

Pioneers and Pathfinders: Justin Ergler

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Steve Poor

Hi, this is Steve Poor, and you're listening to Pioneers and Pathfinders.

For our last episode of the year, we're pleased to welcome back to the podcast Justin Ergler. Justin is a consultant focused on legal operations, outside counsel management, and client value strategy. Listeners may know Justin from his work at GlaxoSmithKline, where he pioneered the award-winning Outside Counsel Selection Initiative and led the company's global transition away from the billable hour to non-hourly, value-based fee arrangements. Justin also co-founded the Legal Value Network and continues to serve as a board member. Additionally, Justin is co-host of the podcast Off the Clock with Keith Maziarek. Justin and Keith had previously joined us for a two-part discussion in May. Today, Justin returns for a one-on-one conversation about finding the procurement path, why he values being part of a team, helping law firms tackle the challenges of data, and his thoughts on generative AI's impact on legal services pricing.

We will be off the next two weeks. Happy holidays to all our listeners and thank you for another great year! We will return January 7 with a new episode.

Thanks for making time to join me today. I really appreciate it.

Justin Ergler

Of course, I really appreciate the invite.

Steve Poor

Yeah, let's talk a little bit about, I don't know. Let's start with you. You made an amazing career in the legal ops space, dealing with data, dealing with pricing, dealing with value, client-vendor relationships. You started if I'm interpreting correctly. You started in procurement before moving into legal ops. Why that move? What was it about the legal ops piece that intrigued you?

Justin Ergler

My entire career is basically a story of slipping, tripping, falling over and ended up where I am.

Steve Poor

I hear that.

Justin Ergler

Out of the military, I went to University of North Carolina, Chapel Hill, and at UNC, I had a professor there called Brian Tomlin who had a relationship with folks at GlaxoSmithKline, and they had an accelerated executive development. I forget what it was called. It was a three year program, is in procurement, and I didn't know what the word procurement meant at the time. So I looked it up, figured out it was buying things. And I, you know, I said, Okay, I had a girlfriend at the time who was quite good at buying things. And I said, you know, I think I found my calling. But no so I joined GS, very fortunate to get my start at GlaxoSmithKline, and very thankful for Professor Tomlin for giving me the connection to have the opportunity to do so. And so I was in procurement at GSK and buying everything from laptops to--GlaxoSmithKline is a pharmaceutical company--so R&D lab supplies, everything under the sun, right? And at that time, you know, legal wasn't on my radar at all. But when I was in e-sourcing group, I ended up in this was running auctions for things like laptops, all different, you name it, we were

trying to do the most aggressive procurement methods in order to control costs. And the legal space at that time, it was a space where you had to put money in there. Not everybody understood why. But if you didn't, bad things could happen.

Steve Poor

Yeah, I remember those days, yeah.

Justin Ergler

A good day to be at a law firm in those days.

Steve Poor

Yeah, I'll tell you. Those are the golden days.

Justin Ergler

Yeah, exactly. But then, you know, the financial crash happened, and all of a sudden, you know, CFO CEOs and others started caring about why are we spending so much money on these law firms? What are they actually doing for us? And especially business units say, Hey, you're putting the screws to me on every nickel and dime I spend. How come these guys over here are basically given a blank check? So the general counsel of GlaxoSmithKline at the time, a guy called Dan Troy. He was very keen on a variety of things. He wanted to show that he was a good steward of the company's money. That was a phrase, yeah, you know, I want to be able to show him a good steward of the company's money, which I love and obviously still used to this day. And so he was willing to engage with procurement and to see if there were opportunities in his space, which I give him a heck of a lot of credit for, because he was very early on the adoption cycle. And so...

Steve Poor

That wasn't the usual dynamic at the time.

Justin Ergler

No, no. It was not, not that it was a pull from the General Counsel, that it wasn't in a complete push. And then there were some quick wins and things that I refer to as ancillary services, like court reporting, things like that, things that weren't near and dear to the lawyers hearts. Then the evolution, and it was like, Oh, hey, these procurement guys, they don't know what they're talking about, because I didn't at all. Right, it was just applying procurement techniques to for services to services that were provided to the legal department. And then from that you got more and more uptake. And then Dan's other passion in the operations or financial or business space was killing billable hour. He did not want to pay by the hour. He thought it was as a former partner at Sidley Austin, then on the in house side, and also former general counsel of the Food and Drug Administration, he just thought it wasn't good for all parties involved, and so that's what he wanted to do. And I was the lucky young at the time gentleman that got to embark on that, and Dan, I had figured we'd start in some of the more cookie cutter. I don't mean that in a bad way. I just mean repeatable matter areas. No. Dan wanted to start with our two mass torts we had going on at the time.

