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### **Written Resources** *(see attachments)*

- Pieces of Advice for a New General Counsel
- Leadership Skills for New General Counsel Managing Attorneys
- The Law Department from the Perspective of the CEO *(excerpts)*
- Top Ten Metrics That Your Legal Department Should Be Tracking
- Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices *(excerpts)*
- The Business Case for In-House Pro Bono

### **Coaching/Mentoring Connection**

- Connect with a CLO coach/mentor during your first year as general counsel through ACC CLO Services. Please contact Justin Connor, Director of Chief Legal Officer Services at [j.connor@acc.com](mailto:j.connor@acc.com) or 202.677.4762 to discuss your mentoring needs.

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From the Experts

# 7 Pieces of Advice for a New General Counsel

Marc E. Manly, Corporate Counsel

July 6, 2015

A college classmate recently took a position as general counsel of a company after a long career with a prominent law firm. Having done the same more than a decade ago, I offered to provide some pointers. He was an experienced lawyer, but he was new to the role of general counsel. Assuming that some of this could be helpful to others, I converted my notes into the following observations. They were aimed at public companies with boards and public reporting obligations, but some of the thoughts might be of relevance in other settings as well.

The first seven pieces of advice will be offered here; the final seven will be posted in a subsequent column. They are presented in no special order.

## 1. You Should Report Directly to the CEO

Some companies have the general counsel report to the chief financial officer or a chief administrative officer instead. This is a recipe for the legal organization to have at best a weak voice within the enterprise. It undercuts the stature of the general counsel and undermines authority you will need in providing advice and executing your function. It also may signal the CEO's view of the role of legal, and puts an intermediary between you and the CEO, with the clear risk that your advice or concerns will be miscommunicated or misdelivered. Personally, I think it is a bad structure, and I would never take a position as general counsel unless it reported directly to the CEO.

## 2. All Lawyers Should Report to You

No matter what the organizational structure of the enterprise, with subsidiaries, foreign operations or decentralized management, if you are ultimately responsible for the legal affairs of the enterprise, all lawyers must report to you. Dotted lines won't do.

This principle is important for at least two critical reasons. First, the board of directors will expect its general counsel to be accountable and responsible for all things legal. With that accountability, you must be responsible for all the lawyers, with the powers that flow from all

lawyers reporting to you, with their salaries, bonuses, promotions and continued employment under your control. Notwithstanding the theories of matrixed organizations and “dotted-line” reporting, the simple fact remains that people respond better to you if you are their boss. They will be more apt to keep you informed and listen to your directions, which are key if you are expected to be responsible for the legal function.

Second, lawyers provide an important check and balance within the enterprise. They are canaries in the mine and involved in all things that could blow up—from a flawed transaction to mishandling of matters that could lead to an unwanted media focus or government investigation. To best fulfill that role, the lawyers should have the independence that reporting up through a legal organization provides. If they report directly to business heads and not the general counsel, their independence to raise an issue is seriously compromised and could be perceived as risking their careers. If they report to you, they have protection if they take the right position for the enterprise but an unpopular one with an individual client or business unit.

### **3. All Counsel—In-House and Outside—Are Assigned and Hired by You**

As a corollary to Point 2 above, the law department, and ultimately the general counsel, must be responsible for hiring and assigning lawyers, both internal and outside counsel. Although the views of clients should be considered in hiring outside counsel and assigning in-house counsel, you and the law department must make the ultimate selection.

Consider the contrary: If the client selects or directs who the outside counsel on a project is, outside counsel will naturally oblige that client and gravitate to support his or her views, conclusions and risk tolerances. But their independent views may be at odds to those of the business client on the transaction or raise a matter of risk that, properly considered, could jeopardize the transaction. They will be reluctant to surface these views if hired by the client, upon whom future engagements may depend.

As general counsel, you need to structure law firm engagements so that you get the unvarnished view of the matter and can evaluate the risks involved in the issue, unbiased by the business client who will be invested in the matter being considered. To achieve this, it is crucial that outside counsel clearly understand that you and the law department are their client, not the businesspeople whom they may be assisting.

In fact, beware of law firms or individual outside lawyers who market directly to your business clients within the enterprise, or use personal relationships with clients to obtain their support in getting hired. It is a complete red flag when an outside counsel is using connections with clients to obtain an engagement—his or her loyalty and efforts to please will be directed at the client and not to the law department, and you will have lost control of the legal advice and assessment of risks.

Quite frankly, my worst nightmare as an in-house counsel occurred where a client was hiring his own counsel for supporting advice, advice that he used to cover or legitimize a huge breach of fiduciary duties. And in that episode, it was shocking for me to see how even the most respected firms could be swayed to provide questionable advice desired by their client.

There are nuances in this rule that must be worked out, depending on your circumstances. For example, your government affairs organization (if it doesn't report to the general counsel) or the

tax group under finance may hire law firms for lobbying work or for tax advice, and the question becomes whether that is your responsibility or not. Work these seams out with your colleagues, but the guiding principle should be that any person, whether inside or outside, providing legal advice to the enterprise should be your responsibility and under your control.

## 4. Be Responsive

Any lawyer who has ever worked for me will smile at this suggestion, because they have heard it repeatedly. All members of the law department should be encouraged—no, better yet, held to a strict standard of responsiveness.

I followed a simple rule: Any communication received before noon got a reply by the end of that day; any received after noon was answered by the next morning, at the latest. It is easy to be responsive and very much appreciated by clients. As I have said to my lawyers, a client may not know the difference between legal advice that is A+ and a mere C, but they know if your lawyers are being responsive.

Responsiveness will improve the perception and value of the law department within the company. It will improve your client satisfaction scores and make it easier for you at annual budget meetings. Even if a lawyer is busy and can't get to the request right away, send a simple message such as, "I have your email, but am tied up in another matter until Monday—can the matter wait until then, or can I get a colleague to help on this?" Such an acknowledgement, versus ignoring the email because you can't get to the substance until Monday, will be appreciated beyond expectation. And you should lead by example by following this rule yourself. Acknowledge receipt of emails, reports, memos and heads-ups with a simple "Thanks," "Thanks, I'll review this" or "Thanks, let me schedule some time with you to follow up." Not responding makes the sender wonder if you ignored it, or even received it.

Vacations and similar absences from work may make it difficult to follow this rule. Personally, I found it relatively painless to stay in email contact even during vacations, and I responded accordingly without much disruption. But forwarding email or delegating the responsibility to others during a vacation so that the client receives a response even in your absence is far superior to a client's email that goes unanswered for a week.

The same requirement also goes for personal promptness. No lawyer should arrive late to any meeting or phone call. Period.

## 5. Don't Be Afraid to Say, "I Don't Know Right Now"

As general counsel you will probably be surprised by the range of legal questions that come your way demanding prompt answer, many times without warning and in the heat of battle. Some clients tend to believe that lawyers have memorized the answer to every legal issue and should have an immediate response. We know that this is not the case. It took me time, but all general counsel should be prepared to say, completely without defensiveness: "That is an interesting question, but I don't know the answer as I sit here. I'll need to research it, or seek out an expert on this matter. When do you need an answer?"

An intermediate position on this one could be to say, "I don't know for sure, but my instinct is that this is the answer." This approach will give some direction on the issue, but make sure the particular client knows that this is a tentative and not a final answer. And determine a timeline

required for obtaining any necessary confirmation—is it an immediate fire drill where you need to get on the phone that day and find an expert on the matter, or do you have more time?

## 6. You Will Exercise Judgment on How Far to Research a Matter

One of the biggest differences between in-house and outside counsel is that in-house counsel can weigh the costs and benefits of taking more time to research the answer to a legal question. Outside counsel tend to research the most trivial issue well beyond what is optimal in terms of the downside if their initial view happens to be wrong, or for fear of some nuance—however unimportant—they might miss.

So there are important trade-offs between Points 5 and 6. An optimal trade-off is hard to teach and impossible to establish as a rule for governing. But the point is this: Sometimes a transaction or a business decision has to be made on the basis of your best judgment and instinct right then and there, and the benefits of slowing the decision down so that you can research the issue and increase the confidence of your instinct from 70 percent to 95 percent is simply not worth it. There is a complicated weighing of the consequences if you are wrong versus the consequences of delaying to enable fuller research, but you will be surprised how much of your advice will be based on the immediate instinct formed from experience. And in doing so, resist the temptation to assume the worst in giving prompt advice.

## 7. Be a Business Leader, not Just the Chief Lawyer

To be effective as a lawyer and as a senior leader, you must know your company's business and strategies. Outside counsel offer legal, not business advice. A general counsel's role is much different—principally as a senior executive to help achieve business objectives where your particular expertise involves the legal issues affecting the business.

So don't be shy about weighing in on the business merits of an issue. General counsel who stay aloof from business decisions become ineffective and marginalized. To become knowledgeable as a business leader, make sure that you are assigned to committees within the organization that are focused on the business, such as a transaction review or strategy committee. And participate as a senior business executive first, chief lawyer second.

*Marc E. Manly was the general counsel of Duke Energy Corp. and its predecessor company, Cinergy Corp, from 2002 to 2012. Prior to that he was general counsel at New Power Holdings; vice president and solicitor general at AT&T; and a partner at Sidley & Austin. He earned his J.D. and an M.A. in economics from the University of Michigan in 1977, where he graduated magna cum laude was a member of the Law Review and Order of the Coif.*

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## 505: Leadership Skills for New General Counsel & Managing Attorneys

**N. Cornell Boggs, III**  
*Vice President and General Counsel*  
Tyco Plastics & Adhesives

**Michele Coleman Mayes**  
*Senior Vice President and General Counsel*  
Pitney Bowes Inc.

**Gloria Santona**  
*Executive Vice President, General Counsel & Secretary*  
McDonald's Corporation

## Faculty Biographies

### N. Cornell Boggs, III

N. Cornell Boggs, III serves as vice president and general counsel for Tyco Plastics & Adhesives (TP&A) in Princeton, New Jersey, one of five business segments of Tyco International (US), Inc. Mr. Boggs is responsible for the overall legal operations within the segment, including corporate and commercial law, intellectual property, human resource law, environmental law, and litigation.

Prior to Tyco, Mr. Boggs served as Americas regional counsel for Intel Corporation in Folsom, California, where he was the group counsel and legal manager for Intel's Americas sales and marketing organization. Prior to Intel, Mr. Boggs served as associate general counsel for Anheuser-Busch Companies, Inc. based in St. Louis, where he worked in the corporate and commercial law group and the marketing, distribution, and antitrust law group. Mr. Boggs also worked as an in-house attorney at the Monsanto Company, where he worked for the corporate legal group and the chemical company operating division. Prior to Monsanto, Mr. Boggs served as a trial attorney for the U.S. Department of Justice in Washington, DC, where he was an Attorney's General Honor Program hire in the Civil Division, Torts Branch, Environmental and Occupational Disease Section. Prior to his work at the DOJ, Mr. Boggs was a Judicial Clerk for the Honorable William G. Conover, Court of Appeals of Indiana in Indianapolis.

In 1999, he was awarded the Valparaiso University Law School's Alumni Service award and in 2000, he was awarded the University's Alumni Service Award. He currently serves on the School of Law National Council (board of trustees). Mr. Boggs is also a member of the board of directors of the Minority Corporate Counsel Association and he is past cochairman of ACC's Law Department Management Committee.

Mr. Boggs is a graduate of Valparaiso University and the Valparaiso University School of Law.

### Michele Coleman Mayes

Michele Coleman Mayes is senior vice president and general counsel of Pitney Bowes in Stamford, Connecticut.

Previously, Ms. Mayes served in the U.S. Department of Justice as assistant United States attorney in Detroit and Brooklyn, eventually assuming the role of chief of the civil division in Detroit. She entered the corporate sector as managing attorney of Burroughs Corporation. Her career continued to evolve as Burroughs and Sperry Corporation merged creating Unisys Corporation, for which she was appointed staff vice president and associate general counsel for worldwide litigation. She later joined Colgate-Palmolive Company as vice president and associate general counsel U.S. Her last position at Colgate-Palmolive Company, before leaving for Pitney Bowes, was vice president, legal and assistant secretary, and elected a corporate officer.

