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Q&A With O'Melveny & Myers' Darin Snyder

Law360, New York (June 02, 2009) -- Darin Snyder is a partner in O'Melveny & Myers LLP's San Francisco office and chair of the firm's intellectual property and technology practice within the adversarial department. He is also past managing partner of O'Melveny's San Francisco office.

Snyder has extensive experience in major civil and criminal litigation and consulting matters, with an emphasis on intellectual property and technology-intensive business sectors. He has wide-ranging experience in all phases of business litigation, including trial and other evidentiary hearings and appeals.

Q: What is the most challenging case you've worked on, and why?

A: Every case has its challenges, but to paraphrase George Orwell, some are more challenging than others.

Beginning in 1995, I worked with several O'Melveny attorneys representing Avant Corp. in a group of cases related to the alleged theft of computer source code. Before we had been hired, law enforcement had searched the company's headquarters, a TRO had been issued in federal court and the company's stock price had dropped precipitously.

There were even rumors that the company's facilities had been wrapped in yellow police tape. The company was on the brink of collapse. But the company's leadership had a fierce commitment to protect the company, its employees and its shareholders.

The litigation eventually included several parallel civil and criminal proceedings. They garnered substantial press attention, almost none of it flattering. Every case involved several defendants, each of whom had their own counsel. And every day seemingly brought new challenges that threatened the existence of the company.

The cases lasted for years and involved several trips to the appellate courts. Published decisions arising out of the cases announced new law in the areas of grand jury proceedings, copyrights, trade secrets and the attorney/client privilege for corporations.

The cases were eventually resolved, and the company was sold for several hundred million dollars. I've been involved in many bet-the-company cases, but I've never been involved in another in which the company's existence was at risk on a daily basis on so many fronts and for so long.

Q: What accomplishment as an attorney are you most proud of?

A: This question makes it tempting to pick some case-related achievement or some professional accolade. I've been fortunate to receive more than my share of both. But the satisfaction from them is fleeting, and it is the nature of our work to move from them immediately to the next challenge.

Instead, I am most proud of the impact I have been able to have on others, especially within O'Melveny. I've been lucky to have the opportunity to work with and influence the professional careers of many legal professionals — some lawyers, some not.

It is a privilege and an honor to have the chance to share with them the practice of law as I was taught it — pursuing excellence while maintaining the highest standards of integrity. Whatever I have given them, they have repaid me many times over with their dedication and hard work.

Q: What aspects of law in your practice area are in need of reform, and why?

A: Several areas of litigation and IP law are good candidates for reform. In general, commercial litigation has become a tactical weapon, and the limited oversight of the discovery process and rareness of fee-shifting only compound the incentives to misuse that system.

The burdens of discovery, especially e-discovery, have been the subject of several efforts at reform, but more is still needed.

There are also several areas of patent law that could benefit from reform, and there have been efforts at the congressional level for some years to make changes. We could also benefit from a federal civil trade secrets law to eliminate the patchwork of state laws that now govern the area.

Q: Where do you see the next wave of cases in your practice area coming from?

A: In many ways, the next waves are already here. In patent litigation, cases by nonpracticing entities (often unflatteringly called "patent trolls") are common and increasing. This will likely continue until there is either a legislative solution that changes the risk/reward ratio for those plaintiffs or practicing businesses find a way to control the litigation threat.

Similarly, companies often turn to their patent portfolios to protect or gain market share when they cannot rely on the increasing size of markets to increase revenue.

The decline in the economy will also likely bring increased trade secret litigation. This often occurs in an economic downturn, when hundreds of thousands of employees are changing jobs, many involuntarily.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A. I have had the privilege of learning from an exceptional array of incredibly talented lawyers during my career. Some I've worked with, and some I've litigated against. And I've shamelessly stolen ideas and

techniques from all of them.

Of all those lawyers (and putting aside my extraordinary colleagues at O'Melveny), Allen Ruby stands out as the one who most often and consistently impressed me.

In court, he is unfailingly superlative. His combination of judgment, intelligence and even-temper is without peer. He's gracious and modest — traits not often found in great trial lawyers. He's also laugh-out-loud funny and tells a great story.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: 1) Treat your career as a life-long investment. There is no get-rich-quick solution, and it is up to you to make the right investment choices. If you want the rewards, you have to be willing to invest the time and effort over a period of years. And you can never compromise your integrity without damaging it permanently.

2) Learn the technology at issue in your IP cases. It doesn't matter whether you have a science degree or not. Your opportunities will be limited if you are not willing and able to roll up your sleeves and learn what a case is really about. Many lawyers do not do this, and if you do, you will have a competitive advantage over them.

3) Don't focus too narrowly. It is important to develop expertise. But you limit your perspective and creativity if you do not continue to expose yourself to a variety of areas. Learn about other areas of the law. Learn about other areas of technology. Read good fiction. Be a student of history. The world is full of good ideas, and you never know what will inspire you.

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