Steve Poor

Sure, why not?

Justin Ergler

And the rationale was, Well, hey, if we can do it there, nobody else can say, Oh, my space is too complex, right? And he was right. So tripped, fell over, learned what procurement meant, ended up

there. Financial crash happened, got the opportunity in a way that not many businesses started introducing financial rigor in the legal arena, and had some successes. And here I am.

Steve Poor

You sort of grew up in procurement, using basic procurement techniques, buying all kinds of stuff. Then you move into the legal space with the support of the General Counsel. But there still had to be dynamics involved that you had to be sitting there scratching your head, going, What the hell are these guys doing? I mean, because the application procurement technique seems pretty straightforward to the legal space until you start dealing with lawyers.

Justin Ergler

Yes.

Steve Poor

What sort of surprised you the most? What do you have to overcome to achieve success in that space?

Justin Ergler

I would say that I'm a relationship guy. I always say, I say, I say, now I tell people now that you know, I'm not a lawyer. Never will be a lawyer. Quite happy to not have financial debt, but, but, so my currency is in relationships. My currency is in relationships. Now, over 20 years, have I learned enough to be somewhat dangerous in the legal world? Yeah, but that doesn't mean I'm going to go argue a motion, right? So my currency is in relationships. And one of the things I appreciated about legal, it was a pain in the butt for a long, long time, but once you kind of get into it is how strong the relationships are and how much that influences buying decisions. It's one thing, and that's, let's say, another space of the company. It's one thing, to have a supplier that you've been using for years. That might not be the best price, but they're pretty good. And you know Jim. You know Jim's a great guy. He always picks up the phone when you call and just feel comfortable and say, I like Jim. I don't want to go to a new supplier. Okay, in the legal space, it was almost at first offensive that somebody because I've also always said I'm not qualified to pick a law firm. I'm not qualified to tell a lawyer you should use this firm instead of that firm, right? But what I can do is put structure and process in place to provide decision grade data upon which you can make that selection. And if that means you're going to go with Susan, the same lawyer you used in the same firm for years that you went to law school with her and did it right, great. But if Susan's at a premium cost, and there's other firms that have a better value combination meaning experience and cost, well then you're going to have to make that decision in the light of day and justify. And it's, so it's not getting to that point. It was a long, long time. That's one of the reasons we started with the ancillary services. Because, quite frankly, in house attorneys, they didn't know, nor really probably care, what court reporting company was at x, y and z trial or whatever, because those were all selected by the law firms. So we started there, and we weren't taking away their favorite court reporting company, because they didn't even have one. But once it got into the law firm space of actually managing outside counsel, that's when at first, if I'm being honest, some of the knives came out. You know what I mean, like, hey, get away.

Steve Poor

I would assume.

Justin Ergler

But as you develop those relationships, more and more with internal folks, and I'm very, very fortunate, the outside counsel I worked with, some of my closest industry friends are outside counsel partners, not to mention, obviously, the business side of legal at law firms, but developing those relationships and that trust, I guess that's the thing. Maybe that surprised me, because lawyers were always portrayed in

the movies as these like evil, backstabbing, you know what I mean, things like that. But these people care about each other a lot, and those relationships are strong. Even across law from law firm to law firm, there are very strong relationships between lawyers, and that's one of the things that's really, I wouldn't say, fall in love. That's too strong of a term, but I've really enjoyed being in the industry.

Steve Poor

Right as you moved away from traditional hourly billing, how did you develop metrics to measure success. Structure The pricing. What sort of criteria were you? What was what worked for you?

