

- Dan Silverman: Good day listening public. Today is February 14th, 2020 and you are listening to General Disclosure SAN podcast. That's right. We are no longer untitled. Those were interesting days, but now we're grown up. We've got a title, and it's not just a title, it's a little bit of a pun. So we're super excited about that as well. I'm Dan Silverman, joined as always by my cohost, Cheryl Dowd. Cheryl, how are you?
- Cheryl Dowd: Hi, everybody. I'm great. How's everybody today? Glad to have a guest here today that you're about to introduce. Thanks, Dan.
- Dan Silverman: Yeah, sure. You were on top of it.
- Cheryl Dowd: I know. Too much caffeine.
- Dan Silverman: There we go. Today's guest is Katherine Lee Carey, Special Counsel at Cooley LLP. Kate, how are you today?
- Katherine Lee C...: I'm great. Thanks for having me, and happy Valentine's Day to both of you.
- Dan Silverman: We're a very festive bunch as well.
- Cheryl Dowd: Yes, thank you.
- Dan Silverman: So, Kate, I'm going to start off with a question, a version of a question that I ask just about everybody, which is, defining your career, however you want to define it, why do you do this? Why do you choose to do this work?
- Katherine Lee C...: Wow, that's an existential question to ask you at this hour of the day, Dan. Why do I do this? Well, I entered this field by accident, which I have a feeling is probably true of many people. I had started out my career with the intent of being a criminal defense attorney, which I did for a few years, then really did not like it very much, and I ended up going back to work for a school that I had previously worked at as a secretary prior to law school and sort of learned the ropes from there and eventually became an expert on higher education regulatory law.
- Katherine Lee C...: So here I am, the reasons that I still do it is for the most part I find it challenging and interesting and I really like working with schools and helping them understand, having myself been general counsel and compliance counsel in a number of different schools over the years, how challenging it is to both understand and implement regulations and laws affecting higher Ed, and the fact that I have that experience and kind of help schools understand the realities and how you can make it work. I enjoy that a lot. And of course I'm helping schools that are helping students. So, I love that. The work that I do ultimately is helping students be successful.

- Dan Silverman: Let's say higher education and the practice of law were both outlawed. What would you want to do?
- Katherine Lee C...: What would I want to do? Is there a job where I could just read books and watch movies and have that be my job, because that would be the ideal job for me.
- Dan Silverman: I think you're describing kind of a maybe a general cultural critic, right?
- Katherine Lee C...: Yes. Perfect. Although, I don't want to really have to criticize their work. So I will basically just say, "I finished this book, I enjoyed it." I did not finish this book, which is usually a sign that I did not enjoy it. Or I could follow Cheryl into what I assume would be her path in musical theater because I also do love musical theater.
- Dan Silverman: Well, you're skipping ahead to our very best and favorite segment. So we'll put a pause on that, but we'll look forward to it. We're going to start then with your experience as a university counsel and university Counsel's Office, so many of our members are looking for tips on how to best interact with that office. What would you say, what was the most helpful for you when you sat in that chair when you got a call?
- Katherine Lee C...: Well, one of the things I think that it's helpful for people to understand, and obviously it's different at every school, but the General Counsel's Office, depending on the size of the school, depending on the sort of structure of the organization, it's sometimes as it was for me, a one woman office for a good deal of the time that I did it. So I was being, as you can imagine, pulled in many directions and things that had nothing to do with education necessarily. I think that's one of the challenges, if you have a GCs office with limited resources, human resources, they're often trying to handle contracts and governance and regulatory and everything else, and that can be very challenging.
- Katherine Lee C...: For me, I came into my job as a higher education regulatory expert, which in most universities, that's not the background of their GC because it's such a weird, narrow niche of expertise. So for me that was my expertise, so all of the other stuff was stuff that for a lot of the time I was sort of learning as I went until I became good at it. But if you're not in the legal office and you're trying to maybe have a question or you need their attention, one of the best things that you can do honestly is reach out to them before you need them and make sure that they understand what it is that you do and how what you do interacts with regulation and what the risks are for not complying. Because if you have a brand new GC in a higher education entity that doesn't understand how title IV and the Higher Education Act tie together and are in many cases the lifeblood of your university's funding source, they need to really understand the risks associated with not being in compliance.

