

Can Entrepreneurial Principles Make You a Better Lawyer?

Part 1

BY RONALD M. SANDGRUND, ESQ., INQ.

It's fine to celebrate success but it is more important to heed the lessons of failure.¹

The riskiest thing you can do is play it safe.²

This is the seventh article series by The InQuiring Lawyer addressing a topic that Colorado lawyers may discuss privately but rarely talk about publicly. The topics in this column are explored through dialogues with lawyers, judges, law professors, law students, and law school deans, as well as entrepreneurs, journalists, business leaders, politicians, economists, sociologists, mental health professionals, academics, children, gadflies, and know-it-alls (myself included). If you have an idea for a future column, I hope you will share it with me via email at rms.sandgrund@gmail.com.

This month's article is the first of a three-part conversation about whether entrepreneurial principles can make better lawyers. We ask: What exactly is a philosophy of entrepreneurship and what does it have to do with being a successful lawyer and finding contentment? Why have both Colorado and Denver Law been teaching entrepreneurial principles to their students? Shouldn't the students be focused on learning the law, how to write briefs, and how to draft contracts—taking their cue from Professor Kingsfield, who said, “You come in here with a skull full of mush; you leave thinking like a lawyer.” Why did our state attorney general create a new position called “chief innovation officer?” Is this entrepreneurship stuff a fad or the future?

The discussion's second and third parts will follow in the February and March issues. You'll hear from lawyers who have employed, sometimes unwittingly, an entrepreneurial mind-set to build highly successful law practices. One lawyer commuted between Texas and Colorado for years to ensure that every employee at his soon-to-be shuttered 16-year-old Texas firm found new employment, and then founded from scratch a new and highly successful, full-service, recession-resistant Colorado firm. Another firm went from teetering on closing its 25-year insurance defense practice to obtaining, in less than 10 years, over half a billion dollars in recoveries for its clients as reborn plaintiffs' lawyers. A former social worker left the practice of law to help develop several start-ups, and then used the insights gained upon returning to the fold (or as he says, “Before I was a lawyer, I worked with juvenile delinquents for 10 years. This was good preparation for working with my entrepreneurial clients.”). And, a former collegiate ski racer, described by a mentor as “a force of nature,” brings to her successful practice an astute legal mind combined with an appetite for risk that law school tried its best to wring out of her.

Thanks to my friends Phil Weiser, Sue Heilbronner of MergeLane, and Dave DuPont of TeamSnap, who inspired me to put this three-part series together. And many thanks to Vincent Dimichele, a Colorado Law 2L, for his help with the dialogue and the thoughtful questions he raised during the editing process.

Introduction to Part 1

During the late summer of 2011, I accepted an invitation to a Colorado Law alumni lunch at Boulder's Laudisio. Other than CU football games and tailgate barbecues, I had never attended an alumni event in 30 years, but I really liked Laudisio, and who doesn't enjoy a free lunch? I ended up sitting next to the incoming law dean, figuring we had nothing in common. But it turned out we were both Mets fans (me, of the '69 Miracle Mets; him, of the '86 Thank You Bill Buckner Mets). He started to bend my ear about introducing a philosophy of entrepreneurship to Colorado Law. *Yeah, right*, I thought, *what does that have to do with being a capable lawyer?* The incoming dean then explained his mission while I half listened. *Where was my lobster ravioli?* Sensing his sermon was falling on deaf ears, he invited me to drinks a week later. Selfishly, I thought: *Maybe I can score some Buffs tickets!*

Over drinks I explained that being entrepreneurial had nothing to do with being a good lawyer, and, in any event, you were either born with an entrepreneurial mind-set or not, and it couldn't be taught. The incoming dean politely disagreed. Soon after, he invited me and my former law partner to a dinner hosted by Ann Getches, joining two principals (one a former lawyer) from the Foundry Group, a nationally known venture capital fund, and a successful local developer (also a former lawyer). They asked my partner and me to describe the history of our law firm, which had garnered some success after nearly shutting down due to unexpected changes in the legal marketplace. After finishing, they said, “See, you're entrepreneurs!” We smiled politely, thanked Ann for a great meal, and went back to practicing law.

The law dean later invited me to audit his 1L Philosophy of Entrepreneurship class that spring, which I did, if only to conclusively establish that the class had little to offer lawyers who were going on to practice law rather than start businesses. Later, the Dean asked me to co-teach the class with the extremely gifted start-up entrepreneur Sue Heilbronner of MergeLane. *Hah, me teach entrepreneurship? He had to be kidding!*

Five years later, in 2018, I completed my fourth year co-teaching the class, this time with another gifted start-up entrepreneur, Dave DuPont of TeamSnap. That annoyingly persistent law dean, Phil Weiser (now attorney general), dubbed me the Reluctant Entrepreneur.

This article illuminates the stories of several practicing lawyers who have put entrepreneurial principles to work to help them and their firms succeed in ways that aligned with their core values. It also discusses why DU and CU are teaching their students to think entrepreneurially, and how an entrepreneurial mind-set can apply not only to starting businesses, but also to improving government, social welfare, and nonprofit operations, and to enhancing careers of any kind.

