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Regional Portrait ...

Louisville's Not Just about Horses & Bourbon as Legal Market Heats Up

While jockey John Velazquez rode Always Dreaming to victory in last month's Kentucky Derby, they weren't the only winners at Churchill Downs that first Saturday in May. Several leaders and senior partners at Louisville law firms were also victorious on the business development front.

In fact, in the week leading up to the big race, referred to enthusiastically by Louisville residents as Derby Week, law firms entertain clients and potential clients from around the country in what's clearly a one-of-a-kind marketing/business relations opportunity. (*Of Counsel* reached out to several law firm

leaders to interview for this article and, while they eventually found time to talk, their schedules were packed full as they seriously courted clients and prospects.)

"Like other firms [in the region], we certainly try to take advantage of 'the most exciting two minutes in sports,' as they say about the Kentucky Derby; we introduce clients who've

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never been to it to that event,” says Robert Connelly, chairman of 260-lawyer Stites & Harbison, one of the most well-known firms in Louisville, adding that several of the firm’s attorneys, especially those in its transactional group, have been very busy recently.

The uptick in work for Stites’ attorneys mirrors a pattern occurring at other Louisville firms, prompting several outside observers to call Derby City one of this year’s hottest legal markets in the nation. Along with the traditionally strong health care business in Louisville that has long kept lawyers’ phones

ringing, a convergence of factors contributes to the surge in legal activity, and Connelly points to a few of them.

“There’s been significant public investment in Louisville,” Connelly says. “We recently built a new bridge and did significant repair work to another bridge. We’ve seen an infusion of money just from the ancillary contracts and work related to that construction. We’ve seen an increase in interest and activity in the universities in Kentucky at both the University of Louisville and University of Kentucky. They are both expanding research programs. Louisville was admitted into the Atlantic Coast Conference, and it recently had a [college football] Heisman Trophy winner. Even though those are not related to academics, there’s a bump in applications in admissions from outside the state.”

Both public and private money is flowing into construction and revitalization in this city also known as the Gateway to the South. “Like a lot of mid-tiers cities, you’re seeing a renaissance of downtown; a lot of people are moving back into the urban core,” says George Vincent, firm chair of Cincinnati-based, 650-attorney Dinsmore & Shohl, which has 65 lawyers in its Louisville office who are very much in demand these days, especially the litigators.

At Wyatt, Tarrant & Combs, chief marketing officer Andrew Payton agrees and says other developments have added to the city’s resurgence. “We’ve got a new convention center, and we’re smart enough now that when we build a stadium we build it in the urban center,” he says, adding that Wyatt’s always-robust health care practice has gotten even more active in this bustling city. “We have a baseball team downtown. They’re looking at a location for a new soccer stadium, and we’re getting better downtown housing. These things add to the life of downtown.”

And all of this creates more buzz for the city, boosts the local economy and, consequently,

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From the Editors

Taylor's Perspective ...

Successful Law Firms Work Hard to Stand Out in a Crowd

You're a managing partner, senior partner, or chief marketing officer, and you help shape the way the outside world perceives your law firm and your brand. What sets your firm apart from your competitors?

I asked the chairman of a firm that's ranked among the top 100 largest firms on "The List" in the *2016-2017 Of Counsel 700 Survey* this question: What differentiates your firm? He didn't handle it very well, bumbling and mumbling and serving up platitudes and spewing sweeping generalizations.

And yet, law firms and the consultants and marketing experts they hire expend a lot of money, energy, and effort on ways to distinguish themselves in this crowded and competitive market. "The legal marketplace is obsessed with differentiation," says an East Coast consultant. "The very fact that [the chairman] said what he said shows just how much law firms are struggling with the notion of what their law firm is."

One reason some law firm leaders can't or won't find the words for how their firms are different than others is because the stated reasons are as hackneyed as a 20-year-old cliché: We have industry expertise, they might say; we have a proven track of getting results; we have market dominance; we hire the best and brightest young stars and train them well. And then there's my least favorite that's been in vogue since the great "transformation of the profession" that was supposed to occur after the recession: We offer value-added

client service. Excuse me? You mean you don't provide value-subtracted service? How very special you are indeed.

"What we have is a bunch of attorneys running around trying things that Dale Carnegie wrote about decades ago," says another consultant who works with law firms nationwide. "And then they're surprised that they can't achieve differentiation. They need to do something substantive, like train lawyers to be helpful members of the client's business team rather than unpleasant parasites that nobody wants to call." That's a bit harsh, but it's a good point.

Many managing partners are hard-pressed to say how their firms are specifically different from their competitors because differentiation is something that comes with hard work and attention to details as opposed to anything catchy or dramatic.

Those Who Get It

Fortunately, I spoke with several firm leaders who could offer articulate, concise, 10-story-short-ride elevator speeches to answer the differentiation question.

Consider how Deborah Read, the managing partner of Cleveland-based Thompson Hine, describes SmartPaTH, an innovative, award-winning—and yes, differentiating—program the firm rolled out in 2014: "SmartPaTH is a comprehensive approach that melds legal

project management, value-based pricing, flexible staffing, and process efficiency into an end-to-end model for service delivery. It applies systems and ways of doing things combined with software and innovations to allow us to deliver services with greater predictability, transparency, and efficiency.” Well said, Debbie, well said.

As noted in this issue’s back-page interview with attorney Aaron Swerdlow, Los Angeles-headquartered Gerard Fox Law brought in six former CEOs to draft its business plan when it was formed seven-plus years ago. Differentiation was built into it. Gerry Fox doesn’t hesitate to talk about a few things that make his firm stand out, including diversity. “We’re not 85% white male at the top,” he says. “We’re the most diverse law firm that we know of. If you look at a plant in your room every day from one angle, you’ll be limited. But if you shift from the other side, you’ll see a completely different view. We have a lot of different cultures here and look at things from different angles.” That’s right: Angles—plural—matter.

