



## 205 - Creative Leadership & Team Building within the Corporate Law Department

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Before joining Fannie Mae, Ms. House was chief of the debarment section of the Resolution Trust Corporation, which was the third largest government contracting agency at that time. Prior to that she was in private practice in Washington and London where she provided legal services to a wide variety of corporate and financial institution clients.

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Mr. Woodmansee is currently the vice chair of ACC's international legal affairs committee. Prior to repatriating to the United States, Mr. Woodmansee served on the policy and legal committees for the American Chamber of Commerce (Netherlands).

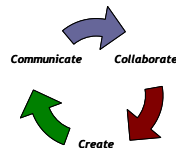
Mr. Woodmansee received a B.A. from the University of Arkansas and a J.D. from the College of William and Mary.

THE RULES

Communicate, Collaborate, Create

CREATING VALUE IN CORPORATE LEGAL DEPARTMENTS - PRACTICAL LEADERSHIP AND EFFECTIVE COLLABORATION TIPS

GREG TOLBERT



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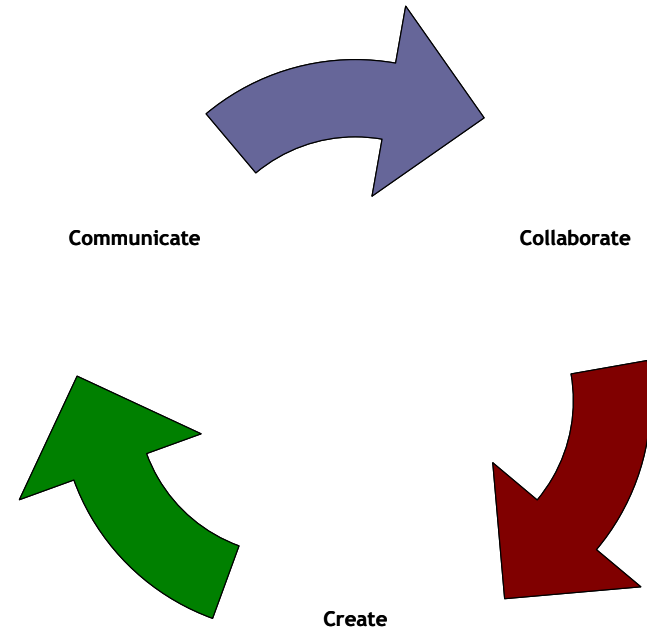
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THE RULES - COMMUNICATE, COLLABORATE, CREATE

THE RULES - COMMUNICATE, COLLABORATE, CREATE



INTRODUCTION

Much - perhaps all - of this guide is common sense. Equally true, however, is that much of this common sense is not followed. Hence, the opportunity.

Unfortunately, for too many reasons, many corporate counsel will not be able to complete a career of significant length without encountering at least a couple unpleasant folks. Others, regrettably, will encounter far more than their fair share. Bad news. Some of these folks will be your co-workers, the business managers and executives you support, or the outside counsel you hire. More bad news. The odds that you can do something that meaningfully will change these tortured souls who wreak havoc on others is pretty low and probably not worth the effort. You can, however, with a bit of common sense and thought, avoid being on the same list as these people.

Rather than a clinical approach or treatise, this guide is a collection of tips and practices. In short, this is not a "how to" piece; rather, it is a collection of common sense ideas that may help corporate counsel and the people with whom these lawyers work. The content is provided in 'bullet' or 'tip' form in the hope that it will be more useful and interesting. Obviously, this guide is only a summary of useful tips. It is not exhaustive and, quite frankly, in some circumstances, no amount of good advice will overcome a bad situation.

This guide is divided into four sections.

- # **Section I** provides a list of common sense practical behaviors, actions, and principles - listed in 'rule form' that, if implemented, provide traction for anyone to improve their leadership skills and behaviors and collaborate more effectively with others.
- # **Section II** provides more targeted practice tips primarily for corporate counsel.
- # **Section III** provides some tips on working effectively with business leaders in a corporate legal department.
- # **Section IV** includes a list of selected additional resources that will provide useful insight regarding leadership and effective collaboration for corporate counsel.

Although this guide is organized in sections that track differing critical relationships for corporate counsel, the tips therein translate into each of the relationships. For example, in each of these various relationship, there is value in being solution-oriented. Accordingly, understanding and using these tips and, more importantly, making them habits, should improve each of the various relationships.

" " " " "

Commonsense is not very common.

- Latin proverb

" " " " "

SECTION I

FIFTY SIMPLE RULES

"Hit the point once. Then come back and hit it again. Then hit it a third time - - a tremendous whack.

*Winston Churchill*

" " " " "

At the end of the day, an attorney's job is not that tricky. Like many jobs, it requires only a bit of intellect and some hard work. Vision, commitment, and decency will signal better lawyers. The ability to collaborate effectively with others will distinguish the best.

Below are fifty rules (from among many) in no particular order - all of which are common sense and all of which would make working with you a better experience for others ... and perhaps yourself as well.

1. Be an optimist
2. Dream big
3. Make it happen
4. Think of others; be considerate
5. Be passionate and committed; All the way in or all the way out
6. Hindsight is easy; It's thinking ahead that's hard
7. Learn to listen; It will make a difference
8. Time is the enemy of everyone; Use your time wisely and be alert for time bandits
9. Make time for the people you love and the things you love
10. Smile

11. Cheer for others
12. Be humble
13. Trying to please everyone pleases no one, not even yourself
14. Be a gracious winner; Be a gracious loser
15. Plan ahead; Align your team; and focus on execution
16. Have the discipline to pursue continuous improvement
17. You don't know what you don't know
18. Two words: Thank you
19. Ask questions
20. Face the facts
21. Experience makes a difference
22. Don't worry about the problem; worry about the solution
23. When you are righteous, you do not have to tell people that you're righteous
24. You can disagree without being disagreeable
25. Stand tall
26. Have pride in your work
27. Keep your powder dry
28. Lesser people look to fix the blame; Leaders look to fix the problem
29. Know your limits; Raise your sights
30. Enjoy what you do; Never stop doing what you love
31. Recognize the contribution of others

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- 32. Actions speak louder than words
- 33. Volunteer
- 34. Reflect for a moment; You have much for which to be grateful
- 35. You can make a difference
- 36. Respect is listening
- 37. Do what you say you are going to do
- 38. 'Know-it-alls' don't
- 39. Negative people are not fun
- 40. Don't take things for granted
- 41. Your pride or a participant ribbon, you can't have both
- 42. Enable people to count on you
- 43. There is no need to accept things as they are
- 44. Lead, follow, or get out of the way
- 45. Excellence is a habit, not an act
- 46. Take satisfaction in a job well done
- 47. Be bold and imaginative
- 48. Having someone help you is okay, having them do it for you is pitiful
- 49. People don't care how much you know, until they know how much you care.
- 50. Rest, relax, recharge

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" " " " "

*People told Columbus the world was flat. He did not insist that it was round. He got in a boat.*

" " " " "

SECTION II

LEADERSHIP & EFFECTIVE COLLABORATION TIPS

At this moment there are six billion four hundred seventy million eight hundred eighteen thousand six hundred seventy one people in the world. Some are running scared. Some are coming home. Some tell lies to make it through the day. Others are just now facing the truth. Some are evil men at war with good. And some are good, struggling with evil. Six billion people in the world, six billion souls. And sometimes... all you need is one.

*One Tree Hill  
CW Television*

" " " " "

This section identifies leadership and effective collaboration tips for corporate counsel and outside counsel to work effectively to create value for the corporate client. These tips, of course, assume that your ability to succeed with a project oftentimes may be influenced by how effectively you work with others. The material is divided into three parts.

- # *Part A* focuses on tips both for corporate counsel and outside counsel.
- # *Part B* identifies tips for outside counsel.
- # *Part C* provides a few tips for corporate counsel who work with outside counsel that, ideally, may help optimize the relationship.

One critical problem with identifying leadership and effective collaboration tips for lawyers is the same problem that Zorba the Greek encountered. That is, you can knock forever on a deaf man's door.

Let's be blunt. Too many lawyers, with too little evidence to confirm their value proposition, believe they are leaders by nature or (more commonly) by title and that effective collaboration is the result of everyone simply listening to them. We've all met people like this. From time to time, we have to work on a project with them. And, a few of us poor souls share the same employer with these folks.

What to do? The easy route is to ignore the problem and stumble through life and your career and then swap polite stories when retirement rolls around. Alternatively, you can try to improve the situation. This path, of course, is not without risk.

A. TIPS FOR BOTH CORPORATE COUNSEL & OUTSIDE COUNSEL

Successful organizations create the conditions to allow their employees to do their best work. Not everyone, however, works in a successful organization. Similarly, even in successful organizations, there are a variety of people. And, people, of course, can affect the success of the organization. One popular paints a picture:

Some folks are surrounded by people who are willing to take a bullet for them. Others, however, are surrounded by folks who want to pull the trigger.

Obviously, there is a difference between these two groups. Sadly, no amount of advice (informed or otherwise) will overcome every situation, but, there are ways to improve the odds that you're part of the first group.

This section, albeit briefly, is designed to set the table for the later sections in this guide. In short, it identifies some simple, common sense characteristics, behavioral styles, and work practices both for corporate counsel and outside counsel to increase your effectiveness. To wit -

- # Be an optimist
- # Be humble
- # Respect people - our team, opposing parties/counsel, judges, juries, and the public
- # Have a sense of urgency
- # Be accountable
- # Be passionate
- # Understand that, if you make room for that possibility, other people can teach you something
- # Try to understand the world through other peoples' eyes
- # You can focus on yourself as a team leader or focus on creating a team of leaders
- # Everyone is busy; Don't make matters worse with useless email messages



## THE RULES

- # Don't get in the way of innovation
- # Understand the difference between management and leadership
- # Be able to transition easily from leadership to support roles as warranted
- # Don't hide from reality
- # What you refer to as "multi-tasking" - others around you almost always view as doing two things at once and doing them rather poorly ... so, go ahead and put your cell-phone down and pay attention to what you are doing
- # Communicate, collaborate, create

**B. TIPS FOR OUTSIDE COUNSEL**

Now, this news may come as a surprise to some outside counsel. But, when corporate counsel get together and the subject of outside counsel comes up, well, the discussions are not always long endorsements on how outside counsel - to the surprise of everyone - rode in to the rescue and saved both the business and their equally hapless corporate counsel from themselves. Sometimes - let's not say how often - the discussions go in a different direction.

That, of course, doesn't have to be the case. Quite the contrary. There are things outside counsel can do - most, again are common sense - that may improve the relationship (and very likely the results of the engagement) substantially. Below are four common sense suggestions for outside counsel - all driven by the work philosophy posited by this guide - *i.e.*, communicate, collaborate, create - that ought to improve any engagement. These suggestions are followed by some practical tools that also should improve most engagements.

**1. UNDERSTAND THE CLIENT.**

- # Learn about your client - what do they do and know?
- # Understand how the organization functions - *i.e.*, some businesses have a fairly unique way of doing things, a certain type of culture, or are more concerned with process. To be effective, you need to understand how this organization operates.

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- # Understand that a lot of organizations highly value teamwork. Accordingly, the other people involved may not appreciate folks who do not work well in a team.
- # Understand that there are a wide variety of in-house counsel - *e.g.*, control freaks, micro-managers, absentee landlords, and those who team, empower, and are transparent. Odds are that, in most engagements you won't have sufficient time, energy, or ability to change corporate counsel. Accordingly, it is probably worth the effort to determine how she functions and consider how you may improve your relationship.

**2. MAINTAIN PERSPECTIVE.**

- # Understand that the legal component of the matter is not the entirety; this client is trying to run a business
- # Litigation is not the main event; Running the business and making a profit is
- # You're on the outside looking in

**3. ADD VALUE.**

- # Have a compelling value proposition
- # Be an innovator - a gentle innovator
- # Be flexible
- # Be humble
- # Being available is a good start, but just the beginning; You still need to execute and deliver

**4. MAYBE IT'S YOU.**

- # Regardless of how often you see it, it's not about face time & hearing yourself talk
- # Do not be passive aggressive; It's okay to disagree, but once we have a plan, stay aligned and stay on message
- # Don't try to impress folks with how much you know. Unless you're always right (and, sometimes, even when you are), it's a losing game

- # Do not go around the legal department. Marketing has a place and a time. More often than not, however, this is a recipe for getting fired.
- # You may be a great lawyer, but, if you cannot be trusted to work within your role, you must be replaced. Corporate counsel need people they can count on.

§ **PRACTICAL TOOLS.** There are a variety of practical tools that outside counsel easily can implement that, in most engagements, will add value -

- # *Status Updates.* Use concise written status updates, timely emailed to the entire team, to keep folks in the loop and everyone positioned to add value. The status update should be driven by the business objective of the representation and identify tasks completed since the last update, work to be done, and issues requiring decisions.
- # *Budgeting.* Many corporate counsel are required to budget outside counsel costs. This can be a time consuming and difficult, but necessary, chore. If you can provide corporate counsel with budgeting assistance for your matter, you will visibly separate yourself from others.
- # *Training.* Many corporate legal departments lack the time and/or resources to provide training for their legal departments or businesses. Accordingly, if you can provide value-added training or practice area updates, these may be quite welcomed.
- # *Client Service Teams.* Assemble and utilize a client service team to provide a stable vehicle for ongoing communication with corporate counsel.

**C. TIPS FOR CORPORATE COUNSEL WHO WORK WITH OUTSIDE COUNSEL**

Lawyers are notoriously difficult to manage. In many ways, the practice of law is a self-centered profession. In addition, law schools, generally speaking, don't excel at training lawyers to work with business clients or to understand business issues, organizational management, etc. Similarly, most law firms focus on the practice of law and marketing, but lack basic business training.

Nonetheless, chances are pretty good that you will need to work with outside counsel. After all, time is the enemy of everyone and, regardless of how hard you may try, you simply can't do it all by yourself.

In large measure, the corporate counsel-outside counsel relationship is no different than other professional relationships. The keys to success are well known -

- # Hire good people
- # Have a personal approach that improves the odds of success
- # Invest in the relationship. That means more than paying bills (even when you do so promptly). It means investing your time, effort, coaching, etc.
- # Don't micromanage; if that is necessary, you have the wrong team. It also probably means that you have way too much free time on your hands.

That said, there are some common sense tips. Below are four suggestions for how you may improve any engagement. Again, these suggestions are followed by some practical tools that also should improve most engagements.

**1. GET GOOD PEOPLE.**

- # Work with people you trust
- # Try to hire people who are smarter than you
- # Hire people who are thrilled by this work. It's still work, but ...

**2. SET THE TABLE.**

- # Create a context in which other people can do great things
- # Create an opportunity for success - e.g., pre-planning; organization; connections; big picture; team transparency; continuing dialogue, etc.
- # Set and communicate direction
- # Create alignment
- # Be clear about what precisely you want outside counsel to do and the parameters of the engagement

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## 3. OPTIMIZE THE RELATIONSHIP.

- # Educate outside counsel. Make sure counsel understands your business, your corporate culture, and the context to their specific assignment.
- # Remember that they are professionals, too
- # Set and live values
- # Encourage innovation
- # Encourage commitment
- # Reward success and failure, but punish inaction and un-involvement
- # Grow yourself and others

## 4. TEND YOUR OWN GARDEN FIRST.

- # Build a foundation for success; Start with yourself
- # Think about and be sensitive to what other people need from you
- # Be mindful that outside counsel are not human piñatas
- # Listen (this is the number one item across the globe in 360 feedback)
- # Make time to get to know the people you hire; Make a connection
- # Solicit feedback
- # Care ... about people, the business, the project, etc.
- # When the job is well done, say thank you; and mean it
- # Understand the value of associates
- # Maintain a dialogue and, when there are problems, communicate more, not less

## § PRACTICAL TOOLS.

- # *Engagement Letters.* Use clear, concise engagement letters (ideally an engagement letter that has been reviewed recently) to address likely issues and concerns. Clarify who has authority over a matter.

