



902 - Managing Your Sales & Marketing Department

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Faculty Biographies

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Robert Schlossman represents high technology companies both as outside and in-house counsel. Mr. Schlossman currently services as senior vice president and general counsel of Network General Corporation, a leading supplier of network and application analysis solutions in San Jose, California.

Prior to Network General, Mr. Schlossman served as senior corporate counsel for Ciena Corporation, a publicly traded corporation and a leading supplier of application-focused communications networking equipment.

Prior to Ciena, Mr. Schlossman was senior corporate counsel at ONI Systems Corporation, a public company and a leading supplier of optical networking equipment, which was acquired by Ciena. Mr. Schlossman also was an attorney with the Venture Law Group. Mr. Schlossman began his legal career as a Law Clerk to the Hon. Eugene F. Lynch, U.S. District Court of the Northern District of California.

Mr. Schlossman holds a B.A. and M.A. from Stanford University and a J.D. from the Boalt Hall School of Law at the University of California at Berkeley.



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The Challenge

- Effective support of a direct sales force requires in-house counsel to limit risk while also helping to grow the business.
- How do we protect the company and assure compliance without becoming the “sales prevention department”?
- What are some practical approaches to working with Sales?

Background Information

Network General

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RadioFrame Networks

Network General Corporation

- Develops and sells network analysis solutions.
- Products include hardware, software, hardware and software bundles, maintenance contracts, training, and consulting services.
- Privately held and headquartered in San Jose, CA.
- Created in July 2004 when Silver Lake Partners and Texas Pacific Group purchased the "Sniffer Technologies" product line from McAfee, Inc.
- Products have been on the market for 20 years.
- 500+ Employees.
- Operations in 15+ countries outside of the US.
- Thousands of customers worldwide.
- 100+ current channel partners.
- Legal Department:
 - 3 Attorneys and 1 Contract Manager.



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RadioFrame Networks, Inc.

- **We design and sell wireless network equipment. Our products provide cellular coverage in "dead" spots and in the future will be available for the home.**
- **Products include hardware, software, maintenance contracts, training, and design services.**
- **Privately held and headquartered in Redmond, Washington.**
- **Founded in 1999; venture-capital funded.**
- **Approximately 200 employees.**
- **Operations in Europe and the U.S.**
- **Wireless carriers purchase our products, as well as other network equipment manufacturers.**
- **Our salespeople interface with cellular carriers as well as large cellular equipment vendors.**
- **Legal Department:**
 - 2 Attorneys and 1 Paralegal/Contract Manager.



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Supporting Your Sales Department



Understand Your Sales Team

- Remember that the sales department generates your company's revenues.
 - Remind yourself of this often.
- Keep in mind that selling is a hard and very stressful job.
- Understand your company's business – what is sales trying to sell?
- Build close relationships with your sales people. Know who is effective.

Understand Your Sales Team

- Understand how your sales force is compensated.
 - Think about what behaviors are motivated by the compensation incentives.
- Understand what the customer is trying to accomplish—don't chase every ball that the customer throws.
- Ask questions.
 - Don't assume that you or the sales person has all the facts.
- Read Reebok Rules by Jack Douglas.

Reduce the Pain of the Process

- Make sure sales knows you and your team and how best to get your help.
 - Be responsive. If you are not, things will often proceed anyway.
 - You want them to come to you with questions. It will save you cleaning something up later.
 - Train someone to help sales for times you are not available.
 - Give them ways to contact you and be clear about when it's appropriate to track you down at home or on vacation to avoid a crisis.
- Create a process for review that sales understands and can follow.
 - Make compliance easy for your sales team.
- Help prevent fraud with adequate processes and internal controls.
 - Finance will be grateful, particularly where things such as revenue recognition are potentially impacted.
 - Watch out for refunds, rebates, long warranties, ability to trade in products for credit on new purchases, and anything similar.

Reduce the Pain of the Process

- Protect legal interests and use and share your business sense, but keep in mind that most decisions in a sales contract are business decisions, not legal ones.
- Try not to say 'no' except when absolutely necessary.
 - Think hard about whether there is a way to accomplish the desired result.
 - Can you come up with a creative solution that gets the customer what it wants?
 - But do not be afraid to say "no".
- Explain yourself in business terms.
 - Where it will help, give clear explanations of legal terms or provisions, but don't inundate your sales team with legalese. They know you're a lawyer.