Alan Hoffman, the managing partner at Philadelphia’s Blank Rome, seems to always answer reporters’ questions eloquently and candidly. “While Blank Rome was founded more than 70 years ago, 70% of our current attorneys have joined us over just the past five years,” he says. “So, looking at where we are geographically and who comprises our firm today, we have the unique perspective of being a fairly ‘new’ firm, with the benefit of a strong foundation and a rich history. All of this transformation has been made under our guiding goal of remaining relevant to our clients, and I am proud that we continue to differentiate ourselves in this regard.” Fresh talent = Fresh ideas.

Speaking of “fresh,” visionary law firm leaders not only embrace change, they initiate change. In Syracuse, at the strong Northeast firm of Barclay Damon, managing partner John Langan embodies that philosophy. “From senior partner down to entry-level staffer,” he says, “we have a mentality that we

are in a rapidly changing business, and we’re going to have to do things differently and examine how we do things. Whether it’s continuing education, technology, a new method of delivering service or how you price services, you’ve got to be more open and adaptable because things are changing so quickly.”

In Dallas, the managing partner of Jackson Walker, Wade Cooper, says that the firm has one of the largest litigation practices in Texas and probably the largest real estate practice in the state. He mentions that the partnership has many lawyers with broad political and regulatory experience and talks about how its funds practice group is known as one of the top two or three firms internationally in representing institutional investors when they invest in private equity hedge funds. “That’s a national and international differentiation,” he says.

But here’s what Cooper talks about most enthusiastically: “We have done a far better job than most firms in managing our costs so we have an overhead that is lower than our competition, which gives us flexibility on rates. And from the standpoint of laterals, we provide a platform. That affords laterals rate flexibility without taking a cut in compensation. Our platform for a lot of laterals is unique.”

One attribute that didn’t come up in the several interviews I conducted was responsiveness. When I conducted a similar inquiry for this publication in 2005, that trait came up a lot as a truly differentiating characteristic. Rodgin Cohen, then the chair of the New York global firm of Sullivan & Cromwell and now its senior chairman, had this to say about responsiveness to clients: “I ask our attorneys to follow a rule: Don’t leave your desk at night until all phone calls are returned.” Rodg leads by example; he always returns calls. And of course, being responsive is still very important and can set you apart from others.

So, if someone asked you how your firm differentiates itself in this rough-and-tumble legal marketplace, what would you say? ■

—Steven T. Taylor

Surviving a Buyer's Market:

A Simple Exercise to Differentiate Your Practice

Ten years ago, it seemed like there was plenty of work for every reasonably good law firm. These days, not so much. In today's competitive, low-growth, price-sensitive environment, you had better be able to hold on to existing clients and tell potential new clients what you offer that's better than the alternatives, or your practice may be at risk.

Is your law firm or your practice group really different and better than your closest competitors? Are you able to articulate why clients and prospects ought to hire you rather than someone else? Do clients perceive your practice in a way that sets it apart from competitors, that positions you as better and more valuable?

If your answer to any of those questions is "no," then I suggest that your practice is not effectively differentiated—and that needs to change. This article recommends a short, simple exercise that will help you craft a winning message in a crowded, competitive marketplace.

Define Your Practice

First, decide whether you are talking about the whole firm (easiest if the firm is small and operates in a well-defined niche area) or your practice group. For our purposes here, let's say we are defining a practice group.

Fill in the blanks:

We do [what kind of work] for [what kind of clients] in [what geographic service area].

Here you are simply defining the core work of the existing practice: what you mostly do, what you're selling, what you are known for, how a colleague might describe your group. Aim for a short statement that is descriptive of present reality rather

than aspirational. You are working for the moment on messaging, not strategic planning or vision-casting.

My experience working with practice groups and groups of practice leaders in a variety of law firms is that asking and answering these questions leads to interesting, useful discussions about the range of services that are being offered, which services are most important and why, who their best clients are and why, what kind of work they'd like to do more of, and sometimes what work they should not be doing at all.

Sometimes the discussion makes it clear that a group is not well-defined, is not cohesive, or its core services are not well understood. That discovery may lead the group to identify a specialized sub-practice area with high upside potential or to identify valuable assets it had been taking for granted. I have seen a lot of positive outcomes as a result of these conversations.

Articulate Your Strengths

Next consider the group's strengths. Not a full SWOT (analysis of Strengths, Weaknesses, Opportunities and Threats), just the strengths. Typically, when I first ask a group to list its strengths, I hear things like:

- We're highly experienced in this area of law.
- We've been doing this work for a long time.
- We serve some well-known clients.
- We're active in the community.
- We have a good reputation in the community or region.
- Partner so-and-so is very well known in this town.
- We did a really big deal that people know about.

- We are a highly collegial group. We work well together.

That's all well and good, but are those strengths *differentiating*? Do they matter? Are they strengths that you can leverage and actually do something with? Do clients hire you for those reasons? Do those features really distinguish you from capable competitors?

Go ahead and make a list of strengths, as long as it needs to be. For some groups, it will be a long list while for others it may be more of a struggle, but I've never been with a group that could not come up with any strengths at all.

Make a Candid Assessment

Then, for each of the strengths listed, ask, in sequence:

1. Is it true?

The question is whether each specific, purported strength is demonstrably true. How do you know? Can you back it up? Usually the answer to this question is: yes, but not always.

If yes, it's true, then...

2. Is it different or better than competitors?

Is it special, uncommon, or unique to your group, or can most or all of your competitors

make the same claim? Is it something that distinguishes your group and sets it apart, or simply something that's required to practice in that area, a minimum standard that applies to most every practice group of your type?

If yes, it's true, and yes, it's different or better than competitors, then...

3. Is it meaningful to clients?

Do clients care about the particular strength? Do they hire law firms on that basis? Is it something they consider important and valuable? Is that what they're paying for?

If yes, yes, and yes, then you have identified a truly differentiating strength, which you will want to be part of your messaging to clients, prospects, and referral sources (including your partners). You are giving people a clear reason to buy.

Following are a couple of simple examples. First, as illustrated in Figure 1 below, when we ask the three questions against a generic list of strengths, we find that this mythical practice group does not have any truly differentiating strengths. They are experienced but so are their competitors. They have a good reputation but so do other firms. They've been in the market for a long time but so have some other firms in town, and the group is not sure how much clients care about its history and longevity in any event.

