



## **EPISODE #23**

### **Risk management and the virtual law firm**

**Total run time:** 19:12 minutes

**Terri:** Even though Covid-19 lockdowns have been lifted in most places, many lawyers continue to work remotely by choice, either from home or while on the road. I'm Terri Garland and you're listening to the Portable Ethics Lawyer. To talk about the risks of working remotely, our guest today is David Jargiello, the general counsel of VLP, a fully remote law firm. David, welcome.

**David:** Thank you for having me.

**Terri:** For those not familiar with your firm, would you please tell us a little bit about its background?

**David:** Sure. VLP Law Group is a sophisticated, fully distributed, national law firm with an emphasis on transactional practice. Our leading practices are, in no particular order: corporate, technology transactions, commercial lending, and patents. Today we have about 50 lawyers and growing, and our clients range from the various earliest venture-backed startups to Fortune 100 companies.

**Terri:** VLP did not emerge as a result of the pandemic. You've been around for a lot longer than that, right?

**David:** That's right. VLP is 14 years old. We're going on our 15th anniversary very shortly so that means we opened our doors in 2008. The firm, however, was conceived and structured as early as 2007.

The architect and founder of the firm was an individual by the name of Craig Johnson. Craig was a legendary Silicon Valley legal entrepreneur and my own mentor for some

20 years. Craig, by way of background, was, among his many accolades, a practice group leader at Wilson Sonsini in the 1980s and the founder of a firm called Venture Law Group in 1993, which you may have heard of.

Venture Law Group—as a historical side note, VLG—was predicated on a number of then-novel practice concepts, most obviously the use of a firm trade name—Venture Law Group—and a logo. Our letterhead was an acorn with no words on it, just an acorn as opposed to partner names.

In the same vein, Craig envisioned VLP circa 2007 as again disrupting the paradigm of the practice of law. [In] 2007, if you'll remember, the business world was just beginning to virtualize and moving beyond brick and mortar; the cloud was about to become mainstream. We believed at that time that technology—then, WebEx being the standard—was already at a point where seamless, excellent client service could be delivered from anywhere at any time. It seemed obvious to us that those tools would become more sophisticated over time, not less. Therefore, it seemed to us that a national, even international, law firm with no physical offices was not only possible—it was inevitable. It was going to happen. Having done it before in the form of VLG, a paradigm-shifting firm, we thought we could do it again.

So, putting all of that together, it would be very hard to overstate the amount of business and strategic risk management thinking that we put into operationalizing this whole virtual firm concept in its early years. Importantly, I would say that has not stopped. It continues to this day. We continually think about the risk management aspects of being virtual. That is not a process that has ever ended.

**Terri:** David, when we were preparing for this podcast, you mentioned the need for rigorous risk management policies and procedures early on. What have been some of the most important ones?

**David:** Before we launched the firm, we identified that rogue lawyers—what I would define as lawyers operating outside of established firm policies and procedures—would

be one of, if not the, central operational risk in a firm in which you don't see people every day in the hallway.

Our solution to that was to run an exceptionally tight risk management ship with systems that reach every individual in the law firm on a continuous basis. I would give four examples of that:

First, risk management is embedded in the firm's DNA. It is structurally and culturally part of who the firm and what the firm is. Case in point, VLP has never had a risk management committee per se, at least not in a traditional or customary sense. Rather, at VLP, it is the executive committee—the governing committee of the firm—that is, and always has been, the risk management committee. What this means, among other things, is that risk management issues don't fester until they bubble up to management; rather, practice risk is managed early, often, and continuously at the very highest levels of the firm.

Secondly, we block and tackle just like everybody else. Those fundamentals are hardwired, again, into the firm. So, we have all of the best practices you might see in any other law firm. All new business is reviewed by an independent committee, that committee has the gravitas to say no, conflicts are monitored, conflicts are managed, engagement letters are required, we monitor that engagement letters have been retained, files are closed and, again, we monitor compliance that people are closing their files. We have procedures and policies for opinion letters and audit letters. So, on a day-to-day practice hygiene level, we look just like any other law firm. You know, we can and do, for example, say no to partners on new business.

Third, we view hiring as a risk management decision. In VLP parlance what we say is, "Fit trumps growth." Fit trumps growth. In a distributed environment, fit is not a buzz word. It is a risk management imperative. In our hiring practice, practice excellence is a given; that's table stakes. But on top of that, I would say the quintessential VLP lawyer has several things: a self-starting, entrepreneurial nature; a natural inclination to proactively reach out to his or her colleagues and stay connected to the firm; and a fair degree of tech savvy. So, the fact of the matter is, working virtually is not for everybody.

Therefore, risk management has to begin at the proverbial door. It is part of the hiring decision.

