



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Tom Larkins

& the Law Department of Applied Materials



THE SPEAKERS



Tom Larkins

Senior Vice President & General
Counsel, Applied Materials
(Nov 2012 – June 2020)



Mark Nelson

Partner, Cleary Gottlieb Steen &
Hamilton LLP



Kimberly Spoerri

Partner, Cleary Gottlieb Steen &
Hamilton LLP



Tony Downs

Partner, Goodwin Procter LLP



Christina Lewis

Partner, Goodwin Procter LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of our distinguished Guest of Honor and his colleagues, we are presenting Tom Larkins and the Law Department of Applied Materials with the leading global honor for General Counsel and Law Departments.

Applied Materials, Inc. (Nasdaq: AMAT) is a leader in materials engineering solutions used to produce virtually every new chip and advanced display in the world. Their expertise in modifying materials at atomic levels and on an industrial scale enables customers to transform possibilities into reality and shape the future.

Mr. Larkins addressed “GC Mindset: Capturing Opportunities AND Managing Risks in an Ever-Changing World.” The distinguished panelists’ additional topics included antitrust issues, M&A, intellectual property disputes, and employment.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors including General Counsel.



Tom Larkins

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Applied Materials

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Applied Materials has transformed from a small start-up into one of the most admired companies in the world. We put the “silicon” in Silicon Valley, playing a key role in the evolution of the electronics industry.

We enable our customers to build a wide range of advanced products, including: 1) larger capacity and faster memory chips; 2) more efficient, faster, and highly integrated processors; 3) super high-resolution displays; and 4) flexible electronics.

Mr. Larkins was Senior Vice President and General Counsel from November 2012 to June 2020 for Applied Materials, Inc. He was responsible for all legal affairs, worldwide intellectual property and global security, and brought to Applied a wealth of experience in mergers and acquisitions, global commercial transactions and operations, corporate finance, securities, and corporate governance.

Prior to joining Applied, Mr. Larkins served as vice president, corporate secretary and deputy general counsel of Honeywell International Inc., a diversified global technology and manufacturing leader, from September 2002 to November 2012. His areas of responsibility included corporate governance, public reporting, mergers and

acquisitions, corporate finance, real estate and procurement. He joined Honeywell (formerly AlliedSignal) in 1997 and served in various positions, including vice president and general counsel of its Automation and Control Solutions business segment.

Prior to joining Honeywell, Mr. Larkins served as senior vice president, chief administrative officer and general counsel of L.A. Gear from 1994 to 1997. Before that, he was in private practice (mergers and acquisitions, securities and general corporate) in Los Angeles for seven years, most recently at Fried, Frank, Harris, Shriver & Jacobson.

Mr. Larkins received his undergraduate degree from Stanford University and his J.D. from the University of Southern California.

We are committed to being the innovation leader that pushes the boundaries of science, technology and engineering to solve the world’s toughest materials engineering challenges.

We bring many perspectives to solving high-value problems. From research and development to supporting our customers’ manufacturing, we look at the entire roadmap and help speed ideas to market.

We are committed to deep collaboration. Adding strength to strength allows us to discover new opportunities together and deliver innovative, timely solutions that unlock new value and change the world.

Our business is built on trust. Over multiple decades, our customers have come to trust that we will deliver solutions to their toughest challenges while protecting their IP and their competitive advantages.

We align who we are and what we stand for as a company with what matters to our employees and their communities.

Our purpose drives everything we do. It is shaped by our values and reflected in our actions. From the well-being of our employees and their communities, to our sustainable business practices and corporate governance, we are focused on building a better future.

We are dedicated to conducting our business in an environmentally and socially responsible way, taking action to protect the health and safety of workers, customers and neighboring communities.

We are committed to making strategic investments around the world in education, civic engagement, the arts and the environment to improve the communities where we work and live.

We are steadfast in attracting, developing and retaining a global workforce and respecting the local cultures of the regions where we do business.

KAREN TODD: Hello! My name is Karen Todd, and I'm the Executive Director and Chief Operating Officer of the Directors Roundtable.

I would like to thank everyone who is listening in today for taking time from your busy schedules to attend this program. I want to especially thank the people of Applied Materials, and the many legal experts that support your legal team, for being in the audience. To all the other outside law firms, universities and organizations who are represented – welcome. I want to extend our appreciation to the staff of Goodwin Procter for their help with this webinar.

The Directors Roundtable is a civic group operating globally to organize the preeminent programming for Boards of Directors and their advisors, including General Counsel and their legal departments. Over the last 30 years, we have never charged the audience to attend any of our more than 800 events worldwide.

Our Chairman, Jack Friedman, expressly created this series to give executives and corporate counsel an opportunity to speak about their organizations, what they are doing as good global citizens, and their successful strategies in navigating a business world that is constantly challenging – especially in the last year.

We honor General Counsel and their Legal Departments, so that they can share this information with the Directors Roundtable community.

Today, we are very pleased to honor Tom Larkins, Senior Vice President and General Counsel of Applied Materials from November 2012 to June 2020, and its Law Department, many of whom are in attendance. Applied Materials is a global leader in creating materials engineering solutions for chips and displays used around the world.

Their expertise in modifying materials at atomic levels and on an industrial scale



enables customers to transform possibilities into reality and shape the future.

I would also like to introduce our Distinguished Panelists.

Mark Nelson and Kimberly Spoerri are partners from Cleary Gottlieb Steen & Hamilton LLP's Washington, D.C., and New York offices, respectively. Tony Downs and Christina Lewis are partners in Goodwin & Procter LLP's Boston office.

A special certificate has been sent to Tom acknowledging his leadership and the valuable contributions of the Law Department, along with the original of this letter from the Dean of his alma mater, the University of Southern California, Gould School of Law, which I will now read:

Dear Distinguished Guests:

On behalf of everyone at the USC Gould School of Law, we send a heartfelt congratulations to our esteemed alumnus and very good friend, Tom Larkins, on this prestigious honor. He is more than deserving of this recognition by the Directors Roundtable Institute as Distinguished General Counsel.

Tom epitomizes the dedication to excellence that has become a hallmark of our school and the strong sense of service that we seek to instill in our students. Tom is highly regarded for his outstanding leadership and

work as senior vice president and general counsel at Applied Materials, Inc. In addition to his professional contributions, he makes an important impact through his service. For several years, Tom has offered his time, effort, and expertise to the USC Gould School of Law as a member of our Board of Councilors. He also helps open windows of opportunity for our students, and helps shape their future career paths, as a vital part of our Employment Committee.

It has been a privilege to have Tom's presence enriching our USC Gould alumni community for the past 35 years. We celebrate his professional achievement and are inspired by his example. All of us at the Gould School send Tom and his family our best wishes.

Congratulations, once again. As we say at USC, from one member of the Trojan Family to another, "Fight on!"

Sincerely,

Andrew T. Guzman

I will now turn it over to Christina Lewis to introduce Tom and moderate today's panel.

CHRISTINA LEWIS: Thanks, Karen, for that introduction to today's programming. And what a nice letter from USC!

As mentioned, I'm Christina Lewis, a partner in Goodwin's employment practice

in Boston, and I'll be moderating today's panel. With that, it's my pleasure to introduce to you Tom Larkins. It's a privilege to be on this panel with him and with the other speakers that you're going to hear from today.

As you heard from his biography, Tom has a wealth of experience as in-house counsel, and I'm very much looking forward to hearing him talk about those experiences. So, without further ado, I will turn this to Tom to kick us off.

TOM LARKINS: Thanks, Christina. And thanks to Directors Roundtable for hosting this event, and for giving me one last chance, albeit virtually, to engage with the broader legal community. Thanks to Dean Guzman for those very kind words, and to the esteemed panelists joining us today. But most of all, thanks to my colleagues over the last 35 years, and most especially the Applied Materials Law Department, with whom I proudly share in the recognition from today's event.