Figure 1			
Strengths	True?	Different or Better?	Do Clients Care?
Experience and expertise	✓		✓
Good reputation	✓		✓
Longtime presence in this market	✓	?	?
Honesty and integrity	✓		✓
Size and depth of group			?
We work well together	✓	✓	?

Dig Deeper to Identify Meaningful Differentiators

The group represented above failed to identify any compelling, differentiating strengths, which is not unusual. The lawyers should take another crack at it. It might be helpful to get some input from clients or revisit how an important client was obtained or how the group has sold itself to lateral candidates. Again, we are looking for real, communicable strengths that are true (demonstrable), different and better than competitors (distinguishing), and meaningful (important and valuable) to clients.

In the second example (Figure 2) below, let’s say the practice being considered is a 40-lawyer IP boutique situated near the United States Patent and Trademark Office. Its self-reported strengths include the following:

The first strength is “patent prosecution expertise.” Again, let’s ask the three questions:

1. Is it true?

Can the lawyers credibly boast of substantial patent prosecution expertise? Yes. They have developed a great deal of expertise in the course of filing thousands of patents and are fully dedicated to and specialized in this area of practice.

2. Is it different or better than competitors?

Yes; in terms of annual throughput and the sheer number and variety of patent applications handled over many decades, they have

developed expertise that is demonstrably superior to most other law firms. They can back up this claim with statistics and anecdotes.

3. Is it meaningful to clients?

Most certainly. Their clients want outside counsel who are highly specialized in patent prosecution, understand the underlying science or technology, and have substantial experience dealing with examiners at the USPTO.

With regard to special expertise in patent prosecution, this firm has answered yes, yes, and yes to our three questions; thus, they have identified a differentiating strength (indicated by the symbol ★). That’s something, but more would be better.

“Understanding of Asia-based clients” is another differentiating strength. The group is unlike its competitors in its understanding of Asia-based companies with US patent needs, can back it up, and those clients obviously care about the firm’s special expertise in that regard. This hypothetical firm has thus identified at least two ways in which it is set apart from competitors. The lawyers now have descriptors they can use to distinguish their practice from other law firms and convey their differentiable value to certain clients and prospects.

The examples above are necessarily limited. A group might also be able to differentiate based on range of services (breadth), size of the group (capability and depth), geographic locations (proximity or footprint),

Figure 2				
Strengths	True?	Different or Better?	Do Clients Care?	
Patent prosecution expertise	✓	✓	✓	★
Efficiency through sophisticated tech	✓	✓	?	
Understanding of Asia-based clients	✓	✓	✓	★
Highly capable attorneys	✓		✓	
Good reputation			?	
Collegial atmosphere	?	?	?	

service quality (responsiveness, communication, etc.), relationships, speed, efficiency, price, industry segment expertise, and any number of other factors.

The Goal of Differentiation

The goal of this differentiation exercise is to be able to first articulate and then consistently convey—across the group, across the firm, and to clients, prospects, and referral sources—what distinct value you are offering that sets you apart from competitors. Once you have gone through this process in your group, ask: Is this enough? Is it compelling? If not, what's missing? How will we fill critical gaps or build needed capabilities?

The exercise itself may be simple but, for many groups and firms, the work you need to do to arrive at one or more meaningful differentiators may not be easy. It will require analytical judgment, rigorous candor, and possibly some significant strategic refocusing. But in today's highly competitive legal marketplace, failing to do so may not be an option. ■

—Eric A. Seeger

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The Horse's Mouth:

Get Your Clients to Do Your Talking

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

Now you might be able to answer with a bold assertion and making a bold claim may indeed be important to get your audience's attention. However, even more critical, you must then support that claim if you want to convert attention into action.

To support any assertion, proof speaks the loudest. Even then, when you say something about yourself, it's bragging. When other people say it about you, there's the proof. Such is the essence of any testimonial and one way to prove you have something meaningful to offer, and that you are better than your competition, is to produce a few forceful and persuasive testimonials.

A testimonial is usually a written communication from a client that talks about what is special about you, your practice group, and/or your firm. Ideally, a testimonial should describe the work undertaken, highlighting the success achieved, and include a comment that the client is happy to recommend you. The power of a third-party endorsement is such that it can unlock the doors of the reader's subconscious mind. It is tangible evidence that allows you to showcase the specific ways you are meaningfully differentiated and distinctive from competitors.

Testimonials can be used to say things about your firm and your services that you

could never say yourself. Most importantly testimonials should:

- ***Evidence success***

Clients want to work with those professionals and firms that have a track record producing results: "Smart & Smarter guided us through all of the pitfalls involved in outsourcing our manufacturing operations and helped us save over \$7 million in operating costs in the first year."

Ask yourself, would your current client testimonials (if you have any) make you want to do business with your firm?

- ***Build trust***

When a prospective client reads a testimonial about how you and your firm are a leader in their particular industry niche or that you always go the extra mile to provide exceptional service, the commentary is more likely to be seen as objective feedback, oftentimes viewed as more trustworthy.

Do you think that your current client testimonials resonate with prospects and give them the confidence to trust you?

- ***Provide credibility***

Your potential clients, especially the *Fortune* 500, want reassurance that you have served companies of their stature, or in their industry, or with their particular problem, so that you can therefore understand their mission-critical issues. To that end, objective third-party endorsements are usually much more believable and credible than any paid advertising.

So, how much does your firm spend on paid advertising each year and, with that number in mind, what are your plans for obtaining compelling client testimonials?

How Do You Get Great Testimonials?

Perhaps not surprisingly, the answer is the same as it is for referrals; first you have to ensure that you have, in fact, earned them.

Understand your client's expectations. To have any hope of obtaining winning testimonials, you must be known as a professional who performs in accordance with your clients' expectations, which means that you need to invest the time to ensure that you have clearly understood those expectations.