Participants



Brad Bernthal is an associate professor at Colorado Law. He studies start-ups, entrepreneurial law, and early stage finance (such as angel investment and venture capital). He is also the founder and director of the Entrepreneurship Initiative at CU-Boulder's Silicon Flatirons Center.



Marty Katz is the University of Denver's chief innovation officer and the former dean of its Sturm College of Law. Before that, he was a partner at Davis Graham & Stubbs with a practice emphasis in employment law.



Lisa Neal-Graves is the former chief innovation officer for the Colorado Attorney General. She previously worked for the Zayo Group, Intel Corporation, Unisys, Chase Bank, Deloitte Consulting, US WEST Advanced Technologies, and AT&T Bell Labs.

Marty Katz's Entrepreneurial Journey



InQ: Marty, you are Denver University's chief innovation officer and former dean of its Sturm College of Law. Why is Denver Law teaching entrepreneurial principles to its students? I'm

talking about those students who go on to become litigators, transactional attorneys, and wills and trust or family lawyers. The folks who read this article, who run law firms and who make hiring decisions, they want to know: What is the value added that they're getting in hiring law students with entrepreneurial training, as opposed to those who focus solely on the nuts and bolts of the law: reading cases, writing good briefs, and learning how to draft a contract. How is this going to give those employers a leg up?



Marty: My thinking on this really started back when I was at Davis Graham and Stubbs. As many law firms do, we would conduct focus groups with our clients and potential clients and ask, "What can we do to serve you better? How can we be the lawyers you want to call rather than the lawyers you dread calling?" And the answer that we got was really ubiquitous. It wasn't just coming from a handful of our clients; this was one of the cross-cutting themes. It was, "I really want a lawyer who understands my business and understands where my legal issues fit into the business, rather than seeing them in isolation. I want lawyers who both see themselves, and are capable of acting, as members of a bigger team." We also heard: "I called you because the problem I was wrestling with at my company had a significant legal dimension. But I'm looking for people who can see the legal issue in the context of whatever my broader strategy is, whatever my broader set of goals are. You'll be the expert in the law but I want you to collaborate with my finance and engineering experts." And I continued to hear those comments years later, and they resonate for me. So to me, when I was a faculty member, when I was a dean, and through the present, the question is: How do we create students who fit that profile?

InQ: How does introducing law students to entrepreneurial principles make them into that kind of lawyer?

Marty: There are a couple different pieces to that. A law school must help its students develop a skill set that includes listening, understanding, empathizing, being able to really hear the way a client is thinking about a problem, being willing

to look at the problem from a lot of different angles until you come up with the right frame for the problem, and thinking about solutions that may be further from the box.

InQ: As a prospective employer seeking to groom a competent transactional lawyer, I wonder if I might prefer someone who can just put together a solid contract for a client and not start experimenting with new ideas on the client's dime.

Marty: I would start by saying that, even if we are not talking about experimenting with new ideas, many clients want the skill set of a problem-solver, not merely a scribe or technician. But, there are also legal problems that demand unconventional solutions and maybe even experimentation. I'm not sure it's a dichotomy. This is because the number of carefully planned-out solutions that end up failing is significant. So you might decide with a client, "Let's try something that might be a little bit riskier but will yield good information for us."³ And let's remember, in addition to how you build a lawyer's knowledge, judgment, and expertise, all lawyers should be asking, "How do you build your business? How do you persuade potential clients that they should have you working on their cases or deals?" If you're in a bigger law firm, you should be asking, "How do you persuade your colleagues that you're ready for the next level of work?" If you look at the law students we see here, and you follow them into the first few years of their careers, they are very much engaged in a business-building exercise—even within the confines of a large firm.

InQ: What about the teamwork piece? Law firms tend to hire more associates than will ever translate to partners, so those associates are competing for a limited number of positions.

Marty: Law students need to understand their own strengths and weakness as they operate on teams, and to be the best team member possible given their strengths and weaknesses. They also need to understand that effective teams are really about managed conflict. Frankly, unless senior lawyers are going to staff teams with people who think just like them, which is pointless, you are essentially inviting conflict as a way of solving problems.

InQ: Marty, your employment law background involved a big firm with big clients. But Colorado has many practitioners in small firms who are writing a will for a family member or neighbor, or have to deal with a personal injury rear-end car wreck case. These folks are very busy, and their clients have insular problems that may not be repeated. And, certainly, the client isn't interested in being part of an experiment. How about the small firm setting, how do the entrepreneurial attributes that are being inculcated at DU help?

Marty: I will concede that in a situation like that, you're talking about a very different kind of team. The team really may just be you and your client, or you and your client's family. You may have very small teams, and a pretty limited set of paths that are going to be acceptable. But even in those cases I'd say some of the skills we are trying to teach will apply: the deep and careful listening and understanding, and thinking about the problem from the client's point-of-view. I will also concede that there are legal problems for which there really is only one reasonable or acceptable solution. In that case the answer is probably that entrepreneurial thinking doesn't apply very much. However, I continue to believe that any time you're dealing with many possible paths or multiple ways of understanding the problem, entrepreneurial skills apply.

Origins

InQ: Was there something in your family background that convinced you of the importance of entrepreneurial thinking?

