

## Kommerstad Center Speakers Forum

Lessons Learned: Using Your Law Degree in Business  
VANCE OPPERMAN

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## Kommerstad Center Speakers Forum

### Lessons Learned: Using Your Law Degree in Business

VANCE OPPERMAN<sup>\*</sup>

#### Introduction of Mr. Opperman

*Professor Edward S. Adams, Co-director of the Kommerstad Center for Business Law and Entrepreneurship:*

I want to welcome you to hear our speaker on law and entrepreneurship for the Kommerstad Center for Business Law and Entrepreneurship program this afternoon. We're extremely fortunate to have a distinguished alumnus of this law school join us today – Vance Opperman, who graduated in 1969. Let me tell you a little bit about Vance, if you're not familiar with his very distinguished and impressive career. He is the President and Chief Executive Officer of Key Investment, Inc. – a local venture capital firm.

He is the former president of an information provider for computer assisted legal and business research company called West Publishing, a company we all know quite well. He is a member of the Board of Directors of the Thompson Corporation, the entity that purchased West. He is the founder and former Senior Partner of Opperman and Paquin, a position he held before becoming President of West Publishing in August of 1993.

While he was a practicing lawyer, Vance was named the one of the 100 most influential lawyers in America in 1991 by the National Law Journal. He was also named one of the top twenty-five winning litigators in Minnesota in 1991 and one of nation's top litigators by the National Law Journal in 1992. He served on President Clinton's national information infrastructure advisory council from January 1994 through January of 1996. Because he is one of the most generous alumni of this school, you see his name quite often here. It's a pleasure and an honor to welcome him today. I'm sure he will share some insights with you that will be extraordinarily useful in your career, and I'm very honored that he could join us. Thank you very much.

<sup>\*</sup> Vance Opperman is a Minnesota business and political leader and seasoned litigator is the former president of West Publishing and president and CEO of Key Investment, Inc. An alumnus of the University of Minnesota Law School ('69), Mr. Opperman was the Spring Semester speaker for the Kommerstad Center for Business Law and Entrepreneurship at the University of Minnesota Law School on March 15, 2002.

**Mr. Opperman:**

Do they really truly let people in this young? A lot of you will someday find yourself saying the same thing.

Ed called me up this morning actually and asked me if I'd read the Constitution. I said, "Yeah," and he said, "Do you believe in free speech?"

I said, "Yeah."

He said, "Well come on over and give us one."

So here I am. Actually, he interrupted me while I was watching reruns of my favorite television program, *Who Used To Be A Millionaire?* For those of us in venture capital that's not much of a joke.

First, I'd like to give you three things that I discovered in looking back on thirty-three years of law practice that have helped me in business and entrepreneurial activities. Then I want to talk a little bit about one downside of the transition from law to business and finally, two joys of entrepreneurial activity.

**The Practice of Law Helps in Business*****To Persuade***

We live in an oral society – whether because of our culture or because of our country. Think about it. The Best Evidence Rule against hearsay, the right to face your accusers. Humans live in an oral society. I don't know how that operates with other species, because I don't spend much time with other species – except primates – but then that's my political side, and I won't talk much about that. In my experience the first thing that helps in business is the ability to get up and talk.

I've been honored to serve on a variety of committees to select CEOs of various corporations. In every instance the person selected from a group with moderately equal credentials, male or female, has been the person who was the best at oral presentation. And that makes sense.

It's hard to persuade people, it's hard to motivate people, and it's hard to get people to do something, unless you're pretty good at talking.

The thing that gave me an opportunity to hone my skills was being in the practice of law, a setting where I needed to talk, to persuade,

and to read audiences. In business, if you make a presentation, if you try to sell a company, if you talk to a bond committee, a loan committee, or a group of employees that don't know you from a hole in the ground; one of the things that will help a lot is your ability to persuade orally.