I did my best to come up with a topic that could reflect the evolution of a perspective over time. It has some application for everyone, regardless of practice area.

As my friends and colleagues know, it can be dangerous to give me a microphone and a captive audience, but I'll try my best to behave.

So, what is the GC mindset? It's the prism through which you view problems and problem-solving, strategy and objectives, and how you lead your team and try to enable the company's success. It's not some grand epiphany that comes with the role; it's something that morphs over time, based on your learnings and experience. Some things that I'll talk about may sound obvious, but I continue to be surprised at how often they can be overlooked.

There are some fundamental building blocks that go all the way back to when I was a law firm associate, such as the importance of



understanding and communicating context. It makes the difference between someone feeling like they've been given a law school exam hypothetical and dreading life and someone feeling like they're a key part of a team. You'll definitely get better ideas from energized people if you take the time to provide context. It's the difference between something becoming the bottom-of-the-stack chore and the top-of-the-stack priority.

Also, there is value in being willing to push out the boundaries of your comfort zone. As a first-year corporate associate, I could honestly say that I was the senior corporate associate in the office. I was lucky enough to work with partners who did not view that as something to fear, but who tried to develop me, give me an opportunity to succeed, and kept raising the bar and letting me do more and more and more, rather

than just dictating what I *could* do based on my seniority. That's a lesson that I've tried to pay forward to others throughout my career.

So, why did I go in-house? My first in-house role was with a small public company, LA Gear, in which our firm's client had made a turnaround investment. I took the job because the chairman assured me that I'd have a seat at the leadership table and would be involved in discussions about the what and the why, and not just the how and the when. I'm sure that law firm people can relate to the fact that often you sit there late at night and wonder how the client could have made that decision and gotten themselves in such trouble. Everything seems to be painfully obvious. I wanted to go inside and understand how those decisions got made, and see if I could help

drive successful results, and maybe more importantly, design out problems before they arose.

Turnaround investments don't always turn in the direction that you hope, but they do provide ample opportunity to learn how to deal with quickly changing circumstances. That was clear from my very first week at the company, which was a baptism by fire that was a great learning experience.

My first day at work was supposed to be the day of the Northridge earthquake, and not only did I not get into the office, but I watched my way to the office on the Santa Monica Freeway crumble. On my real first day, I walked in to find that a senior leadership meeting was starting, and the topic on the table was a fundamental change in the company's business model. The Chairman had turned to the person on the other side of him to ask what we should do, and 45 minutes later, it came around to me. With that wealth of industry experience, I was able to start to understand that something with long-term potential could have short-term implications that would need to get managed through. I suggested a contractual clause that would help mitigate that risk that we, over the customer's objection, got into the contract and we wound up using later on.

Two days later, newspaper and television stories broke that created my first-ever crisis management experience, with public relations, regulatory and government relations workstreams. That provided the lesson that adversity can present a real opportunity to make an impact.

I stepped up and was the leader of that cross-organizational team, and things wound up working out for the best. Time precludes the full version of these stories, so I apologize.

When I was thinking about moving on and joining Allied Signal, which would become Honeywell, I talked to a partner at one of

my former firms and asked what he knew about them. He was actually in the process of working for a client that I had worked on, to sell a business to Allied, and had been to their offices several times. He said, "The people that seem to succeed there are business people who happen to be lawyers." He also said, "I never told you this, because I was afraid your head would swell, but that's the way I've always thought of you. I think you would do very well there." I was happy about the compliment, but that concept really resonated with me, and I tried to build that out over the course of my time at the company.

It all starts with obvious things like developing a fundamental understanding of the business objectives and figuring out how your team can accelerate capturing opportunities and mitigating risks.

You have to be able to accomplish seemingly conflicting objectives at the same time – something the CEO drilled into our heads – such as growth and productivity; capturing opportunities while managing risk; being both smart and fast, and woe be the person who tries to choose between the two.

You learn to understand the value of common processes and terminology in driving change and alignment, and the unique position of the law department to see across the organization and connect the dots.

Lastly, there is the danger of complacency in good times, and the danger of intellectual laziness. Don't default to the easy answer; think it through. I'm a believer that the real learnings come out of the third, fourth and fifth-level detail questions. Without seeing them, I know that there are several members of my team rolling their eyes because they've been through that experience, but I do believe that that's where the best learnings come.

By the time I joined Applied in late 2012, I had developed my own concept of the law department as a business partner. In the

first meeting with my team, I had one slide with two columns. On the left-hand side was "Ten Attributes of the Client Advisor" – and there's nothing wrong with being a client advisor – and on the right-hand side was "Ten Attributes of a Business Partner". I told them that each of us, including myself, was probably at a different point in the continuum on each of the 10 attributes, but that working together, I hoped to get *all* of us all the way over to the right on all 10. If we were successful in doing this, we would have more interesting and rewarding jobs. The Law Department would be perceived as being a much greater value add to the company and the demand for our services would skyrocket. Ultimately, the Law Department would be viewed as a competitive advantage. Because if you're doing the same thing that everybody else is doing, there's not much opportunity to differentiate yourself from the pack.

I do not have time to go through each of the 10 things on each side, but I want to hit on some highlights.

A client advisor would be responsive; can know the business well today; can be able to spot issues and gaps; can move the ball forward at a deliberate, thoughtful pace; and can be aware of the risks and able to say, "Here's the pros and cons of Option A and here's the pros and cons of Option B."

A business partner is a thought leader, not just able to answer questions *from* the client, but able to advise the clients on what they *should* be thinking about. The business partner has a strategic forward-looking focus, and I would say one of the things that has really driven the ability to make progress has been a very strong and tight alignment between the company's strategy and objectives, and the Law Department's strategy and objectives. Over the course of my time at Applied, about 75-80% of our annual objectives were tied directly to enabling business objectives, and the other 20-25% were aimed at how the Law Department can do all that more effectively

and more efficiently – again, the seemingly conflicting objectives.

It's important to not just be able to identify issues, but to execute for results and own the results, and have a bias for action that's based on intelligent risk-taking and solution-oriented critical thinking.

I know a lot of this is corporate speak and concepts, but it really does work. If you put all of that together, what it really develops is a sense of a how-to rather than a why-not mindset. When you're presented with a problem, your first instinct is to figure out how to solve that problem, as opposed to reciting why that problem is hard and probably can't be done. That's a huge shift, and when you make that shift, things turn out for the best.

So, while the philosophy seems simple, it is hard to master, but we did it. And, like all other operating philosophies, once it's established, it's time to think about how it needs to evolve.

In 2017, Applied turned 50, which is not that common these days and the company was doing really well. But the idea was, let's not be too pleased with ourselves; let's think about where we want to go. The CEO, Gary Dickerson, adopted a mantra. If I had a dollar for every time I have repeated this mantra, I probably could have retired a long time ago – but it was, “How do we need to think and act differently to get to where we want to go? Let's realize that that might be different than what got us to where we are.”

Also, at the time, it became very popular when you heard talks about strategic planning, both internally and externally, to hear people say that things were changing at a faster rate than ever. It sounds intriguing the first two or three times you hear it, and then you see people's eyes glaze over after that, and nothing really happens. I heard someone say it in a slightly different way, that I adopted, and it was that the pace of change will never be slower than it is today. That's more of a

“So, what is the GC mindset? It's the prism through which you view problems and problem-solving, strategy and objectives, and how you lead your team and try to enable the company's success.”
– Tom Larkins

slap-in-the-face wakeup call that makes you start to rethink, what you really need to be doing to be prepared for that.

You need to see over the horizon, and the law department is uniquely positioned to be one of the lenses to see what's coming over the horizon and figure out what's relevant for the company. What you don't want to be is the guy at the baseball game that sees the baseball getting bigger and bigger and bigger, and then it hits him, right? You don't want to be that person. But you can't chase everything; you have to focus on the critical and high-impact areas. The more you are involved in driving the growth of the company, the more you realize that you need to place equal or greater emphasis on the fact that the law department is a guardian of the company's people, its assets, and its reputation. While we all want to win, we want to win the right way and constantly reinforce the culture that acts like that.

