

## **RSGI Podcast, Episode 1. Transcript.**

**Reena Sengupta:** Welcome to the very first RSGI podcast. I'm delighted to welcome Danny Tobey, who is a partner at DLA Piper. Now, we've chosen Danny to be our first guest because he has had two lives. He was originally a lawyer trained in medicine. So he's kind of a doctor-turned-lawyer. He is somebody that has stood out for us in our research for the FT Innovative Lawyers Program. He won the overall Individual Innovative Lawyer Award in 2023, which is one of the hardest awards to win, and has then appeared in our lists winning other awards for other kinds of legal expertise and practice areas. Danny represents, I think, the cutting edge of legal practice. I think he represents probably what the new lawyer is going to look like in the future. And I'm very delighted that he is able to join us and share with us all his amazing insights. So, a big welcome to you, Danny.

**Danny Tobey:** Thank you, Reena. Really excited to be on your first podcast.

**Reena Sengupta:** Tell us a little bit about you.

**Danny Tobey:** I am a fifth-generation Texan. I always thought I would be a lawyer and a writer, a fiction writer. I always loved futuristic fiction, science fiction. As I got into law school, I got very interested in bioethics and biotechnology and the ways that law and technology intersected, especially when that technology challenged the way that our laws had evolved over a longer period. I ended up going to medical school as well and have spent almost my entire career working at the intersection of law and technology.

A little tidbit that's informed my perspective is I had a startup software company that started in my dorm room in law school and was something I carried with me through medical school. It grew into educational software that came out of my own frustration at not being able to take notes and process information the way I wanted to in real time. I grew that and ultimately was able to exit to Wolters Kluwer, which is a global educational publisher. That has always informed my view of the law because I know what it's like to be the entrepreneur, staying up all night working on the software with friends and then trying to sell it the next day.

**Reena Sengupta:** So we've got a tech entrepreneur, cum doctor, cum lawyer. One of the things that I'm interested in looking at, and this is kind of the theme of today's discussion, is we look at the evolutions in the practice of law. RSGI has put out a report every year looking at all of our research, stuff that we do for the FT and the things that we do for other clients. We identified six evolutions in the practice of law. One of them is this idea of going from precedence to predictios – something we will speaking about that.. One of the things that got us excited was the idea of proactive compliance as a service. I was wondering whether you could tell us a bit more about that.

**Danny Tobey:** I would love to. So proactive compliance is really interesting. These new large language models can solve new problems. They can to some extent, but it's not so easy. There are technological issues and ethical issues. Our thesis with proactive compliance is that most compliance is reactive. By the time you discover a problem, bad things have already happened. People are already hurt, laws have already been broken, scrambling to clean up a mess. The idea is with some of these predictive tools, especially the new predictive tools that can look at not just

structured data like receipts and time cards, but now language and subtext and context, we can go much earlier and find things before the really bad stuff has already happened.

And we're not just doing that by throwing it into a large language model because we've tested all those tools, and they're wonderful, but for this very important purpose, they're not, where we as lawyers, need them to be. What we've been doing is training small language models on clients' specific data and on very specific problem sets. If a company is worried about a particular sales force or a particular region where they've had some issues, we can train a model that's really sophisticated for that specific problem. It really increases the predictiveness, but also importantly, the specificity of it, the ability to find real things without finding false alarms.

Our goal, we are not trying to get after people for things that haven't happened yet. We use this very responsibly. It's used for an education moment and say, we're looking for areas where things seem to be going off course, where we can step in and say, here's a new control the company can put in place that would safeguard against this drift, or maybe it's time for a training program to say, this is not how we do X, Y, Z. We've tested this with real-world scenarios and found some great things where we were able to intervene. One of the Global Heads of Investigations at the pilots, the GC said – what do you think? We have found 10 red flags. Any one of these could have turned into a multimillion-dollar investigation, but now we can stomp out the embers and prevent a forest fire. It feels really good.