### ***To Learn from Business Client Mistakes***

A second good thing about being a lawyer is getting paid to watch other business people make mistakes. You often get hired when someone else has made a mistake, or has been accused of making a mistake, or some regulatory agency thinks things haven't been done the way they ought to be done. I've had a great education watching screw-ups. I've watched small businesses, medium-sized businesses, and large businesses make all kinds of mistakes. It was my business to help them out and solve those problems, and that was a very good practical education.

Let me give you two examples of the kinds of things I learned from clients who made mistakes that I've tried not to replicate in any of my business activities. First, businesses in trouble add and make too much debt. You can fancy that up with leverage – you can call it whatever you want to call it. And although it's been a little tougher in the last two years, I've tried to carry with me what I've learned from seeing that.

The second problem that I saw I call the "magic person syndrome." Whenever you see a law firm that makes a lot of lateral hires, know that they all will fail. Absolute 100% rule. Partners get together around town – big ones, small ones – "You know, by gosh, we have got to be in intellectual property."

"Yeah, that's a great idea. We have to have more intellectual property lawyers, absolutely right! So and so is a great intellectual property lawyer - let's hire her!"

So they work out a deal to get her into the firm. And it will fail. It will fail because expectations will be too high – it's the magic person syndrome. "If we just have that one person, all of our problems will be solved."

It never works. It never works in a law firm, and it never works in business. A vice president in charge of human resources or a vice president in charge of sales will do the same thing. The Vice President of Sales will *always* tell you that. "The northeast region didn't do well this year because we didn't have Jones. If we only had Jones, boy, that

northeast region would take off like a rocket!” And stupidly, you go ahead and hire Jones and what you find out is it doesn’t do any better with Jones there, either. And you’ve ticked off half your sales force, because you paid a lot to get him.

The magic person syndrome. I saw it in law firm after law firm. I think it is the most serious mistake made in personnel management in business, and it’s a mistake I try to avoid.

### ***To Be Disciplined – In Time, Stress, and Decision-Making***

Discipline – the third thing I’ve learned. A great thing about being a lawyer is the discipline you learn. You learn it in two ways. First, you work hard, long hours under stress – fabulous training if you’re going to start a company or you’re called in because a well-established company is having trouble and you’re expected to turn it around. Your ability to work very long hours will hold you in good stead. If anyone ever tells you that the practice of law does not take a lot of hours, he or she is not much of a practicing lawyer. I don’t think it’s possible to practice law and not spend a lot of time at it.

I remember interviewing a very talented young lawyer who was clerking at the Eighth Circuit. When I gave that speech, she got up and ran out of my office. She wouldn’t have been a very successful practitioner in my view. Law teaches you the discipline of spending lots of time.

The other thing it teaches you is how to function under stress a lot of the time. It’s a fabulous experience and a great discipline to have. In law, you have a limited amount of time and then you have to get up and argue in within this narrow time frame with very strict rules. Argue in front of an appellate court and as soon as you’re done, someone will stand up and essentially say that you are stupid, you’re poorly reasoned, that your research doesn’t amount to much, that the cases you’ve cited don’t say what you said they do, and, frankly, your whole line of argument is a crock. You’ve managed to save a little time for rebuttal, and what are you going to do? You’re going to get very good at persuading under stress with very little time to do it.

My favorite stress story comes from is a trial I had in Stillwater, Minnesota. I hated state court and this case frankly didn’t endear me to it. We had identified a very serious problem and started a class action. Texaco was concerned that its underground gasoline tanks were leaking gasoline. In the course of discovery, we had uncovered a program at Texaco – the “Three Star Program” for its 1200 proprietary upper

Midwest stations. Stations rated with one star were to be kept and owned by the company and upgraded. Two-star stations were stations that would be sold to the station operator but under no accelerated timetables. Three-star Texaco stations were to be sold at all costs and within 30 days, if possible. What do you think were the conditions of the underground gasoline tanks in three-star stations?