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- # *'Punch List' Guidelines.* Develop and utilize practical guidelines to establish clear, concise expectations and practices. For example, clarify the assignment; specify the response time; clearly state your own role; be frank about staffing expectations
- # *Budgets.* Agree in advance on the budget for the project and the procedure for making adjustments during the course of the engagement as circumstances (and more complete information) evolve
- # *Contact Lists.* Make it easy for outside counsel to work with you. Provide a team contact list for the matter at the start of the engagement and keep it current.
- # *Status Reports.* Provide outside counsel with sample status reports to position them to work effectively with you and your team.
- # *Feedback.* Develop the habit of giving outside counsel timely constructive feedback on their performance during and after every matter. Do not wait too long to tell outside counsel if you're unhappy with how the firm performed or managed the budget.

" " " " "

Vision without execution, is a hallucination.  
- *Albert Einstein*

" " " " "

SECTION III

BUSINESS SUCCESS TIPS FOR CORPORATE COUNSEL

"Big ideas are so hard to recognize, so fragile, so easy to kill. Don't forget that, all of you who don't have them."

*Sir David MacKenzie Ogilvy*

" " " " "

This section highlights a variety of tips designed to enable corporate counsel to be successful in working collaboratively and efficiently with business leaders. Accordingly, common themes that permeate these tips include -

- # Creating and maintaining alignment between the legal department and the business
- # The role of the legal department
- # Understanding the value measurements most often used by business leaders

Commonly in the business world, work is accomplished and decisions are made through teamwork. Accordingly, it is no surprise that your ability to work as part of a team is a critical skill to have and to develop. In addition, the ability to lead and to support - and to move between the two roles, as warranted, without drama is critically important.

A related point, of course, is to understand and appreciate the difference between management and leadership. There is a good deal of scholarship and empirical research on this point. Suffice it to say that there are important critical differences between leaders and managers. At the risk of oversimplifying the differences, consider the following:

LEADERS VERSUS MANAGERS		
	MANAGERS	LEADERS
AGENDA	Create an agenda by planning & budgeting (e.g., establish timetables, allocate resources)	Create an agenda by establishing direction (e.g., set a vision for the future and strategies for change)

LEADERS VERSUS MANAGERS		
	MANAGERS	LEADERS
STYLE	<ul style="list-style-type: none"> <li># Are copies</li> <li># Ask how and when</li> <li># Are classic 'good soldiers'</li> <li># Administer</li> </ul>	<ul style="list-style-type: none"> <li># Are originals</li> <li># Ask what and why</li> <li># Are their 'own person'</li> <li># Innovate</li> </ul>
EXECUTION	<ul style="list-style-type: none"> <li># Controlling</li> <li># Maintains people</li> <li># Problem solving</li> <li># Maintain process</li> </ul>	<ul style="list-style-type: none"> <li># Motivating &amp; Inspiring</li> <li># Develops people</li> <li># Create trust</li> <li># Energize people to overcome obstacles</li> </ul>
FOCUS	<ul style="list-style-type: none"> <li># On the bottom line</li> <li># Focus on systems, structure, reporting</li> </ul>	<ul style="list-style-type: none"> <li># On the horizon</li> <li># On people</li> </ul>
OUTCOME	<ul style="list-style-type: none"> <li># Accepts the status quo</li> <li># Predictability</li> <li># Consistency</li> </ul>	<ul style="list-style-type: none"> <li># Challenges the status quo</li> <li># Change</li> <li># Innovation</li> </ul>

The point of this table is not to disparage managers. Organizations - large and small - can benefit from individuals with management skills. These are skills that can be developed and can benefit the organization. On the other hand, organizations and especially individuals who confuse a management role with leadership can take their organization and their people a step (or many steps) in the wrong direction.

**A. WORKING COLLABORATIVELY WITH BUSINESS LEADERS**

Given a choice, it's pretty safe to assume that not every business leader puts working with corporate counsel at the top of their list of most rewarding, important, or valuable activities. There are myriad reasons. Some reasons, unfortunately, no doubt have to do with corporate counsel as well as their approach to risk, control, decision-making, etc.

This section identifies ten common sense tips for corporate counsel to work more collaboratively with business leaders. Many of these tips respond to well known complaints commonly voiced by business leaders who work with

attorneys. And, again, these suggestions are followed by some practical tools that also should help you work more collaboratively with business leaders.

1. **COMMUNICATION.** People do not like to be left in the dark. Keep business leaders informed regarding the work entrusted to you and, in particular, the status of the matter, upcoming issues, significant events, and change.
  - # Communicate early
  - # Be candid. It's your job. Don't sugar-coat bad news. False hope is counter-productive and often times reduces alternatives.
  - # No one likes surprises, especially from attorneys. If there is bad news, the business should hear it first from you
  - # It's not the deed; It's the cover-up
  - # Don't be hard to communicate with; everyone is busy - even people other than you
  - # Set realistic expectations regarding the time necessary to complete the project
  - # Be solution-oriented
  - # Straight talk - *i.e.*, be honest, clear, specific, and consistent. And be brief. There is no need for you to consume all of the oxygen in the room.
  - # To the greatest extent practicable, be transparent
  - # Establish confidence and credibility with everyone with whom you interact
  
2. **KNOW YOUR LIMITS.**
  - # If your role is to say "no," you don't need a legal department; rather, you need one person
  - # Know the difference between legal issues and business issues and appreciate the reality that business leaders make business decisions
  - # Lawyers are not business leaders. Sure, you could try to do both jobs ... and you may be able to make a half-way contribution to each - which ought to get you fired from both
  - # You are not your client's savior; you're their lawyer. Understand the difference

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3. **THE BASICS.** Corporate counsel's traditional role is to counsel corporate management at all levels, supervise outside counsel, and reduce legal barriers to business objectives. Accordingly, corporate counsel should -
- # Provide business decision makers with practical, options-based legal advice to inform business decisions
  - # Identify a solution ... anyone can list problems
  - # Distinguish between what is good and what is critical
4. **CREATE VALUE.** Every business desires timely, quality legal counsel at a reasonable cost
- # Provide concise, clear, useful, legal advice
  - # Business leaders don't need law review articles or theories; they need answers
  - # When useful, explain the legal context
  - # "It depends" isn't a very useful answer for informing business decision making; Provide a clear answer - yes, no, or open question
  - # Provide legal advice that prudently informs clients to make decisions that maximize their options
  - # Maximize options for business leaders to make business decisions - *i.e.*, prepare legal advice to allow business leaders to choose among alternatives
  - # Clients are reluctant to 'lawyer-up,' help make it easy for them
  - # Listen more than lecture
  - # There are three types of people: Problem-makers; Problem-listers; and Problem-solvers. Be a problem-solver
5. **ADD VALUE.** Corporate counsel can provide additional value to the business -
- # Provide practical strategic thinking
  - # Collaborate effectively with outside counsel to improve the odds that the money spent on outside counsel is well spent
  - # See yourself as a business manager - *e.g.*, implement a strategy to control costs; perform

early case assessment; use budgets; measure performance; etc.

- # Pure intellect and hard work will get you in the door; but to add value, your knowledge must transcend the law and embrace the same business concerns with which your clients wrestle each day
- # Be a change agent; Position the team to embrace positive change
- # Have a 'can do' attitude and ability; Possess and nurture strategic thinking and tactical organization to get the job done
- # Be solution-oriented
- # Be efficient and organized
- # Provide clients with preventative legal counsel
- # Anticipate legal needs
- # Think 'end-state'

6. **LEARN THE BUSINESS.**

- # Learn your clients' business - *e.g.*, what they do; how the products/services are developed, produced, distributed, and sold; costs, profits, margins, cash flow; competitors, strategic threats, regulatory environment.
- # Read everything you can about the business and the industry - *e.g.*, SEC filings, press releases, investor/road show presentations; executive speeches, etc.
- # Don't be reluctant to ask questions
- # Do your homework
- # Spend time with the operations
- # Learn the basics of your business' accounting - *e.g.*, how to read a balance sheet and understand GAAP
- # Understand the client's business objectives

7. **RESPECT & VALUE.**

- # If you want people to respect you, you need to start by respecting them
- # Care about your co-workers

**8. TEAMS.**

- # Start with a high performance team - not B and C players
- # The A players must function as a team
- # Recognize and value the collective team
- # Focus on building a team of leaders rather than being the team leader

**9. QUALITY WORK, PROMPTLY DONE.** Understand the measurements of value most often used by businesses -

- # Responsiveness
- # Quality of the work
- # Outcome of the matter

**10. MAYBE IT'S YOU**

- # Be positive, team-oriented, and obvious in your desire to exceed expectations
- # Be engaged; solution-oriented
- # Show trust in everyone to do their jobs well
- # Get the easy stuff right - e.g., be on time for meetings and with deadlines; proofread your work; be organized; be accessible; behave
- # Be passionate and committed to your business. All in, or all the way out
- # Have the discipline to pursue continuous improvement
- # Understand the entrepreneurial spirit
- # Resist the forces to be an 'in-box attorney.' Blindly reacting to the endless onslaught of email - even if you do so very well - fails to direct effort to strategic problems or to maximize the potential return on the investment. Think about bigger opportunities to make a difference - e.g., toolkits for the business to address common issues; preventative counseling programs; web-based communications; etc.

**§ BEST PRACTICES TOOLS.**

- # *Listen.* You can learn a lot by listening.
- # *Read.* There are folks who spend a great deal of time and effort to develop a thesis - invest the time to read.
- # *Team Meetings.* Don't meet just because a meeting is scheduled, but do keep people in the loop.
- # *Share Credit.* Recognize the contribution of others. Chances are you didn't save the world by yourself.
- # *Be Purposeful.* Develop a reliable method for everything - e.g., templates, out of office, files, checklists, etc.
- # *Continuous Improvement.* Be systematic, but continuously improve.
- # *Status Reports.* Especially for litigation, big transactions, and long-term projects, use status reports to build traction to drive a team toward better results.
- # *Contact Lists.* Develop and use dynamic contacts lists (e.g., email enabled, group an team distribution lists, etc.) - especially if there are third parties involved
- # *The Team & the Plan.* Make certain that you have the best possible team. Have a plan of attack. Stick with it, align your team around it, and focus on execution.

**B. CREATING & MAINTAINING ALIGNMENT BETWEEN THE LEGAL DEPARTMENT AND THE BUSINESS**

Creating and maintaining alignment between the legal department and the business is an essential ingredient in any effective legal department. Although alignment oftentimes is assumed, if ignored, this inevitably can create misalignment, friction, and worse. To create and maintain alignment, some simple, but effective measures are necessary -

1. **UNDERSTAND THE BUSINESS.** Make it your business to know the company's business. Take every opportunity to learn more about the business and the company's operations. Even still, you will not know as much about the business as the business team.

- # Clients should not have to feel the need to educate you on the basics of the business every time they contact you
- # Know your operations
- # Know your products
- # Know the company's history
- # Know the company's key competitors
- # Know the company's regulators
- # Understand the company's business model
- # Recognize and, if possible, resolve conflicts between business units

## 2. PLAN AHEAD.

- # Anticipate potential legal issues before they become a reality
- # Resolve those issues in advance
- # There will always be fires - e.g., transactions and business disputes - but taking the proactive approach will reduce costs over the long term

## § PRACTICAL TOOLS TO IMPROVE ALIGNMENT.

- # Take time to meet the business managers
- # Visit the operations
- # Understand their particular business issues
- # Don't sit in an ivory tower waiting for problems to come to you; Maintain an informal, but active visible presence

## C. KEY COMMON SENSE PRACTICES

There are a variety of common sense practices that effective leaders use to guide their efforts everyday.

1. **SMILE.** A positive attitude is important both for you and the rest of the team. People notice when you smile. Besides, there are a lot worse jobs than working indoors, as an attorney for a business.

2. **BE SOLUTION-ORIENTED.** People are not coming to you for a lecture; rather, they are looking to you to help them solve a problem. Problem solvers add more value than problem listers.
3. **BE AN EXAMPLE.** Lead by example; not by nagging or criticizing. Be a change agent.
4. **ADD VALUE.** If your involvement does not add value, you should not be involved.
5. **LISTEN.** People like to be heard.
6. **COMMUNICATE CLEARLY.** Despite the ubiquity of email, there is no substitute for face-to-face communication.
  - # Be concise and specific
  - # Be as brief as possible; master the art of the executive summary
7. **BE ORGANIZED.** This includes, you, your office, and your team. Have a work plan, including a to do list, and work efficiently against key priorities.
8. **BE ON TIME.** This is easy. Anybody can do this. Why can't you?
9. **TO DO LIST.** Have an action plan for your work and use it.
  - # Stay focused on priority projects
  - # Review your 'to do' list
  - # Review new matters
  - # Do it now
10. **FIRE DEPARTMENTS.** Don't 'put out fires.' Instead, build a fire department. Otherwise, you will end up trading the long term for the short term. This is not a 'whack a mole' game where you simply react.
  - # Don't react
  - # Rather, plan, focus, execute
11. **UNDERSTAND YOUR BUSINESS.** You are not an expert in your business, but you can be informed. Stay current on your company, business, and industry sector. In addition,



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understand the history of your business. To keep current, read or review the following -

- # Wall Street Journal and local newspaper(s)
- # Annual Report and SEC filings
- # Company and industry websites
- # Trade Association publications and websites
- # Earnings calls
- # Executive speeches
- # Securities analysts' reports

12. **MIND YOUR MANNERS.** Thank people for a job well done. Recognize and congratulate other people's success and accomplishments. Mean it.

13. **DISCONNECT.**

- # You cannot do everything
- # Learn to disconnect. Don't wear a bell
- # Limit your work schedule. You will increase your focus, creativity, and productivity

#### D. SIMPLE STEPS

The following are a few simple steps designed to decrease the total amount of time you need to commit to administrivia and, as a result, increase the amount of time and bandwidth you can commit to work that will make a difference.

1. **CONTACTS.** Develop, maintain, and manage a contacts database.
  - # Keep it current, complete, and organized
  - # Keep a backup
  - # Keep a "key contacts" list with you and with your assistant
2. **To Do LIST.** Maintain and manage a single, consolidated "to do list."
  - # Keep it current
  - # Keep it in one place

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- # Use it as a tool to manage and prioritize your efforts

3. **FUTURE OPPORTUNITIES.** Maintain and evaluate future opportunities - e.g.,

- # Training programs (CLEs)
- # Industry meetings

4. **WORK PRODUCT.** Develop, maintain, and manage a work product library (e.g., templates, forms, research, checklists, etc.).

- # Keep it current, complete, and organized
- # Keep it in one place - preferably backed up

5. **ADMINISTRATIVE TOOLS.** Develop, maintain, and manage commonly used administrative tools. When you develop a useful tool, use it. Examples include -

- # Travel Summary
- # Contacts List
- # Passwords
- # Company training requirements

" " " " "

If you've come to tell the truth, you'd better  
have a good horse just outside the door.

- Moroccan proverb

" " " " "

SECTION IV

ADDITIONAL RESOURCES

This section identifies some helpful resources pertaining to leadership and effective collaboration. Although general resources are included - and they do provide instructive insight, this section, in particular, tries to capture resources specific to attorneys and corporate counsel in particular.

