

In This Issue

- Law firm leaders discuss what's hot and what's not for 2022, with additional findings from a recent BTI study Page 1
- Of Counsel's* Steve Taylor reflects on a recent book he co-wrote on immigration and the pro bono opportunities that are opening for law firms..... Page 3
- Patrick McKenna looks at the 80-20 rule and finds new reasons why differentiation still eludes "full-service" law firms Page 5
- Ross Fishman provides a COVID-era checklist for optimal client needs assessment as well as enhanced personal and professional contentment Page 8
- For McGlinchey Stafford's Mag Bickford, psychological acuity and emotional intelligence are the strategic keystones of a booming L&E practice..... Back Page

[A Nod to Bob ...](#)

What's Hot, What's Not: A Projection of Growing and Slowing Practices in 2022

As noted in these pages last month, the astute law firm consultant and classy, considerate gentleman Robert "Bob" Denney died in October at the age of 89. A dear friend of countless people across the legal profession, including those of at Of Counsel, Bob distributed his knowledge on many topics and in many ways, not the least of which was through his annual reports and mid-year updates entitled, "What's Hot and What's Not in the Legal Profession."

In honor of those "communiqués," as Bob often called his savvy written observations, we offer this take-off of his signature reports. While no one could do this as well or as insightful as Bob, here's our more condensed version.

What will be the law firm-driving practice areas this year? It depends on who you ask but

one sentiment that keeps coming up is that mergers and acquisitions practice group leaders have been planning for a particularly robust year and are now buckling up for a high-flying M&A ride.

Attorneys who pay close attention to the ups and downs of various practice areas, including those areas outside of their own, say they see a surge in this space across the economic spectrum. Matthew Murer—the chair of another hot area, health care, in the Chicago office of Kansas City-based Polsinelli—is one of those lawyers reading the tea leaves.

Continued on page 2

“M&A is really hot across all industries,” Murer says. “While the pandemic did put an initial damper on deals, government stimulus funds and pandemic relief have left many companies with lots of capital to deploy. Historically low interest rates have encouraged companies to put that capital to good use.” And regarding his own specialty, he adds this: “Private equity also continues to show significant interest in health care companies.”

That speculation is likely on-target and would not surprise many observers. It is also supported

by data. Consider an assessment by Michael Rynowecer and the firm he founded and leads, Boston-based BTI Consultants, in its recently released report, *The BTI Practice Outlook 2022: The Surge in Legal Spending Arrives*. The study synthesizes and analyzes information collected through more than 240 in-depth interviews with leading in-house decisionmakers.

“M&A will enjoy outsized growth as a record 71% of large companies are planning transactions for 2022,” the report states. “They are contemplating deals larger than prior years but still plan a record number of smaller/private deals.”

Technology seems to be the hottest commodity on the M&A shopping list as c-suite leaders position themselves to acquire or increase access to tech markets, and as the BTI study notes, “transform their organizations, and bring on hard-to-find talent.”

At the consistently growing Nevada-based McDonald Carano, lawyers expect several of their practice groups will be busy in the next 12 months, including estate and tax planning, real estate development, construction, employment, business transactions, and commercial litigation, according to Matt Addison, managing partner of the firm’s Reno office. On the estate and tax planning front, the prospect of regulatory changes from the Biden administration and the ongoing migration of prosperous individuals, investors and business owners from California and elsewhere into The Silver State are both fueling the practice area’s growth. These developments are also prompting McDonald Carano to ramp up their hiring efforts and bring in more talent to meet demand.

“Nevada has the second highest growth rate for six-figure income earners in the nation and our tax planning team expects to continue being very busy helping clients address significant concerns that the nation’s tax structure will change under the Biden Administration to become less friendly to wealthier individuals,” Addison says. “We’re

Continued on page 13

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Taylor's Perspective ...

Pro Bono Work One of Many Themes in Book on Immigrants & Immigration Law

Last year two major issues stood out as difficult challenges, and worse, for lawyers and law firms: mental health and labor shortages. No single antidote exists to cure these problems; nor are there any easy multiple solutions. But one thing could help: pro bono service.

In writing about the legal arena for more than a quarter-century, I've interviewed literally—and, yes, I'm using that word correctly—thousands of attorneys. I've found that the vast majority of them entered the profession because they wanted to help people, particularly those in need, with their problems. And there's nothing Pollyanna-ish about this sentiment serving as a reason and an inspiration to enter law school and practice law.

Now, I don't think most lawyers completely lose their sense of that early-on motivation and purpose, but sometimes they, shall we say, misplace it. Because let's face it: It's easy to forget about that driving-force commitment while operating in the context of private practice—what with the race to pile up billable hours, the internecine politics within law firms, the sometimes cut-throat competition to land or wrestle away a big-name, top-paying client from a rival firm ... the list goes on.

Pro bono work often helps attorneys rekindle that need to help others. It helps them find meaning, which lifts mental health, and that makes them better, happier lawyers.

On the labor front, law firms have been scrambling to find and hire bright, young

talent to meet the ever-growing demand for legal services. Often, young attorneys are impressed by law firms that demonstrate a commitment to a wide array of community service initiatives, most of all, pro bono legal work. It may not be the first or even the second employment driver for them but for most it's clearly an important career criterion. Simply put, they want to do good.

Increasingly, they also want to see that the law firm they choose to join doesn't shy away from taking a stand on societal issues that some people—including clients—might consider controversial. That is, they're often attracted to partnerships that get actively and publicly involved in addressing climate change, economic and racial justice, voting rights, and other such hot-button issues.

That includes immigration, which is certainly one of many polarizing issues in our nation. For more than 30 years, Susan J. Cohen, a partner at Boston's Mintz Levin who founded and chairs the firm's immigration practice, has demonstrated her dedication to serving immigrants, including those seeking political asylum, those with extraordinary ability, and others who yearn to live in the United States and need representation to navigate the minefield that is this U.S. immigration bureaucracy. She has helped many of her clients on a pro bono basis. And, Mintz Levin deserves considerable credit for supporting her and others within the partnership for their firm-wide commitment to community service.

