsement letter

introducing and recommending your services to their clients. Firm A simply approves your writing and “signs” the letter. This is a very powerful and cost-effective technique as the cost of sending an offer to each of Firm A’s clients is minimal. The beauty of this technique is that the clients of Firm A are more susceptible to hear from you since Firm A, which they already know and trust, is implicitly recommending you. To make this work, you need to look for firms that target the same type of client you seek and are not competing directly with you. Think about the various aspects of your practice and the firms that you could approach to start a profitable and mutually beneficial relationship with.

Launching A New Practice Area—If you’re launching a new practice or dramatically changing the focus of your existing practice, you might think about using endorsements to support your new endeavor. Perhaps to help launch your new practice you’ve done some substantive research and decided to present a workshop or seminar to existing and prospective clients. You can often get pre-event references by forwarding your seminar notes or outline to business contacts or colleagues for review. Tap your network, ask your friends, look to your past clients. With a bit of persistence—you should be able to get several credible endorsements well in advance of presenting your seminar. Now use those to give credibility to your actual seminar offering and build trust in your presentation expertise. At the seminar itself, ensure that participants are allowed to provide written commentary at the end, especially to identify what they liked about your seminar content (*what was the most valuable to them?*). Now use those seminar endorsements to evidence your knowledge and expertise as it impacts the new practice area.

Using Your Endorsements

Before you purchased your last book, did you flip to the back cover to read what other people had to say about it? As an author, I learned from some of my more experienced

brethren that one good way to promote your newest work was to get well-respected peers to write favorable advanced praise and then include that commentary all over the front and back covers of the book jacket. When you admire the person who provided the quote, it adds instant credibility to the book.

While endorsements must be used in the proper manner, don’t limit your creativity. You can include them among your materials for use in RFP proposal presentations; in client newsletters; post them on your website, on different pages and in borders so they remain in view; and you might even include an endorsement in your e-mail signature (ideal to rotate them). One firm I know compiled a promotional brochure made up completely of only client endorsements.

Most often, we use endorsements to get our foot in the door. Obviously, if that is the only way to initiate contact with the prospect, do it. But the real power of an endorsement is in the proof it offers when the potential client is ready to decide. Endorsements should be used at the end of the selling process to dispel any doubt, eliminate risk, substantiate value, and pave the way to your engagement proceeding. ■

—Patrick J. McKenna

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Looking Ahead: 2023 Priorities

Each year we look ahead and make predictions for the coming year. Each year brings uncertainty, and 2023 appears to be bringing more uncertainty than most. Economic headwinds, inflation, the threat of a possible recession, global unrest, and in particular the decline in the corporate transactions that drove much of law firms' success in 2021 and the first half of 2022, are raising questions for many about what the coming year will hold for law firms.

While year-end financial results are still coming in, we expect that 2022 will show uneven results for firms relative to 2021. However, we need to remember that 2021 was a record year for many law firms, and a decline relative to 2021 may still represent strong performance relative to pre-pandemic years. Revenue in 2022 continued to benefit from strong pricing power even in the face of lower demand in the second half of the year. Growth on the revenue side was offset by higher expenses, particularly increases in associate compensation. While the compensation increases were largely instituted in mid to late 2021, 2022 was the first year that firms bore their full-year impact.

As we step back and evaluate the current trajectory and pipeline of work in these early months of 2023, unevenness in law firm performance persists. Some firms are maintaining solid levels of productivity while the industry overall is reporting a decline in demand (as measured by gross billable hours). Certain segments, particularly technology and capital markets-focused practices, appear to be disproportionately negatively impacted, while other practices, particularly litigation, are seeing increased demand. Given the level of variability in demand shifts across firms and practices, performance for the remainder of 2023 will depend in large part on how well-prepared firms are to adapt to potential changes in demand.

As we look ahead, we have identified the following priorities for law firm leaders as 2023 unfolds.

Smart Performance Management

The announcement of layoffs by a few firms in recent months has received a lot of attention. Managing performance, at all levels, is always important. 2021 and early 2022 allowed firms to take a light touch on performance management because there was an excess of work. 2023 will be a year to reinvigorate performance management.

Some firms may need to go beyond performance management and consider layoffs, if demand is down and is expected to stay down for an extended period. That said, it is important to take a long-term view. Avoid over-pruning and remember the lessons learned in the 2008 downturn when firms made deep cuts and stopped hiring. As a result of these aggressive pruning actions, firms later struggled with holes in their talent pool once demand began to pick up. And of course, firms are currently paying the price in the form of the higher salaries that were required to attract and retain associates just a year ago.