Marty: Yes, but in a circuitous way. I moved further away from entrepreneurship before I moved closer to it. I am the son of an entrepreneur. While I love my father very much, I realized early on in my career that one of the better paths for maintaining that love between us—because we are both very competitive people—was to choose a career path that looked different from his. He was and is a real estate developer and a technology entrepreneur. He's also a former partner at Wall Street's Proskauer law firm. He left the practice to be an entrepreneur and never looked back. When I was choosing career paths, I never in a million years thought I was going

to choose that career path. So, for most of my career I would have said, "No, that's not me. That's not what I do, that's my dad, that's that Mr. Katz! I'm the non-entrepreneurial Mr. Katz."

InQ: So what happened to turn you into an entrepreneurial evangelist?

Marty: Fast forward past me interviewing clients as a lawyer at Davis Graham. And then later, as law dean, I'm out there talking to Colorado's biggest legal employers, people who want to hire our students. Post-2008, local lawyers were telling me they felt bad for me that I had become law dean in the wake of the Great Recession—but all I could think was what a great opportunity this was for effecting a sea change in legal education. I think at that point I realized, after not seeing myself as entrepreneurial during the first half of my legal career, that maybe I was kidding myself. I completely embraced entrepreneurial thinking and problem solving and the whole skill set we've talked about: seeing crisis as opportunity; seeing around corners.

InQ: So, like father, like son?

Marty: Yes, during the latter part of my career I've definitely embraced entrepreneurship. And, wow, I feel like I'm *still* learning so much! As an employment lawyer I felt like over time I became an expert in my field of practice. You have this defined body of knowledge that you are the master of, or at least you hope so. But now, I feel like I come into work every day and say, "Wow, here are the 10 things that I have to learn today or I'm in big trouble."

InQ: You have charted a path away from the kind of career that your dad had pursued, and then, ironically, drifted away from the siloed law setting and toward a broader, entrepreneurial mind-set. Are there any words from your dad that ring in your ears? Advice he gave you when you were younger that didn't completely make sense to you until you made this career turn and you started thinking, *Oh that's what he meant!*

Marty: There are two big things that stand out. First, I think to be a true entrepreneur, you have to be a radical optimist. I would watch my father go through so many ups and downs. He was in the residential real estate business through the early 80s and through the downturn in the late 80s. And as everything was going to heck

around him, he'd wake up in the morning, and it didn't matter what was going on around him: it was going to be a good day. I would look at him in horror thinking, objectively, everything is going to heck, so how can you be happy? So, it was less advice than just his way of being, a sort of assuredness that at the time I thought was crazy overconfidence. In retrospect, I now see that he was simply totally focused on the problem he was going to solve that day, and he knew he was going to solve it. His focus and ability to solve one problem at a time and understand its connection with other problems has been a really big model for me.

InQ: And the other thing?

Marty: Maybe this just reflects some of the differences between fathers and sons, but I realized very early on that his risk tolerance and my risk tolerance were very, very different. I had this idea that without a very high level of risk tolerance, I could never be an entrepreneur. Over time I learned that it's actually less about your level of risk tolerance than understanding your own level of risk tolerance, and understanding the risks you can and can't control, and thinking more strategically about that. My dad and I talk about this now, and we laugh a little, but it was a realization that was really important to me in terms of understanding that while everyone can embrace an entrepreneur's mind-set, it still has to be true to you—you have to tailor it to who you are in the world. That was an eye-opening realization.

Entrepreneurial Traits, Tools, and Methodologies

InQ: What are the traits of an entrepreneur?

Marty: They are flexible in the ways they approach and solve problems. They recognize that the way you first conceptualize a problem may end up not being even close to how you end up conceptualizing it. Their solutions are very outside the box. They embrace an openness to understanding how other people, particularly end-users, are thinking about the problem. They have a strong ability to listen and empathize. And their level of risk tolerance is higher than average—and what's most interesting is the way they *think* about risk. Traditional thinkers focus on failure rather than success and see failure

as a thing to be avoided at all costs. In contrast, entrepreneurs say, “It’s not *just* success or failure. Those aren’t the only two options. There’s a third option that some might call failure but I call learning.” And they just dust themselves off, stand back up, and go at the problem again. They see failure as the path to success. Another quality of entrepreneurs is impatience, a desire to just get out and try, making things happen in the world that they can observe and learn from. This is different from the traditional approach of planning everything so you think it will be just right before you roll out anything. So there is a sense of, “I’d rather start doing something sooner because one of two things is going to happen: either I’m going to solve the problem or I’m going to learn something from it. But if I sit back and spend too long planning, I’ll miss opportunities, and I won’t be learning.”

InQ: What sorts of tools and strategies do entrepreneurial thinkers employ?

Marty: One strategy is learning how best to frame a problem, and then understanding your audience. So the first step is one of going out and talking to a lot of people and listening really carefully to understand the problem.

InQ: Yes—that strategy is often applied to designing and selling products and services. In the case of lawyers, that could apply to marketing one’s services to a prospective client, drafting a contract to meet both parties’ needs, or crafting the theme of one’s case that will be most persuasive to a judge or jury.

