The Rise of Conscious Capitalism & the Fall of Woke

The Best Columns and Podcasts from LEVICK 2022
Including interviews with more than 150 thought leaders
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Foreword by Richard Levick

“Having now finished the work assigned me, I retire from the great theatre of Action; and bidding an Affectionate farewell to this August body under whose orders I have so long acted, I here offer my Commission, and take my leave of all the employments of public life.”

— General George Washington, December 23, 1783

Welcome to the 7th edition of our annual Year in Review. The years fly by and while they are always interesting, no others in the past nearly 80 years qualify for the “Year That Saved Democracy.”

You will notice that three quarters of the way through the year we had to put In House Warrior — our daily podcast for the Corporate Counsel Business Journal — and many of my weekly columns on hold due to a cancer diagnosis. While cancer is always unfortunate, it ultimately pales in comparison to the threats we faced in 2022.

A Hero Not a King

Two months after the Treaty of Paris was signed in 1783, ending the Revolutionary War, General George Washington resigned his wartime commission as commander-in-chief of the Continental Army. He spoke the words above to the Confederation Congress, in the senate chamber of the Maryland State House. Eighteenth century artist John Trumbull captured the moment in a painting which famously hangs in the Rotunda of the U.S. Capitol. As many times as I have seen the painting in person and on the Internet and television, I never fully appreciated the moment.

A war hero, Washington could have been king.

And with it, our experiment in Athenian democracy would have come to a screeching halt. Washington, benevolent to the point of sacrificing his wealth, family and health to support this nascent concept, could look into the future and see the end, just after the beginning. Rather than be a 247-year-old experiment, democracy would have been a short story. No elections, no power to the people. A monarchy.

December 23, 1783 is perhaps the most important of a litany of dates that have established, defended and expanded our democracy. July 4th, 1776, the celebrated signing day of the Declaration of Independence; September 17, 1787, the Philadelphia Convention approving the U.S. Constitution; April 1789, George Washington being elected the first president of the United States; January 1, 1863, the Emancipation Proclamation; April 9, 1865, the end of the Civil War, followed by President Ulysses S. Grant’s two terms as president, salvaging critical parts of the Reconstruction Era; February 3, 1870, the passage of the 15th Amendment granting African American men the right to vote nationally; August 18, 1920, the passage of the 19th Amendment finally granting women the right to vote nationally; May 8, 1945, V-E Day; August 15, 1945, V-J Day; August 28, 1963, Martin Luther King, Jr.’s “I Have a Dream” speech; December 22, 2022, when the Select January 6th Committee released its Final Report, investigating the January 6th attack on the United States Capitol.

None of these historic moments and more, defending, defining and expanding democracy occur if Washington — at the peak of his power — does not humbly resign, recognizing the fragility of democracy. A fragility most of us, myself including, took for granted.

Add to this list of moments and heroes former Congresswoman Liz Cheney, former Congressman Adam Kinzinger and my old friend, law professor and Congressman Jamie Raskin. Though important, it is not as much their conclusions that make them heroes but their unique courage and willingness to put country above party and personal ambition.

As Adam Kinzinger said, ‘As a child I dreamed of standing alone against the crowd for what was right. Until this moment, I didn’t know if I had the courage.’ They certainly do. Who among us can say that?

The Center Re-Emerges

If the 2022 mid-term elections taught us anything, it is that despite all the gerrymandering, voter suppression, institutionalized racism, screaming from the fringes and election denialism, the center of the country is re-emerging, not just here but in a number of other countries as well.
We are ultimately not whole or happy without putting our families, communities and country first, above our own self-interest. We may think we are — endlessly either engaging in consumerism or feeling resentment for not being able to — but chasing those things that temporarily make us happy pass like new car smell. It is in the service of others where contentment reigns.

For those angry — often violently so — on the far right, I have to admit to not fully understanding their rage, hard as I try. As someone who has traveled the world and represented more than 30 other countries, I marvel at our imperfect successes — a social safety net, a school system, potable water, a vast power grid, a national highway system, grocery stores and so much more. It is not that these things could not be improved upon or that so many things seem out of reach, but we are blessed with them, and improvements are within reach. But certainly not by storming the Capitol, attempting to kidnap governors, banning books or denying elections.

Meanwhile, many on the left take critically important movements such as #MeToo and #BlackLivesMatter and turn them into personal grievances, not about racism or sexism, but as tools for personal power. How many executives are petrified to provide helpful constructive criticism for fear of being accused of “microaggression” or sexism or racism?

The term “woke” has always bothered me because, for starters, it is past tense and judgmental. It implies ‘I am more self-aware than you, see things you don’t and have done all the personal growth I need to.’ As the Dalai Lama says, ‘being aware is my full-time job and I still don’t get it right.’

Perhaps a more accurate term might be “awakening” as in, I understand some history though I need to learn much more. I have seen some injustices but need to be sure I study them rather than first rage on social media. I have strong points of view but need to examine and discuss them with people who see things differently, rather than canceling them, a tool of authoritarian governments with no place in alleged progressive movements.

Rather than a grateful nation, we have become an entitled one. When I watch black and white film of the Greatest Generation marching through Europe they mightily helped to save, I am endlessly captivated and cannot take my eyes off the screen. The courage, humility, sacrifice and commitment to democracy, country and doing the right thing is so…so President Washington-like.

Looking Forward

2023 is the year we all need to take more personal responsibility. Democracies die either by revolution or indifference. And it is personal. What we do matters. Just like the World War II GIs.

If you did not do an adequate job on your assignment at work, you cannot race to HR with a complaint. If you are in HR, you need to start your investigation by getting the entire context of the situation, not just play pronoun police. If you are a politician, you need to reach across the aisle and get things done — as this historic December was for this U.S. Congress. If you are a journalist, tell us what is there, not just what isn’t. For a generation or two fueled on judgment, start with a mirror. Judgment of others without self-reflection is a sin as old as the Old Testament.

We have done the impossible. Our forefathers and foremothers took a 2,500-year-old concept and, however imperfect their Constitutional draft, put it into action for an experiment now longer than the ancient Athenians themselves. In our work, we have had the honor of representing multiple benevolent monarchies. They are remarkable governments and countries, in some cases, with so much oil revenue that work is optional and in other cases with no personal income taxation. But still, people complain. Life will never be perfect.

Perhaps our goal for 2023 is more self-reflection, reaching out to others and recognizing that the loudest on social media is neither a valuable read of popular opinion nor a leader.

For business executives trying to avoid Tesla/Twitter’s fate — selling cars largely to those left of center while embracing the far right on Twitter and watching advertisers flee and stock values drop — it is still going to be a difficult year, with pressure to weigh in on social issues. It will always be a company-by-company and case-by-case decision as much based on timing and context as corporate history and who your adversaries are.
But largely, keeping a low profile on social issues often remains a smart decision, though sometimes impossible (e.g., health care). Integrated corporate teams — IR, HR, brand, legal, communications, etc. discussing “what if;” understanding corporate history; competitors’ positions; potential adversaries’ social priorities; changing attitudes and more will help inform wise decisions. It is always easier to tamp out a match than a forest fire, so advanced planning is critical.

Much as they are historic, all movements have an arch and there is now increasing pushback to those who have weaponized #MeToo, #BLM and #AAPI for their own personal gain. We all know people whose careers and families were ruined by verifiably false accusations. What some on the left dismissively refer to as “collateral damage.” A few years ago, the falsely accused were intimidated into silence with their epitaphs authored by their accusers. This is increasingly less the case.

In law school, I was the first male to ever work in the Women’s Rights Division of AFCSME, then the largest union in the AFL-CIO. As an early advocate, I marveled at how the Equal Employment Opportunities Commission (EEOC) and various statutes could balance the playing field. But I also feared for future victims whose positions would be weakened by posers using the Commission and laws for their own personal gain.

Life is very short. We go from high school to AARP membership faster than we imagine until we get there and wonder how 50 years have gone by. Franco Harris, Anita Pointer, Pele, Kristie Alley, Gaylord Perry and so many more that we have recently lost. I saw and listened to all of them in their prime. And now they are gone. What makes us think we will be any different?

Looking at life through today’s eyes is easy. Looking at life through our future eyes, now there’s the ticket. Our future selves looking back always knows the truth, courage and the right thing. Live 2023 and beyond with those eyes. It isn’t easy, but it is a great place to start.

Enjoy the read.

Richard S. Levick, Esq.
Chairman & CEO
December 31, 2022
The Land of Enough

“Who is rich? One who is happy with their portion.”

— The Mishnah

My mother died on Christmas Eve, 1961, when I was four, my sister six and our father recently back from the Korean War, where he had witnessed so much carnage close up — including the time he lost a mate in a literal flash, standing just yards away. “He was there and then he wasn’t.”

Real life losses are not like Hollywood, where you are “all better” by the end of the movie two hours later. As Maxine Harris wrote in The Loss That Is Forever: The Lifelong Impact of the Early Death of a Mother or Father, loss stays with us in the little hours. It is there before we are even conscious of our memory. The smell of liver and onions cooking on the stove like our grandmother used to make. A photograph of a lost loved one. The reflex to make a call you can no longer make.

I had thought that with the loss of my mother at a young age and the subsequent loss of a friend in third grade and a grandfather a few years later, that I understood loss. But I was just a rookie.

I was speaking with my sister-in-law over the holidays, and she was talking about the loss of virtually all her family’s money in the financial crash a little over a decade ago and the subsequent loss of her husband and my brother a couple of years ago. I too had lost the entirety of my fortune, though for different reasons, and we talked about the gracious lessons of post-loss and the undeniable value of the phoenix. How we learn to focus only on the things that matter. How we have learned to ignore the vacuous narcotic of over-commercialism which bombards us on every form of media with the message that we are not whole or complete without their latest product. Want, it seems, is a message that must be repeated like the bombing of Dresden in World War II.

My days are filled with work, and what little time remains is comprised of only simple things — a walk in the woods with a neighbor, a book, cooking, feeding the wild animals that surround my home in the woods, exercise, prayer and reflection. It turns out that the constant desire for more and social climbing are a Jacob’s ladder to nowhere.
I think about all the things I have learned from crushing losses and, although I have lost sleep over the decisions I should have made to avoid them, perhaps this arduous journey is exactly where I should be.

I think about that a lot as I look at President Biden’s approval rating, which is mostly in the low 40s, largely due to the seemingly never-ending Covid variations and inflation. What, pray tell, did we expect? That the worst pandemic in a century would end with the flip of a light switch? That after World War II our supply chain was redirected into a postwar footing overnight? Who would have thought The Greatest Generation would spawn The Entitled one?

Other than inflation — fully to be expected after a globally disruptive event and at a fraction of the 1970s runaway inflation level — our economic numbers are among the best in 70 years. The Wall Street Journal reports, “A booming U.S. economy is rippling around the world, leaving global supply chains struggling to keep up…” with the expectation that upon the final numbers, the U.S. economy will have grown about 6% in 2021, a fabulous number that leads the world.

As to Covid, between the Trump and Biden Administrations, we have seen the development of a vaccine in ten months, not ten to fifteen years, the historical average. In the United States alone we have administered well over 500 million shots in one year. Miracles, it seems, do not do well in presidential popularity polls.

I never understood Ronald Reagan’s famous inaugural quote, “Government is not the solution to our problem, government is the problem.” Everyday I drive on our highways, pass a public school, turn on my faucet and have instant access to plentiful and cheap potable water, read about our military, turn on electricity and a thousand other things, I am in awe of a form of government which has presided over the greatest experiment in democratic rule in the history of humankind.

I know it is human nature to go to NASCAR in search of accidents rather than to marvel at the ingenuity of humans and near-perfection of machines, and for newspapers to report the negative aberration of the norm as the definition of news. Perhaps, though, for a few moments a day, we should be grateful and in praise of these days.

One day a few years ago, when I was walking home from the metro, in the depths of cumulative losses so deep I saw no possible escape and ruination as a near certainty, I passed a man walking toward me whose face had been so disfigured that I marveled at his courage to walk in public. Forgive me, but in that moment, I realized how fortunate I truly am. Aren’t we all?

Perhaps there is no better time than the start of a new year to commit to a practice of focusing on what we have rather than what we don’t. The Book of Leviticus and the New Testament do not tell us to like our neighbor. They tell us to love them. And they certainly do not instruct us to envy them. Maybe in 2022, we should spend more time looking inside rather than out?

When my father descended into a near decade of dementia, I would think often of how I would eulogize him. The phrase that kept coming back to me was, “He understood ‘enough.’” Enough wealth. Enough house. Enough car. Enough to fill the heart. He did not need to search for happiness and contentment. It had found him.

I was thinking a lot about sudden loss and contentment when I did a show on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal just before the holidays with Joel Burcat, an old friend, former longtime practicing environmental lawyer, and past Chair of Saul Ewing’s Oil & Gas Practice. He is the victim of near-sudden legal blindness. After a period of depression and mourning, he turned to his second love, writing novels and, with the aid of technology, has now authored multiple environmental legal thrillers that are both electrifying and accurate, including Drink to Every Beast, Amid Rage and the just released Strange Fire.

The discipline to be content and introspective has never been more challenging than it is today when we realize that we don’t have the control — even over our own thoughts — that we once did. When we touch the keyboard, who is in control of what happens next? Hint, it isn’t us and the race isn’t even close.

On this subject, I interviewed Josh Lowitz and Michael Levin, co-founders of the research firm Consumer Intelligence Research Partners, for a show called Breaking Up is Easy to Do: The Internet Rewired Our Brains To Fall Out of Love With Brand Loyalty. We talked about their recent research on the decline of brand loyalty, substituted by internet-driven activities such as likes, influencers and reviews and the increase in brand switching. It’s not just impacting consumer product brands but professional service ones as well. How do companies re-earn trust and retain and grow customers in an age when switching and distant customers are the rule, not the exception?
For the more cynical among us, I interviewed James Carder, Chief Security Officer & Vice President of Labs at LogRhythm, to discuss New Trends in Litigation & Accountability in Cyber Crime Incidents. He spoke about the rise in ransomware and the increased life and death risks of recent cyber-attacks, including recent events at hospitals where deaths occurred after cybercrimes. He shared best practices, prophylaxis and other insights from lessons learned in the recent Log4j attack, Solar Winds, Colonial Pipeline, TJX and more.

I also interviewed a dear friend, Elizabeth Lampert of Elizabeth Lampert PR, about the beginning and history of law firm marketing and public relations, the challenges ahead for law firms and the risks for 2022 such as their real estate footprint, Covid-19 and staffing, crisis planning, DEI and climate change. Elizabeth makes the point that law firms seldom prepare or update crisis plans ahead of time, a distinct exposure at a time when the spotlight is increasingly turned on them.

And finally, for the aspirational in all of us, I hosted Beverly Behan, President of Board Advisor and the author of *Becoming A Boardroom Star* and *Board and Director Evaluations*, for a show named after her book, called *Becoming a Boardroom Star*. She discussed the GC’s role, board evaluations, the difference between champion board leaders and preservationists, board innovation, succession planning and more. She has worked with nearly 200 Boards of Directors over the past 25 years ranging from the Fortune 500 to recent IPOs in the US, Canada and around the world. Beverly fervently believes that great companies deserve great boards, and her work focuses on taking boards to the top of their game in overseeing the companies they govern. Now that would certainly seem to be enough.

As historian Heather Cox Richardson wrote last week, we cannot change the past, as much as we would like to, “But it is never too late to change the future.” Shall we?

Wishing you enough in 2022.

Enjoy the shows.

Richard Levick

Listen to *The Backup Plan*

Listen to *Breaking Up is Easy to Do — The Internet Rewired Our Brains to Fall Out of Love with Brand Loyalty*

Listen to *New Trends in Litigation & Accountability in Cyber Crime Incidents*

Listen to *The Duchess of Law Firm PR*

Listen to *Becoming a Boardroom Star*
The Middle Road

“I was lyin’ with my mess-mates on the cold and rocky ground
When across the lines of battle came a most peculiar sound
Says I “Now listen up me boys”, each soldier strained to hear
As one young German voice sang out so clear
“He’s singin’ bloody well you know”, my partner says to me
Soon one by one each German voice joined in in harmony
The cannons rested silent. The gas cloud rolled no more
As Christmas brought us respite from the war
As soon as they were finished a reverent pause was spent
‘God rest ye merry, gentlemen’ struck up some lads from Kent
The next they sang was ‘Stille Nacht’. “Tis ‘Silent Night’” says I
And in two tongues one song filled up that sky”

— John McCutcheon’s song Christmas in the Trenches
about the World War I Christmas Soccer Truce
on the Western Front

Each year we produce a Year-In-Review eBook with a theme based on the year that was, filling it with our 50-or-so columns and hundreds of podcasts. 2021 seems to be about learning to live with loss — with nearly 5.5 million people worldwide dying of Covid-19. It was also a year for Americans and others in democratic nations to think the unthinkable: Will democracy survive?

As someone who has suffered great loss in this lifetime, the key lesson I have learned is that acceptance and adaptation — not revenge — is the path that works. But history is a long arc measured in eons, not a single lifetime, so perspective and certainty are a challenge. I suspect we know as much about the heavens as an ant does about humanity.

Although I never voted for him, one of the things I always admired about President Ronald Reagan was that he never took his suit jacket off in the Oval Office. He had too much respect for the institution and its symbols. I have never been much of a rule follower myself. Growing up in the shadow of the anti-Vietnam War protests and living in Washington, DC
when Woodward and Bernstein were first writing about a break-in at the Watergate, I had a tangled relationship with authority. It turns out that symbols, manners, kindness and soft power — mean something. In fact, they mean more than something. They are the glue of civilizations.

I have always been a change advocate, working for Ralph Nader organizations as a first career decades before environmental and conservation measures were “cool.” But with something gained is always something lost. I remember the family-owned convenience stores in the 1970s asking how they could safely and cleanly store returnable bottles if the government was going to mandate them. Long before the era of superstores, it was a concern that could mean the difference between profit and loss for these local businesses. Today, as much as I like the idea of electric cars, I worry about the 85% of electric cars in Asia powered by dirty coal from China and the new minerals war shaping up over cobalt. It will not end well for the Congolese who will either do the mining under harsh conditions or be forced to move off their ancestral land with little or no consideration. At the risk of repetition, for everything gained, something is lost.

I think this is one of the reasons the late Archbishop Desmond Tutu and President Nelson Mandela sought change “via media” — the Latin phrase meaning “the middle road.” It is an aphorism for life which advocates moderation in all thoughts and actions. As Aristotle wrote, “moderation is the essence of wisdom.”

2021 started with the violent January 6th insurrection — nothing short of a presidential coup — and has ended with Covid-19 fatigue. We are fighting over masks and vaccines for heaven’s sake. The conversation is about individual liberties when it should be about shared responsibilities.

It seems we have all taken our jackets off when really, we should be doing the exact opposite. Fully stopping at stop signs, being kind to our neighbors, opening doors for strangers, listening before speaking or judging. Simply because the internet gives us newfound power of publication and amplification does not mean we should.

The late Harry Reid grew up without indoor plumbing and an alcoholic, violent and suicidal father. He would grow up to serve 12 years as one of the longest tenured Senate Majority Leaders. In America, everything could still be possible. It is a remarkable experiment in self-rule and well worth our dedication.

In late December 1890, 300 peaceful and cooperative Lakota men, women and children were gunned down with three mountain guns — the precursor to the machine gun — at the Massacre at Wounded Knee. 131 years later we still live with the shame of this tragedy committed by hung-over members of the Seventh Calvary seeking revenge for the death of General George Armstrong Custer 14 years earlier. This road to the extremes does not lead us where we want to go.

Via media. We need to find the middle way or be condemned to replace one injustice with another.

Peaceful process may be boring, make few headlines and be slow and plodding, but it is also the magic of long-lived societies.

In the linked eBook you will read essays about the news of the day for the past year and find links to more than one hundred of 2021’s most popular podcasts that we hosted on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, sharing views on dozens of issues from all points of view. Hopefully they are helpful and instructive. Some may even be inspiring.

Over the past week, we kicked off 2022 with new podcasts guests who, in fact, are finding via media.

David Bodanis, a New York Times best-selling author, spoke about his new book, The Art of Fairness: The Power of Decency in a World Turned Mean which seems like an essential read for what is likely to be a bumpy ride in 2022.

Danny Heitman, the editor of Phi Kappa Phi’s Forum magazine, an award-winning columnist who frequently writes for The Wall Street Journal, Christian Science Monitor, New York Times, Washington Post and others, discussed the joys and lessons learned from writing obituaries — an unusual but powerful source of daily inspiration.

On how to build for the future, my old friend, Dr. Habib Al Mulla, a partner at Baker McKenzie and one of the UAE’s most highly respected legal authorities, joined me for a show. He is a key architect of Dubai's financial free zones, the legal framework establishing the Dubai International Financial Centre (DIFC) and how Dubai became a leading center for Foreign Direct Investment.
Looking forward, Kirk Nahra, a partner at Wilmer Hale and Co-Chair of both their Big Data and Cybersecurity and Privacy practices and a leading authority on privacy and cybersecurity matters for more than two decades, spoke about privacy and security laws and trends for 2022. He covered what to expect in state and international regulation; best practices for avoiding privacy and security investigations and how to navigate them when they occur; the unique challenges of privacy issues in health care; and career opportunities.

Looking backward, Chip Jones, author of *The Organ Thieves: The Shocking Story of the First Heart Transplant in the Segregated South* and winner of the 2021 Library of Virginia Literary Award for Nonfiction, discussed the tragic true story of Bruce Tucker, a middle-aged African American family man, who had his heart and kidney harvested after an accident, without consent or even notification to his family and before he was clinically dead. To those who wish to curtail or outlaw freedom in teaching, it is yet another lesson on the importance of learning from our history so that we do not repeat it.

Maybe 2022 can be the beginning of our own “Christmas soccer truce,” practiced for more than one day. Imagine.

“Manners are of more importance than laws. Upon them in a great measure, the Law depends. The Law touches us but here and there, and now and then. Matters are what vex or soothe, corrupt or purify, exalt or debase, barbarize or refine us, by a constant, steady, uniform, insensible operation, like that of the air we breathe in. They give their while form and color to our lives. According to their quality, they aid morals, they supply them, or they totally destroy them.”

— Edmund Burke

Happy New Year.

Enjoy the shows.

Richard Levick

Download the eBook

Listen to *The Art of Fairness*

Listen to *The Golden Age of Obituary Writing*

Listen to *The Miracle of Dubai*

Listen to *Big Data, Privacy and Security*

Listen to *The Stolen Heart*
The Real People of History

“Lather was thirty years old today.
They took away all of his toys.
His mother sent newspaper clippings to him,
About his old friends who’d stopped being boys.”
— Grace Slick

There are those moments you never forget as a child, when your innocence is rattled with so much g-force that everything stands still, and you realize that adults do not have it all figured out and that the justice of fairytales has begun to fade.

Coming home from dinner with my grandparents one late January weekend in 1967 to learn by television news bulletin that Apollo 1 astronauts Virgil “Gus” Grissom, Edward White II and Roger Chaffee had been killed in a launch pad fire during a test at Cape Canaveral, Florida, before they had ever tasted the release of earth’s gravity.

Bobby Kennedy in the Ambassador Hotel in California, moments after saying “On to Chicago and let’s win this,” felled by Sirhan Sirhan’s bullets and immediately cradled by Juan Romero, the hotel busboy who rushed to his aid.

Martin Luther King, Jr. and the end of a dream.

As a child who grew up with ABC’s Wide World of Sports, the first Super Bowl, Joe Namath’s guaranteed win and the murder of Israeli athletes at the 1972 Munich Olympics, sports presented a window to the world — a glimpse of its soon-to-be over-commercialized future and its possibility of tragedy.
I was 14 in the summer of 1972 and just before the Olympics started, I received my weekly issue of *Sports Illustrated*, which included Mark Spitz and profiles of many foreign athletes, including an attractive female Israeli sprinter as she sat on the track. I was struck by her relaxed, joyous smile and youthful beauty enhanced by her athleticism. A few days later, she was dead. The horror of the terrorism and hostage taking of the 11 Israeli athletes and the nearly successful but ultimately botched heroic rescue effort meant that some but not all of the Israeli team had been killed. I looked at the list in the newspaper — hoping not to see her name — and realized that all that was left was the photograph.

About a week later, the undefeated U.S. men’s Olympic basketball team, comprised of all amateur collegians, was playing the Soviet professionals in the gold medal game — which was more than James Naismith had ever imagined in his wildest dreams. It wasn’t a sporting event. It was the Cold War in 48 minutes.

What happened next was the most controversial ending in sports to this day, with Soviet satellite basketball officials extending the game’s last seconds three times until they got the ending they wanted, with the Soviets winning by a point. My childhood had officially come to an end.

Less than two years later, I was watching television in my parents’ room — a rare treat when they were home — between the two best college basketball teams in the country that year, Maryland and N.C. State. Unfortunately they were in the same conference — the ACC. Whoever won the conference championship would get invited to what at the time was a small field of 25 teams for the NCAA basketball tournament. The other would be a footnote. Maryland, my team, would lose 103-100 in overtime as my Dad and I watched Maryland, led by, among others, Tom McMillen, match a great N.C. State team basket for basket until the very heartbreaking end.

Life was not only filled with tragedy, but even our escapes could come with their own form of despair.

Like so many of the other moments mentioned above, I can remember where I was, what room I was in, who I was with. Today, a small box in my basement is all that remains of my high school, college and early 20s memorabilia. A few papers I was proud of at the time and some old love and “Dear John” letters. Loves and heartbreaks that I was certain would stay with me forever. The last time I opened that box — and it has been years — I didn’t even remember who the people were. The heartbreaks we were certain would last a lifetime have been reduced to not even a memory. Was that even me?

Compared to a lifetime of moments, memories are few and those we retain are imperfect, recreated each time we conjure them up. But a few form our own personal Mount Rushmore, hardly dimmed with the passage of time. Can it really be half a century?

Over the past year, I have gotten to know Tom McMillen — “The Man Who Did It All.” He is the President and Chief Executive Officer of the LEAD1 Association, which represents the athletic directors and programs of the Football Bowl Subdivision. He was on both the 1972 Olympic and 1974 Maryland teams, a Rhodes Scholar, NBA player, Member of Congress, author, founder of several publicly traded companies and the youngest Presidential appointee ever. And as humble and accessible as can be.

He graciously offered to be a guest on *In House Warrior*, the daily podcast I host for the *Corporate Counsel Business Journal*, and we discussed the state of college athletics; the historic 1972 Olympic gold medal basketball game; the 1974 heartbreak; Name, Image and Likeness; January 6th and more.

In the winter of 1983 I went to a matinee with my friend Ron — I cannot remember his last name — to see the movie La Traviata, the film version of Verdi’s opera. I remember feeling a little proud of myself, being 25 and watching an opera. I had no idea who Placido Domingo was; who played Alfredo, the tragic and broken-hearted hero; or anything about the story, save for the subtitles.

I also had no idea that the tragic opera — which seemed too melodramatic to my uniformed senses — was actually based on the 19th century true story of Alexandre Dumas’ affair with French courtesan Marie Duplessis, a laundress who at the age of 13 had been forced into prostitution by her destitute father. She taught herself to read and write and studied extensively so that she could hold her own in high society. Soon, rich and powerful men were falling for her intellectual charms and captivating beauty, including Franz Liszt — who would write that, “She was the most complete incarnation of womankind that has ever existed.”
Dumas and Duplessis fell in love but, as a then-struggling writer, he could not afford the extravagant gifts her wealthy suitors could and broke off the affair, writing, “I am neither rich enough to love you as I could wish nor poor enough to be loved as you wish.”