A new book, *Journeys From There To Here: Stories of Immigrant Trials, Triumphs, and Contributions*, showcases these clients' struggles and successes. Former U.S. Senator Bill Bradley says the book's "full of insight, honesty, and wisdom" with stories "that will move you and remind you why immigration is so vital to America's future."

Full disclosure: I'm proud to say I co-authored the book with Susan. I'm also honored to call Susan my friend. Often I characterize the legal work she does as "saintly" —because of her compassionate, life-saving, and life-enhancing service—as well as "strategic" for the tactical creativity she uses to help her clients.

Here's a glimpse of *Journeys From There To Here*, which I wrote a year ago as a narrative synopsis (granted, it's also an unabashed plug): *As a nation we're experiencing a time of tremendous anti-immigrant antipathy and activity as the United States government detains refugees in cages at our southern border, institutes sweeping Muslim travel bans, prevents those who have escaped persecution from submitting asylum applications, and makes so many more moves that defile the historically welcoming American spirit famously embodied in the Statue of Liberty. In this environment, something gets lost: the narratives of immigrants and their contributions to our society.*

Journeys From There To Here: Stories of Immigrant Trials, Triumphs, and Contributions depicts the lives and accomplishments of 11 immigrants from around the world who sought and struggled to come to the United States, ultimately succeeding in making a life here for themselves and families.

Those portrayed include a famous writer exiled from Albania and Greece amid threats to his life; a seven-year-old Korean girl who was a violin virtuoso when she and her family first came here and ultimately went on to become a world-renown musician; a political refugee from Afghanistan who escaped tyranny and threats against his life to establish schools for girls and women in his native country and ultimately earned a PhD in economics at a prestigious US

university; an Egyptian-born computer scientist and entrepreneur who's changing the world by creating and developing what she has coined "emotional artificial intelligence"; and others who dreamed of immigrating to and succeeding in the United States, often escaping the danger, poverty, or both, of their home countries.

While these people all have very different and compelling stories, they have one commonality: They were all represented by Susan Cohen, an award-winning, Boston-based immigration lawyer widely recognized as one of the nation's very best attorneys in this field. Journeys From There To Here offers brief analyses of the legal impediments Cohen's clients encountered and the strategies she used to navigate past obstacles so they could stay in the United States. It sheds light on the labyrinth of complexities of the often unfair and unjust US immigration system. Most importantly, the stories in this book illustrate the ways in which immigrants work hard, contribute to society, enhance scientific and cultural communities, and enrich the American Way of Life.

Law firms should embrace and encourage pro bono legal service for many reasons, including the mental health and hiring concerns it can help address (as noted above), the good will it generates internally and externally, and the PR and marketing benefits it produces, which often augment a firm's bottom line. The most important reason, however, is simple: It's the right thing to do, and lawyers have a societal responsibility to do it.

In the words of the late, great Supreme Court Justice Ruth Bader Ginsberg: "Lawyers have a license to practice law, a monopoly on certain services. But for that privilege and status, lawyers have an obligation to provide legal services to those without the wherewithal to pay, to respond to needs outside themselves, to help repair tears in their communities."

In 2022 and beyond, law firms should recommit to improving and expanding their pro bono programs. ■

– Steven T. Taylor

Claiming to be Full Service Is an Exercise in Irrelevance

Too often your firm's strategy, assuming that you have one, is focused on the wrong issues.

Many keep asking, "*How can we effectively compete with* (that particular firm) *at what they are doing in* (some particular area)?" Firms are so intent on watching each other and imitating what each other do, that they fall victim to competitor inertia. The more your firm looks like everyone else and as any distinguishable differences between firms blur, competition leads to commoditization.

Many firms attempt to be different but are not truly *differentiated* because they pursue forms of uniqueness that clients simply do not value. Some of the most prominent examples of this are firms that propagandize their: number of lawyers; reputation and years in business; growth in revenues; promise to assign the best people; commitment to superior client service; various (pay-to-play) "Best Lawyers" awards; devotion to producing results; etc.

Sorry: these are ALL table stakes, not points of meaningful, to clients, differentiation.

Look at the retail industry. Which retailers seem to have experienced the most trouble? The Departments Stores—one of the top three "*fastest declining industries*" in 2021 and comprising over 6500 businesses throughout the United States. And what is a department store? A place that *sells everything*. That then becomes a recipe for disaster as it becomes very difficult to meaningfully differentiate an "*everything*" place.

Does anyone see the similarity here to firms claiming their strategy is being a "*full-service law firm*?"

I continue to be amazed by the number of lawyers who lay claim to their firms being full-service providers. And then, in those same firms, if you visit some individual attorney's Bio you find them listing far too many different areas of expertise to be believed. It would appear that in some effort not to prematurely



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close the door to any prospect's call, we error in exaggerating and consequently depreciating our professional profiles.

This perverted attraction to thinking that there is something special in being seen to be full-service causes us to inflate our supposed competence. It is as if it has become so seductive to claim **wide** expertise, rather than **deep** expertise, that these professionals attempt to be the answer to every client's potential problem, rather than being seen as a distinguished and believable authority in only one, or maybe two, specific areas.

Furthermore, if you explore any individual firm who claims to be full service or highly diversified you will find that 80 percent of its revenues usually emanates from just 20 percent of its various practices and service offerings; from 20 percent of its total client list; and from 20 percent of its partners.

In other words, at the heart of the 80/20 principle is a counter-intuitive yet prevailing fact—that it is often a mere 20 percent of your client relationships that generate the bulk of your profitability and that a large percentage of your clients and your work is either not profitable or only marginally so. Can someone then please help me understand, what is the economic justification for not focusing on your strengths and where the greatest value for your firm resides?

I have come to believe that it parallels most lawyers' sense of risk avoidance and how these individuals want to keep all of their options open. But unfortunately, if you examine the results, all too often by trying to be a competent "Generalist" you invariably attract many clients who may not be the best fit and who do not see any differentiating reason to pay you higher fees.

"After all", I quiz lawyers, "why should I choose you (your group / your firm)?"

"What added value do you bring to my particular business matters?"