She joined the board of Legal Momentum and was elected chair. She also is a member of the ABA, where she formerly served as cochair of the arbitration committee and a member of the commission on women in the profession. Ms. Mayes received the Margaret Bret Award from the ABA commission on women in the profession and the Trailblazer Award from the Minority Corporate

Counsel Association. In the November 2003 edition of *Black Enterprise*, she was identified as one of America's top black lawyers.

Ms. Mayes received her BA from the University of Michigan and her JD from the University of Michigan Law School.


### **Gloria Santona**

Gloria Santona is executive vice president, general counsel, and secretary of McDonald's Corporation in Oak Brook, Illinois. She is also a member of the company's senior management team. In her capacity as general counsel, Ms. Santona provides oversight to McDonald's global legal function, which includes 73 lawyers in the United States and 60 lawyers in 19 countries around the world. She is responsible for all aspects of legal compliance and policy for the global enterprise. Ms. Santona also serves as secretary to the board of directors and, in that capacity, provides advice and counsel regarding matters of corporate governance. She has held positions of increasing responsibility in the company's legal department, since graduating from law school.

Ms. Santona is a member of the American and Chicago Bar Associations and a member of the boards of directors of Aon Corporation, ACC, and the Minority Corporate Counsel Association. She serves on the board of trustees of Rush University Medical Center. She is a former member of the board of directors of the American Society of Corporate Secretaries and currently serves as a member of its audit committee. Ms. Santona was formerly chair of the corporate board of advisors of the National Hispana Leadership Institute.

Ms. Santona graduated with a BS from Michigan State University and is a cum laude graduate of the University of Michigan Law School.






**Session 505**  
**Leadership Skills for New General  
Counsel and Managing Attorneys**

Gloria Santona  
Executive Vice President and General Counsel  
McDonald's Corporation

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*The in-house bar association.™*



**Leadership Skills**

- Defining the role of the General Counsel
- Mastering the business
- Leading the legal function
- Communicating with senior management and the board of directors

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## Defining the Role of the General Counsel

- Legal Department Leader
- Resource for Legal and Regulatory Issues
- Corporate “Gatekeeper”
- Risk Manager
- Advisor to Senior Management
- Strategic Business Partner

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## Legal Department Leader

- Create departmental strategy and align with corporate strategy
- Recruit, develop and retain legal talent
- Monitor effectiveness of department's operations
- Communicate
  - To the department
  - To senior management

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## Legal Resource

- Perform legal work and provide legal advice to senior management
- Discern trends in the legal and regulatory environment and devise company-specific solutions
- Establish legal policy
- Manage outside counsel

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## Corporate “Gatekeeper”

- Ensure company’s legal and regulatory compliance
- Participate on corporate disclosure committee
- Fulfill Sarbanes-Oxley obligations
- Ensure that the board of directors has the “right” information to operate effectively

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## Risk Manager

- Manage risks
  - Risk Assessment
  - Establishment of appropriate policies
  - Contingency planning
- Manage crises
  - Investigations -- internal and governmental
  - Communications
    - Internal -- with employees and the board of directors
    - External -- with shareholders, the government and the public

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## Senior Management Advisor

- Advisor to senior managers
  - Transactions
  - Litigation
  - Governmental inquiries/investigations
- Legal advisor to the board of directors
  - Corporate governance policies
  - Board and committee self-evaluation
  - Legal risks
  - Compliance programs and policies

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## Strategic Business Partner

- Member of executive management
- Participant in strategic planning
- Leader of cross-functional initiatives and/or departments

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## Mastering the Business

- Review key documents
- Interview key executives, both functional and business unit leaders
- Establish clear expectations with the CEO and key clients
- Develop relationships with peers and key stakeholders

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## Key Documents

- About the business --
  - Mission statement and strategic plan
  - Organization charts
  - Financial statements
  - Business unit reports
  - Public filings
  - Analyst reports
  - Recent media reports
  - Industry reports
  - Standards of business conduct

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## Key Documents

- About the legal environment --
  - Company charter and by-laws
  - Corporate governance policies
  - Board and committee minutes
  - Key policies
  - Applicable governmental regulations
  - Litigation portfolio
  - SEC reports (proxy statement, 10-K, 10-Q's, 8-K's)

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## Executive Interviews

- CEO and Business Unit Heads
  - Strategic objectives
  - Current business plan
  - Challenges and opportunities for the business
- Functional Unit Heads
  - Departmental priorities and concerns
- All
  - What are your expectations regarding legal support?

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## Leading the Legal Function

- Define legal department services
  - Align department strategy and mission with business strategy and legal needs
  - Determine core competencies of the department
  - Outsource strategically
  - Identify and address changing needs
  - Solicit client feedback

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## Leading the Legal Function

- Manage talent
  - Promote positive relations with staff
    - Seek input
    - Clearly communicate expectations
  - Foster diversity
  - Diagnose available skill sets; identify gaps; and hire appropriately or provide training
  - Establish performance evaluation systems
  - Create career paths and development plans
  - Develop appropriate compensation plans

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## Leading the Legal Function

- Manage costs
  - Overhead/inside counsel
  - Outside counsel
  - Settlements and damages
- Measure performance
  - Qualitative
  - Quantitative
    - Budget
    - Peer benchmarking on key metrics

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## Advising Senior Management and the Board of Directors

- Provide clear, objective advice based on fact
- Consider the business context

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## Recommended Reading

- The Corporate Executive's Guide to the Role of the General Counsel, Steven J. Friedman and C. Evan Stewart, ACCA Docket, May 2000
- 250 Things (and Counting) That I'm Glad I Knew -- Or Wish I'd Known -- during My First Year as General Counsel, D.C. Toedt III and Robert R. Robinson, ACCA Docket, November/December 2001
- A Company's First General Counsel InfoPAK,

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## Chair's Forum: The Law Department from the Perspective of the CEO

**Tim Donahue**  
*President & CEO*  
Nextel Communications, Inc.

**Cinda A. Hallman**  
*President & CEO*  
Spherion

**Sara L. Hays**  
*Senior Vice President and General Counsel*  
Hyatt Hotels Corporation

**Lisa G. Iglesias**  
*General Counsel, Vice President & Secretary*  
Spherion

**Leonard J. Kennedy**  
*Senior Vice President & General Counsel*  
Nextel Communications, Inc.

**Robert M. Lynch**  
*Senior Vice President and Associate General Counsel*  
SBC Ameritech

**Scott D. Miller**  
*President*  
Hyatt Hotels Corporation

**ACCA's 2002 Annual Meeting  
Chair's Forum  
Monday, October 21 – 8:30-10:00 am  
Constitution Ballroom**

**The following excerpt is reprinted with permission from Warner Books and is  
from the book:**

**How to Think Like a CEO  
The 22 Vital Traits You Need to Be the Person at the Top  
By D.A. Benton**

**For additional information or how to purchase this book, please go to  
[www.twbookmark.com](http://www.twbookmark.com)**

## CHAPTER 6

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# The Mountaineer

*Every climber is different, and it's important for you to understand those differences*

Mountaineers are the men and women who, by whatever route, make it to the top of some mountain. They come from the ranks of hikers and climbers in the organization. Although the top climbers have the 22 Vital Traits, that doesn't mean they are all alike.

I've met CEOs who are old, young, wealthy, poor, good, not so good, experienced, inexperienced, short, tall, balding, toupee'd, gay, straight, black, Hispanic, Asian, female, male, dumb, smart, and any other category you care to list.

I've seen office decor range from a wall of bowling trophies to a roomful of Kittinger furniture with a view of mountain lakes to a view of a city skyline. Their office manner ranges from cowboy boots on the desk to silk handkerchief in the pocket with three corners showing. Where one CEO has photos of himself with Presidents Bush and Reagan, the next

one has a reply note on the corner of his desk ready to be mailed to President Clinton: “Thanks for the invitation, but I can’t come. I have too much to do right now. Invite me again.”

CEOs’ activities on and off the job take wide swings. A rendering plant president whose back building was piled twelve feet high with euthanized kittens and puppies from the humane society goes to weekly sensitivity training seminars. Another CEO who runs his family’s billion-dollar philanthropic foundation spends weekends helping the vet artificially inseminate the cows on his ranch. A manufacturing CEO who spends twelve hours on Saturday personally repotting sixteen indoor plants collects a \$2 million check for some personal investments on Monday. One of the wealthiest CEOs I wrote about doesn’t like to spend money on himself, so when he needs clothes his wife has to *sneak* new ones into his closet without his finding out.

Some of the CEOs I spoke with created their company and went on to corporate fame and fortune, and some on to bankruptcy. Many started all over a second and third and fourth time. Some gave up and turned to alcoholism. The last time I heard about one of them I’d met he was delivering pizzas for a living.

Some of the CEOs went to the right schools and joined the right corporations in the right jobs and had the right mentors. Some became famous. Some got fired. Some became entrepreneurs. Some went to bigger corporations. Some became consultants.

CEOs vary in so many different ways, but they will always be one of two types:

1. An entrepreneur—the soloist climber.
2. A hired professional manager—the big-wall climber.

It is extremely important for you to comprehend the different types of CEOs. Misunderstanding or not caring are two of the best ways to lose your job. But if you know the patterns:

- You can identify how to work more effectively with your CEO.
- You can decide what style you *prefer* working with to aid you in job hunting and selecting a company.
- You can better determine your own natural inclination, as well as choose the type you want to develop into.

From my formal and informal conversations with CEOs I've seen distinct patterns that separate the entrepreneurial personality from the professional. The differences are not always along a clear-cut line of demarcation, but CEOs definitely tend toward one direction or another. Both types have their own nature, their own character, their own set of strengths and corresponding weaknesses. One type is not better than the other, just necessary for different kinds of companies, their stages of growth, and their future potential, although the more substantial the enter-

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prise the less likely the top person is entrepreneurial. The trend into the late 1990s will be a CEO who can successfully and effectively wear both hats.

Anthony O'Reilly currently does that. He is the CEO of a large public corporation in the United States, H. J. Heinz, and also an independent entrepreneur in Ireland. His Irish job description includes being chairman of an oil company and holding the controlling share of the largest newspaper publishing business in his native country. He uses the best entrepreneurial traits at Heinz and the best professional management traits in his entrepreneurial ventures (and vice versa).

Executing the entrepreneurial CEO's role is as demanding as the professional CEO's role, but in slightly different ways. For your personal growth and development, you need to be aware of the tendencies and limitations of both so you can acquire abilities in both arenas. The CEO of the future, to be competitive, has to be flexible in going from one mode of operation to another.

#### ENTREPRENEURIAL TYPES (SOMETIMES CALLED HIRED GUNS) AS COMPARED TO PROFESSIONAL MANAGERS

*The entrepreneur is an innovator.* Almost like an imaginative garage tinkerer, he invents a product (as Bill Gates of Microsoft did), has a great idea, or

takes on a cast-off business that others didn't see as worthwhile. The entrepreneur might have even learned the business from someone else and now wants to do it for himself.

*The professional manager, on the other hand, is a perfecter.* He takes what others have started, breaks former limitations, and is supposed to raise the thing to new heights. (Lou Gertsner was brought in to IBM to do that.) He is an overseer of others' creative processes.

*Starting your own company versus being hired to run someone's company is like giving birth to a baby versus adopting one. You end up caring equally for it and giving both the same love and attention, but for one of them you were there at the conception and that's always special.*

—MARK KIMMEL

President, Paradigm Partners

*The entrepreneur's personal money is often on the line.* Or he secured additional financing from friends, family, banks, or venture capitalists. His subsequent compensation depends on his company's profitability and his ownership. (Down the road, if successful, he may be irked by the fact that he has to pay competitive salaries to a professional manager, someone who didn't put the same blood and sweat into the company.)

The private banking company J. P. Morgan runs



advertisements appealing to the entrepreneur, with a photo of a pair of boxing gloves alongside the advertising copy: “If you’re like most entrepreneurs, it hasn’t been easy making it. All the more reason not to lose it.”

I was meeting three New York City entrepreneurs for lunch at a very expensive “white tablecloth” Italian restaurant. In response to something said, one of them jotted an idea down on a napkin—not a paper cocktail napkin but a *cloth* dinner napkin. When he saw his friend watching, he snapped, “It’s okay [to write on the cloth] based on the price I’m paying for this meal!” Because company money is, in effect, coming out of his own pocket, he expects to get more from it.

