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### Canvassing for Critical Data ...

## Surveys Serve as Salient Tools for Action, Especially BTI’s Latest

Surveys can matter. They’ve long been considered an effective way to take the pulse of the legal profession. That is, as long as they’re expansive enough to encompass a solid sample size and are conducted using sound methodology by reputable, unbiased organizations, among other factors.

The research gathered in an excellent benchmark survey of law firm chief operating officers, executive directors, and legal administrators is summarized well by Rees Morrison in this month’s issue. (See “Takeaways from Ongoing Survey of COO Compensation and

Roles” on page 13.) The survey’s findings provide keen insight into the job law firm COOs perform and data about what they’re paid do that work.

Last year in our October issue we ran an article that highlighted a survey on the

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still-growing and very important legal area affecting both law firm clients and the lawyers who practice in this space—environmental, social, and governance law. The survey, conducted by the law firm Thompson Hine, made quite a splash in the legal trade media. The report, entitled “An ESG Snapshot” and written by attorneys in the Cleveland-based firm’s ESG Collaborative, summarizes and analyzes the survey data and acts as a barometer of sorts for C-suite executives and

in-house counsel to gauge the effectiveness of their own companies’ ESG efforts.

Of course law firms frequently conduct their own surveys, which often serve two purposes. “Law firms routinely use surveys for internal research purposes—for example, surveying clients to measure satisfaction and gather feedback,” says Tania Zamorsky, public relations expert and principal of New York-based Zamo PR, adding that surveys also act as valuable external PR tools. “They can be a way to demonstrate thought leadership in a particular space.”



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## Tracking Satisfaction

Surveys can also provide a way to peer into the collective mindset of lawyers and law firms. The latest report produced by BTI Consulting, released this summer, couldn't come at a better time nor cover any more relevant ground, given that law firms are still struggling to hire and retain good young talent as the associate hiring battles continue.

The highly regarded Boston-based consulting firm collected valuable data in its extensive survey and report the findings in a first-of-its-kind examination, *BTI Associate Satisfaction A-Listers 2022: BTI Survey of Law Firms Where Associates Are Happiest*.

The word “extensive” is key here. The firm received more than 4,000 responses, giving its conclusions substantive weight and reliable credence. According to the report's introduction, the associate satisfaction survey “defines what associates want and value — and the law firms associates rate as best at each — and why.”

Michael Rynowecer, BTI's president, and his team encourage law firms to read the data, analyze it, and implement strategies to boost and maintain their lawyer ranks:

*Continued on page 18*

## Upon What Basis Is Your Firm Considered Special?

In answer to the question “*Upon what basis is your firm truly differentiated from your competitors?*” a firm leader will respond, but only after taking some time for reflection.

This pause for reflection is interesting. It doesn’t suggest that the question came as a total surprise, as one that had never been asked before; or that this is an issue that this firm leader has not regularly considered. What it does suggest is that despite any previous contemplation, a wholly satisfactory answer has not been found and that a suspicion exists in the mind of this professional that he or she is offering, at best, only a superficial response.

In my strategy sessions with groups of partners I have often posed a similar question to the entire group, one I believe is reflective of the primary concern that occupies most prospective clients’ minds—what I have come to think of as the “defining” question. It goes like this: “*Tell me please—as a prospective client, why should I choose you (your group / your firm); what makes you distinctive; and what added-value can you bring to my business matters—that I cannot get anywhere else?*” (Please, do notice those last six words).

The responses I most often elicit to this question are fascinating. Firstly, I find, that it would be highly unusual for you to get the same answer from two partners within the same practice or industry group, and you certainly won’t get even a slightly similar response from two partners within the same firm. It is the rare firm or group that has developed a specific “song sheet” of common and difficult (prospect and client) questions and suggested responses for their professionals to consider using.

Secondly, the answers that you do often elicit (in the words of one General Counsel whom I suspect evidenced these responses once too often) are likely enough to “*make me want to puke on your shoes.*”

Now as you might guess, responses usually boil down to a variation on two very familiar and time-worn themes. You will likely hear: “*because we can do it better, faster, and cheaper—so why not give us a try on just one matter so that we can show you what we can do.*” (As if I, as the prospective client, am going to get some divine gratification from taking a personal risk with an unknown quantity). Or you will most certainly hear: “*because we offer a broad array of services such that you really can expect to get some depth of expertise from our firm.*” (And I’m often thinking to myself, and how can you truly provide me with any real depth and breadth ... given your size).

What I have learned those responses indicate to most sophisticated clients is that if you were truly recognized as having the preeminent specialized expertise in any given area, it would not be necessary for you to resort to tactics of “better, faster, and cheaper.” Your expertise would be apparent and therefore speak for itself, or it could be easily demonstrated to the perspective client and present some compelling evidence for consideration. Alternatively, without a preeminent position, proffering a full-service capability is not likely to be viewed as credible unless maybe your firm is from among a handful of the largest in the nation.

And even among some of the largest, you will witness a growing need to become far more focused. I was recently struck by an interview with Sandy Thomas, just reelected for his third term as Global Managing Partner at Reed Smith, when he was asked about the direction of his firm and his *growth priorities*. He responded that Reed Smith will focus on developing capabilities in five **core industries**: financial services; life sciences and health; energy and natural resources; transportation; and entertainment and media.

The interviewer observed, “*That’s a wide net—but compared to some Big Law leaders who seem loathe to imply any scrap of business is less important, it’s practically a laser-like focus.*”

## The Case for Selective Focus

It is against this backdrop that issues of meaningful differentiation and strategic thinking should be explored. Unfortunately, too many of the firms I speak with engage in strategic planning as a mere extrapolation of the past, a means of forecasting their future five-year budgets, or some “strengths, weaknesses, threats and opportunities” exercise that treats the entire firm as one big homogeneous entity—when what is really needed is a brutal examination of the viability and profitability of each discrete business unit and office, and whether it is now or has the potential of ever becoming a preeminent player in its respective marketplace.

Take for example the SPAC market, also known as blank-check companies that form a sizable chunk of the IPO pipeline. These alternative funding vehicles took off during the pandemic and one firm in particular, of only 120 lawyers, managed to top Kirkland, Skadden and many other BigLaw names in their record-setting 2020 deal flow.