Duplessis never answered Dumas’ final letter as she was too ill from tuberculosis and would die at 23. A broken-hearted Dumas published his novel *The Lady of the Camellias* four months later, which would inspire Verdi to to write his opera.

In an age of instant accusations and judging, do we know the story behind the story? Did we even hazard a moment to ask? The poverty that would cause Marie to sell her body? The tragic disease that would prevent her from answering a mournful Dumas? The heartbreak that would inspire one of the greatest operas of all time? Franz Liszt’s lifelong guilt for being on tour and never having a final visit with Marie? There is always a story behind the story.

The names and faces of history are real people — a fact made plain to me as I watched the remarkable footage restored from a number of post-war German cities in a silent film shot by George Stevens called *Deutschland 1945*. Stevens, a film producer, joined the Allied forces in World War II and headed a film unit under General Dwight D. Eisenhower. Not actors, not special effects. Real people, real history, real torment.

I interviewed several other real people on real issues this week, including Ivan Wasserman, Managing Partner of Amin, Talati & Wasserman and one of America’s premier attorneys for health, wellness, beauty and other consumer products. He discussed the trends, litigation and challenges on food labeling, including how to develop advertising campaigns that match the clinical evidence. With class-action litigation against food and beverage companies hitting a record high last year, his insights have never been more important.

I also interviewed Jordan Lipp, Managing Member of Childs McCune and a member of the *Berkley Life Sciences Elite Defense Team*, to discuss best practices in product liability. Jordan represents virtually all types of companies regulated by the FDA, including pharmaceutical, medical device, dietary supplement and food companies, and has successfully defended some of the largest recent jury trial product liability cases in Colorado. He is the author of *Product Liability Law and Procedure in Colorado*.

And finally for the week, I spoke with Rudy Rivera, the Chief International Counsel for Fidelity National Financial — a Fortune 500 company that provides insurance, claims management services, real estate solutions and information services on Managing International Litigation. Rudy successfully manages multimillion dollar national and international litigation with an 80 percent success rate. He provides recommendations for managing litigation, litigating in multicultural jurisdictions and managing outside counsel. Rudy also shares stories about his hardscrabble youth and solo practitioner legal practice and how they influenced him as an in-house counsel.

I’ve now hosted nearly 500 podcasts and I am constantly amazed by the fact that we are all real people, not headlines. Real hopes and dreams.

“I’m also just a girl standing in front of a boy asking him to love her.”
— Anna Scott, played by Julia Roberts, in the film Notting Hill

Enjoy the listens.

Richard Levick
“Looking up at the stars, I know quite well
That, for all they care, I can go to hell,
But on earth indifference is the least
We have to dread from man or beast.
How should we like it were stars to burn
With a passion for us we could not return?
If equal affection cannot be,
Let the more loving one be me.”
— W.H. Auden excerpted from The More Loving One

In all relationships large and small, we engage in the dance of trust. Small signals, often unspoken, tell us how to proceed. However many millions of times we get this right in the course of a lifetime, we remember the times we got it wrong, stung by heartbreak or business setbacks. No matter our level of personal or professional due diligence, we wonder, how did we miss those signals? Yet, trust-building always requires someone to go first. “Let the more loving one be me.”

On a perfect late spring night at the very end of May 1974, with junior year of high school about to become a memory, I was on the backyard deck of my friend Matt Osnos’ home, overlooking dozens of dense trees and discussing boundless possibilities in the way only high school students can. Later in life, the innocence and infinite optimism of youth would be replaced by the suffering of “the slings and arrows of outrageous fortune,” but for that brief and shining moment, anything was possible.

Matt’s father, David, made a surprise visit onto the deck, in a celebratory mood, just home from working late, trusting us with a secret that would become news the next day and burnishing a beer each for two young men just about to become of age. He was a partner at Arent Fox — a law firm he would work at for more than 50 years — representing, among
other clients, Abe Pollin’s sports and real estate empire, which included the expansion Washington Capitals professional ice hockey team. Hours before, the Caps — as they would become known — had secured their first ever draft pick and David was brimming with excitement.

Long before ESPN and other networks televised every move of professional sports leagues, the 1974 NHL Entry Draft was conducted over a secret conference call from Montreal. David reported to us that the Caps took highly touted defenseman Greg Joly as their number one draft pick and beamed, “The Caps may not win the Stanley Cup, but I am telling you they are going to be competitive.” The Caps would go on to win a total of just eight games, lose 67 and tie five in that first year, a record for futility not broken to this day. In fact, the draft was so unfair that the NHL has subsequently changed its draft rules to make teams more competitive from the start. Greg Joly would be traded within two years, never living up to expectations, a fate difficult to comprehend in sports and in life. The past is not always prologue.

If memory serves me correctly, the last game of that near-fruitless season was a high-scoring 6-6 tie with the historically impressive Stanley Cup playoff-bound Montreal Canadians, where the indefatigable Caps came back from 3-0 and 6-3 deficits. At the game’s conclusion, in one of the warmest tributes in sports I have ever witnessed, the Canadians lined up Stanley Cup-style to shake the hands of every Capitals player as if it was a series final and not a meaningless 82nd regular season game. Never give up, never surrender. David was right, the Caps had become competitive.

David was so remarkably kind and generous, and his excitement so palpable, that I remember that moment on the deck nearly half a century ago with vivid clarity, even though I don’t think I ever saw David again. The Caps may have been perennial losers, but they were loveable. And it all started with David, who passed away this past week. He was the “more loving one.”

Life’s lessons are often found in unexpected places, not the least of all sports, including, of course, hockey. How did the U.S. men’s amateur hockey team win the 1980 Olympic Gold medal—the Miracle on Ice—including beating the heavily favored professional Soviet Olympic team? Why did brilliant Soviet coach Viktor Tikhonov freeze and forget to pull his goalie in the last two minutes when they trailed by a lone goal? Sometimes our very success is the reason for our next failure.

As for the Americans, they were comprised of men who were “the more loving ones” and the Soviets, so used to near-perfection, forgot for 60 minutes the love that got them there.

I was thinking about that magic moment with David and his son Matt nearly 50 summers ago when I was interviewing John Bacon, an award winning New York Times bestselling author of 12 books including the highly regarded and recently released Let Them Lead: Unexpected Lessons in Leadership from America’s Worst High School Hockey Team, on the daily podcast In House Warrior that I host for the Corporate Counsel Business Journal.

In 2000, John became the head coach of his former high school hockey team, the Ann Arbor Huron River Rats. The team he inherited was the worst team in school history (0-23-3 in 1999-2000). He helped transform them into the best, including a number four rank in the state of Michigan and number 53 ranking nationally, in just three seasons.

As a writer he did what writers do and recorded the stories and the lessons learned, many of which fly in the face of today’s logic of participation trophies and lowered expectations. He provides so many great lessons that it took us a two-part episode to get to just a fraction of them: making it special, selling the hard, authenticity, the joy of victory, diversity, motivating millennials, creativity and more. His strategy is straightforward: “Set high expectations, make them accountable to each other and inspire them all to lead their team.”

He discussed two more of his 12 books including Playing Hurt: My Journey from Despair to Hope and the bestselling The Great Halifax Explosion: A World War I Story of Treachery, Tragedy, and Extraordinary Heroism, about the munitions ship Mont-Blanc which exploded in early December, 1917 with 2.9 kilotons of TNT as it neared port in Halifax. The ensuing explosion — which caused 11,000 casualties, including many people being instantly vaporized — is the third most powerful explosion ever visited on a human population, behind Hiroshima and Nagasaki. And yet, it is largely forgotten in Canada and the United States. Its lessons of over-confidence and human error should not be.

I also interviewed Albert Fox Cahn, the Founder and Executive Director of the Surveillance Technology Oversight Project (S.T.O.P.) on balancing security, surveillance and privacy. We discussed the most topical issues in surveillance and privacy,
including police departments purchasing large troves of data, inherent biases in facial recognition, geo-fence warrants, cell tower data, corporate responses to government requests for data while aggressively mining it on their own and AI bias. If we are looking for a place where trust breaks down quickly, it is the internet. If we are to rebuild our social fabric, then this is a very good place to start.

Finally, in another two-part series I discussed the U.K. legal market with my old friend Moray McClaren and Paul Brown of Lexington Consultants, who have been advising law firms globally for decades on their most complex strategic and organizational issues. We covered post-merger integration, cultural challenges, profitability, the unique financial pressures of 2022, private equity, the growth of boutique law firms and more in the first in an occasional series looking at the law firm markets in the U.K. and continental Europe, Latin America, Africa, India and the U.S.

Over the past week, we lost Thich Nhat Hanh, the Vietnamese Buddhist monk and Zen master, whose book, Peace Is Every Step: The Path of Mindfulness in Everyday Life, influenced millions, including me. His message of urging us to embrace mindfulness — to be fully present in each moment — is never more important than today, in a world divided by tribal political instincts, harsh judgment and a seemingly endless sense of scarcity.

Let us practice abundance. Today, as in every day, we will be confronted with choices. “Let the more loving one be me.”

“You must trust and believe in people or life becomes impossible.”
— Anton Chekhov

Enjoy the shows.

Richard Levick

Listen to Let Them Lead: Part 1
Listen to Let Them Lead: Part 2
Listen to Balancing Security, Surveillance and Privacy
Listen to The U.K. Legal Market: Part 1
Listen to The U.K. Legal Market: Part 2
“And in the naked light, I saw
Ten thousand people, maybe more
People talking without speaking
People hearing without listening
People writing songs that voices never shared
And no one dared
Disturb the sound of silence”
— Paul Simon

There was a moment over cocktails recently when I asked, “Do you want to see me again?” The answer was so instantaneously affirmative and lilting that there was no doubt as to her intent. Or so I thought, but that is another story. We’ve all been there, when instead the answer was the briefest hesitation, or, as John Prine wrote, when “she waits just a second too long.” In that pause lies an abyss where hope and rising expectations go to die.

Silence is often the hardest thing for us to embrace. And yet, when it is a personal reflection publicly exhibited in real time, it is the most remarkable of things.

We aren’t very comfortable with these pauses. We race to fill the space. However, it is in the pauses where humanity touches the surface. Leading up to the silence, the brain is not distracted, thinking of its next question or answer as we normally do. Instead, it is, as the late Zen Master Thich Nhất Hạnh would say, when we are totally present in the moment. The silence exists and the answer is slow in coming precisely because it is the unvarnished truth, meeting oxygen for the very first time.

This week, on three of the podcasts we recorded, there were those remarkable pauses, with two people reflecting on a life’s work and one reflecting on the present as it lays the foundation for the future.
The Personal Price of the Big Life

On In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, I interviewed Stuart Stevens, considered the most successful Republican political operative of his generation, in a deeply moving and emotionally raw show on the transition of the great political party he loved, which has turned its principles into empty and instantly exchangeable marketing slogans. We are talking, of course, about the Grand Old Party.

In a highly partisan age, this is not a partisan story. It is instead the story of a broken heart. Of a man who served five GOP presidential campaigns, including both Bushes, Bob Dole, Mitt Romney, and countless gubernatorial and senatorial campaigns, and helped build the Republican Party into a highly successful juggernaut. But instead of basking in his glory as he nears the last chapter of his remarkable career, he is instead sounding more like Robert Oppenheimer — the father of the atomic bomb — when later in life he asked, “What hath man wrought?”

Wait for it. About three quarters of the way through the episode there is a deafening silence that speaks volumes. It is the moment someone looks back and wonders about the value of his life’s work. It is not an easy moment.

Stuart’s handiwork is all over the Republican party at the highest levels. He so strongly believed in its principles, in its embrace of the Founding Fathers’ vision. And now? It is a party he sees as rudderless, built entirely around the “Big Lie.”

Stuart was a founding partner of Strategic Partners & Media and stepped down from the company in April 2019. He is currently an advisor to the Lincoln Project and is the author of eight books, including his most recent, It Was All a Lie — How the Republican Party Became Donald Trump. The book is not just an indictment of the Republican Party, but also a candid and often lacerating mea culpa.

We didn’t use the Hebrew phrase “tikkun olam” — to repair the world — but this is the story of a once young man who set out on a life’s mission to help repair the world, loaded with hope and optimism and, upon reflection decades later, looks back and tries to muster either.

The silence you hear is heart breaking.

A Remarkable Life

There were two other great pauses on programs this week. In a show entitled Mediating a Better Future — The Remarkable Life of the Hon. Daniel Weinstein, my old friend and generous soul Primila Edward and I interviewed The Hon. Daniel Weinstein (Ret.). Primila is based in Kuala Lumpur, Malaysia; was formerly an in-house counsel and the principal consultant with Straits Consulting Group; and currently works as a Consultant Trainer at Epromasters.

Judge Weinstein is one of the preeminent mediators of complex civil disputes in the United States and is a founder of JAMS, the world’s largest private mediation provider. He is also internationally recognized as one of the premier mediators of complex, multi-party and high-stakes commercial and political disputes. He has settled some of the largest and most contentious financial sector, intellectual property and environmental cases of the past two decades and is the former Envoy of the United States to Bosnia, where he mediated a $14 billion transfer of funds to Muslims, Croats and Serbs.

He is the recipient of the 2014 International Advocate for Peace Award from the Cardozo Journal of Conflict Resolution, whose past honorees have included former Presidents Jimmy Carter and Bill Clinton, Ambassador Richard Holbrooke, and Nobel Peace Prize Winner Archbishop Desmond Tutu. We were in the presence of a sage.

At the end of the show, we asked him about his life’s work and there was a long, long pause. It was the moment a man in his 80s was looking back over a remarkable and Herculean career. We edited the pause down a little, but you can still feel it. “How terribly strange to be 70?” How even more strange to be 80.

How Gen Z is Channeling their Fear and Passion to Save America

On Real Washington — the show I cohost with Michael Zeldin, host of That Said with Michael Zeldin on CommPRO and former on-air CNN Legal Analyst — we interviewed John Della Volpe, Director of Polling at the Harvard Kennedy School Institute of Politics about his new book, Fight: How Gen Z is Channeling their Fear and Passion to Save America.
The Washington Post referred to John as one of the world’s leading authorities on global sentiment, opinion and influence, especially among young Americans. This is America’s most diverse and educated generation and most of what we think we know about it is wrong. Its members view global warming, the threats to democracy, opioids, January 6th and more as personal existential threats and are forced to deal with issues of life and death in a way young people haven’t had to since World War II. A third of this generation believes a U.S. civil war in their lifetimes is now a possibility.

When we asked John if he was optimistic about the future, there was the pause, but then it came. As much as Stuart is heartbroken, John is concerned but optimistic. And Daniel? He knows there is a path to resolve even the most intransigent disputes. Maybe, just maybe, we have a succession plan.

So here we have three shows, looking backward, looking presently and looking forward. It is not an age of what then-Federal Reserve Board Chairman, Alan Greenspan referred to during the go-go 1990s as “irrational exuberance,” but there is hope.

While it is not easy, the painful self-examination is something we all need to do far more of, rather than avoiding its clutches via the rapid-fire judgment of others.

Inshallah — if God wills. But for the foreseeable future, tie your camel.

“Silence is a time of reflection to bring peace and meaning to your life, and to those around you. This deafening quiescence will mean different things to different people but if they listen carefully, they will understand…”

— Virginia Alison

Enjoy the shows.

Richard Levick

Listen to It Was All a Lie
Listen to Mediating a Better Future
Listen to How Gen Z is Channeling Their Fear and Passion to Save America
Don’t Be Evil

“If there is a worse place than hell, I am in it” ....
— Abraham Lincoln, after the battle of Fredericksburg, 1862

“In spite of everything I still believe that people are really good at heart.”
— Anne Frank, writing in her diary weeks before her capture, 1944

In the spring of 1995, WIRED magazine’s Executive Editor Kevin Kelly met with author and Luddite sympathizer Kirkpatrick Sale to interview him on his forthcoming book, Rebels Against The Future: The Luddites And Their War On The Industrial Revolution: Lessons For The Computer Age.

Describing early 1995 feels virtually unrecognizable now, like the conversations we used to have with our grandparents when they described the transition from horse and buggy to automobiles. We would wonder, “How did they do it?”

In 1995, almost no one had a mobile phone. Amazon was less than a year old, selling only books; there was no talk of profit, and they were burning through capital. Apple was struggling to survive and taking out full page newspaper advertisements to build its tribe.

It was just six years after the fall of the Berlin Wall and barely three since the Soviet Union had collapsed. Google was more than three years from being founded, and when it was, no one laughed at its original tag line, “Don’t be evil.” The Soviet Union — the original “Evil Empire” — had collapsed at the end of 1991 and capitalism had been declared the winner. It was a time of extraordinary hope in the West. We were intoxicated by the feeling that all things were possible.

Getting on the internet was well-nigh spiritual in those days and almost always included this dial up sound from AOL. Every online experience seemed virginal.
Our first internet experiences felt like the days of CB radio. It was the Wild West, and in a few keystrokes, you could be communicating with someone in a foreign country. For a generation used to exorbitant long distance telephone rates, this was almost as exciting as that astonishing moment in 1876 when Alexander Graham Bell shouted to his assistant Thomas Watson after the successful invention of the telephone, “Mr. Watson, Come Here, I need you.” The Eagle had indeed landed, but this time, in all of our homes.

The internet was a great promise that seemed to make the world smaller and more accessible all at once. And that is what Kevin Kelly believed when he interviewed Sale, who, conversely, believed society was on the verge of collapse. Kelly hated Sale’s book and lured Sale into a $1000 bet that, “In the year 2020, we’re not even close to the kind of disaster you describe.”

Twenty-five years have come and gone, and on December 31, 2020, Bill Patrick, WIRED Editor, declared Kelly the winner, “But it’s a squeaker and not much cause for celebration.”

If you had asked me in 1995, I would have taken Kelly’s bet to be a certainty. Today? I wouldn’t take that bet at all. How many friends do you know who historically supported gun control but have recently whispered to you about the purchase of a firearm or their plans to? This is not the exhilarating spring of 1995.

Looking Backward to Look Forward

The battle of Fredericksburg was fought in mid-December 1862 and was a horrifically bloody set back among many for the Union Army. There were 12,653 Union casualties to 4,201 for the Confederates. It was the second year of the Civil War, and it was not going well for the North.

As for Lincoln’s leadership, Senator Zachariah Chandler, a radical Republican, wrote, “The President is a weak man, too weak for the occasion…”

Lincoln received almost daily letters from grieving mothers, sisters and widows, which weighed on him so heavily that he was once found by his son Robert hunched over his desk, crying.

However great the tragedy of the Battle of Fredericksburg, the bloodiest days were ahead — Gettysburg, Chickamauga, Spotsylvania and Cold Harbor to name but a few. We would lose roughly 2% of the American population — that is, proportionally, ten times greater than current U.S. losses to Covid-19. The pain of these four years is instantly evident from the photos of Lincoln’s face, aging from young man to old in just four years.

Who would have thought that one of the things keeping us sleepless at night would be the question, “Does democracy survive the Internet Age?” Is it a force for good or is it tearing us apart at the seams? Absurd rumors take on the authority of fact and become rallying cries. Criticism, once limited to a personal conversation or sometimes no conversation at all other than a monologue in our heads, has been given as much of a platform as Gutenberg.

The National Butterfly Center in Texas has had to close, as it is the latest focus of absurd conspiracy theories about child sex trafficking, and book banning is back in vogue. To Kill a Mockingbird, by Harper Lee; Maus, by Art Spiegelman; The Bluest Eye, by Toni Morrison; Heather Has Two Mommies, by Lesléa Newman; The Hate U Give, by Angie Thomas, to name just a few, with hundreds more on watch lists and endangered. It can’t happen here?

What hath the Internet Age wrought? It has brought us more information in a day than our grandparents had in a year while simultaneously shredding our notions of free speech. And this is just the threat from state and local governments and our fellow citizens. What about dangerous nation state actors and cyber criminals?

So here we are, at the emotional crossroads somewhere between Lincoln’s despair after the Battle of Fredericksburg and Anne Frank’s indefatigable hope in the summer of 1944.
Over the past week, I interviewed three experts on security and cybersecurity — dedicated to keeping us safe — for the daily podcast, *In House Warrior* that I host for the *Corporate Counsel Business Journal*, along with two thought leaders on Covid-19 and law firm management.

**The New Paradigms in Security**

Roderick Jones, formerly of Scotland Yard’s Special Branch and the Executive Chairman of Concentric—which provides comprehensive security programs for high-growth Silicon Valley companies, High-Net Worth Individuals (HNWI) and others—joined me for a show. He spoke about the shift from international to domestic threats, the frightening rise of “leadership resistance,” escalating online security threats, the importance of sentiment analysis, the increased use of the dark web by extremists and what we can do to protect ourselves.

**Cybersecurity is No Longer Just an IT Issue**

Peter Halprin, a partner in Pasich LLP’s New York office and a faculty member with the Global Cyber Institute, spoke about the proliferation of cyber and ransomware attacks and how in-house legal departments are taking on a larger role in cybersecurity efforts. He focused on the critical questions general counsels need to ask themselves, including how are we protecting the company; what do we do if we’re hacked and how are we going to pay for this? Most importantly, Peter discussed why in-house counsel need to treat cyber-attacks as inevitabilities.

**A Guide to Internet Privacy**

Jeremy Berkowitz, Senior Principal on Promontory Financial Group’s privacy and data protection team (part of IBM Consulting), provided a guide to privacy issues. He discussed the current landscape of privacy legislation in the U.S., including California, Virginia and Colorado; potential action by the FTC, CFPB and other agencies on privacy rulemakings; the biggest challenges organizations face in building privacy programs; what an ideal privacy governance structure looks like and the privacy-related issues to watch out for in 2022.

**The Evolving World of Covid Vaccine Liability Immunity**

It is hard to imagine this period of time without discussing Covid-19, so Judi Curry joined me for a conversation. She is the Senior and Managing Partner of the New York City office and Co-Leader of the Medical and Life Sciences Industry Team at Harris Beach PLLC, as well as a member of *Berkley Life Sciences’ Elite Defense Counsel*. She discussed which coronavirus vaccine has been approved by the FDA and which ones have been approved under an FDA Emergency Use Authorization; who is immune from liability for vaccines under federal laws and the limitations on immunity from liability; what healthcare providers, hospitals and pharmaceutical companies can do to protect themselves from coronavirus-related lawsuits; and the most recent U.S. Supreme Court rulings on vaccine mandates.

**The Trusted Advisor — Up Close with Brad Hildebrandt**

For our law firm readers and listeners, my old friend, Brad Hildebrandt, the founding father of management consulting for the legal profession, joined me for a conversation on what law firms should be doing and thinking during this challenging period. Brad discussed current pressing law firm challenges such as finding and keeping talent, culture, and the technology race. Brad’s extensive knowledge of the legal profession and his unique understanding of the dynamics of professional services firms have led him to become the leading global authority on the business of the practice of law the world over. He is also an ordained Lutheran minister with a master’s degree in theology, training that seems remarkably relevant today.

**Saying Goodbye to a Legal Giant**

Over the course of the past week, Professor Yale Kamisar, known as the “Father of the Miranda Rule” and cited in more than 30 U.S. Supreme Court cases including *Gideon v. Wainwright* — the right to counsel — passed away at age 92. He helped shape modern criminal procedure, including protections for the rights of the accused.

I never knew Professor Kamisar but recall reading him extensively in law school, since I spent so much time doing scholarship for the late criminal law scholar Nicholas Kittrie — another legal luminary whose work had influenced me long before law school.
Jeffrey Lehman, the vice chancellor of N.Y.U. Shanghai, who studied under Professor Kamisar and later served as dean of the University of Michigan Law School, said of Professor Kamisar, “He used to talk about himself as a young kid playing stickball in the Bronx, being picked on by cops. And that is sort of what led to his interest in law, as a way to regulate the behavior of powerful people.”

Eve Primus, who also studied under Professor Kamisar and now holds a chair in his name at the University of Michigan Law School, said, “There was this period of police brutalization of predominantly Black and brown people, especially in the South. Yale, being the person that he was, understood that there were opportunities to move law forward.”

He was a man of the moment and significantly influenced the 1960s and 1970s Supreme Court, under Chief Justice Earl Warren, that was examining civil liberties with fresh eyes. One person out of many, making an extraordinary difference.

How appropriate that we are celebrating the 137th birthday this week of author Sinclair Lewis, who wrote, among other classics, *It Can’t Happen Here*, a cautionary tale about the fragility of democracy.

It can happen here. With Yale Kamisar as part of our inspiration, let us do everything we can to keep the great disruption at bay.

*You may say I’m a dreamer*  
*But I’m not the only one*  
*I hope someday you’ll join us*  
*And the world will be as one*  
— John Lennon, *Imagine*

Enjoy the shows.

Richard Levick

*Listen to The New Paradigms in Security*  
*Listen to Cybersecurity is No Longer Just an IT Issue*  
*Listen to A Guide to Internet Privacy*  
*Listen to The Evolving World of Covid Vaccine Liability Immunity*  
*Listen to The Trusted Advisor*
Where Strength Comes From

"Each of us must do the things that matter
All of us must see what we can see
It was long ago you must remember
You were once as young and scared as me
I don’t know how hard it is yet mamma
When you realize you’re growing old
I know how hard it is not to be younger
I know you’ve tried to keep me from the cold
Thanks for all you done it may sound hollow
Thank you for the good times that we’ve known
But I must find my own road now to follow
You will all be welcome in my home”

— Murray Mclaughlin, Child’s Song

How did Teddy Roosevelt — who would later write in his diary, “The light has gone out of my life” — survive the loss of his 22-year-old wife Alice and mother Mittie, hours and a floor apart, while he rushed between their bedside as each took their last breaths, on Valentine’s Day 1884?

What was it about Sir Ernest Shackleton and his crew that enabled them to survive being stranded for more than two years without food or chance of rescue on their expedition to Antarctica in 1915?

Where did the strength come from for Admiral James Stockdale, the highest ranking U.S. POW in the Vietnam War, to survive seven years in a North Vietnamese prison camp and then to grow so much from it that he looked back upon it as “an experience I would not trade?”
Closer to home, what about our grandparents or great grandparents? If they were born a little over a century ago their first memory outside of the family was likely to be of Teddy Roosevelt's second inaugural in 1905, itself the result of a tragedy — the assassination of President William McKinley four years earlier. If they had been born out west, then certainly that first memory would be of the Great San Francisco Earthquake of 1906.

They came of age just in time for World War I and returned, if they returned at all, to be welcomed back by the worldwide influenza pandemic that lasted well over three years. Grandma did not have the right to vote until 1919.

Part of their 20s would be roaring until Black Friday, October 29, 1929, when the stock market crashed and the Great Depression began, lasting until World War II, when they would be in their early 40s. Some of them would go back to war while others timed it perfectly for their children — our parents and grandparents — to go the European or Pacific theater.

Only by the time they were in their late 40s would they begin to experience peace and prosperity. Not a snowflake among them.

Where does this strength come from?

The older I get, the more I am in awe. If you are as lucky as I was, there was many a night when one of the grandparents would tell stories, and we would get a glimpse, trying to picture a time long gone. I don't recall a single complaint amongst the hundreds of stories. It was just life.

I thought I had known hard times, but I was mistaken. Through my early 50s, I knew almost nothing but prosperity peppered with the occasional setback and rejection, which I foolishly misinterpreted as hard times. Since that time, I have experienced one tragedy after another, suffering each one individually and collectively, testing my temerity far beyond the nadir.