The thing I knew over the years, but which has become more and more apparent in recent times, is that anything of any significance needs an enterprise-wide perspective and a multi-disciplinary approach. That's a fancy way of saying no one group can accomplish any result of significance on its own. You can't think about only the things that are right in front of you. You also need to consider the implications of decisions on all key constituencies, from a legal, a regulatory, a business, a customer, a supplier, and an employee perspective. That leads you to an evolution of the concept to the *business partner in an integrated enterprise*.

There are some key elements to this that I'll just spend a minute or two going over. One that might be surprising to some people, is you have to know what you don't know, and

how and where to find the answers. You need to be a learn-it-all and not a know-it-all.

The vast majority of the people on the call have succeeded and advanced over the course of their careers because of what they do know and what they, themselves, did. Going forward, the future leaders will be the ones who know what they don't know and know how to pull the right people with the right capabilities together to figure out the answer. Even from early in my in-house career, I was asked to lead a few cross-company big projects, and invariably, a business person would go into the CEO or the president's office and say, “Why is the lawyer doing this?” I've always wondered why our profession is the only one that gets genericized. People always talk about “the lawyer” – never names – and I was lucky enough to have bosses who said, “Because if I have you do it, you'll come in with a pre-ordained answer and you'll just backward engineer into the solution that you want, and we'll waste a tremendous amount of time and effort. Tom will want to get to the best answer; he'll look for input in defining what that would be. He will understand what he doesn't know and go out and find the answer. It might not be one that jives with everyone's notion coming into the project, but it will be one that will have consensus coming out of the project.”

I've always relished those roles. I've always been flattered by the confidence people have in me and tried to teach people to be viewed as someone who can step up in that way.

In order to deal with things in an integrated enterprise, you need to look for multiple perspectives and encourage constructive debate. The ideas that you get are limited by the people that you have at the table. You really

have to consider if all the right people are at the table that represent the perspectives that can bring relevant insights. Do they have the right capabilities; and do you have an inclusive atmosphere that encourages people to put ideas on the table and to have constructive debate that makes the ideas better?

I've seen people, as you start to develop this atmosphere, be willing to put their ideas on the table. If it's not accepted exactly the way they put it on the table, they view it as a loss, and they stop putting ideas on the table going forward. Whereas, for me, if I put an idea on the table at the start of the meeting, and an hour later, we have a much better idea that bears a faint resemblance to what I started with, but I'm confident it is a much better idea, that's going to be one of the best days of that week. Getting people's mindsets around that is a foundation that allows you to drive for bold thinking, where people are willing to take risks. Because when you go into new areas, new business models, just things the company hasn't done before, you are going to have to understand that the consequences of doing nothing can be significant. You're going to have to understand that you're not going to be able to answer all questions and design it out with an engineering-like precision before you do anything. You're going to have to adopt an iterative mindset where you start with an informed working hypothesis, you test it, you learn, and you adjust as you go. People need to understand that most decisions are not irrevocable, and that you miss 100% of the shots you don't take. You're going to make more progress, because ultimately, on anything that is ambiguous or uncertain, you have to take an informed point of view, plan accordingly, and adjust as necessary as you go.

There's a great book called *Thinking in Bets*, by Annie Duke, that I recommend to anybody to help see how that actually plays out.

Those are the high-level highlights. I will tell you that when it comes to this mindset, the nicest compliment I got was when I told



exec staff that I was going to retire, someone said, "Tom, obviously we thank you for what you've done, but what we really thank you for is the mindset that you've established within the Law Department that makes the Law Department one team with the business, not ping-ponging back and forth, and an integral part of getting to where we need to go." That was probably the nicest compliment I could get, and the legacy that I want to leave. But as much as we made progress and instilled this mindset over the last eight and a half years, I am absolutely certain that under the leadership of my successor, Teri Little, that the best is yet to come for both Applied and the Law Department.

With that, I'll turn it back to Christina to see where we go from here.

CHRISTINA LEWIS: Thanks very much, Tom. Your insight into the GC mindset is incredibly valuable. Listening to how to be a business partner as opposed to just a client advisor, and seeing over the horizon, to the how-to mindset. How can some of those philosophies be applied to the opportunities and risks that are front-of-mind for GCs today?

TOM LARKINS: I'll try to address that as best I can at a high level. Some of the things that are front-of-mind for all of us are how do we enable growth and value capture for our companies. What are the unique new issues, new business models, entry into new markets and industries, the impact of AI on all of us, M&A capacity and capability – all those different things. On the other side, the risk management side, it's enabling and ensuring value protection. You can create all this wonderful innovation, but if you can't effectively protect its value with your suppliers, with your customers, and with your own employees, it's going to be short-lived.

What you wind up doing is defining the problem statement and coming up with a framework. One of the things we worked hard to do is to not view questions in terms of "how do we improve over the status quo," because that's inherently limiting. The status quo might not be the most relevant factor for where you want to be going forward. Rather, what would be the ideal result? What would have to happen for that ideal result to come into place? What's the likelihood of that happening; what are the obstacles that are happening; what kind of resources would

need to be devoted to make that happen, over what kind of a time frame? You're working backwards from the ideal state and figuring out what has to happen.

That way, you can ensure alignment on the vision of where we want to go; you make sure everybody understands the degree of complexity in getting there, and understands the different trade-offs you can make with other projects going on. You can focus on driving the opportunity without losing sight of the risks. One of the things I learned a long time ago was you can have risk-free businesses, but those will be a great rain-making opportunity for all the bankruptcy lawyers. If you take no risks, you will wind up going out of business. The key thing is not to avoid risk, but to engage in intelligent risk-taking. Emphasize how you move smart and fast to get to the overall objective.

A real-life thing, Christina, that happened over the last year is the pandemic. Everybody on all of our teams was completely working at full speed before the pandemic hit. Then all of a sudden, you had the safety of your employees, the impact to your customers, the impact to your suppliers and obviously, the impact to your investors. So you had to have multiple work teams; you had to have these cross-disciplinary teams; and you needed to be able to make decisions fast. You needed to trust and empower, because you could not have the time to have everything work its way back up the chain and then work its way back down. I know I spent time with my team just aligning on what we wanted to do, and then letting people go out and work with the other teams and make decisions and move on, and then we would cross-check, as we went through the process.

But it was something where you wanted to make sure you viewed the employees and their safety first, and then, in our case, the criticality of the industry and our customers. Being able to support them, and also being whatever support we could be to our suppliers, because it definitely showed the

supply chain disruption risks that people had talked about in theory before, but now actually happened. It'll be interesting to see, going forward, at all companies, the lessons they learned from that, and what they'll do going forward.

CHRISTINA LEWIS: Thanks, Tom. As you know, there's an emerging focus on environmental, social and corporate governance. What is Applied doing to address ESG?

TOM LARKINS: That's a great question. The vision at Applied is to make possible a better future, so this kind of focus is actually in our wheelhouse. We've thought about how to apply it to us. Like anything else, we have to have a framework, and we call our framework 1X, 100X, 10,000X. 1X is the impact that we can have inside our own walls as a company, and so we've set specific objectives there. 100X is the greater impact we can have by collaborating with our customers and suppliers. Then 10,000X is the greatest impact we can have by increasing the energy efficiency of every transistor, chip and computer, a broad impact on the world at large.

In addition, we're reinforcing our culture of inclusion by committing to even greater transparency, clearer targets, and comprehensive training. One of the things that I've loved about Applied from my first days of joining is that Applied has always been committed to investing in the communities where our employees work, and being active members of the community, not just people taking up space. We demonstrate this through commitment, through strategic grantmaking and employee engagement activities in causes of particular importance to us: education for underserved youth; girls' empowerment; the alleviation of hunger; access to the arts and culture; and environmental stewardship.