Douglas Ellenoff was a “first mover” in this particular niche and reported to the media earlier this year that “*Right now, every phone call is new business. And that seems like a high-class problem to have.*” Part of his firm’s fee is dependent upon the deals getting priced and just through the first two months of this year, his firm advised on SPAC IPOs that raised nearly \$10 billion. According to Ellenoff, his secret sauce—**developing practices where bigger firms have little interest**, is how he got involved in SPACs in the first place.

And if SPACs go out of fashion, Ellenoff has chips already down on other niche practices. He’s convinced that equity crowdfunding

finance will take off (a potentially lucrative micro-niche I identified and wrote an article about in 2019). As an alternative funding option and launched in May 2016, one of the more intriguing doors that entrepreneurs can now open to access capital is equity crowdfunding. When I last looked, companies in 58 different industries have been successfully funded. Typically, about 80 percent of the capital committed goes to 17 different industries from application software and consumer packaged goods to biotechnology and personal services. In March 2020, the Securities and Exchange Commission (SEC) proposed sweeping changes to regulate Crowdfunding as well as the other private capital-raising exemptions, one of which was to raise the overall limit to \$5 million. While not as big as some had hoped, this new ceiling allows for larger institutional players to invest alongside retail investors and may witness many midsize companies jumping into the online finance arena. Meanwhile, Ellenoff has invested in a technology offering, iDisclose, that he likened to TurboTax for crowdfunding disclosures.

This is the mathematics of “Selective Focus.” By being highly focused, some firms are able to be far more effective and profitable. The obvious lesson from watching Ellenoff’s firm and that others are learning, is that when you expand to appeal to a larger number of markets and clients—you lose focus in your “core” strengths. Market power and competitive distinctiveness lies in being a specialist. When a specialist tries to broaden their base, they can invariably end up courting trouble, not new clients.

In reality there are very few firms (if any) that can truly demonstrate preeminence across a wide range of services and to multiple sectors of the market. Even the largest, supposedly full-service firm tends to be “Tier One” in a very small number of key practices rather than across an entire service range. The majority of firms truly compete in a vast number of substantive practice areas, industry sectors, or through some combination of the two. Such firms may or may not limit their activities to only those

areas where they would be considered the most superior.

## The Relevance of Focusing on Core Strengths

A new Financial Post report entitled “*The Changing Face of Professional Services*” found that 71 percent of the respondents reported that they prefer to work with specialist firms rather than a one-stop shop. And two thirds say that some firms are adding too many services and potentially diluting their core competencies. Accordingly, “*this may play to the strengths of firms that focus on specific industries.*”

The report makes clear that the ability to advise clients effectively will in part be shaped by a firm’s understanding of changing sector dynamics. “*Here, those firms that demonstrate a deep understanding of industry convergence and the changing nature of supply chains and consumer demand, should be well placed to benefit.*”

This research concludes with a couple of recommendations most notably: **Do not dilute your strengths.** Some firms are deciding to focus on a smaller number of sectors. Others are establishing new business units to meet a demand for specialization. Many are wary of non-traditional competitors encroaching on their territory. The message from respondents is clear: do not add so many services that distract from what you do best.

No single firm can claim to have expertise in every area and attempting to develop a competitive capability in a large range of services can actually make your firm less competitive in all of them. Competitive markets create a strong need for firms to be very clear about what their “core” market position is and about what “table stakes” are required to play the game.

Consider the example of today’s commercial real estate practice. There are some very high margin areas and some like conventional conveyancing, straightforward secured lending and others that just aren’t so profitable. The higher margin transactions often require



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of a firm that they develop a strong industry team equipped with multi-disciplinary expertise. That expertise may require involving tax, corporate, banking, capital markets, intellectual property, and licensing professionals, in addition to specialists in urban planning, environmental, construction, and joint venture issues. Firms must have a critical level of expertise, practicing together in a well-managed team, to stay in this game. Clients soon get a good idea of which firms have developed preeminent strength to handle the more complex transactions and those that may be best suited to the more routine work.

In this situation, once your firm (or business unit) gets excluded from the high margin transactions, you are left only to fight amongst a large number of rivals to get some slice of the remaining work, usually highly fee sensitive and involving fierce competition. As this continues, you face the stark reality of learning to live with a marginally profitable practice and potentially losing your very best talent to the market leaders. After all, is it not possible, that a few firms will command a significant advantage in the talent market as those who are the best in their area are drawn toward them, thereby making it extremely difficult for other firms to grow or sustain what may once have been a profitable practice?

*The Search for the right lateral is not about simply having a book of business anymore, but rather at least a third, and growing, of the inquiries our firm receives are very **industry specific**.*

My discussion with Jon Lindsey at Major Lindsey & Africa (2020)

## Focus Requires the Courage to Make Choices

From your firm's perspective, the strategic task that firm management has to determine is whether you are satisfied with the situation

as it currently exists: is each practice truly profitable, is the practice worth committing further resources toward developing, or what would the downside be if we were not to provide these services? Indeed, could we somehow fine-tune or reposition this business unit so as to be regarded as the preeminent authorities in some new niche or selective area of client need?

Such was the case with one employment practice group that I worked with. While not considered preeminent in their marketplace and not being favored with some of the more lucrative work, they reflected together as a group upon whether there was some niche within their practice in which they could develop a superior expertise and profile.

Their strategic reflections helped them realize that with the tremendous number of consolidations going on among many of their clients and within selective industries, a different type of expertise was required to blend the various employment policies, personnel redundancies, and benefits issues that were cropping up between and among merging companies. They therefore set about to develop and market their expertise in "Post-Merger Integration" employment issues. By repositioning their employment practice into serving this specific niche, their size which once limited them from being considered as a source for other important employment issues was no longer a disadvantage, as none of their major competitors had any expertise or professionals working in this distinctive area.

What allowed them to reposition their practice was understanding focus and critical mass.

Obviously, from any buyer's perspective, the group with a dozen lawyers focused upon specifically serving a particular (niche) area is likely to be better (more competent), enjoying a greater degree of marketplace recognition (success), and able to offer the benefit

of the shared experience of the entire business unit. Competitive firms (perhaps even much larger) having only a couple of professionals practicing in the same area are at a disadvantage.

