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Rising Smoke ...

Part One: Cannabis Law Attorneys Stay Busy to Keep Pace with Industry Growth

Before the pandemic hit the United States and started to spread, cannabis law attorneys were increasingly busy in what was then a hot practice area. After all, the marijuana industry was experiencing growth in both consumer demand as well as workforce numbers and talent; an influx of deep-pocket investment money; industry consolidation; and of course increased legalization but with diverse and complex state-by-state regulations that require significant legal help to navigate; among other factors.

Now, and since March 2020, cannabis law is even busier—smoking hot, if you will.

Attorneys’ workloads are full primarily because of the industry’s expansion and its gushing revenue stream in recent years. The term “emerging” no longer applies to the legal marijuana sector; it has, indeed, emerged.

“By some estimates, total U.S. cannabis sales were expected to surpass \$24 billion in 2021, representing 38% growth over 2020 sales,” according to a report in January

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by Reuters. “In considering the industry’s broader effects on the economy, a recent analysis published by *MJBizFactbook* projected that the cannabis industry is expected to add \$92 billion to the U.S. economy in 2021.” [The fact book contains marijuana business data collected and analyzed by the editors of the trade publication *MJBiz Daily*.]

The most recent surge in business and legal activity is a direct result of a significant escalation in consumption during the COVID era.

“The market is thriving, particularly since the beginning of the COVID pandemic, when many jurisdictions established cannabis as essential,” says Jonathan Robbins, the cannabis law chair at Miami-based Akerman, which has 30 attorneys serving the industry full-time or in some capacity. “Given the current environment in which we’re living, people are heavily burdened with stress. Thus now more than ever, the therapeutic benefits of cannabis are being embraced.”

Jonathan Storper, the leader of the cannabis law group at the national firm Hanson Bridgett in San Francisco, concurs. “The regulated cannabis market is growing by leaps and bounds,” he says.

Barriers Still Exist

That’s not to say, of course, that all impediments have been cleared for even more growth. “Financing remains a challenge, however, because of federal legal restrictions and black-market competition,” Storper adds.

Although states are increasingly legalizing pot, New York and Virginia among some of the most recent ones, the federal ban places unfriendly-business complexities on the industry. One major problem centers on the legal framework requiring banks to be federally insured by the FDIC, which means, in large measure, marijuana businesses can’t use banks so cannabis is a cash-operated business, which presents several obstacles. For example, it makes it difficult for dispensaries and other cannabis businesses to pay employees, attorneys, other professionals, and their taxes.

What’s more, without action on Capitol Hill and in the White House to legalize pot nationwide—something an overwhelming majority of Americans want, according to poll after poll—market competition will take



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Taylor's Perspective ...

More Law Firms Take a Stand and Take Action—More Should Follow Suit

Now that we've passed the two-year mark since COVID entered our lives, and as public officials and private businesses continue to lift restrictions, many of us see the holy grail gradually manifesting: normalcy.

But of course the pandemic changed us—intellectually, emotionally, and, for some, occupationally. As has been well-documented, millions of Americans, including attorneys, changed jobs or at least recalibrated the direction of their career arc. Deep inner reflection often served as the catalyst for that change—or for many, so too did a simple dislike or even disdain for how they made their living and how they were treated on the job.

Legal recruiters have been seeing a lot of this naval gazing that leads to career moves—among seasoned partners, mid-career attorneys, and young associates alike. “I think the pandemic has made [many people] re-evaluate their internal sense of purpose – that is, how much time they want to spend with their families, or where they want to be in five or 10 years,” says Sarah Morris, managing director of the San Francisco office of international legal recruitment firm Macrae.

Increasingly, attorneys want their law firm to operate with a sense of purpose as a cornerstone of its culture. It's something that clearly figures into the hiring equation.

“Of course they want money but all things being equal that's going to be a differentiator,” says Lisa Smith, a consultant with Washington, DC-based Fairfax Associates. “I've seen some firms that can't afford to offer [BigLaw-money compensation] offering a sense of purpose and values that align with many young associates as well as laterals. I'm working with a firm that's very involved in human rights issues and social justice and that's a big recruiting play for them.”

Sometimes when a firm's values don't gel with those of certain attorneys, those lawyers leave, even if they have to take a pay cut. A 40-something, very successful junior partner told me earlier this year that he made the decision to leave a large, prestigious, top-tier partnership because of a remark by a firm leader that, to the junior partner, reflects a deep-rooted, firm-wide attitude.

“I was talking about the environmental, social, and governance concerns among several of our colleagues, and this senior partner interrupted me. ‘You know what? A lot of us are already sick and tired of all this ESG [crap].’ He then turned and walked away. I'd already been having trouble reconciling my beliefs with many of the cultural changes, for the worse, that I saw at the firm as we continued to grow bigger and bigger. That comment was indicative of those changes and proved to be the proverbial straw that broke the camel's back. I called a legal recruiter the next day.”

He soon landed at a highly regarded and profitable firm that didn't compensate him as much as his former partnership did but had a clearly articulated sense of purpose. Importantly, his new firm demonstrated it through their actions in many ways, including a robust pro bono practice. "I couldn't be happier," he says of his move.