A. LEADERSHIP & EFFECTIVE COLLABORATION RESOURCES FOR CORPORATE COUNSEL

BOOKS

- # Howard J. Aibel, *Successful Teaming of Inside and Outside Counsel to Serve the Corporate Client*, MANAGEMENT FOR IN-HOUSE COUNSEL: TECHNIQUES, TOOLS, APPROACHES BAR ASSOCIATION SECTION OF ECONOMICS OF LAW PRACTICE 129 - 137 (ABA Section of Economics of Law Practice 1985).
- # General Counsel Roundtable, *A More Perfect Union - Extracting Greater Value Through Improved Outside Counsel Relationships* (2002).
- # Thomas L. Sager & James D. Shomper (eds.), *Leaps & Bounds: Moving Ahead With The DuPont Legal Model* (2001).
- # Debra H. Snider & Mark J. Ohringer, *Strategic Partnering for Legal Services*.
- # Washington State Bar Association, *Effective Collaboration: Keys to Success for Corporate In-House Counsel and Outside Counsel* (Program co-chairs David R. Goodnight and Greg Tolbert) (May 13, 2004).
- # West Group & American Corporate Counsel Association, *Successful Partnering Between Inside and Outside Counsel* (June 2003 red. Ed.) [Four volume treatise, Robert L. Haig, ed.].
- # Peter D. Zeughauser, *Lawyers Are From Mercury - Clients Are From Pluto*.

## ARTICLES

- # J. Nick Badgerow, *Can't We all Just Get Along?: A Review of Successful Partnering Between Inside and Outside Counsel*, 70 JOURNAL OF THE KANSAS BAR ASSOCIATION 12 (March 2001)
- # N. Cornell Boggs, III, Michele Coleman Mayes, & Gloria Santona, *ACC 2004 Annual Meeting - Program 505: Leadership Skills for New General Counsel & Managing Attorneys*, ASSOCIATION OF CORPORATE COUNSEL (2004).
- # Timothy R. Brown, *Outside Counsel and General Counsel: Developing the Relationship* (2002) at www.tklaw.com.
- # Michael T. Burr, *GCs vs. Law Firms*, The Corporate Legal Times/LexisNexis Martindale-Hubbell 15th Annual Survey of General Counsel, 14 CORPORATE LEGAL TIMES No. 152 at 42 - 51 (July 2004)
- # Jill Schachner Chanen, *The Strategic Lawyer*, ABA JOURNAL 43 (July 2005).
- # Julie S. Congdon & Patricia M. Hamill, *Managing A Primer*, 21 ACCA DOCKET No. 4 (April 2003).
- # *Corporate Counsel Leadership: Building Winning Teams and Effective Legal Strategies*, METROPOLITAN CORPORATE COUNSEL at 56 (April 2005).
- # Richard de Bodo, *Building Teamwork Between In-House Counsel and Outside Litigators*, THE PRACTICAL LITIGATOR 14 (November 2006).
- # Fasken Martineau, *A Win-Win Strategy for Corporate and Outside Counsel: Collaboration and Business Discipline in Providing Legal Services* (August 2003), at www.fasken.com.
- # Jack L. Foltz & Steven A. Lauer, *The "Art" That Is Part of "Partnering,"* 17 CORPORATE COUNSEL'S QUARTERLY 70.
- # General Counsel Roundtable, *Outside Counsel Management: Beyond the Cost-Quality Trade-Off* (2001).

- # Phyllis Weiss Haserot, *Guidelines for Happy Client-Counsel Relationships*, 8 RAINMAKER'S REVIEW 6 (September 1998).
- # Ben W. Heineman, Jr., *Lawyers as Leaders*, 116 YALE L.J. POCKET PART 266 (2007).
- # Teresa T. Kennedy, *In-House & Outside Counsel - The Trust Factor*, 22 ACC DOCKET 25 (January 2004).
- # Robert E. Kerrigan, Jr. & Marc J. Yellin, *Partnering and Strategic Trading Alliances Between In-House and Outside Counsel*, 497 PRACTICING LAW INSTITUTE 487 (March-April 1994).
- # Jason Krause, *The Cisco Way*, ABA JOURNAL 53 (September 2005).
- # Frederick J. Krebs & Deborah M. House, *Leadership Training for Attorney Managers: If You Lead, will They Follow?* ACC DOCKET, 78 - 87 (June 2007).
- # Marci M. Krufka, *Chief Legal Officers Have Spoken, But Are Law Firms Listening?* 22 OF COUNSEL 12 (April 2003).
- # Michael J. Morse, *Partnering with In-House Counsel*, GP SOLO 38 (July/August 2004).
- # W. Scott O'Connell & Marcus E. Cohn, *Effective Collaboration: Twenty Practical Considerations for Corporate Counsel*, DEFENSE COUNSEL JOURNAL 401 (October 2005).
- # Ellen Ostrow, *20 Ways To Become A Leader*, 77 WISCONSIN LAWYER 28 (March 2004).
- # Richard B. Rothwell, *In Good Company - Build Better Partnerships With Corporate Clients*, 14 ALA NEWS 20 (December 1995/January 1996).
- # Greg Tolbert, David R. Goodnight, & Vanessa Power, *Leadership in Lawyering; The Role of Leadership in Effective Collaboration Between Corporate and Outside Counsel*, 58 WASHINGTON STATE BAR NEWS No. 6 at 14 - 22 (June 2004).
- # Greg Tolbert & David R. Goodnight, *Creating Value: Effective Collaboration Between Corporate Counsel and*

*Outside Counsel*, Chapter 3 WSBA Program Manual for Effective Collaboration: Keys to Success for Corporate in-House Counsel and Outside Counsel (Washington State Bar Assoc. May 13, 2004).

- # Greg Tolbert & Galen Schuler, *Tips on Effective Collaboration Between Corporate Counsel and Outside Counsel*, 13 CORPORATE COUNSEL, (Washington State Bar Assoc. Summer 2002).
- # Greg Tolbert & James A. Gillespie, *Effective Collaboration With Outside Counsel: Putting A Tent Over This Circus*, 49TH ANNUAL INSTITUTE, ROCKY MOUNTAIN MINERAL LAW FOUNDATION (July 2003).
- # *Avoiding the House Divided: Mutual Strategies for Inside and Outside Counsel Panel Discussion*, 56 ANTITRUST LAW JOURNAL 159 (35th Annual Spring Meeting - 1987).
- # *General Counsel's Pet Peeves*, 7 RAINMAKER'S REVIEW 3 (September 1997).
- # *How To Keep Cost-Conscious Clients From Jumping Ship*, PARTNER'S REPORT (October 2002).
- # *What Your Clients Really Want and How Partners Can Meet These Needs - - And More*, PARTNER'S REPORT (June 1999).
- # Robert Vosper, *Better Clients - Law Firm Lawyers Speak Out About Their Clients' Shortcomings*, INSIDE COUNSEL p. 44-46 (September 2006).

#### OTHER

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- # The Partnering Law Institute (founded by Law Partnering Inc. of Prescott Arizona), [www.lawpartnering.com](http://www.lawpartnering.com)

#### B. GENERAL LEADERSHIP & EFFECTIVE COLLABORATION RESOURCES

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##### LEADERSHIP

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- # Warren G. Bennis & Burt Nanus, *LEADERS: STRATEGIES FOR TAKING CHARGE* (1997).
- # Warren G. Bennis & Robert J. Thomas, *GEEKS AND GEEZERS* (2002).
- # Peter Block, *STEWARDSHIP: CHOOSING SERVICE OVER SELF-INTEREST* (1993).
- # J. Burns, *LEADERSHIP* (1978).
- # Ram Charan, *KNOW-HOW: THE 8 SKILLS THAT SEPARATE PEOPLE WHO PERFORM FROM THOSE WHO DON'T* (2007).
- # James C. Collins, *GOOD TO GREAT: WHY SOME COMPANIES MAKE THE LEAP ... AND OTHERS DON'T* (2001).
- # Max DePree, *LEADERSHIP IS AN ART* (1987).
- # Daniel Goleman, *What Makes a Leader?* HARVARD BUSINESS REVIEW (January 2004).
- # Spencer Johnson, *WHO MOVED MY CHEESE?* (2000).
- # Jon R. Katzenbach, *TEAMS AT THE TOP* (1998).
- # John P. Kotter, *THE LEADERSHIP FACTOR* (1988).
- # John P. Kotter, *What Leaders Really Do*, HARVARD BUSINESS REVIEW (1990)
- # Gordon MacKenzie, *ORBITING THE GIANT HAIRBALL: A CORPORATE FOOL'S GUIDE TO SURVIVING WITH GRACE* (1998).
- # Jerry Porras & James C. Collins, *BUILT TO LAST: SUCCESSFUL HABITS OF VISIONARY COMPANIES* (1997).
- # Jerry Porras, Stewart Emery, & Mark Thompson, *Success BUILT TO LAST: CREATING A LIFE THAT MATTERS* (2007).
- # Dennis A. Romig, *SIDE BY SIDE LEADERSHIP: ACHIEVING OUTSTANDING RESULTS TOGETHER* (2001).

## THE RULES

- # Noel Tichy & Nancy Cardwell, *THE CYCLE OF LEADERSHIP: HOW GREAT LEADERS TEACH THEIR COMPANIES TO WIN* (2002).

## EFFECTIVE COLLABORATION

- # Warren G. Bennis & Patricia Ward Biederman, *ORGANIZING GENIUS: THE SECRETS OF CREATIVE COLLABORATION* (1997).
- # Edward De Bono, *SERIOUS CREATIVITY: USING THE POWER OF LATERAL THINKING TO CREATE NEW IDEAS* (1993).
- # Tim Sanders, *LOVE IS THE KILLER APP* (2002).
- # Susan Scott, *FIERCE CONVERSATIONS: ACHIEVING SUCCESS AT WORK AND IN LIFE ONE CONVERSATION AT A TIME* (2002).
- # David Straus, *How To Make Collaboration Work* (2002).
- # Robert I. Sutton, *THE NO ASSHOLE RULE: BUILDING A CIVILIZED WORKPLACE AND SURVIVING ONE THAT ISN'T* (2007).

## ASSESSMENT TOOLS

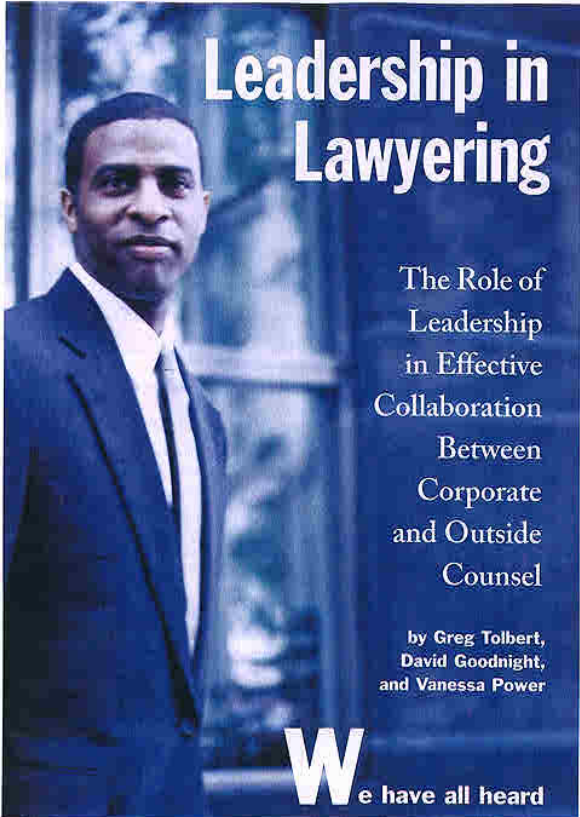
- # Marcus Buckingham & Curt Coffman, *FIRST, BREAK ALL THE RULES: WHAT THE WORLD'S GREATEST MANAGERS DO DIFFERENTLY* (1999).
- # Marcus Buckingham & Donald O. Clifton, *NOW, DISCOVER YOUR STRENGTHS* (2001).
- # Gallup's StrengthsFinder Profile

## MANAGEMENT/FEEDBACK

- # Center for Creative Leadership & Sloan R. Weitzel, *Feedback Tat Works: HOW TO BUILD AND DELIVER YOUR MESSAGE* (2007)
- # Gallup, Great Manager's Program
- # Tom Rath, *VITAL FRIENDS: THE PEOPLE YOU CAN'T AFFORD TO LIVE WITHOUT* (2006).

## COMMUNICATION

- # Myles Martel, *Leadership Legacies: Words to Enlighten, Persuade and Inspire* (2005).



# Leadership in Lawyering

The Role of Leadership in Effective Collaboration Between Corporate and Outside Counsel

by Greg Tolbert, David Goodnight, and Vanessa Power

**W**e have all heard

horror stories about cases spinning wildly out of control, fees increasing exponentially, and clients feeling drained and unhappy with final results. There is never one simple reason for such unfortunate situations, but there is often one common denominator in the equation: lack of leadership.

When we talk about leadership, images of political and military leaders — from Winston Churchill to General Dwight D. Eisenhower — may come to mind. We do not generally think about the critical role leadership plays in every-

day lawyering. When selecting outside counsel, corporate counsel generally look at a firm's reputation and a lawyer's academic credentials, expertise, and experience; and talk to friends and colleagues about their options.

What is not often (or easily) assessed is the leadership quotient. This is the vital, and too often missing, component in effective collaboration between corporate and outside counsel.

The long-term health and stability of client relationships should be a primary concern for outside counsel. To develop healthy and stable client relationships, outside counsel need to work with corporate counsel to set common goals and objectives. This takes "bifocal" vision — the ability to take short-term needs into account while guiding action toward reaching long-term business goals. Ultimately, it takes leadership in lawyering.

This article is divided into three sections. The first covers the basics of effective collaboration, identifying typical mistakes and the key components of healthy partnerships. The second analyzes the role of personality, and leadership in particular, in successful partnering between corporate and outside counsel and in effective representation. The third provides practical tips for effective collaboration.

### The Basics of Effective Collaboration

We begin, of course, where we always begin. Every client — small or large — desires high-quality legal representation at a reasonable cost. Simple enough, but not always achieved.

In this section, we discuss three keys to effective collaboration. First, however, we identify typical mistakes that must — absolutely must — be pushed out of a relationship to collaborate effectively.

#### Typical mistakes

There are numerous barriers to effective collaboration. Both corporate and outside counsel should be sensitive to the following and develop appropriate practices to minimize the deleterious effects of these barriers to effective collaboration:

- Failure to communicate;
- Failure to plan;

- Adding baggage, not value;
- Ignoring billing and budgeting; and
- Doing unnecessary work.

At the risk of oversimplifying things, effective collaboration is both a high-level commitment to successful partnering (i.e., attitude matters) and a hands-on practical approach to delivering more value through practices that enable better collaboration.

#### **Key components of successful partnerships**

As with all things in life, before you can progress, you need to master the basics. In developing an effective relationship between corporate and outside counsel there are "Three Bs" to keep in mind:

1. Outside counsel should become insiders to the business;
2. Pay attention to billing and budgeting; and
3. Balance the competencies of corporate and outside counsel.<sup>1</sup>

#### **1. Business 101**

Effective collaboration between corporate and outside counsel is not "business as usual." It will not occur without the active commitment of both corporate counsel and outside counsel, and it will not occur without a front-end understanding of the company and the business.

To educate outside counsel about the company's business and/or the company's approach to legal representation, corporate law departments may wish to provide an orientation session for outside counsel. These structured sessions (which likely generate the most value for significant legal representations — e.g., multiparty litigation, class actions, large acquisitions or divestitures, initial public offerings, etc.) for individual attorneys; a key law firm, or multiple firms provide an opportunity to get everyone on the same page, provide an insight to the corporation and its culture, and leverage the corporation's existing resources.

#### **2. Pay attention to billing and budgeting**

Although there are obvious reasons to substantiate the need for effective collaboration between corporate and out-

side counsel, one explanation that is always current is money, money, money. Simply stated, for most corporate law departments, the expense of outside counsel is the largest single budget item. Although effective collaboration between corporate counsel and outside counsel does not necessarily equate with lower outside-counsel expenses, it does help improve the odds considerably that those monies will be well spent in the course of serving the client's objectives.