It really builds the culture of Applied. I was very surprised when I moved out here from the East Coast and started meeting people in the community. A lot of people

– everyone I met – knew who Applied Materials was. Not all of them understood what we did, but they all knew of us because of our involvement in the community. That has always been a source of pride for me, and I've been executive champion on some of our fundraising projects and it's great. It has inspired me, as I thought about retirement, to think about causes, like the Law Foundation of Silicon Valley, the Campaign for Legal Services, serving on the Board of Counselors of my law school, where you can generate a personal spark, by giving back and having an impact beyond what you do in your professional work.

CHRISTINE LEWIS: Fantastic. Thanks, Tom! I will next ask Mark Nelson, who is a partner at Cleary Gottlieb, to speak.

MARK NELSON: Thank you, Christina. I'd like to start by thanking the Directors Roundtable, including Jack Friedman and Karen Todd, for organizing this event and inviting me to speak, and to the Goodwin Procter team for helping put on the webinar.

I've had the pleasure of working with Tom and many members of the Law Department at Applied Materials for the better part of six years or so, and it's been an incredible learning experience for me. Tom's comments on how he views the role of General Counsel and the mindset of a successful law department are a great example of what we outside counsel can learn from our clients and apply in our own business. It also points to the importance of building and maintaining strong in-house legal departments that can help companies navigate business challenges. The team at Applied Materials is really one of the best-prepared for the future that I've ever come across, and that's due both to the mindset Tom has brought to the Legal Department, as well as the fact, very importantly, that the company's Board and senior leadership genuinely value the Legal Department and view the lawyers as true partners in pursuing their business objectives, rather than as potential obstacles to be overcome. To me, that is a

hallmark of a strong law department, and a well-run company that's well-positioned to deal with whatever challenges lie ahead.

Speaking of challenges, I'm going to focus the remainder of my remarks on a couple of trends in my field, which is antitrust, with a particular focus on how those trends affect the review of mergers, and the impact of politics on antitrust in recent years.

The first trend is that there seems to be a growing sense of anxiety about market concentration, in particular in high-tech and big data sectors. Not coincidentally, these are areas that regulators and politicians have a harder time understanding than traditional industries, and find it challenging to wrap their minds around the business models that have led to so much growth. They see the massive growth of companies like Amazon, Facebook, Microsoft, Apple, and Google, and they presume that this growth suggests there must be a problem, and it is a problem that antitrust laws should fix.

We hear this anxiety from antitrust authorities and politicians across the globe, but increasingly in the United States, which is home to all of the companies I just mentioned that are leading a lot of this growth. That anxiety is understandable because there's a palpable sense in which people have become increasingly dependent on large tech companies in their day-to-day lives, whether it's shopping, communication, news, other media, social interactions, and so on.

But that dependence on technology could just as well be a sign that these companies are simply incredibly successful in delivering to consumers exactly what they want. When you step back and consider how these companies and their growth have affected consumers – in my view – the improvements to consumer welfare they have brought are massive and evident. In contrast, at least when you view the impact of this growth through an antitrust lens, the potential harms that get raised seem more theoretical than real, and

“It all starts with obvious things like developing a fundamental understanding of the business objectives and figuring out how your team can accelerate capturing opportunities and mitigating risks.” – Tom Larkins

the concerns seem more focused on harmful things that *might* happen at some time in the future than on actual harms experienced by consumers today.

We also sometimes hear the concern that competing businesses may die out when they aren't able to keep up with innovation and technological advancement, and that this is somehow harmful. This is not normally considered an antitrust concern, and it is, in fact, a natural consequence of companies innovating and competing successfully. They come up with new business models that displace old business models, which is sometimes referred to in economics as “creative destruction.”

The danger of using the blunt tool of antitrust to try to address this generalized anxiety about certain firms becoming too big is that it will force distortions in the law away from the foundational economic principles on which antitrust is grounded, which is to promote consumer welfare. That should be the core focus of antitrust law. Losing that focus runs the risk of harming rather than enhancing competition and consumer welfare.

It may be that there is a case to be made for regulating certain aspects of businesses – even these high-tech businesses – including, perhaps, to ensure diversity of voices in media, or to address privacy concerns that are associated with gathering large amounts of personal information. In my view, however, the way to get at those types of concerns is to address them openly and make the case for direct regulation of the relevant activity, if appropriate.

Antitrust law should not be twisted to serve other policy or political objectives, or else

you risk distorting the law and encouraging others, especially outside the United States, to do the same. You can bet that if we, in the U.S., give an inch by moving away from our principles, others will take a mile. That can lead to enormous uncertainty in how antitrust laws will be applied and that lack of predictability is ultimately bad for business *and* for consumers.

CHRISTINA LEWIS: Mark, if I could just interrupt you to ask, is this type of concern new and unique to high-tech, or have you seen it before?

MARK NELSON: I don't think it's new. I'm sure there are a number of historical parallels, but this latest round reminds me, in particular, of concerns we heard during the economic crisis that began around 2008 about banks having gotten “too big to fail.” At the time, some people suggested that antitrust enforcement hadn't done a sufficient job of limiting concentration in the banking industry, and that too many mergers had been allowed, leading to too much concentration in the industry.

The reality, though, was that there were still a lot of banks for consumers to choose among. The market for banking services wasn't particularly concentrated. Prices for services were not going up with increased concentration. So, the market power of the sort that antitrust is designed to address wasn't the issue.

There were, however, obviously genuine issues about the scale of certain financial institutions and the risk to the stability of some financial markets that a failure of one of those institutions could pose. But antitrust was not well-suited to address the concerns and, eventually the call to use antitrust policy

as a way to try to address the perceived problem died down, and the focus appropriately turned to direct regulation of the activities that gave rise to the systemic risks that were identified at the time.

Today, a number of the reforms that were put in place back then are still in place. We didn't see any serious push during the financial crisis to amend the antitrust laws or even enforce them in a way that was fundamentally different than in the past.

That takes me to the second trend I want to highlight, which is the increasing role of politics in antitrust. Politics has always played a role to some extent in the antitrust field. For example, globally, we've long seen antitrust used, or deliberately not enforced, to allow for the creation of so-called "national champions" – in particular, industries that are considered critical to a particular country. Or we see politics come into play in negotiating remedies over merger reviews. When a merger is cleared subject to remedies, we sometimes see policy objectives that aren't genuinely tied to underlying antitrust issues presented by a transaction seeping into the discussion. Protecting jobs, agreeing not to close a certain plant, or ensuring minimum investment in a particular political district can come about to appease political leaders who have some influence on the antitrust review process. We are increasingly seeing trends towards greater use of antitrust, and merger control rules in particular, to achieve political objectives that really have nothing to do with the antitrust merits of the transaction under review.

In particular, we have seen a growth in protectionism in merger reviews. Sometimes that manifests itself as hostility towards foreign acquisitions of local companies. More often, those concerns are addressed through direct foreign investment laws, like the CFIUS rules and process in the United States. But at times we see the antitrust review process being used for these purposes when there's no serious underlying competition concern.



We have also seen protectionism in the form of challenging mergers between two foreign companies coming together to become more efficient and compete more effectively against a local firm that a government happens to want to protect, for whatever reasons. That kind of protectionist thinking turns typical antitrust policy objectives on its head in that it ultimately encourages less, not more, competition. The reality, however, is that sometimes politics get in the way.

CHRISTINA LEWIS: Interesting. Thanks, Mark. And do you see politics coming into play in the U.S., or is this really just an issue for outside the U.S.?