It turned out the first one was in Stillwater and one day when they were digging an excavation down a hill for a major industrial project, they discovered gasoline. My first reaction was "Great! The first gasoline well in the world. Most places only find oil. You found gasoline." But it's kind of a problem when you're building a twelve million dollar industrial park. It's hard to weld stuff with gasoline coming out of the ground. So we sued Texaco with that information on behalf of those property owners. Finding liability wasn't much of a problem. You don't really have to worry much about traumatizing the jury as to the dangers of gasoline seeping out of the ground. They can pretty much visualize that. What you're going to have trouble with is determining the damages. And that of course the most stressful part if you're a plaintiff, because you're taking some contingency or some kind of risk. You're not, believe me, going to risk whatever it is – time or expense or whatever – on a case where liability is bad, at least not after the first year or two of practice.

So the real stress comes in damages – how much has the land been damaged? And one of the ways you do that is to get an appraiser, put them in front of the jury, and ask them two questions: "What was the value before? What was the value after?" And of course it's a great big value before and a tiny little value after. You subtract one from the other and put the number up on a blackboard or some such device so there's a large dollar amount that nobody can possibly miss. And you leave it there if they'll let you, because then when the other lawyer gets up to cross examine at some point, he's going to have to take the eraser and erase it off the board. You use whatever trick you happen to like to dramatize that.

So, I'm confident that my world-famous expert who had done all the appraisals for the highway department in Stillwater will give me the right answer – the one he'd given in his written report. I asked him what the property value was before they discovered gasoline and I wrote a nice big number on the board – the number on the front page of his report. And then I asked him, "Could you tell us what the value is after the gasoline was discovered?" And he looked at me and said, "Oh, that would be impossible." Now that's a moment of stress – and I'm looking for a carpet to crawl under.

The judge made it worse, because she woke up and, being

judicially helpful, said, “What!?!?” At which point, my expert got to repeat, in a nice loud voice, just in case the jury hadn’t caught it, “Oh, that would be impossible.” Now, that’s a moment of stress! But the damage had been done, and we didn’t get any sleep at all that night. But we knew how to operate under stress on three or four hours of sleep night after night – a useful discipline different than you get in almost any other profession.

The second thing the discipline from practicing law gives you is the ability to come to a decision quickly with the facts that are available. This is not a brief-writing, research mentality of library rats who take forever to think things through. They’re not going to make it in the practice of law and they certainly aren’t going to make it in the business world. They accept the myth that there is an ultimate fact, that the answer they are searching for exists someplace. It does not.

If you practice law for any length of time, you will have a moment of epiphany. You’ll have a terribly important but simple issue of law and you’ll be at the helpful computer terminal with all the legal research in the entire world at your fingertips, from Westlaw, of course. And you won’t find the answer. Why? Because none of the questions you have will have the answer. None of them.

In business the problem is the same. You never have enough information or enough time and you have to make a decision that affects either the expenditure of money, the expenditure of time, or a plan to move forward. The discipline I acquired in the practice of law included the ability to come to a decision in less than a day. You’ll have a day to make an important argument, a day to put together a trial brief, a day to tell a client what to do, a day to sign a settlement agreement. And you have to do it in a very tight time frame. And you won’t have complete information, ever, and you’ll wish you could have one more day, one more week, one more month, to see what’s going to happen. But you can’t – you’re forced to make the decision and move on.

If you take anything away from the practice of law – anything – and use it in any business context, that is the discipline I would urge you to take away. The single most important discipline you will ever have in business is the ability to make a decision quickly on the facts you have and move on.

Ten years ago, Shintaro Ishihara wrote a book called *The Japan That Can Say No*. It suggested that requiring the reporting of quarterly profits was hurting American business, that we ought to take the long 20-year view. I didn’t believe it then and I don’t think it’s true today. The fact of the matter is business cycles are about 90 days long. And if you can’t live with that, you also won’t be able to practice law very well

because there isn't a heck of a lot in law with a time period of longer than 90 days. There are some statutes of limitations longer, but I don't think there's a rule of procedure that gives you 90 days for anything. If you depart the confines of a law firm to run a business, this will be the most important form of discipline you have.