Effective collaboration requires a representation plan and budget that can be periodically updated. Budgets force outside counsel and corporate counsel to focus on the work that needs to be done and the most cost-effective ways to do it. In addition, a budget decreases the temptation to make *ad hoc* decisions.

In the face of uncertainty about client expectations, it is natural for outside counsel to try to preserve some room to maneuver. Some might call this prudent management of client expectations; some might call it something worse. Either way, corporate counsel can help the budgeting process by communicating client expectations about the budget amount they believe to be necessary or justified for a particular matter. With a clearer understanding of client budget expectations and more explicit decisions as to what work is needed or not needed, outside counsel can do a better job of ruling out less-essential work to determine whether the client's budget can be achieved without compromising professional standards.

To prevent misunderstandings and promote confidence, outside counsel (especially large law firms) should ensure that billing statements are reviewed for value and accuracy by the lawyers performing the bulk of the representation. This may seem obvious, but in practice this is a major and not infrequent problem. In the end, the issue boils down to trust. Because money is at stake, billing mistakes undermine effective collaboration by eroding the confidence of both corporate counsel and the client in outside counsel. Trust is lost. The relationship is damaged.

Because trust is at stake, it is absolutely critical that outside counsel wisely guard against inaccurate or low-value billing.

#### **3. Balance strengths of corporate and outside counsel**

Corporate and outside counsel have complementary core competencies. In a recent exhaustive study,<sup>2</sup> the General Counsel Roundtable identified the following core competencies:

##### **Corporate Counsel Core Competencies**

- Company and industry knowledge
- Familiarity with individual business clients
- Relatively low-cost provider
- Interests aligned with company's interests
- Convenient access to documents and parties
- Business perspective, skills, and judgment
- Multidisciplinary experience

##### **Outside Counsel Core Competencies**

- Breadth of experience
- Staffing capability and flexibility
- Independent perspective
- Expertise in discrete area
- Ability to spread costs of infrastructure
- Number of professional contacts
- Broad geographical representation

The challenge is merging and maximizing these core competencies effectively and efficiently. This cannot be done without effective communication. It cannot be done without leadership. And it cannot be done without individuals who, depending upon the situation, can transition *easily* from a leadership role to a support role.

#### **The Role of Leadership in Effective Partnerships**

Successful partnering between corporate and outside counsel takes an understanding of common goals and objectives. It also requires a captain at the helm of the ship. Far too often, cases and transactions become weighted down by the volume of minutiae and the momentum of the process or, in the case of litigation, case schedules.

There are numerous serious and costly problems with a captain-less ship. A litigation matter, for instance, can easily be driven by a mindless court schedule generated by a clerk's office, or lawyers simply noting depositions and

taking other discovery without careful thought as to the client's real goals. The schedule and discovery may, or may not, have any meaningful relationship to the dispute. It might, for example, call for 16 months of discovery in a case where little or no discovery is needed. Or it might not call for mediation for 12 months into a case where mediation should occur immediately.

Part of the problem is that the legal system is essentially designed for brain surgery. If a patient comes in with a simple mole that needs to be removed, the system still pulls out all the tools for

major brain surgery. That is, it does so in the absence of leadership.

The result? Without clear leadership from either corporate or outside counsel, the partnership between corporate and outside counsel envisioned above simply breaks down and the legal matter ambles along on its own, costly, accord. Another result is an amorphous relationship that does not serve the need of the company — the ultimate client — to meet its business objectives. Yet another result is a colossal waste of time and money.

Over the last 25 years, the legal pro-

cess has become increasingly costly. Along with that increase in costs, the role of outside counsel has morphed from providing purely legal advice and analysis to working as a partner in ensuring a thriving business. It is absolutely critical that outside counsel recognize the role as one mandating not only standard lawyering skills (expertise, analysis, and judgment) but also meaningful leadership ability that translates into good direction, initiative, and vision.

To quote a popular maxim, counsel today must lead, follow, or get out of the way.

#### **Leadership**

Enormous work has been done on leadership in the for-profit and nonprofit fields, and many people reading this article will have read a number of popular leadership bestsellers — books like the terrific *Built to Last* and *Good to Great*, the inspiring *Leadership Jazz*, and *Geeks and Geezers*.<sup>3</sup> Leadership forums have developed, especially in the nonprofit sector. Willow Creek's annual "Summit" draws thousands of leaders from around the world, now with satellite conferences in many major cities around the United States.

Both for-profit and nonprofit corporations place a high premium on high-level and day-to-day leadership. This is reflected in the salaries (some might argue absurdly high salaries) paid to some corporate CEOs.

The same is not true, however, of the legal profession. When one thinks of leadership and lawyers, one tends to think of the bar association, or committee or positional leadership work within a firm or corporation. "Lawyer Jones chairs a judicial review committee." Or "my colleague Smith chairs a group of estate planning lawyers at a national firm."

These leadership roles may have little or nothing to do with the type of leadership that is required to ensure effective collaboration between corporate counsel and outside counsel — or the effective working of a case, for that matter. Lawyers, generally, simply have not placed much value on leadership within cases or on corporate law projects. Instead, we talk about analytical ability, judgment, and experience.



Traditionally, law schools have paid even less attention to leadership, while business schools have keyed in on the subject for years. Now with increasing intensity, law schools remain focused largely on the traditional nuts and bolts of lawyering and the skills required for the practice of law. Law students are rewarded for analytical and writing ability, and rightly so. Yet in the day-to-day practice of law, leadership is absolutely vital.

The premise of this article is that these traditional lawyering qualities, while they form what you might think of as an essential baseline, are not adequate and do not substitute for effective leadership.

Effective leadership is especially important in complex or multiparty cases. If four, five, or more parties, each with separate counsel, do not have the benefit of some overarching leadership, it is almost certain that the legal work will suffer and/or be considerably more expensive than necessary. Lawyers and clients will bicker. Egos will arise and vie for center stage. Work will be duplicated, without much effectiveness. Judges will read duplicative pleadings because the lawyers are not working together in a coordinated fashion. It happens all the time.

The leadership vacuum, we think, is often compounded in litigation. This is because the vast majority of judges are not natural leaders. Some judges, particularly federal court judges, have adopted supra-rule practices to help control their cases. Some have even adopted orders controlling cases. These orders require structure and impose obligations on lawyers beyond those contained in the rules. But if a judge offers no leadership in managing the case, the role falls to the lawyers — should the lawyers fail to lead, the case will be governed by the run-of-the-mill case schedule.

So what does leadership look like in this lawyer/leader context?

One might trigger a large variety of answers in attempting to define the qualities that are inherent in leadership. Raymond Cattell, a pioneer in the field of personality assessment, developed the "Leadership Potential Equation." His work is not tailored to the legal profes-

sion but offers interesting insight nonetheless. He found that traits of an effective leader include the following:<sup>4</sup>

- **Emotional stability.** Good leaders must be able to tolerate frustration and stress. Overall, they must be well adjusted and have the psychological maturity to deal with anything they are required to face.

- **Dominance.** Leaders are often competitive and decisive, and usually enjoy overcoming obstacles. Overall, they are assertive in their thinking style as well as their attitude in dealing with others.

- **Enthusiasm.** Leaders are usually seen as active, expressive, and energetic. They are often very optimistic and open to change. Overall, they are generally quick and alert, and tend to be uninhibited.

- **Conscientiousness.** Leaders are often dominated by a sense of duty and tend to be very exacting in character. They usually have a very high standard of excellence and an inward desire to do their best. They also have a need for order and tend to be very self-disciplined.

- **Social boldness.** Leaders tend to be spontaneous risk-takers. They are usu-

ally socially aggressive and generally thick-skinned. Overall, they are responsive to others and tend to be high in emotional stamina.

- **Tough-mindedness.** Good leaders are practical, logical, and to-the-point. They tend to be low in sentimental attachments and comfortable with criticism. They are usually insensitive to hardship and, overall, very poised.

- **Self-assurance.** Self-confidence and resiliency are common traits among leaders. Leaders tend to be free of guilt and have little or no need for approval. They are generally secure and free from

guilt, and are usually unaffected by prior mistakes or failures.

- **Compulsiveness.** Leaders were found to be controlled and very precise in their social interactions. Overall, they were very protective of their integrity and reputation, and consequently tended to be socially aware and careful, abundant in foresight, and very careful when making decisions or determining specific actions.

Outside of basic leadership traits, successful leaders must also possess personality traits that allow them to envi-

sion the future and convince others that their vision is worth following. These personality traits include:<sup>5</sup>

- **High energy.** Long hours and some travel are usually a prerequisite for leadership positions, especially as your company grows. Remaining alert and staying focused are two of the greatest obstacles you will have to face as a leader.

- **Intuitiveness.** Rapid changes in the world today combined with information overload result in an inability to "know" everything. In other words, knowledge, reasoning, and logic will not get you through all situations. In fact, more and more leaders are learning the value of using their intuition and trusting their "gut" when making decisions.

- **Maturity.** To be a good leader, personal power and recognition must be secondary to the development of your employees. In other words, maturity is based on recognizing that more can be accomplished by empowering others than by ruling others.

- **Team orientation.** Business leaders today put a strong emphasis on teamwork. Instead of promoting an adult/child relationship with their employees, leaders create an adult/adult relationship, which fosters team cohesiveness.

- **Empathy.** Being able to "put yourself in the other person's shoes" is a key trait of leaders today. Without empathy, you can't build trust. And without trust, you will never be able to get the best effort from your employees.

- **Charisma.** People usually perceive leaders as larger than life. Charisma plays a large part in this perception. Leaders who have charisma are able to arouse strong emotions in their employees by defining a vision that unites and captivates them. Using this vision, leaders motivate employees to reach toward a future goal by tying the goal to substantial personal rewards and values.

In the end, this listing of qualities, while perhaps instructive, is one of dozens of attempts to define in words what people know to be true: some people are natural leaders. They know how to get from A to Z — and others will follow them along the way. It is, to be sure, far beyond our competence or ability to attempt to define leadership in so many

words. We believe, however, that leadership is a gift of sorts. It can be developed. But some people have this gift and others simply do not.

#### *Leadership as the cornerstone to successful lawyering*

##### *For corporate counsel*

Leadership principles should generally inform your attitude and translate into a number of behaviors when interacting with outside counsel, an opposing party in a transaction or litigation, or the court:

- **Hire a leader.** It will make your life easier.
- **Define the objective of the representation early, clearly, and repeatedly.** If you've hired the right leader, he or she should be able to get you there.
- **Provide meaningful guidance from beginning to end.** Too often, corporate counsel simply hire outside counsel and thereafter provide little meaningful guidance. One simply must engage on a substantive level if the representation is to be effective.
- **Facilitate an exchange of information.** Outside counsel, in litigation or in the course of a transaction, will generally not have the knowledge of the company required to obtain critical information. You must assist in this process.
- **Make informed judgments and then stand with outside counsel.** A leader does not stand back and point the finger when things go south. That is not leadership; it is weakness. Judgments should be made together, with full knowledge of risks. Thereafter, corporate and outside counsel should work together through good or bad. If problems arise (and they will), leaders fix the problem; they do not affix the blame.
- **Get involved.** With few exceptions, corporate counsel should be providing meaningful guidance on transactional documents, briefs, mediation submission, and strategy, and at trial.

##### *For outside counsel*

To be effective, outside counsel must provide leadership to the client, colleagues, co-counsel, opposing counsel, and the court. As with corporate counsel, this requires a constructive attitude and a number of behaviors:

- **Keep the client's business objective in mind.** This is particularly true when a "team" of lawyers is at work. Lead counsel must keep the big picture — from the client's perspective — in mind at all times.
- **Remember, relationships matter.** As a leader, your relationships with colleagues, co-counsel, court staff, in-

house staff, and opposing counsel are absolutely critical. You must pay attention to relationships. Many cases and legal projects are thrown off course because relationships are not sufficiently valued. Some fine, highly skilled lawyers create additional expense and difficulty for their clients by not paying attention to this rule.

- **Don't surprise the client.** Your client should know what you are doing, what you are not doing, and why. Clients deserve regular weekly updates showing work accomplished, work

to be performed, and results obtained.

- **Communicate, communicate, communicate.** Your client deserves to know what is happening on any case, even a small one. Communication should be characterized by openness and trust. If communication breaks down, trust will break down.
- **Provide initial and updated budgets.** Clients also deserve to know what you think a project will cost. And they deserve to know what it actually costs.

#### **Practical Tips and Simple Tools for Effective Leadership**

The following are tips for building a better relationship between corporate and outside counsel:

- **Ask outside counsel to lead.** Simply make it clear from the beginning of the representation that you expect more than good thinking and writing. You expect results, and you expect leadership to get those results. Make it clear that outside counsel's role is a global role, not a technician's role.

- **Educate outside counsel.** At the beginning of each new representation, corporate counsel should provide outside counsel with a briefing on client objectives, client personnel, decision-making, control structure, and client expectations on the frequency and detail of communications and decisions.

- **Representation plan.** Outside counsel should develop a representation plan early in the engagement for the client's review and approval. The plan should be regularly updated and used as a tool for measuring performance and managing costs. A representation plan can add value by identifying those areas where corporate counsel and clients can efficiently provide information and those areas where outside counsel should concentrate their efforts. The plan should include a shared strategy to obtain the desired results.

- **Status reports.** Outside counsel should provide weekly or monthly status reports, highlighting new developments and tasks so that corporate counsel is continually, and automatically, kept up-to-date in real time. See page 22 for a sample report. Reports should be sent electronically and should highlight any new or critical information. The sample report is designed to be read in 30-60 seconds.

- **Budget to actual comparisons.** As outside counsel, provide at least quarterly budget reports to actual comparisons for each matter, showing a cumulative total. Include new matters not budgeted for at the outset. See page 22 for a sample quarterly budget.

- **Hold periodic team meetings.** Client representatives should be included in periodic team meetings. These meetings serve to redefine the goals of the repre-



sentation, identify risks and challenges, and discuss strategy. These are especially important in multiparty or multilawyer cases.

• **Keep the team informed.** Too often, lawyers communicate selectively. While this is sometimes appropriate, it is imperative to avoid triangulation. E-mails should be copied to all concerned, not to selected favorites. Controversial strategic and briefing decisions should be disclosed and discussed, not hidden or popped as a surprise.

• **Be responsive.** Promptly return telephone calls and respond to correspondence. If co-counsel called, assume it was important; if you return a call that you do not find important, consider it an opportunity to clarify expectations and reduce the risk of future misunderstandings as to what is and is not important in the representation and the co-counsel relationship.

• **Communicate more, not less.** When in doubt, ask or confirm. Speak plainly if there are perceived problems or disagreements, and develop a skin thick enough to hear and consider plain speech from co-counsel without harboring hurt feelings or injured pride. It is natural to want to avoid difficulties, but solutions require more intensive communication — not less.

**Conclusion**

Effective collaboration between corporate counsel and outside counsel adds value, reduces costs, and substantially improves the odds that the client will obtain high-quality legal representation at a reasonable cost. Leadership in lawyering and the ability to transition easily between a leadership role and a supporting role as the situation requires are essential components to an effective, collaborative relationship. ✍

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*School of Public Affairs. The authors co-chaired a WSBA CLE in Seattle on May 13 entitled "Effective Collaboration: Keys to Success for Corporate In-house and Outside Counsel."*

**NOTES**

<sup>1</sup> See "Ask the Practical Questions: the Three Bs of Partnering," *Corporate Legal Times* (Sept. 1999), at 1.2.

<sup>2</sup> See General Counsel Roundtable, *Outside Counsel Management: Beyond the Cost-Quality Trade-Off*, at 96 (2001).

<sup>3</sup> *Built to Last: Successful Habits of Visionary Companies*, by James C. Collins and Jerry I. Porras; *Good to Great: Why Some Companies Make the Leap ... and Others Don't*, by James C. Collins; *Leadership Jazz*, by Max Depree; *Geeks and Geezers*, by Warren G. Bennis and Robert J. Thomas.

