The Notes You Don’t Play

Career Development

My car during much of law school was an old Honda Accord hatchback that had previously been my

grandmother's. It was that shade of burgundy, inside and out, that Honda couldn't get enough of in the 1980s; its nose was slightly mashed in from an encounter with another vehicle in a parking lot (I found the car that way one evening, *sans* explanatory note). In short, it was a beater. Even so, it was super-reliable, and I kept it that way by attending to its routine maintenance. I did most of the work myself. But for complex jobs, I went to Tony.

Tony (or, as he identified himself when calling a customer, "TonyFromGlobal," said as one word) never seemed to be absent from his shop, which was a masterpiece of oily chaos, with vehicles of all makes and values piled three-deep around the building. To say he was trustworthy doesn't go far enough. Not only did he never perform unnecessary work, he often made minor adjustments in the course of addressing whatever issue your car was in for, such that a squeak or rattle would disappear, a window would operate more smoothly, or a staticky speaker would once again be clear. There were no charges for such things, or even acknowledgments that anything was done about them, they would just … happen.

Tony once talked me out of spending US$400 to replace shocks and struts. The car was basically a rolling bobblehead at that point, and I felt silly wobbling around town in it, but Tony persisted until I agreed to let it go. I think his closing argument was something like, "You'll be out of school soon, and you'll get rid of this car, and you know what you'll get for it? US$400!" I actually got US$600 several months later, but I took his point (and was US$1,000 better off for having done so).

I thought about Tony the other day while talking with in-house colleagues about a situation we small-law folks sometimes face. A corporate department seeks your guidance, and you can certainly provide it, but you find yourself looking past the point of engagement to consider the follow-on consequences — intended and not, foreseen and not — of your guidance being applied by this business team. The requester came to you with an appropriate recognition of a legal issue and asked you to clarify the issue's application to the business proposal by analyzing the known and possible risks. In other words, your colleague is an experienced consumer of legal services, and yet you still find yourself tempted to couch your response not in the terms in which it was sought, but as summary advice or direction as to next action ("what I would do is…").

So, to flog a couple of worn corporate metaphors, should you stay in your lane? If you do, are you reinforcing silos you should be tearing down? More to the point (and with a nod to this issue's theme), when, if ever, should you cross these borders?

I think the answer here is that cherished favorite of lawyers everywhere: It depends. I'm tempted to say that it doesn't depend, that the urge to respond to specific questions with broad guidance just means you didn't fully unpack the additional legal issues you're (let's assume correctly) perceiving at gut level into your conscious mind. This has certainly been the case for me at times, and when it is, I find that slowing down can help me find the best outcome in the shortest amount of time.

The nature and maturity of the relationship can be the determining factor. If the trust and rapport are solid and long-established, as it was between me and Tony, you may find the requester actually prefers and expects that you look beyond the narrow question they posed, and address *why* they're asking it, and what they mean to do about it.

If the relationship is relatively fresh, and there may be skepticism about whether legal's input will improve or sink the process into the mire, make sure you first demonstrate to your client that you're listening by answering the questions that they asked. If you see the potential for unwanted consequences, ask the questions that will help you gain perspective and improve your ability to

respond, not the sort that will come across as advice in camouflage, such as that favorite of significant others when preparing for an evening out: “Is that what you’re wearing tonight?”

Jazz icon Miles Davis is sometimes quoted as saying, when asked what distinguishes truly great music, “It’s not the notes you play, it’s the notes you don’t play.” Sometimes, that’s good advice for our advice. TonyFromGlobal would agree.

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