Getting Involved to Improve the World

Fortunately, more and more law firms are getting the message, taking a stand on vital issues, and launching initiatives to make a difference. "Firms have been more focused on touting ESG initiatives," Morris says, adding that elevating attorneys to more prominent roles with new job titles sends the right signal. "In February a Silicon Valley-based firm promoted the attorney heading its pro bono program from counsel to the newly created role of 'pro bono partner.'"

It wasn't so long ago that the vast majority of law firms steered far away from sociopolitical matters for fear of conflicting with clients' values. The thinking: *Controversy can cost us credibility—and currency.*

"In the past," Smith says, "when events happened and issues emerged on the national or international stage law firms usually sat back and said, 'That's not our business to comment on or act upon.' I feel now more firms are stepping up, taking a stand, and taking action on things they believe in."

Morris also points out that more law firms are collaborating with in-house legal departments on pro bono projects. They do this, she says, "with the aim of fostering both a sense of purpose and stronger relationships with clients." While this approach acts as an effective business development tool, more importantly it presents a way to use combined resources and talent to better help the intended recipients of the community service efforts.

For their regular feature entitled "Insights," the consultants at Fairfax wrote a piece called "Looking Ahead in 2022" and posted it on their website." In it they covered several areas that prudent firms should focus on or at least consider. One had to do with the need for partnerships to define (or redefine) and implement strategy and vision. What followed was prose, which addresses the topics and supports the assertions in this editorial:

"Part of developing a strategy and vision is articulating a sense of purpose. What does the firm stand for and value? When will the firm take a stand on something? Employees around the globe are prioritizing purpose in making decisions about joining/leaving jobs, and law firms are not immune from this trend.

"In fact, it is an area where law firms may have an advantage as they can use firm talent and resources to fight for social justice, sustainability, or other areas where the law can advance the firm's values. Having the opportunity to be involved in these efforts can be a draw for young lawyers. And because clients are also reinforcing their values and purpose, being able to partner with clients when those values are aligned can be a powerful tool for client retention."

Making a difference and improving people's lives—not to mention helping save the planet from climate-induced destruction—is also "powerful." Some may roll their eyes at this, scoff, and laugh it off dismissively. But applying the talent and resources that lawyers have to advance cultural stability, provide support and comfort for those in need, and offer empathy and action to enhance the world is nothing to ridicule. To quote the question posed (with the answer implied) by talented songwriter Nick Lowe and brought to life by the incomparable musician Elvis Costello, "what's so funny 'bout peace, love, and understanding?" ■

—Steven T. Taylor

What High-Performing Leaders Do: Coach Partners One-On-One (Part 1)

One of my more memorable career achievements was being hired to conduct leadership training for the in-house Legal Department Heads at a pioneering technology company called Intel. What made this experience especially extraordinary (and ironic) is that a good part of my first day's instruction covered the importance and logistics for conducting one-on-one coaching. The ironic aspect of this was how I was first introduced to the importance of leaders engaging in coaching—through reading (*High Output Management* published back in 1983) the work of Andrew S. Grove, co-founder, Chair, and CEO of . . . Intel.

Leadership is about behavior and one of the most critical skills for any leader is in being a good coach. Almost everyone can benefit from the straight talk and support of someone you can turn to for a bit of guidance or just talk to about an issue, either when you're lost or stuck in old patterns can

be enormously helpful, especially when this person is someone who knows you and someone you can trust enough to reveal your blind spots and vulnerabilities.

Are you constantly fighting fires or having to deal with various performance issues? Engaging in constructive one-on-one discussions can help you catch interpersonal conflicts or underperformance issues before they've exploded. As a leader you still have to follow through on what you learn but knowing about a problem when it's first developing can make it much easier to address than when you have to triage later.

As a practice or industry group leader you have numerous colleagues who have career aspirations. They want to grow, build their skills, try new things, get acknowledged by their colleagues and in the marketplace. If you don't have the conversations with your



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people about this growth, they may just revert to autopilot, inadvertently doing the same old schtick day to day. Without regular one on ones, these conversations often get lost in the shuffle and only surface during annual reviews which are then quickly forgotten and never acted upon.

One of the great benefits of engaging in one-on-one coaching is that you set aside time for a colleague to talk about *them*. And you should not underestimate the impact of how showing that you care and that this individual is important can have on morale, commitment and trust in you as the group's leader. The more you get to know your people, especially through one-on-one conversations, the more you will know how to motivate each partner uniquely.

There are other benefits to engaging in one-on-ones. And you don't need to be the one who is always offering counsel, especially to some more senior member of your team. Perhaps one of your team members is thinking about some new initiative and wants some unfiltered feedback before they invest a lot of time in it? You investing the time to arrange a one-on-one with a few of the more critical thinkers in your group may be the perfect way to both convert this individual's semi-baked idea into one that has impact as well as develop buy-in from a few key supporters.

There are many challenging dimensions to coaching: how to initiate it; when and how much to get involved; when to back off; what to say and what to leave unsaid; and how best to follow up. Successful practice leaders learn how to straddle the line between "too little" and "too much" coaching.