Today the marketplace wars are being won by the well-focused specialists. As Peter Drucker advised managers many years back: *“Concentration is the key to economic results. Economic results require that (law firm) managers concentrate their efforts on the smallest number of activities (practice or industry groups) that will produce the largest amount of revenue.”*

No other principle is violated as constantly today as this basic principle of concentration. In too many firms the motto seems to be: *“let’s do a little bit of everything.”*

## Be Special or Be Dead

As James Jeans the author of a classic text on trial advocacy once stated: *“We travel the path first broken, and over the years that path, through continuing affirmation of use, becomes a rut that directs our travel without the need for thought as to direction or destination. We become experts at mimicking mediocrity.”*

While many firms engage in some form of strategic planning, only a few really come to realize that having three to five truly strong practices is preferable to having a good number of mediocre practices that serve only to consume resources, dilute profits and diffuse strategic strength. Firms and their business units need to clearly articulate what their selective focus is.

Become obsessed with questions like: “What (industries, practice areas and market niches) are we best at? What are we world class great at? What makes us unique?”

The lessons to be learned from all of this, is that to be among the most profitable and successful you must change your focus from “do everything” to “do what we do well” and “do only what we are best at.” Imagine having as a compelling challenge and managing your firm consistent with a strategy that states: *“We will have as integral to our firm only those business units that are ranked number one, two, or three in every market we serve.”*

Ironically the message here may be to get rid of the 80 percent of what you do that’s mediocre and get damned good and expand the 20 percent that really is “special.” Because, if you’re not special, you’re dead. ■

—Patrick J. McKenna

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# Managing into Headwinds

As we head into the second half of the year, economic headwinds appear to be getting stronger. Demand through Q2, particularly for corporate work, is down, albeit only modestly. Citibank's mid-year report indicates a 0.6 percent average decline in demand. Expenses are on the rise, due to higher attorney headcounts and the gradual shift toward a return to office. We have written before about managing through headwinds, along with the lessons learned from previous downturns, and it is time to revisit that topic.

Before we do, however, it is important to remember that 2021 was a record year for the legal industry. Demand in many practices skyrocketed. While expenses for talent increased, they were partially offset by savings as the return to office continued to be delayed. A segment of the market saw profit increases of 20–30 percent and more. We knew at the beginning of the year that replicating those profitability increases would be difficult, if not impossible, for most firms. As a result, it is not surprising firms are seeing a drop in demand coming from such a high level. Keep this in mind when thinking about what management actions might be appropriate, as it is easy to get caught up in negative headlines.

## Lessons Learned From Past Downturns

The 2008 and 2020 downturns blindsided many law firms. They both hit swiftly and hard, and law firm leaders scrambled to make tough business decisions. With the benefit of hindsight, we see that some of those decisions were necessary, and some may have been short sighted. Lessons learned from these experiences include:

- Firms that stopped hiring associates in 2008 found themselves with holes in their

talent pool once demand began to pick up a few years later. And in 2021, firms spent an enormous amount on salary increases, signing bonuses, and recruiting fees to quickly build or rebuild the talent pool. Many firms are still underleveraged, and the possibility of future talent gaps could be even more significant than previous downturns.

- Some firms cut operations staff to the bone, both in 2008 and early in 2020. While it saved money in the short term, it often set firms back on strategic initiatives and business development. Many firms are operating much more leanly now, so the opportunity for significant staff reductions is far more limited.
- Firms deferred investments, whether in strategic initiatives or capital costs like technology. While this may have been a possibility in 2008, it is a risky move in 2022 or beyond when the practice of law depends heavily on technology, and continued investment in innovation is critical for many firms.
- Further, some firms deferred investments in mergers and lateral hiring. We saw a divergence of approaches in 2020 with some firms shutting down lateral hiring, and others taking advantage of the market to bring in strong talent. Firms that invested in talent in 2020 were much better positioned to take advantage of the increase in demand in 2021.

## Responding in 2022

Since the first signs of a potential market slowdown, firms have been keeping a close eye on the 2022 budget and year-to-date performance. Firms established their 2022 budgets in a period of very high demand. Particularly for firms that set aggressive growth budgets, now is the time to take a hard look at the budget, determine how the firm is faring against

the budget, and what effect that will have on year-end profitability. Equally important, firms should begin communicating with their partnerships about the range of potential financial outcomes.

While the appropriate actions will depend on each firm's circumstances, firms should consider the following:

### ***Manage Legal Talent***

- *Continue strategic lateral partner hiring.* The first half of 2022 has been a very active period for lateral hiring. While lateral hiring typically slows a bit in the second half of the year, growth-focused firms should continue to make strategic investments in laterals. However, given economic uncertainty, firms should also look more critically at the strategic value of lateral candidates and perform robust due diligence. Compensation arrangements should be structured to balance risk and ensure compensation reflects results achieved (after a reasonable ramp up period).
- *Manage associate performance.* Firms should continue to manage associate performance but take a long-term view. Avoid over-pruning or under-hiring. Given lean associate staffing in firms today, retaining top associate talent must remain a priority.
- *Evaluate income partners.* The income partner ranks in many firms have exploded over the last decade. There are likely more opportunities to right size the income partner group than any other category in the firm.
- *Do not ignore equity partners.* Equity partner performance was strong in 2021—with both productivity and revenue generation materially up for many partners. While maintaining that level may be more difficult in 2022, firms have an opportunity to reset the overall expectations for what it means to be an equity partner.

### ***Invest Wisely***

- *Continue to invest in strategic initiatives.* Review your strategy and pick the initiatives which are the top priorities and will most benefit the firm over the long-term. Ensure that you continue to make appropriate investments in those initiatives, both of management time and budgeted expenses.
- *Focus support staff spending on high value activities.* Many firms have focused on reshaping the administrative support team. Invest in people and initiatives that will help drive revenue and profits—technology enhancement, business development support, recruiting/lateral hiring support, pricing and profitability support, and client facing initiatives.
- *Manage space needs.* Continue to look for opportunities to reduce the firm's office footprint as return to office expectations come into greater focus. Smaller offices, office sharing, hoteling, and other design choices to reduce the office footprint should be on the table. While significant reductions may only be possible when leases expire, there may be opportunities to right size leases in the near term.