MARK NELSON: Historically, we've seen it more outside the U.S. In the past, it has been viewed as less appropriate here. However, we are seeing both of the trends I mentioned increasingly coming into play in the United States, and, in some ways, the trends are coming together. Political considerations on the right *and* the left have been influencing the current debate over changing the antitrust laws. Normally, people associate more aggressive antitrust enforcement with the left, and that's certainly happening now, with Democrats, led

by Senator Klobuchar, calling for reform. But at the same time, we also see calls for reform coming from the right. For example, just a couple of weeks ago, Senator Hawley, a Republican from Missouri, proposed amending the antitrust laws to bar altogether mergers or acquisitions by purportedly dominant online companies or platforms, without defining exactly what that term means, though we all know which companies he is targeting. Although you don't often hear calls from the right for that kind of reform, barring all mergers, in this case, it seemed like a transparent attempt to limit the growth and influence of companies that Senator Hawley happens to see as hostile to his particular political leanings. He wants to rein in the influence of these tech companies on public discourse, including his ability to express his views, because he sees them at a different end of the political spectrum and is concerned that they will impose constraints in a way that disfavors him and his supporters.

That may well be a concern worth considering from a policy perspective, like the systemic risks that I mentioned with respect to the financial markets in 2008–2009. But it's not an antitrust concern, and the antitrust law shouldn't be stretched to address

perceived harms that really aren't tied to the economic concept of consumer welfare. The danger of such efforts is that leads to enforcement practices that do not have a sensible limiting principle.

Interestingly, though, Senator Hawley may find some common ground with Democratic lawmakers who are also looking for ways to rein in the growth of these large tech companies for entirely different reasons.

More generally, with the Democrats controlling Congress and the White House, we should expect to see a more aggressive merger enforcement policy and antitrust enforcement generally, and possibly legislative changes that will expand the reach of antitrust laws. Senator Klobuchar has been leading an effort that may make it easier for the government to win cases if they challenge mergers in court. Although the government generally wins the cases it brings, Senator Klobuchar has proposed shifting presumptions to make it even easier to win.

Hopefully, when the dust settles, these developments will all be limited by and focused on the guiding underlying economic principle of antitrust, which is enhancing and protecting consumer welfare. Only time will tell if political influences will get the upper hand and push the limits of antitrust law to achieve other ends.

I'll pause there, Christina, to see if there are any other questions.

CHRISTINA LEWIS: Thanks, Mark. We do have one question from the audience to you, which is, how do you advise clients about the antitrust implications of a transaction if geopolitical concerns or U.S. politics are substantially driving the outcome?

MARK NELSON: At least in the U.S., we ultimately have the federal courts to turn to. That is the ultimate discipline on the U.S. antitrust authorities. The U.S. authorities might be influenced by political

considerations, and; they may get pressure from the Hill, but you ultimately can get in front of the federal judge and hopefully be vindicated, if you're right that the transaction doesn't harm competition. You have to build a strong case and have confidence in your case, but it becomes much more difficult if there *are* genuine underlying antitrust issues. Politics can create pressure to bring an action that is hard to overcome in court.

That's one of the troubling things about changing the rules that are already very favorable to the government. To make it even easier for them to win will mean that politics can play more of a role, and the courts will be less of a check on the antitrust authorities.

Also, outside the U.S., we don't often have that same discipline of the courts imposing a constraint on the regulators. The regulators often are the last word, or the court process is so prolonged that as a practical matter, at least for mergers, you can't really take advantage of it. For that reason, I expect that political considerations are still going to be of greater concern outside the U.S.

CHRISTINA LEWIS: Thanks very much, Mark.

Next, I would like to introduce Kimberly Spoerri, who is also a partner at Cleary Gottlieb.

KIMBERLY SPOERRI: Thanks for the introduction, Christina. I thought I would talk about my area of expertise, which is M&A, and maybe think a little bit about what we can expect to see in the M&A market in the months ahead, and also what we've seen to date for 2021. If I get my 2021 predictions correct, please remember you heard it here first! If they are wrong, forget I said anything.

Just going back to 2019 and 2020, and what we've seen over the last eight or so years coming out of the recovery from the Great Recession and out of the Lehman

bankruptcy, is a really strong M&A market. While 2020 was down from 2019, it was, nevertheless, the seventh straight consecutive year of deal volumes in excess of \$3 trillion, which is quite a healthy number. The only reason that 2020 was down from 2019 was because of COVID, and essentially there was a huge drop-off in deal activity in March, once the pandemic hit the U.S. That continued for three or four months, and then we saw a big pickup in M&A deal activity in late August, September, which carried forward to the end of the year and, candidly, is still going this year. We've seen an extremely busy first quarter for deals in 2021.

As one might expect, M&A in 2020 was strongest, I wouldn't say in the fields that were least impacted by COVID, but I would say in the many fields that were positively impacted by COVID. Obviously you saw some companies do better than expected because of the shift to work from home, so you saw a lot of big deals in the tech sector and also in healthcare.

One thing we didn't see in 2020 that we expected to see was more distressed M&A. Obviously, a lot of companies in other sectors, such as travel, entertainment and hospitality, were suffering, and are still suffering. No one has swooped in to take advantage of the value differentials there. We'll see if that happens in 2021.

In terms of what we can look for in 2021 more generally, it is a little easier to make a prediction for the full year, since I have 25% of it to base a track record on. The levels remain elevated, and that's from a global perspective, and in the Americas. We're seeing a broad-base improvement in corporate M&A, and an increase of unsolicited deal activity. People generally were a little bit cautious about unsolicited activity in activism during COVID; it just seemed a bit unseemly. Those shackles have been thoroughly thrown off now.

I think we're also seeing deal volumes driven by mid-sized transactions as opposed to mega-deals, and we're also seeing a lot of stock-for-stock transactions. Those two trends: mid-sized deals and stock-for-stock transactions are essentially tied to the same underlying cause, which is that we currently still have inflated company valuations. It's obviously much easier to pay inflated valuation for a smaller company than a large company, and it's obviously easier to use your inflated stock value to buy someone else's inflated stock, as opposed to using cash. As the M&A market continues on its track, we're going to see more of those types of deals over the coming year.

I've said this for about five years now in various presentations, so some of you guys may have heard it before, too. There's still a lot of money that's spent by private equity sponsors. I think they're sitting on about \$3 trillion of cash, so there's a huge backlog of deals to be done by them. That's obviously still driving a very healthy M&A market.

I would be remiss not to mention one of the biggest trends coming out of 2020, along with Peloton and Zoom, which is SPACs [special purpose acquisition company]. Essentially, SPACs had a huge year in 2020, and they were up somewhat in 2019 after being fairly flat for many years. Now, in 2021, they're up even more, and, in fact, in the first three months of 2021, we've all seen as many SPAC deals as we have in all of 2020. It's going to be interesting to see, with SPACs playing such a large part of the M&A market – if any of the veneer or the shine comes off of that sort of transaction. Will the M&A market still keep up its blistering pace, or will it slow down? Because certainly something like 20% of deal volumes now are accounted for by SPAC activity.

Generally, all signs point to the continuation of the sellers' market. We just need to wait and see, but that's where it's heading.

CHRISTINA LEWIS: Kimberly, why has it been a sellers' market?

“Over the course of my time at Applied, about 75-80% of our annual objectives were tied directly to enabling business objectives, and the other 20-25% were aimed at how the Law Department can do all that more effectively and more efficiently – again, the seemingly conflicting objectives.”
– Tom Larkins

KIMBERLY SPOERRI: It's an interesting question. There are a few different reasons, but the primary one is that there's a lot of demand. There's a lot of capital floating around, and it's not just in the old places from the old acquirors. Obviously we still have strategics, and we have PE [private equity] firms, as I mentioned, that have a huge war chest. We have hedge funds and pension plans; but we also have a lot of new market entrants. The new market buyers that have come in over the last five to 10 years have a ton of cash that they're trying to spend. We also have sovereign wealth funds, family offices, and, as I mentioned earlier, SPACs.