I. Getting Ready to Coach

In a very *proactive* manner, high-performance group leaders will make it a habit to ask themselves on a weekly basis, who on their team might need some attention:

- Is anyone in noncompliance with our group standards?
- Is anyone struggling?
- Who needs help, even if they're not struggling?
- Who needs energizing?
- Who needs recognition or appreciation? (and don't overlook your Star performers)
- Is there anyone I haven't had coffee or lunch with recently (or otherwise paid personal attention to) in a while?
- Is anyone doing things that are disrupting the group?
- Who do I have the least solid relationship with?
- Are the juniors being looked after?
- Are there any conflicts going on between group members?

Meanwhile, in more of a *reactive* mode, spending time on coaching is what is required when some partner in your group:

- is unclear on where they want to go with their careers such that they are just cruising along doing the same old schtick;
- asks for advice, assistance, feedback, or support;
- is taking on a new task or responsibility;
- appears frustrated or confused;
- seems indecisive or stuck;
- is performing inconsistently;
- expresses a sincere desire to improve;
- performs below acceptable standards; or
- has a negative attitude that is impeding their work and the work of others.

It is also important to know *when not to coach*. Unless you are able to qualify and exceed the following conditions, you are probably not going to be able to provide effective coaching. You need to critically examine—do the people you are seeking to coach:

- consider you their trusted advisor?
- feel confident that you can help them to visualize and articulate their dreams?
- know you like them? (and do you actually like the people you are coaching?)

- view you as being someone who cares about others?
- see you as someone investing time toward building a strong relationship with them?
- feel comfortable admitting their flaws to you?
- see you as someone who would act and offer advice in their best interests (and not to make you look good)?

II. Some Preconditions to Being Effective

- Developing Rapport

In a coaching relationship, the focus should be on your colleagues' professional goals and how they can be achieved. Your aim as coach is to create a level of rapport that encourages this individual to communicate honestly about their performance. If you have established good rapport you will feel comfortable and relaxed in each other's company to the extent that you can talk frankly and openly without either side feeling defensive.

Now, if you don't really know this individual, then you will need to build a foundation for the coaching relationship. You need to allow sufficient time for the coaching process and this aspect should not be hurried. Any attempt to rush it carries the danger of being seen as artificial, something you need to avoid at all costs. This is also true of the often-cited advice from coaching trainers that you should mirror your colleagues body language and speech patterns. If you are not skilled in this activity it can come across as false and potentially annoying, which will be detrimental to why you are conducting the coaching, especially if you work together.

The safest course of action is to talk about something that is work-related and about which you believe they have a genuine interest in or at least an opinion about. In

the coaching meetings, after an initial greeting, open the conversation with a remark that lets your colleague know that you are genuinely interested in them and what they have to say. Then follow this with a question that leads the conversation into the aim of the coaching. Remember to actively listen and display your interest in what your colleague is saying and avoid doing too much of the talking.

- Active Listening

To be an effective coach you must show that you are genuinely interested in the other person and what they have to say and want to help them develop their competencies and achieve their career aspirations. Therefore, in any effective one-on-one discussion, you need to hear precisely what is being said to you so that you have a clear understanding of the issue being conveyed. The principle of active listening is your disciplined ability to prevent distractions breaking your concentration during your discussions.

The amount of eye contact you have with your colleague during your one-on-one; your use of non-verbal signs like nodding and smiling; together with verbal confirmations (*interesting, tell me more*) are just some of the ways people assess how well they are being heard. One key element of active listening is your competence and attentiveness in being able to accurately paraphrase back to your colleague precisely what you have heard them say. Doing that confirms your understanding; helps develop rapport and empathy with the individual; and communicates your impartiality and comprehension.

To have effective communication you need to observe all the conscious and unconscious signs displayed, enabling you to discern the true meaning behind the spoken words. By truly listening you are able to form questions that serve to probe deeper into the essence of the subject and stimulate your colleagues' thinking process.

III. A Few Coaching Challenges to Keep in Mind

Most professionals view themselves as rugged individualists making autonomous decisions, charting their career and mapping out their futures. When we offer these same professionals some coaching assistance, we tend to base our perceptions and prescriptions on our own behavior, performance, personality, and sense of what we believe appropriate. So, some of the built-in mindset challenges that may affect your coaching abilities include:

- *How first impressions can stick*

Your perceptions color your reality and are actually capable of altering your relationships. Once we form a first impression of an individual, we strongly resist changing that impression. Further, once we have formed that first impression, we then tend to rationalize the individual's characteristics and behaviors to fit our preconceived impression.

We tend to package all information that we collect about an individual. Most of us have a menu of favorite labels we use to describe different people. After some observation we select one of those labels and assign it to the person.

If your overall impression of someone is positive you will likely have a tendency to discount some of their faults. Similarly, if your overall impression of a person is slightly negative, you may tend to overlook their positive traits. While many of the traits, characteristics, or behaviors associated with a particular label might fit this particular individual, others will not. But, because we tend to hold the bundle together as a convenient whole, we tend not to closely scrutinize the attributes that may not fit.