Marty: Yes. In the case of a proposed business product or service, you have to ask, “Is this problem worth solving? Is my idea viable?” The next step is trying to figure out how you test that, whether it’s developing a product or service prototype, and then getting out there and obtaining feedback. The idea behind this “lean” testing model is that the idea doesn’t have to be perfect. It just needs to have enough of the characteristics of what it is you’re trying to test that you can get feedback. The next part of the “lean” process is the iterative piece where you take what you learn, go back and change up what you’re doing, and then test it again. Another critical strategy is effective interaction among team members, especially among the more recent graduates, who are particularly

collaborative. If you look out in the world and see how interesting problems get solved, they are very rarely solved by lone thinkers. So, I wouldn’t underestimate the importance of the team and the team dynamics as part of entrepreneurial thinking.

Nature versus Nurture

InQ: Marty, I want to explore with you a little bit the question of nature versus nurture when it comes to the entrepreneurial spirit or mind-set. I remember telling Phil Weiser—your entrepreneurial, evangelical counterpart at Colorado Law—“Well, you can’t teach people to be entrepreneurs. It’s either in your DNA or it isn’t.” I also had a pretty constipated view of what it meant to be entrepreneurial. Then, after Phil drafted me as an adjunct to teach Philosophy of Entrepreneurship, I eventually concluded that it is possible to instill law students with an entrepreneurial mind-set, toolkit, and skill set. And for those students who don’t embrace the view that they are natural entrepreneurs, I tell them to find someone with whom they can provide a complementary skill set that’ll let them work together as team. My Exhibit A for the students was my law partner of 30 years, who could see around corners better than any lawyer I’ve known, and who was most comfortable when thinking outside the box. Me, I was the trusty mechanic who could keep the old Chevy running regardless of the weather.

Marty, how do you see that balance and interplay between nature and nurture when it comes to teaching students to being entrepreneurial?

Marty: I ended up in a very similar place to you. However, I tend to categorize the students, including law students, into three groups:

First, there are those who arrive on campus who are on fire to build and create stuff, and they have the entrepreneurial mind-set. From the day they show up on campus they identify that way. So for that group, what I think what we can do as educators is find ways to support their journey. That’s the easy case, you almost don’t have to do anything for them, just find ways to support them and get out of their way! I can fund their projects, I can connect them with the right mentors, I can help them network.

When it’s time to raise money, I can connect them with venture capitalists or angel investors. They’re moving through already, so I don’t need to get them moving, I just need to help them keep moving.

InQ: And the second group?

Marty: The second group consists of those who don’t really know what they want to do. For them, the key is to give them a chance to dip their toe in the water in a way that is as encouraging as possible, but also feels safe. Let people take an idea and form a team around it, try to develop it, and see if this gets them going. If it does, we support them in the same way we support the first group. Essentially, we are helping people unleash their inner entrepreneur.

InQ: And the third group?

Marty: These are the people who don’t necessarily see themselves as entrepreneurs or innovators. They may be risk averse, viewing themselves in a more detail-oriented role like the one you say you played opposite your former law partner. Still, they are looking for things to do in their life that feel meaningful and that allow them to make change, even if it does not feel like grand change. We try to help those students find a role or set of roles that they can play that are going to put them on the path toward meaningful careers. Interestingly, this skill set is probably not that different from the traditional entrepreneurial skill set, which will allow them to function as part of a team in way that feels meaningful. For these students, the key is trying to find experiences for them, generally mentored or supervised, or taught in some way that allows them to live the entrepreneurial experience—to take it out for test drive in a comfortable environment.

InQ: Marty, is the law school engaged in any effort to see if, by inculcating entrepreneurial principles in its law students, those courses have value for the students later? Is there any kind of evidence that exposure to these entrepreneurial principles is making a difference in the students’ careers and making them more successful or effective lawyers?

Marty: At this point, the evidence is largely anecdotal. We talk to a lot of our graduates and a lot of the people who hire them—clients, as well as firms. In these conversations, we are getting

strong anecdotal feedback that this is working. Over the longer haul, as this generation of our graduates gets further into their careers, we can be more quantitative in collecting data, including longitudinal data. For me, the most compelling data we have is a survey done by the Institute for the Advancement of the American Legal System at DU, called the Foundations for Practice Study.⁴ In this survey, we asked people what skills new lawyers need to be successful. We got more than 24,000 responses from lawyers of all kinds in all 50 states. Most interesting about the answers were the number of characteristics that are fundamentally entrepreneurial—things like work ethic, common sense, and resilience. The next step is to reverse engineer legal education to help ensure that our students graduate with these traits, in addition to all of the core legal skills they need. It is an exciting opportunity.

Brad Bernthal's Entrepreneurial Journey

InQ: Brad, please share with us a little bit of background about yourself and your family.



Brad: I'm from Lincoln, Nebraska. My dad was a university professor and my mom taught special education. While my becoming a law professor follows in some respects my parents' work, looking back there may be a few clues as to why entrepreneurship would attract me. I illicitly sold Blow Pops out of my locker in seventh grade, finding the lucrative aspects of the black market in candy. I also ran a gambling pool. More mainstream, I started a magazine while in high school. I found that it was fun for me to build something with others collaboratively where nothing existed previously. I got a real charge out of that. From there I played college tennis and after that I tried to play professionally in France. I soon realized I was not going to make it, but I also learned that I loved traveling. I taught English in Korea from 1995 to '96, where I also worked in a new school launched by a husband and wife. From there I worked for Senator Bob Kerry in D.C., where I managed the intern program and organized the office softball team. Eventually, I was asked to be the Senator's car driver, which I thought was a real insult. Soon I realized that it was one

of the best jobs in the office because you're always with the Senator and you're trusted to keep things in the vault. The experience was fabulous. And that work led me to law school at CU.