I've told you three things you can take away from the practice of law that will help you in business. Notice I didn't give you the usual one? The usual one is "learn to think like a lawyer and that will help you in business." I don't know what that means. I think it's a meaningless cliché. What is meaningful knowing how to marshal the important facts in a very short time, make the decision and move on. If you can't do that, you won't be a very successful lawyer and you sure as heck will be a failure in business.

### ***The Downside***

Remember, I said there was a downside? It comes from the organizational structure of law firms. Law firms are not hierarchical organizations – they are very horizontal in their structure, primarily because everyone is a lawyer. Because of that, lawyers are not particularly good at dealing with different kinds of people at different hierarchical levels. They're more accustomed to dealing with peers. And because there's a certain language and type of relationship when you deal with peers, lawyers often are not prepared to function in a corporate setting which is much more structured and more hierarchical. In my view that requires that you deal with people in a much different way.

For example, lawyers aren't particularly good at team building. If they do build teams, for example, for the purpose of putting together a lawsuit, they are relatively small teams – seven or eight or nine people – and they're not put together for the long haul. The reverse is true in business – you need to be able to motivate and interact with large numbers of different types of people in an effective manner at a variety of hierarchical levels – very few of them will be your peers. To me, that's the down side of the practice of law. It does not prepare you for the human part, the personnel part, of running a business.

## **The Joys in Entrepreneurship**

### ***The Equity***

At the beginning of my speech, I said there were two joys in business or entrepreneurship. The first joy is building equity. This would

have meant nothing to me when I sat in this law school, although not this building, not even on this bank of the Mississippi River. In the practice of law you can make a good living, and that's fine. Great things come from being able to provide for your family and yourself. But you don't build equity.

Law firms generate, partly because of the tax structure that applies, a lot of current income; but they do not develop equity they can sell, pass on, or easily trade. I was a partner in the old established law firm — probably the oldest one in the state — of Dougherty Rumble Butler. By the end of that law firm's existence, after 115 years, it had produced two members of the United States Supreme Court and one of the first members of the Minnesota Supreme Court. And that didn't matter — the firm failed.

No matter how revered any law firm is, it's still a personal services business, and you can't build up equity in a personal services business. Think there's equity at Arthur Anderson? There's not.

So, one of the joys of building a business is that in addition to creating income, you get to build some return. You get to build equity and assets with value that represent what you put into it. And you get to help others do the same thing. It's exciting to be able to build something, know you've built it, and know it's going to be there for a while and that it has value.

### ***The People***

The second joy in building a business and being an entrepreneur is experiencing the wide variety of people you get to work with. The most amazing thing — when I left the full time practice of law in 1993 and started working primarily in business circles, I discovered that there were a lot of people out there who actually respected lawyers. It was a revelation. You will learn that when you get involved in civic and charitable activities, maybe even political activities, that there are a lot of people from all kinds of backgrounds.

My favorite entrepreneur, I won't embarrass him by name today — the magazines have embarrassed him on their front covers many times. Anyway, my favorite entrepreneur is a guy who grew up in St. Paul, never graduated from high school, went to a company, got an idea, had the idea adopted, had a fast rise through the ranks, built some equity, was able to sell the equity, and started a number of other companies, several of whom are now publicly traded. I've known this individual for a long time, and during all that time, the people for whom he held the

highest regard were lawyers. They'd obviously gone to school – he had not. They were persuasive and could talk – he's not very good at that. They were able to zero in on the important subject or the important discussion point and suggest an alternative, which he always had trouble doing. He made more money than most lawyers, but nonetheless . . . .

So if you are in any kind of business, you'll experience the joy of working with the variety of people you meet from all walks of life.