### ***Focus on Clients***

- *Be proactive with clients.* Our interviews with the clients of law firms indicate that they appreciated firms that supported them throughout the challenges of the pandemic. This varies across sectors but can start with anticipating how market changes may affect your clients' business and legal needs. Clients value firms that proactively identify emerging risks and legal requirements, and partner with them to find solutions.
- *Be creative with pricing.* Effective rates have increased over the last year, which will no doubt create some pricing pressure going forward. Instead of turning

to discounts, get creative about meeting client budget requirements through alternative pricing, project management, increased efficiency, and cost-effective staffing approaches.

Managing through headwinds can be a challenge for law firms. Leaders who can balance short-term actions with long-term goals will position the firm for success not just in 2022 but in 2023 and beyond. ■

—Lisa Smith and Kristin Stark

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

# Want to Change Direction in Your Legal Career? Try Career Mapping

When embarking on any journey, it's essential to know where you're headed. A detailed map can help you stay focused, avoid wasted time and arrive at your destination faster. That's why career mapping is a valuable tool for attorneys. It's especially powerful if you've been in a specific practice area or niche industry for a while and you're ready to do something different.

## What Is Career Mapping?

Career mapping is the creation of a personalized, long-term plan for advancement within your organization or field. It outlines where you are right now and where you'd like to ultimately end up—as well as all the steps necessary in between.

Traditionally, career maps are developed by employers for or with their employees. However, we recommend candidates take a proactive stance and perform their own career mapping. Having a solid, actionable plan for where your career could go—based on the experience you already have—can open a whole new world of possibilities.

## Creating Your Own Personal Career Map

Developing your career map needn't be stressful or tremendously time consuming. You can write it out by hand or create it in a Word document or spreadsheet. There are even career map templates available online to help guide you. Here are the basic steps you should follow to map out your own vision for what's down the road:

- **Define where you are right now in your career.** This is your starting point, a

professional profile of sorts. It's a self-analysis exercise that can give you a clearer understanding of your big-picture goals. Be honest and thorough. You should include information such as:

- Professional experience: roles and responsibilities
- Professional achievements
- Hard and soft skills, with an emphasis on transferable skills
- The aspects of your job you dislike
- The aspects of your job you like the most
- Strengths and areas in which you excel
- Shortcomings and weaknesses (e.g., skills gaps)
- **Decide where you want to go.** Now it's time to visualize your future. Describe the type of work you want to be doing, what companies you're interested in and the kind of work-life balance you want to achieve. What title and responsibilities do you aspire to have? Think of this step like creating the description for your dream job.  
At the same time, you also want to stay flexible with your goals. There will be more opportunities for you if you're open to working in a variety of industries versus a specific one or two. For instance, if you're solely working on commercial contracts in real estate, you could translate that experience into a contract focus that's applicable to any industry (i.e., NDAs, SOWs, vendor Agreements, procurement contracts, etc.).
- **Figure out how to connect the dots.** How can you get from #1 all the way to #2? Start by finding lawyers who are already in a job you aspire to have. LinkedIn is a great tool for investigating what route someone took to wind up in their ideal job role. You can also track down attorneys who previously held your title or

worked in a similar area—and follow the breadcrumbs to see where they went after they left the company. This will give you some ideas and inspiration as to what’s possible for you.

If you come across a lawyer on LinkedIn who has been successful in a career path you’re interested in, don’t be afraid to reach out. Send them a message and ask how they were able to make that move. What skills and/or experience did they leverage in order to land their current position? What keywords did they focus on in their resume? Try to get a better understanding of their company’s department structure and business model, as well as its approach to lawyer professional development. For example, if your end goal is to become a GC, companies like Procter & Gamble and The Coca Cola Company are good destinations. Based on our market intel, these organizations prepare all their attorneys with the skill set to eventually become a GC from day one. Be sure to inquire about company culture and cross-functional work as some large organizations may divide their legal teams into niche-focused silos, making it more difficult to grow within the company.

You might also benefit from some real-world insight from a mentor or trusted member of your network. Ask for clear, unfiltered advice on making yourself more marketable to your target practice area, industry niche or organization. Find out who you should be building connections with and what your resume really needs to take you where you want to go.

- **Set realistic mini goals to propel you forward.** Now that you have a better idea of what you need to work on, it’s time to create a plan of action. Resist the temptation to set lofty goals—instead, establish smaller and more attainable objectives and set a deadline for achieving them. Be sure that your mini-goals are **SMART**

goals: Specific, Measurable, Achievable, Relevant and Time-Bound. This will make it easier to track your progress.

For example, if you want to transition from government work to a private law firm, it helps to have hands-on experience in areas firms focus on, such as anti-trust or tax crimes. Ask your supervisor about projects or training opportunities that can help you acquire knowledge in these areas. Or, if you have your sights set on being a GC, volunteer to head up an employee resource group at your organization in order to obtain leadership experience. If you’re in-between jobs and at a career crossroads, consider interim opportunities. Interim work gives you the flexibility of a short-term commitment (3 to 18 months) while allowing you to gain valuable new skills and experience that you can transfer to a permanent role. Every time you reach a mini goal, take a minute to congratulate yourself! Making note of how far you’ve come will help you stay motivated along the way.

- **Keep checking in.** Create a regular schedule (e.g., quarterly) for reviewing your career map and evaluating the progress you’re making toward your goals. Remember that your map is a living, breathing document that’s subject to change. Your goals may shift over time along with your action steps. Be ready to adapt your plan as needed.

Having a thoughtfully planned career map can give you more confidence and a greater sense of control over your future. It can also help ensure that every decision you make brings you continually closer to the legal career you were meant for. ■

—Nina Houston

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# The Simplest Way to Develop a Thriving Litigation Practice: Don't Just Market More. Dominate Something

I'm going to *disagree* with the premise that marketing litigation is fundamentally different from any other type of practice (although litigators tend to *believe* that they're different). We've represented at least 50 litigation boutiques and practices, and I frequently hear the same complaint—that transactional lawyers can get consistent, repeat work from the same clients, but litigators can't. They often complain “I just did a great job for XYZ Company, but they might never get sued again!”

That's true, there *can* be more opportunity for obvious repeat transactional business from a company that does a steady stream of similar deals. But I've found that for most litigators that's really just an excuse. There are plenty of litigators with enormous, steady books of business, so it's obviously possible.