Firms will also need to evaluate income partner performance. The income partner ranks in many firms have exploded over the last decade. There are likely more opportunities to rethink the income partner group than any other category in the firm.

Operational Effectiveness

Some of the recent layoffs have been on the operations side of the firm. We continue to see firms reshaping the business operations and administrative support team. Even with a full

or partial return to office, the support needs for firms continue to evolve, with increased needs in areas like technology and data security, business development, pricing and profitability, and client-facing innovation.

We expect firms to continue to evaluate their operational needs and adjust the mix, which may result in some necessary layoffs. However, there may be some opportunities for upskilling existing staff to fill new or evolving positions. This requires an investment in professional development for the operations team but should pay off in terms of loyalty to the firm.

Strategic Growth

Despite uncertainty around 2023, growth continues to be a major trend. We saw an uptick in mergers in 2022, and have already seen 22 mergers announced in 2023, including several mergers of scale. While the scramble for associate talent has cooled, firms continue to make strategic investments in lateral partners and groups.

We are seeing growth becoming a front-and-center priority for firms at all levels of the legal market. Growth is driven by a need for scale—whether in core practices, adjacent specialty practices, key geographies, or a bigger base from which to make investments. Further, brand recognition, which is becoming increasingly important to clients when making outside counsel hiring decisions, particular for Board-level matters, favors larger firms or practices. The top 20 firms in the 2021 Acritas Global Elite Law Firm Brand Index are all among the largest firms in the world.

Firms who might not have considered large combinations in the past are much more likely to be open to the idea today, and we expect that merger activity and aggressive lateral partner hiring will be on the agenda of many firms.

Evaluate Pricing

As noted, law firm pricing power was high in 2021 and through much of 2022 and rates have increased significantly in the last 2-3 years. In a high-demand environment, budgeting and pricing was less prominent. As demand softens in certain practice areas and client segments, pricing power will erode, and firms will once again need to look at how they can deliver services more efficiently. Pricing professionals will be in high demand.

Law firms are often very protective of their culture, yet we see signs that culture is not the positive force or glue it once was. Different generations may view aspects of firm culture with skepticism. Some firm cultures may not align with the stated diversity and inclusion goals of law firms (and their clients). We also see a reported increase in mental health concerns among lawyers, which are not always adequately supported in the culture of some firms. And hybrid work is here to stay, so firm culture needs to adapt to embrace it, not just tolerate it.

Some firms are being very proactive about adapting the culture of their firm, and it is time that all firms examine their culture to ensure it is an appropriate culture for today, and not for 20+ years ago. ■

—Lisa Smith and Kristin Stark

This Insight was written by Lisa Smith and Kristin Stark, Principals at Fairfax Associates. Fairfax is a specialist firm of highly experienced consultants focused on serving law firms. Our focus is built on a deep understanding of the strategy, organization, and motivation of professionals. Fairfax assists law firms in defining and executing strategy, pursuing strategic growth and merger, and addressing partnership issues including partner compensation, governance, and firm performance. The Insights series draws upon our collective consulting experience to address topics that we consider of current interest to the senior leaders of law firms.

Elder Care Trends

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At Falcon Rappaport & Berkman in Rockville Center, NY, senior counsel Dana Walsh Sivak agrees that hiring elder law attorneys can be challenging—particularly for hiring partners. “It can be easier for a hiring manager to look at objective data to evaluate whether someone will make a good litigator or corporate attorney,” she says, adding that those practicing elder law must have a certain emotional IQ, an X-factor of sorts, to serve their clients effectively.

“What an elder law attorney does, however, is so different,” Walsh Sivak says, “and whether something has a ‘successful outcome’ depends entirely on the client and what’s important to them. You can always train a person to learn a process but the versatility, adaptability, and the compassionate nature that you need to have to serve your clients’ needs [are innate], and you can’t teach those things. Smart hiring managers look ... for those people whose heart is into this kind of work.”

What’s more, to be successful in this legal field you must juggle many factors to deliver excellent service, which is where that “versatility” comes into play. “To have the right stuff as an elder law attorney, you must be adept at navigating many dynamics—family, financial and health care—to develop the most creative and cost-effective solution for your clients,” Cona says, noting that attorneys often get frantic calls from the families of elderly people when crises hit.

And when that happens the practitioner needs to provide counsel with a steady hand and the ability to clearly communicate a range of different courses of actions. “A successful elder law attorney will walk the family off the

cliff with a quick education and understanding of their options under the law,” Cona says. “In addition, a compassionate elder law attorney will relieve them of the burden of managing the process and the care coordination, allowing them to focus on their loved one’s health.”