Justin Ergler

I would say moving to non hourly when I say sometimes terminology gets some people take flat fee, fixed fee. When I say non hour, when I say flat fee, I mean, no shadow billing, nothing like that, no reconciliation. We agree to a price, we agree to a invoicing schedule, and then we invoice based on that schedule, single line invoice and submit, approve, done. The biggest thing was the scope of work, the assumptions document, and that was something that that was a process to get to a place where you could build something that was good. And it was again, through the relationships, my relationships that I had with the law firms, working with their business professionals, to agree, okay, how many expert depositions do we think we're going to have? How many this? How much of that? How much of that? So those units, if you will. Now, how did you validate the pricing I codes weren't much help. Let's put it that way. But there was a process that was built we used, called OCSI, and it was a mini RFP process that culminated in auction, reverse auction, which that was another thing Dan Troy and PD Villarreal, they let us do it, basically, is the thing, because, you know, there were other companies doing auctions at the time, so not only were they taking a step out there, but their friends were saying, Hey, what is this? But I digress. As part of that, though, we had to have a robust set of assumptions so that law firms could know they were bidding on the same scope as their competition. And so we would refine and refine and get phases, and we'd have phases so we would understand better understand through competition, how much should a preliminary motion phase cost, how much should a expert discovery piece cost, and things like that. So what that enabled us to do? So we basically got there through competition, because there wasn't data on you might know how much you spent in L300, whatever, but okay, well, how much of that was allocated to depositions? And then not only depositions, but fact witness depositions or family deposition, things like that. So it really took a long time, because we really had to build the data set on our own, but we were confident we were getting fair pricing because we leveraged the marketplace to get competition. I think sometimes where people go wrong is they undervalue how important it is to at the front end of a matter to get the proper assumptions in place. That's thing one. Thing two, I think they undervalue how much trust needs to be there, such that a law firm feels comfortable giving competitive pricing knowing that should the assumptions bust, you are going to be a reasonable client and come back to the table to understand what changed and make a price adjustment. So that's kind of a long winded story, but that's how it got there.

Steve Poor

How do you define value in all of that you have the competition, and you've come to the conclusion that competitive pricing says it's going to be x. Best case is going to be a million dollars to handle this particular matter. Now the business unit has to decide, I presume, whether or not it's worth a million dollars to do this particular deal or to do this to handle this particular case. Did you have those conversations internally as well?

Justin Ergler

Well, that's a great point. And as far as just to your first point, value is combination of quality and price for me, and that's one of the things. The number one thing in corporate legal department is you need to have excellent legal representation.

Steve Poor

Of course.

Justin Ergler

I just try to get it at the best cost and to have firms display that how excellent they are going to legally represent you, rather than telling us their Chambers rating or sending us a 50 page PDF, glossy PDF, of their regulatory practice. So value is combination of experience excellence and cost, I would say another thing that changed, that really, I think helped business professionals get into the legal profession, especially on the corporate side, is that budgets for legal expenses used to come for a lot of companies from something called, might be called Corporate sundry somewhere, or something like that. But basically it was a black hole where money was where that's how they paid the lawyers. Then there was change not too long after the financial crisis, where business units started being cross charged for legal expenses based on if they were the benefiting business units. So let's say at a company, if you're in US commercial and you have sales folks that go off and do maybe something they shouldn't have done so you're getting investigated by the government. We have to hire law firms to help with that investigation. That amount of money is going to be cross charged back to us commercial. So what does that mean? That means that it impacts our P and L, which what does that mean? It impacts probably their bonuses, bonuses. So now they really care about what they're spending on law firms, but not only what they're spending but who they're spending it on. So for law firms, obviously you need to develop the relationships with the in house lawyers and the GCs and all that stuff. But I even take it one step further when I talk to firms. I say, if you have the opportunity, because sometimes in house folks, they kind of keep their business clients to themselves. If you have that opportunity, those business client relationships are huge. Because in some companies, they definitely have a seat at the table, as far as what law firms get hired.

Steve Poor

How was the move into consulting? How did you like sort of starting your own business?

Justin Ergler

It was interesting. I mean, I've been told for years, you know, hey, why don't you do consulting X, Y and Z? And I was happy where I was, and I was doing things that I thought A, added value, but I was given the opportunity to do things that were first in industry, which was pretty cool. So I enjoyed that, and then got to a point I call it a beautiful midlife crisis, where it's like, hey, you know what? I've been doing this for 20 years. Maybe it makes sense to try something new. And I had done a lot of work. I'm co-founder of the Legal Value Network, and so I worked for years and years and years with law firms and the business side of law firms, spoken at law firms, practice groups and things like that, partner retreats, and my capacity as an in house corporate guy, and I had said, you know, hey, I'm gonna go try it so I don't even have a website. My business, my business email address is...