**Reena Sengupta:** It's so exciting to hear what you're doing, partly because when we started thinking about where the practice of law is going, we thought it was going more towards predictions. We do so much research with clients, we talk to hundreds of GCs every year. The first time this notion occurred to us was about seven or eight years ago. We profiled ABInBev and also DBS Bank that year, and they had legal compliance together. They could predict a potential fraud or a potential breach with about 80 percent accuracy, which went up to about 90 percent over the years. We thought if clients are doing this for themselves, it's only a short time until law firms do it.

You're the first law firm we got to know that was doing it at scale. Have you got thoughts about where else you could roll it out to? We're looking at compliance, but where else could this be applicable?

**Danny Tobey:** I want to pull on one point you raised, which I think is so important. Half of our practice is rolling out the technology tools. The other half is guiding on the governance of using AI. I never want to talk about them separately, because there is a right way and a wrong way to do this. It's a technology issue because there's a lot of sales going on out there where people say, "Oh, we have this or that tool," and you really must dig deep and say, like you said, what is the benchmarking? Does it have accuracy? What is the accuracy?

Accuracy is not just catching things. It's false positives and false negatives. Both of those have arms. It's about having good internal governance, and we never do anything without the human in the loop. You said, it was only time before outside law firms did this, but we have a very strong view that there is a benefit to this because we will find things that the client might not want to be aware of because they aren't helpful. They are false positives, private, irrelevant and that can be distractions. Our human subject matter experts, our investigations council can filter through and

say in our best legal judgment, this is what the company needs to know about. We're not going to burden them with other things that are not material or not relevant. We always have that human lawyer in the loop. I think that's very important.

**Reena Sengupta:** Yeah, and I was just going to say actually, Danny, because we've bandied around the idea of the Minority Report and we're not really talking about that, are we? I think it's a good point you make. We're talking about intelligent predictions, not just absolutes or intelligent issue spotting.

**Danny Tobey:** Intelligent issue spotting and also building a process and procedure around that. That is Responsible AI that's in line with international standards and expectations for how we use these tools. One of the benefits of building these tools inside a law firm – and I built a start up where you're doing a lot with a little. We have 4,000 attorneys and an FCPA model in Brazil, we have attorneys in Brazil, with FCPA experience is that we can build that model with decades of legal experience encoded into the model, cultural experience encoded into the model, knowledge of a particular company encoded into the model. There is a way to do this technologically that is a differentiator because the worst thing you want is to rely on noise that increases complexity, it doesn't decrease complexity.

To your question about where else can you roll this out? We've been shocked at the adaptability of what we can do here. Proactive compliance was the original name, but now we're calling it proactive counselling because we've learned. I do a lot of products liability litigation and the other part of my practice. When you litigate one of these multi-billion dollar products liability cases, there are sometimes things that you find that you wish you found earlier, for example something was spread throughout billions of pages in a regulatory file. What we're learning is we can train these tools to be quality risk assessment tools. Let's take a whole portfolio of products. Let's look for molecular structures. Let's look for journal articles. But it's not a magic eight ball.. You can't just take all this stuff and throw it into a model and see what comes out the other side.

We're working with our product liability litigators, and really proud to say, they just won a big thing this week. They help us build these models in ways that create signal and not noise. The goal is to maximize light, minimize heat.

Nobody wants to live in a world with automatic justice, in my view. Some people say, "Oh, these tools will never be able to solve this." I actually disagree. I think they will be good enough and sooner than we think. The question isn't, "could we run a lot of this autonomously?" The question is, "should we and do we want to live in that world?" So, I am actually an optimist in the sense that I see a symbiosis between human legal caretaking and better technology. But, we've now been asked by one client to roll out into an M&A scenario. Let's bring these tools to do things with deal digits that literally were not possible before. This is next level of sophistication.

Private equity has seen interest in this for risk assessing, for diligencing. We've seen excitement from corporations that want to use it for just M&A. But also just for bread and butter clients and transactions and analysis in other areas. Kathleen Brain just joined us. She was a partner at DLA. Then she became the Maryland Insurance Commissioner. And then she came back to DLA and led the committee that wrote the Association of Insurance Commissioners AI Vault. She said –

you can use this in the insurance industry to look for insurance regulatory compliance. The sky is the limit. I want to stress that we do this right.