Elder & Cannabis Law Interplay

Talk with any elder law attorney and the topic of change invariably comes up. The legal and societal vicissitudes are both positive and negative; some create opportunities and others erect barriers. Perhaps no new development offers or promises to offer more benefits to older Americans than ... marijuana. That’s right, pot. The use of cannabis is opening new forms of treatment for elderly citizens living in those states that have legalized the plant.

For Walsh Sivak, she has overlapped and intertwined a pair of legal practices quite nicely for the benefit of her clients and her career. She explains: “I have found some really interesting, niche ways of advocating for helping seniors maintain their independence and live their lives on their own terms,” she says, noting that this discovery has helped her differentiate herself from other elder law attorneys. “I’ve focused some of my practice on cannabis law, and it’s developed into a really interesting intersection with elder law in that I advocate for increased access to medical cannabis by seniors.”

As has been widely reported, medical cannabis serves as a remedy, or at least a salve, for many mental and physical ailments, including several that particularly affect seniors. Cannabis can and increasingly has helped reduce their use of opioids that they take for certain conditions, which of course can be highly addictive and harmful. Walsh Sivak has launched a campaign of sorts to educate people, particularly elderly citizens, about cannabis and promote its medical use.

“I’ve sort of made it my mission to try to combat the stigma that so many people have against cannabis, which prevents a lot of older people from considering what could be a great treatment option for them,” she says. “It saddens me that a lot of older people could be enjoying an enhanced quality of life, but don’t consider cannabis because of societal pressures or because they think it’s ‘taboo’ to use, even as a medicine.”

Walsh Sivak delivers speeches at conferences for health care facility operators, social workers, other professionals, and members of the general public about the efficacy of medical cannabis treatments for seniors. “I’ve seized this opportunity to educate people about why medical cannabis could be a real game changer for the elderly, and I also benefit from the public interest in this topic to generate attention for my elder law practice,” she says.

Again, this innovative blend of legal counseling, and her ability to market it, is opening doors for Walsh Sivak by setting her apart from her competition. “My networking in the

cannabis space has helped develop relationships that other elder law attorneys wouldn’t have an opportunity to forge, without running in these circles, which has increased my ability to develop referral relationships and generate more business through this untapped resource.”

On another level, she says her interrelated practices provide her with occupational satisfaction because it enhances her capacity to help others, which seems to be a driving force for many elder law attorneys.

Consider what Fiero says when asked what she finds rewarding about this practice area. “The fact that I can positively impact the lives of my clients brings me such great joy,” she says. “I decided to go to law school because I wanted to use my degree to assist people. I have dedicated my legal career thus far to doing just that, and I am grateful every day that I can bring support and comfort to our clients.” ■

—Steven T. Taylor

Of Counsel Interview

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after prestigious honor for her work, including being named California Lawyer of the Year twice. These days she practices appellate law at California-based Complex Appellate Litigation Group.

In March, *Of Counsel* interviewed Sungaila about the arc of her career, appellate law, women in the profession, and other topics. But time and space prevented a much discussion about an important initiative that she launched more than a year ago and which is ongoing—an award-winning podcast that she hosts, “The Portia Project.” In the twice-weekly podcast, Sungaila conducts interviews honoring and exploring the accomplishments of trailblazing and leading women judges and lawyers, and those in other positions, in the hopes of inspiring the next generation of women lawyers and law students. Part two covers that ground.

For only the second time in the 25-plus-year history of this feature, the *Of Counsel* Interview comes in two parts, the first of which appeared in the April issue. (The only other two-part *Of Counsel* Interview, published in the spring of 2017, was with prominent immigration lawyer and author Susan Cohen, who founded the immigration law practice at Boston-based Mintz Levin more than 30 years ago.) To receive a copy of the first part, contact Steven T. Taylor at stevetaylor77@comcast.net. Here, then, is part two.

Finding the Right Medium

Of Counsel: MC, last month when we spoke we covered a lot of ground but we didn’t talk much about your podcast, “The

Portia Project.” How did it start? What was the inspiration for creating it?

MC Sungaila: It started a few years ago when I began interviewing women appellate judges in connection with the ABA. I was going to start working on a book for them, as a way to chronicle the history of women appellate judges. As an appellate lawyer, I was noticing that there weren’t as many female appellate judges either on the state or federal levels. There were about 130 of them, which is a small percentage of the number of positions there are. I thought it would be nice to highlight them and maybe encourage others to apply for those positions.

In doing these interviews, I found that the judges really liked to talk. And then I’d have to adapt those conversations into essays for the book. In the adaptation process, I thought that some of the essence of the interviews was lost. There were more interesting anecdotes and stories that they were willing to talk about but they didn’t turn out as well in an essay format. Something was missing. And, I wanted to capture that. Just like any artist, I thought about it and realized a book might not be the right medium. This is a worthy project but I need a different medium.