Finally, we run our firm in a way that ensures multiple, overlapping touch points with all personnel. Multiple, overlapping touch points with all personnel—what does that mean? The executive committee divides up the partnership among them and conducts routine, personal check-ins with all partners. The managing partner and our chief administrator do routine, personal check-ins with all associates and paralegals. And our administrator does routine, one-on-one check-ins with all staff. These check-ins are virtual, of course—we are a virtual firm. They are consistent, they are meaningful, and they are driven from the top of the firm.

The converse of that is we have tried to engender a culture where people feel free to reach out for contact with management with questions, concerns of any kind that they might have. I would say with confidence that it would be very difficult for somebody today at any level at the firm to slip through the cracks, or to fall off risk management radar. Fourteen years later, this is precisely because we are virtual.

**Terri:** You say “precisely because we are virtual”—what do you mean by that?

**David:** It is precisely because we are virtual, that we maintain tighter, better control over the firm’s risk management policies and procedures.

Everybody at VLP came from managing practice in a brick-and-mortar environment. After almost 15 years of being virtual, we’ve come to the conclusion that there is a bit of an illusion afoot in traditional settings. That illusion being that seeing somebody is supervising them. Just because you physically see somebody in the office on a day-to-day basis, it doesn’t necessarily follow that you are supervising them. In our view, being virtual has forced us to recognize and operationalize the core principles of sound management and supervision. And those I would say are, actually, in fact, proactively, constructively, meaningfully reaching out to individuals in the firm at every level, in a high EQ manner. So therefore, I would say it is precisely because we are virtual that we’ve been able to operationalize those principles of affirmative, intentional reach-out to

manage the firm and frankly the way we have successfully managed the rogue partner risk. It's not seeing that's important; it's connecting that's important.

**Terri:** Sounds like what you're saying is that in the virtual environment, you have to be intentional about supervision, instead of assuming that it's happening because you see someone.

**David:** Spot on. Intentionality is in fact a VLP risk management mantra. We've all been in brick-and-mortar environments, as I said, and there are obvious advantages to that. But conversely, just because you physically see someone doesn't mean that you're reaching out to them constructively to evaluate, for example, how their practice is doing or what their shortcomings or challenges may be.

Firm management everywhere learns those things by engaging with people. Being virtual for us is a forcing function. It's a forcing function. Being virtual forces intentional engagement with your team. So, we manage in substantial part by proactive, intentional engagement with our respective teams, whatever they may be—associates, paralegals, staff. Because we do that, we have a very, very good grasp at any point in time on the pulse of the law firm.

**Terri:** Let's switch topics a bit. How do you handle training in a distributed environment?

**David:** First, we tend to hire for seniority, and that's at all levels of the firm: partners, associates, and staff. We are confident that we could run professional training and professional development processes virtually if we wanted to. It's just a business decision that we have asked our new hires to be able to hit the ground running.

Second, just because we're "hiring senior," that doesn't obviate the need for training and supervision. I've already mentioned that we work hard to build in multiple points of contact with all personnel. Through the combined efforts of the executive committee, our managing partner, our administrative manager, and the general counsel, no one at any level of the firm is off on their own without consistent, regular management engagement.

I would argue, in fact, that successful training and supervision requires a manager to be proactive and to reach out—to an associate who needs more help, for example—or to proactively manage projects or projects' deadlines with one's team. Putting it that way, successful training is a variation on successful management. You have to reach out to them, review their work product, schedule meetings, walk through their work product, what was good, what was not so good, do a call with the client together, do a debrief afterwards, what went well, what went not so well.

It's that intentionality of engaging your subordinates—whether they are associates, paralegals, or junior partners—and improving their skillsets, improving their business development skills, improving their work habits, improving their timekeeping, and improving all the assets involved in legal practice. You have to take time with people, and you have to help them develop their skills.

**Terri:** At ALAS, we stress the importance of educating lawyers and staff to come to the firm's general counsel with ethics questions and other concerns and, before the pandemic, we encouraged general counsel to stay visible by walking the halls. How do you encourage reporting and identify issues in the virtual environment?

**David:** Good question. As I mentioned, I worked with VLP's founder, Craig Johnson, months before the firm started operations, thinking about how you practice outside of a brick-and-mortar environment. We were extensively analyzing the professional responsibility, the risk management, and the mechanical, operational aspects of virtual practice in 2007.

The point of that is that the role of general counsel has been hardwired into the firm since its very inception and I would say that, through a host of firm educational, firm cultural, and firm social avenues, the general counsel remains front and center—I would say omnipresent—on matters of practice integrity.