The danger of these tools is you can now speak to AI in natural language. Anyone can very quickly use the out-of-the-box version of these tools and ask it to do things. When we do a project like this, we will run a full-scale experiment with a human team and the technology legal team side by side so that we have baselines where we can compare and know what we are catching, what we are missing, what's right, what's wrong, and we iterate until we get to an acceptable level for us and our client's perspective.

The first time we did this, we did a combination of human review, a narrow machine learning arm, and generative AI. In those first couple runs, machine learning way outperformed our generative AI. We knew that because we had a very important human baseline. But we've evolved and iterated and worked with new technologies. Now our generative AI is performing at a superior level.

**Reena Sengupta:** I think everything you said is so interesting. I'm going to unpack it a little bit. I love this term, proactive counseling. Really what we're talking about is perhaps going from precedence, not to predictions, but to proactive counseling. Maybe that's the next step. It begins with a P as well, so we've got the alliteration. Marvelous. Thank you for evolving our practice of law evolution!

I had an event this morning in London. We gathered 70-odd general counsel in a big round table salon. We were talking about various things. One of the segments of the day was talking about the experience economy. The GCs were talking about what kind of experience they wanted from their outside counsel, from their legal service providers.

One GC very nicely put it and talked about proactivity. In his dream world, he would have strategic advisors that came to him and said, not "Have you thought about this? Have you thought about that?" But actually, the golden apex of that proactivity is, "By the way, I've got a business opportunity for you." It's somebody that understands how the company makes money and then enables the company to make more money or generate more revenues.

As in-house legal teams become more like revenue generators themselves, as well as protectors of the business and guardians of the reputation, they're also looking for external counsel to enable that business. I think it's very interesting that you're seeing it evolve into M&A. I've been in this business for 30 years and people often ask me, "Where did you get the idea for innovative lawyers?" I got it partly from the early noughties when I set up my business, talking to loads of GCs who were not happy with their big law firms. I used to think, how can this industry continue to exist when these big clients are not getting the service they want? Even then, in the early noughties, what they wanted was this proactive service.

They wanted the law firm to come to them and tell them what they didn't know about things they needed to know about. I wonder, as we're thinking about the overall practice of law, what does it mean to know your client? In a funny sort of way, you're taking your client's data in a safe, protected way, running Gen AI over it, and helping them know themselves better than they know themselves. Where do you see that extrapolating to? Let's talk science fiction. Where does that client-lawyer relationship go?

**Danny Tobey:** I love that question because one of the greatest legal lessons I ever learned when I first came to DLA, I was going to give a presentation to a client titled “Risk Mitigation for AI.” Lauren Brown, one of our vice chairs, looked at the deck and said, “I love it. I only have one suggestion. Cross out risk mitigation and call it business enablement.” That was one of those career moments where a light bulb lit up. That changed my entire perspective on lawyering. Now I’m in this fortunate position where I’m not just working with general counsels. I’m working with boards and C-suites, the CEOs, the CIOs, the CTOs, the CISOs. I love it because it’s not just about avoiding risk. It’s about navigating the future and building value for our company, customers, and shareholders. Part of the question about how you build value is ‘how do you avoid potholes?’.

I think the other key thing is that, AI is almost like the canary in the coal mine for where the legal profession goes. You can’t approach AI as a lawyer as a risk issue. You can’t approach it as a legal issue because it is the most horizontal technology on earth. It cuts across everything. It’s basically just software, like software 2.0.

So we say artificial intelligence, but it’s really just the next generation of software. It touches every aspect of it. It’s counterproductive if you’re just coming in two weeks before a product launch and saying, “Oh my God, they’re going to launch this large language model. What could go wrong? Can you test this? Can you do this?” We do that all the time. It’s a what not to do in terms of project design but you know, we get: “Our LLMs get launched to 100 million people, can you test this?” Some of our lawyers are data scientists. We come in, we do that testing underprivileged to battle test it. But that’s not the ideal.

The ideal is, day one of the project, the CEO, the CTO, the CSO, the CPO, the GC, they’re all working together to say, how do we build a successful product? If you have everyone breaking down their siloes, saying, here’s our budget upfront for testing, here are the guardrails? That’s the way to go fast. How do we transform our enterprise budget upfront for testing? Two years ago, I would get hired by lawyers and general counsels. Now, I spend as much time talking to boards and C-suites, including the general counsel. It’s so collaborative and value-oriented. What lawyers ought to bring to the table is, generating value is about predicting and engineering around the highest areas of hitting a brick wall.