I always thought that each year would be better than the last. But it turns out, Bette Davis was right. As she said in All About Eve, “Fasten your seatbelts. It’s going to be a bumpy night.” Given enough time though, day follows night.

There is a version of Simon & Garfunkel's Sound of Silence by Disturbed which is so powerful, I can listen to it almost endlessly. “Hello darkness my old friend, I’ve come to talk with you again,” but now darkness is not loneliness as Art Garfunkel intended, but the abyss. If you keep going, though impossible to see at first and long after you think you cannot take another step, there is the gift of the reason. Surviving is hope's revenge over tragedy. What we do with our survival gives tragedy its meaning.

When Covid first hit and I could no longer do global speaking tours, we modified our In House Warrior podcast for the Corporate Counsel Business Journal and made it a daily show—240 times a year. It may be a commitment, but it is also a bounty, like my own private PBS. With apologies to Dos Equis, it is where I get to spend time with the most interesting people in the world. Best selling authors. Retired politicians. Former counsels to presidents. U.S. and state Attorneys General. Each one telling their story, many in the most personal way.

We will pass 50,000 downloads this year with guests such as Alan Dershowitz, Molly Ball, Michael Steele, John Dean, Andrew Young, Joe Lockhart, Andrew McCabe, Jeffrey Sonnenfeld, Elizabeth Holtzman, Abbe Lowell, Jamie Gorelick, Sherron Watkins and Dr. Raphael Bostic, amongst hundreds of others. Perhaps the drop-the-mic moment was former HHS Undersecretary Michael Caputo giving one of only two post-cancer interviews, a diagnosis he was originally not expected to survive.

That is, until, this week, when we aired the show, Luke's Song and the Tragedy of Pediatric Cancer and the Power of Hope. In a deeply moving interview, Tim Brown, a former Vice President and General Manager of biotechnology at Genentech and now a volunteer with Children's Cancer Therapy Development Institute (cc-TDI; full disclosure, I sit on their board) spoke about their personal journey with their son Luke, from fatal diagnosis to the historically slow efforts to find cures for pediatric cancers. In a remarkably candid conversation, Tim a cure.

I did not know Tim until we did the show, and yet we went on a voyage of personal discovery. I admire everything about Tim — his strength, love and courage. Each day he gives more and more meaning to Luke's life by helping other families. Who says time — or love — has to be linear?

This is where we find strength.
The FDA approves on average 12 drugs every year to treat adult cancers but has only approved 12 drugs to treat childhood cancers since 1978 — that’s 12 approved drugs for childhood cancers in nearly half a century. Since cc-TDI’s inception in 2015, it has pushed two drugs into three clinical trials to treat childhood cancer.

Next week, we will air a show with Annette Bakker, a PhD in Biochemistry and President of the Children’s Tumor Foundation, about the fact that cures for cystic fibrosis, muscular dystrophy, neurofibromatosis and rare cancers may have already been developed but that scientists don’t realize it yet. With minor tweaks, some of pharma’s discarded drugs could be turned into game-changing therapies for currently untreatable diseases. Hope is our elixir.

Doing a show each day allows us to cover so many topics, and while almost all are on law, public affairs and business, sometimes we cover the personal side — because all of us are on this journey together.

Also on In House Warrior this week:

A View of Antitrust with the FTC’s Former Director of Competition, Bruce Hoffman

Bruce Hoffman, a partner at Cleary Gottlieb and the former Director of the Federal Trade Commission’s Bureau of Competition, discussed his views on how businesses should think about antitrust with Lina Khan leading the FTC and Jonathan Kanter at the helm of the DOJ. He also provides an overview of state and federal antitrust reform legislation proposals and addresses the question posed by some critics, that antitrust enforcement needs to be radically changed due to U.S. market concentration.

Legend of the Defense Bar Arvin Maskin on Enterprise Risk & Crisis Management

My old friend Arvin Maskin, a partner with Mayer Brown and leader of their global Enterprise Risk & Crisis Management practice, discussed trends in class action and MDL — Multi-District Litigation. Arvin was former lead and senior counsel in some of the largest mass tort and product liability litigation matters, including “Agent Orange,” asbestos, breast implants, lead paint and many more. He also addressed the necessity and challenges of presenting scientific evidence in the courtroom, the critical differences between risk mitigation and crisis preparation and response, pressing challenges for in-house counsel and the role of boards on these matters.

Is the Chevron Doctrine Doomed?

Richard Samp, Senior Litigation Counsel at the New Civil Liberties Alliance, joined us to talk about the Chevron Doctrine — judicial deference given to administrative actions — which courts have followed for nearly 40 years but which now appears likely to be re-examined by the U.S. Supreme Court. Throughout his 40-year career in private law practice in Washington, D.C., Richard Samp has specialized in appellate litigation with a focus on constitutional law and has participated directly in more than 200 cases before the High Court.

Garage to Global With Guggenheim Securities

Rob Bartlett, Senior Managing Director of Guggenheim Securities and cohost Louis Lehot, a partner at Foley & Lardner, discussed the market, SPACs, 2021’s hypergrowth and 2022’s market expectations, market stability and making the transition from accountant to law firm partner to investment banker.

Where Strength Comes From

The secret to survival is to keep going. Seventeen years after the light had gone out of his life, Teddy Roosevelt was president of the United States. It was his reaction to the double tragedies of losing his wife and mother to diseases of filth and the unsanitary conditions of the time — typhoid and strep — which led to a newfound awareness and purpose. He had given meaning to tragedy and life after death.

When my father was 33 and a Korean War Vet, his 25-year-old wife — my mother — died unexpectedly overnight. Devastated first by the loss of so many friends in Korea and now his young wife, he asked a priest he happened upon, “How do I go on?” The priest turned my father around to face my six year old sister and the four year old me, sitting with our grandparents off in the distance, and said, “You don’t have a choice. You carry on for them.”
Winston Churchill was right. Carry on and “never, never, never give up.”

“Each of us must do the things that matter
All of us must see what we can see”
— Murray McLaughlin, Child’s Song

Enjoy the shows.

Richard Levick

Listen to Luke’s Song and the Tragedy of Pediatric Cancer and the Power of Hope
Listen to A View of Antitrust
Listen to Legend of the Defense Bar
Listen to Is the Chevron Doctrine Doomed
Listen to Garage to Global with Guggenheim Securities
The Better Angels of Our Nature

“We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.”

— Abraham Lincoln

By the time Abraham Lincoln gave his first inaugural address on March 4, 1861, seven states had already seceded from the Union. He knew all he had to sell was the idea of America.

For most of my life I took democracy for granted. I was convinced it was defined by the strength of its institutions. But democracy is an idea, like electricity, train travel and space flight. Unlike those other things though, democracy requires our continued belief to exist.

You can believe, as so many did a little over a century ago, that humans were never meant to fly, but that belief today will not stop a single plane from flying.

Democracy, on the other hand, needs our continued investment. For those critics who point out its imperfection, I would argue you miss the point. Democracy, as the early 20th century associate justice of the United States Supreme Court Oliver Wendell Holmes wrote, does not start out with all the answers. It is the framework which requires constant refinement and rework.

Democracy was a lonely idea. Over the millennium, other than briefly with the Athenians and pirates, government was the right of sultans and kings, and democracy was believed to be an idea that could not work. Until, of course, the signing of the U.S. Constitution in 1787. In the years afterwards, most of the Founding Fathers we remember would write of its likely demise, but what they created endured.
Ideas are the soul of democracy and debate its nourishment. Without this marriage there is no offspring of progress. For those triggered by the idea of debate, I am sorry. The sacrifice is too great to abide your censorship.

Where do ideas come from and why are we so afraid of them?

We have been shunning and banning books since long before Nicolaus Copernicus provided a model of the universe that placed the sun rather than the earth \textit{at the center of the universe} in 1473.

The New World brought Puritan settlers preferring that we read only the Old Testament.

Mark Twain, America’s Man of Letters, has been banned more than almost any other American author for the crime of placing an escaped slave named Jim as the moral center of his 19th century novel, \textit{Adventures of Huckleberry Finn}. Truth, even if fictionalized, is apparently dangerous.

Are we not to see the universe as it is? To practice faith as we wish? To see the world through other eyes? These are the gifts of these and thousands of other works. What comes next is up to us.

Joseph P. Kennedy — patriarch of the Kennedy dynasty — often repelled me with his parenting skills, with one exception. He held court at the dinner table nightly where the family discussed the issues of the day. Debate leads to knowledge and abrogates our fear of ideas.

Why is it that both the left and right are now so fragile that they cannot imagine our children reading books or hearing ideas we do not embrace? It is, in fact, this very Socratic discussion where intelligence and reasoning come from. Without it, there is no knowledge or wisdom, just memorization and ideology. Democracy dies a thousand small deaths at silent dinner tables every night.

\textit{The Odyssey}

When I was a 2L in law school, I argued on the national moot court team and spent months in the stacks of the law library, on a fruitless search for “the truth.” The issue was the constitutionality of airport searches two decades before 9/11. It was also in the early days of computers, so all of the research had to be done by hand. It was tedious, but I was convinced that if I just kept going back through each decision, every citation, even dicta, that I would find “the truth,” as if it had been granted to Adam and Eve in the Garden of Eden. Right next to the story of the apple would be “The truth about airport searches.”

I was Homer on my own odyssey, but no matter how much I sailed, I could never find anything other than human opinion. And while it would support my arguments, pure truth was elusive.

While perfect truth may have indeed exceeded my grasp, the journey taught me law school’s most important lessons — to be able to argue an issue from either side and to think in detailed layers. That is, epistemology: to research, study, question, discuss, debate and repeat over and over until every argument and every crevice had been explored.

That is, the virtual opposite of what we do today, where we draw conclusions first and then argue passionately from an emotional and certain point of view without textualized or layered thinking. Don’t like the opposing argument? Ban their books, cancel them or complain of being triggered.

“Triggered,” by the way, is the new phrase for what we used to call thinking. And thinking is supposed to make us uncomfortable. That is the whole point.

Every time I read arguments about banning books, canceling ideas and triggering, I hear the line from a Pierce Pettis song, “\textit{like a tear from God’s own eye}.” Shame on us.

It turns out, there is no certain truth, but there are ideas, debates and moral compasses.

\textit{Great Thinkers}

This week on \textit{In House Warrior}, the daily podcast I host for the \textit{Corporate Counsel Business Journal}, I interviewed four great thinkers who are changing their professions.

\textit{Her Honor: My Life on the Bench…What Works, What’s Broken, and How to Change It}

Retired Judge \textit{LaDoris Hazzard Cordell}, the first African American woman jurist in Northern California, joins Michael Zeldin of \textit{That Said with Michael Zeldin} and me to
discuss her new book, *Her Honor: My Life on the Bench...What Works, What's Broken, and How to Change It*. She provides an insider account of our legal system and reveals the strengths, flaws and much-needed changes required within our courts.

**Up Close on Litigation Finance with Christopher Bogart of Burford**

I also spoke with Christopher Bogart, Chief Executive Officer, director and a co-founder of Burford, the largest global provider of legal finance in the world and a force in the global legal market. We discussed his view of trends, innovations, challenges and perhaps, most importantly, their significant financial commitment to women and people of color in the practice of law. Chris Bogart is one of the most significant innovators in the practice of law over the past 50 years.

**Cures For Many Rare Diseases May Already Exist**

In a “call for the courageous,” Annette Bakker, a PhD in Biochemistry and President of the Children’s Tumor Foundation, spoke with me about the fact that cures for cystic fibrosis, muscular dystrophy, neurofibromatosis and rare cancers may have already been developed, but that scientists don’t realize it yet. With minor tweaks, some of pharma’s discarded drugs could be turned into game-changing therapies for currently untreatable diseases.

**An Eye on Asia**

James Tunkey, Chief Operating Officer of I-OnAsia, a cross-border investigations and security consulting company, spoke about their work assisting American clients with risk management and litigation support issues in Asia. The old adage that criminals are always one step ahead is very true, particularly in the corporate white-collar space—even more so because so many losses go unreported.

“Do not curse the deaf or place a stumbling block before the blind.” Leviticus 19:14

As the rabbis interpreted this through the centuries, this is not an early Americans with Disabilities Act warning but instead a recognition that we are all — every one of us — to some degree, blind and deaf in different ways. We need to be kind to each other and recognize rather than exploit these human foibles. Most importantly, we need to recognize these shortcomings in ourselves.

If we are fighting ideas because we disagree with them, how do we get our sight and hearing back?

We stand on the shoulders of giants. They gave us this height to try and reach the stars, not to complain about the glare.

Let us find the better angels of our nature.

“*The great thing in this world is not so much where we are, but in what direction we are going.*”

— Oliver Wendell Holmes

Enjoy the shows

Richard Levick

[Listen to Her Honor: My Life on the Bench](#)

[Listen to Up Close on Litigation Finance](#)

[Listen to Cures for Many Rare Diseases May Already Exist](#)

[Listen to An Eye on Asia](#)
Remembering Mike O’Horo

“From this day to the ending of the world,
But we in it shall be remember’d;
We few, we happy few, we band of brothers;
For he to-day that sheds his blood with me
Shall be my brother…”

— William Shakespeare, Henry V

It was 30 years ago now, at my old firm, when Jay Jaffe informed us that he was hiring Mike O’Horo, a professional sales consultant who had sold cars and jewelry and everything in between. He had never worked with or sold to lawyers — a class of consumers who simultaneously demand endless industry sector expertise and no conflicts — and yet he had no fear. But I did. Who, I wondered, is this guy, who I had not met in the interview process and would join us in a few weeks?

My fears were quickly dispelled. Mike, as I was soon to learn, had confidence but no hubris — a Houdini-level gift that was effortless for Mike but daunting for the rest of us struggling, as Icarus did, with success as much as failure.

He was as charming as he was erudite. Wicked smart, witty, and, as we were to soon learn, capable of telling truth to power in such a direct and unvarnished way that the listener was faced with the realization of their stark choice. Do the right thing or continue down a cul-de-sac path. It was overwhelming for some, but his clarity of vision and words had the ability to stay with you for decades. We never gave them a name, but these moments were “Mike-isms” for sure. Anyone who ever had the pleasure and honor of working with him knows those moments. Three decades later I can recall scene after scene — as if my memory is celluloid — when he cut through the clutter of the universe and struck me like a lightning bolt. For those brief and shining moments, time stopped.
And like a lightning bolt, he was a force of nature. No one, and I mean no one, who ever met Mike ever forgot him.

Mike passed away this week, far too young, holding the hand bedside of the woman he had met late in life — his lovely wife Zdeni, so full of robust spirit that it is contagious — and loved with so much passion and honesty that you could feel it, even though, with their moves overseas, you did not see them often anymore.

If you were a client and had the honor of Mike counseling your sales efforts, you were in for a tour-de-force. I have had the honor of working closely with all of the great founders of law firm and lawyer sales training, and they are all close friends — Bill Flannery, Felice Wagner, Jim Durham and more. Each are brilliant and have profoundly changed the profession. But no one else I have ever known could change your outlook in just a sentence. That was Mike O’Horo, who, without precedent or platform, entered the legal world in the early 1990s and impacted it and its lawyers so profoundly that the profession is forever changed for the better.

Of all the many parables — and that is what they were, more than mere stories — Mike shared, the one that stands out is about an early business failure which wiped him out. He said that once you have crashed and burned and recovered to experience the phoenix, you had no fear. I hear those words at every critical juncture. He was truly fearless until the very end.

The only joy I can take in this moment of such profound sadness is that Oliver Wendell Holmes, Sandra Day O’Conner, Thurgood Marshall, Clarence Darrow, Mohandas Gandhi, Nelson Mandela and the other great legal minds in heaven are lining up to get the opportunity to ask Mike, “When you consider my latest challenge, what should I do now?” Mike always had an answer.

“He that shall live this day, and see old age,
Will yearly on the vigil feast his neighbours,
And say ‘To-morrow is Saint Crispian:’
Then will he strip his sleeve and show his scars.
And say ‘These wounds I had on Crispin’s day.’
Old men forget: yet all shall be forgot,
But he’ll remember with advantages…”

We will miss you dearly, Mike. We loved you.

Richard Levick
Is This the Moment Ukraine Saves Democracy?

“Russians will ‘see our faces, not our backs.’”

— Ukraine President Volodymyr Zelenskyy

About five years ago while I was preparing for a speech, one of the other speakers approached me, an historian who studied the large, Hegelian dialectics of history — the swings from extremes. Jointly worried about what was then a 10- and now 15-year decline of democracies around the world, she explained that historically, the only way that there has been a turn-around and a return to more normalized times is through extremes — deprivations such as a great depression, plague or a catastrophic, nearly world-wide war. Are we at that moment? When the clarity of evil is so clear and the fear of escalation so great that we are at that instant when unification seems possible?

This is our Cuban Missile Crisis on steroids. Suddenly, nothing else seems as important.

In mere weeks, NATO has become stronger than ever and has recovered all that it lost and more during the America First years. Germany and Sweden have acted instantly and aggressively in ways no past events have inspired them to do, regardless of how much U.S. presidents of both parties pleaded. The historically neutral Swiss have joined EU sanctions. The list of courageous cooperation is near-endless as we witness the power of unified democracies. We are entering a new world of post-Cold War alliances and it may be the silver lining of this tragedy. The start of an Age of Enlightenment?

While war, even nuclear war, is still on the table, we are seeing the power of peaceful sanctions, real-time transparent intelligence, sophisticated cyber defense and isolation.
In Ukraine, a lawyer-turned-actor-turned-comedian-turned-president has moved NATO and the world to action and tears, inspired by a courage not seen since “Tank Man” stood in front of a column of tanks in Tiananmen Square in June of 1989. It is clear that Russia's invasion is not just a threat to Ukraine but a proxy for the war on democracy. This is, as New York Times bestselling author Frank Bruni pointed out, a moment for us to ask, “Do the times make the man, or does the man make the times?” Either way, this is a moment for all of us to follow the lead of courage and determination.

Over the weekend and early this week, we recorded five shows on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal on the Ukrainian crisis.

Ukraine: Lessons Not Being Learned

Dr. James Dorsey, an award-winning journalist, Senior Fellow at the National University of Singapore's Middle East Institute, and Adjunct Senior Fellow at Nanyang Technological University’s S. Rajaratnam School of International Studies, elaborated on his latest article, Ukraine: Lessons Not Being Learned. James argues that Russian President Vladimir Putin's invasion of Ukraine and the international condemnation it generated contains key lessons for policymakers, lessons that should have been learned in past global crises but weren't. He focuses on the importance of countries standing up to violations of international law as they occur, with a greater focus on human rights and immigration. James, who has covered the wars in the region over the past several decades, argues that Mr. Putin began the re-creation of his Russian world in 2008 when he recognized the two Georgian breakaway republics of Abkhazia and North Ossetia and that he was emboldened by a lack of unified international condemnation.

The Ukraine Crisis Requires an Immediate Assessment of IP Risks

Rob Sterne, a director of Sterne Kessler in the Electronics Practice Group and co-chair of the firm's Patent Office Litigation Practice, spoke about his latest weekly letter, this one on the Ukraine crisis and the unique IP risks it presents. He points out that the Ukraine crisis requires an immediate assessment of a company's IP risks associated with the R&D, manufacturing, supply and distribution chains of enterprises. The enterprise IP professional must work with their management counterparts and consultants in examining their IP plan to understand and make recommendations to senior management about the detected risks due to these unprecedented world events. This IP plan assessment will provide senior management with a risk map and possible strategies and tactics for risk reductions. His advice to in-house counsel is that nearly every aspect of the enterprise is going to be impacted, so you need to act now. To subscribe to his insider letter, you can email Rob at rsterne@sternekessler.com.

The Ukraine, The GOP and Judge Ketanji Brown Jackson

Marc Fisher, a senior editor of The Washington Post spoke about two pressing issues: the trap the GOP laid for itself by abandoning its seven-decades long rock-solid position on Russia — then the Soviet Union — as America's chief enemy, untrustworthy and anti-freedom, and how it instead embraced Donald Trump's “America First” rhetoric and his policies of stepping back from NATO and other U.S. alliances with Western democracies. He also delves deeply into the remarkable history of U.S. Supreme Court nominee Ketanji Brown Jackson and how she, throughout her entire life, found a path between confrontation and compromise.

A View from the Middle East on the Russian Invasion of Ukraine

Ibrahim Al-Assil, Senior Fellow at the Middle East Institute, provides a view of the Russian invasion of Ukraine from the Middle East perspective. He discusses the fascinating implications of the UAE's abstention on the UN vote; the impact of the loss of trust by regional countries as a result of the failure of the United States to uphold its promise on the “red line” regarding the use of chemical weapons by Syria; the impact of radically changing positions by different U.S. administrations; U.S. relations with the UAE, Israel, Qatar and other countries in the region; China and India's strategies and more.

From Russia with Monopolies

Garphil Julien, a Research Associate at the Open Markets Institute, elaborates on his recent article in The Washington Monthly, From Russia, With Monopolies. He discusses the supply chain impacts that will reverberate on the West and Europe as a result of sanctions on Russia due to the invasion of Ukraine. While severe sanctions appear to be working, Russia will retaliate in areas where they have near global monopolies including energy, especially natural gas, and the raw materials for the global fertilizer market. This will in turn dramatically inflate the price of energy and food. Will
Americans and Europeans, who are applauding the bloodless weapons the U.S., NATO and other countries are using, be patient and understanding enough when food and energy prices become volatile and green energy — at least for a period of time — becomes a luxury?

As Winston Churchill said when working to form the United Nations after World War II, “Never let a good crisis go to waste.”

“We will win.”
— Ukraine President Volodymyr Zelenskyy

Enjoy the shows.

Richard Levick

Listen to Ukraine: Lessons Not Being Learned
Listen to The Ukraine Crisis Requires an Immediate Assessment of IP Risks
Listen to The Ukraine, The GOP and Judge Ketanji Brown Jackson
Listen to A View from the Middle East on the Russian Invasion of Ukraine
Listen to From Russia with Monopolies
The Russians Are Coming

“A lie can travel halfway around the world while the truth is putting on its shoes.”
— Mark Twain

About five years ago, I was struck by two articles written by Molly McKew — a journalist, former aide to the president of Georgia and an expert in information warfare — about a 30-year-old strategy called The Gerasimov Doctrine, which outlined the Russian government’s five-part strategy to compete with China and the West now that the former Soviet Union could no longer do so militarily or economically. ‘It’s war; it is always war; and therefore, everything is fair,’ summed up the three pillars of reasoning. Sowing domestic dissatisfaction and a loss of trust in government, the rule of law and the media was its goal. Vladimir Putin, along with General Valery Gerasimov, were among its authors.

It was such a harrowing read that I asked Ms. McKew to join a Sirius-XM show I was honored to co-host with venture capitalist Jonathan Aberman, now Dean and Professor of Practice at the School of Business and Technology at Marymount University. While deeply frightening, the thought of Russia winning a new disinformation war — despite the unexpected wins of Brexit and Donald Trump — still seemed more theoretical than real. No more.

Since the Russian invasion of Ukraine, we have been running podcasts on our show In House Warrior for the Corporate Counsel Business Journal daily on various legal, IP, business, cyber and geopolitical issues impacted by the war. It has required long days and seven-day weeks. Still, when I read Paul Holmes 7,000-word spellbinding article — A Turning Point In The Disinformation War? — I could not put it down. Here, in one place, was a 30-year history of Russia’s systematic and tragically successful war on the West, which touched on so many critical issues.
Paul Holmes is the Founder and Chair of PRovoke Media — the most important read in the public relations industry. He has been writing about public relations for more than 25 years and has a deep intellect that comprehends history, global politics and business in addition to communications. I knew as soon as I read his piece I had to have him on a show right away.

Over the past several years, proponents of the Gerasimov Doctrine — Russia and their Western apologists — almost won without firing a shot. Now that we see what violent autocracy looks like up close, we may reflect long enough to reconsider our ever-escalating internal strife.

As Shadi Hamid wrote in *The Atlantic*, “Sometimes, unusual and extreme events mark the separation between old and new ways of thinking and being. Russia’s war on Ukraine has already left several such marks: It has upended the West’s assumptions about the world, revitalized the liberal order, and transformed perceptions of both Vladimir Putin and Volodymyr Zelensky. The war has also thrust America back into a main role on the world stage. In the span of a few days, skeptics of American power have gotten a taste of what a world where America grows weak and Russia grows strong looks like.”

When I am at Navy Marine Corp stadium for football and lacrosse games, the perimeter of the second level is complete with placards of great naval battles — Belleau Wood, Chateau Thierry, Pearl Harbor, Java Sea, Wake, Coral Sea, Midway, Eastern Solomons, Guadalcanal and more. Somewhere in Russia they have a similar memorial for their successes of dezinformatsiya, but instead of naval battles they have memorialized Brexit, Hillary’s email exfiltration, Donald Trump’s election and on and on. As Molly McKew wrote, “[Russia] arguably won a significant battle without most Americans realizing it ever took place.”

Russia perfected its disinformation campaign in countries such as Estonia, Georgia and Lithuania and then escalated it, significantly influencing the outcomes of Brexit in the U.K. and the 2016 U.S. presidential election, leaving chaos in its wake. While the Brits and Americans were distracted by kompromat and whether the Mueller Report would show dispositive proof of collusion, the Russians had already successfully launched a disinformation war to split both countries.

Have any of us stopped to appreciate the miracle of the past few weeks? The Biden Administration and U.S. intelligence helped hinder President Putin’s disinformation efforts and even the invasion itself through aggressive and real time sunlight, while NATO reorganized to a level of unanimity and strength not seen in years. It didn’t stop the war, but we finally learned how to battle dezinformatsiya. It didn’t end divisiveness, but it reminded us of what a post-World War II alliance can do with extraordinary speed and effectiveness.

As Paul points out at the end, “Reality may not be as speedy as a lie, but it is inexorable.”

Enjoy the listen and read — they are essential for these times.

Richard Levick

Listen to Dezinformatsiya — A Turning Point In The Disinformation War
Navigating Risk

“Gee, I wish we had one of them doomsday machines.”
— George C. Scott as Gen. ‘Buck’ Turgidson in Dr. Strangelove

I have always been amazed at the confident abandon with which we use words like “due diligence,” as if we can accurately and fully read and understand every risk — past, present and future. The more information we have, the more surprised we seem to become by endless eventualities.

Who would have thought that the very country that unleashed its destructive impulses on America and the West with the Gerasimov Doctrine — radically accelerating the demolition of our faith and confidence in government, courts, the media and each other—would also be the same country unifying us throughout Europe and America by invading Ukraine?

Up until very recently, we seemed ready to go to civil war over masks and pronouns, but in just a few short weeks appear to have realized that a nuclear and chemically equipped autocrat engaged in the greatest threat to democracy since World War II deserves our utmost attention.

What level of cyber warfare should we anticipate from an antagonistic Russia? What preparations should we be making in our offices and homes? High profile and High Net Worth Individuals require special prophylaxis, but it also turns out that small and medium sized businesses are considered “low hanging fruit” by Russian cyber warriors. Now is not the time to rest on our cyber laurels.

How do companies navigate their brand and marketing position at a time when a new cold and hot war has started while the struggle at home teeters between an “off with their heads” French revolutionary narcissism (all judgment, no listening) and the late World War II Senator Arthur Vandenberg’s belief that “politics stops at the water’s edge?” What will tomorrow bring?
To help us anticipate, navigate and prepare for the lightning fast and radically altering foreign and domestic risks, we recorded five shows this past week on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal that is carried globally by multiple media partners such as CommPRO and Air Asia, to help guide us through this period of danger and uncertainty.