*On the other hand the professional manager is more frequently well financed* (from the bond or stock market or some private ownership). Although his personal money isn’t on the line, his personal skin is. Normally the CEO’s compensation includes stock, options, or equity, which provide some “ownership.”

For example, the top executives of Campbell’s Soup Company have up to 75 percent of their total compensation tied directly to performance. Only if the company meets specific goals in terms of sales, earnings, cash returns on assets, and performance related to other food companies do the executives receive any bonus. And to ensure they feel like owners of the company they have to own stock valued at three times their base salary. They risk their own money (or gain) just like other shareholders.

Anthony O'Reilly, who spends the company's money as well as his own, says he is much more risk-averse with Heinz money than his own. He feels a fiduciary responsibility as a trustee of Heinz's assets and much more willing to take real investment risks with his own.

*The entrepreneur CEO doesn't like to, can't, or won't labor and sweat for someone else.* Often he got where he is with an independent, "to hell with everyone" attitude. Or an "I'll show you" and "I'm not going to take it anymore" set of personal convictions. Maybe he was fired from a professional manager situation. But there is a good chance he had a major career displacement when he deliberately (or unintentionally) royally messed up. Sometimes he's called a maverick.

The founder of Gold Bond trading stamps, Curt Carlson, explains, "The minute I was out on my own, I knew I'd found my own element."

A different entrepreneur explained it this way to me: "I would never make it in a large company. I'm too irreverent. I tend not to play the corporate game by the rules. It's incredibly painful to work in corporate America—it's a career boot camp. I learned more from working with the biggest asses. I learned what I didn't want to be like! They interact and totally demotivate people. They advance from point A to B by walking on the heads of people."

*His professional manager counterpart is much more likely to be able to deal with corporate politics*

*and the BS.* This type of CEO has to work well as the “people-skilled” organization man, i.e., one who deals with politics and relationships among constituents (employees, government, corporate executives, media, boards, and customers).

As a generality, with fewer people in his required circle to please the maverick has developed fewer people skills. He has just enough to gain an acceptable presence. (Now this isn't always true. Some entrepreneurs have very effective people skills but have simply tired of dealing with the office politics and BS.) Whereas the hired gun, with his need to deal with hordes of employees and constituents, develops people skills foremost to deal with small, medium, and large diverse groups.

Having people skills is different from being people oriented. Small companies (say under \$50 million) have to be people oriented. You have to worry: Joan matters to you; Sam matters to you. All processes are people oriented. One at a time. One on one. Big company CEOs have to worry about the process. You can't possibly be interested in Joan. There are thousands of Joans. You have to develop people skills but not on an individual basis.

*The entrepreneur has more latitude to play by his own rules.* He is frequently stereotyped as someone who is a nonconformist, a lone ranger who circumvents the system. Usually he has more freedom to go out and try new things. And possibly fail. *But the professional manager needs to play by corporate rules.* He is frequently stereotyped as a traditional-

ist. Tried and true. Stable. Experienced. Mainstream. Usually he has less freedom to mess up at any level.

Roudy Roudebush owns a trail riding operation outside of Telluride, Colorado. Like all chiefs he should be a “salesman” for his organization as well as the boss. Wearing his well-used spurs, chaps, jeans, bandanna, vest, and cowboy hat, he rides his horse into various bars in town—right through the front door, high in the saddle, to the bar, and orders a beer. “The Telluride tourists go wild with excitement, and they follow me right out the door to my barn to sign up for a trail ride,” he says. Entrepreneurs can get away with that. You probably wouldn’t see the chief at GM drive a new model car through the bar doors of Telluride or Detroit.

*The entrepreneur gets to (and often has to) rely on himself and his own judgment.* He answers to himself first and foremost, at least in the early stages of his company. (It’s sort of like the Frank and Ernest cartoon characters who are walking out of the boss’s office saying, “If I’m going to work for an idiot, I may as well go into business for myself!”) He goes into the job with no In basket. He organizes and manages the endeavor, assumes all risks, and hopes for a big return.

*Strong-willed people found companies or manage companies and they’ll do well . . .*

THE MOUNTAINEER

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*as long as they don't fly the company into  
the side of the mountain.*

—PAUL HOUSTON

President, Results, Incorporated

*The professional manager answers to lots more  
legal constituents. So he relies on planning commit-  
tees and teams more.* He must be aware of more  
business goings-on than he could possibly know  
about personally, and he must be able to always de-  
fend decisions.

The professional manager has an In basket full and  
waiting for him upon his arrival. He usually ends up  
redoing or revamping work set in place by predeces-  
sors. New management theories get tested in this or-  
ganization because they have the time, resources, and  
people to implement the latest trend.

*Entrepreneurs are more interested in what  
are you doing to grow the business; profes-  
sional managers are interested in what are  
you doing to run the business.*

—SAM SANDERSON

President and COO,  
Rogers Network Services

*The entrepreneur thinks and acts fast.* He fre-  
quently needs constant action and activity to keep  
his venture afloat. And he can't understand why  
everyone isn't as dedicated as he is. He's almost al-  
ways the first one in the morning, last one out at  
night. As one said to me, "I wish weekends were five

hours long. I could do that.” A different CEO entrepreneur who went back to being a hired gun CEO explained, “I gave up sleep for six years. It was hard on me and my family.” The entrepreneur usually has a small staff and therefore wears many hats. He relies on himself. An entrepreneur gets his hands dirty. He’s more “in the trenches,” although less so as his company grows.

The professional manager has to be an executor of well-thought-out plans. He’s purposeful. Deliberate. And most important he knows to work within hierarchies despite the excess time it consumes. The hired gun generally has a large staff available to him, but a large staff often requires a large staff to support itself, thus building a lumbering machine minimizing potential for individual entrepreneurialship.

I asked a man why he left his executive position at a big public corporation to start his own. He said, “Don’t quote me because of my contract with my former employer, but I left because of the bullshit, authoritative, chain of command of trying to get things done. There wasn’t enough money in it *and* it didn’t suit me because I didn’t own it. Other than that, it was a fine life.”

The entrepreneur calculates risk against what he wants to do. Results are very important. The professional manager has to be terribly careful about what he says and does; careful how he positions himself.

The professional frequently calculates risk against his employment contract. Power is very important.

Big professionally managed companies often aren't as focused on results as rhetoric suggests. They are more focused on power.

You will seldom see a soloist hired to run a big public corporation, whereas professional managers are frequently recruited to manage an entrepreneurial organization. Many times you will hear of a company whose management requirements outgrew the founder/entrepreneur's capability.

One company and the founding entrepreneur I studied started with twenty-five people in the beginning and now they are so big their offices have more bathrooms than that. When the entrepreneur needed to develop into a professional manager, his financial backers pressed him to hire a pro. (This is often the point where many entrepreneurial companies get sold and go public.)

Campbell's Soup Company was managed by professional outside executives for decades. When the son of the founder (Jack Dorrance Jr.) died, it looked like Campbell's would be bought by a food conglomerate. Instead the family reasserted its business presence with the new vice chairman, Bennett Dorrance, being the first of the entrepreneur's kin to work at the helm since 1984.

*Entrepreneurs are not made, they are born. You can't take Entrepreneur 101. They are a sum total of their life experiences from childhood on. . . . Entrepreneurs have a fire in the belly. A company started by an entrepreneur (through acquisition of other*

*companies or through a new idea) often turns to a professional manager once the ship has been built. The entrepreneur needs someone to maintain the ship and keep it dry.*

—LEONARD ABRAMSON  
CEO and President,  
U.S. Healthcare

It's a long haul to the top of most public or private organizations. The advantage of starting your own company is that you get to the top right away! (And as the expression sometimes goes: "Entrepreneurs are self-made men who worship their creator.") Being able to stay at the top of the heap is the test for the entrepreneur as well as the professional manager.

By looking at the differences between entrepreneurs and hired guns you can see each has advantages and disadvantages in their type. The strengths of each are required at various stages of a company's growth.

Whether an individual is an entrepreneur or professional manager, the CEO has to be secure in himself, competitive, straightforward, unapologetic, a tad theatrical, and aware of his style. (Either way, entrepreneur or professional manager, he might be autocratic. Neither group holds a title on that trait!) Mistakes can ruin either type. And, of course, they don't all succeed, regardless of their soloist or big-wall climbing tendencies.



## WHAT TYPE OF CEO DO YOU WORK FOR?

If your CEO is the founder or owner, an independent, plays-by-his-own-rules, fast-acting, get-in-the-trenches type—you have an entrepreneur.

If your CEO was hired to do a specific job, oversees and manages various experts, operates with other people's money, deals with corporate politics and plays by corporate rules, executes well-thought-out plans through a sizable staff—you have a professional manager.

If your CEO wants innovation and creativity, has money to invest in new projects, encourages individual thinking, prizes people skills, expects people to follow the rules, acts purposefully but with energy, professes a willingness to get his hands dirty (but doesn't really)—*you have a professional manager who wants to utilize entrepreneurial traits.*

Entrepreneurial organizations generally strive to be bigger. And bigger organizations need to be more entrepreneurial.

Knowing the CEO type you are working with and may work with in the future enables you to see what he values, what his bosses expect of him, and what he looks for in those he hires and promotes. It's your choice to decide if that's the type you want to work for, but it's *your responsibility* to find out and understand the type.

### THE CEO JOB— DECISION MAKING

A CEO's job is to make decisions. (Make them wisely, of course!) But above all, make them. If you can demonstrate an ability to solve problems early on in your career you will get the nod most every time for advancement. Remember, even those who don't decide, decide.

Jim Rupp ran his own business for twenty years before he retired. "I always felt so relieved after making a decision; that's why I always made them so quickly."

Whether it is reaching a conclusion making up your mind, passing a judgment, or pronouncing a verdict, it's still a decision. People judge a chief's character, courage, and determination by his ability to come to a conclusion and get it implemented. No one is so admired as someone who can decide what needs to be done and does it. No one is as short-lived as a chief who can't make a decision.

Surprisingly there's lots of indecision in the workforce, even at the top. One ex-CEO of a consumer products company was described as one who "knew everything about everything; you couldn't bring up anything that he hadn't thought of. The person was consumed with work but couldn't make a decision." The individual who can't make a decision, can't narrow down options, and as a result of keeping options

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HOW TO THINK LIKE A CEO

open too long has people stymied, will in time get the company stuck.

*With the pace of technology, you really need someone to set priority, direction, and make the decision.*

—LARRY KIRSHBAUM  
President, Warner Books

All day long a parade of people ask for decisions from the CEO. What to do about a new competitor's product? How to resolve a personnel policy dispute? What can be done about a key employee paralyzed with grief over the death of a spouse? Who should be promoted? You can see judgments and resolutions consume the CEO's day. Being willing and able to simply decide is the CEO's job.

*It's just as important what decisions you don't make as those you do make as the CEO. I've discovered that some of the issues people bring to me—first, I don't need to make the decision about it, and secondly, I don't need to make it in the time frame they want it made. The CEO can get really hung up on things they shouldn't be involved in. . . . Management books preach empowerment. As the CEO, empowerment is real easy to do. But it's shocking to me that I've found a real lack of people who are wanting and willing to take on the responsibility. I*

*hear, "Let us manage." I say okay. But half of them talk a better game than they play.*

—BILL FAIRFIELD  
CEO, Inacom

People really want to be led. We make the mistake of being incredibly polite and holding back on determination. People want direction. People want decisiveness. Individuals would rather disagree with a decision than have ongoing indecisiveness. They want to give their opinion but they want the chief to decide.

*Don't let the sun set on a decision. Everyone will have input as to what you should do, some people will be angry regardless of what you choose, but you'll make a lot more people angry if you drag it out. You're going to make a choice anyway. Do it earlier rather than later.*

—JACK LUNDBERG  
President,  
Denver Sala/Svedala Industries, Inc.

#### To Make Decisions:

1. *Ask and ask and ask questions.* The more information you have, generally the better the decision. Questions cut through people's emotions and opinions and get to the facts. Take nothing on assumption. Ask. Bring all data together and *listen* regardless of whether the ideas come from the youngest employee or the most senior.