Katherine Lee C...: Then that way when the time comes and you have a question, you can go to them and say, "Hey, here is the question that I have and here's the risk if we get this wrong." Because, that's what lawyers are all about. We're always talking about risk and how do we minimize it? How do we make sure that we're doing things in the best possible way? So if you're approaching the GC with a question and saying, "Here is my understanding of what could happen if we don't do this correctly," that will get their attention.

Katherine Lee C...: Then it really just needs to be building a partnership so they understand that what you're providing them is ... in a lot of ways, you kind of need to make sure that you understand what the risk is so that you can explain it. Then that way when you're sitting down with your counsel and you walk through the section of the code of federal regulations that you have a concern about or part of the participation agreement with the department they understand what's at stake. That's probably one of the biggest things that you can do to help yourself. But even before you get there build that relationship, make sure they know who you are.

Dan Silverman: Cheryl, have you heard specific questions from our members on this, about maybe how to build that relationship? Is that something that our members have asked you about at all?

Cheryl Dowd: Our members have talked a bit about that, and mostly it's because they see legal counsel as several rungs up from the kind of work that they do, so they're a bit intimidated about reaching out. So it's taking the steps to ... I think Kate's point about letting them know who you are, especially if you're dealing with regulatory compliance, these things connect them.

Cheryl Dowd: What we talk about, Kate, a lot is the need for collaboration in institutions, and as you can probably understand. [crosstalk 00:07:34] Yeah, because a lot of institutions you'll hear, "Oh, well they do that in this department, and they do that in this department. We don't do these things together." And we say, "Well, with what's going on they're really do need to be relationships between the compliance office, for distance ed for example, and the financial aid office and general counsel and subject matter experts, if we're talking about professional licensure disclosures." So there's a team that needs to be a part. So getting started is their key thing. What I think I hear from you, Kate, is that they shouldn't be intimidated, that they really do need to have that introduction and see what they can do to be collaborators.

Katherine Lee C...: Right.

Dan Silverman: But what if-

Katherine Lee C...: And also keeping in mind that ... sorry, Dan. Yeah, I was going to say, keeping in mind that a lot of times the general counsel may not have any real experience in higher ed. I mean, a lot of the GCs I work with at schools are corporate counsel

or one guy I work with used to be in real estate, so their understanding of what you do is limited. So if you don't make the effort to build that relationship and build that collaboration, and in some ways be the person who leads the team and says, "Hey, we need to have these five people all in a room to discuss this." I know it can be intimidating, but listen, we're not vampires. We're mostly pretty cool. We want to make sure that our organization is safe from risk, so don't be afraid to reach out and introduce yourself and say, "This is what I do and I want to make sure that we're on the same page and that you understand what it is that I might need your help on."

Katherine Lee C...: Because if you're talking to a corporate attorney or a real estate attorney or somebody who came from some completely different background, they need to be educated. And if you're the expert, then take the initiative and be the person who helps educate them so they understand the ties between everything you just said, Cheryl, I mean the academics and financial aid team and the distance learning team, all of those things tie to financial aid. Everyone needs to be on the same page.

Cheryl Dowd: That is excellent advice, Kate. I really appreciate that because pointing out ... and I hear this from some general counsel people that I know, they have so much on their plate that following the specificities of some of the regulations is a bridge too far, that they do need maybe a one pager that gives them an update on any changes that have been made or anything that needs to be implemented at the institution. But certainly in summary form so that they can dive deeper should they choose to but at least have some awareness, because they do. You said it so, so well, there's just so much that they're covering plus have different backgrounds coming into the GCs office. So thank you for sharing it in that way. It was very clear.

Dan Silverman: I have a followup question on that though. Given their busy-ness and their large portfolios, what are some practical tips then for building that bridge before you need them?

Katherine Lee C...: It's funny, it's the same advice I give to schools about their elected representatives, that before someone is introducing legislation that's going to be harmful to your school, that legislator should know who you are. So in those kinds of situations I always tell them, invite them to your event, let them see what you do. I think one way that you could do something sort of similar with your GC, especially if your GC is sort of the one woman or one man show that I was, is invite them or notify them when there's some new updates that you may have seen come across the NASPA webpage or just in whatever way you are tracking changes to laws or regulations that impact the school that you're aware of because it's in your wheelhouse. Right? If you take that and you forward that to the General Counsel's Office and say, "This is something that I want to make sure that you're aware of, it does impact us. Could we take 20 minutes to sit down and just kind of walk through it to make sure that we're all on the same page?"