An interesting thing about a lot of these new sources of capital is it's not just a new source to do M&As; it's a new source of capital to do other sorts of deals. For example, a typical sovereign wealth fund plans to do a big minority investment and to be a relatively passive minority investor. That puts a completely new type of transaction on the table for a seller to consider, and it gives them the option between remaining private and perhaps going the route of slower growth or not growing as fast as they otherwise might, and totally selling out. Now, all of a sudden, you can get a huge amount of cash and still control your company.

It's not just sovereign wealth funds that offer that option; we've also seen a growth in long-term private equity funds over the last four or five years. The old private equity play used to be: buy out a company, take it private, redo it over a four, five, six-year period, sell it or IPO it. Now you have private equity firms that are buying and holding

minority positions or buying and holding companies that they wouldn't previously have been able to do such a fast turnaround with over a 10 or a 12-year period.

Again, you have all of these additional sources of capital, but the sources are also being more creative and flexible in the way they're using capital, which permits lots of different types of deals and more options for sellers beyond just selling out.

CHRISTINA LEWIS: Thanks, Kimberly. Are there consequences to it being a sellers' market?

KIMBERLY SPOERRI: Yes. I'm sure a lot of people in the audience here know this even better than me that there are two main consequences. One is just the value of the deals being done, and the fact that those are going up. That's exactly what one would expect. But it's not just the deal values that are increasing; it's also that you're seeing more and more seller-favorable terms from a contracting perspective. One thing that I'm sure this audience has heard a lot about is rep and warranty insurance, for example. That started off as a phenomenon in the PE market, six or seven years ago, and now its use is pretty much ubiquitous. Not just PE firms, but strategic; it's something that sellers are expecting.

One of the interesting things is that they dovetail. I just mentioned about companies staying private longer and getting investments from different kinds of investors. If you're a private company, and you've been private for a long time and you have a couple of PE guys on your board, and they are

20% investors, they're going to be expecting the same terms in a sale of the company that they would see in their world. We're actually seeing much more sophisticated sellers pushing for these seller-favorable fee terms. So it is moving away from indemnities and using rapid warranty insurance. You have much tighter closing conditions now. Basically, it's the same style of deal in a public company as a private company deal, unless you have a material adverse effect, which is essentially almost impossible to prove, you're closing the deal no matter if there's a downdraft of the business or if you didn't get a key customer consent or anything like that.

To tie into something Mark was saying earlier, there's also an attempted increase to shift regulatory risk to buyers. The main thing that sellers care about are closing certainty. Anything that impacts closing certainty, whether that's closing conditions or MAE [material adverse effect] and downdrafts in the business, or regulatory conditions, they're going to try and shift more and more of that to buyers. In a seller-favorable market, buyers have less room to push back, so it really puts buyers in an awkward position. On the one hand, you have sellers that are expecting these deals to be totally locked up when they sign; on the other hand, sellers are pushing the risk to the buyers to get the deal done. You also have buyers seeing a changing regulatory environment and more aggressive regulators, so at the time you're drafting the contract and trying to think about what the obligations of each side are, you also have to be thinking ahead of the curve and looking around the corner to see what kind of novel theory a regulator might try to apply in our particular deal or our particular case. There's definitely an interesting push and pull there, in terms of negotiating and giving sellers comfort, but also being able to advise your client on what they're really taking on, when they're trying to meet these seller terms.

The other interesting consequence of the sellers' market – and this is something we've



seen more and more in the last two to three years – and probably as a result of work-from-home, is that the pace of dealmaking has just increased exponentially. Deals that used to take three or four months when I started as an associate now take a month or less. You get a process letter from an auction, and it sets out a bid date. Everyone is just assuming that's the date the target wants to sign; that's not the date they want your first draft of the contract or for you to tell them that you're all done with diligence. There's someone in that deal, I can almost assure you, if you're in an auction process, that is negotiating with the target almost from day one to get to a fully signed contract within three weeks or less. That's another challenge for buyers these days, especially strategic buyers because they look at deals very differently than PE firms. They have a lot more stakeholders; they have a lot more people who are interested in how to integrate the company, how to think about synergies of a company, digging down into the diligences. It's a challenge for strategic buyers to think about how they remain competitive in auction processes as PE sellers continue to push the limits in terms of how fast deals are going, what's happening pre-signing, and pushing to post-signing, lots of interesting developments.

CHRISTINA LEWIS: Yes. Thanks, Kimberly. We do have one question for you from the audience, and I'm curious to hear your answer to this. Are SPACs a passing fad, or will they have lasting power? When do the SPACs make sense versus IPOs and other strategic options?

KIMBERLY SPOERRI: [LAUGHS] I won't make any snarky comments about who we've seen try to do an IPO and who ended up doing a SPAC instead. But are they a passing fad? It's hard to tell. We haven't really seen these SPACs mature yet. There is some skepticism among lawyers, because we are lawyers, that eventually there will be a couple of big blowups in the SPAC market and they will slow down. But I don't think they are ever going to fall as out of fashion as they were in, let's say, 2017, 2018. I do think it will be hard for them to maintain their current popularity. Generally, people tend to think that companies that are better suited for SPACs as opposed to IPOs are a little weaker, but the SPAC process is a lot easier than an IPO process. It runs a lot more quickly. What I'm interested to see is how regulators at the SEC respond to SPACs.

CHRISTINA LEWIS: Perfect. Thank you very much, Kimberly.

We're now going to move to our third panelist, who is my partner at Goodwin, Tony Downs. Tony?

TONY DOWNS: Hi. My name's Tony Downs. I've been at Goodwin since the mid-'80s, and I became a patent litigator in about 2000. One of my first clients was Applied Materials in the early 2000s. When you think about comparing litigation of today to litigation of about 20 years ago, there are some huge differences. There were large amounts of paper documents that you had to collect. There was expensive travel, and the case we had was a district court, patent jury trial in Boston. We had to travel to England to gather paper, and that took a large number of people to get. We then had the trial, and it lasted a couple of years. We did win the trial for Applied, but the world has really changed in the last few years, including during the time that Tom's been the General Counsel.

Applied Materials has great relations with many of its customers and suppliers all throughout the world. One of the great things that I was able to do in working with Applied Materials on intellectual property matters was to travel around the world to meet the people at these great companies. I also met some great lawyers who are in the countries where the technology is just growing so fast – in Korea, Japan, China, Taiwan and others.

Working with Applied Materials and ultimately with Tom, when he joined in 2012, was a great thing. When Tom came in, he really did ramp up the scrutiny that the General Counsel was giving to the litigation cases that were coming before us, and also any questions of indemnity and things like that.

It was a great burst of energy to have Tom come onto the scene, and I was very glad to be able to work with him on a number of cases.

The other thing that was great for me, as I said, is I got a chance to meet these other lawyers and other people from companies who were in a similar business around the world, and that was something that was of benefit to Goodwin, as well.

But we know now, in the last year or so – and I'm going to be fairly brief – that patent litigation in the U.S. has pretty much dropped off the radar screen until fairly recently because of COVID and the difficulty of getting juries, of getting courts to schedule hearings, to actually have the old-fashioned trial, where everyone comes to a court, let's say in Delaware. They bring a large team and have lots of people involved. All that has really slowed down but may be coming back as we get into hopefully more vaccination of people and more safe procedures being allowed.

Another thing that's changed is that companies like Applied Materials and people like Tom are looking for *efficient* and also *mutually* beneficial settlement agreements or arrangements that can be made to settle up transactions rather than trying to correct it through a court case or an actual trial.

Recently, a lot of courts have just put trials on hold, but some of the patent cases are coming back and are getting on the court's calendar. There have recently been cases in Texas. I was involved in one of them just a few weeks ago where we actually went to trial. Even though we had to wait two weeks because one of the other side's attorneys had tested positive for COVID.