If you do criminal law, you'll meet other kinds of people, too. I did that for the first two years of my legal career until it dawned on me that it was kind of demeaning to have clients that I was afraid to take home because they'd rape my wife or steal my silverware. So I got out of criminal defense work. But it was good trial experience

You can meet a lot of interesting folks in various kinds of law practice but in entrepreneurship you'll meet a much broader variety of people from a whole bunch of different backgrounds. Drive down Lake Street or drive down University Avenue and see the ethnic changes and the immigrant communities and the tremendous number now of new start-ups and growing businesses – some of them not so new that have been doing quite well for quite a while. Very exciting stuff.

I always tell my kids that of all the degrees you can get – and I'm a big believer in getting more education – a law degree ought to be one of them. It'll prepare you the best for life. It'll prepare you the best for business success. It'll even prepare to practice law. It's a useful thing to have and will bring you great joy. Now you're going to bring me great joy by asking questions. Thank you.

*Student Question:*

How important are contacts – whether legal contacts or that you made when you were lawyer or contacts you made in business?

*Mr. Opperman:*

Contacts are one of the great things about any professional or social activity. You know, people don't like to be lonely. That's why some of us get remarried . . . and remarried. But who's counting? Very few humans enjoy being isolated, social islands unto themselves. You won't meet these individuals in the practice of law.

I won't surprise you by saying that if you read all these self-help business books – how to be a better this, seven effective habits, or whatever – many of them will tell you that if you want to really be successful, you ought to hang out with other successful people and do what they do. That's my view, too. The truth of the matter is you use your contacts all the time.

I assume that many of you chose Minnesota to go to law school because many of you plan to stay, practice, do business, be a judge, be in politics, or try lawsuits in the state of Minnesota. Why did you make that decision? Because you understand that the people you get to know, the people that you work with, the people you go to school with . . .

One of my classmates and closest friends as an undergraduate is a federal judge. I've had the honor of practicing often in front of him. That doesn't get me anything, but it's a more familiar surrounding than other courts I've spent most of my life in. There's a well-known lawyer in town who left a couple of years ago and now advises other venture capital groups. I call him all the time.

The simple answer to your question is the contacts you make in law school and in the first couple years of practice are invaluable. And you will contact those people, and there will be reciprocity, as you go through life.

*Student Question:*

My friends at the business school tell me that lawyers, as a rule, are too risk averse to be successful as entrepreneurs or in any competitive field of business. How would you respond to a claim like that?

*Mr. Opperman:*

I think that's wrong. Let me give you an example. There are risk averse individuals. Risk averse lawyers become tax lawyers, or even better, estate lawyers, because all their clients are dead. That's pretty risk averse, if you think about it. There are risk averse people in all professions. In the medical profession, the risk averse people become nutritionists or podiatrists – I don't know. They probably don't become surgeons.

But I think the most risk taking is in the practice of law. We started the container anti-trust case in 1976. This was a case where we knew that, as counsel for the plaintiffs, you put in all your money and

you pay all your experts, all in the hope that there will be a settlement or a verdict that's upheld on appeal. The collective risk undertaken by that group was in excess of fifteen million dollars in out of pocket expense. Calculated time was something in excess of 100 million dollars.

We tried that case for three and a half months – the verdict was 1.2 billion dollars. Then we had another three years to play around in the various appeal courts. It's amazing how defense lawyers with unlimited checkbooks can develop appeal strategies. We ended up in four different appeals courts. You might think, "How's that possible? You try in one district courts, you get one appeal." Oh, no.

Now that kind of practice is not for the risk averse. If the jury comes back and says, "We're sorry, you're out of luck," you're *really* out of luck. You've wasted a lot of your life and a lot of your money. Your partners are going to look at you and wonder what happened. What's even worse, frankly, and any of you who do major plaintiffs' work will have this happen. You finally get to trial, three years or longer after you've started the case. You actually try the case, which is a rarity. You win, which hopefully is not a rarity. And now you've got a verdict.

Listen to this example. The Massey Ferguson case was the last major case I tried before I left the practice. After four and a half years of fighting, we finally got a verdict – the jury gave us forty-six million dollars, forty million of which was punitive damages. We did such a good job in that case that the forewoman of the jury came back to us and said, "You only asked for forty million in punitives, but we wanted to give you more. Did we do the right thing?" Oh, yes!