Gathering all the facts minimizes a wrong resolution. Get people to explain. Give them reasons to object. Let people fight for their position.

Take the initiative to get a broad range of input.

- Ask your five most critical advisors.
  - Ask someone totally unrelated—your twelve-year-old daughter's friend, for instance.
  - Evaluate likely consequences to all parties involved.
  - Then decide.
2. *Set a timetable.* Draw conclusions. Make recommendations. Act.

The time to work through a complicated issue should have set limits. A wrong decision is better than no decision. You can decide to wait on a resolution. That's a decision. Needing a conclusion against the clock ensures one gets made. All sporting games have a definite set time; therefore, the game gets resolved. The same is true in the game of decision making. Even the right decision can be wrong if it's made too late.

3. *Rest with your decisions. Live with them.* Any decision will be unpopular and seem unacceptable by someone. Leave it lie. The cycle of acceptance will come around *sometime* if you maintain a pattern of seeking input, consider all facts, follow a sense of values, and keep motivation intact. If you're delegating the

process, rest with whatever decision your people make. Don't jump down their throats and tear out their livers after they have made the decision you'd given them the responsibility of making.

Nothing is more frustrating to employees and destructive to leadership than indecision, fluctuation, and actions suspended. In all decision making you finally have to choose. What separates winners from the rest is whether you end up finding good in what you've chosen. The ability to live with a decision that could prove you either right or wrong takes confidence.

*Hire good people. Make decisions fairly rapidly. Use their recommendations, then don't look back. It's over.*

—DENIS BROWN  
CEO, Pinkertons

There is a myth that all chiefs are rational people, making rational decisions. Not so. You may think they study the hard facts and launch the right response every time. "I grew up thinking adult decision making was more black and white than it is," says one CEO. In fact, chiefs' decisions are often based on human emotions of greed, fear, even naivete. Even they can be a little less businessman and a little more human. "Everyone is out for themselves—including the CEO," as one executive matter-of-factly ex-

plained it to me. “He may preach ‘team, empowerment, pluralism,’ but if he has a chance to get a \$10 million bonus the year the company takes a \$50 million loss, he’ll take it.”

The reality is, sometimes chiefs have their minds made up before they go through the exercise of the decision-making process. Whatever the request or situation might be, the answer is always no. One CEO spelled it out: “I have a sign outside my door for everyone who comes in. It says, ‘NO.’ It saves me a lot of time. Fifty percent of the people won’t ask, another large percent won’t ask again, so it cuts my work load in half.”

Be modest about your own grand decision-making ability. Maybe it is one of your better qualities; I hope so for you. But being able to make the right decision may come from some other source, such as superior marketing angles, a superior brilliance, fortunate timing, or pure luck—not from you alone.

The CEO’s total existence is based around decisions: He has to anticipate them, make them, change them, argue for or against them, correct them, delegate them, and live with them. Warren Buffet says a career boils down to “a tiny handful of very well-considered decisions.”

LEADING PRACTICES PROFILES SERIES

# Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices



# Leading Practices in Law Department Diversity and Inclusion Initiatives: Company Best Practices

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This Leading Practices Profile updates the 2005 ACC Leading Practices Profile, *Leading Practices in Law Department Initiatives: What Companies are Doing*.

The information in this Leading Practices Profile (“LPP”) should not be construed as legal advice or legal opinion on specific facts, and should not be considered representative of the views of ACC, unless so stated. Further, this LPP is not intended as a definitive statement on the subject; rather, it is intended to serve as a tool for readers, providing practical, benchmarking information to the in-house practitioner.

Susan Tahernia, J.D., Legal Consultant for ACC, interviewed the featured participants for this written Leading Practices Profile, and she is the principal author of the document.

For more information about ACC please visit our website at [www.acc.com](http://www.acc.com).

## OVERVIEW

The Association of Corporate Counsel is pleased to present this update of its 2005 Leading Practices Profile, *Leading Practices in Law Department Diversity Initiatives: What Companies Are Doing*. In the original profile, ACC examined the diversity initiatives of legal departments within ten corporations. In 2005, these representative companies explained how their diversity initiatives were developed and structured. Participants were also asked to share key success factors, including internal initiatives (i.e., recruiting, retaining, mentoring) and external initiatives (i.e., pipeline programs, internships, law firm networks) that helped enhance diversity within the legal function and across the legal profession as a whole. In this update, we present the programs and practices of eight legal departments, six of whom were featured originally in the 2005 report. ACC gratefully acknowledges their insights, as well as the insights on progress and trends offered by Guy Rounsaville, Jr., co-founder of the California Minority Counsel Program, and Joseph West, President and CEO of the Minority Corporate Counsel Association.

The companies featured represent diverse industries and are headquartered throughout the United States, one in Canada. Their legal departments<sup>1</sup> range in size from a staff of 12 (5 of whom are attorneys), to a staff of 559 (320 attorneys). Represented industries include financial services, management consulting, industrial manufacturing, hotel management, utilities, energy and food and beverage manufacturing and marketing. Additionally, ACC spoke with Legal Leaders for Diversity, a non-profit Canadian organization of Canadian general counsel.

The 2012 update explores updated design, development and implementation models of successful workforce diversity programs, both internally and through external initiatives. In doing so, we feature the strategic recruitment, retention, awareness, performance management, and outside service provider initiatives of the following eight profiled legal departments:

- JPMorgan Chase, New York, NY
- Northeast Utilities, Berlin, CT
- Fairmont Raffles Hotels International, Toronto, ON, Canada
- Shell Oil Company, Houston, TX
- The Coca-Cola Company, Atlanta, GA
- Morgan Stanley, New York, NY
- Booz Allen Hamilton, McLean, VA
- ITW, Glenview, IL

Section I of this profile briefly introduces the issues addressed by the participants. Section II provides perspectives by MCCA's Joseph West and the California Minority Counsel Program's co-founder Guy Rounsaville on progress and trends within legal departments that aspire to have both an inclusive and diverse workforce and relationships with outside firms that equally value these goals. Section III profiles the diversity and inclusion strategies and practices of eight companies and their legal departments, and Section IV features those company program summaries. Section V contains sample forms and policies of diversity and inclusion policies shared by participants,

while Section VI identifies key relevant sources for legal departments, as published by ACC and externally.

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# I. Introduction

In the last few months of 2012 alone, the topic of diversity was on the forefront of national and global news, as governments, business leaders and the general populace underscores the important need for leaders who reflect changing demographics globally. In Europe, laws introducing mandatory quotas for women representation on corporate boards have been passed in France, Spain, the Netherlands, Belgium and Italy over the past few years, in response to an awareness that change has not come quickly enough at senior leadership levels. In November 2012, the European Union introduced legislation requiring publically traded companies across the EU to fill at least 40% of board positions with women by 2020. Here at home, a significantly diverse electorate that included women, persons of color, members of the LGBT community, young voters and blue collar workers elected President Obama for a second term. Even on Capitol Hill, change is evident. New US legislators - those taking office for the first time in January 2013 as the 113th Congress - are more diverse than at any other time in US history. Among the 200 Democratic representatives, women and those from various minority groups will outnumber straight white males for the first time in history.<sup>2</sup> Recent legislative mandates in Section 342 of the Dodd-Frank Act designed to correct gender and racial imbalances are also requiring financial firms to comply with standards showing a good faith effort to diversify workforces or risk losing government contracts.

Within the legal profession, supporting and improving diversity and inclusion has been an important yet challenging business strategy for corporations and their legal departments for a number of years. How are legal departments faring in meeting these objectives? According to the Minority Corporate Counsel Association's 13<sup>th</sup> Annual General Counsel Survey,<sup>3</sup> 108 women (of which 19 are also racial minorities) served as the top legal officers in Fortune 500 companies in 2011, an increase of 6 over 2010, and 22 more than in 2009. After a drop in 2009 in the representation of women general counsel at companies on the Fortune 500 list, the 2012 MCCA survey marks the third straight year of healthy growth. Among minority lawyers, 47 companies on the 2012 Fortune 500 list employed minorities as general counsel, an increase of 4 over 2011; and an impressive 10 since 2008. Within ACC, statistics show these diversification trends as well: in 2000, 68% of its self-disclosing members were male and 32% were female; by 2011, the figures had shifted to 58% and 42%, respectively.<sup>4</sup>

Law department representatives interviewed for this Profile agree that diversity initiatives are not only the right thing to do, but also are a rewarding and required business imperative in an era where demographics of both the workforce and the company's customer/client base are changing. This updated Leading Practices Profile finds that corporate legal department efforts to improve diversity and inclusion continue to show progress, as strategies center around four major efforts: 1) recruitment (including pipeline, community groups, networks); 2) retention (including employee networks); 3) strategic planning to increase awareness; and 4) supplier diversity measures (including outside counsel tracking and report cards).

Company representatives featured here described practices and initiatives that encourage diversity and inclusion, including diversity initiatives their law departments are implementing, supplier diversity programs, and other initiatives or measures instituted to increase the diversity of lawyers in the use of outside counsel and/or legal service providers. Additionally, representatives addressed resources that have been most helpful to them in developing their legal departments' diversity and inclusion policies and practices and offered the most important advice they would

give to a colleague in setting up and managing a successful workplace diversity practice within a corporate legal department.

## II. An Overview of Diversity and Inclusion: Perspectives on Progress and Trends

### A. Moving Diversity and Inclusiveness Forward: A Conversation with Guy Rounsaville, Jr., Co-Founder, California Minority Counsel Program

ACC asked Guy Rounsaville, Jr., co-founder of the [California Minority Counsel Program](#), to share his views on strides that diversity and inclusion efforts – as well as attitudes and mindsets – have made within the legal profession over the past several decades. Rounsaville, whose legal career spans 4 decades and who served as General Counsel of Wells Fargo Bank for 21 years, Visa International for approximately 6 years, and LaSalle Bank from 2006 until it was acquired by Bank of America in late 2007, played a pivotal role in the formation of the California Minority Counsel Program (CMCP). Formed in 1989, the purpose of the CMCP is to promote business opportunities for minorities engaged in the private practice of law. Although he acknowledges that important progress has been achieved, Rounsaville expresses disappointment in the pace and scale of progress achieved: “We have made progress, but not nearly as much as I thought we would have made initially. I am focused now on trying to assist wherever I can in making sure that our progress is perhaps more rapid and certainly more consistent as we go forward on this journey.”

According to Rounsaville, progress in this area relies on three critical components:

- 1) **Insistence by legal departments that outside law firms embrace diversity and inclusion:** First, Rounsaville stresses the importance of legal departments communicating clear expectations concerning diversity to their outside law firms; in doing so, he stresses, their external counsel will do whatever is necessary to meet those expectations. “I believe the client is the key catalyst for achieving greater and more consistent progress in diversifying the legal profession. If the clients are consistent in what they require of their outside law firms as far as diversity is concerned, the law firms will respond accordingly. However, the message must be consistent and clear. When a General Counsel meets with his/her outside law firms and communicates what the client expects and diversity is never mentioned, it is not surprising the law firm will not consider diversity to be a priority. If, however, the client always states that diversity in the team of outside lawyers is important and holds the outside law firm accountable for achieving that diversity, then the law firms will in fact make sure they achieve what the client wants,” explains Rounsaville.
- 2) Leadership on the part of corporate legal departments and law firms to ensure a



culture of inclusiveness within organizations: This leadership is critical for success in recruiting and developing diverse attorneys. If a corporate law department or law firm attracts and retains minorities and women, it's usually because the leadership of that department or law firm has been visibly active in making sure that the department's or firm's culture is inclusive and values all of its attorneys regardless of how they may differ from one another. The leaders that do a great job in this regard not only say that diversity is a core value but they act, and expect others to act, as if it is of critical importance. To the extent possible, legal department and law firm leaders should attempt to weave into every internal and external activity some aspect of how important diversity and inclusion is to the firm and its people. This would include incorporating diversity and inclusiveness values in marketing, recruitment, promotion, client assignments, management structure and business development strategies.