<sup>4</sup> See Raymond B. Cattell, *The Scientific Analysis of Personality* (1965), chap. 4.

<sup>5</sup> See United States Small Business Administration, "Leadership Traits," at [www.sba.gov/managing/leadership/traits.html](http://www.sba.gov/managing/leadership/traits.html) (Feb. 20, 2004).

**Sample Weekly Status Report**

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**To:** Corporate Counsel  
**CC:** Client's Business Representatives  
**From:** Outside Counsel  
**Date:** March 9, 2004  
**Re:** Status Update

<b>Status:</b>	Motion for protective order granted March 5. Discovery cutoff March 30. Final hearing scheduled for May 30.	
<b>Items Completed this Week</b>	<ol style="list-style-type: none"> <li>1. Outside counsel prepared letter to petitioners regarding itinerary for site visit.</li> <li>2. Client's business representative provided copies of photos for demonstrative exhibits at final hearing.</li> <li>3. Outside counsel prepared and filed motion to compel discovery responses (see attached). Motion is noted for March 18.</li> </ol>	
<b>Action Items</b>	<ol style="list-style-type: none"> <li>1. Team meeting to prepare for final hearing and discuss possible PowerPoint presentation, demonstrative exhibits, and amicus draft.</li> <li>2. Prepare motion for partial summary judgment.</li> <li>3. Site visit.</li> <li>4. Final hearing.</li> </ol>	3/15 @ 1:30 pm 4/10 3/24 5/30
<b>Ongoing Discussion Items:</b>	<ul style="list-style-type: none"> <li>• Discussion regarding which charts/maps/PowerPoint we should use for final hearing.</li> <li>• Brainstormed ideas at 2/10 team meeting and 2/24 team meeting.</li> <li>• Possible demonstrative exhibits: financial statements.</li> <li>• Possible PowerPoint slides showing expert analyses and chart designating conclusions.</li> </ul>	
<b>Objective:</b>	Resolve pending lawsuit and determine long-term strategy to prevent future actions based on similar issues.	

**Sample Quarterly Budget Report**

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**To:** Corporate Counsel  
**From:** Outside Counsel  
**Date:** March 9, 2004  
**Re:** Fourth Quarter 2003 Budget Projections and Third Quarter 2003 Budget-to-Actual Comparison

<b>Budgeted Fees/Costs Quarter Ending September 30, 2003:</b>		<b>\$40,000</b>
<b>Actual Fees and Costs Quarter Ending September 30, 2003:</b>	<b>Fees:</b>	29,314
	<b>Costs:</b>	1,245
	<b>Total:</b>	<b>30,559.00</b>
<b>Over/Under Budget</b>		<b>-9,441</b>
<b>Milestones:</b>	Outside counsel prepared a litigation risk analysis regarding the client's claim for breach of contract against purchaser of products. Outside counsel reviewed background documents, confirmed facts, and prepared and filed complaint. Outside counsel prepared draft motion for TRO.	
<b>Budget, Tasks, Goals for Quarter Ending December 31, 2003:</b>	October: Finalize and file motion for TRO. Propound discovery requests. Note Rule 30(b)(6) deposition.	20,000
	<b>Total October:</b>	<b>20,000</b>
	November: Discovery and motion practice.	10,000
	<b>Total November:</b>	<b>10,000</b>
	December: Discovery and motion practice.	10,000
	<b>Total December:</b>	<b>10,000</b>
<b>Total for Quarter:</b>	<b>\$40,000</b>	
<b>Objectives:</b>	Resolve pending lawsuit and determine long-term strategy to prevent future actions based on similar issues.	



**Creative Leadership & Teambuilding  
within the  
Legal Department**

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Janice Innis-Thompson  
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Association of Corporate  
Counsel

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## Agenda

- Introduction and overview.
- Leadership as a concept.
- Opportunities for Leadership.
- Practical tips for exercising Leadership.
  - Yourself
  - Outside Counsel
  - Clients
  - The Legal Department
  - Strategic Planning

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## What is Leadership?

- Passion.
- Vision, insightfulness and belief.
- Communication and inspiration.
- Attracting and empowering others.
- Courage.

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## Why is Leadership Important?

- For sustainable success.
- To focus, prioritize and fight the battles.
- To balance business needs and legal requirements.
- To inspire trust and confidence.
- To create, motivate, and sustain the team.
- To serve the stakeholders.

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## Common Obstacles to Effective Leadership?

- Misalignment of vision.
- Failure to communicate effectively.
- Failure to persuade.
- Failure to empower.
- Failure to prioritize.
- Loss of confidence.

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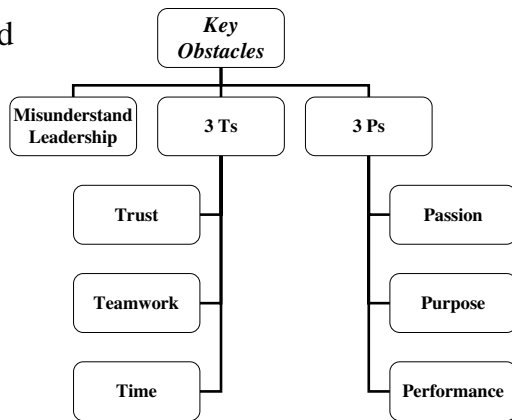
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## Obstacles to Effective Leadership

- Misunderstand leadership
- 3 Ts
- 3 Ps
- Poor model

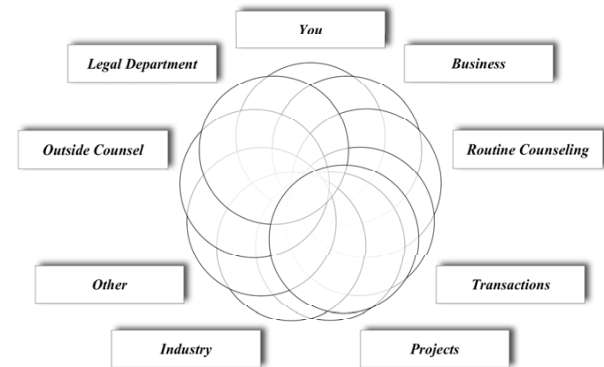


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## Traction for Common Obstacles



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## Essential Leadership Behaviors

- Honesty and integrity.
- Courage.
- Caring.
- Development.

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## Improving Leadership Skills

- Assessment
  - Use self assessment tools.
  - Other assessment.
- Feedback
  - Develop and use a strong network to get substantive feedback.
  - Provide feedback.

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## Improving Leadership Skills (continued)

- Define your vision.
- Communicate effectively.
- Build a good team.
- Development/Succession

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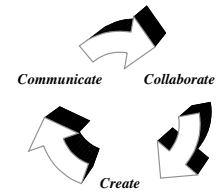
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## Potential Models

- Oblivious/fragmented
- Aligned
- Optimized

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## Practical tips in exercising Leadership.

- Yourself
- Outside Counsel
- Clients
- The Legal Department
- Strategic Planning

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## Yourself

- Be a continuous learner.
- Reflect.
- Try a different approach.
- Use your skills outside the corporation or legal department.

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## Yourself

- Take charge.
- Know your strengths & your limits.
- Personal vision statement.
- Be optimistic.
- Improve your social intelligence.



## Yourself (continued)

- Improve your communication skills.
- Build your brand.
- Career coaching
- Maintain integrity
- Is this the right workplace for you?



## Outside Counsel

- Hire leaders.
- Define the representation.
- Provide meaningful guidance.
- Use a representation plan and status reports.

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## Outside Counsel (continued)

- Facilitate the exchange of information.
- Make informed judgments.
- Get involved.
- Communicate.

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## Clients

- Learn the business.
- Anticipate legal needs.
- Understand the 'value measurements' most often used.
- Communication.

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## Your Legal Department

- Understand, teach, & develop leadership skills & behaviors.
- Nurture leadership personality traits.
- Understand & address the critical difference between management and leadership.

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## Strategic Planning and Leadership

- Sets the course.
- Identifies the issues.
- Creates a plan and a road map.
- Gets Leaders and followers on the same page.



## Components of Strategic Planning

1. Departmental mission statement.	2. Values to guide work.
3. Identify threats and opportunities.	4. Establish goals.
5. Develop Objectives/strategies to achieve goals.	6. Create action plan(s).
7. Implement action plan(s).	8. Adjust as required.



## Working with other Leaders.

- Corporate strategies.
- Client strategies.
- Budget.
- Interviews.
- Official and unofficial statements.

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## Strategic Planning as a Leadership Tool

- Demonstrate your Leadership.
- Respond to Strategic Planning.
- Travel with the Leaders.

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### CHOOSING A LEADERSHIP PATTERN

#### A. Five Basic Leadership Patterns

Managers usually choose from among five basic leadership patterns.

1. Tell—basically a one-way communication of saying to the staff: "Do this!"
2. Sell—primarily a "Tell" approach with "sugar coating." Here you communicate with the staff by saying one or more of the following: "Do this, because it is good for you, good for the client, good for the agency, and/or good for the world!"
3. Consult—Here you have three options. You say to the staff:
  - a. "Here is the problem, and here is my solution. What do you think of my solution?"
  - b. "Here is the problem. What do you think should be the solution?"
  - c. "What do think is the problem, and what do you think should be the solution?"

After you hear the responses of your staff for each of the foregoing options and discuss those responses, you make the final decision yourself. (We are not talking about voting here!!)

4. Delegate—This requires that you give away your authority to your subordinate to take actions and to make decisions at your subordinate's discretion. You can, however, put boundaries on this authority (e.g., not to spend more than \$10,000 and to complete the project in 60 days.) You still retain your responsibility for the results of what you have delegated, but your subordinate will also be responsible for what has been delegated to him or her. You can delegate authority either for a specific task or for numerous tasks falling within a given category (e.g., to handle all types of "X" cases coming into the office). Following are six degrees of delegated authority the attorney manager can employ:
  - a. Take action: No further contact needed.

- b. Take action: Let me know what you did.
  - c. Look into the problem: Let me know what you intend to do; then do it unless I say not to do it.
  - d. Look into the problem: Let me know what you intend to do; delay until I give approval.
  - e. Look into the problem: Let me know the alternatives and pros and cons, and recommend one.
  - f. Look into the problem: Give me all the facts. I will decide what to do.
5. Consensus—This requires that you make a final decision or take an action only when everyone being consulted will fully support that decision or action. This pattern of leadership does not require that each person being consulted believes that the final decision or action is the best decision or action to take. Rather, “consensus” means only that everyone will fully support the decision or action.

#### B. Will They Follow?

The factors that will determine whether or not the staff will willingly follow the attorney manager using one of the preceding five leadership patterns include:

1. The characteristics of the manager.
2. The characteristics of the staff.
3. The task and/or the situation.

#### C. Case Studies

Instructions: For each of the following brief scenarios, identify the leadership pattern or patterns you would use as the manager to get the staff to willingly follow you. Be prepared to discuss how: (1) the characteristics of the manager; (2) the characteristics of the staff; and (3) the task and/or the situation, will probably result (or not) in the staff willingly following you, given the leadership

pattern that you have chosen. Most cases will involve the use of two, three, or even four different leadership patterns.

1. You are a managing attorney in XYZ Inc.’s Legal Department. Your regulator has just issued regulations implementing a new statute. The regulations have a 90-day delayed effective date. Prior to their becoming effective, XYZ must create new processes and procedures for implementing the requirements so that the company will be in full compliance at the effective date.

You have been assigned the task of reviewing the company’s operations and creating and implementing an effective compliance program for this purpose. Unfortunately, the first draft of the proposed program must be forwarded to the General Counsel in one week. Even more unfortunately, two attorneys who are relatively inexperienced, are new to the department, and who have no in-house counsel experience have been assigned as the only staff you have to work with on this project. You tried to convince the General Counsel that you needed more experienced attorneys to work with you on this project. She understood why you would like this to happen, but explained there were no experienced attorneys available at this time.

As an experienced in-house counsel and an “old hand” in complying with regulatory frameworks, you know that this project will require a complete understanding of the company’s operations, and the application of the statute and regulations to those operations and negotiation with and education of your business clients as to how the program will be implemented and applied, etc. etc. In short, this is a major project. Still, you must do the analysis, create the plan, and propose it to the General Counsel in one week.

What leadership pattern (or patterns) would you use in supervising your two junior attorneys? Why do you think the pattern (or patterns) that you selected would result in the junior attorneys willingly following your supervision?

2. As part of an initiative to charge the costs of the Legal Department to those business clients who use the related legal services, the company’s CFO has sent a memo to the Legal Department announcing that three weeks from this coming Monday all in-house counsel will begin using a new timekeeping system. The Legal Department has traditionally resisted

any timekeeping system, arguing that it takes away from their time to do their “real” work and discourages clients from coming to them to get needed legal advice to the detriment of the company’s interests. As General Counsel you personally agree with the sentiments of your staff, and, in fact, argued long and hard against this new budgetary tactic. Being the supervisor, however, you must now deal with this directive.

What leadership pattern (or patterns) would you employ with your staff members in this situation? Why do you think the pattern (or patterns) you selected will result in your staff willingly following your supervision?

3. The company is on a fast track to create a new product that will require you to assign one of your attorneys to serve on a full detail to one of your business clients for the next month. At this time you have two employees available in the office who could handle this assignment.

Employee A, you know, could easily and effectively take care of this assignment. Although Employee A is somewhat busy at this time, she could still manage the detail without great difficulty.

You could also have Employee B take this assignment. Employee B is less experienced than Employee A, but is bright, competent, and hard working. Employee B has not worked on projects of this nature before, but he has always been willing to learn new things. Employee B is as busy as A, but could squeeze the assignment into his ongoing workload.

What leadership pattern (or patterns) would you employ in getting either Employee A or B to willingly take on this assignment? Which employee would you select for the detail, and why do you believe the leadership pattern you selected would lead that employee to willingly undertake the assignment?

4. You are the manager of a division within the Legal Department. You have been told that your division has been selected tentatively to test pilot an entirely new legal computer hardware and software system, which, if successful in your division, will later be installed throughout the Department.

Still, your boss does not want to force this project on you and your division if you do not want it. Your boss tells you that the testing of the system may create some significant problems for your division in getting

its work done since the system is experimental and may crash on occasion. Likewise, your boss acknowledges—as you already know—that while some people in your division are computer whizzes, others are computer neophytes, and some are completely resistant to joining the computer age. Your boss tells you the decision is up to you. “Get back with me in one week.”

What leadership pattern (or patterns) would you employ with your staff in making this decision? Why do you believe this leadership pattern (or patterns) would result in the staff willingly following?



