

Career Path: What the Heck Were They Thinking?

Career Development



Banner artwork by art_of_sun / *Shutterstock.com*

I'm a little tired of "best of" awards, truth be told. In my professional life, not a week went by without some law firm being celebrated for an accolade. In-house counsel seem to do fewer, but we still hand out awards like clockwork such as for best law departments, GCs of the year, and the ACC Top 10 30-Somethings (of which I served as a judge). There are hundreds and hundreds of them.

Now, it's not that the law firms, departments, and individual lawyers who are nominated and who win these awards aren't awesome. They usually are pretty great and deserving of recognition. The award serves as a temporary boost to the ego, provides a little thrill of recognition, can get you introduced to folks you'd like to know, looks good on your resume, and reassures you that you haven't given up a large chunk of your waking hours for nothing.

The thing is, there's not a great deal awards can teach us. In fact, that a majority of votes went to Person X at Firm Y could mean one of several things. Maybe voting was light that year and the marketing department did a great job getting their friends' friends to vote. Maybe the judges were lazy or incompetent. Or maybe the donation the firm made to the voting committee's favorite charity wasn't completely coincidental. But let's take even the best assumption, i.e., the winner is a great lawyer who delights their clients. OK, what does that do for me? How does it help me provide a better service?

Question, comment? Contact Career Path columnist James Bellerjeau.

Worst lawyer award

I'll tell you what would be much more valuable to know: **Who are the worst lawyers** and what did

they do that made them stand out? Flagrant public mistakes can provide great learning experiences. Although it's true we sometimes learn from our own mistakes, it's considerably less embarrassing to use other people's screwups for our teachable moments.

> Although it's true we sometimes learn from our own mistakes, it's considerably less embarrassing to use other people's screwups for our teachable moments.

You might be surprised to hear there are far fewer lists nominating "the worst lawyer of the year" or "the biggest legal screwups of the decade." Or maybe you're not surprised. Lawyers are a sue-happy group, come to think of it. Probably not a good idea to go around seeking nominations for your new "worst lawyer" list, although I bet you could get some new advertisers to buy space in your award publication.

The closest analogy I can think of are periodic lists compiled by law firms of the largest fines and settlements companies paid to resolve enforcement actions. These penalties are the result of sometimes epic misconduct and mismanagement, but it is rare for individuals to be singled out. In just the last few years, each of Airbus, Petrobas, Ericsson, and Telia coughed up more than a billion dollars in fine for paying bribes. Do you know any of the involved parties' names?

> You don't get to problems that big without senior management malfeasance — either their direct involvement, or they knew about it and didn't stop it, or they didn't know but should have known.

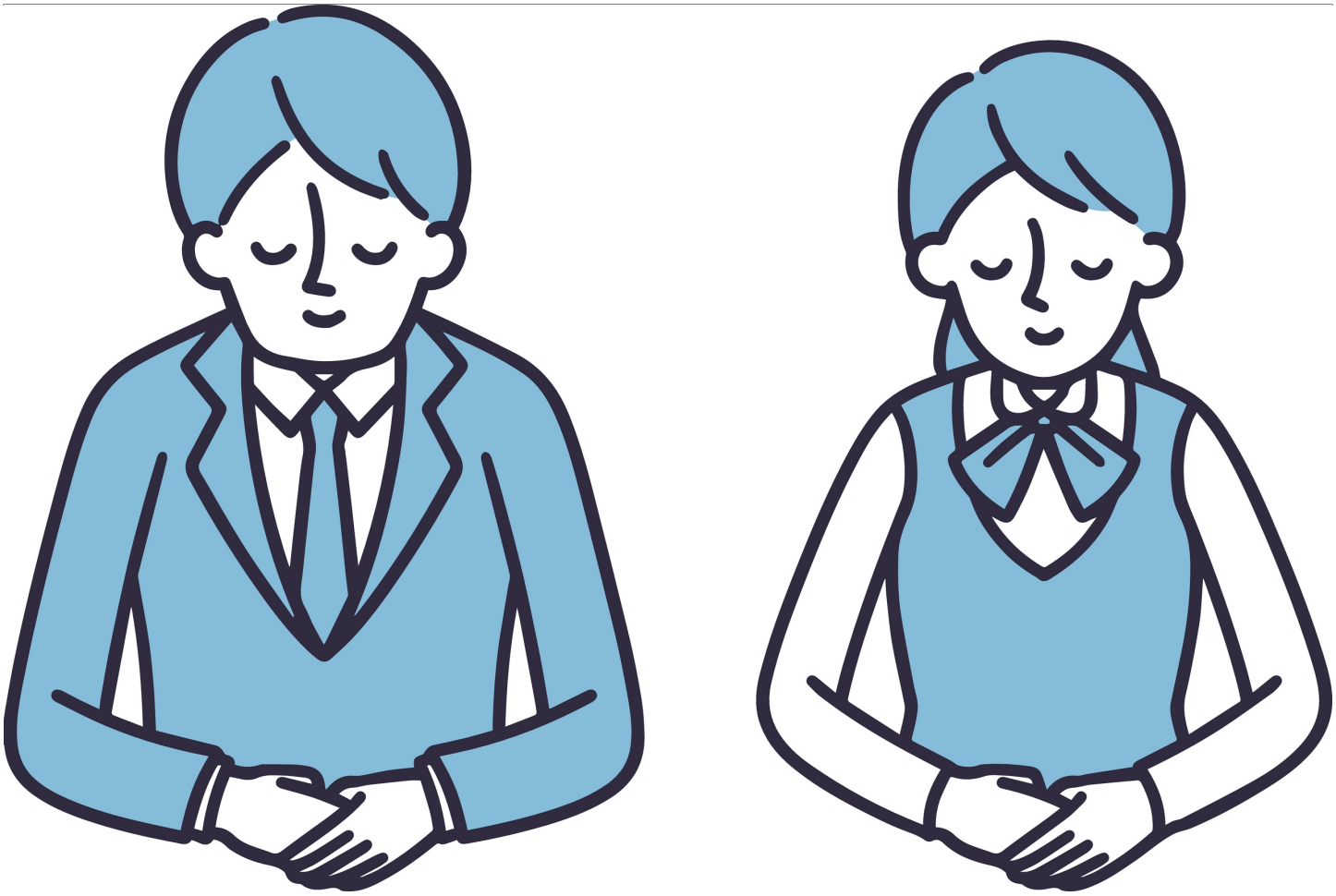
It would be really interesting to know what management was thinking in these companies. You don't get to problems that big without senior management malfeasance — either their direct involvement, or they knew about it and didn't stop it, or they didn't know but should have known. The thought process in all three cases would be fascinating to understand. Why did they make the decisions they did? Would we have been tempted to make the same decisions?