Of course, some types of litigators also get mountains of steady work from a few big clients, but those clients tend to be pretty savvy purchasers of legal services. They know the value of this volume of work, so they tend to trade this volume for extremely low hourly rates, like insurance-defense, low-end bank loan and leasing litigation, or big purchasers like Walmart.

## Find Your Focus

So, to litigators, litigation practices, and boutiques, I advocate two basic things —

1. Build a brand that distinguishes you, so you're known for something. An approach, a style, AFAs, budgets, toughness, trial skills, creativity, problem-solving, value,

efficiency ... pick something credible and meaningful.

2. Find a niche you can dominate, individually, as a practice group, or firm. Find one or more industries, sub-specialties, target audiences, organizations, etc.

The point is—typical businesses don't get sued very often. But you still need a steady stream of work from **SOME** type of target. That is, you can either get a **lot** of work from a few businesses (like transactional lawyers or insurance-defense litigators), or occasional work from a lot of targets. Because they never know what companies are going to get sued next week, rainmaking litigators need to juggle a lot of different contacts.

Business development can become a numbers game. And the most-efficient way to get in front of a high volume of different contacts (as I've been advocating for literally 25 years...), is a target industry or narrow market of some sort.

Think of it this way—it's every marketing consultant's Legal Marketing Association-based strategy. For example, at Fishman Marketing we offer branding, websites, and marketing training for law firms. Firms don't need a new brand or website very often and I don't know when they'll need one, so I need to stay in front of a **LOT** of law firm decisionmakers so that every year I get calls from enough firms to stay busy.

I may need to touch hundreds, perhaps thousands of different people regularly enough that whenever they happen to need the services we provide (whether tomorrow or in ten years), enough of them remember me and what we do at Fishman Marketing. That's what makes LMA, or the Association

of Legal Administrators (ALA), or the bar associations, etc. efficient target audiences for consultants and others who sell products or services to law firms.

## How to Market a Litigation Practice

That's the same strategy litigators should use. If they can't land a single client that gets sued a lot, then they need to find some larger market segment or target audience that does and become the go-to lawyer (or firm) for a great many of them.

If you've picked the trade association or industry strategically, enough of these companies will get sued every year to keep your lawyers busy. It's easier and more efficient for busy litigators to market to a single industry group than to general "businesses." This is particularly true when you have created no clear differentiator that makes you a superior choice for that specific audience.

Become the go-to litigators for a small industry group or niche.

I've seen firms focus their marketing on small industries like agriculture, pest control, ship or railcar finance, freight forwarding, casinos, horses, pets, hand tools and appliances, fraternities and sororities, dam or

bridge builders, police in taser cases, timber and forestry, prison construction, 3D printing, beer, restaurants, cannabis, logistics, Internet of Things (IoT), robotics, rental cars, pharmacies, and countless more. Injury lawyers claim leadership in certain types of injuries, like the omnipresent marketing toward truck or motorcycle crashes or dog bites, as well as less-obvious things like bicycle wrecks, hair-transplant malpractice, or injuries occurring in hotel rooms or rideshare cars, or specifically to Catholics.

Note, they're not focusing their *practice*, just their *marketing*, for the sake of efficiency. That is, you may practice as broadly as you want, but market narrowly. In marketing, a laser beam is more efficient than a broad, scattershot approach. ■

—Ross Fishman

*Ross Fishman is the CEO of Fishman Marketing, Inc., a global strategy, branding, and website development firm. Called "One of the nation's leading experts on law firm marketing" by Lawyers Weekly USA, he's written ten marketing books, keynoted hundreds of conferences and retreats, and built brands for 200 firms in 25 countries. Reach him at ross@fishmanmarketing.com, +1.847.921.7677, or LinkedIn.com/in/rossfishman. Subscribe to his legal marketing blog at fishmanmarketing.com/blog.*

# Takeaways from an Ongoing Survey of COO Compensation and Roles

Hundreds of US law firms have someone who is in charge of administrative activities. To learn more about that position, during the summer of 2022 Altman Weil, Inc. (Jim Wilber, Principal) and Savvy Surveys for Lawyers (the author, CEO) invited the top administrative officers of law firms to take a benchmark survey on compensation and roles. By the first release of the report in late August, 159 of those Chief Operating Officers, Executive Directors, Legal Administrators and a slew of equivalent roles had submitted responses that included their base salary in 2022 and their cash bonus for the previous fiscal year. We will refer to them all collectively by the most common title, “COO.” A quarter of the firms had 61 lawyers or fewer; a quarter had 190 lawyers or more; and the median size was 95 lawyers. Five work at Canadian firms, while all the rest work at US law firms.

What are interesting takeaways from the first release?

**The more lawyers in the law firm, the higher the COO pay.** Not surprisingly, the more lawyers who practice at a firm, the larger the paycheck of the COO. Larger firms place more demands on their top administrative person; they expect more experience, training and capabilities. According to a linear regression model, the COO’s total compensation would be predicted to rise by \$861 for every lawyer practicing in the firm above the of \$418,107. So, a COO at a 500-lawyer firm by this model would be predicted to earn total cash compensation of \$848,607 [418,107 plus 861\*500]. But the regression model explains less than one-third of the variability of total cash compensation.

**Education plays a modest role in increased COO pay.** From the responses we received, the large majority of COOs with an advanced

degree—gained after graduating from college—have earned a master’s in business administration, an MBA. Almost 40 percent of our respondents have pursued and gained that degree. Another eight percent of the group graduated from law school, so they hold a JD degree. But neither advanced degree predicts total compensation with any precision.

**Little variation in whom the COO reports to or in its effect on compensation.** As the lead person for all administrative and support activities in the firm, one might expect the COO to report in to the top lawyer, the Managing Partner (or Member or Shareholder). And that is exactly the case: approximately 50 percent indicated that they took their instruction from and reported to that lead lawyer. Another 25 percent report to the Management Committee, Executive Committee or an equivalent group. The final 25 percent serve two masters: both the managing lawyer and the governing group. But we saw no material distinctions in total compensation because of the COO’s reporting line. The reason for little distinction in compensation seems obvious: if you report to the top governing person or body, that’s all there is to it.