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

Be proactively remarkable. When you stand out from other professionals, you will be talked about. Being remarkable means going the extra mile so that service defines your offering; it cannot be an add-on. Help your clients learn and grow. Don't just solve their current problem; help them anticipate and avoid future problems.

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

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

Although you may now feel as if you've truly earned a testimonial, you may still have to ask for one.

Firms often make a big deal about identifying certain testimonials as "unsolicited." Unsolicited testimonials are those that arrive *via* email, ordinary mail, seminar feedback forms, or simply from random conversations, without any effort on your part. Think back to the last time someone sent an e-mail to thank you for some recommendation that you provided, commented on how brilliant your latest article was, or perhaps commended you for responding to their question so quickly and thoroughly.

They're all testimonials in the making. If you were to simply respond—the same day—thanking them for their generous comments, and ask permission to use what they wrote, you would have an unsolicited testimonial without much trouble.

Have you ever been a speaker, perhaps on a panel, when someone in the audience later approached you to say how much they enjoyed your insightful presentation? When someone says something you like, let him or her know you're flattered, and that what they've said would be perfect for a testimonial. Ask them if it would be okay for you to write up their comments as a testimonial and send it to them for approval in the morning. Strike while the proverbial iron is hot. Waiting more than a couple of days significantly lowers the chances of your getting what you want.

Solicited testimonials are those you consciously pursue. You might start by listing 10 clients you consider your most important, high-profile, or influential. In order to land a testimonial that is powerfully persuasive and becomes a permanent part of your marketing collateral, you should try to get one from a recognized or influential expert source. It should talk about how you helped address and solve a problem that happens to be a common problem experienced by your targeted client group. A persuasive testimonial

will help you tell your story. It will show that you know something about a specific problem, issue, market, or business.

If you want the really great testimonials, you have to ask for them. Most often, your clients are smart business people who understand the nature of your request. Call them, tell them what you need, treat them to breakfast or lunch, and, to further help earn your testimonial, simultaneously give some thought to what you can provide them (an idea or lead) in return.

Generally speaking, you won't have difficulty in obtaining a testimonial, since you will be asking only those clients who are already happy with your work. If you feel in any way awkward about asking the client for this favor, you're sending yourself a clear signal that your relationship with them may not be the best.

You might want to consider inserting a clause in your retainer agreement that makes a testimonial a standard part of doing business with your firm. The contractual language would read something along the lines of: "After completing this transaction and obtaining your financing, Smart & Smarter would like to feature our work together in a testimonial." Such a clause sets the expectation, at the very beginning of a specific matter, that a testimonial will be furnished right after the project is completed.

In some situations it pays to help people write your testimonial. Perhaps they're extremely busy, perhaps a bit uncomfortable about how to actually write a testimonial, or sensitive to not wanting to disappoint you. In such cases, your offer to write the testimonial yourself will be appreciated. Simply interview them about their experience with your firm, write up your notes with all their main points included, and use as much of their actual terminology as possible.

Write two different versions to allow them to choose which they prefer. After you've drafted the testimonials, include another

section titled "I Can Do Better Than That," leaving some blank space for your client to write an original statement if he/she wants to exercise that option. If they do make any changes, odds are the testimonial will inevitably end up being *much* better than what you originally wrote.

What Should Your Testimonial Say?

Take a moment and look at any of the written testimonials you may currently have, perhaps those on your LinkedIn page. Ask yourself objectively if they would prompt you to pick up the phone. Or do they merely communicate the same old trite message: "These are wonderful folks to work with, and I have been doing business with them for years." That sounds nice but has no compelling power.

To be truly powerful and convincing, your testimonials must do as much of the following as possible:

- **Show how the client's anxieties and fears were relived, or real risks alleviated**

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

- **Overcome a prospect's potential objection**

"Initially, I thought your firm's fee quote was rather steep, but now in retrospect I have come to realize how much more expensive it would have been in the long run if we had retained a firm that had only limited experience with these kinds of financing deals and that wasted our precious time helping them learn the ropes. Your firm definitely provided us with the best value."

- **Define a benefit**

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

- **Focuses on the specifics of the professional**
“Jennifer Ward was not only responsive in returning every call within the hour, but she managed to get her team of attorneys to work nonstop through an entire weekend in order to close our deal within the tight time frames it required.”

- **Has an “act now” impact.**
“Up until last summer we used the ABC firm for all of our tax work but, having now switched to your firm, we find that we get far more proactive tax counsel. We believe that every company in our industry would benefit from similar advice.”

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

- **Suggest emotion**
Which of the following two testimonials better engages you?

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

Or

2. *“We got our securities questions answered quickly.”*

Wouldn't you agree that the first testimonial, because of the underlying emotion it conveys, actually draws in the reader more? Don't lose the “flavor” or the emotion of your endorser. Very often, the slightly quirky phraseology that someone uses in the testimonial is the key to making an affective connection with the reader. Resist the temptation to edit out personality. Keep the testimonial in the writer's own words.

Always include a name at the bottom. Attribution makes it more believable. And, if it is not fabulous, a real rave, don't use it.

It's better to have no testimonials at all than to use weak or unbelievable ones. Finally, only use testimonials that truly support your practice objectives.

Strategic Variations

Endorsement Letters. A variation on the testimonial, known as an endorsement letter, deserves special mention. Here, Firm A (the host, let's say an accounting firm) agrees to let your firm (the beneficiary) deliver a promotional message to Firm A's clients. Firm A simply approves your letter and “signs” it. It is a very powerful and cost-effective technique as the cost of sending an offer to each of Firm A's clients is minimal.

The real beauty is that Firm A's clients are more willing to hear from you since Firm A, which they already know and trust, is implicitly recommending you. To make it work, you need to look for “host” firms that target the same type of client you seek and, obviously, are not competing with you. Think about the various aspects of your practice and the firms that you could approach to start a profitable relationship.

Launching a New Practice Area. If you're launching a new practice or dramatically changing the focus of your existing practice, you might think about using testimonials to support your new endeavor. Perhaps, to help launch your new practice, you've done some substantive research and are now conducting a workshop or seminar to existing and prospective clients. You can often get pre-event testimonials by forwarding your seminar notes or outline to business contacts or colleagues for review.