And now wait for it . . . *"That I can NOT get anywhere else?"*

And for what it is worth, this is a great question to pose to the members of your practice or industry team. Let them work in small break-out groups to brainstorm an answer that might have some hope of resonating with a prospective or existing client. And this is definitely a question that is on the minds of your prospects and your clients—whether it gets articulated or not. For my part, I have posed this many times as a break-out exercise and you would not believe the difficulty we all have (myself included) in coming up with a sensible response.

If you ever study the choices and career paths of some of the most successful professionals in all fields—law, accounting, medicine, financial planning, management consulting, and so forth, you would find that they have followed a similar direction: these professionals had the courage to play high-risk for high-reward. They became successful by narrowing their focus to become the expert; the authority, the go-to resource in some chosen niche area of client need.

You can recognize these specialists by the fact that they:

- are obsessive in having a special area of industry focus or subject-matter expertise;
- do not just repeat what everyone else is saying or create generic content that someone less knowledgeable could just as easily have written;
- freely share and do not stray from their area of expertise;
- are significant—which is different from prolific—in terms of their content creation;
- have a passion for the subject matter and are perceived as an educator; and
- have a strong point of view, which is the foundation of all of their content.

I remember being struck by a benchmarking study done a few years back by the GC350 which identified in-house counsel's preferences for where they distribute their legal work. For "Specialist Advice," they reported that 45 percent was outsourced which amounted to three times as much as

the “low-level” or the “day-to-day legal” work accounted for.

One of the basic, fundamental principles of economics is “what is scarce is valuable.” If what you do as an attorney is rare and relatively hard to find, a premium fee is easily justified. On the other hand, if what you offer is widely available from many other firms, do not expect to have much leverage.

Just imagine that you have developed a chronic cough. It seems to be provoked without reason is often painful and now has you waking up in the middle of the night. In spite of trying a few medications that your friendly neighborhood pharmacist suggested, and which provided some minor relief, nothing seems to really remedy your cough such that now you begin to comprehend that you had better seek real medical attention. Do you simply make an appointment with your General Practitioner, your trusted Family Doctor, even for the purpose of seeking out a referral; or do you take it upon yourself to begin to look for a resource that appears to know this specific problem and potentially offer some highly specialized, corrective counsel?

One of the more common behaviors that we often ignore, unless of course, we are the potential buyer of professional services, like with my medical example, is the influence of . . . Google! In fact, I would assert that your biggest competitor is not the firm down the street or the largest firm in your market footprint; but your biggest competitor is often the need that we all have to do some online research to search out our available options. News Flash: Websites have already edged out referrals as a driving influence for many buyers of professional services.

In this instance, with the chronic cough, I think we both know precisely what you would do. So, why do you think that any prospective or existing client (a typical user of your generalist advice) would do anything different? When the problem is acute, novel, difficult, or high risk, they begin to seek out an expert—someone with the experience and credentials to treat and resolve the particular, specialized pain.

To build on this example, if you are pitching for a particular engagement, responding to a competitive RFP, or attempting to court some attractive prospect, if you do not possess **deep and narrow expertise** in the specific domain or niche that seems to be required, you are in a race to the bottom. If you cannot immediately outline your particular problem-resolution approach with all its phases and idiosyncrasies, you will lose to your (one Google click away) competitor who owns the mind-share when it come to this particular niche and offers a clear problem solution.

As a full-service, all things to all people, generalist attorney trying to impress some prospect with your project management skills, your AFA experience or claims that you can do the work better, faster, and cheaper, you should know, pretty much in advance, that you will need to keep your fees—very LOW—to get most of your legal work.

It has been said that the ultimate strategy is to be a category of one! For over 30 years, my inspiration has been a guy by the name of Jerry Garcia, who many will instantly recognize as the individual who started the Grateful Dead rock band. Jerry was known to have observed, “*It ain’t good enough to be the best of the best; I want to be the only Cat who does what I do!*” ■

—Patrick J. McKenna

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Assessing Client Needs—And Your Own

Editor's Note: The following is extracted from the 2020–2021 COVID Pandemic Edition of Ross Fishman's The Ultimate Law Firm Partner's Working-From Home Marketing Checklist.

The basis for conducting this assessment is to identify the client's needs and objectives. It will also give you and the client the opportunity to work together to brainstorm and create a clear plan for the future.

The key is to strategize and present this information in a way that identifies their questions and concerns and helps them achieve their future goals. If there are legal solutions to their concerns, you have a path to find a way to work together on them.

- Susan Freeman offers “some powerful questions that show respect for the client, giving them an opportunity to share what's most important to them, below:
 - From your perspective, what would be a valuable way for us to spend this time together?
 - What would be useful for you to know about our firm?
 - What prompted your interest in our meeting?
 - In talking to some of our clients in your industry, I'm struck by a couple of particular issues they are grappling with. These include: [give examples]. How would these resonate with you and your management?
 - How is your organization reacting to... (a recent, important development in this client's industry or function)?
 - How are you handling... (new competition, cheap imports, a new regulatory framework)?
 - Is there a particular competitor you admire?
 - Can you tell me what your biggest priorities are for this year?
 - What are your most significant opportunities for growth over the next several years?

- What exactly do you mean when you say [‘risk-averse,’ ‘dysfunctional,’ ‘challenging?’]
- Who would you say are your most valuable customers?
- What would your best customers say are the main reasons they do business with you?
- Why do customers stay with you?
- Why do customers leave?
- When customers complain, what do they say?
- How have your customers' expectations changed over the past five years?
- How would you describe the biggest challenges facing your own customers?
- What's the driving force behind this particular initiative? What is behind the drive to reduce costs, design a new organization, etc.?
- What would ‘better’ (risk management, organizational effectiveness, etc.) look like?
- How much internal agreement is there about the problem and the possible solutions?
- From your perspective, given everything we've discussed, what would be a helpful follow-up to this meeting?”
- Any one of these can help you to show respect, gain trust, build rapport, and, ultimately, be likable.
 - Since people want to work with people they like, try *active listening*, rather than talking.

General Mindset

Always remember, whatever your job, **always do more than is expected.**

Clients cannot often tell whether you are doing a good technical job, but they can tell how well you are treating them, and this is especially true when you cannot physically shake their hand and look them in the eye.