Most of us would have a difficult time reconciling a negative impression of someone with outstanding performance in certain areas. Instead, we attribute lower performance

in all areas, even though some actually may be inaccurate, in order to make sense of our overall impression.

We may acknowledge an individual's weaknesses in a key area but rationalize them because we like this person, and the person has strengths in other areas. But, if those weaknesses are found in critical areas, they may have a significant influence on our overall impression.

- *How we tend to view failure differently, depending on who is failing*

We tend to blame our own personal shortcomings on factors in our environment, while we tend to blame the failures of others on the individual.

When we have fallen short of expectations, we are likely to summarize our behavior as "having had a bad day," or helping others understand just how "*the circumstances had changed.*" Alternatively, in the very same situation, if the failure were the result of someone else's action (or lack thereof), we could just as easily be talking about how "*he does not have sufficient experience to handle the responsibility,*" or how the management of this matter suffered from "*his obvious failure to properly communicate.*"

- *How, over time, many seem to just naturally rest on their laurels*

Over time we all tend to develop a level of performance that becomes comfortable.

As professionals master their craft, they typically try to achieve a comfortable level of performance as expressed by hours spent at the office, hours billable, new client volume generated or any combination of familiar metrics. As we increase our knowledge and skill doing an effective job for clients becomes more routine and less stressful than when we first began in the profession. Eventually we reach a level of competence where we feel we have mastered our job and then begin to coast at a comfortable level.

Professionals who would never have been satisfied with average grades at law school now consider being average, in their personal performance metrics as compared to other partners, quite acceptable.

This may be where the concept of ‘resting on one’s laurels’ had its origins. Professionals will then attempt to justify how they continue to perform at the same levels, if not at a higher level than they did in previous years. As we become more senior, we also tend to believe that we have paid our dues and should not have to continue to make payment. We look forward to a time when we are able to produce excellent performance without exerting too much effort. This might work except for the fact that things change—our skills become passé and our competencies become commoditized. Meanwhile, the more senior we are, the more people’s expectations of us increase. The older we are the more people expect that we should know and the more we know, the more we are expected to excel.

Many believe that the simplest way to increase someone’s contribution is to have them work harder, put in more billable hours and exert greater effort. But increasingly, with seniority, the expectations of more hours leads only to extreme anxiety, potential burn-out substance abuse, and irritable behavior. The only way to help these partners increase their contribution is to help them work smarter rather than harder.

- *How we need to find agreement on what needs changing*

We cannot change something when we half-heartedly agree to work on it. Too often people feel that they need to work on changing something that someone else wants to see changed. This attitude represents compliance, not commitment.

Consider this. Identify the one skill that, if you were able to perform it with a high level of proficiency, would guarantee that you were perceived as a star player and make a significant difference in your career success?

Now look back to your last performance review and see if that same skill was identified such that it is something that you are currently diligently working on improving?

In spite of our current fad to believe that we can effectively multi-task, the truth is that we all face real limitations on how many different issues we can successfully tackle at any one time. It is highly improbable that you can juggle a half-dozen different priorities. Whenever we try to address more than one or two important things at the same time, we end up making no significant progress with any of them. Therefore, you can only help someone to the extent that you can assist someone to prioritize and focus on one or two of their most critical issues.

People would genuinely like to achieve everything that is on their agenda and everything that they aspire to achieve. The painful truth is that past experience leads us all to believe that little change will actually take place. We are optimistic about what could be achieved but highly skeptical about our personal resolve and discipline to actually follow through. To the extent that you can get your partner to accept changing or accomplishing just one important issue and to the extent that you can accomplish even a modest win, the other issues yet to be addressed, become insignificant.

- *How helping develop strengths can often trump fixing weaknesses*

Developing a moderate strength into a profound strength would have a far greater impact on performance than fixing something that was slightly below average.

The process of progressing from unacceptable performance to acceptable performance is far more straightforward and understandable than going from acceptable performance to outstanding performance. It is usually very clear what needs to be done to remedy an underproductive partner. Skill weaknesses and behavior problems are observable and the solutions often easily identifiable. But the

process of gravitating to outstanding performance is a lot harder to quantify.

Imagine if we were to make a list of the most important skills, areas of knowledge and activities that any practice group leader should engage in. Imagine then that we classify our list into three categories—critical, necessary, and nonessential. Now imagine that have all of the partners in your firm rate all of the group leaders based on this model.

Research shows that highly rated leaders are excellent at a few things and good or average at most other things. Meanwhile, profiles of the lowest rated leaders do not show them to be terrible at anything. Their profiles only point to below acceptable scores in one or two, albeit, critical areas. The poor showing of these leaders has tarred them with a negative performance rating on other skill areas.

The question then becomes if you only did one or two things exceptionally well, which

one or two things would make the biggest difference or have the most significant impact on the way those partners in your practice group perceive your contribution. ■

—Patrick J. McKenna

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Keeping Clients While Managing Extraordinary Change

Keeping clients when your firm is changing is a tricky business and involves a lot of reassurance—not just for them, but for you. I vividly remember interviewing a client about his relationship with his law firm, my client. While he was very satisfied with the firm's work and the people doing it, he moved quickly on to his top concern. Unbeknown to me but known by him, the senior partner who served as the primary point of contact was dying of cancer. The client said to me, "I feel terrible about it ... but what is going to happen to me?"