Tap your network, ask your friends, look to your past clients. With a bit of persistence, you should be able to get several credible testimonials well in advance of your seminar. Now use those testimonials to give credibility to your actual seminar offering and to build trust in your subject matter expertise. During the seminar itself, ensure that participants are

allowed to provide written commentary at the end, especially to identify what they liked about your seminar content (what was the most valuable to them). Now use the seminar testimonials as evidence of your knowledge and expertise as it relates to the new practice area.

Using Your Testimonials

Before you purchased your last business book, did you flip to the back cover to read what other people had to say about it? As an author, I learned from some of my more experienced colleagues that one good way to promote your newest work is to get well-respected peers to write favorable praise in advance and then include that commentary all over the front and back covers of the book jacket. When you admire the person who provides the blurb, it adds instant credibility to the book.

While testimonials must be used in an appropriate manner, don't limit your creativity as to options. You can include testimonials among your materials in RFP presentations, in client newsletters, and on your Web site, posted on different pages and in page borders so that they remain in view. You might even include a testimonial in your e-mail signature (ideal to rotate them). One firm I know put together a fabulous promotional brochure

made up of only client testimonials. They truly understood that it's what others say about you that counts!

Most often, we use testimonials to get in the door. Obviously, if that is the only way to initiate contact with the prospect, do it. But the real power of a testimonial is in the proof it offers when the potential client is ready to make a decision. Testimonials should be used at the end of the selling process to dispel any doubts, eliminate risk, substantiate value, and thus pave the way to an ongoing engagement. ■

—Patrick J. McKenna

Patrick J. McKenna (patrickmckenna.com) is an internationally recognized authority on law practice management and strategy. Since 1983, he has worked with the top management of premier law firms around the globe to discuss, challenge, and escalate their thinking on how to manage and compete effectively. He is co-author of business bestseller First Among Equals and Serving At The Pleasure of My Partners: Advice To The NEW Firm Leader published by Thomson Reuters in 2011. He advises executive committees and boards on leadership selection and succession issues and co-leads a program entitled "First 100 Days" (first100daysmasterclass.com) usually held at the University of Chicago. Reach him at patrick@patrickmckenna.com.

Near-Term Bonanza, Longer-Term Questions:

The Impact of Brexit on Law Firms in London

On 29th March 2017, the United Kingdom served notice under Article 50 of the Lisbon Treaty that it wished to withdraw from the European Union, thereby commencing the Brexit process.

Brexit is in reality three processes. The first is the negotiation of the terms by which the UK will leave the EU. It is what the media have started referring to as the terms of our divorce, complete with what is shaping up to be a costly divorce “bill.” The second is determining the future relationship between the UK and the EU. The third is negotiating the future relationship between the UK and the United States (and the rest of the world) as the UK will no longer be part of the EU trading block and will be free to make its own arrangements with other nations.

Article 50 requires the terms of the UK’s departure to be resolved within two years; that is, by 28th March 2019. There is no time limit on the other two processes. Whilst all the relevant parties have an interest in maintaining existing markets, the Brexit process is complex and, like any other essentially political process, is fraught with difficulty.

However, whatever the outcome, Brexit will in due course have consequences for any law firm that has an office in London.

Historical Ties

London has been the first outpost in Europe for many US law firms and is usually home to their largest European office, for a combination of reasons that are not directly related to the UK’s membership in the EU. Irrespective of the EU, London is one of the world’s leading financial centers, it has a common law system, there is no language barrier, and it has the necessary critical mass

of lawyers and other support services to maintain an office. It is also the largest center for dispute resolution outside the United States.

None of these attractions are likely to be immediately affected by Brexit; however, the longer-term position of London may change in the future. That position will remain unclear until we know the likely outcome of all three above-mentioned processes.

At one end of the scale is “soft” Brexit, the conceivable scenario where negotiations result in the UK continuing to maintain close trading links with the EU and relatively uninhibited free movement of services (including legal services) and people is permitted. At the other end of the scale is “hard Brexit” where the UK could have little or no favourable trading relationships with the rest of the EU, and European citizens are only permitted to work here *via* an employer Visa license system.

A “pick and mix” sector approach to Brexit is also something that has been talked about. Whilst both the EU and the UK have agreed that the UK will no longer be part of the EU single market, negotiations on the UK’s future relationship with the EU have not yet started in earnest. So it is still not clear what form we will be looking at post-2019.

Looming Issues

In this uncertain period, law firms with London offices will need to consider the following issues:

1. Access from London to the EU market may cease. As a result, the ability to sell legal services freely may be constrained

by tariffs or because there is no longer a mutual recognition by EU jurisdictions of a law firm based in London. As a precautionary step, it may therefore be sensible to consider incorporating an entity in one of the remaining EU states in order to maintain the position.

2. It may no longer be possible to freely move UK nationals between London and other EU states or for EU nationals to work freely in London.
3. Depending on the terms of Brexit, there may be some impact on the position of London as a financial center since there may not be as open an access to the EU financial markets. Such constraint may affect London's dominance of the European capital markets and its hegemony as a fund raising center, with a knock-on effect for those lawyers involved in transaction work. Also potentially impacted are lawyers who specialize in the area of funds structuring and financing, which has of late been a vibrant work stream for US law firms in London. If financial institutions move

people to Frankfurt or Luxembourg as a result, will lawyers need to follow? Most experts agree such effects are likely to be longer-term, if at all, and that the critical mass of the London financial center will not disappear overnight.

4. Those US law firms with EU competition practices based in London may need to rethink this logic and move their teams to Brussels. The wider consideration is that US law firms may need to think through their future resources in London in a variety of practice areas.
5. In due course, trade deals between the UK and the United States and other nations may be forged, opening up additional markets with consequent implications for law firms. Again, though, the rate of change is likely to be slow.

In the near term, Brexit is being seen as a bonanza for the legal community in the UK. Contracts will need to be reviewed for every client in every industry during the two-year Brexit countdown. Regulatory cooperation with the EU needs to be thought through



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for sectors ranging from pharma to tax to aviation.