**The pay of COOs has reached partner levels.** Many COOs of firms that have fewer than the median size of our survey group, 95 lawyers, see total compensation in the \$250,000 to \$350,000 range. Nothing to sneeze at and probably a significant proportion of what the median partner at their firms takes home. At the other end of the pay scale, our survey heard from 16 COOs whose base salary plus bonus exceed \$700,000. Partners bring in the fees and take the financial risk, and are paid commensurately, but COOs enable them to do so. Thus, a good measure of pay equity makes sense.

**The number of reports to a COO doesn't correlate much with compensation.** In corporate America, it is typical for the spans of control of executives to expand as their level in the hierarchy rises. More managed, more moolah. Yet our survey finds no similar influence. The median number of people reporting directly to our respondents is seven.

**COO has become the most common, and highest paying, title.** Back in the 1990's, when firms began recruiting or promoting professionals to oversee the non-law practice operations of the firm, the common designation was "Legal Administrator," "Legal Manager," "Director of Administration," or variations on those terms. In the first decade of this century, "Executive Director" held sway, but as the largest law firms morphed into more corporate structures, the "Chief" adjective appeared. From the survey we see that 60 percent reported their title to be "Chief Operating Officer" or close enough to that title that we converted it to "Chief Operating Officer."

**Many hats, many activities.** The survey asked the respondents to estimate for the previous 12 months how much time they devoted to 16 typical activities of a COO. The survey asked for those estimates in percentages. The task with the highest average estimate was "Working with the Managing Partner (top lawyer)" at 13 percent, followed by "Managing/overseeing Finance functions" at 12.5 percent. What is striking is the breadth of activities that the COOs are involved in—they have a wide range of responsibilities and are putting out fires all over the place. We further analyzed COO activities versus Executive Director activities, but could perceive no material differences.

**Even smaller firms see the benefit of a COO.** Surprisingly, a dozen firms in our first Release have fewer than 30 lawyers. We did not dissect whether the range of activities differed (for example, branch office and lateral recruiting time likely vary) according to the size of the firm. The next release, garnering an even larger set of COO respondents, may

support such a finer-grained analysis. As billing rates for lawyers have risen, which raises the opportunity cost of them overseeing the operations of the firm, and as competitive pressures have ratcheted up for law firms, which makes professional management more vital, and as the complexities of big law have mounted, which makes the integrated skills of people, processes and systems more valuable, firms of all sizes have steadily turned to investing in the COO role, and vesting that person with considerable scope.

**Big challenges face the position and merit commensurate compensation.** The last question on the survey asked the respondent to forecast for the coming year or so their most significant challenges. Most of the respondents took that opportunity and left comments that ranged from terse remarks to lengthy expositions. We deployed several capabilities from the burgeoning world of natural language processing to identify themes. wordclouds, bigram analysis, and topic modeling (Latent Dirichlet Allocation, specifically) all point to a similar stretch of white water. The concerns most frequently voiced include adequacy of talent, succession planning, return to work, and strategic planning.

This initial release confirms a fundamental truth for US law firms. Effective COOs hold responsible positions and balance full plates. They are the glue that allow the practicing lawyers to ply their profession effectively. The best of the COOs possess the variegated skillset to navigate finance, psychology and politics, the flow of new technology, and the ever-present challenges of retaining strong performers. The law firm COO role continues to evolve and deepen, and the compensation has risen apace. ■

—Rees Morrison

*Rees Morrison, a former lawyer and long-time management consultant to lawyers, is the founder of Savvy Surveys for Lawyers <https://savvysurveysjd.com/>.*

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## Associate Satisfaction

*Continued from page 2*

“Use it to improve associate retention, performance and to raise even the highest levels of satisfaction. The cost of retaining a good associate is dwarfed by the cost of losing one. The associates with the highest satisfaction levels are most likely to develop an emotional connection to their job and firm — and see commonality between their goals and firm goals.”

### **\$: Not Be-All, End-All**

Interesting, but perhaps not surprising given recent discussions and reports about young attorneys’ values, money’s not the linchpin to happiness. “Only 17% of associates put money first. The remaining 83% of associates are focusing on building their careers — presuming their salaries are in a band of competitive reasonableness,” according to the satisfaction report.

High compensation is “not as important as the other factors we discuss in this report,” it states. “Money helps with short-term pain. Ultimately, more than half of these associates are willing to give up some amount of money to build their resumes. And they are betting this will bring substantially higher returns over their careers. All other factors being equal—market rate salaries are minimum expectations as associates search for other attributes.”

This finding supports other recent data. A February survey of associates—conducted by The Thomson Reuters Institute and released this past spring with responses from some 1,400 attorneys practicing at a range of large, midsize, and small partnerships—reported similar conclusions about compensation:

Money was “not a strong consideration for staying at their current firm,” the TRI survey noted. “Indeed, compensation was dead last in order of priorities on what associates like most about their current firms. Furthermore, no matter through which lens the data was analyzed (age, gender, race or ethnicity, LGBTQ+), compensation was at the bottom of the list of what lawyers like most about their firms.”

### **The Gender Gap**

In the BTI survey, associates indicated that they gain the most satisfaction from their jobs when law firms hire and retain very smart, supportive and “awesome” people; the young lawyers feel appreciated and respected; they have opportunities to learn and are challenged to be their best; and they get to work on interesting cases and perform “hybrid” matters.

But, of course, not all of those who responded reported high satisfaction in the workplace. Only about a quarter of them characterized their job satisfaction as “excellent,” half of them indicated “fair,” and a quarter “not so much.”

Regarding the appreciation and respect factor, once again the Thomson Reuters research also underscored the importance of this intangible but crucial value—particularly for women. “A lack of appreciation was a top five factor for lawyers leaving their current firms, especially among women, who ranked it 2nd out of all of the others,” it noted, adding that firms should keep this in mind in their retention efforts and suggested partners “say thank you” to their younger colleagues more often. “Clearly, this is one of the most cost-effective ways to retain talent.”

The BTI report found that women’s job satisfaction is 13 percent lower than men’s and the gender gap is even wider when the survey participants chimed in on whether they think their law firms “are committed to helping

their career.” Just over 37 percent of women reported that their firms are as compared to 52 percent of men.

That commitment level or lack thereof seems to carry a lot of weight. Consider what the BTI team noted, in addressing their law firm readers:

“Commitment is the wind lifting the wings of their careers. Associates are at your firm to learn, practice law and build their careers. They want firms who demonstrate a clear commitment to help them accomplish these goals. This commitment is defined by actions and an intangible sense of responsibility to the associate. They evaluate not just the actions and words, but the enthusiasm as well. Associates are impressed by the level of enthusiasm more than the number of actions a firm takes.”