During the depths of the pandemic, lawyers and judges got very familiar with Zoom and podcasts became more popular, although they hadn’t really hit their stride in the legal realm yet. But more and more people were listening to them. And I thought, *This might be the medium—if the judges are willing to speak publicly*. As it turned out, this *was* the right format. That’s how it evolved. So I wanted to hear what others thought about this idea and figured that someone would shoot it down [laughter]. But nobody did. So I moved forward on it.

I had a startup and knew that first I needed funding and even before that I need to find out if people want to do it. If the judges say no, there is no project. But I had nothing to show them because I hadn’t launched yet and I didn’t really know what it was going to look

like. People were going to have make a huge leap of faith in me just like the people funding it had to have a leap of faith in me as well. I give all of those people a lot of credit, especially for those who agreed to be among the first 16 people I interviewed for the podcast. They had to trust me that either it would turn out well or, if it didn't, I wouldn't let it see the light of day.

OC: And indeed it did turn out well.

MCS: Yes, what happened was just organic. I thought it would be 16 episodes and then we'd start a new season. But I'd interview people and right after the interview they'd email or call me, or even during the interview, they'd say, "You should talk to this person next. They'd really enjoy it and they have stories to tell." As a result, before the first episode even aired, I had 30 interviews produced because of all the referrals and recommendations my interview subjects gave me. That's when I thought, *Okay, this project is serving a purpose. It has a greater mission. People are responding to it. There's something that the judges find cathartic about it. They think it's useful to share [their thoughts and stories] with others.*

And then the project just grew—from focusing on appellate judges to also include people who can talk about this: If I were in law school, I'd want to know two things. One would be all the different things I can do with my law degree, which is hard for career services to really fully share. And the second thing is: If I'm a woman law student, what are the ways in which women are already leading?

You can accomplish both of those things by talking to women who are leading in a number of different areas, and some of the women are doing so outside the legal realm. So it evolved from judges, to law professors to general counsel, and women managing partners of law firms to women who are running non-legal nonprofits and women entrepreneurs in legal technology businesses. And the project has grown. We're now at episode 109.

OC: It seems to be a classic example or epitome of The Snowball Effect.

MCS: Yes, absolutely. I didn't intend this to be as extensive as it is. But as long as there's a strong momentum behind it, I could keep doing it, because I feel like I'm just a conduit for the larger service of what this is doing.

OC: MC, it's really quite remarkable how many interviews you've done in such a short amount of time. To do 100 within a year is mind-blowing. You must have a lot of stamina to do so many in a short amount of time. Interviewing, which requires very actively listening among other things, can be tiring, as you know.

MCS: Yes, sometimes I had four or five a day. It depended on my scheduling. These days I don't do more than three on any given day and I try to limit it to one or two.

Reaching New Levels

OC: Clearly this project is all-encompassing but are there one or two podcasts that really stand out or maybe surprised you? Are there a couple you'd like to highlight? Or do you feel it's too difficult to choose?

MCS: First, I'll make a general comment for context. When I go back and listen to them or read the transcript, I'm amazed at the women and their willingness to be vulnerable and genuine. One of my friends, who's a trial lawyer, said something to me once: "You know, you could go to 10 years of bar [ABA] functions and never have this level of conversation with any of these people," she said.

It's like you're sitting down for coffee with them and the audience is sort of along for the ride. I really don't think it would work if they weren't willing to be vulnerable and share parts of themselves—because what makes the interviews interesting is that you get to see who they are as people, to some degree, which you rarely get to see. That's especially

true for judges, but also for a general counsel of a major company or a managing partner at a law firm. You don't usually hear those kinds of introspective or personal thoughts. That's what makes the interviews work and even makes them a little magical. How or why that happens I don't know. But almost all of them say they enjoyed it and have had a good experience, which leads them to recommend someone else.

A lot of people believe that people who are successful never had any challenges in their life. But a lot of them did, especially the trailblazing women who were told they shouldn't even apply for a job. There's a lot to learn from them. For example, for some of them, you can see how they navigated things through their personality and creativity.

I think of Ann Covington who served as the chief justice of the Supreme Court of Missouri [the first woman to hold that position]. She's a gracious person who usually doesn't talk about herself; rather, she talks more about other people. The challenge with her was to get her to talk about her journeys without talking about other people. People like her are special. And, we're friendly now. Some of these people I never knew and we just kind of hit it off, and I feel like there's a connection. And sometimes I'll introduce someone to someone else. They could meet one another on their own but feel more comfortable with having someone else introduce them. So I broker introductions.