Steve Poor

Good marketing, Justin.

Justin Ergler

My business email address is at Gmail, justin.ergler@gmail.com. It's all been word of mouth, which has really been pretty humbling, that you've built enough relationships in the industry to do that. So it's been really cool. I will say there are pros and cons back office stuff I'm not a huge fan of, but you got to do it.

I will say that the biggest con for me, or not biggest con, most difficult part for me is since the military all the way on through my career, I've always valued being part of a team and charging towards one collective goal. If that makes sense.

Steve Poor

It does.

Justin Ergler

When you're a consultant, you're part of the team, and then the project's over, and then you're gone. You know what I mean? So there is a point. There is a part of that, if I'm being honest, there is a part of that I miss being part of a team that is continuously charging reaching one goal. Let's go to the next one. Let's go to the next one. Let's go to the next one. I love building things, if that makes sense. I love building things, getting to that plateau, and then looking up and saying, how do we get up there?

Steve Poor

Makes complete sense. Consulting can be somewhat a lonely a lonely business. As you look at your your law firm clients, your legal department clients, the teams you work with, what are you seeing in terms of the increased sophistication of the use of their data? Are there trend lines you're seeing?

Justin Ergler

I would say that for anyone listening to this podcast at a law firm or on the corporate side, you are not the only one who thinks your data is absolute garbage. That's the first thing I hear everyone well, how about today? Oh, my data is horrible. We can't use my data is absolutely awful.

Steve Poor

And it usually is, by the way.

Justin Ergler

It usually is, but everybody thinks that they're alone in that on data. That's one of the things I've seen, is that everybody thinks their data is horrible, and sometimes it's hard to admit it, but everybody thinks their data is horrible. And as you said, usually that's the case. But I will say that there is a growing appetite, because, as you said earlier on, when you're asking me about kind of my career progression, there is more of an appetite now from lawyers to make decisions based on data than ever before. I think there is pressure. I mean things like, for example, Keith Maziarek, you talked to both of us on our podcast. He has been banging his head against the wall ever since I've known the poor guy on profitability, and why do we only focus on revenue and not profitability? People are getting that now, the lawyers, the partners, business committees, they're getting that they're understanding how you can leverage data to make better business decisions, let alone I was shocked. You asked my you know what surprised me about the legal industry. I was shocked at how much lawyers relied on basically, like gut. You can call it experience, but I call it gut on what is the right decision. I was expecting like decision trees and nodes and 80% chance it happens like this. 15% it happens like this. I was expecting, like spider webs of different decision trees.

Steve Poor

That's crazy. That's crazy talk.

Justin Ergler

Yeah, and it was, it would just be like, Oh no, this plaintiff's lawyer, yeah, he's an idiot. That's what we're that's what we're going with. Oh yeah, no. I met him, and I met him in Atlanta at a conference two years ago, he doesn't know what he's doing. Okay, but, yeah, I was surprised at how much it was on

gut. And I think that that's why I love the phrase decision-grade data. I think lawyers, and as lawyers move, so does the legal industry, right? You can have business geeks like me talking till we're blue in the face, but if partner, Managing Partner, General Counsel, doesn't want to do it, they're not going to do it. But I think they're more receptive to saying that data provided its decision grade can help make better decisions. So with tech companies out there now, there's a tech company that I've worked with, there's a lot of legal startups that they have folks not coming from they're not ex lawyers. They're not people that grew up under ... They're tech prodigy geniuses. You know what made that have no experience in legal but they've identified there's problems in the legal space. Data is one of them. And there are different companies coming up out there now, which I'm not going to advertise for anybody, but there's companies out there now that are focused on helping law firms harvest the data that they have, using AI to fill in the blanks where there are blanks, and then basically giving it to them and saying, hey, guess what? Now you have decision-grade data that you can put into a system or whatever.

Steve Poor

Yeah, it's an interesting catch 22 isn't it that I want to use data, but my data is lousy, but the data is not going to get better until people actually using it and relying on it, and they're not going to use it and rely on it until it's better. You got to break that cycle at some point.