Communicate regularly. Meet your obligations and deadlines. Be responsive—do not make clients wait to hear from you. Try to return every call and email within two hours and never let a call or email go unreturned overnight. Don't be afraid to return a call or email simply saying you are working on it and giving the client a deadline when they can expect to receive the requested information.

Treat every person at the firm with the utmost respect regardless of their gender, race, religion, sexual orientation, age, or title. Learn the names of all of the receptionists, secretaries, clerks, and messengers, and *use* them. It is not only the decent thing to do, people notice. It matters. Savvy lawyers understand that secretaries and receptionists are often the best source of information because they have different guards up and might be more willing to share.

Gender-based Communication Musings

Susan Freeman offers some personal insight into gender communications within law firms.

Women remain underrepresented at every level in corporate America, despite having earned more college degrees than men for over 30 years. Most organizations understand the need to do more—corporate commitment to gender diversity is at an all-time high. Nonetheless, progress remains slow—and may even be stalling.

One of the most powerful explanations is the simplest—we have blind spots when it comes to diversity, and we cannot solve problems we do not see or understand. Raise awareness in your own firm and lead by example. Women need to have an equal shot at the career-stretching assignments. To create equity in the workplace, we must help women and men communicate more effectively.

- Diversity and inclusivity are not the same things.
- Firms that are diverse and inclusive perform better than firms that are not.
- Diversity requires including women and men of different ages and races.
- Inclusivity calls for complete integration of all employees into all firm operations.
- Women and minorities benefit from having people who coach them on “political navigation” as well as skills development.

In the workplace, people are continuously—and often unconsciously—assessing your communication style for two sets of qualities: warmth (empathy, likeability, caring) and authority (power, credibility, status). In all cases, a communication style turns into a weakness when overdone. A woman's collaborative approach can appear submissive and a man's directness can seem callous.

Men appear aggressive when their expansive postures infringe on other's personal space (sometimes called “manspreading”), when they have a “death grip” handshake, and when they emphasize status cues to the point where they look haughty and uncaring. Women are viewed as weak or passive when they are unnecessarily apologetic, when they smile excessively or inappropriately, and when they discount their own ideas and achievements.

Typically, women have the edge in collaborative environments where listening skills, inclusive of body language and empathy are highly valued, and are judged as better at dialogue. Women are more empathetic and less combative. Because they are better at listening, they can more effectively and consistently find client-centered solutions.

Without as much ego or bluster, they can find unique solutions to litigation, rather than just filing a lawsuit. Most clients want to avoid costly litigation, yet many male attorneys do not even consider seeking a creative solution or alternative. The client's real goal is to resolve the dispute and get back to making money. In this regard, a woman attorney's

inclination to listen and predisposition to be creative, offers a solid advantage.

Women are generally more patient and better listeners, positioning them to understand the client's real needs when negotiating a deal or trying to solve a client's business problem.

Research shows that success and likeability are positively correlated for men and negatively correlated for women. That is, when a man is successful, his peers often like him more; when a woman is successful, both men and women may like her less. This trade-off between success and likeability creates a double-bind for women. If a woman is competent, she does not seem nice enough, but if she seems really nice, she is considered less competent. This can constrain her career advancement.

This bias often surfaces in the way women are described, both in passing and in performance reviews. When a woman asserts herself—for example, by speaking in a direct style or promoting her ideas—she is often called “aggressive” and “ambitious.” Or worse. When a man does the same, he is considered “confident” and “strong.”

According to Carol Goman, the author of *The Silent Language of Leaders*, women display more “warm” body language cues. They are more likely to focus on those who are speaking by orienting head and torso to face participants. They lean forward, smile, synchronize their movements with others, nod and tilt their heads (the universal signal of listening, literally “giving someone your ear”).

These are powerful and positive communication traits. Understanding these differences in gender-based communication gives you an advantage. Use what you now know to grow and protect your practices, your client's company, and yourself.

The receiver makes meaning of the message—regardless of the sender's intent. Effective communication takes place when the sender confirms the message is received as

the sender intended. For each person, certain communication strategies are more effective than others. As men and women communicate differently, there are common practices that make building and maintaining relationships a bit easier. We suggest giving the following recommendations an old college try:

- Adapt to sudden changes in direction whether in your personal or professional life.
- Use an easy-going and, where appropriate, fun, approach to building and nurturing relationships with colleagues and clients.
- Be prepared to share problems openly with trusted advisors or mentors inside the firm.
- Provide information that stimulates conversation among people of differing personalities, views, and styles.
- Ask for others' thoughts and ideas—even if they conflict with your own.
- Don't always expect brief, specific answers, especially outside of the courtroom.
- Allow for storytelling—your own and that of others—in your life.
- Acknowledge unique talents and leadership skills, even when you are not the leader.
- Be clear on your expectations, desired outcomes and completion details.
- Support others' needs for new ideas, state-of-the-art technology, modern-day materials, and intellectual growth challenges.
- Offer others praise and appreciation when due, early, and often.
- Indulge in occasional speculation, knowing sometimes the questions are more meaningful than the answers anyway.

Your Mental Health

Law can be a difficult and stressful career. We work long hours on intellectually and emotionally challenging projects for clients who may seem demanding and unappreciative. We bring the work home with us not just physically, but also mentally and emotionally.

It is essential to take care of yourself. Eat right, get enough sleep and exercise, and spend time with your friends, family, and hobbies. Volunteer for a charity. Ensure you have a vibrant and fulfilling life outside of your practice, as well. Being successful and productive is more about that balance than it is about the quantity of work you have produced.

Law can be an isolating profession even while working in an energetic office. In today's uncertain times, it is important to focus on your emotional and mental well-being in addition to your physical condition. The "social-distancing" and "self-isolating" behaviors that can keep you free of disease can be lonely and stressful. These can cause additional health problems and aggravate any physical problems you may have.

During periods of intense and extended isolation, take the time to exercise and find productive ways to distract yourself. Try to maintain a consistent daily routine, even just waking up and eating at the same time every day. Take a walk or ride a bike. Do an art project or start a 1,000-piece puzzle.