"It's not enough for the [law] firm to have a diversity page on its web site, the leadership has to be actively involved with diversity and it must communicate what it and others in the firm are doing to promote diversity and inclusion. Without this active and visible commitment from the firm's leadership it will be very difficult, if not impossible, for the firm's culture to be what it must be for diversity and inclusion to really become a core value," explains Rounsaville. "The one thing that is missing in the programs that seem to have it all right except for the results is leadership; and leadership is critical."

- 3) **An accountability structure that rewards and penalizes based on effectiveness of diversity and inclusion measures:** Legal departments – both in private practice and the corporate world – must monitor and track diversity and inclusion initiatives. "If lawyers get no credit towards billable hours for being involved in diversity events or being involved in community activities so that there is no upside for them to be involved, and there's also no downside if they don't get involved, then it is unlikely they're going to pay much attention to such things, and they will direct their energy and efforts to those things that really affect their personal bottom line," says Rounsaville. It all comes down to accountability. Rounsaville advocates for a system that rewards and penalizes both law firms and individual lawyers based on a diversity/inclusion report card. "The profession will continue to make slow and uneven progress in the area of diversity until and unless the clients send a clear message to their law firms and reward success and penalize failure."

In short, communication and accountability can only result if the organization's leadership makes diversity a clear condition of representation. An inclusive culture is achieved only if a general counsel or managing partner acts and communicates in a manner that indicates the importance of diversity and inclusion. Hiring, retention and advancement of good attorneys can only be achieved if leadership sets the right tone about what will be acceptable conduct within a department or firm and is willing to invest time and money in order to help achieve that inclusive standard of conduct through training and education.

## B. Trends in Diversity and Inclusion: A Conversation with Joseph West, President and CEO, Minority Corporate Counsel Association

To better understand how corporate legal departments and the outside counsel they work with have fared over the past seven years since we published the original practice profile on diversity and inclusion, ACC spoke with President and Chief Executive Officer Joseph West of the [Minority Corporate Counsel Association \(MCCA\)](#). The mission of the MCCA is to advocate for the expanded hiring, promotion, and retention of minority attorneys in corporate legal departments and the law firms that they retain. MCCA is committed to supporting legal departments and law firms in diversifying their workforces, demanding a level of commitment by outside providers to diversity and inclusion principles, and mentoring diverse talent to reach high levels of achievement. ACC is proud to call MCCA its partner in diversity outreach, thought leadership, education and promotion in this vital area.

To achieve these critical goals, MCCA offers continuing legal education programs and networking opportunities annually for in-house attorneys, including the acclaimed [Pathways to Diversity Conference](#) held annually in New York City, the [CLE Expo](#) and its annual [General Counsel Invitational](#), a networking event that combines CLE courses with a signature golf tournament. MCCA also sponsors regional networking forums across the country, which provide members in these various geographical locales not only with the opportunity to network with each other and obtain continuing legal education but also to receive leadership and inclusion training through such vehicles as MCCA's [Academy for Leadership and Inclusion](#).

MCCA also supports corporations and law firms in their diversity and inclusion efforts through such resources as an upcoming Diversity [InfoPAK](#), in joint collaboration with the ACC, and the Diverse Archive Counsel Database, a database of MCCA member law firms available to ACC members. "[Through the] Diverse Archive Counsel Database, ACC members have an opportunity to gain exposure to MCCA's law firm members, in the process seeing which law firms are most serious about the issue of diversity and inclusion, [a benchmark that] more and more corporations are [keenly interested in]," explains West.

### I. Diversity and Inclusion: How Are Law Departments and Firms Doing?

Asked how law departments have performed as a whole in implementing such programs since the 2005 Leading Practices Profile was published, West cites the results of the MCCA 13<sup>th</sup> Annual General Counsel Survey, which shows an uptick in the number of women general counsels and, to a lesser degree, of minority general counsels since 2005. "What you don't see is a corresponding growth in women and minorities at the partnership ranks of major law firms, particularly at the equity partner level. And part of that, I think, has to do with the lack of focus, lack of attention given to growing and developing and nurturing, and providing opportunities for advancement of the diverse talent that a lot of firms bring in. So the short answer to your question is that anecdotally there are firms that are focusing on this issue, but as a whole we have yet to see the sort of broad-based effort take root to increase diversity and particularly to increase the leadership ranks of minorities and women at major law firms," says West.

"What our research has shown, is that diverse lawyers that come into law firm settings in a lot of

firms are just left to flounder. They don't get hands-on mentoring, and growth, and development; they don't get the opportunity to develop relationships with sponsors, people in leadership within the firm who can expend capital on their behalf, who can help grow and guide their career path. And so we've seen some firms develop very strong, robust mentoring programs where diverse lawyers are linked up with diverse lawyers who take an active role and are invested in making sure that they succeed," explains West.

In short, as a whole, law firms still tend to lag behind corporate law departments in what West believes may be the most critical barometers: retention and advancement. "That is why a lot of the work we're doing now at MCCA is focused not just on diversity as a recruiting tool, but also inclusiveness as a tool for retention and providing opportunities for advancement," adds West.

## 2. Creating Effective Diversity and Inclusion Programs

On diversity plan elements that he views as important success factors for developing and implementing high quality diversity programs, West describes a tripartite approach that relies on three steps: *Include*, *Invest*, and *Intercede*.

- **Include Diverse Staff in All Aspects of Business:** "What we've seen is that a lot of diverse talent that come into organizations really aren't included in the flow, the culture; they aren't made part of the DNA of the organization, they don't get the same opportunities for client exposure in their law firms, they don't generally get the same sort of informal mentoring or generally aren't made a part of the informal network - golf outings, luncheons, for example. And right off the bat, they aren't made to feel included as part of the organization."
- **Invest in All Staff:** "This really has to do with growing and developing this human capital, the talent that you bring into your organization through training, CLE opportunities, client exposure, to actually being placed on matters and given the opportunity to do work and grow and develop the skill sets and the talents and the abilities that they've brought to the organization," continues West.
- **Intercede on Behalf of Diverse Staff:** This final step has two prongs: the first is a mentoring component; the second entails going to bat for the mentee. "One side of it is having a mentor who can help you develop your skill set and grow; the other part of it is having a sponsor, someone who can expend political capital on your behalf, someone who can go to another practice group leader on your behalf and speak to your skill sets and your abilities and your talent and your potential or who can go to bat for you in that partner meeting when it comes time to be considered for partnership," says West.

"Organizations need to understand how important it is to engage in this tripartite approach of including, investing and interceding in order to help ensure that the diverse talent pool they work hard to achieve thrives and grows and excels," offers West.

## 3. Trends in Diversity and Inclusion

Asked about trends emerging in this area, West cites to the ever growing number of corporate law departments that are insisting on a greater level of involvement by their outside firms on diversity

and inclusion initiatives. This expectation seems to hold true, according to West, even for those corporate legal departments that do not (yet) themselves have a similar level of engagement from a diversity standpoint. And among large legal departments, expectations are well-defined: outside counsel are increasingly expected to have active and working diversity committees; specific programs for getting diverse lawyers assigned to their work; and annual reports from these outside providers about the efficacies of their programs. "That's a trend that I think is encouraging because as we know, law firm behavior is driven by client expectations; and up to this point, perhaps part of the reason why we haven't seen as much movement from the diversity and inclusion standpoint within law firms is because, frankly, corporate clients haven't been as demanding, haven't been as engaged with communicating their expectations and holding their outside law firms accountable for the progress on diversity and inclusion and the lack thereof. So this is one trend that I see developing that I think is very encouraging," adds West.

Another trend perceived by MCCA is an increase in diverse general counsels - particularly women and minorities. "That's an encouraging trend that -- I think and hope -- will continue. Part of it I believe, is that you have a greater level of transparency when it comes to hiring and promotion at the highest levels for publicly traded companies as compared to large law firms. One of the things that we at MCCA are trying to encourage -- although it is an uphill battle -- is a greater level of transparency for law firms to share more information about the lawyers that they bring on board, the programs that they have to retain them, and the opportunities for advancement that they afford them," continues West.

Beyond these trends, the most important thing that has to happen is for organizations to begin routinely taking organizational inventories from a diversity and inclusion standpoint and assess whether its culture fosters these ideals:

"The fact is any diversity program that's implemented is only as successful as the environment in which it's planted. So probably the most important thing that has to happen initially is for any organization, whether it's a corporate law department or a law firm, to conduct an inclusiveness inventory or an inclusiveness survey of the people who work there to try and gain an understanding of whether the environment is one that is conducive to or will actually foster inclusion. If it's not, the program is going to fail....Unless an environment itself is inclusive, unless the talent being brought into that environment is afforded opportunities to grow and develop, then [even the best intentioned] diversity programs are destined to fail," observes West.

## Legal Leaders for Diversity and Inclusion (LLD) Initiative

In May 2011, a group of Canadian general counsel launched the Legal Leaders for Diversity and Inclusion (LLD) initiative. The primary goal of LLD is to encourage general counsel to take responsibility and be held accountable for creating a more inclusive legal profession, starting at their own departments and organizations. LLD also encourages its members to foster these same values through the larger Canadian business community. ACC spoke with Kenneth Fredeen, General Counsel at Deloitte & Touche LLP (Canada) and a founding member of the LLD about this organization's important strides in achieving these large goals since its inception little over one year ago.

LLD operates on the premise that lawyers, and in particular general counsel, have a special role to play in society and within organizations:

Diversity, creating an inclusive legal profession and an inclusive organization is a great opportunity for General Counsel and his or her staff to really show leadership. People listen to us. And this is not just about doing the right thing or the human equity part of it, which is important, but it's also about showing that we are a profession that cares about others and cares about providing opportunity for the best and brightest, no matter who they are.

– Kenneth Fredeen

The 70 Canadian general counsel members (whose companies are designated in LLD's mission statement in Section V of this Practices Profile) signed a pledge, [A Statement of Support for Diversity and Inclusion by General Counsel in Canada](#), and an agreement referencing 17 best practices that serve as guidance for the signatories. Some of these best practices include:

- **Creating a “diversity-friendly” law department through actions and words.** Know your organization's diversity plans and emphasize their importance to your group. Be visible in your support; attend your organization's diversity events. Help develop Diversity Employee Networks and act as Executive Sponsor in one of them.
- **Participating in programs** such as the Internationally Trained Lawyers Program (ITLP) where you host internationally trained lawyers in your department. Support organizations that promote diversity, such as the Toronto Region Immigrant Employment Counsel.
- **Hiring from a diverse pool.** Establish a diversity intranet website to show role models for career progression. Create internal and external mentoring programs. Build diversity and inclusiveness plans into employee reviews and find ways to measure success and hold leaders accountable for diversity and inclusion.

(continued)

- **Educating leaders** to ensure they understand and champion the business case for diversity and inclusion. Make coaching in diversity and inclusiveness part of all leadership training. Establish external diversity advisory committees to guide business leadership.
- **Making sure outside law firms know diversity is a core value** and that you expect to see diversity and inclusion on your legal teams. Retain minority- and women-owned firms whenever possible. Support vendors and suppliers whose ownership or employee base reflects a commitment to diversity and inclusion.
- **Being an Advocate.** Speak with other CLOs about diversity and inclusiveness and share best practices.

In its brief tenure, LLD has made significant strides toward making the legal profession more inclusive. One of its members was asked to chair a federal panel designed to collect best practices for the hiring of persons with disabilities and understanding the barriers that exist to the employment and retention of such individuals. Another LLD member has worked to establish a mentoring program for diverse student at Osgoode Hall Law School's career development office. Still others have met with gay and lesbian lawyers for the purpose of sharing what barriers continue to exist for LGBT lawyers and law students. LLD members have met with leaders from law firms throughout Canada to underscore the point that external lawyers must mirror the in-house departments they serve and take a leadership role in helping to create a more inclusive legal profession.

As a result of its dynamic first year, a number of LLD members have been recognized for their accomplishments. But these accolades should be placed in context, explained Fredeen in his recently published piece in *Diversity & The Bar*, November/December 2012:

“Awards are second to what matters most: concrete actions leading to a more inclusive Canadian legal profession. This is a journey without a destination. Along the way there will be signals of success but a truly inclusive legal profession will be a forever-moving target. The important thing is to maintain our momentum.”