OC: It's often better to have a liaison.

MCS: Exactly. So there's this nice little community of connection, and I hope that people are able to share their ideas with and meet each other. I didn't really have a vision of this happening because of the podcast.

OC: You mentioned Ann Covington. What others come to mind?

MCS: I was able to interview four women on the Washington State Supreme Court. All of them have very interesting backgrounds

and each unique. I find it interesting how many women are serving on state Supreme Courts in some states. Michigan is another state with several women justices.

Landmark Episode: The Right Choice

OC: For your 100th podcast, you chose to interview Judge Dorothy Nelson for whom you served as an extern years ago. She seems to have been an excellent choice for that landmark interview. Why did you choose Judge Nelson and how did it go?

MCS: Actually I interviewed, together, both Judge Nelson and Lisa Kloppenberg, who was a clerk for the judge [and has served in various leadership roles and as a professor at Santa Clara University in California and other academic institutions]. There are several reasons why I did that. First, of course, Judge Nelson is very special to me and I was so glad she agreed to do that podcast; it seemed fitting that the 100th episode would be a very personal episode. But it wasn't just personal to me.

I also wanted to highlight the book that Lisa wrote about Judge Nelson, her life and work and the law [*The Best Beloved Thing is Justice: The Life of Dorothy Wright Nelson*]. We talk about mentoring quite frequently in the podcast and I wanted to exemplify what that looked like. Judge Nelson was the first women dean of an ABA-accredited law school in the country. She was the dean at the USC law school, and then she mentored a lot of her law clerks into leadership positions at other law schools, including Lisa.

I also wanted to highlight the respect for Judge Nelson that so many of us have and all of our connections because of that particular clerkship.

OC: What are one or two things you learned from Judge Nelson that have been most vital to you?

MCS: Her ability to bring people together. She talked about that in the podcast. She is very conscious about bringing people together in ways that will help resolve [matters] and get consensus to move forward. One way she does that is she often includes food, whether it was punch and cookies in her chambers or dinners and potluck dinners at her house. It just breaks things down to have people connect over food at a human level, which makes them more able to see you as another person, rather than someone who might be opposing them.

She had a soft-power way of working with people. She's been behind many initiatives and moved them forward and doesn't mind if she doesn't get the credit directly, as long as the initiative happens. It's interesting to be around her and see that happen because if you ask her or someone like her how they do something ... she'd only tell you part of it because she's not [overly conscious] of all that she's doing to bring people together.

OC: That's a great answer, MC. What else comes to mind?

MCS: She's warm and fuzzy but she's got high standards. We [those who worked with the judge] had to deliver and be careful and deliberate about our work and analysis. So we'd sit around the table with punch and cookies and her but we were pushing through tough issues in the cases and debated them before we'd go outside her chambers. You have to deal with the tough questions first before you can go out into the world.

I admired her for pressing everything to make sure she was reaching a proper decision, in her mind, and not only for the case at hand but for other cases. So as a judge, she had this soft power but she was also very focused on the law and rigorous about the work. I think those two things together is a very good lesson. ■

—Steven T. Taylor

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Of Counsel Interview

Appellate Lawyer Launches, Sustains Podcast with Women Legal Leaders

When Mary-Christine “MC” Sungaila practiced law in the 1990s as a litigator, she’d often need to visit people on the job in various offices to depose them for the case she was handling. She’d check in for her appointment at the reception area, walk down the hall to the conference room, and conduct the deposition. Invariably, she’d encounter biased assumptions at every turn.

“Everyone, from the receptionist to the lawyers, thinks you’re the court reporter,” Sungaila says. “You’re carrying your bags, and they just assume you’ve got court-reporting equipment.”

Apparently, this was a common occurrence for women attorneys in that era, Sungaila notes, adding that, while it was sexist and annoying, it didn’t rise to the level of sexism that previous generations of women in the legal profession ran up against. Those in the

1960s, 70s, and 80s who sought attorney positions at law firms often confronted the unwritten but pervasive policy that served as an employment barrier: Women need not apply.

“You just knew it was going to happen,” she says, “and then you’d use that to your advantage and think: *If you want to underestimate me, well, that’s cool. I’ll go ahead and do my work and do it well.* It was so common that if you mention this to virtually any woman lawyer in our era, they’ll simply say, ‘Oh yeah, sure, the court reporter thing.’”

Sungaila hasn’t let any societal attempts to demean her gender and slow her down. She’s had a robust, highly regarded, 30-plus-year career as an appellate lawyer in private practice, accumulating prestigious honor

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