Even when there are great lawyer-client relationships, clients are concerned about their own interests. They notice when senior lawyers start spending more time at their condos down south, or when younger lawyers come and go on their work and invoices.

Any number of events can create a potential challenge to retaining a client, including:

- The departure of a lawyer
- A change in company ownership
- The death of a lawyer
- A change in company leadership

In general, law firms do a poor job of establishing the kind of institutional relationship that binds a client to the firm. In some cases, it's because of ego or compensation; in some cases, the nature of the lawyer-client relationship can't be replicated. And in some cases, it's a lack of confidence in colleagues. While you can't guarantee that clients will connect with new firm contacts (or vice versa), you can do many things to make planned or unplanned transitions go more smoothly.

In the event of an unexpected change, here are some smart steps to take:

- Have the managing partner or client relationship partner contact the client immediately to establish that the client is a

priority. The goal is to reassure the client that everything is being handled and that people are familiar with the client's issues. Offer to meet with or talk to the client to review the relationship and plans for the future.

- Ask what information would be helpful. For example, a new client decision-maker might benefit from a list of matters in progress.
- Set up methods to introduce new contacts at the company or the law firm. This could be done through face-to-face meetings, Zoom, or telephone calls.
- Provide a client team chart. This document, with pictures of assigned firm personnel, their roles and responsibilities (e.g., geographic coverage or substantive expertise) and contact information, will make it easy for clients to learn about and access their firm contacts.

Once you take these immediate actions, you can move into a planning phase. In many cases, it is apparent from a senior lawyer's age or years of experience that, at some point, a transition will need to be made. While it can be difficult to broach, the sooner succession plans are made, the better; clients need time to digest the changes and become comfortable with the proposed arrangements.

How can you facilitate an institutional bond?

- **Look at all the existing and potential points of contact with the client and make assignments for relationship development.** This could include LAA's, paralegals, and other staff members as well as lawyers.
- **Determine the appropriate lieutenant(s) who will be groomed to take over responsibility for the client.** In some cases, the selection will be driven by substantive skills; in others, personality may be key. The proposed successors should be phased in through communications,

matter oversight, billing, and relationship building.

- **Communicate the transition plan to the client.** This includes who was selected for the relationship and why. (This is another good place for a client team chart.)
- **Allow the team to be visible to clients.** The primary attorney should promote interaction between client representatives and team members to develop a level of comfort and trust. This could include having file reviews or relationship meetings, including team members on calls and emails, visiting the client with the team, having lawyers provide client seminars or training in their areas of expertise, planning social activities and “meet and greets” or even working on community service projects together.
- **Plan specific ramp-up activities for firm representatives new to the client relationship** (e.g., attending client training sessions, attending pipeline meetings with the client, taking a tour, etc.).
- **Ask for the client’s feedback.** As things progress and others get more entrenched in the relationship, it’s important to let the client provide input on the transition. For example, here is a comment from one client about the firm’s suggested new point person: “From a succession standpoint, there’s an issue: No one yet fits the bill. [Lawyer B] thinks he will do this, but he hasn’t earned my trust to the extent [Lawyer A] has. They need to know this.”

I don’t know how often people get hit by busses but clients talk about it a lot—“What would happen if [lawyer] gets hit by a bus?” While you may never be able to duplicate the original relationship, others in the firm can offer many positives, from different ways of looking at things to a new level of appreciation for the client.

Whatever the transition plan, the key to retaining clients is to start sooner rather than later. ■

—Sally J. Schmidt

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Sally Schmidt, President of Schmidt Marketing, Inc., helps lawyers and law firms grow their practices. She was a founder and the first President of the Legal Marketing Association, is a Fellow of the College of Law Practice Management and was one of the first inductees to LMA’s Hall of Fame. Known for her practical advice, she is the author of two books, “Marketing the Law Firm: Business Development Techniques” and “Business Development for Lawyers: Strategies for Getting and Keeping Clients.” Follow her @SallySchmidt.

Cannabis Law

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a hit and black-market distribution will continue to encroach.

“Unfortunately, the illicit market (at least in California) is significantly undercutting the ability of legitimate cannabis owners from fairly competing in the marketplace,” according to written answers submitted to *Of Counsel* by Jonathan Hyman and Jonathan Menkes, co-chairs of the CBD and legal cannabis group at Irvine, California’s Knobbe Martens. “Until regulators step in to curtail the illicit market, I don’t think very many of the legal players will be able to compete for much longer.”

Despite the industry’s strong market—and the robust business it’s generating for lawyers—many of those operating inside this sector feel a sense of uncertainty and frustration at the failure of nationwide legalization efforts, says Stan Jutkowitz, the leader of the cannabis law team at Chicago-based Seyfarth Shaw, which has 50-plus attorneys serving marijuana-industry clients. That legislative inability and other factors also breed resignation across the industry and carry an impact on investments and pricing.