Lessons from hell

Because we should be open to continuous improvement from wherever inspiration strikes, I propose we **establish an annual "What Were They Thinking?" list** for counsel of companies and institutions that experience public crises. No need to crown an overall winner, and no need to pour salt on the wounds by referring to anything so rude as the "worst lawyers."

> And if we're honest, we should demonstrate humility when judging others.

And if we're honest, we should demonstrate humility when judging others. What seems like an obvious mistake after a crisis has unfolded was in all likelihood anything but clear at the time. We're talking about smart, accomplished, often well-meaning people who were doing their absolute best in difficult circumstances, not hacks or crooks.



Satome Yokote / *Shutterstock*

We could use these criteria for counsel's potential inclusion on the list:

- A deliberate decision (or lack of a decision) leading to significant corporate harm. In other words, there has to be one or more avoidable moments we can second-guess.
- The harm must make its way into the public eye. Lots of bad stuff happens that we never hear about. This isn't about surfacing companies' private business.
- Legal counsel either made the decision or was closely involved with those that did and so should have been able to influence the decision.

With this in mind, I quickly came up with the following candidates:

- **Disney's counsel** in letting the CEO say the company would explicitly fight to overturn a democratically adopted law in the State of Florida that had broad public support.
- **Fox News' counsel** for allowing reporting on Seth Rich conspiracy theories.
- **Twitters' counsel** for suppressing the news about Hunter Biden's laptop two weeks before the presidential election, making it appear as if they were choosing sides in a topic of clear national relevance.
- **Boeing's counsel** for allowing a circumstance to arise where safety officials say they felt their voices were overridden by business concerns.
- The **Motion Picture Academy's counsel** on thinking that a 10-year suspension for Will Smith attending the Academy Awards was appropriate while allowing him to retain his award.

Politics is so heated that I have great sympathy for any company that makes a misstep, egregious though they may be. Sometimes the pressure to take a stand is overwhelming. And I would bet there are a lot of companies whose safety officials feel underappreciated and underfunded. The slap and its consequences may not seem to reflect obviously poor decision-making to you.

So I'll offer up one more candidate for the "What Were They Thinking" nominations — the “Overall ‘What Were They Thinking’” candidate

- **Credit Suisse's counsel** for their inability to control either CS's internal compliance culture or the flow of damaging information to the press. Any company can be hit by a scandal, and follow-on scandals are not that rare. After all, once authorities give you a good looking-over, they are more likely to find more troublesome things. But if your company makes global headlines month after month for a string of scandals over a multi-year period, something's gone terribly wrong.

I’d be interested to know who you think should make the list.

Be well.

Disclaimer: The information in any resource in this website should not be construed as legal advice or as a legal opinion on specific facts, and should not be considered representing the views of its authors, its authors’ employers, its sponsors, and/or ACC. These resources are not intended as a definitive statement on the subject addressed. Rather, they are intended to serve as a tool providing practical guidance and references for the busy in-house practitioner and other readers.

James Bellerjeau



Lecturer

University of Zurich

James Bellerjeau is a lecturer in the LLM program of the University of Zürich and for the Europa Institut of the University of Zürich.

Bellerjeau served for two decades as group general counsel for Mettler-Toledo International Inc., an S&P 500 company with its worldwide headquarters in Greifensee, Switzerland. He then led Mettler-Toledo's global Sustainability program for several years through June 2021.

Bellerjeau shares thoughts on how to live a good life at Klugne. You can also follow him on LinkedIn.