## Ranking Law Firms

The vast majority of BTI’s survey ranks the laws firms that seem to excel at cultivating associate satisfaction, with “Best of the Best” signifying the top-tier of those ranks.

Among those partnerships that are “Law Firms Best at Helping Associates in Their Career”—a very important value so consequently a critical category—are Fenwick & West; Mintz Levin; Polsinelli; Skadden; and Wilson Sonsini, as well as a few others.

The survey also ranks law firms in such categories as mentoring, opportunities for growth and others.

BTI unabashedly states that this report can help law firms attract and keep good talent and urges them to seize on this opportunity to educate themselves on what associates are thinking, particularly female attorneys: “Learn how [satisfaction] attributes play out as part of the associate experience. Immediately learn the law firms associates ranks as best—by name. See where your firm stands. And, learn the law firms [that] women associates report as best at each key activity.”

This article really only scratches the surface of the consultancy’s research. To read the entire report, contact The BTI Consulting Group at 617-439-0333 or [bticonsulting.com](http://bticonsulting.com). ■

—Steven T. Taylor

## Of Counsel Interview

*Continued from page 24*

care to a US senator—in advising large health systems, emerging health care companies, and entities focused on behavioral health serving commercial and safety-net patients.

Recently Evans talked to *Of Counsel* about her journey into the legal profession, her career, passion for helping providers who care for the underserved, Polisnelli's ability to hire very good lawyers despite the talent war, women in the profession, including a little more about that encounter at the high-stakes meeting, and other topics. What follows is that edited interview.

**Of Counsel:** What path led you into becoming an attorney, Jennifer?

**Jennifer Evans:** My answer to that question is not very traditional, and I'm not sure how interesting it is. I was working as a legislative assistant on Capitol Hill in Washington, doing health care policy. I noticed that many of colleagues were lawyers or were attending law school. So, I just took the LSAT—I guess because everyone was doing it, which isn't a very good reason. Then I applied to a few different law schools but I decided I didn't want to go because I got a promotion to be the legislative director to US Senator Ben Nighthorse Campbell, at a pretty young age, which was very interesting.

So I reached out to all the law schools I'd been accepted to and asked if they would defer my admission for a year. Of course they said no because they're law schools. But one of the schools I applied to was the University of Colorado and I was a Colorado resident and was going to fund my own law school education. [But after getting very wrapped up in the legislative work], I decided that I had no intention of going to law school the following year.

But then my boss Senator Nighthorse pulled a political surprise on us and switched political parties [from Democratic to Republican], without any discussion.

The work on health care matters I'd been doing was great fun, and important, and then all of a sudden it changed. I'd been on one side of the political spectrum and then I had to go to different meetings with different people. It was all very unsettling.

I was considering whether I should stay or leave the job when I got a letter from University of Colorado Law School saying, "You're admitted." I went to my husband and said, "Honey, we have a plan. We're moving to Colorado." He was thrilled because he had been in D.C. for almost five years at that point and he was wanting to return to Colorado after he got his graduate degree in D.C. and I wanted to come back, too.

### Fortunate Circumstances

**OC:** Well actually, I think that's an interesting arc to a legal career. How did you get involved in practicing health care law?

**JE:** It wasn't easy because I really wanted to live in Colorado and practice law. When I left law school in 1998 there wasn't the sort of national practice that included the really sophisticated health care practice that we have now. I was fortunate that the first law firm I worked at happened to be defending an entity in a health care claims case—even though that wasn't really their main area of practice. It was an existing client that they had a long-time relationship with, and they were nearing the end of their settlement negotiation. I had the good fortune to work on it.

I was a first-year lawyer and I went into a meeting with the government to try to work through [some issues of the settlement]. I don't know why they let me do that as a first-year but it worked out pretty well. So that

gave me a little bit of health care law experience in Denver but I wasn't sure there'd be more of it.

Then I changed law firms and went to Faegre & Benson, now Faegre Drinker Biddle, which had a new client, a big health care company, and they needed someone to go in and help out. They were short-staffed. I was lucky enough to work with that health care company. In the mean time, the firm had started to add some fantastic health care lawyers who were Colorado natives like me and had started their careers in other cities where they had very sophisticated training in health care. And they wanted to come home to Colorado. All of a sudden we had the makings of a very sophisticated health care practice in Denver. [Most of these health care attorneys also ended up joining Polsinelli.]

And now Polsinelli has the largest health care department in the country of Am Law 100 law firms. We all get to practice together, and I have amazing colleagues in Chicago, D.C., Los Angeles, San Francisco, Houston, New York City, St. Louis, and all over. We get to represent health care providers in all of those locations.

**OC:** You probably spend a significant amount of time managing the Denver office. What's the percentage of the time you spend serving clients?

**JE:** Well, at Polsinelli leadership protects lawyers. We are almost 100 percent practicing lawyers; we only have one lawyer who doesn't practice law and that's our CEO. I spend 100 percent of my time practicing law, and then the extra percent of my time [*laughter*] is helping my colleagues as managing partner, working to make sure they're able to practice at their highest level, help seize opportunities for their clients and for us, and contribute to the Denver community. Fortunately, for me as office managing partner, we're very much a practice-group-managed firm. So, I'm a lawyer in the health care department but I'm not in charge of the health care department. I have very capable colleagues who are the

practice group leaders and they do the lion's share of the administrative work in term of managing clients and lawyers.

What I do as managing partner of the office is more external, representing the firm locally and trying to integrate my new colleagues and my growing colleagues and help them have the best experience with their clients and for themselves at our firm.

## Helping Those in Need

**OC:** On the practice front, what types of work do you like to do for clients and why?

**JE:** I'm a health care regulatory lawyer. I do reimbursement work. Our elevator speech essentially is: "We help providers get paid and keep their money." When you're working with federal health care programs, there are so many rules and regulations that you must follow to ensure that you're in good standing with the government.

I worked as a director of a Medicaid agency here in Colorado and Medicaid is the health care program that primarily provides care for underserved communities and takes care of a significant percentage of children in this country. I gained a lot of experience at that agency. So now—to answer your question—the work that I like to do best is for safety-net clients, the safety-net hospitals and other providers that are more focused on the underserved populations.