“Much of the industry appears to be reconciled to the fact that cannabis will not be legalized at the federal level in the short term,” Jutkowitz says. “Congress has not been able to pass legislation legalizing cannabis nor has Congress been able to provide a safe harbor for cannabis banking, despite the fact there’s a bill that would do just that. The SAFE Banking Act has been passed by the House five times [only to stumble in the Senate]. Also, equity investment in cannabis companies has slowed and the price of product remains volatile.”

M&As, Rural Growth, and Enthusiasm

The consolidation craze that has run rampant across many economic sectors, including the legal profession, of course, has also affected the cannabis industry. Many larger companies see lucrative opportunities and swoop in to acquire smaller businesses. This is fueling legal work in many areas of law.

“Lawyers across the firm are servicing our cannabis clients, including our corporate, real estate, intellectual property, finance, tax, litigation, and M&A practice groups,” says Hanson Bridgett’s Storper. “The M&A market in particular is very hot right now.”

But those players in the M&A market encounter difficulties too. “In corporate transactions, one of the most important takeaways for cannabis businesses is to be prepared for longer-than-expected delays in regulatory approvals that can create challenges in daily operations, financing arrangements, and business planning,” says Andrew Gabriel, who chairs the business entities & transactions department as well as the real estate and land use team at Nevada’s McDonald Carano.

Attorneys at McDonald Carano, which has offices in Las Vegas and Reno, have been serving clients in the marijuana business for several years (medical pot has been legal since 2000 and recreational cannabis since January 2017). And it was one of the early firms to launch an official cannabis law practice group,

Gabriel says national legalization will also boost mergers, acquisitions, and other deals. “If federal law changes to make cannabis legal, U.S. public companies and banks will be encouraged to dive in, creating a flurry of transactional activity,” he says.

Not surprisingly, Nevada’s marijuana-industry growth has centered in urban areas. But that’s changing as rural counties are beginning to embrace cannabis businesses and the revenue they generate.

“The state has issued more than 700 medical and recreational cannabis licenses, but most are in the main population centers of Clark and Washoe counties,” Dennis Gutwald, Gabriel’s partner at McDonald Carano, who practices in the firm’s gaming and administrative law group. “Several once-hesitant rural counties that previously issued local cannabis moratoriums are now interested in diversifying their local economies by bringing cannabis-driven economic benefits to their communities.”

The same sort of acceptance and embrace in rural communities is not limited to Nevada. “I’ve got friends and associates in California, Oregon, and other states where pot’s legal, and they say a lot of residents in small towns are lighting up and digesting edibles often these days, and the business people see greenbacks in the green, leafy substance,” says an East Coast law firm consultant. “Entrepreneurs find it all very exciting – as do several of the cannabis law attorneys I counsel.”

Several of the lawyers *Of Counsel* contacted for this article expressed enthusiasm about practicing in the cannabis law arena. They called the industry “dynamic” with “potentially meteoric growth opportunities”

and legal issues they find “intellectually challenging” and “changing almost daily.”

Ackerman’s Robbins puts it this way: “I have been practicing in law almost 30 years, the last several of which have been devoted almost exclusively to cannabis. It’s extremely invigorating and rewarding to be able to help shape a new industry and the laws regulating that industry. This is something I have not experienced in the past.”

More to Come

Because this economic sector and the work it creates for attorneys is so “dynamic,” there’s more to report and this article can only cover so much in the space allotted. Consequently, for the first time ever in examining a particular legal area, *Of Counsel* has split this practice area portrait into two parts. Look for more in our May issue with additional insight on a range of cannabis law topics offered by the same sources in this article and others. ■

—Steven T. Taylor

Of Counsel Profile

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practice, the state of the bankruptcy area, and other topics. What follows is that edited interview.

Of Counsel: What made you want to become a lawyer?

Scott Lepene: All lawyers have their own stories to tell in terms of how they matriculated into the law. For me it was a jagged route, to a certain degree. I didn't initially go to college as an undergrad with the thought of, *Okay, I'm going to be an attorney*. I was a broadcast journalism major in college, and that experience really helped shape me and played a role in my development as an attorney. After graduating from college, I worked as a sports anchor/sports reporter at an ABC affiliate in Beckley, West Virginia.

I learned a lot in my time in broadcasting. I only did it for a few years, but in a lot of respects the law and broadcast journalism are similar in that you have to learn to think on your feet. You certainly have to demonstrate strong interpersonal communication skills. You have to appear confident, and you're going to go up to people you don't know and advocate positions. Of course, you need to communicate clearly to your viewers and listeners from a broadcast perspective. To a degree, I think that mirrors what's expected of you when you're advocating a position and representing clients in the courtroom.

OC: That's interesting, Scott. What did you do after your sports broadcasting job?

SL: I'd always thought in the back of my mind that the legal profession was certainly an avenue that I would consider going down when I felt like it was the right time. And, I'd also note, that I have a father who's in the

legal industry, and he's actually still a partner here at Thompson Hine. He's had a profound impact on my life. He and I still have the opportunity to practice together. We're in the same restructuring group, and certainly that had an impact, not only in terms of the value in having a law degree, but also specializing in an area. That was something I wanted to do rather than being a generalist. I obviously gravitated toward restructuring.