The difficulty is predicting the longer term. UK Prime Minister Theresa May is keen to present Brexit as an opportunity for national renewal. How Britain will prosper in future is nonetheless by no means certain. Of one thing, though, we can be pretty sure. The

UK's political and business relationships with the US will be ever more important. ■

—Iain Miller

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Kentucky Market

Continued from page 2

drives the demand for legal services. What's more, a few years ago, Mayor Greg Fischer signed a resolution to make Louisville a "compassionate city," a proclamation that encouraged residents "to ensure that we take care of all of our citizens," Fischer said at the time.

Connelly recognizes that Fischer has implemented a number of smart moves, including the compassionate city designation. "In the current political climate, that's gotten a lot of positive attention," he adds.

State & National Influences

The mayor's not the only one contributing to the city's growth. Since his election in 2015, Kentucky Gov. Matt Bevin has pushed several initiatives that some are crediting as other reasons for the growth of the local economy.

"There's been a sea change in the political landscape in our state and it has led to and continues to lead to a great deal of business and legal activity," says P. Douglas Barr, managing partner at 150-plus-lawyer Stoll, Keenon & Ogden. "One of the things that the governor did in the legislature at the very beginning of the session in 2017 was pass a right-to-work law. Already we're seeing significant activity from companies that are looking to come into Kentucky. Louisville is a great place to do business, and it just got better."

Barr says Stoll's broad-ranging business services area is probably the firm's "hottest" practice right now, but that all of its practices are seeing an increased workload. Much of it comes from mid-level and smaller businesses, and the firm's launched a marketing effort that focuses on companies of that size.

"Many of the large national firms and some of the larger regional firms tend to shoot towards really huge international corporations," Barr says. "We have plenty of those kinds of clients and serve them well. But we're rolling out a new emphasis on the mid-sized and smaller businesses that have been our bread-and-butter forever."

From the Derby City offices of Cincinnati-Louisville-based, 500-plus-attorney Frost Brown Todd (lawyers at the firm essentially say it's headquartered in both cities), partner Geoffrey White concurs that the business-friendly approach taken both in the governor's mansion and the White House is fueling legal work.

"Both in Washington, DC, and in Frankfort [Kentucky's capital] there's now a very pro-business agenda," says White, who manages the 145-lawyer Louisville office. "There've been three billion-dollar-plus projects that have been announced that, given the scope and size of the projects, every firm in Kentucky is going to be involved in a variety of ways. There's also been a big public-private partnership law that went into effect last year, and because of it, we've seen projects come our way."

White notes that the firm's national transaction practice has experienced a rise in activity as has its real estate, hospitality and franchise, energy, labor and employment, and health care practices.

"We do work all over the country," White says, adding that both the firm's reputation for having top-quality lawyers and its relatively low rates attract national clients—something the firm markets to prospective clients. "The rate structure we have in Louisville really compares favorably to some larger markets and that gives us a unique opportunity because clients are much more sensitive to cost now. At the pitch table, if you will, the rate does become a real differentiating point that we take advantage of."

Given the heat generated from the Louisville legal market, one would think

that more outside firms would elbow their way into the market, and some have, but not many. When they do, they usually do it by combining with an existing local firm. “When [outside] firms have opened in Louisville it’s usually been because of a merger; you get the depth of scale that way,” Dinsmore’s Vincent says, adding that he doesn’t see a lot of interest from many large national firms “I don’t think the bigger firms have Louisville on their radar screens.”

Attracting National Companies

That’s not true of large corporations. General Electric has a significant presence in Louisville. Collectively, Ford Motor Co., Amazon, and UPS have invested \$3 billion recently to expand their platforms in the city. “I guess Google Fiber thinks this is a hot market because they’re coming to Louisville, and that’s receiving some publicity,” says Wyatt’s Payton, who, for the record, characterizes the city’s legal market as more “warm” than “hot.”

Then there’s Humana, a major health insurance provider, which has its headquarters in Louisville. Its presence underscores the importance of health care, particularly long-term care, in the region.

“We’re one of the largest if not the largest centers for long-term care in the country,” Payton says. “Our firm represents long-term care providers and even more so we represent a lot of hospitals—nonprofit hospital chains across the region. That business is incredibly competitive and incredibly regulated, and it’s not getting any simpler. Then you layer

on top of it new practice areas, which are increasingly challenging practice areas, like data privacy and security, what with all that patient information being passed around.”

Payton says Wyatt’s real estate lawyers are doing a lot of work in Louisville and perhaps even more nationwide, as the relationships they’ve built over the years with large corporations has driven this broader geographic reach. “These companies have had some connection to our region, and then they ask us to take that work nationally,” he says.

Finally, on a completely different note, another factor is drawing people and generating business and legal demand: the advent of Bourbonism, tourism centered on Kentucky’s legendary drink of choice. “It’s very popular,” Payton says. “We’re making the national news regularly with the bourbon visitor center [particularly the Wild Turkey Bourbon Center]. It’s like a mini version of wine country. Everybody who has a bachelor party now wants to come to Louisville to do all the bourbon visitor centers and the Kentucky Bourbon Trail that goes across the state.”

Some say, only half-jokingly, that this phenomenon may be another reason admission applications are up at both the University of Louisville and the University of Kentucky. One thing’s for sure, that increased interest in the state’s two largest colleges provides a stronger academic applicant pool. And that benefits law firms. “We draw a lot of our folks from those two great institutions,” Vincent says, echoing what his counterparts at other firms are saying. ■

—Steven T. Taylor

Of Counsel Profile

Continued from page 24

the general counsel of a well-respected sports agency.

Recently *Of Counsel* talked with Swerdlow about his career, the range of his expertise, the eSports and gaming practice area, and the challenges he faces and satisfaction he gets in serving clients. The following is that edited interview.

Serving the Badgers

Of Counsel: As you probably know, Aaron, we like to start these interviews by finding out why a person decided to become a lawyer. What was it for you? Was there a defining moment or was it more of an evolution that prompted you to pursue a career in the legal profession?