Start some of the things you have been putting off, like cleaning out your drawers or closets. Take an online class and learn a new skill. Write that article or blog post that you have been thinking about. Learn to play the guitar; in just a few days, you can be strumming and singing early Beatles with your friends online.

Sarah Tetlow, Legal Productivity Coach and Founder of Firm Focus, suggests "when distracting projects pop into your mind or vision while you're trying to finish a deadline for work, quiet the distraction by identifying *when* you will address it.

- 'I need to do the laundry. I will do it when I take a break at 3:00.'
- 'I should write an article about this topic!' I will set a tickler reminder to prepare the draft on Tuesday after I've filed this brief.

- 'I would love to clean out that closet.' I will do that on Saturday afternoon.

By identifying a scheduled time for your next action on those precious thoughts and tasks, it will help calm your brain of the distraction knowing you have a plan."

Speaking of calming the brain, practice mindfulness with an app-like *Calm* or *Headspace*. Listen to some stress-reducing music, like "Weightless," by Marconi Union. Use this time to get in better shape by downloading an exercise app like *Couch to 5K*, *Hundred Pushups*, or *Pocket Yoga*, and get started!

Andrew Fishman, LSW says "It's important to stay informed, but it's easy to become overwhelmed by too much bad news. Consider limiting the news to certain times of the day. Try to figure out how much information you need to make healthy choices without going overboard or obsessing.

"Resist the powerful attraction to the social media platforms that can increase your stress. Sites like Facebook often act as a funnel for bad news, fake news, conspiracy theories, and people either complaining about their miserable lives or humble bragging about how much better their lives are than yours.

"In times of crisis, people may worry about their loved ones getting sick and dying. This is often connected to the amount of media a person consumes. This fear isn't *entirely* irrational but may do more harm than good; stress like this can damage your mental and physical health. Unless it's helping to make healthy decisions, worrying isn't a good use of time or energy.

"Try to be proactive about connecting with loved ones. Get as close as you can to meeting in person. That is, Facetiming is better than calling, because you can see the smiles on their faces. Calling is better than texting because it's more interactive and you can hear them laugh. And texting is more dynamic

than passive email well-wishes. Share upbeat messages on Instagram.”

Consider reading *The Happiness Advantage* by Shawn Achor, which discusses how “happiness fuels success.” In your life and career, strive for a career that provides *both*.

If you feel that you may need some support or assistance, there are many available resources designed specifically for lawyers. These include (1) Lawyer Assistance Programs through state and local bar associations and (2) the renowned Hazelden Betty Ford Foundation at hazeldenbettyford.org/. Seek them out.

If you follow this checklist, over time you should find that you have developed a significant network of contacts you can turn into clients. Moreover, you will have laid the foundation for a successful career, one that is fulfilling personally, professionally, and financially. Hopefully, you will be able to look back on this unprecedented event as the time you invested even more deeply in your personal marketing and took your practice to the next level.

Remember, once you identify what you love to do, find a way to bring that into your practice. If you do, you may spend your time until retirement leaping out of bed every morning absolutely passionate about your profession, your career, and your success.

Good luck! ■

—Ross Fishman

Ross Fishman is CEO of Fishman Marketing, one of the legal profession's leading strategy, branding, and website firms. A Fellow of the College of Law Practice Management and inaugural member of the LMA's Hall of Fame, Ross helps law firms increase revenue and profits as dominant market leaders. Reach him at ross@fishmanmarketing.com, +1.847.921.7677, and LinkedIn. com/in/rossfishman. Buy The Ultimate Law Firm Associate's Marketing Checklist (COVID-19 edition) on Amazon at t.ly/syIQ or contact Ross for discounts for 25+ copies.

2022 Trendlines

Continued from page 2

meeting this increased demand through an ongoing, nationwide search for highly qualified attorneys, with CPAs and/or LLMs in tax, who are interested in relocating to Nevada.”

Green Energy and L&E

While scores of scientists and dozens of environmental organizations have criticized the massive 2022 Department of Defense and military contractors spending bill and the lack of spending on the existential threat to the planet caused by climate change, they would be happy with what is manifesting in the legal profession. Green energy is clearly on the rise. This continued growth, of course, generates the legal-service needs.

“We’ve seen a rapid expansion in renewable and alternative energy with our clients, and I expect to see that continue in the new year,” says Michael Ferachi, managing partner at New Orleans-based McGlinchey Stafford. “The industry continues to face increasing challenges posed by endless government and regulatory scrutiny, complications presented by climate change, and, of course, rapid changes in markets, technologies, and customer base.”

At McDonald Carano, Addison sees the same green energy trend expanding in 2022, calling renewable energy one of the “fastest-growing” new industries in Nevada. “Our energy team sees no end in sight for their already booked-out work representing U.S. and international developers and investors in connection with project development, permitting, and finance of renewable energy projects,” he says. “We are involved in nearly every major renewable energy project currently underway in Nevada, which is work that will continue well into 2022, including photovoltaic projects and utility-scale wind farms.”

On another front, Addison, Ferachi, and Murer all say labor and employment work will continue on its upward arc. Polsinelli L&E attorneys “have been very busy dealing with lots of novel issues,” Murer says, “including how to handle the return to the office and how to reconcile vaccine mandates from the federal government and conflicting direction from some state governments.”

Ferachi agrees that COVID-related issues will continue to drive employment law at McGlinchey. “As the virus continues to [affect] employers,” he says, “I expect our L&E attorneys to remain in demand for solutions around the pandemic and workplace safety.”

The BTI report calls labor and employment law “the gift that keeps on giving to law firms,” according to its assessment of one of the busiest practice areas. “The rules and guidance are constantly changing. And the return to work keeps generating new regulatory guidelines as new developments unfold. Clients yearn for updated information and insights into industry and regional practices used by other companies.”

The consultancy also says the heightened demand for L&E legal service continues to produce high-tech innovations to help clients stay compliant with the every-evolving regulatory framework.