- Katherine Lee C...: When you get updates or trainings on things, why not send that to the GC and say, "Hey, I know that you wanted to learn more about," I don't know, "ICERs," whatever it is that you know that you think might be useful, forward that along and ask them if it's something that they might be interested in or a conference or those kinds of things. Because, a lot of times they are very busy obviously and they're doing a million different things in lots of different areas, but you do as general counsel want to have at least a general, ha ha, general, a general sense of all of the sort of the big, the big ticket items. Right?
- Katherine Lee C...: So if a big ticket item is there is a borrower defense regulation that's going to impact how we report litigation, well, if your general counsel is not a higher ed expert, but you have seen this come across through a blog post or a news alert, that's something that gives you a perfect opportunity to bring them into the loop and let them know that you are on top of this, you are keeping track of this, but you need their help. But if you have never spoken to them before, they may wonder who you are and why you're sending them stuff, which is why I say to everyone that I know that this is not something that's comfortable for a lot of people. Walk across the building, drive to wherever they are, whatever the case may be, and have a face to face, even if it is literally a minute and a half of their time where you just introduce yourself in person. I think that's so valuable.
- Katherine Lee C...: I know it can be tough, especially if you're not in the same place, and if it's not something you can do in person, then pick up the phone. I know we all avoid speaking to human beings now, but that is another ... that one conversation on the phone, just letting them know who you are, can make all the difference when something does come up that you need their help on.
- Katherine Lee C...: So there's myriad ways to approach this, and I know for some introverted people it's uncomfortable to kind of take that first step, but all you have to do is just make sure that they associate you with what you do, then that way in the future when big changes are coming and you want to make sure they are aware, and let them know that there is opportunities for them to learn more from you, but also through these other avenues, I think that's really valuable for the council themselves. They'll appreciate that because of course they want to make sure that they know what they need to know, and knowing they have you as a resource to keep them up to date is a great way to build that relationship.
- Dan Silverman: How do decision makers, either within the university counsel's office or elsewhere on campus decide, actually, we need outside counsel for this?
- Katherine Lee C...: So generally speaking, what I find is that schools that have a robust legal department tend to use outside counsel less frequently. Obviously if they have the internal resources, because they can usually figure out how much help they actually need. But even so, that level of legal expertise is often the level where they understand what they don't know. So if you have a big legal department that has a person who's sort of a compliance function, then I would say you start there and they will generally take that up the ladder if they feel like it's

something they need a second opinion on or they want to bring in outside counsel to assist with.

Katherine Lee C...: For smaller schools or schools that have just have smaller legal departments, I think they tend to look to outside counsel more frequently because they just don't have all of the types of expertise that they need. Then the question becomes, with the specific question that you have or the specific area of law, how do you find the right firm to assist with that particular type of question? And I find in most schools that is a decision that's made by the General Counsel's Office because they will tend to do their research on which firms kind of hit which marks and kind of cover the areas that they need.

Katherine Lee C...: So it can kind of depend on the type of organization you've had, the structure of your organization, where that decision is being made. But I find that in most cases if there is a legal function anywhere within the organization, they will have their set of outside counsels for specific purposes. So in the case of Cooley, our education group, obviously we are part of a huge firm that does lots of different work. But our education practice group is one of the biggest in the country, so we tend to have those kinds of questions coming to us because someone will have worked with someone in our group on something education-related at some point and they'll know they can come to us to find out if we have the expertise that they need.

Katherine Lee C...: A lot of times they find us just from blog posts, news alerts, conference presentations, that kind of public presentation tends to help institutions understand what the expertise areas are for different firms. But, Dan, I'm sorry. I kind of drifted off from your question. The question being, who generally makes the decisions? If there's a legal department, generally they're the ones that will do the research and figure out which firms make the most sense, but if you're not in the legal department and you know that there's a lawyer at a firm that you've seen presents on a topic or that you know is really good at something, don't be afraid to recommend them to the general counsel's office or to the compliance office and say, "Hey, I saw this person presents on this topic and they seemed very knowledgeable about it. Maybe we should consider them."

Katherine Lee C...: Absolutely do that, because as general counsel, I was always looking for more resources, so I would always appreciate that if you have a thought or recommendation. But the other thing is if you don't have a legal department, which is sometimes the case, then it really becomes an administrative or executive level decision, if it's the president or the Dean or someone like that who might be having to make that kind of decision, and obviously more challenging for them if they don't have any real background in law or know who are their players in the education space for purposes of legal advice. But usually they can figure it out just based on doing some research, using Google. You can find most everything you need that way.