Aaron Swerdlow: It was an evolution. I had a grandfather who was an attorney and I come from a family where a professional degree is encouraged. I felt early on that my strengths and weaknesses were aligned with being an attorney.

I was first inspired to make that commitment when I was working for the athletic department at the University of Wisconsin. I was working directly with the football, basketball, and hockey players, and I realized that many of them were young adults, just like myself, who were trying to navigate school, find balance, deal with issues with significant others, learn how to become semi-autonomous from parents, and handle legal issues that sometimes would come up for them.

I realized that I could go to law school and hopefully put myself in the position where I could help friends and family with the legal elements and the inevitabilities of life. I saw

that these sports celebrities deal with the same sort of legal and ethical issues that non-athletes do. They might be on a more public stage or with higher stakes but to put it very simply: The star running back puts his pants on one leg at a time like the rest of us do.

OC: Were you always interested in sports, or was it something you gravitated to while at the University of Wisconsin?

AS: I was always an avid sports fan growing up and I played a lot of sports. In my freshman year at Wisconsin, I made connections with the athletic department. In Madison, the football team and the basketball team are the talk of the town. That's where the energy flows, especially for freshmen and sophomores coming in. I followed that energy and passion and thought, "Well, if I'm going to have a work-study job, why not have one in a department that inspires me and is a source of school spirit and energy on campus."

OC: Then when you graduated, you moved to Washington, DC, and attended law school at Georgetown. After you got your law degree, what did you do next?

AS: I moved to Los Angeles with my girlfriend, now wife, who joined the sports and media department at [Los Angeles-based] O'Melveny & Myers. I found myself dropped into Silicon Beach as it was emerging, and in addition to my interest in sports, I had a concurrent passion and opportunity in the tech space.

So I took an unusual path and went in-house with a social media- and location-based tech company that provided software to big brands to help them manage their Facebook, Twitter, Instagram accounts at a local level. I thoroughly enjoyed that. But I felt the call of sports, and when Kauffman Sports [Management Group] reached out to me to work for them, I jumped at the opportunity.

OC: So you went in-house at Kauffman Sports. Is that when you were doing a lot of

the agency work with high-profile players, coaches, and executives?

AS: Yes, that's the premier agency for representing basketball players, coaches, and executives. I worked with Mark Price, Patrick Ewing, Jerry Stackhouse, head coaches at D-I institutions. I worked with Jeff Hornacek, Lionel Hollins, and I could keep name-dropping here [laughter]. I was handling everything from their employment agreements, severance agreements, marketing endorsements, speaking engagements, and occasionally I'd be asked to lend a hand in family law issues—the sort of legal issues that come up for high-net worth, high-profile individuals. I also went out and solicited my own clients. So it was a great opportunity early on out of law school to hone my business development and client relations skills.

OC: When did you join Gerard Fox Law?

AS: I came over to Gerard Fox last summer. A recruiter reached out to me and introduced me to the firm and its unique value proposition. I went through an interview process, and we had a courtship on both sides. I'm very glad I made the switch. My clients are better served within this law firm ecosystem.

Storming Silicon Beach

OC: You have a wide range of expertise and experience, given that you work in the entertainment, technology, and sports areas and you do transactional work, corporate matters, and employment law. What's been keeping you the busiest since you joined the firm?

AS: It's been the work for emerging tech companies as Silicon Beach continues to thrive, especially around investments and employment agreements. To be quite frank, tech employment agreements and tech severance agreements are very similar to agreements with NBA teams. It's just that the parties have different names and there may

be some different rules and regulations. But there's actually more overlap than one would think.

I've also found myself increasingly asked to do work in the eSports landscape (videogames) and not just because I live near Riot Games. It's a burgeoning industry and I think that my background in traditional sports representation combined with tech has made me valuable to some clients. I've had increased work with videogame developers for professional videogame teams.

OC: Certainly, when you think of different practices of law, eSports and gaming has really been one of the fastest growing areas, hasn't it?

AS: Yes, it's already a \$1 billion industry, but it's about to be a multi-billion dollar a year industry. And while this may sound cliché, from a legal perspective, it's really the Wild West. It's very similar to how now-established sports leagues were in the 50s and 60s, or baseball was a hundred years ago. There isn't collective-bargaining. There aren't contracts when there should be. There aren't uniform standards.

OC: I know you do a lot of writing. Do you touch on these subjects in the articles you write?

AS: Yes, I have an article coming out shortly [in a legal publication] on streaming rights because videogame developers own this intellectual property that professional gamers are streaming live and monetizing in game sales. So, different content creators are taking different approaches on how to balance the creativity and self-promotion that gamers will provide with protecting intellectual property and monetizing it appropriately. From a business and legal perspective, it's a very interesting space.

OC: Aaron, it seems that you could be a member of a few different practice groups at the firm. I'm sure there's some overlap, but what departments are you a member of?

AS: I believe I'm a member of four practice groups. I never know what the day is going to bring. There's the corporate practice group, the sports law practice group. I also do entertainment and music as well as banking and financial services.

OC: If you were to talk to a law student or young lawyer who finds the gaming area interesting and maybe they're leaning towards navigating themselves in that direction, what would you advise him or her to do? What sort of skills does someone who works in this area need?

AS: Drafting and revising documents. I would recommend taking a very good transactional course. I took a wonderful course with Professor Rich Brand who is a partner in sports law and real estate at Arent Fox [he's also the San Francisco managing partner and head of the sports practice group at this Los Angeles-based firm]. He treated us students like associates. He evaluated our work and marked it up as if we were first-year associates. That was wonderful training. So I would encourage people who are still in school to take practical transactional courses—drafting, mediation, arbitration, as many as possible.

The other thing I would focus on from a coursework perspective is taking an intellectual property elective because that is a big element in the eSports area. I don't know of a law school that offers coursework in videogames and eSports. You have to sort of piece it together with the combination of transactional and intellectual property law.

And then, obviously, you want to get a legal internship; a videogame company would be ideal. But also getting experience with a law firm that practices in videogames is important. There are even some small firms that are doing some great work.