As William Faulkner wrote, “The past is never dead. It's not even the past.” The future is seldom as we predicted or anticipated, and unintended consequences seem to always catch us by surprise.

A Paper Cyber Tiger? The Russian Cyberwar That Isn’t…Yet

Brandon Valeriano, Ph.D., a Senior Fellow at the Cato Institute, a Distinguished Senior Fellow at the Marine Corps University and formerly a Senior Advisor to the Cyberspace Solarium Commission joined me to discuss his latest articles, including A Russian Cyber War in Ukraine Was a Fantasy and Putin’s invasion of Ukraine didn’t rely on cyberwarfare. Here’s why. He outlined the clues earlier Russian cyber operations can provide, why Russia’s current cyber efforts have had little impact, their ineffectiveness on the battlefield but their effectiveness at disrupting peaceful societies, how hacktivists are engaging and why cyberwarfare is not yet decisive.

Cyber Risks In the Age of Geopolitical Disruption

Dr. Chris Pierson, Founder and CEO of BlackCloak, a pioneer of personal digital protection, spoke on air about the increased risks to CEOs, C-suite executives, High Net Worth Individuals and Ultra High Net Worth Individuals during this geopolitically tense time. He outlined particularly threatened industries, including energy, finance, aerospace and defense, and also highlighted how personal Gmail accounts are now a target, especially for those working with the federal government in some capacity.

There Are No Borders In The Digital Wars

Peter Cavrell, Vice President of Business Development & Marketing and Chuck Mackey, Director of Cybersecurity Consulting at Fortress Security Risk Management, discussed existing cyber threats and how they will only grow with the likely forthcoming Russian cyber warfare. Expect more insider threats, supply chain risks and attacks on the small and middle market firms. They also discussed how to insulate and protect your assets, including 6-Steps to Cyber Safety and an accompanying infographic.

Navigating the Risk of Corporate Political Spending

Bruce Freed, President and Co-Founder of the Center for Political Accountability, spoke on how corporations can navigate the increasingly transparent and highly challenging world of political donations. Already demanding prior to the January 6th insurrection, it is now a minefield, with PAC, 527 and association donations and alliances drawing heavy critical fire from the media, social critics, employees and even shareholders. In this age of divisiveness and heightened public criticism when the old tropes about ‘equal donations’ and ‘not agreeing with everything a politician or group stands for’ increasingly on deaf ears, corporations must interrogate the increased risks and reduced rewards of their political donations. The Center provides multiple resources for companies, including a model code of conduct, Navigating the Risks of Corporate Political Spending.

Erin Essenmacher, a long time board member, award winning film maker, strategist and journalist captured a number of my thoughts on the subject in a recent article in Directors and Boards magazine entitled How to Respond to Social and Political Issues.

The SEC and Securities-Related Regulatory and Enforcement Matters

Kristin Snyder, former Deputy Director of the Division of Examinations at the SEC and current member of the White Collar & Regulatory Defense Group at Debevoise & Plimpton LLP in the firm’s San Francisco office, joined me for a show. She discussed securities-related regulatory and enforcement matters, particularly for private investment firms and other asset managers; ESG enforcement for investment managers and private funds; a look forward at 2022 SEC trends; and more.

For those of us who wondered what it was like for our grandparents and great grandparents in the leadup to World War II, we can wonder no more. We now have a fractional sense of the risks and tumult, the courage and the entire populations reduced to proxies by an autocrat trying to establish superpower leverage. Already, it has put into perspective what it is really like when someone “makes us feel uncomfortable.”
“We shall defend our island, whatever the cost may be. We shall fight on the beaches, we shall fight on the landing-grounds, we shall fight in the fields and in the streets, we shall fight in the hills. We shall never surrender!”

— Winston Churchill speaking before the House of Commons, June 4, 1940, following the evacuation of British and French armies from Dunkirk.

Enjoy the shows.

Richard Levick

Listen to A Paper Cyber Tiger? The Russian Cyberware That Isn’t... Yet

Listen to Cyber Risks in the Age of Geopolitical Disruption

Listen to There Are No Borders in the Digital War

Listen to Navigating the Risk of Corporate Political Spending

Listen to The SEC and Securities-Related Regulatory and Enforcement Matters
Former U.S. Attorney General Alberto Gonzales

“If you prick us, do we not bleed? If you tickle us, do we not laugh?”

— William Shakespeare, The Merchant of Venice

Growing up with The Washington Post 60 years ago meant suffering through the Washington Senators and Redskins [sic], who, collectively, despite the homerun prowess of Frank Howard and the pinpoint passing accuracy of quarterback Sonny Jurgensen, mostly taught humility and sorrow.

It also meant that affairs of state were the local news. You got to know politicians the way other kids knew about baseball players. Senator Frank Church wasn’t just of the “Watergate Baby” generation and a prominent figure in American foreign policy; he was a neighbor whose wife hosted us on play dates.

My best friends and neighbors were kids named Zarni and Willfried, the children of diplomats. George McGovern’s 1972 presidential campaign office was a close D.C. Transit bus ride away. Richard Nixon’s helicopter seemed to be always flying overhead. All politics truly felt local.

When I first started working in politics at age 19, Steny Hoyer was already a well-known and highly respected Maryland state senator, all of 37, and he intimidated me so much that I could hardly look at him during our meeting in his Annapolis office. For me growing up, politicians weren’t just people devoted to public service; they were deities.

I can still remember most of those news cycles and those photos: Bus Boy Juan Romero comforting Bobby Kennedy on the floor of the Ambassador Hotel. Phan Thị Kim Phúc — the “Napalm Girl” — terrified, naked and running, having ripped off her burning clothes, fleeing a napalm attack in Vietnam.

These photos and a thousand more, capturing the “look,” are permanent fixtures in our brains. As clear as yesterday. Fear, pain, anxiety, horror, humility, humanity. There is always some incredibly raw emotion captured in those moments.

Who can look at a photo of Abraham Lincoln, Martin Luther King, John Kennedy or Lyndon Johnson and not see in their faces the immense struggles of the Civil War, the Civil Rights movement, the Bay of Pigs, the Vietnam War? We may leave history, but it never leaves us.

I have had the honor of meeting hundreds of current and former politicians over the years. A disappointing few were shockingly empty suits, but in most, you could see in their eyes the depth of their interest, concern, patriotism, passion and, sometimes, anguish.

Years ago, shortly after he left the Attorney General’s office, Alberto Gonzales was at our home thinking about his future, and I saw that look. It was the moment that you knew this was not just an icon but a human being, who, having experienced Washington’s long knives, was wondering, “What’s next?”

Nearly two decades later, the former Attorney General of the United States was kind enough to join me for a podcast on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal.

Judge Gonzales was appointed by President George W. Bush as the 80th United States Attorney General and now serves as Dean of Belmont University College of Law. He discussed his transition from government to dean of a faith-based law school and what it was like in the White House post 9/11; his views on the election and January 6th; his long-term relationship with President Bush; the importance of faith, particularly when confronting so many challenging decisions; and more. He is the highest-ranking Hispanic American in federal executive government to date. His accessibility, thoughtfulness, kindness and humility are on full display.

“The awareness that we are all human beings together has become lost in war and through politics.”
— Albert Schweitzer

Enjoy the show.

Richard Levick

Listen to Up Close and Personal With Former U.S. Attorney General Alberto Gonzales
Is China Investable for Western Companies?

“The Chinese use two brush strokes to write the word ‘crisis.’ One brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger — but recognize the opportunity.”

— John F. Kennedy

I have a special relationship with China, developed over a quarter century of business travel. At one point, my multiple annual visits to Beijing gave me a ringside seat to a metropolis, once known as a “bicycle city,” transforming into a city of eight lane highways and gleaming new Chinese-built automobiles. It is a remarkable country, with Americans still trying to figure out, “How do we compete? How do we co-exist?”

Unlike Russia, China and America are each other’s best customers and deeply reliant on each other. When Peter Zeughauser — one of the legal industry’s premier strategists — reached out and suggested a podcast with Fangda Partners, I knew we had to do a show. Fangda Partners is one of the most respected law firms in China with 700 lawyers in five cities and a focus on mergers and acquisitions, private equity, commercial litigation and capital markets.

Peter Zeughauser of the Zeughauser Group; Zili Shao, chairman of Fangda Partners and a board member on multiple international companies; Jeffrey Ding; Peng Tan; and Colin Law — all senior partners with Fangda Partners — joined me to discuss western investment and expansion in China. In this powerhouse interview, they discuss the state of the Chinese economy and China-U.S. relations, State Owned Enterprises, the Chinese
government's increasing investments in strategic industries, “Common Prosperity” to close the Chinese wealth gap, the impact of Covid on Chinese capital markets and much more.

Join us. It is a striking show on what is possible and what’s next in China.

Enjoy the show.

Richard Levick

Listen to Is China Investable for Western Companies and Investors?
“It is as certain that many opinions, now general, will be rejected by future ages, as it is that many, once general, are rejected by the present.”


I am not sure of the exact moment when we matriculate from youth to adulthood, but it must be around the time we are no longer certain of anything.

We all enthusiastically raise our hands when asked if we support free speech until someone utters something we don’t like. Then, we believe in prior restraint, shouting, canceling or some other form of protest to prove our embrace of free speech is an aspiration not a reality. The exceptions we create defrock the rule.

Over the past three quarters of a century, the U.S. Supreme Court has issued opinions to show it has evolved to embrace a robust First Amendment—a high water mark for any democracy. The stronger a democracy, the more it can handle vigorous criticism. Is that all about to change?

As 19th Century German military strategist Helmuth von Moltke wrote, “No battle plan survives contact with the enemy.” History is made not by the planners but by the moments. It diverges on a thousand pinheads and takes us down roads as divergent as Atlantis and perdition.

What would have happened if Nazi General Erwin Rommel — the Desert Fox — had found petrol in North Africa? Or if Imperial Japanese Navy Admiral Chūichi Nagumo had guessed right and properly armed his B5N2 “Kate” aircraft, which could be used either as a torpedo bomber or as a level bomber, depending on if the attack came by air or sea?
Re-arming them took 30 minutes and at the Battle of Midway this was all the time the Americans needed to turn the tide of the war. Or if General Ulysses S. Grant had not been elected President in 1868 to resurrect Reconstruction after President Andrew Johnson spent his four years in office trying to dismantle it?

Add to this list of starkly divergent potential futures the protection of journalists in pursuit of truth.

An accidental meeting on a train ride in 1919 between Justice Learned Hand and U.S. Supreme Court Justice Oliver Wendell Holmes began the remarkable metamorphosis of Justice Holmes reconsidering his views on the First Amendment. Over the next two decades the Court would find its way to interpret a more robust First Amendment, one designed to protect citizens over governments.

It was, after all, one of the framers, John Adams — tragically cheered on by one of my heroes, Abigail Adams — who orchestrated the Alien and Sedition Law to make it illegal to criticize elected officials and gave him tremendous power to define treasonable activity including writings he did not abide. Over two and a half centuries, the First Amendment has come to protect war protestors and draft resisters, Wobblies and investigative journalists — the Fourth Estate.

One of the Court’s landmark First Amendment decisions is New York Times v. Sullivan, in which the Court significantly raised the burden of proof in defamation cases. Recognizing that the Fourth Estate is necessary for a well-functioning democracy, the Court ruled that if the plaintiff was a public official, they must not only prove the normal elements of defamation but also actual malice.

The 1964 case grew out of a full-page advertisement in The New York Times published by supporters of Martin Luther King, Jr., that had criticized the police in Montgomery, Alabama for their mistreatment of civil rights protestors, but had contained some minor inaccuracies.

The Court issued a unanimous decision holding that the Alabama court’s verdict for the plaintiffs had violated the First Amendment. Libel had become a weapon of the Old South to defeat Civil Rights. At the time Sullivan was argued, there were nearly $300 million in libel actions pending — in 1960s dollars — from the southern states against news organizations.

Over the past few U.S. Supreme Court terms, we have heard justices initiate discussions on the sanctity of long settled areas of U.S. Constitutional law including Roe v. Wade, the Chevron Doctrine regarding administrative review, New York Times v. Sullivan and more.

This week, on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, I was honored to host two First Amendment icons: Floyd Abrams, Senior Counsel at Cahill Gordon & Reindel, and Chip Babcock, a partner at Jackson Walker. Floyd Abrams has been described by the late Senator Daniel Patrick Moynihan as “the most significant First Amendment lawyer of our age,” and Chip Babcock is a litigator for celebrities, networks and publishers on the most important and highest profile First Amendment issues of our time. I am not sure where history is going, but these are two figures who have made their mark.

This show addressed rising concerns by court watchers that this landmark case might be in jeopardy. Both Floyd and Chip are confident that the New York Times v. Sullivan standard will prevail, if for no other reason than Chief Justice John Roberts is a defender of settled law. Who am I to challenge the view of two of the great champions of the First Amendment? Still, I wonder...and I worry.

“…the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market.”

— Justice Oliver Wendell Holmes

Enjoy the remarkable discussion.

Richard Levick

Remembering Michael Sohn & Paul Ferrillo

“I look in the mirror now
I see that time can be unkind
But I know every wrinkle
And I earned every line
So, wear it like a royal crown
When you get old and gray
It’s the cost of living
And everyone pays
It’s the cost of living
And everyone pays”

— Don Henley and Stanley Lynch, The Cost of Living

I no longer take anything for granted, not even tomorrow.

This past week I lost two friends, Michael Sohn and Paul Ferrillo. Both so suddenly that it did not — and still does not — feel real.

I met Michael more than 20 years ago, when he was the longtime Chairman of Arnold & Porter. There was an important meeting in London, and he wanted me there. I explained that I had just left London and needed to be in the States for a speech. No problem, he responded. We will put you on the Concord and you will be back in New York three hours after the meeting is over. And that is what we did. If Michael knew something needed to be done, he found a way.
He was a dynamo, honored at the 30th Anniversary of the *Legal Times* as one of “30 visionary business leaders who turned the Washington legal community into an international powerhouse.” He was also incredibly kind and approachable.

Years later, after he retired, we would reunite on the important non-profit work he and his lovely wife Sylvia were devoted to. Since it was during Covid, we kept our conversations remote but promised to meet up for dinner as soon as the seclusion ended. When I saw on the caller ID that Michael had called the other day, I thought it was time to arrange our dinner. Instead, it was Sylvia leaving a message with the tragic news that Michael had passed suddenly earlier in the day. It is a testament to Sylvia that literally during her moment of greatest need, she was thinking of others.

I would never have guessed Michael was 81. If you wanted to know what forever young and indefatigable looked like, you just looked at Michael.

One of the strange things about the isolation of Covid is that when a person dies suddenly whom you have not seen in person for a while, it is even harder to believe. I see them in my emails and texts. Can’t I still communicate with them?

Just a few days after learning of Michael’s passing but before I could comprehend it, I received an email that my old friend Paul Ferrillo had passed away suddenly. Paul, a partner at Seyfarth Shaw, handled complex securities class actions and major data breaches and had been a friend for decades.

We had worked together on more data breaches than I can count, and I loved his vision — it was like he was the Fram oil filter salesman of data breaches. “Pay me now or pay me later.” He could see around the corner and advised his clients accordingly and with prescience.

We were working on a breach last week and I had spoken with him just days before he died. I learned a long time ago to tell the people you love that you love them, for tomorrow is promised to no one. I am blessed that I had shared my feelings with him over the years, particularly at some of his most challenging moments. But never did I imagine when I said goodbye to him last week that it would take on permanence.

Paul was a kind man who wore his emotions honestly. If you were close, you knew when his world was upside down. He always had your back and never tried to take advantage of you.

There were three certainties for Paul — the love of his wife Pat and their 12-year-old twins. Bless Seyfarth Shaw for working with Pat now to ensure support for the twins’ education.

When I was a little boy, fearing the newfound certainty of mortality due to the early loss of my mother and, not long after, a third-grade schoolmate, I began the daily ritual of prayer. It is grounding and reminds you to be humble and grateful. It also helps you more fully remember the ones you have lost and perhaps provides a chance to speak to them. It used to seem an easy enough ritual, one I perform daily to this day. But now the list of those who are gone has grown far, far too long.

As I write this, *Amazing Grace* has come onto the smart speaker. The chances of that are several thousand to one with the endless list of songs randomly selected by Alexa. Maybe it is not just we who talk with those who have passed. Maybe they talk back.

Au revoir my friends. Until we meet again.

Richard Levick
How Good Is Your Company at Managing Political Risk?

The following article by Richard Levick first appeared in *Brink*, a publication of conversations and insights from the edge of global business, on April 4, 2022.

The most oft-asked question I get from C-suite executives and board members is, “How do we navigate these rocky political shoals?” We have studied and consulted on mercantile activism for years, and while we have identified many rules, we also find that the rules change rapidly with so many exceptions that it requires extremely honest and ongoing 360-degree discussions to apply them effectively.

Companies are being forced to navigate issues publicly that impose upon them political decisions whether they seek them out or not. Sanctions are the latest and the fastest, but there are others. The SEC recently proposed climate disclosure rules, which promise to be highly complex and challenging; in response to restrictive new abortion laws in multiple states, companies are having to choose if their health insurance includes travel reimbursement for abortions; and anti-LGBTQ laws in Florida, Georgia, Louisiana, Oklahoma, Tennessee, Texas and other states are also forcing U.S. companies to take a stand. Add to that the questions of whether you leave Russia, how, to what extent, and, if you’re considering a return, how you would manage reentry.

When to Speak Out and When Not To

The tales of Delta and Disney illustrate how difficult this can be. One company was excoriated for saying something and the other for staying silent.
Delta was heavily criticized for appearing to support Georgia’s legislation to restrict voting access, when in fact, it had tried to make the legislation less onerous and had written an internal memo highlighting the changes. Delta, as the largest employer in the state of Georgia, regularly comments internally on much of what happens at the statehouse without necessarily lobbying for a particular change. Nonetheless, Delta appeared to the public to be supporting the legislation. You break the glass, you own it.

Contrast that with Disney who initially remained silent on Florida’s “Don’t Say Gay” legislation and was denounced for it by its own employees and others and has since changed its position (though it continues to remain silent in most other states where it does business and similar legislation is on the books). Darned if you do, darned if you don’t.

The bottom line is that none of the rules, including the ones below, are written in stone. Work with “a cabinet of rivals” — lawyers, lobbyists, brand experts, HR, communicators and more — so that you holistically understand the forthcoming issues. Know and trust each other now, so that in the moments that count, you have license for difficult conversations and constructive disagreement.

Don’t Be First in or Last Out

Since the invasion of Ukraine began, over 400 companies have announced their withdrawal from Russia, while others have stayed. Jeffrey Sonnenfeld and his team at the Yale Chief Executive Leadership Institute have recorded these activities, categorizing them by their level of commitment to departure and excoriating over 30 companies that have stayed in their “Hall of Shame.”

The first day the list went public, many of the Hall of Shame companies saw their stock drop 15% to 30% when the key market indexes fell by one-tenth of that.

As Sonnenfeld points out, those companies that have stayed risk becoming tarred as a number of American companies did three-quarters of a century ago for their “constructive engagement” with Hitler’s Germany in the run up to World War II. Beware, this is a scarlet letter that lasts for decades.

Unless you are planning on making this your corporate-defining moment, the best strategy for most companies leaving Russia is to be neither first nor last.

Your Brand Can Be a Buffer

All great companies struggle to go from a product to a brand to a theology. Nike, Apple, Starbucks, Marriott, the NFL — these aren’t just brands. They take on theological importance, which creates its own significant buffer. When Nike or Apple does something wrong, the first instinct is to trust them and give them the benefit of the doubt. A luxury enjoyed by few companies.

Simon Sinek’s Start with Why asks an essential question — why are you in business? Maximizing profits for shareholders and servicing your customers are no longer enough. Understand your tribe.

Nike’s advertising campaign embracing Colin Kaepernick was no accident. Nike understood exactly where its market was going and decided to embrace an icon who, as a controversial figure, was Kryptonite for most other advertisers.

Nike took on the NFL — the second most powerful sports league in the world and one of its key customers — and won. The results weren’t even close. Nike increased its market cap by billions, and the NFL did a 180 degree turn and, at least publicly, embraced diversity.

Does your company know where its market is going? Do you have patience to wait out 10 days of online vitriol and calls for boycotts, including online burning of your product? Nike did, because it knew its customers, knew the place it holds not just in customers’ heads but in their hearts, and, most critically, knew in which direction the market was moving.

B2B Companies Are Not Exempt

Since Foxconn and Takata, there is no such thing as a business-to-business company. We are all consumer brands now and have earned the “success tax.”

Any company can be the target of calls for boycotts, protests, online shaming, employee and shareholder revolts, etc., not just consumer brands. While this may feel obvious, most historically, B2B companies are largely untested under the clique lights and prefer to think “it can’t happen here.” Yet Sonnenfeld’s Hall of Shame has more than its share of B2B companies.
Our best decisions are not made when we feel the anxiety induced by inquiring reporters on deadline. Use your peacetime wisely. Test your interdisciplinary teams multiple times a year. Reverse engineer what other companies do in difficult public situations. Look forward to tomorrow’s issues — such as Taiwan — and game it out. Know and have relationships today with third party allies and NGOs.

There are two moments when an issue goes from a one-day story to a negative viral sensation. The first is the moment a decision considered a mistake goes public. The second, is when reporters ask other experts. If they pile on, you risk becoming a poster child of what not to do. Know your potential allies before you need them. There are few who will jump in the quicksand once accusations are made.

**Political Donations Are a Minefield**

One of the unintended consequences of the U.S. Supreme Court’s *Citizens United* and its progeny decisions is that while companies gained First Amendment rights, they also acquired First Amendment responsibilities.

Already challenging prior to the January 6th insurrection, political donations are now a minefield. Heretofore opaque PAC, 527 and association donations and alliances are now largely *transparent* and draw heavy and sustained critical fire from the media, social critics, employees and even shareholders. Companies have to increasingly ask the question if playing the political donation game is worth the cost.

Most of the time, a single tweet is not hugely consequential, yet the early warning on the Saudi-Emirati blockade of Qatar was uncovered through a single, suspicious tweet. If we do not understand the context, then the power to predict the future is lost in a pile of pixels.

The blinding speed and unanimity with which the U.S. and NATO applied sanctions over Ukraine is historic and remarkable. Governments, working in unison, worked at a speed few could imagine.

If this is now the speed of the possible, never has it been more important to anticipate and plan for a world that is much different than it was yesterday.
Risk Mitigation in the Age of Sanctions

“I cannot fathom why any of these companies are remaining in Russia helping the evil empire. It is indefensible and gravely troubling.”

— General David Petraeus

We have now, all of us, looked into Russian President Vladimir Putin’s eyes and we are troubled by what we see. As U.S. Senator Mitt Romney of Utah put it, he is a “man who is trying to shape the world in the image where once again Russia would be an empire.”

Like so many things today, the battlefield has changed. International diplomacy is no longer the purview of just the Madeleine Albrights, Henry Kissingers, Dean Achesons and Ralph Bunches. If you lead a company, you have long been an ambassador but now you are a diplomat too. As Eleanor Roosevelt said to Vice President Harry Truman four hours after President Roosevelt’s passing, “Is there anything we can do for you? For you are the one in trouble now.”

For the past 50 years, we have more or less followed the Milton Friedman Doctrine — “the social responsibility of business is to increase its profits.” Historically, when faced with a delicate public problem, we could issue a statement talking about our responsibility to our customers and our shareholders. Crisis averted. Today, that won’t even buy a news cycle.

Another signpost we have sped past is the age of the Lexus and the Olive Tree. Tom Friedman’s theory may no longer apply. Countries with a middle class strong enough to support a McDonald’s network do go to war with each other. There were 850 McDonald’s in Russia and 81 in Ukraine. The calculus between trade, investment, prosperity and freedom has been broken.

A half century ago, I was a young social activist and cut my political teeth on the nascent environmental and anti-Vietnam War movements and spent my first career as a grassroots organizer and lobbyist, extensively trained in Saul Alinsky methods. I dreamt of the day
when a corporate brand would have a social purpose. But like so many aspects of youth, I am not so sure anymore.

How ironic that I now increasingly long for the day when, as Sigmund Freud would say, “Sometimes a cigar is just a cigar.” The new reality, for the foreseeable future, is that brands are increasingly defined by where they stand on some topical social issues as much as they are on price or quality.

The most oft-asked question I get from C-suite executives and board members is, “How do we navigate these rocky political shoals?” We have studied and consulted on mercantile activism for years and while we have identified many rules, we also find that the rules change rapidly with so many exceptions that it requires extremely honest internal and ongoing 360 degree discussions to apply them effectively.

If the rise of the Internet has done nothing else, it has blurred boundaries. The nation’s second online bookstore — Amazon — is now the world’s largest grocery retailer. Accounting, consulting and law firms no longer have entirely separate lanes. World War II-era Senator Arthur Vandenberg’s old adage that “Politics stops at the water’s edge” is, tragically, now not always true. Politics is no longer the third rail of business. It is a part of your brand.

Companies are being forced to navigate issues publicly that impose upon them political decisions whether they seek them out or not. Sanctions not only being the latest but the fastest.

The SEC has newly issued proposed climate disclosure rules, which promise to be highly complex and challenging. In response to restrictive new abortion laws in multiple states, companies are having to choose if their health insurance includes travel reimbursement for abortions. Anti-LGBTQ laws in Florida, Georgia, Louisiana, Oklahoma, Tennessee, Texas and other states are forcing companies to take a stand. Add to that the questions of whether you leave Russia, how, to what extent and if and how you would manage reentry?

But You Said…

A case in point about how difficult all of this is, are the tales of Delta and Disney. One company was excoriated for saying something and the other for staying silent. In the case of Delta, they were heavily criticized for appearing to support Georgia legislation to restrict voting access when in fact, they had tried to make the legislation less onerous and had written an internal memo highlighting the changes. Delta, as the largest employer in the state of Georgia, regularly comments internally on much of what happens at the statehouse without necessarily lobbying for a particular change. None-the-less, they appeared to the public to be supporting the legislation. You break the glass, you own it.

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Nothing Stays in Vegas

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Is it Hegelian Dialectic time?

The seemingly boundless arcs of history are ultimately constrained by Hegelian moments which eventually define peaks and nadirs. World wars, plagues, depressions and other significant events tend to get people and governments to do extensive soul searching, re-evaluate and realign. The Russian invasion of Ukraine, which threatens to escalate into a World War II-like conflict, feels like one of those moments, which cuts through our differences and may offer unity as a silver lining. Once Vladimir Putin “makes you feel uncomfortable” it has the ability to change a lot of attitudes.

If we are indeed at one of those moments, expect fundamental attitudes to change very quickly.

Start with the Why

All great companies struggle to go from a product to a brand to a theology. Nike, Apple, Starbucks, Marriott, the NFL — these aren't just brands. They take on theological importance which creates its own significant buffer. When Nike or Apple does something wrong, the first instinct is to trust them and give them the benefit of the doubt. A luxury enjoyed by few companies.

Simon Sinek's Start with Why asks an essential question — why are you in business? Maximizing profits for shareholders and servicing your customers are no longer enough. Understand your tribe.

Nike's advertising campaign embracing Colin Kaepernick was no accident. Nike understood exactly where their market was going and decided to embrace an icon who, as a controversial figure, was Kryptonite for most other advertisers.

NIKE took on the NFL — the second most powerful sports league in the world and one of their key customers — and won. The results weren’t even close. Nike increased its market cap by billions and the NFL did a 180 degree turn and, at least publicly, embraced diversity.