Creating Policies & Practices

Approach at Network General

- Network General processes thousands of transactions every quarter ranging from a few thousand dollars to over \$1 million.
- More than 80% of Network General's transactions small and produce less than 20% of Network General's revenue.
- Signed Agreements only required above a certain dollar threshold.

Approach at RadioFrame Networks

- Many of our sales contracts are with very large, international companies who have great leverage in their dealings with us.
- For initial customers, we have not been able to use a RadioFrame "form" contract.
 - We do have form trial (evaluation) agreements that have been very useful for potential new customers.
 - The salesperson can use that form without significant review time required.
 - We have form agreements ready to be used once our newer products are more widely available.
- We have succeeded in setting some standard terms.
 - Our sales teams helped us determine those basic terms and they try to get them where possible.
 - Developing such terms was a collaborative process with sales, legal and finance.

Education and Training

Avoid Problems with Education & Training

- Education, and repetition, helps prevent honest (albeit foolish or stupid) mistakes.
 - Sales understands that their deals will get done more quickly (and commissions will be earned more quickly) when things don't get bogged down in Finance or Legal.
 - Explain that working with you proactively can help speed things up. Make sure they understand you do not want to be a barrier. You want to help ensure the deal will go through and not get bounced back due to process or other problems.
- Train sales on existing and new processes.
 - Schedule trainings periodically to remind them and to make sure new team members understand.
 - Leave time for more open-ended discussion. They will often have questions you don't realize they have.

Some Training Topics

- How to use your company's sales documents
 - What form agreements exist?
 - Evaluation/Demonstration agreements – when and how to use?
 - Who is allowed to sign what type of document at your company?
 - What is the process for getting changes reviewed/approved?
 - How do they get the ball rolling when they have a potential sale? Who is their contact?
- Disclosure requirements
 - With Sarbanes-Oxley and other compliance obligations, there is scrutiny and accountability at many levels. It won't work to just say "nobody will notice". Legal can't help Sales play hide the ball from Finance or other departments. It's better to get the issues resolved up front.

Explanation of Legal Terms

- What do certain legal terms mean and why do they matter to Sales?
 - Indemnification provisions, intellectual property provisions, and warranty terms often not understood.
 - For example, agreeing to give up your company's intellectual property may mean your company is no longer a good acquisition target. People remember examples when they impact their pocketbook.
 - Another example: a rebate offer or product swap offer may mean certain revenue is not recognized in a particular year. If commissions are calculated off of recognized revenue, the applicable commission may be reduced.
 - Shipping terms (who pays for shipping) can eat up all available margin on a product. If the company loses money with every sale, it won't be around long.
 - Liquidated damages, consequential damages, and indemnification. If they understand the economic impact these terms can have, they may understand when you push back on changes to your standard terms.

Creating a Compliance Culture

- Speak about ethics at every opportunity.
- Encourage managers to speak about ethics.
- Start at the top and work down.
- Differentiate “legal” decisions from “business” decisions.
- Seek out and build relationships with advocates in your audience.
- Present a business case for ethics and compliance.
- Make compliance manageable.
 - Work with existing processes.
 - Avoid creating additional work for employees and partners.
 - Allow for flexibility.

Example of Compliance Training Slide

- Bribery is Bad Business
- Individuals, as well as the company, can face criminal and civil penalties.
- Risk of prosecution is just one reason to avoid bribes and corrupt payments:
 - Increases cost of doing business,
 - Buys an unenforceable contract,
 - Incentive to government officials to create new obstacles,
 - Exposure to organized criminal activity, and
 - Undermines overall compliance culture at company.

What to Do When Things Break Down

- Address breakdowns in communication early and often.
 - Problems that fester are likely to grow and be more difficult to fix later.
 - If a salesperson finds following the process challenging, try talking with them to see why.
 - Is the process too cumbersome? Is it holding up their deal?
 - Do they think the standard process is optional? If so, broader management buy-in may be required.
 - Perhaps they come from a culture at a prior company where their actions were acceptable.
- If there are serious legal consequences to the actions of someone in sales, make yourself heard.
 - Try talking with sales first. Explain why the issue matters.
 - Don't be shy about going higher up the management chain, but do so in a calm, professional manner.

What to Do When Things Break Down

What to Do When Things Break Down

- The Ultimate Recourse
 - Remember you represent the company, not any individual executive (even though you may report to the CEO or another officer).
 - If there is a serious ethical or legal problem that is not being addressed by the CEO, you will likely need to take it to the Board of Directors. Yes, that may impact your working relationship with your boss, but your ethical responsibilities trump professional comfort.
- Think about when to involve outside counsel and who should retain outside counsel.