I'd also advise them to try to get published. There are number of electronic newsletters out there focused on this area, and the barriers to getting published are surprisingly low.

Representing Songwriters

OC: I would think all of this would be good advice. To shift gears here a little bit, Aaron, you've been with the firm for nearly a year now, what are a couple of matters that you've worked on that really stand out to you as being important or challenging or satisfying?

AS: The first one is a litigation matter that I helped bring to the firm. I'm not a litigator, but it involved representing a group of songwriters against the Department of Justice. There's a settlement agreement between the Department of Justice and the companies that track music in the public space and distribute royalties. The Obama DOJ reinterpreted those settlements—which govern, in large part, how songwriters are paid for their creative work—in questionable ways, in ways that go to the heart of what a copyright is, intellectual property rights, due process, and having the government decide on one's behalf.

That was just a very powerful matter for me because I was working directly with some prominent singers and songwriters who saw their livelihood, the financial foundation of what they do for a living, being changed by the government and large Internet conglomerates. It was interesting to see what the little guys were going through. Government policy can have a direct impact on everyday lives very quickly.

OC: Has the litigation been resolved yet?

AS: It's still before the federal court in DC; oral arguments are upcoming. At an absolute minimum I think we helped get the issue in front of the public. It was in *Rolling Stone*, *The New York Times*, *Hollywood Reporter*, and other outlets. Often the songwriters are forgotten so this placed the focus on them.

OC: I'm sure that the clients really appreciated your introduction of them to your firm and to be able to have such good representation. I'm also sure that your colleagues appreciated your bringing the business to

them. Once you made that introduction of the clients to the litigation group, did you keep your hand involved in the matter even though you're not a litigator? Did you check in from time to time?

AS: Yes, I try to stay in the loop with all of my clients even if I pass them along to other attorneys who are experts in a different legal area because I feel ultimately responsible for the service the client receives. While I let the experts, the more senior attorneys, do their thing, I do monitor it and respond to client inquiries.

OC: Can you talk more about your eSports practice?

AS: I'm very excited about my eSports clients. It's very interesting and fun for me to help individuals who are so passionate about the new frontier in sports and are not only redefining how to define athletes but redefining sports, how sports are consumed, how consumers interact with sports figures. Some sports figures interact with fans in real time, during the competition, or during a stream of a game. We're taking what we're seeing with Twitter and Instagram from athletes to the next level. Very, very rarely in professional sports do the fans get to interact with athletes during the competition. We're really at the forefront of the business and legal implications of all of this. It's a fascinating and growing industry.

OC: It seems this is or at least will be a robust revenue generator for the firm. Is that right?

AS: Yes, I have faced no resistance; I'll put it that way. I'd say what you said is a fair characterization, especially as more brands move into the space. There are also some small firms and solo attorneys who are working in this area, and I'm sure other law firms are paying attention because it's a new emerging area of law. But right now there aren't a lot of attorneys practicing in this space.

OC: Aaron, it was really a confluence of different skills that you have that came

together to make you a natural fit for this practice area. But I'm sure you encounter challenges in this area and in private practice in general. Could you talk about a challenge or two that you face?

AS: Managing clients' expectations, billing. Every potential client wants to know how much a matter is going to cost them, and in most instances it's very difficult to give more than an educated guess. Until one gets into the minutia of the matter, it's impossible to know for sure. I think dealing with those dynamics can be challenging. So it's mostly the billing and collections and all that fun stuff. Law school certainly doesn't prepare you for this. Nothing prepares you for it. Frankly, it just takes trial and error. I just have to be sensitive and ask, "What would be important to me if I were on the other side of this engagement?" It's been difficult.

OC: Thank you for that candid answer. You're certainly not alone in finding that to be a challenge. Finally, Aaron, what was it about Gerard Fox Law that made you want to join the partnership? I'm sure you had other opportunities at other firms, but you chose this one. Why?

AS: Because of our founder and managing partner, Gerry Fox, the firm is very entrepreneurial, very diverse, and very forward-thinking. The members of the firm recognize the challenges of the economic model of the traditional law firm and are taking different approaches head-on and owning them. Every firm says they are diverse, but this firm truly is very diverse. Every firm says they have flexible billing, but this firm is extremely flexible. The partners walk the talk. Our firm is very focused on what the next generation of clients is going to need from their attorneys and how to reach them.

Our firm is ahead of all the important trends. I find it exciting to be at a firm that tries different things and is very entrepreneurial. There's a lot of energy and opportunity here. ■

—Steven T. Taylor

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Of Counsel Interview ...

Young but Experienced: Attorney Brings Skills & eSports Knowledge to LA Firm

Attorneys at Los Angeles-based Gerard Fox Law pride themselves on taking a different approach to practicing law and running a firm—something that was a foundational principle when the partnership was formed in 2010. Consider this: Firm Founder and managing partner Gerry Fox and his leadership team hired six former CEOs of Fortune 100 companies to draw up the partnership's business plan.

Fox and his partners stand out from their competitors in many other ways as well, including the attributes of the people they hire to practice alongside them. (For more on Gerald Fox Law, see the editorial on page three that examines law firm differentiation.)

"In our law firm environment, we want entrepreneurs, people who are not just one-dimensional lawyers," Fox says. "We want people who can see the world through the eyes of the business person and have a multi-faceted set of skills."

Attorney Aaron Swerdlow exemplifies the type of lawyer the firm seeks out and hires, Fox says. "Aaron is one of several sterling examples that we hold up for clients to see what we're looking for on our team," he says. "He demonstrates what it means to have an of counsel who is young, smart, and forward-thinking. People constantly acknowledge that he adds value because he doesn't just draft a brief or negotiate a contract. He looks at everything he's doing from four different corners. And, he knows how to command a room."

Swerdlow is also "front-and-center" in a cutting-edge new industry that requires quick-thinking yet detailed-oriented legal service: eSports. Swerdlow's eSports clients include leagues, teams, and high-profile professional athletes. He joined Gerard Fox Law last summer as a corporate and transactional counsel, bringing with him his experience as

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