Does your company have the certainty to know where its market is going? Do you have patience to wait out ten days of online vitriol and calls for boycotts, including online burning of your product? Nike did because they knew their customers, knew the place they held not just in their heads but in their hearts and, most critically, knew which direction the market was moving.

Your Customers No Longer Define You

Since Foxconn and Takata there is no such thing as a Business-to-Business company. We are all consumer brands now and have earned the “success tax.” Any company can be the target of calls for boycotts, protests, online shaming, employee and shareholder revolts, etc., not just consumer brands. While this may feel obvious, most historically B-to-B companies are largely untested under the clique lights and prefer to think “it can’t happen here.” Yet Sonnenfeld’s Hall of Shame has more than its share of B-to-B companies.

It’s Not Easy Being Green

I’ve had a number of conversations with DEI, HR and ESG officers over the years which is often accompanied by a certainty that they are wearing the white hat. Not so fast. Public narratives change quickly. Already diversity issues are splitting normally supportive and allied communities. The definition of green is changing as more Americans come to realize the supply chain for “renewables” goes straight through mines, indigenous lands and national security risks (Russia and China).

Nothing stays the same forever or even for very long. Our ideas on diversity will (and need to) significantly expand. Coal, nuclear, natural gas and other energy sources will have a period of greater acceptance due to economics and domestic production. The “S” in ESG will only mean more things in the coming months and years.
The critical take away is to always remain humble and recognize that the goal line is constantly moving. Facebook went from one of the most popular companies to the least trusted digital company in an inordinately short period of time. The brand trust you have earned is fleeting unless you re-earn it every day internally and externally. Marketing ESG and DEI is a lot different that living and evolving with it.

Use Your Peacetime Wisely

Our best decisions are not made when we feel the anxiety induced by inquiring reporters on deadline. Use your peacetime wisely. Test your interdisciplinary teams multiple times a year. Reverse engineer what other companies do in difficult public situations. Look forward to tomorrow's issues — such as Taiwan — and game it out. Know and have relationships today with third party allies and NGOs.

There are two moments when an issue goes from a one day story to a negative viral sensation. The first is the moment a decision considered a mistake goes public. The second, is when reporters ask other experts. If they pile on, you risk becoming a poster child of what not to do. Know your potential allies before you need them. There are few who will jump in the quicksand once accusations are made.

Scrub Your Political Donations

One of the unintended consequences of the U.S. Supreme Court’s Citizens United and its progeny decisions is that while companies gained First Amendment rights they also acquired First Amendment responsibilities.

Already challenging prior to the January 6th insurrection, political donations are now a minefield. Heretofore opaque PAC, 527 and association donations and alliances are now largely transparent and draw heavy and sustained critical fire from the media, social critics, employees and even shareholders. In this age of divisiveness and heightened public criticism and when the old tropes about equal donations and not agreeing with everything a politician or group stands for falling on deaf ears, it raises the question for corporations about the increased risks and reduced rewards of political donations.

Is there a politician who won't take a meeting with a large company, certainly one with jobs in their district? Companies have to increasingly ask the question if playing the political donation game is worth the cost.

To help companies navigate the risk of corporate political spending, the Center for Political Accountability provides multiple resources including a model code of conduct, Navigating the Risks of Corporate Political Spending.

Canaries in the Coal Mine

We are in love with the “new shiny.” For a while, “Big Data” was just that, the new shiny object. But big data alone is just math if it is not analyzed in context. It takes a team that understands social trends, interest groups, history, influencers, legal and business issues and more.

Most of the time, a single tweet is not alertive yet the early warning on the Saudi-Emirati blockade of Qatar was uncovered through a single, suspicious tweet. If we do not understand the context then the power to predict the future is lost in a pile of pixels.

It Gets Faster and Faster

The blinding speed and unanimity with which the U.S. and NATO applied sanctions is historic and remarkable. Governments, working in unison, worked at a speed few could imagine. If this is now the speed of the possible, never has it been more important to anticipate and plan for a world that is much different than it was yesterday.

(A shorter version of this article originally ran in BRINK)
The Lusitania Sinks Again

“Is there anything more beautiful in the world than to sit before an open window and enjoy nature, to listen to the birds singing, feel the sun on your cheeks and have a darling boy in your arms?”

— Anne Frank, from her diary, April 19, 1944, three months before the family was arrested

As Clint Eastwood said, “Tomorrow is promised to no one.” The world is anything but static. Perhaps we should eliminate our generational demarcations — Z, Millennials, X, Baby Boomers — and just refer to us all as the “Whiplash Generation.”

The Buddhists teach us the importance of changing perspectives and seeing the world through the eyes of others. They are right, of course, but these days are so remarkably overwhelming that changing perspective is an endless marathon, and standing still is a recipe for futility.

I cut my political teeth on the anti-Vietnam War movement, with the draft ending 18 months before I was eligible. I thought 18 months an eternity at the time but still, it gets your attention. It had occurred to me that I might be learning how to use an M-16 the following fall, rather than signing up for Freshman English.

I still recall the summer days at sleepaway camp when the slightly older male counselors were awaiting lottery draft numbers. Death was in the luck of the draw.
When sacrifice gets real, then you know what sacrifice is. Until then, it’s just talk. If we are enlightened but not on the front lines, it is empathy. It’s not the same, but a very good place to start.

Decades later, I was enthralled by Mikhail Gorbachev, Perestroika, Glasnost and the end of the “Evil Empire,” not because I hated the Soviet Union, but because they ended the Cold War and seemed, in the immortal words of John Lennon, to “Give peace a chance.”

Russian and Soviet history, going back centuries, is not nearly as moderately benign as I once thought, though I had been significantly influenced by the fact that they had been our ally in World War II against the Nazis — the supreme evil — and suffered 27 million casualties.

Seventy-five years later, they have become, on a global scale, the hegemonic demon. It is time to update our perspectives.

Ever since I read Molly McKew’s brilliant series of articles in Politico five years ago about the Gerasimov Doctrine, the five part information warfare doctrine to create the very kind of increasingly violent political division in America that we are experiencing, I have been quoting it in articles and referencing it in speeches. Soon after her articles appeared, I had Molly — who has advised Georgian President Mikheil Saakashvili’s government and former Moldovan Prime Minister Vlad Filat — on a show I was periodically co-hosting on Sirius XM. One does not forget warfare doctrines which turn countries upside down with few shots fired.

The only problem? The Gerasimov Doctrine does not exist. That is no slight to Molly. Most of the world that is aware of its effectiveness is equally convinced of its existence as a doctrine. In a recent Foreign Policy article, Mark Galeotti, principal director of the consultancy Mayak Intelligence, humbly took responsibility for our collective misunderstanding.

In the spring of 2013, based on a speech by Russian General Valery Gerasimov about the use of propaganda and subversion to destroy “a perfectly thriving state...in a matter of months and even days,” Galeotti wrote a blog using the word “doctrine,” which would eventually go viral and lead to our misunderstanding.

In the years since, we have witnessed the annexation of Crimea, the Donbass war and the war-crimes-infused invasion of Ukraine. Our mistake in misunderstanding the speech and elevating it to a doctrine is that, as Galeotti points out, “Gerasimov was actually talking about how the Kremlin understands what happened in the ‘Arab Spring’ uprisings, the ‘color revolutions’ against pro-Moscow regimes in Russia’s neighborhood, and in due course Ukraine’s ‘Maidan’ revolt. The Russians honestly — however wrongly — believe that these were not genuine protests against brutal and corrupt governments, but regime changes orchestrated in Washington, or rather, Langley. This wasn’t a ‘doctrine’ as the Russians understand it, for future adventures abroad: Gerasimov was trying to work out how to fight, not promote, such uprisings.”

Galeotti’s piece is essential reading, and the Russian invasion is no less threatening nor momentous without a “doctrine” — think Archduke Franz Ferdinand’s assassination — but the Russians don’t have a single organizing principle. They may be even more dangerous because they do not have a coordinated plan, and what they do have is often being implemented by “a bewildering array of ‘political entrepreneurs’ hoping that their success will win them the Kremlin’s favor,” as Galeotti writes. No wonder we cannot figure out Putin’s long game.

This past week, for In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, I was interviewing “The Man Who Correctly Predicted the 2022 Russian Invasion of Ukraine,” Dmitri Alperovitch. He is a Russian-born American computer security industry executive, co-founder and former chief technology officer of CrowdStrike, and the Co-Founder and Chairman of Silverado Policy Accelerator. He also served as a special advisor to the Department of Defense and currently serves on the Department of Homeland Security Advisory Council. He predicted the Russian invasion long before many other experts thought it was fait accompli and corrected my misunderstanding of the Gerasimov Doctrine. Being the CEO of a crisis communications firm, it seemed prudent to “run to the light” and admit my error.

As Alperovitch points out, there is no winning this war for Russia, and not really for NATO and the U.S. either. No-fly zones will likely rapidly lead to ballistic, if not nuclear, exchanges. We will, however, likely end up with a world once again of two superpowers — the U.S. and China — with much of the world divided into NATO and non-NATO alliances. Those seeking simple solutions are either naive or nakedly ambitious.
To help us navigate the corporate and business risks of this escalating war — including cyber risks, international sanctions and the potential for blowback — we hosted a series of podcasts this week, including:

This Is Not the End of Globalization as We Know It with Harry Broadman, Chair, Emerging Markets and Partner, Berkeley Research Group

U.S. Companies, Sanctions and the Ukraine with Michael Parker of Ferrari & Associates

Small and Medium Sized Businesses Beware: The Recent Rise of Cyber Attacks Originating from Russia and China with Jim Lippie, CEO of SaaS Alerts

The Home Front—Dealing with Cyber Legal Risks Stemming from Russia’s Invasion of Ukraine with Kenneth Rashbaum, partner with Barton LLP

When World War I began in 1914, it was “over there” for most Americans. Only when the passenger ship Lusitania was sunk in 18 minutes by a single torpedo from a German U-20 submarine off of Old Head of Kinsale, Ireland, on May 7, 1915, did the world become outraged. Two years later, American Doughboys were, in fact, over there.

While there was no conspiracy, both Winston Churchill — then First Lord of the Admiralty — and the Admiralty itself were well aware of both the general and somewhat specific dangers to the Lusitania. The Germans had advertised the dangers to the Lusitania in British newspapers before the ship left port. With destroyers in dangerously short supply, the Admiralty sent neither an escort nor provided more detailed intelligence.

Churchill and the Admiralty knew that the rise of unarmed merchant ships being sunk by the Germans would eventually build international sympathy and hopefully sacrifice. More than one hundred years later, it is hard to determine where on Hobson’s choice we should come down — expediting the end of the First World War or the Lusitania’s 1,198 civilian casualties, including 128 Americans? A century does not seem enough time to make up one’s mind.

If nothing else, these days we are learning new respect for the post-World War II years of economic and democratic expansionism. How lucky we were.

Recent events have put our domestic and personal problems in perspective. At the end of the day, we are just a very large asteroid floating through space. It takes immense cooperation, courage, selflessness and sacrifice for us to run the place. Are we up to it?

What will be our Lusitania moment when we realize more is required of us?

Enjoy the shows and stay safe.

Richard Levick
Win By Any Means Necessary

“More tears are shed over answered prayers than unanswered ones.”
— Truman Capote

What’s enough? When are we satisfied? The brilliance of capitalism is that it keeps us motivated — ever creating, ever expanding. Its fatal flaw is that, for many of us, we are never satisfied. There is always more. Just one more thing to make us fulfilled and happy. We even need to hire therapists to confirm that we are content with being content.

This past week, we hosted bestselling historian Garrett Graff on Real Washington, the weekly program I cohost with former CNN Legal Analyst Michael Zeldin of That Said with Michael Zeldin on the In House Warrior podcast. I know I should have been thinking of other historical issues when we spoke to Garrett about his new, highly acclaimed book Watergate: A New History, but that is the thought that kept running through my mind. Why wasn’t President Richard Nixon ever satisfied?

The interview — and the book — are fascinating as Garrett remarkably breaks new ground. As Len Downie Jr. of The Washington Post wrote, “Do we need still another Watergate book? The answer turns out to be yes — this one.”

Watergate was not just a break-in. It was a state of mind that included multiple illegal acts over a course of years leading up to the 1972 election. As Nixon would tell his senior staff, “To win by any means necessary.”

One of the great ironies of the 1972 election is that Nixon beat George McGovern in a landslide, taking 60.7% of the popular vote, carrying 49 states, winning 521 out of 538 electoral votes and becoming the first Republican to sweep the South.
I know hindsight is 20-20, but even at the time, the race never seemed close. It was Nixon's paranoia and insecurity which led him to do the unthinkable, and it was all absolutely unnecessary.

Nixon was a complicated man, but I always thought the late historian Stephen Ambrose captured him brilliantly in the last lines of his three-volume set on the late president. ‘Nixon ran for the two highest offices in the land five times and won four of them and still thought himself a loser.’ When is enough, enough?

The thing about Nixon — and most of us — is that the road to perdition is built in inches. It starts with the smallest off-center thing and then grows, even without us being fully conscious until, suddenly, we are in Dante’s inferno.

I have been honored to meet and interview two key Watergate figures: former Special Counsel to President Richard Nixon, Chuck Colson, for my old Forbes column, and former Nixon White House Counsel, John Dean, for an In House Warrior podcast.

For both of them, their post-Watergate lives were regenerative. The late Chuck Colson delved deeply into faith and helping others through his Prison Fellowship. John Dean — who, after pleading guilty to obstruction, courageously and methodically testified against Nixon — has spent a lifetime committed to integrity. We are measured by what we do after the fall.

Truman Capote, one of the greatest writers of all time, destroyed his close lifelong friendship with Harper Lee after Lee’s To Kill a Mockingbird became a best-seller. He could not control his jealousy, even with his childhood friend. No matter how much we have, why is it never enough?

Are there times when we are Nixon or Capote-like, or, even for a while, early Colson or Dean-like, going along, before we count our blessings and do the right thing?

The great irony about losing — not that I would suggest it become a habit — is that it gets us closer to satisfaction and contentment when done in moderation, and that we learn from it. The more we have, the more we fear losing.

There comes a time when we realize the things we want most of all aren’t things. It has been at least 35 years, but what I wouldn’t do to be out in the backyard, having a catch with my dad one more time. One more time.

Enjoy the moments.

“Not necessity, not desire — no, the love of power is the demon of men. Let them have everything — health, food, a place to live, entertainment — they are and remain unhappy and low-spirited: for the demon waits and waits and will be satisfied.”

— Friedrich Nietzsche

Richard Levick

Listen to Real Washington With Bestselling Historian Garrett Graff
Managing Through an Angry Marketplace

“Sir, your Grace’s displeasure and my imprisonment are things so strange unto me, as what to write, or what to excuse, I am altogether ignorant...And to speak a truth, never Prince had wife more loyal in all duty, and in all true affection, than you have ever found in Anne Boleyn…”

— Final letter from Anne Boleyn to King Henry VIII
from her prison in the Tower of London

After being falsely blamed for King Henry VIII’s break with the Catholic Church and of infidelity, incest and seduction by witchcraft, Queen Anne Boleyn was beheaded. It was, of course, powerful gaslighting, gleefully engaged in not just by the King, but by the insiders of the Royal Court. Sensing her weakness, they piled on and, among other things, referred to the Queen as “the concubine.” The King had eyes for Jane Seymore.

It is nearly five hundred years later, and yet I wonder how much we have evolved. Social media, it seems, has made us all members of a very large Royal Court, piling on, selective with facts and reducing epistemology into a debate over triggering. How does one achieve wisdom without debate?

With only a few historic exceptions — 1907 and World War II come to mind — corporations have largely stayed out of politics. Today it is no longer possible to “avoid politics.” Politics is coming for your company. The now almost certain reversal of Roe v. Wade is just the first in a series of Supreme Court decisions which will change what we thought was well-settled. One needs no imagination to see how Congress and states are increasingly using companies — once longtime allies — as targets. Survival and success depend on planning for these changes.
Corporations such as Disney, Delta, AT&T and hundreds more are being pulled into the maelstrom, often regardless of their actual policies or positions. Today it is no longer possible to “avoid politics.” Politics is coming for your company. Survival and success depend on planning for it.

If our recent forbearers of the World War II generation were the “Greatest Generation,” our current tribal divisions make us almost the perfect opposite. We see the possible and put it out of reach.

There is no perfect strategy, but there are a number of things that companies can do to reduce exposure and avoid pushback from an angry public. Here are a few of them:

1. Blow up your silos. Integrate teams so that legal, investor relations, public relations, brand, HR, advertising and others work together seamlessly and see the world through a lens that includes an understanding of law, politics, business and history. Adversaries are increasingly grassroots organizations, not just competitors, the plaintiffs’ bar or regulators. They play by different rules.

2. Track issues using human intelligence over AI so that trends are instantly understood and anticipated before they become public issues. Too many companies rely just on “Big Data” without an understanding of the history or politics that dictate when a single tweet means a movement among others that are to be ignored.

3. “Know ‘em before you need ‘em.” Build your third-party allies now, during peacetime. In the early days of a rising issue, potential critics are looking to their trusted icons to determine how they will respond. Having dependable relationships with nonprofits, think tanks, opinion writers, former members of congress, academics and others with a tribal following can be a powerful — and sometimes last — line of defense.

4. See your company as your critics do. Understanding their perspective can help you anticipate why positives are perceived as negatives and vice versa. Seeing the world differently empowers you to become a change agent rather than thinking that more effective “messaging” alone will change minds.

5. Work to move your brand to a theology. Nike, Apple, Starbucks, Marriott and a few other corporations can more easily navigate crises because their customers and stakeholders feel that these companies are part of their own identity. How are you working to become part of the hearts and minds of your customers and stakeholders?

6. Plan for the long term. If you know your authentic brand, know who your new customers are going to be and know where the market is going, you can more easily make sacrifices and endure criticism.

The market of fairness and reason has been replaced by one of anger and guilt-by-accusation. We cannot navigate these rocky shoals by playing Whac-a-Mole. Instead, we need a multidisciplinary, long-term understanding of where the market is going and the discipline to abide by it.

“A lie can travel halfway around the world while the truth is putting on its shoes.”
— Mark Twain

This article will be published next week in the University of Georgia Crisis Communication Think Tank’s 2022 e-booklet Power of People.
The Scarlet Letter

“When the founders wrote ‘We The People’ in the preamble, they did not have in mind the majority of America’s citizens.”

— Justice Thurgood Marshall, from a 1987 speech

Spoiler Alert: I am pro-choice but am also a strong supporter of religious liberty. I appreciate the outcome of Roe but always agreed with the late Justice Ruth Bader Ginsburg that a different grounding should have been found for abortion rights, and with Sandra Day O’Connor that Roe is not always well-reasoned and has a time bomb built in — a viability standard which would always get shorter with the advance of science.

The problem with infidelity is not so much the act but the loss of trust.

The leak of Justice Samuel Alito’s first draft of Dobbs v. Jackson Health Organization is an act of unfaithfulness to the U.S. Supreme Court’s historic norms and is one more destructive blow to a country based on a voluntary experiment known as democracy.

This tragic blow is instantly superseded by the strikingly broad language in Justice Alito’s draft opinion which marks, all at once, a threat not only to safe and legal access to abortion, but to stare decisis, the right to choose one’s consensual sexual partners (Lawrence v. Texas), the right to marry a person of the same sex (Obergefell v. Hodges), birth control (Griswold v. Connecticut and Eisenstadt v. Baird) and interracial marriage (Loving v. Virginia). None of these rights were recognized at the time when the 14th Amendment was ratified in 1868. For that matter, our expectation of privacy and any right not specifically enumerated in the Constitution may soon be under threat as well.

Increasingly more laws are treating a fetus as a person and reducing the rights of women. Pregnant women who have been in car accidents, fallen down the stairs, failed a drug test as a result of eating a poppy seed bagel, took doctor-prescribed legal drugs during their pregnancy, and have given birth to a stillborn have been charged with crimes including manslaughter.
To add salt to the wound, in his sweeping leaked opinion, Justice Alito resurrects Sir Matthew Hale, a 17th-century jurist who conceived the notion that husbands cannot be prosecuted for raping their wives, devised instruction to jurors to be skeptical of reports of rape — which survived him until the 1970s — and sentenced women to death as witches on Gallows Hill in Salem. Justice Hale’s influence on American jurisprudence had long been in decline…until now.

Justice Alito also cites 13th century English cleric and jurist Henry de Bracton, who in one treatise wrote that if a person has “…struck a pregnant woman, or has given her poison, whereby he has caused an abortion, if the foetus be already formed and animated … he commits homicide.” Justice Alito neglected to cite the parts where de Bracton goes on to write that “Women differ from men in many respects, for their position is inferior to that of men” or that “…those condemned to be burned alive ought not to be injured by floggings, whippings, or tortures, since many perish while under torture.”

This Court appears to be on the verge of splitting the states into rights and crimes in a way it has not since the Dred Scott v. Sanford decision in 1857, when the country was divided into slave and free states. In Dred Scott, the Court ruled that Black people were “beings of an inferior order” and “so far inferior that they had no rights which the white man was bound to respect and that the Negro might justly and lawfully be reduced to slavery for his benefit.”

Justice Alito and at least four other sitting Supreme Court justices pride themselves on being originalists — a trend that can be traced to Robert Bork’s “Neutral Principles and Some First Amendment Problems,” published in the Indiana Law Journal just two years before Roe was decided. As Harvard professor, author and journalist Jill Lepore wrote, “There is no mention of [abortion] in a four-thousand-word document crafted by fifty-five men in 1787. This seems to be a surprise to Samuel Alito.”

To help us wade through the legal ramifications, this week I interviewed constitutional scholar and Supreme Court watcher Steven Schwinn — a Professor of Law at the University of Illinois, Chicago, and the author of Constitutional Law Prof Blog — on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal.

Will Dobbs ultimately reduce women to the scarlet letter? We are all now collectively holding our breath for what is surely not the last shoe to drop. To the originalists, be careful what you wish for. The slippery slope is far slicker than you realize.

Enjoy the listen.

Richard Levick

Listen to Overturning Roe v. Wade
“Unhappy is the land that needs a hero.”
— Bertolt Brecht, Life of Galileo

We are an over-poll society, a fact which subsequently influences politicians to prefer to follow rather than lead. Yet, how is it possible that up until U.S. Supreme Court Justice Samuel Alito’s draft in *Dobbs v. Jackson Women’s Health Organization* leaked, only 20% of Americans thought Roe v. Wade was in danger of being overturned? It is like looking at a Monopoly game board and not recognizing that it is a square.

It is time for companies to think deeply about their positions on reproductive rights, health care as a political issue, same sex marriage and related matters. History sometimes moves backwards — one court watch referred to the leaked opinion as being akin to overturning *Brown v. Board of Education with Plessy v. Ferguson* — and it is going to be ever more difficult for companies to stand on the sidelines.

While few companies have yet to see this as “a business imperative,” as Levi Strauss uniquely argued immediately after the leak, they will soon. Taking sides on the most problematic issues of the day may not be advisable, but it may also be unavoidable. Companies should be using their peacetime wisely to plan and determine what and when to implement. Ten recommendations follow to help start the process:

1. **Understand these times:** For the foreseeable future — likely at least for a generation — understand that the Court will not be shy about overturning long-held norms nor concerned about winning popularity contests (historically this has often been a virtue). Surrounding yourself with decision makers who habitually look backwards is not going to be helpful in making critical decisions during these unprecedented times. You may choose to say and do nothing on choice, birth control, same sex marriage, etc., but do so out of a careful, multidisciplined analysis, not because “it is the way we have always done things here.”
2. **Where to locate?** Where you open your next establishment is no longer limited to the tax and regulatory rubric. Anti-choice states that criminalize currently legal behavior will not only impact your current work force but your future one as well. Since the “Pill” was approved by the Food and Drug Administration almost exactly 52 years ago, women have entered the workforce at 11 times the rate they did prior to its approval. While access to birth control and abortion are by no means the only reasons why women entered the workforce in large numbers, their impact cannot be underestimated. Already college age students and their parents are evaluating their college choice on whether their daughters might become a criminal. Consider recruitment in the coming years.

3. **Understand your workforce:** Levi’s acted in part because of its substantial female workforce and large female customer base. Unionized or not — and increasingly employee activism is coming as wildcat actions rather than organized labor — understand the thoughts and feelings of your employees. You may not always be able to lean in, but the more accommodating you are on other issues the more room you will have with reproductive matters.

4. **Where is the market going?** Nike embraced Colin Kaepernick because they understood where the market was going and were willing to leave smaller groups of traditional customers behind. The question for you is not where your market is now, but where it is going.

Sacrifices will be required. No matter your position or whether you take no position at all, some constituencies will be offended. In this day and age, threats of boycotts are seldom realized, but neither is the hope of pleasing everyone. There will be no unanimity amongst employees, customers or critics, so do not let the perfect be the enemy of the good.

5. **Your political contributions are transparent:** Most corporate political contributions are no longer opaque. It is increasingly difficult to stake out positions while simultaneously funding politicians with opposing views. There is a 100% chance you will be exposed for contributions inconsistent with publicly expressed corporate views as there are now publications and NGOs that study these political contribution records and make them public. Traditional journalists closely follow their work.

For as little as companies receive in return for political contributions, rethink your strategy. Either align your political contributions or make none at all, like IBM. Never has doing the right thing been less expensive.

6. **Plan for the long haul:** The division over **Roe** is five decades old; the division in the country is a fifth of that, but both will get worse before they get better. This is not a “lipstick on a pig” moment. Neither play Whac-A-Mole with this issue nor think that you can get away with hypocritical or superficial positioning. Whatever you do, build it as part of a long term strategy.

7. **Listen:** In these challenging days, conversations between people with sincerely held pro-life and pro-choice positions finding common ground are among the most inspiring moments. Explore this common ground and see if it can provide you platform to remain both neutral and helpful, if that is the position you want to stake out.

There are lots of ways to carve out these issues. Have robust conversations with diverse leaders in your firm, including HR, diversity, legal, insurance, brand, medical, employees and more to determine what is the very best way to address reproductive rights and sexual preference issues and carve out a strategy that works best for your company. Build a communications strategy around it, rather than vice versa. This is not just a legal or political issue and should not be internally addressed as if it is.

8. **Your brand will be defined by these decisions:** Why is your company in business? It is no longer just for shareholder profit and customer satisfaction. The more senior executives understand why they are in business the more easily they can carve out positions on these challenging issues. Starbucks has always been “the third place.” Apple was always for the creative in us. Understanding who you are has never been more important. If you have not already after DEI, ESG, #MeToo, global warming and more, it is time for a 360 degree review of the totality of your brand.

9. **Don’t be first or last unless you want notoriety:** If you want to get noticed — and there can be great value in that — then be first to win the media coverage. Otherwise, be anywhere but last.
10. **Be sincere and authentic:** Chick-fil-A's since-largely-abandoned anti-LGBTQ positions never inspired organized resistance because they were based on authentic and sincerely held as well as well-articulated religious beliefs. Sincerity and authenticity may not be Kevlar, but they go a long way in defining who activists are going to target.

Whatever you do, *Dobbs* will not be the end of challenging public issues for corporations. Plan for a series of challenging decisions over the coming years, build your strategy comprehensively, and be forward-looking. What you do next is going to have more impact than all of your advertising, marketing and political contributions combined.

There is a *non-scaling fence* around the Supreme Court of the United States. It is a shocking admission of where we are as a country. A country, that just a century and a half ago had erected a monument on its shores as a beacon to “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!” Unless you’re pregnant.