InQ: What was your law practice experience?

Brad: I practiced for about four and a half years. I did some securities litigation for a San Francisco law firm that bet the house on tech. I moved into appellate work, which I loved. I started in 2001, when the tech economy was starting to collapse, and then September 11 precipitated a real change in the national mood and economic scene. The firm imploded while I was there—*this was not all my fault* [laughs]. Eventually, I moved back to Colorado and did about a year of mergers and acquisitions and securities work before going to a midsize firm here in Boulder, Berg Hill Greenleaf & Ruschitti. I returned to Colorado Law in the fall of 2005 as a fellow, where I worked directly for Professor Phil Weiser.

Bringing Entrepreneurial Principles to Law School

InQ: What is it that the law school has been trying to teach its students about entrepreneurship that will help them succeed?

Brad: There are lots of advantages to getting law students involved with entrepreneurs and start-ups. In terms of age, there's often closer proximity between a law student and a relatively junior founder of a technology company than there is between a law student and other business people. Critically, start-up business models usually are simple enough that law students can get their heads around them. If a law student can't understand it, usually that business model is too complex to succeed or the entrepreneur can't explain what he or she is trying to do, neither of which is a good thing. Finally, exposure to entrepreneurial principles becomes a great "training wheels" type environment for aspiring business attorneys to learn to sync up their legal toolset with the needs of a business.

InQ: Have you gotten feedback from the business community supporting that belief?

Brad: When we talk to experienced deal or transactional attorneys, one of the first things you hear is, "Law school did not teach me to

understand my client's business, and I really couldn't do my job until I understood business models and became a business counselor." Entrepreneurship is a pretty good way to impress upon students that you need to understand business models, and it also puts them in a context where the students can understand the business model and then use legal tools to fit it. So, it's helpful to prepare students not just for working with start-ups and entrepreneurs; what we've done has become a great point of access for learning how to work with business people.

InQ: In addition to understanding a client's business model, how can entrepreneurial principles help the students succeed as lawyers?

Brad: In terms of the practice of law, consider that even during my time here, which is now roughly 15 years, there's been at least one major economic bust and, from a law practice perspective, two boom-bust cycles. The profession's nature has changed fairly quickly over those 15 years. The entrepreneurial skills and methods that students learn are important to the practice of law for two reasons: First, entrepreneurship is fundamentally about navigating conditions of uncertainty, identifying opportunities that are worth pursuing, and then finding strategies, if you're willing to bear uncertainty and take a risk, to try to build something worthwhile. Second, entrepreneurial methodologies and perspectives serve our students well if they view their own career as an entrepreneurial undertaking.

InQ: What about helping students perform better as lawyers?

Brad: Law school traditionally had been a terrific engine for teaching students to think like a lawyer, to engage in rigorous modes of analysis. To a certain degree, law school is great at preparing people for litigation—you can't come out of here without knowing something about civil procedure and evidence and how to manage a basic lawsuit. But traditional law schools don't do much to teach team strategy. In contrast, the entrepreneurial methodology is all about effective collaboration. It gets students thinking about systematic approaches to building a business. It offers a vocabulary from a management perspective that can be shared with other team members.

Examples of Entrepreneurial Lawyering

InQ: Can you identify particular lawyers and actions they took or visions they had that you would now, looking back, say: “They were entrepreneurial. They weren’t just being a good lawyer, they were thinking entrepreneurially.”

Brad: I didn’t have the vocabulary at the time, but George Berg often knew—whether it was with respect to a case or the growth of his firm—he knew steps 1, 2, 4, 7, and 10. And he just trusted that he’d be able to figure out those missing steps along the way. That is the way entrepreneurs think. They know the few initial steps. But, more importantly, they have a very strong vision about the ultimate last step, and they trust they’re going to figure these things out. And that was George in a nutshell. He would work on cases that way; and I think he also grew the firm that way. I think that firm’s success was a direct offshoot of George’s entrepreneurial perspective.

InQ: Coincidentally, George is profiled in Part 3 of this article. Any other examples?

Brad: Entrepreneurs understand that they operate with very limited resources. You’ve often got a small team, maybe a little outside capital, and you have to be very improvisational with what you have. You often need to lean on help from mentors, advisors, and other individuals who are not situated within the company. The community makes an enormous difference for an entrepreneur. In my view, Phil Weiser embraced this kind of thinking early on, first as a law professor, and then later as the Colorado Law dean and executive director of Silicon Flatirons.⁵ If you look at his genius, one of the key ways that he got leverage, and did a lot with relatively limited resources, was to mobilize the community outside the law school. I saw him do that close-up—his ability to get all these mentors and advisors to help even though they’re not getting directly paid. He built a network in a way that was meaningful; people really enjoyed being a part of his team.

Does Teaching Law Students Entrepreneurial Principles Make Them Better Lawyers?