But what I learned in broadcasting, as I mentioned, really did play an important role in my evolution as an attorney. It helps provide me with a don't-be-afraid-to-fail mentality that I have applied to my approach in serving clients and client contacts. It certainly has helped me in the courtroom.

In addition to that, [in both professions] you're going to approach people that you may not know. You don't necessarily put people up on a pedestal, similarly to speaking to a celebrity, for example. I never thought about, *Oh, I'm interviewing Jerry West or Kareem Abdul-Jabbar*—or any other big names that I came across in my broadcasting time. I knew it was just another person. So when I speak to a client or try to bring in work for the firm, I take that approach: He or she is just another person. I'm always thinking about ways to discuss our firm and to tell our client or prospect about Thompson Hine and how we can essentially provide value. I tell them about Thompson Hine and our story, because we've got a great story to tell.

OC: What's really important and gratifying to you in practicing law? What comes to mind?

SL: It's incredibly satisfying to me when I've earned the trust of a client—when I've done a very good job and gained that client's trust. It's satisfying when they give you a call back and say, "I want to continue to work with you." That really hits home to me, and it's something I truly focus on when selling our firm and when taking on an opportunity. And, I want to have that client relationship in a better spot when I'm done on a matter than

when I started on it. That's very important to me.

No Pandemic Bankruptcy Boom

OC: A couple years ago it looked like bankruptcy was going to be soaring, and all of you guys and gals would be super busy in more traditional bankruptcy matters. Fortunately for the business community, there weren't as many bankruptcies as we'd thought. What has kept you and your team busy?

SL: I remember being in New York on Monday, March the 9th, 2020, and I was staying at the same hotel that I was in two months earlier in January. I went down to work out. It was early in the morning. In January, I couldn't find a workout machine to use because it was packed. In March, two months later, I was in the same exact workout room, at the same exact time of day, and there were two other people in the entire workout room. It demonstrated to me that we were in for a completely different ballgame. I remember ending my trip a day short. We hit March, and the world pressed timeout.

If you recall, from March until June, we didn't know what was going on and the whole industry just stopped. I recall at that time my corporate partners were reaching out to me and asking me whether I could jump on board calls and advise board members about what they could do regarding drawing down on lines of credit and so forth. Because at that point there was no Paycheck Protection Program at that point, and people were thinking, *We need cash, and we need to sit on as much cash and be as liquid as we possibly can to get through this.* That was really the focus: Cash is king. Stockpile your cash, sit on that cash, so you can survive this period. And that's what we were advising at that time.

Aside from that, there was very little bankruptcy activity. But, as you recall, virtually every practice area in the third and fourth quarter of 2020 became very busy. Everybody

wanted to make up for the lost ground they experienced in the first two quarters and a half of 2020. We thought that this thing was really going to spiral, because we were busy in the third and fourth quarters, and as we went into 2021 we thought we'd be equally as busy. But then the PPP money came, and again and again.

And so we saw a downturn in the bankruptcy work, but we as a group have always been able to stay above the fray and remain steady. We were fairly busy throughout 2021 largely because, for me personally, I do alternatives to bankruptcy. Although the number of bankruptcy filings may have gone down alternatives to bankruptcy, primarily assignments for the benefit of creditors, is essentially a more efficient and cheaper option to a bankruptcy. Not every insolvent situation is a great candidate for the assignment for the benefit of creditors, but I was fortunate this past year to have a couple of matters matriculate from that perspective.

And one of the things that I have with my practice, and being self-sustaining, is [my bankruptcy/restructuring group] and I am able to generate work for others. We're able to help create corporate work and real estate work as well as for other practice areas that can open up opportunities for our firm. And that's something I champion and why I'm constantly selling our firm first as opposed to just only my capability as an attorney.

Ramping Up

OC: So an emphasis on cross-selling is very important to you and the firm?

Yes, and through my various client contacts throughout the country, I've been able to maintain a good flow of my own work as well. As I sit here today in 2022, during this past week or week and a half I've seen a real uptick in opportunities. In talking with clients, I know that there is at least one likely bankruptcy that I'm going to be involved

with and another one that may be filing. And then there are other assignments for the benefit of creditors' opportunities that are essentially just hitting as I'm talking to you. So I suspect that as we climb out of the first quarter of 2022, and as this year continues forward, we're going to see a lot more activity in the restructuring world, primarily because we've got inflation on the rise, and we've got an increase in interest rates.

One other thing that I would mention is that prior to the pandemic you had a number of companies in a variety of different industries, with retail being one of them that immediately comes to mind, that were struggling. These companies were essentially going to tap out prior to the pandemic. And then they were propped up by the PPP money, which kept them afloat for basically two years. But now the PPP money is done. Those companies are going to run out of that additional cash that was made available to them, and they're going to reach an end game.