Enjoy the listen.

Richard Levick

*Listen to Overturning Roe v. Wade*
It Can Happen Here

“A country that tolerates evil means—evil manners, standards of ethics—for a generation, will be so poisoned that it never will have any good end.”

— Sinclair Lewis, *It Can’t Happen Here*

I am a child of “The Great Society,” President Lyndon Johnson’s call to use the country’s post—World War II prosperity to “enrich and elevate our national life.” With an overwhelming majority in Congress, he was able to sign into law 84 pieces of legislation, including the Civil Rights Act of 1964, the antipoverty Economic Opportunity Act of 1964, the Food Stamp Act, the establishment of Head Start, and The Higher Education Act of 1965, which, among other things, provided low-interest loans to students. It was quite the time.

I am also a student of the Milton Freidman approach that “The social responsibility of business is to increase its profits.”

So here we are, on the horns of a dilemma. What, we wonder, do we want our corporations to be? Purveyors of products and services, providing shareholder value or weighing in on political positions and exercising a broad level of environmental, social, labor and other responsibilities that ultimately define us? We are what we stand for.

There are two great truths we have learned about the politicization of all things over the past few years. First, that divisive politics, which have shaken this country to its roots, have now spread to the boardroom; and second, that no company is immune. Neither silence nor leadership guarantees that you will successfully manage the arduous path of the newly bellowing “Roaring 2020s”

Companies that seemed immune to activists and political criticism are finding themselves in challenging territory — AT&T, Delta, Disney, McDonald’s and Nike, to name but a few. About the only thing we know for certain is that inconsistency and being too slow to respond to the moment are recipes for desperately unwanted attention and worse.
In this space, we have written extensively about rules and recommendations for companies, both public and private, and how they can best navigate the new normal. While there are many other recommendations, at the top of the list are three critical points:

• Use your peacetime wisely. There is no better time than now to address what is coming next. If you wait until you are in the crosshairs, it is too late. Hope is not a strategy.

• Understand why you are in business. Shareholder value and satisfied customers are a foundation but no longer a purpose.

• Involve multidisciplinary teams that have business, historical, investor relations, social media, legal, branding and other skills. Corporate teams that are siloed, as most are, will assume that each challenge is a nail in search of a hammer. This is a moment for wise, collective counsel. Activists deliberately pick targets that reside between silos, where companies are most vulnerable.

Looking for more clarity, this past week on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, I interviewed my old friend Dr. Tony Jacques, author of Crisis Counsel: Navigating Legal and Communication Conflict, on his latest article, “When Should Corporations Take A Stand On High-Profile Social Issues?” What should companies do about these issues when shareholders, customers, employees, stakeholders and politicians are often pulling in different directions? Looking at Disney, Levi Strauss, Nike, Ben & Jerry’s, BMW and more, this show is designed to help companies navigate these challenging issues.

Tony suggests there are several key rules, including the business relevance of the issue, corporate consistency, carefully selecting your social issues, and the value and risk of saying nothing.

Also this past week, to try and gain some historical perspective, on the weekly show Real Washington on In House Warrior — which I cohost with former CNN Legal Analyst Michael Zeldin of That Said With Michael Zeldin — we interviewed bestselling author David de Jong about his new book Nazi Billionaires: The Dark History of Germany’s Wealthiest Dynasties. As great as companies like Allianz, BMW, Daimler-Benz, Porsche and Volkswagen are, their paths to extraordinary success and those of their dynastic families go right through the Third Reich. In this show and in his book, David explores the families, their arrangements with Nazis — including Adolf Hitler — and how they profited from historic tragedy. Filled with lessons for today’s corporations facing so many challenging issues, David suggests, “Be mindful of history.”

There are at least three lessons from his interview:

• Whatever you do, it will eventually become public.

• Your actions today will be viewed through the lens of history.

• If you stick with the Milton Freidman approach, while you will not be immune to criticism or history, it is at least a safe place to start your internal conversations.

Also this week, Jeff Berkowitz of business intelligence firm Delve authored a very thoughtful piece for companies about the Roe v. Wade dilemma, which is making the issue of corporate positions on social issues all the more prescient.

There are so many variables for each company that the best strategy involves recalling the lesson of the Zen master and the little boy, as articulated in Charlie Wilson’s War: “We’ll see.” Every company, every situation, every jurisdiction, every moment in time is different and requires baking a fresh cake. With so much at stake, give your company plenty of time — and multiple perspectives — to game out these decisions.

This is not the first nor the last time we will be writing on these challenging and evolving issues. As for specific advice, “We’ll see.”

“There are those timid souls who say this battle cannot be won; that we are condemned to a soulless wealth. I do not agree. We have the power to shape the civilization that we want. But we need your will, your labor, your hearts, if we are to build that kind of society.”

— President Lyndon Baines Johnson, May 22, 1964, in his graduation address at the University of Michigan

Enjoy the shows.

Richard Levick

Listen to When Should Corporations Take a Stand on High-Profile Social Issues

Listen to Nazi Billionaires: The Dark History of Germany’s Wealthiest Dynasties
Let Her Sing

“The arc of the moral universe is long, but it bends toward justice.”
— Martin Luther King, Jr.

How do we find the strength to keep going? I know from so many recent conversations that I am not the only one to have those days when the fatigue will not dissipate and getting out of bed feels like fighting gravity.

Collectively, we have started to appreciate what was once unimaginable — the pain and anguish of our grandparents and great grandparents, who, if they were born at the right time and right place, spent their first 50 years suffering through the Great San Francisco earthquake, World War I, the 1918 flu epidemic, the Great Depression and World War II. If they were lucky, over that time they got maybe a decade of prosperity which must have felt like an aberration.

If 9/11 and Covid burst our collective sense of security, then the last few years have rocked our very sense of hope. We have been shocked to learn we are not immune. Mass murders in Buffalo, Uvalde and 300 more shootings over Memorial Day weekend alone, killing 130 people; January 6th; George Floyd; economic fears; the war in Ukraine; the greatest existential threat to democracy since the Civil War; and, of course, endless Covid and its health care, supply chain and economic disruptions. To say the least, it has not been an easy time.

When my father returned from the Korean War, still a young man, he understandably found it hard to date. He had seen too much. The loss of so many friends, sometimes standing next to him when they were blown away. After some years, he met and married a beautiful and wonderful woman who gave him renewed hope and my sister and me. As life is often cruel and unfair, at 25, she passed away suddenly on Christmas Eve, 1961. A few days after the funeral, he went with my mother’s parents, my six-year-old sister and the four-year-old me to Atlantic City, then a quiet town, to spend some time mourning and beginning the long, slow process of recovery.
Poolside, my father saw a priest and asked if they could walk together, “Even though we are of different faiths.” When my father asked the priest how — after he had witnessed so much carnage in Korea and now the sudden loss of his young wife — he could keep going, the priest stopped and turned my father around. He pointed to my sister and me and said, “You don’t have a choice. You keep going for them.”

Hope is where we find it.

Victor Frankl, the Austrian neurologist, psychiatrist, philosopher, writer and Holocaust survivor developed the theory of Logotherapy — “The search for meaning even amidst suffering can constitute a potential solution to human suffering.” In a word, hope.

One hundred years ago this week, we dedicated the Lincoln Memorial to Abraham Lincoln, “The Great Emancipator.” Just over a decade after its opening, the Daughters of the American Revolution, in an act that lives in infamy, denied African American opera singer Marian Anderson the opportunity to perform close by in DAR Constitution Hall because of her race. Not to bend to injustice, Howard University, Eleanor Roosevelt, FDR, United States Secretary of the Interior Harold Ickes and others worked their political muscle, and on April 9, 1939, she sang from the steps of the Lincoln Memorial in front of 75,000 people — 25 times the capacity of Constitution Hall. To injustice, we respond.

On those days when fear strikes and oppression overwhelms us, listen to Marian Anderson sing *Ave Maria* from those steps. This is what it sounds like to hear the angels sing.

From the embattled steel plant in Mariupol, Ukraine and the 21 crosses in front of Robb Elementary School in Uvalde, Texas to D.C. Police Officers Daniel Hodges, Eugene Goodman, Mike Fanone and Christina Laury who defended our Capitol on January 6th and the hundreds of unsung frontline Covid healthcare heroes, it is our job to offer solace, see the best and keep hope alive.

Rejoice in the music and be your best self. You are needed.

Richard Levick
Loss & Hope

“Ah death. A change of clothes.”
— The Dalai Lama

What we remember are the stories. It is what holds us together. Families. Communities. Countries.

I am pretty sure Santa was not there at the creche and that George Washington did not fell his father’s cherry tree, but these stories give us a foundation and commonality which holds us together.

When I was in second grade and just starting to develop my own story of the world, my teacher passed away from cancer after a valiant fight. Like my mother, just three years earlier, my teacher was struck down in her twenties. I turned to my father and with the piercing wisdom of a seven-year-old, asked, “Why do all the people I care about die?” Unbeknownst to even myself, I was preparing for a lifetime of loss.

If you live long enough, it’s a good skill to have.

This week, the January 6th Committee will begin its televised report, in a made-for-television production which is apparently necessary in an age when reading, fact gathering and the ascension to wisdom have gone out of style.

Since 9/11, we have learned that we are no longer immune from foreign attacks on our shores. In 2008-2009 we lost our faith in ever-upwardly mobile economies. The pandemic taught us that we are susceptible to communicable diseases that we had mythologized as being limited to far off places. On January 6th we recognized that the miracle of the peaceful transition of power could no longer be taken for granted.

No wonder we are afraid.
Reasons for Fear

It was a busy week on In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal.

I interviewed Kathryn Kolbert, who has a long and distinguished career advancing women's rights and is the lawyer who argued Planned Parenthood v Casey before the Supreme Court. The case overturned a Pennsylvania law that required spousal awareness prior to obtaining an abortion and was found invalid under the Fourteenth Amendment because it created an undue burden on married women seeking an abortion.

Ms. Kolbert, who is the former CEO of People for the American Way and the creator and executive producer of NPR's Justice Talking, discussed the Dobbs leak and the likely overturning of Roe v Wade. She was emphatic about the political reality that abortion rights will no longer be found in the courts. Political action is the only remaining route.

I also interviewed election law Professor Richard Hasen, who is the Chancellor's Professor of Law and Political Science at the University of California, Irvine and the Co-Director of the Fair Elections and Free Speech Center. He is a nationally recognized expert on election law and campaign finance regulation; the co-author of leading casebooks in election law and remedies; named one of the 100 most influential lawyers in America by The National Law Journal; author of the recently released book Cheap Speech: How Disinformation Poisons Our Politics—and How to Cure It and writes the often-quoted Election Law Blog.

We discussed election law from the Florida election recount through the recently leaked Steve Bannon designed “Precinct Strategy,” — a four-part campaign to be unleashed for the 2022 election cycle which includes election-denier poll watchers, on-call GOP lawyers, party friendly district attorneys and loyalist Boards of Canvassers, all designed to intimidate voters and drive down Democratic participation. With Moore v. Harper likely headed to the Supreme Court in 2023, which would give profound powers to the states to curb voting, it is not an overstatement that for millions of Americans, the right of franchise is soon to be a memory.

We are a non-partisan agency that represents companies and countries of all natures and points of view. When you have represented 30 countries, you don’t see the world through just an American perspective, nor through Democratic or Republican eyes. We try to fix the impossible for everyone. It is not a political position I worry about. It is the institutions.

I am an optimist by nature, even about death. But it would be an adventure in unbridled denial to think these things will not have a fundamental and significant impact on this great experiment we call democracy. We are at the precipice where free and fair elections, privacy, stare decisis, respect for the Court and even faith in democracy are in peril.

With apologies to The Book of Numbers, “What hath man wrought?”

Hope Arrives

The thing about loss is, what we do next is what gives it meaning.

Toward the end of the week, I interviewed “The Music Man,” Dan Binstock, a partner with the legal recruiting firm of Garrison & Sisson, a lawyer and a musician. Dan cannot read music but has been playing the piano since the age of five. He has the gift of synesthesia, which means that when he hears a sound or a musical note, he gets a visual representation in his mind of a color and texture of the sound, and, as a result, can instantly play the music he has just heard. Since the pandemic, videos of him playing by ear have been viewed over 40 million times on TikTok. It is a delightful show that will have you singing along, choking up and leaning in.

Back in February, I interviewed Tim Brown, a former Vice President and General Manager of biotechnology at Genentech and now a volunteer with Children’s Cancer Therapy Development Institute (cc-TDI), in a deeply moving interview about the loss of their son Luke, at age 20, who died after a life-long fight with pediatric cancer. It was a remarkably candid conversation about suffering loss, giving it meaning and finding hope.
The FDA approves on average 12 drugs every year to treat adult cancer but has approved only 12 drugs to treat childhood cancer since 1978. Since cc-TDI’s inception in 2015, it has pushed two drugs into three clinical trials to treat childhood cancer.

A reporter from the scientific journal *Nature* heard the show and was inspired to write a profile piece on cc-TDI, giving the budding non-profit, which specializes in hope, its first feature coverage ever.

There are very few times in life or work that you can have your hand — even in the slightest way — on something that might change peoples’ lives fundamentally for the better. When I heard about the story coming out, it was one of those rare moments when I thought, “Now this really matters.”

Let’s do the work that matters.

“I would like to speak briefly and simply about a serious national condition. It is a national feeling of fear and frustration that could result in national suicide and the end of everything that we Americans hold dear…. I speak as a Republican, I speak as a woman. I speak as a United States Senator. I speak as an American.”

— Senator Margaret Chase Smith, June 1, 1950, four months after Senator Joseph McCarthy made his infamous speech in Wheeling, West Virginia, accusing the State Department of harboring 205 communists and beginning the era of McCarthyism.

Enjoy the shows.

Richard Levick

*Listen to The Lawyer Who Argued Planned Parenthood v Casey Before the Supreme Court*

*Listen to From Hanging Chads to The Precinct Strategy — How Elections & Democracy Hang In the Balance*

*Listen to The Music Man*
History is Calling

“Give of yourself…you can always give something, even if it is only kindness…no one has ever become poor from giving.”

— Anne Frank

How is it that the land that gave us Beethoven, Mendelssohn, Schumann and Wagner also gave us the Third Reich? The line between magnificence and malevolence is far thinner than we care to admit.

In this country, where we take democracy and capitalism for granted, a 55-year-old United States Department of Justice environmental lawyer named Jeffrey Clark — according to court filings, a deposition and multiple published reports — almost convinced Donald Trump to name him Attorney General and overturn the election, three days prior to the January 6th insurrection. Were it not for the intervention of Acting Attorney General Jeffrey Rosen and his deputy, Richard Donoghue, threatening mass resignations at the United States Justice Department, we might very well have seen the plan enacted.

According to court filings, Clark told President Trump, “History is calling. This is our opportunity. We can get this done.”

If only Tōjō, Hitler and Mussolini had known that a fanciful memo and a three-hour meeting were all they needed to undermine our democracy.

One of the things my friend, the late Mike O’Horo, said to me once was that “After you lose everything and realize you can rebuild, you stop worrying.” His words pierced me at the time, but I never quite appreciated just how true they were until I lost everything. It has a way of getting your attention and helping you focus on the only things that matter.

We live in a time when fear of loss dominates our emotions and impacts how we see the world. We operate with, as the late Stephen Covey wrote, a “scarcity mentality,” abandoning our abundance mindset. If the 17th and 18th centuries were The Age of Enlightenment, then this is the Age of Thanatophobia — the fear of death of all things, self, possessions, democracy and all we control.
When all the noise of commercialism, competition with the Joneses and our internal endless loops playing in our brains of what we think success looks like are stripped away, we can finally hear and see the beauty and magnificence that is all around us. I know Henry David Thoreau lived within walking distance of his mother who supported his “independent” natural life, but he had a point. There is incredible joy in living simply in natural surroundings.

How is it that Anne Frank — who received her now legendary diary almost exactly 88 years ago this past week — maintained her optimism? She lost everything, including the feeling of sunlight, as she hid for two years from the Nazis with her family in their secret annex, behind a bookcase, in a neighbor’s home in Amsterdam. So close to surviving, just weeks before the end of World War II, she would perish in Bergen-Belsen. Only her father, Otto, survived the war.

Her first words in her red and white checker covered diary on June 12, 1942, were:

“I hope I will be able to confide everything to you, as I have never been able to confide in anyone, and I hope you will be a great source of comfort and support.”

And so it has been for generations.

Amazingly, she never lost hope. Her gift to us is for us to never lose ours.

As Jimmy Seals of Seals & Croft, who passed away this past week, reminds us, “We may never pass this way again.”

History is calling. Make it count.

Richard Levick

Podcasts for the week:

*Up Close & Personal With Foreign Minister, H.E. Mr. Tahsin Ertuğruloğlu*

*From Coercion to Compliance?*

*How Clothes Limited & Empowered Women Through History*

*Other People’s Money — The Rise of Fraud in the Crypto & NFT Worlds*
My Old Man

“My father used to play with my brother and me in the yard. Mother would come out and say, ‘You’re tearing up the grass.’ ‘We’re not raising grass,’ Dad would reply. ‘We’re raising boys.’”

— Harmon Killebrew

It is that time of year when the Men’s College World Series is on and also that time of year when all of my teams — Maryland, Michigan, Central Michigan, University of Virginia — have been knocked out along with my Division III team, Catholic. So, you listen or watch the contests for the sheer joy of the game of summer. Bountiful and endless.

I am driving outside of Detroit and listening to the Texas-Texas A&M elimination game and though Texas is far behind late and cannot afford to give up any more runs, the Texas catcher — otherwise a tip top player — makes a mental error and tries to throw out an A&M runner stealing second, with a man on third. This is something you Do. Not. Do. The runner stealing second meant nothing. Sure enough, split seconds later, the errant throw is heading toward shallow center field and A&M scores yet another run, sealing Texas’ fate.

As Yogi Berra said, “Baseball is 90 per cent mental. The other half is physical.”

As heartbreaking as this was for Texas, it is also why minor league and college baseball are so enjoyable to watch. A brilliant play followed by a mental error that major leaguers would seldom, if ever, make. You get to watch the molding of perfection, but it still needs time in the kiln.

For me, this was the moment. The trigger that makes you want to pick up your phone and call Dad. “Did you see that? What was he thinking?” Dad is long gone and there is no one on the other end to pick up the phone to complete your sentences and read your mind.

If you, like me, have lived long enough to lose loved ones, you know those moments well. It could be the smell of a favorite dish; a Sinatra tune — “My Way” was a favorite; simply the way the light looks late afternoon; a beloved expression; or a baseball game. And there we are, a moment now pregnant with memory, sandwiched between melancholy and joy. As William Shakespeare wrote five centuries ago about the battle on St. Crispin’s Day, “Old men forget: yet all shall be forgot, But he’ll remember with advantages.” These are, indeed, memories with advantages.
Who do you call when only the specter is left? Despite the endless cornucopia of phones on earth, we have yet to master telephony to Valhalla.

Virtually all American holidays have devolved into devotionals to the gods of shopping. Heaven help us if Juneteenth is reduced to Memorial and Labor Days, let alone Christmas, when it is the sales we remember, not the meaning.

If you have not already, for this Father’s Day, hug your father if you can and remember him if you cannot. For so many of us now they are a ghost, a memory and a call we can no longer make.

My Old Man
By Steve Goodman

I miss my old man tonight
And I wish he was here with me
With his corny jokes and his cheap cigars
He could look you in the eye and sell you a car
That’s not an easy thing to do
But no one ever knew a more charming creature
On this earth than my old man

He was a pilot in the big war in the U.S. Army Air Corps
In a C-47 with a heavy load
Full of combat cargo for the Burma Road
And after they dropped the bomb
He came home and married mom
And not long after that
He was my old man

And oh the fights we had
When my brother and I got him mad
He’d get all boiled up and he’d start to shout
And I knew what was coming so I tuned him out
And now the old man’s gone, and I’d give all I own
To hear what he said when I wasn’t listening
To my old man

I miss the old man tonight
And I can almost see his face
He was always trying to watch his weight
And his heart only made it to fifty-eight
For the first time since he died
Late last night I cried
I wondered when I was gonna do that
For my old man

This week’s podcasts:

Two lions of the DOJ, now with Morrison Foerster—Brandon Van Grack and Alex Iftimie, discussing cyber security and the rise of ransomware

Brandon is the former Chief of the U.S. Department of Justice’s Foreign Agents Registration Act (FARA) Unit and was a lead prosecutor for Special Counsel Robert S. Mueller III’s investigation of the Russian government’s efforts to interfere in the 2016 presidential election. Alex is the former Counselor to the Attorney General and former Deputy Chief of Staff and Counsel to the Assistant Attorney General for National Security. Both are now co-chairs of Morrison Foerster’s National Security and Global Risk + Crisis Management groups.

Not your parents SEC with Thomas Redburn Jr., Partner and Chair of Lowenstein Sandler’s Securities Litigation Practice

Tom discusses SEC Chair Gary Gensler’s ambitious rulemaking agenda, focusing on two significant proposed changes — insider trading and Special Purpose Acquisition Companies (SPACs). As Tom says, “While Gensler is a believer in the capital markets as a means of capital formation, he is all about protecting investors … love him or hate him, that’s who he is.”

Community and regional bank regulatory matters with Sandy Brown, a Co-Leader of Alston & Bird’s Financial Services & Products Group

Sandy formerly served in the Office of the Comptroller of the Currency in the Reagan Administration and now counsels and represents financial institutions and specialty finance companies. He discusses banking corporate and regulatory matters, particularly for community and regional banks; the increased politicization of public
policy issues related to bank supervision; consolidation in the banking industry and its roots and what caused bank M&A activity to slow considerably in 2022, compared to 2021.

Enjoy the shows and Happy Father's Day.

Richard Levick

Listen to Two Lions of the DOJ

Listen to Not Your Parents SEC

Listen to Community & Regional Bank Regulatory Matters
A Star Chamber? Is the 14th Amendment Next?

“…it’s not right to say ‘Roe is on the ballot’ in November. The 21st century is on the ballot.”

— Jennifer Rubin, Opinion Columnist for The Washington Post

“I would honestly be lying if I said I weren’t afraid that it could all go away.”

— Jim Obergefell, lead plaintiff in Obergefell v. Hodges, the landmark ruling on same-sex marriage

What makes great societies and religions so strikingly powerful is the slowness with which they change. We may not agree with everything they stand for but we know they are built upon a foundation of beliefs and principles. Solid stone. They do occasionally metamorphosize but usually stop short of revolution and give us time to catch our collective breath.

As Beth Nielsen Chapman sang so passionately in her song Sand and Water, “Solid stone is just sand and water, baby; Sand and water, and a million years gone by.” We may not all be constitutional lawyers or theologians, but we know the ground we stand on is solid stone.

Until last week.

In three rulings on consecutive days the conservative majority of the U.S. Supreme Court has replaced the tests for weighing constitutional violations for guns, abortion and religion with a new “text and history” test, which to me reads as “outcome determinative.” A sort of William Randolph Hearst approach. “You furnish the pictures. I’ll furnish the war.” Give me the result and I will find you the history.
Corporations regularly ask us to predict the future and help them navigate the rocky shoals of conscious capitalism. While full deference to Milton Freedman’s doctrine that “the social responsibility of business is to increase profits” is no longer possible for all corporations all the time, it still provided a solid foundation. Now what? Health care policies are now fully politicized. Guns may become a part of office fashion and the office itself may become a sanctuary.

What are corporations to do about adherence to the rule of law when confidence in the Court has plummeted to an historic low of 25%? Three out of four Americans no longer have confidence in the Supreme Court of the United States of America. Democracy is a voluntary activity and many people act out what they feel. How long before respect for company rules are harder to enforce?

I am not optimistic that the right to privacy survives the “text and history” test. The “right to privacy” is not written in the U.S. Constitution and does not make an appearance until 1928 in Justice Louis Brandeis’ dissent in the wiretapping case Olmstead v U.S. What will tech companies do when law enforcement demands data about women suspected of getting abortions in states where it is illegal? Amazon purchase data and Google search queries? Period-tracking apps?

As the National Lampoon cover satirized in 1972, “Is nothing sacred?”

Don’t catch your breath just yet. This week the Court will likely rule on the administrative state — West Virginia v. the Environmental Protection Agency — which could reverse the near-40-year deference to the Chevron Doctrine and require administrative agencies to operate only from detailed directions from Congress — not as much of a concern but for the intractable congress of the past 30 years. The Court is also entertaining reviewing the “Independent State Legislature Doctrine” that state legislatures could reverse the popular vote in their state for president.

Earlier this year on the daily podcast I host for the Corporate Counsel Business Journal I was honored to have on two First Amendment icons, Floyd Abrams and Chip Babcock. At the end of the show they expressed their mild confidence that Chief Justice Roberts would not let the Court overturn the landmark case New York Times v. Sullivan where the 1964 Court ruled that the freedom of speech protections in the First Amendment restricted the ability of American public officials to sue for defamation. It was designed to protect journalists and activists during the Civil Rights movement a half century ago. I was reassured though not confident then. I am less so now. After all, if Dobbs v Jackson Women’s Health is clear about anything, Chief Justice Roberts is Chief in name only. It’s Sam Alito and Clarence Thomas’ Court now. And, as if on cue, as I am writing this, Justice Thomas just suggested he would like the court to revisit New York Times v. Sullivan.

To provide a more balanced view of this watershed Supreme Court term, I interviewed Nicholas Nelson, Counsel at Faegre Drinker who is an experienced litigator in the U.S. Supreme Court and appellate courts nationwide and who has filed briefs in over 20 U.S. Supreme Court cases. He provides an exceptional analysis on the In House Warrior podcast and is more in a wait and see mode about the direction of the Court. His point that for decades we enjoyed a Court that was more evenly balanced ideologically and had a swing justice—Sandra Day O’Connor, Anthony Kennedy, John Roberts—and as a result gave everyone at least half a loaf at the end of the term is an excellent point.

Still, I am on edge. Despite Justice Alito’s majority opinion that Dobbs is limited to abortion, Justice Clarence Thomas’ concurring opinion takes direct aim at same sex marriage, LGBTQ rights and access to contraceptives. But he did not stop there. Substantive due process — the doctrine which allows courts to establish and protect certain fundamental rights from government interference, even if the rights are not enumerated elsewhere in the U.S. Constitution — is specifically on the list.

Once you take away substantive due process, is the 14th Amendment — “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States” — next?

States’ rights is an argument rooted in the Founders, their first experiment with democracy with the short-lived Articles of Confederation, the Civil War and the Civil Rights movement, among others. It is a powerful argument and one worthy of great consideration.

But states are not inherently more democratic than the rights of the majority at the federal level. It feels a lot like venue shopping when you raise the states right argument after you know you will lose at the federal level.

This argument — then known as “popular sovereignty” — was at the root of the Lincoln-Douglas debates in 1858. At the time, advocates insisted that the people who lived in a territory had the right to decide for themselves whether or not to permit enslavement, not the federal government. In his debates with then-Illinois lawyer
Abraham Lincoln, United States Senator Stephen Douglas insisted that popular sovereignty “was the true meaning of democracy.”

It was this movement which inspired Abraham Lincoln to give his famous “A house divided against itself cannot stand” speech in June of that year, shortly before the two-month series of debates with Douglas. How long can our divided house stand today?

As the dissenting opinion in Dobbs — written by Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan — articulated, “never before had the court rescinded an individual right and left it up to the states whether to respect what had once been anchored in the Constitution.” This may be the first time the Court has taken away individual liberties in 245 years, but it will not be the last.