InQ: Is the law school engaged in any effort to see if its courses that inculcate entrepreneurial principles in its law students have value for the

students later on? Is there anecdotal evidence or a longitudinal study examining whether the students who took those courses obtained employment earlier, lasted in positions longer, or have been more successful? Is there any way to measure whether exposure to these entrepreneurial principles is making a difference in the students’ careers?

Brad: Is there a metric? The honest answer is no. To do that, you almost have to have a matched-pairs case study where you take a student who is interested in business law who does not take an entrepreneurial law course, does not participate in the Entrepreneurial Law Clinic, and does not take the venture capital course, but who has a similar background for whatever reason and interest as someone with that background and who takes those classes. We don’t really have a control group to do a matched-pairs analysis. Currently, our program

has cultivated a reputation such that employers regularly reach out to us for candidates that come through our program. I think they believe that we teach students the importance of understanding the business model first, and then teach them the importance of mastering the legal tools and syncing the two. But I can’t tell you there’s a metric and we certainly have not done anything systematic in the way of study. Ron, how would you design such a study?

InQ: I have no idea. But, from my own experience—and I know I’m biased because I hope that what I’m teaching is helping—I’ve seen tremendous growth in the students in my Philosophy of Entrepreneurship class, from the beginning of the class to the end. I recognize what I would call a broadening of their horizons and an ability to see the bigger picture. I believe the students react to business problems that we ask them to solve for their end-of-the-semester

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final project⁶ in ways that I'm quite convinced they had no chance of employing at the start of class. I also have heard from lawyers with whom I've spoken that law school tends to wring the risk-taking out of you. Law school tries to force you to figure everything out and pin everything down. But what I see in CU's and DU's legal entrepreneurship programs is students hearing and embracing, "Uncertainty is okay; uncertainty is good; uncertainty can be leveraged. If you don't succeed at something, that's not failure, it's learning."

Brad: I would plus 1 to that. Entrepreneurial thinking provides an important counterbalance. The legal profession typically punishes mistakes more than it rewards smart moves. The practice of law can over-deter: you make a mistake, especially if it rises to malpractice, and the profession can really turn the screws on you. In contrast, law firms don't really celebrate a nice legal argument proportional to how big the insight may be. Entrepreneurial thinking offers a good counterbalance to get people thinking more about innovation and creativity, which are really nice moves and merit reward. I also think that on the attitudinal front, entrepreneurial thinking can change the level of empathy that our students have for their clients. They understand the clients so much better and are able to take that forward. In my experience, it is not unusual for some business lawyers to harbor a bit of contempt for their clients because they think their clients are getting wealthy even though they're not as smart or hard-working as their lawyers. Our program helps our students develop empathy, and that makes them feel like they're really in their client's corner, understanding the risk factors that make entrepreneurship difficult. Finally, entrepreneurial thinking can offer pathways to build networks, which works out well for the students over time.

Entrepreneurial Characteristics and Pitfalls

InQ: What are some of the top characteristics of an entrepreneur?

Brad: Persistence. Persuasiveness. Vision. The ability to mobilize resources creatively. The ability to get in and out of as many blind alleys as possible before you run out of money or life.

InQ: Are there features of an entrepreneurial mind-set that you think could run counter to a successful law practice?

Brad: Yes, and I think it arises from the different perspectives people have of "failure." There are some types of failure and risk that are appropriate and will help an attorney perform at a high caliber, and there are some that are completely unacceptable. A feature of entrepreneurship is to move fast and break things. We want to get some product or service out that's "just good enough," because even if it doesn't work and it breaks, we're going to get important feedback and learn. In contrast, in most legal contexts, that's not considered an appropriate way to practice law. You might try to send up some trial balloons, but to send something out that feels incomplete and undercooked is not competent practice. Another aspect of entrepreneurship that you sometimes hear about is "fake it until you make it," meaning, provide the customer the illusion that something, some product or service, is being done in a certain way even though it's not. For example, creating a website that looks automated, but is managed every moment by people behind the scenes. That's a way to test whether there's going to be a market for a particular kind of product. I think in most attorney-client relationships, the "fake it until you make it" mentality would breed mistrust and is a recipe for a type of deception that is unacceptable. Ron, what do you think?

InQ: I agree—I've seen more than a few lawyers try to "fake it," and it did not turn out well. Still, lawyering can be a highly creative and innovative enterprise. For example, litigators are constantly experimenting with new trial strategies and themes; business lawyers regularly try out new transactional and tax avoidance structures. But employing an entrepreneur's rapid, iterative experimentation and customer feedback loop is hard to replicate in legal practice. In our construction defect trial work, where we face similar legal issues and factual scenarios repeatedly, we can approximate such a thing from one case or trial to the next. Or, maybe a lawyer writes a brief containing all the strongest, time-tested arguments, but also makes some untested arguments, in the alternative. Perhaps one of the untested arguments catches fire with

a judge, or you simply preserve it for appeal and try to change the law later. That's a prudent way to experiment. On very rare occasions, when grappling with thorny litigation strategy questions, we might run mock trials or focus groups and safely experiment with different approaches to get immediate feedback. So, there's room for iterative experimentation in the practice of law, but it's nuanced and must be salted with experience and employed strategically. And, of course, lots of experimentation is available when marketing one's legal services—just look at the variety of TV ads we see!