Speaking of legal tech services, one of the areas that will be hot in 2022 is “leveraging [artificial intelligence] for review not only within a single matter, but across matters – the industry at large has become more and more comfortable with the use of analytics and continues to apply it in new and interesting ways for individual matters,” says Erika Namnath, executive director of global advisory services at Lighthouse, a Buffalo-based tech firm staffed with highly regarded legal, compliance, and technology experts.

“The focus now,” Namnath adds, “is shifting to how to leverage [AI] across matters, given the increasing potential to extract what’s learned on one matter then apply it to following matters. That will lead to greater efficiency – that is, increased speed to review and

production. Leveraging AI also helps ensure more consistency, which reduces risk overall, and can result in significant cost savings.”

Other practices that are expected to heat up are: real estate, construction, intellectual property, environmental, social, and governance, among others, according to multiple sources.

Cooling Off

So, what’s *not* hot? What practices will slow down in 2022? Certainly, the one insiders mention first is bankruptcy, as the area’s hectic pace in 2020 has decelerated. More companies would be filing for bankruptcy but government assistance programs helped resuscitate many of those enterprises that were especially hit by the pandemic.

“Spending on bankruptcy more than doubled in 2020 and has been tracking downward since then,” the BTI reports states. “Government programs helped many companies stave off bankruptcy filings. In addition, the strong and quick recovery painted a rosier picture than many thought would emerge. The work is largely concentrated in highly leveraged companies and organizations tied to volatile commodity markets.”

On a related note, the same can be said of restructuring, where there is a real need. “Like bankruptcy—most of the need comes from the highly leveraged industries—and the supply chains supporting these industries,” according to the BTI analysis, which also notes that clients will likely turn to law firms with high-profile expertise in this area for help. “Brand and reputation matter deeply in restructuring. Most companies didn’t forecast the need for a restructuring. These companies will look to their existing firms—but most clients report they are never approached by their existing firms. At this point, clients look for brand more than referrals, because companies don’t want to spread the word they are in trouble.”

When it comes to litigation—that is a mixed bag. Certain types of litigation have definitely increased, something that seemed unlikely to

many in the profession in early 2021. “A year ago I would have pointed to litigation as a down practice but litigation has picked back up in the past year as clients have returned to a new normal,” Murer says.

It is hard to forecast if litigation arising from past due debts will be on the rise until we see the ramifications of the expiring foreclosure and eviction moratoriums.

But high-stakes, bet-the-company cases will likely take a downward turn. “The number of companies facing bet-the-company litigation continues to drop. Aggregate spending will contract as fewer companies report facing bet-the-company matters,” the *The BTI Practice Outlook 2022* states.

Flexibility Is Key

It is safe to say that other areas will cool off as the coming months unfold, and it is important that law firms do what prudent firms always do when certain practices stagnate: stay flexible, adjust to the cycles, and, to the extent that it is possible, move people to where they are needed.

“If activity in any practice area decreases, we balance our workloads,” Ferachi says. “That’s an opportunity for our colleagues to hire and cross-train for hot areas. It also gives the lawyers time to develop business, continue to learn, and find ways to fill in the gaps so that we can continue to provide holistic value and service for our clients in every industry.”

For some firms, there appears to be very little or no slow down on the horizon for any of their practices. Take, for example, the sanguine outlook Addison has for McDonald Carano in the next 12 months: “We don’t have any slow areas of practice at this time and do not anticipate any in 2022. We’re very grateful for the prominent and successful market position we presently enjoy, and we’ll do everything we can to maintain it.” ■

– Steven Taylor

This Is The Moment

About 30 years ago or so, I was in the pre-op room for another in a long series of foot and leg operations – inconvenient and painful, but never life threatening. I was in there with several other patients, including one elderly man, waiting for our operating rooms. Gently strapped to one side, facing him and a cinderblock wall painted one of those bulk discount colors that schools and hospitals are famous for, it occurred to me that for any number of patients facing more serious operations, including possibly my new pre-operating room neighbor, this would be the last thing they see – pale yellow acrylic latex paint. Suddenly, I understood what T.S. Elliot meant when he wrote that the way the world ends is “Not with a bang but a whimper.”

Life is long but it is also painfully short. A blink. I came of age with the Rocky movies, seeing the first one in the theater in 1976 and still today choking up at the end of the best ones. Is it because of the movies which, camp though they may be, so brilliantly tug at every heart-string? Or is it because nearly half a century has gone by and I’ve watched Sylvester Stallone age from a 20-something to a 75 year old in what seems like the length of a feature film? Whose reflection is it I see when I look in the mirror?

We seldom see the ends of things coming because we act so often as if we have all the time in the world. What would happen if we lived with the awareness that precisely because life is so short, we should be our best selves all the time? No second chances, no do-overs. If we lived as a community rather than a zero sum game?

As we get older, life looks so much different in the rearview mirror than the windshield. Life’s most recollected moments come down to those instances when we could do the right thing or the easy one. When it comes to diversity, for all of us, this is one of those moments.

Some weeks ago on *In House Warrior*, the daily podcast I host for the *Corporate Counsel Business Journal*, I spoke with two

legal diversity experts who are paving the way to create real change in the legal community.

Aviva Will, Burford Capital’s Co-Chief Operating Officer, discussed the company’s launch of the second phase of The Equity Project, a \$100 million commitment designed to increase diversity in the business of law, particularly in leadership and partner positions. The project’s goal is to create opportunity in law where there was none before and build connective tissue between lawyers and their clients where there might otherwise be a breakdown over financial issues. Ms. Will shared how the expansion of The Equity Project was motivated by the “vanishingly few” commercial disputes led by female and racially diverse lawyers. Burford contributes a portion of its profits made from resolved Equity Project-funded matters to organizations that promote lawyer development for female and racially diverse lawyers.

I also interviewed my old friend Lloyd Johnson, CEO and founder of Chief Legal Executive, who previously launched the Minority Corporate Counsel Association (MCCA) and numerous legal publications, to discuss diversity in the legal community. For more than 30 years, Lloyd has counseled senior executives at Fortune 500 companies, playing a pivotal role in the legal community through career development initiatives that engage and mentor female attorneys and attorneys of color.