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<b>ALTERNATIVE LEADERSHIP PATTERNS</b>			
	Characteristics of the Manager	Characteristics of the Staff	Task and/or Situation
<b><u>TELL</u></b>	<ul style="list-style-type: none"> <li>-Expert</li> <li>-Experienced</li> <li>-Decisive</li> <li>-Charismatic</li> <li>-Trusted by staff</li> <li>-Lower in affiliation</li> <li>-High in power</li> <li>-High in achievement</li> <li>-Good communicator</li> </ul>	<ul style="list-style-type: none"> <li>-New</li> <li>-Inexperienced</li> <li>-High-low in achievement</li> <li>-High in affiliation</li> <li>-Team player</li> <li>-Capable of doing the job</li> <li>-Trust managers</li> </ul>	<ul style="list-style-type: none"> <li>Crisis</li> <li>No alternative</li> <li>No choice</li> <li>Achievable</li> <li>Little time</li> <li>No flexibility</li> </ul>
<b><u>SELL</u></b>	<ul style="list-style-type: none"> <li>-Know the staff &amp; what they will "buy"</li> <li>-Know what you are selling</li> <li>-Know benefits &amp; costs of what you are selling</li> <li>-Good communicator</li> <li>-Persuasive</li> <li>-High power</li> <li>-High achievement</li> <li>-High affiliation</li> </ul>	<ul style="list-style-type: none"> <li>-Knowledgeable</li> <li>-Experienced</li> <li>-Low-high achievement</li> <li>-Low-high power</li> <li>-High affiliation</li> <li>-Trust manager</li> <li>-Team player</li> </ul>	<ul style="list-style-type: none"> <li>-Need acceptance &amp; support from staff</li> <li>-Specific task</li> <li>-Changes in practices, policies, procedures, etc.</li> <li>-Disagreeable task</li> <li>-Some time to communicate</li> </ul>
<b><u>CONSULT</u></b>	<ul style="list-style-type: none"> <li>-Experienced-Inexperienced</li> <li>-Open to change</li> <li>-Some expertise</li> <li>-Low-high power</li> <li>-Low-high achievement</li> <li>-High affiliation</li> <li>-Group management skills</li> <li>-Know staff</li> <li>-Communication skills</li> <li>-Listening skills</li> <li>-Secure in hearing dissenting ideas</li> </ul>	<ul style="list-style-type: none"> <li>-Experienced</li> <li>-Expert</li> <li>-Communication &amp; listening skills</li> <li>-Want to be consulted</li> <li>-High power, achievement &amp; affiliation</li> <li>-Will be affected by decision</li> <li>-Will implement decision</li> <li>-Has power to block the decision</li> <li>-Honest with boss</li> <li>-Trust manager</li> </ul>	<ul style="list-style-type: none"> <li>-Complex task</li> <li>-No "right" answer</li> <li>-Want support from staff to implement</li> <li>-Time to consult</li> </ul>
<b><u>DELEGATE</u></b>	<ul style="list-style-type: none"> <li>-Experienced-Inexperienced</li> <li>-Trusts staff</li> <li>-Knows staff's strengths/weaknesses/likes/dislikes</li> <li>-Low-high power</li> <li>-High affiliation</li> <li>-Low-medium achievement</li> <li>-Good communicator</li> <li>-Knows task being delegated</li> </ul>	<ul style="list-style-type: none"> <li>-Experienced</li> <li>-Will accept delegated authority &amp; accountability</li> <li>-High achievement, power &amp; affiliation</li> <li>-Self-starter</li> <li>-High personal motivation</li> <li>-Team player</li> <li>-Reliable</li> <li>-Good communication &amp; listening skills</li> <li>-Good judgment</li> </ul>	<ul style="list-style-type: none"> <li>-Used to train/develop staff</li> <li>-Manager doesn't have time to do</li> <li>-Geographical distance</li> <li>-Specific task</li> <li>-Area of responsibility</li> <li>-Not "sensitive"</li> </ul>
<b><u>CONSENSUS</u></b>	<ul style="list-style-type: none"> <li>Same as under CONSULT plus:</li> <li>Not wedded to "one approach"</li> <li>Wants a "creative" solution</li> <li>Willing to devote the necessary time</li> </ul>	<ul style="list-style-type: none"> <li>Same as under CONSULT plus:</li> <li>Not wedded to "one approach"</li> <li>Wants a "creative" solution</li> <li>Willing to commit necessary time to finding a solution</li> <li>Good group participation skills</li> <li>Low-high achievement, affiliation</li> </ul>	<ul style="list-style-type: none"> <li>Same as under CONSULT plus:</li> <li>Need total support from staff and all those affected by the decision</li> <li>Needs "lots" of time</li> <li>Decision affects all staff</li> </ul>

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		& power	Issues of any kind but not "politically sensitive"
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## Leadership Training for Attorney Managers:

In our experience, the typical job history of a chief legal officer (CLO), or senior in-house counsel who manages other attorneys (managing counsel), has just a few steps. They often look something like this:

1. Law school,
2. Law firm or in-house counsel, then
3. CLO or managing counsel.

This description is, of course, a glittering generality. There are many variations on the theme. They may include a stint with the government, an additional loop-de-loop between a corporate law department, law firm and then back to the law department, or perhaps a few lateral moves between companies.

However, one fact remains abundantly clear and repetitious: In the past, very rarely have you seen any management or, better yet, leadership training interjected into the picture. Instead, the non-supervisory line attorney of yesterday, promoted to be tomorrow's manager of 10, was often left to sink or swim. The negative ramifications of this result rained upon the new manager, the people he/she manages, the legal department and, ultimately, the company.

If You **Lead,** Will They **Follow?**

By Frederick J. Krebs and Deborah M. House

### Planning a Winning Team

Winning football coach Vince Lombardi advised that, "Leaders are made, they are not born. They are made by hard effort, which is the price which all of us must pay to achieve any goal that is worthwhile." Suffice it to say he knew what he was talking about: Lombardi, named "Coach of the Century" by ESPN, coached the Green Bay Packers to nine winning seasons in the 1960s and boasted a record of 105-35-6, unmarred by a losing season in a 13 year professional coaching career. Companies appear to be taking heed of such advice, realizing the inadvisability of the alternative. Accordingly, those with greater resources—and typically those with larger legal departments—are taking steps to assure that their rising legal managers get the leadership training that they need.

Recently, as part of ACC's commitment to provide value for in-house counsel at each stage of their career through targeted resources and services, the authors worked with a large international law department to create leadership training for its lawyer managers-to-be. Among other topics covered by the training was strategic planning. [See information regarding leadership training that ACC offers to its members on page 84].

Good strategic planning answers many of the questions that run through the newly minted legal manager's mind as he/she breaks into a cold sweat wondering what to do next. And make no mistake, this is not just about CLOs for large law departments. Such questions have universal application for small law departments as well. In fact, if you are the only attorney the company has, given your limited resources (you!), isn't it essential that you know where you are going and how you are going to get there? Similarly, although you might be part of a larger legal department's overall plan, attorney managers of subunits within a large law department are going to need to engage in strategic planning for their practice area.

Summarily stated, strategic planning addresses itself to inquiries such as:

- Why does the law department exist and what is its mission?
- What is the vision we aspire to for the department?
- What are the strengths and weaknesses of the department?
- What are the factors that may negatively affect the law department?
- What are the positive opportunities that the law department has for change?



- What actions can/should be taken to make the law department what it should be?
- How can the budget process support and reflect strategic planning?
- How do we go about making these actions a reality?

These are the types of questions that have been asked and answered during the careers of almost a dozen current or former CLOs from a wide variety of industries that we interviewed to gain insight into the law department strategic planning process for training purposes. Their answers underscore the importance of leaders understanding the process and seeking more education where they do not. From our discussions with them we gleaned the following nuggets of wisdom.

#### One Size Does Not Fit All

Your strategic planning process should take into account that the needs of companies/organizations (clients) will differ significantly and will constantly be subject to change. As a result, what they need and what you do will vary greatly. For example, if a company is in an aggressive acquisition mode, or implementing a new brand, or downsizing—all of those needs will drive the legal department's plan. The strategic plan for the legal department should also take into consideration the history/status/structure of the department (what it is and what it should be and how that will affect the delivery of legal services).

Creation of the strategic plan also provides a valuable opportunity for in-house counsel not only to respond to their clients' needs, but to be pro-active as well. Moreover, client input can help determine how in-house counsel respond to client needs (e.g., how important legal news should be communicated). It can also be used to manage client expectations.

#### There Is No Substitute for Careful Thinking and Planning

Although approaches may vary, traditional strategic planning contemplates a progressive analysis and undertaking that typically starts with the creation of a clear mission and vision statements, identifies strategic issues, progresses to the development of strategic goals and objectives, and finally to the creation and implementation of an action plan to meet the identified objectives. While the process should not be tortuous or any element belabored—it does require some important work that should

not be avoided. Perhaps most importantly, you should understand the end goal and what you need to achieve. As one CLO put it: "Think before you plan!"

#### Align With and Participate in the Company's (Client's) Strategic Planning

While the level of sophistication of strategic planning may vary from company to company, as a general matter our business partners are ahead of us in the strategic planning department. This fact can be used to the distinct advantage of the legal department because aligning with the corporate goals facilitates the creation of the strategic plan for the legal department (to say nothing of enhancing counsel-client relationships). For example, if the client determines that one of its goals is to invest in a new foreign market, that goal should direct the legal department's plan as it determines how it will support that endeavor. And even if you don't tailor every law department goal to a company goal, you can at a minimum keep the company goals in mind as you work on the plan.

**Finally, make sure that your clients have knowledge of your plan. It will enhance your reputation as a true business partner.**

It is important to stress, however, that the legal department's strategic planning should not be simply a reactive endeavor. Rather, it is vital that the legal department secure a chair at the table of the corporate planning process and contribute to that process. For example, if the client's strategic goal is to move into a new foreign market that is subject to a legal and regulatory framework that makes outside investment very difficult—that fact needs to be brought to the attention of the client during the strategic planning process—not afterwards. That will not happen unless counsel is at the table. On a more mundane note, several CLOs noted that the department's plan should be written in the same style and format as the company plan to facilitate communication and alignment.

And make sure you have the right people at the table when you do your internal department planning. You should involve appropriate staff in your planning process.

#### Communicate Your Plan

Once you develop the goals, objectives, and action plans that come from your strategic planning be very intentional about communicating them. First of all, make sure that all legal department staff understand the where, why, how, what, and when that underlie those plans, and align their

goals and activities appropriately. Note too that outside counsel should understand the plan and even may be appropriate participants in this process—especially if you anticipate they will be important participants in achieving your goals. Finally, make sure that your clients have knowledge of your plan. It will enhance your reputation as a true business partner.

#### The Right Horse for Your Course

While we hesitate to compare in-house counsel (as one of our interviewees did) to equines, the underlying analysis attached to this phrase makes a good point. Your best attorney may not be the best attorney for the jobs required by your strategic planning. It does not mean existing staff is not competent. Rather, consider this—even a Kentucky Derby winner is not going to perform well in the Grand National Steeplechase or as a performing Lipizzaner Stallion! As corporate goals and legal department goals change, you must constantly reassess your department. Do you have access to the right skills sets to get the job done and if not, how will you get

them? Perhaps you need more generalists and fewer specialists or vice versa given new corporate needs. Or, perhaps you need a lawyer with good solid "detail" skills rather than a "visionary" counselor. And do not limit this evaluation just to in-house counsel; it applies to outside counsel as well.

#### Understand Your Client's Business

This cannot be said often enough as it applies to everything that you do. If you do not understand how the business works, then you cannot help your client go where it needs to go; you cannot be a true business partner. And this applies from start to finish, including knowing how your client makes money, the business climate in which it operates, and the legal and business risks that it faces.

For example, say your client engages in a particular type of transaction that by sheer numbers is profitable for the company, but on an individual basis, runs on tight margins. In your strategic planning, you will need to provide legal services that match those characteristics (e.g., by securing one outside law firm to do all of the transactions, but at a below market fixed price that would not be profitable for several firms splitting the business). If you did not understand how the business operates your analysis about how to provide legal services may be faulty.



### The Bottom-line Counts

As a general matter, lawyers have a bad reputation as budget planners who traditionally argue that you cannot predict or control legal costs, especially litigation. In today's business environment many (if not most) clients do not tolerate this position. Good legal department strategic planning requires good budget planning. Part of this process requires understanding how you spend your legal dollars and determining whether you spend them in the right places. For example, you may find the work done by your lawyers can be handled more cheaply and more effectively by others, such as paralegals or even clients with the right training and support. In other cases, you might pinpoint areas of high risk and a greater need for legal services. It also means that you must develop and live within accurate budgets and projections of your legal expenditures. Several CLOs emphasized that legal costs can and should be estimated with accuracy.

Data from past activities will be useful in making this analysis. One CLO said he intended to develop a metric based on "the cost of failure" with failure being defined as anytime the company gets into a dispute where the company paid more than originally obligated including for legal services, settlements or because of contract disputes, or even to address employee disgruntlement. Lawyers do not like to project and adhere to proposed expenditures—but it can be done.

### You Are What You Track

The importance of securing and applying the appropriate metrics cannot be underestimated. One of our interviewees noted he works off a pyramid structure to demonstrate this. At the bottom of the pyramid is data, the next layer up is facts, the next ascending layer is knowledge, and the pinnacle component is wisdom. Data may come in many forms—crunching of numbers from outside counsel, numbers relating to transactions provided by clients, estimated hours to accomplish projects, timelines, client surveys, legal spending inside and out, as well as the number and types of lawsuits. Collect the data and then use it in the strategic planning process and to measure your results.

### Culture Matters

Strategic planning cannot be conducted in a vacuum. The existing culture of the company—or perhaps the absence of an appropriate culture—must be taken into consideration. For example, if the culture of the company is to marginalize lawyers or to view them as obstacles—that fact should be taken into consideration in strategic planning. In fact, part of the strategic planning in such an

## Avoid a never-ending search for the appropriate data that may not exist or overspend your energies on compiling it.

instance may be to establish an action plan to turn this culture around since the ability of the legal department to be effective is going to be directly affected by such a culture. Similarly, if the culture of the company is that business units work in competitive silos, and the goals of the company contemplate maintenance of the status quo, that also must be taken into consideration in planning and providing legal services.

### Do Not Overanalyze

The traditional strategic planning process contemplates a certain analysis. However, beware of getting bogged down in the details. For example, do not torture yourself over whether something is an objective or a goal or whether your mission or vision statement is perfect. Avoid a never-ending search for the appropriate data that may not exist or overspend your energies on compiling it. Dive in and get started with your planning and recognize your first time through the process may not be perfect. You can always start creating the data you now know you need; do not spend time bemoaning the fact that it doesn't exist currently. Moreover, the strategic planning process is not stagnant. You will have plenty of time to correct course as you move forward, and in fact should do so regularly.

### Strategic Planning Can Be More Than Strategic Planning

Use the planning process to achieve other goals. For example, one CLO saw it as a great tool for team building. It might also present a chance for an attorney to step out of his/her comfort zone and act as a leader where they otherwise might not have such an opportunity. Finally, it can be a way to direct and implement change in a manner that allows staff to understand the reasons therefore, and gives them an opportunity to climb aboard or remain behind.

### Break Down the Barriers

One CLO succinctly captured the law department planning process when she summarized her approach as follows:

1. Require and implement the discipline of accurate forecasting and budget management in the law department.
2. Then convince the business to use lawyers early and often.

## Peer Advice on Strategic Planning

"I would say that strategic planning is not a highly quantitative exercise except when we set out the action plans to get us to our objectives. We debated long and hard about it. So, in the intellectual property area we decided that we would have at least two high profile enforcement actions every year and publicize those in order to establish our reputation as an aggressive enforcer of our intellectual property. And in the first year of our plan we did four. So now we are on the radar screen as people you don't take lightly in the IP area. So the key is to select objective, measurable items that you're going to take on as part of your strategic plan."



Barry Nagler, senior vice president, general counsel and secretary, Hasbro, Inc., and former Chairman of ACC

"The truth is that the law department is responding to the higher crises that are hitting the company. You can't anticipate them. In fact, you have to manage your department so that while you think you might know what's going to happen this year, you sure as heck know it is not going to happen that way. So the law department, more than any other department, has to be proactive in its strategic plan, and nevertheless still be nimble enough to be responsive to what really is happening to others that you have no control over."



Michael Roster, former general counsel of Golden West Financial Corporation, and former general counsel of Stanford University, and former Chairman of ACC

"Lawyers need to understand how to develop better business plans for their own departments. For example, if a company decides that within the next 3 to 5 years, strategically, it is going to be in an acquisition mode, the first thing the general counsel should do is sit down with the business development people and the lawyers that support that client and talk about what is coming down the pike in the next 18-24-36 months. Unless you sit down and have that discussion, you're not making these decisions strategically, or thoughtfully. You're just making them as they happen and you'll be constantly reacting."



Anastasia D. Kelly, executive vice president, general counsel, and senior regulatory and compliance officer, American International Group, and ACC Board Director

"In terms of implementing a performance management system that furthers the goals of the department or the team it is just best to get it off the ground and accept that it is going to be imperfect the first time. So, get started as opposed to worrying too much about whether it is going to be perfect from the beginning, because it won't be."