**Reena Sengupta:** This point you make about generative AI being software, and it being new software, I saw a very interesting presentation from Ben Evans last night. He had one slide where he was talking about how people used to view an elevator. We never think about a lift, as we call it in Britain, or an elevator as a piece of AI or software, but there it was. Back then, it was. I think that’s absolutely right. It will become part of our tools that we won’t notice.

**Danny Tobey:** An elevator, no one says, “Oh my gosh, that’s artificial strength.” It lifts people up 20 stories and now humans are no longer the masters of strength. We still have power lifting in the Olympics.

But I will say this, I feel very passionately while there is an evolution of technology developments, it’s a matter of degree. It’s a bit like boiling the frog, you can’t say when it got hot, it just got hot one degree at a time. There are enough cumulative developments of AI, with key aspects of predictability, control, understanding, moral decision-making, it’s not just business as usual. It gets to more complicated and judgment-laden tasks like agency, autonomy.

I think it is very appropriate that we're being cautious as a society because elevators blend into the background and you don't think about them. But when autonomous justice or autonomous healthcare blends into the background, there are some things that you want to make sure are going right before you just assume them as part of the fabric.

**Reena Sengupta:** Yes, it's back to your human in the loop point. There are studies that show that judgments done by an AI are often less biased than a human judge. But it's that issue of compassion. Do you want to be judged by AI? Do you want to be judged by the human? Maybe it's the two things together. That's the way forward. I started off this conversation saying you were the lawyer of the future. We're not really saying that the lawyer of the future has to be a tech entrepreneur, a budding sci-fi writer, published sci-fi writer, doctor, then lawyer. But we are talking about a different mindset where people come into the law, young lawyers. What do you advise young lawyers of what they need to be successful in this world?

**Danny Tobey:** I think young lawyers have an inherent advantage compared to some other professions. On one hand, we are quite vulnerable to new technologies, there are charts saying lawyers are very open to large language models eventually being able to do what they do.

But lawyers are very very flexible and adaptable. Think about the way we are trained, we are given hypotheticals and they are changed in real time, you have constant training of adaptability and flexibility and those will be the skillsets of the lawyer of the future. But in addition to that, we have to understand more about business and finance. We have to need and understand the humanities. There will be a symbiosis between the human touch and the technology.

I will say, for people getting scared, I always think about the pandemic. People did business through video conferencing, like we do now, but I fly more, and do more face to face post-pandemic than pre-pandemic. Why? Because there is an ineffable need for humanity and connection and that will continue to reign. We should be happy about that. We should be happy that as human species, we have a human meaning and role.

People always say their biggest fear is AI becomes more like people and I say that, my biggest fear is that people become more like AI. It's polishing off that humanity and dignity and compassion and grace. We're going to need those more than ever.

**Reena Sengupta:** Well, thinking about humanity and humanistic views, a couple last questions for you then, Danny. You're an inspirational guy. So where do you get your inspiration? Tell us the most inspiring book that you've read in the last 12-24 months or so.

**Danny Tobey:** You know, the science fiction is kind of a choice that we would read. I just finished 'Never Let Me Go', bit of an older book. It's an accepted part of society, and then you sort of live the life of people.

**Reena Sengupta:** And who's that by?

**Danny Tobey:** It's Ishiguro.

**Reena Sengupta:** Oh great, well that's going on my reading list. And the very last question, music that inspires you?

**Danny Tobey:** Oh gosh. My trinity of musical loves is opera, the Beatles, and Bob Dylan. Bob Dylan, I was just thinking about his quote from "When the Deal Goes Down." He says, "We live and we die and we know not why, but I'll be with you when the deal goes down." He always cuts to what matters, even when we don't know anything.

**Reena Sengupta:** Well, that is fantastic. Listen, Danny, thank you so much for joining me. That's a wonderful note on which to end. Thank you very much.

**Danny Tobey:** Oh, thanks for having me. This was a lot of fun.