Lisa Neal-Graves's Entrepreneurial Journey

InQ: Lisa, can you draw a thumbnail sketch of your work history?



Lisa: I was born in Chicago, but grew up in Denver, where my dad was hired by IBM as one of its first black engineers. He raised engineering-minded children, so I was building computers and learning math before I fully understood English. I went to George Washington High School for its advanced placement computer math course; I was the only girl in the class. I was also a cheerleader—so I wasn't a complete nerd. In college I majored in computer science and math, then went to work for Bell Labs, during which time I got a Masters in Computer Science. Then I moved to US WEST Advanced Technologies, got married, and moved back East. I returned to Bell Labs as an R&D division manager, supervising engineers and architects. Along the way I picked up a second Masters in Engineering Management, and I began working in product management focused on customer relationship management solutions.

InQ: What followed?

Lisa: I moved to Deloitte, a consulting firm, working internationally. From there I joined Chase as a senior VP for human resources operations. In the late 1990s I was courted by a start-up, but the dot-com crash interrupted that discussion. In 1999, I was recruited by Unisys to create a new business unit, an Application Service Provider business. I kept running into pushback from legal regarding a number of product ideas. I kept seeing great opportunity;

they kept seeing legal risks—risks I had trouble understanding. It was very frustrating. So I told my husband, “Hey sweetie, I’m going to quit my job, take the LSAT, and go to law school.”

InQ: What a big move!

Lisa: Yeah, a lot of people thought I was having a midlife crisis. One of my friends steered me to Phil Weiser at Silicon Flatirons, and he encouraged me to follow through. Those three years of law school—I thought I had really lost my mind! The law was very different from engineering. In engineering school there’s an answer. In law school, there’s just arguments. I found the tech-law related courses most interesting. After law school I worked as in-house counsel for five years at Intel, eventually heading its technology strategic long-range planning in Portland, Oregon. After a couple of years I came back to Colorado to work for Zayo Group, which handles communications infrastructure.

InQ: And from there you joined the Attorney General’s office?

Lisa: First, I worked with Phil Weiser during his campaign. Given my wide-ranging background, he felt I could work as the AG’s chief innovation officer.

InQ: What’s the AG’s office been like? [Note: This interview occurred in March, 2019; Lisa moved on from the AG’s office in mid-July 2019.]

Lisa: The beauty of the AG’s office is that you’ve got people who are here because they want to make a difference, not simply because they needed a job. You’ve also got a combination of people who have been here a long time and others who are relatively new, but not necessarily new to the practice of law.

InQ: Before I continue, I want to alert the readers that when this interview is taking place you’ve been on the job for less than two months. So much of what we will be talking about will be prospective—what you intend to do and hope to achieve—since you’ve had no time to implement any new ideas or measure their impact. How do you hope to use innovative principles—that is, a philosophy of entrepreneurship—to make the AGs office more effective?

Lisa: My main charge is to help the office use technology and related resources to improve outcomes and efficiency. Some of this was already happening when I arrived, through

the leadership of some of the sections; less so in other sections. When you think about technology and innovation, it’s really about improving processes and how people leverage those processes.

InQ: Isn’t change hard in a large organization like the AG’s office?

Lisa: Yes. Often you break things before you fix them, and we can’t afford to break much of anything that is working effectively. So, to start, I’m looking for low-hanging fruit: “What places have not yet been evaluated where processes could be improved?”

InQ: Can you supply some concrete examples, even if you haven’t fully implemented any changes yet?

Lisa: Through interviews and online surveys, we are starting to identify areas where a lot of manual input is required and we are asking, “Can this work be automated? Can electronic file-sharing eliminate labor and save time? Can we identify and prioritize legal needs faster?” Remember, some AG sections serve various state actors, such as the securities and consumer fraud groups; others are reactive, like tort litigation. As to the former, we are asking, “Can we use computer technology to assist decision-makers in identifying concerning patterns so that our legal resources are directed more efficiently and quickly?” One obvious example is consumer fraud reports, which often are communicated through hotlines. Rather than relying solely on a case-by-case evaluation of whether legal action is warranted, we are examining whether we can use large-scale data analytics to identify patterns of fraud and the scope of the resulting harm, such as would allow us to focus on taking remedial action sooner and more broadly. Aggrieved consumers can use our website to fill out a complaint, but even that is essentially a manual input—there’s no “intelligence” in the system to tell you which complaints need to be prioritized.

InQ: Could you integrate AI into that culling process?

Lisa: I’d love to use artificial intelligence, but that remains quite a challenge. The best of all worlds would be to use a combination of AI and machine learning, a neural-network-based engine that was constantly learning.

InQ: What would be the metric that one would look at two or four years from now to measure the success of whatever changes you might implement?

Lisa: The easiest metric would be to look at the number of cases handled and how much backlog we have remaining—recognizing that there’s always going to be more work than could ever be done. We’d also like to know how many cases we’re managing versus how much time is spent on each case. We might also be able to better identify cases we need to settle versus those we need to try, and the cost per case. Certain industries, like insurance, understand analytics, and they have used actuarial science to develop cost-benefit outcome models to help them better manage claims. Once you get to a point where you trust that the analytics are giving you the information you need, then you can make changes applying those analytics.

InQ: Do you think that data analytics and crowdsourcing are potential tools the AG’s office could use in dealing with criminal justice reform?

