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Law School News: Throw Out The Old Thinking 9-30-2019

Michael M. Bowden

Roger Williams University School of Law

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September 30, 2019

Law School News

Throw Out the Old Thinking

At the 2019 Santoro Business Law Lecture, a panel of experts discuss what makes a good business lawyer, how to provide value for clients and building strong professional relationships.



The 2019 Santoro Lecture panelists: (l-r) Collin Bailey '08, Tracy Baran, MaryKay Koreivo, Anthony Marini '12, and Alicia Samolis '05. Image Credit: RWU Law/David Silverman

September 30, 2019

Michael M. Bowden

A sizeable gathering of RWU Law students, alumni, faculty and staff assembled in Providence Thursday for the first installment of the annual Santoro Business Lecture to be held since [the passing of Professor Anthony J. Santoro earlier this month](#). Santoro's wife Pauline and their four children also attended.

This year's lecture was unique in featuring a panel of experts rather than a single guest speaker. Four in-house counsel (including three RWU Law alumni) and a corporate VP engaged in a

wide-ranging discussion of what makes a good business lawyer, how to provide value for clients and how to build lasting professional relationships.

Dean Michael J. Yelnosky opened the lecture by noting that Santoro would have been pleased to see “his two families together – his real family and us, his law school family.”

“As a professor, and as a dad, he was simply larger than life,” Santoro’s daughter Anne Erhard added. “When he spoke, we all listened. When he asked, we answered – not well, usually. Unless we answered with absolute precision, confidence, brevity and intelligence, we were usually either tormented on how we answered the question wrong or we were bombarded with another series of questions. I suspect this is maybe almost exactly how he treated some of his poor students over the years. But really, we all sought out his advice. We craved what he could teach us.”

"When he spoke, we listened. When he asked, we answered – not well, usually. Unless we answered with absolute precision, confidence, brevity and intelligence ..."

~ Anne Erhard, daughter of Professor Anthony Santoro

The Panel Discussion

The panelists were Collin Bailey '08, Senior Director of Strategic Procurement at CVS Health; Tracy Baran, General Counsel of Ocean State Job Lot; MaryKay Koreivo, Senior Vice President for Bank of America Merrill Lynch; Anthony Marini '12, Director of Strategic Procurement at CVS Health; and Alicia Samolis '05, partner and chair of Labor & Employment Practice at Partridge, Snow & Hahn. RWU Law [Professor Susan Heyman](#) served as moderator.

Some edited highlights:

Q: What factors should you focus on in building a strong relationship with a new business client?

Samolis: Get to know your client. How is the organization structured? How many employees do they have? What states do they operate in? Know your client’s business; their specific company values and philosophies. Of course, you’re never going to get all that information the first time you work with a client. But if you want to make it a long-term relationship, your goal is to gain that kind of knowledge over time.”

Baran: It’s really important to know your client’s goals and objectives, what they want to get out of a transaction, what’s important to them, their internal structures and hierarchies – and also their appetite for risk.

Q: What qualities should a good business lawyer bring to the table?

Koreivo: I'm looking for a partner in a lawyer, somebody who is a good communicator, somebody who can clearly explain the legal issues, and who has a good understanding of business issues as well.

Bailey: When we need [to bring in an outside legal expert], we have to feel comfortable that he can protect CVS, insulate us from risk and litigation. If you're prepared, if you're ready, if you're able to give us that counsel that's on point, we can tell. And we'll want to deal with you over and over again.

Marini: We value honesty and transparency. And at the end of the day, we're ultimately trying to protect the corporation, who is our ultimate client. At the same time, you're balancing that with the need to get something done in a very prompt fashion to satisfy your business's leaders.

Koreivo: I agree that honesty and transparency is important. And succinctness – you know, just tell me what the answer is.

Baran: Yes! Just spit it out, get to the point. That's important to me, too, as a client. You should understand the things are important to me, what I need to focus on.

Samolis: I'd say that transparency particularly includes transparency about bad news. It's really important to be transparent when you disagree with the client or with what client is trying to do – if it's something that's crazy or doesn't make sense [from a legal perspective]. A good relationship is nice, but don't forget they're your client – and they're not paying you to say they're right all the time. Don't be afraid to tell your client, "This doesn't really make sense. We're going to lose if anyone ever challenges this." And then try to explain the potential risks to the best of your ability. They don't have to take my advice – but they'll be paying me later on if they get sued or get into some other sort of mess.

Q: How is being in-house counsel different from being in private practice?

Marino: When you shift [from private practice] to a large corporate environment, it's a different world entirely. A different dimension.

Baran: In private practice, the general wisdom is that your goal is to become a specialist in some [area of law]. You have to be known for something, to be the go-to person for something. But that wisdom all went out the window when I went in-house. Suddenly, because you carry the name "lawyer," everyone thinks you're an expert in *everything*. Nobody wants to know your research citations or thought processes. They want an answer: "Just tell me what to do." Again, it goes back to succinctness.

Q: What knowledge should a corporate lawyer should have with respect to business issues more generally?