Our conversations reminded me of our collective need to challenge the standard for diversity. We must recognize the similarities of our victimhood and the abundance of opportunities. We should be stepping together, not stepping on each other. How much progress have we truly made in diversifying legal departments? How much more is on the horizon?

The biggest changes are ahead of us.

—Richard S. Levick, Esq.

Richard S. Levick is the Chairman and CEO of LEVICK, a global communications firm.

Of Counsel Profile

Continued from page 20

says one. “She is accessible and very responsive.” And another of the many she represents adds: “She is relentless in her pursuit of the truth.”

Chambers also surveyed clients who offered praise for the L&A team of lawyers Bickford leads. A client says: “They are excellent and thoroughly prepare, leaving no stone unturned,” one interviewee says. From another client: “They are always there day or night and work exceptionally hard to help us at every turn.”

And to think that Bickford took the legal-career track despite—perhaps partly because of—a dismissive aunt and a negative, condescending nun. Recently, *Of Counsel* talked with Bickford about her practice and career, the good and the bad about the legal profession, a special attribute she looks for when hiring employment law attorneys, and other topics, including the behavior of both the aunt and the nun.

Proving Doubting Debbies Wrong

Of Counsel: Mag, what made you want to become a lawyer?

Mag Bickford: When I was probably about six years old, old enough to stand in the shallow end of the pool, I was at my aunt’s house. All of the family were swimming around in the pool, and one of my aunts asked me, “What do you want to be when you grow up?” And out of the blue—and all I can think of was it had to be from TV—I popped out with, “I’m going to be a lawyer!” She looked at me and said, “Oh, I don’t think so.” But I came back with, “Oh no, I *will* be a lawyer.” I guess

I knew then that I’m so damn hard-headed. So now I’m a lawyer. There you go.

And then there’s another story that has to do with this: I went to an all-girls Catholic high school. I had the good fortune of being in honors classes. There was a very unpleasant nun—in junior year, honors history. And at the end of the year, after she got to know people, the nun made everybody in that class stand up and say what they wanted to be. Of course with me having a last name with the letter B, I was asked pretty early on in the order.

So I stood up and said, “I’m going to be a lawyer.”

She said, “Oh no, no, no. You can’t be a lawyer. You should be a therapist, or a counselor, or a psychologist.”

And I’m like, *Oh, really?* To make a long story short, after a few years of practicing law, I realized that’s exactly what we are, therapists (*laughter*)

OC: And how did you find yourself practicing law in the L&E area?

MB: A little bit of luck and a little bit of determination. I started off at a plaintiff union firm. Consequently, their case base was personal injury, workers comp, the panorama of union stuff and pension work. So, when I started I was more focused on the personal injury side of that practice, but I was exposed to the union side and the concept of labor law. We also did a lot of discrimination cases and things like that. I was doing all of the above. And what I found out was I really liked it.

Then I got the wonderful invitation, when my kids were small, to go in-house, because the particular place that ended up employing me pitched me to come work for them by saying, “I want a plaintiff union lawyer to come run my legal department and my HR department because they’re going to know the worst possible scenarios and they’re going to make sure that I don’t end up there.”

OC: Smart person.

MB: Yes, a brilliant person. At that point I thought, *That's exactly what I want to do. I like the hours better and I don't have to keep time. Oh my gosh.* So it really was the perfect time in my life for that to happen. I loved it. I always called that job Camelot because it was just so perfect. Eventually, they sold the company, so I ended up going back to law firms, but it really was a magical time, and I learned so much about myself, about the practice of law, and about people. It was a gift.

Same Issue, Different Strategies

OC: You have been practicing labor and employment law for quite a while.

MB: Yeah, more years than I want to count.

OC: (*laughs*) What's a matter that you handled that really stands out? I know that you've worked for so many clients over the years on a range of issues. But what comes to mind as a particularly interesting and satisfying matter?

MB: I think the one that stands out the most is really two different clients on the same issue. It was a labor law issue with two charter schools that got petitioned for unions. One of them said, "Look, we want to have solidarity with our employees. We're not going to go to an election. We're going to go straight to bargaining, and we're going to put a collective bargaining agreement in place."

Shortly after that, at a different school, same thing happened. But they wanted to aggressively campaign against certification and collective bargaining. So, it was really an interesting tandem in terms of working on the same type of issue with different takes on the desired outcome.

OC: With different legal strategies.

MB: Yes. One of the things we want to do as lawyers is to make our clients happy and

get them what they want. I had to think very differently in both of those situations because they wanted such different outcomes. I think the hallmark of an effective lawyer is to look at your client and see what they want and what's good for them and get them there. In both cases, that's exactly what happened. But each took a very different strategic path.

You can't always walk the same path. If I had a Title VII case, they're all different, but in the end it's the same path. I get my case; I send out my discovery; I take some depositions; I file motions for summary judgment; and then we either shut the thing down or we go on further and settle it or go to trial. It's a pretty established path, whether it's a no-brainer case or whether it's an egregious case, it's really the same path.

This was the same exact scenario but I had to completely create an approach independent and unique to that client. That was fascinating.

OC: I'm guessing it was gratifying not only because you helped your clients but also because it expanded your mind and your horizons.

MB: Yes, I grew because of that.

OC: That sort of intellectual stimulation I think is what really moves a lot of us. What do you really like about being a lawyer and the legal profession?

MB: I love my partnership with my clients and I love my passion with my clients. As an L&E lawyer you can't do this by rote. You've got to personalize and hold the hand of your client because it's complicated, emotional stuff. Just to be a hired gun, I would be so frustrated. Because the type of law that I practice has me working hand-in-glove with my clients and it gives me a passion and goals that motivate me every single day. I have great clients; I have great stories; I could write a book easily, although I'd have a client privilege problem (*laughs*). I love what I do. I love being a thinking advocate.

OC: That's the name of your book.

MB: There you go. *The Thinking Advocate*. ... My partner, who used to be my associate, she's fantastic, and I do a lot of public speaking and this morning we were speaking to the Louisiana Society of CPAs on diversity, equity, and inclusion. As I'm going through this speech advocating for DEI—what to do, how to do it, etc. etc., I'm listening to myself and I thought, *Oh my gosh, I sound like I'm preaching*. I walked out and said to Camille, "I think I'm a reincarnation of a Baptist preacher."