Lisa: Yes. The AG has the power to convene, which is a huge tool in trying to understand how, for example, things like bail reform affects citizens, how the legislature is thinking about the issue, and what things the AG’s office could do to help. We hope that we could pull in opinions from a variety of sources to enable us to better understand how a problem is viewed from various perspectives, such as the courts, executive branch officers, probation officers, community members, and other folks involved in the bail system. This process can help us identify legal concerns, cost concerns, effects on family, unintended consequences, and so on. There are crowdsourcing applications where you put a question out there and have people provide you with their answers. We use a similar tool internally called *PopIn* to better understand what’s happening with employees. This tool allows us to ask questions and employees to provide responses—sometimes anonymously—and for them to vote on the responses they feel are best aligned with their values and perspectives. We use this, in combination with small group meetings, as a way to get more feedback, better define the problem, and identify possible solutions. My experience has been that typically

about 10% of employees respond to these kinds of surveys. Our response rates have been 50%!

InQ: I have friends who have been in the AG's office; some are still there. They tell me that every time a new attorney general is elected, he or she announces their intent to "shake things up." They tell me that often there would be a brainstorming session or a retreat and people would describe what's wrong, what needs to be improved, and how things might be made better. So there's all this energy, discussion, and optimism—but the same, big obstacle always presents itself: the way the AG's office is structured and how it is funded by the legislature. How, if at all, are you rethinking this cycle of excitement and disappointment?

Lisa: Often changes are sought to be made from the top down, hoping that people will just accept the change and make it happen. Our approach is to start by asking for feedback from the ground up, then to use that information to better frame the problems—the core issues—and identify potential solutions. My hope is that the disappointment you describe won't occur or will be lessened. Rather than starting with a grandiose waving of the hands, talking about change, and pressing down with ideas, we hope to gather ideas from the people who work here and employ a collaborative effort to figure out how to make things work more effectively, and to do it in a way that is adaptable to later feedback. We hope people will get on board with new ideas because we will include parts of their ideas. It's always hard when new folks come in because the belief is that they do not understand why things are the way they are. That's why we want to start by asking lots of questions, to make sure we are asking the right questions, and then focus on the most important core issues. We then hope to identify solutions with buy-in from those most affected by any proposed changes. We want to first learn what has already been considered so we don't make the same trek. Then, we hope to get folks to think sincerely about the things that they are working on and how a proposed change either benefits or doesn't benefit their work. I hope that this process leads to the right set of changes and an agreed-upon purpose statement describing an agreed set of principles dovetailing with the AG's mission.


InQ: Another thing I've heard from my friends at the AG's office is that the lawyers there work very hard, that there simply aren't very many people skating along; more often, they are just overworked. Maybe they're supposed to be working 9 to 5, but for many they put in plenty of evenings and weekends, taking time away from their families. Moreover, they are not as well compensated as others in the private sector doing identical work. You said that before you fix something sometimes you have to break it. How do you break things in the middle of these folks doing their jobs? How do you deal with the inevitable pushback and tension that comes with change?

Lisa: The people who work here are here because they want to do the right thing for Colorado's citizens. This is a job that they choose with their heart, not because of the funding. Everybody here is working their level best. Honestly, I expected many to react to me by saying, "Are you kidding? We already don't have enough time to do the jobs we have and now have to innovate?" But their reaction has been quite the opposite. Instead, they say, "Hey, I've been thinking about some things, but because we didn't have the latitude, and there was no one we could ask questions of and explore my ideas with, nothing would happen. But, since you asked, I think this is

a great time for us to talk about X." So, I am hopeful that people will be open to change because it's coming from them. And, then, hopefully, as they see the results from those changes they'll feel that they're using their time more effectively.

People here are hungry for ways to make things more efficient. At a minimum, I would like to just open the door to having conversations that cause people to think differently about things. If they see other people having greater success and experiencing greater efficiencies, maybe they will say, "Can you show me how to do this?"

Conclusion

In this Part 1, Marty Katz and Brad Bernthal summarized the traits of entrepreneurs and their entrepreneurial thinking and explained why and how Denver and Colorado Law have tried to instill a philosophy of entrepreneurship in their students. Lisa Neal-Graves outlined a roadmap for identifying helpful changes in the Attorney General's office by applying entrepreneurial methodologies. In Parts 2 and 3, we'll talk to five lawyers known for their entrepreneurial approaches to practicing law, including three who applied these principles to develop thriving law practices from the ashes of earlier, failed business models. 



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NOTES

1. Attributed to Bill Gates.
2. Attributed to Seth Godin.
3. One can see that sort of iterative thinking playing out in the high stakes bellwether class action trials happening right now involving Monsanto's Roundup weed killer and Johnson & Johnson's pelvic surgical mesh and baby powder as both companies search for winning trial defense and appellate strategies.
4. <https://iaals.du.edu/projects/foundations-practice>.
5. Silicon Flatirons is a center for innovation at the University of Colorado-Boulder, serving students, entrepreneurs, policymakers, and professionals at the intersection of law, policy, and technology. See <https://siliconflatirons.org/about-us>.
6. The final project involves pairing teams of three or four students with local start-ups and having them develop solutions to business challenges the companies are facing.



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