For Fredeen and LLD, it's about creating an inclusive work place: “ We all hear great stories of the benefits, how diversity creates a more engaged and cohesive team. It is also about talent, hiring the best people available, being innovative, reflecting our client or clients, whether they are internal or external. [T]here's a huge return on that investment if you create a diverse general counsel's office. And I think a lot of us in the Legal Leaders for Diversity understand that. If you create a diverse pool of people within your group, your group is stronger for it, and you'll be much more successful in serving your client.”

For more about the Legal Leaders for Diversity, please see ACC In-house Access, [Legal Leaders for Diversity and Inclusion: Embracing Leadership](#), June 15, 2012 and Kenneth Fredeen, “Legal Leaders for Diversity and Inclusion,” *Diversity & The Bar*, November/December 2012.

### III. Diversity and Inclusion Themes and Leading Practices

Each of the eight organizations featured in this Leading Practices Profile shared information about its diversity and inclusion initiatives. Listed below is a summary description of the various themes and leading practices discussed, which shows the range of their efforts. Further information on these and other diversity and inclusion initiatives taken by each of the featured law departments can be found in the individual program summaries in Section IV of this Profile.

The companies featured here have four principal strategies for improving diversity and inclusion within their legal departments and company-wide: recruitment programs, retention programs, strategic planning initiatives for increasing awareness and involvement, and supplier diversity measures. As a general rule, the recruitment and retention programs are internal initiatives, supplier diversity measures are external, and awareness/involvement programs are a hybrid of internal and external initiatives. Nevertheless, some recruitment and retention efforts also require looking beyond internal strategies to external groups and pipeline programs.

#### A. Recruitment

All of the legal departments that spoke with ACC value diversity as an important consideration in filling open positions. Each discussed how they go about casting the widest net possible. At Booz Allen Hamilton, the law department's staffing practice involves routinely seeking a diverse slate of candidates for job vacancies before final hiring decisions are made. A number of legal departments rely on summer internship programs that dually benefit the company and the candidate by giving selected diverse law students opportunities to experience working as part of a corporate legal department, and affording prospective employers a diverse slate of potential candidates and opportunities to assess the interns before extending offers of employment. Among these programs is one hosted by the Legal Education for the Advancement of Diversity and Scholarship Fellowship Program (LEADS). The legal department at ITW collaborates with LEADS to host third-year law students of diverse backgrounds. Northeast Utilities has innovatively partnered with one law firm to offer a first or second year law student of a diverse background a unique opportunity to participate in a joint summer associate program sponsored by both organizations. Morgan Stanley accepts a Diversity Fellow, a program open to first-year law students, into its summer program. A

ACC continually strives to develop resources and programs that respond to and anticipate member needs. To ensure that we fulfill this commitment, we embrace the promotion of diversity and inclusiveness within ACC and the in-house community as one of our core values.

ACC's Matthew J. Whitehead, II Award recognizes outstanding achievement by a corporate counsel, a group of corporate counsel, a corporation or a diversity project, in creating a program or initiative that increases awareness of and commitment to corporate legal diversity, and/or the improvement of employment, retention, advancement, and career path opportunities for diverse attorneys.

For more information and to download the award criteria and nomination form, please visit:  
<http://www.acc.com/aboutacc/diversity/matthew-j-whitehead-ii-diversity-award.cfm>

number of legal departments also rely on ACC's numerous summer intern programs to recruit diverse talent, including [WMAACCA's Corporate Scholars Program](#); [ACC Chicago's Diversity Summer Internship Program](#); [ACC Georgia's Summer Internship Program](#); and [ACC St. Louis's 2012 Summer Diversity Internship Program](#).

Some law departments also rely on pipeline programs for finding the best diverse talent. By partnering with external organizations dedicated to advancing professional opportunities in the legal industry for persons of color and women, universities with significant minority student bodies, and other diversity pipeline projects, legal departments at Coca-Cola, Morgan Stanley, ITW, Shell and JPMorgan Chase are able to cast a much wider net for top minority legal talent. The Law Preview Prep Course Scholarships for Diverse Students, a project of JPMorgan Chase's Legal and Compliance Department, is a successful pipeline program that affords some diverse law students an opportunity to get a head start on legal studies while creating a more robust pipeline of candidates "who hold future promise for our company and the legal community overall," explains Stephen Cutler, General Counsel, JPMorgan Chase. Among several strong pipeline initiatives, Morgan Stanley collaborates with the New York City Bar Association's Recruitment and Retention Committee to receive a first-year law student as a Diversity Fellow within its summer program. Since 2005, Morgan Stanley has also sponsored a four-day intensive summer internship with Legal Outreach, Inc. for NYC ninth-graders in underserved communities. At Coca-Cola, pipeline/affinity is one of four benchmarks the Legal Division uses to track progress of its diversity goals. In doing so, Coca-Cola measures how their division engages and partners with diverse bar associations, external speaking, financial underwriting and diversity pipeline projects such as [Street Law](#), a program with which ACC has partnered to target diverse high school students.

For the Booz Allen Hamilton legal department, its work-life balance initiatives are vital recruitment and retention tools. These initiatives include telework solutions, flex hours, employee assistance programs, onsite day care and granting leave for religious holidays.

## B. Retention

A number of legal departments discussed effective strategies for retaining diverse staff and engaging more diverse leaders. These strategies include the use of structured diversity and inclusion plans, targeted mentoring, and training to assist in developing staff. Among the many uses of diversity and inclusion plans to increase awareness, a topic discussed below in paragraph C, one company, ITW, also relies on its annually-revised diversity and inclusion long-range plan to more effectively recruit, develop, promote, retain and engage more diverse leaders.

Targeted mentoring programs seek not only to enhance exposure for mid- and senior-level women and minorities to executive management, but also to provide visibility to and opportunities for mentoring by these business leaders. Many of the featured companies are invested in mentoring, as an institutional benefit. Senior leaders work with rising professionals, sharing insights on what it really takes to advance and lead effectively. At Morgan Stanley, mentorship and leadership among female legal and compliance professionals is promoted with such events as a brown bag networking lunch series to allow women at different leadership levels an opportunity to network and develop their careers by discussing issues such as work/life balance, breaking the glass



ceiling, and promoting and supporting the advancement of in-house women attorneys of color to general counsel, senior executive and senior management positions.

Finally, a number of law departments support training opportunities and targeted development programs based on interactions with diverse senior leaders and staff members. Within Coca-Cola's Legal Division, robust professional development opportunities are available, including ample opportunities for in-house attorneys of all persuasions to work on assignments (short- or long-term, or as an expatriate) in any of the multiple countries where the company does business.

### C. Comprehensive Strategies to Increase Diversity and Inclusion

Each legal department we interviewed relies on some initiative designed to increase awareness of diversity and inclusion. Some departments rely on diversity and inclusion plans that serve as roadmaps for internal and external diversity and inclusion activities. Others rely on diversity committees or councils to help coordinate, manage, and implement diversity-related practices. Employee driven diversity forums are recognized and supported as sources for increasing cultural awareness and heightening sensitivity of diversity and inclusion issues because of the targeted development programs, resources on diversity, community service opportunities, and networking they offer.

Several legal departments belong to organizations that promote diversity or inclusion in the legal profession, including the Minority Corporate Counsel Association, Legal Leaders for Diversity and others; these organizations help identify and recruit the best diverse talent. A number of legal departments incorporate diversity- and inclusion-related education as part of their overall strategy. Two legal departments include adherence to diversity core value initiatives as part of the formal performance appraisal process.

At Shell, the Legal Department's Diversity and Inclusion Council authors a diversity action plan that is updated every two years and circulated to the General Counsel and to senior leaders within the department for approval. Once approved, the plan guides internal and external diversity and inclusion activities for the plan years. ITW also relies on its Diversity and Inclusion Leadership Council, of which the General Counsel is member, to implement diversity and inclusion practices. Coca-Cola has developed Diversity Initiative Goals to track and document progress in four benchmark areas: outside firm implementation of diversity and initiative goals; internal programs designed to recruit, hire and promote women and minority attorneys within the department; attainment of women- and minority-business enterprise spend goals; and success with pipeline and affinity programs. Northeast Utilities' 25-member Diversity Council champions diversity goals across the company by guiding employee education and training in communication, community involvement and advising internal clients, as part of its goal of fostering an inclusive environment that ultimately enhances its competitiveness within the industry.

Employee resource/network/affinity groups increase employee engagement overall. Companies that utilize them tout their ability to improve communications and service delivery to an increasingly diverse customer base and also praise their ability to enhance recruitment and retention efforts. Booz Allen Hamilton is a leader in cultivating employee driven diversity forums. Its employee-driven diversity forums – covering the spectrum from the various racial minority forums to flex work, parents' and women's forums, to Armed Services and LGBT employee forums – are integral to the firm and send a message to stakeholders (from staff to clients, and even

to prospective employees) that Booz Allen is an inclusive environment that values and respects differences. The firm's 14 award-winning diversity and employee forums offer targeted development programs, networking, recognition and community service opportunities for staff.

Educating staff and sustaining awareness of diversity and inclusion issues is a priority for many organizations. Shell Legal participates in the company's annual global Diversity and Inclusion Week that encourages leaders and all staff to participate in learning and awareness sessions. The Legal Department also sponsors "Lunch and Learn" events that focus on topics relating to diversity and inclusion. Past sessions have included *Sexual Orientation 101*, *Ethics & The Holocaust*, and *Bullying*. Guided by an annual rotation of senior level sponsors, and in conjunction with strategic partnerships across the business units, Northeast Utility's employee resource groups have developed and implemented a "Walk in My Shoes" program, a series of Diversity Workshops, a Diversity Toolkit for managers, and a Diversity Intranet Webpage as part of the company's robust training and awareness commitment.

Both Booz Allen Hamilton and Shell each incorporate diversity and inclusion efforts as part of employee performance evaluations. At Shell, diversity and inclusion is a listed goal on the Goals and Performance Assessment, and each business is required to complete an annual Leadership Assessment that tracks mentoring and development of diverse groups and progress regarding the reduction of representation gaps. For JPMorgan Chase, legal department leadership that promotes diversity and inclusion is routed in internal and external initiatives. From external pipeline programs designed to increase diversity in the legal profession and retain diverse talent; to internal diversity training, mentoring and development; to its recognition of employee and service providers who embody the law department's diversity mission statement talent, JPMorgan Chase's Diversity Committee achieves and preserves a firm culture that is both inclusive and respectful of its global audience of employee, customer suppliers and local community stakeholders. These efforts represent Best Practices not only for JPMorgan Chase, but also for many of the companies featured here.

## D. Supplier Diversity

As part of an ongoing and comprehensive commitment to ensure diversity at all levels of the labor and supply chain, each legal department described initiatives to encourage diversity and inclusion by third party suppliers of legal services. Legal departments described efforts to use women- or minority-owned law firms and/or professional service firms to staff certain law department matters. They also discussed outside counsel initiatives targeted to the larger law firms.

### I. Efforts to Increase Minority and/or Women-Owned Law Firms

Under the company's global supplier rubric, Shell Legal has instituted external initiatives to increase the diversity of outside lawyers and/or legal service providers it uses. Not only does its minority and women-owned business program initiative meet the Legal Department's own goal of using minority and/or women-owned law firms and other legal vendors on Shell matters, it also enables Shell to meet its US corporate supplier diversity targets. The department periodically hosts MWBE Round Robin events where Shell in-house counsel interview minority and women outside counsel, with the objective of increasing the diversity of the outside counsel it hires.

The Coca-Cola Legal Division invites the principals of minority or women-owned law firms to the company for the day and facilitates introductions, all with a goal of making these smaller boutique firms part of the delivery of its outside counsel legal needs. ITW has retained minority-owned law firm to represent its interests in employment matters, product liability and toxic tort litigation issues. The ITW Legal Department also encourages law firms to join such organizations as the Leadership Council on Legal Diversity help to find the best diverse talent. Other law department representatives also described larger company supplier diversity initiatives and practices that overlap with their own initiatives in this area. Company-wide, Fairmont Raffles Hotels International is committed to supplier diversity. The company has formalized policies and education and training in this area to assess current practices and better understand how to continue improvement.