J. Daniel Fitz, general counsel and company secretary, Miaya plc, and ACC Board Treasurer

"I absolutely keep my attorneys apprised of how what they are doing relates to the strategic goals. I give them the corporate objectives. I drill down from those corporate objectives to the legal department objectives which are all supportive of the corporate objectives. I give them feedback from the executive committees about what's going on and what the current emphasis is. So through constant communication I keep reminding them what the corporate objectives are and what the current status of the achievement of those objectives are."



Susie Flook, group general counsel for The Body Shop International plc

"I wish in the beginning I had taken a very long hard look at the corporation's strategic plan and decided what seats I needed to have on the legal department bus going forward. And once I decided what skills and experience I needed, then I would have gone through and made sure I had the right people sitting in those seats."



Kate Chisholm, vice president, general counsel, and corporate secretary for EPCOR Utilities, Inc., and EPCOR Power LP

"I have found that communicating how the legal department thinks about strategy, thinks about helping the company achieve its goals, and does this in a manner consistent with how the operating units manage their own businesses, is tremendously helpful to the law department's reputation and perception by business managers. All of a sudden you are a strategic partner, not a necessary evil or group overhead to be borne by the guys making the money."



James T. Bellerjeau, general counsel and secretary for Mettler-Toledo International, Inc., ACC Europe Chapter Treasurer

5. Implement metrics to measure success regarding the allocation of legal department resources.

**Questions to Ask**

Nearly every CLO interviewed mentioned questions that he or she felt necessary to a successful planning process. Here are some of them:


1. How should the law function be structured? Centralized reporting to the CLO, decentralized and reporting to business units or a hybrid? Centralized location or "on the ground" with the business units?
2. Is the law department capable of aligning with the corporate goals? If not, what must be done to achieve that goal? Stated simply, does the department have the skill sets necessary to help the client achieve its goals?
3. What can the legal department do to help the company achieve its goals? What does the client need?
4. What will this cost? Can we estimate our legal expenditures for litigation? For transaction work?
5. Do you staff for peaks or valleys?
6. Do you handle core strategic issues inside or with outside counsel?
7. What metrics work best? Do you measure input (e.g., time, dollars spent, turnaround) or output (e.g., dollars saved, risks eliminated, client satisfaction)?

8. What should we stop doing? What can someone else do more efficiently or effectively?
9. How should I communicate with the client?
10. How do I manage client expectations? What does the client want?

**What I Wish I Knew**

We asked CLOs what they know now that they wish they had known when they first engaged in the strategic planning process. We felt the mistakes they mentioned to be especially enlightening and that much could be learned from them.

1. I did not understand the importance of the strategic planning exercise. I thought it was simply a "check the box" exercise.
2. I over-analyzed the problem and took too long to get started.
3. I planned before thinking about what I wanted to achieve.
4. I did not take a critical look at what the company needed and the skill sets in our law department.
5. I did a good job reacting, but was not proactive enough in anticipating issues or changes.
6. The biggest mistake I made was not leaping into the strategic planning. I took for granted that the legal department's size and shape was right to begin with.

Based on our analysis and discussions we would offer one more suggestion: Learn more about the process of strategic planning and how to implement it. Learning how to lead definitely was not taught in law school. And although it may be hard, it certainly is a worthwhile goal. And it may make the difference between sinking and swimming. You choose. 

Have a comment on this article? Email [editorinchief@acc.com](mailto:editorinchief@acc.com).

**Note**

- 1 Those interviewed included CLOs based in Europe, Canada, and the United States who currently represented (or had represented) corporations and multinational companies in the energy, insurance, technology, consumer goods, financial services, manufacturing, and food industries.

**ACC Extras on...Strategic Planning**

**ACC Annual Meeting Program Materials**

- *Effective Budgeting for the Law Department (2006)*: The topics in this program material include making the case for bringing work inside, billing back for time, establishing metrics, using benchmarking effectively, increasing the number and/or experience levels of non-lawyer staff, and using contract or temporary lawyers for specific projects. [www.acc.com/resource/v0824](http://www.acc.com/resource/v0824)

**InfoPAKs**

*Strategic Planning for In-house Counsel (2006)*: Strategic planning allows a law department to focus its energy effectively and ensure that its members are working toward the same goals. Such planning also allows a department to assess and adjust its direction in response to a changing environment. This InfoPAK is intended to provide in-house counsel with information focused on strategic planning issues. [www.acc.com/resource/v0883](http://www.acc.com/resource/v0883)

# TOOL for

## How to Create a Legal Department Business Plan



# our TIMES

BY RON K. BARGER,  
JANE MALLOR MCBRIDE, AND  
ANTONIE WELLS WHITTIER

In an era when corporations are under assault on all sides—by the media, by regulators, by shareholders, and by the public—it is very much in a corporation's interest to put in place formal documents that spell out corporate values, goals, and procedures. A corporation's legal department should take a leading role in these efforts, in part by creating its own legal department business plan.

A legal department business plan is an organizational tool that identifies the legal department's goals, sets forth detailed implementation steps and strategies, and establishes procedures. It is also a conceptual tool that defines how the department can best function within the company to provide optimal services and advance corporate priorities. All in all, the plan reflects a shared vision that guides legal department members on an ongoing basis.

The benefits of a legal department business plan are enormous. A legal department business plan makes the department's goals explicit and gives everyone in the

department a sense of what is expected of each employee. The plan also fosters a deeper understanding of broader company objectives, encourages the development of good working relationships with clients, and reinforces the legal department's importance as a key resource within the company.

By analyzing the services that the legal department provides to clients, the plan promotes a higher level of consistency in the delivery of these services. By generating a greater awareness of departmental resources, the plan helps people respond with flexibility to unforeseen circumstances. Finally, the plan, by virtue of the brainstorming and team effort that go into its creation, builds departmental morale and produces greater cohesion within the department.

In all of these ways, a legal department business plan leads to more effective partnerships with clients, superior client service, and greater efficiencies, all of which contribute significantly to corporate well-being.

Ron K. Barger, Jane Mallor McBride, and Antonie Wells Whittier, "Tool for Our Times: How to Create a Legal Department Business Plan," *ACC Docket* 21, no. 9 (October 2005): 146-160. Copyright © 2005 Ron K. Barger, Jane Mallor McBride, Antonie Wells Whittier, and the Association of Corporate Counsel. All rights reserved.





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#### THE FOUNDATIONS FOR A SUCCESSFUL PLAN

Traditionally, business plans have been used to obtain funding for entrepreneurial projects and businesses or as an essential step in selling an established company. They have typically followed a largely prescribed format and include a somewhat rigid financial and market analysis. Although the organization and discipline that characterize traditional business plans are important for legal department business plans, as well, the components of legal department business plans can be far more diversified. Indeed, versatility is a hallmark of legal department business plans.

Because of their versatility, legal department business plans can be organized using a variety of formats, ranging from simple and direct to highly detailed. Regardless of the format, a legal department business plan should include the projects and/or goals that the department is pursuing, the steps that must be taken to complete the projects and/or reach the goals, a statement of deadlines, and methods of measuring success. Without these

components, a legal department business plan will lack definition and focus.

The period of time covered by a business plan can vary. Although annual plans are often used, a longer period of time can sometimes be more effective, particularly if a plan covers major projects that will take more than one year to complete. No matter what time period the plan covers, you will need to keep long-term goals in mind as you develop your plan. Language in the plan that refers to goals and projects whose completion date falls outside the time frame of the plan keeps all department members looking ahead and bridges the gap between the current plan and subsequent versions.

The topics, themes, and focus of the plan will depend on the needs and circumstances of both your legal department and your company. For example, a plan for a legal department that has been downsized might concentrate on a reallocation of resources or a reconsideration of the situations in which outside counsel will be used. Alternatively, a plan for the legal department of a corporation that is expanding through acquisitions might concentrate on internal growth and the integration of the new businesses.

As circumstances and priorities change, the plan should change. When a company-wide computer system is introduced, for example, a legal department business plan should be updated to include references to the new system and how it will be used to support the department's goals and objectives.

It is a good idea to review the format, emphasis, and wording of business plans used by other company departments or your company as a whole. If, for example, the company's overall business plan uses a strict format that emphasizes bottom line results, then the legal department's plan should use the same or a very similar format and should incorporate a similar results-oriented theme. When the corporate culture is more informal, a wider range of formatting options may be available. The wording used in a legal department business plan is also important. If corporate management routinely uses certain key phrases or terms of art, then the plan should be drafted with the appropriate terminology in mind. Taking these steps will generate more effective communications with others in your company.

In order to be successful, a legal department business plan must actually be used. There is nothing

worse than spending legal department time and resources to construct a plan that gets placed in a drawer and ignored. Because an effective legal department business plan paves the way to future success and accomplishment, it should be regularly consulted by legal department members.

Another important factor to bear in mind when drafting a legal department business plan is the audience to whom the plan is directed. On the most basic level, a business plan is a set of guidelines for members of the legal department. But a legal department business plan is often distributed to corporate management, business units, and even outside counsel. Under these circumstances, the plan serves a reporting function, as well as an informational and promotional function.

department's budget. Although a legal department business plan may refer to budgetary issues, the business plan is far more expansive. The legal department business plan is strategic and visionary in nature while the departmental budget deals with dollars and is more one-dimensional and limited in scope. Although the format of a legal department business plan may differ from that of a traditional business plan, a well-organized and well-written legal department business plan will be impressive to the department's business clients.

The preparation of a legal department business plan is often challenging, but a careful review of the issues outlined above will help you produce a good result.

#### CREATING THE PLAN

##### Drafting the Plan

In order to build consensus and generate enthusiasm for the plan, all legal department members should be involved in the plan's formulation.

You can use a number of different procedures to encourage full legal department participation in creating the plan. For a small legal department, you can organize a series of departmental brainstorming sessions to discuss formatting options and to outline the basics of the plan. For larger departments, various department members can draft various sections of the plan and then circulate a unified draft to the entire department. Another way to proceed is to distribute to legal department members a plan already drafted by senior members of the department and to ask for comments, either in writing or in a meeting. At Archon, for example, all lawyers in the legal department were required to write their own personal business plans, which were then used to develop the department's overall plan. Regardless of the procedure followed, the process should be as participatory as possible and should give each legal department member a stake in the final product and its successful implementation.

One of the main reasons for requiring the full participation of legal department members in the preparation of the business plan, in addition to promoting the cohesiveness of the department, is to emphasize the department's significant place within the company and the department's identification

### **ALTHOUGH THE FORMAT OF A LEGAL DEPARTMENT BUSINESS PLAN MAY DIFFER FROM THAT OF A TRADITIONAL BUSINESS PLAN, A WELL-ORGANIZED AND WELL-WRITTEN LEGAL DEPARTMENT BUSINESS PLAN WILL BE IMPRESSIVE TO THE DEPARTMENT'S BUSINESS CLIENTS.**

When distribution of the plan outside the legal department is anticipated, the authors of the plan should carefully consider the best format and method of presentation for the information. Many legal departments convert their business plans into PowerPoint presentations that are introduced to wider in-house audiences in formal meetings. This system showcases legal department accomplishments, such as cost control initiatives, successfully resolved cases, and the closure of significant transactional matters, and demonstrates how the legal department contributes to overall corporate objectives.

Business plans are also an effective way to present legal department achievements to business clients who are already familiar with this form of communication. It is important to distinguish between a legal department business plan and the

From this point on . . .

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#### ONLINE:

- ACC's committees, such as the Law Department Management Committee and the Small Law Departments Committee, are excellent knowledge networks and have listservs to join and other benefits. Contact information for ACC committee chairs appears in each issue of the *ACC Docket*, or you can contact Staff Attorney and Committees Manager Jacqueline Windley at 202.295.4103, ext. 314, or [windley@acca.com](mailto:windley@acca.com) or visit ACCA Online<sup>SM</sup> at [www.acca.com/networks/ecommerce.php](http://www.acca.com/networks/ecommerce.php).
- allPM.com, a site for project managers, includes information on project management software tools and technology, at [www.allpm.com](http://www.allpm.com).
- Global Counsel *Best Practice Series: Law Department Structures and Reporting Lines*, at [www.practicallaw.com/A28434](http://www.practicallaw.com/A28434).
- *Law Department Management*, an ACC InfoPAK<sup>SM</sup>, available on ACCA Online<sup>SM</sup> at [www.acca.com/infopaks/lawdept.html](http://www.acca.com/infopaks/lawdept.html).
- Thomas L. Sager and Scott L. Winkelman, "Six Sigma: Positioning for Competitive Advantage," *ACC Docket* 19, no. 1 (January 2001): 18–27, available on ACCA Online<sup>SM</sup> at [www.acca.com/protected/pubs/docket/jf01/six.html](http://www.acca.com/protected/pubs/docket/jf01/six.html).

with the company's mission. To this end, important company goals should be incorporated into the legal department's plan. The most current version of the company's goals and objectives, together with supporting documentation, such as a corporate mission statement, should be close at hand when the legal department plan is being drafted.

Incorporating a company's business values into a legal department business plan has two important benefits. First, the legal department members gain a far better understanding of their business clients and feel more connected to the corporate culture. Second, business clients who read the plan gain a far better understanding of the legal department and how it contributes to the success of the business.

- John R. Stout, *Road to Better Business Reputations Will Not Be Smooth or Painless*, at [www.fredlaw.com](http://www.fredlaw.com).

#### ON PAPER:

- WILLIAM D. BYGRAVE, ED., *THE PORTABLE MBA*, 2d. ed. (John Wiley & Sons, 1997).

#### AT ACC'S 2003 ANNUAL MEETING:

- Are you looking for even more information on this issue? If so, plan to attend ACC's 2003 Annual Meeting October 8–10 at the San Francisco Marriott. Visit [www.acca.com/education03/am](http://www.acca.com/education03/am) to learn more about the meeting and register.

*If you like the resources listed here, visit ACC's Virtual Library<sup>SM</sup> on ACCA Online<sup>SM</sup> at [www.acca.com/resources/vl.php](http://www.acca.com/resources/vl.php). Our library is stocked with information provided by ACC members and others. If you have questions or need assistance in accessing this information, please contact Staff Attorney and Legal Resources Manager Karen Palmer at 202.295.4103, ext. 342, or [palmer@acca.com](mailto:palmer@acca.com). If you have resources, including redacted documents, that you are willing to share, email electronic documents to Managing Attorney Jim Merklinger at [merklinger@acca.com](mailto:merklinger@acca.com).*

#### General and Free-form Plans

When a legal department creates a business plan for the first time, a straightforward approach and a general format may work best. Over time, a more customized approach may bring greater returns.

Archon used both formulas with good results. When all departments were required to submit business plans to corporate management, the use of a general model allowed the various plans to be compared more easily and resources allocated accordingly. The use of a free-form approach, however, permitted the inclusion of highly creative ideas in the plan and created a greater sense of accountability for the plan's success among department members.

Regardless of the format that is used, a legal department business plan must contain certain core elements to be effective: an identification of the projects and/or goals that the department is pursuing, the steps that must be taken to complete the projects and/or reach the goals, the deadlines, and the methods of measuring success.

#### Model for a General Business Plan

A useful model for a legal department business plan appears below. A short discussion of the content of the sections of this general model follows.