It's an interesting situation to be in, because we then sat around for two weeks, everybody getting tested every morning to see if there was any more COVID. Eventually there wasn't. We went into the courtroom in Marshall, Texas, in front of Judge Gilstrap. He had a great set of procedures in place to make sure everybody was safe and maintaining distance, and the case went ahead smoothly. That seems to be a harbinger

that there will be more cases being tried in court, whereas it's been pretty much on hold for a long time.

But turning back to Tom, I really enjoyed the opportunity to work with him. He was great for Applied Materials, and I couldn't be happier to have had the opportunity to work with Tom on a number of cases, which were not easy to solve, but which required a lot of creative litigating, deal making, and investigation.

The other thing I can say about Applied Materials and Tom in general is that they are very much on the cutting edge. It has been fascinating to be able to work on the kind of technology and the various intellectual property issues that have come up over the more than 15 years that I've been working with Applied Materials.

So, Tom, thank you for being on the board, and it was very much a great pleasure to work with you!

CHRISTINA LEWIS: Thanks, Tony. Before I conclude with some thoughts on emerging trends in employment law, I did want to tell the audience that I know there are a couple of questions pending for Tom, and following my hopefully brief remarks, there will be time for Tom to answer those questions.

As you know, I am an employment partner at Goodwin. When I think about recent trends in employment law, there's really no way around acknowledging what a tremendous and unprecedented impact Covid-19 had, and is having, on the workplace.

As you heard Tom say, when the pandemic first hit, companies like Applied were faced with three acute challenges: 1) shifting to a remote workforce rapidly; 2) the impact the pandemic had on customers, vendors and suppliers; and maybe most importantly, 3) the safety and well-being of employees. Applied navigated these challenges very well, as you heard Tom say.

But moving away from Applied specifically and just speaking more generally about challenges that companies across the country faced when this pandemic first emerged, any questions that they are now trying to grapple with still are questions like: 1) How do we physically change the workplace to maximize safety? We've got companies putting up signs, posters, mandating face masks, constructing plastic barriers. 2) How do we ensure workers can be productive at home? 3) How do we ensure data security with a remote workforce? 4) What can we do to ask employees about their medical history and current symptoms before allowing them to enter into the workplace? Are we allowed to know that information? 5) What are our obligations if an employee becomes ill at work? 6) Do we need to change our workplace policies and procedures entirely, given how drastically the working environment has changed? And then 7) How do we comply with the laws in the different states where employees are working but were not previously? As many in the audience can probably relate, employees moved away from having to be near their home office and were suddenly in jurisdictions where the company had not previously operated.

The answer to those questions is unique to each company. There is not a one-size-fits-all answer, which just makes these things even more complicated.

Now, what we're seeing is companies imagine what the future holds. Have we learned anything that's positive from this experience? Should we continue allowing some employees to work remotely? If we do that, can we cast a wider net looking for talent, because there might be people in different jurisdictions where we didn't previously operate who would be perfect for a certain position. Again, there's probably not a one-size-fits-all answer to all of these questions.

Companies are also facing new questions – unprecedented questions, I'll call them, which seems to be the word for this pandemic – such as can we mandate employees

“You need to see over the horizon, and the law department is uniquely positioned to be one of the lenses to see what's coming over the horizon and figure out what's relevant for the company.”

– Tom Larkins

receiving the vaccine? I would say that this is probably the number one question that I receive of late from various companies. There is a legal answer to that question, which is yes, provided you make reasonable accommodations for individuals who object on religious grounds or who have a disability that prevents them from receiving the vaccine. But I think that the legal answer is not really the hardest question. The hardest question is, do we *want* to mandate vaccines? Or do we simply want to encourage them? What does the workplace look like if some employees are vaccinated and others are not? Does it mean that we still have to wear a mask; do we still have to have socially distanced meetings? These are the new questions that companies are grappling with *now*.

In short, there's no question that the pandemic has dominated the employment world over the last year and may have reshaped workplaces for the foreseeable future. It's definitely an interesting time to be an employment lawyer, to work through these issues alongside clients. I look forward to getting through the rest of this and the end of this, with all of you.

With that, if there are no new questions for me, what I'd like to do now is enter our general Q&A section. We already have a couple for Tom, but don't feel shy about typing in a couple of questions for any of the panelists if you didn't get a chance to ask while they were speaking.

Tom, here is your first question. What do you see as the biggest risk on the horizon for in-house legal departments?

TOM LARKINS: That's always a great question. A lot of people think of this in

terms of specific subject matter risk, and I think of it in a slightly different way. The external environment is changing so rapidly in so many different ways. It's the ability of a company to assess those changes and risks, assess how they change their underlying assumptions and actually be able to make decisions about the path they want to be on and execute with the necessary speed, recognizing some things take culture change, some things take longer than others; there are short-term and long-term implications. The thinking is evolving at a lot of companies to wrestle with those things and to get some great minds together and think about the right way to go. The challenge, then, is distilling that into action and having aligned action across an organization, to go with the requisite speed, so that you're staying ahead of the game, going where the puck is going as opposed to where it was. As you can see, I like sports analogies!

It's easy to talk about a lot of these topics. It's hard for law departments to talk about what they can't do, to make sure you have the right time to devote to the true needle-moving situations and to make sure that what is a needle-mover for a law department is the same as a needle-mover for the businesses and for the companies and for the companies' top management.

The rigor of the iterative thinking, and the driving of that to execution is the essential for success, and anything that gets in the way of that is going to be disabling. I'm proud that a company like ours has a multitude of opportunities – more than enough to pursue – but you have to figure out which are the higher-impact ones and which ones you should pursue and which is going to have the biggest benefit for all the key constituencies.

CHRISTINA LEWIS: Excellent. Thanks, Tom. This next question is one of my favorites, because if we can't learn from our mistakes, what can we do? The question is, please describe a situation that proved to be a major setback in your career, and how you overcame it and learned from it.

TOM LARKINS: There have been a multitude of situations where I took a shot and tried to make the best decision that I could at the time, but circumstances evolved differently than anticipated and we didn't achieve the desired results. I'm not known as a patient person. I hate to lose, and when you lose long wars, you're not very happy about it. But I try not to wallow, and what I try to do is to think about what I'd do differently the next time. What did I learn from it? But going back to something I said earlier, which is sometimes things don't work out the way people would hope. Then people start to wonder, should we be taking shots? That's not the right thing. I don't believe the quality of the decision is 100% dependent on the outcome. You can have bad decisions where people get lucky and it turns out well, and you can have good decisions that for unforeseen reasons don't work out well. Don't go back into a cocoon; be willing to still take the shots, do it based on what the upside benefit is and how well you think you can manage the risk.

Leaders allow people to fail, yet don't make their team a failure. You want the bold thinking; you want people being willing to take risks; and the biggest danger of a setback on a project you're working on is that people go back into their shell. I would always try to do whatever I could to prevent that from happening.

CHRISTINA LEWIS: Excellent.

TOM LARKINS: I've had enough setbacks that it's hard to choose any one in particular, so I went with the general approach.

CHRISTINA LEWIS: [LAUGHS] That's what they say – setbacks are a mark of a

“You really have to consider if all the right people are at the table that represent the perspectives that can bring relevant insights. Do they have the right capabilities; and do you have an inclusive atmosphere that encourages people to put ideas on the table and to have constructive debate that makes the ideas better?”

– Tom Larkins

successful career, for sure! So, Tom, another one for you that just came in. The audience wants to know what's next for you?

TOM LARKINS: It's a good question! One thing that I've learned over the last few months is the value of not having the corporate calendar on my calendar, and I've been helping out with some specific projects that are now winding down and I'll be moving on. When I first talked with my wife, I had to promise that I would leave the house and not become a fan of daytime T.V. – those were the critical things before she would let me retire! We thought that the way to separate from work was travel. Then last year happened, and that went by the wayside. Now there's some hope that it'll come back, so maybe that'll be my plan. I have various ideas, but I'm not looking to jump from one calendar right into another calendar, so I'll probably give it some thought and try to do some enjoyable things, and then figure out later on what to do. My interests range from doing a podcast – I have a friend who has a very successful podcast – to getting and staying involved with companies on boards, and things like that.