- Dan Silverman: So what if a ... and by the way, I'm shedding a few tears here that you didn't mention podcasts as a way of getting new clients, but anyways.
- Katherine Lee C...: Well now I know.
- Dan Silverman: Now you know. Right, right. Yeah, we were all learning. So let's say the university council at, at San Diego state decides to hire an outside counsel for state authorization matter. What would the role be at that point for the state authorization compliance officer on campus? And maybe it's not [crosstalk 00:19:37] I don't know.
- Katherine Lee C...: What I think is the most useful and effective use of that tool, and I would recommend this to every GC that I ever come in contact with, is if you have somebody on your campus who is the state authorization compliance person, that is the person responsible for that portion of the 8 million regulations that are governing your operations, that that person be involved in those conversations, especially if your GC is not someone who has a ton of experience with state authorization and what it means, because it's not going ... partly because, just from a cost efficiency standpoint, having an expert talk to a general counsel who's not the one who's going to necessarily implement it and may not fully understand the importance of it or how it all links together, then you're just going to have a sort of a game of telephone, right? The general counsel gets a call or has a call with outside counsel then tries to relay that information internally to the person who's going to have to figure out how to make it happen.
- Katherine Lee C...: So I always encourage GCs to have those conversations with the person in the room so that they understand the questions to ask and they are there to hear their responses and that way the person who's ultimately going to have to figure out how to implement the advice from the outside counsel is hearing firsthand and is involved, can ask questions and can really penetrate and understand all of the underlying issues.
- Katherine Lee C...: If that's not possible, and I understand sometimes it's not, then I think the key is that you just have to put yourself in a position to be at minimally in the loop. Because if you know that they're having a conversation about something that's going to impact what you need to do and you're not going to be in the room where it happens ... there's a little musical reference for you, Cheryl. If you're not in the room where it happens, then you need to have the feedback from the general counsel about what their understanding is of the advice.
- Katherine Lee C...: It's also helpful if you're not going to be on the phone to send the general counsel your specific questions so that they know to be asking what it is they need to be asking, and hopefully that will also spur the GC to be thinking about those questions too so they understand, "Here's what is being identified as a risk by my team." I need to make sure I understand what these things mean, so hopefully they will come to you and ask, but if they don't, they're at least going

to get the advice from outside counsel and you just have to make sure that you keep yourself in the loop on the relay, the information that they get back.

Dan Silverman: Cheryl, do you have any questions for Kate on this or anything else?

Cheryl Dowd: I am just so grateful of how you broke it down for us, Kate, because I think it gave a lot of information for our compliance staff members to think through about the relationship that they can build with their general counsel at their institution. So, thank you for breaking it down for them in a way that's very practical and some good steps to make themselves known and have a relationship with general counsel at their institutions. So, thank you for that.

Katherine Lee C...: My pleasure.

Dan Silverman: So we are going to skip my third favorite segment of all of our podcasts, the regulation of the week, because we have a little bit of news. As you know, we are now, the General Disclosure is the name of our podcast, and we are on PodBean, so you don't have to just get us as a tab in your browser on the same website. We also are now aggregated to Google Play, Stitcher, and TuneIn. Hoping to get to Apple podcasts, but they are being exceptionally difficult. If there's anybody out there listening, period, thank you. But even better, if you know how to get a podcast onto Apple podcasts, please let us know. We will now move on to the best segment, which is Cheryl and musicals. Now, Cheryl, today I want to talk a little about soundtracks. We have not talked about that much.

Cheryl Dowd: Okay. Well, Kate, you can include, you know, please add to this. Yeah.

Katherine Lee C...: Okay. I'm here.

Dan Silverman: So either of you, is there a soundtrack that you prefer to listen to than watch the actual show?

Cheryl Dowd: Oh gosh.

Katherine Lee C...: That's a tough one.

Cheryl Dowd: That is a tough one.

Katherine Lee C...: There's some soundtracks that I just love and I will listen to over and over and over again, but it wouldn't stop me from going to see the show again either. So, that's a tough question.