Justin Ergler

Right. And I think I mean my advice for law firms clients as well, but law firms is you got to take the first step. You got to see what you got. You got to, as I said, you have to find a company out there where you can see what you can get from your existing data, fill in the blanks, and then I think with AI and I do not like 99% of the other people in the world, I am in the 1% that does not claim to be an AI expert.

Steve Poor

Nice to meet you, Mr. Non-expert. I don't meet very many people like you.

Justin Ergler

I like to think I like, I mean, just the buzzword. I like to think that I'm good enough to be dangerous, and I know enough to be dangerous. And I learned so much from, you know, clients and things like that, about, especially the tech startups, about the incredible things you can do. But I think the adoption piece is going to be made easier. So if you can get that initial take, that initial step, they're going to be tools in place where it's going to make the burden on lawyers less than it has been in the past, such that they'll use these use in air quotes, systems more like whenever I would talk, whenever I talk to tech clients, my question is always, okay, what are the lawyers going to have to do in your platform? Oh, well, all they're going to have to do is log in, do this, go over here, and then go over there, and then it'll set up an email, then they verify it, and then they go back into ... nope, nope. They're never going to do it. They're never going to do that. So I always say, the fewer touch points lawyers have to have, the system adoption is going to be exponentially higher. So, and I think with AI, people smarter than me in the tech world are going to use that to make it so that lawyers can leverage the benefits of good data and capturing great data without having to capture it themselves,

Steve Poor

As long as we're on the topic of AI, because you can't do a podcast now legally without talking about AI. How do you see the use of better data, the use of technology to speed efficiency? How do you see that affecting pricing, or the way clients approach the pricing structures?

Justin Ergler

Well, I hope, as I said, Keith has beating his head against the wall on profitability, and people are now, you know, finally, over the last few years, like really listening to some of the things he's said. I hope that I'll be able to quit beating my head against the wall around non hourly flat fees. Because I think it's really interesting that clients have been saying flat fees for years, and it's all the law firms don't want to do it. Now, I think if you're a law firm, if you're going to invest in technology and AI, flat fees are the way to go. And I think clients, I've heard clients, are the ones saying, Well, hold on, I want this back on hourly if you're going to be spending less hours. So I think that push and pull in that fight isn't productive for anyone, I think moving to flat fees, because if you're a law firm and you do invest in AI, guess what it's called an investment, for a reason, you need to recoup and get a return on that investment. And I mean, I don't see how any client could argue with that, but, you know, I'm sure there are arguments that occur, but I think that's going to be something from a pricing standpoint, is, how do you factor that in? I think flat fee is the best way to go. How do you validate whether a law firm is factoring in too much for AI too little, or whatever? That's where you use competition to drive the market, and via that competition, that's where you get good data to understand what is fair and reasonable in the marketplace, such that at some point you don't need to leverage competition on everything. You know an XYZ antitrust matter in this jurisdiction, in this area that should be around 2.6 to 2.8 million. You know that because you validated those costs, and that's where I see. I see, I hope AI pushes pricing towards flat fees, and I hope even the monitoring of those flat fees right, like we used to say, e billing systems were great because they could monitor billing guidelines, and were firms adhering to billing guidelines. AI, I mean, is going to be able to monitor assumptions based on matter management systems and even documents and things like that? How many depositions have we done? How many of this? How much of that? I think in pricing it can, it can absolutely be revolutionary, but we're not there yet, but I think we will get there eventually.

Steve Poor

Yeah, I don't think we are there yet. This dynamic you talk about is interesting to me, this flip flop between law firms wanting to use flat fees because they're concerned about preserving their margins on businesses gets more efficient and in house counsel saying, Well, wait a minute, all I read about AI is it's going to reduce my cost and reduce the amount of time you're spending. Why should I go to a flat fee based on an antiquated cost structure when the costs are supposedly coming down? That's such an interesting dynamic, isn't it?

Justin Ergler

See, I don't, I don't think costs are going to come down. And this is just my own personal opinion.

Steve Poor

Well, they come down in legal business all the time, Justin.