We'll see how it plays out. Like I said, the non-profit stuff is where I would like to spend more time, especially on the causes that I have embraced. I'm on boards and I would like to be able to spend more time with them, try to help out and have an impact. I still want to have that impact, but I'm picking different ways to do it.

CHRISTINA LEWIS: Excellent. Thanks, Tom. One more for you, which is, we as outside counsel would like to know the answer

to this question. What is the biggest challenge to running an in-house legal team?

TOM LARKINS: That's a good question. There is so much for in-house teams to think about and so much for us to do, you have to remember that you need the right people in the right roles that you can trust. Having a multi-disciplinary enterprise-wide approach is going to cause an evolution of law department structures from the old traditional “command and control” to more networks of teams working in a far more informal and flexible environment. That's going to be an adjustment.

There's going to be a need for law departments, especially global ones like Applied's, to have alternative service delivery models. There are people who make decisions that can generate success or risk at all levels of the organization, and you can't have everything funnel down. You have to be able to get the word out there, and you have to have people able to do things independently. You need to use AI to be able to have people have more value-added jobs and automate the processing of things. Not getting rid of people; just having them do more value-added work that requires judgment, as opposed to just doing the processing.

All companies that I've talked to are facing these same problems. Before the pandemic, we had a global Law Department meeting. People get tired of hearing just one person's voice saying the same thing over and over again. I invited four General Counsels from Silicon Valley companies to attend and take whatever questions came from the audience. They talked about how they were looking at

things from their perspective. People were dealing with common issues; people had made more progress in some areas than others had made. It was nice to see that people were wrestling with the same things and do a bit of brainstorming on how to address it.

CHRISTINA LEWIS: Great.

MARK NELSON: I have a question for Tom. I thought it was interesting to hear you talk about the mindset you think is appropriate for a General Counsel and for a legal department, to bring to the business and to the senior executives of the company. The question I have for you is how do you, as General Counsel in particular, but also as a lawyer in a law department, help persuade senior executives who might be of the mindset that lawyers are obstacles and not partners in helping them? How do you help persuade them that the legal department and lawyers *can* be partners and can contribute to the business side of things?

TOM LARKINS: From the very first interviews for my first role, and then in every role along the way, that's part of what I go through in the interview process. What I have advised other people who have been thinking about making that switch, is you need to find a company that views the law department in the right way. Not a, "Speak when spoken to and we'll take your advice when we agree with it," kind of place, because anybody who makes the switch from a law firm to that kind of environment will be very unhappy very quickly. I had

the good fortune to come in as a General Counsel at a small company, and then went to be a smaller fish in a much bigger pond and a GC of a business unit. After that, I did many other things, and then came to Applied, but in each case, I dealt with this specifically. I basically ended each conversation with, "I'm assuming you're paying me because you want my input. I'm not assuming that you're always going to take my advice." Then I would make a faint attempt at humor by saying, "Sometimes you're going to have a bad day. You'll get it wrong and disagree with me." They still hired me! You *want* that person at the table; you want that consigliere; you want that person who's to help design out the problems from the beginning. Usually, in a big company, you wind up meeting a wide variety of people before you join – sometimes double digits – and you can get a good sense of them.

It's people that have the view of the department in the right way. If I feel that I can learn from and work well with them then I'm willing to make the move. That's what I advise people whenever they're thinking of new roles. Find that fit. Find something where you can add value on day one, but there's enough of a learning curve and runway that's going to keep the job interesting for you along the way.

M&A people, litigators, maybe some IP people – people who have to deal in their law firm jobs with multiple industries and get up to speed on those things very quickly, realize that it's not the technical details that

get you; it's more how you do it. When I first joined Applied, we were working late one night, and I was actually walking out with the CEO. I said, "I'm trying to get the lingo down and learn as fast as I can." He said, "You're doing great. I don't need you to know how to design the tool. But you're asking the questions and putting things on the table that we brought you in to do and that wouldn't be there if you weren't here." I had no experience in semiconductors when I joined the company, but you apply common sense and business sense and ask the questions. Then as you learn more about the business, you can have more pointed and specific input.

I've been very fortunate, Mark, because there's a lot of people that haven't had the same experience, where the company has been like that, and I have enjoyed it tremendously.

MARK NELSON: Thank you.

CHRISTINA LEWIS: Wonderful. Thanks, Tom. This is bringing us to the conclusion of this webinar. I want to thank all the panelists for sharing their thoughts on some incredibly interesting issues. A special thanks to you, Tom, and congratulations again on this recognition; it's very well deserved.

On behalf of all the panelists, I want to thank everyone who's in the audience for attending today, and we hope it was beneficial. Stay safe and take care!



Mark Nelson
Partner

Mark W. Nelson's practice focuses on global antitrust matters, with an emphasis on merger cases and U.S. civil litigation. His U.S. practice includes extensive merger work and antitrust counseling, and litigation experience in both civil and criminal matters, as well as in FTC administrative proceedings. Mark's global practice involves merger cases before the European Commission and national authorities throughout Europe, Asia, and South America, as well as defending actions involving alleged restraints of

trade and abuses of dominant position in EU proceedings. He has also been actively involved in litigation, investigations, and counseling in matters involving the intersection of antitrust and intellectual property law, in particular in the context of patent pools and standards-setting.

Mark joined the firm in 1993 and became a partner in 2002. He received a J.D. from Harvard Law School and a B.S. from Cornell University.

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Kimberly Spoerri is a partner in the New York office of Cleary Gottlieb Steen & Hamilton LLP. Her practice focuses on public and private mergers and acquisitions, private equity investments, and corporate governance matters. She also regularly represents major investment banking firms acting as financial advisors to acquirors or target companies.

Kim has played a leading role in some of the firm's most high-profile transactions advising several notable clients, including

Honeywell International Inc. in its spin-offs of Resideo Technologies and Garrett Motion; GiVi Holding (the Versace Family holding company of Gianni Versace S.p.A.) and Donatella Versace in connection with the sale of Versace to Michael Kors Holdings Ltd.; Google in a variety of transactions including its acquisitions of Orbitera, Waze, Motorola Mobility, and ctwist Inc.; MDC Partners in its business combination transaction with Stagwell Media; and MSD Animal Health in the acquisition of the global rights to Vecoxan from Elanco.

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Tony Downs
Partner



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Christina Lewis
Partner

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Tony Downs, a partner and the former chair of Goodwin's IP Litigation practice, has more than 30 years of litigation experience. He joined Goodwin in 1988 after clerking for Chief Justice William Rehnquist at the U.S. Supreme Court. His practice is focused on intellectual property litigation, with specialization in patent matters. He also has experience in trade secret cases, antitrust and competition law, securities and other

complex commercial litigation. Mr. Downs has been repeatedly listed in *Chambers USA: America's Leading Lawyers for Business*, and other publications, where clients have lauded him for being "outstanding at trial," "greatly skilled in making complex technical arguments understandable," "an excellent writer," and thought of "highly" as a "strategist." *IAM Patent 1000* describes him as "a shrewd medical devices maestro."

Christina Lewis is a partner in Goodwin's Employment practice, representing employers in all facets of their relationships with employees and across a range of industries. Ms. Lewis helps clients negotiate and draft employment agreements, employment policies, affirmative action plans and separation agreements. She also advises on employment issues including employee discipline, leaves of absences, terminations, internal

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Additionally, Ms. Lewis conducts seminars and training programs on a variety of employment topics, including discrimination prevention, and is a certified trainer in both fair employment practices and sexual harassment prevention by the Massachusetts Commission Against Discrimination (MCAD).

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