All new partner candidates for the firm have to go through a risk management orientation. That risk management orientation takes place before they are hired, in fact, before an offer decision is made. So as a matter of policy, if you are a partner

candidate, you go through all of your interviews as you might in any other firm, but there is a final and last interview. In that interview, we walk through all of the risk management policies and procedures that we expect and that we have in the firm from new business intake through conflicts and everything else. There is a fairly detailed report on how the firm runs its practice. This is embedded in the hiring decision.

**Terri:** Let's switch topics and talk about UPL. VLP lawyers are disbursed geographically. How do you guard against unauthorized practice of law or UPL?

**David:** Very timely question. Pre-Covid, the answer was simple: we were quite rigid about requiring that every lawyer be licensed to practice in their jurisdiction of residence. Remember that, as a virtual firm, every lawyer is practicing at home or at an office adjacent to their home. How do we ensure that? We ensured admission in good standing in the same way that any law firm does. Accounting and HR always know where any lawyer is physically practicing, and we make routine bar inquiries for each lawyer in the firm to make sure there is what we think of, or what we would call, alignment of location and license.

Enter Covid. One effect of Covid is that we, like many firms, are suddenly seeing lawyers, you know, air quotes, "practicing remote" in the sense of ABA [Formal Opinion] 495; in other words, relocating to a jurisdiction in which they are not in fact licensed. So, for example, we will now see candidates that are barred in New York, for example, who practiced at one time in a brick-and-mortar New York office but during the pandemic they relocated their New York practice to Florida and now they are permanently located in Florida.

We do allow this, but it is subject to strict and, I would say, still evolving guidelines. First, in my example—New York barred lawyer, New York practice physically sitting in Florida—we engage local counsel in every instance. So in my example that would be, we would retain local ethics counsel in Florida. The narrow question for that local counsel is: is there local adoption, if any, of the principles of ABA 495 by case law or ethics opinion or otherwise? If there are no remote practice guidelines in the jurisdiction, then the answer is simple: the candidate must be admitted in the state to

be hired at VLP. If there are remote practice guidelines, then we develop, again with local counsel, guidelines to which the candidate must adhere as a condition of employment or admission to partnership. The last step, of course, is that we, you have to monitor that through new business intake and through reach-out that I mentioned before to make sure that they are abiding by those guidelines, and they stay effective.

**Terri:** Switching topics again, when we were preparing for this podcast, you mentioned that flexibility is a key differentiator of your firm. How's that?

**David:** There are some hard lines in the practice of law. Excellent work product, exceptional client service, and attention to client and transactional deadlines are examples of that. After that, there is, however, you know, some degree of flexibility. At VLP, I would say lawyers and staff have considerable flexibility in setting their schedules. So, in our view, I would say virtual practice does not mean sitting at your desk at your computer between a hard 9:00 am to 5:00 pm or something like that. Rather, it means it's more functionally defined. It means being available, virtually, to meet the business needs of the firm and its clients. For some individuals that might in fact be 9:00 to 5:00; for other individuals, it might be a mix of hours over the course of the day and evening, whatever works best in light of childcare, family, or other obligations.

**Terri:** But how do you collaborate when people are not working on the same task at the same time?

**David:** Of course, there are times in any practice, certainly in a transactional practice, when it is all-hands-on deck and everybody has to do what's required to meet the needs of the client and the firm, but there are also many times when teams can work out of rigid hourly lockstep. How do you differentiate between those two? In the end it takes planning and communication among your team, some degree of intentionality—what do we do, what's due this week, what's due today, what's due this month, what is everybody's schedule, what is everybody's availability—and putting that together and understanding that in a thoughtful, intentional way.



**Terri:** As you know, lateral movement has been really high in the past couple years. That is not only a business issue for law firms, but can also increase claims against them. How is your firm increasing stickiness to keep lawyers with the firm?

**David:** Excellent question. It has been a key point of focus since the day VLP opened its proverbial doors. Since inception, we have had what we call a Virtual Culture Committee or VCC. The sole purpose of that committee is to find ways to bring people together. That's its sole function. And we consider that to be an enormously strategic function. That group is responsible for engineering ways in which we bring people together through either virtual events or live events. We have two in-person partner retreats every year. We have two virtual all-hands meetings per month by Zoom—so literally all hands in the firm. We have a host of live and virtual practice group meetings throughout the year. We have a host of local events, where people just get together, who are in the same geographic area, just for lunch and then throughout the year, various live and virtual events around holidays, firm anniversaries, and things of that nature. It would be hard to overstate how much time, effort, and mindshare we expend trying to make and keep VLP a place that people very genuinely want to be.

**Terri:** Thanks very much for sharing the lessons you and your firm have learned about practicing virtually.

**David:** My pleasure. Thank you for having me.

**Terri:** Until next time, I'm Terri Garland, and this is the Portable Ethics Lawyer.

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