- Executive summary.
- Priorities.
- Goals.
  - Goal 1.
    - Priority status/reason.
    - Action steps/responsible parties.
    - Success measurement.
    - Dependence of goal on other departments.
    - Dependence of goal on other goals.
  - Goal 2.
    - Priority status/reason.
    - Action steps/responsible parties.
    - Success measurement.
    - Dependence of goal on other departments.
    - Dependence of goal on other goals.
  - (And so forth for each of your goals).
- Consolidated timeline.
- **Executive summary.** The executive summary generally describes the plan as a whole, including its highlights and themes. An executive summary drafted before the plan is written may be incomplete; therefore, the drafters of the plan must check the executive summary for accuracy and completeness after the plan has been written.
- **Priorities.** This section sets the legal department's priorities among the various goals outlined in the plan. You can set priorities by using a hierarchy, denoting the goals as A-level, B-level, or C-level priorities, for example. A legal department's priorities are shaped both by internal factors, such as company-wide cost-cutting initiatives or business unit reorganizations, and external factors, such as significant legal developments.
- **Goals.** Legal department goals are the centerpiece of the general model and, indeed, of virtually all legal department business plans. List and

analyze the goals according to a number of factors, beginning with a description of why the goal has (or has not) been given a priority status. To help make sure that your legal department goals track with what your company wants and needs from your department, see Michele S. Gatto, "SWOT and Beyond: How to Make Your Law Department Effective," *ACC Docket* 21, no. 9 (October 2003): 40–58, in this issue of the magazine to learn how to gather that information.

- **Goal priority and supporting reasons.** Priority among goals is based on current information and circumstances; as circumstances change, you can revise priorities. The revised business plan should include the reasons for the new priorities. For example, training for members of the legal department, which might normally be a B-level priority, may move to an A-level rating when the company acquires a new business or a new law is passed and the responsibilities of the legal department expand accordingly.
- **Action steps/responsible party.** A description of specific actions to be taken to achieve particular goals is critical. In addition to enumerating the specific action steps for reaching a goal, a plan should identify the responsible parties so that accountability and a point of contact for each step are made a part of the plan.
- **Deadlines and milestones.** Deadlines for each action—that is, dates by which certain events must take place—are essential in an effective plan. Likewise, milestones—that is, major events or accomplishments that occur over time—should also be listed. For example, the creation of a series of legal department training workshops may have a deadline of January 1, 2004, and the completion of all such training workshops on June 1, 2004, is the associated milestone. Here again, full departmental participation is beneficial because input from legal department members and particularly responsible parties will make the inclusion of deadlines and milestones possible.
- **Success measurement.** The method of measuring success depends on the goal being measured. If the goal is to hire a lawyer with particular expertise, the goal will be achieved when the lawyer is hired. The success of achieving other goals, how-



ever, may be more difficult to measure. For example, it may be difficult to quantify success in such areas as improving interdepartmental communications or shortening response times to requests for legal department assistance. Nonetheless, writing the business plan is useful for the opportunity to discuss these matters and select the best method of measurement for the various goals. Additionally, one way to underscore a legal department's commitment to the success of the plan, as well as the success of the company, is to make a policy of reporting on success to upper management, which success measurement allows to occur.

- **Dependence of the goal on other departments and/or other legal department goals.** The last two subsections suggest that in some cases the

legal department will not, by itself, be able to guarantee the realization of a goal by a specified deadline. For example, a client satisfaction survey cannot be completed if the recipients fail to respond. The real importance of these subsections is their ability to identify areas where delays in achieving goals may occur. For the credibility of the plan and the protection of the legal department, plans should identify potential problem areas and supply options or alternatives that allow goals to be met in a timely fashion.

- **Consolidated timeline.** The final section of the general model is a consolidated timeline, used to array in one chart all of the deadlines contemplated by the business plan. Presenting this information in a timeline (Gantt) chart,<sup>1</sup> such as the sample in the sidebar below, is effective for,

among other things, underscoring the variety of projects that the legal department is involved in, an important point when presenting the plan to corporate management. The chart also shows periods of greater or lesser use of legal department resources on the projects and facilitates internal planning and resource management.

A variety of general models may be used by a legal department in writing its business plan. The example set forth above is one formulation that has been used successfully. Using a format that facilitates planning, promotes participation, and allows for future updates and adjustments is essential.

*Customized or Free-form Plans*

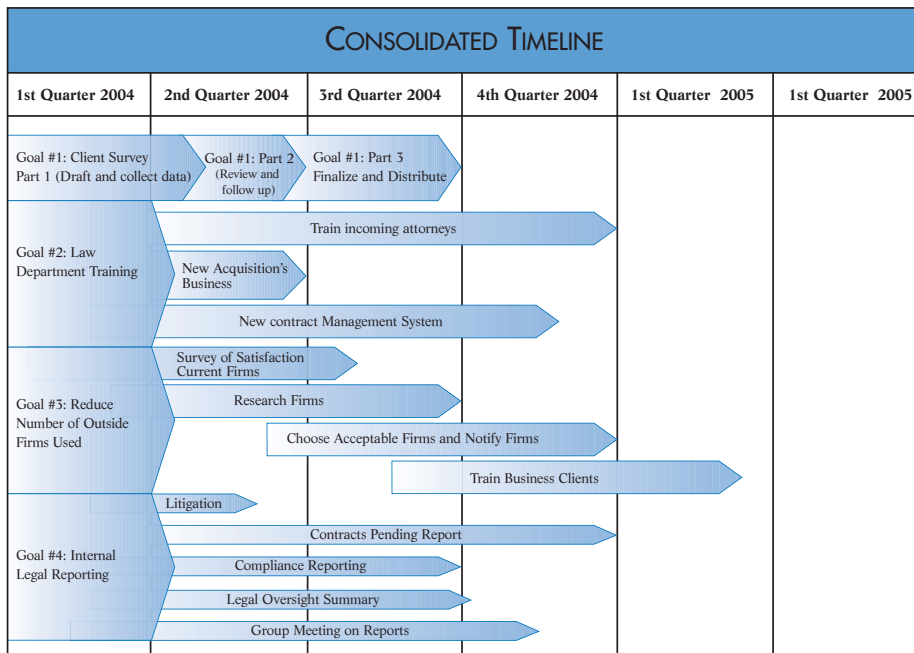
Legal department business plans should be sufficiently flexible to address a number of subjects and to adapt to a number of organizational schemes. Customized or free-form business plans should include the previously discussed components but also may be organized using a more expansive and/or more individualized approach. See the sidebar on this page for an example of a free-form legal department business plan.

Legal departments in smaller companies or in companies with an entrepreneurial focus may find a free-form plan especially useful for generating ideas and demonstrating the department's adherence to the corporate culture. But legal departments at larger companies can also customize their departmental business plans. Free-form plans often include sections that are intended to expand creativity or deepen the level of analysis, as in the following examples:

- **Legal department mission statement.** A mission statement summarizes the way that the legal department approaches its responsibilities at the company. A mission statement promotes departmental cohesiveness and can be particularly meaningful when it results from one or more legal department brainstorming sessions. Normally, a departmental mission statement appears at the beginning of a plan and supplies the vantage point for viewing the rest of the plan.
- **Current assessment: strengths and weaknesses.** An assessment of legal department strengths can include the specific, such as goals achieved and cases concluded, and the general, such as flexibility, speed, and entrepreneurial spirit. Likewise,

the weaknesses can be detailed (the department is understaffed) and general (lawyers are not included in corporate strategic planning).

- **Keys to success.** In general, this section describes overarching principles that must be followed or changes that must be made for the goals listed in the business plan to be reached. For example, a legal department business plan that focuses on improved customer service might identify better responsiveness and greater consistency as the principles to be followed. This section is useful for sustaining momentum and giving legal department members a way to assess progress.
- **Assessment of previous business plans.** It is always sound policy to identify the lessons learned from experience. An examination of previous business plans used by the department,



**SAMPLE OF A CUSTOMIZED OR FREE-FORM LEGAL DEPARTMENT BUSINESS PLAN**

- I. Legal Department Mission Statement
- II. Current Assessment: Strengths and Weaknesses
- III. Statement of Primary Objectives for Current Year
- IV. Legal Department Training Initiative
  - A. Description of Initiative
  - B. Action Steps
  - C. Responsible Parties
  - D. Deadlines
  - E. Timeline for Initiative
  - F. Measuring Tools
  - G. Keys to Success
- V. Revised Service Model Project
  - A. Description of Project
  - B. Business Units Involved
  - C. Customer Analysis
  - D. Action Steps
  - E. Responsible Parties
  - F. Deadlines
  - G. Timeline for Project
  - H. Measuring Tools
  - I. Keys to Success
- VI. Departmental Leadership . . . and so forth

including their format, content, approach, and overall usefulness, will indicate which plan works best for the department. Business plans previously used by other departments in the company can also be examined.

- **Service model.** A legal department's service model refers to its way of providing service to its clients. By refining the model, the legal department can dramatically improve such things as turn-around time, interdepartmental communications, and timely interaction with clients on business matters.
- **Services provided.** Business clients (and even some legal department members) may not be fully aware of the wide range of services that the legal department provides. This section lists these services and describes them in an organized and effective way. This section is particularly useful when the department is expanding or otherwise changing the scope of its services. It is also a reminder to the business side of the corporation of the importance of the legal department and is a particularly useful section to include when a business plan is first drafted or circulated.
- **Customer analysis.** Analyzing every business client or, if more appropriate, every business group and determining the best practices for dealing with each one can produce substantial benefits and lead to improved partnerships with business clients.
- **Leadership.** Legal departments contain many potential leaders for the company as a whole. Identifying ways to be more noticeable in the company can increase the department's visibility and demonstrate the added value that the department brings to a variety of situations. In today's closely watched corporate environment, the legal department leadership role is more important than ever.
- **Communications flow.** Intra- and interdepartmental communications can often be upgraded. Identifying how and under what circumstances various kinds of information should be conveyed and the departments or persons to whom such information should be directed can quickly improve the flow of communications. Flowcharts and diagrams may be especially useful to depict the proper communications channels.

Another way to customize legal department business plans is to include project-specific titles and sections, such as document management, outside counsel initiatives, technology improvements, and cost-saving guidelines. This approach is very useful when the business plan covers a period of time marked by major projects within the department or company-wide initiatives. Consistent with the rest of the plan, these customized sections include a detailed discussion of the subject matter, including priorities, goals, success measurement, deadlines, and milestones.

**MONITORING PROGRESS**

Once the plan has been drafted and responsibilities have been assigned, monitoring progress is crucial. Monitoring progress is not part of the business plan per se but is a related activity that is critical to the plan's success. A successful legal department business plan should have mechanisms in place that permit the monitoring needed to ensure that the plan is being implemented efficiently. One or more persons in the department should be responsible for receiving updates and determining whether any changes to the legal department business plan are required.

A variety of methods can be used to receive information and track the progress made on departmental projects. The most basic way to monitor progress is through updates at regular departmental meetings. Such updates have the added benefit of making the business plan an agenda item at staff meetings and reinforcing its central importance to the department. Alternatively or additionally, emails or memos can confirm that deadlines have been met, milestones reached, and projects completed. As noted above, a senior member of the legal department must be responsible for assessing such information to see whether any adjustments are necessary.

At Archon, for example, a consolidated timeline incorporating all plan deadlines hangs on a wall of the legal department so that members can view the status of various projects at any given time. This approach not only underscores the significance of the plan and promotes a team approach but also ensures that everyone in the department sees the timeline every business day.

Archon used project management software that simplifies the maintenance of this chart, but even a simple chart derived directly from the business plan can achieve similar results. The chart should include the action steps, the responsible party, the deadline information, and a place for notes. Various project management software packages are available to create timelines, charts, and other helpful tools for monitoring plan progress. Whatever method is selected, plan monitoring must be done regularly to be effective. See the sidebar below for a sample tracking chart.

A business plan will change over time to take into account new and often unanticipated informa-

tion and events. This change is a strength of a plan, not a weakness. A plan's flexibility should easily permit amendments and change. Indeed, the plan's very existence will make adapting to these unanticipated events much easier by placing them in an already established context. In fact, the healthiest plans are altered continually and move forward together with the legal departments that they support.

**MAINTAINING PLAN VITALITY**

The creation of a legal department business plan is not an end in itself. As noted above, the drafted

**SAMPLE TRACKING CHART**

Task ID #	Plan Location	Task	Notes	Person(s) Responsible	Start Date	Finish Date
		Client Survey		SS	1/1/04	9/30/04
1	5.5a	Draft and circulate survey questions to legal department personnel for comment and input.		SS	1/1/04	2/15/04
2	5.5b	Hold internal legal department meeting to discuss comments on draft survey questions and finalize.	LL to coordinate scheduling	SS, LL	2/15/04	3/1/04
3	5.5c	Identify recipients of survey questions.		SS	1/30/04	3/1/04
4	5.5d	Circulate survey.		SS, LL	3/1/04	3/10/04
5	5.5e	Obtain survey results.		SS	3/2/04	5/15/04
6	5.5f	Schedule and hold followup phone sessions or meetings with recipients who have not responded.		SS	3/15/04	5/15/04
7	5.5g	Review and evaluate survey results.		SS, LL	5/15/04	7/15/04
8	5.5h	Write and circulate report pertaining to survey results to legal department personnel.		SS	7/15/04	9/01/04
9	5.5i	Hold legal department meeting to discuss results and recommendations.		SS, LL	9/01/04	9/30/04

plan should be reviewed, consulted, and updated on a continual basis. The legal department members should view the plan as a guide that is central to their professional responsibilities. Indeed, the department should refer to the plan regularly in its discussions of ongoing and future projects and initiatives. As circumstances change, the plan should be updated and adjusted. In these ways, the vitality of a legal department business plan is maintained, and the plan becomes a powerful tool for building legal department morale and achieving success.

A legal department business plan should be as visible as possible. The plan should be available in hard copy form and easily accessed on personal computers and laptops. Similarly, the plan can be bound or included in a notebook or other compilation of essential reference materials used by the department. And it could reside on an intranet for ease of updating so that everyone could always have access to the latest edition.

A legal department's business plan should be a central part of discussions on pending projects and departmental goals. Likewise, the business plan can be a regular aspect of staff meetings. Legal department members should be aware that performing their responsibilities under their plan is critically important to the departments and the company. Some legal departments tie annual performance appraisals and bonuses to achievement of business plan goals.

Legal department leaders should be receptive to and encourage input on ways to improve the plan. Quarterly or biannual meetings devoted to discussing the business plan should be scheduled. Consideration should be given to appointing a specific committee that becomes responsible for distributing, amending, and updating the plan on a rotating basis.

Finally, the fact that a legal department business plan can be used to record departmental progress and accomplishment and as testimony to the department's leadership in the company promotes a plan's continuing vitality.

## CONCLUSION

Although virtually all American corporations engage in strategic planning and use business plans,

only 16.7 percent of legal departments use business plans.<sup>2</sup> At a recent ACCA seminar in Dallas, no more than 20 percent of the attendees raised their hands when an informal poll was taken to see how many of the legal departments represented in the room currently used business plans.

This year—in fact, right now—is a good time to consider implementing a legal department business plan. Business plans provide a valuable tool for analysis, goal setting, and accomplishment. Legal departments that use legal department business plans, such as Archon, have gained numerous benefits from the plan, including more productive relationships among members of the legal department, improved allocation of resources, heightened departmental cohesiveness and morale, and more effective communications both within and outside the department. Legal departments that use business plans find that a plan aids in conforming legal and business goals, facilitating partnerships between the legal department and its business clients, and showcasing legal department achievements.

This time of reevaluation and restructuring for many corporations is an ideal time for legal departments that have not already created a legal department business plan to do so. The time invested in creating a successful legal department business plan will be paid back many times over in the benefits received. In this era of increased corporate scrutiny, in-house legal departments have a very important role to play. A legal department business plan will help a legal department reach its full potential at a time when maximum use of resources matters more than ever. A

## NOTES

1. A Gantt chart uses a graphic depiction set on a timeline to illustrate the starting point, the end point, and the duration of a project.
2. Corporate Legal Times—Huron Consulting Group LLC 15th Annual Survey of General Counsel, July 2002, at [http://cltmag.com/editorial/survey/july02\\_2.cfm](http://cltmag.com/editorial/survey/july02_2.cfm).