The Court has created chaos and corporations will find this time no easier to navigate than each of us.

_Sand and Water_

By Beth Nielsen Chapman

All alone, I didn’t like the feeling  
All alone, I sat and cried  
All alone, I had to find some meaning  
In the center of the pain I felt inside

All alone, I came into the world  
All alone, I will someday die  
Solid stone is just sand and water, baby  
Sand and water, and a million years gone by

I will see you in the light of a thousand suns  
I will hear you in the sound of the waves  
I will know you when I come, as we all will come,  
Through the doors, beyond the grave

All alone, I heal this heart of sorrow  
All alone, I raise this child  
Flesh and bone, he’s just  
Bursting towards tomorrow  
And his laughter fills my world, and wears your smile

All alone, I came into the world  
All alone, I will someday die  
Solid stone is just sand and water, baby  
Sand and water, and a million years gone by

Richard Levick

This week’s In House Warrior podcasts for the Corporate Counsel Business Journal

Listen to A Look At A Watershed Supreme Court Term
Listen to How Aguilar Bentley Has Grown As A Certified Woman Owned Law Firm
Listen to Too Big to Shill? Trends in Fraud
Listen to How Woke Are Millennials and Gen Zs? Not So Much.
Listen to A Litigator’s Mindset
All the King’s Men

“When there is a lack of honor in government, the morals of the whole people are poisoned.”
— Herbert Hoover

In honor of Independence Day and our 500th podcast we dedicate it to the memory of James Chaney, Andrew Goodman and Michael Schwerner, the three Freedom Summer organizers murdered, June 1964.

I spent much of the July 4th holiday reading excerpts from speeches by American patriots, which sets the table for today’s column.

So much happened at the end of the most recent U.S. Supreme Court term that we are still digesting. It will take years — and endless litigation — to get our minds around it all.

In response, we are airing a series of programs on the daily podcast In House Warrior that I host for the Corporate Counsel Business Journal with lawyers and law professors to help absorb the extreme changes that have already begun to impact our collective lives. Our first show on the term appeared in last week’s issue, with Nicholas Nelson, an experienced litigator in the U.S. Supreme Court and appellate courts nationwide and Counsel at Faegre Drinker.

Of the two things that strike me the most about the series of earthshattering rulings, the first is Justice Clarence Thomas’s concurrence in Dobbs v. Jackson Women’s Health Organization, in which he cites 11 of his own opinions, 10 of them solo dissents in which no one — not even one of the other conservative justices — joined him. In his Dobbs concurrence, he argues that overthrowing nearly 50 years of settled law and Roe v. Wade was not enough. He suggests that the Court reconsider marriage equality, LGBTQ rights, access to contraception, privacy and substantive due process — the doctrine which allows courts to establish and protect certain fundamental rights from government interference, even if the rights are not enumerated elsewhere in the U.S. Constitution.
Justice Thomas is more honest than his brethren, Justice Samuel Alito, who wrote that *Dobbs* is limited to *Roe*. All of these cases are built upon each other — and they are a stone’s throw from the 14th Amendment. You cannot pull the *Dobbs* thread as written without pulling at all of these rights.

The second is the irony of Justice Thomas’s call to review *Obergefell v. Hodges* — the right to same sex marriage. *Obergefell* cites *Loving v. Virginia* — the landmark 1967 unanimous civil rights decision where the Court ruled that laws banning interracial marriage violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment — no less than three times. Of all the things Ginni Thomas is losing sleep over these days, I wonder if this is on her radar?

Following Justice Thomas’ reasoning to its logical conclusion is as frightening as it is honest. Over 30 years he has, largely alone, written dissents which now serve as his guidepost instead of *stare decisis*. In other words, he does not look to 246 years of jurisprudence for direction, but in the mirror.

For companies trying to adjust to the speed and depth of legal changes, the best advice I can give is to study three decades of Justice Thomas’ dissenting opinions. He has gone from “the silent Justice” to arguably the most powerful, and in his dissents are the tea leaves of what is to come.

I very much appreciate that as of this writing, 119 U.S. companies — from American Express to Starbucks — have expanded their reproductive health benefits or offered travel reimbursement to employees in states with partial or full abortion bans. Others can learn more about options on the *Rhia Ventures* website. But at the speed with which this Court substitutes *stare Thomas* for *stare decisis* on a host of issues, how do companies hope to remain true to their missions and keep employees, customers and shareholders happy without being thrust into the political melee?

**Looking Backward to Look Forward**

Five days after John F. Kennedy’s assassination, President Lyndon Johnson told Congress: “No memorial oration or eulogy could more eloquently honor President Kennedy’s memory than the earliest possible passage of the civil rights bill for which he fought so long.”

And so he did. Johnson celebrated the bill’s deep bipartisan support, which passed with more than two thirds of the lawmakers in Congress. On July 2nd, 1964, President Johnson signed the Civil Rights Act into law. He went on television shortly thereafter “to talk to you about what that law means to every American.”

“One hundred and eighty-eight years ago this week, a small band of valiant men began a long struggle for freedom. They pledged their lives, their fortunes, and their sacred honor not only to found a nation, but to forge an ideal of freedom — not only for political independence, but for personal liberty; not only to eliminate foreign rule, but to establish the rule of justice in the affairs of men.

Those who founded our country knew that freedom would be secure only if each generation fought to renew and enlarge its meaning…. Americans of every race and color have died in battle to protect our freedom. Americans of every race and color have worked to build a nation of widening opportunities. Now our generation of Americans has been called on to continue the unending search for justice within our own borders.

The purpose of the law is simple. It does not restrict the freedom of any American, so long as he respects the rights of others. It does not give special treatment to any citizen…. It does say that…those who are equal before God shall now also be equal in the polling booths, in the classrooms, in the factories, and in hotels, restaurants, movie theaters, and other places that provide service to the public.

*Its purpose is not to punish. Its purpose is not to divide, but to end divisions — divisions which have lasted all too long. Its purpose is national, not regional. Its purpose is to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity.*

*We will achieve these goals because most Americans are law-abiding citizens who want to do what is right. My fellow citizens, we have come now to a time of testing. We must not fail.*

In celebration of our 500th In House Warrior program, (now ranked as one of the top 15% of all podcasts globally), I interviewed former federal prosecutor and former President of the Black Women Lawyers of Greater Chicago, Kalia Coleman, a partner with Riley Safer Holmes & Cancila. From childhood she was inspired by Justice
Thurgood Marshall and the *Brown v. Board of Education* decision, which she first learned about in sixth grade. It was, as she put it, “the first time I understood the power of persuasion that a lawyer possesses.” She also discussed the significant influence her partner, Judge Patricia Brown Holmes, and the appointment and confirmation of Supreme Court Justice Ketanji Brown Jackson have had on her life.

These bells cannot be unrung.

“It is rather for us to be here dedicated to the great task remaining before us — that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion — that we here highly resolve that these dead shall not have died in vain — that this nation, under God, shall have a new birth of freedom — and that government of the people, by the people, for the people, shall not perish from the earth.”

— Abraham Lincoln, Gettysburg Address November 19, 1863

“Humpty Dumpty sat on a wall
Humpty Dumpty had a great fall
All the king’s horses and all the king’s men
 Couldn’t put Humpty together again”

Enjoy the shows and happy Independence Day.

Richard Levick

This week’s podcasts include:

Former Federal Prosecutor & Former President of the Black Women Lawyers of Greater Chicago, Kalia Coleman

Protecting & Enabling Your Global Revenue Stream

A New Approach to IP
“You Cannot Cry All the Time”

“You so much grief for me? No man will hurl me down to Death, against my fate. And fate? No one alive has ever escaped it, neither brave man nor coward, I tell you — it’s born with us the day that we are born.”

— Homer, The Iliad

This is the story of three journeys — two remarkable women on very different paths and the one we are all taking together.

When I was 16 and a waiter at summer camp, they announced the draft lottery numbers. I did not worry since it was 18 months prior to my eligibility, which seemed like an eternity in youth. But for the counselors and older waiters, it was a different story. Your lottery number was your destiny.

That was the price of a U.S. foreign policy in Vietnam that included ground troops. Today, the United States, NATO and NATO countries have engaged in a unified economic and munitions battle, arming Ukraine and economically strangling Russia. As a result, rather than spending our youth staring down mortality, for the vast majority of us who do not have family and relatives in Ukraine, about the only thing we have to be concerned about is inflation and the price of gasoline. Yet still, we complain. As much as I do not like paying more than $5 per gallon, it is an expense of treasure not blood. I am eternally grateful. Perspective is everything.

The weapon of unified economic pressure — slow but effective when used with pincer-like efficiency — is well worth noting. It is our new “domino theory” in reverse.
The Strength to Carry On

The week’s first podcast for In House Warrior, the daily podcast I host for the Corporate Counsel Business Journal, was with Olena Levshun, a Senior Partner with EBS — an accounting, law and consulting firm (and a member firm of IR Global) in Kyiv, Ukraine. She likely lost a cousin to the war, though with so little information, she cannot be sure. Despite the invasion, she feels lucky. She and her family have returned to Kyiv; they are together and she is at work. For her and her co-workers, going to the office is the balm. They do not focus on pronouns, socially divisive issues, temporary inflation or other issues that pale in comparison. Each day is a gift that they know is no longer guaranteed.

As she says, “You cannot cry all the time.” So, you find strength you never knew you had and carry on.

For companies wanting to be economic patriots — to do something to immediately support Ukrainians — you can reach out to EBS to have them do some of your accounting and legal work. You can reach Olena at olevshun@ebskiev.com. Every day matters, so now would be an especially good time to connect. There is power in economics.

The Cult of the Robe

Deborah Kelly, a law school classmate of mine and a remarkable woman in her own right, also came on a show. She is a partner in the Employment and Labor practice at Manatt and, for ten years, was the former pro bono counsel to the National Abortion Federation. Deborah, who is known for her straightforward, “cut-to-the-chase” opinions, speaks for herself — not for Manatt — in this extraordinarily candid and opinionated interview.

She represented the Federation at the height of Operation Rescue when extremists were murdering clinic doctors. She is also the co-author of an amicus brief to the U.S. Supreme Court on abortion. This is a radically transformative moment for the Court and the nation as a whole, not just on abortion, but on dozens of issues including LGBTQ rights, marriage equality, access to contraceptives, privacy, interstate travel, substantive due process and many more. Suddenly, the world’s longest-lived constitution is not what we thought it was. Rights can disappear.

Deborah is fully aware of what some of the most extreme players in the pro-life movement are capable of, especially now that they have been unleashed and are already introducing and passing legislation in multiple states to make access to some forms of contraception, interstate travel and corporate health care limited and, in some cases, illegal. She provides recommendations for companies and delivers an unvarnished view of the road ahead.

The Court’s Legitimacy Crisis

Our job as a crisis and public affairs communications firm is to see “what’s next” and help clients avoid exposure. Tragically, two factors are coming together to radically threaten “business as usual.” The first, obviously, is the Court’s legitimacy crisis. Regardless of how you feel about any of the Court’s recent decisions, three quarters of Americans have lost faith in the Court. The “cult of the robe” is diminishing.

As much as we would like to “say it ain’t so,” on the front lines of the road ahead are universities, law schools, law firms and businesses.

Universities in red states are trying to develop new recruitment strategies, fearful of significant drops in enrollment out of concern that many women will choose schools in states where they will not be treated as criminals for unintentionally getting pregnant.

Law schools are meeting across the country, trying to determine how to teach U.S. constitutional law.

Law firms and their partners — such as Sidley Austin and, presumably, any law firm with Texas offices that have pledged to pay for out-of-state abortions — are being threatened by the Texas Freedom Caucus with “felony criminal prosecution and disbarment.” As of this writing, approximately 25 AmLaw firms have pledged to cover abortions and reproductive health travel costs for employees where restrictions are in place. Can prosecutions and disbarment attempts be far behind? What happens when law firms cannot operate in certain states or have to consider rejecting clients due to their affiliations or political beliefs? The threat to access to counsel may not have arrived, but you can see it from here.

In Federalist No. 78, Alexander Hamilton wrote that the judiciary has “no influence over either the sword or the purse; no direction either of the strength or of the wealth of the
society; and can take no active resolution whatever. It may truly be said to have neither
force nor will, but merely judgment.”

To put it more simply, as President Andrew Jackson said in response to U.S. Supreme
Marshall has made his decision; now let him enforce it.”

Though never a subscriber to “originalism,” I felt it was grounded in serious
jurisprudence. If you looked back far enough, could you find the original intent? It did
not seem that far from the concept of stare decisis.

Remarkably, it is worth noting that both the Organization of American Historians and
the American Historical Association — the two leading professional historian
organizations in the United States — and eight other U.S. historical associations have
issued a joint statement, saying among other things, that the six Supreme Court
justices in the majority in the Dobbs v. Jackson Women’s Health decision, “adopted a
flawed interpretation of abortion criminalization that has been pressed by anti-abortion
advocates for more than thirty years” and that, “[t]hese misrepresentations are now
enshrined in a text that becomes authoritative for legal reference and citation in the
future,” undermining the “imperative that historical evidence and argument be
presented according to high standards of historical scholarship. The Court’s majority
opinion…does not meet those standards.”

For the rest of us, this is known as a failing grade. What is originalism if it does not
abide history?

Eulogy for Business as Usual

And businesses? How unfair, once again, that they are being pushed to the front lines
of the debate.

When you are trying to make decisions about how actively you want to get involved as
a business entity in the disruptive politics which are ravaging the nation, just look
ahead to November. Imagine an America where election results are routinely rejected;
Americans are intimidated from voting due to the color of their skin, economic status or
precinct; where political violence is not just accepted, but where January 6th looks like
a precursor, not an aberration. The decisions you make today will reflect not just on
history, but on your fourth quarter.

It can be hard to see patterns when you are living life in real time. But the patterns are
there nonetheless. The rise of political violence and its growing acceptance are
terrifyingly real.

Rachel Kleinfeld, the author of many books and articles on political conflict has written
that, “We’ve seen an uptick in Republican parties at the local level — though
occasionally at the state level — using militias for security at party events, having
militias vote on party business, in one case in Michigan having militias introduce
legislation. You’re seeing a lot of photo-ops with militia members — things that
normalize their interaction with the democratic process. These militias are being used
to threaten other Republicans who aren’t part of this antidemocratic faction.”

Members of the GOP are, “endorsing violent attacks on the opposition without
facing serious party discipline, fantasizing about settling political differences via
paramilitary combat, vastly minimizing the January 6 insurrectionist violence or
erasing it with propaganda, and describing January 6 rioters facing prosecution as
‘political prisoners.’”

When asked where America is on the continuum of countries experiencing political
violence, she noted that, “the percentages of Americans endorsing violence are
approaching Northern Ireland’s Troubles at their height in 1973.”

What Do Companies Do?

For decades, companies made political contributions which were largely Solomonic.
More or less, companies made contributions that were generally split down the middle.
“Something for everyone” was the theory.

Opaqueness aided corporate political donations which historically allowed
considerably more latitude and an imbalance if companies found this strategically
warranted. Multiple websites such as Progressive Shopper and Indy100 track and
report corporate political donations while other news sources and websites provide
detailed analysis on a daily basis. Nondisclosure of political donations is now a fantasy.
If you write the check, it will become public.

It is not just transparency but the very concept of evenly divided political donations that
has reached its zenith. Like it or not, it is coming time to make a choice.
After January 6th, many companies paused their political contributions to the 147 members of Congress who refused to certify the election. Slowly these companies have crept back and are funding these politicians and others with relatively little notice. In a post-Roe world, we now see companies making political contributions that are diametrically opposed to their publicly stated policies on reproductive freedom. We are at the tipping point where it is riskier to “split the baby” than to take a position. This is a radical notion, but one not to be missed by company officials trying to make these decisions. Tomorrow — which is eminently visible — is going to be very different than today.

By way of example, in May, Microsoft declared that it would, “support employees and their enrolled dependents in accessing critical health care — which already includes services like abortion… regardless of where they live across the U.S,” including travel expense. Microsoft added that it will, “continue to do everything we can under the law to support our employees and their enrolled dependents in accessing critical health care.”

Yet, a year prior, Microsoft donated $250,000 to the Republican Governors Association, which is used as an umbrella campaign fund to help elect candidates significantly hostile to reproductive freedom.

CVS has pledged to support its employees’ right to choose by, “making out-of-state abortion healthcare services more accessible and affordable,” yet has made $290,000 in contributions to politicians who support severe restrictions on reproductive freedom, even in the case of rape and incest.

Ditto Amazon, AT&T, Comcast, Google, Wells Fargo and many more. It will not be easy for companies to navigate the twin crises of the Court’s waning legitimacy and growing political violence but trying to make both sides happy will not work for much longer.

In 1865, in the wake of the Civil War, many of the southern states tried to halt or undo Reconstruction. Through a series of laws known as the “Black Codes,” state legislators regulated how Black Americans worked, lived and worshiped with no protection for assault, robbery, rape or murder. This is what inspired the 14th Amendment. Until our 21st version of the 14th Amendment comes, what will we do?

First They Came
By Pastor Martin Niemoller

First they came for the Communists
And I did not speak out
Because I was not a Communist
Then they came for the Socialists
And I did not speak out
Because I was not a Socialist
Then they came for the trade unionists
And I did not speak out
Because I was not a trade unionist
Then they came for me
And there was no one left
To speak out for me

Enjoy the shows.

Richard Levick

Patriotic Capitalism

The Cult of the Robe

Addressing Corporate Risk Management in the Global Environment

Keeping Your Eyes on the Prize
Unbought and Unbossed

“I want to be remembered as a woman… who dared to be a catalyst of change.”
— Shirley Chisholm

The first presidential campaign I remember was 1968 when Vice President Hubert Humphrey ran. He suffered from a very late start — too late to participate in the Democratic primaries — due to President Lyndon Johnson’s shocking March 31 announcement that, “I shall not seek, and I will not accept, the nomination of my party for another term as your president.” From the start, Humphrey would have had to pull off a near miracle just to be nominated.

And that was it. I was hooked on politics. As a 6th grader, I was making HHH bookmarks and beginning a lifelong addiction to politics, though one tempered now by today’s vitriolic and sullied show-business quality to it.

In 1972, candidates George McGovern, Henry Jackson and Edwin Muskie were fascinating; George Wallace was frightening; and then there was Shirley Chisolm.

With only $300,000 in campaign funds, America’s first African American congresswoman — and the second African American woman to serve in Albany in an elected position — was running for president. “Fighting Shirley” ran a strikingly successful campaign, receiving 152 delegates, 10% of the total, which was good enough to end up fourth in the delegate count. The impossible had become possible.

This was the moment that tens of millions of young African American girls and women realized they too could run for president. It took a century after Reconstruction, but equality was starting to knock at the highest levels. Words can certainly inspire, but nothing is as existentially powerful as seeing icons who look like you.
I am also sure this moment was not lost on a 25-year-old law student named Hillary Clinton.

As Shirley Chisholm would later say, “I have certainly met much more discrimination in terms of being a woman than being black, in the field of politics.” Unfortunately, there are still so many glass ceilings to shatter.

It was also a moment that was not lost on me as a 15-year-old boy, a white suburban Jewish kid who cherished every word from the speeches of people like Robert F. Kennedy, Martin Luther King, Jr. and…Shirley Chisholm. There was hope and sanity in their words. The world could be better and together we could make it so. Assassinations broke hearts and ruptured hope, but still, through the tears there was always tomorrow and the rise of new visionaries.

To this day, Congresswoman Chisholm seldom receives the credit she deserves, or even much scholarship. That is, until Anastasia Curwood, Professor of History and Director of African American & Africana Studies at the University of Kentucky, wrote her most recent book, *Shirley Chisholm: Champion of Black Feminist Power Politics*. She joined me for a podcast this week on *In House Warrior*, the daily podcast I host for the *Corporate Counsel Business Journal*.

I know Garrison Keillor writes of a certain generation, “Back in the Sixties, when I was in my twenties, we sang ‘We Shall Overcome’ and clearly we did not overcome, we only created new hairstyles.” But it is a generation that brought an end to the Vietnam War; walked on the moon; launched the Civil Rights, women’s and environmental movements; created the EPA and OSHA; passed Title IX; dramatically increased living standards and brought us Shirley Chisolm. It may not be, as Tom Brokaw would write of an earlier generation, “The Greatest Generation,” but it had its moments of greatness and Shirley Chisholm was one of them.

When Shirley Chisolm drove through her Bedford–Stuyvesant district in Brooklyn in her sound truck, she would utter, “Ladies and Gentlemen … this is fighting Shirley Chisholm coming through.” And indeed she did. She was a staunch advocate for racial and gender equality, the plight of the poor and ending the Vietnam War. She sponsored increases in federal funding to extend the hours of daycare facilities and was a primary backer of a national school lunch bill (leading the charge to override President Gerald Ford’s veto).

She was co-founder of both the National Women’s Political and Congressional Black Caucuses, and in 1977 became the first African American woman and second woman ever to serve on the powerful House Rules Committee.

A 1974 Gallup Poll listed her as sixth on the list of most-admired women in America — ahead of Jacqueline Kennedy Onassis and Coretta Scott King.

And yet, up until Professor Curwood’s work, it was hard to find her.

Let us not become a generation like William Thackeray’s first novel: *Vanity Fair: a Novel without a Hero*. We need our heroes and we need to remember them.

This week is the 159th anniversary of the 54th Massachusetts Volunteer Infantry Regiment — the second African-American regiment in the history of the United States — charging Fort Wagner, the battle upon which the movie *Glory* was based. Despite knowing the odds were stacked heavily against them, the 54th charged the walls of the near impenetrable fortification on Morris Island off Charleston Harbor in South Carolina and suffered casualties nearing 50%.

At this frightful cost, they helped the United States win the war and, in one of the fiercest battles with an African American regiment after the Emancipation Proclamation (which among other things called for the enlistment of African American soldiers), proved they were second to no one.

As historian Heather Cox Richardson wrote this week:

“The men of the 54th knew they were not like other soldiers: they were symbols of how well Black men would fight for their country. This, in turn, would be a statement of whether Black men could truly be equal to white men under the country’s laws, once and for all, for in this era, fighting for the country gave men a key claim to citizenship.

The whole country was watching…and the soldiers knew it.”

Shirley Chisholm never wanted to be just a symbol. As Professor Curwood would write, she was only mentioned, “when ‘strong Black women,’ feminists, Black people, the 1970s, the Democratic presidency or outspoken political officials are a topic of discussion. She was much more than that.” Yes she was. And she, along with the 54th, were flesh and blood, fear and courage and also trailblazers and symbols. Heroes for their age and ours.
We are standing on the shoulders of giants. May we never forget our history nor write falsely of it.

“She showed up, she stood up and she spoke up.”
— Reading from the Minister at Shirley Chisholm’s funeral

Enjoy the shows.

Richard Levick

*Listen to An Unsung Hero: Rescuing Shirley Chisholm’s Life from Symbolism*

*Listen to When Failure Is Not An Option*

*Listen to Navigating the Cayman Islands’ Investor Black Holes*
From Eternity to Here

“Ah death, a change of clothes.”
— The 14th Dalai Lama

The endless fields of amber grain. Valhalla so far in the distance it is, we are sure, just shy of eternity. Mortality, we have decided, is not for us. “Heaven can wait.”

I suppose old age and death are things that happen to others...at some point, and then only far in the future. We see it all the time, not the least of which is from the most judgmental among us. This current race to victimhood or pride over how patriotic, traditional, biblical, green, diverse, sexually identified, vegan, the most uncomfortable or whatever else it takes to win the imaginary contest has me thinking we are doing too much talking and not enough listening. It is not victimhood that suggests humanity but empathy and kindness — the two blessings that stem from asking the question, “How are you?” and then actually paying enough attention to heed the answer.

Maybe age, cancer and many other illnesses are not communicable diseases, as so many fear, but why take a chance? Let us discuss our victimhood ad nauseum while we largely ignore the aged (“OK, Boomer”), the infirm, the disabled and parents of the disabled. Let them suffer alone. We have our own victimhood to brag about.

When did advocacy lose empathy?

As spiritual writer and film maker John Harrigan wrote, “People need loving the most when they deserve it the least.” A tall order but a heck of a mission.
Age and infirmity most often teach a wisdom and humility that cannot be found in the latest email signature or rally cry. We are all on a limited runway. We just don’t know the distance. Maybe we should embrace our collective journey? Mortality — now there is a common theme.

When I was four, and then so many early ages thereafter, my quiet little world was filled with such a plethora of unexpected death that I thought it was fate, not theory. Sometimes overnight, sometimes after a protracted illness. Hope was always shattered but never eviscerated.

A few months ago I started having subtle, almost unnoticeable symptoms that could easily be confused with aging. Until they could not. The test results — blood, bone marrow, CT scans and so many more — started coming in, all “dark” as the oncologists and other specialists would say. It was palliative care, not cure, but remission can literally last decades so it is certainly not a likely death sentence.

When my life first fell apart 15 years ago, I asked myself how I could be a better person, what I could learn, how I could be more spiritual. Grace takes a lifetime or more; yet this time the results were so instantly in evidence that I was the one reassuring the medical teams. “Whatever it will be it will be and I accept it.” I am pretty sure it will be remission after six or eight months of chemotherapy and radiation, but it is not something I lose sleep over. Maybe the Hindus are right and we keep coming back until we get it right. Samsara, I would like that.

I am no little Buddha in training (though I humbly try). I am just a mortal man with all those many limitations, who has learned over the years to appreciate every little thing that surrounds me — the migrating birds, Beethoven, freshly baked bread, the beauty of an insect and a billion more formerly unnoticed gifts. I have learned the meaning of “enough,” something I only recently inherited from my late father. Contentment lies within, not the next purchase or conquest.

I am not sure what is out there — either in the universes of universes or the heavens themselves — but I am pretty sure that anything and everything is possible and that the certainty and bright lines we so desperately seek are answered by our faith, a dose of denialability and the strength we find in our connectedness and love, not our differences and judgment. In the end, what does it all matter if we have not practiced kindness and self-awareness?

Confession

The spirit is willing but the flesh is truly weak. I can no longer write my weekly columns or host my daily podcast for the Corporate Counsel Business Journal — which is a shame for so many reasons, not the least of which were all the remarkable guests from around the world and how we were soaring past 100,000 listeners annually, putting us in the top 10% of podcasts globally. But there is always gain in loss, so we are opening our weekly eNewsletter (circ: 55,000) to guests columnists. Just send your column to our Marketing Coordinator, Nicole Mailhoit at nmailhoit@levick.com with a bio line as well as your permission and we will do our best to run it. It is okay if it has run before, as long as it remains relevant and we have the proper permissions. The podcast will come back in time, too.

Ideas, like breath, are always welcome.

Today's Final Thought

Eternity is what we make it, not what is handed to us.

Would it be me if I didn’t quote both The 14th Dalai Lama and Arnold Schwarzenegger’s character from The Terminator in the same column?

“I’ll be back.”

Richard Levick

Top podcasts and our first guest column:

The Art of War — Time Tested Corporate Crisis Strategies (Part I)

When Something is Lost, Something is Gained

An Unsung Hero: Rescuing Shirley Chisholm’s Life from Symbolism
Second Chances

“Success is not final; failure is not fatal; it is the courage to continue that counts.”
— Winston Churchill

Authors Note: We have managed dozens of discrimination matters for plaintiffs (including one of the largest arbitration awards in the history of DEI) and defendants, and written many dozens of articles on the subject, including this eBook. This time, we explore the sensitive but critical subject of how DEI advocates could be more effective and… diverse.