There you are with a nice piece of paper that says forty-six million bucks – not bad, since you've got about a million bucks in the case plus costs – not a bad return. Now the question is, what happens? Well, on the way to the court of appeals, the Supreme Court affirmed the Delaware Valley HMO case, which essentially says no punitive damages. That'll keep you up a few nights, when most of your award is punitive damages.

Despite that case because, as you know, having read an infinite number of cases, there's always an argument that doesn't apply but somehow gets in. Because of some of those arguments, in the environmental area, punitive damages have actually done well since that very decision.

That's not for the weak of heart; that's for people who enjoy risk. And there are lots of practices where that's true. So I don't think it's at all true that there's no risk, or that people who are risk averse are lawyers.

You can be an MBA, and not have a whole lot of risk, or be very risk averse. I think it's a personality trait, but if you want risk, get into the plaintiff's side of class action or major commercial litigation. You'll have plenty of risk.

*Student Question:*

Do you make a distinction between moving into the business world from a transactional practice versus a litigation practice?

*Mr. Opperman:*

I get an opportunity to speak at large, well-known law firm retreats a couple times a year. I like it because I get to see people I used to try cases against – they're all friendly now. That question always comes up, probably because there's a clear line of demarcation in most law firms between transactional lawyers and litigators. My sense of it is that you will certainly have migration of transactional lawyers where their transactional specialty had a domain that was close to the domain of the company that they went to – you see quite a bit of that. On the other hand, I doubt that Mike Wright, the CEO of Super Value, ever took a grocery class. You see some transference based exclusively on expertise, but I don't think those people do particularly well and I don't think they get very far up in the company.

If you've looked at the people who have done very well, who have moved from law to business, more of them, I think, are litigators. And I don't think that has to do, again, with the specifics of what they litigated. I mean, I don't think Irving Shapiro litigated cases for or against Dupont, where he became the CEO. He's the most famous local example of someone that went on to take over a major company.

I think it has more to do with different kinds of personal skills. And, to be honest, in thinking about a remark such as this, I've come up with that those three and they still apply: the ability to be persuasive, and the ability to move and motivate people, which requires the ability to communicate orally, the ability to be disciplined and come to decisions quickly and be driven in those decisions by the facts available at the time.

Those are the big ones. Another, obviously it helps, is having some knowledge. But I think those are the two that drive business success more than any other attributes. And I think those are more likely found in a litigator.

That may be a personal bias, but I think that's the experience in England, also. I don't know a lot about the English system. I chair the audit committee for Thompson, and we have a number of our operations overseas also. Most of the people I meet who are in business who have been lawyers seem to all have been barristers as opposed to solicitors.

*Student Question:*

Can you tell us any more ways that a JD compares favorably, or maybe unfavorably, to an MBA?

*Mr. Opperman:*

MBA school was not really much of a program when I started law school. It's a 20-year phenomenon. Then I didn't know a lot of smart, bright, verbal, driven, disciplined individuals who got MBAs. I do now.

Where a law degree may come up *unfavorably* is in the networking possibilities. That's really just an impression. I have no idea if there ever have been any studies on that; I don't know how you'd quantify it. But, when I speak over at the Carlson school I recognize a lot of the students by their last names. And that tells me something about the networking that has gone on.

The way a law degree compares *favorably* is in the way students are taught. I look at the materials of my wife, my son, and my younger daughter, and I hear them talk about what they do in MBA school. They use the business case study method. I think that studying business cases studies is kind of a silly exercise because the cases are so narrow and not necessarily replicable. In that regard, I think the case method in MBA school leads people down a false path.

But maybe that's the best way of doing it – just like the old Latin schools used to teach our grandparents or great-grandparents Latin and Greek. It wasn't because they were going to use it; it was just a way to get discipline. I think the method of instruction and the material that is used in law school is superior and more congruent with later life experiences than the methods and materials used in an MBA program.