Several of the companies interviewed employ multiple strategies to grow their diverse supplier bases. These strategies include:

- **A Mentor/Protégé Program.** Launched in 2012 by Northeast Utilities' procurement team, the Mentor/Protégé Program is a best practice for increasing the number of minority business enterprises (MBEs) doing business with NU. The program has increased first and second tier spend with MBEs by facilitating mentor/protégé relationships with those that subcontract for work.
- **A Supplier Diversity Academy.** This structured, comprehensive program is under development by Northeast Utilities in conjunction with the University of Connecticut School of Business, in an effort to grow a supplier base that is reflective of the demographics of Northeast Utilities' service territory. The program is another best practice initiative designed to help established, high potential diverse business owners become more competitive in their target markets, all while contributing to the economic vitality of the region.

## 2. Outside Counsel Initiatives: Tracking Diversity Among Strategic Partner Firms

Each legal department described strategies for communicating and tracking their preferred law firms' efforts to recruit and develop diverse talent. A number of law departments require their external counsel to submit information on diversity demographics and initiatives, including number and percentage of openly LGBT attorneys on staff or hours billed by women and minority attorneys on law department matters.

Other legal departments identify the various factors on which outside law firms are evaluated and how their performance in the area of diversity and inclusion affects decisions in assigning work and/or designating firms as preferred or primary firms. At Northeast Utilities, for example, outside counsel firms are asked to submit annual data on firm demographics and support of diversity organizations. NU's outside counsel are also expected to have a diversity plan and show measurable progress in furthering diversity within the firm and, specifically, with respect to NU-related work. This includes providing NU periodically:

- the number of diverse attorneys/paralegals/staff working on NU matters and hours

spent on NU matters by diverse attorneys/paralegals/staff;

- a description of steps taken to enhance diversity within the firm, including career development opportunities for staff, recruitment efforts;
- a description of efforts made within the profession and the community to further diversity; and
- measurable success in achieving supplier diversity and diversity among temporary employees.

A number of law departments described initiatives targeted for their partner law firms. These include hosting conferences for these partner firms that reinforce the value they place on diversity and inclusion and awarding firms that make significant strides in this area. Coca-Cola Legal has specific aggregate annual spending targets by which it measures progress in the engagement of minority owned enterprises and firms as direct contractors.

In 2002, Shell Legal started requiring its strategic partner firms to complete a *Strategic Partner Diversity & Inclusiveness Survey* on a yearly basis. The information from the survey is used by Shell Legal to grade the firms' performance in the area of diversity and inclusion. This legal department has also hosted conferences for its strategic partner firms designed to reinforce the importance Shell places on diversity and inclusion and to foster diversity and inclusion within the strategic partner firms.

One of four benchmarks Coca-Cola implemented for achieving its Diversity Initiative goals is a large law initiative, which measures how the Legal Division differentiates and rewards partner law firms for progress in diversity and inclusion within its law firms. Beginning in 2007, the Coca-Cola Legal Division began awarding the Living the Values Award to the law firm that best demonstrates its commitment to diversity with creative and innovative solutions that advance company goals. These solutions may include strides in hiring, retention and promotion of diverse lawyers, initiatives that add value to its internal efforts, creative partnering arrangements with minority and women owned firms and pipeline/community outreach initiatives.

## E. Leadership and Top-Down Support: Leading Practices and Trends

### I. Leading Practices

Beyond the Leading Practices addressed above, the following additional strategies are identified as best practices by leaders we spoke with:

- **Commitment from the Top and Ownership at All Levels.** Virtually every featured law department reaffirmed the importance of a strong commitment from the top and buy-in from all levels of the organization. Building a successful strategic plan for diversity and inclusion requires a level of commitment equal to other mission critical programs, according to Coca-Cola's Lewis. A strong commitment from the top and ownership by a cross-section of the organization is a critically important factor in any successful

workplace diversity practice at Shell, ITW and Morgan Stanley. Creating an inter-generational model with broad-based ownership of diversity and inclusion initiatives helps ensure that responsibility for success is not perceived as belonging to one person (or to a small group). “[I]t’s a larger effort that everybody can be proud of and claim some success in. If you can’t figure out how to do that in your organization, then it does become a one-man show or a one-woman show, so it is only as effective as that man or that woman who is around and focused on it,” adds Coca-Cola’s Lewis. Encouraging law department members to have benchmarking conversations with other companies and with diverse bar associations is one way of developing this broad-based ownership mentality and is a Leading Practice for Coca-Cola. At Booz Allen Hamilton, a strong corporate diversity function that is backed by a dedicated commitment to diversity and inclusion - from senior leaders to more junior members of teams - is a best practice for both the law department and the firm as a whole.

- **Inclusion is an Important Part of the Equation.** It is not enough to recruit and develop persons of diverse backgrounds, if the organization lacks a culture of inclusiveness that is tolerant and respectful of differences, explained Guy Rounsaville, Jr., co-founder, California Minority Counsel Program. “Although most would agree that a substantial amount of progress has been made in rooting out overt practices that might be considered discriminatory and unfair, there still remains a lot we can learn about ourselves and our practices which might be changed to create a more inclusive working environment. ... I believe it relates more to the little things that occur on a day-to-day basis ... than on any great terrible event. In many cases a person feels like he or she is on the outside looking in, and those on the inside are not even aware they are making their colleagues feel excluded.” Without a culture of inclusiveness, the best diversity intentions cannot be fully successful. “Unless an environment itself is inclusive, unless the talent being brought into that environment is afforded opportunities to grow and develop, then [even the best intentioned] diversity programs are destined to fail,” observes MCCA’s Joseph West.

This sentiment is echoed by Legal Leaders for Diversity and Inclusion (LLD), a Canadian initiative by general counsel. The organization’s primary goal, according to Terence Badour, Executive Vice President, Law & Administration, Fairmont Raffles Hotels International (FRHI), and LLD member, is to encourage all general counsel to work toward creating a more inclusive legal profession. Add Nichols Hurd and Crowl, “Shell realizes that our success depends on having the best and brightest and allowing them to work in an environment where they can contribute at their maximum capacity. We know that we won’t be able to achieve our goal of becoming the most innovative and competitive energy company in the world if we don’t create an inclusive work environment that unleashes everyone’s true potential.”

- **Communicating Expectations to Outside Counsel Firms and Tracking Progress.** Corporate legal departments drive change within their strategic partner law firms by communicating clear expectations concerning diversity and inclusion initiatives. As emphasized by both Rounsaville and West in the preceding section, legal department clients are the catalyst for achieving consistent progress, and expectations by them that their outside firms have active diversity committees, strategies for assigning diverse lawyers to the company’s work, and annual reporting are Leading Practices for achieving lasting and systemic change in this area. At Northeast Utilities, outside counsel are expected to share the company’s commitment to diversity and inclusion.

The company expects its law firms to provide firm and management demographics annually, examples of their support of organizations dedicated to increasing minority and women lawyers and to show measurable progress in furthering diversity. NU also tracks progress by requiring its law firms to provide annual data on these expectations. Firms that embrace these values can also support the company's own efforts in this area. Explains MacKay, NU Deputy General Counsel, "leveraging your law firm partnerships to help [your legal department] do some of the things you can't do on your own - in terms of training, development, mentoring and hiring - ... helps support and drive the expansion of diversity not only within the law department, but within the company and the legal communicate as a whole." Shell Legal requires its strategic partner firms to complete its Strategic Partner Diversity & Inclusiveness Survey bi-annually and grades the firms' performance based on responses.

## 2. Diversity and Inclusion Trends in the Legal Profession

ACC also asked participants to describe trends in the area of diversity and inclusiveness. Several leaders identified the hiring of disabled lawyers and veterans as two areas of emerging focus for legal departments seeking to promote cultures of inclusiveness. Individuals with physical disabilities and challenges are the next frontier in the evolution of diversity and inclusion policy, according to FRHI's Badour. Corporate counsel at Shell agree that the hiring of individuals with disabilities and recent military service members are trends in the area of diversity and inclusiveness. An ACC [poll](#) of members taken in April 2012 shows legal departments are beginning to make inroads in the area of disability. Among 90 respondents, 13% reported their legal department employs a lawyer with a disability.

"Minority majority" is the term used by ITW's, Chappelle, Director of Diversity and Inclusion, to describe what she sees as another trend in the area of inclusion and diversity. "People of color in the US and elsewhere around the world are becoming the majority. This fact shapes recruiting initiatives ... [and] is impacting how we see talent externally," explains Chappelle.

# IV. Company Program Summaries

Following are summaries from discussions with eight companies about their law department diversity and inclusion practices and initiatives.

## A. JP Morgan Chase

At the global financial services company, JPMorgan Chase, "diversity is a core value in how we operate as a world-class organization," according to Matthew Biben, Senior Legal Advisor for JPMorgan Chase and General Counsel for Consumer Banking. Each of the company's approximately 250,000 employees worldwide is encouraged to participate in the promotion of inclusiveness. Over 32,500 employees belong to the more than 170 local chapters of Business

## VI. Additional Resources

### A. ACC Resources

#### I. Leading Practices Profiles

Legal Department Leading Practices for Adding Value and Moving Beyond the Cost Center Model (September 2010), *available at* <http://www.acc.com/legalresources/resource.cfm?show=16804>

Compensation Programs and Retention Strategies for In-house Lawyers (May 2004), *available at* <http://www.acc.com/vl/membersonly/PracticeProfile/loader.cfm?csModule=security/getfile&pageid=16810&page=/legalresources/resource.cfm&qstring=show=16810&title=Compensation%20Programs%20and%20Retention%20Strategies%20for%20In-house%20Lawyers>

#### 2. ACC Docket

Canadian Briefings, Legal Leaders for Diversity and Inclusion, June 2012, <http://www.acc.com/accdoCKET/upload/canadian-briefings-2012-09-b.pdf>

Brent L. Henry and E. Macey Russell, *Developing Great Minority Lawyers for the Next Generation*, July 2010, <http://www.acc.com/vl/membersonly/ACCDocketArticle/loader.cfm?csModule=security/getfile&pageid=970657&page=/legalresources/resource.cfm&qstring=show=970657&title=Developing%20Great%20Minority%20Lawyers%20for%20the%20Next%20Generation>

Douglas G. Scrivner and Paul Chadha, *Collaborating with Outside Counsel to Promote Diversity Change*, June 2009, <http://www.acc.com/vl/membersonly/ACCDocketArticle/loader.cfm?csModule=security/getfile&pageid=305806&page=/legalresources/resource.cfm&qstring=show=305806&title=Collaborating%20with%20Outside%20Counsel%20to%20Promote%20Diversity%20Change>

#### 3. InfoPAKS

Affirmative Action Compliance (September 2011), *available at* <http://www.acc.com/vl/membersonly/InfoPAK/loader.cfm?csModule=security/getfile&pageid=700885&page=/legalresources/resource.cfm&qstring=show=700885&title=Affirmative%20Action%20Compliance>

#### 4. Top Tens

Top Ten Tips for Employers to Assist and Employee with a Disability, October 2012, <http://www.acc.com/legalresources/publications/topten/ttfetaewad.cfm>

#### 5. ACC Polls

In a 2012 ACC Canada Quick Poll, 50% of Canadian general counsel noted a law firm's policy on diversity when retaining external lawyers. *See*, <http://www.acc.com/aboutacc/newsroom/accinthenews/canadian-law.cfm>

In April 2012, ACC polled its membership asking, "Does your department employ a lawyer with a disability?" Thirteen percent of respondents responded in the affirmative. *See*,

<http://www.acc.com/vl/membersonly/Polls/loader.cfm?csModule=security/getfile&pageid=1307418&page=/legalresources/resource.cfm&qstring=show=1307418&title=Does%20your%20department%20employ%20a%20lawyer%20with%20a%20disability%3F>

## 6. Additional ACC Resources

Marc Roellig and Marc Walters, “The Corporate Counsel’s Guide to Growing Diversity and Inclusion,” October 2011,

<http://www.acc.com/vl/membersonly/Article/loader.cfm?csModule=security/getfile&pageid=1304017&page=/legalresources/resource.cfm&qstring=show=1304017&title=The%20Corporate%20Counsel%27s%20Guide%20to%20Growing%20Diversity%20and%20Inclusion>

Marc Roellig, “Why Diversity is Critical to the Success of Your Law Department,” October 2011,

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## B. External Resources

### I. Organizations Dedicated to Promoting Diversity and Inclusion in the Legal Professions

**Minority Corporate Counsel Association:** MCCA was founded in 1997 to advance the hiring, retention and promotion of diverse attorneys in legal departments and the law firms that serve them. MCCA’s [website](#) contains numerous resources for legal departments interested in achieving diversity

and inclusiveness. Some notable examples include:

- [Diversity & The Bar Magazine](#)
- [Pathways Research](#)
- [Law Firm Diversity Database](#)

**Legal Leaders for Diversity:** An organization consisting of more than 70 General Counsel in Canada, formed in 2011 to encourage greater diversity and inclusion in its members’ own businesses and to foster these same values throughout the legal profession and the larger Canadian business community.