The fundamentals of a particular company being the same as those that were around two years ago are probably even more heightened given all of the inflationary issues and what we're dealing with in a post-pandemic world. These companies are not going to make it. I think that, from a lender perspective, these lenders who were essentially kicking the can down the road are now going to see a higher degree of their creditors make their way into workouts with the rise in interest rates. There's going to certainly be more volatility, which will result in more restructuring work.

OC: You've talked about adding value in a couple of different contexts. How do you and the team that you work with add value to your clients in a world that's so distressed right now? What do you say in pitches and what do you deliver?

SL: That's a great question. Value to me can be provided to a client or client contact in a number of different ways. But, most importantly, in order to provide value, you have to listen. You have to listen to what needs the

client is articulating. But there are a number of different ways to provide value. Certainly it can be done by doing a great job. Everybody knows that, that by doing a great job, you're going to provide value. But it may just be in the form of an introduction. It may be in the form of a presentation. We have a saying at our firm "We will know your business." When we know our clients, we know what our clients need, and we learn what our clients need by listening. That's how we can provide value.

Rise of the Rapid Response

OC: You talked about what you like about the profession: Building trust and long-term relationships with clients. What about the flip side? What is it that you don't like about the legal profession?

SL: In talking with others who have been in the business for a very long time, I think the practice of law has changed in several ways. For example, before the advent of the internet and email, lawyers had the opportunity to tackle a project, think about it, and really formulate a strongly themed response, if necessary. In other words, you could be asked to do something and immediacy would not necessarily mean 15 minutes or a half hour. You would have the opportunity to really think.

In the society we have today, it is a *now-now* mentality. And while we certainly want to be able to provide immediate responses, one of the things about the law is that it requires you to think. It's not something where you can immediately come up with an answer right off the cuff. Well, sometimes you can.

But there are other times where it takes time to formulate an appropriate response. And, while we always want to be incredibly responsive to our clients and get them answers as quickly as possible, the immediacy of today's environment, where we are today, is sort of counterintuitive. The ability to provide a great response, a great answer to a client, in

such a short period of time runs counter to [the practice of law]—to a certain extent.

Now, in terms of being responsive but having a little bit more time to get back to a client, one of the things that I always tell our folks here at the firm is that if a client sends you an email saying, “Can you help me with this?” it doesn’t mean you go radio silent. You have to be responsive. So you may say to the client: “I got your email. Let me look at this and get back to you.” That buys you time to come up with a well-researched and well-reasoned response, as opposed to giving that immediate answer. Responsiveness is something that’s incredibly important.

OC: So it seems you and your colleagues are going to get very busy. Do you expect that you’ll be hiring more restructuring and bankruptcy attorneys for your group, and if so what do you look for in a candidate besides he or she being smart and checking all the other boxes?

SL: I certainly think that there’s going to be a need for hiring more folks. I also think that one of the hallmarks of our firm is the importance of diversity. We’re obviously

going to be focused on hiring really good, capable people, and we can certainly achieve that. But in doing so, diversity is important, and it’s imperative that we adhere to that. That’s part of our firm makeup. That’s an important piece of what we’re going to be looking to accomplish.

In addition, though, when we talk to associates, I really focus on asking myself: “Is this someone who is a team player? Is this someone that I’m going to be comfortable going into a conference room and running through arguments and working together to come up with a strong work product?” That’s what I ask myself when I interview someone. And, I’m sure my colleagues feel the same way: We want to hire someone who is smart, personable, and confident.

OC: I like what you said, which essentially was: We, as a team, can accomplish great stuff.

SL: Yes, across the firm, we’re all very team-oriented. That’s important to us. ■

—Steven T. Taylor

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Of Counsel Interview ...

Bankruptcy Law Is Heating Up and Thompson Hine Attorney Is More Than Ready To Roll

Many people outside of the profession think that opposing counsel despise one another. Attorney XYZ goes for the jugular of attorney ABC and vice versa. In a fierce battle in the courtroom or around the negotiation table, angers flare, and the vitriol runs rampant.

Indeed that's sometimes the nature of the profession, but of course lawyers usually act cordially and respectfully toward one another. Rarely, however, do they lavish enthusiastic praise onto their opponent.

There are exceptions. Scott Lepene, a partner with a national practice in bankruptcy and restructuring at Cleveland-based Thompson Hine, was the recipient of such praise.

"Recently, I found myself in an adversarial position against Scott Lepene," according to feedback provided to the ranking agency Chambers by a well-regarded attorney who faced off against Lepene. "The case was a

highly contentious litigation matter pending in the bankruptcy court in New York City. Following 11 years of litigation, our client had obtained a judgment against a company, and the company then filed for bankruptcy in an attempt to dodge the judgment. Mr. Lepene was hired by the other creditors of the company. Through Mr. Lepene's creative thinking and legal prowess, the parties were able to broker a resolution that successfully concluded ... and achieve an amicable end of the bankruptcy proceeding."

Regarding that litigation experience, the attorney continued: "It was perhaps the most sophisticated litigation and bankruptcy matter that I have addressed as a practitioner, and Mr. Lepene as an adversary handled it quite efficiently and effectively."

Of Counsel recently spoke with Lepene about his career, what he values about his

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