Justin Ergler

Exactly, I don't know what I've done. I'm thinking, I told you, I'm not a lawyer. went to school to do math. I'm not a lawyer. But yeah, no, I don't think that the great cost saving revolution, AI revolution, is going to necessarily be there. Now, do I think costs are going to come down? Yes, do I think corporates may spend slightly less money than they would have before. Yes, I do, but I think that an angle that a lot of law firms and lawyers are looking at, and a lot of in house clients want, is that if you give a lawyer 10 hours to do something, they're going to take nine hours, 59 minutes and 59 seconds, even if they're really sure they got the right answer two hours in, they're gonna they're gonna check themselves, they're gonna go back. So I think AI is going to enable them to it's almost like elevated thinking, elevated spending their time on more elevated tasks. That's just in the lawyering thing. So do I think lawyer time is going to go down, not necessarily, maybe marginally, but not big steps change down. So I think people need to be not wary, but they need to temper their expectations that, oh, this is going to

cut my legal budget by 40% not anytime. I can't predict tomorrow, let alone years into the future, but I can say confidently, not anytime soon.

Steve Poor

It would not be a dynamic we've seen before in the profession. Would it?

Justin Ergler

Not in my experience No. I mean, honestly, the thing with AI that I think about the most is, at what point is it just AI talking to another AI? I mean, AI is coming up with, you know, arguments for X, Y and Z, for a plaintiff's counsel in AI for the defense counsel is getting pushes and prompts for what they think plaintiff's counsel is going to do. So at what point is just AI and AI duking it out in an AI judge rolling in one party's favor?

Steve Poor

And we're sitting on the beach drinking a pina colada.

Justin Ergler

Hey, I'm happy with that. That's why I have my tech clients, because so they make friends and build those relationships, but one of them that discovers that, discovers that. But, yeah, no, I think, I think AI, I think it is going to lead to better legal representation, obviously, more efficient, but I think it's going to lead to better legal representation. I think it is going to lead to risk reduction in that those gut decisions are going to become less or at least they're going to be more informed. You're never going to replace the expertise of a lawyer like Andy Bateman at King and spawning, you know, his expertise that he's had over.

Steve Poor

Nor should you.

Justin Ergler

You're not. But again, it's kind of goes back to a bunch of our different points we've made so far. You're going to be arming those experienced, expert lawyers with decision grade information upon which they will make the best decisions for their clients. So does that mean that it's going to cost a lot less? I don't see that right now, but I do see the quality of legal representation getting higher.

Steve Poor

Well, your lips to God's ears, we've we've run out of time. Justin, thank you so much. I've enjoyed the conversation.

Justin Ergler

I always do.

Steve Poor

And you've given out your email address. So for listeners you want to talk to Justin, don't look for the link in the show notes. Listen to his email address.

Justin Ergler

Yes, yes. But hey, Steven, thank you for having me on. I really appreciate, really appreciated you being on our off the clock podcast. You're a great guest, and look forward to talking again soon.

Steve Poor

I do too. What can we expect on the Off the Clock podcast?

Justin Ergler

We've got a few things in the hopper. We've got, hopefully we have a law firm, very interesting law firm business model, such that they are heavily leaning in on technology and AI and senior lawyers, such that, I think the youngest lawyers they bring in are like, fifth years and fifth years and, you know, obviously up their partners. And so when Keith told me about it, I kind of laughed. I said they sound like, I don't know if you're a baseball fan.

Steve Poor

Yeah, moderately.

Justin Ergler

So okay, well, I, I'm from Pittsburgh area, some Pittsburgh Pirates fan, so you really can't be a baseball fan, but the New York Yankees, what they do is they just take players from like the Pittsburgh Pirates, and they just pay them more money and bring the best ones to the New York Yankees. That's kind of like what they're doing. They're letting the am law 20 develop Associates, and they pick the best ones. They're like, hey, we'll pay you a little bit more to come work for us. So but they do that, and the way, that way they're able to have less first through fourth years is leveraging technology and AI. So I think it's a really interesting business model. And as you know, the legal industry changes direction overnight. I'm kidding, but I think it's eventually, people are going to keep an eye on this. And if this firm is successful, I'd be interested to see what people think.

Steve Poor

We'll look for the podcast episode.

Justin Ergler

Absolutely.

Steve Poor

Sounds fascinating.

Justin Ergler

Hey, Stephen, if I don't talk to have a great holiday, but I hope I talk to you soon.

Steve Poor

Yeah, you too.

Thanks for listening to Pioneers and Pathfinders. Be sure to visit thepioneerpodcast.com for show notes and more episodes, and don't forget to subscribe to our podcast on your favorite platform.