Samolis: I'm not a tax attorney, but a business lawyer needs to know just enough about tax to be dangerous. I mean, I do employment law. That's my specialty. But all my clients expect that I'll know at least enough about [other areas of business law] that I can refer them to the right person

or tell them when there might be an issue. By the way, if you're wondering what to specialize in, data privacy is the hot new issue. It's going to blow up. There's going to be a ton of work out there. The people who do it now get paid the highest fees. And it's not going to go away.

Baran: I would agree with Alicia that tax is at the top. You need to know, at least, when there is a potential tax issue that your company should consult with a tax lawyer on. You need to know tax. You should have some simple knowledge of accounting basics. And know something about insurance – just to be able to issue-spot. It will definitely give you an edge in practice if you know some of those business basics.

Marini: In law school, I took Corporate Business Planning I and II, Corporate Taxation, Business Orgs is another one I'd really recommend. Because you have to understand how your company makes money. And yes, again, Tax Law.

Koreivo: I just had a loan closing today. We only had a couple of weeks to get it done, and my client brought in an attorney with a very impressive knowledge of accounting, who was really able to move things along. So he is somebody whom I might go to in the future, because he displayed such a good business sense in addition to his legal expertise.

Bailey: I think all companies are grappling with issues like, how do we deal with a data-and-digital environment versus a physical environment? And I'll be honest with you, it's going to be an interesting journey. It's an uncharted frontier, and every day folks are trying to better figure out the infrastructure. I'd say to all of you who are coming into the legal profession right now – you have an opportunity to really set precedent. These things [issues under the Consumer Protection Act, etc.] haven't yet been litigated. No one's even thought about a lot of it, and the laws are just being invented and causing challenges. So at the end of the day, there's no easy answer. You try your best to keep up, but you also know that you're going to have to throw some of the old thinking.

Q: *Where should a lawyer draw the line on giving legal advice versus business advice?*

Baran: For an in-house lawyer it's a fine line, because – as the attorney – you always want to maintain that attorney-client privilege. And if you start to cross that line into business advice, then you start to lose that privilege. I think the key is using your business sense to give legal advice so that you're tying them together; you're maintaining your role as an attorney and not becoming a businessperson who then loses that privilege.

Marini: We try to value and implement as much as possible the concept of informed consent. We want to make sure our corporation is aware of the consequences, the potential risks that could occur, the business assumption that their leaders might be assuming.

Bailey: Just don't forget: your livelihood relies your credentials, your license. You're still an officer of the court even when you're working in-house. So yes, you have to build rapport and relationships, but that doesn't mean capitulation, and it doesn't mean putting your license in jeopardy. So use your common sense in that regard – get things in writing. Remember, a partnership doesn't mean, "I'm going to do whatever you say and put myself at risk."

Baran: I think the mentality has to be, “Okay, so you may not be able to do this the way you *want* to do it – but here are some thoughts on how it *can* work. You can do it if you change the deal structure a little bit, or if you got an indemnification or if you change the contract a little bit. You can tweak it this way if you want to be conservative. But if you really want this to happen, and you’re willing to take on the risk, yeah, you can do it that way.”

Bailey: I totally agree. There’s very rarely a situation where the answer is really just “No.” And honestly, you don’t want to become known as a “No” attorney, because they don’t get that many calls. Their inbox is light. Because there’s always an opportunity to say, “You want this outcome, but we can’t do it exactly this way. So here are two or three other options.”

Q: Is it appropriate to ask your client outright what their risk appetite is? Or is that something better left for later in the conversation?

Samolis: It takes time. But it’s such an essential part of the client relationship, because clients are all over the place. I have clients who are so risk adverse – they don’t want to do anything with any risk. And then you have those who go the other way, the “cowboys” who are willing to take extreme risks, to the point where I’m saying, “This is not only illegal, but you’re going to get caught and it’s going to kill you!” Only then will they will consider my advice to not do something!

Baran: I agree with Alicia. You get the answer more clearly in the process of getting to know the client.

Bailey: I would say, always start with the right and best recommendation – but keep those other options in your back pocket in case they’re willing to take on additional risk.

Baran: Even if you have a client, or you’re working for a company that embraces risk, our job as lawyers is always to minimize that risk. Our job is to structure a deal or structure a transaction so that ... I think this goes to the heart of what every lawyer does – you should expect the worst and hope for the best. You have to expect that every deal that you do and every contract that you write might potentially fall apart at some point.

Q: What other advice would you offer to students or new lawyers who are planning to enter corporate law?

Marini: Take it slow, ask questions. Don’t assume you know everything. Put in the work. It’s not easy; it’s not supposed to be. But it is rewarding. Also, I’d say, network. Seek mentorship, make friends, shake hands, have conversations. Most folks are generally approachable and are eager to give you their own advice.

Baran: I agree immensely: network. Be out there. Especially in Rhode Island, if you ever have an aspiration to be in-house, you need to network. That’s how most people get their in-house positions here – by knowing people in the company, in the industry; by representing a client in private practice and then they draw you in. That’s how a lot of it happens.