Of course, in the last six to eight years since the passage of the Affordable Care Act, the Medicaid program has grown and is a huge part of our nation's health care payment system. It's the largest payer in the country. It also has some unique requirements to cover services furnished through Medicaid beneficiaries for mental health or behavioral health. Now I have a lot more clients who aren't just primary care providers and hospitals but are behavioral health [*professionals*]. It's also still a bit of a battle because while Medicaid is

required to cover behavioral health services they don't always pay adequately or have as much coverage as they should under the parity laws. So that's a very interesting area of practice, and I just really like helping providers who are helping the underserved.

Access to care is so important—it's about making sure that we have the systems in place to both cover the care that's needed and adequately pay for it. It's discouraging when government or commercial payers are at loggerheads with providers and not wanting to pay for the service that they furnished or try to put in a bunch of technical traps for the unwary so they don't have to pay. It's remarkable how much time I spend making sure that my clients, who provided care that was needed, keep the money that they were already paid. Too often government and private payers send a letter three years later and say, "We want all the money back." And then you're in litigation. We spend a lot of time protecting these clients.

**OC:** I can imagine that it must be very rewarding—to put it simply—to help those people in need. Is that why you're drawn to performing safety-net work?

**JE:** Yes. It's also some of the most complicated and interesting work. But that alone wouldn't sustain me. It is rewarding work because if providers don't have the support they need, they're not going to be able to continue to furnish access to care. I'm obviously not a clinician; that's not the right job for me, to actually be on the front lines providing care. But it is very satisfying to help the people who can.

**OC:** I want to move into another topic. What challenges do you and your team have to overcome to bring on really good lawyers, whether they be laterals or first-years? What's your trick to prevail in the talent war?

**JE:** Well, there's no one trick. I think the thing that we do at Polsinelli that is so strong and helps us attract and retain good lawyers is that we put clients' needs first in everything.

The great lawyers are the ones who really care about their clients and about the client work. And, you don't want to try to practice law and serve your clients at an organization that doesn't see that as their primary purpose. If you have organizations that are more caught up in their bottom line and having fancy offices than serving clients then they're not going to have clients for very long. Our business model, our growth, our ability to attract and retain very good lawyers ... it all starts and ends with our ability to attract and retain clients.

## Gender Imbalance

**OC:** Jennifer, you've had a lot of success in your career and you're a leader at your firm. But as a female attorney you probably have also seen the inability of law firms to keep pace with their clients in terms of hiring and promoting to leadership women and attorneys of color. Can you talk about that? What do you see is helping to even up the imbalance, if indeed we are?

**JE:** I don't know if we are evening up the imbalance, yet. I like how you phrased that question: Why are firms, as you say, not keeping pace with their clients in terms of them having a good balance in their legal departments that match the demographics of our world? We all recognize the value of having your lawyers, your legal department, your custom service people reflect the customers. The business case for balancing out, to use your word, is that it reflects our clients, and their customers, and the communities we live in.

Part of what's made it easier for me is that I'm a lawyer practicing in Denver, Colorado and Denver, Colorado has wonderful women leaders. Within the Polsinelli law firm, throughout the country but particular in the Denver office, we reflect our city. We have women leaders in our practice groups, in our client service teams. It's common to see a woman leading a team, and if not leading a team, right next to the leader. It's far

more unusual for me to be the only woman in a meeting or a room, than the opposite. But I know this is not the common experience within the profession.

**OC:** I bet you've experienced, shall we simply say, some things as a woman attorney, including the comment from the old guy about you losing weight—after you gave birth!

**JE:** Yes, and that could have gone in another direction. But I was ready to go, walking into that meeting because I knew we were going to have contentious conversations about business. I was prepped. I'd been in another city and was flown in the night before and I was probably already a little salty. So when he said that I snapped right back at him in way that A: was accurate and B: bought me some points for chutzpah, if you will.

But you could imagine that going another way: I mean a new mom who has a baby and lost a bunch of weight goes into a meeting and somebody comments on her appearance. She may lose it a little bit and not have the chutzpah to keep going. I remember walking

out of that meeting with a smile on my face because I got the best of him. But I was also shaking my head. Can you imagine that someone could be such a dinosaur to make a comment like that?

Anyway, about the imbalance ... it's very hard to sustain yourself in any environment if you're the only person with your perspective. If you're the only woman, or the only one who's not white or the only one with a certain orientation, it's difficult. When we're dealing with challenging situations it's really nice to have someone who understands your context and encourages you and helps you overcome adversity.

We all have to work for including different perspectives and to check ourselves as well. It's up to all of us who have achieved some degree of leadership to make sure that we're constantly checking our assumptions because the world keeps moving and we better move with it. I know I do. If I don't, I'll be the dinosaur in the next story. ■

—Steven T. Taylor

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## Of Counsel Interview ...

# Health Care Lawyer Helps Clients Navigate Regs while Serving Safety-Net Providers

Years ago when Jennifer Evans practiced law as an in-house attorney, the company she worked for flew her in from another city to attend a critical meeting and offer her experience and insight into a difficult matter. Evans, currently the health care compliance practice leader of Kansas City-based Polsinelli and managing partner of the national firm's Denver office, remembers that day well.

“It was a very high-stakes but small meeting with the CEO and a few other leaders and we had to make some hard decisions,” she recalls. “Now I’m the compliance lawyer so of course I’m the one requiring them to make those tough decisions. The pressure wasn’t necessarily coming out of the business office. I walk into the meeting—I’m the only woman in the room—and one of the older men looks at me and says: ‘Jennifer, you’ve lost so much weight.’”

And how did Evans respond to this offensive, sexist remark?

“I look at him and say, ‘Hey! I had a baby.’ And the whole room roars with laughter. I mean, what an entirely inappropriate thing for him to say in the first place, and later as I thought about it, I realized my answer was an unexpected response. Also, I won some points in that meeting and that guy lost points.”

In addition to thinking quick on her feet, Evans has earned a highly regarded reputation for her client service in the health care law arena. The recipient of numerous honors, she focuses her practice on fraud and abuse, Medicare and Medicaid reimbursement and regulatory compliance. She brings a wide range of experience—including time spent on Capitol Hill as a legislative director for health

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