OC: What do you not like about the legal profession? What makes you angry or disappoints you? What do you wish you could change?

MB: Billable hours (*laughs*).

OC: Of course, you're not alone about that.

MB: That's right. I also don't like that this profession attracts people who are more about themselves than the greater glory. Most law firms have people who tend to be "all about me" as opposed to "all about us." When I [look across the legal landscape] I see that, and it's so hard to get people to reorient their point of view.

OC: I think more and more people are becoming narcissists. Fortunately, that behavior seems to a growing phenomenon. But that's a complex topic.

MB: Yes, a long discussion for another day.

Key Candidate Attribute

OC: Mag, let's talk about your chairing of the labor and employment department. When you look for people to bring in, to join your group, what do you look for in a candidate, in either a fresh-out-of-law-school hire or a lateral? Something that's different than

just being smart and checking all the boxes. Something that's unique to your practice.

MB: Easy answer: commitment to passion. I don't want anybody on my team who's just going to phone it in. Clients want to feel that you are in it with them. If you don't have a level of passion that matches their level of passion, then they're going to go find a different lawyer. I can say that for everyone I've hired—and not just in my section, because I'm involved in hiring for the entire firm—I looked for a level of passion. Is there a fire in your belly on behalf of your client and on behalf of the firm?

OC: Right, and you can often tell when someone is faking that enthusiasm and that happens too. I'm sure you had to decide which candidates truly had that passion you look for. To shift gears a little, you're certainly staying very active handling your many management tasks and responsibilities.

MB: Yeah, managing both the mother-ship here at McGlinchey and my labor and employment team keep me very busy.

OC: Right but you also have a flourishing practice. What's keeping your L&E lawyers and yourself busy? I'm sure COVID-related issues account for a lot of the workload.

MB: Yes, that was going to be my first answer. There are two things: COVID and DEI issues. In employment law, things always change a little bit here and a little bit there in terms of the employment laws. But in March of 2020, everything changed in employment law. We saw the EEOC [Equal Employment Opportunity Commission] backing off positions they've held forever because they needed to be more accommodating to the remediation of COVID in the workplace. To me it's probably been the most exciting time, and it's also been the busiest time because of that. It's really been intellectually fun and challenging to get ahead of the various issues related to COVID in the workplace and help our clients.

At the very beginning, we were guessing how this was going to play out because it took a little while for laws to come out. It's just been so much fun. I probably shouldn't say that because people will think I'm terrible. But as a labor and employment lawyer, it's been an exciting time.

OC: And before that the Me Too Movement was keeping you all hopping.

MB: Oh, big time. Big time. And you know what else was interesting? I looked at my discrimination cases—before Black Lives Matter, my race cases were not that prolific. It was more in the world of sex, FMLA [Family and Medical Leave] and ADA [Americans with Disabilities Act] issues. Now the race cases are equally as active as the Me Too cases. I think what the hard part is with the Me Too cases, and with the race cases, is that people read something and they think that's the verbatim proof. It's more of a challenge for us defense employment lawyers to make our clients' defenses heard, because people just believe. That's been kind of difficult. But that is certainly a change that I've seen. So it's interesting.

On the Horizon

OC: You're clearly a leader in the firm and a very influential one. Where do you see McGlinchey going? Will you continue to expand? Will you hold steady in 2022? Any new offices? Anything like that?

MB: Yes, I completely think we're going to continue in an expansion mode. We're actively

looking for people who are committed, both at the associate and at lateral levels, to the culture of our firm. Employment law is going to still be busy. Commercial litigation I think is going to grow by leaps and bounds once the moratoriums are lifted on foreclosures regressively. Our financial services institution team members, they're always growing; they're a big growth area. General litigation is on the rise, and now that we can litigate fully, I think that's going to continue to grow.

We do have our sights set on a few expansion cities. We're only going to expand geographically if it makes sense. But I think we're going to see some of that in 2022, to some degree.

OC: Can you tell me which cities you're looking at, Mag?

MB: I can't say which cities but I will say this, we just opened in Atlanta. That's a new market for us to some degree. We brought on some good people to handle the work in Atlanta.

OC: It sounds like the future looks very bright. How long do you think you're going to continue to practice?

MB: Well, I have kids. I don't think I'll ever not work. But I expect at least another 10 years. Maybe not in a 2,000 hours kind of a way, but I don't think I'll ever really retire completely out of the law firm unless I have to. I love what I do, and I can't imagine not doing it. ■

– Steven T. Taylor

Of Counsel *Interview* ...

“The Thinking Advocate” Successfully Juggles Leadership Duties, L&E Client Service, and Community Outreach

When hearing the old maxim “if you want something done, ask a busy person,” several people might come to mind, including many successful attorneys. The sentiment certainly applies to Magdalen Blessey Bickord.

As if her role as the managing partner of the New Orleans office of McGlinchey Stafford, which is headquartered in The Big East, and her service running the firm’s labor and employment office as its chair weren’t enough to keep her busy, the insightful, engaging, and witty Bickford also continues to maintain a robust workload as a highly regarded L&E attorney. And it’s no secret that lawyers in this practice area have had their hands full in recent years, given the explosion of legal activity sparked by the Me Too Movement and then the high volume of pandemic-generated workplace concerns.

Oh yes, and she’s also a prolific writer and speaker on labor and employment matters.

If you click on the “presentations” or “published articles” categories on her website bio, you have to scroll down a quite ways on each to get to the bottom. What’s more, she serves as an ambassador of sorts for the firm with her active community outreach efforts.

Bickford handles a wide range of matters for clients including discrimination, harassment, and wrongful termination litigation, as well as collective bargaining negotiations and Fair Labor Standards Act cases. And, her clients seem to value extensive experience and knowledge, stellar communications skills, and commitment to them and their matters.

Consider what two clients told the ranking agency Chambers about the wildly successful but modest Bickford: “She provides the same level of attention, professionalism and dedication to solving issues no matter what it is,”

Continued on page 16