This article is written for those who misuse DEI, try to leverage it for their own advantages, jump to conclusions and run roughshod over alleged perpetrators who let the issue’s popularity overwhelm their sense of responsibility for justice. Our hats are off to all the courageous DEI leaders who seek justice and fairness, fight for every penny of their budgets and are as good at listening as they are at being advocates.

On September 30th of 1971, the Washington Senators played their last baseball game at RFK stadium and fled to Arlington to become the Texas Rangers. As a 13-year-old boy, this was yet another reminder. Loves could suddenly abandon you.

I switched to rooting for the Baltimore Orioles, only forty-one miles away, but they were never the home team, though I gently cheer them on to this day. Bereft of a real hometown baseball team I turned to soccer and lacrosse as my games of summer. Baseball — always an October interest — no longer served as the mother’s milk of endless summers.

Nonetheless, through the influences of my father and grandfather — who embraced the game like Sophie embraced Jan in Sophie’s Choice — baseball lore is still an important part of the season. As retired LEVICK Senior Vice President and baseball aficionado Larry Smith says, ‘baseball is not a nine-inning game. It is the opera of summer. A 162-game love story.’
Flawless But With Flaws

This past week in 1956, Don Larsen pitched a perfect game for the Yankees in the World Series. He faced 27 batters and not a single one made it to base — no hits, no walks, no errors. An untouched canvas.

The World Series has been the fall classic since 1903 and yet there has only been one perfect game — a level of perfection happening twice as rarely as Halley’s Comet.

The Yankees were playing the Brooklyn Dodgers in Game 5 of the Series and Don Larson was coming off a dreadful Game 2, in which he lasted only two innings and allowed four runs on four walks. Larsen arrived at the ballpark on game day and was stunned to learn that manager Casey Stengel had picked him to start. In the locker room after the game, Larsen said, “After what I did in Brooklyn, he (Stengel) could have forgotten about me and who would blame him? But he gave me another chance and I’m grateful.”

Second chances, not exploiting a single bad act over a lifetime’s worth of work and acceptance of imperfections. A model of justice worthy of exploring.

Good or Evil?

He cheated on his wife, stole money from Jewish families during World War II, spied for Abwehr (the counterintelligence arm of the Wehrmacht) and died a poverty-stricken alcoholic.

He also saved 1,100 Polish Jews during World War II at significant risk to himself, going bankrupt in the process.

Meet Oskar Schindler.

Humans are complicated.

A Bend in the Road

Since I first became conscious of adult issues, I have been a staunch supporter of civil rights going back to age six. It was a time of the first modern Civil Rights movement and even a six-year-old could be heavily and permanently influenced. Gay rights, minority rights, women’s rights, etc. were all a critical part of an evolving consciousness.

Years later I would become the first male ever to work in the Women’s Rights Division of AFCSME, a powerful influencer on national politics, and write my master’s thesis on the history of and arguments in favor of equal pay.

But I never thought the road to equality would look like this. So many good intentions and important actions, but we also have so many painful misunderstandings and miscalculations. Punishments that do not fit the crime; denials of due process; an absence of a statute of limitations; presumptions of guilt and the list goes on. None of these are excuses for bad behavior or crimes against the abused. But we do not even talk about them and many people either think these injustices just do not exist or are a satisfactory price to pay and unworthy of discussion.

The risk of pointing out these justice-skirting issues is being labeled, fired and permanently ostracized. As one woman cavalierly responded after a speech I gave asking about men and women whose families, careers and reputations were torn asunder by false accusations, “collateral damage.” Catch phrases are a tragically comfortable substitute for real thinking on hard-to-answer questions.

As the Dalai Lama says, “The goal is not to be better than the other [person], but your previous self.”

The DEI Journey

While the Civil Rights movement goes back to before this country’s founding, we are relatively early in the evolution of DEI. For those more interested in self-righteousness, perhaps we can be a little less judgmental? On little planet earth there are 195 countries, 6500 languages, 4300 religions and too many thousands of cultures to count. It will take lifetimes to know more than a tiny fraction of that diversity or to even name, understand and appreciate all those different from us. We all live in glass houses.

And yet we brag about our accomplishment of achieving the “diversity of the five.” We have a female, an Asian American, an African American, someone identifying as LGBTQ+ and maybe someone from the disabled community (though usually an afterthought). We rush to post it on our website and apply for awards. “Look at us doing what many communities have been calling for for half a century.” Doing what is popular
and virtue signaling may be helpful in encouraging others, but it is neither justice nor courage. It’s following.

The Little Rock Nine enrolled at formerly all-white Central High School in a successful effort to try to force what became Brown v. Board of Education. They faced “Massive Resistance;” violence; a legislative-led Southern Manifesto; the racist, intimidating and in-your-face Mother’s League of Central High, who’s vitriolic acts are captured in so many historic photos, and more. This was indomitable courage in the face of powerful evil.

Mahsa Amini, the 22-year-old Kurd killed last month by the dreaded Iranian morality police for infringing hijab rules amid a crackdown on women’s dress. Unmatchable courage in the face of a country where the inmates rule the asylum.

John Lewis leading over six hundred marchers on March 7, 1965 across the Edmund Pettus Bridge in Selma, Alabama only to face brutal attacks by oncoming state troopers. Courage beyond words.

The law firm Paul Weiss representing pro bono Thurgood Marshall in 1954 to reverse the doctrine of “separate but equal” in Brown v. Board of Education and also pro bono representing Edith Windsor in challenging the Defense of Marriage Act in United States v. Windsor in 2013. Controversial issues not yet popular with the masses, but the firm provided the legal support to help change history anyway.

These were people and institutions that stood up when the last thing they could expect was applause.

Times and risks are different, but understanding, humility and love rather than judgment and bandwagon-jumping should be the monikers of today’s change agents.

The Perfection Standard

Perfection is an unmeetable standard. Not Martin Luther King, Jr., Abraham Lincoln, Queen Elizabeth, FDR, Winston Churchill or even the saintly Mother Teresa would pass. Despite their not meeting today’s standards, I would hate to think of the past 170 years without their presence. Spreche deutsch anyone?

I believe strongly in the safety and equality of the LGBTQ+ community and that non-binary people must be able to make daily choices without fear. Putting self-identification on emails is the current trend and I appreciate its critical importance. We have gone from the Stonewall uprising to acceptance and increasing embrace in a fraction of the time of other civil rights movements.

But why is sexual identity more important than religious identity, which can inform which day someone celebrates the sabbath, which holidays they observe and seating and dietary preferences just to name a few?

Disability? As someone who has been half deaf since childhood, I have preferences (corporate dinners with round tables and background noise turn you virtually fully deaf). Not to mention the DEI advocates who use jokes and language about my partial deafness that they would never permit if we were discussing other DEI issues.

Epilepsy? Maybe architects would think twice about using flashing lights as design elements in airports and other common spaces. Imagine fearing being triggered for an epileptic fit every time you walked through an airport tunnel.

Blindness? How would you reimagine your office background noise which can render the blind truly blind?

We should stop racing to out-victimize our neighbors. We are all victims of some sort. As was anonymously said, “Just because I carry it all so well doesn’t mean it’s not heavy.”

The New Way Isn’t Necessarily the Better Way

Justice and civil rights will always be works in progress. There is nothing to do but to keep fighting. The lesson for those who pile on but do not lead is that popularity is not a doppelganger for progress. Justice is the only goal.

As a crisis communications firm, we are often asked by companies and their boards to help them navigate challenging diversity issues. There is so much criticism, especially among people who agree in principle, that there are no guaranteed best communications practices. I can only tell you that overly sensitive criticism amongst
the movement is nearly as challenging a bridge to cross for corporate executives wanting to do the right thing as the bomb throwers who oppose diversity and believe not listening is a virtue.

It seems to me that DEI drivers, which have done so much good, are really only at the place in their evolution where they have succeeded in diversifying the book covers, not the books. It is what is inside where diversity's richness blooms. DEI deeply deserves our support and as many chances as it takes to get God's work right.

“Returning hate for hate multiplies hate, adding deeper darkness to a night already devoid of stars. Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that.”

— Martin Luther King, Jr.

“It’s been a long
A long time coming
But I know, a change gonna come
Oh, yes it will

Then I go to my brother
And I say, brother, help me please
But he winds up, knockin’ me
Back down on my knees

Oh, there been times that I thought
I couldn’t last for long
But now I think I’m able, to carry on

It’s been a long
A long time coming
But I know a change gonna come”

— Sam Cooke
The Golden Hours

First in a Series on Risk Management and Communications
By Richard Levick

“But in all my experience, I have never been in any accident… of any sort worth speaking about. I have seen but one vessel in distress in all my years at sea. I never saw a wreck and never have been wrecked nor was I ever in any predicament that threatened to end in disaster of any sort.”
— J. Smith, Captain of the RMS Titanic

The Conflict

There is a natural conflict between the lawyers working on litigation and crises that are likely to garner public attention and the communications professionals working with the media. Lawyers need and want time to determine all of the critical facts, potential liability and necessary information, while the communications side of the house is working to meet reporter deadlines before the story — and likely a premature, negative narrative — goes viral.

The History

When the White Star Lines was preparing to launch its unsinkable cruise liner, the Titanic, it recruited its greatest captain, E.J. Smith, on the brink of retirement, to stay on for one more transatlantic crossing so he could skipper the new pride of the White Star fleet from Southampton to New York. He was chosen due to his unblemished history. So smart and experienced a captain, he had never so much as experienced a near accident. He was the perfect choice for the maiden voyage.

Two days prior to hitting an iceberg, he told his assistant telegraphist Harold Bride, who had been receiving messages of potential danger ahead, that he understood the warnings of icebergs and would adjust. He also told Bride that the new technology, the telegraph — the 1912 version of Twitter — should no longer accept incoming messages but instead be used exclusively for the many wealthy passengers who wanted to send ship-to-shore messages about being on the “Wonder Ship.”
To be forewarned is to be forearmed.

When the Titanic did strike the iceberg, Captain Smith maintained his confidence in the guarantee of an unsinkable ship combined with his lifetime of sailing experience. The sinking of the vessel was beyond his comprehension.

Over the next two and a half critical hours, unpracticed crew and passengers tried desperately but tragically ineffectively to load the lifeboats. Two ships fairly nearby — the RMS Carpathia and the SS California — replied too late. The California, six miles away, mistook the Titanic’s desperate flares as “company rockets.” Its telegraph officer had shut down for the night and as a result there was no one to receive the frantic message: “SOS Titanic calling. We have struck ice and require immediate assistance.”

Dreadfully, through misfortune and misunderstanding — two traits common in crises — the California would take no action to save any passengers. They too could not comprehend what was happening because of the unsinkable narrative they believed to be true. The Carpathia, fortunately, would navigate the ice flows and arrive in two hours, saving 705 passengers.

The golden hours are the opening hours of a crisis — when danger is rushing in and information is sparse. It is where history is made.

In high profile litigation and crisis matters, it is defined as the time between when we learn of the matter and when legacy and social media control the narrative. That means if we do not act with consideration to the public, others get to define the hero and the villain, influence future jurists and set the foundation for liability. No matter how independent justices and juries might be, by the times a matter goes to trial, as citizens, they have read the newspapers.

Truth is a race. It is not what we know, but what we believe first. Once we assume our perception is accurate, we become believers, and shaking us from this viewpoint is exceptionally difficult. Just ask Captain Smith. He knew the ship could not sink.

In many areas of litigation — food, pharmaceuticals, labor and employment, etc.; the list is too numerous to mention — the plaintiffs’ bar has already optimized the web so that when a matter occurs they already have influential content at the top of the major search engines. As the old joke goes, if you want to keep a secret, put it on the second page of Google. Nearly no one looks past the first few links on a web search.

The plaintiffs’ bar is busily controlling search engines right now, which are designed not only to harvest plaintiffs but also encourage journalists and the public narrative. Control the search, control the story.

The result? The defense bar is often already behind on the public narrative before the first client meeting.

The Lesson

At 1:22 am on June 21, 2021, when the Champlain Towers South collapsed in Surfside, Florida, tragically killing 98 people, the initial media reports over the first three days — thousands worldwide — inferred that the volunteer condo board had been negligent in its oversight. It goes without saying that media on high profile matters is viral. Reporters have to quickly post stories and go on air. Social media follows and codifies the earliest reports. However careful the journalists are, theories are presumed to be facts or certainly interpreted by the public to be so. Imagine the difference if we got to describe the wolf in Little Red Riding Hood first: ‘He’s sensitive and endearing — and maybe a vegetarian’ rather than “Big and bad.”

In an environment where we see 5,000 to 10,000 advertisements a day, not to mention the other messages demanding our attention, all we can do is categorize. Good, bad; guilty, innocent. There is no time for analysis or processing. No one parses the media the way defendants and lawyers do. For everyone else, they just decide who deserves their empathy.

Once these initial impressions are made, audiences move on to the next news cycle. The only thing that remains is our categorization. In this case, early media reports made it appear that the board members — one of whom was killed; others who lost their homes, friends and fortunes — had been previously negligent.

Over the next 72 hours, hundreds of conversations were had with journalists globally to set the record straight, which changed the global narrative and the course of the litigation.

While speed, triage and instantaneous decision making is required in crisis matters, our training as lawyers is to gather all the facts and be certain before making any public statements, if any. While this training makes perfect sense it also creates a vacuum filled by others, few if any with your client’s sympathies in mind.
While every situation is different, the Champlain tragedy identified four key strategic steps:

1. Communications discovery: Immediately identify the facts as best as can be determined. Limit your public statement to these incontrovertible facts and only update your statement if and when more known facts become evident.

2. Stop playing Whac-A-Mole: It is human nature to answer the ceaselessly ringing phone, texts and emails but this is usually a fool's errand. It is tsunami-like and virtually impossible to handle. It also makes you defensive and empowers the narrative of journalists, not your client's. Instead, draft a brief holding statement which stays within the lines of what the lawyers approve and reply with this to almost every inquiry. It will immediately slow down the clock and start to allow you to be proactive rather than reactive.

3. Be Selective: Identify a trusted journalist(s) or the most influential — the ones other journalists are reading, such as The New York Times, Financial Times, Wall Street Journal, Washington Post, Politico or others and give them exclusive information which begins the process of introducing your narrative and influencing other journalists.

4. Employ one-on-one communications: In the case of national and global stories, there are hundreds of media who want information, almost all at once. In the case of Surfside, many hundreds of conversations were had with journalists over three days, one on one and off the record, to provide them with facts which they could independently verify and to help save them time and point them in the right direction. It changed everything.

Every matter is different and requires sui generis strategies developed in concert with the lawyers and communications. The critical question for all matters is how we use the “golden hours.”

While this was not true in Surfside, it is best for the lawyers and crisis communications professionals to have a relationship in peacetime. There are too many judgement calls required not to have developed a trusted relationship ahead of time when no one is watching.

Lawyers are among the best educated and trained professionals in the world. But just like with Captain Smith, there are limits to that expertise.

“Sometimes, though, you make a pact with yourself. I’ll pretend there’s nothing wrong if you pretend there’s nothing wrong. It’s called denial, and it’s one of the strongest pacts in the world. Just ask all those people who were still drinking champagne while the Titanic went down.”

— Neal Shusterman

Richard Levick
There But For the Grace of God Go I

Second in a Series on Risk Management and Communications

By Richard Levick

“If you don’t stick to your values when they’re being tested, they’re not values — they’re hobbies.”

— Jon Stewart

The Corporate Social Compact

If we have learned anything over the past six years, and certainly after January 6th and the midterm elections, it is that the Social Compact is real and serves as the bedrock for a civilized society.

The political philosophy which our Founding Fathers universally believed — that “government must be based on an agreement between those who govern and those who consent to be governed,” however, is no longer limited to just government. Commerce — public and private — now have their own social compact with multiple constituencies. Companies that recognize this, such as Apple, Marriott, Nike and Starbucks, have customer relationships which approach tribal and are theological in nature. They are not just a company, they are part of their customers’ identity.

This contractual bond is often taken for granted by many companies who view their customer relationships as merely transactional. But customers, shareholders and increasingly stakeholders — those individuals with influence but no direct financial interest — believe they have a social compact with the companies they choose to follow, whether or not they are buyers or investors. Breach that compact and you have eviscerated trust and will long postpone the time when you become a part of their identity.
Today, we are overwhelmed with commerce and receive between 5,000 and 10,000 advertisements per day, most whispering ‘Unless you buy our product, you are inadequate.’ No wonder so many consumers feel disempowered. We are not individuals, just a fractional part of a demographic.

The Choice

In corporations as in government, executives must make hard choices daily. Unfortunately, other than rising stock prices, the media is almost always only interested in the mistakes and their consequences.

The difference between youth and experience is that when we are young we are convinced we know with certainty exactly what we would do when confronting Faustian choices. For the experienced, we suffer the lure and consequences of temptation. There is something about financial comfort which make us Odysseus-like, listening with longing to the songs of the Sirens.

How is it we make the choices we make, especially when we know there could be risks ahead? The road to perdition is littered with fallen heroes.

Balancing Risks

It turns out that Bob Dylan did not hand sign his own recently released limited edition book, The Philosophy of Modern Song, despite its price tag of $600. Mr. Dylan's vertigo and the pandemic are the reasons for mechanization and they make perfect sense. I am always reluctant to criticize companies for decisions they make when I am not in their war room to witness it firsthand, but I am still having a hard time understanding why Mr. Dylan's renowned publisher Simon & Schuster, which sold 900 “hand signed” limited editions, originally refused to issue refunds and had denounced as “online rumors” the possibility that the signatures were machine made. When faced with the truth, run to the light.

Adidas knew of the risks of working with the controversial entertainer, entrepreneur and rogue, Ye (aka, Kanye West) going back to 2018, and discussed it at length at the most senior levels. With his products representing 8% of sales, this was a painful decision. So, little was done until Ye's bridge-too-far antisemitic tweets in October made it too problematic to continue the relationship.

These close decisions — between pecuniary results and eliminating a substantial risk — are determined by what we measure. If the short-term bottom line is the only calculus then we will always retain our Ye's. What is the long-term cost?

When Johnson & Johnson went to the great risk and expense of pulling all of its over-the-counter pain medications in 1982 as a result of the Tylenol poisonings, it then proceeded to out-perform expectations most quarters and become one of the most trusted pharmaceutical companies for the next three and a half decades. Short term sacrifice can pay long term dividends.

As the old Russian proverb goes, “The leopard cannot change his spots.” Ye was never going to change and be risk free.

Say it ain’t so, but product searches on Amazon are now overwhelmingly paid advertisements, not organic searches for the best product to meet our needs. As Stephen Covey wrote, “Trust is the glue of life. It’s the most essential ingredient in effective communication. It’s the foundational principle that holds all relationships.” I am a huge fan of Jeff Bezos, but isn’t this similar to the road that Mark Zuckerberg and Facebook took to infamy?

Eight major universities — including Michigan State, LSU, TCU, Syracuse, the University of Colorado at Boulder and others, with more coming — have now partnered with bookmaking companies and are promoting gambling to their students in exchange for lucrative sponsorship deals. College presidents have been sending out university-wide emails promoting gambling. A large percentage of recipients are under 21 — which violates the gambling industry's own code of conduct due to the highly susceptible nature of young people. Some of the recipients are current athletes. Can you say Pete Rose, anyone?

When faced with social transformative decisions, look backwards from the future. If this blows up — and it very likely will — will the money have been worth it? And when it does, the national media will pick out as a poster child a single university. Knowing that, would you still make the same decision today?

No matter how much you understand your market, it will change. No matter how private a decision seems, it will likely go public at some point. The key to reduction in risks occurs before you make the bad decision. Slow down. Look at this through your constituent's eyes. How will they view this decision?
Group thinking, fear of telling truth to power, taking comfort in the fact that “everyone else is doing it” or “this is the way we have always done it” and that no one will ever know are just a few of the handmaidens of bad decisions. When faced with choices that expose your company to risk, step outside yourself and ask your trusted team, “What do customers, shareholders, stakeholders, journalists and Mom think?” If you cannot justify it to Mom, it is not going to be a good decision.

Remember, if it goes wrong, none of these justifying arguments will carry any weight. As Ayn Rand wrote, “Rationalization is a process of not perceiving reality, but of attempting to make reality fit one’s emotions.”

“From us alone, they say, come all their miseries, yes, but they themselves, with their own reckless ways, compound their pains beyond their proper share.”

— Zeus, from The Odyssey

Richard Levick
The Ghosts of Groundhog Day

Third in a Series on Risk Management and Communications

By Richard Levick

“Generals are always prepared to fight the last war.”
— Winston Churchill

The worst decisions I have ever made are those that try to correct the past.

We overcompensate or second guess or simply take the road “less traveled” and think, as Robert Frost so beautifully wrote, that it will make “all the difference.” While the past is a wonderful teacher, it is but a factor, not a blueprint.

No doubt students of history are far better positioned to understand the present and peek into the future, but everything is different the second time around.

New potential crisis matters may share similarities with past events, but each situation is unique. As we learned in the movie Groundhog Day, every single decision that Phil (played by comedian Bill Murry) makes, no matter how simple, affects the lives of others (including the target of his affections, Andie MacDowell) and, most critically, his own. The universe is filled with quantum particles impacting everything and everyone they touch.

Still, we are intoxicated by the past and often seek its guidance, like Shakespeare’s Julius Caesar and Macbeth seeking out soothsayers to tell them the future. Even when they are told what is going to happen next, it is subject to misinterpretation. Our eyesight is impaired by the glare of our past.

When I speak to CEOs and boards I am often asked what they need to be doing in the pre-crisis or early hours of an ascending negative event. While there are dozens if not hundreds of tactical and strategic recommendations, the first job of a leader is emotional, not tactical.

As most of us recall, on Sunday evening April 9, 2017, Dr. David Dao was involuntarily deplaned from his seat on United Airlines Flight 3411 by the Chicago Transit Authority at O’Hare airport. He refused to deplane voluntarily due to a Monday morning medical appointment with a patient and was dragged screaming from the plane in a scene captured by at least two passengers with real time video on their mobile phones. By Monday morning the videos had gone viral and United was in the unenviable position of playing catch up. For Dr. Dao, it resulted in a concussion, a broken nose and two missing teeth. For United — “the friendly skies” — the damage was much worse.

Most of us watch companies misplaying a matter that blossoms into a crisis, and wonder, “How could they do this?” when really we should be asking, “What can we learn?”

As spectators, we are blessed with the advantage of hindsight. What have we learned so that when we are drinking from the tidal wave of our own burgeoning crisis and have no time to properly process, we don’t make the same mistakes?

Even though the videos first appeared on social media on a Sunday evening, no one at United either saw them or alerted CEO Oscar Munoz until he learned about it Monday morning in the newspapers — a form of communications better suited for an earlier age. He had lost his early warning advantage, severely limiting critical options.

Over the next two days, Mr. Munoz and United would make several missteps which made the crisis worse and turned a local domestic event into an international crisis. First, he issued a written “non-apology” apology which focused on United’s employees and policy for oversold flights rather than seeing things from Dr. Dao’s point of view. While this might have been understandable and temporarily soothing for United employees, the rest of the world saw things through Dr. Dao’s eyes. He had come to represent every United passenger. “Will this happen to me?”

On the following day, Mr. Munoz sent an email to United’s 84,000 employees, doubling down on the points from his letter. This too is understandable since, prior to Mr. Munoz’s arrival, there had been a crippling strike at the airline and Mr. Munoz apparently saw an opportunity to sooth past rough waters between management and employees.

Of course, when you send an email to 84,000 people, it will leak, which resulted in another negative news cycle. With so much adverse media coverage and increased pressure, Mr. Munoz watched the videos, changed course and then masterfully handled the crisis from that point forward, but not until 20 million Chinese citizens per hour were downloading the videos. For 30 years United had been penetrating the Chinese market and now that was threatened by some poor decision making at O’Hare.

With apologies to William Shakespeare’s Mark Antony, I come here not to bury Caesar but to praise him. We had the honor of working with Oscar Munoz when he was the CEO of CSX and watched him masterfully handle a derailment that included a toxic spill. He perfectly balanced safety, the community, customers and shareholders. If Oscar Munoz can make the mistake with Dr. Dao, what chance do the rest of us have?

From my perspective, Mr. Munoz’s desire to look back and fix the past overrode his reasoning for addressing the present.

In a crisis, everything is upside down. William Faulkner wrote that “The past is never dead. It’s not even past.” The past may not be dead but sometimes it is not a very good guide for the present.

When Martha Stewart was first under investigation by the Securities and Exchange Commission (SEC), she was reportedly offered a settlement of $250,000 but told her lawyer, Bob Morvillo, ‘I’m innocent and didn’t do anything wrong.’ Regardless of the legal issues at stake, the public viewed her as guilty and the SEC saw this as a “message case.” If they cannot regulate everyone, then high profile sacrifices such as Ms. Stewart are a good way to inhibit potential future wrongdoers. Perception trumps reality once again.

For Ms. Stewart, she appears to have been looking backward, as an icon with multiple media platforms, and was unable to see clearly into the present. She was no longer perceived as America’s “Sweetheart” but a potential felon. Bad things can happen to good people and all that brand building goes to waste.

While I was not in the room with Ms. Stewart, we were in March of 2008 at AIG when it elected to pay approximately $218 million in bonus payments to employees of its financial services division while it was under a bailout from the U.S. federal government.
Once again, it was perception over reality. AIG was contractually obligated to pay these bonuses, but they had two solid options to avoid the problem. Unfortunately, too many senior executives, though certainly not all, were looking backwards and counseling AIG Chairman and CEO Ed Liddy — an American patriot who took over the nearly impossible task — to pay the bonuses. It was a terrible look and made AIG the poster child for the financial crisis.

Few outside of Wall Street remember that, like Chrysler a generation earlier, AIG paid the federal government back ahead of time with interest. It turned out to be a good investment for the U.S. government but it painfully hurt the AIG brand.

Looking backwards often dominates our decision making, when really we need to stare down the present. Each morning is different no matter how similar the sunrise.

The value of a brand is not in its advertisements but in how it responds in a crisis.

Tabula rasa

Potential crisis situations hardly give us the time we need to gather full information, seek advice from contrary quarters, reflect and proceed apace with events. This is why interdisciplinary team drills one or twice a year are so helpful. “How would we respond if this happened to us?” “How does legal and communications or IR and HR effectively discuss differences and reach difficult decisions in a highly charged moment?” “If the right sacrifice properly timed will deflate a crisis, how do we make that decision?” “How do we respond when we are perceived as the villain of a news cycle, not the hero?”

One of the first things we need to do when seemingly normal events become abnormal is to stop and ask the question — “What internal or external events, people or symbols make this a more challenging risk?” Is it race, sex or sexual preference? Is it a political movement or election? Is it a trend in the industry? A forthcoming shareholders’ meeting or competitor activity? The sympathy of an accuser or alleged victim? What is happening externally impacts perception.

We tend to be too insular and employees often look at policy and the past rather than explore the unique factors of the moment. When they report up the food chain, they are often limited by this perspective, influencing the most senior executives. “This is the way we have always done it,” is a thought process suitable for the road to perdition.

The job of senior executives is to look at the outside factors, be Talmudic, and ask a variation of the Passover question, “Why is this [moment] different than all others?”

Time is not our ally in a crisis but if we use our peacetime wisely to prepare not just tactics but emotions and learn from the past rather than be slaves to it, it can give us the perspective we need for the present.

“Don’t look back. Something might be gaining on you.”

— Satchel Paige

Richard Levick
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