Cheryl Dowd: The only thing it does do in listening to the sound track as if there's a piece of dialogue that kind of separates the song, they find a way to piece it together for purposes of the soundtrack. So, that makes the listening to it kind of nice. But I agree with Kate. You want to see it in person, especially when they try to



simulate some kind of dance break, so you hear some sort of tapping in the background but you can't really see it. But I do enjoy a good soundtrack, but I enjoy both. You're right. If I have the chance to see it live, I want to see it live.

Dan Silverman: What about the other way? Has there ever been a time where you've seen a show live, you thought, "This is great," then you listen to the soundtrack later and you think, "This is disappointing. Soundtrack's not as good as I thought."

Cheryl Dowd: Well, I think one thing that's interesting too is which version do you get? Because sometimes you'll see something live, but there are several versions that might be out there and whether you have the original cast or, gosh, with Les Mis you have the 10th anniversary version, the 20th anniversary version. So, you have a variety of that.

Cheryl Dowd: I can't say that I've been disappointed in any of the ones that ... okay, I take that back. There is one version of Les Mis that I am not as keen to listen to. I didn't like their Jean Valjean as much. He had kind of a whiny voice, and I don't want to whiny voice on Jean Valjean, so I don't listen to that version, but there's other versions. So the 20th anniversary is better than, I think it's the 10th anniversary version. Does that help at all, Dan, for splitting it up?

Dan Silverman: Oh, [crosstalk 00:26:11]. Yeah, absolutely.

Katherine Lee C...: The other thing too with that, that I find is that there's something to be said for the experience of the show, that it isn't that the soundtrack isn't great, it's just that being in the middle of the experience, like Kinky Boots is a great example. Being at that show on Broadway is so fun and there's dancing and people are standing up in the audience and they're singing and it's like being at a party, and you don't get that from the soundtrack by itself. So, I think there are those kinds of shows too where you're not just sitting watching the show. You sort of feel like you're part of something that it's not the same when you're listening to it on the Bluetooth in your car.

Dan Silverman: Kate, is there anything that you're looking forward to seeing this spring?

Katherine Lee C...: I'm actually traveling abroad with my husband and I'm trying, trying, trying to convince him to go see Hamilton in London, and he keeps arguing with me about, "Why would we see a movie about the American revolution in the country from which we were revolting?" And I just think it's even better that way. But on the new shows front, I don't have anything. I'm not going to be in New York for a while, so I'm not sure when I'll have a good Broadway experience, but I will wait for Cheryl to recommend things to me now that I know she's the expert.

Cheryl Dowd: Well, I don't know about the expert, but I do encourage you to go see Hamilton. I saw it in Chicago.

Katherine Lee C...: Oh, I have seen it.

Cheryl Dowd: Oh, okay. But I understand-

Katherine Lee C...: I saw it in New York.

Cheryl Dowd: Oh, good for you. Yeah. And I like the Chicago cast, but my point is here in London that the King is even more ornate in how they dress him. So I think that would be really interesting. So there's that. Then as far as musicals coming up, I think the only thing that's kind of on my radar is Music Man, because Hugh Jackman and Sutton Foster will be the leads, and that will be in the fall of 2020. So in the meantime, there are all kinds of regional theaters that are trying to do Music Man in the regional theater before it comes out next fall. So, that'll be interesting.

Katherine Lee C...: Oh, wow. I love Music Man.

Cheryl Dowd: It's fun.

Katherine Lee C...: It's trouble with a capital T.

Cheryl Dowd: And Hugh Jackman will sell it. I mean, he'll just totally sell it.

Katherine Lee C...: Absolutely. Yes.

Dan Silverman: Well, Kate, you might not have known this, but the second choice for the title of this podcast was the Hugh Jackman Hour. Cheryl's a huge fan, so I don't think-

Katherine Lee C...: Think of the gamut you could run, I mean, you could go from Wolverine to The Greatest Show. I mean, there's so many options.

Cheryl Dowd: That's right. That's right.

Dan Silverman: So, I think we're going to leave you right there for today. Thank you so much, Kate, for coming on. I also want to thank Rosa Calabrese at WCET for helping us with some of this production this time, our website. So, thank you to you. Thanks to everyone who's listening, and we will talk to you next time.

Cheryl Dowd: Thanks everybody. Thanks, Kate.

Katherine Lee C...: Thanks everybody.

Cheryl Dowd: Take care.

Katherine Lee C...: My pleasure, guys. Anytime. Take care. Bye.