## 2. Diversity in the Legal Profession Initiatives

[A Call to Action: Diversity in the Legal Profession](#) is a mandate signed and endorsed in 2004 by over 100 prominent general counsel at some of America’s leading legal departments committing to foster diversity in the legal profession, both within their organizations and in the outside firms which supply legal services.

[A Call to Action Canada](#) was inspired by the US Call to Action. Its mission is to provide a forum to encourage and support Canadian in-house counsel in taking a leadership role in advancing diversity and inclusiveness in the legal profession by insisting on a demonstrated commitment by their outside law firms to diversity and limiting or terminating relationships with those law firms which demonstrate a lack of interest in, and commitment to, being diverse and inclusive.



[A Statement of Support for Diversity and Inclusion by General Counsel in Canada](#) – a pledge signed by Chief Legal Officers in Canada espousing that they value the range of perspectives, ideas and experiences that diversity provides.

The Association of the Bar of the City of New York's (ABCNY) [Statement of Diversity Principles](#) calls upon law departments and law firms in the New York City area to reaffirm their commitment to fostering diversity in the legal profession in meaningful ways (e.g., hiring, retention, leadership development, etc.).

### 3. Reports and Guides

Deloitte, Women in the Boardroom: A Global Perspective, November 2011, [http://www.deloitte.com/assets/Dcom-Tanzania/Local%20Assets/Documents/Deloitte%20Article\\_Women%20in%20the%20boardroom.pdf](http://www.deloitte.com/assets/Dcom-Tanzania/Local%20Assets/Documents/Deloitte%20Article_Women%20in%20the%20boardroom.pdf)

### 4. Articles

Andrea M. Juarez, CLI's Diverse Attorney Retention Initiative for General Counsel and Managing Partners, 40 The Colorado Lawyer 21 (March 2011).

Kathleen Nalty, Dr. Arin Reeves, Achieving Inclusiveness in Law Departments, September 2011, Center for Legal Inclusiveness, September 2011, <http://www.acc.com/vl/membersonly/Article/loader.cfm?csModule=security/getfile&pageid=1303989&page=/legalresources/resource.cfm&qstring=show=1303989&title=Achieving%20Inclusiveness%20in%20Law%20Departments>

## VII. Endnotes

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<sup>1</sup> Based on the seven (of eight) legal departments that responded to this question.

<sup>2</sup> See, Carolyn Presutti, New US Congress is Most Diverse in History, Voice of America, Dec. 5, 2012, <http://www.voanews.com/content/new-us-congress-is-most-diverse-in-history/1558934.html>

<sup>3</sup> For a discussion of results of MCCA's 13<sup>th</sup> Annual General Counsel Survey, please see, Thomas Threlkeld, "Measuring the Progress of the Nation's Legal Leaders," Diversity & The Bar, September/October 2012.

<sup>4</sup> See, *Growing Diversity in Corporate Law*, July 2011, <http://www.acc.com/aboutacc/newsroom/accinthenews/Growing-Diversity-in-Corporate-Law.cfm>.



## **THE BUSINESS CASE FOR IN-HOUSE PRO BONO**

Esther F. Lardent

During the past decade, the number of formal, organized pro bono efforts at in-house legal departments and the participation of in-house lawyers and legal staff in pro bono matters have increased dramatically. Led by a growing number of general counsel strongly committed to pro bono service and potentiated by the work of Corporate Pro Bono (CPBO), a global partnership project of the Association of Corporate Counsel (ACC) and the Pro Bono Institute (PBI) that provides tailored information, guidance, training, and support to in-house legal departments and ACC Chapters, in-house pro bono is becoming an accepted, valued, and well-integrated aspect of in-house practice.

Legal department lawyers, like lawyers in other practice settings, take on pro bono matters despite hectic work schedules for a variety of reasons: the distressing gap between those desperately in need of legal assistance and the available resources (a number of studies have found that 80 percent of low-income persons with a serious legal problem are unable to secure legal help); the ethical obligation to provide service that is at the core of every lawyer's professional identity; the desire to use one's skills and expertise to make the world a better place. In-house legal departments – and their legal staff – do not provide volunteer legal services to enhance their professional stature, skills, or business goals. However, properly structured, implemented, and aligned pro bono programs can, in fact, enhance critical aspects of the operations of companies and their legal departments. The pro bono business case for law firms has been established. Major law firms now realize that pro bono service can and does enhance important firm functions and goals. While the business case for pro bono service at in-house legal departments is different from that at major firms, it is equally clear and compelling.

### **Recruitment and Retention**

There is substantial competition for in-house lawyers who have the requisite skills to add value to legal departments. Most legal departments recruit experienced laterals rather than recent law school graduates, but pro bono is a factor for both groups. In particular, the growing number of talented law firm associates and partners who have been active pro bono participants while at their firms will be attracted to legal departments that afford them the ability to continue to take on pro bono assignments. In addition, many potential hires in the legal department view a commitment to pro bono as an important indicator that the company – and its legal department – value their employees as individuals and evidence a broader commitment to society. One study (Kelly Services, 2009) found that 85 percent of job seekers around the world and across all ages “are more likely to want to work for a company that is considered ethically and socially responsible.”

While some in-house lawyers seek advancement – and aspire to become general counsels – many in-house attorneys have more limited advancement opportunities. To avoid losing able, seasoned lawyers, law departments must create a workplace environment that continues to stimulate and

satisfy experienced and knowledgeable staff. Pro bono engagements offer the opportunity to broaden and vary work, interact with different people inside and outside of the legal department, and work in another environment that makes use of legal skills. The departure of a valued attorney is a major financial loss, with total costs – interruption of service, search and transition expenses, etc. – typically exceeding the annual salary of the employee. Pro bono service, for some lawyers, can be an important factor in promoting retention.

## **Employee Engagement**

Many companies and legal departments measure engagement as an expression of an employee's attachment to his or her job that influences the employee's eagerness to succeed in the workplace. Engaged employees are more excited about and involved in their work, and therefore act in ways that further the interests of their company. They care about the future of their company and feel strong emotional bonds to their employer, which can result in higher productivity and performance, increase retention levels, and lower absenteeism.

There are a number of factors that are believed to increase employee engagement, including organizational culture and an employee's perception of company values, recognition and rewards that incentivize staff, and quality relationships with managers and peers. Many in-house departments structure their pro bono programs to support these drivers, which contributes to an employee's overall sense of motivation and loyalty to the company. Engaged employees are brand ambassadors for the company. Pro bono is one way legal departments can support employee engagement, demonstrate the company's value to its employees, recognize employees for their contribution to the community, and promote positive teaming within the department, as well as cross-functionally.

## **Corporate Social Responsibility/Corporate Citizenship**

Corporations are increasingly recognizing the importance and value of corporate social responsibility – actions that ensure that companies are good and responsible citizens of the communities in which their employees live and work. Corporate social responsibility (CSR) has been defined by the World Economic Forum's Global Corporate Citizenship Initiative as:

[T]he contribution that a company makes in society through its core business activities, its social investment and philanthropy programs, and its engagement in public policy. That contribution is determined by the manner in which a company manages its economic, social, and environmental impacts and also manages its relationships with different stakeholders, including shareholders, employees, customers, business partners, governments, communities, and future generations.

The involvement of a company's legal department in pro bono service adds value and breadth to that company's CSR profile and activities. Pro bono service enhances the quality of life and stability of residents and the community at large, making an important contribution and creating a better business climate. It provides a specialized and highly desirable outlet for employee voluntarism and, often, complements the company's charitable giving and other philanthropic activities. It should come as no surprise that the pro bono work undertaken by legal departments

is increasingly cited and applauded in corporations' annual corporate social responsibility reports.

### **Professional Development**

As large law firms have discovered, pro bono engagements provide critically important professional development opportunities not only for younger lawyers but also for more experienced counsel. Pro bono work enables lawyers to maintain their proficiency in areas such as litigation that are no longer a routine part of their daily work. It also provides the opportunity for lawyers and legal staff to hone skills that are immediately applicable to their work for the company, including negotiation, leadership of a team effort, working effectively with partnering organizations, etc.

### **Integration with the Company, the Community, and the Profession**

Pro bono work enables members of the legal department to address a sense of isolation – from other members of their profession, from the company as a whole, from their communities – that may arise in the in-house environment. Work on a pro bono matter or project, particularly one undertaken in conjunction with a local pro bono organization or NGO, promotes interaction with other lawyers. At some corporations, legal departments are taking on pro bono projects that add a legal dimension to already existing corporate volunteer and/or philanthropic efforts. For example, the legal department at a company that focuses its charitable giving and volunteer service on enhancing children's educational opportunities may provide legal assistance to low-income families seeking to improve the education available to their developmentally disabled children. A legal department at a company whose volunteers provide housing and food for the poor and homeless could use their legal skills to help those targeted by the company to become eligible for food stamps and to secure safe and affordable homes. In doing so, the legal department not only improves the outcomes for those whom the company is striving to help, it also demonstrates to its internal clients the value of the department's legal skills.

Similarly, pro bono work helps the legal department, and, through its counsel, the company as a whole to better understand the communities where it is doing business and to help ensure that the company is viewed as a good citizen and a good neighbor in its communities.

### **Improved Teamwork and Morale**

Studies have consistently demonstrated the value of voluntarism in improving morale and productivity by reinforcing a sense of pride, common values and vision, and deepening personal relationships. Pro bono projects enable members of the legal department who may otherwise have little or no contact to work together toward a common goal. Signature pro bono projects, that is those targeted to a particular area of the law or client population, can involve lawyers and non-lawyers at varying levels of seniority and across offices and areas of specialization. A number of companies that have experienced financial, legal, or reputational difficulties have found that a shared pro bono culture can play an important role in maintaining a positive outlook and a shared sense of responsibility and pride in the company.

## Enhanced Inside/Outside Counsel Relationships

The growing trend toward the development of joint pro bono ventures between and among legal departments and their outside counsel enables each party to the relationship to leverage their particular strengths and skills. It also provides an opportunity to work together “off the clock” in a manner that strengthens mutual understanding and respect. This enables outside counsel to gain a better understanding of the client legal department so they can better respond to its commercial needs.

## Diversity

While in no way a substitute for attracting, retaining, and managing a diverse workforce, pro bono can intersect with and strengthen the department’s commitment to diversity. Some legal departments and law firms, for example, have focused their pro bono activity on matters of particular importance to families and communities of color. This focus affords an opportunity to all employees, regardless of race, ethnicity, gender, etc., to gain a better understanding of the issues and concerns facing these communities and individuals.

## Reputation

Consumers, regulators, shareholders, employees – all of these groups view the actions and initiatives of corporations in the larger context of corporate reputation. Studies indicate that charitable giving, both dollars and in-kind, as well as a demonstrated commitment to improving local communities are particularly convincing indicia of a “good” company. On a narrower scale, legal publications that cover in-house counsel news are increasingly aware of and focused on pro bono service. For example, *Corporate Counsel* magazine, in launching its annual awards for best legal department, made pro bono service one important criterion for that award.

## Conclusion

There is a growing recognition that a well-designed, institutionally supported legal pro bono program can enhance and strengthen the communities in which corporations operate while, at the same time, addressing key operating issues in a manner that strengthens the performance, reputation, and effectiveness of in-house legal departments.

*For more information about how your company can develop an effective in-house pro bono program or enhance its existing program, please contact Corporate Pro Bono at (202) 729-6699 or visit our website at [www.cpbo.org](http://www.cpbo.org).*

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